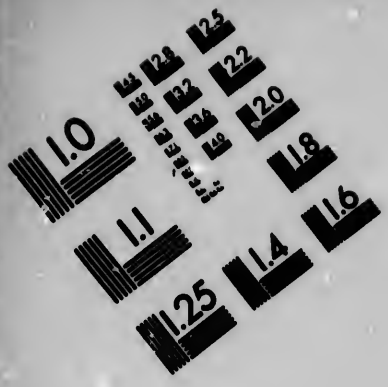

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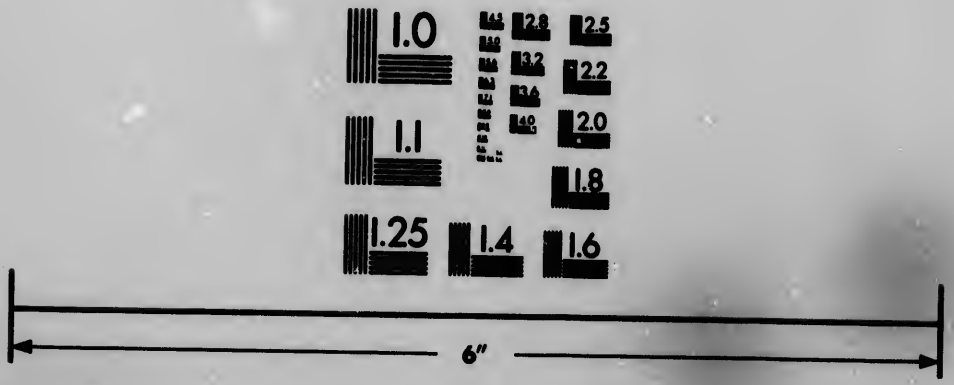

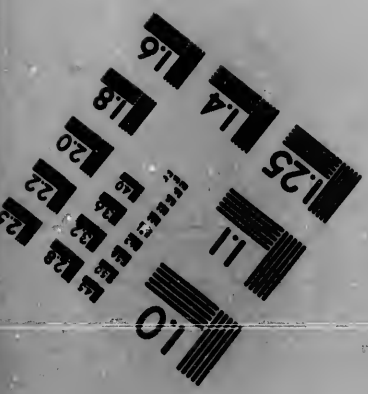

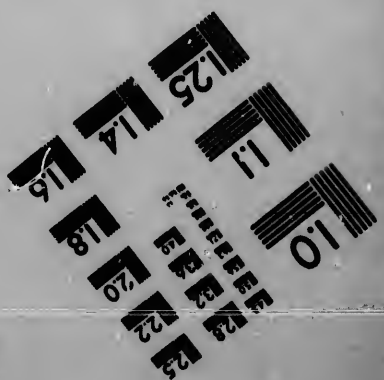

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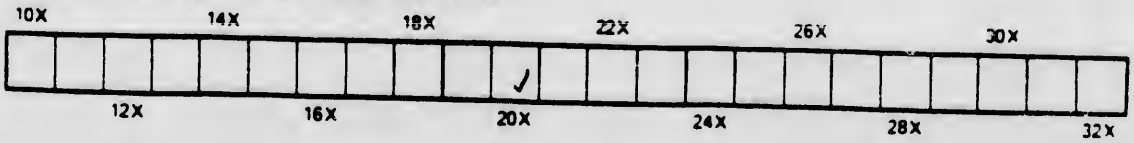

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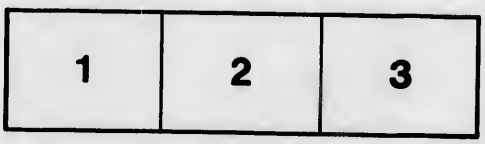

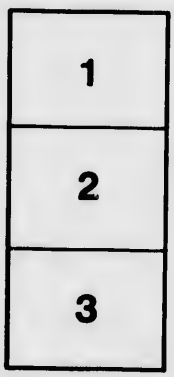

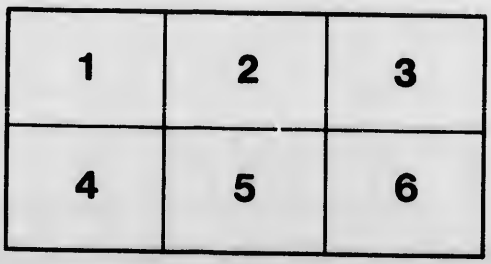

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LAW REPORT.

The Vice Admiralty Court of Lower Canada has had jurisdiction, since its establishment in 1764, over cases of collision, and other maritime causes of action arising in the River St. Lawrence, within the ebb and flow of the tide, and its jurisdiction has not been ousted or impaired by the creation of Courts of King's Bench and juridical Districts, under the Provincial Statute of 1793, commonly called the Lower Canada Judicature Act. (1.)

The fact of the locus in quo of the collision being within the body of a county or of a district, if within tide water in the River St. Lawrence, would not oust the jurisdiction of the Admiralty,—no exclusive jurisdiction attaching, by the Laws of Lower Canada, to the locality of the contract or thing done,—as in England.

The River St. Lawrence, throughout all its course in Lower Canada, is not comprehended in any one of the Judicature Districts.

IN THE VICE ADMIRALTY COURT OF LOWER CANADA,

the 23d March, 1844.

Before Dunbar Ross, Esquire, Deputy Judge.

The LORD SYDENHAM,

Charles Armstrong, Master.

ACTION OF

JOHN MOLSON, & al.

This was a case of damage by collision in the River St. Lawrence, brought by John Molson and others, the owners of the Steamboat Queen, against the Steamboat Lord Sydenham. The action commenced by the issuing of a warrant of attachment, under which the Lord Sydenham was arrested. An appearance was given for the owners of the Lord Sydenham, under protest to the jurisdiction of the Court, on the grounds :—

First—That the place where the collision in question in this cause happened, was in that part of the River St. Lawrence called and known as Lake St. Peter, about two and a half miles below Yamachiche, and about four and a half miles above Pointe du Lac, and distant about three miles from the north shore, within the District of Three Rivers, in Lower Canada, and also within the body of the County of St. Maurice in the said District, and is therefore exclusively cognizable by the Courts of King's Bench of Lower Canada.

(1) *Contra*—Hamilton vs. Fraser, K. B, Quebec, 1811.—Jones vs. Howard, K. B. Q., 1823.—Willis vs. Soucy, K. B. Q., 1827.—*Stuart R., pp.* 158, 39.

Secondly—That the said collision did not occur on the high and open seas, nor in any waters within the ebbing and flowing of the tide, but took place within the body of the said County of St. Maurice, in the District aforesaid, out of the jurisdiction of the High Court of Admiralty of England, and therefore out of the jurisdiction of the Court of Vice Admiralty of Lower Canada.

The Promoters in their reply alleged that the collision in question happened in Lake St. Peter, at a place below Yamachiche, and above Pointe du Lac, within the ebb and flow of the tide, and not within the body of the District of Three Rivers, nor within the body of the County of St. Maurice.

Affidavits were produced in verification of the respective allegations of the parties.

The Respondents produced four affidavits:—

Charles W. Hayden, of the Borough of William Henry, in the District of Montreal, Mail Conductor, deposed—

That he was on board the Steamer Lord Sydenham, on the twenty-third day of May last, when the collision in question happened—That it took place in Lake St. Peter, about two and a half miles below Yamachiche, and about four miles and a half above Pointe du Lac, about three miles from the north shore, within the body of the District of Three Rivers, and of the County of St. Maurice in that District, and not upon, nor in any waters subject to the ebbing and flowing of the tide.

Charles Logie Armstrong, deposed to the same effect.

Ambroise Paquet, of the Parish of St Charles des Grondines, *ancien navigateur*, deposed—That he has navigated the River St. Lawrence between Quebec and Montreal, during every season of navigation, from the year 1800 until last fall, as a Seaman, Master of a Schooner, and Pilot—That he knows how far the tides ascend in the said River, and that during neap tides there is no perceptible rise of the waters beyond Port St. Francis, and never beyond Pointe du Lac, (the lower end of Lake St. Peter,) even in spring-tides.—That at the end of spring-tides and during high easterly, and north-easterly winds, the waters of Lake St. Peter swell or rise a few inches, but that the current is ever downwards—That when the waters rise during these high winds, they remain in that state for several days without rising or falling, if the high winds continue, and that when it blows hard from the south-west, or down the River, the waters of the Lake never swell nor rise even during spring-tides—That the collision happened at the place mentioned in the Act on Protest, and he is positive in saying that at the place in question there is not an ebbing and flowing of the tide.

The affidavit of Jean Bellisle, of the Parish of Deschambault, also an old navigator, is to the same effect as the preceding one.

The Promoters also produced four affidavits:—

William K. Rayside, Deputy Harbour Master of the port of Quebec, deposed—That he has resided in this Province, at intervals, during the last forty years, and that he is well acquainted with the River St. Lawrence between Quebec and Montreal, and with the ebbing and flowing of the tides therein, and with the place where the collision in question in this cause took place, and that the waters of the St. Lawrence at the said place are subject to the ebbing and flowing of the tides, and rise and fall several inches at the spring-tides.

Hugh E. Scott, of Quebec, Gentleman—has resided in this Province for twenty-five years, and is well acquainted with the River St. Lawrence between Quebec and Montreal, and with the ebbing and flowing of the tides therein, and with the place of the collision in this cause. The waters of the St. Lawrence at the said place are subject to the ebbing and flowing of the tide.

Robert Shaw, of Quebec, Merchant—has resided in this part of the Province for the last twenty-seven years, and during the greater part of that period, has acted as Agent for Ships and Steamboats navigating the St. Lawrence between Quebec and Montreal, and is well acquainted with the tides therein and with the place of the collision in question in this cause;—it is to his knowledge that the waters of the St. Lawrence rise several inches there at spring-tides, unaided by the influence of the winds.

John Ryan, of Quebec, Gentleman—has resided during the last forty years, with occasional intervals, in this Province. During seven or eight years he was master of a Steamboat navigating the River St. Lawrence between Quebec and Montreal, and is well acquainted with the ebbing and flowing of the tides in the said River between the said places. He is also well acquainted with the site of the collision. The waters of the St. Lawrence rise there several inches at spring-tides, unaided by the influence of the wind. In the year 1841, the Steamboat Charlevoix grounded about fifteen miles above the place of the collision, and the witness was despatched by the owners to get her off; but after using every exertion for that purpose, he did not succeed until the setting in of the spring-tides, when, owing to the rise of the water caused by the tide, he accomplished his object.

Mr. Ahern and the Honorable Mr. Primrose argued the case on behalf of the Respondents, in support of their Protest to the jurisdiction of the Court, and contended that the jurisdiction of the Admiralty, in civil matters, may be properly divided into 1. Local, to which belongs collision, &c. 2. To the subject matter, as contracts for wages, bottomry bonds, &c.,—That this question necessarily turns on the 1st head, the locality of the collision.—That the place of the collision is proved by the affidavits to be beyond the ebb and flow of the tide—That the rise of waters mentioned in these affidavits was the combined effect of the wind and the damming up of the waters by the tide below—That to constitute an ebb and flow there must be a flux and reflux of the tide twice in twenty-four hours, and that in the present case it was apparent, from all the affidavits, that the flow of water at the place in question is constantly downwards; also, that the collision happened within the body of the County of St. Maurice and of the District of Three Rivers—That the Court has no jurisdiction over causes of action arising in places beyond the ebbing and flowing of the tide, nor until the passing of the 2d Will. IV, c. 51., in any place which is within the body of a County, or the body of a District.

That in England the Common Law Courts would not permit the Admiralty to exercise jurisdiction in matters within the cognizance of the former, because it would be depriving the subject of the trial by jury—That the mere fact of the *locus in quo* being in a County ousted the Admiralty—That the High Court of Admiralty in England has no jurisdiction except within the ebb and flow of the tide, and until the passing of a recent statute not even there, if the cause of action arose within the body of a County, and the Vice Admiralty Court in Canada could exercise no greater jurisdiction than the High Court of

Admiralty, of which it was a mere emanation—That the decisions of the Courts of King's Bench in the Case of Hamilton v. Fraser, and of the Camillus, were conclusive as to the want of jurisdiction in the Court within the limits of Lower Canada—That the Statute 2d Wm. IV., does not give jurisdiction out of tide water, and only had the effect of taking away the power of prohibition in the cases therein mentioned when occurring within the ebb and flow, and that jurisdiction is never implied in favor of an Inferior Court—That the Statute 3 and 4 Vict., c. 65, which extended the jurisdiction of the High Court of Admiralty in England to cases of collision within the body of a County, had no reference to this Country, as appeared by its provisions, which related expressly to that Court, and that in determining the law of this case we must keep our attention fixed on the decisions and conflicts in England anterior to 1840—That before that period the Admiralty in England had no jurisdiction over causes of wages begun and finishing in a County, nor in cases of salvage or collision occurring within the body of a County, nor for necessaries furnished to a foreign vessel—That even if this Statute could be considered as extending to Vice Admiralty Courts abroad, it never could be so construed as to give jurisdiction beyond the ebb and flow of the sea, the intentions of the Legislature being only to obviate the inconveniences which had been experienced in certain cases occurring *within the ebb and flow and within the body of a County*; that this extension of jurisdiction had been carefully limited to *ships and sea-going vessels*, thus excluding all other vessels or Steamboats employed exclusively in carrying on the internal commerce of the country—that in respect even to the ships and sea-going vessels, British ships were only subjected to the jurisdiction in cases of salvage and damage, whilst foreign vessels were further made subject to it in respect to tonnage and necessaries supplied; that thus these latter description of claims, if arising within the body of a County were, in respect to British ships, still left to the jurisdiction of the Common Law Courts.—That the place of collision in this cause was beyond the ebb and flow of the tide, and that neither the Admiralty law, nor the Commission of the Judge, gave him power to try it—That to constitute an ebb and flow there must be a flux and reflux of the tide twice in twenty-four hours—That in Lake St. Peter there was not even a periodical rise and fall of the waters; but only a partial rise at particular seasons, when aided by the wind at the spring-tides, which rise continued for several days.

3 Black. Com. 7 Ed. pp. 68, 69, 106. 2 Brown, Civ. & Adm. law, pp. 71 to 91, 92.—Johnson's Dict. v. *reflux*. 3 Story Am. Const. pp. 526, 527, 530, 532. Par. 1663. 2 Bac. Ab. pp. 176-7. Coke 3 Inst. 113. 4 Inst. 134. 2 Brown, 111. 3 Term R., 315. More R, 891. Stuart R., 21, 150, 613. 2 Wm. IV., c. 51, s. 6. Laveau's Dict, Ed. 1821, v. *marée*. Prov. Stat. 34 Geo. III., c. 6. Falconer's Dictionary, word *tide*.

Mr. Andrew Stuart, in answer and in support of the jurisdiction of the Court argued,—That with respect to the site of the collision being beyond the ebb and flow of the tide, it cannot be decided by an Act on Protest, in as much as there is contrariety in the affidavits as to the main fact upon which the objection is based, and that the case must go to plea and proof—Then as to the second objection, namely, "that the *locus in quo* of the collision being within the body of the County of St. Maurice, and of the District of Three Rivers, ousted the jurisdiction of the Court,"—it will be found, upon reference to

the Statute 9th Geo. IV., c. 73, that the county of St. Maurice was bounded on the south-east by the River St. Lawrence, and did not comprehend the site of the collision—That the Court of Vice Admiralty in Lower Canada was vested with a much larger jurisdiction than the High Court of Admiralty in England, as restricted by the Statutes of Richard the 2d., and the decisions of the Judges thereupon—That these decisions were not binding upon the Court, and could only be referred to as written reason—That the discussions between the Metropolitan Courts turned upon points which were inapplicable to Colonial Courts—That the restriction under the 13th Rich. 2, was intended to prevent the Admiralty from intermeddling with things done within the realm of England, and to confine its jurisdiction within the limits assigned to it in the time of Edward 3d, as appeared by the 2d Henry IV., c. 11, which re-enacted the 13th Rich. 2d.—That the Respondents, though they did not refer to the Statutes of Rich. 2d, evidently rested the second objection of the Act on Protest on the 13th Rich. 2d, which was not applicable out of England—That in order to maintain this objection it was necessary to show that the Courts of King's Bench of Lower Canada had the same powers as the Courts of Common Law in England—That in making use of the terms—*within the body of a County*—in the sense in which it was employed in England, it was not competent to the Respondents to substitute the word *District* for that of *County*—That marine torts were not included in the Statute of 13th Rich. 2d, and were therefore not excluded from the Admiralty—That from Sir Leoline Jenkins' argument before the House of Lords, in relation to a Bill to ascertain the jurisdiction of the Admiralty, it appeared that the Admiralty in that time contended for a much more enlarged jurisdiction than the Common Law Courts That the Statutes of Rich. 2d were not received as Law in the United States, although there the Common Law of England was in force and could apply a remedy in all cases out of the jurisdiction of the Admiralty—That in England all the navigable rivers were within the bodies of Counties; that this was not the case in Lower Canada, and that the decisions of the Common Law Courts in England would not therefore be law here.—That by the eighth clause of the Judicature Act of '93, the powers of the Courts of King's Bench in Lower Canada were defined to be those of the *Prevôté*, *Justice Royale*, Intendant or Superior Council before the conquest—That by the *règlement* of 1717, French Admiralty Courts were established in Canada, possessing exclusive jurisdiction over all the causes of action mentioned in the *Ordonnance de la Marine* of 1681, within the ebb and flow of the tide, and as high up as the spring-tides in the month of March—That the limits of the Districts comprehended no part of the River St. Lawrence with the exception of the islands—That the Commission of the Admiralty Judge invested him with maritime jurisdiction as extensive as that *anciently* exercised by the Admiralty Courts, and that the jurisdiction does not depend upon locality but on the subject matter—That if the Colonial Courts, as stated by the Respondents, be mere emanations of the High Court of Admiralty, then the Imperial Statute of 1840, gave jurisdiction to this Court in the present cause—That by the sixth clause of the Imperial Statute 2d Wm. IV., c. 51, which was intended to obviate the difficulties which had arisen in Lower Canada, from the conflicting decisions of the Courts of Vice Admiralty and King's Bench, respecting the jurisdiction of the former over causes of action arising on the River St. Lawrence, within Lower Canada, the jurisdiction of this Court was greatly extended, and that power was conferred

upon it to try causes of action occurring in any part of the River St. Lawrence, either within or beyond the ebb and flow of the tide, provided the master or vessel came within the local limits of the Court, that is, within reach of its process; and that therefore, even on the supposition that all the allegations of fact contained in the Act on Protest were true, the Statute in question would still give jurisdiction to this Court to take cognizance of the present cause.

9 Geo. IV. c. 73.—Stats. 13 and 15 Rich. II, and 2 Henry IV.—1 Jenkins' life pp. 77, 79—1 Bell. com. 497.—Gallison R., 420, 463, 470—(Delovio vs. Boit,)—2 Brown, pp. 93, 122.—2 Doug. 607. Proclam. of 1763.—Imp. Stat. 14 Geo. III., c. 83.—Prov. Stat. 34 Geo. III.., c. 6 and 8.—1 Valin, Ord. de la Mar. pp. 112, 127— 2 *Ibid*, pp. 571.—2 Wm. IV., c. 51 —Stuart R. 613.—Com. Dig. V. Adm.—3 aed 4 Vict., c. 65.—Kent Com. 368, 369. —3 Am. Jurist 26.—6 Wm. IV., c. 4.—Case of the Henrietta Sophia, Vice Admiralty, Quebec, 1843.

Mr. Primrose, in reply, contended, that the descriptions of the Counties of Lower Canada, necessarily included one-half the River, in as much as the Islands opposite to them were comprehended, and that the whole Province being by the Judicature Act divided into three Districts, the portion of the River St. Lawrence which is found between the respective points designated on the line in the respective Districts is necessarily included—That the jurisdiction of the Court of King's Bench had been constantly exercised ever since over criminal offences committed on the River, and judgments rendered in that Court in these respective Districts, in numerous cases for capital offences, as in Larceny on a navigable river; and recently the Courts of King's Bench of Quebec and Three Rivers had entertained jurisdiction over a case of capital felony, charged to have been committed on board a Steamboat in the River. But the main question in this cause was whether the collision took place within the ebb and flow of the tide, and that the case referred to by the Court from the 6th Peters' Cond. Reports, Sup. Courts, U. S. touching the influence of the tide at New Orleans, shewed that there was there a regular and constant rise and fall of the water, and that it was very different from this case, Lake St. Peter and the Mississippi not being in the same condition.—That the Admiralty Courts in the United States did not extend their jurisdiction beyond the ebb and flow of the tide—That the enlarged jurisdiction given to Colonial Courts referred only to revenue cases—That this Court must be governed by the Admiralty Laws of England, and that the terms of the Judges Commission were necessarily restrained by the decisions of the Courts—That if the case were tried in the King's Bench, the parties would be entitled to a trial by Jury—That the *règlemens* and Ordinances of the French King were superseded by the introduction of the Admiralty Laws of England—That the second clause of the Judicature Act gave jurisdiction to the Courts of King's Bench, in *all* causes except those purely of Admiralty Jurisdiction—That under that clause the Courts in this country granted Writs of Certiorari, &c.—That although the King of France extended the jurisdiction of the Admiralty to high-water mark, in the spring tides of the month of March, it did not follow that the English Admiralty Courts could extend their limits to the same point —That the Court of Vice Admiralty maintained jurisdiction in the case of the Henrietta Sophia, because the collision was caused in the Harbour of Quebec, by the action of the tide, and the affidavits on both sides in this case, abundantly

shew that the rise of the waters in Lake St. Peter was very uncertain and by no means such as to bring it within the meaning implied by the terms *flux* and *reflux* of the tide.

(JUDGMENT.)

The present case is one of extraordinary interest and importance whether we regard the magnitude of the sum sought to be recovered, (a) or the extreme nicety and difficulty of the point of jurisdiction involved in it; and its importance was assuredly not lost sight of by the Counsel who conducted the cause on either side, for it underwent a very long and elaborate argument.

The protest to the jurisdiction of this court is based upon two separate and distinct grounds :—

First—That the collision between the Steamers QUEEN and LORD SYDENHAM happened in the River St. Lawrence, at a place within the body of the County of St. Maurice, and within the body of the District of Three Rivers, and consequently within the exclusive jurisdiction of the Courts of King's Bench of Lower Canada.

Secondly—That the place in question is beyond the ebb and flow of the tide; and that therefore, neither the High Court of Admiralty of England, nor the Vice Admiralty Court of Lower Canada can take cognizance of it.

The point to be determined in this preliminary issue involves the right of this Court to exercise jurisdiction over the present case.

My enquiry will be directed in the first instance to that objection which is predicated upon the site of the collision, namely, that it is within the body of the District of Three Rivers, and within the body of the County of St. Maurice, and therefore within the *exclusive* jurisdiction of the Courts of King's Bench of Lower Canada. I presume that the terms "*within the body of the County of St. Maurice*," have been made use of in the Act on Protest for the mere purpose of bringing this objection within the language of the terms adopted in England, to denote the exclusive jurisdiction claimed by the Courts of Common Law, over causes of action arising *infra corpus comitatus*; and that no greater stress is intended to be laid on this term than that which is implied by the other expression used in the plea, namely, within the body of the District of Three Rivers, which, according to the territorial divisions of Lower Canada for the purposes of judicature, corresponds with the terms of the English Jurisprudence,—"*within the body of the County.*" The latter expression then may be dropped in considering this objection, as the former one,—"*within the body of the District of Three Rivers,*" will serve all the purposes of the authorities cited by the counsel for the Respondents, in support of the exclusive jurisdiction of the Courts of King's Bench of Lower Canada to try the present cause.

From the affidavits produced on both sides I assume as proved, that the collision occurred in Lake St. Peter, about two miles and a half below a place called Yamachiche, and about four miles and a half above a certain other place denominated *Pointe du Lac*, or the lower end of the Lake, and about three miles from the north shore.

(a) £10,000 sterling.

The objection which is founded upon the *locus in quo* of the collision is susceptible, at the present stage of this cause, of a final determination by this Court, as there is no contrariety in the affidavits on this head, and the other matters of fact involved in the point, namely, whether it be within the body of the District of Three Rivers, being ascertainable without the necessity of further evidence for its elucidation.

In the consideration of this first objection, several points present themselves.

First—Does the locality of the collision, supposing it to be within the body of the District of Three Rivers, give jurisdiction, in regard to the present action, to the Court of King's Bench for that District, or any other District in Lower Canada, to the exclusion of the jurisdiction of this Court, supposing its jurisdiction not to be otherwise impugned?

Secondly—On the supposition that the *locus in quo* may be found to be *without* the limits of the District of Three Rivers, have our Courts of King's Bench, under the Laws of Lower Canada still jurisdiction, exclusive or concurrent, over the subject matter of this action?

Thirdly—What are the powers and attributes of the Courts of King's Bench of Lower Canada, and what the limits, territorially, of their jurisdiction?—and

Fourthly—Did the collision in question, as a matter of fact, happen within the limits of the District of Three Rivers, or of any other District.

Although the jurisprudence of England furnishes innumerable instances of controversies, as to their respective jurisdictions, between the Courts of Admiralty and Common Law, from which sufficient lights might be expected to be procured, to facilitate the decision of the present cause,—the question, as it now presents itself before the Court, is beset with no common difficulty, arising from the necessity of applying the Statutes, judicial decisions, and rules of law of one country, to another vastly dissimilar in the circumstances upon which the jurisprudence of the former has arisen and been formed.

Of the nature and extent of the Admiralty jurisdiction of England, previously to the thirteenth century, little is known—and it might have continued for a much longer period enveloped in the same degree of obscurity, were it not for the contentions between the Admiralty and the Common Law Courts. The encroachments of the former gave umbrage to a people enamoured of the trial by Jury, and produced a reaction resulting in the enactment of the restraining Statutes of Richard the Second and Henry the Fourth, in the end of the fourteenth century, which were designed to confine the Admiral within his ancient and legitimate jurisdiction. The forced interpretation of these Statutes by the Common Law Judges, caused the almost total annihilation of the Admiralty jurisdiction; and the jealousy of the English people of any invasion of their trial by Jury, although a very powerful and plausible reason, is scarcely sufficient to account for the flame of contention which raged so long between the two systems, without having recourse to other reasons and causes of a nature not now to be scrutinized.

While the Common Law Courts, though fettered by locality in the exercise of their jurisdiction over contracts and other things done or happening within the realm of England, arrogated to themselves nevertheless, by the use of a fiction, the right of taking cognizance of contracts and other things done be-

yond the seas, and in foreign countries, they, at the same time waged a war of extermination against the Admiralty Courts to such a degree, as to deny to that Court the cognizance of matters in their nature palpably of maritime jurisdiction, and over which it had formerly exercised, confessedly, an undisputed control; and they only condescended to tolerate the cognizance, by the latter, of suits for seamen's wages,—a matter eminently of Admiralty jurisdiction,—as an exception to the general rule, and an indulgence to that class of people. It is manifest that had the line of demarcation between the two systems been based upon some abstract principle of law,—such as allowing the Admiralty an exclusive, or concurrent jurisdiction, over contracts and causes of action essentially maritime in their nature, and requiring the proverbial celerity of the proceedings in that court, with its remedy *in rem*, and the known equity of its rules;—or had the Common Law Judges adhered more to the spirit, than to the letter, of an enactment of a comparatively rude period in legislation,—the contradictory, and in some instances, preposterous decisions and rulings of subsequent times, would have been avoided, and the jurisdiction of the Admiralty Courts would have been handed down to us with well defined metes and bounds, precluding the necessity of the continued interference of the Legisurelat in modern times, in order to repair its crippled condition, and to restore it to rational and practicable limits. This, however, is not the only instance in the jurisprudence of England in which Judge-made-Law has been permitted to alter, or fritter away, the written Statutes of the land.

With the origin and history of the Admiralty jurisprudence of England, however, I have little or nothing to do. Though the decisions of the Courts of that country may seem to have gone beyond the Law, and the Statutes of the Realm, they must still have a binding effect, in as much as the Legislature must be presumed, after a great lapse of time, tacitly to have acquiesced in the innovation.—My duty is to administer that law as I find it in force in Lower-Canada, regard being had to the wisdom of modern decisions, and such statutary enactments, as may have modified, altered, or enlarged the jurisdiction of this Court.

The subject matter of the present action necessarily excludes from my consideration a numerous class of cases which have given rise to many of the struggles between the two Courts in England.—No question arises here of a contract made on the land, to be executed at sea; nor of a contract made at sea, to be executed on the land, nor of anything done—partly on the sea and partly on the land, nor of any of the other fractional and unphilosophical tests, or quibbles, which have been invented, under an unreasonable construction of the Statutes of Richard the Second, with a view to circumscribe the jurisdiction of the Admiralty within the narrowest limits.

Cases of collision between vessels under way are *per se* essentially of maritime jurisdiction, and there is not an instance, even in England, of an attempt to restrain the Courts of Admiralty from taking cognizance of suits of this nature, apart from the grounds of objection which may have been urged as to the place of their occurrence.

I shall first proceed to show what would be the fate of a case of this nature occurring in England, within the body of a County.

As the Statutes of Richard II. and Henry IV. are the breast work which was set up against the encroachments of the Admiral's jurisdiction, and as they

are continually referred to in the decisions of controverted Admiralty cases, I will here recite them.

13 Rich. II., c. 5.—"What *things* the Admiral and his Deputy shall "meddle.—Item. For as much as a great and common clamour and com- "plaint hath been often times made before this time, and yet is, for the Ad- "mirals and their Deputies hold their Sessions within divers places of this "realm, as well within franchise as without, accroaching to them greater au- "thority than belongeth to their office, in prejudice of our lord the King and "the common law of the realm, and in diminishing of divers franchises, and "in destruction and impoverishing of the common people, it is accorded and "assented that the Admirals and their Deputies shall not meddle from hence- "forth of anything done within the realm, but only of a thing done upon the "sea, as it hath been used in the time of the noble Prince King Edward, "grandfather of our lord the King, that now is."

15 Rich. II., c. 3.—"In what *places* the Admiral's jurisdiction doth lie.— "Item. At the great and grievous complaint of all the commons made to our "lord the King in the present parliament, for that the Admirals and their De- "puties do encroach to them divers jurisdictions, franchises, and many other "profits pertaining to our lord the King, and to other lords, cities and bo- "roughs, other than they were wont or ought to have of right to the great op- "pression and impoverishment of all the commons of the land, and hindrance "and loss of the King's profits, and of many other lords, cities and boroughs "through the realm—it is declared, ordained and established, that of all man- "ner of contracts, pleas and quarrels, and all other things rising within the "bodies of the counties, as well by land as by water, and also of wreck of the "sea, the Admiral's Court shall have no manner of cognizance, power nor ju- "risdiction, but all such manner of contracts, pleas and quarrels, and all other "things rising within the bodies of counties, as well by land as by water as "afore, and also wreck of the sea, shall be tried, determined, discussed and "remedied by the laws of the land, and not before nor by the Admiral nor "his lieutenant in any wise; nevertheless of the death of a man and "of a mayhem done in great ships being and hovering in the main "stream of great rivers, only beneath the bridges of the same rivers nigh to "the sea, and in none other places of the same rivers, the Admiral shall have "cognizance; and also to arrest ships in the great flotes for the great voyages "of the King and of the realm, saving always to the King all manner of for- "feitures and profits thereof coming, and he shall have also jurisdiction upon "the said flotes during the said voyages only, saving always to the lords, ci- "ties and boroughs their liberties and franchises."

2 Hen. IV., c. 11.—"A remedy for him who is wrongfully pursued in the "Court of Admiralty.—Item. Whereas in the Statute made at Westminster, "the thirteenth year of the said King Richard, amongst other things it is "contained, that the Admirals and their deputies shall not intermeddle from "thenceforth of any thing done within the realm, but only of a thing done "upon the sea, according as it hath been duly used in the time of the noble "King Edward, grandfather to the said King Richard, our said lord the King "will and granteth, that the said Statute be firmly holden and kept and put "in due execution; and moreover the same our lord the king, by the advice "and consent of the lords spiritual and temporal, and at the prayer of the "said commons hath ordained and established, that as touching a pain to be

" set upon the Admiral or his lieutenant, that the statute and the common " law be holden against them, and that he that feeleth himself grieved against " the form of the said statute shall have his action by writ grounded upon the " case against him that doth so pursue in the Admiral's court, and recover his " double damages against the pursuant, and the same pursuant shall incur the " pain of ten pounds to the king for the pursuit so made if he be attainted."

It will be observed that the first statute relates very generally to the subject matter of the Admiral's jurisdiction—" *What things the Admiral and his deputy shall meddle*," namely, of things done on the sea and not of any matter done within the realm. The second statute passed two years after the first, although entitled—" In what *places* the Admiral's jurisdiction doth lie," relates as well to the subject matter, as to the *locus in quo* of the contract, or thing done, and forbids the intermeddling by the Admiral of any contracts, pleas or complaints rising within the bodies of counties by land or water, &c. It is remarkable that although the Statute of Henry IV., which was passed scarcely ten years after, and which re-enacts the Statute of the 13th Rich. II., and renders it penal to bring suit in the Admiralty contrary to its provisions, seems to overlook the stringent enactments of the Statute of the 15th Richard II,—nevertheless the Judges of the common law, in their zeal for the aggrandizement of the jurisdiction of their own courts, adversely to that of the Admiralty courts, have adhered to, and even exceeded the very letter of the latter statute. Although the restriction in that statute applies to things rising within the bodies of Counties, by land or water, they have denied jurisdiction to the Admiralty, unless the cause of action had not only arisen, but been *completed* on the sea. And although the phrase be, *by land or water*, without mention of the ebb and flow of the tide, they have excluded the Admiralty on the Thames, and in other great streams and inlets within the ebb and flow of the tide, and in places which are frequented by the ships of all the commercial nations of the earth; and they have only escaped the anomaly of interdicting the cognizance of suits for mariners wages in the Admiralty, by the application of a few arguments *ab inconvenienti*, which apply with equal force to other disputed cases in which interests to a vast amount have been jeopardized from the want of a remedy in that court.

Under the ban of such a feeling of hostility on the part of the common law courts towards the Admiralty, which attained to a great height in the time of its implacable enemy, Lord Chief Justice Coke; and with a current of decisions following in the same spirit, it is not to be wondered at, that in a country—the jurisprudence of which has been so much fettered by the marginal abstracts and the not unfrequent suppositious corollaries of Reporters,—prohibitions should constantly go to the Admiralty in cases of collision happening within the bodies of Counties, although within the ebb and flow of the tide, and on the high way of nations.

Among the causes of collision, occurring within the bodies of counties in England, and in which the Admiralty has either declined to exercise jurisdiction, or has been prohibited from doing so, the following may be referred to:

In the year 1669—The case of Violet vs. Blaque, to be found in Croke's Reports of decisions in the Reign of James I., page 514. —This was a case of collision at Limehouse, on the River Thames, in which a prohibition issued.

1789—Volthasen vs. Ormsley, 3 Term R. p. 315—A collision in the River Thames, within the county of Kent.

1831—or 1832—The Lord of the Isles cited, 2 Hagd. p. 398—A collision in the Solent Sea, a channel from two to seven miles wide, between the Isle of Wight and Hampshire, held to be within the County of Hampshire, on the supposition probably that this channel forms part of the County of Hampshire. I have not seen the Report of this case, and this decision is very questionable even on English authorities.

1832—The Public Opinion, 2 Hagd. 398—A collision in the Humber, near Hull, in the County of Kingston-upon-Hull.

1836—The Eliza Jane, 3 Hagd., p. 335—A collision on the River Thames, within the jurisdiction of the Court of Conservancy of London.

Since the passing of the 1st and 2d Geo. IV., c. 75, sec. 32, the jurisdiction of the Admiralty over cases of damage by collision by foreign vessels to British vessels, within the bodies of Counties, which perhaps previously existed on principles of international law, has been fully established; and we find the following cases decided in the Court of Admiralty. The Christiana, a foreign vessel bound to Norway, in 1828, 2 Hagd. p. 183.—The Girolamo, an Austrian vessel, in 1834, 3 Hagd., p. 169.—These were cases of collision occurring in the River Thames, within the bodies of Counties.—And in the year 1840, the jurisdiction of the High Court of Admiralty was still further enlarged by the 3d and 4th Vict., c. 65, which conferred a concurrent jurisdiction upon it in all cases of damage by ships or sea-going vessels, happening within the body of a county.

But I cannot see that these Statutes extend to the Colonies, or that the difficulty in the present case is at all relieved by them. The 1st and 2d Geo. IV., c. 75, is expressly declared not to extend to Scotland or Ireland, and it would seem from the terms of the second Act, that its provisions are solely applicable to the High Court of Admiralty *in England*.

I feel therefore bound to take the Admiralty Law of England, as it stood previously to the passing of these Statutes, to be the law by which the decisions of this court are to be governed, in so far as that law is applicable to the situation and condition of Lower Canada, conformably to the dictum of Lord Mansfield in the case of Lindo vs. Rodney—"That the Colonies take all the common and statute law of England *applicable to their situation and condition*;" regard being always had to any legislative enactments by which it may have been subsequently modified. With respect then to cases of collision occurring in England, within the bodies of counties, between British vessels, from the Statutes of Ricd. 2d, down to the year 1840, the decisions are uniform, and up to that period it was settled law, that the courts of common law possessed exclusive jurisdiction over them. The courts of Admiralty have been restrained in these cases, not from any acknowledged want of jurisdiction over such suits, *rationé materiæ*, or *rationé situs*,—for as well the cause of action, (collision,) as the site of its usual occurrence, are eminently of maritime jurisdiction; but from a principle insisted upon by the courts of common law, that the land jurisdiction, wherever it attached, necessarily ousted the jurisdiction of the Admiralty. The same rule must also be taken as law in this country, provided the courts of common law and of Admiralty here stand precisely in the same

relation to each other, in respect of the laws and jurisprudence of each, as the same courts do in England. Let us then enquire how far the systems of law in force in England and Lower Canada correspond, and whether the jurisdiction of the common law courts of this country adheres so rigidly to the locality of the contract, or thing done, as to repel, and entirely exclude, any other jurisdiction; and whether the term *infra corpus comitatûs* is to be applied by our courts to the jurisdiction of the court of Vice Admiralty, with the same repellent force as in England; and whether the situation and condition of the two countries are so similar, as to render this term susceptible of being transplanted into the jurisprudence of Lower Canada, and of being adopted as a rule of law, to the same extent as in England.—The mere enunciation of the proposition shews that it cannot be embodied, to the letter, as a governing principle in our system, and that we must adopt the term, *within the body of a district*, as that one which corresponds most nearly, according to our territorial divisions, with the import of the English phrase.

Being driven to abandon the *letter* of the rule,—"*within the body of a county*,"—and to substitute the term *body of a district* in lieu of it, the next point is to define the precise limits to be assigned to this rule, regard being had to our system of laws. The Court of King's Bench in England exercises jurisdiction over the whole realm, but the matters of fact involved in each case must, as a general rule, be tried in that county alone where they have arisen; and although it is permitted to evade this by a fiction, laying the *venue* in another county,—still this fiction confirms the principle, and the Jury must be taken from that county in which the *venue* is laid. In Mostyn vs. Fabrigus, (Cowper, 176) it was said by Lord Mansfield:—"There is likewise "a formal distinction which arises from the mode of trial; for trials in Eng- "land being by Jury, and the Kingdom being divided into counties, and each "county considered as a separate district or principality, it is absolutely "necessary that there should be some county where the action is brought in "particular, that there may be a process to the Sheriff of that county, to bring "a Jury from thence to try it." The records of English decisions show, that if one act of aggression be more strenuously resisted than another, it is the infringement of any particular liberty, franchise, or local jurisdiction whatever. Hence the origin of that principle of locality, even in civil matters, which has so much distinguished, and in some instances, so much embarrassed the jurisprudence of England. The difficulty in the controversies between the courts of Admiralty and common law, has been greatly aggravated in consequence of the counties bordering upon the sea, and great inlets and rivers, having no certain fixed limits, and the necessity of establishing their local bounds, by a reference to usage, such as the distance at which the process of the courts of common law has been usually executed;—as occurred in the case of the Public Opinion, already cited from the 2d Hagd., where the extent of the local jurisdiction of the town and county of Kingston-upon-Hull over the River Humber formed the bone of contention.

How then stands the case with us?—Instead of one Superior Court of King's Bench in Lower Canada, exercising civil jurisdiction over the whole extent of that territory, we have three courts of equal powers, exercising jurisdiction, each within a particular district,—the precise limits of which are defined by statute. Instead of having any particular jurisdiction attached to the locality of the contract, or thing done, the domicile, or the personal service of the process of

the court, within the bounds of any one district, upon the party proceeded against, enables the court of that district to take cognizance of all civil causes of action, except in questions touching real estate, without any regard to the site of the contract or thing done, upon an enlarged interpretation of the rule of the civil law, *actio sequitur forum rei.*

It follows then, as a legal consequence, that the court of King's Bench for the district of Three Rivers, supposing the cause of action in this case to have arisen within its limits, acquires thereby no *exclusive* jurisdiction over it. There is no doubt that the court of King's Bench of that district, equally with the courts of King's Bench of the other districts, would acquire jurisdiction over the subject matter of this suit, in an action *in personam*, by the service of their process, within their own limits. And it can scarcely be doubted, that even had the cause of action happened beyond the limits of Lower Canada, the presence of the wrongdoer, within any of these districts, would enable the court of King's Bench for that district, to try the present cause. Even in England, where this distinction of locality is so much considered in the proceedings of courts of justice, they have never hesitated to take cognizance, by the adoption of a fiction laying the *venue* in a particular county,—of trespasses as well as other torts arising out of the realm, as well on the high seas as in foreign countries. This doctrine was fully laid down by Lord Mansfield in the cases of Mostyn vs. Fabrigas already cited, and also in the cases of Le Caux vs. Eden and Lindo vs. Rodney, reported in Douglas, pp. 594 and 613. The same subject is also to be found discussed at great length in Story's conflict of Laws, Ed. of 1841, where, upon the authorities cited from Boullenois, he shows that the domicile of the wrong doer gave jurisdiction to the courts in France to try causes of personal torts, occurring out of the limits of the kingdom.

What then becomes of the force of the term *infra corpus comitatus* of the English law as applied to our local jurisdiction? What definite legal import can be affixed to it, when invoked as a guide, or rule of decision, to point out the line of demarcation between the respective jurisdictions of the courts of King's Bench, and the courts of Admiralty in Lower Canada? When strictly and legally analyzed, it is most manifest that it cannot be adopted as a rule of law with us, to the same extent as in England, without violating that salutary principle of adaptation laid down by Lord Mansfield. The jurisdiction of our courts of judicature does not adhere with such tenacity to the locality of the contract or thing done, and the exercise of their jurisdiction is not based upon any rule or law which would exclude or render incompatible, the exercise of a concurrent jurisdiction by the courts of Admiralty. The rule then—*infra corpus comitatus* in its English technical import, is to us a legal exotic not susceptible of transplantation into the uncongenial soil of our jurisprudence, and ought to be expunged from our legal vocabulary.

I have now shewn, that supposing the site of the collision in question to be within the district of Three Rivers, the court of King's Bench for that district acquires thereby no *exclusive* jurisdiction over the subject matter of this action, from the impossibility of applying the rules of law adopted in England, to the circumstances of this country. I have also shewn, that the only circumstances which could give the court of King's Bench of that district, or of the district of Quebec or Montreal, any judicial power over this case, would be the domicile, or the presence of the party proceeded against, within

their respective limits, and that for this purpose it is perfectly immaterial whether the injury was inflicted *within* those limits, or *without*, or even *beyond* the limits of Lower Canada. So far then the jurisdiction of this court, if jurisdiction it otherwise have, stands unscathed.

I shall next proceed to trace the powers of the courts of King's Bench of Lower Canada, and the limits of their respective jurisdictions.

By the 34th Geo. III, cap. 6, commonly called the Judicature Act, the then province of Lower Canada was divided into three juridical districts, namely Quebec, Montreal and Three Rivers; and it was enacted, by the second section of that statute, that in each of these districts, there should be constituted a court to be called the Court of King's Bench, and which courts, *in their respective districts*, should have original jurisdiction, to take cognizance of, hear, try and determine, in the manner therein enacted, all cases, as well civil as criminal, and where the King is a party, except those purely of admiralty jurisdiction. By the eighth section of the same statute, the judicial powers of the said courts are more minutely defined, and they are designated in the following terms:—"And the said courts of King's Bench "shall respectively, in the superior terms aforesaid, have full power and "jurisdiction, and be competent to hear, and determine, all plaints, suits "and demands, of what nature soever, which might have been heard and "determined in the courts of *Prevôté, Justice Royale,* Intendant or Superior "Council, under the government of the province, prior to the year one "thousand seven hundred and fifty-nine, touching rights, remedies and "actions of a civil nature, and which are not specially provided for by the "laws and ordinances of this province, since the said year one thousand "seven hundred and fifty-nine,"—with a *proviso* interdicting the exercise of any power of a legislative nature.

If then we test the judicial powers of the courts of King's Bench by a reference to those transmitted to them, under this section, from the courts of *Prevôté, Justice Royale,* Intendant or Superior Council, we obtain at once a clear and distinct line of demarcation, as between these courts, and the courts of admiralty, established in this country, previously to the conquest, under the *Réglement* of the French King, of the 12th January, 1717, which invested the latter with an exclusive jurisdiction, conformably to the Ordonnance de la Marine of 1681, over all matters relating to the building, furnishing, victualling, equipping, sale, and adjudication, of ships,—over all charter parties, and the freighting or hiring of ships, bills of lading, wages of mariners, and the board and provisions furnished to them by order of the master, during the fitting out of vessels,—policies of insurance, bottomry bonds, and generally over all contracts concerning the commerce of the sea, notwithstanding any reference to another tribunal, or the existence of any conflicting privilege:—Also of all prizes by sea, wrecks, damage to ships or their cargoes, and the inventory and delivery of the effects of persons dying at sea, and a variety of other matters, (including criminal offences,) enumerated in the different articles of the second title of the first book of the Ordonnance de la Marine.

Thus the courts of Admiralty, under the government of France, exercised a most extensive jurisdiction, and claimed the exclusive cognizance of a great variety of cases with which neither the court of Admiralty of England, or of Lower Canada, would intermeddle.

But independently of the more definite limits assigned to the courts of King's Bench, by the eighth section of the statute in question, the general powers conferred upon them are pointed out in the second section, in language more comprehensive, which gives to them original jurisdiction, over *all* causes, civil and criminal, under an exception, namely, of those purely of admiralty jurisdiction,—the precise import of which exception must be ascertained before we confine the courts of King's Bench within the more restricted limits of the eighth section.

If the admiralty jurisdiction which the Legislature of Lower Canada had in view, when it introduced the words "*purely of admiralty jurisdiction*" into this statute, was that jurisdiction which had been exercised in this country, by the French Admiralty Courts, simultaneously with the courts mentioned in the eighth section, no difficulty could possibly occur in ascertaining the full extent of the exception. All the cases enumerated in the Ordonnance de la Marine would fall under its ban. Although the marked bounds to the jurisdiction of the courts of King's Bench, indicated by the eighth section, might give a colour to such an argument, there are still insuperable objections to its being adopted. The French Admiralty Courts, having a general exclusive jurisdiction over all contracts concerning the commerce of the sea, to the extent enacted in the Ordonnance de la Marine,—the word "*purely*," if intended to apply to the French Admiralty jurisdiction, would be a redundancy in language, of which the framers of the Act of 1793, can scarcely be presumed to have been guilty. Besides, at the period of the passing of this Act, the Admiralty Laws of England had been introduced into this country, and had been in force for thirty years; and we cannot for a moment conclude that the Legislature of Lower Canada contemplated the introduction, into that Province, of a system of admiralty laws, at variance with those already in force throughout the British Colonies. From the universality of the jurisdiction, a uniformity of laws was indispensable. At least the adoption, in one British colony, of a system of laws, differing so much from the Admiralty Laws of England, and of the Vice-admiralty courts abroad, would necessitate the decision of cases arising in the British colonies, between British subjects, upon principles of international law,—an anomaly which never could have been intended. In carrying out the terms of this exception then, regard must be had to the Admiralty Laws of England, and the word "*purely*" must be held to apply to causes of action *exclusively* within the competency of the Courts of Admiralty of that country, in contradistinction to those, whereof the admiralty and the courts of common law have *concurrent* jurisdiction. But it is difficult to determine what causes are *purely* or *exclusively* of admiralty jurisdiction, within the purview of the exception, unless it be Prize,—with all its incidents, and criminal offences committed in great ships in the main streams of great rivers.

This term is also rendered still more ambiguous by its application to the district of Montreal, and the county, or inferior district of Gaspé, in the former of which cases of admiralty jurisdiction could scarcely arise, and the latter being entirely a *land* jurisdiction, to which it would in no wise apply,—unless, as said before, in the incidents of Prize.

This exception, however, becomes much more difficult of solution, when we come to consider another objection urged to the sufficiency of the Act on Protest. The Respondents allege that the site of the collision is within the

body of the district of Three Rivers, and within the body of the county of St. Maurice. Mr. Stuart in reply asserts, that the place in question is not within the limits of the county of St. Maurice, nor of the district of Three Rivers, nor within the limits of any county or district of Lower Canada. The objection is new, as far as I am aware, and the merit of its discovery is due to the ingenuity and research of the learned counsel, who urged it at the hearing of this cause.

In order to ascertain the sufficiency of this objection, it will be necessary to enquire minutely into the territorial limits of the districts of Quebec, Montreal and Three Rivers, established by the 1st Section of the Judicature Act already referred to. They are as follows:—"The said Province of Lower-"Canada, shall consist of three districts to be called the district of Quebec, "the district of Montreal, and the district of Three Rivers, which shall be di-"vided by the following lines, to wit:—the district of Quebec shall be "bounded to the westward by the eastern line of the Seigniory of Dorvil-"liers, *as far as it extends*, and thence by a due northwest line to the northern "boundary of this Province, *on the north side of the River St. Lawrence*, and "by the eastern line of the Seigniory of Saint Pierre les Becquets—*as far as* "*it extends*, and thence by a due south-east line, to the southern boundary of "this Province, *on the south side of the River St. Lawrence*, and the said dis-"trict of Quebec shall comprehend *all that part* of this Province, which lies "to the eastward *of the before-mentioned western boundary lines* of the said "district. The district of Montreal shall be bounded to the eastward by the "western line of the Seigniory of Masquinongé *as far as it extends*, and thence "by a due north-west line to the northern boundary of this Province, *on the* "*north side of the River St. Lawrence*, and by the western line of the Seig-"niory of Yamaska, *as far as it extends*, and thence by a due south-east line "to the southern boundary of the Province, *on the south side* of the River St. "Lawrence; and the said district of Montreal shall comprehend all that part "of this Province which lies to the westward of the before-mentioned eastern "boundary lines of the said district; and the district of Three Rivers shall be "bounded to the eastward by the before-mentioned *western boundary lines* "*of the district of Quebec*, and to the westward by the before-mentioned "*eastern boundary lines of the district of Montreal;* and shall comprehend "all that part of the Province, *which lies between the said boundaries;* and "the said districts shall also respectively comprehend all the islands in the "river Saint Lawrence, opposite to the *shores* thereof, *which are included in* "*the respective limits aforesaid.*"

From this it is apparent that the boundary lines which divide the district of Quebec from the district of Three Rivers, and the latter from the district of Montreal, extend no further than the points at which the division lines of the Seigniories of Dorvilliers, St. Pierre les Becquets, Masquinongé, and Yamaska, respectively touch the river St. Lawrence; and the district of Three Rivers is declared to comprehend all that part of the said Province which lies between the said boundaries; and the districts of Quebec and Montreal are declared to comprehend all that part thereof which lies to the eastward and westward of their before-mentioned boundary lines, namely, the eastern and western boundary lines of the district of Three Rivers. It cannot be pretended that the Seigneurial division lines in question cross the River St. Lawrence, nor is there

a word in the statute to indicate the intention of its framer to trace even an imaginary line from one side to the other. The actual positions of those lines, as they are laid down on the Map of Lower Canada, by the Surveyor General of that Province, and as represented upon the section of the Map now before me, completely destroy such a presumption:—

The eastern division line of the Seigniory of Dorvilliers, which forms the western boundary line of the district of Quebec, on the north side of the river St. Lawrence, strikes the river at a point about three miles below the opposite point on the south side which forms the terminus of the eastern boundary of the Seigniory of St. Pierre les Becquets; and the line which would connect these two points, would cross the river in a transverse direction, at an angle, with the prolongation of either boundary line, of about forty-five degrees, as laid down in one set of Maps, and in another, at an angle of about eighty-five degrees, or nearly a right angle.

All the statutary provisions of Lower Canada, made either for electoral or juridical purposes, concur in this exclusion of the waters of the river St. Lawrence from all the counties and districts, and remove every doubt of its being accidental.

The first division of Lower Canada was into counties, cities and towns, under the Proclamation of 1792, for the purpose of returning Representatives into the Provincial Parliament, under the Constitutional Act of 1791. The

waters of the river, as we would naturally expect in the formation of such small territorial divisions, are plainly excluded. The description of the county of St. Maurice, as an instance, is as follows:—"The seventeenth of the said "counties, to be called St. Maurice, shall comprehend all that part of our "said Province on the northerly side of the river St. Lawrence, between the "easterly side of the said county of Warwick, and a line parallel thereto, run- "ning from the south-easterly angle of a tract of land, commonly called the "Seigniory of Batiscan, *together with all the islands in the said river St. Law- "rence nearest to the said county*, and in the whole or in part fronting the "same, including within the said county, the tract of land comprehended "within the limits of the Town and Borough of Three Rivers thereinafter "described." The next division is that into districts under the Judicature Act already mentioned. The Lower Canada Statutes 9 Geo. IV., c. 73 and 10 and 11 Geo. IV., c. 17, altered in some degree the boundaries of the said counties and districts, without nevertheless extending any portion of them over the waters of the St. Lawrence; and the last mentioned Act declares that *the district of Three Rivers* shall *consist* of certain counties therein mentioned, with a reference to the former Act 9 Geo. IV., c. 73, which, as well as the Proclamation of 1792, shew that these counties are bounded by *the river St. Lawrence*, and only include the islands opposite to each. The statute 2 Wm. IV., c. 1., which allowed debtors to go at large, upon bail, within the limits of the county, and the statute 6 Wm. IV., c. 4, which extended this liberty to the limits of the district, permit debtors to go on board of any vessel or boat lying in any river within or *opposite to* the county, or district, from the limits of which they were bound not to depart. The Statute 47 Geo. III., c. 9, to prevent the desertion of seamen, and which provides for the arrest, under the warrant of a Justice of the Peace, of any seaman who may be concealing himself *on board of any ship*, has this clause:—"XI. Provided "nevertheless, and it is hereby also enacted by the said authority, that no- "thing in this Act contained shall be construed to extend to authorize or jus- "tify the execution of any warrant or process of any Justice or Justices of the "Peace within the jurisdiction of the Vice Admiralty of this Province, unless "such warrant shall have been previously authorized by the Judge of the said "Court of Vice Admiralty." The first attempt to include any portion of the river St. Lawrence, within the local limits of any district, was by the Ordinance 4 Vict. c. 45, which, though suspended before the period appointed for its coming into operation, is to be found on the face of the Statute Book. In describing the limits of the contemplated territorial division of Montreal, the lower boundary line is made to cross the river from the termination of the south-western boundary line of the Seigniory of Batiscan on the north side, until it reaches, in the manner therein described, the Bay of Yamaska, on the south shore.

Thus, then, the waters of the river St. Lawrence, throughout its whole course in Lower Canada, are excluded from the territorial limits of all the districts, and if a doubt could possibly remain of the intention of the framer of the Statute of 1793, that effect, that doubt would be for ever set at rest by the concluding words of the section which defines the limits of each district; they are as follows:—"And the said districts shall also respectively comprehend all the islands in the *river St. Lawrence*, opposite to the *shores* thereof *which are included within the respective limits aforesaid.*

In consequence of the exclusion of the river from the several districts established by the Judicature Act of 1793, the difficulty of interpreting the precise limits of the words, "*purely of Admiralty jurisdiction*," becomes, as already mentioned, greatly enhanced, in as much as these words obviously contemplate the *waters* of the river; and that had the framer really intended to exclude the river from the districts, he must, in that case, as a matter of course, have used these words as an exception to the *land* jurisdiction of the courts of King's Bench, in which sense it is difficult to arrive at a satisfactory solution, unless we presume that reference must have been meant to the incidents of Prize occurring upon land,—a consideration of too remote a nature to supply the *lacune*. The only conclusion then to be arrived at is that the framer of that statute, like many other lawgivers, was dealing with edgetools, and that he had not himself any very perspicuous idea of the import of the terms employed by him; and this impression becomes confirmed when we consider that he has applied the exceptional words to the district of Montreal, and to the county or inferior district of Gaspé, in which latter its acceptation must necessarily be restricted to the land jurisdiction.

It has been attempted on the part of the counsel maintaining the Act on Protest, to meet Mr. Stuart's objection, as to the exclusion of the river from the districts, by shewing that the courts of King's Bench for the districts of Quebec and Three Rivers have taken cognizance of criminal offences committed on board of vessels navigating between Quebec and Montreal; and in proof of this, reference is made to a case of felony charged to have been committed on board of a Steam-boat on its passage from Quebec to Three Rivers, and which was tried in both districts, without any objection being taken to the jurisdiction of the court in either district. With respect to criminal offences it need hardly be observed, that the locality ascertains the jurisdiction. This rule is one *strictissimi juris*, and must be implicitly observed, unless otherwise expressly deviated from by statute. The waters of the St. Lawrence not being included within the limits of any district of Lower Canada, no offence committed on board of any vessel navigating that river, not even excepting felonies committed on navigable rivers within Lower Canada, under the 4th Geo. IV., c. 6, could properly have been tried in any district of Lower Canada, previously to the passing of the criminal statutes of the Province of Canada of the 4th and 5th Victoria, commonly called Black's Acts. It follows then that the offence alluded to was as much within the competency of the court of King's Bench of the district of Quebec, or Three Rivers, as a breach of the peace committed in the Island of Otaheite or on the summit of *Mont Blanc*, and had the attention of the court been drawn to this point, there must have been at once an end of the case.

The main question, however, to be decided here, is not whether the site of the collision is within, or without, the body either of the county of St. Maurice, or of the district of Three Rivers; nor whether the courts of King's Bench of Lower Canada have, or have not, jurisdiction over the cause of action to be tried in this case. The point to be ascertained is,—whether or not *this* court has jurisdiction over the matter in issue. If it have, I am bound to maintain it;—If it have not, in vain will it be to show that the powers of the Courts of King's Bench are not so ample as they may have been supposed to be, and that *they* cannot claim exclusive jurisdiction over this case, in as much as

their diminished jurisdiction could not be invoked in aid of a defective jurisdiction in this court. "The civil law courts" (as observed by Lord Stowell, in "the case of the Atlas, 2 Hagd. 62,) "have no right to usurp an authority, "merely because a common law court does not possess it; it must have a "more direct and positive foundation. A court of civil law does not claim to "be the refuge for all derelict jurisdictions, and whenever a court usurps a "jurisdiction that does not belong to it, a prohibition is grantable *ex debito* "*justitiæ*, and for the very purpose of correcting such usurpation, and pre- "serving the subject courts within their proper limits."

With a view to determine the extent of the jurisdiction with which this court has been invested, it will be necessary to refer to the powers originally conferred upon it.

The first establishment of an Admiralty jurisdiction in Canada was in the year 1764, at a period when the Crown of Great Britain had an undoubted right to give laws to this country. The terms of the Commission addressed to Governor Murray, as Vice Admiral of the Province of Quebec, authorise the Vice Admiralty court to take cognizance of all cases, civil and maritime,—of complaints, contracts, offences, crimes, pleas, debts, exchanges, accounts, charter-parties, agreements, suits, trespasses, injuries, extortions, and demands, and business civil and maritime whatsoever, in and throughout the Province of Quebec, and territories thereof, and maritime parts whatsoever of the same, and thereto adjacent, and also throughout all and every the sea shores, public streams, ports, high-water rivers, creeks and coasts, or places overflown whatsoever, within the ebbing and flowing of the sea, or high water, or upon the shores, or banks whatsoever of the said Province of Quebec, as well within liberties and franchises as without,"—and in any matter, thing, cause, or business whatsoever done or to be done within the maritime jurisdiction aforesaid, and to hear and determine the same according to the rights, statutes, laws, ordinances and customs *anciently* observed; also in all and singular complaints, contracts, agreements, causes and business civil and maritime to be performed *beyond the sea* or *contracted there*, and in all causes and matters which in any manner whatsoever touch or concern, or *anciently* have, *(belonged,)* and do, or *ought to belong*, unto the maritime jurisdiction of the said Vice Admiralty court, and in all causes, matters, &c., done, or happening within the maritime jurisdiction of the said Province of Quebec, and territories, &c., by sea or water, or the banks or shores of the same, &c., also to arrest, and cause and command to be arrested, according to the civil and maritime laws and *ancient* customs of the said court, all ships, persons, things, &c., for the premises, within the said maritime parts, and for all other causes, &c., so that the goods or persons may be found within the jurisdiction aforesaid.

In the ample and extensive powers thus conferred we observe a desire, on the part of the British government, to extend the jurisdiction of the Admiralty of England, to this portion of her possessions, not in the mutilated condition to which the usurpations of the common law courts had reduced it within the kingdom of England, but with powers and attributes corresponding with those *anciently* possessed by it, and with those previously conferred on the Vice Admiralty courts in the neighbouring colonies, and in accordance with those exercised by the maritime courts of every other commercial nation of Europe, and which reason and common sense pointed out as being indispensable to the

object in view. The terms contained in every commission to the Judges of this court, from its institution down to the one under which I now sit, provide for the exercise of equally comprehensive powers.

The right in the Crown of Great Britain to introduce such laws, and to erect courts of justice with such powers as it might deem proper, in a country acquired by conquest, (until otherwise provided for by Parliament,) and among these, to constitute courts of Admiralty, with a more enlarged jurisdiction than that of the High Court of Admiralty in England, will not be called in question, provided such laws and judicial powers were not repugnant to the laws and constitution of Great Britain; and the exercise of such enlarged jurisdiction, for a long period of time, by the Vice Admiralty courts abroad, has confirmed that right were it even originally doubtful. Besides—in so far as regards this court, the right is distinctly asserted in the Proclamation of the 7th October, 1763, and was afterwards confirmed by the Imperial Statute of the 14th Geo. III., c. 83. By the 4th section of that statute, the provisions contained in the said Proclamation, and the powers and authorities given to the Governor and civil officers of the Province, by the grants and commissions issued in consequence thereof, are revoked from the first May then following, on the grounds of their inapplicability to the state and circumstances of the Province, and other enactments are made in lieu thereof, by the subsequent clauses of the statute. The commission granted by the King to the Admiralty Judge, did not come within the scope of this section. The 17th section contains a distinct reservation of the right of the Crown to erect courts of criminal, civil and ecclesiastical jurisdiction in the Province.

The 18th section declares all and every the acts of the Parliament of Great Britain, regulating the trade of the Colonies, to be in force in the Province of Quebec; among which may be mentioned the fourth George Third, chapter fifteen, (since repealed by fifty-ninth, George Third,) imposing duties in the Colonies, the forty-first section of which gave jurisdiction to the courts of Admiralty, appointed or to be appointed over all America, for the recovery of all penalties and forfeitures to be incurred thereunder,—which provision would be inoperative, without the existence of such a court to carry it into effect. The Imperial statute 14th Geo. III., c. 88, for defraying the expenses of the administration of justice, and for the support of the civil government of the Province of Quebec, directs, by its fourth section, all penalties and forfeitures, thereby inflicted, to be recovered in the court of Vice Admiralty. The Provincial Ordinances 28th Geo. III., c. 1, and 30th Geo. III., c. 2, and the Provincial Statute 33d Geo. III., c. 2, which were passed for the purpose of regulating the inland trade of the Province, contain, each, provisions for the recovery of penalties in the court of Vice Admiralty:—thus affording a distinct recognition of the existence, within the Province, of an Admiralty Jurisdiction, at these different times; and this seems to be further confirmed by the 45th section of the Constitutional Act of 1791, and by the provisions of the Judicature Act of 1793 already mentioned, and also by the eleventh section of the Provincial statute of 1807, concerning the desertion of seamen, above cited.

Having thus shewn the existence of an Admiralty jurisdiction in the Province for a period of thirty years, how,—let it be asked—has that jurisdiction been revoked, or annulled, or in any way superseded or impaired by any other

statutary provisions?—It unquestionably has not, and we have then the evidence of the establishment, in Canada, of a Court of Vice Admiralty exercising undisputed jurisdiction over the whole course of the river St. Lawrence, within tide water, from the year 1764 to the year 1793, when, upon the passing of the Judicature Act of that year, it is supposed that its jurisdiction has been ousted by the division of Lower Canada into three juridical districts, and the establishment of courts of King's Bench therein, exercising jurisdiction,—not according to the common law of England, with all its fictions and its attachment to locality, but on the enlarged and more philosophical principles of the civil law of France, as introduced in '74. There is no one rule more distinctly settled in the jurisprudence of England, touching the interpretation of statutes, than this—That no pre-existing jurisdiction can be ousted by implication, nor by any other means than the authority of the Legislature, clearly and distinctly expressed to that effect.—Do we find words of such import in the judicature Act of 1793? There are none, and therefore we have no declaration by the Legislature of an intention, either to oust, or impair the jurisdiction which the Vice Admiralty Courts then exercised over the river St. Lawrence, from the Gulph to the utmost limit of tide water.

This brings us naturally to the consideration of such decisions, as may have been rendered in Lower Canada, since the passing of the judicature act in question, as well in the court of Vice Admiralty, as in the courts of King's Bench upon applications for writs of prohibition; and also of such Imperial statutes as may have been subsequently passed, affecting the jurisdiction of this court.

The cases in which writs of prohibition have been awarded to restrain the court of Vice Admiralty are the following:—

1811—Hamilton vs. Fraser, which was a case of salvage at the Batture of Mille Vaches, in the river St. Lawrence, about 200 miles above the Island of Anticosti.—Stuart R. p. 21.

1822.—Murphy vs. Wilson, for an assault committed on a seaman on board a British vessel in the Port of Kingston, St. Vincent, while in the prosecution of her voyage.—Ibid, No 39, Note (a).

1823.—Jones vs. Howard, damage by collision by the ship Camillus, while under way in the Port of Quebec.—Ibid. p. 158.

1827.—Willis vs. Soucy—Suit for pilotage in the St. Lawrence below Quebec.—Ibid. p. 89.

1834.—Short vs. Hurley.—Loss of passengers' goods at Grosse Isle below Quebec, by the oversetting of the boat of a ship on her voyage from Dublin to Quebec.—Ibid p. 39.

The first instance of a prohibition being refused, was in the case of Ritchie vs. Orkney, decided in 1835. The action in the Admiralty in this case was against the steamer Good Intent, for damage by collision in the port of Quebec.—Stuart R., 613.

The first mentioned cause, Hamilton vs. Fraser, in 1811, is the leading case on the prohibition side. The judgment refusing the prohibition in the case of Ritchie vs. Orkney, in 1835, was rendered by the same court, (and, as I believe, similarly composed,) not from any change of opinion in respect of the reasons of the judgment in the former case, but in consequence of the passing of the Imperial statute 2 Wm. IV., c. 51.

It might appear at first sight unnecessary for me to proceed any further in the consideration of the first ground of objection in the Act on Protest, namely, that one which is predicated upon the *locus in quo* of the collision, in as much as the Court of King's Bench, in the case of Ritchie vs. Orkney, refused to issue a prohibition, in consequence of its interpretation of the Imperial statute of 1832, which, in the opinion of that court, gave jurisdiction to the court of Vice Admiralty to take cognizance of a case of collision happening in the River St. Lawrence, within the body of a County, over which it had no judicial power previously to the passing of that Act. In as much, however, as, after the most mature deliberation, the judgment which I am about to render in the present cause does not square with the views entertained by the court of King's Bench, either in the case of Hamilton vs. Fraser, or in the case of Ritchie vs. Orkney, I am constrained to enter somewhat at large into the grounds upon which the prohibition in the former case is reported to have been allowed.

The original action in the Court of Vice Admiralty, in Hamilton vs. Fraser, was for salvage services performed in the river St. Lawrence, to the ship Trio, at the place called the Batture of Mille Vaches, within the ebb and flow of the tide. The plea to the jurisdiction alleged those services to have been rendered at a place within the body of the county of Northumberland, in the District of Quebec, in Lower Canada, and without the jurisdiction of the Vice Admiralty. The Honorable Judge who rendered the judgment of the Court, stated the general question, arising out of the facts suggested in that case, to be;—"Whether the Court of Vice Admiralty had jurisdiction in a case of salvage "*arising, and entirely completed*, within the limits of the Province," and the court was of opinion that it had not. The learned Judge then proceeded to apply to *this* proposition, the doctrine of the English common law courts, founded on the statutes of Richard II., and Henry IV., already cited, and he laid down three rules or propositions in support of the general question, namely:—

First—"That according to the civil and maritime law of England, the "High Court of Admiralty of England cannot hold plea of any matter "arising within the jurisdiction of the ordinary courts of law, and that it can-"not hold plea of any matter arising within the limits of the Realm, or King-"dom of England, *because the limits of the jurisdiction of the ordinary courts "of law, are co-extensive with the limits of the realm.*"

The extent of the jurisdiction of the court of Admiralty, as defined in the first proposition, is laid down in the very general terms of the statute of the 13th Richard II, which was passed, as the title of that statute imports, to determine—"What *things* the Admiral and his deputy shall meddle"—and speaks of things done within the *Realm*. The statute of the 15th Richard II., which was enacted with a view to determine, as stated in its title,—"In what *places* the Admiral's jurisdiction doth lie,"—interdicted the cognizance, by the Admiral, of things rising within the *bodies of counties*. The word *Realm*, in the sense in which it is used in the general question or proposition put in the case of Hamilton vs. Fraser, is too general, and is liable to mis-interpretation. An arm of the sea, or the estuary of a large river, or even sometimes the sea coast within the range of cannon shot, may be said to be parcel of the Realm of England, *quoad* other nations and kingdoms, although they may not be within the body of any *county* of the Realm. The current of decisions,

from the year 1391 to the year 1840, except in so far as regards damage caused by foreign vessels, has settled the law on this point to be—that whenever the subject matter of the action arises, or is done, within the *body of a county*, then the common law courts claim an exclusive jurisdiction over it. All the cases cited in Hamilton vs. Fraser, in support of the first proposition, are expressly stated to have turned on this point,—namely, that the cause of action arose *infra corpus comitatus*; and in one of these cases, Leigh vs. Burley, (which is somewhat of ancient date,—being in the 7th James I.,) it will be found, upon reference to the Report, that Dodridge, Serjeant, demanded this question:—"The Isle of Lundy is *de corpore comitatûs* of Devonshire, and lies "twenty miles within the sea:—Whether is that within the county?—Foster, "Justice—If the sea there be not of any county, the Admiral hath jurisdiction, "or else not." And the decision in the case cited from Coke is to the same effect—"The sea, says the Report, within the jurisdiction of the Admiral, is not of any county, for if the sea be within any county, Pais may come from thence."

The words, then, *within the realm* must mean within the bodies of the *counties* of the realm, for the sea between Devonshire and the Isle of Lundy, as described in the case of Leigh vs. Burley, is, in the general sense, certainly of the realm, but not within the jurisdiction of the common law courts, because it is not within the body of any county. The word realm being taken in the restricted sense of the term, the first proposition would be correct, in so far as it lays down the law as it existed in England at that time, but it is obviously incorrect in as much as it is predicated upon the extended sense of the term realm. In order clearly to keep in view the principles of the English decisions, it is absolutely necessary to employ the same terms made use of by the courts in rendering their judgments, and not to substitute the term *realm* for that of *body of a county*, which is the one invariably used in the Reports.

My object, in drawing attention to this distinction, is to guard against the fallacy into which we may be unavoidably led, in determining the bounds of the Admiralty jurisdiction in Lower Canada, by the specious dictum, (for it is no more)—"*that the limits of the jurisdiction of the ordinary courts of law in "England, are co-extensive with the limits of the realm*,"—in order, therefrom, to draw the inference, that the limits of the jurisdiction of the ordinary courts of law in *Lower Canada*, are co-extensive with the limits of that Province, or territory, which inference, from the reasons already given, is, inadmissible. The first proposition, therefore, cannot be taken as the correct rule of law even in England, and much less in Lower Canada.

The second proposition—"That certain cases are exceptions to the general "rule, but that salvage, arising and completed within the jurisdiction of the "ordinary courts of law, is not one of the excepted cases,"—is merely negative and lays down no general principle. It is true, however, that neither salvage nor collision is among the small number of what judge-made law has permitted to be treated as excepted cases.

The third proposition is—"That the Provincial court of Vice Admiralty "has no greater, or other authority, than that of the High Court of Admiralty "of England."

This proposition is not borne out by a reference to any authority. The courts of Vice Admiralty are assumed to be mere branches, or emanations

from the High Court of Admiralty, and the Commissions to the Admiralty Judges are referred to in support of this view. The words of all the Commissions, as already stated, bear evidence of an intention to establish, in the Colonies, an Admiralty jurisdiction of a much more extensive nature, than that of the High Court of Admiralty. The words used are obviously designed to throw off the trammels of the English decisions, and to restore the Admiralty jurisdiction, in the Colonies, to its ancient limits, namely, those observed in the time of Edward III.,—the time of the Articles of the Inquisition taken at Queensburgh, in 1376—the time of the Articuli Admiralitatis, in 1610, and of the resolutions upon the cases of Admiralty jurisdiction, in 1632.

Besides all the authorities which speak of the comparative powers of the High Court of Admiralty, and Vice Admiralty courts, support the opposite doctrine. Judge Story, in the case of Delovio vs. Boit, decided in the Circuit Court of the United States, in Massachusetts in 1815, and reported in Gallison's Reports, p. 470, and which probably contains more learning on the subject of Admiralty jurisdiction, than is to be found in any other book or treatise, says—"In some of the States, and probably in all, the Crown established, or reserved to itself the right to establish, Admiralty courts; and the nature and the extent of their jurisdictions depended upon the commission of the Crown, and upon acts of Parliament conferring additional authorities. The commission of the crown gave the courts, which were established, a most ample jurisdiction over all maritime contracts, and over torts and injuries, as well in ports as upon the high seas. And acts of Parliament enlarged, or rather recognized, this jurisdiction, by giving or confirming cognizance of all seizures for contraventions of the revenue laws." And in a note to the same page we find the following observation—"It is presumed that the commissions were usually in the same form. One of the latest is to the Governor of the Royal Province of New Hampshire, in the 6th year of the reign of Geo. III. It authorizes him to take cognizance of, and proceed in all cases civil and maritime, and in complaints, contracts, offences or suspected offences, crimes, pleas, debts, exchanges, accounts, charter parties, agreements, suits, trespasses, enquiries, extortions, and demands, and business civil and maritime whatsoever, commenced or to be commenced between merchants, or between owners and proprietors of ships and other vessels, and merchants and others whomsoever, with such owners and proprietors of ships, and all other vessels whatsoever employed or used, within the maritime jurisdiction of our Vice Admiralty of our said Province, &c., or between any other persons whomsoever had, made, begun or contracted, for any matter, thing, cause, or business whatsoever done or to be done, within our maritime jurisdiction aforesaid, &c. &c.; and moreover in all and singular complaints, contracts, agreements, causes and business, civil and maritime, to be performed beyond the sea, or contracted there, however arising or happening," with many other general powers—And it declares the jurisdiction "to extend throughout all and every the sea shores, public streams, ports, fresh waters, rivers, creeks and arms, as well of the sea as of the rivers and coasts whatsoever of our said Province," &c. In point of fact the Vice Admiralty court of Massachussets, before the revolution, exercised a jurisdiction far more extensive than that of the Admiralty of England."

It is apparent from the similarity between the language here used, and that of all the commissions to the Judges of the Vice Admiralty courts in Canada, already referred to, that a uniformly extensive Admiralty jurisdiction was established throughout all the British North American Colonies. All the American writers upon Admiralty jurisdiction, to whom it became a matter of importance to ascertain the precise limits of that jurisdiction, as bequeathed to them by Great Britain at the time of the revolution, concur in opinion as to the more enlarged jurisdiction of the Vice Admiralty courts over that of the High Court of Admiralty. Judge Winchester said in the case of the Sandwich, that the Statutes 13 and 15, Rich. 2, had received in England a construction which must at all times prohibit their extension to that country, (U.S.) (*a*) Chancellor Kent states, "It is said by a Judge (Peters) who must "have been well acquainted with this subject, (for he was a Registrar of a "colonial court of Admiralty before the revolution,) that even the distinction "between the Instance and Prize courts was not known in their Admiralty proceedings under the colony administrations." (*b*) The separate identities of the High Court of Admiralty and the Vice Admiralty courts, are kept up in all acts of British Legislation, (*c*) and were this court a mere branch or emanation of the former, and governed by its laws, the 6th section of the Imperial act of 1840 would have been at once conclusive as to the question of jurisdiction involved in the present cause, in so far as mere locality is concerned.

The proposition then that the powers of this court are precisely identical with those of the High Court of Admiralty of England, cannot be admitted, without curtailing the jurisdiction of the former in some matters, and extending it in others, by the force of legislative enactments in the United Kingdom, which have no relation to this court. The provisions of the 3d and 4th Vict. c. 65, relate expressly to the practice and jurisdiction of the High Court of Admiralty *in England*, and have palpably no more reference to the courts of Vice Admiralty abroad than the statutes regulating the number of passengers to be carried by stage coaches running out of London.

The fourth proposition laid down in the case of Hamilton vs. Fraser, and which is assumed to be the legal consequence of the three first is,—that as the High Court of Admiralty cannot, so the provincial court of Vice Admiralty cannot hold plea of any matter of salvage, arising and completed, within the jurisdiction of the ordinary courts of law, and consequently that the provincial court of Vice Admiralty cannot hold plea of any matter of salvage, arising and completed, within the limits of the Province, *if the limits of the jurisdiction of the ordinary courts of law of the Province be co-extensive with the limits of the Province.*"

It is assumed here that the same reasons upon which the common law courts claim exclusive jurisdiction over matters arising within the bodies of counties in England, obtain in Lower Canada. It has already been shewn that the stringent rule of the English law in regard to things done or arising *infra corpus comitatus*, is not applicable to, nor susceptible of amalgamation with

(*a*) Peters adm R. 233.—1 Kent com. Ed. 1832, p. 356.—Hall adm. Pract. XVII.
(*b*) 1 Peters adm. R. 5, 6.
(*c*) 1, 4 Geo. 3, c. 15. 49 Geo. 3, c. 107. 2 Wm. 4, c. 51. 3 and 4 Vict. c. 65, &c.

the system of laws in force in this country. The Queen's courts in England exercise jurisdiction over the whole Kingdom, and exclude the jurisdiction of the Admiralty in matters occurring within the body of a county, because the trial must be by a jury from the particular county in which they arise. It has been already shown that the courts of King's Bench in Lower Canada, on the other hand, are confined, in the exercise of their jurisdiction, to the limits of their respective districts, and that the locality of the thing, except as to real estate, confers no particular or exclusive jurisdiction. That the domicile of the debtor, or of the wrongdoer, or the service of its process upon him within the district of Quebec, (for instance,) which would give the court of that district jurisdiction over this matter, and that for this purpose, it is perfectly immaterial where the cause of action arises,—whether within the district of Quebec, of Montreal or Three Rivers, or *within* or *without* the limits of Lower Canada. The same degree of incompatibility which exists in England between local jurisdictions, is unknown in Lower Canada, and their is no analogy between the two systems in this respect.

It is assumed, in this fourth proposition, that the mere circumstance of the salvage services having been performed, or supposed to have been performed, within the county of Northumberland, and within the District of Quebec, not only gave the Court of King's Bench jurisdiction over the cause of action, but ousted the previously existing jurisdiction of the Vice Admiralty court. This is a fallacy predicated upon the rules of law to which the struggles between the two courts in England gave rise, and which, as already shewn, are only applicable to the local circumstances, and the system of laws of that country. The courts of common law and of Admiralty in England, have existed from time immemorial, and it is now impossible either to trace their origin, or to ascertain the ancient line of demarcation between them. In Lower Canada, an Admiralty jurisdiction of an extensive nature existed for thirty years before the institution of its Courts of King's Bench, (which are the mere creatures of statute,)—and that jurisdiction has never been abrogated. Previously to the passing of the Judicature Act of '93, no shadow of objection could be taken to the right of this court to entertain an action for salvage services performed in that part of the river St. Lawrence called the *Batture of Mille Vaches.* How then and when has that jurisdiction been ousted?—As already stated, it cannot be so by implication, and were there any words to be found in the Statute Book having that tendency, the same strictness of interpretation which is exacted in construing the creation of a new jurisdiction, would, *e conversu*, be equally necessary in establishing its abrogation.

The same reasons which would exclude the Admiralty jurisdiction at Quebec, or Mille Vaches, would equally exclude it on the Ocean-expanse of the St. Lawrence between *Cap des Monts* and the Island of Anticosti.—The river, towards the Province line, is sixty miles wide, about double the width of the English channel between Dover and Calais, and no land can be discerned on either side from the deck of a vessel sailing through the middle of this space. The horizon in all directions is, to all appearance, one interminable waste of waters. It is as much *altum mare* as the middle of the Atlantic ocean, and it would be a novelty to witness the departure of a land bailiff to effect a service of process within this "*body of a county*!" In addition to his ordinary libe-

ral education, he would require to study navigation, and provide himself with a quadrant; and his first operation,—standing in his light and fragile skiff—would be to ascertain, by astronomical observation, his latitude and longitude, in order to determine, whether he was serving his writ, within the District of Quebec, or within the limits of the Province of Newfoundland. The most extravagant extension of the local limits of any county in England, and the most extravagant interpretation of the restrictive effect of the statutes of Richard the 2d, and of all the decisions to which they gave rise, would fall far short of the ludicrousness of such a case.

But the fourth proposition professes to be based on the hypothesis—*that the limits of the jurisdiction of the ordinary courts of law of the Province are co-extensive with the limits of the Province.*" In support of this hypothesis the Proclamation of 1763, the Act 14th Geo. III., c. 83, the Order in Council of August 1791, are referred to in order to establish the limits of the Province of Quebec and that of the then Province of Lower Canada, and to show that the river St. Lawrence is within *those* limits. But there is a failure to show that the river St. Lawrence is comprehended in any one of the Districts established by the Judicature Act of 1793, by which *alone* the limits of the jurisdiction of the Courts of King's Bench are established. The river St. Lawrence has been already shewn, to be in its entire course, *without* the limits of every one of these districts. The Bature of Mille Vaches is neither within the body of the county of Northumberland, nor of any other county, district, or territorial division of Lower Canada; and this fact, perhaps, is the strongest to test the fallacy of the argument—that the Court of King's Bench for the district of Quebec, had exclusive jurisdiction over the salvage services performed at Mille Vaches, by reason of their locality, in as much as *quoad* the jurisdiction of that court, it is perfectly immaterial whether Mille Vaches be *within* or *without* the limits of the district of Quebec,—no additional right to take cognizance of the cause being derived from the locality of the thing done.

The court of King's Bench in England would indubitably, by the aid of a fiction laying the venue in an English county, take cognizance of a case of tort on the high seas to the personal property of a British subject, but would it on that account attempt to prohibit the Admiralty from holding plea of such a case, if it had been first instituted there? This has never been attempted. In such a case the court of King's Bench would be constrained to tolerate a concurrent jurisdiction at least in the High Court of Admiralty; and the courts of King's Bench in this country are precisely in the same position, with this difference that in consequence of the system of law in force here conferring no additional jurisdiction by reason of the locality of the thing done, the jurisdiction of the courts of King's Bench in Lower Canada can only be concurrent, whether the cause of action arise *within* or *without* their local limits. Had the word *exclusive* been introduced into the judicature act of '93, in speaking of the jurisdiction conferred by that act on the courts of King's Bench in Lower Canada,—it might then be argued that these courts were in the same position as the courts of common law in England, which oust the Admiralty jurisdiction by force of the exclusive local jurisdiction claimed by them. But even armed with this tranchant term the addition of the exceptional and indefinable words "*purely of Admiralty jurisdic-*

tion," would still render the point extremely doubtful, independently of the exclusion of the River St. Lawrence from their local limits, which in either case would form an insuperable barrier.

After the most mature consideration of all the reasons given in support of the prohibition in the case of Hamilton vs. Fraser, and the additional objection now brought out for the first time by Mr. Stuart, that the *locus in quo* of the salvage services in that case formed no part of the body of any county or district within the local limits of any one of the courts of common law in Lower Canada, and with the most profound respect at the same time for the great learning and the eminent talents of the honble. Judge who is reported to have pronounced the judgment in that case,—the conclusion to me is irresistible, that the court of Vice Admiralty, instead of being prohibited, ought to have been sustained in its jurisdiction over the subject matter of the action.

In the case of the Camillus, for damage by collision, caused by that vessel while under way in the port of Quebec, decided in 1823, (and in which a prohibition afterwards issued,) the Honble. Mr. Justice Kerr, then Judge of this court, still persisted in maintaining its jurisdiction over the St. Lawrence within tide waters, notwithstanding the prohibition of 1811, in the case of Hamilton vs. Fraser, and I have not the smallest doubt that the decisions of that honble. Judge, as well in that case as in the case of the Trio, were perfectly sound and correct.

But it may very naturally be asked *cui bono* disturb the decisions of the court of King's Bench in the cases of the Trio and Camillus, since that court subsequently, in the case of the steamer Good Intent, for a collision in the port of Quebec, decided in 1835, as already mentioned, after the passing of the Imperial statute 2 Wm. 4, c. 51, maintained the jurisdiction of the Vice Admiralty court over causes of action arising in the river St. Lawrence, within the limits of Lower Canada,—and in as much also as it follows from that decision, that the honble. Judges who sat in that case, were they now called upon to try an application for a prohibition in the present cause, would, as a matter of course, refuse it, and would sustain the jurisdiction of this court over the cause of action now submitted to it, in so far at least as the *locus in quo* is concerned. My answer is—that I do not rely much upon the effect of the Imperial statute in question to extend the jurisdiction of this court.

This act is intitled, "An Act to regulate the practice and the fees in the "Vice Admiralty courts abroad, and to obviate doubts as to their jurisdiction." The 6th section, which is relied upon as giving this court jurisdiction, in cases in which its jurisdiction, previously to the passing of that act, was doubtful, is in the following words:—"And whereas in certain cases doubts "may arise as to the jurisdiction of the Vice Admiralty courts in His Majes- "ty's possessions abroad, with respect to suits for seamen's wages, pilotage, "bottomry, damage to a ship by collision, contempt in breach of the regula- "tions and instructions relating to His Majesty's service at sea, salvage and "droits of Admiralty; be it therefore enacted, that in all cases where a "ship or vessel, or the master thereof, shall come within the local limits of "any Vice Admiralty court, it shall be lawful for any person to commence "proceedings in any of the suits herein before mentioned, in such Vice "Admiralty Court, notwithstanding the cause of action may have arisen

"*out of the local limits of such court*, and to carry on the same, *in the same* "*manner*, as if the cause of action had arisen *within the said limits*."

This clause is admitted on all hands to be obscure, in so far at least as its application is restricted to the court of Vice Admiralty in Lower Canada. I am afraid it is something more than obscure. The framer has conjured up doubts which never existed, and having brought them into existence, he has failed to remove them. The power delegated to this court at its institution, and which it has since exercised, without interruption, of taking cognizance of causes of action arising on the high seas, *beyond its local limits*, whenever the person or the thing came within those limits, has never been impugned. The intention of the framer of the clause, in so far as it is to be legally gathered from the terms of the act, was to give this court jurisdiction over the various categories therein enumerated, provided the master or vessel came within its local limits, that is, within the limits of Lower Canada, and within reach of the process of the court. It may be said, that since no doubt could properly exist as to the right of this court to take cognizance of such causes, *before the passing of that act*, the person who moved the Legislature in this matter, must have had in view the embarrassment produced by the decisions in the case of Hamilton vs. Fraser, and of the Camillus, and that he must have intended something more than he has expressed, that is, to give this court jurisdiction in cases in which the decisions of the King's Bench in those two cases had prohibited it. He *may* have had such an intention in his breast, but he has failed to express it.

It was said, in the case of Ritchie vs. Orkney, that this was a remedial statute, and that it was therefore the duty of Courts of Justice to carry into effect its general object. The rule is undeniable in so far as regards the extending of the remedy under a remedial statute; but where the question touches the power of the court to take cognizance of the matter at all, the point must be tested upon a different principle. A statute creating a new jurisdiction, which this would be, if the decision in Hamilton vs. Fraser be correct, is one which confers a power, and powers are ever to be strictly construed. Again, the clause in question purports to give the court power to commence proceedings in, and carry on, a cause of collision happening beyond its local limits, when the vessel comes within those limits *in the same manner* as if the cause had originally arisen there. Then if the decision in Hamilton vs. Fraser, which denied its right to try a cause of collision, arising within Lower Canada, be well founded, how or in what manner could this court *commence proceedings in, and carry on* such a cause arising beyond its limits, *in the same manner* as it would try one arising *within* its local limits, since, in the latter case, it could not try it at all? Of course the foreign case would be equally beyond its control, and, although it may sound very like a quibble, the clause in question, if strictly and literally construed, would actually abridge the court of Vice Admiralty of Lower Canada of a right which it previously undoubtedly possessed, and exercised. Such a construction, however, would be at variance with the settled rule in the interpretation of statutes, that Courts of Justice are bound to strain the terms of a statute, in some instances even against the letter, *ut magis res valeat quam pereat*, and in order to give them a rational and reasonable construction, consistently with the respect due to the authority of Parliament, and in order to avoid, by all possible means, put-

ting such an interpretation on them as would amount to a *reductio ad absurdum*.

The only possible mode by which a construction, favorable to its conjectured object, can be put upon this clause, is to suppose that its provisions, though made generally for all the courts of ViceAdmiralty abroad, had, nevertheless, reference pointedly to the circumstances of the local limits of the Vice Admiralty court of Lower Canada, and the decisions of its courts of justice ; and since it authorizes this court to *commence proceedings* in, and to *carry on* a cause of salvage or collision, or any other of the enumerated causes of action arising beyond its local limits, *in the same manner* as if such cause of action had arisen *within* those limits, then that such a provision amounts to a distinct recognition that such cause of salvage, collision or other thing arising within these limits, *could* previously have been tried by this court, and that its jurisdiction, though doubtful, in the opinion of the framer of that act, as to causes of salvage, collision, &c., arising *beyond* its local limits, stood nevertheless unimpaired as regards these causes of action when arising *within* its local limits. I have no objection to coincide in that interpretation of the clause in question, for it is destructive of the principle of the judgment in Hamilton vs. Fraser, and comes in aid of the views already expressed by me in regard to the correctness of that decision.

Under either view of the effect of the statute in question, I have no hesitation whatever in coming to a determination, that the first ground of objection set forth in the act on protest, namely, that one which denies the jurisdiction of this court by reason of the locality of the collision, is unfounded and cannot be sustained.

The other ground of objection remains still to be disposed of, namely, that one which impugns the jurisdiction of this court upon the ground that the collision in question occurred on the river St. Lawrence beyond the ebb and flow of the tide. This is a point of the greatest importance. Although in interpreting the English decisions with reference to the objection of locality which has just been disposed of, I have rejected the rigid English application of the rule *infra corpus comitatus*, as violating that principle of adaptation which must of necessity be observed in transplanting a system of laws, which had its origin, and its growth, in the particular circumstances and conditions of one country, uncontrolled by any abstract principle of law, into the jurisprudence of another country, totally dissimilar in these particulars, I am not prepared to treat the present objection in the same style. The settled and undisputed rule in England, and which has moreover been held to be law in the United States, that the courts of Admiralty have no jurisdiction beyond the ebb and flow of the tide, though inadequate to the circumstances of Lower Canada to the full extent, is still susceptible of application as far as it goes.

Had the collision happened, beyond dispute, at a place either entirely within, or far removed from the ebb andflow of the tide, I might be prepared now to decide upon the law of the case. The evidence on this point, although brought out in the shape of affidavits, by two parties, each endeavouring to substantiate an opposite and contradictory series of facts, really contains less contrariety than is to be found in most cases, and there does not seem the smallest ground for calling in question the good faith of the parties swearing either on one side or on the other. It is averred on both sides, that there

is an occasional rise and fall of the waters of lake St. Peter. Both agree that this only takes place in spring tides ; but the one set of affidavits assert that it is not periodical, and is ascribable, solely, to the combined effect of winds and tides ; while those on the opposite side state, that there is a positive rise and fall of the waters of the lake, in spring tides, independently of the effect of the wind ; and the affidavit of Ryan, which possesses the character of circumstantial in a higher degree than any other, states that he succeeded in floating a steamboat, which had grounded fifteen miles above the site of the collision, in consequence of the rise of the water caused by the tide.

But it is not upon such meager evidence that I am to decide the important fact involved in this second objection of the act on protest. The parties must proceed by plea and proof in order that each may have an ample opportunity of adducing all the testimony which may be deemed essential in order to elucidate this question of fact. This decision, as a matter of course, implies that I am not now disposed to maintain the jurisdiction of this court over the river St. Lawrence beyond tide water. Where the precise point lies, at which the jurisdiction of the Admiralty stops, it may be difficult to determine, and there must always be a considerable extent of debatable ground in and about this uncertain line.

While on this part of the subject, I may mention a few authorities which possibly have a bearing on the point.—2 Douglas 443. Dunlop Adm. pract. 41. Cond. Rep. Sup. Ct. U. S., 342. 6 Cond. R. U. S., 173. 1 Valin. 129. 2 Valin 571, 572. 7 Carrington and Payne, 664. (or 32 Serjeant & Lowber, 678)—3 Hagd. 273.

It may be said to be absurd that this court could take cognizance of a case of collision happening in or about Port St. Francis, on Lake St. Peter, and that in a similar case, occurring ten or twenty miles above the same spot, the court could afford no remedy, while damage to an incalculable amount might be caused by a foreign vessel outward bound, and against which all recourse might be lost. Such a misfortune might now occur without any means of redress, as this court could in no way stretch its jurisdiction beyond the tide waters of the St. Lawrence, however urgent the cause,—the Admiralty jurisdiction in Canada being necessarily handcuffed by the rule of the English law, that it cannot be exercised beyond the ebbing and flowing of the tide. The same inconveniences may arise here which were felt in England in regard to collisions in the river Thames, within the bodies of counties, previously to the passing of the statutes of 1821, and 1840, giving a remedy in the Admiralty in such cases. The powers of the High Court of Admiralty have been much enlarged by the latter Act, and it is now gradually recovering those ancient limits of its jurisdiction which reason and the nature of the remedy afforded by its mode of proceeding, necessarily assigned to it, and from which it ought never to have been driven. Thus it has required the experience of ages in England to overcome the effect of the statutes of Richard the 2d., and the forced interpretations of them by the common law judges, and to approach that just appreciation of the true boundaries between the courts of common law and those of Admiralty or maritime jurisdiction, which the wisdom of the naval code of France would have taught them nearly two hundred years ago, and which has been confirmed by the uniform practice of the maritime courts, as well of the Sister Kingdom of Scotland, as of the rest of Europe.

The river St. Lawrence may be considered, and under a more liberal system of commerce may actually become, from its mouth to the port of Montreal, as much the highway of nations, as the English channel; and the anomalies which now fetter the exercise of maritime jurisdiction over that noble stream, might well become the subject of legislative interference, in order to afford commerce that protection and redress which it would derive from a speedy adustment of its differences, under the equitable system of laws and practice by which justice is administered in maritime courts.

Whether the present case will be found to be within the legitimate jurisdiction of this court, or not, will depend upon the remaining question of fact yet to be fully ascertained, namely—the exact amount of influence which the tide exercises upon the waters of the St. Lawrence at the place of the collision, either apart from, or combined with, the agency of high winds; and whether such influence will constitute an ebbing and flowing of the tide according to the legal interpretation which this term must receive. The facts being still open, the law to be applied to those facts must also remain open, and I am not now called upon to say to the tide of the St. Lawrence—"Thus far shalt thou go and no farther;" nor yet to decide what are the utmost limits to which the phenomenon of the tides will permit this court to extend its jurisdiction. It is extremely probable that this most important point in this cause, upon the precarious position of which the payment of a claim of an unusually large amount (if made out) may possibly altogether depend—is not far above, nor far below, the actual site of the collision. When the riparian inhabitants of the River and the Lake, and others having a knowledge of the fact, come to be examined, it may then be fully and satisfactorily ascertained; and if the collision be found to have happened beyond the jurisdiction of this court, it will be my duty then to dismiss this suit for want of jurisdiction, but if otherwise, to proceed to a final determination on its merits.

I must now, however, overrule the protest and assign the parties to appear absolutely.