

Юрисдикция английского Адмиралтейского суда

Адмиралтейский суд был судом морской юрисдикции и первоначально, как следует из его названия, был судом лорда - верховного адмирала¹ Англии, в котором судья заседал в качестве лейтенанта или заместителя адмирала. Однако постепенно, хотя его юрисдикция в значительной степени отличалась от юрисдикции судов общего права и справедливости, он стал обычным муниципальным трибуналом.

Это был суд глубокой древности, его можно проследить еще во времена правления Эдуарда I., и, по всей вероятности, он существовал как суд отдельной юрисдикции задолго до этого времени.

THE Court of Admiralty was a Court of marine jurisdiction, and originally, as its name implies, was the Court of the Lord High Admiral of England, in which the Judge sat as the Admiral's lieutenant, or deputy. By degrees, however, although its jurisdiction differed largely from the Common Law and Equity Courts, it became an ordinary municipal tribunal.²

It was a Court of great antiquity, and may be traced as far back as the reign of Edward I., and in all probability existed as a Court of separate jurisdiction long before that time,

(a) It seemed to have owed its origin, in great measure, to the inelasticity of the Common Law, the processes of the Common Law Courts originally depending upon venue, and not extending to matters happening at sea. The judges of the Admiralty Court seem to have been always ready to extend its powers at the expense of the Common Law Courts, and to have aimed at completely monopolising jurisdiction over maritime causes, but all such encroachments were sturdily resisted and prevented by Acts of Parliament,

(b) The technical process of the Courts of the Common Law, however, so limited their jurisdiction and hampered their procedure, that prior to the reign of James I. it was impossible with any show of justice to prohibit suitors from resorting to the Admiralty, in cases where that Court could alone afford a satisfactory remedy; so that ultimately the Admiralty Judges, although compelled to abandon their claim to exclusive maritime jurisdiction, exercised undisputed authority in those cases in which the Common Law Courts could give no redress.

Origin of Court of Admiralty.

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Antiquity of Court.

(a) Boyd on the Merchant Shipping Laws, p. 450.

Early jurisdiction of Court.

Over torts.

Over salvage suits.

And possession.

The exclusive jurisdiction so left to the Admiralty Court included :—

1. All torts committed on the high seas.
2. All suits of salvage.
3. All suits of possession.
4. All cases of hypothecation.
5. All suits for seamen's wages.

The right of the Admiralty Court to have exclusive cognisance over torts committed on the high seas has never been disputed. The authority over salvage suits arises from the fact that it was considered as a branch of the Eoyal Prerogative with which it had been entrusted. The remedy in suits for possession and seamen's wages was more advantageous, because the Admiralty Court

(6) See 13 Richard II. stat. 1, c. 5 ; 15 Richard II. c.' 3; and 2 Hen. IV. c. 11.

afforded a summary process unknown to the Common Law, by which the possession of the thing in dispute was at once dealt with. The contract of hypothecation was not recognised at all by the Common Law.(c)

The Court of Admiralty remained confined within these Statutory exnarrow limits until the beginning of the present reign, powers of when, in the year 1840, an Act was passed to improve ^{Court} the practice and extend the jurisdiction of the Court,(d) and its power has been still further extended by other Acts passed

¹ Court of the Lord High Admiral of England

² T. Eustace Smith A Summary of the Law and Admiralty 4th ed. 1892 (<http://heinonline.org/HOL/Licen>)

in the years 1854 and 1861,(e) which will be more fully noticed in treating of practice. In 1859 barristers and solicitors were first allowed to practise in Admiralty. (/)

Originally the Admiralty Court exercised a criminal Early criminal jurisdiction.

jurisdiction over all offences committed on the high seas, but all criminal jurisdiction was taken away from it in the reign of Henry VIII. (<f)

By the Judicature Act, 1873,(A) the Court of Ad- Alterations miralty is consolidated with, and made to form a part cature Acts, of, the Supreme Court of Judicature, to .which all its former jurisdiction is transferred,^ and it is formed, with the Courts of Probate and Divorce, into the Probate Divorce, and Admiralty Division. (7c) The change is

(c) Williams and Bruce, Admiralty Practice, 2nd Ed. p. 9.

(d) 3 & 4 Viet. c. 65. (e) 17 & 18 Viet. c. 78, and 24 Viet. c. 10.

(/) 22 & 23 Viet. c. 6.

(g) 28 Hen. VIII. c. 15. This jurisdiction is now exercised by the Central Criminal Court. See 4 & 5 Will. IV. c. 36, and 7 & 8 Viet. c. 2. (h) 36 & 37 Viet. c. 66, s. 3.

(£) Ibid. s. 16. ' (Jc) Ibid. s. 31. '

Practice in Admiralty Division.

The Admiralty Division will not exercise ¹ jurisdiction over property of a foreign State.

Immunity from arrest not limited to

principally in name, as all matters are to be assigned to the Probate, Divorce, and Admiralty Division which before fell within the jurisdiction of those Courts,(/) and the Judge of the Admiralty Court is made a judge of the High Court of Justice.

The practice of the Admiralty Division is now governed by the Rules of the Supreme Court, 1888, and the Rules, Orders, and Regulations of the High Court of Admiralty, 1859 and 1871, are annulled.(m)

When

however, no other provision is made by the Judicature Act or the Rules of 1883, the procedure and practice in use before the Rules of 1883 remain in force.(я.)

By International Law, ships or other public property of a State, destined to the public ;rse of such State, are privileged, and are free from the control and authority of any other State, and are not liable to any municipal tribunal except of the State to which such ships or property belong. Consequently the Admiralty Division will not exercise jurisdiction over public ships, the property of a Foreign State.(o) And the Chancery Division has refused to exercise jurisdiction over property belonging to a foreign Sovereign.^)

This immunity is not limited to foreign ships of war, hut depends on the question whether the ship or property

(l) 36 & 37 Viet. c. 66. s. 34, and Jud. Act. 1875, s. 11.

(m) See commencement to R. S. C. 1883, and App. 0.

(n R. S. C. 0. 72, r. 2.

(o) The Parlement Beige, 4 P. D. 129; 5 P. D. 197 ; The Constitution, 4 P. D. 39 ; The Cliarkieh, L. R. 4 A. & E. 59.

(p) Vavasseur v. Krupp, 9 Ch. D. 351.

is public property or not; and in the case of a ship, foreign ships of war.

such immunity is not lost by the fact that, in addition to the public uses, she may carry merchandise and passengers for hire.(p) It appears, too, that if the ship is declared by the sovereign authority of the State to which it belongs, by the usual means, to be public property, that declaration cannot be inquired into.(<2)

The Adtoiralty Court consisted of two separate divisions Divisions of

. iii /-Ч Admiralty
—the .Prize Court and the instance Court. Court.

The Prize Court had nothing whatever to do with the Prize Court, ordinary jurisdiction of the Admiralty Court, but was a jurisdiction which the Judge of the Admiralty Court . exercised, by virtue of a commission issued under the Great Seal, at the beginning of every war, to proceed upon all and all manner of captures, seizures, prizes, and reprisals of ships and goods which were or should be taken, and to hear and determine according to the course of the Admiralty and the law of nations.(r) Happily, there has been no war of sufficient importance to require the appointment of a Prize Court since the passing of the Judicature Acts, but it is presumed that the Crown would not depart from its ancient custom, and, if need required, would still appoint a Judge of the Probate, Divorce, and Admiralty Division to the office.

In the Instance Court its jurisdiction was limited to instance Court,
cases of private injuries to private rights arising at sea,

(p) The Parlement Beige, 4 P. D. 129; 5 P. D. 197.

(q) The Parlement Beige, supra.

(»•) Wharton's Law Lexicon, "Admiralty"; also Brown's Law Diet., "Prize."

Jurisdiction in contracts.

In torts.

Jurisdiction of the Admiralty Division the same as that formerly exercised by Admiralty Court.

Matter^ which before the Judicature Acts were in the exclusive jurisdiction of the Admiralty Court must still be assigned to the Probate, Divorce, and Admiralty Division.

or intimately connected with maritime subjects. —' In contracts its jurisdiction was confined to contracts of a maritime nature. In torts to wrongs either committed at sea or on water within the jurisdiction of the Admiralty.(s)

By sect. 34 of the Judicature Act, 1873, all causes and matters which would have been within the exclusive cognisance of the Admiralty Court before that Act are assigned to the Probate, Divorce, and Admiralty Division of the High Court, and, consequently, that Division of the High Court has the same jurisdiction as that exercised by the High Court of Admiralty before the passing of the Judicature Acts.

It must be remembered that matters which before the Judicature Acts were in the exclusive jurisdiction of the Admiralty Court must still be assigned to the Admiralty Division, and an action cannot be commenced in respect of them in any other division of the High Court; (t) and if the plaintiff does choose any other Division it may be questionable whether under the terms of the Order (Ord. 5, r. 5) there is any power to transfer his action to the Admiralty Division. But see O. 49, r. 3.

Shipping cases will be transferred to the Admiralty Division from another Division of the High Court when they are of such a nature that they can be more properly dealt with in that Division.(v)

(s) As to waters within the jurisdiction of Admiralty, see post,
p. 11.

(f) R. S. C. O. 5, r. 5; and see Jud. Act, 1873, s. 33.

(u) *Hawkins v. Morgan*, 49 L. J. 618.

When part of a contract (or other cause of action) arises Jurisdiction . . . in! . . . over contracts,
partly on the sea and partly on land, the common

law excludes the jurisdiction of the Admiralty Division, for, part belonging to one cognisance and part to another, the common or general law takes the place of the particular.^) Purely maritime acquisitions which are earned and become due on the high seas—as seamen's wages—come within the jurisdiction of the Admiralty, and this though the contract for them is made on land.(y)

Mixed contracts—for example, charter-parties (or contracts for the hiring of the ship), or contracts made upon the sea to be performed in England—on the other hand are enforced not by the Admiralty, but by the Common Law Division, (r)

When the Admiralty Court has jurisdiction over the Jurisdiction

original subject-matter in the cause, it has also jurisdic- questions, tion over all consequential questions, though properly determinable at Common Law.(a)

If an action has been commenced in the Admiralty Transfer of Division in a matter over which that division has no commencedIn jurisdiction, the defendant can insist as a matter of right ^^sion^ on its transfer to another division.(b)

(x) Co. Litt. 261; Steph. Com. 11th Ed. vol. iii. p. 365.

(y) 1 Yent. 146.

(rr) See *Bridgman's Case*, Hob. 23 ; *Hale*, Hist. C. L. 35 ; *Le Caux v. Eden*, Doug. 572.

(a) The Case of the Admiralty, 13 Rep. 53 ; *Ridley v. Egglesfield*, 2 Lev. 25, Hardr. 183. The jurisdiction of the Admiralty Division is now in most of the cases in which it is exercised clearly defined by statute.

(B) The *Seaham*, 48 L. J. P. 29.

Actions coining under jurisdiction of Admiralty.

Whenever any of Her Majesty's ships of war attack any persons alleged to be pirates, whether afloat or ashore, the question whether such persons are pirates or not is to be determined by the Admiralty Division of a ViceAdmiralty Court.(c) The ships and goods taken from the pirates are proceeded against in the Admiralty Division, and are subject to condemnation as droits and perquisites of the Crown. If, however, any part of the property can be proved to have been taken from an innocent person, the owner is entitled to have them returned to him on paying one-eighth part of their value in lieu of salvage.(d)

The ordinary cases in respect of which the authority of the Admiralty Division is exercised are:—

1. To restore possession of a ship.
2. For damage to a ship, her cargo, &c.
3. In respect of s'eamen's wages.
4. Salvage.
5. Necessaries supplied to a ship.
6. Bottomry and respondentia.
7. Claims by a mortgagee.
8. Pilotage and towage.
9. Bestoring goods taken by pirates.
10. Assaults or batteries committed on the high seas.

(c) 13 & 14 Viet. c. 26, s. 2.

(id) Ibid. s. 5. In addition to this statutory power of giving back goods taken from pirates, the Court still appears to have, by common law, power to restore goods taken from pirates, and also to entertain actions in personam for injuries inflicted on the high seas, but its jurisdiction over such claims has fallen into disuse although it is not obsolete (Roscoe's Admiralty Law and Practice, 2nd Ed. p. 97).

It is difficult to clearly define the local jurisdiction of Local jurisdiction.

the Admiralty Division, but it has been held by the Courts of Criminal Law that the criminal jurisdiction of the Admiralty Court transferred to them by 28 Hen. VIII. c. 15 (and the civil jurisdiction appears to be co-extensive with this) extended over all offences committed by British subjects or foreigners on board British ships : (e)

1. In all great waters frequented by ships. (/)
2. In creeks, harbours, ports, &c. in foreign countries. (y)

And over all persons (h)—

3. In havens and creeks, and in rivers below bridges in the United Kingdom. (t)

In other words the common law jurisdiction of the Common Law

Admiralty Courts extended over— jurisdiction of the Admiralty Court,

1. British subjects and persons on board British ships every where. (/c)

2. Foreigners on board foreign ships only when they were in the territorial waters of this country, (Z) and when such ships are private ships. (m)

It must therefore be remembered that in every case where the Court exercises a jurisdiction over foreign

(e) Meg. v. Anderson, L. R. 1 Cr. 0. 161'.

(/) MS., Bailey, J.

(g) Eex. v. Jemot, Old Bailey, 28th Feb. 1812.

(h) Cunningham's Case, Bell, Or. C. 72.

(r) Bruce's Case, 2 Leach, 1093; Russ. & Ry. 243. See hereon, Russell on Crimes, 5th Ed. 11-25.

(7c) Beg. v. Anderson, L. R. 1 Cr. C. 161.

(l) Meg. v. Keyn, 2 Exch. D. 63.

(m) Woolsey's Inti. Law, s. 54.

Territorial

waters,

what included in.

Sea within three miles of the coast not within territorial waters.

Powers of punishment

ships for offences committed out of its territorial waters the power is necessarily given by statute.

The territorial waters of this country include the shore between high and low water-mark, («.) all great rivers below bridges, (o) and all bays and inland seas enclosed within headlands so situated that a man can see from one to the other. (y>)

By international law a country has particular rights over the sea within three miles of its own shore, but in Reg. v. Keyn (q) (the Franconia Case), it was held by the majority of the Court for Crown Cases Reserved that the Central Criminal Court, under the transferred criminal jurisdiction of the Admiralty, had no juris-

diction to try a foreigner in command of a foreign ship, passing within three miles of the shore of England, who ran into and sunk a British ship, for the death of a person caused by the collision. The criminal jurisdiction of this country has been extended by a recent statute (r) to all offences committed within one marine league of the coast measured from low water-mark, but for the general purposes of Admiralty jurisdiction the sea within three miles of the coast cannot be considered as part of the territorial waters.

In addition to its other powers the Admiralty Division

- (n) 3 Inst. 113; 2 Hale, 17.
- (o) Bruce's Case, 2 Leach, 1093.
- (p) Reg. v. Mannion, 3 Cox, C. C. 158; Reg. v. Cunningham, Bell, Or. C. 72.
- (q) 2 Exch. D. 63.
- (r) 41 & 42 Viet. c. 73 (The Territorial Jurisdiction Act, 1878).

lias under the Merchant Shipping Act, 1854,(5) ss. 103 for carrying
* illegal colouri

and 105, power to punish for carrying illegal colours.

These powers are shortly as follows :—

Any commissioned officer in the Army or Navy may seize a ship and bring her for adjudication before the Admiralty Division.

1. When the British flag is wrongly used on any ship owned by a person not entitled to own British ships.
2. When the owner or master of a British ship wrongly conceals its British character or assumes a foreign character.
3. If an unqualified transferee (i.e., a person not a British subject) acquires as owner any interest in a ship using the British flag and assuming the character of a British ship.
4. Where the master or owner makes a false declaration of ownership.

The Court may award the officer instituting the suit such part of the proceeds of the sale of the ship as it may think fit.

If the seizure is shown to be unjustifiable, the Court may order such officer to pay costs and damages to the party aggrieved, (f)

The Admiralty Court had also jurisdiction over the Flotsam,

ii -l • л 1 -i i. jetsam, and goods where a ship foundered or was split at sea which ii_gan. became flotsam, jetsam, or ligam, and a suit for these

(s) 17 & 48 Viet. o. 104.

(t) The Merchant Shipping Act, 1854, s. 103. See also 52 & 53 Viet e. 73.

must formerly have been brought in that Court; but goods wrecked were claimed by action at Common Law. Flotsam is where the ship is split, and the goods float upon the water between high and low water-mark; jetsam is where the ship is "in danger to be drowned, and for saving the ship the goods are cast over into the sea"; ligam or legam is where the heavy goods are cast into the sea with a buoy, that the marines may know where to retake them; wreck is where the goods shipwrecked are cast upon land.(w) ' Wreck.

The jurisdiction over wreck was also formerly in the Admiralty Court.

What const! In order to constitute a wreck in the legal sense of the word, it is necessary that the " goods should come to land ; if they continue at sea they are either flotsam, jetsam, or ligam.

Jurisdiction of By the Merchant Shipping Act, 1854, and the Mer- Board of Trade

over wreck. chant Shipping Act Amendment Act, 1862,(ж) the Board of Trade has now a general supervision over wreck, which, for the purposes of the Acts, includes flotsam, jetsam, and ligam. If no owner of goods wrecked (the word here includes flotsam, jetsam, and ligam) claims them before the expiration of a year from their finding, the goods are sold by the Beceiver of Wreck, and the proceeds paid into the Consolidated Fund.(y)

(и) Bacon's Abridgment, 7th Ed. vol. ii. p. 498, B.

(x) 17 & 18 Viet. c. 104, and 25 & 26 Viet, c. 63.

(y) 17 & 18 Viet. c. 104, s. 475. As to the rights and duties of salvors, see ss. 439, 441, 442, 450, 458,

460, 484, and 25 & 26 Viet, c. 63, ss. 49, 50. For preventing plundering of wrecks, see s. 447

The Court of Admiralty of the Cinque Ports has concurrent jurisdiction with the High Court in cases of salvage within the local bounds of the Cinque Ports.(2)

There are no formal pleadings in the proceedings in this Court, the case being decided upon facts proved by affidavits.

The jurisdiction of the Admiralty Division is now to a Jurisdiction

4 . defined by
very large extent defined and limited by various statutes, statutes.

In the more ordinary cases in which the jurisdiction of the Admiralty Division is exercised—damage to ships, necessities supplied to ships, and mortgages of ships—its jurisdiction is purely statutory, and in many other cases limits have been placed by statute on the extensive jurisdiction originally claimed by the Admiralty Court.

The Admiralty Division adopts many of the principles Principles of the Civil Law, and also makes use of other laws as Admiralty^{le} occasion require; such as the Ehdian Laws, and the Comts, Laws of Oleron—bodies of law derived from places . anciently celebrated for their skill in naval affairs, viz., the island of Rhodes and the island of Oleron in France.(a)

It may be open to question how far, at the present

time, there is any general, in the sense of universal, I^s there any i General
law binding nations which have not assented, or who Maritime law?

have withdrawn their assent to it, any more at sea

than upon land. In many cases 'the Judges have

of Merchant Shipping Act, 1854; 24 & 25 Yict. c. 96, s. 64; and 24 & 25 Viet. c. 97, s. 47. ,

(») The Lord Warden v. The King in Ms Office of Admiralty,

2 Hagg. 438. As to these hounds-see post, p. 34.

(a) Steph. Com. 11th Ed. vol. iii. p. 366.

affirmed and acted upon the existence of a general maritime law and the necessity of following it.(b) In the present day, however, since the compilation of codes by the civilised nations of Europe, it may well be questioned whether any such general maritime law exists, and whether the fair and wise course in each case must not be to limit the liability of the owners and the power of the master to bind them to the law of the country to which the ship belongs.(c)

(b) For recent instances of this see The Hamburg, Br. & Lush. 253; The Gaetano and Maria, 7 P. D. 1, 137 ; The Gratitude, 3 C. Rod. 240 ; The Bonaparte, 3 W. Rob. 306 ; The Eliza Cornish, 1 Sb. Ec. & Ad. 36, 57.

(c) This latter rule appears to be the one adopted in the cases of Lloyd v. Guibert, L. R. 1 Q. B. 115, and also in the American case of Pope y. Niclerson, 3 Story's Rep. 465.

INFERIOR COURTS OF ADMIRALTY.

BESIDES the Admiralty Division there are other Courts other Courts

. having

which, by virtue of powers given them by statute or jurisdiction, royal charter, exercise a limited jurisdiction in Ad-

miralty. This jurisdiction is, in some cases, as the County Courts, or justices of the peace, limited by the amount of the claim or property against which it is sought to be enforced, and local hounds; in others, as the Commissioners of the Cinque Ports, by local bounds . only.

The Admiralty Division has concurrent jurisdiction Exercise concurrently with

with the Inferior Courts, and the plaintiff is only Admiralty

Division.

prevented from exercising his option to proceed m the Superior Court by the fear of not recovering costs if the case is one for the Inferior Court.

The Royal Court of Jersey and Guernsey and the The Royal

• . Courts of

Admiralty Court of the Isle of Man possess, a primary Jersey and exclusive jurisdiction over all Admiralty matters which ^Court ofⁱⁱ arise within certain local hounds. Each Court has a Man.^{S*^e} of separate mode of procedure of its own. Appeals lie from these Courts to the Privy Council.(a)

(a) 3 & 4 Will. IV. c. 41, s. 2.

B

The ViceAdmiralty Courts.

Appeals.

The Inferior Courts.

County Courts.

Actions for necessities.

The Vice-Admiralty Courts are Courts established in various parts of Her Majesty's dominions, which have a concurrent jurisdiction with the High Court in Admiralty in matters arising within their local bounds.(b) The claims over which they have jurisdiction are named by statute, but are practically the ordinary claims decided by Courts of Admiralty.(c) Appeals from the Vice-Admiralty Courts lie to the Privy Council, but no appeal is allowed from any decree or order not having the force or effect of a definitive sentence or final order, save by permission of the Judge ;(d) the time for appealing is six months from the date of the decree or order.(e)

The Inferior Courts are :—

The County Courts.

The City of London Court.

The Court of Passage at Liverpool.

Justices of the Peace.

The Commissioners within the Cinque Ports.

The County Courts.—The jurisdiction of the County Courts is purely statutory, and cannot be exercised by all, but only by certain specified Courts, appointed by Order in Council.(/)

A County Court has no greater Admiralty jurisdiction

(g) 30 & 31 Yict. c. 45, s. 16. And see hereon The Colonial Courts of Admiralty Act, 1890, 53 & 54 Yict. c. 27.

(c) 26 & 27 Viet. c. 24, ss. 10, 11. (d) Ibid. s. 22.

(e) Ibid. s. 23. For appointment of Judges of the Vice-Admiralty Courts, see the Appellate Jurisdiction Act, 1876 (39 & 40 Viet. c. 59), s. 23.

(f) 31 & 32 Viet. c. 71, s. 5 ; Order of Jan. 14.1869.

in respect to necessities than the Admiralty Division, and consequently cannot entertain an action for necessities supplied to a British ship, the owners of which are domiciled in Great Britain.(y)

Under the Merchant Shipping Acts, the Judge of any County Court having Admiralty jurisdiction has power (concurrently with the High Court), in the event of an injury caused by a foreign ship to British property in any part of the world, upon its being shewn to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or crew, to direct the vessel to be detained until satisfaction should be made for the alleged wrong, or security be given to abide the event of a legal decision.(ji) Concurrent jurisdiction is also given to the County Courts with justices in those cases where the latter have jurisdiction over salvage claims: i.e., where the value of the property saved does not exceed £1000(r) and over allotment notes of seamen's wages.(A)

The chief Admiralty jurisdiction of the County Courts has been conferred by the County Courts Admiralty Jurisdiction Act, 1868,(l) extended by the Amendment Act of 1869.(m) Under these Acts the jurisdiction of

(g) The Bouse, L. R. 3 A. & E. 135; Allen v. Oarbutt, 6 Q. B. D. 165. This rule also applies to the City of London Court and Court of Passage at Liverpool.

(h) 17 & 18 Yict. c. 104. ss. 527-529.

(r) 25 & 26 Yiet. c. 63, s. 40, sub-s. 6.

(k) 17 & 18 Yict. c. 104. s. 169.

(l) 31 & 32 Yict. c. 71.

(TO) 32 & 33 Yict. c. 51.

Power of arrest for damage.

Salvage claims when value of property saved is less than £1000.

Claims enforced in County Courts Salvage. Disputes as to salvage.

Towage, &c.

Damage.

Hire of ship or carriage of goods.

the County Courts is both in rem and in personam, hut is limited by

1st. The amount claimed, or (in salvage claims) the value of the property saved.

2nd. The nature of the claim.

3rd. The place in which the cause of action arose.(?r) The claims specified are :

1. For salvage in which the value of the property

saved does not exceed £1000, or the amount claimed £300.(o) Where there are disputes as to the amount

of salvage the amount may be referred to the arbitration of a County Court, or to two justices, if the amount of property saved does not exceed £1000 in value, (p)

2. For towage, necessities, or wages, where the amount claimed does not exceed £150.(q)

3. For damage to cargo or ship, however arising, when the amount claimed does not exceed £300.(r)

4. Claims arising out of an agreement made in relation to the use or hire of any ship, or in relation to the carriage of any goods in any

(n) Eoscoe on Admiralty, 2nd Ed. p. 105.

(o) 31 & 32 Viet. c. 71, s. 3, sub-s. 1.

(p) 17 & 18 Viet. c. 104, s. 461; and 25 & 26 Viet. c. 63, s. 49; and post, p. 28.

(q) 31 & 32 Viet. c. 71, s. 3, sub-s. 2. The County Courts have, under 32 & 33 Viet. c. 51, s. 2, jurisdiction to entertain a claim for damage for breach of a contract of towage : The Isca, 12 P. D. 34.

(r) 31 & 32 Viet. c. 71, s. 3, sub-s. 3; and 32 & 33 Viet. c. 51, s. 4.

ship, or of tort arising from such carriage, where the amount claimed does not exceed £300.(5)

5. Causes in respect of the claims aforesaid, where By agreement, the parties agree by memorandum signed by them or their' agents that the County Court ■ shall have jurisdiction, whatever the amount claimed, (t)

Passengers' luggage carried on board a ship is not Passengers'

" goods " within the meaning of sub-s. 4 of the above goods⁶ ¹¹⁰⁴ section, and consequently the Act does not confer jurisdiction to try a claim arising out of the loss of luggage .in the County Court.(u)

The- County Courts, having Admiralty jurisdiction, No jurisdiction , * , . , , . in cases to

have no jurisdiction in cases -to which the above Acts do which Acts do

not extend, e.g., the case of bottomry,(v) as that was ,

always a case within the special- jurisdiction of the

Admiralty Court.

On the other hand, in the case of Beg v. Judge of the Southend County Court{x}, it was decided that the County Courts Admiralty Jurisdiction Acts, 1868 and 1869,

(s) 32 & 3 Viet. c. 51, s. 2, sub-ss. 1 & 2; Cargo ex Argos, 5 L. R. P. 0. 134; The Alina, 5 Ex. D. 227; 49 L. J. P. 40; 42 L. T.

517; 29 W. R. 94. See contra, Simpson v. Blues, 7 L. R. C. P.

290; Qunestad v. Price, 10 L. R. Ex. 65; and see also The Zeus; 13 P. D. 188.

(t) 31 & 32 Viet. c. 71, s. 3, sub-s. 4; and 32 & 33 Viet. c. 51,

s. 2, sub-s. 2. .

(u) The Queen v. The Judge of the _ City of London Court, 12 Q. B. D. 115. . , .

(u) The Elpis, L. R. 4 Ad. 1. (x) W, N. 1884, p. 130.

Local jurisdiction.

Costs of action in the Superior Court which should have been brought in the County Court.

did not deprive a County Court, not having Admiralty jurisdiction, of its jurisdiction to try an action for freight (the action being brought for a sum under £50) as freight was a common law claim, which could always have been enforced in the Common Law Courts.

The local jurisdiction of the County Courts is regulated entirely by the Order of Council by which they are named, and a County Court may, for Admiralty purposes, include the districts of several other County Courts, and extend out to sea for a distance of three miles from the shore. (?/)

Under the County Courts Admiralty Jurisdiction Act, 1868, a plaintiff not only lost his costs but could be condemned in costs if he took proceedings in the High Court of Admiralty, or in any superior Court, and did not recover a sum exceeding the amount in which the County Court had jurisdiction in that class of cases. Proceedings as to salvage on account of property saved was subject to the same rule when the value of the property saved did not exceed £1000. (r)

This section of the County Courts Admiralty Jurisdiction Act is now repealed by Ord. 65, r. 1, of the Rules of the Supreme Court, 1883, and the plaintiff is now entitled to costs irrespective of amount when he brings his action in the Superior Court, unless the judge for good cause shewn otherwise orders ; (a)

but the rule (y) 31 & 32 Viet. c. 71, s. 2; Order in Council of Jan. 14, 1869. (u) 31 & 32 Viet. c. 71, s. 9. •

(a) See Tenant & Co. v. Ellis & Co. 6 Q. B. D. 46; Carnett v. Bradley, 3 App. Gas. 944. •

seems now established that the Court will otherwise order, unless special circumstances for bringing the action in the Superior Court are shown, and will also not allow the plaintiff any costs, even County Court

costs.(6)

Proceedings in an Admiralty Court must be commenced—

1. In the County Court having Admiralty jurisdiction in which the vessel or property to which the cause relates is at the commencement of the proceedings.

2. If the foregoing rule be not applicable, then in the County Court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England resides, or if such owner or agent does not reside within any such district, then in the County Court having Admiralty jurisdiction, the district whereof is nearest to the place where such owner or agent resides.

3. If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such County Court having Admiralty jurisdiction as General Orders direct.

4. In any case in the County Court, or one of the County Courts having Admiralty jurisdiction, in which the parties by a memorandum

(6) *The Herald*, 63 L. T. (N.S.) 324; *The Asia*, 1891, P. 121;

Turner v. Mersey Docks and Harbour Board, 1891, P. 216.

Transfer of proceedings.

Pleadings in

transferred

action.

Proceedings.

signed by them, or by their attorneys or agents, agree shall have jurisdiction in the cause, (c)

5. In the County Court of the district in which the defendant, or one of the defendants, resides or carries on business at the commencement of the action.(d)

The practice in Admiralty actions in the County Court is regulated by the County Court Rules of 1889.(e)

The whole or part of the proceedings may be transferred from one County Court to another, or from a County Court to the High Court. The transfer has in all cases to be made to the High Court and is discretionary with it.(f) There appears, however, to be no power to order the trial in a County Court of an action begun in the High Court, as s. 65 of the County Courts Act 1888 (g) only applies to contracts.

Where a case commenced in a County Court is transferred to the High Court, pleadings must be delivered in the same way as in an action commenced in the Admiralty Division.(t)

The proceedings, trial, and enforcement of judgments under the Admiralty jurisdiction are similar to the process in other actions in the County Courts, with the ex-

(c) 31 & 32 Viet. c. 71, s. 21; *The City of Durham*, 1891, P. 1.

(d) 51 & 52 Yict. c. 43 s. 74; *The Hero*, 1891, P. 294.

(e) Order 39; for forms see Forms 317 to 337.

(f) 31 & 32 Yict. c. 71, ss. 6-8.

(g) 51 & 52 Viet. c. 43.

(h) *The Carisbrooke*, 38 W. R. 543.

ception that the Judge may, in any Admiralty or maritime case, be assisted by two mercantile assessors, if he think Assessors, fit or either party request it.(i)

Appeals lie from the County Courts to a Divisional Appeals. Court of the Probate, Divorce and Admiralty Division,(k) or if the County Court is within the Cinque Ports, to the Court of Admiralty of the Cinque Ports or the Divisional Court of the Probate, Divorce and Admiralty Division.(Z)

No appeals are allowed where the parties have agreed Cases in which

..... no appeal is

by a memorandum signed by them or their solicitors allowed, or agents that the decision of the County Court Judge shall be final, and such an agreement does not require a stamp, (m)

No appeal lies from the County Court on any On inter-

locutory

interlocutory matter, except by leave of the Judge of the matters. County Court, (n)

From a final order of the County Court in an Ad- On final

orders.

in a maritime case an appeal lies if the amount decreed or ordered to be due exceeds the sum of £50,(o) or there

may be an appeal on any point of law or equity or upon the admission or rejection of evidence, but in such

(i) 32 & 33 Yict. c. 25, s. 5. The mercantile assessors are persons of skill and experience in the matter to which the action or proceeding relates.

(κ) E. S. C. Ord. 59, r. 4.

(Z) 31 & 32 Yict. c. 71, s. 33.

(m) 51 & 52 Yict. c. 43, s. 123. See also 31 & 32 Yict. c. 71, s. 23.

(n) The Cashmere, 15 P. D. 121; 31 & 32 Yict. c. 43, s. 26.

(o) 31 & 32 Yict. c. 43, ss. 26, 31.

Mode of appealing.

case if the action be one of contract or tort to give a right of appeal, the debt or damage claimed must exceed

£20.(p)

If during the progress of an Admiralty cause in the County Court, the subject-matter of the action appear to exceed the jurisdiction of the Court, the validity of any previous order of the Court is not affected, and unless the parties agree that the Court shall retain its jurisdiction, the Court may by order transfer the cause to the Admiralty Division.(?)

Appeals lie from the Admiralty jurisdiction of the County Court on questions of fact as well as law.

Appeals from County Courts may still be brought under the County Courts Admiralty Jurisdiction Act, 1868 (r), ss. 26 & 27, as well as under the County Courts Act, 1888.(s) In the case of The Humber(t) leave to appeal was ^granted after the expiration of ten days from the trial, when it was shewn that no injustice would be done to the other side.

Two methods of appeal lie from the Admiralty jurisdiction of the County Court.

By instrument of appeal lodged in the Registry of the Admiralty Division within ten days from the date of the decree or order appealed from. Leave to prosecute the appeal, however, may be given on sufficient cause for the

(p) 51 & 52 Viet. c. 43, s. 120. See on this -section, The Helen, 1892, P. 67.

• (?) 31 & 32 Viet. c. 71, s. 7.

(s) -51 & 52 Viet. c. 43, ss. 120-132.

(0 9 P. D. 12.

■ (r) Ibid.

omission being shown by a Judge of the Admiralty Division, notwithstanding the instrument of appeal has not been lodged within due time.(u)

Before lodging the instrument of appeal the appellant must give security for the costs of the appeal in the County Court (x) by deposit of money or bond.(y)

The second method of appealing is by way of motion.

This method is given by s. 6 of the County Court Act, 1875.

The appeal in this case is made by way of motion to a Appeal by way

...

of motion.

Divisional Court of the Probate, Divorce and Admiralty Division, (z) The motion is ex parte in the first • instance,^ and is granted on such terms as to costs, security, and stay of proceedings as the Court thinks fit.

The motion must be made within eight days from the making or giving of the order appealed from. At Evidence on the trial or hearing of the cause in the County Court motion.^{1*7} either party may require the Judge to make a note of any question of law raised, and of the facts in evidence, and of his decision, and either party may obtain a copy of the Judge's notes by paying for such copy. Such copy must be signed by the Judge, and can be used on the motion and hearing of the appeal.

It appears to be a condition precedent to the hearing of an appeal from a County Court by motion that the (■и) 31 & 32 Yict. c. 71, s. 27.

(x) The Forest Queen, 40 L. J. (N. S.) Adm. 17.

(•y) 19 & 20 Yict. 108, a. 71.

(я) The Brothers, L. 11. 1 P.-D. 52.

(a) Mathews v. Ovey, 13 Q. B. D. 403.

Assessors on appeal.

Fresh evidence on appeal.

Judge be requested, at the trial or hearing before him, to make a note of any question of law raised at such trial or hearing.(&) And in a recent case, which conflicts with some of the earlier cases, it was held that unless the Judge was requested to make such note at the trial he was not bound to furnish a copy of any note made by him.(c)

And in another case, where there were no shorthand writer's notes of the evidence and no notes of evidence by the Judge available for the appeal, the Probate Divorce and Admiralty Division allowed evidence on the appeal to be taken *vivd voce*.(d)

Where an Admiralty action has been heard in the County Court with the assistance of nautical assessors, elder brethren of the Trinity House can be required by either 'party to assist on the hearing of the appeal if the Divisional Court consider such assistance to be necessary or desirable, (e)

There is power to allow fresh evidence to be adduced at the hearing of an appeal if a proper case be made and an order allowing fresh evidence to be brought on an appeal from an inferior Court can be made to a single Judge of the Admiralty Division.(/)

(b) Mercer v. Mavor, 62 L. T. 244; Re The County Court Judge of Bristol, 62 L. T. 534. See also 51 & 52 Yict. c. 43, s. 120.

(c) Mercer v. Mavor, 62 L. T. 244; Manby v. Shillater, 62 L. T. 218. See also Wray v. Clements, 62 L. T. 244. See contra Morgan v. Davies, 3 C. P. D. 260; and see per Lush, J., in Turner v. Great Western Railway Co., L. R. 2 Q. B. D. 126.

(cZ) The Confidence; The Susan Elizabeth, 4 Mar. Law. Cases, 79.

(e) 51 & 52 Viet. c. 43, s.,125.

(/) The Eclipse, 14 P. D.,71.

Under the County Courts Act, 1875, if the judgment No further ap- of the County Court was confirmed, no appeal lay from LT^wherV^ the decision of the Divisional Court except with the confined,'no express permission of the President of the Probate, when judgment Divorce and Admiralty Division, hut if the judgment was ^{reversed} - altered, no leave was necessary to appeal to the Court of Appeal.(y) The County Court Act, 1888,(A) which repeals the County Court Act, 1875, contains no provision on the subject, and under s. 45 of the Jud. Act,

1873, no such appeal can he made except with the leave of the Divisional Court..

The City of London Court and the Court of Passage of The City of

, London Court
Liverpool are practically, so far as their Admiralty juris- and the Court
of of

diction is concerned, County Courts, the' former Court is Liverpool, regulated by the same rules and orders, and the proceedings are the same as in other County Courts, (r) The
area of its Admiralty jurisdiction is limited by the Order in Council of January 14, 1869.

The rules by which the Court of Passage is governed Roles of Court ^J & ^b of Passage,
are made by the assessor of the Court,(/c) and by the

last rules the practice of the Court of Passage is to be
mutatis mutandis, the same as that of the High Court. (Z)

The Court of Passage has jurisdiction in all cases where, Jurisdiction.

either the property to which the cause relates is within

(g) 38 & 39 Yict. c. 50, s. 10. The Lycia, 14 P. D. 1. (7r.) 51 & 52 Viet. c. 43.

(r) 31 & 32 Viet. c. 142, s. 35.

(7c) 32 & 33 Viet. c. 51, s. 6.

(l) Eoscoe on Admiralty, p. 76.

Appeals.

Justices of the Peace.

Damage.

Salvage.

the jurisdiction, or where the owner of the property resides within the jurisdiction.(m)

Appeals from the City of London Court, and from the Court of Passage of Liverpool, go to a Divisional Court of the Probate, Divorce and Admiralty Division, and are governed by the same practice as from County Courts, (я.)

Justices of the Peace.—The jurisdiction of justices is exercised in respect of three cases only, damage, salvage, and wages.

In damage their jurisdiction is confined to claims in respect of injury done by any vessel or float of timber to a harbour, dock, pier, or quay, when the amount claimed in respect of such damage does not exceed

£50; and the justices may cause the vessel or any property belonging to her to be distrained and kept until the amount of damages and costs awarded is paid.(o)

Disputes with respect to the amount of salvage (arising elsewhere than within the boundaries of the Cinque Ports), are, if the value of property saved does not exceed £1000, to be determined by two justices of the peace resident, in the case of wreck, at or near the place where

(TO) Roscoe on Admiralty, 2nd Ed. p. 114; and see 31 & 32 Yict. c. 71, s. 25; and 32 & 33 Yict. c. 51, s. 6. An appeal from an order made by the Court of Passage of Liverpool, is subject to the same rules as an appeal from a County Court in an Admiralty cause, and security for costs must be given before lodging the instrument of appeal, otherwise the appeal cannot be entertained. The Forest Queen, L. R. 3 A. & E. 299; The Ganges, 5 P. D. 247.

(n) Roscoe on Admiralty, 2nd Ed. p. 133 ; R. S. C. Ord. 59, r. 4.

(o) 10 & 11 Yict. c. 27, ss. 74, 75.

the wreck is found, and in case of services to any ship or boat,(jo) or to persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought,(§) and this whether the salvage service was rendered in the United Kingdom or not.(r)

The jurisdiction of justices in disputes where the Jurisdiction

under the
e amount claimed for salvage is less than £200 is (with £200 exclusive.

the County Courts) practically exclusive, and in an action for distribution of salvage when the amount claimed is under £200 will not be entertained in the Queen's Bench Division.(s) The High Court has power to condemn in costs plaintiffs who arrest and detain a vessel in respect of which a claim might have been proceeded with before justices, but will not do so unless the facts shew mala fides or crassa negligentia.(f)

Jurisdiction is not given to all justices in salvage Justices who . . . have juris-
cases, but only those appointed by a special rota.(it) diction.

Where no such rota is appointed the salvors may by writing addressed to the justices' clerk name one justice

(p) The term " ship or boat " includes a hopper barge not furnished with any means by which she could be propelled and used only for dredging purposes. The Mac, 7 P. D. 38,46 L. T. B. 907 ; see also The Merchant Shipping Act, 1854, ss. 2 and 458.

(g) 17 & 18 Viet. c. 104, s. 460; and 25 & 26 Viet. c. 63, s. 49.

(r) 25 & 26 Viet. c. 63, s. 49, sub-s. 2.

(s) Atkinson v. Woodhall, H. & C. 170. Reported under name of Atkinson v. Bell, .31 L. J. M. C. 174.

(t) Boscoe on Admiralty, 2nd Ed. p. 116.

(it) 25 & 26 Viet. c. 63. s. 49, sub-s. 3.

Powers of Justices.

Limit in claim for wages.

Proceedings for recovery of wages under £50, cannot be taken in a superior Court. Exceptions.

and the owner of the property saved may name the other, (ж) If either party fails to name a justice within a reasonable time the case is tried by two or more justices in petty sessions.(y) The jurisdiction of justices in cases of salvage may be exercised by a stipendiary magistrate, and is concurrent with the County Courts.

Justices or their umpire have full power to enforce the production of documents and administer oaths at the hearing.(z) They may decide the dispute themselves, either with or without assistance of an assessor, or may refer the dispute to an arbitrator, who must be conversant with maritime. affairs. The award must be made within forty-eight hours after the matter has been referred to the justices or after the appointment of the umpire; the justices or umpire have, however, power to extend this time.(a)

The power of justices to enforce claims for wages is confined to cases where the wages do not exceed £50, and their decision is final.(5)

Proceedings for the recovery of wages under £50 cannot be instituted in a Superior Court unless (1) the owner of the ship is bankrupt; (2) the ship is under arrest or sold by the authority of the Court; (3) the justices refer the case to the 'Superior Court; or (4) neither owner nor master is or resides within twenty

(rb) 25 & 26 Viet. c. 63, s. 49, sub-s. 4.

- (y) Ibid, sub-s. 5.
- (z) 17 & 18 Viet. c. 104, s. 463.
- (a) Ibid. s. 461.
- (b) Ibid. ss. 188,191, 464..

miles of the place where the seaman or apprentice is discharged or put on shore.(c)

Any part of the wages of any seaman allotted by Allotment or advanced notes may be sued for and recovered before justices.(d)

Appeals from justices lie to a Divisional Court of the Appeals. Probate, Divorce and Admiralty Division.(e)

To give a right to appeal the sum in dispute must exceed £50.(f)

On an appeal from an award of justices, or their Method of ap-

• T , pealiDg on

umpire, on a dispute with respect to salvage, the appellant disputes in must, within ten days after the date of the award, give savfage.^o notice in writing to the justices of his intention to appeal. He must also, within twenty days from the date of the award, give to the opposite party notice of motion in writing to appeal. An affidavit of the service of the notice of appeal, and of the notice of motion with copies of the notices, must be filed. No other proceeding is necessary for the institution of the appeal.(/)

If the appeal is to be heard without any pleadings, and without further evidence than the evidence adduced before the justices, the appellant must, within ten days from the filing of the proceedings and award, leave printed copies thereof in the Admiralty Registry. If the

(c) 17 & 18 Yict. c. 104, s. 189.

(d) Ibid. s. 169. This section says nothing about the amount of claim, but it would seem to be confined to cases not exceeding £50, see s. 188. As to allotment notes, see post, chapter on Wages.

(e) R. S. C. Ord. 59, r. 4.

(/) 17 & 18 Yict. c. 104, s. 464. '

(g) R. S. O. Ord. 59, r. 5.

C

appellant does not do this the Court may, on the application of the respondent, dismiss the appeal with costs.(A)

Commissioners The Commissioners within the Cinque Ports. — The within the

cinque Ports, jurisdiction of these Commissioners is a statutory one, and was given in 1820.(r) It is unlimited as regards amount of claims, but is confined to local bounds, and extends from Seaford in Sussex to Paversham in Kent, including all the waters, creeks, and havens comprehended between them.(A) Within these bounds it has concurrent jurisdiction with the High Court and the Court of Admiralty of the Cinque Ports.(T) The Commissioners, three or more in number, in each of the Cinque Ports, two ancient towns, and their members, (m) are nominated by the Lord Warden of the Cinque Ports,(n) and have no power to act out of the place where they are resident or from which their usual place of residence is more distant than one mile.(o)

. The claims which the Commissioners are empowered to decide are :—

1. Differences relative to the salvage of cables and anchors.

■' (h) E. S.C. Ord. 59,r. 6.

(r) 1 & 2 Geo. 1Y. c. 76.

(fc) Ibid. s. 18.

(l) The Maria Luisa, Swab. 67.

(m) The Cinque Ports are Dover, Sandwich, Eomney, Hastings, and Hythe, the two ancient towns are Winchelsea and Eye, Seaford is a member of Hastings.

(n) 1 & 2 Geo. 1Y. c. 76, s. 1.

(o) Ibid. s. 3.

Such claims are to be decided by three or more of the Commissioners within twenty-four hours after the difference is referred to them.(fp)

2. Claims by pilots and others for services of any sort rendered to a ship whether the ship is in distress or not.(rj)

3. Claims for saving any goods, wares, or merchandize wrecked, stranded, or cast away from a ship. In this case to give the Commissioners jurisdiction the master or owners, or their agents, must be present.(fr)

The Cinque Ports formerly possessed special pilots of Pilots and

wreck.

their own, and special proceedings with respect to wreck, but these pilots are now placed under the jurisdiction of the Trinity House,(s) and the procedure with respect to wreck in the hounds of the Cinque Ports is now the same as elsewhere.(^)

Appeals lie from the Commissioners of the Cinque Appeals. Ports to a Divisional Court of the Probate, Divorce, and Admiralty Division concurrently with the Admiralty Proceedings Court of the Cinque Ports. In order to appeal, the ' parties must within eight days after the award is made declare their wish to appeal to the Commissioners, and within twenty days from the date of the award take out a monition against the adverse party ; (u) this appeal is conclusive.^)

(p) 1 & 2 Geo. IV. c. 76, s. 1.

(q) Ibid. s. 2.

(r) Ibid.

(s) 16 & 17 Yict. c. 129; and 17 & 18 Tick e. 104, s. 370.

(t) 17 & 18 Yict. c. 120, Sched.

(rc) 1 & 2 Geo. IV. c. 76, s. 4.

(a) Ibid. s. 5.

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PART III.

Practice.

1. INTRODUCTION.

2. WRIT OF SUMMONS, WARRANT OF ARREST, RELEASE, AND APPEARANCE.

3. PLEADINGS.

4. ACCOUNTS, REGISTRAR, AND MERCHANTS.

5. TRIAL, EYIDENCE, JUDGMENT, AND COSTS.

INTRODUCTION.

It appears from the terms of Ord. 5, r. 5, of the Rules of the Supreme Court to be questionable whether an action, which before the passing of the Judicature Acts would¹

have been in the exclusive cognisance of the Admiralty Court, can be commenced in any other Division of the High Court other than the Admiralty Division. But see hereon Ord. 49, r. 3.

Admiralty actions are either in rem or in personam. In Actions in ram

and in per-

actions in rem the property itself out of which the claim sonam. has arisen is proceeded against, and made available to ^{Jn rem} answer the claim. This form of action applies to cases either where the owner seeks to obtain possession of his ship, or where a maritime lien is sought to be enforced.

Proceedings in rem are peculiar to Admiralty, and are of course only available when the res is within the jurisdiction of the Court. Actions in personam are directly ы personam. against the person from whom relief is claimed, and as a prudent person always prefers to proceed in rem if he can do so, proceedings in 'personam are only adopted when the res is inaccessible to arrest.

The Admiralty Division has no jurisdiction to entertain an action in rem under Lord Campbell's Act against a foreign ship, (a)

(a) *The Vera Cruz*, W. N. 1884,110.

Judicature

Acts.

Consolidation of actions.

An action when it is once commenced in rem or in personam, must continue in that form and cannot be changed.(6) The Court has no jurisdiction to enforce a judgment in a personal action by proceedings in rem.(c)

The practice in the Admiralty Division is now regulated by the Judicature Acts, 1873 and 1875,(d) and the Rules of the Supreme Court of 1883. The Rules and Orders of the Admiralty Court of 1859 and 1871 are repealed.(e) Where, however, no other provision is made by the Judicature Acts or the Rules of 1883,

the procedure and practice in use before the Rules of 1883 remain in force.(/)

The Admiralty Division has the same powers of transfer and consolidation of actions as the other Divisions of the High Court.(r/) The actions sought to be consolidated must depend on the same facts. In salvage actions, the Court will consolidate actions where there are several salvors not rendering precisely the same services, (h) Either the plaintiff or the defendant may apply for consolidation. The Court will punish a party who has unreasonably objected to consolidation by making him pay costs or depriving him of them at the trial, (r) The order for

(b) Humphreys v. Edwards, 45 L. J. Ch. 112.

(c) The City of Mecca,, 6 P. D. 106.

(d) 36 & 37 Viet. c. 66, and 38 & 39 Viet. c. 77.

(e) See commencement of R. S. C. 1883, and App. Ord.

(/) R. S. C. Ord. 72, r. 2. (g) R. S. C. Ord. r. 8.

(h) The William Hutt, Lush. 25.

(i) The Jacob Landstrom, 4 P. D. 191; The Longford, 6 P. D. 60 ; 30 L. J. Ad. 28.

consolidation can be obtained by summons and be made by a Registrar, but it appears to be the practice to apply to the Court to dis sever consolidated actions.(&) The Court can, when it is convenient to do so, order one of several consolidated actions to be referred to the Registrar separately. (/) Consolidated actions can be dissevered.(m)

Where actions have been consolidated the usual practice is to give the conduct of the action to the plaintiff in the first action and give leave to the other plaintiffs to declare separate statements of claim.(n)

The differences which still exist between Admiralty Differences in

... the practice of
practice and the practice of other Divisions arise from the Admiralty

. Division arise

the difference in the remedy afforded by the Admiralty from the

... difference in

Court, and occur chiefly in actions %n rem, actions m remedy

personam having few substantial differences from proceed-^{afforde<1 c}

ings in the Common Law Divisions of the High Court of

Justice.

The pleadings and ordinary steps in an Admiralty action are the same as in the other Divisions, hut additional facilities are given to the plaintiff at various stages of the action of enforcing his rights against the res, i.e., the subject-matter of the claim.

In the following pages only the differences between Admiralty actions and proceedings in the other Divisions of the High Court are pointed out, and the reader must

(k) Roscoe, 2nd Ed. p. 248.

(l) The Helen R. Cooper, 3 A & E. 339. .

(m) The William Hutt, Lush. 26.

(n) The Cosmopolitan, 9 P. D. 35 n.; The Bjorn, ibid. 36 n.; The Never Despair, ibid. 34 n.

The Judge.

The Begistrar and his duties.

Other officers.

remember that, except so' far as Admiralty practice is shewn to vary, it is the same as that of the Common Law Divisions.

The officers of the Admiralty Division, are, first, the Judge, now an ordinary Judge of the High Court. The Judge of the Admiralty Division, so far as the state of business in his Division admits, has to share with the other Judges the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.(o) That is, go circuit with the other Judges.

Next in importance to the Judge is the Eegistrar, who is appointed by the Judge. His duties are, to hear interlocutory applications, to work out questions of account referred to him by the Judge, and act as taxing master, (p) The Eegistrar also acts as Eegistrar of the Court of Appeal in Admiralty actions. He has also, with certain exceptions, the same powers as a Judge at chambers.(q)

Other officers are, the Deputy-Eegistrar, and the Chief and Subordinate Clerks.

By the Judicature Acts and Eules, the District Eegistrars have practically the same powers, in matters pending in the District Eegistry, as the Eegistry of the Admiralty Division.(r)

(o) Jud. Act, 1875, s. 8.

- (p) Ibid. 1873, s. 77 ; Ibid. 1875, s. 8; 3 & 4 Viet. c. 66.
- (q) R. S. O. Ord. 54, r. 12.
- (r) See Jud. Act, 1875, s. 62, and R. S. C. Ord. 35.

An important official in carrying out the proceedings of the Court is the Marshal and Serjeant-at-Mace. His chief duties are to arrest ships and cargoes and to retain them in his custody after they are arrested ;(s) to appraise their value when an official valuation is necessary ;(t) to unload and tranship cargoes when that is necessary for a sale by the Court, and to carry out all sales made by the Court, (ад) These duties he carries out by subordinate

officers called his deputies or substitutes. In the District Eegistries and outports the collectors of custom act as the Marshal's substitutes.^) "

Writs of execution are, however, directed to the sheriff for execution as in actions in the other Divisions, (y)

The Judge may also be assisted by assessors, who are in the Superior Court always Trinity Masters when the question is of a nautical character,(s) but in the County Court are mercantile assessors,(a) that is, one or more persons of skill and experience in the matter to which the action or proceeding relates.(6)

All instruments, under the seal of the Court, prepared in the Admiralty Registry, are issued on a notice filed by the solicitor applying for the same, and bear date on the day on which they are issued, (c) - The Marshal and his substitutes.

The Marshal does not enforce writs of execution. Assessors.

Issue of instruments under seal of the Court.

- (s) R. S. C. Ord. 19, r. 11.
- (t) Ibid. 61, rr. 14-16. (u) Ibid.
- (x) Roscoe's Admiralty Law and Practice, 2nd Ed. 164.
- (y) Ibid. 92. (z) See 'post, chapter on Trial, &c.
- (a) 32 & 33 Viet. c. 51, s. 5.
- (b) Pollock's County Court Practice, 8th Ed. p. 106.
- (c) R. S. C/ Ord. 67, r. 10.

Service of instruments.

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Instruments cannot be served on a Sunday, &c. Service of warrants.

Instruments must be served within twelve months from the day on which they bear date, or the service will be invalid.(c?)

No instrument except a warrant can be served on a Sunday, Good Friday, or Christmas Day.(e) '

Warrants or other instruments required to be served . by the Marshal must be left by the solicitor taking out the same with a notice in the Admiralty Register.(/)

The service of any instrument, either by the Marshal or a solicitor, or the clerk or agent of a solicitor, must be verified by affidavit.^

Affidavits used in Admiralty actions are filed in the Admiralty Registry.(A)

On filing any instrument or document in an Admiralty action, the solicitor must state, in writing, on a printed form called a minute, to be obtained in the Admiralty Registry, the nature of the instrument filed and the date of filing, (r)

A record of all such minutes, and of the actions commenced, appearances entered and orders made, is kept in the " Minute Book " of the Court.(/c)

The practice in the Admiralty Division is now regulated by the rules of the Supreme Court, 1883,(/) but

- (d) E. S. C. Ord. 67, 11. (e) Ibid. r. 12.
- (/) Ibid. r. 13.
- (g) Ibid. r. 14.
- (h) Ibid. 38, r. 10.
- (i) Ibid. 66, r. 8.
- (lc) Ibid. r. 9.

(?) See Heading of E. S. C. and App. Ord.

where no other provision is made by the Judicature Acts or the rules of the Supreme Court, the procedure and practice in operation prior to the 24th of October 1883 remain in force, (m)

. (m) B. S. C. Ord. 72, r. 2.

Writ of summons.

Service of, out of jurisdiction.

District

Registries.

Service of writ.

Omission of address of

WRIT OF SUMMONS, WARRANT OF ARREST, RELEASE, AND APPEARANCE.

PROCEEDINGS are commenced by a writ of summons, (и.) Leave must be obtained if the writ is to be served out of the jurisdiction, (о) and this will only be granted where the cause of action arose within the territorial jurisdiction of the High Court, (р) .

The writ of summons may be issued out of a District Registry, (у) and, unless ordered to the contrary, all further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, down to and including final judgment, or an order for an account, may be taken in the District Registry. (р)

The writ of summons in an action in rem can, like the writ in an ordinary action, be served by a solicitor or his clerk. (s)

A writ in personam for service within the jurisdiction

(n) The forms of writs of summons are given in the Appendix to the R. S. C., and are printed in the Appendix.

(o) R. S. C. Ord. 11, r. 1.

(p) The Vivcir, L. R. 2 P. D. 29; 35 L. T. N.S. 782; 26 W. R. 453.

(g) Jud. Act, 1876, R. S. C. Ord. 5, r. 1.

(r) Ibid. 1873 (36 & 37 Viet. c. 66), s. 64.

(s) The Solis, 10 P. D. 62.

is not valid if the address of the defendant be omitted. (f) defendant from Where a writ in 'personam for alleged salvage service had been served on the owners of the ship within the jurisdiction leave was given to serve the owners of the cargo outside the jurisdiction, under Ord. 11, rule 1, of the K. S. C. 1883. (A) .

In an Admiralty action in rem any person not named in Right to the writ may intervene and appear, according to the old ^{intervene} practice, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the registry, (ж)

Any person who has duly intervened in an action in rem Removal from

. District

and appeared may remove a matter from a District Registry. Registry, as of right, in addition to the other cases in which the action may be removed. (y)

The Court will not add parties so as to turn an action in rem into an action in personam. (z) . ¹

Notices of motion, together with the affidavit (if any). Motions, in support thereof, must be filed in the Admiralty Registry three days at least before the hearing of the motion, unless leave be given to the contrary ; and a copy of the notice of motion and of the affidavits (if any) must be served on the adverse solicitor before the originals are filed. (a)

(t) The W. A. Sholten, 13 P. D. 8.

(m) The Elton, 1891, P. 265.

(.x) R. S. C. Ord. 12, r. 24.

(y) Ibid. 36, r. 13 (4). As to cases generally in which an action may be removed from a district registry, see Ord. 36, r. 16.

(z) The Bowesfield, 61 L. T. 128.

(a) R. S. C. Ord. 62, r. 10.

Warrant for arrest.

Affidavit to lead to the warranty.

Requisites of.

Additional particulars required;

in actions of wages;

of bottomry;

of distribution of salvage.

In Admiralty actions in rem a warrant for the arrest of property may be issued at the instance either of the plaintiff or defendant at any time after the writ of summons has been issued. Before the warrant of arrest is issued, an affidavit by the party or his agent must be filed. This affidavit must state the name and description of the party on whose behalf the action is instituted, the nature of the claim or counterclaim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

In action of wages, possession, bottomry, and distribution of salvage, additional particulars are required.

In an action of wages or of possession these are the national character of the vessel proceeded against;

and if against a foreign vessel, that notice of the institution of the action has been given to the consul of the State to which the vessel belongs, if there be one resident in London (a copy of the notice must be annexed to the affidavit).

In an action of bottomry—the bottomry bond, and if in a foreign language a notarial translation of it, must be produced to the Registrar, and a copy of the bond or translation, certified to be correct, must be annexed to the affidavit.

In an action of distribution of salvage—the amount of salvage money awarded or agreed upon, and the name, address, and description of the party holding it.(&)

The warrant may be allowed to issue although it does (fe) R. S. C. Ord. 5, r. 16.

not contain all the required particulars. In a wages cause the service of the notice may be waived, and in a cause of bottomry the production of the bond.(c)

A warrant of arrest must be served by the Marshal Service of warrant.

or his substitutes within twelve months of its date.(d)

The Marshal can send notice to his substitute by Service by telegram of the issue of a warrant, and if the substitute^{telegram}

communicates the purport of the telegram to the master of the ship arrested, and the latter subsequently moves the ship, he can be committed for contempt of Court.(e)

Whether the property to be arrested be situated within the port of London or elsewhere within the jurisdiction of the Court, the solicitor issuing the warrant must within six days from the service thereof, file the same in the Admiralty Registry.(/) The warrant may be served anywhere in England or Wales, or within three miles of the coast.(#) The Marshal on service endorses a certificate on the warrant, and the solicitor taking out the warrant must file it in the Registry within six days after service.(A) In the District Registries and In District Registries.

outports, the collectors of customs act as the Marshal's substitutes.(r) The lien of the plaintiff in an action in

(c) R. S. C. Ord. 5, r. 17.

(d) Ibid. 67, r. 11.

(e) The Seraglio, 10 P. D. 120. ■

(/) R. S. C. Ord. 9, r 11.

(g) See Borjesson v. Garlberg, 3 App. Oas. 1316.

(h) Williams and Bruce, Admiralty Law and Practice, p. 196.

(r) See The Seraglio, 10 P. D. 120. If the ship is in an outport and there is danger of her sailing, the Marshal will send a telegram to

Caveat against the issuing of a warrant.

Action in District Registry.

Solicitor not carrying out his undertaking liable to attachment.

rem takes effect from the moment of the arrest of the ship, e.g., if the ship of a limited company is arrested, the right of the plaintiff is not affected by a subsequent order for the winding up the company.(/r)

A party who fears that his property is about to be arrested may cause a caveat to be entered against the issue of a warrant for its arrest.(7) This he does by filing in the Registry a notice, signed by himself or his solicitor, undertaking to enter an appearance in any cause that may be instituted against the property, and to give bail in a sum not exceeding an amount stated in the notice, or to pay that sum into the Registry, and thereupon a caveat is entered in the "Caveat Warrant Book." (or)

Where an action is proceeding in a District Registry, the District Registrar, before issuing a warrant for the arrest of the property, ascertains by telegraph or otherwise, from the principal Registry, whether or not any caveat has been entered against the issue of a warrant to arrest the property.(n)

A solicitor not entering an appearance or putting in bail in an Admiralty action in rem, in pursuance of his written undertaking so to do, is liable to an attachment.^(^)

his substitute at the outport, requiring him to detain the ship until the warrant can arrive by post: Williams

and Bruce, Admiralty Law and Practice, p. 192, note (as).

(k) *The Celia*, 13 P. D. 82.

(Z) R. S. C. Ord. 29, r. 11.

(n) *Ibid.* r. 13.

(m) *Ibid.* r. 12.

(o) *Ibid.* 12, r. 18.

Where proceedings are commenced against the property Service of writ in respect of which a caveat has been entered, a copy of the writ must be served on the party on whose behalf the caveat has been entered, or his solicitor, and such party must within three days give bail in the sum claimed, or pay such sum into the Registry, unless the amount claimed exceeds the amount for which he has undertaken to give bail. (2)

Where a party undertakes to give bail or pay money Default in

giving bail.
into Court and fails to do so, the plaintiff's solicitor may pursuant to

undertaking.

proceed with the action by default, and on filing his proofs in the Registry may have the action placed on the list for hearing, (r) The party undertaking has twelve days from the filing of his notice against the issuing of the warrant of arrest, or three days from the service of the writ upon him to give bail or pay the money into Court, and it appears he may take whichever of these times is longest.(s)

Where the action is tried in the default of the party's undertaking, the judgment may be enforced by attachment against such party and by arrest of the property. (t)

The party filing the caveat is entitled to notice before any proceedings are taken against the property, in order that, should a claim be made against it not exceeding the amount for which he has undertaken, he may give bail in

(p) B. S. C. Ord. 29, r. 14.

(q) *Ibid.* r. 15.

(r) *Ibid.* r. 16. •

(s) *Ibid.* rr. 15, 16.

(t) *Ibid.* r. 17.

How property arrested is released.

By bail.

Reduction of bail.

such sum, or pay it into the Registry. (n) •A party is not debarred by a caveat from proceeding to arrest the property itself, but he will be condemned in costs and damages, unless he shows he has good reason for the course adopted.!»

When property has been arrested it may be released on one of the parties giving bail or paying money into Court. Bail is usually required to the amount of the claim, but if the claim exceeds the value of the ship and cargo it is given on the value at the time of arrest, (y)

The solicitor of a party arresting property may, before an appearance has been entered, obtain the release of the property by filing a notice that he withdraws the warrant of arrest.»

Where a ship is arrested and bail required for an exorbitant amount, the plaintiff will have to pay the costs and expenses incurred by the defendant in giving the bail.(a)

The Court can order the re-arrest of the property to satisfy costs.(5)

The amount of bail required is only the value of the property released, so if the amount of bail is found by the valuation of the property to be too great it may be reduced.»

(it) R. S. C. Ord. 29, r. 14.

(ж) *Ibid.* r. 18.

(y) *The St Olaf*, L. R. 2 A. & E. 360 ; 38 L. J. Ad. 41.

(z) R. S. C. Ord. 29, r. 2. (a) *The George Gordon*, 9 P. D. 46.

(6) *The Freedom*, L. R. 3 A. & E. 495 ; 41 L. J. Ad. 1.

(c) *The Duchess de Brabant*, Swa. 264; *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Ad. 49.

/

Where substantial bail in an action in rem is offered and refused the plaintiff is liable to be made to pay the costs and damages of such refusal.(cl)

The value of the property in respect of which bail is How value of given may either be agreed upon by the parties themselves arrived at or appraised by the Marshal or his substitutes.(e)

Money may be paid into Court in lieu of bail, and Payment into i . Court to obtain the property will be released if the sum m respect of release. which the claim has been instituted is paid into the Registry.(/) Cargo arrested for freight only, may be released by filing an affidavit of the amount due for Release of

. cargo arrested freight (after deducting all allowances made by the for freight, charterparty and the costs of paying into Court), and paying the amount as sworn by the affidavit into the Registry, or satisfying the Judge that it has been already _

Paid. (#)

Money paid into Court is paid to the account of the Money, how paid into

“ Admiralty Registrar ” at the Bank of England (Law Court. Courts Branch) upon receivable orders to be obtained in the Admiralty Registry.(/t)

Money paid into Court can only be paid out under an order of the Court or a Judge.(r) The payment out of money in Court may be prevented by filing a notice against such payment in the Registry. (K)

(d) The Bon IIIcarAo, 6 P. D. 12P; 49 L. J. P. 28.

(e) This was so under the A. C. R. 1859, r. 124, and does not appear to be altered.

(/) R. S. C. Ord. 29, r. 3.

(g) . Ibid. r. 4.

(i) Ibid. r. 20.

(h) Ibid. 22, r. 19. (7c) Ibid. r. 21.

Bail, how takeD.

Notice of bail.

Costs of bail not costs in action.

Bail may be taken before the Admiralty Registrar, or before any District Registrar or Commissioner to administer oaths in the Supreme Court. In every case the sureties must justify.(Z) /

The party giving the bail bond must serve upon the adverse solicitor a notice containing the names and addresses of the sureties and of the Commissioners before whom the bail was taken. The bail bond must not be filed, except by consent, until the expiration of twenty- four hours from service of this notice. A copy of the notice verified by affidavit must be filed with the bail bond.(m)

A Commissioner cannot take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.(ta)

The number of sureties is usually two. They must not be partners. (0)

■The various delays required in the taking of bail may be dispensed with by consent of the solicitors in the action, (p)

The costs of taking bail is not part of the defendant's costs of action in an action of salvage or damage, but it may be recovered as damages from the plaintiff where the arrest of the ship is made maliciously or with gross negligence.(g)

(l) R. S. C. Ord. 12, r. 19.

(m) Ibid. r. 20.

(n) Ibid. r. 21

(o) The Corner, Br. & L. 161.

(p) R. S. C. Ord. 64, r. 10.‘

(q) The Numida, 10 P. D. 168.

When the bail is given or the money paid into Court Release, the defendant is entitled, except in the cases hereafter mentioned, to have the property released. This is done by an instrument issuing under the seal of the Court called a “ Release.” The release is obtained by filing a prazcipe signed by the solicitor or his clerk, stating that bail has been given, or that money has been paid into Court, as the case may be, and that no caveat against the release of the property is outstanding. The release when obtained is left with a notice in the Registry, and at the same time all costs, charges, and expenses for the care and custody of the property whilst under arrest must be paid.(s) The release is entitled to instantaneous obedience, and any person acting in opposition to it is liable to attachment.^)

Salvage forms an exception to the ordinary proceedings Release

C&S6S of

in bail, the plaintiff being entitled to have the value of salvage, the res ascertained before it is released. The value is either agreed upon, in which case the agreement should be reduced into writing signed by the respective solicitors and filed in the Registry, or an affidavit of the value made, by some person acquainted with its value, and filed in the Registry.^) If the plaintiff considers that the affidavit is

unsatisfactory, he takes out a caveat release to test the statements made by it.(cc)

A binding valuation may also be made by a valuer

(s) R. S. C. Ord. 29, r. 7.

(t) The Towan, 8 Jur. 222; The Tritonia, 5 No. Cas. 111.

(u) R. S. C. Ord. 29, r. 5. (ж) Ibid. rr. 6-8.

Release in

District

Registry.

Caveat release.

How obtained.

Motion to overrule caveat release.

Time during which caveats remain in force.

appointed by the Receiver of Wreck on the application of either party.(y)

Where an action is proceeding in a District Registry, the District Registrar before he authorizes a release, ascertains by telegraph, or otherwise, from the principal Registry, whether or not any caveat has been entered there, (z)

A caveat release is a proceeding taken by any party in a cause to prevent the release of any property under arrest. It is obtained on a notice signed by the solicitor or his clerk (a) and is entered in a book called the "Caveat Release Book." (b)

Where a caveat release is entered the party wishing to release the property applies by motion or summons to overrule the caveat, and the Court makes such order as it thinks fit. A party entering a caveat release is liable to be condemned in costs and damages, unless he shews good reason for the course adopted, (c)

Caveats whether against the issue of a warrant, the release of property, or the payment of money only remain in force for six months from their date,(rf) and may be withdrawn by the party or his solicitor entering them. The old practice was that the priedice to lead to the withdrawal must, except by permission of the Registrar,

' (y) 25 & 26 Viet. c. 63, s. 50.

(js) R. S. C. Ord. 29, r. 9.

(a) Williams and Bruce, Admiralty Practice, p. 223.

(b) R. S. C. Ord. 29, r. 8.

(c) Ibid, r.,10.

(d) Ibid. 64, r. 15.

be signed by the same person who signed the priedice to lead the entry of the caveat, (e)

The ordinary rules as to personal or substituted service Service of writ in an action

apply to actions in personam, but in actions in service of a writ of summons against ship, freight, or cargo on board, is effected by nailing or affixing the original writ for a short time on the main mast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.(f)

No service of the writ is required when the solicitor of the defendant agrees to accept service and to put in bail, or to pay money into Court in lieu of bail.(5)

Service of an amended writ in an action in rem must Service of amended writ.

be effected in the same way as of the original writ. If the defendants do not appear, and the ship has been sold, and the proceeds paid into Court, the amended writ must be delivered to the Registrar with notice that service is intended. The writ must then be filed in the Registry. (A) .

If the cargo has been landed or transhipped service is On cargo

(e) A. C. R. 1869, r. 176. There is no express provision on the point in the R. C. S. 1883.

(f) R. C. S. Ord. 9, r. 12.

(g) Ibid. p. 4, r. 10. A solicitor failing to comply with his undertaking is liable to attachment, Ord. 12, r. 18.

(li) The Cassiopeia, 4 P. D. 188 ; 48 L. J. P. 38. The person leaving the writ with the Registrar must still endorse the date of service under Ord. 9. r. 16.

landed or transhipped.

Or where access cannot be obtained to it.

Appearance.

Method of objecting to jurisdiction.

As to appearance under mistake.

Intervention of persons interested in

effected by placing the writ on the cargo for a short time, and leaving a true copy upon it. (r)

Where the cargo is in the hands of some person who will not permit access to it, service of the writ may be made on the custodian, (k)

Appearances in Admiralty actions are entered in the Central Office or a District Registry in precisely the same way as in other Divisions of the High Court.

If the appearance is entered in London it must be entered in the Central Office. Notice of the appearance is forthwith given by the Central Office to the Admiralty Registry. (1)

Where the defendant intends to object to the jurisdiction of the Court he may, without obtaining an order to enter or entering a conditional appearance, serve a notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorising such service, (m) If he enters an absolute

appearance it cannot be afterwards recalled, (n) unless entered under a mistake, (o)

In Admiralty actions in rem any person not named in the writ may intervene and appear, on filing an affidavit

(r) R. S. C. Ord. 9, r. 13.

(k) Ibid. r. 14.

(Z) Ibid. 12, rr. 2 & 3.

(TO) Ibid. 12, r. 30. The ordinary time for appearance is eight days.

(n) The Blickeney, Swa. 428.

(o) Nottage v. Aithen, 25 S. J. 835.

that he is interested in the res under arrest, or in the property

arrested.

fund in the Registry. (jo)

The proceedings in default of appearance in an action Proceedings in

default of

in personam are the same as in actions in the Common appearance.

Law Divisions, but are of a special nature in actions

in rem, and will be found set out in the chapter on

Pleadings.

(p) R S. C. Ord. 12, r. 24.

K

PLEADINGS.

Pleadings in actions for damages by collision.

Preliminary

Act.

Particulars it must contain.

THE pleadings in Admiralty actions are now the same, and, with the exceptions hereafter noted, governed by the same rules, as in other Divisions of the High Court.

To this rule, however, actions for damages by collisions between vessels form a partial exception. In such actions, unless the contrary be ordered, the solicitor for the plaintiff must, within seven days after the commencement of the action, and the solicitor for the defendant must, within seven days after appearance, and before any pleading is delivered, file with the Registrar, Master or other proper officer, as the case may be, a document called a " Preliminary Act," which is sealed up and not opened until ordered by the Court or a Judge. It must contain the following particulars :—

1. The names of the vessels which came into collision, and the names of their masters.

2. The time of the collision.

8. The place of the collision.

4. The direction and force of the wind.

5. The state of the weather.

6. The state and force of the tide.

7. The course and speed of the vessel when the other was first seen.

8. The lights, if any, carried by her.

9. The distance and bearing of the other vessel • when first seen.(?)

10. The lights, if any, of the other vessel, which were first seen.

11. Whether any lights of the other vessel, other than those first seen, came into view before the collision.

12. What measures were taken, and when, to avoid the collision.

18. The parts of each vessel which first came into contact.

The Court or a Judge may order the preliminary act to be opened, and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case, if either party intends to rely upon the defence of compulsory pilotage, he may do so, and shall give notice thereof in writing to the other party, within two days from the opening of the preliminary act,(s)

A similar form of preliminary act is used in the Preliminary act in Vice-

Vice-Admiralty Courts.p!)

Admiralty

The object of the preliminary acts is to obtain a j_{ts} object., statement of the leading circumstances of the collision whilst they are fresh in the recollection of the parties.

(r) In the case of *The Godiva*, 12 P. D. 20, the preliminary act was ordered to be amended because this was not properly stated.

, (s) R. S. C. Ord. 19, r. 28. This rule is substantially a reenactment of rr. 62-64 of the Admiralty Rules and Orders of November 1859. The preliminary act is filed in the Admiralty Registry (room No. 738); filing fee, 5s.

(;t) *The Norma*, 35 L. T. (P. C.) 418.

Not used in actions by third parties against one of llie ships.

Interroga
tories.

Any application to amend a mistake must be made immediately on its discovery, must be supported by affidavit,(a_u) and will not be allowed to be made at the hearing.(ж)

The preliminary acts are only used in actions by one ship against another, and have no application to an action by some third person against one of the ships,' e.g., the owner of a cargo injured by the negligence of the ship carrying it.(y)

In the case of *The Miranda* (z) Sir Robert Phillimore refused leave to amend a clerical error in a preliminary act, even although the application was made before the hearing of the action and was supported by affidavit.

The Court will not allow a party to contradict his preliminary act at the hearing.(a)

Interrogatories ought not to be delivered for information which should be set out in the preliminary act,(b) but the Court in a recent case refused to strike out interrogatories, because the information sought to be obtained through them would for the most part be afforded _ by the preliminary acts.(c)

(u) *The Vortigem*, Swa. 618.

(x) *The Franhland*, L. R.3A.& E. 511; 41 L. J. Ad. 3.

(;y) *The John Boyne*, 36 L. T. 29; 26 W. It. 766.

(z) 7 P. D. 185; 47 L. T. N. S. 447.

(a) *The Vortigem*, Swa. 518.

(b) *The Biola*, 34 L. T. N. S. 185; 24 W. E. 524.

(c) *The Radnorshire*, 5 P. D. 172; 49 L. J. P. 48. The Court in this case simply decided that it had no power under Ord. 31, r. 5, of the E. S. C. 1875, to strike out the interrogatories, they not being exhibited unreasonably or vexatiously, and not being scandalous.

la claims for damage where the defendant claims to have his liability limited under the Merchant Shipping Act,(d) he may do so either hy a counter-claim, or in his statement of defence. Another method, when the defendant admits the ship was to blame, is to apply, hy motion to stay proceedings and to limit the liability to the statutory sum.

Proceedings are then usually stayed on paying the amount included in such statutory limitation into Court and payment of the taxed costs of the plaintiff. The defendants may also pay the amount of their liability into Court in order to procure the release of the ship without thereby admitting any liability.(e) The most usual practice, however, is to claim the benefit of the statutory limitation of liability after it has been decided that the ship is to blame. The defendant, after the principal action has been decided, or before if he chooses to do so, issues a fresh writ and delivers a statement of claim in a fresh action, called an action of limitation of liability, shewing that the ship has been found to blame, and alleging that the owners were

not privy to the negligence which caused the collision. The statement of claim also shews the tonnage of the ship, and that the amount payable in respect of such tonnage has been paid into Court, and the owners claim to have a decree limiting their liability to the amount paid into Court. The action is

(d) See ante, chapter on Damage.

(e) *The Amalia*, Br. & L. 151; 8 L. T. N. S. 805; *The Sisters*, L. R. 1 P. D. 281; 35 L. T. N. S. 36.

Claim for statutory limitation of liability in claims for damage.

Limitation

actions.

Practice in.

Delivery of statement of claim.

Defence and reply.

then set down for trial and heard on a motion day. The facts are verified by the ship's register, which must be produced in Court, and by affidavit. Decree ordering such limitation is then made, and advertisements issued for creditors in respect of such damage to send in claims within a limited time, usually six weeks. The defendant in the limitation suit may require the plaintiffs solicitor to give an undertaking for the costs of the limitation suit.(/)

In an action of limitation of liability it is open to the defendant to prove that the registered tonnage of the ship is not the correct tonnage.(g)

In actions in rem the plaintiff must deliver a statement of claim within twelve days from the appearance of the defendant.(A)

The statement of defence in an action in rem must be delivered within the same time as in an action in the Common Law or Chancery Division—that is, within ten days from the delivery of the statement of claim, or from the time limited for appearance, whichever is last, unless the time be extended by a Court or Judge.(r) The reply in all Admiralty actions must be delivered within six days from the delivery of the statement of defence, or where there are several from the last of the defences, unless the time be extended by a Court or Judge.(k)

(/) See hereon, s. 614 of the Merchant Shipping Act, 1864 (17 & 18 Vict. c. 104), and Roscoe's Admiralty, 2nd ed. 56.

(g) *The Ecepta*, 14 P. D. 131.

(h) R. S. C. Ord. 20, r. 3.

(r) Ibid, 21, r. 6.

(k) Ibid. 23, r. 1.

In an action in rem if the defendant does not appear or deliver a statement of defence within the time allowed for that purpose the plaintiff cannot sign final judgment, but must file an affidavit of service, and the action will then proceed as though the defendant had appeared.(Z) That is, the plaintiff must file his statement of claim,(TO) and if the defendant does not then, within ten days from the filing of the statement of claim, deliver a defence he will be in default for that also, (n) The plaintiff will

then file notice of motion,(o) and set down and bring on the action on motion for judgment.(p) On the hearing the Judge may, if he be satisfied that the plaintiff's case is well founded, pronounce for the claim. He may do this with or without a reference to the Admiralty Registrar, or to the Admiralty Registrar assisted by merchants. The Judge may at the same time order the property to be appraised and sold with or without previous notice, and the proceeds to be paid into Court, or he may make such order as he may think just.(g) In default actions in rem evidence may be given by affidavit,(r) and the affidavits need not be printed.(s) The rule in terms applies only where default is made in appearance, but it

(il) R. S. C. Ord. 13, r. 12.

(m) Ibid. 19, r. 10; Ord. 67, r. 4.

(n) Ibid. 27, r. 11.

(o) Ibid. 19, r. 10; Ord. 67, r. 4.

(p) Ibid. 32, r. 6.

(q) Ibid. 13, r. 13.

(r) Ibid. 37, r. 2. See also *The Sfactoria*, 2 P. D. 3; *The Spero Esepecto*, 32 W. R. 624; *The Solis*, 10 P. D. 62.

(s) R. S. C. Ord. 38, r. 30.

Proceedings on default of defence.

is presumed it would also apply where the default was in delivery of a statement of defence.

The forms of pleadings appended to the Rules of 1883 are only to be taken as specimens of the forms of pleadings to be adopted. For instance, in *The Isis* (t) the plaintiff in an action of salvage delivered a

statement of claim in exact conformity with the Form No. 6 in Appendix C. to the Rules of 1883. Sir James Hannen decided the statement of claim to be insufficient, and ordered it to be amended.

Particulars of any general allegations in a pleading may be required and obtained in an Admiralty action in the same way as in an action in the Queen's Bench Division.(u)

The service of any instrument by a solicitor, his clerk, or agent must be verified by an affidavit, (ж)

(t) 8 P. D. 227.

(u) The Rory, 7 P. D. 117. (u) R. 8. C. Ord. 67, r. 14.

ACCOUNTS, REGISTRAR AND MERCHANTS.

WHEKE the taking of accounts or the assessment of Reference to the Registrar

damages becomes necessary in an Admiralty action, it and merchants, has been the immemorial custom to direct a reference of them, either to the Registrar alone, or to the Registrar assisted by merchants.

It is the practice of the Admiralty Division to allow Interest, interest on the amount awarded to the plaintiff from the time when the claim arises,(y) and it does so even in actions over which the Admiralty Court had no jurisdiction before the Judicature Acts, and also in actions transferred to the Admiralty Division for the purpose of assessment of damages by the Registrar and merchants, (s)

The reference may be directed at any stage of the proceedings, and may be either for the purpose of carrying out the decree, or of finding facts on which the Court can base its judgment.(a) Questions of law cannot be so referred,^ but particular principles of law may be directed to be observed by the Registrar,

(c)

(y) The Northumbria, L. R. 3 Ad. & E. 6; The Kong Magnus, 1891, P. 223.

(z) The Gertrude; The Baron Aberdare, 12 P. D. 204; 13 P. D. 135.

(a) Williams and Bruce on Admiralty, 2nd ed. p. 451.

(b) The Ocean, 10 Jur. 506; 2 W. Rob. 91; 4 No. Ca. 410.

(c) The St. Cloud, Br. & L. 3 (19).

Practice on references.

Witnesses may be heard at reference.

The practice on reference is now governed by the Rules of the Supreme Court. The Rules are taken from the Admiralty Rules, 1859, 107—118, and are shortly as follows:—

Within twelve days from the day when the order for the reference is made, the solicitor for the claimant files his claim (which is a statement comprising the several items of the claimant's demand) and affidavits, and the adverse solicitor has twelve days from the filing to file his counter-affidavits.(e)

Any further affidavits by either

solicitor must be filed within six days from the filing of the counter-affidavits; this time may, however, be extended by the Judge or Registrar.(/) A notice must then be filed by the solicitor for the claimant within three days from the time allowed for the filing of the last affidavits, praying to have the reference placed on the list for hearing. This notice must have the stamps for the reference affixed to it. If this notice is not filed the adverse solicitor may apply to have the claim dismissed with costs.(y)

At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with, but the Registrar may adjourn the reference from time to time as he may deem proper.(A)

Witnesses may be produced before the Registrar for examination, and their evidence (if required) taken down

(e) R S. O. Ord. 66, r. 2.

(/) Ibid. r. 3.

(g) Ibid. r. 4.

(h) Ibid. r. 6.

in shorthand, (r) Or evidence may be given by affidavit, (/c)

The affidavits need not be printed.(Z)

The evidence on a reference is by affidavit; (m) the Cross* examination

affidavits are not to be printed without an order,(n) but on affidavits, it is in the discretion of the Registrar to refuse, if he

thinks fit, to give weight to an affidavit unless and until the deponent has been cross-examined on his affidavit, and where the deponent is a party to the action, he may, although resident abroad, be required to attend in this country for cross-examination.(o)

The party applying for the employment of a shorthand writer must, in the first instance, bear the extra expense. The reporter, who is appointed by the Court, is sworn to faithfully report the evidence. A transcript of the shorthand writer's notes, certified by him to be correct, will be admitted to prove the oral

evidence of the witnesses on an objection to the Registrar's report.(jb) .

The costs of the attendance of counsel at a reference are Allowance of not allowed on taxation, unless the Registrar is of opinion ' that the attendance of counsel was necessary.^)

By Ord. 65, r. 1, of the Rules of the Supreme costs.

(r) R. S. C. Ord. 56, r. 6.

(fe) Ibid. 37, r. 2.

(l) Ibid. 38, r. 30.

(m) Ibid. 37, r. 2.

(n) Ibid. 38, r. 30.

(o) The Parisian, 13 P. D. 16.

(p) R. S. C. Ord. 56, r. 6.

(q) Ibid. r. 7.

Report as to costs.

Right to take up the report.

Court, 1883, the costs of all proceedings are in the discretion of the Court, and the old rule as to costs of a reference—namely, that if the defendant took off one- third of the plaintiff's claim the latter must pay the costs ; if one-fourth was taken off, each party bore his own costs; and if- less than one-fourth was taken off, the plaintiff was entitled to his costs—no longer applies, and the Court must exercise its discretion according to the circumstances of each particular case.(r)

The Eegistrar may, however, report whether any and what part of the costs of the reference should be allowed, and to whom.(s) In an action of damage, where the defendant sets up a counter-claim relating to the collision in respect of which the action is brought, and both ships are held to blame, both parties will, as a general rule, be entitled to the costs of a reference to the Eegistrar, unless more than a fourth is taxed off their claims.(t)

The solicitor for the claimant may within six days after notice that the report is ready, take it up; if he does not take it up within that time, the adverse solicitor may do- so, or may apply to have the claim dismissed with costs, (u) The plaintiff in a reference in an action for collision withdrew a large item of his claim at the reference. He recovered less than two-thirds of the amount originally

(r) The Fnedeberg, 10 P. D. 112.

(s) R. S. C. Ord. 66, r. 8. See hereon The Whilliamma, 8 P. D, 97 ; The Savernahe, 5 P. D. 166 ; 49 L. J. P. 71.

(t) The Mary, 7 P. D. 201.

(u) R. S. C. Ord. 66, rr. 9-10.

claimed, but more than two-thirds of the amount which remained after the withdrawal of such item. Sir J. Hannen decided that the original amount of the claim before withdrawal was the claim upon which costs were to be given, and that consequently the plaintiff was not . entitled to his costs.(я) -

Where the Eegistrar's report is objected to, the Objections to

Registrar's

solicitor objecting must, within six days from the filing report.

of the report, file a notice, a copy of which has been previously served on the adverse solicitor ; and within a further period of twelve days file a petition in objection to the report.(y) If both parties consent, the objection may be brought before the Court by motion instead of petition. The procedure at the hearing of the petition is the same as at the hearing of an ordinary action.

All the rules respecting the pleadings and proofs in an action, and the printing thereof, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to the report of a Begistrar.(z)

The costs on an appeal from the Master's report Costs of appeal from report.

usually follow the event.(a) <

Where the Begistrar is assisted by merchants they Merchants, are appointed by him with the approval of the Judge.

(x) The Eilecm Dubh, 49 L. T. B. 444.

(;y) R. S. C. Ord. 66, r. 117.

(z) Ibid. 66, r. 12.

(a) The Bloch Prince, Lush. 568; 5 L. T. N. S. 39 ; The Panama, L. R. 1 Ad. D. 462 ; 45 L. J. Ad. 108.
Power of Judge to advance trial.

Actions, how tried.

Agreement in writing may be made an order of Court.

TRIAL, EVIDENCE, JUDGMENT AND COSTS.

In Admiralty actions the Court or Judge has power at any stage of the proceedings to advance the trial of the action to any day or time which may be thought fit.

The application for such advancement may be made by either party, and is made by summons or motion.

On such summons or motion the Court or Judge has power to dispense with the giving of notice for trial, or to abridge the time or times required by the rules for the giving of such notice, for the delivery of pleadings, or taking any other proceedings in the action.(b)

Actions in the Admiralty Division are always tried by the Judge alone or assisted by assessors. And a plaintiff in an action in rem cannot insist on a trial by a Judge with a jury, as the Judge has, under Ord. 36, IT. 4 and 7a, a discretionary power only to allow trial by a jury-0)

Any agreement in writing between the solicitors in Admiralty actions, dated and signed by the solicitors of both parties, may, if the Admiralty Registrar think it reasonable and such as the Judge would under the circumstances allow, be filed, and shall thereupon become

(b) R. S. C. Ord. 64, r. 9. See hereon, The Avenir, 9 P. D. 84.

(c) The Temple Bar, 11 P. D. 6.

an order of Court, and have the same effect as if such order had been made by the Judge in person.(c£)

The Court or Judge has power at any stage of the proceedings in an action to appoint that the trial shall take place on any day or within any time which may be thought fit. This order may be obtained on motion or summons by either party. The giving of notice of trial may be dispensed with altogether, or the time for notice of trial, delivery of pleadings, or doing any other act in the action abridged.(e)

Opening statements are dispensed with at the hearing, Hearing, and it is the practice to proceed at once to the evidence.

After the evidence is concluded the leading counsel for the plaintiff addresses the Court, and is followed by the leading counsel for the defendant^/) And the counsel for the plaintiff has a right to reply. The Judge either Judgment, gives an absolute judgment, or a judgment subject to a reference to the Registrar and merchants.

The assessors, where the Judge requires advice on the Assessors, nautical facts of the case, are two of the Trinity Masters.

They only advise, and the sole responsibility of the decision rests with the Judge.(t/)

In actions for damages or salvage their presence can be

(cZ) R. S. C. Ord. 62, r. 23. See hereon, The Adandhu, 11 P. D.

40; The Karo, 13 P. D. 24. (e) R. S. C. Ord. 64, r. 9.

(/) In a damage suit the ordinary practice prevails, and the plaintiff must begin, even although the defendant raises no other defence than inevitable accident: The Otter, L. R. 4 A. & E. 203 ;

The Benmore, L. R. 4 A. & E. 132.

(g) The Magna Gharta, 26 L. T. N. S. 512 (P. C.).

Evidence and witnesses.

In default actions in rem

Evidence in cases of collision.

obtained as a matter of course by filing a preeceipe requiring their attendance. In other cases an application must be made to the Judge to secure their attendance.

Evidence is taken vivd voce unless the parties consent that it should be taken by affidavit, but the Judge may order any matter to be proved by affidavit, or the witness examined before an examiner ; but where the other side bond fide desires the production of a witness for crossexamination, and such witness can be produced, no order can be made ordering the evidence to be taken by affidavit. (7r.)

In default actions in rem and in references in Admiralty actions, evidence may be given by affidavit,(r) but the evidence is not to be printed unless otherwise ordered.(k)

Affidavits used in Admiralty actions are filed in the Admiralty Registry. (Z)

In an action for collision, the books containing the entries made by the Coastguard, and sent to the Coast-guard Office, are admissible in evidence to prove the state of the wind and weather at the time of the collision, without calling the person who made the entries; (m) but entries in the ship's log of the circumstances of the collision, and depositions before a Receiver of Wreck, made under the Merchant

Shipping Act, 1854, s. 448,(n) and the examina-

(h) R. S. C. Ord. 37, r. 1.

(0) Ibid. r. 2.

(7c) Ibid. 38, r. 30.

(7) Ibid. r. 10.

(TO) The Catharina Maria, L. R. 1 A. & E. 63.

(n) The Henry Coxon, 3 P. D. 166.

tion of a crew of a salvaged vessel taken by the Receiver of Wreck under the same section, are not receivable.^)

The attendance of witnesses and the production of documents at the hearing are enforced by the usual writs of subpoena ad testificandum and duces tecum. Service of Subpoenas

effectual for

either of these writs in any part of Great Britain or the whole of . , e the United Ireland is as effectual as if the writ had been served in Kingdom.

England or Wales.(jp)

The Court will not order the commander's reports to the Admiralty to be produced in an action against a Queen's ship.(5)

A judgment in an action in personam may be enforced Enforcement _ _ _ of judgment in in the same way as in an action in the Common Law an action in personam.

Division, (r)

A judgment in an action in rem may be enforced in an action in rem.

against the res itself, or, if bail has been given for its release, against the bail.

Where bail has not been given the parties usually Against the res itself.

settle the matter out of court and consent to a release of

the res; if this is not done, the res will be sold by the

Marshal, and the proceeds paid into the Registry.(s)

Where a sale is necessary a commission for appraisal- Practice where a sale is re-

ment and sale is obtained, and the commission is left with quired. a praecipe for execution at the Marshal's office. If the

(0) The Little Lizzie, L. R. 3 A. & E. 56.

(p) 24 Viet. c. 10, s. 21.

(q) The Bellerophon, 44 L. J. Ad. 5 ; 31 L. T. N. S. 756.

(r) As to these, see R. S. C. Ord. 42.

(s) R. S. C. Ord. 51, rr. 14-16.

No order for sale except in an action.

property has been already appraised, a second appraisalment is not necessary.(f) '

An order will not be made for the sale of a vessel, even upon the application of the owner, where such vessel is not proceeded against in the Court.(u)

The Marshal fixes and advertises the sale, which is usually by auction, but may be by private contract. The property is not sold unless the biddings reach the appraised value, and in such case an order must be obtained for leave to sell it for a less sum.

The Marshal then pays the gross proceeds of the sale into Court, his account for the sale is taxed by the Begis- trar, and any person interested in the proceeds of the sale may be heard on the taxation.(ж) Any objection to the taxation is heard in the same manner as an objection to the taxation of a solicitor's bill of costs.(y)

Enforcement of Where bail has been given, if the amount of the where bail has decree and' costs is not paid into the Registry, the plain- been given.

Costs on the higher scale.

tiff obtains an order for the defendant and his sureties to pay the amount by a specified day. If this is not done, writs of execution or attachment may be issued against the defaulting parties.

Under the Rules of the Supreme Court of 1883, costs are only to be allowed on the higher scale if the Court or Judge, or a taxing-master, acting under the decision of

(f) Roscoe's Admiralty Law and Practice, p. 187. (u) The Wexford, 13 P. D. 10.

(<B) R. S. C. Ord. 61, rr. 15-61.

(y) Ibid. r. 16.

the Court or Judges, specially orders it. Such order is only to be made on special grounds, arising out of the nature and importance, or the difficulty or urgency, of the case.(z) In a case since the rules of 1883 came into force,(a) Sir James Hannen refused to give costs on the higher scale when £2400 was awarded in a salvage action, (b)

Retainers to two counsel are allowed on taxation.(c) Two counsel . . . allowed on

the Registrar on taxation, as between solicitor and taxation.

client, has no jurisdiction to decide whether items of costs caused by the postponement of trial and amendment of the pleadings were incurred through the solicitor's negligence.(rf)

A valid tender may be made, reserving the question Tender, of costs.(e) - A plea of tender is bad, unless the amount pleaded as tendered he paid into Court;(/) but it is not necessary to make a good tender that it should be accompanied by an offer to pay the plaintiff's costs up to

that time.(y)

In the case of The Lotus,(h) Sir Robert Phillimore, Illiberal although he decided that the tender was of a sufficient^{de},

(a) R S. C. Ord. 65, r. 9.

(a.) The Horace, 9 P. D. 86.

(b) Under the former rules the plaintiff was always entitled to costs on the higher scale when £1000 or upwards was awarded.

(c) The Neera, 5 P. D. 118; 48 L. J. P. 69.

(d) The Papa de Bossie, 3 P. D. 160.

(e) The Hickman, L. R 3 A. & E. 15.

(/) The Nasmyth, 10 P. D. 41.

(9) The William Symington, 10 P. D. 1; but see The Thracian,
3 A. & E. 504.

(h) 7 p. p. IO9.

Appeals from

Admiralty

Division.

Appeals from ViceAdmiralty Courts.

amount, yet, as the tender was not a liberal one, refused to make the plaintiffs pay the costs incurred subsequently to the payment into Court.

In a case_ where a collision had occurred through the bad navigation of both the colliding ships, the Court refused to give any costs of the litigation arising out of the collision to either party, (r)

When the payment into Court of a fund is obtained by one set of claimants, and it subsequently turns out that another set of claimants are entitled to be paid out of such fund in priority to the first claimants, the Court will give the first claimants their costs out of the fund up to the time of the payment into Court.(/c)

When a ship is arrested, and hail required for an exorbitant amount, the plaintiff arresting will have to pay the costs and expenses of the defendant in giving such bail.(Z)

Appeals from the Admiralty Division, by s. 18, sub-s. 5, of the Judicature Act, 1878, go to the Court of Appeal, and not, as before the Act, to the Judicial Committee of the Privy Council. The ultimate appeal is, as in appeals from the other Divisions of the High Court, to the House of Lords.

Appeals from the Vice-Admiralty Courts are, however, unaffected by the Judicature Acts, and still go to the Judicial Committee of the Privy Council.

(r) The Hector, 8 P. D. 218.

(k) The Immacolata Concezione, 9 P. D. 37.

(l) The George Gordon, 9 P. D. 46.

The same rules as to stay of execution apply in Ad- stay of

execution.

miralty as in other appeals.(m)

The general rule as to costs of an appeal is that the Costs of

1,1 i / \ ^aPP^{éal}-

unsuccessful party must bear the costs of the appeal \{n)

but this rule can of course be departed from where exceptional circumstances exist.

An application to stay proceedings under an order of Application for

stay of pro-

the Court of Appeal, pending an appeal to the House of Lords pending an appeal.

Lords, must be made to the Court of Appeal, and not to the Division of the High Court to which the action is attached.(o)

The Court of Appeal follows the practice of the Privy Council No security for

■

. costs required

Council in Admiralty actions, and does not require on an appeal, security for the costs of an appeal to be given, except under special circumstances.(y)

An appellant who is clearly liable to give security for Where

,

necessary,

costs ought to offer security without necessitating an security for costs should be .

application to the Court. Such offer, if it be a reasonable offer, one, ought to be accepted. In dealing with an application for security, the Court will, in considering the question of costs, consider which of the parties' conduct necessitated the application.^) ,

When a respondent has given notice that he will on Right to with, draw cross the hearing of an appeal contend that the decision of the appeal.

(m) The Annot I/y, 11 P. D. 114; see also The Santa Clara (Owners of) v. L. & N. W. Ry. Co., 2 Times Law Rep. 312.

(n) The Batavier, 16 P. D. 37.

(o) The Khedive, 6 P. D. 1.

(p) The Victoria, 1 P. D. 280.

(g) The Ship Constantine, 4 P. D. 156.

Cross notice of appeal.

Court below should be varied, and the appellant subsequently withdraws his appeal, such notice entitles the respondent to elect whether to continue or withdraw his cross appeal. If the respondent continues his cross appeal, the appellant has the right to give a cross notice that he will bring forward his original contention on the hearing of the respondent's appeal.(r)

If a respondent gives notice under Ord. 58, r. 6, that he intends applying to have the order of the Court below varied, when the appeal comes on for hearing, and the appeal is dismissed with costs, the appellant is entitled to deduct from such costs the extra costs incurred by the respondent's notice, (s)

In the case of The Hope,(t) an action for wages, the defendants compromised the action by payment to each of the plaintiffs a sum in discharge of the claim and costs. The plaintiffs left the country without paying their solicitors' costs. The Court of Appeal, reversing the decision of Sir R. Phillimore, decided that, as there was no evidence that the parties had made the settlement with the intention of depriving the plaintiffs' solicitors of their lien for costs, there was no ground for ordering the defendants to pay the plaintiffs' taxed costs.

The Court of Appeal and House of Lords are very loth to consider a point not raised at the trial of an action, and will, as a general rule, refuse to do so.(u)

(r) The Beeswing, 10 P. D. 18.

(s) The Lauretta, 4 P. D. 25 ; 48 L. J. P. 56. (<) 8 P. D. 144.

(u) The Tasmania, 15 App. Cas. 225 ; The Pleiades, 1891, A. C.

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