LEX MERCATORIA:

OR

A COMPLETE CODE OF COMMERCIAL LAW:

IN

A GENERAL GUIDE TO ALL MEN IN BUSINESS.

TRADERS, BROKERS.
REMITTERS, FACTORS.
OWNERS.
FARE-Headers, SUPERFACTORS.
CAPTAINS, AGENTS.

An Account of the Mercatoria Companies, of the Duties and Favours Done by our Commercial Branches with Foreign Powers, of the Duty of Consul, and of the Laws Governing Adver, Neutral, and Defended.

To which is Added,

AN ACCOUNT OF THE COMMERCE OF THE WHOLE WORLD.

Describing the Manufactures and Products of Each Country, with Tables of the Cost, Importance, and Advantage of Their Respective Crops, Weights, and Measures.

The whole equally calculated for the Information and Service of

THE MERCHANT, LAWYER, MEMBER OF PARLIAMENT, AND
PRIVATE GENTLEMAN.

BY THE LATE WYNDHAM BEAWES, Esq.

HIS BRITANNIC MAJESTY'S CONSUL AT SEVILLE AND ST. LUCAR.

THE SIXTH EDITION.
CONSIDERABLY ENLARGED AND IMPROVED.

BY JOSEPH CHITTY, Esq.
OF THE MIDDLE TEMPLE.

IN TWO VOLUMES.

VOL. I.

LONDON:

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1813.
LEX MERCATORIA:

OR,

A COMPLETE CODE OF COMMERCIAL LAW;

BEING

A GENERAL GUIDE TO ALL MEN IN BUSINESS,

WHETHER AS

TRADERS, INSURERS,
REMITTERS, BROKERS,
OWNERS, FACTORS,
FREIGHTERS, SUPERCARGOES, OR
CAPTAINS, AGENTS.

WITH

An Account of our Mercantile Companies; of our Colonies and Factories abroad; of our Commercial Treaties with Foreign Powers; of the Duty of Consuls, and of the Laws concerning Aliens, Naturalization, and Denization.

TO WHICH IS ADDED,

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JOHN PINTARD.
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THE following Treatise is perhaps the most comprehensive and useful that has ever been compiled. It not only treats of every branch of the law connected with commerce, but it also contains most valuable practical information for merchants, on domestic and foreign commerce. The Author, Mr. Beawes, from his education, employment, and official situation as British Consul, was peculiarly competent to afford the best practical information on every branch of commerce, and which could not be derived from books; and hence many of his observations in this work have been received in our courts of justice with the highest respect, and have frequently become the basis of decisions in those courts, and consequently the work is peculiarly valuable as well to the lawyer as the merchant.

The subject is divided into Two Parts, or Volumes. In the First, after an interesting statement of the history and utility of commerce, and some useful observations as to the education, character, and conduct of a British merchant, every branch of British and foreign law affecting domestic or foreign commerce is collected.—In particular is considered the law relative to Ships, Shipowners, Captains, Mariners, Factors, Brokers, and other mercantile agents; The Navigation Laws of Great Britain, the Registry Acts, the Statutes relative to Fisheries, the Law relative to Charter-parties, Bills of Lading, Freights, Demurrage, Bottomry, Ballast, Pilots, Wreck, Salvage, Average, Ports and Havens, Lighthouses, Letters of Mark and Reprisal, Privateers, Pirates, Convoys and
PREFACE.

Cruizers, Captures, Bills of Health and Quarantine, Embargoes, Passports and Letters of Safe Conduct, Leagues and Truces, War and Peace, the Law of the Admiralty and of Consuls, Insurances, Arbitrations, Aliens, Naturalization and Denization, Banks and Bankers, Usury; all Contracts, as Bonds, Bills of Exchange, Promissory Notes, &c. and the Law of Bankruptcy, &c. &c.

In the Second Part, or Volume, is given an Account of the Trade of the whole World, describing the Produce and Manufactures of each particular Country, and its accustomed Trade with other Countries, and a Statement of their Coins, Weights, and Measures.

In the present Edition considerable alterations and additions have been made in the First Volume, and many modern decisions are noticed.—But in the Second Volume, considering the unsettled state of foreign commerce, and the uncertainty what arrangements may take place on the return of peace, the Editor has considered it better not to attempt to alter the original work, except in a few instances, where it has appeared that no material change in the present state of things is likely to ensue.

1st October, 1812. J. CHITTY.
ADVERTISEMENT

FROM THE EDITOR OF THE TWO PRECEDING EDITIONS.

THAT candour and liberality, which has ever distinguished the British nation, will render all apology unnecessary for the liberty the Editor ventures to take, of glorying in the very favourable reception which has been given to the last edition of this valuable work. Had it been his own original production, he could not more sensibly have felt the satisfaction this circumstance affords him. Delicacy, however, in that case might have confined him to a very concise, grateful acknowledgment; but as the chief merit of every edition must be founded on the intrinsic value of the extensive plan projected and carried into execution by the late venerable Mr. Beawes; he may be allowed more freely to expatiate on the many advantages which the mercantile world, and the gentlemen of the long robe, have derived from it.

Being a complete commercial code, it has afforded useful information on all subjects of dispute respecting maritime and trading concerns, and has occasioned many amicable compromises and adjustments, by arbitration and references, without entering into tedious and expensive litigations; but when law-suits have been unavoidable, it has equally served as a guide to able counsellors and to learned judges on the bench, who have frequently quoted the precedents it furnishes of the custom of merchants, and of the decisions of former courts. This has been in a great measure set forth in the royal license for the exclusive right to publish, granted to the Author, upwards of forty years ago; and after the death of Mr. Beawes, the proprietors, encouraged by a continual demand for the work, grown into confirmed reputation, constantly took every step in their power to improve the new editions, down to the present time; by instructing their Editor to make such valuable alterations and additions as the revolutions in commercial affairs; the modern decisions in our courts of law; and the increase of able commercial writers, rendered essentially necessary.

The extensive circulation and general approbation of the work in all parts of Europe, and even in Asia, was noticed in the advertisement prefixed to the last edition, it shall not therefore be repeated; but with respect to the present edition, it may be proper to observe, that the final settlement of the new government of the United States of America, and the great commercial revolution which established a treaty of commerce between France and Great Britain, made it the Editor's ardent wish, that a new impression might be called for, at no great distance of time from the dates of those important events.

A simplification of the customs, so far as it goes, has been one happy consequence of this unexpected new connection with our reputed natural enemies, and if no other national benefit had been derived from it, this alone would have been sufficient to have done honour to the talents and integrity of the present administration. But in justice to the framers of the last treaty of peace with France, let it likewise be remembered, that the basis of the Commercial Treaty, of the Consolidating Act, and of the Convention, was laid by them. All these treaties are inserted in their proper places.

To this edition then we have been enabled to add, not only those and other public papers, such as the treaty with Spain, &c. but likewise a complete tariff of the duties on
Importation and exportation, drawbacks, bounties, &c. which tempted in any former edition, on account of the complex and perplexing mode of collecting the customs, before the Consolidating Act took place.

With respect to ancient documents of authority, the forms of which have not undergone any alteration whatever, they are preserved as they stood in the original, being testimonials of the care and attention of the deceased author, and memorials of the great number of years, that his book has been held in deserved esteem.

Some pages of obsolete matter, such for instance, as the ordinances regulating the old banks of France, established during the minority of Louis XV.; and other papers of a similar nature, have been rejected, and in their stead, new and interesting subjects of the present day have been introduced, which will be easily found in the General Contents, and in the Index. Unwilling, therefore, to descend to particulars, we shall only mention the last regulations of the corn trade, and the latest decisions upon that most important concern, the circulation of accommodation bills of exchange, with fictitious endorsements.

To the list of modern commercial writers, mentioned in the last edition, as having afforded great assistance to the editor, he has now to add the new edition of "Cooke’s Bankrupt Laws;” “The Reports of Cases adjudged in the Court of Chancery by William Brown, Esq. down to last Trinity Term 1791;” “Kyd’s Treatise on the Law of Bills of Exchange and Promissory Notes;” “The Term Reports,” &c. From all these compilations, he has extracted whatever was essential to complete his own; and always with a candid acknowledgment of the obligation; a fair practice, which he takes this opportunity to recommend to those, who have most copiously borrowed from every edition of “Lex Mercatoria,” without any restriction on the part of its respectable proprietors.

A new arrangement was judged necessary with respect to the Customs, which are transposed to the close of the work, with a view to annex further regulations of Government, which have been daily expected.

Finally, as the public funds are now generally considered to be the barometer of our national prosperity, which is reputed to increase or decrease, as they rise or fall in any great degree; and most of our merchants are deeply interested in them, for themselves, and their foreign correspondents, the last general statement of them, as delivered into Parliament, forms one very important article of the Appendix.

THOMAS MORTIMER.
AN HISTORICAL

DEDUCTION OF COMMERCE

FROM ITS ORIGIN.

COMMERCETERM is almost as old as the creation, and a very small increase of mankind proved its utility, and demonstrated the natural dependence our species had upon one another: their employs were (by the wise disposition of Providence) suited to their wants; and the diligent discharge of the one (by his blessing) rendered sufficient to supply the moderate cravings of the other; and though tilling of the earth, or feeding of flocks, were the sole primevous labours, yet (limited as they were) they could not be exercised by our first parents, with that comfort their great Creator designed them, without a mutual correspondence and traffick, as the husbandman's subsistence would have been poor without the grazier's help, and the latter's comfortless, under the want of corn, fruits, and pulse to his milk; this led them to an exchange of commodities; and thus commerce commenced in the infant world, and so continued whilst our progenitors could content themselves with these riches of nature, and were not obliged, by a growing posterity, to alter their method in disposing of them. But when this became the case, and buying and selling by the intervention of money was found most convenient in their commercial engagements, this method was invented and adopted in lieu of barter by the most polished nations, and so handed down to us, with the exception of those savages, (and some people not much better) where the use of coin has hitherto remained unknown, and their traffick carried on in its primitive way, though not always with its native simplicity. But before this alteration, and great increase of mankind, their desires were easily satisfied, as their wants were the boundaries of them; they contentedly made the fleece of their sheep serve them for clothing, and their hunger found a ready supply from their gardens and kine; a neighbouring spring slacked their thirst; and a tree, or a tent, was sufficient to defend them from the inclemencies of weather, in those climes where the first race was settled. . . . .

Their labour procured them a satisfactory support, and the products of the earth and

* In the fifth edition of this work by Mr. Mortimer, a distinction is made between the terms trade and commerce. Trade is defined to be that description of traffick which is carried on by the members of a state between themselves, and commerce to be the intercourse between the subjects of different nations by means of navigation. But there is no foundation for this distinction. See Johnson's Dict. "Commerce" and "Trade."
AN HISTORICAL DEDUCTION OF COMMERCE

cattle served them both for necessaries and regales, till their corruptions brought in fraud, and this gave birth to avarice and violence; the stronger began to invade the weaker, and as these oppressive acquisitions could only be maintained by force and policy, cities were built, and governments formed; and when by this means an aggregated number swelled to too great a magnitude, to have their necessities supplied by their neighbouring territories, they were compelled to seek for remoter helps, by commerce, destroying those halcyon days, pregnant with the blessing of health and peace, by the introduction of luxury and excess, which spreading as trade did, carried with them a long train of mischiefs and diseases, quite changing the face of the primeval golden age, so replete with quiet and tranquillity: distempers and disquiets flowed in from this defection; and our unhappy forefathers no sooner quitted the rules of abstinence and moderation, than they found this deviation and change productive of a thousand ills, destructive both to the ease of mind and body. But though these were the fatal consequences of commerce thus abused, yet the growth of vitiated mankind, and the peopling thereby of different parts and continents, rendered the continuation of it absolutely necessary for their comfort and support; and life itself would have proved burthensome, without this means of mutual assistance, which, in process of time, increasing as mankind did, and men's views and designs being extended in proportion to their desires, trade was no longer limited to the providing necessaries only, but profit was sought in, and became a motive to, the carrying it on; which, however, might occasionally have promoted both unity and charity among them, had the correspondence been conducted with that sincerity it ought; and by this means rendered productive of those reciprocal benefits and advantages, that naturally accrue from the supplying the wants of one country, with the superfluities of another. And though the degeneracy of mankind has perverted these lines leading to happiness, from having the intended effect, by their intermixing covetousness and deceit in their dealings, and, for many ages past, made ambition and avarice the motives to the continuance and extension of trade, more than want; yet these sinister designs have accidentally proved very beneficial to these latter ages, as it is probable without such excitements, the greatest part of the world had still remained unknown to us; but, pushed on by the desires of gain, in order to support the one, and satisfy the other, men have made the many discoveries which lay hid for ages, and disregarded the risks they run, and the inconveniences they suffered, whilst they considered themselves in the road to riches and preferment; the pleasing prospect animated them to fresh engagements, and a succession of these opened to us the wide field for trade that now lies before us; and whatever the motives were to the daring enterprises of former ages, we of this are generally indebted to the undertakers of them for many of the comforts and conveniencies of life. And my design in the remainder of this chapter being to show the advantages we receive from their labours, and to deduce the growth and progress of trade from the small beginnings I have mentioned, I shall hasten to let the reader see, in a small tract, the beneficial influence it always had, and still has, on human affairs; and that all nations have increased in strength and power, or remained weak and abject, in proportion as they have encouraged or neglected commerce; which is now become an universal means, that offers itself to every one, for the improvement of his fortune, and from whence the most flourishing states derive their strength, the sovereigns their surest funds, and particulars the establishment of their families in ease and splendor.

Whoever runs over all the ages of the world, will find, that the histories even of the most warlike nations, will furnish him with as large accounts of their commerce as of their conquests, and the narrative to be equally extensive and full on the one subject as on the other.
FROM ITS ORIGIN.

If the greatest empires were established by valour and the force of arms, they were made firm, and supported, only, by the succours, which trade (with the labour and industry of the people) furnished them with; and the conquerors would soon have languished, and perished with the conquered, had they not (as the scripture expresses it) converted the iron of their arms into ploughshares, and had recourse to the riches which agriculture, manufactures, and commerce produce, in order to preserve and improve, by the tranquil arts of peace, the advantages acquired in the horrors and tumults of war.

And to enter more largely into the proof of the above general assertion, of the utility and excellence of trade, let us look back into the first ages of the world, and bring the history of it down to our own times; and I flatter myself, that I shall be able solidly to prove, by the examples I shall produce, that the nations neither were, nor are, powerful; the cities rich, nor populous, but in proportion as they have extended their commerce; and those princes do not well understand their own interests, nor will render their reigns flourishing, or their people happy, who do not by all means encourage and protect their trading subjects.

Mons. Huet* (the illustrious and learned author of that excellent book, entitled, A Treatise of the Commerce of the Ancients) seems persuaded, that the Phoenicians were the first navigators in the world; though many think with the ingenious Dr. Garcin, who with more probability assigns it to the Arabians, in the little tract he has communicated to the publick about it; and conscious of my own mean capacity, I shall not presume to offer my sentiments in so intricate an affair, more especially after what has been said by those learned authors on the subject, but give my reader their own words, in which he will find the reasons they assign for their different conclusions, and from which he may draw motives for fixing his judgment on the side he thinks most agreeable to it and truth. I shall begin with the opinion of the first of these great men, and conclude the chapter with that of the latter.

The Phoenicians, and Tyre their capital, are the first that present themselves on examining the commerce of the ancients; and these will sufficiently prove, to what a height of glory, grandeur, and riches, a nation is capable of attaining by the sole resources of commerce.

These people (as is remarked by the aforesaid Mr. Huet) only occupied a narrow border along the sea-coast, and Tyre itself was built on an ungrateful barren soil, which, when most fruitful and productive, was insufficient to support that great number of inhabitants, which the first successes of trade had brought thither.

Two advantages, however, indemnified this defect; they had excellent ports on the coast of their little state, particularly that of their capital; and they were born with so happy a genius for trade, as to be commonly associated with the Egyptians, in the honour done these latter, by supposing them the inventors of naval commerce, particularly that of long voyages.

The Phoenicians knew so happily how to profit by these two advantages, that they soon became masters of the sea and commerce. Lebanon, and the other neighbouring mountains, furnished them with excellent wood for the construction of their ships; and they had in a short time numerous fleets, which ran the hazard of unknown voyages to establish their trade; and their people multiplying almost to infinity, by the great number of strangers, which the desire of gain, and the sure occasion of enriching themselves, drew to their city; they found themselves in a condition to send out many colonies, particularly that famous one of Carthage, which preserved the Phoenician spirit in regard to traffic, and did not yield any thing to Tyre itself in its trade.

* Bishop of Avranches or Soissons.
whilst it greatly surpassed it in the extent of its dominion, as there will be occasion to show hereafter.

The degree of glory and power, to which the commerce and navigation of Tyre had raised it, rendered it so famous, that the report of profane authors would hardly be believed destitute of exaggeration, had not the Prophets themselves spoke of it with still greater magnificence; so that the description of its grandeur, of its forces, and the almost incredible number of its vessels, merchants, and merchandizes, makes one of the most beautiful passages in the prophecy of Ezekiel, which could not possibly be forgot, when we are speaking of the excellence of commerce, and its splendor. And the prophet Isaiah likewise says, That Tyre is the common city of all nations, and the centre of all commerce, and, in a word, is the queen of cities, whereof the merchants are princes, and which has for traders the most illustrious persons of the earth. Such was the ancient Tyre, when (following the prophecies of Ezekiel) she fell, or sunk, under the arms of Nebuchadnezzar, after a siege of thirteen years. It is true, that Providence had (if we may so say) secured an asylum and resource to the inhabitants of this unfortunate city; for the Tyrians, during so long a siege, had both the precaution and time to fortify a neighbouring island, where they established their maritime forces, and where their merchants retired with their stores and merchandizes, and there continued a business so flourishing, that the taking and ruining of their first city, did not destroy their empire of the sea, nor the reputation of their commerce.

It was this new city of Tyre, which, trusting in its riches and puissance, dared afterwards to resist Alexander the Great, already master of one part of Asia, and had like to have interrupted, for some time, the course of his victories; but in pay of its temerity, it was entirely destroyed by the conqueror; and, to the end there might remain to it no hopes of being raised from its fall (as the first time) he removed its marine and commerce, transferring them to Alexandria, a new city that its founder intended to make the capital of the empire of Asia, of which he then meditated to achieve the conquest.

Whilst the one and the other Tyre experienced these great revolutions, Carthage, a Tyrian colony, as aforesaid, augmented its forces by trade, and by that put itself in a condition once to dispute with Rome the empire of the world.

These new Africans soon reaped the benefits, which the happy situation of their city offered, and profited by the genius for trade and navigation, which they had brought with them from Phenicia; they made their fleets and merchants pass on one side to the ocean, beyond the Pillars of Hercules; and, on the other, along the whole western coast of Europe; and, if some authors may be credited, their pilots and their merchants even had the boldness, or good fortune, to be the first that penetrated as far as those unknown lands, of which the discovery so many ages afterwards has done so much honour, and brought so much profit, to the Spaniards.

The Carthaginians, quite occupied in their commerce, never thought (till too late) to value themselves on the immense riches, which they had amassed (by this means) for extending their dominion abroad; but their being tired of their pacific merchant state cost them dear.

Their city, which trade had peopled with above seven hundred thousand inhabitants, was soon deserted, to furnish their armies with troops and recruits. Their fleets, accustomed solely to carry their merchants and merchandize, were now only loaded with soldiers and warlike stores, and of their wisest and more fortunate traders were formed those chiefs, and generals of armies, which were destined to make Rome tremble, and put Carthage in a condition to become the mistress of the world.
FROM ITS ORIGIN.

The high feats of arms of the Carthaginians in Sicily, Sardinia, Spain, and particularly in Italy, under the famous Hannibal, and also the disorder of their affairs by the victories of the two Scipios, are facts well known, and are of too little import to the matter of which we treat here, to call for any detail of them; and I shall only add, that trade had raised Carthage to so high a degree of riches and power, as obliged the Romans to a fifty years cruel and doubtful war, to subdue this rival; and, in fine, triumphant Rome believed she could not entirely subjugate and reduce her by any better means, than cutting off those resources which she might yet find in trade, and which, during so long a time, had supported her against all the forces of the republick.

It was, in effect, that resolution of the senate which decided the fate of Carthage; and the Carthaginians themselves were so terrified, that having apprehended by this design, they should be obliged to give up their fleet, and to retire inland five leagues from the sea, they chose rather to expose themselves to the hazards of a third Punic war (so fatal to them) than to renounce, so easily, the only hopes that could remain to them in their misfortunes, and voluntarily consent to see their commerce pass to Utica, where they knew the Romans, to achieve their ruin, proposed to transfer it, as we have said Alexander did that of Tyre, to the new city he had given his name to, when he determined to punish the Tyrians for having dared to retard his conquests.

Alexander lived too short a time to be witness of the happy and flourishing state, to which commerce would elevate this last city. The Ptolemies, who after his death had Egypt for their part of his conquests, took care to support the infant trade of Alexandria, and soon brought it to such a degree of perfection and extent, as to bury in oblivion both Tyre and Carthage, which, during so long a time, had carried it on, almost alone, and had re-assembled to them the commerce of all other nations.

The so sudden success of the commerce of Alexandria ought not to occasion much surprize, when reflection is made on its happy situation, which rendered it so commodious to be the depository of all merchandizes from the east and west.

This famous city had on one side a free commerce with Asia, and all the east, by the Red Sea; the same sea and the Nile gave her entrance into the vast and rich countries of Ethiopia. The commerce of the rest of Africk and Europe was open to her by the Mediterranean; and, if she would carry on the interior commerce of Egypt, she had besides the convenience of the Nile, and canals made by the hands of men, (works immortal, and almost incredible, of the first Egyptians) she had, I say, the help of caravans so convenient for the safety of merchants, and for the transportation of their merchandizes.

There was added a large and safe port, where foreign vessels arrived from all parts, and whence departed incessantly the Egyptian vessels, which carried their merchants and commerce to all parts of the then known world.

It was this convenience of depositing merchandizes at Alexandria, that spread through all Egypt those immense riches, which rendered their kings sufficiently powerful to support themselves, for more than an age, against the Romans, who endeavoured from time to time to subdue so fine a kingdom: riches so considerable, that historians affirm, that the product only of the customs of importation and exportation, upon the merchandizes that passed the custom-houses of Alexandria, amounted annually to more than thirty millions of livres, (or about 2,250,000l. sterling) though the major part of the Ptolemies were moderate enough in the imposts which they laid on their people.

Before the battle of Actium, the Romans had always found, in the spoils of the nations they had subjected, from whence to fill the treasury of the republick, and, at
AN HISTORICAL DEDUCTION OF COMMERCE

the same time, to furnish a sufficiency for the expenses, in which the plan of an universal monarchy continually engaged them.

These resources beginning to fail them, the commerce of Egypt seemed very proper to support by its riches (and, as I may say, by its credit) the reputation and empire of Rome.

From the time that Augustus had reduced this kingdom to a province, he earnestly endeavoured to make the trade of Alexandria flourish more than ever, and at the same time he augmented that which the Egyptians had always maintained, or carried on in Arabia, the Indies, and to the most remote parts of the east, by way of the Red Sea.

Alexandria, become Roman, was only inferior to Rome itself in grandeur and in number of inhabitants. The magazines of the capital of the world were no longer filled but with the merchantizes which came to it from the capital of Egypt; and very soon neither Rome, nor all Italy, subsisted, but by the corn and other provisions brought to it by the merchants and Egyptian fleets; and that in so great a quantity and abundance, that an historian (Josephus) affirms, (though doubtless with some exaggeration) that Alexandria yielded more riches to the treasury of Rome in one month than all Egypt in a year: though, if Pliny's calculation is to be credited, the profits of the commerce of Egypt amounted yearly, for Rome, to 125,000,000 of crowns* (and these at 54d. to about 28,125,000L sterling, as the exchange is through this whole work) that is to say, a hundred times more than the Romans employed, whose ordinary expenses did not amount to above 1,250,000 crowns.

This great trade (which soon made that of all the other provinces of the empire flourish) augmented incessantly, and made the senate determine to maintain it, by the corporations it established in Rome, for trade and traders, by the laws which it made in their favour (or rather by those of the Rhodians, which it adopted, and which are long since become a specie of the law of nations, for the navigation and commerce of the Mediterranean), by the magistracy it encharged with their execution, and by the protection which it afforded to the merchants, as well strangers as Romans, in all the extent of the empire.

Alexandria, notwithstanding, had in the end the fortune of Tyre and of Carthage. Trade had raised her, and the fall of her trade overset her. The Saracens, who seised on Egypt in the reign of Heraclius, having by their fierceness driven away the merchants, who love tranquillity and peace, this city, which then held the first rank after Rome and Constantinople, hardly preserved anything of its ancient splendor; and though it afterwards regained some vigour under the Sultans, and the same now from the Christian nations, which carry on the Levant trade, and maintain a tolerable good business; it is, however, no longer possible to know again that ancient Alexandria, so famous, and which by its trade was, for so long a time, the glory and support of an empire, which, in truth, was founded by arms, but that received its principal strength from commerce.

Before we proceed to treat of the commerce of the moderns, we will yet add some examples of the Gallick cities, which were formerly rendered famous by the enterprises of their merchants.

It is easy to demonstrate to the French of the present times, (to excite them to revive their trade) that the gout and genius of the nation has been always divided between the glory, which it acquired by its arms, and the solid advantages produced by trade.

Marseilles, the most ancient ally of the Romans, equally celebrated for its antiquity,

* Mons. Savary calculates a French crown to be worth 54d. sterling, at the time of his writing, though it is greatly altered since.
for the wisdom and equity of its senate, for the sciences taught in its academies, for the many colonies it established, and for the wars it gloriously maintained against so many different people, jealous of its riches, was indebted only to its trade for these advantages; and it was solely by the means of commerce, that it arrived in so short a time to that high point of respect and power, as to render it for a long time the arbitrator of the neighbouring nations, who were drawn there to learn the arts and politeness of Greece, which its first inhabitants brought from Asia, when they left it to settle among the Gauls.

The example of Marseilles soon animated the greatest part of the French cities to trade, more especially those that were situated upon the same sea, or that were not far distant.

Arles became famous for its experience in navigation, and for its ability in the art of building ships. It likewise distinguished itself for the invention of divers manufactures, and, above all, its works in gold and silver gave it a great reputation.

Narbonne even yet exceeded Arles, and, so long as its port existed, it saw arrive fleets from the East, Africk, Spain, and Sicily, loaded with all sorts of merchandize; whilst the inhabitants on their side equipped their own ships to carry abroad the products of their country, or the manufactures which were owing to their industry.

When the alteration of the course of the river Aude had occasioned its deserting the port of Narbonne, Montpellier took the advantage of that's decline; and this last city received in her own, ships from all parts of the Mediterranean which arrived before in that of the first mentioned.

There were yet reckoned among the number of the French cities situated on this coast, which trade had rendered flourishing (though in a very inferior degree to those just now mentioned) Agde, Toulon, Antibes, Frejus, and Aigue-Morte, particularly the last, before the sands of the Rhone had left it at a distance from the sea; and no one can be ignorant, that even to the time of St. Lewis, this was where the embarkments were made for the holy wars, and that it was the merchants of this place which furnished that great and holy king with the greatest part of the ships that composed that numerous fleet which he fitted out in the last years of his life for his expedition against Tunis.

The Gallick ocean had likewise its ports and cities for trade, of great reputation; as Bourdeaux in Guyenne, Vannes and Nantes in Bretagne, and the famous Cerbillon, (now unknown) which Strabo places near the mouth of the Loire.

In fine, in the inland country was Lyons, (a city yet so famous for its trade) where, if we may believe some authors, there formerly assembled no less than sixty nations to treat of their commerce, and which, from that time, (by its happy situation at the confluence of the Rhone and Saone) extended, as one may say, its arms from the ocean to the Mediterranean, and was become as a general staple or storehouse for all the French merchandizes, without reckoning the trade which she carried on in all the Levant, and particularly in Egypt, by means of the correspondencies which she had with Arles and Marseilles.

Let us now pass from the ancient history to those of the middle age and latest times; and these two histories will furnish us with facts, which will not be less interesting, nor less glorious to commerce, than those of which antiquity has taken care to preserve to us the memory.

Though the Romans, as we have seen, cultivated and improved the commerce of Egypt, after that country became one of their provinces; yet in general they were not a people possessing the spirit of commerce, they rather supplied the want of native industry by their attachment to military glory, and they provided themselves with the luxuries of other nations by conquering and plundering them. The accounts of the
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immense treasures they brought home, after subduing the richest countries of the then known world, almost surpass the bounds of probability; but they are so well authenticated, that they must find a place here as memorials of the splendor of ancient Rome.

Julius Caesar, upon his conquest of Gaul, Africa, Egypt, and Pontus, is said to have had at one time carried before him in his triumph, vessels of gold and silver, computed by modern authors to have been equal in value to twelve millions sterling, which were deposited in the publick treasury; also 1822 gold diadems, weighing 15,023 pounds, independent of the vast treasure which belonged to him as general. Their pro-consuls were likewise continually sending or bringing home, from the conquered provinces of the East, immense riches in gold and silver, precious stones, and every article rare or excellent for clothing, furniture, tables, and equipages, and for the decoration of their publick buildings. The palaces, estates, and revenues of many of the first citizens of Rome equalled those of sovereign princes. Lentulus, Crassus, and others had estates worth three or four millions. The emperor Nero's donations at sundry times are by some computed to have amounted to 17,760,000l. sterling; and it is recorded, that he paid for a single carpet the sum of 32,000l. Some Roman ladies are said to have paid 3,000l. for a single piece of linen; and Lullia Paulina, when dressed in all her jewels, wore to the value of 322,000l. sterling. Yet these immense luxuries not being employed in circulation, through the various channels of commerce, were in a great degree to be considered as a dead stock locked up in the houses of individuals; and as the sloth, luxury, and effeminacy of the emperors, the magistrates, and the people increased with them, it was soon found by sad experience, that the empire could not sustain the vast expence of her civil and military establishments without industry, without manufactures, without trade, to support general commerce. Its dissolution was the consequence of relaxation from the principles of industry, sobriety, and economy, the basis of the durable prosperity of commercial states.

The fall of the Roman empire had drawn after it that of all the people who had submitted to it. The inundation of the barbarians, so fatal to the sciences and polite arts, was not less so to trade; and, if the learned saw their libraries, and the finest works, sacrificed to the flames, by people equally fierce as ignorant, the merchants had not more power to save from their fury, either their numerous trading fleets, with which they covered both the one and the other sea, nor the vast magazines, which they had always full of merchandizes the most useful and rich.

So that whilst these nations, greedy of blood and pillage, were fighting with the Romans, or whilst they were disputing among themselves the possession of the countries they had usurped, all their commerce consisted only in the spoils of the vanquished; and they had no other trade than the sharing of those immense treasures, which they found amassed in all the towns of the empire which they sacked, and particularly in the capital, which was more than once exposed in prey to their fury and avarice.

But after that the bravest and most fortunate of these barbarians had formed puissant monarchies from the ruins of the Roman empire; after that they were established, some among the Gauls, as the Franks; others in Spain, as the Goths; and others yet in Italy, as the Lombards; they soon learnt from the people they had subjected, and whom they had afterwards associated, the necessity of commerce, and the manner of carrying it on with success; and they became so skilful, that some of them were in a state or capacity of giving lessons to others; for it is to the Lombards that the invention and usage of the bank, of books with double entries, of exchanges, and a number of other ingenious practices, which facilitate and secure trade, are commonly attributed.

It does not appear very certain who were the people of Europe, which (after that
the new masters had divided it, and recalled peace) applied themselves first to trade, and made it flourish.

Some injunctions of Charlemagne, and of Louis le Debonnaire, might make it be believed, that it was by France that commerce re-established itself in the West; and the laws that those two princes made, either to hinder their subjects from a contraband trade with their neighbours, or to ease the merchants which trafficked in the interior parts of their estates from the new impositions which they would have laid on their merchandizes, at least shews that the French before the eighth century, did not carry on an inconsiderable trade, either within or without the kingdom.

There is, however, an appearance that the civil wars, which were so frequent under the reign of Debonnaire, and during that of his children, soon interrupted the first success of commerce (revived in France); and the incursions of the Normans, which laid waste almost at the same time the French empire, having entirely destroyed trade, the Italians had a juncture to acquire the glory of being its new restorers, as they ought to have that of afterwards recalling the liberal arts and sciences, which had been banished ever since the dismembering of the Roman empire.

It is therefore to the people of Italy, particularly to those of Venice and Genoa, that the re-establishment of commerce is indebted; as it is also to commerce that these two famous republicks, which have been so long rivals, owe their glory and puissance.

In the bottom of the Adriatick Sea, there were a quantity of small marshy isles, separated only by narrow canals, but covered, and (as one may say) secured, by divers morasses, which rendered the taking them almost impracticable. Here some fishermen retired, and lived on the small traffick which they made with their fish, and of the salt which they drew from the ponds on some of these isles.

It was these islands which served for a retreat to the Venetians, a people of that part of Italy which is along the gulf, when Alaric, king of the Goths, and afterwards Attila, king of the Huns, came to ravage Italy, particularly after that this last (who highly merited the name of the Scourge of God, which he had given himself) had taken Padua and Aquila, and had reduced them to ashes.

These new inhabitants of the morasses did not at first compose any body politick, but each of these seventy-two isles of this little Archipelago had, for a long time, their proper magistrates, and, as one may say, a separate sovereignty.

When their commerce became so flourishing as to give jealousy to their neighbours, the Venetian islanders thought of forming themselves into a republick, and it was this union (first begun in the sixth century, but not perfected till towards the middle of the eighth) which laid the most solid foundations of the power and commerce of the Venetians, particularly that of the last, which, during more than four ages, had not, in any respect, its equal in all Europe.

Until the union of the isles, the trade of their inhabitants spread but little beyond the coast of the Mediterranea; but the establishment of the new republick having given courage and strength to their merchants, their fleets were in a short time seen to visit the most distant ports of the ocean, and afterwards those of Egypt; and by the treaties made with the Sultans, under the Pope's approbation, secured the trade of spices, and other rich merchandizes of the East, which they were to purchase at Cairo, a new city the Saracen princes had built on the banks of the Nile.

The riches of the Venetians increased to such a degree, by the commerce with Egypt, that they thought themselves strong enough to undertake some conquests, and to form, from the taking a number of important towns, what they called their state of terra firma, which rendered them yet more considerable in Italy, though they lost a part after the famous league of Cambray.
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Animated by these first successes, and supported by the resources of their commerce, and by the inexhaustible funds, which their merchants were capable of furnishing to the treasury of the republic, Venice happily carried her arms yet farther, and extended her conquests on the side of the Morea, and in many of the principal islands of the Mediterranean and Archipelago, which she subjected to her dominion; and, to complete her glory, she had a great share in almost all the crusades which were made for the recovery of the Holy Land, or for the succour of the Christians of the Levant, as well as at the taking of Constantinople, and the conquest of the best part of the Grecian empire, which passed under the dominion of the French princes, in the beginning of the thirteenth century.

Venice was in this state of prosperity and glory, when she experienced the lot of so many powerful cities, which the fall of their commerce had either ruined or weakened; she found, in the diminution of her own, the fatal term of that puissance which had given umbrage to so great a number of princes combined to her destruction, who signed the treaty of Cambray in 1508; and two of her most celebrated historians take particular notice, that their sage senate had not had so much trouble to re-establish their publick affairs after the famous battle of Aignadel, but because the Republic could not any longer find the same resources as heretofore, in the trade of the merchants, already greatly enfeebled by the loss of that of the spices, which the Portuguese had begun to carry from them, and which was yet diminished from another side by the Provincials, particularly by those of Marseilles, who became in greater esteem than the Venetians at Constantinople, and in the principal sea-ports of the Levant, and who knew so well how to maintain their credit, that very soon all the commerce of those parts was only carried on under French colours.

Genoa, which had re-commenced an application to commerce, at the same time with Venice, and had not been in any degree less fortunate in making it flourish, was, for a long time, a troublesome rival, who disputed with the Venetians the empire of the sea, and who shared with them the trade, which they carried on in Egypt, and all the other ports of the Levant, and of the West.

A jealousy was not long in breaking out, and the two republicks having come to blows, it was not till after three ages, of an almost continual war, (only suspended by some treaties) that the Genoese (commonly superior to the Venetians, and which was signalized by many advantages that they had gained during the new wars they had together) lost, about the end of the fourteenth century, their reputation and superiority at the battle of Chiozza, where Andrew Contarini, Doge and General of the Venetians, secured to his republick, (by a happy desperation) the honour of an unequal combat, which decided for ever a quarrel so famous, and brought to Venice the empire of the sea, and the superiority of trade, which were the reward of a victory so unexpected.

Genoa was never able to rise again from its loss, and victorious Venice enjoyed for a whole century its advantages, both in trade and war; but, in fine, these two republicks, although very unequal for the rank which they have now in Europe, and for the figure that they make, are become, as one may say, to a sort of equality in trade, with this difference however, that the Venetians carry on a greater than the Genoese in the Levant, and the Genoese a more considerable one than the Venetians in France, Spain, and other Christian states in Europe.

At the time that commerce re-commenced and gained strength in the meridional parts of Europe, there was formed in the North a society of merchants, which not only brought it to all the perfection it was capable of having, before the discovery of the one and the other India, but also begun to give it those laws it has continued to observe under the name of uses and sea customs, and
to form a sort of code, the first of all those which have been made for the marine trade.

This society is the famous association of the Hanseatic Towns, which is commonly believed to have begun at Bremen on the Weser, in 1164.

It was not at first composed of more than the towns situated on the Baltic Sea, or of those that were but little distant. Its reputation and its forces increasing, there were but few of the trading towns in Europe which were not desirous of engaging in it. France furnished to the Confederation, Rouen, St. Malo, Bourdeaux, Bayonne, and Marseilles; Spain, Barcelona, Seville, and Cadiz; England, London; Portugal, Lisbon; the Low Countries, Anvers, Dort, Amsterdam, Bruges, Rotterdam, Ostend, and Dunkirk; Italy and Sicily, Messina, Livorno, and Naples.

The end of the fourteenth century and the beginning of the fifteenth were the most flourishing times of this alliance; it was then it presumed to declare war against kings; and history has not forgot that which it made against Waldemar, king of Denmark, about 1348, and against Eric in 1428, particularly this last; where the Hanseatic fleet was composed of forty ships, with twelve thousand regular troops, exclusive of the sailors.

The policy of the princes, whose principal towns had entered into this association, thought it ought to give bounds to a power, which began to grow suspicious, and which had not failed to become very soon formidable; the means were easy and short, each one withdrew their merchants from the alliance, which, in a little time (of that large number of towns of which it was composed in its greatest power) found itself reduced to only those that had begun the confederation; towns, notwithstanding, still so puissant by their commerce, that they were admitted to make treaties with the greatest kings, and particularly with those of France, as very lately happened in the reign of Lewis XV. and in the regency of Philip Duke of Orleans.

Some towns of Lower Germany still preserve the name of Hanseatic Towns, but, for the greatest part, this is rather a title with which they aim to honour themselves, than a mark that they continue to carry on trade under the laws and protection of the ancient alliance; there not being now more than Lubeck, Hamburgh, Bremen, Rostock, Brunswick, Cologne, and a few others, which are truly Hanseaticks, and of which the deputies are found at the assemblies, either ordinary or extraordinary, which they have for the common interest of the Association.

The great trade which Holland carries on with the Hanseatic Towns, does not contribute a little to support them in a part of their ancient reputation; and it is particularly to the alliance which they have with that powerful republick, that they owe the preservation of their liberty; the succours which some of them have received have more than once saved them from the enterprizes of the princes their neighbours, who either pretend to have a right over them, or were jealous of the riches that their merchants amass in trade.

It is also commerce, and the immense riches which the Dutch have acquired by it, that laid the first and most solid foundation of that power, which has placed them in a condition to give so great succours to their allies; and it is only to the resources, which they have found in their trade, that they owe that degree of strength and credit, in which, at present, their republick appears; a credit so great and so well established, as has already, for a long time, rendered it equal to kings, and in some sort the arbiter of their differences.

The inhabitants of the Low Countries have always been distinguished by their trade, but, the riches thereof has also always rendered them fierce, and impatient of any sort of yoke, even the most easy and moderate.

These provinces, already so well known, by their continual insurrections against
their best princes, having past, in the fifteenth century, under the dominion of the Spaniards, they presently found, in the severity natural to that nation, motives to excite their factious genius, and, under a pretended violation of their privileges by their new masters, they united to support them, and combated so fortunately for liberty, that with the aid of the powerful protectors, who declared for them, (and particularly France) seven among them in the end formed this republick, which, in less than half an age, has carried its arms and commerce into all parts of the earth, and has made establishments so solid, that there are no powers who appear capable ever to shake them; nor is there any likelihood that its fall will come, but from itself; and that it cannot sink but under its own weight, and only by means of the too great extent of trade, which it may not be longer in a condition to support.

The Spaniards, to stop the progress of this new-born republick, believed that the hindering their trade would suffice, and to prohibit that which its merchants had always continued (notwithstanding the war) in all the ports of the Spanish dominions.

The project was effectual, and the Dutch, deprived of this resource, would have found themselves reduced to the last extremity, if the most daring of their merchants had not taken the resolution to go to the East-Indies, to partake, if it was possible, with the Portuguese, (then united with the Spaniards,) the immense riches which the Oriental trade produced.

This enterprize, which appeared far beyond the power of these people, but ill fixed in their liberty, or rather who still fought to obtain it; this enterprize, I say, after some unsuccessful voyages, was in the end fortunate, and they fitted out twenty fleets in less than ten years, which returned loaded with spices and other merchandizes of the Indies, as well as with the spoils and booty of the Spaniards and Portuguese.

And, to prevent the confusion and disorder that so many different companies which were daily forming, and that had nothing in common but the object of their trade, might bring to it, it was then determined, by uniting them all together, to form that famous Dutch East-India Company, which seems incessantly to gain new strength, and which, after above an age's continuance, has not suffered any misfortune or diminution of its power and glory.

This great establishment was made in the year 1602, and it is this that has served as a model to so many other celebrated companies, which have since carried on a trade from Holland to all other parts of the world, and particularly to the ports of the Levant, Africk, the West-Indies, and, in one word, to every place, where business could be transacted: these able merchants neglected not any, and they found in the less important, as well as in the more considerable, profits and resources, which ordinarily escaped the notice of other nations.

It is this commerce, which may be termed universal, that reassembles in Holland this infinite number of merchandizes, which it afterwards diffuses in all the rest of Europe.

It produces hardly any thing, and yet has wherewith to furnish other people all that they can have need of: it is without forests, and almost without wood, and there is not seen any where else so many carpenters, which work in naval constructions either for war or merchandise. Its lands are not fit for the culture of vines, and it is the staple or mart of wines, which are gathered in all parts of the world, and of brandies drawn from them. It has no mines nor metals, and yet there is found almost as much gold and silver as in New Spain or Peru, as much iron as in France, as much tin as in England, and as much copper as in Sweden. The wheat and other grains that are there sowed, hardly suffice for nourishment to a part of its inhabitants, and it is, notwithstanding, from hence that the greatest part of its neighbours receive them, either for their subsistence or trade; in fine, it seems as if the spices grew there; that
the oils were gathered there; that it nourished the precious insects which spin the silk, and that all sorts of drugs for medicine or dying were in the number of its products, and of its growth; its warehouses are so full, and its merchants seem to carry so much to strangers, or so many strangers come to load in its ports, that there is not a day, or it may be said, a moment, when ships do not come in or go out, and frequently entire fleets.

The commerce of the Russians, a commerce already so established and extended, and which we see increasing under our eyes, merits without doubt not to be forgotten in this historical abridgement of the progress of trade, and of the advantages which thereby accrue to those nations that apply themselves to it.

The situation of Russia is one of the happiest for commerce; its frontiers bordering on those of China, give to it a facility of carrying on trade, in that vast and rich empire, which re-unites, in some sort, the whole traffick of all the East. On the side of the Caspian Sea, there is offered to it, the commerce of Persia, of Armenia, and of the East-Indies; it may maintain a very considerable one with Constantinople, and the other states of the Grand Signor, by means of the ports, which it has, or which it may establish, on the Euxine Sea; and Archangel secures to it a great traffick with France, England, Holland, the Lower Germany, and many other nations.

In fine, to support this vast commerce with reputation, it is not deficient in rich merchandizes, either of its own product, or, at least, that are found there, both better, and in greater abundance, than elsewhere; and, for the transportation into its provinces, of those which come to it from abroad, it has four great rivers, whose courses are near enough to be easily joined by canals, and which discharge themselves into the four seas, by which this grand empire is in part bounded, providing, as one may say, for bringing even into the capital, the spoils of all the rest of the world.

So many advantages were for a long time neglected by a nation equally uncivilized and lazy, and where the natural indolence was maintained for ages, by the political diffidence and suspicions of the greatest part of their princes, which had prohibited them all communication with strangers.

It is true, that after the English had discovered, by a fortunate chance, the celeb-rated port of Archangel, all nations, which carried on the commerce of the North had a free admittance into this part of the Russian dominions, but it was not properly till the glorious reign of Peter the Great,* that Russia knew her strength and true interest, in regard to commerce; and it is to this monarch, always vigilant for the glory of his nation, and the prosperity of his people, that it is indebted for having extended its commercial intercourses to all parts of the world, where other nations of Europe have established theirs, and where till then, the name and empire of the Russians were hardly known.

It is to the year 1697, that the epocha of the establishment of their commerce ought to be fixed; a year which should for ever be consecrated in the Russian annals, since it was at that time that the political voyage of the Czar Peter Alexowitz, began, and that this monarch formed the grand design of changing the face of the Russian empire, and, by introducing commerce, to bring in also in its train, politeness, the sciences, liberal arts, and the many other advantages, which are ordinarily the fruits of them.

For the execution of a project so worthy of him that had conceived it, that famous embassy, to which was given the name of the grand embassy, which without doubt it merited, on account of the Czar's presence, who determined to be there in person,

* This great prince was the first of his country, who assumed the title of Emperor of all the Russians, which was confirmed to him by the other sovereigns of Europe, who sought his friendship. He was the founder of St. Peterburgh in 1721, and died in 1725.
though incognito, and mixing in the train of the ambassadors, was seen to arrive in Holland, and afterwards pass over to England.

The pretext was the renewal of ancient treaties: the true reason was, that the prince this way found an occasion to come and study in these two nations, so skilful and fortunate in commerce, the most sure grounds of that, which he designed to establish in his own dominions.

It was then, that, despoiled of the marks of grandeur, and mingled with the most simple workmen, he did not think it unworthy of his rank, to employ his royal hands in the same works as they.

Sometimes with the mallet and chisel in hand, he worked in the yards at all sorts of naval constructions, which could make the marine flourish. At others, attentive to the lessons of some skilful pilot, he informed himself of the divers points of wind that reign at sea, or learned the manner of using the compass, and sea-charts for a safe navigation. At other times, he took the shuttle, and studied in the manufactories the art of making those fine cloths, which the English and Dutch had till then sold so dear to his subjects. Sometimes also, by conversation with the most able merchants, he sought to penetrate into the secrets of the Bank and Exchange, and to secure beforehand correspondents at London and Amsterdam to the bankers, whom he proposed to establish in the principal towns of his dominions. In fine, nothing escaped his curiosity, from the desire which he had to form his subjects to arts and manufactures: and as if he designed some time or other to set up as a master in the fabrication of all sorts of works, he himself served a sort of apprenticeship, and was seen assiduous in the work-houses of the most able artificers; here to handle the iron with the blacksmith, there cutting wood with the carpenter; in another place, twisting hemp with the ropemaker; and, in one word, working at all the trades which are necessary to support commerce, and render it flourishing.

It cannot be expressed how many establishments, favourable to trade, and till then unknown to the Russians, were the happy consequences of the curious discoveries of a prince so universally attentive to the good of his people.

New ports were opened in divers parts of his dominions, and that of Petersburgh now vies with Amsterdam.

On the land side, with numerous caravans, the Russians made a road across the vast regions of Tartary, and being admitted at Pekin, they returned loaded with the richest merchandizes of China and the East.

The junction of the Baltic with the White Sea is almost achieved, by canals cut in the lands, with a labour and expence immense and truly royal; and there are lately others dug to join these two seas with the Caspian, by means of the Volga.

But still a variety of regulations, and a fund of sound policy was wanting to bring commerce and arts to an eminent degree of perfection in an empire so subject to revolutions in its government. These we have seen established by an admirable code of laws, and in general, by the wise administration of the reigning empress, the renowned Catharine II. the liberal patroness of learning and the polite arts, who, adopting the best parts of the plan of Peter I. for civilizing his subjects, sends a number of youths annually at her own expence to England and other countries, to study agriculture, botany, trade, the mechanic and polite arts, in short, every branch of useful knowledge. At the same time, she spares no pains or expence to attract skilful artists, and able workmen in every class to her country. Honours, pensions, and large emoluments are the rewards of those who enter into her service. However, it is the duty of the British legislature and the magistracy to guard as much as possible against the seduction of her manufacturers; for the excellent policy of this princess may be as detrimental to the trade and manufactures of other countries, as it is
beneficial to her own. Her alliance is already become so formidable as to be contended for by the first powers of Europe, and a country which at the beginning of the present century had scarce any weight in the affairs of Europe bids fair to turn the scale into which she shall place her influence or interest. If her commerce increases in the same rapid proportions as her civil, military, and naval power, those who have had the greatest hand in erecting it, may be the first to repent the measure.

Let us now join to so many examples, ancient and modern, of the advantages that commerce produces to states, and among the nations where it flourishes, some remarkable instances of individuals, whom it has raised to the highest fortune. Perhaps those who are more affected by their own interest than by that of the publick, may herein find motives and inducements to animate and engage them to a profession which may be attended with so great and happy effects.

France and Italy furnish us with the two first, in the order of time, and England with a third, all equally celebrated and singular.

James Coeur, a native of Bourges in the province of Berry, was a son of a private merchant; he followed the profession of his father, but with such speedy and happy success, that an author assures us, he gained more alone, than all the merchants of the kingdom together.

His commerce was extended to all the Mediterranean; he trafficked in Asia with the Turks or Persians, and the other subjects of the Sultans of Babylon, and in Africa with the Saracens.

It was by the city of Montpellier (which then was the only entrance of the kingdom on that side) that he carried on such extensive commerce; this also was the only reason that could render that city dear to James Coeur, with which he had not otherwise any connection, and consequently this was the sole motive that could determine him to embellish it. After speaking of a fountain which he made, where his arms still remain, we shall enlarge a little on the common exchange of the merchants, known at Montpellier under the name of the Loge, which he built, that this edifice might have a remarkable conformity with the commerce of the city, as it is visible, he never dreamt of undertaking the former, but with the view of augmenting and facilitating the latter. This building, which still subsists, is solid and magnificent. What is admired above all, are the basso relievos in medallions, which ornament the front, and which employ the vain curiosity of those, who have yet the weakness to give into the search after the philosopher’s stone; these are to them so many enigmatical emblems, under which they imagine that James Coeur has hid the mysteries of the grand work, of which he made use, as they pretend, to acquire his immense riches, which, notwithstanding, he owed solely to trade, according to Mr. Astruc.

His great riches, acquired by a way so lawful, and the probity with which he always conducted his business, having rendered him famous among foreigners, and known at court; Charles VII. called him to the ministry, and intrusted to him the management of his finances, making him Grand Treasurer, A.D. 1444.

His elevation did not in the least interrupt his merchandizing, but, on the contrary, excited him to continue it with greater reputation and success; but then this generous merchant, whose heart was yet greater than his fortune, had the most noble views in his commerce, and preferring the interest of the state to his own, it was more in his own funds than the prince’s exchequer, that he found resources, not only to re-establish the kingdom, exhausted by a long war, but to carry on enterprizes against the ancient enemies of the French nation, and to reunite to the crown, one of its finest and richest provinces, which had been for a long time in the hands of the English.
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In effect, very soon, armies were raised and maintained solely at the expense of this disinterested minister: he advised the conquest of Normandy, and he alone was at almost all the charge. When he went in embassy to Rome, a fleet of twelve ships, which accompanied him, belonged to him entirely, and it was he that was at all the expense of fitting them out. In a word, after Charles had, as it were, associated James Coeur in the government of the state, there was nothing in France that was great and considerable, which was not supported by the credit of this sage and rich merchant, and wherein he did not employ the better part of the great effects that arose to him from his trade. Mr. Astruc says, his very disgrace, which it appears he never merited, seemed to have rendered him illustrious.

It is true that the people, accustomed to fancy a mystery and prodigy in things that surprised them, and were above their comprehension, reported that James Coeur owed his fortune to the secret of making gold; but the truth is, that all the philosopher's stone of this fortunate and able merchant only consisted in his great commercial connections; and that he knew no chemistry more proper to operate the transmutation of metals, than the immense traffick that furnished him with those rich merchandizes, of which his storehouses were always full, and which he exchanged with so much profit against gold and silver, that an ignorant and credulous populace attributed it to the perfection of the grand work, which it imagined he had the good luck to find out.

Another example of fortune and glory, to which private men have attained, by the means only of commerce, is not less remarkable, though more illustrious.

The family of Medicis has been always praise-worthy and commendable, both for the antiquity and nobleness of its origin, and the greatness of its credit and riches.

From the eleventh century it has had great men, and there is found in history, an honourable succession of the race of Medicis, who, in this first rise of their house, were equally distinguished by the lustre of ecclesiastical dignities, by the honour they acquired in the profession of arms, by that which they obtained in the government of states, and in the chief magistracies of cities.

It was not, however, till the beginning of the fifteenth century, that this family, reserved to so great a fate, ought properly to count the epocha, or era of its elevation; and it is to Cosmo de Medicis, that famous citizen of Florence, who so justly merited the name of great, father of the people, and deliverer of his country, that it is indebted for the first, or at least the most solid foundations of a grandeur, which would be hardly credible, did we not see, so lately as the year 1722, their fortunate and illustrious posterity, governing with so much sagacity the descendants of those people, who formerly owed their liberty to the courage and prudence of this first citizen of their republic.*

In effect, after this great man had set in motion the wheel of fortune, which was to raise his house so high, there were but very few dignities, honours, titles, or alliances, by which this family was not illustrated; and, in less than a century, it gave four sovereign pontiffs to the church, two queens to France, and to the sacred college more celebrated subjects than any other house, even sovereign ones, had given to it till then.

It was nevertheless commerce only that was the source of so much renown; the ancestors of Cosmo, following the custom of the nobility of Italy, had not neglected this resource, to support them in the honours either of the camp or cabinet; but he, more

* This illustrious house became extinct by the death of Gaston, the last Grand Duke of Florence, to whom the late Emperor of Germany, then Duke of Lorrain, succeeded.
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fortunate, or more intelligent, had made so large a fortune, that he became even
comprollable to sovereigns for his riches, and he was always courted and regarded,
on account of the great influence which he preserved all his life, in the affairs of
Italy.

Lawrence, his brother, who, to the name of Great, which he merited as well as
Cosmo, added that of Father of Letters, was so well known at the Porte, on account
of the factors which he maintained in all parts of the Levant, and of the great
number of ships which he sent, that Bajazet, the fierce Ottoman emperor, not only
always regarded him as one of his allies, but even honoured him with the name of
his friend.

All the other Medici, who came after these two great men, and were elevated to
the chief honours of their republic, had the wise policy to imitate them, and in no
manner to deprive themselves, by a false delicacy, of the utility of commerce; and
when, in fine, the great qualities and merit of another Cosmo had raised this house
to the sovereignty of Florence, neither he, nor his successors, thought it unworthy
of them, to continue to seek, in an honourable mercantile line, the means to support,
with great credit, the splendour of a rank, which, in some sort, was owing to it; and,
to this very day, the palaces of the Grand Duke are never shut either to tradesmen or
merchants.

Mr. Mortimer, in the fifth edition of this work, mentions Sir Thomas Gresham, as a Sir Thomas
third example of the advantages of commerce to individuals.

Sir Thomas Gresham an Englishman, who, though he did not attain to the very
high honours of James Coeur or Cosmo de Medicis, does not yield to either in the
services he performed for his country, or the riches and credit he acquired by merchan-
dize. The general incidents of the life of this illustrious citizen of London are so
well known, and are so amply related in all our histories of England, and lives of our
eminent men, that I shall only recite such particulars as may serve to place him in many
respects upon a level with the Frenchman and the Italian.

Mr. Thomas Gresham was the youngest son of Sir Richard Gresham, an eminent
citizen of London in the reign of Edward VI. He succeeded his father in the office of
agent to the king for the negociation of his loans and the sale of his wool at Antwerp;
and in that city he laid the foundation of his fortune. It was, at that time, the
custom for the kings of England to borrow money of the Flemings for any exigencies
of the state, and, by mismanagement, the crown was become considerably indebted to
the principal merchants at Antwerp: upon which occasion the Flemings demanded
most exorbitant interest, and sometimes the royal jewels were pledged for the pay-
ment. By his prudent management he not only cleared the king by discharging all
his debts, but in the reign of Queen Elizabeth he put an end to the disgraceful
and extravagant method of borrowing from foreigners, by delivering a plan to the
queen for negociating loans for the public service at home, a plan which pleased her
own subjects, and occasioned a great saving to the nation. For this service her
Majesty conferred on him the honour of knighthood. He established the credit of
English merchants with the Hanseatic Towns, and he was highly instrumental in
bringing over a great number of the persecuted Flemings who fled from the tyranny
of the Duke D'Alva, the Spanish governor of the Netherlands, under Philip II. At
his own expense, he built the Royal Exchange in London, and founded a college,
known by the name of Gresham College, endowing it with an income for the support
of a professor of each of the liberal sciences, who continue to this day, and read
public lectures in divinity, law, physic, astronomy, geometry, music, and rhetoric.
He also bequeathed a great many donations of annual sums to public charitable insti-

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tutions; yet this did not prevent his making ample provision for his widow, and he died very rich in the year 1579.

Mr. Savary supposes it a matter of surprise, that among so many examples of the advantages that commerce produces in the states where it flourishes, France had not, at the time of his writing, furnished any one; it is owned, he says, with regret, that, in regard to commerce, the French at present are less in a condition to serve as a model, than they are in need of being animated by the example of others.

And then proceeds with making the following queries, and giving the succeeding account of the aptitude and qualifications of the French for trade; and, though he seems a little partial in favour of his countrymen, I think he exaggerates nothing in his description of the kingdom.

"Will this generous nation," says he, "so capable of the greatest enterprizes, be inferior to others in this thing only, whilst she greatly surpasses them in every thing else? No surely: and excepting her haughtiness, which often made her regard trade as little worthy of her; or her impatience, which almost always discouraged her on the first difficulties, there is certainly no one that could carry on commerce with more advantage, or to whom, I may affirm, it is more proper, when she will apply herself to it in earnest.

"What is there in effect wanting to France of all that is necessary to carry on a considerable trade?"

"She has an infinite number of inhabitants, hardy, enterprizing, laborious, and, at the same time, full of genius, address, and industry."

"Her lands, which are as fertile as any in the world, deny her hardly any sort of fruits, provisions, drugs, or other merchandize."

"Her different provinces, according to the diversity of their soil, produce in abundance, corn, wine, salt, and every necessary to the support of life.

"There is found silk, flax, and hemp, for all sorts of stuffs and linens, or other works which are made of these materials."

"Its pastures feed an almost incredible quantity of large and small cattle, which serve for nourishment, and to furnish excellent hides and fine woolens, and its mines produce the most necessary metals and minerals for arts and trades, and for the fabric of manufactures."

"If its merchants inclined to commerce, the two seas, which wash its coasts, open to them excellent ports, and offer them the conveniency for carrying it on to the four quarters of the world."

"If they will content themselves with a home trade, the French manufactures, or those that are imitated from strangers, are arrived to the last degree of perfection, by the wise regulations and by the attention of the magistrates of the police, and the inspectors appointed to take care of their performance.

"In a word, it may be said, and I shall say it without exaggeration, that France reunites at home all the advantages of commerce, which are found divided among the other people of Europe, and, that, being sufficient to itself, it can absolutely pass without other nations, and content itself with its own abundance, whilst they, on their parts, will find it difficult to subsist without our succours, and that great commerce, of which some, and with a great deal of reason, are so proud, would soon be seen to fall, if they ceased to receive from us that infinite number of merchandizes which are necessary to them, and which it is with difficulty they can find elsewhere.

"It is this truth ill understood, and urged too far, that has given room to that paradox so dangerous, which they of this way of thinking would establish in these
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"latter times; that France ought to carry on no commerce with strangers, and that
she would always be sufficiently happy and flourishing, if she did not want labourers
and soldiers.
"The necessity of the one and the other is indisputable; without soldiers our fron-
tiers would remain open to our enemies, and the kingdom without defence; and
without labourers to cultivate our lands, they would be no longer sufficient for our
support. But upon what shall the pay and maintenance of our troops be established,
if commerce, which is the most fruitful source of the riches which enter our king's
exchequer, be taken from us? And what will the farmers do with their crops,
though never so abundant, if they have no longer an opening to get rid of their
superfluity; and, by want of trade, see those provisions miserably perish on their
hands, which would have enriched them, if they had passed into those of their
neighbours.
"The merchants then are a third order of persons, of which France has need, and
who are not less necessary to her than her soldiers and labourers; and commerce is a
profession, without which all would languish in the kingdom, and the inhabitants
would sink under their own abundance, as they could consume neither the whole
at home, nor have the liberty to carry a part abroad.
"It is sufficiently comprehended, that by commerce, supposed so necessary to
France, and for which it is known, that the French are at least as fit as the other
nations of Europe, is not to be understood that trade which is carried on in our
provinces, by the communication which they have with one another, of the natural
productions, or the works of art, that they have each at home, for this would be
always flourishing enough, if there was a care at the same time to carry on that abroad;
but it is the commerce which may be maintained with foreigners that is principally
in view, whether they come to our ports to carry away those merchandizes of which
they have need, or whether we send our ships to load with those which they have
and we want.
"It is true, that, for long voyages, France has already at home a company of
commerce, of which the first success seems to promise, that it will not one day be
any thing inferior to the more celebrated ones established among our neighbours;
so that, without encroaching upon the vast grant of a company so profitably formed
and so wisely conducted, I shall content myself to animate the French merchants to
such other objects of commerce as they may share with the other nations of Europe,
or even that they may carry on with a greater facility and profit than they.
"These hopes, with which I dare flatter our merchants, are not false nor even
dubious. Whoever surveys the parts of Europe where the English and Dutch carry
on their most considerable commerce, Spain, for example, or the towns of the North
and the Baltic Sea, will see what nation is most likely to succeed.
"Almost all the necessary merchandizes for those important branches of commerce
are found in France; on the contrary, England and Holland have hardly any.
"We have for Spain, stuffs of gold, silver, and silk, clothes, woollens, linens,
paper, hats, all sorts of stockings, cards, laces of silk and thread, mercery, iron
wares, and many others. The North cannot do without our wines, brandies,
vinegars, salts, prunes, chestnuts, and walnuts, so that it will presently be decided,
to which nation the loading of ships for the North, or Spain, is most easy; whether
to the French, who, without borrowing any thing from others, have, within them-
sewels wherewith to make up an entire cargo; or to the English and Dutch, who
come to seek in France what they want, and who, destitute of this succour, would
be obliged to send their ships half laden, and without the proper assortments for
those two countries.

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"It is also the same in proportion with all other trades, by which the French may enter into competition with their neighbours.

"In regard to profit, it is as clear, and shorter. Whoever sells at second-hand can make but one gain, whilst he that sells at the first acquires two; the English and Dutch are in the first case, the French in the second; so that those can only benefit themselves on the price which the merchandise they sell in Spain and the North costs them in France, and these add yet to the said profit, that which was made on the first sales of such merchandize.

"This is not enough; the advantage of returns is yet all entirely on the part of France, since the French ships, by bringing back the Northern and Spanish commodities, take away from strangers those immense profits, which they used to make on us, when they brought the same merchandizes into our ports.

"One cannot on this subject help expressing some concern at not seeing established in France, that wise policy of the English, who, by their Act of Navigation in the year 1660, ordained, that none of the merchandizes and products of Europe be brought into England, nor the states that depend on it, but in ships appertaining to English subjects, or from the places of their manufacture and growth; and that none of the merchandizes of the growth of any of the English colonies, or that may hereafter become so, of Asia, Africa, and America, shall any longer be brought in but in English ships, or those appertaining to the English.

"A policy certainly both prudent and equitable, and, if it had place among us, would open our ports to strangers, who should bring the merchandizes of their country and wisely shut them against those who, having nothing of their own growth, come to sell us those at a dear rate which they have collected from all parts of the world; and who, flattered by our indolence, or, it may be, by our vanity, have insensibly accustomed us to receive only from their hands, at an excessive price, what it would be easy for us to get on much better terms, if we would only take the pains to send for them.

"It may probably be alleged, that, as the French marine is not in any degree comparable, but much inferior, to that of their neighbours, with whom they are invited to become competitors, there is but little appearance that they should ever find the facility or advantages with which they in vain were flattered in carrying it on.

"And it must be confessed, that, in maritime states, commerce and navigation ought to go hand in hand, for there is so strict and intimate a tye between the one and the other, that commerce is without strength, whilst the marine is languishing, and the weakness of the one necessarily draws on the fall of the other.

"But besides, that our ports are not so unp rovided with ships of war, as to leave the French merchants at any time destitute of convoy and guards, to favour and protect their trade; what doubt is there that, even on this part, France, when she pleases, need not yield to any other power whatever.

"Our neighbours are obliged to fetch from abroad the greatest part of their naval stores; wood, iron, cordage, sails; all these come to them from foreigners; instead of which, our provinces easily furnish us with the best part of that we have need of for the building and fitting out our navy.

"Some of them have wood proper for the bodies of ships; and there are found in the mountains, others fit for making the rest of their materials; there are, in many, mines of copper and iron sufficient to supply our yards and docks; and all, in general, are so abundant in flax and hemp, for making sails and cordage, that it is even from us that other nations receive the greatest part of those they consume in their rope-walks, or that their weavers make into cloth proper to sail their vessels.
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"We are no more in want of provisions or ammunition, but are even in a condition to spare part to others; and to man our ships of war and merchant fleets, we have more than sixty thousand sailors, distributed in five classes, of which the rolls are renewed annually, and of which the one is always accounted engaged, from the beginning of each year, to serve in the king's ships, and the four others are reserved for the merchants' service.

"These hopes, which are founded on so many advantages, that might render our marine flourishing, either for war or trade, are certainly not in the number of those ideal projects, that it is not possible ever to carry into execution.

"Those times, so glorious to the marine of France, 1690, are still remembered, when our naval forces, equal to those of our enemies, obtained the victory over the united fleets of the two powers, who each in particular would have attributed to itself the empire of the sea; and we have not in the least forgot, that, during all the war which was terminated by the treaty of Ryswick, 1697, our privateers, superior to those of the English and Dutch together, took from one of them so great a number of ships, that their merchants, who avow that their loss amounted to more than three thousand vessels, were obliged to carry their complaints to their parliaments; and the trade of the other was so disturbed or impeded by the fortunate cruizes of the same privateers, that this was one of the principal reasons that made them desire a peace, and, in some sort, to demand it with eagerness.

"It is not, however to be denied, that events which prudence could not foresee nor courage repair, have weakened the French marine; but why should we lose the hopes of seeing it recover? That which so happily succeeded under the reign of Lewis XIV., will it be impossible, if undertaken, to prosper under that of Lewis XV.? A young monarch, in whom shine so many great qualities, that they seem already to foretell the happiness and glory of France! and an establishment, which was seen pushed on almost to perfection, under the ministry of Mons. Colbert, and of the Marquis of Seignelay his son, why may it not gather new strength, supported by the care and experience of a prince who has recorded his first campaigns at sea by a victory, and who labours with so much application to restore us a marine, capable of making our colours always respected; and, at the same time, to put our merchants in a condition of carrying on, in all parts of the world, a commerce, for which they have so much facility and advantage?"

Mr. Savary here finishes his sentiments of his country and the French nation; and, I think, he has proved a true prophet, in regard to their commerce, which has been greatly extended and increased since his time, to the no small detriment of ours. They were at least a century behind us in mercantile affairs, and it is matter both of surprise and concern, that they have in any shape exceeded us; as despotick governments are not calculated for prosperous commerce, and had not Lewis XIII. and XIV. stepped out of the common track of arbitrary kings, in order to protect and render it flourishing, we should never have seen that nation, from competitors with, become superior to, us in any branch of it; but the good regulations made in those kings' reigns, and since continued, added to the fertility of the soil and temper of the people, who can content themselves with a less expensive way of life than we are unhappily fallen into, have enabled them to carry many of their commodities cheaper to market than our higher wages and dearer living will permit us to do, and consequently robbed us of the sale of our inferior sorts of woollens, which they have been able to imitate; but, as I shall speak of this when I come to treat of commerce in general, I shall only add here, that I fear they now equal us at least in the dispatch of their home manufactures, though I hope not in their products and trade of their plantations, their sugar colonies only excepted.
Mr. Savary having left the English out of this historical deduction of trade and commerce, as if they had been a people without any concern in it, I can only impute it to that deference he every where pays to his father's judgment, whose malicious insinuations against us, in his Parfait Negociant, the son must have contradicted, had he treated us with the same impartiality he has others; to avoid which, and not expose the weakness of his envious parent's ill-grounded and unjust invectives, we may presume were the motives that induced him to pass us over in his account of commercial nations, and made him prefer leaving a chasm, rather than a blot, in his otherwise valuable works; though he is not wholly to be acquitted from inheriting or adopting part of his father's partiality, as he has copied some of his aspersions, when he speaks of us in the body of his dictionary; to confute which, and do justice to my countrymen, I shall endeavour to improve this opportunity by demonstrating his partiality, and supplying his defect, that we may appear in the true light we ought, in the history of the European commerce; and in order thereto, I shall here only briefly mention what occurs to me concerning our first engagements in commerce, and refer my reader for a more ample account of its progress and present state of improvement to the sequel of the work.

Though it must be allowed that the English, in respect of most other European nations, were late beginners in universal commerce, yet they have improved in it with an amazing rapidity.

It is many ages since they knew the value of a naval power, and were taught by the Romans how necessary this would be for their defence and support, as well as conducive to their commerce with other nations; the former, we have seen before, were masters of the art, and consequently in a capacity to give lessons; they knew the great advantages derived to kingdoms from it, and indeed that this only could make a nation flourish. They considered how capable of improvement our country was, and being settled among us, were desirous of rendering this union as advantageous as possible, and, having met with a people brave and daring as themselves, and in every respect fit to undertake any hazardous enterprizes, they would certainly have raised commerce to a flourishing pitch, had not their own intestine broils called them home, and, ours on this occurrence increasing, left commerce to languish, as it did for ages after, till our victorious Edward III. and afterwards the glorious Queen Elizabeth, animated their subjects to an imitation of their neighbours, and, by proper encouragements, led them in to share the advantages which hitherto other nations only had reaped, exclusive of them. The introduction of a few woollen manufacturers of woollen cloths from Flanders, and the privileges granted to them by Edward, laid the foundation of the British woollen manufactories; but to Elizabeth was reserved the immortal renown of completing the great commercial revolution, which took place at that memorable era.

Voltaire, who, as an historian, is by no means partial to the English nation, gives the following account of this happy event. "From the first beginning of Elizabeth's reign, the English applied themselves to manufactures: the Flemings being per-secuted by Philip II. King of Spain, removed in large bodies from Flanders to London, bringing with them an increase of inhabitants, industry, and riches. This capital, which enjoyed the blessings of peace under Elizabeth, cultivated likewise the liberal arts, which are the badges and consequences of plenty. In a word, London was enlarged, civilized and embellished; and, in a short time, one half of the little island of Britain was able to counterbalance the whole power of Spain."

* Vide also 5 Hume, Hist. England, 488. 1 Burr.
The best principles of commerce derived from the ancients were adopted by the wise and active ministers of Elizabeth. She sent out skilful navigators to make discoveries in America. She established colonies; and kept up a maritime force for the protection of the commerce of her subjects at sea. In fine, she founded the East India and other commercial companies; and it was under her glorious administration, that the English gained a superiority on the ocean, which has ever since been preserved; and on the support of which, not only our commercial interests, but our independent existence as a nation depends.

The increase of our commerce has consequently been that of our power, which is happily risen to the summit of human glory, as there is no potentate on earth who can equal our maritime force, become now the bulwark of our country; and may it always continue unrivalled and triumphant whilst time endures!

It is in this place, that I must beg leave to congratulate my countrymen on the happy situation of Great Britain, which is the best calculated that can be conceived, for the security, ease, and convenience of its inhabitants as a commercial people. The southern division, still distinguished by its ancient name, England, is bounded on the east by the German ocean; and on the west by the Atlantic, which, by their union, form the British channel, its barrier to the south. On the north, it is defended by the Deucaledonian sea; and a facility of communication is afforded to this vast body of waters surrounding the British isles, not only by a number of excellent harbours and commodious sea-port towns, but by sundry large navigable rivers flowing from the inland provinces, of which the Thames is the principal.

This happy spot thus admirably protected by nature from the incursions of neighbouring states, and enabled, by her insular station, to keep constantly on float a maritime force for the further security of her commerce, whenever its safety but appears to be endangered, is likewise indebted to the indulgent bounty of Providence for every necessary and convenience of life, and is blessed with a temperature of air, which, while the inhabitants lived according to the sober laws of nature, and sought not the destruction of their health by the use of spirituous liquors, afforded more frequent instances of remarkable longevity, than any other part of the known world. But, notwithstanding a visible, and much to be lamented degeneracy, the great body of the people, by whose industry the manufactures and commerce of the country is supported, are justly distinguished for their ingenuity, perseverance, diligent application to business, and superior expedition in completing the works they undertake.

Our lands may justly be counted some of the most fertile, and their products of fruits, provisions, &c. as plentiful and as good as any in Europe, and our merchandizes more than other countries can boast of.

The different counties, according to their situation, produce corn, and all necessaries of life in abundance, which, on many occasions, have preserved several of our neighbours from famine.

We have hemp and flax for the manufacturing our linens and canvas, now brought to perfection, and our pastures feed an almost infinite number of cattle, which not only supply our markets with excellent food, but furnish us with fine woolls, and the best leather in the world.

Our mines produce iron, lead, tin, copper, coal, &c. in abundance, and our forests and woods are so well stocked with oak for shipping, as seems to promise, under well-regulated laws, an inexhaustible supply.

Our seas are well filled with their finny inhabitants, which, according to the steps taken by the legislature for the encouragement of our fisheries, and the ready concurrence of our merchants in promoting so beneficial design, must prove productive of immense riches to the nation, besides occasionally providing comfortably for
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our poor, which advantages have for many years past been reaped by our industrious neighbours.

I think a deduction of this nature ought not to be closed without mentioning a word of the Spaniards, who, like us, have been passed over by our author in silence; for, though they have been tardy in finding out the advantages nature has given them for trade, and have long remained blind to their own interest, yet their commerce is not so despicable and small as to be overlooked when we are treating of commercial nations.

Their discovery of America, and their subsequent settlements on that continent, gave birth to their trade and riches; for, though a potent nation before in dominion, they wanted the sinews of power, which the mines of Mexico and Peru have since produced them.

They have very considerable ports, equally well situated for commerce, both on the Biscayan and Mediterranean seas, and where large concerns are transacted, though principally by foreigners, as the Spaniards in general consider traffick to be a mean employ, and consequently a derogation from that gentility they almost all affect being born to; however, they have formed some very considerable companies among them, as that of the Philippines, Guipuscoa, and one lately established at Seville for the manufacturing of woollens, stockings, hats, silks, and most other commodities they formerly imported for their American trade; and, having received great encouragement from the crown for perfecting their other manufactures, they have, for some time past, clothed all their troops with their own cloths, and the king's wearing them himself, and prohibiting the importation of foreign ones, has brought their fabrics into such great repute, that they are daily increasing; and the uncommon privileges granted the weavers, it is to be presumed, will, in time, animate them to new engagements, and teach them to imitate the other woollen fabrics of Europe, as they have been so successful in copying their cloths, more especially if they can procure workmen from their neighbours to assist them, as they have lately endeavoured, and in some degree succeeded in, from hence.

Their silk manufactories have likewise kept pace with their woollen, and both their West-Indian and European dominions are now principally supplied by them, as they were formerly from France, so that their eyes having been opened to these advantages, both Old and New Spain feel the salutary effects of this discernment, and, if the same measures are pursued as have been so happily begun in favour of the subject, we may reasonably expect, in a few years, to see them a more flourishing people, than it was possible for them to be, till roused, from their former indolence and neglect, to a just sense of the advantages that industry and application offer them.

I might here mention their tunney fishery, and some other instances of their improvements, but shall defer exalatiating or descending to particulars till I come to treat of them in the general body of trade, and only add here an observation, that as the Spaniards have improved the different manufactures I have mentioned, their neighbours have proportionably found a decay in theirs, which can only be remedied by seeking other channels for the sale of their commodities, though I must confess, I think this to be despaired of, when the common paths of trade are become so beaten, and every branch of it so prejudiced by interlopers, except the following sheets open new scenes, which, by care, may be improved to the adventurer's advantage. I should here mention something of the Swedes, Danes, &c. but shall refer my reader to what I shall afterwards say of their trade, when I come to describe it minutely.
FROM ITS ORIGIN.

Dr. Garcin's* Account of the Origin of Navigation and Commerce.

Historians seem hitherto to have forgot, by the little they have said, that the Arabians were the first navigators, and the first people who opened the commerce between Asia, Africa, and Europe; this is a thing, however, very easy to be proved, notwithstanding the invention of navigation is attributed to the Tyrians and Egyptians, at the beginning of this historical deduction.

The situation of their country, which is, in this regard, the most favourable in all respects, at first naturally brought them thither. As Arabia is a very large peninsula, washed by the sea on three sides, and its entry on the fourth being the most difficult, by reason of the extent of its deserts, which are filled with sand, and without water, necessity induced this nation, one of the most ancient, in order to procure an advantageous communication with others, to open passages by water; to invent the first marine vessels, and to form itself courageously to navigation; it had so much the more cause to improve, and become acquainted with its seas, as it was no great distance from the Indies, which, as is known, was at all times fuller of riches than any other part of the world.

This practice being attained, it was much easier for its inhabitants to pass by water to many of their neighbours, than to traverse deserts so dangerous, and to make such great tours, either to go out of, or to return to, their country. Thus it was by their fleets that they corresponded wherever there was a sea, and by caravans on the land side to the Mediterranean; it was, in fine, by these powerful means, and by the Arabians only, that the most sought for and precious things of all the Indies, past from east to west, in the most ancient times, and in those which followed, until that of the Emperor Augustus.

This nation, according to historians, has been the richest of the world, in the earliest ages, as we shall soon see by relating what they have said of it; and this is one of the strongest proofs of its ancient commerce with the Indies, and from thence with the countries which border on the Mediterranean; for the Tyrians and Egyptians were not formerly flourishing in their commerce, otherwise than as the industry and riches of the Arabians made them so, who furnished them, under large profits, with all the merchandizes of the isles, and of the maritime coast of Asia, the same as the Portuguese and Dutch have some time since done in Europe, and it is by the same commerce of the Indies that they are enriched. The Oriental Sea was to the Arabians what the Mediterranean was to Phœnicia and Egypt; these three nations enriched themselves mutually by the trade of those two seas, each having laboured on its part for the properest means to cultivate it by navigation in the two seas, and by caravans through the lands that separate them.

It is known by very ancient experience, that the richest countries are not ordinarily such, but by the means of commerce and navigation. The Sabeans, an Arabian people, who inhabited the countries bordering on the Indian and Red Seas, were incomparable in their sumptuousness and riches: one need only read Agatharchides, Diodorus Siculus, and Strabo, to be convinced of it by the detail which they give. They, drained, says the first of these historians, in Photius, the treasures of Asia and Europe; by the exchange they made of the most precious things. They surpassed, says the second, lib. iii. by the riches and abundance which they had of all precious things, not only those of Barbary their neighbours, but also all other nations. Considerable sums were necessary to purchase a middling quantity of their merchandizes; these historians

* Formerly an eminent physician at Neufchâtel.
record, that these people, so rich by their commerce, made ivory, gold, silver, and precious stones, to shine in their furniture, upon the doors, columns, walls, and roofs of their edifices; and that they possessed a very great quantity of gold and silver vessels; they relate, that their expences were enormous in all things, even in works of the most admirable sculpture and engraving; in a word, that their magnificence was unequalled; which demonstrates that this nation was skilful, bold, and venturesome in the Indian trade and navigation, and that it was by her that the Tyrians and Egyptians flourished so much in theirs, and upon the same merchandizes which they received and passed to the other western nations, the most remote. The Prophet Ezekiel, chap. xvii. verse 22, in addressing himself to the city of Tyre, speaks of this nation of the Sabeans under the names of Sheba and Raamah, which were two places of Arabia. The merchants, says he, of Sheba and Raamah were thy factors, making thy fairs valuable in all sorts of the chiefest spices, and with all sorts of precious stones and gold: This is a sure testimony of the antiquity and the opulence of its commerce which it had with the Indies.

It was this opulence which determined Alexander the Great to make Sheba the capital of his empire; and tempted the Romans to its conquest in the time of Augustus; a time in which they began better to know the Oriental Sea, and the coasts which limit or bound the western.

We may believe, as the greatest part of the ancients did, that the precious merchandizes of the Arabians were all the growth of their own country; but it is a mistake, they being carried to them; for it is certain that Arabia has never produced of itself the sixth part of its riches. Of all the aromatics, only incense, balsam, myrrh, and calamus aromaticus, grow there; the two last of which were not sought for, only as they were deemed to be something better than those which grew in the other parts of Asia and Africa. It may also have a little gold, but in no quantity, as some of the ancients imagine; the Arabians brought it from India, the same as they did aromatics, precious stones, and rich merchandizes of all sorts. Strabo seems to insinuate so in saying, that they changed their aromatics and precious stones against the gold and silver of strangers. One may be persuaded, that in some parts of Asia, the origin of all these things is yet near the same as it was in former times, all the difference being that it is now infinitely better known.

Incense, in reality, was to them of very great advantage, as they furnished all the western nations with it, who were then Pagans, and consequently consumed infinitely more than they do at present: But, as the ancients were passionately fond of all the most exquisite aromatics, those which the Arabians brought from India making the greatest number, produced also their greatest riches.

The aloe wood, cassia, and cinnamon, which are mentioned in many passages of Scripture, and in the most ancient historians, made, beyond dispute, after the gold, the principal branch of their commerce. Malabar, Ceylon, and Sumatra, or Malacca, were really the principal places where their fleets often went to take in their loadings, as it was only from thence that they drew all those rich merchandizes; these were formerly much better esteemed than they are at present; and, as this nation solely supplied all the countries of the world that wanted those commodities, this is yet another demonstrative proof of their ancient navigation to the Indies.

It is nevertheless a matter of surprise, that ancient history either does not speak of it at all, or if it does, it is in a manner very obscure: This proceeds from Arabia being very little frequented, and consequently very little known to other nations. The great difficulty and danger of traversing its sandy and arid deserts, and of being sheltered from the robberies which a part of its inhabitants were always given to, in beating the field, plundering the caravans, and stripping the travellers and merchants, were the
causes that our first ancestors could not be informed about it until the time of Alexander, or even till that of Augustus. We may moreover add, that their navigation was but little known even to the time when the Portuguese went to India by the Cape of Good Hope, and that thereby they ran away with that rich European trade which the others carried on by means of the Egyptians, and these by that of the Venetians. They were therefore always masters of the Indian Sea, by their navigation, till then, as is well known even to all the Indians. This navigation, as well as their commerce, was indeed a little disturbed by the Romans, but this was only for some time. Another cause, which made their navigation unknown in ancient times, is that the Arabians, the better to preserve the commerce of the Indies, which they sought so advantageous, always took care to conceal from strangers who lived towards the Mediterranean, the voyages which they made on the Oriental Seas, the routes or courses which they used, and the origin of the merchantize which they brought in, and which so greatly augmented their riches.

Besides, in those times, the arts which facilitate the intercourse of nations were wanting, which made history so ignorant of a country so distant. These are geography, printing, the conveniency of posts, and the improvements in navigation; thus the Arabians always succeeded in their intended concealment, with the view of making their commerce lasting, and to attract thereby the greater profits.

And, to have the thing succeed the better, and to impose on the foreign nations, who so very earnestly enquired after their spices, they invented fables or pretended difficulties that subsisted; above all, in regard to the cassia and cinnamon, on which they made the most considerable profit; and affirmed them to grow in the middle of their country, but in places almost inaccessible, and so dangerous, that they could not procure but a very small quantity, with infinite industry and trouble. The whole contrivance is recorded by Herodotus, lib. iii.

It was this which made all antiquity believe, that these spices or aromatics were scarce, and only to be found in Arabia. Pliny was the first who discovered that these fables were only invented in order to sell their drugs dearer; but, on rejecting these, he substituted others nothing inferior, in declaring the cinnamon to be brought from Ethiopia, in mentioning the manner of its growth, that of gathering, and transporting it abroad, or to strangers; the difficulties he has stamped upon all these circumstances, and on the means of having it in time, as also the cassia, do not appear less great, nor less fabulous, than those of Herodotus, which he would not admit. See Pliny, lib. xii. ch. 19.

It is certain that neither Ethiopia, nor Arabia, has ever produced any of these aromatic barks; the trees from whence they are taken can never be transported, on account of the different nature of the soils, and the drought and heat which reigns there; and it is only in the Isle of Ceylon the air and earth are really fit to nourish them; so that it is this place alone, which has in all times supplied the rest of the world with these aromatics.

In fine, the ancient Arabians did not invent fewer fables in favour of their commerce, than the Persians did to represent the dangers which they had in procuring the gold in those parts of India where they could find it, and which were believed sandy. This is what may likewise be seen in the book of Herodotus above cited.

Pliny says nothing of the navigation of the Arabians, which is a proof that it was unknown in his time. He only mentions that of the fleet of Alexander, which past from India to Euphrates, and that which the Romans made every year also in his time to the Indies: He has described the route from Egypt, but he has made it appear, that their voyages only terminated about the river Indus. The Romans, although
masters of some ports of Arabia, did not, in the least, discover the navigation; which
the Arabians took care to hide, and which they made directly from some of their ports
to the island of Ceylon, to load with cassia, cinnamon, and precious stones; and from
other parts of India, to do the same with other merchandizes, as gold, drugs, and
odoriferous woods. It seems by the recital of Pliny, that the navigation which the
Romans made to that corner of the Indies of which he speaks, did no injury to the
Arabians, only in the smaller part of their commerce.

It is easy to comprehend that these last, in proportion to their navigating their seas,
should have the good luck to discover the shortest passages to many parts of the first
peninsula of the Ganges, and from that to the others; for we must not believe that
the Romans were the first that crossed the Arabian Sea, which it bounds, as Pliny re-
marks, lib. vi. ch. 23.

It was infinitely easier to the Arabians to cross this sea to India, or to Ceylon, than
it was for the Tyrians to run over the different parts of the Mediterranean. The first
had fine weather to chuse at their pleasure, and winds that were fixed and regular; by
which they might securely perform their voyages with as much exactness, rectitude,
and speed, as they had occasion for, and always in a manner, equal in the same
seasons: advantages which the Tyrians had but very rarely; they never had fine
weather at a certain point, on which they might depend; so that these had more need
of ability in the marine than the former, on account of the variableness of the winds,
cloudy weather, and tempests which often reign in the Mediterranean.

The winds of the Indian Sea, rarely tempestuous, are always regular, changing twice
a year, and under two directions, alternately opposite one to the other; each last six
months, at least, if the latitude is near our tropick. These winds are the south west
and north east; and they are called monsoons, of the which one is dry and the other
rainy; the north east wind causes the dry monsoon, and begins in the month of
November, on this side the equinoctial line: the rainy one begins in the month of May,
and it is occasioned by the south west, which makes it last till October.

In fine, the monsoons which reign at sea on this side the equinoctial, are always
opposite to those which reign on the other side of that line.

It is therefore seen by the exactness of these two seasons, and the regular winds of
the Indies, that it was not any thing difficult to the Arabians happily to succeed in
their navigation for passing the sea, not only to the Isle of Ceylon, but also to that of
Sumatra, or to Malacca, which is in its neighbourhood. They yet make to this very
day these traverses, in a great measure, without using the compass, at least very rarely;
for the winds, being once fixed and invariable, serve them for guides and rules in the
direction of their route, almost as well, and even in some manner more exact, than
they would do by the help of the stars in serene weather. What is it then that should
have hindered the performing the same in ancient times? This is what the modern
historians have not thought of, in speaking of the ancient navigation of India. It
is probable, had they been on the spot, as I have been, they would have thought as
I do.

Many nations among the Indians have always crossed these seas by the favour of
these winds. The dry monsoons, periodically renewed by the north east wind, assist
their sailing to the westward; and the wet monsoons, formed in like manner by the
opposite winds of south west, serve them also for sailing eastward. One monsoon
serving them to go, and the other to return, and those always equally certain and
regular.

The Arabians, washed by the same sea, ought therefore to do the same thing; and
it is what they have always done, according to the tradition of the Indian nations; who
regarded them as the masters of the navigation of the seas, till the arrival of the
FROM ITS ORIGIN.

Portuguese among them, who ruined entirely the vast commerce of Arabia, which had been of so long a duration.

Pliny makes mention of these two winds for traversing the Arabian Sea. The south west, which was called, says he, in that country, Hypalus, was the proper wind for sailing from the Cape of Syagros, which is believed to be that of Tartaque, to Zizerus, a port in India; this is apparently that of the present Diu: they, in returning, adds he, departed from thence in the month of December, or even in that of January; and this traverse was made, according to him, in forty days. The Periplus of the Red Sea, attributed to Arianus, says the same, according to Mr. Huet; it informs us farther, that they sailed from Arabia for India in the month of July; and these seasons are exactly the same now, with respect to the navigation of those countries.

Mr. Huet believed; by the relation of Pliny, that these courses were new, and had been discovered by the Romans; which might be so in regard to the Romans only, but it is absolutely not the same in respect to the Arabians, as these routes were at that time known to the latter, and had been so for several ages. The author of the Periplus, before-mentioned, says, that it was an ancient pilot, named Hypalus, who first discovered, by favour of a south west wind, this course to the Indies, and that his example was followed with so much success, that they gave to this wind the said pilot's name.* However, we ought to be persuaded, that this only regards the navigation of the Romans.

In fine, after these éclaircissements, we ought not any longer to be surprized at the ancient splendor of the Arabians, which, at the same time, occasioned that of the Tyrians and Egyptians; the commodious situation of their country, the pleasantness of a frequent or almost continual serenity of their sky, the direct regularity of the winds which reigned in their Oriental Seas, and their own spices, above all, the incense, were advantages, which would naturally render them flourishing, if improved, as they always were by them; and it may be added, that the goodness of their ports, infinitely better than all those of India, was what favoured them most in their commerce. I am strongly led to believe, with Mr. Huet, that the surname of Happy, which Arabia anciently received, only came from the excellency of her harbours, and from that of her former commerce. This Arabia, called Happy, was never so rich in its own product as to merit so fine an appellation; it might rather have been given her for being the richest nation in the world by her trade with strangers, than because her soil was found better comparatively than that of Stoney or Desert Arabia.

The last remark to be made is, that the treasures and commerce of the Arabians enriched the neighbouring nations; Judea, above all, felt it most, as may be judged by the revenues and wealth of Solomon, which the Scripture describes in the tenth chapter of the first book of Kings, and the ninth and second of Chronicles, to have been so immense "That all the kings and governors of Arabia brought him gold and "silver, besides his annual revenue, amounting to six hundred and sixty-six talents of "gold;" and it is likewise from thence known, what were the presents which the Queen of Sheba made him, after coming from the depth of Arabia to see him and prove his wisdom, importing only in gold one hundred and twenty talents, besides spices and precious stones, making according to Father Calmet, 8,176,000 French livres, or, at the exchange of 5 d. per French-crown, of three livres, as it was then governed, about 613,200l. sterling: though Dean Prideaux computes it at 864,000l.; a plain proof of the great richness of this Queen's country, and to confirm the many advantages that Judea reaped from trade, I think Dr. Garin might have added to what he has said on this subject, the mention that is made in the twenty-second

* Traité du Commerce et de la Navigation, par M. Huet, chap. 54.
chapter of the first book of Chronicles, of the wealth King David had prepared for the House of the Lord: viz. an hundred thousand talents of gold; and a thousand times one thousand talents of silver, making the immense sum of 1,170,000,000l.

sterling, according to the aforesaid Dean's calculation of 7,200l. per talent of gold; and 450l. per talent of silver, only in those two metals, besides brass and iron without weight, and the addition that he made out of his privy purse, towards that pious work, of three thousand talents of gold, and seven thousand talents of refined silver, as hinted in the twenty-ninth chapter of the above-mentioned book, and the fourth verse; to which we may subjoin what is recorded in the seventh verse, "That the fathers and princes of the tribes of Israel, &c. gave five thousand talents, and ten thousand drams of gold, ten thousand talents of silver, eighteen thousand talents of brass, and an hundred thousand talents of iron," as an additional proof of the benefits brought to this country by commerce; for none of this vast treasure was the product of it, and consequently must have been imported, to the great enriching both of prince and people; as plainly appears from the magnificence of their gifts. And though we have not the account of King David's trade to the land of Ophir and Tarshish, as fully noticed as we have that of his son Solomon's, yet he undoubtedly commenced it, on his conquest of the kingdom of Edom, which made him master of Elath and Eziongeber, two sea-port towns on the Red Sea; from whence he might, and certainly did, direct his traffic to the coast of Africa westward, and to Arabia, Persia, and India, on the east; and, as he lived twenty-five years after making that conquest, we may account for his amassing such, otherwise an incredible sum, by the long continuance and vast profit of his trade.

I am not ignorant, that many learned authors judge the talents above-mentioned to have been less than they are here calculated at; yet, supposing with them, that they were not above half the value, the sum still remains prodigiously great, and shews what I am contending for, that commerce alone could furnish such a treasure.

From the commerce and navigation of the Arabians, we may pass with great propriety, to that of the fleet of Solomon, which went to Ophir. After what we have seen of the navigation of the former, it will not be very difficult to make appear more clearly than has ever yet been done, which way it took for performing this voyage.

First, there is a great probability, that Solomon was informed by some Arabians, or by the Queen of Sheba herself, long before she came to see him, of the maritime places, from whence they drew their gold, their spices, and the other rich merchandizes of their commerce, as well as of the route which they had to go; and that it was in consequence of this discovery, that he took the resolution to maintain, in some port of the Red Sea, a fleet to proceed every three years, according to the sacred text, to the same places which were frequented by that of the Arabians; this could not be otherwise for many reasons, which may be deduced from all that I have advanced, and from that which I shall yet add here.

Secondly, it cannot be doubted, that Solomon, after this discovery, and with the design of drawing from India the same treasure which the ports of Arabia procured, did not take care to secure pilots to conduct his ships to those places; and as his fleet wanted men to fit it out, and serve aboard it, this prince, for that reason, obtained, as the Scripture informs us, from Hiram king of Tyre, some people experienced in maritime affairs, who, as it likewise appears, had also ships in the Red Sea, to join with those of Solomon in this voyage.

It is evident by what I have said, in regard to the Arabians, that the islands of Ceylon and Sumatra were the principal places to which they sailed; the fleet of Solomon ought certainly to do the same in holding the same route; I would say, in traversing the midst of the sea.
It cannot positively be affirmed, that the isle of Ceylon has been formerly rich in gold, as many of the learned believed, and that this fleet which certainly went thither, drew its gold from thence, as it did its precious stones, cassia, and cinnamon; but it may be supposed, with much greater probability, that it got it from some part of the peninsula of Malacca, called anciently the Chersonese of gold, or from the island of Sumatra, since this has been always, as it still is, full of this precious metal. The sea is as easy, or easier to pass, from the isle of Ceylon to that of Sumatra, by the western monsoon, than it is from Arabia to the coast of Malabar, or to the island of Ceylon, as I have demonstrated. These two traverses have been always practised with the greatest facility. That which the learned suppose along the eastern coast of Africa to Soffala, is ten times more difficult and dangerous, without reckoning that this last place is two hundred leagues more distant from Arabia than the isle of Sumatra is, and that the winds, which are not the same, migh this coast, as in the middle of the sea, are irregular, and very often contrary. In a proper season, a passage is now made from Arabia to Sumatra in less than a month, which cannot be done in four, from the same place to Soffala, by coasting Africa, in any time that may be chosen.

It is then clear that this is that direct route from Arabia to Ceylon and Sumatra which the Arabians took; and which the fleet of Solomon always chose as the easiest and most profitable, or as the only one that could procure him the most precious merchandizes of all the East as well as all sorts of spices.

Aloe, which is a most odoriferous wood, and which is spoken of in Scripture, is only found in these countries, and of which it having been always a principal commerce, is a strong proof, that the fleet of the Arabians, and that of Solomon, went to those places. Let us yet add, that the woods of Almugghim came from thence, and it may reasonably be supposed the Sandal, being also a sweet smelling wood; it comes from the island of Timor, and the Macassars have always carried it to Malacca and Achin, in the isle of Sumatra, for sale to the other nations of India, who have ever diligently sought it.

These elucidations, which strongly agree in favour of the truth of those ancient voyages, ought to release the curious from the perplexities and embarrassments, into which the commentators on the Bible, by the difference of their opinions on this matter, have thrown them. The ancient history of commerce receives also a clear light from this easy demonstration, where the navigation of the Indies has always been, and the transport of the rich merchandizes that have all times come from thence.

Besides, it is seen by these very eclaircissements, that it is by no means necessary to make the fleets of Solomon and Hiram undertake the painful tour of Africa, to fetch every time the gold and merchandize as far as Spain, as Mr. Huet has pretended, and yet more recently the author of the Spectacle de la Nature. These gentlemen, on the credit of some ancient historians, who relate an example of a voyage that was made round Africa, have thought they might conclude, that the fleets of the Hebrews and Tyrians, which sailed from the Red Sea, made this route in the same manner, and, what is more, that they repeated it, according to them, every three years.

This is not a proper place to enlarge on explaining the difficulties the fleets must encounter, to make this prodigious tour along shore, as these authors have advanced: It is easier to imagine it in a closet than to make it on the spot, and to go to examine or prove the dangers; if they had drawn for themselves an exact picture of the fatigues to be endured in risking to follow the coasts of this great part of the world, and had painted the unknown shelves and banks under water, with which the coasts are so well furnished; the contrary winds and currents which last long; and, what is worse, the wrecks which tempests almost continually occasion, on being too near a shore, they would, without doubt, have changed their language. Even now, when
navigation is more perfect than ever, how many wrecks happen in tempestuous seasons, when ships are in sight of the coasts either near their arrival, or after sailing from some port? These wrecks would be more frequent and numerous, if the seas and havens were strange and unknown, and without the charts now used, of which they were formerly ignorant.

The coasts of Africa are in many parts difficult to frequent; there are heights, lengths, and steepnesses, full of shelves, and where the sea is dreadful in the motion and noise of its waves, which break against an infinitude of rocks. How many ships have the Portuguese, English, and Dutch lost, and still lose, near the Cape of Good Hope, notwithstanding the great experience they have had in navigation on that coast! Their losses have been still greater on many occasions in the very road of that cape.

Africa has in truth always produced gold and ivory, but it is a mistake to think that it has also yielded spices and precious stones; if historians of former times, and, among others, Pliny, have affirmed it, they ought to be regarded as having fallen into an error in that respect, the same as has often happened to them in many other things.

On the contrary, the Indies have always abundantly afforded these rich productions, with many others, of which use has been made in trade. Present experience suffices to demonstrate these two truths; and these are facts which prove in their turn, that it was not to Africa, and yet less to Spain, that Solomon sent his fleet to load those precious commodities, so diligently sought after in antiquity. If any such fleet had risked making the tour of Africa to come to Spain, what appearance or probability was there that it returned by the same way, and under the same risks, rather than through the Mediterranean, to get to some port in Syria, which is much nearer, and the sea better known and less dangerous?

Ophir and Tarshish, where the said fleets went, according to Scripture, are not then the same places that Mess. Huet and Pluche have endeavoured to establish in Africa and Spain, viz. Ophir at Soffala, and Tarshish in Andalusia. The learned Bochart has likewise found these places in the Indies, notwithstanding the opposition which the Abbé Pluche made against him. I am strongly led to believe, with Antoine du Pinet, the translator of Pliny, that Tarshish was Guzurate, named by Pliny himself Gedrosi Populi. That author always translated this ancient name into that of Tarshish and Guzurate.

The first voyages to the Indies were made from that side, and it is probable from this, that the Hebrews called the sea which bordered on it, the Sea of Tarshish, to distinguish it from the Red Sea, which was the nearest to their country among those to the eastward of them.

In fine, in respect of Ophir, it appears, that that place must be Sumatra, because this isle has always been the richest in gold; or else the Peninsula of Malacca, believed to be the Golden Chersonese of the ancients, and where were found the odoriferous woods, and other aromatics, which the more remote nations have always brought there, and even to Achin, the capital of Sumatra.

To finish this subject, I shall remark, that the author of the Spectacle de la Nature has attempted to demonstrate, that the knowledge of the north star rendered navigation anciently more bold and fortunate; that the Phœcicians were those that applied themselves to it most; that they taught it with success to the Hebrews; and that they served for guides to the fleets of Solomon; and that, in fine, by their indefatigable activity, and by their continual attention to the information of the polar star, they penetrated every where: by which this learned man gives us to understand, that these same Phœcicians made the Hebrews make the tour of Africa by the assistance of that star; but how could it serve for this long voyage, when it is hardly seen only at five degrees of northern latitude, that is to say, one hundred leagues on this side the line?
FROM ITS ORIGIN.

This author, to shew that the Phœnicians with the Hebrews might make this tour coastways, relates an example taken from Herodotus, viz. that Necao, king of Egypt, sent some pilots on the Red Sea, and ordered them to make the tour of Africa, which they did, and, returning by the Straits of Gibraltar, they arrived in Egypt the third year: but when will another fleet, supposing this story true, be able to do the same? And, seeing that these pilots were near three years in making this tour, the fleet of Solomon would not have failed being almost six, in making the same voyage twice, going and coming without counting its stay in Spain; besides, a fleet never sails, by a third, so quick, as a ship or two, can separately.

As these pilots with their people did not incumber themselves, it is said, with many provisions to make this prodigious tour, he takes care to relate the passage of Herodotus, which says, "that these people advanced into the Southern Sea, and that as they were not ignorant, that the summer rains destroyed, in the most remote part of Africa, that which was sown in the spring, when they found themselves in Autumn, they landed, sowed, and waited the crop, without ever leaving the coasts of Lybia, that is to say, of Africa, getting in their harvest, and reembarking."

This favours strongly of a fable, to any one acquainted with the country and soil of Africa; besides, Herodotus supposes a thing of which he was ignorant, viz. that our autumn makes the spring in the meridional parts of Africa, their seasons being opposite to ours. There might be many things offered to demonstrate the impossibility of this practice among travellers of this order.

When a writer is ignorant of geographical particulars, and the nature of a remote country, he cannot avoid, at least, falling into false suppositions, when he speaks minutely of them. This is what persons who know these places, by having been there, generally remark very well and justly.
THE MERCHANT’S DIRECTORY.

Of Merchants, whether Natives or Foreigners; their Character; some Directions for their prudent Conduct; and an Abstract of the Laws now in force concerning them.

The term merchant (in Latin mercator) or trader, from tradendo, as Minshew derives it, is in England, according to the general acceptation of the word, now confined to him who buys and sells any commodities in gross, or deals in exchange; that trafficks in the way of commerce, either by importation or exportation; or that carries on business by way of emption, vendition, barter, permutation, or exchange; and that makes a continued assiduity or frequent negociation in the mystery of merchandizing his sole business.

It is true, that formerly every one, who was a buyer or seller in the retail way, was called a merchant; and they continue to be deemed so still, both in France and Holland; but here shopkeepers, or those who attend fairs and markets, have lost that appellation.

In 2 Brownlow’s Rep. 99, Lord Coke said, “There are four sorts of merchants, viz. merchant adventurers, dormant, travelling, and residents; but for legal purposes there is no distinction.” And per Holt, Ch. J. 2 Salk, 445, “The term merchant includes all sorts of traders.”

The mercantile profession is very ancient, and generally esteemed noble and independent: in France by two arrets of Lewis XIV. the one in 1669, and the other of 1701, a nobleman is allowed to trade both by land and sea, without any disparagement to his nobility; and we have frequent instances of merchants being ennobled in that country, in regard of the utility their commerce, and the manufactures they have set up, has produced to the state. In Bretaigne, even a retail-trader does not derogate from his nobility, which only sleeps whilst he continues to exercise it, or, in other words, he only ceases to enjoy the privileges of his noblesse, whilst he carries on commerce, and reassumes it by giving over trade, without any letter or instrument of rehabilitation. In many other states, and more especially in the republicks of Venice, Holland, and Genoa, its value encreases, and I wish I could say the same regard was paid it in England, as it merits from a trading nation;* but its importance is not so.

* The encouragement of commerce has always been a favourite object of the British legislature. In the time of King Athelstan, we find a very remarkable law, enacting, that any merchant who has made three voyages upon his own account, beyond the British Channel or Narrow Seas, shall be entitled to the privilege of a thane. 11 Co. 876. Com’s. Dig. Trade, a. 1. Bac. Ab. Merchant.
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justly considered by us as it ought to be, more especially, as we enjoy every desirable advantage for carrying it on; and, could the gentlemen engaged in it be brought to this way of thinking, and be persuaded to do justice to a profession we all esteem honourable, by a stricter imitation of the above-mentioned states, and, not only to study, but appropriate their assiduity and diligence (more especially that practised by our industrious Flemish neighbours) from a sincere conviction of the excellency of the mercantile employ, we should soon outstrip every competitor, and render the British merchant as celebrated as the British valour, or the British power, which he, more than others, contributes to support. It is true, that trade stands so fair in the esteem of an Englishman, and promises so many occasions either for raising or improving a fortune, that many younger sons and brothers of peers are frequently bred up to, and embrace it; but then, they are too apt to quit it on succeeding to the dignities of their families, or to some publick employment, and withdraw those funds, which might otherwise be continued in it, both to their own and the nation's emolument; whereas, was a contrary practice observed, and could many (whose immense riches enable them) be persuaded to pursue their first beginnings, and destine part of their great effects to run into this channel, we should see commerce yet daily improve, and many more active professors shining at the head of it than we now do, a number of important enterprizes might be undertaken, and happily concluded, to the no small encrease both of publick and private interest: but it is an unhappiness (I mean in regard of traffick) that many gentlemen who have been enriched by it, or their inheritors, frequently withdraw from it, either to live in retirement, or, by an advancement to honours and posts, change the tranquil and pleasurable mercantile employ for the more troublesome, though splendid one, of grandeur and power; and notwithstanding such may, and undoubtedly often do, look down on their quondam business as derogatory and now beneath them, yet a prime minister of France, and several successive Grand Dukes of Tuscany (as mentioned in the preceding discourse), I should think might countenance any one's continuance in it, as they deemed it no disparagement to their high stations to be distinguished for their trade, as well as for their eminence and greatness. And, to shew how commerce is thought of by most foreigners, we may subjoin to the examples quoted of the regard paid to it, that many of the Italian princes are the principal merchants of their states, and think it no discredit to make their palaces serve as warehouses. Many of the kings of Asia, most of those on the coast of Africa and Guinea, traffick with the Europeans, either in person or by their ministers; so that, in reality, Spain is the only country I know of, where the mercantile employ is in disrepute; and there it is counted less ignoble and ungenerous to beg, than solicit a support, or improve a fortune by merchandizing. And, before I proceed to mention the laws in force concerning trade, I shall here describe their necessary qualifications, and give some few rules for their conduct, tending to secure them the success they aim at.

Previous to a man's engaging in a general trade, and becoming an universal dealer, he ought to treasure up such a fund of useful knowledge, as may enable him to carry it on with ease to himself, and without risking such losses and disgusts, as great ill-concerted undertakings will naturally expose him to; wherefore, to reduce this necessary science to a proper regulation, I shall recommend the following particulars to his acquirement; and, if his trade is more limited, his learning and knowledge may be so too.
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The General Merchant then should learn,

1. To write properly and correctly.
2. All the rules of arithmetick, which have any affinity or relation to commerce.
3. To keep books of double and single entry, as journals, ledger, &c.
4. To be expert in the order and forms of invoices, accounts of sales, policies of insurance, charterparties, bills of lading, and bills of exchange.
5. To know the agreement between the monies, weights, and measures of all parts.
6. If he deals in silk, woollen, linen, or hair manufactories, he ought to know the places where the different sorts of merchandizes are manufactured, in what manner they are made, what are the materials of which they are composed, and from whence they come, the preparations of these materials before working up, and to the merchandizes after their fabrication.
7. The lengths and breadths which silk, woollen, or hair stuffs, linens, cottons, fustians, &c. ought to have, according to the diverse statutes and regulations of the places where they are manufactured, with their different prices according to their times and seasons, and, if he can add to his knowledge the different dyes and ingredients which enter for the formation of the various colours, it will not be useless.
8. If he confines his trade to that of oils, wines, &c. he ought to inform himself particularly of the appearances of the succeeding crops for his government in disposing of what he has on hand, or to learn, as exactly as he can, what they have produced when got in, for his direction in making the necessary purchases and engagements.
9. What are the sorts of merchandizes which are found more in one country than another, them which are scarce, their different species and qualities, and the properest method for bringing them to a good market, either by land or sea.
10. Which are the merchandizes permitted or prohibited, as well entering as going out of the kingdom or estates where they are made.
11. The price of exchange, according to the course of different places, and what is the cause of its rise and fall.
12. The customs due on importation or exportation of merchandizes, according to the usage of the places, tariffs, and regulations, that he trades to.
13. The best manner of folding up, embalring, or tonning the merchandizes for their preservation.
14. The price and condition of freighting, and insureing ships and merchandizes.
15. The goodness and value of all necessaries for the construction and repairs of shipping, the different manners of their building, what the wood, the iron, the masts, the cordage, the anchors, cannons, sails, and all requisites may cost.
16. The wages commonly given to the captains, officers, and sailors, and the manner of engaging with them.
17. The foreign languages (or at least as many of them as he can attain to) which may be reduced to four principal ones, viz. 1. The Spanish, which is in usage in almost all the East, particularly on the coasts of Africk, from the Canaries to the Cape of Good Hope. 2. The Italian, understood on all the coasts of the Mediterranean, and in many parts of the Levant. 3. The Teutonick or German, which is understood in almost all the northern countries. And 4. French, which is now become almost universally current, fashionable, and useful.
18. The consular jurisdiction, with the laws, customs, and usages, of the different countries he does or may trade to; and generally all the ordinances and regulations which have any relation to commerce, either at home or abroad.
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19. In fine, although it is not precisely necessary that a merchant be very learned, it is, notwithstanding, very proper that he knows something of history, particularly that of his own country, geography, hydrography, or the science of navigation; and that he has knowledge of the discoveries of the countries where trade is established, in what manner it is settled, of the companies which are formed to support those establishments, of the colonies that they have sent out, of which he need not want memoirs, as almost all are inserted in this work, and which he may also learn from the relations of travellers; all these things are of a very great utility for the enterprizes of commerce, which he may have a design to undertake.

We may add to the foregoing requisites for forming a merchant, that he ought on all occasions to have a strict regard to truth, and avoid fraud and deceit as corroding cankers to his reputation and fortune; for, however cunningly the mask is wore, chance may, or time certainly will, discover the cheat, and render the wearer exposed to the contempt and insults of those he has imposed on; and, to what has been said, permit me to subjoin the advice, that he who undertakes a foreign trade should do it with great caution and circumspection, observing several circumstances tending to secure him success: as first, to make himself master of that branch of commerce he intends to engage in; and, if he does not transact this business personally, to be cautious in his choice of factors; above all, that they be noted for their capacity and integrity, otherwise the best laid scheme may be rendered abortive, and produce a considerable loss, instead of an expected advantage, through the treachery, neglect, or ignorance of the agent; for which reason a trader should not be drawn in to employ a factor, with whose character he is unacquainted, from any motive whatsoever, even from that most prevailing one, of serving for a less commission than what others commonly do, as I am sure no trade is worth carrying on that will not afford the allowance generally made to those the merchant thinks proper to substitute and employ. His first care, therefore, should be the choice of such a correspondent as he can depend on, whose integrity will naturally lead him assiduously to solicit and promote the interest of his principal, unbiased by any sinister views of his own. But as merchants, who engage in foreign trade, as well as those who confine themselves to one at home, transact a great part of the business themselves, I shall here add some valuable remarks for their government in purchases and sales, partly extracted from Mons. Savary's Parfait Négociant, and partly what my own experience has furnished me with, as they may be equally serviceable to an English and French reader, though Mr. Savary's share of them was principally intended for the latter.

Trade becomes more or less troublesome, according as it is more or less extensive; and it is for this reason that merchants ought to appropriate different maxims and considerations for the conduct and management of their affairs.

Those who traffick in the merchandizes of our own manufactories, or confine their trade to the consumption of one city only, run less risks, and carry on their business easier than those who dispose of their goods, not only in the place of their residence, but to dealers and retailers in other parts of the kingdom, or abroad; this shall be explained after treating of the manner which merchants ought to observe in the purchase of commodities, and the establishing fabricks themselves.

And for this it is to be remarked, that in places where any considerable manufactories are settled, there are generally associated merchants, who supply the fabricators with the necessary materials for their works, which they sell them, and in payment take their goods, which they afterwards dispatch in other places, or on the spot, to supply commissions given them.

Though there are some of the artificers so opulent, as to buy and procure the ingredients they want for the supply of their manufactories from the first hands; yet
there are others, who (being masters of less stock) sell their goods to the first purchasers that ask after them.

Now merchants must govern themselves in their dealings with these three sorts of men, according as the times and seasons shall dictate; for in those, when the merchandizes are scarce and in demand, they must buy of all as well as they can, and according to the advantages that may present; but, when commerce is dead, or little stirring, and abundance of goods lying on hand, they should then act with circumspection, and observe the following maxims in all their purchases.

1. When goods begin to rise in price (which commonly proceeds from these two causes, either that the value of the materials is considerably augmented on account of their scarcity, or that there are but few goods ready made, to supply a brisk demand); it is natural for those that are perfected to encrease in esteem, in proportion to the want and paucity of them; but it is prudence in him that would buy under such circumstances, to examine the causes that produce this augmentation; and, if the goods are of silk, enquire whether the crop of that commodity has been good or bad, though, if the season has been moist and rainy at the place of its growth, he may be assured of the latter, and that the scarcity of the merchandize proceeds from this of the principal material.

It is equally the same in the manufactories of cloth, and other woollens, when wools are scarce and risen in price; and the same with linens under the shortness of the crop of hemp and flax, and indeed of all sorts of materials, which compose the manufactures of the different sorts of merchandizes, current in trade; because the scarceness of these (as has been said) augments their price, and consequently that of the commodities made of them.

There is no doubt, that when the augmented price of merchandizes proceeds from the scarcity of their materials, that it not only remains so long, but that it daily rises by little and little, and in this case affords the merchant no room for deliberation, who ought immediately to buy and make his bargain, to receive yet afterwards (in a certain time) the quantity he judges he may want to sell.

If the rise of goods comes from there being few in the fabrics, and a great demand for them, and not through a want of the materials which compose them, the buyer ought to act with sagacity and prudence in their purchase; because this probably is a fire that will soon pass, and this augmentation last no longer than the warmth that occasioned it, for two reasons; the first, because it may be chance effect it, proceeding from some merchants of different places accidentally giving their commissions at the same time; or that they happen to meet at their manufactories, which makes the fabricators stand firm to their prices; though, when these merchants are supplied, things return to the same state they were in before, and such an occurrence makes them sometimes even diminish greatly in their value, because the workmen, seeing themselves sought after, engage deeply in their fabrics, and the abundance then occasions a cheapness in the same manner as a scarcity before produced the reverse; and these considerations are very important towards successful purchases.

2. The second maxim necessary to be observed in the buying of merchandizes, is to be extremely circumspect in his words, that his desire of having the goods he is treating for, may not appear; and he should not slight or undervalue them, in order to be thought not to want them, as this cunning only serves to embarrass the mind of the manufacturer, and make him more firm and tenacious under the uncertainty, whether this is a feint or not, and is a means of his not so soon resolving to part with his goods at the price offered, for fear of being surprized: on the contrary, he ought to act with sincerity and frankness, accompanied, however, with prudence, workmen liking better to deal with such sort of chapmen than with those who use tricks and subtlety.
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3. The third is to consider whether the merchandize has diminished in price from a higher degree to which it was before mounted, or whether it augmented in price from a lower one, at which it was, by reason of a dullness in trade, or by the too great abundance that there has been in the fabricks: this is the greatest nicety in the buyers.

For if it is at the height of its dearness, and it comes to fall, then you ought not to buy, because it is certain, that if the cause which made it mount to so high a price ceases, that it will daily diminish, till it returns to the point of its just value.

On the contrary, if the goods are at their lowest value, and the price begins to rise, it is then a time to buy, because it is certain that it will daily augment, so long as the cause which gave room for its augmentation lasts.

And though what has been said may appear a paradox, it is however a truth founded on experience, and by which the most skilful and ingenious merchants have greatly lost or gained, according as they have timely taken their measures or neglected them.

4. The fourth maxim is in the purchase of goods, is, both to know and reflect where they will meet the best sales, and then suit their quality to the taste of the inhabitants.

5. The fifth maxim is to buy of the poorest workmen, because they, not having the means to lay up their manufactures, must sell cheaper than the more powerful ones will, who have substance, and can keep their goods till a fit opportunity offers for a more advantageous sale.

6. The sixth maxim is, not to be drawn in to engage beyond your capital by the tempting bait of a cheap purchase, and from a wrong calculation of your ability to pay at the time agreed on; as a failure of punctuality herein will occasion a loss of credit among the fabricators not to be recovered.

7. The seventh maxim is not to employ, as factors at the fabrick, any who act as merchants, and sell the materials to the manufacturers; for they always buy the goods dearer than others who have nothing to sell, because they give a part in payment, and very often to recover from their debtors, they take of them merchandizes in payment, which are neither so good nor handsome as those bought with ready money.

8. The eighth and last maxim which I shall mention on this subject, is, that if the buyer has a partner, one of them should be on the spot, for two reasons; first, because, being interested in the trade, he is more diligent, and takes better care of what he does, than a factor, who often regards nothing more than his own interest, and who, having commissions from several merchants, favours those he pleases: the second is, because affairs are transacted more secretly, and, many times, opportunities offer for good purchases, which one commissioned doth not dare to engage in, though on such adventures large profits are frequently to be made.

These maxims also hold good in the purchase of all other commodities, and, if carefully attended to, will lead the merchant in the steps he ought to tread, to secure success; and as these have been directed to guide him in laying out his money to the best advantage, I shall now borrow the assistance of the same author to furnish him with proper directions for his management in conducting his sales.

1. The merchant should avoid many words and circumlocutions in his dealings; as this looks more like a retailer than one who is not so; and, supposing he is treating with one of this last distinction, he may be assured, that the buyer understands the value of the goods, so that the merchant only occasions himself unnecessary trouble to ask much out of the way; therefore, what is principally to be observed in sales on trust is, that his debtor be one noted for his punctuality and honesty, and also dispaches large quantities of goods, as these motives should induce a preference to be given one so qualified, (though with less profit) rather than to another with an inferior credit and a shorter trade.
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2. If the merchandizes dealt in are such as are dependant, in some sort, for their value on the mode, seasons ought to be consulted for advantageous sales, so that, if those proper for the winter are asked for at the latter end of it, it is not reasonable to expect so much then as in the beginning, neither is it consistent with the owner's interest to keep them, as he may have no other offers till the returning year, and he then risks their continuing in fashion, so that it will be prudent to embrace any tolerable offer, under these circumstances, that is made him.

3. He ought not to trust too much to any one person; for, in case of a failure, it may straiten him, and, in the end, bring him to the same misfortune; therefore prudence will direct him to disperse his effects in many hands, that, if one or two miscarry, he may be less sensible of his loss, and better able to support it: this is a very necessary maxim to be observed by those who have large dealings, as the sufferings by a contrary practice are innumerable, and there is no one article of misconduct that has brought so many to ruin as this.

4. A merchant should not inconsiderately engage with young men, who have little more to recommend them to credit than being the children of rich parents, as a trust on this account is the product of a very false maxim; because, if they do otherwise than well, their fathers would hardly pay their debts, as the creditor may have flattered himself, neither is it reasonable to expect it, no more than to think they should incommode themselves, or hurt their other children, purely to support a son, which gaming, debauchery, or at best imprudence, has reduced.

5. If it happens, that debtors omit paying what they owe at the time agreed on, the creditors should not oppress them with an extravagant interest; for, though necessity obliges them seemingly to submit, it is a sure canker to their fortunes, which too often at last involves both the trusted and him that trusts, in ruin. Besides, if the latter escape a failure he has drawn the other into, I should think he could not avoid the lashes of conscience, when reflected on his occasioning the debtor's misfortune, by the extortion he had imposed.

6. The sixth maxim is never to lend to any sort of persons whatsoever on an unjustifiable security, nor to take an unwarrantable interest; for this is a detestable act, and exposes the usurer to the penalty of the law, and renders him abominable both in the sight of God and man.

It is, however, both reasonable and prudent for a merchant to take pledges or securities from his debtors, and to be cautious of what they consist; for, if they are in merchandizes, the colours, fashions, &c. of them may change, or the quality may suffer by keeping, so that whilst he imagines he has the value of what is owing him in hand, he may be mistaken by the half: and in these cases of lending or selling on trust, and taking pawns instead of notes for security, the seller or lender should add to the above precaution, that of making the terms of the deposit very clear and apparent, in case of a failure in the debtor, and a consequential claim of the goods by the other creditors, as a joint property, otherwise he may be accused of endeavouring to abscond the bankrupt's effects; and if he has not taken the prudent steps he ought in his dealings, may be obliged to give up what he has received as (and esteemed) a security, besides suffering in his reputation, for being unable to justify what he asserted and pretended; it would therefore be very proper to have the affair transacted before witnesses, or at least to have all the goods that are pledged particularly expressed, in the note or obligation given for the trust or loan, by which means the afore-mentioned inconveniences would be avoided.

7. A merchant should always endeavour to make sales of such goods as are decaying, damaged, or growing unfashionable, as soon as he conveniently can; and if money is not obtainable for them, he should truck them, if he can do it, on a tolerable footing; regarding, however, in this case, not to make the exchange, as one may say, with his
eyes shut; but, first, to observe, that he is well versed in the quality, and has a perfect knowledge of the goods he takes in return, otherwise he may verify the proverb of being "Out of the frying-pan into the fire." As deceits are very common in these sorts of negociations; secondly, he ought to know where, and on what terms, he can get rid of his new effects, otherwise he may risk losing more by them than his old ones. And, thirdly, he should always avoid giving any share of ready money in the bargain, if he possibly can, as he that parts with it is sure to have less advantage in these uncertain dealings, than he that receives it.

3. And lastly, a merchant should never sell any of his goods in small parcels, except drove thereto by mere necessity, as this is derogating from his character, and will certainly occasion him a loss of his retail customers.

Merchants here were always particularly regarded by the common law, though the municipal laws of England, or indeed of any one realm, are not sufficient for the ordering and determining the affairs of traffick and matters relating to commerce; merchandizing being so universal and extensive, that it is impossible; therefore, the law-merchant (so called from its universal concern) all nations take special knowledge of; and the common and statute laws of this kingdom leave the causes of merchants in many cases to their own peculiar laws.

The custom or law of merchants is part of the common law of this kingdom, of which the judges ought to take notice; and if any doubt arise to them about the custom, they may send to the merchants to know their custom, as they may send for the civilians to know their law; and it is said, that the law of merchants cannot be proved by witnesses because it is the law of the land. Winch. 24. Hardress, 486. 8 Burr. 1663.

In the reign of King Edward IV. a merchant stranger made suit before the king's 13 Edw. IV privy council, for several bales of silk feloniously taken from him, wherein it was moved, that this matter should be determined at common law, but it was answered by the Lord Chancellor, that as this suit was brought by a merchant, he was not bound to sue according to the law of the land.

In former times it was conceived that those laws that were prohibitory against foreign goods did not bind a merchant stranger; but it has been a long time since ruled otherwise, for in the leagues that are now established between nation and nation, 19 H. VII the laws of either kingdom are excepted, so that as the English in France, or any other foreign country in amity, are subject to the laws of that country where they reside, so must the people of France, or any other kingdom, be subject to the laws of England, when resident there.

English merchants are not restrained to depart the kingdom without licence, as all Mich. 18 other subjects are; they may depart, and live out of the realm, and the king's 13 Edw. obedience, and the same is no contempt, they being excepted out of the statute Dyer 506. 5 R. II. c. 2. and by the common law they might pass the seas without licence, though not to merchandize.

By Magna Charta it is enacted, that all merchant strangers in amity, (not publicly prohibited) shall have safe conduct to come into, depart out of, and remain in England, and to travel by water or land, in and through the same to buy and sell, &c.

And if any disturbance or abuse be offered them, or any other merchant in a 9 Edw. corporation, and the head officer there do not provide a remedy, the franchise shall be seized, and the disturber shall answer double damages, and suffer one year's imprisonment, &c.
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All merchants (except enemies) may safely come into England, with their goods and merchandize.

Merchant strangers may come into this realm, and depart at their pleasure, and they are to be friendly entertained: and merchants alien shall be used in this kingdom as denizens are in others by the statute.

No merchant shall be impleaded for another’s debt, whereof he is not debtor, &c. and if a difference arises between the king and any foreign state, alien merchants shall have forty days notice, or longer time to sell their effects, and leave the kingdom.

N.B. The time for merchants to withdraw their effects has been by all late treaties enlarged to six months, during which term they are to remain free and unmolested as well in person as goods.

All merchants may buy merchandize of the staple, and any merchant may deal in more merchandizes than one; he may buy, sell, and transport all kinds of merchandize, excepting by later acts, wool, &c.

Merchant strangers are to find sureties, that they shall not carry out the merchandize which they bring into England.

And when they bring any merchandize into the realm, and sell the same for money, they are to bestow it upon other merchandizes of England, without exporting any gold or silver in coin, plate, &c. on pain of forfeiture.

This law is altered, permitting gold or silver bullion, or any foreign coin, or jewels to be exported.

The same extends as well to denizens as strangers, and in strictness of law, they ought not to receive any gold in payment. But now payment may be made in any of the current coins of this kingdom.

And the reasons of these laws were to keep the gold and silver within the realm, and at the same time increase our manufactures by encouraging their exportation abroad.

Foreign merchants are to sell their merchandize at the port where they land in gross, and not by retail.

But goods imported in British built ships, being the property of foreigners, shall pay alien’s duty.

And merchandize is to be laden, and unladen, at certain ports, and in the day-time, under penalties.

It shall be lawful for merchants to transport iron, armour, pistols, muskets, saddles, swords, bridles, &c.

But see Van Omeron, v. Doaick. 2 Camp. 44.

Merchants, &c. corrupting or adulterating wine, or selling the same adulterated, are liable to penalties.

On importation of tobacco, merchants have an allowance of eight per cent. &c.

All merchant strangers, that shall be made denizens, either by the king’s letters patent, or by act of parliament, must pay for their merchandize, like custom and subsidy, as they ought, or should pay before they were made denizens.

The wares, merchandizes, debts, or duties that merchants have as joint-traders or partners, shall not go to the survivor, but shall go to the executor of him that is deceased; and the executor may join in an action with the surviving merchant.

This is not now law, for though the executor is beneficially interested, he cannot join in an action. Lord Raym. 340. Com. Dig. Merchants’ D.

In copartnerships between merchants it is not necessary to provide against survivorship; alter, if the trade is to be carried on for the benefit of widow or children.

* Sed quere, for it hath been since held, that the executor and survivor cannot join, for the remedy survives, though the duty doth not; and therefore on recovery he must be accountable to the executor for that. Martin v. Crump. Salk. 414.
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If two joint merchants occupy their stock, goods, and merchandize in common, to their common profit, one of them naming himself a merchant, shall have an account against the other, naming him a merchant, and shall charge him as receptor* denariorum, &c. that is, as receiver of the money of him B, from whatever cause and contract it shall redound to the common profit of them A and B, as may be made appear by Lex Mercatoria, 10 H. VII. 16. a.

But one partner cannot support an action of assumpsit against the other, unless a balance has been struck. 2 Term. Rep. 478. 4 East. 144.

So where there are two joint merchants, and one of them dies, the other shall have account against their factor, without the joining of the executor of the deceased.

In an action upon the case against A, the plaintiff declares upon the custom between merchants, &c. that if two merchants are found in arrear upon an account, and they promise to pay it at certain days, that any or either of them may be charged for the whole singly; and then shewed the account, that A and B were found in arrears so much, &c. and promised to pay it at certain days, but did not, and the plaintiff brought his action against A only, and resolved that it lay.


Debt upon a bill by a merchant to pay foreign coin, amounting to so much to be paid upon the feast of the purification called Candlemas-day. Upon non est factum pleaded, verdict for the plaintiff. Moved in arrest of judgment, that the declaration was not good, because payment at Candlemas is not known in our law; yet the judgement was affirmed, for that amongst merchants such payment is known to be on the 20th of February, and the judges ought to take notice of it, being used among merchants, for the maintenance of traffic.

No ship shall be obliged to come to any port of England, nor to abide, against the will of the master, or of the merchants, whose the goods be; and if such ships come of their good will, or be driven by misfortune to any port in England, and the masters or merchants will sell part of their merchandizes, it shall be lawful for every man to buy such merchandizes, albeit the same be not put to land to sell; so that no merchant or other go to meet such ships to forestall the merchandizes; so that the masters and merchants, after they have sold that which pleaseth them, and paid the custom, may freely depart, and none shall disturb any ship to come to any port of England, but to the port where the masters and merchants will of their free will arrive, nor shall meddle with the sale of the merchandizes, nor disturb the merchants; and if any set disturbance, he shall incur a grievous forfeiture to the king. Confirmed by 20 Ric. II. c. 4.

Indebitatus assumpsit for 1000l. for monies had and received, and also an infinmul computasset, upon account, the 1000l. became due; the defendant pleaded the statute of limitations; the plaintiff replied, that he is a merchant, and the proviso, and exception for merchants accounts. By Twisden, Rainsford, and Moreton, absent Kelyng, stated accounts between merchants as this case is, are not within the proviso, but only accounts current. Webber cont. Tyrell. 1 Levizn. 287. 2 Keeble 692. 2 Sand. 124. where judgement for defendant; yet the case of Martin and Delboe, 1 Levizn. 298, to the contrary upon an account stated between merchants; yet the same case, 1 Mod. 70. judgement for defendant, 2 Keeble 674. 1 Vent. 89. and 1 Sid. 465. See likewise the case of Farrington and Lee, 1 Mod. 268. and 2 Mod. 311.

All kinds of merchandizes may be exported and imported from and to Ireland, by aliens, as well as denizens, but wool and woollen manufactures, &c. are prohibited to be exported from thence into foreign parts, by a modern statute.

Cattle, butter, cheese, &c. are not to be imported from Ireland into this kingdom, on pain of forfeiture to the poor.

The inhabitants of the islands of Jersey and Guernsey may import into Great-Britain goods of their own growth and manufacture custom free.

No wine, brandy, tobacco, East-India goods, &c. shall be brought from the Isle of Man into Great-Britain or Ireland, on pain of forfeiture, &c.

A woman that useth a trade in London without her husband, is chargeable without him, as a femme sole merchant, she shall plead as sole, and if condemned to be put in prison till she pay the debt, also the bail for her are liable if she absent herself, and the husband shall not be charged.

By the custom of London, a femme sole merchant is where the same trades by herself in one trade, with which her husband does not intermeddle, and buys and sells in that trade; then the femme shall be sued, and the husband named only for conformity; and if judgement be given against them, execution shall be against the femme alone.

Langham v. Bewett. Cro. Car. 68. This is one of those customs called executory customs, the meaning of which expression is, customs united to the courts of the City of London. They are pleadable in London and not elsewhere, except so far as they may be made use of in the superior courts by way of bar. Per Ld. Eldon, Ch. J. in Beard v. Webb. 2 Bos. and Pul. 98.

It shall not be lawful without licence from the king to import by way of merchandizes, gunpowder, arms, ammunition, or utensils of war, on pain of forfeit the same; and the importers, or they in whose custody such gunpowder, &c. shall be found, shall forfeit treble the value thereof.

All persons which shall transport beer beyond the seas for merchandize shall, if a stranger, before transporting, if a subject born, then within four months after, bring into this realm, for every six tons of beer two hundred of clapboards, fit for to make use of, in length three feet and two inches, or else the same cask again, or so much other good cask; or if the transporting be into Ireland, then to bring so much shafolds board, as the clapboard amounteth to.

No stranger shall transport beyond the seas any pilchards or other fish in casks, unless the same person have brought into this realm, for every six tons of fish, according to the rate foresaid of clapboard or cask, upon pain of forfeiture of the beer, pilchards, and cask.

It shall not be lawful to transport wine casks out of this realm, with beer or beer-eager, nor any wine casks shaken, except for the victualling of any ship, or of her Majesty's garrisons and forces, upon forfeiture of forty shillings for every ton of cask.

This act shall not extend to the transportation of herrings in casks.


The justices of Ireland shall not arrest ships or goods, but merchants may carry their merchandizes forth of Ireland to England or Wales; and if any justice do the contrary, he shall satisfy double damages, and be grievously punished by the king.

Merchants may come into Ireland with their merchandizes, and from thence freely return with their merchandizes and victuals, saving to the king his ancient customs and other duties.

If any goods of any merchant born denizen shall be taken by enemies or pirates upon the sea, or perish in any ship that shall be taken or perished, whereof the duties shall be paid or agreed for, and that duly proved before the treasury or Chief Baron of the Exchequer, by the examination of the merchants, or by two witnesses, or other reasonable proof; the same merchants may newly ship in the same port where the goods were customed, so much other goods as the goods lost shall amount unto in
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...custom, without paying any thing, so as the proof be recorded and allowed in the exchequer, and certified to the collectors of the port; and every merchant denizen, who shall ship goods in any carrack or galley, shall pay all customs and subsidies in any alien born.

Provided that it shall be lawful to all subjects to transport in ships, and other vessels Sect. 5. of subjects, all herrings and other sea fish, to be taken by subjects out of any port, to any place out of his Majesty's dominions without paying custom.

It shall be lawful for any person to transport by way of merchandize any of these Sect. 10. goods following, viz. iron, armour, bandcleeers, bridle-bits, halbert-heads and sharps, holsters, muskets, carbines, fowling-pieces, pistols, pikc-heads, sword and rapier-blades, saddles, snaffles, stirrups, calf-skins dressed or undressed, geldings, oxen, sheep-skins dressed without the wool, and all manufactures made of leather, paying the rates appointed by this act.

It shall be lawful for any person to transport by way of merchandize gunpowder, Sect. 11. when the same doth not exceed the price of 51. per barrel: but this was prohibited by proclamation during the late war with France, begun in 1756.

To prevent the destruction of our home manufactures, by transporting and seducing our artists to settle abroad; the Stat. 5 Geo. I. c. 27. provides, that such as so entice or seduce them, shall be fined 100l. and be imprisoned three months, and for the second offence shall be fined at discretion and be imprisoned a year: and the artificers so going into foreign countries, and not returning within six months after warning given them by the British Ambassador where they reside, shall be deemed aliens, and forfeit all their lands and goods, and shall be incapable of any legacy or gift. By 23 Geo. II. c. 13. the seducer incurs for the first offence, a penalty of 500l. for each artificer contracted with to be sent abroad, and imprisonment for twelve months; for the second offence 1000l. and two years imprisonment: And by the same stat. connected with 14 Geo. III. c. 71. if any person exports any tools or utensils used in the silk, linen, cotton, or woollen manufactures, excepting wool-cards to North America, he forfeits the same and 200l.; and the captain of the ship (having knowledge thereof) 100l.; and if any captain of a king's ship, or officer of the customs, knowingly suffers such exportations, he forfeits 100l. and his employment, and is for ever made incapable of bearing any public office; and every person collecting such tools or utensils, in order to export the same, shall, on conviction at the assizes, forfeit such tools and also 200l. By Stat. 21 Geo. III. c. 3. if any person shall put on board any ship, not bound to any place in Great Britain or Ireland, or shall have in his custody with intent to export any engine, tool, or implement, used in the woollen, cotton, linen, or silk manufactures, he shall forfeit the same, and also the sum of 200l. and shall be imprisoned twelve months, and till the forfeiture be paid. And every captain and custom-house officer who shall knowingly receive such an article, or take any entry of it, shall forfeit 200l. By 22 Geo. III. c. 60. if any person shall entice or encourage any artificer employed in printing callicoes, cottons, muslins, or linens, to leave the kingdom, he shall forfeit 500l. and be imprisoned one year. And persons who export, or attempt to export, any engines or implements used in that manufacture, shall forfeit 500l. Captains of ships and custom-house officers conniving at these offences forfeit 100l. and become incapable of holding any office under the crown. By 25 Geo. III. c. 67, any person who entices or encourages any artificer in the iron and steel manufactures to leave the kingdom, shall forfeit 500l. and be imprisoned a year. And persons who attempt to export any instrument specified by name in 26 Geo. III. c. 89. shall forfeit 200l. and be imprisoned one year. And captains and custom-house officers conniving at the offence,
are subject to the same penalty, and become incapable of exercising any public employment.

And having now quoted the laws in force immediately concerning merchants, who cannot always act without their substitutes and dependants, the transition is natural from the former to the latter, and I shall therefore proceed to treat of them in order.

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Of Factors, Supercargoes, Brokers, and Agents.

ALL these denominations import and signify the same thing, in regard of their function, though different in the method and place of discharging it, and is always understood to be one who acts for another, and who buys, sells, and negotiates, in conformity with the orders of his principal, under the various circumstances of his principal's limitations and directions.

The former of these are generally established in some foreign parts, to transact the business of purchasing, selling, transporting, and exchanging, that shall be committed to his care; and the latter more properly for the receiving and paying of monies; whilst the supercargo's employ is confined to the sales of goods under his direction on some voyage, and it may be the purchase of others, in conformity with the orders his employer may give him; they ought all to be masters of the trade and business they engage in, as many advantages, or the reverse, depend on their conduct and proceedings.

A Factor is but a servant to the merchant, and receives from him in lieu of wages; a commission of factorage, according to the usage of the place where he resides, or the business he transacts, this being various in different countries, and on the purchases and sales of different commodities: he ought to keep strictly to the tenor of his orders, as a deviation from them, even in the most minute particular, exposes him to make ample satisfaction for any loss that may accrue from his non-observance of them; and it is very reasonable it should be so, as the distance of his situation renders him unable to judge of his principal's views and intentions; therefore he should submit blindly to them, though always exerting his best endeavours for the merchant's interest, as his gain is certain, whilst his employer's is precarious.

A factor is usually paid for his trouble by a commission of so much per cent. on the goods sold, but sometimes he acts under a del credere commission, in which case, for an additional premium beyond the usual commission he undertakes for the credit of the persons to whom he sells the goods consigned to him by his principal; and this undertaking, though verbal, is not affected by the statute against frauds, 29 C. II. c. 3. s. 4. which in general invalidates any verbal undertaking to be responsible for the debt of a third person, and the factor is usually sued as if he himself were the purchaser of the goods. Del credere is an Italian mercantile phrase, which has the same signification as the Scotch word warrandice, or English word guarantee. A factor who has general orders to dispose of goods for his principal to the best

* As to these agents in general, see Bac. Abr. Title. Merchant and Merchandize B. Selwyn's Nisi Pri. Tit. Factor's—Com. Dig. Tit. Merchant.
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advantage, is bound to exercise that degree of diligence which a prudent man exercises in his own affairs; and consequently the factor is authorized to dispose of the goods on the best terms which can be obtained at the time; and if it shall appear that he has done so, and that he has sold the goods to persons in reputed good circumstances at the time, and to whom at that time he would have given credit in his own affairs, he will not be liable to his principal, although some of these should fail, and for such trouble the factor is generally paid by a commission of so much per cent. upon the goods sold. According to this practice, the principal runs all the risk and the factor is sure of his commission, whether the event be favourable or not. Many merchants do not chuse to run this risk, and to trust so implicitly to the prudence and discretion of their factor; and therefore the agreement called del credere was invented, by which the factor for an additional premium beyond the usual commission, when he sells his goods on credit, becomes bound to warrant the solvency of the purchaser. Mackenzie v. Scott, 6 Bro. P. C. 287. And Lord Mansfield said in Grove v. Dubois, 1 Term. Rep. 115. That a commission del credere, was an absolute engagement to the principal from the broker, and made him liable in the first instance. Hence, where a factor under a commission del credere, sold goods and took accepted bills from the purchasers, which he indorsed to a banker at the place of sale, and having received the banker's bill (payable to the factors own order) on a house in London, indorsed and transmitted it to his principal, who got it accepted; it was held, that on the failure of the acceptor and drawer of this bill, the factor was answerable for the amount. Mackenzie v. Scott, 6 Bro. P. C. 280.

A sale by a factor creates a contract between the owner and buyer, although unknown to each other, and this rule holds even in cases where the factor acts upon a del credere commission. Scrimshire v. Alderton. Strange 1182, and exparte Murray Co. B. L. 379. 5. Ed. Hence if a factor sells goods, and the owner gives notice to the buyer to pay the price to him and not to the factor, the buyer will not be justified in afterwards paying the factor, and the owner will be entitled to recover the price in an action against the buyer, unless the factor has a lien on such price. Drinkwater v. Goodwin, Cowp. 251. If goods are bought by a person as a broker, though without disclosing the name of the purchaser, until he has become insolvent, the purchaser thus knowing that the party acted as an agent, cannot set off the price of the goods against a debt due to him from the broker, but is still liable to the vendor. Waring v. Favenc, 1 Camp. 85. But where a factor, acting under a del credere commission, sells goods as his own, and the buyer does not know of any principal, the buyer may, in an action brought against him by the principal, set off a debt due to him from the factor. George v. Claggett, 7 Term. Rep. 359. And the circumstance of persons selling goods being described in the catalogue of sale as sworn brokers, is not sufficient notice to the purchaser that they are only agents in that transaction, to prevent him from dealing with them as principals. Blackburn v. Scholes, 2 Camp. 343. Moore v. Clementson, 2 Camp. 24. And where goods are sold by a broker without disclosing his principal, the purchaser is justified in paying him in the same, or in a different manner from that stipulated for by the terms of the contract, though it would be otherwise where the principal is disclosed at the time of the sale. (Coates v. Lewis, 1 Camp. 444. Blackburn v. Scholes, 2 Camp. 343. and Favenc v. Bennett. 11 East. 56. which appear to over-rule the case of Kymer v. Sawercrope, 1 Camp. 109. and 180. c.) Where however a factor sells goods as a principal, and before they are all delivered, or any part of them paid for, the purchaser is informed that they belong to a third person, in an action by the latter for the price of them, the purchaser cannot set off a debt due to him from the factor. Moore v. Clementson, 2 Camp. 22.

Where a broker is authorized by one man to sell goods, and to buy such goods for
another, an entry in his books of a sale of these goods from the one to the other, signed by him, is in general a binding contract between the parties, the bought and sold note, which is a copy of this entry, is not sent to the parties for their approbation, but to inform them of the terms of the contract. Hayman v. Neale, 2 Camp. 337. The authority, however, of the broker may be countermanded at any time before a memorandum of the contract of sale is written and signed by him, pursuant to the statute against frauds, although he has previously entered into a verbal agreement to sell the goods. Farmer v. Robinson, 2 Camp. 339.

If goods in the City of London are sold by a broker, to be paid by a bill of exchange, the vendor has a right, within a reasonable time, if he is not satisfied with the sufficiency of the purchaser, to annul the contract. The vendor, however, must intimate his dissent as soon as he has had an opportunity to enquire into the solvency of the purchaser, and five days was considered too long a period for this purpose. Hodgson v. Davis, 2 Camp. 550.

When unlimited orders are given to factors, and they are left to sell or buy on the best conditions they can, whatever detriment occurs to their constituents, they have their excuse in their hands, as it is to be presumed they acted for the best, and were governed by the dictates of prudence.

A factor is barely a trustee for his principal; therefore, if this latter, having goods in the other’s hands, owes him money by simple contract, and then dies indebted by specialty, more than his assets are worth, the factor cannot retain the goods.

But see 6 East. 28. Ambl. 252. 3 Bos. and Pal. 488. 490.

If a factor receives only a bare commission to sell and dispose, it will not enable him to trust; for, in the due execution of his authority, he ought on a sale to receive quid pro quo and, on the delivery of the one, to receive the other; for, otherwise, by that means, as they may trust six months, they may trust sixteen years, not by virtue of any clause in their orders that leaves them at liberty to act as they think best, or of doing as if the affair was their own, may they trust an unreasonable time, as ten or twenty years, instead of one, two, or three months, supposing this the accustomary time of credit for the like commodities: and so it was adjudged, where one had remitted jewels to his factor in Barbary, who disposed of the same to Mulleshack the Emperor, for a sum certain, to be paid at a time, which being elapsed, the factor not obtaining it, was forced to make the same good to his principal.

It is now held, that a factor may sell on credit, unless the usage of the trade be to the contrary. Willes Rep. 406. 3 Bos. and Pal. 489. 1 Camp. 259. Selw. Ni. Pri. 2 Ed. 829.

A factor, as such, has not any authority to pledge, but only to sell the goods of his principal. Paterson v. Tash, Str. 1178. pr. Lee, Ch. J. Hence, if the factor pledge the goods of his principal, the latter may recover the value of them in an action of trover against the pawnor, on tendering to the factor what is due to him, without making any tender to the pawnee. Daubigney v. Duval, 5 Term. Rep. 604. And where a factor pledges the goods of his principal as his own, the pawnee cannot claim to retain against the principal for the amount of the factor’s general lien at the time of the pledge. McCombie v. Davis, 7 East. 5.

The same rule holds with respect to a bill of lading, which has been indorsed to a factor by his principal, for the bill of lading, which is the symbol of the delivery of possession, cannot give a factor a greater authority, than the actual possession of the goods themselves. Hence, as a factor cannot pledge the goods of his principal by delivery of the goods, so neither can he do it by an indorsement and delivery of the bill of lading, for though the indorsement of a bill of lading gives the indorsor an irrevocable right to receive the goods, yet it will not have that operation, where it is
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intended as an assignment of the property in the goods, yet it will not have that operation, where it is intended as a deposit only, by a person not authorized to make such deposit. Newsom v. Thornton, 6 East. 17.

The maxim, that the principal is civilly responsible for the acts of his agent, universally prevails both in courts of law and equity. 4 Term. Rep. 66. pr. Lord Kenyon, Ch. J. and upon this principle it was held by Holt, Ch. J. that a merchant was answerable for the deceit of his factor who had sold some silk to the plaintiff as silk of a superior quality, knowing it to be of an inferior quality. Hearn v. Nichols, 1 Salk. 289.

Again, one and the same factor may, and generally does, act for several merchants, who must run the joint risk of his actions, though they are mere strangers to one another; as if five merchants shall remit to one factor five distinct bales of goods, and the factor makes a joint sale of them to one man, who is to pay one moiety down, and the other at six months end; if the buyer breaks before the second payment, each man must bear a proportional share of the loss, and be contented to accept of their dividend of the money advanced.

But if such a factor draws a bill of exchange upon all those five merchants, and one Salk. 196. of them accepts the same, the others shall not be obliged to make good the payment. Tamen queré de hoc.

There is now no question upon this point, it is clear they would not be liable. See Williams v. Thomas. 6 Esp. Rp. 18. Bull. Ni. Pri. 279. Marius, 2 Ed. 16. Chitty on bills, 4 Ed. 47. 50.

And as the authority and trust reposed in factors is very great, so ought they to be provident in their actions for the benefit of their principals; and therefore, if factors shall give time to a man for payment of monies contracted on sales of their principal's goods, and after the time is elapsed, they shall sell goods of their own to such persons for ready cash (leaving their principal's unreceived) and then such men break and become insolvent, the factor, in equity and honesty, ought to make good the losses; for they ought not to dispense with the non-payment of their principal's monies, after they become due, and procure payment of their own to another man's loss, though, by the laws of England, they cannot be compelled.

If goods are remitted to a factor, and upon arrival he shall make a false entry at the Molloy 423 custom-house, or land them without entering, whereby they shall incur the seizure or forfeiture, whatsoever the principal is endamaged, he must inevitably make good, nor will such general clause help him, as above; but, if a factor makes his entry, according to invoice, or his letters of advice, and it happens that these are erroneous, if the goods are then lost, the factor is discharged.

And as fidelity, diligence, and honesty, are expected from the factor, so the law requires the like from his employer, judging the act of the one to be the act of the other; and, therefore, if a merchant shall consign counterfeit jewels to his factor, who sells and disposes of them for valuable considerations, as if they were right; if the factor receives any loss or prejudice thereby, by imprisonment or other punishment, the master shall not only make good the damage to the factor, but also render satisfaction to the party damned: And so it was adjudged, where one How was possessed of three counterfeit jewels, and having factors in Barbary, and knowing one Southern, a merchant, was resident on the place, consigns those jewels to his factor, who, receiving them, intreated Southern to sell them for him, telling him that they were good jewels; whereupon Southern, not knowing they were counterfeit, sold them to the king in whose dominions he resided, for eight hundred pounds (they being worth really but one hundred pounds) and delivered the money to the factor, who remitted the same to How: the king, not long after, finding himself cheated, committed Southern to

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prison, till he repaid the eight hundred pounds. Whereupon Southern coming to England, brought his action against How, and had judgement to recover his damage; for the principal shall answer for his factor in all cases, where he is privy to the act or wrong: and so it is in contracts, if a factor shall buy goods on the account of his principal (especially if he has used so to do) the contract of the factor will oblige the principal to a performance of the bargain.

When factors have obtained a profit for their principal, they must be cautious how they dispose of it, for if they act without commission or order, they become responsible. Goods remitted to factors ought in honesty to be carefully preserved, as the trust reposed in them is great; and therefore, a factor robbed, in an account brought against him by his principal, the same shall discharge him. And so it is as if a factor buys goods for his principal, which afterwards happen to be damnedif, the principal must bear the misfortune; but, if a factor shall dispose of the goods of his principal, and take money that is false, he shall make good the loss; yet, if he receives monies, and afterwards the same is by edict or proclamation lessened in value, the merchant, and not the factor, must there bear the loss.

The factor must likewise be careful in regard of letters of credit, observing nicely whether they are for a time limited, or to such a value, or not exceeding such a sum, or general, as he may otherwise bring himself into considerable losses.

If a merchant remits goods to his factor, and about a month after draws a bill on him, the factor, having effects in his hands, accepts the bill, then the principal breaks, against whom a commission of bankrupt is awarded, and the goods in the factor’s hands are seized; it has been conceived, the factor must answer the bill notwithstanding, and come in a creditor for so much as he was informed by reason of his acceptance to pay. Chapman v. Derby, 2 Vent. 117.

But this doctrine is now over-ruled, for a factor has a general lien upon all goods of his principal in his hands for whatever may be due to him. Houghton v. Matthews, 3 Bos. and Pul. 488, 9. Sweet v. Pym. 1 East. 4. 1 Selw. Ni. Pri. Tit. Factor, 831. Bac. Ab. Tit. Merchant and Merchandize, B.

A factor, who enters into a charterparty with a master for freightment, is obliged by the contract; but if he loads abroad generally, the goods, the principals, and the lading, are made liable for the freightment, and not the factor.

This must be intended where the factor or agent executes the charterparty, and personally covenants for the performance of it. 5 East. Rep. 148.

The factor having money in his hands appertaining to his principal, receives orders from him, to make insurance on ships and goods, as soon as he has loaded, which, if he has neglected to perform, and the ship miscarries, he shall (by the custom of merchants) be obliged to make good the damage. 1 Marshall on Insurance, 205 to 218. And, in case of loss, he ought not to make a composition without orders from his principal.

When goods are consigned to joint-factors, they, in the nature of co-obligors, are answerable for one another for the whole. 3 Wils. 114.

One joint-factor may account without his companion by the law of merchants; for factors are often time dispersed, so as they cannot be both present at their accounts.

A merchant delivered goods to be sold in Spain, and the factor sells them to one who becomes a bankrupt: we judge here that he shall be discharged.

In account it was held per Curiam, that if a man delivers money to his bailiff or factor to lay out for him in commodities, he cannot bring an assumpsit, but only an account. For it may so happen, that the factor hath laid out more money than he had received. 2 Camp. 239. Bac. ab. Merchant and Merchandize, B. But an assumpsit will be on a promise to dispose of goods in a particular transaction, and to give an account thereof. Salk. 9. Carth. 89. Comb. 149.
A factor should always be punctual in the advices of his transactions, in sales, purchases, affreightments, and more especially in draughts by exchange; for if he sells goods on trust without giving advice thereof, and the buyer breaks, he is liable to trouble for his neglect; and, if he draws without advising his having so done, he may justly expect to have his bill returned protested, to his no small detriment and discredit.

If a factor deviates from the orders he receives in the execution of a commission for purchasing goods, either in price, quality, or kind, or if after they are bought, he sends them to a different place from that he was directed to, they must remain for his own account, except the merchant, on advice of his proceedings, admits them according to his first intention.

A factor that sells a commodity under the price he is ordered, shall be obliged to make good the difference; and, if he purchases goods for another at a price limited, and afterwards they rise, and he fraudulently takes them for his own account, and sends them to another part, in order to secure an advantage that seemingly offers, he will (on proof thereof) be obliged, by the custom of merchants, to satisfy his principal for damages.

If a factor, in conformity with a merchant’s orders, buys with his money, or his credit, a commodity he shall be directed to purchase, and, without giving advice of the transaction, sells it again to profit, and appropriates to himself the advantage, the merchant shall recover it from him, and besides have him amerced for his fraud.

If a merchant orders his factor to ship him a sum in the current coin of a kingdom, when exportation is prohibited, and the money is seized in endeavouring to get it abroad, the loss is for the merchant’s account, and not the factor’s.

If a factor pays money of a merchant’s without his orders, it is at his own peril; and if he lends his cash, without his leave, (though he proposes the interest shall be the merchant’s,) and any loss happens before his principal’s determination about it be known, it shall remain to the factor.

A factor may be a bankrupt. 5 Geo. II. c. 30. s. 39.

The office of a supercargo has already been mentioned.

Supercargoes are persons employed by commercial companies or private merchants, to take charge of the cargoes they export to foreign countries, to sell them there to the best advantage, and to purchase proper commodities to relade the ships on their return home. For this reason, supercargoes generally go out and return home with the ships on board of which they were embarked, and therein differ from factors, who reside abroad at the settlements of the public companies for whom they act. The East India Company only send out supercargoes to the places where they have no factories; and sometimes the chief supercargo remains at the place of a ship’s destination, for a time, waiting the arrival or return of other ships, and acting as factor for the Company.

Agents are persons employed in the different departments of commerce, the law, the army, and the navy.

Commercial Agents are frequently appointed to settle accounts, and dispose of the effects of merchants and other persons dying, or failing in foreign countries, or at home; their commission terminates with the particular business for which they were appointed; and they generally give security for the trust reposed in them. Agents are likewise appointed by colonies, and particular districts of colonies, to transact the public commercial concerns of the places from which they are deputed, with the officers under the government of the mother country to which they belong. It is their duty to preserve the commercial rights and franchises of their principals, to present petitions against any measures that are about to be taken detrimental to their interest, and regularly to correspond with them upon these subjects, and also to consult and advise with the merchants, planters, and others interested in the welfare of the said colonies, and
OF FACTORS, &c.

residing in the mother country. Such were the agents for Carolina, Virginia, and the other colonies of North America, before the revolt of those colonies. And such at present are the agents for our West India islands and other settlements abroad, their public business lies chiefly with the Board of Trade and Plantations, and the Secretary of State for the Colonies.

Ships' Husbands, a class of agents so called, whose chief employment in capital seaport towns, particularly in the port of London, is, to purchase the ship's stores for her voyage; to procure cargoes on board; to settle the terms and obtain policies of insurance; to receive the amount of the freight both at home and abroad; to pay the captain or master his salary, and disbursements for the ship's use; and, finally, to make out an account of all these transactions for his employers, the owners of ships; to whom he is, as it were, a steward at land, as the officer hearing that name is, on board, when the ship is at sea. The general commission allowed to ships' husbands on their accounts is two per cent.

Of the Law Agents little notice need be taken in this work, especially as it is a limited term, and mostly confined to such attorneys and solicitors as are appointed to manage appeals to the House of Lords, from decrees of the inferior Courts of Judicature of Great Britain and Ireland. It is their business to present the petitions for appeals to be heard, to produce and attend the witnesses to be sworn, and to retain the counsel.

Army and Navy Agents receive the pay, wages, pensions, and frequently the prize-money of the officers of the army and navy, their wives, widows, and children, and keep cash accounts for them, nearly in the same manner as bankers for merchants. They likewise pass the commissions of officers through the proper offices. All this business they transact in virtue of letters of attorney from their principals, and wills. When they have cash in hand, officers may draw upon their agents, from any part of the globe, where they shall happen to be stationed; and for men of approved character and credit agents will frequently advance money by anticipation upon their wages, pay, &c. having full powers to reimburse themselves from their accruing effects.

With respect to agents in general it is a rule of law, that whenever a person has a power, as owner, to do a thing, he may consequently, as incident to his right, do it by attorney or agent. Combe's Case, 9 Co. 75. b. Kyd. 92. As this agency is a mere ministerial office, infants, feme covert, persons attainted, outlawed, excommunicated, aliens, and others, though incapable of contracting on their own account, so as to bind themselves, may be agents for these purposes. Co. Lit. 52. a. As to the extent of the agent's authority, if a person be appointed a general agent, as in the case of a factor for a merchant residing abroad, the principal is bound by all his acts; but an agent, constituted so for a particular purpose, and under a limited and circumscribed power, cannot bind the principal by any act exceeding his authority. Per Buller, J. in Fenn v. Harrison, 3 Term Rep. 757.—East India Company v. Hensley, 1 Esp. Rep. 111.

Therefore, where A. desired B. to get a bill discounted for him, but declared that he would not indorse, it was decided by the majority of the court, that no representation of B. could bind A. as an indorser, though it was insisted that what B. had done, was within the scope of his employment, which was to raise money on the bill. It appearing, however, on a second trial, that A. did not declare that he would not indorse it, it was adjudged, that as he had authorized B. to get the bill discounted, without restraining his authority, as to the mode of doing it, he was bound by his acts. Fenn v. Harrison, 3 Term Rep. 757.—Id. 4 Term Rep. 177.—Collis v. Emett, 1 Hen. Bla. 313—Russel v. Langstaff, Doug. 514.

An authority may in some cases be implied and inferred from prior conduct of the principal; and therefore, if a person has upon a former occasion, in the principal's ab-
sence, usually accepted bills for him, and the latter on his return approved thereof, he would be bound in a similar situation on a second absence from home; (Beawes, pl. 86. —Mar. 2d. ed. 135.—Barber v. Gingell, 3 Esp. Rep. 60.—Gardner v. Baillie, 6 Term Rep. 592.—Good v. Watkins, 3 East. 498.) and it has been held that if a person usually subscribes an instrument with the name of another, proof of his having done so in many instances, is sufficient to charge him whose name is subscribed, without producing any power of attorney. Neal v. Eving, 1 Esp. Rep. 61. And we have seen that where a married woman is permitted by her husband to trade on his own account, and in her own name indorses a bill or note, received in the course of such trade, an authority may be presumed from the husband. Coles v. Davis, 1 Camp. 488.—Barlow v. Bishop, 1 East. 434. It has also been decided, that a subsequent assent will make the act of an agent binding on the principal. Ward v. Evans, Lord Raym. 930.—Boulton v. Hillesden, Comb. 450. accord.—Fenn v. Harrison, 3 Term Rep. 757.—Howard v. Baillie, 2 Hen. Bla. 618. semb. contra. It appearing from the above, that the principal will be bound by every act of his general agent, although he exceed his authority, it has therefore been observed, by way of caution, that it is incumbent on the employer to take particular care whom he authorises, as otherwise, it may be of the most fatal consequence to him. Beawes, pl. 84. And as it appears (—— v. Harrison, 12 Mod. 346.—Beawes, pl. 231.) that a master, who has empowered a servant to draw bills of exchange in his name, is bound by acts done by such servant subsequently to leaving his service, unless notice has been given; it is therefore incumbent on every employer to give notice of such fact, to all his correspondents individually, notice in the Gazette not being sufficient to affect a former customer, unless he has had express notice thereof. Gorham v. Thompson, Peake. 42.—Graham v. Hope, id. 154.—Godfrey v. Turnbull, 1 Esp. Rep. 372. As the authority of an agent is not coupled with an interest, he cannot delegate it, so as to enable another person to act for his principal; (Combe's case, 9 Co. 75. 1 Rol. Ab. 830.) if, however, an express authority be given for that purpose he may exercise it. Palliser v. Ord, Bumb. 166.

When a person has authority, as agent, to draw, accept, or indorse a bill for his principal, he should either write the name of his principal, or state in writing, that he draws, &c. as agent; for otherwise, the act will not in general be binding on the principal; (Wilks v. Back, 2 East. 142.—Barlow v. Bishop, 1 East. 432, 434.—3 Esp. Rep. 266. S. C.—White v. Cuyler, 6 Term Rep. 116.—Combe's case, 9 Co. 75.—Frontin v. Small, 2 Stra. 705.—Com. Dig. Attorney, C. 14.—Beawes, pl. 83, 4, 5, 6, 7.) and if a person, draw, &c. in his own name, without stating that he acts as agent, he will be personally liable, (Thomas v. Bishop, 2 Stra. 955.—Rep. Temp. Hardw. 3 S. C.—Poth. pl. 118.—Appleton v. Binks, 5 East. 148.—De Gaillon v. L'Aigle, 1 Bos. and Pul. 568.—Macbeath v. Haldimand, 1 Term Rep. 181.) unless in the case of an agent contracting on the behalf of government. Macbeath v. Haldimand, 1 Term Rep. 172.—Unwin v. Wolseley, id. 674.—Myrtle v. Beaver, 1 East. 135.—Rice v. Chute, id. 579. But in some cases an informal mode of executing the authority will not vitiate. Coles v. Davis, 1 Campb. 485, 6.—Mason v. Rumsey, 1 Campb. 384.

Of Ships and the Navigation Laws.

THE great advantages that arise from trade to a nation, have been fully proved by the introductory discourse, and, as I have therein given a deduction of it from the earliest times, the separate history of navigation would be here superfluous, as this and commerce are so blended, or more properly only distinct parts of the same thing, that
having spoke so largely to the one, I have little room, and less need, to expatiate much on the other in an historical way: however, if any gentleman inclines to a separate account of them, he will find his taste fully gratified, and expectation answered, on reading the history of navigation, (supposed to be wrote by the celebrated Mr. Lock,) prefixed to Churchill’s collection of voyages and travels; but to omit it as inconsistent with my intended conciseness, I shall proceed to particularize the integral parts of maritime affairs; and, as a ship is a principal one in them, and indeed without which no foreign trade could be carried on, I shall begin with this wonderful piece of art.

The name (Navis) is derived from the effect, that is (à navigando) sailing, and the use of it is certainly both necessary and profitable to every commonwealth capable of employing it.

Who was the first architect of these floating fabrics has been hitherto contested, and therefore, in all probability, will now never be known; however, (rejecting the fabulous stories of Dedalus, Janus, &c.) it is natural to suppose Noah’s ark inspired the idea, and that it served as a pattern to be improved by the first navigators, though, as there was no occasion for such, till about three centuries after the confusion at the Tower of Babel had dispersed its builders, so we may reasonably conjecture that occurrence to have been the epocha from which navigation took its beginning; as Providence chastised their audacious attempt to scale Heaven, by dispersing the offenders over the face of all the earth, and consequently in their perambulations they must have found it necessary to invent some sort of vessels for their conveyance across those great rivers, which undoubtedly sometimes impeded their progress, by laying in the way of their journey: how they managed in their maritime affairs, when they reached the sea, history leaves us in the dark, but necessity would certainly inspire them with some means of (at least) supplying themselves with its products; and it is natural to believe, they went on improving the first invention, as they had occasion, to discover its defects, till by successive ones, and nations, it was brought to the perfection in which we now see and admire it.

The Phoenicians, who are the same the Scripture calls the Philistians or Canaanites, as is largely proved by Bochart and others, are generally allowed to have been the first and ablest mariners we read of; yet the commerce of those early ages did not require vessels of such strength and compactness as latter times have, to resist the storms, and tempests they are now exposed to, by launching out into the main ocean, and engaging in long and hazardous voyages, unknown, and, consequently, unattempted by infant navigation. For, though these people were bold and daring enough to engage in several long voyages, as to Ophir, &c. in which they must cross many spacious gulfs and bays, to avoid expending a vast space of time in coasting round them, yet it is hardly credible, they ever ventured to cross that immense body of waters, that lie between Europe and America, as some suppose; and the reflection on their doing what they did, without the assistance of the compass (then undiscovered) I must confess is to me a matter of no small surprise: for, though a learned author supposes them to have conducted their navigation by the sun’s course in the day, and by that of the stars in their nocturnal sailing, and only ventured to sea during summer; yet when one considers, that these guides must be frequently lost to them by cloudy weather, even in that season, not only for a little while, but often for days together, and consequently their knowledge of them, (let it have been as great as the said author conjectures) by this intervening occurrence rendered unserviceable, we must allow them to have been daring adventurers, in combating the frowns and ruffles of a lowering sky, which must frequently have been too formidable for their little skill and slight-built vessels to resist or evade, and to risk the imminent dangers they exposed themselves to on that fickle element, by their engaging in those voyages, which might then be justly counted long and dangerous.
The Greeks, who were their scholars in this science, greatly improved it, and gave their masters several signal overthrows in their naval encounters, as at the famous battle of Salamis, &c. and though the Romans succeeded the Greeks in their profession of this art, and undoubtedly their practice must lead them to the discovery of its defects, and, consequently, to that of its improvement, yet they and several succeeding ages still laboured in the dark, till Providence, about the year 1300, discovered the leadstone’s virtue, and by this means dissipated the mists of guess-work, and rendered navigation more clear and certain: It is to this happy discovery we owe that of new worlds, and the great improvement of maritime affairs, since brought to such perfection.

The fabric of ships has been various, as occasions have required, and invention could dictate to make them answer the intent; which variety continues to this very day, not only between nations, but even in the same country, some being built for war, some for sailing, and others with the lucrative view of stowing well, and each has a name properly adapted, as gallies, frigates, &c.; and the increase of these, and improvement of navigation, has always so much merited the attention of the legislators from the earliest times, as to have occasioned many excellent laws being made for these purposes.

It appears to have been the favourite and uniform object of British policy to confine our foreign trade as much as possible to the shipping and mariners of this country; and in order to accomplish that object, to hold out peculiar privileges and immunities to the mariners and shipping of Great Britain; and to prohibit, under severe penalties, the communication of these immunities to the shipping and mariners of foreign states. We will concisely consider the ancient acts as well as the modern provisions.

The Act 5 K. 2. stat. 1. ch. 3. is generally considered as the first of the British Navigation Laws. This act ordained, that none of the King’s liege people should export or import merchandize, except in ships of the King’s liegeance.

But subsequent statutes of the same reign seem to have permitted the employment of foreign vessels when there was not sufficient British shipping, or when the owners of the British shipping demanded unreasonable freight.

The Statute 1 Hen. 7. ch. 8. prohibited the traffic in any wine of Guienne or Gascony, unless brought in English or Irish ships, and by mariners of England, Ireland, Wales, Calais, or the Marches of the same. Having expired, it was revived by 4 Hen. 7. chap. 10. and its provisions were extended to Thoulouse woad, with the requisition that the master, as well as the majority of the mariners, should be of one of the countries before mentioned, or of Berwick. These acts are remarkable for having brought forward, in a specific form, two of the leading provisions of the modern navigation code; the requisition as to the British property of the vessels, and the requisition as to the British character of the master and mariners. The third great requisition, that the ship should be British built, as well as British owned and British navigated, was reserved for later times. As to other merchandizes than the wines and woad above-mentioned, the same statute of 4 Hen. 7. c. 10. permits such general trade to be carried on by merchants, strangers, in any vessels, but forbids that any other persons, inhabiting here, shall carry it on in ships belonging to foreigners, except

* There was a prior act, 42 Edw. 3. c. 8.; but this cannot be properly ranked amongst the acts of navigation. Reeves’ Law of Shipping, 11, 12.
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where sufficient British shipping cannot be obtained. But merchandize forced in by stress of weather, or enemies, was exempted from the provisions of the act. This law was confirmed by stat. 32 H. 8. ch. 14.

The policy of these provisions received a check by the 5 and 6 Edw. 6. c. 18. which permitted the importation of the before-mentioned wines and woad in any vessel, and with any master or mariners; and the Acts of 4 Hen. 7. and 5 Rich. 2. were absolutely repealed by the Statute of 1 Eliz. ch. 15. but as to vessels, the restriction was re-imposed by the 5 Eliz. c. 5. s. 11. Several acts about this time, by the imposition of duties upon foreign navigation, enforced the spirit of the British policy; but the only direct provisions were those of the stat. 5 Eliz. c. 5. which forbade the purchase of fish from foreign vessels, in pursuance of the tenor of an act passed in the 33 H. 8. ch. 2. the earliest of those legislative provisions by which the fisheries are considered as connected with navigation. It was by this statute of Elizabeth also that those parts of our present policy were introduced which relate to the coasting trade. The act provided, that no person should cause to be laden or carried, in any bottom whereof a stranger born was owner, ship-master, or part owner, any kind of fish, victual, wares, or things of what kind or nature soever, from one port or creek of this realm to another port or creek of the same, on pain of forfeiting the goods so laden or carried.

A permission was given to all persons being subjects to export wheat, rye, barley, malt, peas, or beans, when they did not exceed certain prices, into any parts beyond sea, in ships, crayers, or other vessels, whereof English subjects should be the only owners.

This statute went further than any of those which had preceded it, by forbidding an alien born to become part owner of the vessels employed in the coasting trade; and it continued in force till the conclusion of the reign of Charles the First.

In the mean time, James the First, by some charters and proclamations, enforced the exclusive employment of British shipping in the plantation trade.

The republican parliament of England, in A.D. 1646, encouraged British shipping in the plantation trade by fiscal exemptions; and introduced another of the leading principles in our navigation code, that of confining to the mother country the trade of its colonies and plantations. In 1650, another restriction was laid upon the plantations in general, which has continued in some degree to the present time. It was in these words: “the Parliament doth forbid and prohibit all ships of any foreign nation whatsoever to come to, or trade in, or traffic with, any of the English plantations in America, or any islands, ports, or places thereof, which are planted by, and in possession of the people of this commonwealth, without licence first had and obtained from the Parliament or Council of State.”

But the most important of all the statutes which passed before the Restoration, was the famous Act of Navigation, passed by the Parliament on the 9th of October, 1651. As the same provisions were adopted in 12 C. 2. c. 18. it will be unnecessary here to state them. The origin of this statute has been ascribed by some to the pique of an individual, (see Ludlow’s Memoirs, vol. 1. p. 345;) by others, to the general jealousy entertained by this nation against the Dutch, (Reeves on Shipping, 86.) Be this as it may, the object it had in view was, to wrest from that opulent and commercial republic the carrying trade of Europe; and the mode by which it was proposed to accomplish that object was, to hold out peculiar privileges and immunities to the mariners and shipping of Great Britain, and to prohibit, under severe penalties, the communication of these immunities to the shipping and mariners of foreign states. Thus much, at least, is certain, that the government of that day, (which with all its vices and imperfections, was not blind, in many respects, to the true interests of the British empire) foresaw, that the system was well calculated to stimulate Great Britain to avail
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herself of all the advantages of her insular situation; and, accordingly, not only zealously enforced the provisions of the ordinance (for so it was termed), but confirmed and maintained them, at the expense of their blood and treasure.—Such, indeed, was the intrinsic excellence of the regulations themselves, that they survived the unconstitutional government to which they owed their birth; and immediately on the restoration we find them adopted by the wise and virtuous statesmen, who, for a short time, were the advisers of Charles the Second. Nor is it a slight criterion of their real merit, that they now hold their place in our Statute Book, surrounded by those acts, to which we owe the re-establishment of the laws and liberties of our country.

The principal provisions of this celebrated statute, now called, by way of eminence, the Navigation Act, as far, at least, as they related to the intercourse between this country and the rest of Europe, were, "That no sort of mast, timber, or boards; no foreign salt, pitch, tar, rosin, hemp or flax, raisins, figs, prunes, olive-oils; no sorts of corn, grain, sugar, potashes, wines, vinegars, spirits called aqua vitae, or brandy wine, should be imported into England, Ireland, and Wales, in any ship or ships, vessel or vessels whatsoever, but such as did, truly and without fraud, belong to the people thereof, or some other of them, as the true owners and proprietors thereof, and whereof the master, and three-fourths of the mariners, at least, were English." Exceptions, however, were made, in favour of the vessels of certain states that imported the produce of their own countries; but, about two years afterwards, foreign ships, British owned, were subject to the payment of aliens' duties. This general observation is applicable to all the subsequent acts relative to British navigation, that however the great statesmen, who, at different periods, have governed this country, may have differed, as they frequently have, from each other, on many leading and essential points of political economy;—in this one point they have all concurred; in this one, the policy of all parties has been uniform and unvarying, viz. to confine the immunities of our trade, as far as was compatible with the extent of it, to the shipping and mariners of Great Britain.

If we look back to the state of our navigation and trade in 1660, we shall not be surprised, that many years elapsed before the ship-building of this country was sufficiently advanced, to authorise the legislature to confine these privileges exclusively to British vessels. Under the auspices, however, of his present Majesty, it appeared that the period was at length arrived, when the seal might be set to this favoured object of national policy, and the whole system of our navigation laws seemed ultimately crowned, consummated, and brought to perfection, by the statute 26 Geo. 3. passed in 1766, usually termed "The Registry Act."

The statute of Charles the Second confined our European trade to British owned ships; that of George the Third, to ships built within the King's dominions; because, as it is expressed in the preamble of the latter statute, "the legislature was desirous that the advantages hitherto given to ships owned and navigated by his Majesty's subjects, should henceforth be confined to ships built and fitted out in his Majesty's dominions."

We will first point out the enactments of the three leading acts relative to British navigation, viz. the great Navigation Act, 12 C. 2. 18.; the Registry Act, 26 Geo. 3. c. 60.; and 34 Geo. 3. c. 68. We will then examine the different provisions of these subsequent acts connected with the subject, and the decisions upon them.
Statute 12 Car. 2. c. 18.

An Act for the Encouraging and Increasing of Shipping and Navigation.

For the increase of shipping and encouragement of the navigation of this nation, wherein, under the good providence and protection of God, the wealth, safety and strength of this kingdom is so much concerned; Be it enacted by the King's most Excellent Majesty, and by the Lords and Commons in this present Parliament assembled, and by the authority thereof, That from and after the first day of December one thousand six hundred and sixty, and from thenceforward, no goods or commodities whatsoever shall be imported into or exported out of any lands, islands, plantations, or territories to his Majesty belonging or in his possession, or which may hereafter belong unto or be in the possession of his Majesty, his heirs and successors, in Asia, Africa, or America, in any other ship or ships, vessel or vessels whatsoever, but in such ships or vessels as do truly and without fraud belong only to the people of England or Ireland, dominion of Wales, or Town of Berwick upon Tweed, or are of the built of, and belonging to, any of the said lands, islands, plantations, or territories, as the proprietors and right owners thereof, and whereof the master and threethirds of the mariners at least are English; under the penalty of the forfeiture and loss of all the goods and commodities which shall be imported into, or exported out of, any of the aforesaid places in any other ship or vessel, as also of the ship or vessel with all its guns, furniture, tackle, ammunition, and apparel; one third part thereof to his Majesty, his heirs and successors; one third part to the governor of such land, plantation, island, or territory, where such default shall be committed, in case the said ship or goods be there seized, or otherwise that third part also to his Majesty, his heirs and successors; and the other third part to him or them who shall seize, inform or sue for the same in any Court of Record, by bill, information, plaint or other action, wherein no essoin, protection or wager of law shall be allowed; and all admirals and other commanders at sea of any the ships of war, or other ship having commission from his Majesty, or from his heirs or successors, are hereby authorised and strictly required to seize and bring in as prize all such ships or vessels as shall have offended contrary hereunto, and deliver them to the Court of Admiralty, there to be proceeded against; and in case of condemnation, one moiety of such forfeitures shall be to the use of such admirals or commanders and their companies, to be divided and proportioned amongst them according to the rules and orders of the sea in case of ships taken prize; and the other moiety to the use of his Majesty, his heirs and successors.

II. And be it enacted, That no alien or person not born within the allegiance of our Sovereign Lord the King, his heirs or successors, or naturalized, or made a free denizen, shall from and after the first day of February, which will be in the year of our Lord one thousand six hundred sixty one, exercise the trade or occupation of a merchant or factor in any of the said places; upon pain of the forfeiture and loss of all his goods and chattels, or which are in his possession; one third to his Majesty, his heirs and successors; one third to the governor of the plantation where such person shall so offend; and the other third to him or them that shall inform or sue for the same in any of his Majesty's courts in the plantation where such offence shall be committed: And all governors of the said lands, islands, plantations or territories, and every of them, are hereby strictly required and commanded, and all who hereafter shall be made governors of any such islands, plantations or territories, by his Majesty, his heirs or successors, shall before their entrance into their government take a solemn oath, to do their utmost, that every the aforementioned clauses, and all the matters
and things therein contained, shall be punctually and bond fide observed according to the true intent and meaning thereof: And upon complaint and proof made before his Majesty, his heirs or successors, or such as shall be by him or them thereunto authorized and appointed, that any the said governors have been willingly and wittingly negligent in doing their duty accordingly, that the said governor so offending shall be removed from his government.

III. And it is further enacted by the authority aforesaid, That no goods or commodities whatsoever, of the growth, production or manufacture of Africa, Asia, or America, or of any part thereof, or which are described or laid down in the usual maps or cards of those places, be imported into England, Ireland, or Wales, islands of Guernsey and Jersey, or town of Berwick upon Tweed, in any other ship or ships, vessel or vessels whatsoever, but in such as do truly and without fraud belong only to the people of England or Ireland, dominion of Wales, or town of Berwick upon Tweed, or of the lands, islands, plantations or territories in Asia, Africa, or America, to his Majesty belonging, as the proprietors and right owners thereof, and whereof the master, and three fourths at least of the mariners are English; under the penalty of the forfeiture of all such goods and commodities, and of the ship or vessel in which they were imported, with all her guns, tackle, furniture, ammunition, and apparel; one moiety to his Majesty, his heirs and successors; and the other moiety to him or them who shall seize, inform, or sue for the same in any Court of Record, by bill, information, plaint, or other action, wherein no essoin, protection, or wager of law shall be allowed.

IV. And it is further enacted by the authority aforesaid, That no goods or commodities that are of foreign growth, production, or manufacture, and which are to be brought into England, Ireland, Wales, the islands of Guernsey and Jersey, or town of Berwick upon Tweed, in English built shipping, or other shipping belonging to some of the aforesaid places, and navigated by English mariners, as aforesaid, shall be shipped or brought from any other place or places, country or countries, but only from those of the said growth, production, or manufacture, or from those ports where the said goods and commodities can only, or are, or usually have been, first shipped for transportation, and from none other places or countries; under the penalty of the forfeiture of all such of the aforesaid goods as shall be imported from any other place or country contrary to the true intent and meaning hereof, as also of the ship in which they were imported, with all her guns, furniture, ammunition, tackle, and apparel; one moiety to his Majesty, his heirs and successors, and the other moiety to him or them that shall seize, inform, or sue for the same, in any Court of Record, to be recovered as is before express.

V. And it is further enacted by the authority aforesaid, That any sort of ling, stock-fish, pilchard, or any other kind of dried or salted fish, usually fished for and caught by the people of England, Ireland, Wales, or town of Berwick upon Tweed; or any sort of cod-fish or herring, or any oil or blubber made, or that shall be made, of any kind of fish whatsoever, or any whale-fins, or whale-bones, which shall be imported into England, Ireland, Wales, or town of Berwick upon Tweed, not having been caught in vessels truly and properly belonging thereunto as proprietors and right owners thereof, and the said fish cured, saved, and dried, and the oil and blubber aforesaid (which shall be accounted and pay as oil) not made by the people thereof, and shall be imported into England, Ireland, or Wales, or town of Berwick upon Tweed, shall pay double aliens custom.

VI. And be it further enacted by the authority aforesaid, That from henceforth it shall not be lawful to any person or persons whatsoever, to load, or cause to be laden and carried in any bottom or bottoms, ship or ships, vessel or vessels what- ed by 10 & vol. 1.
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11 W. 2, c. 54, sect. 13, and the importation of anachovies, &c. provided for by sect. 14. No goods to be landed or carried from one part of England to another in the vessel of any alien not denizen, &c. 1 Sulk. 223.

VII. And it is further enacted by the authority aforesaid, That where any ease, abatement, or privilege, is given in the Book of Rates to goods or commodities imported or exported in English built shipping, that is to say, shipping built in England, Ireland, Wales, islands of Guernsey or Jersey, or town of Berwick upon Tweed, or in any the lands, islands, dominions, and territories, to his Majesty in Africa, Asia, or America belonging, or in his possession, that it is always to be understood and provided, that the master, and three fourths of the mariners of the said ships at least be also English; and that where it is required that the master and three fourths of the mariners be English, that the true intent and meaning thereof is, that they should be such during the whole voyage, unless in case of sickness, death, or being taken prisoners in the voyage, to be proved by the oath of the master, or other chief officer of such ships.

Goods of the growth or manufacture of Muscovy or Russia, Explained by 13 & 14 Car. 2, c. 11, sec. 23, 5 Mod. 189.

VIII. And it is further enacted by the authority aforesaid, That no goods or commodities of the growth, production, or manufacture of Moscovy, or of any the countries, dominions, or territories to the Great Duke or Emperor of Muscovy or Russia belonging, as also that no sort of masts, timber, or boards, no foreign salt, pitch, tar, rosin, hemp or flax, raisins, figs, prunes, olive oils, no sorts of corn or grain, sugar, pot-ashes, wines, vinegar, or spirits called aqua-vite, or brandy-wine, shall, from and after the first day of April which shall be in the year of our Lord one thousand six hundred sixty-one, be imported into England, Ireland, Wales, or town of Berwick upon Tweed, in any ship or ships, vessel or vessels whatsoever, but in such as do truly and without fraud belong to the people thereof, or some of them, as the true owners and proprietors thereof, and whereof the master and three fourths of the mariners at least are English: And that no curranus nor commodities of the growth, production, or manufacture of any of the countries, islands, dominions, or territories, to the Othoman or Turkish empire belonging, shall, from and after the first day of September which shall be in the year of our Lord one thousand six hundred sixty-one, be imported into any of the aforesaid places in any ship or vessel, but which is of English built, and navigated as aforesaid, and in no other, except only such foreign ships and vessels as are of the built of that country or place of which the said goods are the growth, production, or manufacture respectively, or of such port where the said goods can only be, or most usually are, first shipped for transportation, and whereof the master and three fourths of the mariners at least are of the said country or place, under the penalty and forfeiture of ship and goods, to be disposed and recovered as in the foregoing clause.

IX. Provided always, and be it hereby enacted by the authority aforesaid, That, for the prevention of the great frauds daily used in colouring and concealing of aliens goods, all wines of the growth of France or Germany, which, from and after the twentynth day of October, one thousand six hundred and sixty, shall be imported
into any the ports or places aforesaid, in any other ship or vessel than which doth truly and without fraud belong to England, Ireland, Wales, or town of Berwick upon Tweed, and navigated with the mariners thereof, as aforesaid, shall be deemed aliens goods, and pay all strangers customs and duties to his Majesty, his heirs and successors, as also to the town or port into which they shall be imported; and that all sorts of masts, timber, or boards, as also all foreign salt, pitch, tar, rosin, hemp, flax, raisins, figs, prunes, olive-oils, all sorts of corn or grain, sugar, pot-ashes, spirits commonly called brandy-wine, or aqua-vitae, wines of the growth of Spain, the islands of the Canaries or Portugal, Madeira, or Western Islands; and all the goods of the growth, production, or manufacture of Muscovy or Russia, which, from and after the first day of April, which shall be in the year of our Lord one thousand six hundred sixty-one, shall be imported into any the aforesaid places in any other than such shipping, and so navigated; and all currans and Turky commodities which from and after the first day of September, one thousand six hundred sixty-one, shall be imported into any the places aforesaid, in any other than English-built shipping, and navigated as aforesaid, shall be deemed aliens goods, and pay accordingly to his Majesty, his heirs and successors, and to the town or port into which they shall be imported.

X. And for prevention of all frauds which may be used in colouring or buying of foreign ships, be it enacted by the authority aforesaid, and it is hereby enacted, That, from and after the first day of April, which shall be in the year of our Lord one thousand six hundred sixty-one, no foreign-built ship or vessel whatsoever shall be deemed or pass as a ship to England, Ireland, Wales, or town of Berwick, or any of them belonging, or enjoy the benefit or privilege of such a ship or vessel, until such time that he or they claiming the said ship or vessel to be theirs, shall make appear to the chief officer or officers of the customs in the port next to the place of his or their abode, that he or they are not aliens, and shall have taken an oath before such chief officer or officers, who are hereby authorised to administer the same, that such ship or vessel was bona fide and without fraud by him or them bought for a valuable consideration, expressing the sum, as also the time, place, and persons from whom it was bought, and who are his part-owners (if he have any); all which part-owners shall be liable to take the said oath before the chief officer or officers of the custom-house of the port next to the place of their abode, and that no foreigner directly or indirectly hath any part, interest, or share therein; and that upon such oath he or they shall receive a certificate under the hand and seal of the said chief officer or officers of the port where such person or persons so making oath do reside, whereby such ship or vessel may for the future pass as a ship belonging to the said port, and enjoy the privilege of such a ship or vessel; and the said officer or officers shall keep a register of all such certificates as he or they shall so give, and return a duplicate thereof to the chief officers of the customs at London, for such as shall be granted in England, Wales, and Berwick, and to the chief officers of the customs at Dublin, for such as shall be given in Ireland, together with the names of the person or persons from whom such ship was bought, and the sum of money which was paid for her, as also the names of all such persons who are part-owners of her, if any such be.

XI. And be it further enacted by the authority aforesaid, That if any officers of the customs shall, from and after the said first day of April, allow the privilege of being a ship or vessel to England, Ireland, Wales, or town of Berwick, or any of them belonging, to any foreign-built ship or vessel, until such certificate be before them produced, or such proof and oath taken before them; or if any officer of the customs shall allow the privilege of an English-built ship, or other ship to any of the aforesaid places belonging, to any English or foreign-built ship coming into any port, and
making entry of any goods, until examination whether the master and three fourths of the mariners be English; or shall allow to any foreign-built ship bringing in the commodities of the growth of the country where it was built, the privilege by this act to such ship given, until examination and proof whether it be a ship of the built of that country, and that the master and three fourths of the mariners are of that country; or if any person who is or shall be made governor of any lands, islands, plantations, or territories, in Africa, Asia, or America, by his Majesty, his heirs or successors, shall suffer any foreign-built ship or vessel to load or unload any goods or commodities within the precincts of their governments, until such certificate be produced before them, or such as shall be by them appointed to view the same, and examination whether the master and three fourths of the mariners at least be English; that for the first offence such officer of the customs and governors shall be put out of their places, offices, or governments.

XII. Provided always, That this act, or any thing therein contained, extend not, or be meant, to restrain and prohibit the importation of any the commodities of the Streights or Levant Seas, laden in English-built shipping, and whereof the master and three fourths of the mariners at least are English, from the usual ports or places for lading of them heretofore within the said Streights or Levant Seas, though the said commodities be not of the very growth of the said places.

XIII. Provided also, That this act, or any thing therein contained, extend not, or be meant, to restrain the importing of any East India commodities laden in English-built shipping, and whereof the master and three fourths of the mariners at least are English, from the usual place or places for lading of them in any part of those seas, to the southward and eastward of Cabo bona Esperanza, although the said ports be not the very places of their growth.

XIV. Provided also, That it shall and may be lawful to and for any of the people of England, Ireland, Wales, islands of Guernsey or Jersey, or town of Berwick upon Tweed, in vessels or ships to them belonging, and whereof the master and three fourths of the mariners at least are English, to load and bring in from any of the ports of Spain or Portugal, or Western Islands, commonly called Azores, or Madera, or Canary Islands, all sorts of goods or commodities of the growth, production, or manufacture of the plantations or dominions of either of them respectively.

XV. Provided, That this act, or any thing therein contained, extend not to bullion, nor yet to any goods taken, or that shall be bond fide taken, by way of reprisal by any ship or ships belonging to England, Ireland, or Wales, islands of Guernsey or Jersey, or town of Berwick upon Tweed, and whereof the master and three fourths of the mariners at least are English, having commission from his Majesty, his heirs or successors.

XVI. Provided always, That this act, or any thing therein contained, shall not extend, or be construed to extend, to lay aliens duties upon any corn of the growth of Scotland, or to any salt made in Scotland, nor to any fish caught, saved, and cured by the people of Scotland, and imported directly from Scotland in Scotch-built ships, and whereof the master and three fourths of the mariners are of his Majesty’s subjects; nor to any seal-oil of Russia, imported from thence into England, Ireland, Wales, or town of Berwick upon Tweed, in shipping bond fide to some of the places belonging, and whereof the master and three fourths of the mariners at least are English.

XVII. Provided also, and it is hereby enacted, That every ship or vessel belonging to any the subjects of the French King, which from and after the twentieth day of October, in the year of our Lord one thousand six hundred and sixty, shall come into any port, creek, harbour, or road, of England, Ireland, Wales, or town of Berwick upon Tweed, and shall there lade or unlade any goods or commodities, or take in
or set on shore any passengers, shall pay to the collector of his Majesty's customs in such port, creek, harbour, or road, for every ton of which the said ship or vessel is of burthen, to be computed by such officer of the customs as shall be thereunto appointed, the sum of five shillings current money of England: And that no such ship or vessel shall be suffered to depart out of such port, creek, harbour, or road, until the said duty be fully paid: And that this duty shall continue to be collected, levied, and paid, for such time as a certain duty of fifty sols per ton, lately imposed by the French King, or any part thereof, shall continue to be collected upon the shipping of England lading in France, and three months after, and no longer.

XVIII. And it is further enacted by the authority aforesaid, That from and after the first day of April, which shall be in the year of our Lord one thousand six hundred sixty-one, no sugars, tobacco, cotton-wool, indigoes, ginger, fustick, or other dying wood, of the growth, production, or manufacture of any English plantations in America, Asia, or Africa, shall be shipped, carried, conveyed, or transported from any of the said English plantations, to any land, island, territory, dominion, port, or place whatsoever, other than to such other English plantations as do belong to his Majesty, his heirs and successors, or to the kingdom of England, or Ireland, or principality of Wales, or town of Berwick upon Tweed, there to be laid on shore, under the penalty of the forfeiture of the said goods, or the full value thereof, as also of the ship, with all her guns, tackle, apparel, ammunition, and furniture; the one moiety to the King's Majesty, his heirs and successors, and the other moiety to him or them that shall seize, inform, or sue for the same in any Court of Record, by bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed.

XIX. And be it further enacted by the authority aforesaid, That for every ship or vessel, which from and after the five and twentieth day of December, in the year of our Lord one thousand six hundred and sixty shall set sail out of or from England, Ireland, Wales, or town of Berwick upon Tweed, for any English plantation in America, Asia, or Africa, sufficient bond shall be given with one surety to the chief officers of the custom-house of such port or place from whence the said ship shall set sail, to the value of one thousand pounds, if the ship be of less burthen than one hundred tons; and of the sum of two thousand pounds, if the ship shall be of greater burthen: That in case the said ship or vessel shall load any of the said commodities at any of the said English plantations, that the said commodities shall be by the said ship brought to some port of England, Ireland, Wales, or to the port or town of Berwick upon Tweed, and shall there unload and put on shore the same, the danger of the seas only excepted: And for all ships coming from any other port or place to any of the aforesaid plantations, who by this act are permitted to trade there, that the governor of such English plantation shall, before the said ship or vessel be permitted to load on board any of the said commodities, take bond in manner and to the value aforesaid, for each respective ship or vessel, that such ship or vessel shall carry all the aforesaid goods that shall be laden on board in the said ship to some other of his Majesty's English plantations, or to England, Ireland, Wales, or town of Berwick upon Tweed: And that every ship or vessel which shall load or take on board any of the aforesaid goods, until such bond given to the said governor, or certificate produced from the officers of any custom-house of England, Ireland, Wales, or of the town of Berwick, that such bonds have been there duly given, shall be forfeited, with all her guns, tackle, apparel, and furniture, to be employed and recovered in manner aforesaid; and the said governors and every of them shall twice in every year, after the first day of January, one thousand six hundred and sixty, return true copies of all such bonds by him so taken, to the chief officers of the customs in London. [Confirmed by 13 Car. 2. stat. 1. c. 14.]
An Act for the further Increase and Encouragement of Shipping and Navigation.

Preamble.

Whereas, the wealth and strength of this kingdom, and the prosperity and safety of every part of the British empire, greatly depend on the encouragement given to shipping and navigation; And whereas it is proper that the advantages hitherto given by the legislature to ships owned and navigated by his Majesty's subjects should from henceforth be confined to ships wholly built and fitted out in his Majesty's dominions: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of August, one thousand seven hundred and eighty-six, no ship or vessel foreign-built (except such ships or vessels as have been or shall hereafter be taken by any of his Majesty's ships or vessels of war, or by any private or other ship or vessel, and condemned as lawful prize in any Court of Admiralty), nor any ship or vessel built or rebuilt upon any foreign made keel or bottom, in the manner heretofore practised and allowed, although owned by British subjects, and navigated according to law, shall be any longer entitled to any of the privileges or advantages of a British-built ship, or of a ship owned by British subjects; and that all the said privileges and advantages shall hereafter be confined to such ships only, as are wholly of the built of Great-Britain or Ireland, Guernsey, Jersey, and the Isle of Man, or of some of the colonies, plantations, islands, or territories in Asia, Africa, or America, which now belong, or at the time of building such ships or vessels did belong, or which may hereafter belong to, or be in the possession of his Majesty, his heirs or successors: Provided always, that nothing hereinbefore contained shall extend, or be construed to extend, to prohibit such foreign-built ships or vessels only as, before the first day of May, one thousand seven hundred and eighty-six, did truly and without fraud wholly belong to any of the people of Great-Britain or Ireland, Guernsey, Jersey, and the Isle of Man, or of any of the aforesaid colonies, plantations, islands, or territories, as the proprietors and right owners thereof, and which shall be navigated according to law, and shall also be registered in manner hereinafter directed, from continuing to enjoy the privileges and advantages they have hitherto enjoyed, or from importing or exporting such goods or commodities as may now be legally imported or exported by such ships or vessels, into and from such ports and places as is now by law allowed, and under such rules, regulations, and restrictions as have heretofore been made touching such foreign-built ships or vessels, and subject and liable to all such duties as have been imposed on any goods or commodities imported or exported as aforesaid in such foreign-built ships or vessels, by any act or acts of parliament: and provided also, that nothing herein contained shall extend, or be construed to extend, to deprive any ship or vessel, which before the passing of this act hath been built or rebuilt upon any foreign-made keel or bottom, and which, before the said first day of May, one thousand seven hundred and eighty-six, was duly registered as a British ship, from continuing to enjoy any privilege or advantage to which such ship or vessel is now by any law or usage entitled; nor to prevent any such ship or vessel which shall have been begun to be repaired or rebuilt before the said first day of May, one thousand seven hundred and eighty-six, from being registered according to and in pursuance of this act, by an order under the hands of the commissioners of his Majesty's customs in England, or any four or more of them, or of the commissioners of his Majesty's customs in Scotland, or any three or more of them; which order the
said commissioners respectively are hereby authorized and empowered to grant, if it shall be made appear to the satisfaction of the said commissioners respectively upon oath, that such ship or vessel was stranded by the act of Providence, and not with a fraudulent intent and was, at the time of being so stranded, the sole property of some foreigner or foreigners; or that such ship or vessel was a druit of Admiralty, and it be in like manner fully and clearly ascertained, to the satisfaction of such commissioners respectively, that the said ship or vessel, from the damage received by being so stranded, was rendered unfit to proceed to sea without undergoing a thorough repair in this kingdom, and that she was necessarily sold for the benefit of the foreign owner or owners, or, being a druit of Admiralty, was sold by virtue and under the authority of an order or commission from the Court of Admiralty, and that she was fairly and openly purchased by a British subject or subjects, and, being the sole and entire property of such British subject or subjects, that she hath been so much repaired, that two thirds of her are British-built.

II. And be it further enacted by the authority aforesaid, That, from and after the first day of August, one thousand seven hundred and eighty-six, no ship or vessel shall be deemed or taken to be British-built, or enjoy the privileges thereunto belonging, which shall from thenceforth be rebuilt or repaired in any foreign port or place, if such repairs shall exceed the sum of fifteen shillings for every ton of the said ship or vessel according to the admeasurement thereof, unless such repairs shall be necessary by reason of extraordinary damage sustained by such ship or vessel during the absence of such ship or vessel from his Majesty’s dominions, to enable her to perform the voyage in which she shall be then engaged, and to return in safety to some port or place of the said dominions, and that before such ship or vessel shall be repaired, so as to exceed the sum aforesaid, the master, or other person having or taking the charge or command of such ship or vessel, shall report the state and condition thereof upon oath, or (being a Quaker) upon affirmation, to the British consul, or other chief British officer, if there shall be such consul or officer at the port where it shall be necessary to repair such ship or vessel, and shall cause such ship or vessel to be surveyed by two fit and proper persons to be approved of by such consul or chief British officer, and shall deliver to such consul or chief British officer, in writing, the particulars of the damage sustained by such ship or vessel, and shall verify upon oath, or (being a Quaker) upon affirmation (to be administered by such consul or chief British officer), the particulars and amount of the repairs of such ship or vessel; and that the same were become necessary in consequence of damage sustained during the voyage to that port, to enable such ship or vessel to prosecute the voyage then intended, and to return to some port or place of his Majesty’s dominions, which the said consul, or chief British officer, is hereby required to certify under his hand and seal; and if there shall not be any British consul, or chief British officer, resident at or near the port or place where such repairs may be necessary, then that such survey shall be made by two fit and proper persons, to be approved of by two known British merchants residing at or near such port or place; and that such master, or other person having or taking the charge or command of such ship or vessel, shall produce to such merchants as aforesaid, vouchers of the particulars and amount of the repairs of such ship or vessel, whose certificate of the same shall be of the like force and effect as that of the British consul or chief British officer resident in any foreign port or place; and in case any ship or vessel shall, after the said first day of August, one thousand seven hundred and eighty-six, be repaired in any foreign port or place, the master, or other person having or taking the charge or command thereof, shall make proof on oath, or (if a Quaker) by affirmation, before the collector and comptroller, or
other principal officer of the customs in the port of his Majesty's dominions where the
said ship or vessel may first arrive (if required by them so to do; which oath or
affirmation the said collector and comptroller, or other principal officer, or either of
them, is and are hereby authorized and empowered to administer), describing the
nature and amount of the charge or expense of such repairs; and if such charge or
expense shall appear to exceed the before-mentioned sum of fifteen shillings for every
ton of the admeasurement of such ship or vessel, and the said master, or other person
having or taking the charge or command of such ship or vessel, shall neglect or refuse
to deliver to such collector and comptroller, or principal officer of the customs, or to
one of them, the certificate so required to be produced in such cases as aforesaid, the
said ship or vessel shall be deemed and taken to be a foreign-built ship or vessel, to all
intents and purposes whatever.

III. 'And whereas it is highly expedient that the provisions made for the registry
of ships and vessels by an Act, made and passed in the seventh and eighth years of
the reign of his late Majesty King William the Third, (intituled an Act for pre-
venting frauds, and regulating abuses in the plantation trade), should be altered and
amended, and that the same should be extended and applied to ships and vessels
other than those which are therein particularly described: ' Be it therefore enacted,
That all and every ship or vessel having a deck, or being of the burthen of fifteen
tons, or upwards, belonging to any of his Majesty's subjects in Great-Britain, or
Guernsey, Jersey, and the Isle of Man, or of any of the aforesaid colonies, planta-
tions, islands, or territories, shall, from and after the respective times hereinafter
expressed, be registered in manner hereinafter mentioned; and that the person or
persons claiming property therein shall cause the same to be registered, and shall
obtain a certificate of such registry from the collector and comptroller of his Majesty's
customs in Great-Britain, or the Isle of Man, or from the governor, lieutenant-
governor, or commander in chief, and principal officer or officers of his Majesty's
revenue of customs, residing in the islands of Guernsey or Jersey, or in any of the
said colonies, plantations, islands, or territories, respectively, in manner hereinafter
directed; and that the form of such certificate shall be as follows; videlicet:

In pursuance of an Act, passed in the twenty-sixth year of the reign of King George
the Third, intituled, 'an Act [here insert the title of the Act, the names, occu-
pation, and residence of the subscribing owners], having taken and subscribed
the oath required by this Act, and having sworn that he, [or, they,] together
with [names, occupation, and residence of non-subscribing owners,] is [or, are]
sole owner [or, owners] of the ship or vessel called the [ship's name] of [place to
which the vessel belongs], whereof [master's name] is at present master, and that
the said ship or vessel was [when and where built, or captured, and date of con-
demnation]; and [name and employment of the surveying officer] having certified
to us that the said ship or vessel is [whether British, foreign, or British plantation
built], has [number of decks] decks and [number of masts] mast, that her length
from the fore part of the main stem to the after part of the stern post aloft, is
[number of feet and inches], her breadth at the broadest part, whether above or
below the main wales, [number of feet and inches], her height between decks
[number of feet and inches, if more than one deck, and if not, then the depth of
the hold [number of feet and inches] and admeasures [burthen] tons, that she is
a [kind of vessel, and how built], has [whether any or no gallery] gallery, and
[kind of head, if any] head; and the said subscribing owners having consented
and agreed to the above description and admeasurement, and having caused

Certificate
of British
registry.
sufficient security to be given, as is required by the said Act, the said [kind and name of the vessel] has been duly registered at the port of [name of the port].

Given under our hands and seals of office, at the custom-house in the said port of [name of the port], this [date] day of [name of the month] in the year [words at length].

IV. And be it further enacted by the authority aforesaid, That no such registry shall hereafter be made, or certificate thereof granted, by any person or persons herebefore authorized to make such registry, and grant such certificate, in any other port or place than the port or place to which such ship or vessel shall properly belong, except so far as relates to such ships or vessels as shall be condemned as prizes in any of the islands of Guernsey, Jersey, or Man, which ships or vessels shall in future be registered in manner hereinafter directed; but that all and every registry and certificate granted in any port or place to which any such ship or vessel does not properly belong, shall be utterly null and void to all intents and purposes, unless the officers aforesaid shall be specially authorized and impowered to make such registry, and grant such certificate, in any other port, by an order in writing under the hands of any four or more of the commissioners of his Majesty's customs in England, or of any three or more of the commissioners of his Majesty's customs in Scotland, for the time being, which order the said commissioners are hereby respectively authorized and impowered to issue, in manner aforesaid, if they shall see fit.

V. And be it further enacted by the authority aforesaid, That the port, to which any ship or vessel shall hereafter be deemed and taken to belong, within the intent and meaning of this Act, shall be, and is hereby declared to be, the port from and to which such ship or vessel shall usually trade, or (being a new ship) shall intend so to trade, and at or near which the husband, or acting and managing owner or owners of such ship or vessel usually resides or reside.

VI. Provided always, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to require to be registered, according to the directions of this Act, any ship or vessel of war, or any other vessel, of whatever built the same may be, or under whatever description the same may fall, being the property of his Majesty or the Royal Family, or any of them, or any lighters, barges, boats, or vessels of any built or description whatever, used solely in rivers or inland navigation.

VII. And it is hereby declared, That no ship or vessel built in any of the colonies of North America, now called The United States of America, during the time that any Act or Acts of Parliament made in Great Britain, prohibiting trade and intercourse with those colonies, was or were in force, nor any ship or vessel which was owned by or belonged to the subjects of the said United States, or of any of the said states respectively, during the existence of those acts, and not registered before the commencement thereof, is or shall be entitled to be registered under this present Act, or to any of the privileges or advantages of a British-built ship or vessel, unless such ship or vessel shall have been taken and condemned as lawful prize, or, having been stranded, shall have been built or rebuilt, and registered in the manner heretofore practised and allowed.

VIII. And be it enacted by the authority aforesaid, That no subject of his Majesty, his heirs and successors, whose usual residence is in any country not under the dominion of his Majesty, his heirs and successors, shall be deemed or entitled, during the time he shall continue so to reside, to be the owner in whole or in part of any British ship or vessel, required and authorized to be registered by virtue of this Act.
unless he be a member of some British factory, or agent for, or partner in, any house or copartnership, actually carrying on trade in Great Britain or Ireland.

IX. And be it further enacted by the authority aforesaid, that so much of the said recited Act passed in the seventh and eighth years of the reign of his late Majesty King William the Third, as directs the oath therein contained to be taken on registering the ships and vessels therein described, shall be, and the same is hereby repealed.

X. And be it also enacted by the authority aforesaid, That no registry shall henceforth be made, or certificate granted, until the following oath be taken and subscribed before the person or persons hereinbefore authorized to make such registry, and grant such certificate respectively, (which they are hereby respectively impowered to administer) by the owner of such ship or vessel, if such ship or vessel is owned by or belongs to one person only; or, in case there shall be two joint owners, then by both of such joint owners, if both shall be resident within twenty miles of the port or place where such register is required, or by one of such owners, if one or both of them shall be resident at a greater distance from such port or place; or if the number of such owners or proprietors exceed two, then by the greater part of the number of such owners or proprietors, if the greater number of them shall be resident within twenty miles of such port or place as aforesaid, not in any case exceeding three of such owners or proprietors, or by one of such owners, if all shall be resident at a greater distance.

Oath.

I A. B. of [place of residence and occupation] do make oath, That the ship or vessel [name] of [port or place] whereof [master's name] is at present master, being [kind of built, burthen, et cetera, as described in the certificate of the surveying officer] was [when and where built, or if prize, capture, and condemnation] and that I the said A. B. [and the other owners names, and occupations, if any, and where they respectively reside, videlicet, town, place, or parish, and county, or if member of, and resident in any factory in foreign parts, or in any foreign town or city, being an agent for, or partner in any house, or copartnership actually carrying on trade in Great Britain or Ireland, the name of such factory, foreign town or city, and the names of such house or copartnership am [or are] sole owner [or, owners] of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share, or property therein or thereto; and that I the said A. B. [and the said other owners, if any] am [or, are] truly and bona fide a subject [or, subjects] of Great Britain; and that I the said A. B. have not [nor have any of the other owners, to the best of my knowledge and belief] taken the oath of allegiance to any foreign state whatever [except under the terms of some capitulation, describing the particulars thereof], or that since my taking [or, his, or, their taking] the oath of allegiance to [naming the foreign states respectively to which he or any of the said owners shall have taken the same] and prior to the passing of an Act in the twenty-sixth year of the reign of King George the Third, (intituled, an Act for the further increase and encouragement of shipping and navigation), I have [or, he, or they, hath, or, have] become a subject [or, subjects] of Great Britain, [either by his Majesty's letters patent, as a denizen or denizens, or naturalized by Act of Parliament, as the case may be, naming the dates of the letters of denization, or the Act or Acts of Parliament for naturalization respectively] or [as the case may be] I have [or, he, or, they, hath, or, have] become a denizen [or, denizens, or, naturalized subject, or subjects, as the case may be] of Great Britain, by his Majesty's letters patent, or by an Act of Parliament passed since the first day of January, one thousand seven
hundred and eighty-six, [naming the times when such letters of denization have been granted respectively, or the year or years in which such Act or Acts for naturalization have passed respectively], and that no foreigner, directly or indirectly, hath any share or part or interest in the said ship or vessel.

XI. And be it further enacted by the authority aforesaid, That, in case the number of joint owners or proprietors of any ship or vessel shall amount to three or more, and three of such joint owners or proprietors shall not personally attend to take and subscribe the oath hereinbefore directed to be taken and subscribed, then, and in such case, such owner or owners, proprietor or proprietors, as shall personally attend, and take and subscribe the oath aforesaid, shall further make oath, that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not, to the best of his or their knowledge or belief, wilfully absented himself or themselves, in order to avoid the taking the oath hereinbefore directed to be taken and subscribed, or is or are prevented by illness from attending to take and subscribe the said oath.

XII. And in order to enable the proper officer or officers of his Majesty’s customs to grant a certificate, truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of his Majesty’s customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted,’ Be it enacted by the authority aforesaid, That, previous to the registering or granting of any certificate of registry as aforesaid, some one or more proper person or persons, appointed by the commissioners of his Majesty’s customs in England and Scotland, or by the governor, lieutenant governor, or commander in chief for the time being in the islands of Guernsey, Jersey, and Man, or of the colonies, plantations, islands, or territories aforesaid respectively (taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons skilled in the building and admeasurement of ships) shall go on board of every such ship or vessel as is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel, as to all and every particular contained in the form of the certificate hereinbefore directed, in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or, in his or their absence, by the said master, and shall deliver a true and just account in writing of all such particulars of the built, description, and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited, to the person or persons who shall be authorized as aforesaid to make such registry and grant such certificate of registry; and the said master, or other person attending on the part of the owner or owners, is hereby required to sign his name also to the certificate of such surveying or examining officer in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

XIII. And be it also enacted by the authority aforesaid, That if such person or persons so appointed to examine and admeasure such ships or vessels as aforesaid, shall wilfully deliver to any person or persons authorized to make registry and grant certificates of registry as aforesaid, a false description of any of the particulars hereby required to be contained in such certificate; or if any person or persons hereinbefore authorized to make such registry, and grant such certificates of registry, shall knowingly make any false register, or grant any false certificate, in regard to any of the particulars required by this present Act, he or they, on being convicted thereof by due course of law, in any of his Majesty’s Courts of Record at Westminster; in the
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Court of Justiciary, or the Court of Exchequer in Scotland, or in any Court of Record in the said colonies, plantations, islands, or territories, or in the Royal Court in Guernsey or Jersey, or in the superior Court of Justice in the Isle of Man, as the case may be, shall respectively forfeit the sum of one hundred pounds, and be for ever incapable of holding or enjoying any office or employment under his Majesty.

XIV. "And whereas the officer or officers so appointed to examine and admeasure such ships and vessels as aforesaid, may not always be enabled to cause such ship or vessel to be laid on shore, for the purpose of ascertaining her tonnage, according to the rule now by law prescribed for that purpose: And whereas it would in some cases endanger such ship or vessel so to do:" Be it therefore enacted by the authority aforesaid, That in cases where it may be necessary to ascertain the tonnage of any such ships or vessels when afloat, the following method shall be observed; (videlicet) drop a plumb line over the stern of the ship, and measure the distance between such line and the after part of the stern post, at the load water-mark; then measure from the top of the said plumb line, in a parallel direction with the water, to a perpendicular point immediately over the load water-mark, at the fore part of the main stem, subtracting from such measurement the above distance, the remainder will be the ship's extreme length, from which is to be deducted three inches for every foot of the load draught of water, for the rake abaft, and also three fifths of the ship's breadth for the rake forward, the remainder shall be esteemed the just length of the keel to find the tonnage; and the breadth shall be taken from outside to outside of the plank, in the broadest part of the ship, either above or below the main wales, exclusive of all manner of sheathing or doubling that may be wrought upon the side of the ship; then multiplying the length of the keel for tonnage, by the breadth so taken, and that product by half the breadth, and dividing by ninety-four, the quotient shall be deemed the true contents of the tonnage: provided always, that nothing hereinbefore contained shall in anywise be construed to alter the manner of admeasuring the tonnage of any ship or vessel, which has heretofore been practised for the purpose of ascertaining the light duties, or any other duties or imposts whatever, payable according to the tonnage of any ship or vessel.

XV. And be it further enacted by the authority aforesaid, That at the time of obtaining the certificate of registry as aforesaid, sufficient security by bond shall be given to his Majesty, his heirs and successors, by the master and such of the owners as shall personally attend, as is hereinbefore required, such security to be approved of and taken by the person or persons hereinbefore authorized to make such registry, and grant such certificates of registry, at the port or place in which such certificate shall be granted, in the penalties following; (that is to say) if such ship or vessel shall be a decked vessel, or be above the burthen of fifteen tons, and not exceeding fifty tons, in the penalty of one hundred pounds; if exceeding the burthen of fifty tons, and not exceeding one hundred tons, in the penalty of three hundred pounds; if exceeding the burthen of one hundred tons, and not exceeding two hundred tons, in the penalty of five hundred pounds; if exceeding the burthen of two hundred tons, and not exceeding three hundred tons, in the penalty of eight hundred pounds; and if exceeding the burthen of three hundred tons, in the penalty of one thousand pounds: and the condition of every such bond shall be, that such certificate shall not be sold, lent, or otherwise disposed of, to any person or persons whatever, and that the same shall be solely made use of for the service of the ship or vessel for which it is granted: and that in case such ship shall be lost, or taken by the enemy, burnt, or broken up, or otherwise prevented from returning to the port to which she belongs, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in his Majesty's dominions, to the collector and comptroller of
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some port in Great Britain, or of the Isle of Man, or of the British plantations, or to the governor, lieutenant governor, or commander in chief, for the time being, of the islands of Guernsey or Jersey; and that if any foreigner, or any person or persons for his use and benefit, shall purchase or otherwise become entitled to the whole, or any part or share of, or any interest in such ship or vessel, and the same shall be within the limits of any port in Great Britain, Guernsey, Jersey, Man, or the British colonies, plantations, islands, or territories aforesaid, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the person or persons hereinbefore authorized to make registry, and grant certificates of registry, at such port or place respectively as aforesaid; and if such ship or vessel shall be in any foreign port when such purchase or transfer of interest or property shall take place, then that the same shall be delivered up to the British consul, or other chief British officer, resident at or nearest to such foreign port; or if such ship or vessel shall be at sea when such purchase or transfer of interest or property shall take place, then that the same shall be delivered up to the British consul, or other chief British officer, at the foreign port or place in or at which the master, or other person having or taking the charge or command of such ship or vessel, shall first arrive after such purchase or transfer of property at sea, immediately after his arrival at such foreign port; but if such master, or other person who had the command thereof at the time of such purchase or transfer of property at sea, shall not arrive at a foreign port, but shall arrive at some port of Great Britain, Guernsey, Jersey, Man, or his Majesty's said colonies, plantations, islands, or territories, then that the same shall be delivered up in manner aforesaid; within fourteen days after the arrival of such ship or vessel, or of the person who had the command thereof, in any port of Great Britain, Guernsey, Jersey, Man, or any of his Majesty's said colonies, plantations, islands, or territories: And that if any pass, commonly called a Mediterranean pass, shall have been obtained or procured for any such ship or vessel, then and in such case the same shall be delivered up at the same time, and in like manner, with the certificate of registry aforesaid, to the person or persons hereinbefore authorized to receive such certificate of registry; and such certificates so delivered up shall forthwith be transmitted to the commissioners of his Majesty's customs in England and Scotland respectively; and such Mediterranean passes shall also be transmitted to the commissioners for executing the office of Lord High Admiral of Great Britain, by the person or persons hereinbefore authorized to receive such certificates and passes, in order that the same may be cancelled.

XVI. And whereas the provisions made in and by the said recited Act, touching the indorsement on certificates of registry, in case of any alteration of the property in any ship or vessel, in the same port to which the ship or vessel belongs, have been found insufficient: Be it therefore enacted by the authority aforesaid, That in every such case, besides the indorsement required by the said recited Act, there shall also be indorsed on the certificate of registry, before two witnesses, the town, place, or parish where all and every person or persons to whom the property in any ship or vessel, or any part thereof, shall be so transferred, shall reside; or if such person or persons usually reside in any country not under the dominion of his Majesty, his heirs and successors, but in some British factory, the name of such factory of which such person or persons is or are member or members; or if such person or persons reside in any foreign town or city, and are not members of some British factory, the name of such foreign town or city where such person or persons usually reside, and also the names of the house or copartnership in Great Britain or Ireland, for or with whom such person or persons is or are agent or partner, or agents or partners; and the person or:
persons to whom the property of such ship or vessel shall be so transferred, or his or his or her agent, shall also deliver a copy of such indorsement to the person or persons authorized to make registry, and grant certificates of registry, as aforesaid, who are hereby required to cause an entry thereof to be indorsed on the oath or affidavit upon which the original certificate of registry of such ship or vessel was obtained; and shall also make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of his Majesty’s customs in England or Scotland, under whom they respectively act.

XVII. And be it further enacted by the authority aforesaid, That when and so often as the property in any ship or vessel, belonging to any of his Majesty’s subjects, shall be transferred to any other or others of his Majesty’s subjects in whole or in part, the certificate of the registry of such ship or vessel shall be truly and accurately recited, in words at length, in the bill or other instrument of sale thereof; and that otherwise, such bill of sale shall be utterly null and void, to all intents and purposes.

XVIII. And be it further enacted by the authority aforesaid, That when and so often as the master, or other person having or taking the charge or command of any ship or vessel, registered in manner hereinafore directed, shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinafore authorized to make such registry, and grant such certificates of registry, at the port where such change shall take place, the certificate of registry belonging to such ship or vessel, who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act; who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of his Majesty’s customs in England and Scotland respectively.

XIX. And whereas many frauds are committed by the frequent change of names given to ships and vessels, and the difficulty of comparing the entry in the book of registers, hereinafter directed to be kept by all such person or persons as are authorized to register ships and vessels, and to grant certificates of the same, with the registers of which they claim the benefit, is thereby greatly increased: Be it therefore enacted by the authority aforesaid, That it shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel, other than that by which she was first registered in pursuance of this Act; and that the owner or owners of all and every ship or vessel which shall be so registered, shall, within one month from the time of such registry, paint or cause to be painted, in white or yellow letters, of a length not less than four inches, upon a black ground, on some conspicuous part of the stern, (provided there shall be sufficient space for that purpose, but if not, then in letters as large as such space will admit) the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same; and that if such owner or owners, or master, or other person having or taking the charge or command of such ship or vessel, shall wilfully alter, erase, obliterate, or in anywise hide or conceal, or cause or procure, or permit the same to be done, unless in the case of square rigged vessels at time of war, or shall in any written or printed paper, or other document, describe such ship or vessel by any name, other than that by which she was first registered pursuant to this Act, or shall verbally describe or cause or procure or permit such ship or vessel to be described, by any other name, to any
officer or officers of his Majesty's revenue, in the due execution of his or their duty, then, and in every such case, such owner or owners, master, or other person having or taking the charge or command of such ship or vessel, shall forfeit the sum of one hundred pounds.

XX. And be it further enacted by the authority aforesaid, That all and every person and persons who shall apply for a certificate of the registry of any ship or vessel, in Great Britain, Guernsey, Jersey, or the Isle of Man, which shall be built, or whose building shall be completed after the first day of August, one thousand seven hundred and eighty-six, shall, and they are hereby required to produce to the person or persons authorized to grant such certificate, a true and full account, under the hand of the builder of such ship or vessel, of the proper denomination, and of the time when, and the place where, such ship or vessel was built; and also an exact account of the tonnage of such ship or vessel, together with the name of the first purchaser or purchasers thereof (which account such builder is hereby directed and required to give under his hand, on the same being demanded by such person or persons so applying for a certificate as aforesaid); and shall also make oath, before the person or persons hereinafter authorized to grant such certificate (which oath he or they are hereby authorized to administer) that the ship or vessel for which such certificate is required, is the same with that which is so described by the builder as aforesaid.

XXI. And be it further enacted by the authority aforesaid, That all and every person or persons who, from and after the first day of January, one thousand seven hundred and eighty-seven, shall apply for such certificate as aforesaid, in any of his Majesty's said colonies, plantations, or territories, shall, before such certificate is granted, produce the like account, under the hand of the builder, and take the like oath as hereinbefore required to be produced and taken by persons applying for the like certificate in Great Britain.

XXII. And be it further enacted by the authority aforesaid, That if the certificate of the registry of any ship or vessel which shall be obtained in pursuance of this Act, shall happen to be lost or mislaid, a register and certificate de novo, in the form hereinbefore directed, shall be granted for such ship or vessel, according to the regulations contained in an Act, passed in the fifteenth year of the reign of his late Majesty King George the Second, intituled, 'An Act for further regulating the plantation trade; and for the relief of merchants importing prize goods from America; and for preventing collusive captures there; and for obliging the claimers of vessels seized for exportation of wool, or any unlawful importation, to give security for costs; and for allowing East India goods to be taken out of warehouses, in order to be cleaned and refeshed.'

XXIII. Provided always, and be it further enacted by the authority aforesaid, That in every such case such security shall be given as is hereinbefore directed; and that in lieu of the oath directed to be taken by the said recited Act, the like oath shall be taken and subscribed, as is hereinbefore directed to be taken and subscribed by the owner or owners of such ships and vessels as are required to be registered by virtue of this Act.

XXIV. And be it further enacted by the authority aforesaid, That if any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall in any manner whatever be altered in form or burthen, by being lengthened or built upon, or shall be altered from a sloop to a brigantine, or from any one denomination of a vessel to another, by the mode or method of rigging or fitting, in such case such ship or vessel shall be registered de novo, in manner hereinbefore required, as soon as she returns to the port to which she belongs, or to any other port in which she may be legally registered by virtue of this Act, on failure whereof such ship or vessel
shall to all intents and purposes be considered, and deemed and taken to be a foreign ship or vessel.

XXV. And be it further enacted by the authority aforesaid, That the owner or owners of all such ships and vessels as shall be taken by any of his Majesty's ships or vessels of war, or by any private or other ship or vessel, and condemned as lawful prize in any Court of Admiralty, shall, upon registering such ship or vessel, before he or they shall obtain such certificate as aforesaid, produce to the proper officer of his Majesty's customs a certificate of the condemnation of such ship or vessel, under the hand and seal of the Judge of the Court in which such ship or vessel shall have been condemned (which certificate such Judge is hereby authorized and required to grant), and also a true and exact account, in writing, of all the particulars contained in the certificate heretofore set forth, to be made and subscribed by one or more skilful persons to be appointed by the Court to survey such ship or vessel; and shall also make oath before the said officer (which he is hereby authorized and required to administer) that such ship or vessel is the same vessel which is mentioned in the certificate of the Judge aforesaid.

XXVI. Provided always, and be it further enacted by the authority aforesaid, That no ship or vessel which shall be taken and condemned as prize in any Court of Admiralty as aforesaid, shall be registered in the islands of Guernsey, Jersey, or the Isle of Man, although belonging to his Majesty's subjects residing in those islands, or in some one or other of them: but in order that the duties now by law due and payable to his Majesty on such ships and vessels may be levied and collected, the same shall be registered either at Southampton, Weymouth, Exeter, Plymouth, Falmouth, Liverpool, or Whitehaven, by the collector and comptroller at such ports respectively, who are hereby authorized and required, after the receipt of the said duties, to register such ship or vessel, and to grant a certificate thereof, in the form, and under the regulations and restrictions in this Act contained.

XXVII. And be it further enacted by the authority aforesaid, That in all the cases where any ship or vessel, so taken and condemned as aforesaid in any of his Majesty's colonies, plantations, islands, or territories aforesaid, shall be registered, and obtain a certificate of such registry, in manner hereinafore directed, an exact and particular account shall be subjoined to such certificate, of the sum for which such ship or vessel shall have been sold, verified by the oath of the person or persons who shall apply for such registry and certificate, in order that the aforesaid duties due and payable to his Majesty may be the better levied and collected, upon the arrival of such ship or vessel in any port or place of Great Britain where such duties are by law due and payable.

XXVIII. And whereas the trade to and from his Majesty's European dominions, and the colonies, plantations, islands, and territories in Asia, Africa, and America, to his Majesty belonging, is now by law confined to such ships only as are of the built of Great Britain and Ireland, the islands of Guernsey, Jersey, and Man, and of the said colonies, plantations, islands, and territories: And whereas ships wholly owned by British subjects, and navigated according to law, can be legally used and employed only in the European trade of this kingdom, and the same are, by virtue of this Act, allowed to be continued in the said trade until the same shall be worn out; and it is therefore necessary to distinguish such ships and vessels respectively in the certificates to be granted pursuant to this Act: Be it therefore enacted by the authority aforesaid, That the certificates which shall hereafter be granted in pursuance of this Act, shall distinguish whether such ships or vessels be of the built of Great Britain or Ireland, Guernsey, Jersey, or the Isle of Man, or the colonies, plantations, islands, or territories aforesaid, or of any foreign country; and shall, if British-built, be in-
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titulated, 'certificate of British plantation registry'; and if such ships be foreign-built, shall be intituled, 'certificate of foreign ships registry for the European tradé, British 'property,' as the case may be.

XXIX. 'And whereas many foreign-built ships and vessels belonging to, or pre- 'tending to belong to, his Majesty's subjects, have, by fraudulent contrivances, and 'under false pretences, obtained registers, by virtue of which such ships and vessels 'are at present used and employed, contrary to the laws now in force, in the trade to 'and from his Majesty's colonies, plantations, islands, or territories in Asia, Africa, 'and America; and it is therefore expedient and necessary, for detecting the frauds 'at present committed, and for preventing the same in future, that all registers here- 'tofore granted should be called in, and delivered up to the proper officer to be 'cancelled, and that new registers of the form hereinbefore described, should be 'granted in lieu thereof, in the manner hereinbefore directed, to all such ships or 'vessels, as shall appear to be legally entitled to the same: And whereas it is expe- 'dient to specify and direct at what time, and in what manner, all other ships and 'vessels, which are not now by law required to be registered, should hereafter be 'registered, according to the intent and meaning of this Act, and should receive 'certificates according to the form and in the manner hereinbefore directed.' Be it 'therefore enacted by the authority aforesaid, That the commissioners of his Majesty's customs in England and Scotland, respectively, be authorized and required, and they are hereby authorized and required, to give public notice, by all such ways and means as they shall judge most proper and effective, that within a certain reasonable time or times as may be best adapted to the distance of the ports to which the ships and vessels owned by his Majesty's subjects shall respectively belong, to be by them specified and published, certificates of registry, according to the form hereinbefore described, will be ready to be granted, in manner hereinbefore directed, to all such ships and vessels as shall be legally entitled thereunto; and that the owner or owners of every such ship or vessel, not heretofore required to be registered, shall, on the first arrival of every such ship or vessel at the port or place to which she belongs, after the expiration of the notice hereinbefore directed, cause such ship or vessel to be registered, and shall obtain a certificate thereof, in manner hereinbefore directed; and that the owner or owners of any ship or vessel, which shall have been heretofore registered, shall in like manner, upon the first arrival of such ship or vessel at the port or place to which she belongs, after the expiration of the notice hereinbefore directed, cause such ship or vessel to be again registered, and obtain a certificate thereof, according to the form and in the manner hereinbefore described, and shall then deliver up the register before granted, if the same be not lost or mislaid: and if the same shall have been lost or mislaid, shall make oath before the proper officer of the customs, that such register has been lost or mislaid, and shall give security in like manner as is directed and required by the said Act passed in the fifteenth year of the reign of his late Majesty King George the Second, in the case of registers and certificates de novo.

XXX. And be it also enacted by the authority aforesaid, That, from and after the expiration of the notice hereinbefore directed, twelve months shall be allowed to all ships and vessels belonging to any of the ports of Great Britain, or the islands of Guernsey, Jersey, or Man, to be registered and obtain certificates according to the form and in the manner hereinbefore described; and that, in like manner, from and after the expiration of the notice hereinbefore directed, eighteen months shall be allowed to all ships and vessels belonging to any of the ports in his Majesty's colonies, plantations, islands, or territories in Africa or America, to be registered, and to obtain certificates according to the form, and in the manner hereinbefore described; and that, in like manner, from and after the expiration of the notice hereinbefore
directed, thirty months shall be allowed to all ships and vessels trading or fishing beyond the Cape of Good Hope, or Cape Horn, to be registered, and obtain certificates according to the form, and in the manner hereinbefore described: And that at the end of the said term of twelve months, with respect to such ships and vessels as belong to the ports of Great Britain, and the islands of Guernsey, Jersey, or Man; and in like manner, at the end of the said term of eighteen months, with respect to all ships and vessels that belong to any of the ports of His Majesty's colonies, plantations, islands, or territories, in Africa or America; and in like manner, at the end of the said term of thirty months, with respect to all ships and vessels trading or fishing beyond the Cape of Good Hope, or Cape Horn, no other register or certificate shall be of force or effect, except such as shall be granted in pursuance of this Act; and that all other registers and certificates shall from henceforth be utterly null and void, to all intents and purposes whatsoever.

XXXI. Provided nevertheless, and be it further enacted by the authority aforesaid, that in case it shall happen that any such ship or vessel, from any unavoidable necessity, or reasonable cause, shall not return to the port to which she belongs within the time hereinbefore limited, it shall and may be lawful for the commissioners of His Majesty's customs in England and Scotland respectively for the time being, and they are hereby required, upon proof being made to their satisfaction of such unavoidable necessity or reasonable cause, to cause such ship or vessel to be registered upon the terms and conditions, and under the regulations and restrictions directed and required by this Act; anything herein contained to the contrary thereof notwithstanding.

XXXII. And be it further enacted by the authority aforesaid, that no ship or vessel, which by this Act is directed to be hereafter registered, or which is directed, instead of the register now required by law, to take out a new register, according to the form, and in the manner hereinbefore described, shall be permitted, after her first arrival at the port to which she belongs, at the expiration of the notice hereinbefore directed, to clear outwards to foreign parts or coastwise, or to proceed to sea in order to fish on the coasts, or for any other purpose whatever, as a British ship or vessel, or shall be in anywise entitled to the privileges of a British ship or vessel, unless the owner or owners thereof shall have obtained a certificate according to the form, and in the manner hereinbefore described; and in case any such ship or vessel shall depart from such port without being registered, and without having obtained a certificate as aforesaid, every such ship or vessel shall be subject to forfeiture, and also all the guns, furniture, ammunition, tackle, and apparel, to such ship or vessel belonging.

XXXIII. And be it further enacted by the authority aforesaid, that if, after the expiration of the notice aforesaid, any ship or vessel (being square rigged) shall be found in any port within the distance of twenty leagues by water from the port to which she belongs, or in any port, other than that to which she belongs, without having obtained the certificate of registry hereinbefore directed, it shall and may be lawful to and for the principal officer or officers of such port, and he or they is and are hereby required to detain such ship or vessel, until the master, or other person having or taking the charge or command thereof, shall, if such ship or vessel be under the burden of fifty tons, give security by bond in the penalty of fifty pounds, in manner herein-
having or taking the charge or command thereof, shall, together with one sufficient
security, (to be approved by such principal officer or officers), give bond to his
Majesty, his heirs and successors, to be taken by such officer or officers, in the penalty
of two hundred pounds, with condition that such master, or other person so having
or taking the charge or command of every such ship or vessel, shall forthwith repair
with her, as soon as conveniently may be, (or being employed in the fishery on the
banks of Newfoundland, and parts adjacent, at the end of the fishing season), to the
port to which she belongs, and there cause her to be registered, and procure a cer-
tificate of such registry, in the form and manner hereinbefore directed, and produce
and deliver to such officer or officers such certificate of registry, within the time
limited in the condition of such bond; which limitation of time such officer or officers is
and are hereby authorized to fix, according to the distance which such ship or vessel
may be from the port to which she belongs, and the nature of the voyage in which she
may then be engaged, and on failure of producing and delivering such certificate as
aforesaid, such bond shall be forfeited; but if such certificate shall be produced and
delivered to such officer or officers within the time so limited in the bond, such bond
shall be void and of none effect, and he or they is and are hereby authorized and re-
quired to cancel the same: And in case any square rigged ship or vessel, after the
expiration of the notice aforesaid, shall be found in any port distant more than
twenty leagues by water from the port to which she belongs, or that the water at the
entrance of the port to which such ship or vessel belongs shall be so shallow as not to
admit her entrance into the same, without endangering the safety of such ship or
vessel, the master, or other person having the charge or command of such ship or
vessel, shall, within forty-eight hours after his arrival at such port as aforesaid, make
known his arrival to the collector and comptroller of the customs, or other principal
officer of such port, and shall require such collector and comptroller, or other
principal officer, to cause his ship or vessel to be surveyed by the proper officer at
such port, who shall be appointed pursuant to the directions of this Act to survey
ships and vessels there, and who shall accordingly make a perfect and accurate survey
thereof, and certify the several particulars thereof in like manner as is hereinbefore
directed, and such collector and comptroller, or other principal officer, shall imme-
diately transmit the said certificate of survey to the persons authorized to register
ships and vessels, and grant certificates of registry, at the port to which such ship or
vessel belongs, thereupon, and upon all the other requisites of this Act being
complied with, shall register such ship or vessel, and grant a certificate of the registry
thereof pursuant to this Act; and it shall and may be lawful to and for the collector
and comptroller, or other principal officer or officers of the customs in the port
where such ship or vessel shall be so found, and he or they are hereby authorized and
required to detain such ship or vessel until a perfect and accurate survey thereof shall
be made in manner hereinbefore directed.

XXXIV. And be it further enacted by the authority aforesaid, That after the ex-
piration of the notice hereinbefore required, the master or other person having or
taking the charge or command of every ship or vessel which shall have been registered,
and shall have procured a certificate of the registry, according to the directions of this
Act, shall, upon demand, produce such certificate of registry to the principal officer
of every port in his Majesty's dominions, or to the British consul or chief
British officer in any foreign port in which such ship or vessel shall arrive, for the in-
pection of such officer or officers, British consul, or chief British officer, in order to
satisfy him or them that she has been properly registered, under the penalty of one
hundred pounds.

XXXV. And be it further enacted by the authority aforesaid, That the proper officer
Certifi-
cates, &c.
at every port and place where registers and certificates shall be granted in pursuance of this Act, shall progressively number the same as they shall be severally granted, beginning such progressive numeration at the commencement of each and every year; and shall enter an exact copy of every such certificate, with the number thereof, in a book to be kept for that purpose; and shall also forthwith, or within one month at the farthest, transmit to the commissioners of his Majesty’s customs in London and Edinburgh, under whom they respectively act, a true and exact copy, together with the number of every certificate which shall be by him so granted; and that if any such officer or officers shall neglect or refuse so to do, he or they so offending shall, for the first offence forfeit the sum of one hundred pounds, and shall, for the second offence, forfeit the sum of two hundred pounds, and be dismissed from his or their office or offices.

XXXVI. And be it also further enacted by the authority aforesaid, That the commissioners of his Majesty’s customs in Scotland shall in like manner transmit, at the end of every month in each year, to the commissioners of his Majesty’s customs in England, true and exact copies of all such certificates as shall be granted by them, or by any officer or officers within the limits of their commission, in pursuance of this Act.

XXXVII. And be it further enacted by the authority aforesaid, That in lieu of all stamp duties now by law imposed on such bonds as shall be entered into by the owner or owners of any ship or vessel built before the first day of May, one thousand seven hundred and eighty-six, or by any person or persons on their behalf, upon such ship or vessel being first registered, and obtaining a certificate in pursuance of this Act, there shall be paid the sum of one shilling, and no more; and that in lieu of all fees and perquisites now payable to any person or persons, on the registry of any ship or vessel, so built before the said first day of May, one thousand seven hundred and eighty-six, there shall be paid on the first registry of every such ship or vessel, pursuant to this Act, the following sums, and no more; (that is to say,) By all ships or vessels decked, or of the burthen of fifteen tons, and not exceeding fifty tons, the sum of one shilling and six pence, and no more; and by all ships or vessels exceeding fifty tons, and not exceeding one hundred tons, the sum of two shillings and sixpence, and no more; and by all ships or vessels exceeding one hundred tons, and not exceeding two hundred tons, the sum of three shillings and sixpence, and no more; and by all ships or vessels exceeding two hundred tons, the sum of five shillings, and no more; which several sums shall be payable to such officers respectively, in the same shares and proportions in which the sums now payable are distributed: Provided always, That the stamp-duties, fees, and perquisites now due and payable upon the registry of, or transfer of property in any ship or vessel, shall continue to be paid as heretofore, save and except upon the first registry in pursuance of this Act, of any ship or vessel built and registered before the first day of May, one thousand seven hundred and eighty-six.

XXXVIII. 'And whereas, since the conclusion of the late war, registers have been granted or promised to ships and vessels not thereunto by law entitled, by his Majesty’s governors, or by the officers of his Majesty’s customs, in consideration of services rendered to the public by the owners of such ships and vessels, at the time of evacuating the countries, or towns, and posts held by his Majesty’s forces in the countries now belonging to the United States of America, or in consideration of the removal of families, to whom such ships and vessels belong, into the countries now belonging to his Majesty: And whereas registers have also in some cases been so granted or promised to other ships and vessels, by the governors of his Majesty’s colonies, plantations, islands, and territories, under misconception of the laws
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relating thereto, and the property of such ships or vessels has bond side, and without fraud been transferred to others of his Majesty's subjects, who under the protection thereof may use and employ such ships and vessels: And whereas it may be therefore just and reasonable, in particular cases, where no fraud or collusion shall appear to have been practised, that such ships and vessels should be admitted to a registry, and that a certificate should be granted to the owners thereof pursuant to this act: Be it further enacted by the authority aforesaid, That it shall and may be lawful to and for his Majesty, by and with the advice of his Privy Council, to order any such ship or vessel, under the circumstances before mentioned, to be registered, and to have a certificate thereof, according to the form and in the manner hereinbefore described and directed, if his Majesty in his wisdom shall think fit; and in case any suit shall have been commenced for the condemnation of such ship or vessel, it shall and may be lawful for his Majesty, by order in Council, to direct all proceedings thereupon to be stayed, either absolutely, or upon such terms or conditions as his Majesty shall think fit.

XXXIX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any governor, lieutenant governor, or commander in chief of any of his Majesty's colonies, plantations, islands, or territories, and they are hereby respectively authorized and required, in any of the cases aforesaid, if any suit, information, libel, or other prosecution or proceeding of any nature or kind whatever shall have been commenced, or shall hereafter be commenced in any Court whatever in any of the said colonies, plantations, islands, or territories respectively, touching the force and effect of any register granted to any ship or vessel, in any of the circumstances aforesaid, upon a representation made to any such governor, lieutenant governor, or commander in chief, to cause all proceedings thereon to be stayed, if he shall see just cause so to do, until his Majesty's pleasure be known, and certified to him by his Majesty, by and with the advice of his Privy Council; and such governor, lieutenant governor, or commander in chief, is hereby required to transmit to one of his Majesty's principal secretaries of state, to be laid before his Majesty in Council, an authenticated copy of the proceedings in every such case, together with his reasons for causing the same to be stayed, and such documents (properly verified) as he may judge necessary for the information of his Majesty.

XL. And be it further enacted by the authority aforesaid, That if any person or persons authorized and required by this Act, in respect of his or their office or offices, to perform any act or thing directed and required to be done or performed pursuant to any of the provisions of this Act, shall wilfully neglect or refuse to do or perform the same, according to the true intent and meaning of this Act, every such person or persons so neglecting or refusing shall, on being duly convicted thereof, forfeit the sum of five hundred pounds, and for the second offence shall forfeit, in like manner, the sum of five hundred pounds, and shall from thenceforth be rendered incapable of serving his Majesty in any office or employment relative to the revenue, or in any civil capacity whatever.

XLI. And be it further enacted by the authority aforesaid, That if any person or persons shall falsely make oath to any of the matters hereinbefore required to be sworn, such person or persons shall suffer the like pains and penalties as are incurred by persons committing wilful and corrupt perjury; and that if any person or persons shall counterfeit, erase, alter, or falsify any certificate required or directed to be obtained by this Act, or shall knowingly or wilfully make use of any certificate so counterfeited, erased, altered, or falsified, such person or persons shall, for every such offence, forfeit the sum of five hundred pounds.

XLII. And be it further enacted by the authority aforesaid, That all the penalties and how penalties are
and forfeitures inflicted and incurred by this Act shall and may be sued for, prosecuted and recovered in such Courts, and be disposed of in such manner, and by such ways, means, and methods, as any penalties or forfeitures inflicted, or which may be incurred, for any offence committed against the laws of customs, may now legally be sued for, prosecuted, recovered, and disposed of; and that the officer or officers concerned in seizures or prosecutions under this Act, shall be entitled to and receive the same share of the produce arising from such seizures, as in the case of seizure for unlawful importation, and to such share of the produce arising from any pecuniary fine or penalty, for any offence against this Act, as any officer or officers is or are now by any law or regulations entitled to, upon prosecutions for pecuniary penalties.

XLIII. And it is hereby declared and enacted by the authority aforesaid, That all and every matter contained in the said hereinbefore recited Acts, or in any Act or Acts of Parliament heretofore passed, touching the trade, shipping, and navigation of Great Britain, and the colonies, plantations, islands, and territories aforesaid thereunto belonging, which is not hereby expressly altered or repealed, shall remain and continue in full force and effect, to all intents and purposes whatever; and so far as the same relate to the registry of ships and vessels, shall be deemed and taken to extend and apply in every respect to all ships and vessels authorized and required by this Act to be registered, and to have certificates of registry.

XLIV. And be it enacted by the authority aforesaid, That the ships and vessels belonging to his Majesty’s subjects residing in the kingdom of Ireland, being duly qualified and registered according to the laws now in force, shall continue to enjoy all the privileges and advantages to which such ships and vessels were by law entitled before the passing of this Act, until the end of four calendar months from the commencement of the first session of the Parliament of Ireland which shall hereafter sit during the space of four calendar months, without prorogation or dissolution; and that from the end of that time, every ship or vessel which shall, by virtue of the authority of any Act that may be passed in the said Parliament of Ireland,* be qualified and registered in any of the ports of the said kingdom of Ireland, under similar regulations and restrictions to those hereinbefore contained, shall continue to enjoy, to all intents and purposes whatsoever, all the privileges and advantages of a British-built ship, or foreign-built ship owned by his Majesty’s subjects, as the case may be, according to the provisions of this Act.

34 Geo. 3. c. 68.

An Act for the further Encouragement of British Mariners; and for other Purposes therein mentioned. 11th June, 1794.

XIV. * And whereas by an Act passed in the twenty-sixth year of his Majesty’s reign, intituled, An Act for the further Increase and Encouragement of Shipping and Navigation, it is, amongst other things, enacted, That when and so often as the property in any ship or vessel belonging to any of his Majesty’s subjects shall be transferred to any other or others of his Majesty’s subjects, in whole or in part, the

* See Irish statute, 27 Geo. 3. c. 90.
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certificate of the registry of such ship or vessel shall be truly and accurately recited
in words at length, in the bill or other instrument of sale thereof, and that other-
wise such bill of sale shall be utterly null and void, to all intents and purposes:
And whereas doubts have arisen, whether, by the said provision, every transfer of
property in any ship or vessel is required to be made by some bill, or in-
strument in writing, and whether contracts or agreements for the transfer of
such property may not be made without any instrument in writing; Be it enacted,
That no transfer, contract, or agreement for transfer of property, in any ship or
vessel, made, or intended to be made, after the first day of January, one thousand
seven hundred and ninety-five, shall be valid or effectual for any purpose whatever,
either in law or in equity, unless such transfer, or contract or agreement for transfer
of property, in such ship or vessel, shall be made by bill of sale or instrument in
writing, containing such recital as prescribed by the said recited Act.

XV. And whereas by the laws now in force, upon any alteration of property in
any ship or vessel in the same port to which such ship or vessel belongs, an indorse-
ment upon the certificate of registry is required to be made: Be it enacted,
That such indorsement shall, from and after the first day of January one thousand
seven hundred and ninety-five, be made in the manner and form hereinafter expressed
and shall be signed by the person or persons transferring the property of the said
ship or vessel, by sale, or contract or agreement for sale thereof, or by some person
legally authorized for that purpose by him, her, or them, and a copy of such indorse-
ment shall be delivered to the person or persons authorized to make registry, and grant
certificates of registry, otherwise such sale, or contract or agreement for the sale
thereof, shall be utterly null and void, to all intents and purposes whatever; and such
person or persons so authorized to make registry, and grant certificates of registry,
are hereby required to cause an entry thereof to be indorsed on the oath or affidavit
upon which the original certificate of registry of such ship or vessel was obtained, and
shall also make a memorandum of the same in the book of registry, and shall forthwith
give notice thereof to the commissioners of his Majesty's customs in England and
Scotland, under whom they respectively act.

**Form of Indorsement on change of Property:**

Be it remembered, That [I, or, we] [names, residence, and occupation, of the
persons selling] have this day sold and transferred all [my, or, our] right, share,
or interest, in and to the ship or vessel [name of the ship or vessel], mentioned in
the within certificate of registry, unto [names, residence, and occupation, of the
purchasers]. Witness [my, or, our, hand, or, hands] this [date in words at full
length.]

Signed in the presence of

[two witnesses].

XVI. Provided always, That if any ship or vessel shall be at sea, or absent from the
port to which she belongs, at the time when such alteration in the property thereof
shall be made as aforesaid, so that an indorsement or certificate cannot be immediately
made, the sale, or contract or agreement for the sale thereof, shall notwithstanding
be made by a bill of sale or other instrument in writing as before directed, and a copy of such bill of sale, or other instrument in writing, shall be delivered, and an
entry thereof shall be indorsed on oath or affidavit, and a memorandum thereof
shall be made in the book of registers, and notice of the same shall be given to the
commissioners of the customs, in the manner hereinafter directed; and within ten
days after such ship or vessel shall return to the port to which she belongs, an indorsement shall be made and signed by the owner or owners, or some person legally authorized for that purpose by him, her, or them, and a copy thereof shall be delivered in manner hereinafore mentioned, otherwise such bill of sale, or contract or agreement for sale thereof, shall be utterly null and void, to all intents and purposes whatsoever, and entry thereof shall be indorsed, and a memorandum thereof made in the manner hereinafore directed.

XVII. Provided also, and be it enacted, that in all cases where the owner or owners of any ship or vessel shall reside in any country not under the dominion of his Majesty, his heirs and successors, as member or members of some British factory, or agent or agents for, or partner or partners in, any house or copartnership actually carrying on trade in Great Britain or Ireland at the time when he, she, or they shall transfer such property in any ship or vessel, so that an indorsement cannot be made immediately, nor a copy of such bill of sale, or other instrument in writing, be delivered, nor an entry thereof indorsed on the oath or affidavit, nor a memorandum thereof made in the book of registers, nor notice of the same given to the commissioners of the customs, in the manner before-mentioned, the same may be done at any time within six months after such transfer shall have been made, and that within ten days after, such owner or owners, or some person legally authorized for that purpose by him, her, or them, shall arrive in this kingdom, if such ship or vessel shall then be in any port of this kingdom, and if not, then within ten days after such ship or vessel shall so arrive, an indorsement shall be made by the owner or owners, or some person legally authorized for that purpose by him, her, or them, and a copy thereof shall be delivered in manner hereinafore mentioned, otherwise such bill of sale, or contract or agreement for sale thereof, shall be utterly null and void, to all intents and purposes whatsoever, and entry thereof shall be indorsed, and a memorandum thereof made, in the manner hereinafore directed.

XVIII. And whereas by an Act passed in the twenty-eighth year of the reign of his present Majesty, intituled, An Act more effectually to secure the Performance of Quarantine, and for amending several Laws relating to the Revenue of Customs, certain provisions were, amongst other things, made to prevent the masters of ships or vessels from wilfully and maliciously detaining and refusing to deliver up the certificates of ships registry, to the prejudice of the owners of such ships or vessels: And whereas the good purposes intended by those provisions have not been effected; and it is therefore expedient to make further provisions for preventing the masters of ships or vessels from withholding certificates of registry, to the prejudice of the owners of such ships or vessels: Be it therefore enacted by the authority aforesaid, That in case the master of any ship or vessel, who shall have received the certificate of the registry thereof, (whether such master shall be a part owner or not,) shall wilfully detain and refuse to deliver up the same to the proper officers empowered to make registry and grant a certificate thereof, on the owner or owners, or the major part of the owners, of such ship or vessel, if such master has not any property therein, or on the other owner or owners, or the major part of the other owners, of such ship or vessel, if such master hath any share or property therein, requiring him so to do, it may and shall be lawful to and for the owner or owners, or the major part of the owners, of such ship or vessel, the certificate of registry of which shall be detained and refused to be delivered up as aforesaid, to make complaint on oath against the master of the ship or vessel who shall so detain and refuse to deliver up the same, of such detainer and refusal, to any justice of the peace residing near to the place where such detainer and refusal shall be in Great Britain, or to any member of the supreme court of justice, or any justice of the peace in the islands of Jersey, Guernsey, or
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Man, or in any colony, plantation, island, or territory, to his Majesty belonging in America, or the West Indies, where such detainer and refusal shall be in any of the places last-mentioned; and on such complaint the said justice or other magistrate shall, and is hereby required, by warrant under his hand and seal, to cause such master to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate on examination of the master, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said master, such master shall be thereof convicted, and shall forfeit and pay the sum of one hundred pounds, and on failure of payment thereof, he shall be committed to the common gaol, there to remain, without bail or mainprize, for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than six months nor more than twelve months.

XIX. And be it further enacted, That the said justice or other magistrate shall, and he is hereby required to certify the aforesaid detainer, refusal, and conviction, to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel de novo, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered de novo.

XX. And whereas it is expedient that the officers empowered to make registry of ships and vessels, and to grant certificates thereof, in case any such ship or vessel is required to be registered de novo, should be authorized to require the production of every bill or other instrument of sale, by which the property in any ship or vessel is transferred: Be it therefore enacted by the authority aforesaid, That when and so often as the property in any ship or vessel belonging to any of his Majesty’s subjects shall by sale be transferred, in whole or in part, to any other or others of his Majesty’s subjects, and such ship or vessel shall be required to be registered de novo, it shall and may be lawful to and for all and every the officer and officers empowered to make registry of ships and vessels, and to grant certificates thereof, to require, and he and they are hereby authorized and directed to require, the bill or other instrument of sale thereof to be produced to him or them; and in case such bill or other instrument of sale shall be so required to be produced, and the same shall not be produced to such officer or officers, the said officer or officers shall not make a registry, nor grant a certificate of registry de novo, for any such ship or vessel: Provided always, that it shall and may be lawful for the commissioners of his Majesty’s customs in England or any four or more of them, and the commissioners of his Majesty’s customs in Scotland, or any three or more of them respectively, if application shall be made to the said commissioners of the customs in England and Scotland respectively, and for the governor, lieutenant governor, or commander in chief, for the time being, of the islands of Guernsey or Jersey, or of any colony, plantation, island, or territory, to his Majesty belonging, if such application shall be made to any of them respectively, upon due consideration of the particular circumstances of the case, to give direction for registering such ship or vessel de novo, and granting a certificate of such registry, notwithstanding such bill or other instrument of sale shall not have been produced as aforesaid, and such registry shall be made and such certificate thereof shall be granted accordingly: Provided always, that all the other regulations required by the laws in force concerning the registry de novo of ships and vessels be complied with.

XXI. And whereas by an Act passed in the seventh and eighth years of the reign of his late Majesty King William Third, intituled, An Act for preventing Frauds and regulating Abuses in the Plantation Trade, it is, amongst other things, enacted, that in case there be any alteration of property in the same port, by the sale of one vol. 1.
or more shares in any ship, after registering thereof, such sale shall always be
acknowledged by indorsement on the certificate of the register before two witnesses,
in order to prove that the entire property in such ship remains to some of the subjects
of England: And whereas it is expedient to authorize and require the proper
officers impowered to register ships and vessels, and to grant certificates thereof, to
issue registers de novo in any case where part of the property of any ship or vessel
shall be so transferred, if the owners or proprietors of such ship or vessel, who were
owners thereof at the time such ship or vessel was last registered, or whose property
therein has not been so transferred, shall be desirous of having a certificate of
registry de novo, instead of the indorsement on the old register, as now required:
Be it therefore enacted by the authority aforesaid, That in case there shall be any
alteration of property in the same port, by the sale of one or more shares in any ship
or vessel, after registering thereof, and the owner or owners, proprietor or proprietors,
of such ship or vessel, who were owners or proprietors thereof at the time such ship or
vessel was last registered, or whose property therein has not been so transferred, shall
be desirous of having the ship or vessel registered de novo, it shall and may be lawful
to and for the proper officers impowered to register ships and vessels, and to grant
certificates thereof, and such officers are hereby authorized and required to register
every such ship or vessel de novo, provided all the rules, regulations, and conditions
of the before-recited Act, passed in the the twenty-sixth year of the reign of his present
Majesty, and of all other laws in force concerning the registry of ships and vessels
de novo, be complied with.

XXII. And whereas British ships or vessels, the property of which is in whole
or in part transferred to persons not being subjects of his Majesty, are not entitled
to the privileges of British ships and vessels; and to prevent frauds in the em-
ployment of such ships or vessels as British ships or vessels, contrary to the
intention of the laws of navigation, they are now by law required, in certain cases, to
be registered de novo; for which purpose it is necessary that such ship or vessel should
proceed, with all due diligence, to the port to which she belongs, or to any other port
in which she may be legally registered, by virtue of the said Act, passed in the
twenty-sixth year of his present Majesty's reign, in order to be registered de novo:
Be it enacted, That from and after the first day of March one thousand seven hundred
and ninety-five, as often as any such transfer of property in any ship or vessel shall
be made, while such ship or vessel is upon the sea, on a voyage to a foreign port
or ports, in case the master of such ship or vessel is privy to such transfer, or, in case
he is not so privy, as soon as he shall become acquainted therewith, such ship or
vessel shall proceed directly to the port or ports for which the cargo then on board
is destined, and shall sail from such port or ports, to which the cargo then on board
is destined, to the port of his Majesty's dominions to which she belongs, or to any
other such port in which she may be legally registered by virtue of the said Act,
and such ship or vessel may take on board, in the port or ports for which her original
cargo was destined, or in any other port or ports, being in the course of her voyage
to the port of his Majesty's dominions in which she may be so registered de novo,
such cargo, and no other, as shall be destined and may be legally carried to such port
of his Majesty's dominions, where she may be so registered de novo; and if such trans-
fer of property shall be made while such ship or vessel is in any foreign port, and the
master of such ship or vessel is privy to such transfer, or, in case he is not so privy, as
soon as he shall become acquainted therewith, such ship or vessel, after having de-
levered the cargo then on board such ship or vessel at the port or ports for which it is
destined, shall sail from such port or ports to the port of his Majesty's dominions to
which she belongs, or to any other such port in which she may be legally registered by
vntue of the said Act, and may take on board, at the port or ports for which her original cargo was so destined, or at any other port, being in the course of her voyage to the port of his Majesty's dominions in which she may be so registered de novo, such cargo, and no other, as shall be destined, and may be legally carried to such port of his Majesty's dominions, where she may be so registered de novo; and if such transfer of property shall be made while such ship or vessel is on a fishing voyage, and the master of such ship or vessel is privy to such transfer, or, in case he is not so privy, as soon as he shall become acquainted therewith, such ship or vessel, after having finished such fishing voyage, without touching at any foreign port or ports, except for the purpose of repairs or refreshments, or for delivering any part of the cargo she may have on board destined for such foreign port or ports, shall sail to the port of his Majesty's dominions to which she belongs, or to any other such port where she may be legally registered by virtue of the said Act, and may take on board, at the foreign port or ports last described, or at any other port or ports, being in the course of her voyage to the port of his Majesty's dominions where she may be so registered de novo, such cargo, and no other, as shall be destined and may be legally carried to such port of his Majesty's dominions, and every such ship or vessel as aforesaid shall be registered de novo as soon as she returns to the port of his Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said Act; on failure whereof such ship or vessel shall, to all intents and purposes, be from thenceforth considered, and deemed and taken to be a foreign ship or vessel, and shall not again be registered, and be entitled to the privileges of a British ship or vessel, unless upon special representation of the circumstances of the case to four or more of the commissioners of his Majesty's customs in England, or to three or more of the commissioners of his Majesty's customs in Scotland, or to the governor, lieutenant governor, or commander in chief, for the time being, of the islands of Guernsey or Jersey, or of any colony, plantation, island, or territory, to his Majesty belonging, as the case may be, the said commissioners, governor, lieutenant governor, or commander in chief, shall respectively, on consideration of the special circumstances of the case, think fit to order; and in such case, they are hereby authorized to order that the said ship or vessel shall be registered, and be thereby again entitled to the privileges of a British ship or vessel, and such registry shall be made, and such certificate thereof shall be granted accordingly: Provided always, that all the regulations required by the laws in force, concerning the first registry of ships and vessels, shall in every such case be complied with: Provided nevertheless, that in no case of the transfer of property, in whole or in part, of any ship or vessel, in the manner hereinbefore mentioned, the ship or vessel, of which the property is so transferred, shall be registered de novo, or be entitled to the privileges of a British ship or vessel, unless such ship or vessel shall return to the port of his Majesty's dominions to which she belongs, or to such other port in which she may be registered de novo, within the period of twelve months after the date of such transfer of property, if such ship or vessel shall not be on a voyage to the east of the Cape of Good Hope, or to the west of Cape Horn, or within two years, if the ship or vessel is on a voyage to the east of the Cape of Good Hope, or to the west of Cape Horn, at the time such transfer of property shall take place, except by the order of the said commissioners, governor, lieutenant governor, or commander in chief respectively, upon special representation of the circumstances of the case, in manner hereinbefore authorized.
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of this country with other independent states; Thirdly, to the trade which she carries on herself or permits other states to carry on with her plantations and foreign possessions; and, Fourthly, the encouragement of the fisheries. We will take a concise and systematic view of this and subsequent statutes relative to these subjects.

First, we will examine the regulations which respect the COASTING TRADE; that is, the trade from one port of this country to another port of the same country.

The following is the enactment of the statute 12 Car. 2. c. 18. s. 6. “That it shall not be lawful to any person or persons whatsoever to load, or cause to be loaded and carried, in any bottom or bottoms, ship or ships, vessel or vessels whatsoever, whereof any stranger or strangers born (unless such as shall be denizens or naturalized) be owners, part-owners, or master, and whereof three-fourths of the mariners, at least, shall not be English, any fish, victual, wares, goods, commodities, or things of what kind or nature soever the same shall be, from one port or creek of England, Ireland, Wales, islands of Guernsey or Jersey, or Town of Berwick upon Tweed, to another port or creek of the same, or of any of them.”

In the second place, we are to consider the foreign trade of this country herself; that is, her trade with other independent states. By the Navigation Act, the 12 Cha. 2. c. 18.* it is enacted, “That no goods or commodities of the growth, production, or manufacture of Muscovy, or of any of the countries, dominions, or territories, to the Great Duke or Emperor of Muscovy or Russia belonging; as also that no sort of masts, timber, or boards, no foreign salt, pitch, tar, rosin, hemp, or flax, raisins, figs, prunes, olive oils, no sorts of corn or grain, sugar, potashes, wines, vinegar, or spirits called aqua-viteæ, or brandy wine, shall be imported into England, Ireland, Wales, or Town of Berwick upon Tweed, in any ship or ships, vessel or vessels whatsoever, but in such as do truly and without fraud belong to the people thereof, or some of them, as the true owners and proprietors thereof, and whereof the master, and three-fourths of the mariners at least are English: And that no currants, no commodities of the growth, production, or manufacture of any of the countries, islands, dominions, or territories, to the Ottoman or Turkish Empire belonging, shall be imported into any of the before-mentioned places in any ship or vessel but which is of English built, and navigated as aforesaid, and in no other, except only such foreign ships and vessels as are of the built of that country or place of which the said goods are the growth, production, or manufacture respectively, or of such port where the said goods can only be, or most usually are, first shipped for transportation, and whereof the master, and three-fourths of the mariners, at least, are of the said country or place, under the penalty and forfeiture of ship and goods, as in the last-mentioned clause.”

This exception as to foreign ships is construed to apply not only to Turkey, but to Russia, and to all the enumerated articles before-mentioned in the same section. But by a subsequent statute, foreign ships, British-owned, were subjected to the payment of alien’s duty.

Such is the groundwork of all the law on the subject of the European trade; but some alterations have been introduced by subsequent statutes. That of the 27th Geo. 3. c. 19. s. 10. after reciting the before-mentioned statutes enacts, “That any of the commodities enumerated in the said Act, being the growth, production, or manufacture of Europe, may be imported into Europe under certain conditions, which it is not material to particularize, either in ships which, before the first day of May, 1786, did truly and without fraud wholly

* A licence by the King, contrary to this statute, was declared void by proclamation, two years after the passing it. Ander. Hist. Com. 2 vol. p. 473.—Reeves on Shipping, 201.
belong to his Majesty's dominions, or which are of the built of his Majesty's dominions, and registered respectively according to law, or in ships or vessels the built of any countries or places in Europe belonging to or under the dominion of the sovereign or state in Europe of which the said goods or commodities so enumerated or described as aforesaid, are the growth, production, or manufacture respectively, or of such ports where the said goods or commodities can only be, or are most usually first shipped for transportation, such ships or vessels being navigated with a master and three-fourths of the mariners, at the least, belonging to such countries, or places, or ports respectively, and in none other ships or vessels whatever; any law, usage, or custom to the contrary notwithstanding."

The act of 2 W. & M. sess. 1. c. 9. declares, That throwing of silk is not nor ought to be construed a manufacture within the intention of the said Act for the encouraging and increasing of shipping and navigation; and that no thrown silk of the growth or production of Turkey, Persia, East India, or China, or of any other country or place, (except only such thrown silk as is or shall be of the growth or production of Italy, Sicily, or of the kingdom of Naples, and which shall be imported in such ships or vessels, and navigated in such manner as in the said Act of Navigation is directed or allowed, and brought from some of the ports of those countries or places whereof the same is of the growth or production, and which shall come directly by sea, and not otherwise), shall be brought or imported into the kingdom of England, dominion of Wales, the islands of Jersey or Guernsey, or the town of Berwick upon Tweed."

So that only such silk as is really the growth of Italy, Sicily, and Naples, may be imported within the meaning of the Navigation Act. Yet during the war, the prohibition has been frequently relaxed, and the importation of thrown silk from a friendly country permitted in any vessel whatever. 43 Geo. 3. c. 153.

There is, however, one European production, namely, the timber of Germany, which the Act of Charles II. allowed to be imported in vessels of the country of which it was the growth or production, or in vessels of the most usual port, but which the Stat. 6. Geo. 1. c. 15. confines to English shipping alone. This Statute repeals a previous prohibition, forbidding the importation of timber from Germany in any ships whatsoever, and allows its importation in British vessels: "Enacting," in the second section, "That it shall be lawful for any of his Majesty's subjects to import any quantity or quantities of fir timber, fir planks, masts, and deal boards, being of the growth of Germany, into this kingdom, from any port or place in Germany, in British built ships only, so as the owner or owners are his Majesty's British subjects, and whereof the master and three-fourths of the mariners at least are British subjects."

These are the principal regulations with respect to prohibiting or limiting foreigners in the trade between this country and the rest of Europe. As to the trade of this country with Asia, Africa, and the greatest part of America, our policy is still stricter and more exclusive. The Act of Navigation lays down the following ordinance: "That no goods or commodities whatsoever, of the growth, production, or manufacture of Africa, Asia, or America, shall be imported into England, Ireland, or Wales, islands of Guernsey and Jersey, or town of Berwick upon Tweed, in any other ship or ships, vessel or vessels whatsoever, but in such as do truly and without fraud belong only to the people of England, or Ireland, dominion of Wales, or town of Berwick upon Tweed, or of the lands, islands, plantations, or territories in Asia, Africa, or America, to his Majesty belonging, as the proprietors and right owners thereof, and whereof the master and three-fourths at least of the mariners are English, under the penalty of the forfeiture of all such goods and commodities, and of the ship
or vessel in which they were imported, with all her guns, tackle, furniture, ammunition, and apparel: one moiety to his Majesty, his heirs and successors, and the other moiety to him or them who shall seize, inform, or sue for the same in any Court of Record, by bill, information, plaint, or other action, wherein no essoin, protection, or wager of law shall be allowed.

An exception to this rule has been made in favour of the Portuguese dominions in South America by the 48 Geo. 3. c. 11. which "enacts, That it shall be lawful to import into the United Kingdom directly from Brazil, or any of the territories and possessions of the crown of Portugal on the continent of South America, in ships or vessels built in the kingdom of Portugal before the first day of January, 1806, or in ships or vessels built in any of the aforesaid territories or possessions on the continent of South America, or in ships or vessels taken by the ships or vessels of war belonging to the Portuguese government, or belonging to any subjects of the said government, having commissions or letters of marque and reprisals from the Portuguese government, and condemned as lawful prize in any Court of Admiralty in the Portuguese government," and, "owned by subjects of the Portuguese government, resident in the said territories and possessions on the continent of South America, and whereof the master and three-fourths of the mariners at least are subjects of the Portuguese government, and residents in the said territories and possessions, any goods, wares, or merchandise, the growth, produce, or manufacture of the said territories and possessions, which are not prohibited by law to be imported from foreign countries."

There is one part of America which does not fall within the force of the Navigation Act of 12 Car. 2.; viz. the territory of the United States. What may be the exact predicament of our commercial relations with those countries at the present moment, it is not indeed very easy to declare: still less, in the present uncertainty of the negotiations, is it possible to point out the law as it is likely to stand hereafter; so that for practical purposes, that part of the Navigation Code which relates to the United States, might almost as well be omitted in a legal work in this peculiar crisis of the political world. We will, however, shortly state the leading regulations of the law which has ordinarily governed our intercourse with the countries in question. Those ordinances originated in the Stat. of the 37 Geo. 3. c. 97. which enacts, "That it shall be lawful to import into this kingdom, directly from any of the territories of the United States of America, in British-built ships or vessels, owned, navigated, and registered according to law, or in ships built in the countries belonging to the United States of America, or any of them, or in ships taken by any of the ships or vessels of war belonging to the government, or any of the inhabitants of the said United States, having commissions or letters of marque and reprisal from the government of the said United States, and condemned as lawful prize in any Court of the Admiralty of the said United States, and owned by the subjects of the said United States, or any of them, and whereof the master and three-fourths of the mariners at least are subjects of the said United States, any goods, wares, or merchandise, the growth, production, or manufacture of the said United States, which are not prohibited by law to be imported from foreign countries."

The 27th section declares, That the Act shall continue in force so long as the said treaty between his Majesty and the United States shall continue in force. The treaty has ceased to be in force long since, but the statute was continued by several subsequent enactments, up to the end of the session of parliament in the year 1808. Before the conclusion of that session, these particular provisions were continued for another year, and the 49 Geo. 3. c. 59. re-enacted them without any limitation as to
their continuance. It may therefore be presumed that this last act is still in per-
manent force, except as it may be from time to time affected by momentary measures of non-intercourse or embargo, adopted in Congress, or by any temporary retaliations which may be resorted to on this side of the Atlantic.

There are a few commodities, however, which form exceptions to all the provisions of the Navigation Act respecting the trade of England with Europe, Asia, Africa, America in general, or the United States. These commodities, for a certain time, may be imported in any ships whatsoever. One of them is unmanufactured tobacco; and the Stat. 49 Geo. 3. c. 25. enacted, that it might be imported from any place whatever, in any ship belonging to any country in amity with his Majesty, however navigated, until the 25th March, 1811. The others are cochineal and indigo; which, by the Stat. of the 49 Geo. 3. ch. 18. made to continue several previous Acts, may be imported, until the 25th of March, 1814, in any ship belonging to any state in amity with his Majesty, from any port or place, provided that no cochineal or indigo, the growth or produce of any of the countries within the limits of the East India Company's charter, shall be imported, except by and on the account, or with the licence of the said company."

With respect to a few kinds of goods, there is a still greater liberty: a liberty not consisting merely in temporary relaxations, but in the total and permanent absence of all restriction whatsoever. Such are masts, timber, or boards, pitch, tar, rosin, hemp, or flax, which, by the 47 Geo. 3. sess. 2. ch. 27. may be imported in any vessel belonging to any state in amity with his Majesty, navigated in any manner whatever.

And such, lastly, are bullion and prize goods, which form an exception, not only to these restrictions, but also to the regulations respecting the coasting trade. This general exception is created by the 15th section of the 12 Car. 2. ch. 18. which provides, that nothing in the Act shall extend to bullion, nor to goods taken by way of reprisals by any ship or ships belonging to England, Ireland, or Wales, islands of Guernsey or Jersey, or town of Berwick upon Tweed, and whereof the master and three-fourths of the mariners at least are English, having commission from his Majesty, his heirs or successors.

Besides all these relaxations, it has been usual to make temporary suspensions, during war, of many enactments in the Navigation Law with respect to commodities in general, or to particular articles. Other temporary provisions may deserve a particular notice through the probability of their re-enactment from time to time; but those which are ordained only upon the pressure of war, will terminate of course in the restoration of peace.*

We will now briefly inquire into the decisions which the Courts have pronounced upon those parts of the Navigation Law which relate to the trade of this country with other independent states. These decisions turn altogether upon the 8th sec. of the Act of 12 Car. 2. c. 18.; the section respecting the shipping in which foreigners may carry on such branches of trade as are permitted to them.

It was once supposed and decided, that this section enjoined the importation of Russian commodities, and of the other enumerated foreign articles, in Russian ships, English manned. This doctrine was laid down in the case of Scott v. Schwartz. It was contended by the counsel for the crown, and admitted and reasoned upon at length by the Chief Baron Comyns, " That the words expressing the ships in which Russia goods should be imported, such as belong to the people thereof, &c. must mean the people of Russia, and not the people of England; and that the policy of that provision was, that Russia ships should be the bringers of those articles, but they should

* See Statutes at large, Index, Tit. Importation.
be navigated by English masters and mariners; and comparing it with the wording respecting the importation of articles from Turkey, which requires the ship to be English-built, it was said, that the manning of Russia ships with English mariners, was a policy extremely beneficial to English navigation, and such as both countries would find an advantage in; but that it was foreseen, that Turkish ships would hardly be suffered by the Mahometans to be navigated by Italian sailors, nor would it be proper for Christian powers to condescend to suffer it; and therefore the Act requires, in that case, that where the mariners were English, the ship also should be such. This seems to have been the decided opinion of the Chief Baron upon that occasion.”

But Mr. Reeves, in his history of the Navigation Laws, observes, “That very little verbal criticism would have drawn from these words a very different construction. For, in the first place, it is not only the goods of Russia that are in question, but also various enumerated goods which are not expressed to be the produce of any particular country; and therefore, when we admit that ships belonging to the people thereof may, when referred to Russia, have an antecedent to which they may refer, it may be asked, what people are referred to where no country is mentioned as the place where the enumerated goods are produced? So that in all cases, except that of Russian commodities, this construction upon these words leaves them without effect or meaning.

“In the next place, this construction seems to be taken contrary to the obvious method of tracing the antecedent referred to. For the words being—that no goods, &c. of Russia, &c. nor any masts, &c. shall be imported into England, Ireland, Wales, or Berwick, in any ship or vessel whatsoever, but in such as do truly and without fraud belong to the people thereof, or some of them, as the true owners and proprietors thereof—and whereof the master and three-fourths of the mariners at least are English, the natural construction is to refer the people thereof to the last antecedent, viz. England, Ireland, Wales, and Berwick, and not to Russia.”

Lastly, upon comparing this description of the ships, and the manning of them, with other descriptions of ships in the same Act, it appears to be the same form of words as is used in various places, in former parts of the Act, to describe English shipping. It is used in the first section to describe the shipping for the plantation trade; in the third section, to describe those that are to bring the commodities of Asia, Africa, and America; it is nearly repeated in the fourth section; and as much of it as regards ships is used in the fifth section, relating to the fishery; it is likewise used in several parts of the Act subsequent to the eighth section. Indeed, this is the sense in which this provision is understood on a subsequent occasion. In the case of Scott v. D’Achez, Lord Chief Baron Parker lays down the law in that sense, without noticing the determination to the contrary, or that there was any doubt ever entertained upon the subject.

The exception at the close of this section has occasioned some discussion: “Except only such foreign ships as are of the built of the country or place of which the goods are the growth, &c. or of such port where the goods can only be, or most usually are, first shipped for transportation, and whereof the master and three-fourths of the mariners at least are of the said country or place.”

The most material doubt upon these words was, whether they applied only to the latter part of the section, relating to currants and the Turkey trade, or extended to the whole of the section. It was maintained by the crown lawyers, in the before mentioned case of Scott v. Schwartz, that it was confined to the Turkey trade; but this was overruled by the Chief Baron Comyns, who clearly thought the exception extended to the whole section, upon the consideration that the goods of Russia, and the enumerated goods, as well as currants and the commodities of Turkey, are all
same country or place," led also to considerable discussion. The point was decided in the case of Scott v. Schwartz; and in which it was adjudged to be the design of the act, that no foreign ships should import any of the goods enumerated and described in this section, if mariners were brought from any foreign kingdom to navigate them. From the same case we may further collect, that though the Act does not precisely fix and determine who shall be the people of a country, yet it gives a larger extent and signification of the phrase than belongs to the term natives; and the precise notion of it is left to the general import and common understanding of the words.

In this case of Scott and Schwartz, there was a ship, Russian built, from Riga, navigated by a master who was born out of the Russian dominions, but who had, nine years before, been admitted a burgler of Riga, and had ever since continued so, residing there when not engaged in voyages. There were eleven mariners, four of whom were born in Russia; the fifth was born in Ireland, there bound apprentice to the master, and as such went with him to Riga; for three or four years before the seizure, he served on board this ship, and sailed in it from Riga on the present voyage. The other six were born out of the dominions of Russia; but one had resided at Riga for eight years next before the seizure; another, five years; another, four years; another, seven years; and the last four had, during the same period, sailed from Riga in that and other vessels. It was understood there was no such thing as naturalization known in Russia.

The Chief Baron Comyns was of opinion, that the master being a burgher, and having taken an oath of allegiance to the Empress, as was proved on the trial, there was hardly any thing more cogent than this to denominate a man of a country; he must be a subject of the Empress. As to the other four mariners, he thought them to be people of the country within the meaning of the Act: first, because the Act seems to intend nothing more than fixed and settled inhabitants there; and a residence of four or five years might well satisfy that expression: secondly, because it seemed to answer the intent of the Act; which was not so much to create difficulties to other countries to find mariners amongst themselves, as to prevent their supplying themselves with them from other countries than England: thirdly, because, by the civil law, such a residence gives a country a right to the resident's service: fourthly, because, in the present case, it was not found by the special verdict, that these persons had ever any habitation or residence out of the Empress of Russia's dominions; and what does not appear, is not to be intended. It was found that they had made several voyages from Russia, but it did not appear that they had made any voyage from any other country; so that they might properly be said to be mariners of Russia, but not of any other country: and as the Act speaks of mariners of the country, and does not say mariners born in the country, and as mariners is a denomination they must acquire, for they cannot be born mariners; if therefore they were of that country while they were mariners, and never were mariners of any other country, they seem to satisfy the words and intent of the Act.

Upon the whole, it was said, that it would be almost impracticable, and make commerce very hazardous, if a merchant was to search out the nativity of every mariner he employed, and in case of mistake or misinformation, was to forfeit his ship and cargo.

Having thus fully considered the trade of England herself upon her own shores, and with the dominions of all other states, we are next to examine the regulations affecting the trade of the British possessions abroad. The Statute 12 Car. 2. c. 18. contains the following enactment: "For the increase of shipping, and encouragement of the navigation of this nation, wherein, under the good providence and pro-
section of God, the wealth, safety, and strength of this kingdom is so much concerned; be it enacted, That no goods or commodities whatsoever shall be imported into or exported out of any lands, islands, plantations, or territories to his Majesty belonging, or in his possession, or which may hereafter belong unto, or be in the possession of his Majesty, his heirs and successors, in Asia, Africa, or America, in any other ship or ships, vessel or vessels whatsoever, but in such ships or vessels as do truly, and without fraud, belong only to the people of England or Ireland, dominion of Wales, or town of Berwick upon Tweed, or are of the built of, and belonging to, any the said lands, islands, plantations, or territories, as the proprietors and right owners thereof, and whereof the master and three-fourths of the mariners at least are English."

Some material alterations have been made in this Act by the Statute 45 Geo. 3. c. 57. which was passed to consolidate and extend several previous ordinances. It enacts, in the first section, that "wool, cotton-wool, indigo, cochineal, drugs of all sorts, cocoa, logwood, fustic, and all sorts of wood for dyers' use, hides, skins, and tallow, beaver, and all sorts of furs, tortoise-shell, hard wood, or mill-timber, mahogany, and all other woods for cabinet ware, horses, asses, mules, and cattle, being the growth or production of any of the colonies or plantations in America, or of any country on the continent of America belonging to or under the dominion of any foreign European sovereign or state, and all coin and bullion, diamonds, and precious stones, may be imported from any of the said countries into the several ports of Kingston, Savannah La Mar, Montego Bay, Saint Lucea, Antonio, and Saint Ann, in the island of Jamaica, the port of Saint George in the island of Grenada, the port of Rosseau in the island of Dominica, the port of Saint John's in the island of Antigua, the port of San Josef in the island of Trinidad, the port of Scarborough in the island of Tobago, the port of Road Harbour in the island of Tortola, the port of Nassau in the island of New Providence, one of the Bahama islands, the ports of Pitt's Town and Portland Harbour in Crooked Island, another of the Bahama islands, the port of Kingston in the island of Saint Vincent, and the principal port in the island of Bermuda, in any foreign sloop, schooner, or other vessel whatever, not having more than one deck, and being owned and navigated by persons inhabiting any of the said colonies or plantations in America, or countries on the continent of America, belonging to or under the dominion of any foreign European sovereign or state, any law, custom, or usage to the contrary notwithstanding." To these ports the Statute 46 Geo. 3. chap. 72. has added Road Harbour in the island of Tortola.

By the second section it is provided, "That tobacco, the growth or production of any island or continental country of America, under the dominion of any foreign European state, may be also imported into the same ports. The importation of foreign coffee and sugar is permitted by Sect. 4. but limited to the ports of Nassau and Pitt's Town, to the principal port in the island of Bermuda, and such other port or ports in the Bahama and Caicocs islands as shall be approved by his Majesty in council; and the 7th section provides, that no foreign ship shall import from any of the before-mentioned places in America, any goods except those before enumerated.

The 8th section permits, "That British rum and Negroes, and all goods legally imported, except masts, yards, bowsprits, pitch, tar, turpentine, and such iron as shall have been brought from the British colonies or plantations in America, may be again exported to any of the colonies or plantations in America, or any countries on the continent of America, belonging to or under the dominion of any foreign European sovereign or state, in any sloop, schooner, or other vessel whatever, not having more than one deck, and being owned and navigated by persons inhabiting any such colony, plantation, or country."

So much of this enactment as relates to Negroes is annulled by 47 Geo. 3. s. 1.
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c. 36. which cleared the present age from the crime and shame of preceding generations, by the final and total abolition of the slave trade.*

And the second section, and the Statute 46 Geo. 3. chap. 72, provide, that tobacco, the growth of foreign islands in the West Indies, or of the possessions of foreign European states in America, may be exported from the ports where it had been imported, and brought into this kingdom by the like foreign vessels as before-mentioned.

But the possessions in America and the West Indies have not been the only objects of legislative attention in modern times. The Statute 37 Geo. 3. chap. 117. makes provision for regulating the trade of foreign ships with the British possessions in India. It enacts, that during the continuance of the exclusive trade of the United Company of Merchants of England trading to the East Indies, and during the term for which the possessions of the British territories in India is secured to the said United Company, it shall and may be lawful for the ships and vessels of countries and states in amity with his Majesty, to import and export from the British possessions in India such goods and commodities as they shall be permitted to import into and export from the said possessions by the directors of the said company, who are hereby directed to frame such regulations for carrying on the trade to and from the said possessions, and the countries and states in amity with his Majesty, as shall seem to them most conducive to the interest and prosperity of the said British possessions in India, and of the British empire."

With respect to Malta, it is provided by the 41 Geo. 3. c. 103. "That Malta and its dependencies shall be deemed part of Europe for all purposes." And the 27th Geo. 3. c. 19. enacts with respect to Gibraltar, "That it shall and may be lawful for any person or persons whatever, to import or bring into Great Britain from Gibraltar, in any ship or vessel which, before the 1st day of May, 1786, did truly, without fraud, wholly belong to his Majesty's dominions, navigated and registered according to law, the goods, wares, or merchandise, being the growth or production of the dominions of the Emperor of Morocco, and which shall have been imported into Gibraltar directly from any part of the said dominions not lying or being to the southward of the port of Mogadore, in ships or vessels of the built of his Majesty's dominions, as before described, navigated and registered according to law, or in ships or vessels belonging to the subjects of the said Emperor of Morocco."

These are the chief enactments respecting the trade of the British possessions abroad: enactments, however, which, during time of war, have been usually suspended by specific Acts of Parliament.

The multiplicity of enactments, however, does not appear to have secured that certainty which is of so much importance in all matters of positive regulation; as may be perceived by the case of the ship Recovery, which came on before Sir William Scott in the Admiralty Court. The ship in question was an American; in spite of any prohibitions that might exist against the trade of foreigners to the British colonies, she had taken in a cargo at a British settlement in the East Indies, and was proceeding with the goods from Bombay to Rotterdam. On that voyage she was captured, and the owners came into the Admiralty Court to claim her. The claim was resisted by the captors, on the ground of illegality: the voyage having, as they contended, been undertaken in contravention of the Navigation Laws. "It is well known," said Sir William Scott, in his judgment on this case, "that our establishments in that quarter of the world have stood on a very peculiar footing, which it has been, perhaps, the

* An American ship engaged in slave trade, is now subject to capture. Case of the Amédée. 1 Acctn's Rep. 240.
policy of this country not to define with great exactness. They may have assumed a
different character at different times; and it may be very important in effect, and very
proper in point of principle, that the general maxims of our navigation system should
be applied to them in their present state, although there might have been a great
anomaly in practically applying them at a former period. It will not, however, be
necessary for me to enter into a discussion of the policy of such a measure.

"With regard to the fact, I had always entertained the notion that they had not
hitherto been so applied. But a case occurred not many years since, which brought
the consideration of the question in a distinct form before the Courts of common law.
After repeated arguments, and much deliberation, the Court of King's Bench ex-
pressed an opinion, that the Navigation Laws did extend to those countries; and on a
writ of error, the judgment of the King's Bench in that case was affirmed, with a
complete adoption of the doctrine laid down. An Act of Parliament was afterwards
passed to quiet the alarm which had been occasioned by this exposition of the law, and
to recognize, in general terms, the policy of admitting foreign vessels to a regulated
trade, on certain conditions which the East India Company were empowered to impose.
But nothing appears to have been ever done under those powers of the Act; and now,
for the first time, the question arises. What is the state of the law, as applicable to this
peculiar situation of things, the provisional relaxation of the Act of Parliament, and
the total inaction on the part of the East India Company, who have, for more than
eleven years, delayed to apply the regulations under which the Act of Parliament had
expressed it to be expedient that foreign ships should be admitted?

"This is a question of very considerable magnitude and importance. But there is,
I think, a preliminary question, which may supersede the necessity of pronouncing a
decision upon it; and that is, Whether the more general question is properly brought
before the Court in its present form? If it is not, I shall not be desirous of delivering
my sentiments upon it, unless I am called upon in another form of proceeding, which
would bring it before me as a case of undisputed jurisdiction."

It is much to be regretted for our present purpose, that this preliminary question
arose; for the learned judge concluded by determining that he had not jurisdiction to
entertain that question of law, which belonged more properly to the Revenue Court;
and we have lost the benefit of a decision which, from the great learning and compre-
hsive understanding of the judge, we have every reason to suppose would have set
this important doubt at rest for ever.

The Court of Common Pleas, in the cases of March v. Abel, and Chalmers and 3 B. and P.
Bell, decided, that the traffic of foreigners with these settlements was illegal by the
Navigation Acts. But both these cases arose upon policies of insurance, effected upon
the passing of that Act of the 37 Geo. 3. ch. 117. to which Sir William Scott alludes
in his judgment in the case of the Recovery, as recognizing and legalizing a regulated
and conditional trade. So that we have no express decision upon the law as it stands at
this moment.

Every provision which we have hitherto noticed, has for its object to enforce some
or all of these three requisites: that the ships employed be British owned, British
built, and British navigated. Therefore it will be necessary to ascertain what the
phrases British owned, British built, and British navigated, are legally understood to
signify.

A ship is considered as British owned when it belongs to some of his Majesty's British
subjects in Great Britain, Ireland, Jersey, Guernsey, or the Isle of Man, or some of
the King's colonies, plantations, islands, or territories in Asia, Africa, or America; 26 Geo. 3.
but no subject whose usual residence is in any country not under the dominion of his
Majesty, is to be deemed a British subject, for this purpose, during such residence, unless he be a member of some British factory, or agent for, or copartner in a house or copartnership actually carrying on trade in Great Britain or Ireland.

There were formerly numerous advantages enjoyed by vessels that were British owned, though they were not built in this country, or, as it is termed, British built; and ship-building was not sufficiently advanced to justify the legislature in confining the privileges of British ships to those vessels built in this country. But in the last century, the great increase of our shipping rendered it expedient to adopt such a measure, and it was accordingly enacted by the 26th Geo. 3. c. 60. sec. 1. "That no ship or vessel foreign built (except such ships or vessels as have been, or shall hereafter be taken by any of his Majesty's ships or vessels of war, or by any private or any other ship or vessel, and condemned as lawful prize in any Court of Admiralty,) nor any ship or vessel built or re-built upon any foreign made keel or bottom, in the manner heretofore practised and allowed, although owned by British subjects and navigated according to law, shall be any longer entitled to any of the privileges or advantages of a British built ship, or of a ship owned by British subjects; and that all the said privileges and advantages shall hereafter be confined to such ships only as are wholly of the built of Great Britain or Ireland, Guernsey, Jersey, and the Isle of Man, or of some of the colonies, plantations, islands, or territories in Asia, Africa, or America, which now belong, or at the time of building of such ships or vessels did belong, or which may hereafter belong to, or be in the possession of, his Majesty, his heirs or successors."

To this Act there were some exceptions with respect to certain vessels belonging to British subjects before the 1st May, 1786. But these exceptions could operate no longer than the vessels which were built or building before the 1st May, might continue fit for service.

By a more modern statute, however, the construction of the phrase British shipping has been a little enlarged. This statute is the 37th Geo. 3. c. 63. of which the following is an extract: "Whereas in consequence of articles of capitulation, whereby certain foreign colonies or settlements, or parts thereof, have been, or may hereafter be surrendered to his Majesty during the present war, certain foreign ships and vessels may have been put, or may be put, under his Majesty's protection: Be it enacted, That all foreign ships and vessels which in consequence of any such capitulation shall have been, or may be so put under his Majesty's protection, at the time of, or in consequence of the surrender of any foreign colony or settlement, or part of any foreign colony or settlement, to his Majesty, shall and may be registered in like manner as ships taken and condemned as lawful prize, may, by the laws now in force, be registered, and shall, by virtue thereof, become entitled to the privileges and advantages of British ships or vessels, under the regulations and restrictions hereinafter mentioned."

Then follow certain provisions as to the mode of registering; and the 3d section enacts, "That it shall be lawful for any such ship or vessel being registered, and having a certificate of registry, as aforesaid, and being navigated as British ships are now, or may hereafter be required by law to be navigated, to import and export to and from any place or places whatsoever, such goods and merchandizes respectively, and none other, as may be imported and exported by any ship or vessel taken and condemned as lawful prize; such importations and exportations to be made in like manner, and under and subject to the like duties, conditions, regulations, and restrictions, and subject to the like penalties and forfeitures for the breach thereof, as if the same were made by any ship or vessel taken and condemned as lawful prize: Pro-
vided always, that such ships and vessels, so put under his Majesty's protection, shall not be allowed to import or export any goods whatsoever to or from any port in Europe not in the possession of his Majesty."

In all other respects these vessels appear to be in the same condition with prize ships, which by the Statute 33 Geo. 3. c. 66. sec. 43. are to be deemed British built.

Various acts have, from time to time, been passed enjoining the registry of vessels, a form without which no vessels above a certain size can obtain the rights of British ships. But as these acts are matter of merely municipal regulation, and do not immediately affect the commerce of foreigners, I shall not particularise them.

The Stat. 27 Geo. 3. c. 19. sec. 19. enacts, That all ships not entitled to the privileges of a British ship, or of a ship owned by British subjects, before 1st May, 1786, and all ships not duly registered, shall, although such ships and vessels may be owned by his Majesty's subjects, be held and deemed, to all intents and purposes, as alien ships.

But there is one exception which deserves to be noticed; it is that enacted by the 35th Geo. 3. ch. 115.; the words are as follow: "Whereas the court of Directors of the United Company of Merchants of England trading to the East Indies, with the approbation of the board of commissioners for the affairs of India, have sent instructions to their presidencies in the East Indies to take up such proper ships as they can procure for sending home investments of goods from India and China, and other parts within the limits of the said company's trade, in the place of ships usually sent from this country to India and China for that purpose, which last mentioned ships now are, or may be engaged in the public service: and whereas the ships so to be taken up may not be British built, or have been registered as such, and may not be navigated as required by the laws now in force:

"Be it enacted, That if, during the continuance of the present war, and for 18 months after the conclusion thereof, any such ship shall arrive in the ports of this kingdom, freighted with goods in the manner, and from any of the places within the limits before mentioned, it shall and may be lawful, upon representation made by or on behalf of the said company to his Majesty in council, for his Majesty, by and with the advice of his privy council, to authorize the importation and entry of such goods, subject to the like duties, and no other, as if they were imported in British built ships, though such goods shall be brought in ships which may not be British built, nor have been registered as British built ships, nor navigated as required by the laws now in force; provided the said ships shall have been built within the territories belonging to the said United East India Company, or the ports under the immediate protection of the British flag in the East Indies: And also to permit such ships to export from this kingdom to the British settlements in the East Indies, or to any of the places within the limits before mentioned, with the licence and consent of the said company, any goods, wares, or merchandizes whatsoever, ordnance and military stores excepted, any law, usage, or custom to the contrary thereof notwithstanding."

This act extended only to the expiration of 18 months after the conclusion of the war; but by the 49d Geo. 3. c. 20. its provisions are continued during the continuance of the exclusive trade to the East Indies granted to the company by 35 Geo. 3. ch. 52.

On the whole, as the exceptions during war, and those which have been before noticed respecting ships built or building before May, 1786, are in their nature but temporary, we may consider the general law as to British ownership and British built to be this: That a vessel, in order to be entitled to any of the advantages of a British ship, must be the property of the King's subjects in Great Britain or Ireland, Guernsey, Jersey, or the Isle of Man, or in some of the colonies, plantations, islands, or territories in Asia, Africa, or America, belonging to or in the possession of his.
Majesty: Further, it must have been built in some of the dominions last enumerated, unless it be a prize vessel, legally condemned, or a vessel put under his Majesty's protection by any capitulation at the time, or in consequence of the surrender of any foreign colony or settlement to his Majesty; in which case, however, such vessel cannot import or export any goods to or from any port in Europe not in his Majesty's possession: Finally, the forms required by the register acts must have been duly observed.

A ship thus far qualified, that is to say, a ship which, according to the statutes, is to be deemed English owned and English built, needs yet another qualification to complete her immunity; she must be not only British owned and British built, but British navigated also.

The Statute of the 12th Car. 2. c. 18. wherein it requires a trading ship to be either English owned or English built, requires also that the master and three-fourths of the mariners be subjects of the King, and the Statute of 13th and 14th Car. 2. c. 11. sec. 6. explains, that the number of mariners are to be accounted according to what they shall have been during the whole voyage. By the Stat. 34th Geo. 3. c. 68. s. 3. it is ordained, that whenever that or any other Act requires, "that the master and the whole, or any proportion of the mariners shall be British subjects, they must be so during the whole voyage, unless in case of sickness, death, desertion of the whole, or part of the crew being taken prisoners in the voyage." And in order to prevent doubts, the same statute, in the 7th section, enacts, that all foreign mariners who shall have served or who shall serve on board any of his Majesty's ships or vessels of war, in time of war, for three years, and who shall have obtained from the commanding officer certificates testifying that they have so served, and testifying also their fidelity and good behaviour during such service, and who shall have taken the oath of allegiance, and complied with certain forms particularly mentioned by the Act, shall be entitled to be employed as masters of British ships or vessels, or as British mariners on board any British ships or vessels within the intent and meaning of any of the laws in force at the time of the passing of that Act; but the Act, in the 8th section, excludes from the power of obtaining this qualification every person, however otherwise qualified, who, after he has become qualified, has taken or shall take the oath of allegiance to any foreign sovereign or state, for any purpose, except under the terms of some capitulation upon a conquest by an enemy, and for the purpose of such qualification only.

At the same time, the same section permits, that in "the navigation on the seas of America and the West Indies, from any port of America and the West Indies, to any port of America and the West Indies, any Negroes belonging to any person or persons being or having become his Majesty's subjects in manner aforesaid, and with the qualifications aforesaid, and in the seas to the eastward of the Cape of Good Hope, from any port to the eastward of the Cape of Good Hope to any other port to the eastward of the Cape of Good Hope, Lascars and other natives of any of the countries to the eastward of the Cape of Good Hope, may be employed as British sailors, seamen, or mariners, in manner heretofore practised."

There is, however, a provision, in its nature temporary, against the employment of Negroes from the colonies then lately belonging to the French King, except under certain conditions.

The 12th section enacts, that in case any British ship shall be found at sea having on board a greater number of foreign mariners than is allowed by this Act, or any law now in force, or hereafter to be made, and the master of such ship or vessel shall produce certificate of the actual necessity of engaging such foreign mariners in some foreign port, by occasion of the sickness, death, or desertion of the like number of British
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mariners, or of the same having been taken prisoners during his voyage, and that British mariners could not be engaged in such foreign port to supply their room; and that for the safe navigation of such ship or vessel it became necessary to engage and employ such foreign mariners, under the hand of his Majesty's consul at the foreign port where the said foreign mariners were so engaged, or, if there is not any such consul there, under the hands of two known British merchants at such foreign port, it shall not be lawful for any of the persons authorised by this Act to make seizures of ships or vessels navigated contrary to the directions of this Act, to stop or detain any such ship or vessel so found at sea, or to hinder her from proceeding on her voyage; but such persons shall, and are hereby required to indorse the certificate so produced, testifying the production thereof, and when and where met with at sea, and that the number of foreign mariners correspond with the certificate of such British consul, or such known British merchants, for the consideration and investigation of the commissioners of his Majesty's customs in England and Scotland respectively.

The Statute 13 Geo. 2. c. 3. sec. 1. and 4. contains a proviso enabling the King, at all times when it shall be found necessary to declare war against any foreign power, to publish a proclamation to permit all merchant ships and other trading vessels and privateers to be manned with foreign mariners and seamen during such war, so as the number of such foreign seamen or mariners do not exceed three-fourths of the mariners at any one time employed to navigate such merchant ship, or other trading ship or vessel, or privateer, and that one-fourth, at least, of the mariners or seamen so employed, be at all times natives, or his Majesty's naturalized subjects of Great Britain; sudden death, and the hazard and casualties of war and the seas, saved and excepted.

And this right is reserved to the King by 33 Geo. 3. c. 68. sec. 9.

Since the union of Great Britain and Ireland, regulations similar to those which we have noticed, have been made by the legislature with respect to the navigation of Irish ships by subjects of the united kingdom.

We have seen that a vessel of which a foreigner is part-owner, is excluded in certain branches of trade from the privileges of a British ship, though it be British-built and British navigated. Wherever, therefore, a foreigner purchases a share in a vessel, the shares of the other owners, of course, became materially prejudiced. To remedy this evil, it was enacted by the 34 Geo. 3. ch. 68. sec. 20. "That no foreigner, or other person or persons whatsoever, not being a natural-born subject of his Majesty, his heirs or successors, shall be entitled to, or purchase, or contract for, any part or parts, share or shares, of any British ship or vessel whatsoever, belonging only to natural-born subjects of his Majesty, his heirs or successors, without the consent, in writing, of the owner or owners of three-fourths in value, at least, of such ship or vessel, for that purpose first had and obtained, and indorsed on the certificate of the register of such ship before two witnesses; and all agreements, contracts, purchases, and sales of any part or share of any British ship or vessel, belonging only to natural-born subjects of his Majesty, his heirs or successors, made, entered into, contracted for, or concluded, by any such foreigner, or other person or persons, not being a natural-born subject or subjects of his Majesty, his heirs or successors, without such consent first had and obtained, and indorsed as aforesaid, shall be, and are hereby declared to be, absolutely null and void, to all intents and purposes whatsoever."

It now remains only to add a few words upon the general policy of the Acts of Navigation; various, indeed, and difficult to be digested, but concurring and combining, throughout all their numerous and complicated ordinances, to the one great object of enlarging and strengthening the maritime power of Great Britain. Dr.
Adam Smith* observes, that there are two cases in which it will generally be advantageous to lay some burden upon foreign, for the encouragement of domestic, industry. The first is when some particular sort of industry is necessary for the defence of the country. The defence of Great Britain, for example, depends very much upon the number of its sailors and shipping. The Act of Navigation, therefore, very properly endeavours to give the sailors and shipping of Great Britain the monopoly of the trade of their own country, in some cases by absolute prohibitions, and in others by heavy burdens upon the shipping of foreign countries.

When the Act of Navigation was made, though England and Holland were not actually at war, the most violent animosity subsisted between the two nations. It had begun during the government of the long Parliament, which first framed this Act, and it broke out soon after in the Dutch wars, during that of the Protector and of Charles the Second. It is not impossible, therefore, that some of the regulations of this famous act may have proceeded from national animosity. They are as wise, however, as if they had been all dictated by the most deliberate wisdom. National animosity, at that particular time, aimed at the very same object which the most deliberate wisdom would have recommended, the diminution of the naval power of Holland, the only naval power which could endanger the security of England.

The Act of Navigation is not favourable to foreign commerce, or to the growth of that opulence which can arise from it. The interest of a nation, in its commercial relations to foreign nations, is like that of a merchant, with regard to the different people with whom he deals, to buy as cheap, and to sell as dear as possible. But it will be most likely to buy cheap, when, by the most perfect freedom of trade, it encourages all nations to bring to it the goods which it has occasion to purchase; and for the same reason, it will be most likely to sell dear, when its markets are thus filled with the greatest number of buyers. The Act of Navigation, it is true, lays no burden upon foreign ships that come to export the produce of British industry. Even the ancient aliens duty, which used to be paid upon all goods exported as well as imported, has, by several subsequent acts, been taken off from the greater part of the articles of exportation. But if foreigners, either by prohibitions or high duties, are hindered from coming to sell, they cannot always afford to come to buy; because, coming without a cargo, they must lose the freight from their own country to Great Britain. By diminishing the number of sellers, therefore, we necessarily diminish that of buyers, and are thus likely not only to buy foreign goods dearer, but to sell our own cheaper, than if there was a perfect freedom of trade. As defence, however, is of much more importance than opulence, the Act of Navigation is, perhaps, the wisest of all commercial regulations of England.†

"Experience," says Mr. Reeves,‡ "has shewn the advantage of adhering to this maritime policy. The inducement and obligation to employ British ships, had the effect of increasing their number. The increase of their number became a spur to seek out employment for them. Foreign trade and the fisheries were, by various expedients, made subservient to advance the interests of shipping. Trade and shipping thus reciprocally contributed to advance each other; and, thus combined, they constituted very considerable sources of national wealth. Having been at first encouraged for the sake of the navy, they were afterwards encouraged for their own.

* 2 Smith's W.N. 212.—The good policy of the regulations is also admitted by Savary.—See Beawes' Lex Merc. 16.17.
† M. Savary observes upon the sound policy of the English Navigation Act, and urges his own countrymen, the French, to adopt similar regulations.—See Beawes’ Lex Mercatoria, 16.
‡ Law of Shipping, 548.
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From being subordinate and auxiliary to another object, they are now become principal objects themselves in the national policy; and, in the mean time, the naval power of the country is sure of supply and support, without being directly in contemplation.

"This action and re-action between shipping and trade, has even been promoted by the effects of naval armaments. It has been found, that after the conclusion of a war, there has constantly been a great increase of mercantile shipping. This has been caused, first, by the government having employed, during the war, a number of transports, which has induced the merchants to invest their money in the building of ships for that service. Secondly, the privateers which were fitted out during hostilities have no employment at the peace but the merchants' service. Transports and privateers fall into foreign trade or the fisheries; and in this manner, does the service of the navy pay back to trade and navigation the obligations it had before received.

"If the wisdom of any scheme of policy is to be measured by its effects and consequences, our navigation system is entitled to the praise of having attained the end for which it was designed. Whether we regard the primary or inferior objects in this system; whether it is the increase of shipping, the extension of our foreign trade, or the strength of our navy, they have all advanced to a degree of consideration unexampled, and they owe that advancement to this system."

FISHERIES.*

FISHERIES are public or private. Public are either fisheries in distant seas in which all nations have a right to fish, and some of which are encouraged by act of parliament, or they are fisheries within the four seas, or within public navigable rivers in which all British subjects have a right to fish, in exclusion of other nations, subject in some particular instances to modifications by acts of parliament, or the prescriptive rights of individuals. Private fisheries are those in which some particular persons are entitled to an exclusive right of fishing.

Public fisheries, as a matter of national concern, are of great importance, since they are not only the source of considerable provisions for the population of the country, but constitute a nursery for our seamen. We therefore find that the common law has, in various instances, particularly protected such fisheries, and that a great variety of statutes have been passed to regulate them.

The natural right of all nations to take fish in the sea may be restrained or regulated by treaty or by customary law. An instance of the latter occurred in the case of Fennings v. Lord Grenville, from which it appears that, by the custom of the whale fishery, amongst the Galapagos islands, he who strikes a whale with a loose harpoon is entitled to receive half the produce from him who kills it; and that, by the custom of the Greenland whale fishery, unless the person who strikes a fish continues his power over it till he has got possession of it, any other who kills it acquires the entire property. In that case, Mr. Justice Chambre laid it down, "That there must of necessity be a custom in these things to govern the subjects of England, as well amongst

themselves as in their intercourse with subjects of other countries. The usage in the Greenland fishery is held to be obligatory, not only as between British subjects, but also as between them and all other nations. I remember the first case upon that usage, which was tried before Lord Mansfield, who was clear that every person was bound by it, and said, that were it not for such a custom, there must be a sort of warfare perpetually subsisting between the adventurers; and he held it strongly binding, from the circumstance of its extending to different nations. The same necessity must prevail in the South Seas, (although the fishery has not been so long in use,) in order to regulate our intercourse with the French, Americans, and others who resort thither.

The extending and improving of the fisheries occupied a considerable portion of that attention which has lately been bestowed on the shipping and navigation of the country. The regulations for conducting these in a great measure, and the bounties for their encouragement altogether, depended upon certain temporary laws which were near expiring in the twenty-sixth year of his Majesty's reign. Thus, the bounties granted by stat. 15. Geo. 3. c. 31. for the Newfoundland fishery were to expire on 1 January, 1787. The bounties given by stat. 11. Geo. 3. c. 38. for the Greenland fishery were to expire on 25 December, 1786. The bounties given by stat. 15. Geo. 3. c. 31. and stat. 16. Geo. 3. c. 47. for the Southern whale fishery were to expire 1 January, 1787. The bounties given by stat. 11. Geo. 3. c. 31. and stat. 19. Geo. 3. c. 26. for the British white herring fishery, were to expire with the close of the session of parliament next after 22 October, 1785. It became immediately necessary to consider the policy to be observed respecting these objects of trade and navigation. The result of this consideration was, that bills were brought into parliament and passed into laws, in the twenty-sixth year of the king, for granting new bounties, and making new regulations for carrying on these fisheries with every possible advantage to the nation. We shall now take a view of these acts, and the general scope of them, without entering too far into their detail. The first is c. 26. for the Newfoundland fishery; the next is c. 41. for the Greenland fishery; c. 50. for the Southern whale fishery; and c. 81. for the British fisheries.

The bounties granted by stat. 26. Geo. 3. c. 26. are for ten years, for vessels employed in the British fishery on the banks of Newfoundland. They are to be British-built, and wholly owned by his Majesty's subjects residing in Great-Britain, Ireland, Guernsey, Jersey, or Man, navigated with a master and three-fourths of the mariners of the same description. They are also to be qualified and subject to the regulations of stat. 10. and 11. Will. 3. c. 25. and they are to clear out from some port in Great-Britain, Guernsey, Jersey, or Alderney, after 1 January in every year, and proceed to the banks of Newfoundland; and having caught there a cargo of not less than ten thousand fish, they are to land them at one of the ports on the north, east, or south side of the island, between Cape St. John and Cape Raye, on or before 15 July, and then make one more trip at least to the banks, and return with another cargo of fish, caught there, to the same port. The one hundred ships which shall first do this are, if navigated with not less than twelve men, to be entitled to 40l. each; if with less than twelve, but not less than seven men, 25l. each: provided, that if in either of those cases the vessel is wholly navigated by men going out upon shares, that is, receiving a certain share of the profits of the voyage in lieu of wages, such vessel shall in the first case be intitled to 50l. and in the latter case to 35l. Again, the next one hundred vessels so arriving are in the first case to have 25l. each, in the latter case 18l. each; and such of them as are wholly navigated by men going out upon shares shall in the first case be intitled to 35l. and in the latter case to 21l.

In order to prevent frauds, a certificate is to be exhibited to the collector of the customs before he pays the bounty, from the governor of Newfoundland, that all the
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The requisites were there complied with. The sanction of oaths by the master and mate is required to certain facts. Provision is made for preventing the desertion of seamen, and the selling of boats, vessels, or tackle, for the fishery to foreigners. Powers are given to his Majesty's officers on that station to seize vessels.

Again, by stat. 29. Geo. 3. c. 53. it was declared, that no fish taken or caught by any of his Majesty's subjects or other persons arriving at Newfoundland, or its dependencies, or on the banks thereof, except from Great-Britain, or one of the British dominions in Europe, should be landed or dried on that island; with a saving of the rights granted by treaty to the French king: * a provision that was occasioned by persons from the Bermudian islands having lately aimed at possessing themselves of a share in the fishery.

The stat. 26. Geo. 3. c. 26. was revived and continued by 37. Geo. 3. c. 99. 39. Geo. 3. c. 102. 39. & 40. Geo. 3. c. 45. s. 8. and 41. Geo. 3. c. 97. The 27. Geo. 3. c. 19. s. 8. & 9. provides that vessels not exceeding 30 tons, and not having fixed decks may be employed in the Newfoundland fishery. The 41. Geo. 3. c. 77. s. 1. & 2. and the 42. Geo. 3. c. 20. s. 5. 43. Geo. 3. c. 154. s. 6. 46. Geo. 3. c. 103. 47. Geo. 3. s. 1. e. 24. authorize the importation of salted salmon and cod-fish from Newfoundland, and give a bounty.

The bounties granted by 26. Geo. 3. c. 41. are for five years; they are for British ships, owned by British subjects usually residing in Great-Britain, Guernsey, Jersey, or Man, which proceed from those places on the whale fishery to the Greenland Seas or Davis's Straights, or to the seas adjacent, manned and navigated with a master and three-fourths at least of the mariners British subjects usually residing in Great Britain, Ireland, or Guernsey, Jersey, or Man. Such ship, after she has been visited and measured by the officer of the port, and it shall appear upon inspection and examination upon oath of certain persons, and it shall be certified by such officer, that she is properly furnished with tackle and equipment for the whale fishery, according to the requisites of the act, and means to proceed thither, and endeavour to take whales, or other creatures living in the seas, and on no other design or view of profit in the voyage, and to import the whale-fins, oil, and blubber thereof into Great-Britain, specifying the port, and shall give bond for so doing; upon these terms such ship may have a licence from the commissioners of the customs to proceed on such voyage; and upon the return of such ship, and her condition being reported by the officer of the port, and oath made by the master as to the performance of the voyage, and that all the whale-fins, oil, and blubber, imported were really and bonâ fide caught and taken in those seas by the crew of such ship, or with the assistance of some other ship licensed for that voyage, there is to be paid by the commissioners of the customs a bounty of thirty shillings per ton of such ship.

Such ship must sail on her voyage on or before 10 April, and continue in those seas diligently endeavouring to catch whales or other creatures, and not depart before 10 August, unless laden with a certain quantity of oil, blubber, or whale-fins, unless they shall be compelled, by some unavoidable accident, to depart. Ships of more than four hundred tons, already employed in the fishery, might continue to be rated as of four hundred tons, and not more. All ships coming into the fishery after 25 December 1796, and being more than three hundred tons, shall not receive a bounty for more than three hundred tons; and such ships respectively are not to equip and man for more than four hundred or three hundred tons.

If a log-book has not been constantly kept on board, no bounty will be allowed. Sect. 10.

* By stat. 28. Geo. 3. c. 55. his Majesty is empowered to make regulations for more peaceably carrying on the Greenland Fishery.
The log-book must be produced to the captains of his Majesty's ships of war with which they may chance to fall in, and also to the British consul at any foreign port.

Provision was made, that ships owned by the king's subjects residing in Ireland, and fitting out from thence, should, on complying with the conditions of this act, be entitled to these bounties. Permission was given to ensure the bounties in order that when ships were lost the owners might have some indemnity. Harpooners, line-managers, and boat-steerers, are secured from pressing. The extent of the fishery is defined to fifty-nine degrees thirty minutes north, and no farther. The commissioners of the customs are annually to lay before parliament an account of the ships employed.

It appearing not necessary to keep ships in the Greenland seas so long, it was enacted by stat 29. Geo. 3. c. 58. that they should have the bounty although they left those seas before the 10th August, and were not laden with the quantity of whale-fins and of oil and blubber required by stat. 26. Geo. 3. c. 41. s. 4. provided they did not depart from thence till the expiration of sixteen weeks from the time of sailing from the port from whence they cleared out. A penalty of 50l. is by the same act imposed on masters who wilfully dismiss their apprentices before the expiration of the time for which they were indentured. By an act of the last session, these bounties were continued for one year longer; and by another of this session, they are continued for six years; during the first three at twenty-five shillings; during the second three years at twenty shillings per ton.

See the decisions on these acts in 6. East. Rep. 238. 9. East. Rep. 44. 1. Taunt. 242. These statutes are subsequently continued by different acts from year to year, and ultimately by 50. Geo. 3. c. 11. until the 25th of March, A.D. 1815.

The South Whale Fishery. Premiums are granted by 26. Geo. 3. c. 50. of this session, for ten years, to twenty ships employed in that fishery; they are to appear by their register to be British-built, and they are to be fitted and cleared out from Great-Britain or Ireland, Gurnsey, Jersey, or Man, and wholly owned by the king's subjects usually residing there.

With regard to fifteen of these ships clearing out between the 1st May and the 1st September, and sailing to the southward of seven degrees of north latitude, and there carrying on the fishery and returning before the 1st July in the subsequent year to Great-Britain, there is to be paid 500l. to the three which shall first arrive with the greatest quantity of oil, or head-matter, being not less than twenty tons in each ship, the produce of whales or other creatures living in the sea, taken and killed by the crews of such ships respectively; 400l. to the three that shall first arrive with the next greatest quantity; 300l. to the three that shall first arrive with the next greatest quantity; 200l. to the three that shall first arrive with the next greatest quantity; and 100l. in like manner to the next three.

With regard to the remaining five, they are to proceed to the southward of the thirty-sixth degree south latitude, and there carry on the fishery, and return in not less than eighteen months, nor more than twenty-eight months, from the 1st of May in the year in which they clear out; and there is to be paid 700l. to the first which shall arrive with the greatest quantity of oil or head-matter in manner before mentioned; 600l. to the next; and 500l. 400l. and 300l. to the others in order respectively.

The ships are to be navigated by a master and three-fourths of the mariners being the king's subjects usually residing in Great-Britain, Ireland, Guernsey, Jersey, or Man; or if the ship clears out from Great-Britain, then it may be navigated by persons being protestants, and who, not being subjects of his Majesty, have been heretofore em-
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ployed in carrying on this fishery; and who shall first make oath, if it is their first voyage from Great-Britain, that they have already established, or intend to establish, themselves and families in Great-Britain, as subjects thereof; and if it is their second voyage, that they actually have so established themselves.

Various regulations are contained in this act for attaining the object designed and preventing frauds. Each ship is to have on board, for every fifty ton, an apprentice indentured for three years. A log-book is to be regularly kept and produced to the collector of the customs at the return home, and verified on oath; and is likewise to be produced to the captain of any of his Majesty's ships with which they may happen to fall in. The master, mate, and two of the mariners, are to make oath, that the oil and head-matter are the produce of their own fishing. A penalty of 500l. is incurred if the cargo is made up from the fishing of any other crew. If oil or head-matter is mixed with water to increase the quantity, the whole is forfeited and the premium lost. The quantities are to be ascertained by an officer of the customs.

Any produce of the fishing in the going out or returning home, although not taken within the prescribed latitudes, may be reckoned towards the requisite quantity. If a ship makes two voyages within any of the periods, she is to have only one premium. Harpooners, line-managers, and boat-steerers, are privileged from being impressed.

As these voyages would carry ships within the limits of the charters granted to the East-India and South-Sea Companies, some special provision was necessary to qualify them to make this incroachment. It was accordingly enacted, that they might go to the eastward of the Cape of Good Hope, and to the westward of Cape Horn, or through the Streights of Magellan, in order to carry on the Southern whale fishery, provided those sailing to the eastward of the Cape of Good Hope did not pass to the northward of thirty degrees south latitude, nor make more than fifteen degrees east longitude from the Cape of Good Hope; and those passing to the westward of Cape Horn, or through the Streights of Magellan, did not pass to the northward of the equinoctial line, nor make more than fifteen degrees west longitude from Cape Horn.

Such ships were also to take a licence from the East-India Company; but the Company were not obliged to grant it to more than ten ships in one year, if it was for passing to the eastward of the Cape of Good Hope; and this, under certain conditions calculated to guard against illicit trade. Those who exceeded these limits were liable to the penalty attending the infringement of the Company's trade. When ships return from a voyage to the eastward of the Cape of Good Hope; they must bring a certificate from the officer of the port, testifying there are no goods on board the produce of those places, but only oil, head-matter, or bone of whales or fish, otherwise they will not be entitled to the premium. Those sailing within the limits of the South-Sea Company's charter, as described by stat. 9. Ann. c. 21. are to have a licence from that Company.

Lastly, temptations were held out to invite foreigners to come and settle here, and carry on the Southern whale fishery from this country.

Some amendments were made in this act by stat. 28. Geo. 3. c. 20. As to the fifteen ships, they are now to sail between the 1st Jan. and 1st Nov. and to return to some port in Great Britain on or before 1st Sept. in the following year. As to the remaining five ships, they are to sail between the same periods of 1st Jan. and 1st Nov. and to return on or before 1st Dec. in the following year. The following additional premiums are granted for the same period as the former: they are for three ships clearing out, as in the former act, between 1st Jan. and 1st of Nov. and which shall double Cape Horn or pass through the Streights of Magellan into the South-Scas, and there carry on the fishery for four months to the westward of Cape Horn; namely, to such
ship which shall return to some port in Great Britain on or before the 1st Dec. in the second year after clearing out, but not in less than eighteen months, and with the greatest quantity of oil or head-matter, not being less in the whole than thirty tons, there should be paid 800l.; to the next 700l.; to the next 600l.

Sect. 2.

Again, ships sailing to the eastward of the Cape of Good Hope, may pass as far as the equator northward, and as far as fifty-one degrees longitude east from London, and no farther; and those passing to the west of Cape Horn, or through the Streights of Magellan, may pass as far as the equator northward, and as far as one hundred and eighty degrees longitude west from London, and no farther. Such ships are to have licences from the East-India and South-Sea Companies; and the East-India Company are not obliged to grant any licence to sail within the limits of their trade round the Cape of Good Hope, until the owners have given bond in the penalty of 2000l. for such ship not taking on board goods the produce or manufacture of the East-Indies, or other places between the Cape of Good Hope and the Streights of Magellan, to the value of 100l. except such as are necessary for their voyage. Doing any thing in breach of this and the former act, shall disable a ship from being entitled to any licence in future. Power was given to the governor of St. Helena, the commanders of the Company's ships, or agents thereto authorised by the Company, to search licensed ships for East-India goods.

Sect. 3.

Ships doubling the Cape of Good Hope, or Cape Horn, or passing through the Streights of Magellan, and not being less than two hundred tons burthen, may be armed for resistance and defence, on a licence being obtained from the Admiralty; which licence is to be granted on exhibiting a certificate from the commissioners of the customs, testifying that such ship is entered out for such voyage, and that the owner has entered into bond in a penalty of 2000l. with condition that such arms shall be used only for resistance and defence in cases of involuntary hostility.

Sect. 4.

No ship is to have more than one of the additional premiums, although she make two voyages within one of the periods.

Sect. 5.

Lastly, there was held out to foreigners a similar temptation to come and settle here for the purpose of carrying on this fishery.

Sect. 6.

An amendment was made in stat. 28. Geo. 3. c. 20. by stat. 29. Geo. 3. c. 53. it being thought sufficient, if, instead of eighteen months, such three ships were kept out only sixteen months. Again, it was declared, that ships need not clear out specially for the latitudes mentioned in stat. 26. and stat. 28. If any master permitted his apprentice to quit his service before the expiration of three years, he is to forfeit fifty pounds. In all these fishery acts there is provision made for importing the produce thereof duty free.

Sect. 7. 8.

See the decisions on these acts in 6. Term. Rep. 224. 4. Esp. Rep. 182. These acts were repealed and other provisions introduced and continued by 35. Geo. 3. c. 92. 37. Geo. 3. c. 121. 38. Geo. 3. c. 57. 42. Geo. 3. c. 18. 45. Geo. 3. c. 96. 48. Geo. 3. c. 124.

The British Fisheries.

The last act made respecting the fisheries, in 26. Geo. 3. is ch. 81. for the encouragement of the British fisheries. By stat. 25. Geo. 3. c. 65. the bounty given by the former acts of 11. Geo. 3. and 19. Geo. 3. was extended to vessels and busses above eighty tons burthen; and the regulations in those acts compelling the busses to rendezvous at certain times and places were repealed. This act extends the bounty, upon certain conditions, even to those under twenty tons. But the old bounties now expiring, it was enacted by stat. 26. Geo. 3. c. 81. that from 1 June 1787, for the term of seven years, and from thence to the end of the then next session of parliament, a bounty of twenty shillings per ton should be paid annually to the owner of every decked vessel built in Great Britain after 1 Jan. 1780, of not less than fifteen tons.
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burthen, manned and navigated according to law, which shall be fitted and cleared out
for and employed in the British white herring fishery.

The manner in which these vessels are to be equipped, and proceed in their voyage,
with the manner of making up their cargo, compose a very long detail not necessary to
be here repeated.

The act gives likewise several other bounties; namely, four shillings per barrel for
herrings packed and completely cured, and landed from any buss intitled to the
twenty shillings bounty per ton; or if a greater proportion than two barrels and a
half to a ton is so landed, then one shilling per barrel. Also a bounty of one shilling
per barrel for all such herrings landed from boats not intitled to the twenty shillings
bounty.

See the decisions in 3. Aust. 926. The 26. Geo. 3. c. 81. was amended and ex-
tended by 27 Geo. 3. c. 11. and has since been continued by various acts. See 30 Geo. 3.
c. 54.

It gives also additional encouragement to the Deep Sea Fishery on the north and
north-east coasts of this kingdom; namely, for the greatest quantity of herrings
cought by the crew of a buss intitled to the above bounties of twenty shillings per ton,
and four shillings and one shilling per barrel, and brought in by such buss between
1 June and 31 Nov. the premium of eighty guineas; for the next greatest quantity,
sixty; the next, forty; and the next, twenty guineas.

All duties in respect of herrings, cod, ling, hake, and salmon, or other white fish
cought and cured by British subjects, and removed for home consumption, were to
cease, excepting the equalizing duties paid on the importation from Scotland into
England of salmon, cod, ling, hake, tusk, and other white fish. The distinction with
regard to the bounty made by stat. 5 Geo. 1. c. 18. between that called haberdine and
other dried cod, was taken away, and instead of the five shillings bounty there is to
be paid in all cases that of three shillings per hundred weight.

A bounty of one shilling per barrel is given to the inhabitants of the Isle of Man
for herrings caught and cured by them; and also on the export thereof, the bounties
allowed by stat. 5 Geo. 1. c. 18.; and the duty on the import of herrings from the Isle
of Man was from thenceforth to cease.

Lastly, in order better to protect the British fishery, it was endeavoured to give
further sanction to stat. 1 Geo. 1. c. 18. and stat. 9 Geo. 2. c. 33. for prohibiting
the importation of foreign-caught fish. To facilitate the prosecution of offenders against
those acts, power is given to two justices, upon the information of an officer suspecting
such fish being brought into the port of London, to summon the parties and proceed
to hear the complaint, and convict in a summary way upon their non-appearance.

Some alterations were made in this act in the subsequent session of parliament. By
stat. 27 Geo. 3. c. 10. the bounty, which by the former act was confined to busses built
before 1 Jan. 1780, is extended to those built after that period. Some trifling
alterations were also made as to the cargoes of vessels; and the bounty of twenty
shillings per ton is not to be allowed to more than fifty vessels fitting out in one year
from the same port.

Such are the regulations of this long act for promoting and protecting the fisheries
on our coasts; to which we have only to add, that by stat. 25 Geo. 3. c. 58. an addi-
tional bounty was given on the export of pilchards for that season only, which was
continued, with other additional bounties, by stat. 26 Geo. 3. c. 45. to 24 June 1786,
which makes the whole of the parliamentary provisions passed at this time for increasing
and extending the British fisheries.

The 26 Geo. 3. c. 45. relating to the pilchard fishery, is continued and amended by

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Bounties on fish cured and exported from British fisheries are regulated by 38 Geo. 3. c. 89. 41 Geo. 3. c. 21. and 45 Geo. 3. c. 102.

Bounties upon curing and exporting mackerel are provided for by 35 Geo. 3. c. 54. and 36 Geo. 3. c. 77.

The British society for extending fisheries, was incorporated by stat. 28 Geo. 3. c. 106, and further regulated by 39 Geo. 3. c. 100.

Bounties for fish brought into the London market, are regulated by 41 Geo. 3. c. 99.

Nothing remains to add but the following provision in the Consolidation Act, stat. 27 Geo. 3. c. 15. which enacts, that fresh fish of every kind or sort whatever, caught or taken in any part of the ocean by the crews of any ships or vessels built in Great Britain, Ireland, the islands of Jersey, Guernsey, or Man, or in any of the colonies, plantations, islands, or territories, which now belong, or at the time of building such vessels did belong, or which may hereafter belong to, or be in possession of his Majesty, his heirs or successors, and wholly belonging to and owned by his Majesty's subjects usually residing in Great Britain, Ireland, or the islands of Jersey, Guernsey, or Man, and navigated and registered according to law, may be imported into Great Britain in ships so built, owned, and navigated without payment of any duty of customs whatever.

The sum and result of all these various laws regarding the fisheries, seem to be this. The following advantages are obtained by permanent laws: namely, By stat. 10 and 11 Will. 3. c. 24. stat. 1 Geo. 1. st. 2. c. 18. enforced by stat. 9 Geo. 2. c. 33. and stat. 26 Geo. 3. c. 81. 49. 44. no sort of fish whatever of foreign fishing (except eels, stock-fish, anchovies, sturgeon, botargo or caveare, turbots and lobsters,) can be imported into England.

By stat. 27 Geo. 3. c. 13. s. 32. all fresh fish caught by vessels built in the King's dominions, and owned by persons usually residing in his Majesty's European dominions, may be imported free of duty; and by stat. 5 Geo. 1. c. 18. s. 6. and stat. 26 Geo. 3. c. 81. s. 16. a bounty is paid on the export of pilchards or shads, codfish, ling, or hake, whether wet or dried, salmon, white herrings, red herrings, and dried red sprats, being of British fishing and curing.

The following advantages are obtained by temporary laws; namely, By stat. 26 Geo. 3. c. 81. and stat. 27 Geo. 3. c. 10. a tonnage bounty and various other bounties are given on the fish caught in the British fisheries on the coast. By stat. 26 Geo. 3. c. 45. a bounty on the export of pilchards. By stat. 26 Geo. 3. c. 26. a bounty on the fish taken in the Newfoundland fishery. By stat. 26 Geo. 3. c. 41. a tonnage bounty on ships employed in the Greenland fishery. By stat. 26 Geo. 3. c. 50. premiums on the arrival of ships from the Southern whale-fishery. The seal-skins, oil, head-matter, blubber, and whale-fins, taken in the Newfoundland, Greenland, or Southern whale-fisheries, are importable without payment of any duty.

OWNERS OF SHIPS, &c.

Since the former editions of this work, a most excellent treatise on the law relative to Ships and Ship Owners, has been published by Mr. Abbott, which comprehends the
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whole law which can affect the owners of ships, and has rendered it unnecessary to
enlarge materially in this work upon the subject. The following observations in the
former edition still deserve the attention of the merchant, and are therefore retained.

In treating of maritime affairs, the owners of ships are the first who naturally chal-
genue our regard, and they become such either by building or purchasing their vessels;
and this, either in partnership or alone; and if the former, and the property is dis-
tributed among several, the major part of them may let the ship out to freight against
the consent, though not without the privity of the minor.

Thirty seven part-owners of a ship would send her a voyage, but two or three of the
other part-owners would not consent. Upon which the Admiralty took stipulation in
nature of a recognizance of the thirty-seven for security for the safe bringing back of
the ship. The ship being lost, the two or three part-owners, who opposed the voyage,
libelled upon this stipulation against the thirty-seven, upon which they moved for a
prohibition, but it was denied; for per curiam, though by the Law of England two or
three part-owners may hinder the others from sending the ship a voyage without their
consent, yet the Law of the Admiralty is otherwise; for there, for the encouragement
of navigation, the Court of Admiralty will permit the ship to make the voyage, upon
security given to bring her back safe; for it is reasonable that the others should have
some security for their ship. Then, if the ship be lost, it is at the peril of the adven-
turers, and they shall be suedable upon their stipulation by the others in the Admiralty;
for now it is not doubted but the Admiralty may take stipulation.

An owner letting his ship to another for a voyage, for a certain sum, and agreeing
that the person hiring the vessel shall have the benefit of the freight of goods, is not
thereby discharged from responsibility for the loss of goods, as was adjudged in the
case of Parish against Crawford. Crawford, the sole owner, had let his ship to Fletcher;
Parish shipped a number of moidores, and had bills of lading from Fletcher, part of the
money was not delivered according to the consignment. And judgment was given
against Crawford. Hill. term 19 Geo. 2. Strange’s Reports, 1251.

In case a ship be taken away from the owners, or they be otherwise dispossessed, it
is provided, both by the common and maritime laws of this realm, that they maintain
an action of trover and conversion for an eighth, sixteenth, or any other part or share
of the same; and in action on the case, the plaintiff declared, that he was owner of
the sixteenth part of a ship, and the defendant owner of another sixteenth part of the
same ship, and that the defendant fraudulently and deceitfully carried the said ship ad
loca transmarina (into a foreign part) and disposed of her to his own use, on which the
plaintiff lost his sixteenth part to his damage: on not guilty pleaded, and verdict for
the plaintiff, it was moved in arrest of judgment, that the action did not lie; for,
though it be found deceptive, yet this did not help it, if the action did not lie on the
subject matter; and here they are tenants in common of the ship, and by Littleton,
between tenants in common there is not any remedy, and there cannot be any fraud
between them, because the law supposes a trust and confidence betwixt them, and upon
these reasons judgment was given quod querens nil capiat per billam. (4 East. 121.
2 Saund. 47 g. 8 Term. Rep. 145.)

Owners are not bound to continue their pactum or partnership longer than they
please, for though by the law marine it was required, that a new-built ship should
make one voyage upon the common risk, before the owners should be allowed to sepa-
rate, yet by the law of England any owner may sell or transfer his right at what time
he pleases.

But, if any one obstinately refuses his consent to a voyage, the law will force him
either to hold or sell his share: But, if he will set no price, the rest may fit the ship
out at their own cost and charges, and whatsoever freight she earns shall be solely

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there's, and no part thereof be given to the dissenting owner, but if the ship should mis-
carry, or be cast away, the rest must make him satisfaction for the part he held:

But, on the contrary, if the greatest part of the owners refuse to fit out the vessel,
they shall not be compelled, on account of the majority, but in this case, the ship shall
be valued and sold, and the like where part of the owners become deficient and unable
to fit her out.

Owners of ships are liable for the actions of the masters they employ, therefore it
behoves them carefully to consult as well the honesty as ability of him they intend to
commit the care of their interests to, as the charge both of the vessel and its lading rests
on him; and the owners are obliged, both by the common laws of England and the
law-marine, to make satisfaction for all damages that shall accrue through the master's
neglect, and were formerly obliged to make good the contents of a bill of loading
signed by the master, provided he absconded, though the said bill of loading might be
iniquitously obtained; as I remember to have occurred with a merchant, who had a
ship of his own from Lisbon, and was arrested, I think, in fifteen actions for money his
master had signed bills of loading for, and had run away with, and which he might
have continued coining, and firmed new bills every day to the utter ruin of his owner,
though never so wealthy, had not the Act 7 Geo. cap. 15. sect. 1. prevented such
fraudulent proceedings, by limiting the owner's loss to ship and freight, so that he now
knows the extent of what damage a rogueish master can do him, which was before un-
ascertained and endless.

On the other hand, if the master commits offences, either negligently or wilfully, he
shall be responsible to his owners for the reparation of damages, and they are not bound
to sue jointly, but may do it separately, both according to the common and marine law;
as also in case the ship hath by freight got something clear to divide, and the master
hath paid some of the owners their parts, the rest may bring their action for their
shares without joining with the others. But the owners must be responsible to the
freighters, as in the following case.

The defendant and seven other persons were proprietors of a ship, which usually
carried goods on freight between Topsham and London, and the plaintiff loaded goods
upon her at the latter, to be carried to the former port; but the defendant, not careful
of his duty, had so carelessly stowed the said goods, that though the ship arrived safe
at Topsham, yet the goods were all spoiled. And upon non culp. pleaded, the jury
found a special verdict, viz. that the defendant, and seven other persons were pro-
prieters and part-owners of the ship; that the ship had a master locat' in her by the part-
owners, who had sixty pounds wages for every voyage between Topsham and London,
that the goods were delivered to the master, none of the part-owners being present.
and that there was not any contract made with them, or any of them by the plaintiff;
that the ship arrived safe at Topsham, but the goods were spoiled. Et si pro quer',
pro quer'; si non, pro def.

And two points were made:

1st. If the proprietors are chargeable, no contract being made with them, and there
being a master that is chargeable in respect of his wages, according to the case of Morse
and Slue; yet per Holt, C. J. clearly, that though the master be chargeable in respect
of his wages, so are the proprietors in respect of their freight, that they receive for the
carriage of their goods at the election of the plaintiff.

2ndly. If the action lay against the defendant alone, it appearing that there are other
part-owners, not made defendants; and held that the action did not lie against him
sole, but ought to have been against all the part-owners; for all the part-owners are
chargeable in respect of the profit they make by the carriage of the goods, and that in
point of contract, upon their undertaking, be it implied or express, and are not charge-
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able as trespassers, for then one might be chargeable alone, but in point of contract, upon their receipt of their goods to be carried for hire. Judgment pro def. as by 3 Mod. 321. Boson con. Sand. 3. Levinz. 258. where it is with a cur. advisare, mes le reporter ut audivit judg. pro defen.

If a ship be broken up, or taken in pieces with an intent to convert the same to other uses, and afterwards on change of mind she be rebuilt with the same materials, she is now another, and not the same ship, especially if the keel be ripped up, or changed, and the whole ship be all at once taken asunder and rebuilt, there determines the partnership, quoad the ship; but if a ship be ripped up in parts, and taken asunder in parts, and repaired in parts, yet she remains still the same vessel, and not another; nay, though she hath been so often repaired that there remains not one stick of the original fabric.

If a man repairs his ship with plank or other materials not his own, but appertaining to another, yet the property is not hereby altered, but the ship maintains and keeps her first owners. Though if a man take plank and materials prepared for the use of shipping, and belonging to another, the property of the vessel follows the owner of the materials, and not the builder; but, if a man cut down the trees of another, or takes timber or planks prepared for the erecting or repairing of a dwelling-house, nay though some of them were for shipping, and builds a ship, the property follows not the owners but the builders.

If a ship is under repair in a dock belonging to the shipwright who is ordered by the owner to repair her, and a fire happens, not through the negligence of the shipwright, but by accident, and destroys the ship before the repairs are completed; the shipwright shall be paid his charges for the repairs. Menetone against Athawes, 3. Burrow's Reports. 1592. cited in Gillet v. Mawman, 1 Taunt. 137.

The repairer of a ship has his election to sue the master who employs him, or the owners, but if he undertakes it on a special promise from either, the other is discharged.

The words which were usually made use of formerly in the sale of ships, viz. the tackle, furniture, apparel, and all other instruments thereunto belonging, did not convey the ship's boat, which, if unexpressed in the sale, remained still in the owners, as she does, if a ship is forfeited for committing piracy.

Though ballast is generally used in shipping, where a vessel goes out empty, or filled with light goods, yet it is not esteemed any part of her furniture; and so it was adjudged in debt on bond; of which the condition was, that whereas the plaintiff had bought of the defendant a ship, if the plaintiff shall enjoy the said ship with all the furniture belonging to the same, without being disturbed for the ship, or any furniture appertaining to it, that then, &c. and the case was, after the sale of the ship, a stranger sued the plaintiff for certain monies due for ballast bought by the defendant for the same ship, in which suit he obtained sentence, upon which the ship was seized. The question was, whether ballast be furniture for a ship or not, and it was resolved in the negative; for although it may sometimes be as necessary as sails, yet it is not always so, as ships frequently sail without it, more especially when a heavy loading answers the purpose by supplying its place.

If a ship commits a piracy, and is thereby become forfeited, but before seizure she be bona fide sold, the property shall not be questioned, nor the owners divested of the same.

And if a mortgagee of ships, by deed, entrusts the mortgager with the original bill of sale; and the mortgager indorses thereon subsequent mortgages, or bills of sale of several parts of the ship, the first mortgagee acquiesces, he shall be postponed.
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Where a ship stands in need of repairs, and the master takes up money for that purpose, though he spends it another way, the owner and ship become liable to satisfy the lender; but if the master borrows money to repair or victual the ship when there is no occasion for it, he only shall become debtor and not the owners, though they are generally bound to answer the fact of the master; for as on the one hand it would be very unreasonable, that the creditor should be bound to take upon him the care of repairing the ship, and supply the owner's room, which must be so, if it should be necessary for him to prove, that the money was laid out on the ship; so, on the other hand, it is consistent with reason, that he be sure he lends his money on such an occasion, as the Master's Act may thereby oblige the owners, which he cannot do otherwise, than by knowing that the money borrowed was necessary for the ship's repair; and therefore if the ship wanted some repairs, and a far greater sum was lent than was needful, the owners shall not be liable for the whole.

Upon an information tamquam, grounded upon the Act of Navigation for importing goods in a foreign vessel contrary to that act, the question was, whether or not, if a foreign ship naturalized by the New Act, being a prize taken in the late war with Holland, be afterwards sold to a foreigner, who sells her again to an Englishman, whether or no the oath must be taken again, according to the act; per Cur. it need not, because the ship was once lawfully naturalized. Hardres, 511. Martin v. Verd. Molloy de Jure Mar. page 227, 228. sect. 15.

An agent for the East India Company, in the East Indies, bought a ship and cargo of the commander, who had no right or power to sell either, and the owner on a suit here had the value decreed him for ship and cargo, the value being found by a jury, with Indian interest, viz. 12 per cent.

If a man gets possession of a ship, without a just title to the same, he shall, by the law-marine, answer for such profit, as the ship, in all probability, might have earned: And the reason of that is, because the only end of shipping is the employment thereof; but if a warrant be directed out of the Admiralty to the marshal to arrest such a ship, and salvo custodire (preserve her in safety) who by force of the same enters into the ship; though the warrant does not mention that the officer should carry away her sails, yet he may justify the taking of them, for that he cannot salvo custodire her, unless he takes away the sails.

In case a ship is freighted out, and in consequence of the agreement receives her lading aboard, if an embargo happens afterwards, and her cargo is taken as forfeited, yet the owners shall notwithstanding receive the freight, as the fault was not in them, but in him whose property the goods were.

In the main sea, or in an arm of it, a ship may not become a deodand, though any body be drowned out of it, or otherwise come by their death aboard, because on such waters ships are naturally exposed to the dangers of tempestuous weather; but a ship or vessel in fresh water may become a deodand, as happened with one lying at Rotherhithe, near the shore, to be careened, where a shipwright being at work under her at low-water, as she leaned aside, she unexpectedly turned over, and unfortunately killed him. Upon a trial at bar, the question was, whether she belonged to the lord of the manor, contiguous to the place where the man was slain, or to the almoner, as a matter not granted out of the crown; and it was resolved that the ship was a deodand, and the jury found a verdict for the lord of the manor.
EMPLOYMENT OF SHIPS, AND WHAT ARE LAWFUL EXPORTS AND IMPORTS.

If a ship imports prohibited goods she cannot be seized as forfeit till there is a condemnation in the Exchequer thereon.

If foreign brandy or spirits shall be imported in any ship under fifteen tons, except for the use of the seamen, not exceeding one gallon each, such brandy, &c. shall be forfeited.

If any master, owner, purser, or boatswain of any ship willingly permit any brass, copper, latten, bell-metal, pan-metal, gun-metal, or shrof-metal, whether it be clear or mixed, tin and lead excepted, to be shipped contrary to this act, or perceiving such metal to be shipped, do not disclose the same in three days after knowledge had to the customer or comptroller of the port, or their deputies, every such owner, &c. shall forfeit double the value of the metal.

Every vessel, with all her tackle, in which any great cattle, sheep, or swine, or any beef, pork, or bacon, except for the necessary provisions of the ships, in which the same shall be brought, not exposing it to sale, shall be imported, and out of which they shall be put on shore, shall be forfeited; and it shall be lawful for any person, within one year after such importation, to seize the vessel, and make sale thereof to the best advantage, &c. and it shall be lawful for any justice of peace of the county, or chief officer of the port town, where such importation shall be, or where any of the cattle, beef, &c. so imported shall be brought, by warrant to cause to be apprehended the master and seamen, having charge of, or belonging to, such vessel; and every other person employed in the landing, or taking care of the said cattle, beef, &c. and them to commit to the common gaol for three months. 20 Car. 2. c. 7. s. 5.

Salted beef, pork, bacon, butter, and cattle, the laws permitting the importation from Ireland into Great Britain, duty-free, are made perpetual, 16 Geo. 3. c. 8.

The importation of tallow, hog's-lard, and grease, is made duty-free, till the 25th March, 1782, from any place. Continued to 1789. 26 Geo. 3. c. 53.

It shall be lawful for any persons who shall reside in her Majesty's dominions to import cochineal in ships belonging to any state in amity; and in Spanish ships, or such as are deemed Spanish ships, sailing with Spanish passes and colours, from Cadiz, Seville, Port St. Mary, St. Lucar, and Gibraltar, or any other ports in Spain, during the war, &c. the Act 12 Car. 2. cap. 18. notwithstanding.

Made perpetual 12 Ann. stat. 1. cap. 18. sect. 3.

No person shall buy any rough hide or calf-skin in the hair, but only such as shall tan them, except salt hides for the use of ships, &c.

Raw hides of steers, cows, or any other cattle, except horses, mares, or geldings, and calves' skins or goat skins, raw or undressed, may be imported, duty-free, from Ireland into Great Britain.

No master shall lose his ship for any small thing, not customed, put in the ship without his knowledge.

No customer or comptroller shall have ships of their own, nor meddle with the freight of ships.

No ship or goods shall be seized as forfeit for unlawful importation or exportation, or for non-payment of customs, but by the persons appointed to manage the customs, or officers of customs, or persons deputed by warrant from the lord-treasurer, or under-treasurer, or by commission from his Majesty under the great or privy-seal, and if any seizure shall be made by any other person for the causes aforesaid, such seizure shall be void.
OF THE EMPLOYMENT OF SHIPS

In case the seizure or information shall be made upon the Act of Navigation, the defendants shall on their request, have a commission out of Chancery to examine witnesses beyond sea, and have a competent time allowed for the return thereof before trial; and the examination of witnesses so returned shall be evidence at the trial.

Every person who shall export goods from any port of this kingdom, capable of a ship of two hundred tons, upon an ordinary full sea, to any part of the Mediterranean beyond the port of Malaga, or import goods from the places aforesaid, in any ship that hath not two decks, and do carry less than sixteen pieces of ordnance mounted, with two men for each gun, and other ammunition proportionable, shall pay for all merchandizes so exported or imported one per cent. above the tonnage and poundage.

It shall be lawful to export fish into any of the ports of the Mediterranean in any English ship, provided one moiety of her lading be fish, and to import merchandize in the same ship for that voyage, without paying any other rates than accustomed.

The master of every ship, carrying certificate goods to Ireland, shall take from the collector in Great Britain a duplicate of his contents, under the hand and seal of the collector and comptroller, which they are required to deliver without fee, and such master shall deliver such duplicate to the officers of the customs in Ireland before he be permitted to land such goods.

In case any foreign goods, shall, by any collier, fisher-boat, or other coasting vessel, be taken in at sea, or out of any vessel, to be landed, or put into any other ship, &c. within the limits of any port, without payment of the duties, such goods shall be forfeited, and the master of such collier, &c. shall forfeit treble the value, unless in case of necessity, of which such master shall give notice, and make proof before the chief officers of the customs of the first port where he shall arrive; the master or other person taking charge of the ship out of which such goods shall be taken in at sea, shall forfeit treble the value.

Where any vessel of fifty tons, or under, laden with customizable, or prohibited goods, shall be found hovering on the coasts, within the limits of any port, and not proceeding on her voyage, wind and weather permitting, any officer of the customs may go on board, and take an account of the lading, and demand security of the master, &c. by his own bond, to his Majesty, &c. in treble the value of the foreign goods on board, with condition, that such vessel (as soon as wind and weather, and the state of such vessel doth permit) shall proceed on her voyage, and shall land such goods in some foreign port. And if such master, &c. shall refuse to enter into such bond, or shall not proceed on such voyage, as soon as wind, weather, and the state of such ship, will permit, unless suffered to make longer stay by the collector, or other chief officer, not exceeding twenty days, all the foreign goods on board such vessel may, by any officer of the customs, by direction of the collector, or other principal officer, be taken out of the ship and secured; and, if such goods are customizable, the duties shall be paid; and wool, or any prohibited goods, found on board, are declared subject to forfeiture.

All goods found concealed on board any ship after the master shall have made his report at the custom-house, and not mentioned in the said report, shall be forfeited, and may be seized and prosecuted by any officer of the customs, and the master of such ship, in case he was privy to such concealment, shall forfeit treble the value of the goods.

It shall be lawful for the officers of excise to go on board any vessel within the limits of any port, and to continue on board, and rummage in like manner as the officers of the customs, for arrack, rum, brandy, or other exciseable liquors; and for coffee, tea,

* N.B. There is the same Act made for any ship hovering on the coast of Ireland, &c. by 6 Geo. 1. cap. 1, sect. 82.
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cocoa-nuts, chocolate, and cocoa-paste; and to seize for his Majesty's use all such of the
said commodities there found, as by law shall be forfeited, together with the package;
and to seize such of the said commodities, as before due entry, and without paying or
securing the duties on the importation, shall be found unshipping or unshipped.

For encouragement of the North-Sea, Island, and Westmony fisheries, no fresh her-
ring, fresh cod, or haddock, coal-fish, or gull-fish, shall be imported but in English
built ships, and having certificate as in the Act, and whereof the master and three-fourths
of the mariners are English, and which have been caught in such ships, and not bought
of strangers, under pain of forfeiture of all such fish, and the ship in which it was im-
ported.

No British ship, trading to any part of the Mediterranean Sea beyond Malaga, shall be entitled to the exemption granted in the act 13 and 14 Car. 2, cap. 11. sec. 36.

It shall be lawful for natives of England or Ireland to import into England directly
from Ireland any sorts of hemp or flax, and all the productions thereof, as thread, yarn,
and any manufacture thereof, of the growth and manufacture of Ireland, free from all
duties, the master of the vessel importing the same bringing a certificate from the chief
officer of the port in Ireland, expressing the marks, number, tale, or weight, of the
species in each bale, mentioned in the bills of lading, with the names and places of
abode of the exporters from Ireland, and of such persons that shall have sworn the goods
to be of the growth and manufacture of that kingdom, and where, and to whom in
England consigned; and the master of the ship, on arrival in England, making oath
that the said bales and goods are the bales and goods taken on board by virtue of the
said certificates.

All linen made in Ireland, and imported into Great Britain, may be again exported to any British Plantation in America, without payment of any duty whatsoever.

To encourage the importation of rough and undressed hemp or flax from the British colonies in America; for hemp, water rotted, bright and clean, or rough undressed flax,
so imported, the following bounties are to be given by the collector of the customs at the
port of importation: between June 24, 1764, and June 24, 1771, 8l. per ton; be-
tween June 24, 1771, and June 24, 1778, 6l. per ton; and between June 24, 1778,
and June 24, 1785, 4l. per ton.

Grants the following bounties on hemp, the growth of Ireland, imported from thence into Great Britain. From June 24, 1779, to ditto, 1786, 8l. per ton. From June 24,
1786, to ditto, 1793, 6l. per ton. From June 24, 1793, to ditto, 1800, 4l. per ton.

Any master or owner of a vessel, fraudulently importing foreign hemp or flax to ob-
tain these bounties, incurs the forfeiture of 100l. and the vessel, with all her furniture, shall also be forfeited.

Grant an additional bounty of 5s. per hogshead upon flax seed imported into Ireland, for which a bounty is allowed in that kingdom, by acts made there in the third and
sixteenth of his present Majesty. Rape seed, and rape cakes, may be imported from
Ireland into Great Britain, duty free.

Cotton yarn, the manufacture of Ireland, may be imported into Great Britain, duty free.

Tea exported to Ireland, as merchandize, to draw back the whole customs, subject to the regulations prescribed by 12 Geo. 3, c. 60, and 16 Geo. 3, c. 51.

Repeals the act of 19 of Henry 7, prohibiting the exportation of gold and silver coin from Great Britain to Ireland, and allows the said exportation.

Repeals the act of 9 Anne, prohibiting the importation of foreign hops into Ireland, and allows them to be imported there.
OF SHIPS AND SHIP OWNERS,

Also, the Act 6 Geo. 1. c. 11, which enacts that no draw-back shall be allowed on the exportation of hops from Great Britain to Ireland, and allows the draw-backs to be paid for hops, whether of foreign or British growth.

Sect. 3.

Repeals so much of an Act of 26 Geo. 2, as confines the Levant trade to subjects of Great Britain only, admitted members of the Turkey Company; and enacts, that the subjects of Ireland, on request, shall be admitted members of the said Turkey Company, and being so admitted, may export directly from Ireland to the Levant seas, or import from thence into Ireland, such commodities as are allowed to be imported into Great Britain from the said seas; or to be exported to the same, by any person free of the Turkey company.

20 Geo. 3.
cap. 45.

Allows any persons, free of the Turkey Company, to import into Great Britain or Ireland, any goods or commodities which have hitherto been usually imported from Turkey or Egypt, or from any place within the dominions of the Grand Seignior, not only in ships built in, and belonging to, Great Britain, or Ireland, but in any ship or vessel belonging to any kingdom or state in amity with his Majesty, his heirs, and successors, navigated by foreign seamen, from any port or place whatsoever, upon payment of the same duties if imported into Great Britain, as the like goods would be subject to if imported in British ships directly from the place of their growth, production, or manufacture; the goods so imported in foreign-built ships to be liable to the aliens duties, if such goods were subject thereto before the passing of this act.

No entry to be allowed to be made of any such goods at the custom-house till certificate is produced by the importer, that he is free of the Turkey Company.

After January 1, 1780, goods usually imported from the Mediterranean may be imported from any port or place whatever, by any persons whatsoever, into Great Britain or Ireland, in British built ships, or in ships belonging to any kingdom or state in amity with his Majesty, his heirs, and successors, upon payment of the same duties, if imported into Great Britain, as they would have been liable to if imported directly from the places of their growth, &c. except drugs, which, if not imported by persons free of the Turkey Company, shall be liable to the same duties as if not imported from the place of their growth. The goods so imported from the Mediterranean in foreign ships to be liable to aliens duties, if they were so before, notwithstanding this act.

Cotton or cotton wool imported in Great Britain after the 1st of Jan. 1780, in foreign ships, to be subject to a duty of one penny farthing on every pound weight, and also to the additional duty of five per cent. on the amount of the said duty, as granted by the Act of 19 Geo. 3. And no draw-back is to be allowed on the re-exportation of the said cotton or cotton wool. The produce of the said duty of one penny farthing per pound weight is to be paid from time to time into the receipt of the Exchequer, and is to be kept separate and apart as a fund for the encouragement of the growth of cotton in his Majesty's leeward islands, and for encouraging the importation thereof into Great Britain, in such way and manner as Parliament shall hereafter direct.

7 Geo. 1.
c. 11. s. 40.

No commodity of the product or manufacture of the East-Indies shall be imported into Ireland, the islands of Jersey, Guernsey, Alderney, Sark, or Man, or to any of the plantations in Africa or America, belonging to the crown of Great Britain, but such only as shall be shipped in Great Britain in ships navigated according to law, on penalty of forfeiting all such goods, or the value thereof, together with the ship, &c.

It shall be lawful for any natives of England or Ireland to ship, in any port of Ireland, in English built shipping, whereof the master and three fourths of the mariners be English or Irish, any white or brown linen-cloth, of the manufacture of Ireland, and the same to transport into any of the plantations, the act 15 Car. 2. cap. 7. notwithstanding.

Provided, that no ship coming to the plantations from Ireland shall break bulk, until the master shall have made known to the governor, or to such officer as shall be by him 1
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appointed, the arrival of the said ship, with her name, and the name of the master, and shall have delivered a true inventory or invoice of the lading, together with the certificate from the chief officer of the port in Ireland where such ship shall be laden, expressing the particulars of such lading, with the names and abodes of the exporters, and of two persons, who shall have made oath before such chief officer, that the said goods and linen are bona fide of the manufacture of Ireland; and until the master shall have made oath, before such governor or officer, that the said goods are the same that he took on board by virtue of such certificate, nor until such ship shall have been searched by an officer; and, in case the commander of such ship shall break bulk before such notice given and certificate produced, and such oath made, or before such search, or if any goods of woollen manufacture, not laden in Ireland, necessary apparel of the commander and mariners excepted, or any linen goods not laden in Ireland, nor of the manufacture of Ireland, shall be found, such ship shall be forfeited, together with all goods imported, or found in such ship.

Makes it lawful to export, under certain regulations, directly from Ireland to British America, the West Indies, or any of the British settlements on the coast of Africa, any goods, the produce or manufacture of Ireland, except wool and woollen manufactures, and cotton manufactures; hats, glass, hops, gunpowder, and coals.

And all goods of the growth, product, or manufacture of Great Britain, imported from thence into Ireland, except woollen manufactures and glass. Also all foreign certificate goods, legally exported from Great Britain to Ireland may be re-exported directly from Ireland to the said plantations and settlements; but not to extend to foreign linens, painted, &c. in Ireland; nor to bar-iron, iron slat or rolled, plated or tinned, nor any manufactured iron wares, till a duty is imposed thereon in Ireland. Nor to any such articles if a bounty or premium is allowed thereon.

Allows the exportation of woollen manufactures from Ireland into any foreign part, and of glass, and repeals all former acts prohibiting the same.

Any goods which may be legally imported from British America, the West Indies, or any of the British settlements on the coast of Africa, into Great Britain, may, in like manner, be imported directly from the said settlements to Ireland.

And any goods which may be legally exported from Great Britain to British America, or the said settlements, may be exported directly from Ireland to the same places.

On condition that the Irish parliament impose on the goods to be so exported or imported, duties, and allow draw-backs, equal to those imposed and allowed on the exportation or importation of the said goods in Great Britain.

Gum senega, or gum arabic; thirty tons may be exported annually from Great Brit-6 Geo. 3. tain to Ireland duty free, by licence from the treasury; to be used in the linen manufactures of that kingdom.

Clothing and accoutrements, the produce of Great Britain or Ireland, for the use of his Majesty’s forces abroad, paid in part out of the Irish revenue, may be exported from Ireland.

No commodity, of the production of Europe, shall be imported into any plantation or place, which shall belong to his Majesty in Asia, Africa, or America, but what shall be shipped in England, Wales, or Berwick, and in English built shipping, and whereof the master and three-fourths of the mariners are English, and which shall be carried directly thence to the said plantations, under the penalty of the loss of all such commodities imported from any other place; and, if by water, of the ship also, with her tackle.

Provided, that it shall be lawful to lade in ships navigated as in the foregoing clause, in any part of Europe, salt, for the fisheries of New England and Newfoundland, and to ship in the Madeiras, wines of the growth thereof, and to ship in the western islands or Azores, wines of the growth of the said islands, and to take in servants or horses in
Ireland, and to ship in Ireland victuals of the production of Ireland, and the same to transport into any of the said plantations.

Ditto, s. 8.

Every person importing by land any goods into the said plantations, shall deliver to the governor, or to such person as shall be by him appointed within twenty-four hours after such importation, his name, and a particular of all such goods: and no ship coming to any such plantation shall lade or unlade any goods, until the master shall first have made known to the governor, or such other officer as shall be by him appointed, the arrival of the ship, with her name, and the name of her commander, and have shewn to him that she is an English built ship, or made proof by producing such certificate, that she is a ship belonging to England, Wales, or Berwick, and navigated with an English master, and three-fourths parts of the mariners English, and have delivered to such governor, or other officer, an inventory of her lading, with the places, in which the goods were laden, under the pain of loss of the ship with her tackle, and of all such goods of the production of Europe, as were not laden in England, Wales, or Berwick.

The word Ireland shall be left out of all bonds taken from any ship, which shall set sail from England, Ireland, Wales, or Berwick for any English plantation in America, Asia, or Africa; and, in case the ship shall load any of the said commodities at the said English plantations, the said commodities shall be by the said ship brought to some port of England, Wales, or Berwick, and shall there unload the same, danger of the seas excepted; and in like manner for all ships coming from any other port to the said plantations, the governor of such plantations shall, before the ships be permitted to load any of the said commodities, take bond in the manner directed in the act, 12 Car. 2. cap. 18. for the encouraging of navigation, that such ship shall carry all the said goods to some other of his Majesty's English plantations, or to England, Wales, or Berwick, and every such ship which shall load any of the said commodities, until such bond given, or certificate produced, from the officers of some custom-house of England, Wales, or Berwick, that such bond hath been there given, or which, contrary to the tenor of such bond, shall carry the said goods to any place other than to other English plantations, or to England, Wales, or Berwick, and there lay the same on shore, every such ship shall be forfeited, with her tackle and lading.

If any ship, which by law may trade in any of his Majesty's plantations, shall come to any of them to ship any of the said commodities, and bond shall not be first given with surety, to bring the same to England, Wales, or Berwick, and there to unload the same, the danger of the seas excepted, there shall be paid to his Majesty, for so much of the said commodities as shall be put on board such ship, these duties, viz. for sugar white, the hundred weight, 5s.; brown sugar and muscovadoes 1s. 6d.; for tobacco, the pound, 1d.; cotton wool one half-penny; indigo, 2d.; ginger, the hundred weight, 1s.; for logwood, 5l.; for fustick, and all other dying woods, 6d.; and for every pound of cocoa-nuts, 1d.; to be collected as shall be appointed in the plantations before the landing thereof, and under such penalties as for defrauding his Majesty of his customs in England.

In case any person liable to pay the duties before-mentioned shall not have monies to pay the same, the officers shall accept such a proportion of the commodities as shall amount to the value.

No goods shall be imported into, or exported out of any plantation, belonging to his Majesty, in Asia, Africa or America, or shall be carried from any one port in the plantations to any other port in the same, the kingdom of England, Wales, or Berwick, in any ship but what shall be of the built of England, or of Ireland, or the plantations, and wholly owned by the people thereof, and navigated with the masters, and three-fourths of the mariners, of the said places, except ships taken as prize, and condemnation thereof made in the courts of Admiralty in England, Ireland, or the plantations, to be navigated by the master and three-fourths of the mariners English, or of the plantations,
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and whereof the property doth belong to Englishmen, under pain of forfeiture of ship and goods.

Repeals so much of the above recited acts of 15, 22, and 23, of Charles 2. and of 20 Geo. 3. c. 10. the 7th and 8th of William 3. as restricts the importation into the British colonies and settlements in America, the West Indies, and on the coast of Africa, to Great Britain alone; and orders the word Ireland to be put into all bonds taken from ships, lading commodities in the said plantations to land the same in Great Britain or Ireland, as directed by the Navigation Act, and allows the trade between Ireland and the said colonies to be carried on in like manner as it is now carried on between Great Britain, and the said colonies and settlements.

Merchandizes may be exported or imported to and from this kingdom and places aforesaid, in any ships taken as prize, and whereof condemnation shall be made in one of the courts of Admiralty aforesaid, and shall be navigated by the master, and three-fourths of the mariners, English, and whereof the property shall belong to Englishmen.

All ships coming into, or going out of any of the plantations, and lading or unlading Ditto, s. 4. any goods, whether the same be his Majesty's ships of war, or merchants' ships, and the commanders thereof, shall be liable to the same rules, visitations and forfeitures, as to the entering, lading, or discharging their ships, as ships are liable to in this kingdom, by 13 and 14 Car 2. cap. 11. for preventing frauds in his Majesty's customs; and the officers for collecting his Majesty's revenue, and inspecting the plantation trade in the plantation, shall have the same power for searching of ships, and taking their entries, and for seizing goods prohibited, or for which any duties are payable, as are provided for the officers of the customs in England, by the said act, as also to enter houses or warehouses, to search for and seize such goods; and all wharfingers, lightermen, or other persons, assisting in the concealment or rescue of the said goods, or in the hindering the officers in the performance of their duty, and the vessels employed in the conveyance of such goods, shall be subject to the like penalties, as are provided by the same act, in relation to prohibited or uncustomed goods in this kingdom; and the like assistance shall be given to the officers, as by the said act is provided for the officers in England, &c.

Where any question shall arise concerning the importation or exportation of any goods Ditto, s. 7. into or out of the said plantations, the proof shall lie upon the owner, and the claimer shall be reputed the importer or owner.

All laws, bye-laws, usages or customs, which shall be in practice in the plantations, Ditto, s. 9. repugnant to the before-mentioned laws, or to this act, or any other law to be made in this kingdom, so far as such law shall relate to the plantations, are void.

Where the governor, or officers appointed by the commissioners of the customs, in Ditto, sect. the plantations, shall have ground of suspicion, that the certificate of having given security in England is false; the governor, or officers of the customs, shall take security there for the discharge of the plantation lading in Ireland, Wales, or Berwick, (substitute the words Great Britain or Ireland, in conformity to 20 Geo. 3. c. 10.) and where there shall be cause to suspect, that the certificates of having discharged her lading of plantation goods in this kingdom is false, the governor or officers shall not cancel the security given in the plantation, until they be informed from the commissioners of the customs, that the certificate is true; and if any person shall raise or falsify any certificate, certificate, return, or permit, for any vessel or goods, or shall knowingly make use thereof, such person shall forfeit five hundred pounds.

The commissioners of the treasury, and the commissioners of the customs, may ap Ditto, sect. point such officers of the customs in any city, town, river, port, harbour, or creek, of any of the islands, tracts of land, and proprieties, as shall seem needful; also upon any
suits brought in the plantations, upon any law concerning his Majesty's duties, or ships or goods forfeited by reason of any unlawful importations or exportations, there shall not be any jury, but of such only as are natives of England or Ireland, or born in his Majesty's plantations; and upon all such suits the offences may be laid in any province, country, or division, of any of the plantations, at the pleasure of the informer.

In all bonds to be taken in the plantations by 22 and 23 Car. 2. cap. 26. the sureties shall be persons of known residence and ability in the plantations, and the conditions of the bond shall be within eighteen months after the date, the danger of the seas excepted, to produce certificates of having landed the goods in one of his Majesty's plantations, or in England, Wales, or Berwick, (substitute the words Great Britain or Ireland, in conformity to 20 Geo. 3.) otherwise such bond, or copies thereof, attested under the hand and seal of the governor to whom such bonds were given, shall be in force and allowed of in any court in England, Ireland, or the plantations, as if the original were produced.

Tobacco exported to Ireland, if less appears to be landed than shipped in Great Britain, an allowance, not exceeding two per cent. may be made for waste during the voyage.

Repeals the acts of 12 and 15 Charles 2. and any other act which prohibits or restrains the setting, planting, or improving to grow, making, or curing tobacco, either in seed, plant, or otherwise, in Ireland.

No ship shall pass as a ship of the built of England, Ireland, Wales, Berwick, Guernsey, Jersey, or any of his Majesty's plantations in America, so as to trade to the plantations, until the persons claiming property in such ship, shall register the same, viz. if the ship belong to any port in England, Ireland, Wales, or Berwick, proof shall be made upon oath of one of the owners, before the collector and comptroller of his Majesty's customs in such port; or if the ship belong to any of his Majesty's plantations in America, or to the islands of Guernsey or Jersey, then the like proof to be made before the governor, with the principal officer of revenue residing on such plantation or island.

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Encouragement of British-made Sail-Cloth.

Every ship which shall be built in Great Britain, and every ship built in his Majesty's plantations in America, shall, upon her first setting out, have one complete set of sails, made of cloth manufactured in Great Britain, and in case such ship shall not be fitted as aforesaid, the master shall forfeit 50l.

No person shall make into sails or tarpawins, any foreign sail-cloth imported after the 24th of June, 1731, not stamped, and in case any person shall make up foreign sail-cloth, other than as aforesaid, such sails and tarpawins shall be forfeited, and such person shall forfeit 20l.

This act shall continue five years from the 24th of June, 1736, and to the end of the next session of parliament.

Continued till the first of June, 1747, and until the next session of parliament, by 15 and 16 Geo. 2.

Confirmed by 19 Geo. 2. p. 457. And it is there also enacted, that from the 24th of June, 1746, every master of a vessel belonging to a subject, navigated with, or having any foreign-made sails aboard, shall at the time of his making his entry at the custom-house of such vessel, also make entry and report upon oath of all foreign-made sails
used in, or being aboard such vessel, and before the vessel shall be cleared by the officers of the customs inwards, where she shall discharge any of her lading, he shall pay the like duties payable by an act of 12 Anne.

Every such sail shall be stamped at the place where the vessel shall make her entry, in manner herein afore-mentioned; and if the master shall not make such entry, and pay the duty before the vessel shall be cleared by the officers of the customs inwards, all such sails shall be forfeited, and the master for every such offence shall forfeit 50l.

If the master after his report or entry made, and before the vessel is cleared by the officers of the customs, shall declare his intention of not choosing to pay the duty, and shall deliver such sails to the officer of the port where he makes his entry, in such case the sails are to be forfeited, and the master shall not be liable to pay the duty or penalty of 50l.

Nothing herein contained shall make captains or masters of vessels, coming from the East Indies, liable to the duties or forfeitures aforesaid, for such vessels being navigated with, or having foreign-made sails on board, which shall bona fide be brought by them from thence.

The commissioners of the customs of Great Britain, by the 24th of June, 1746, shall provide a sufficient number of stamps of eight inches diameter for the stamping of foreign-made sails, &c.

And as doubts have arisen about the meaning of a clause in the said act of 9 Geo. 2. by which vessels are obliged at their first setting out, or being first navigated at sea, to be furnished with one full and complete set of sails, made of sail-cloth manufactured in Great Britain: to obviate such doubts for the future, it is enacted, that from the 24th of June, 1746, every vessel which shall be built in Great Britain, and from the 29th of December, 1746, every vessel which shall be built in his Majesty's plantations in America, upon her first being navigated, shall be furnished with one full and complete set of sails (bona fide belonging to such vessel, &c.) made of sail-cloth manufactured in Great Britain, under penalty, for every default, of 50l. to be forfeited by the master.

All the foregoing recited acts, relative to British-made and foreign sail-cloth, are 26 Geo. 3. continued, and to remain in force, until the 29th of September, 1792; and from thence to the end of the then next session of parliament. See further regulations 29 Geo. 3. c. 55. 33 Geo. 3. c. 49. 36 Geo. 3. c. 108.

SALT.

If any subject of this realm shall ship any salt or rock salt, that hath paid the duty, to convey it by sea to any part of England, and the vessel perish at sea, or be taken by enemies with such salt on board, such person shall, upon proof made at the quarter sessions for the county, &c. wherein he doth inhabit, of the loss of such salt, receive from the sessions a certificate, and upon producing the certificate to any officers of the duty having been paid, they are to let such persons ship the like quantity of salt without paying any duty.

Where any ship laden with salt shall be found hovering on the coasts, not proceeding on her voyage, it shall be lawful for the officers of the customs, or of the duty on salt, to go on board such vessels, and compel them to come into port, and to continue on board until the salt be unladen, or the ship shall depart from the port; and if the per-
sons on board any ship importing salt, shall neglect to enter or unladen such salt twenty
days after the same is come into port, or within that time to depart and proceed on their
voyage, unless permitted by the chief officer of the customs, to make a longer stay, all
the salt on board such ship shall be forfeited, and double the value thereof, to be re-
covered of the master.

No foreign salt shall be imported in any ship of less burthen than twenty tons, and in
bulk only (except for the provision of the ships) upon pain of forfeiting the salt, and
double the value, to be recovered of the person importing.

Ditto s. 19. If any ship laden with salt, to be carried beyond the seas, shall come into any place
in England, it shall be lawful for the officer of salt, to enter such ship, and there con-
tinue till the ship unladen her cargo, or return to sea, under the penalty of 20l. to be
recovered of the master, who shall refuse such officer to come on board; and if any
person shall unladen any of the salt before entry or re-payment of the duty, the whole
cargo of salt shall be forfeited.

Ditto s. 19. Where any salt shall be laid on board any ship, either to be transported beyond the
seas, or carried coastwise, the officer of the customs shall in the cockets (which shall be
also signed by the officer for the duty on salt, and given without fee) express the quan-
tity of salt; and in case such ship shall come into any port in England, it shall be
lawful for the officers of the customs or officers for the said duties, to go on board such
ship, and demand a sight of such cocket, and in case he has cause to suspect that there
is not so much salt on board as the quantity expressed from such cocket (and shall
make affidavit thereof before the collector, or custom officer of the port) to weigh all the salt
remaining on board; and in case there shall not appear to be so much as the quantity
expressed in such cocket (making allowance for the waste, and for salt delivered at an-
other port, and indorsed in the permit) the salt remaining shall be forfeited.


No salt of the produce or manufacture of England, Wales, Berwick, Scotland, or
Ireland, nor any other salt coming from Ireland, Scotland, or the Isle of Man, shall,
after June 1, 1704, be imported into England, Wales, or Berwick, upon pain that all
the salt so imported, &c. shall be forfeited, and that the ship shall also be forfeited; and
every person that shall take any salt out of such ship, or carry the same on shore, or
carry the same from the shore, or be assisting therein, shall forfeit 20l. or suffer six
months imprisonment.

Ditto s. 2. It shall be lawful for any of the officers for the duties upon salt, within two months
after the landing any such salt, to seize the salt, and also the ship; and in case the
owner of such salt or ship shall not within twenty days claim the salt and ship, and give
security to answer the value, the salt and ship shall be sold.

Ditto s. 3. Nothing in this act shall extend to any salt shipped to be carried coastwise, by certi-
ficate, from one port to another according to former acts.

Ditto s. 4. In cases where salt shall have been shipped to be exported, and the ship shall by stress
of weather, enemies, or other necessities, be forced into any port in England, it shall
be lawful for the owner of such salt, or master of such ship, within twenty days, to
reland the salt, so as due entry be made, and the duties again paid down for the whole
quantity that was entered to be exported before any part thereof be relanded.

Ditto s. 6. Where any ship shall come into any port of England from Ireland, or other foreign
part, having on board any salt which was taken in only for the provision of the ship, or
for curing of fish, it shall be lawful to land the salt, so as entry be made thereof within
ten days after coming into port, and the duties paid down or secured before any part
thereof be landed.

Ditto, sect. 10. Where any salt (the duties whereof shall have been paid or secured) shall be shipped,
and perish by the sinking of the ship, before going out of port, and before the exporter
shall be intitled to a drawback; the exporter or proprietor of the salt shall, upon proof
made before the justices at the next quarter sessions, receive a certificate to such proof, and upon producing it to any collector of the duties, he shall let the proprietor buy the like quantity of salt without paying duty.

Or if any salt is lost at sea by stormy weather, or by being thrown overboard for the ship's preservation, the owner thereof shall, upon proof by the oaths of two (whereof the master or mate of the vessel to be one) receive a certificate as above, and be allowed to buy the like quantity of salt without duty.

If any master of a ship, who shall import into Great Britain any salt taken in for the provisions of the ship, or for curing fish, shall not enter and pay, or secure the duty for the same within ten days after coming into any port, and before the same be landed, the salt so imported shall be forfeited, and the master or owner shall forfeit double the value.

Every master of any vessel, who shall transport any foreign salt from Scotland or any of the islands thereof belonging to England, or from one port to another in Great Britain, shall, before landing or delivering such salt, deliver to the officers for collecting the duties on salt a particular of the quantity, signed by the officers of salt and customs for the port whence the vessel came, and the master, his mate, or boatswain, shall make oath, before the commissioners for the salt duties, or their officers, that to his knowledge there hath not been taken into the vessel any salt since he came from such port: And if such vessel be to deliver part of her salt at one port, and part at another, the officers of the salt duties, and of the customs, where such salt shall be delivered, shall certify on the back of the cocket or transire, or else by certificate, what quantity of the salt hath been delivered, on penalty of double the value of the salt otherwise delivered, and 10s. per bushel.

It shall be lawful for the salt officers at any unloading port to go on board such vessel, before the delivery, and demand a sight of the cocket, and to weigh the salt upon the unloading; and if the salt be found to be more in weight than what is contained in the cocket, the surplusage shall be forfeited, and if the master refuses to show the cocket, the officer may seize the salt, and detain it till the cocket be produced; and if it be not produced in four days, the salt shall be forfeited.

The officers of the customs, or of the duties on salt, may go on board any vessel to search if there be any salt on board, and may seize the same, if it be found on board any other vessel than that in which the salt was imported, unless it had been duly entered, or the duties paid or secured; and all such salt shall be forfeited, or the value thereof to be recovered of the master or owner of such vessel, who shall likewise be liable to all other penalties, as if the same had been landed, without entry or payment of the duties; and every person who shall hinder any officer in going on board any vessel and searching, shall forfeit 40l.

If any foreign salt be put on shore before entry or the duty paid, or without a warrant, the person landing the same, or conveying it from the shore, or assisting therein, shall, over and above the penalties already given, forfeit 100l.

On reshipping any salt, British or foreign, from any boat into any ship, and before any dispatches for the salt so reshipped be granted, the master, &c. that comes along with the salt to be shipped on board another vessel, shall make oath before the salt officer, that all the salt he took in is truly reshipped, and that there was no salt added to it, or taken from it, to the best of his knowledge, on penalty of forfeiting double the value of the salt, that shall be otherwise reshipped, and also 10s. per bushel.

Salt landed without the presence of any officer, is forfeited, with 10s. per bushel; and the vessel out of which it shall be taken, with the tackle and furniture are forfeited; and every person concerned therein shall forfeit 20l.

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Officers for the duty of salt, meeting any person conveying salt by land or water, by day or night, may demand a sight of the permit, and may at their own expense weigh the salt; and if it be found more in weight than contained in the permit, the surplusage shall be forfeited; and the persons conveying the same shall be liable to the same penalties and forfeitures, as persons are liable to for removing salt without due entry.

Persons obstructing or abusing officers, in the execution of their duty, shall forfeit 20l. for every offence.

Salt may be imported from any part of Europe to Nova Scotia: It may also be imported into Quebec.

This act continued and to be in force, until June 24, 1790; and from thence to the end of the then next session of parliament.

SILK.

The throwing of silk is not a manufacture within the intention of the Act of Navigation, 12 Car. 2. cap. 18. and no thrown silk of the growth or production of Turkey, Persia, East Indies, or China, or of any country or place, (except only such thrown silk as shall be of the growth, or production of Italy, Sicily, or of the kingdom of Naples, and which shall be imported in such ships, and navigated in such manner as in the act is directed, and brought from some of the ports of those countries, whereof the same is of the growth or production, and which shall come directly by sea, and not otherwise) shall be imported into England, &c. upon the forfeiture of all thrown silk imported contrary to this act.

No foreign wrought silks or velvets shall be imported into Great Britain, the islands of Jersey, Guernsey, Alderney, Sark, or Man, on forfeiture; and the further penalty of 100l. to be paid by the importer, for each piece or remnant, with costs of suit.

This not to extend to East Indian silks or velvets; or to silks, crepes, or tiffanies, the manufacture of Italy.

Exportation of raw silk from Ireland incurs the forfeiture of the silk, together with that of the vessel and furniture.

The treasurer, comptroller, surveyor, clerk of the acts, and commissioners of the navy, or one of them, on oath of one witness, that his Majesty's stores, &c. are conveyed into any ship, being at anchor, and not ready to sail that tide, within any of the roads, harbours, &c. in his Majesty's dominions, may authorise any persons by their warrant (in which the quantity and quality of such goods shall be specified) in the daytime to go on board such ship, &c. and in case of resistance to break open the hatches, &c. and search for such goods, &c. and seize the same for his Majesty's use, unless the said officers and commissioners shall find, upon hearing of the matter, that they were unjustly seized, and thereupon restore them to the party.

As it will greatly tend to the increase and improvement of the silk manufactures of this kingdom, to encourage the growth and culture of silk in his Majesty's dominions in America; It is enacted, that from and after the 24th of June, 1750, raw silks of the growth and culture of any of his Majesty's colonies or plantations in America may be directly imported from thence into the port of London, duty-free, due entry thereof being first made at the custom-house at the time of importation, in the same manner and form (expressing the package marks, and number, together with the qualities of the respective goods) as was used before the making of this act, and so as the same be
SILK.

Landed in the presence of, and examined by, the proper officer of the customs, and be imported in vessels that may lawfully trade to his Majesty’s plantations, manned as the law requires; and, in failure of the conditions herein last-mentioned, the said silks are to be liable to payment of the respective duties, as if this act had not been made.

The merchant or other person, who shall, after the 24th of June, 1750, lade any raw silk on board any vessel in any of the British colonies in America, is before the clearing out of such vessel from thence, to make oath before the collector or comptroller of the customs, and naval officer of the port, or any two of them, that the said silk (expressing the quantity thereof) is bonâ fide of the growth and culture of the British plantations in America; expressing the parish or place where the same was cultivated, and by whom, producing such person’s oath thereto, made before the governor of the place, or the next justice of the peace (which several oaths are to be administered gratis) and the master or person taking charge of such vessel is to bring with him a certificate, p. 397. signed and sealed by the collector and comptroller of the customs, and naval officer, or any two of them (which they are to give gratis) expressing the marks, numbers, tale, and weight of the raw silk in each bale or package, with the names and place of abode of the exporters thereof, and of the person who shall have sworn the same to be of the growth and culture of the said British colonies, and of the person to whom the same shall be consigned in the port of London; which certificate the master, on his arrival at the port of London, is to deliver to the collector or comptroller, or other chief officers of the customs, at or before the entry of the said silk, and to make oath before one of the said officers (which oath is to be administered gratis) that the said bales and parcels, and goods contained in such certificate, are the same which were taken on board in the said British plantations in America; and on default made in any of the premises, the said silks are liable to the payment of the respective duties, as if this act had not been made.

If any person shall, after the 24th of June, 1750, enter any foreign raw silk under p. 398. the name or description of raw silk of the growth or culture of any of the British colonies of America, or shall mix any foreign raw silk with raw silk of the growth of the said British colonies, in order to avoid payment of the duties for the same, he is to forfeit 50l. for every such offence, and all such foreign raw silk; and, in case of any mixture, the quantity mixed, both of foreign and British plantation growth, or the value thereof, together with the packages containing the same, are to be forfeited, &c.

If any doubt or dispute shall arise, whether the said raw silk is foreign, or of the growth or culture of the British American plantations, the onus probandi lies on the claimer.

IMPORTING VAGRANTS.

In case the master of any ship shall bring into this realm from Ireland, the Isle of Man, Jersey, Guernsey, or Sicily, or any of the foreign plantations, any rogue, vagabond, or beggar, or any other person likely to live by begging, being a native of any of the said islands, or plantations, and the person so brought over shall be apprehended wandering and begging, or otherwise misordering himself as aforesaid, such master, &c. shall forfeit 5l. for every rogue, &c. over and above such money as shall be necessary to defray the charges that any constable shall be put to, by means of apprehending and re-conveying the person; and the constable or other officer of any parish where any person so brought over shall be found wandering and begging, or misordering himself,
may cause him to be apprehended, and openly whipped, and after put on board any ship, to be set on shore in the place from whence he was brought, paying for the passage back of such person such rate as the justices at their quarter-sessions shall appoint; and in case such constable, &c. shall upon oath make appear before any justice of peace what expense he hath been put to upon such occasion, it shall be lawful for such justice by order to direct the payment of the money so expended, as also of the penalty of 5l. and in case such master, &c. of the ship shall neglect to pay the monies upon demand, it shall be lawful for such justice, by warrant, to levy the same by distress, and sale of the ship, or any goods within the same, while remaining within the jurisdiction of such justice; and if the master of the ship shall be gone out of the jurisdiction, &c. the said order of the justice may be removed by certiorari into the Queen's Bench, and being filed, the judges are required to direct process for arresting the ship, and detaining the same, until the monies mentioned in such order, together with the charges of such process be satisfied, or otherwise to award process for levying the monies by capias, fieri facias, or eligi, against the master or owners of the ship, as the court shall think proper.

Provided that in case such master or owners shall in the said court shew any probable ground of grievance by the said order, they may be admitted to traverse the same; giving security in the penalty of 50l. to answer the costs of such traverse, in case it be determined against them.

All masters of ships bound for Ireland, the isles of Man, Jersey, Guernsey, or Sicily, shall, upon warrant to them directed by a justice of peace of the county, &c. where such ship shall lie, take on board such vagrants as shall be named in the warrant, and convey them to such place in Ireland, the Isle of Man, Jersey, Guernsey, or Sicily, as such ship shall be bound to, or arrive at; and for the charges thereof, the constable, or the person who serves him with the warrant, shall pay him such rate as the quarter sessions shall appoint, and such master shall on the back of the warrant sign a receipt for the money, and also for the vagrants; which warrant shall be produced to the justice who signed the same, and upon his allowance thereof, under his hand, the money shall be repaid by the county; and every master of such ship, neglecting to receive or transport such vagrants, or to endorse such receipt, shall forfeit 5l. to be levied by distress, or sale of the ship, or any goods within the same, by warrant of any justice of peace for the same county, &c.

Confirmed by 13 Geo. 2. p. 478 and 479.

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MISCELLANEOUS.

Masters of ships knowingly importing foreign cut whale-fins or whale-bone, shall forfeit 50l. &c.

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"The laws and regulations formerly made and in force for preventing and prohibiting the exportation of live sheep, rams, and lambs, wool, woelfels, mortlings, short-
WOOL, &c.

lings, yarn, or worsted made of wool, woolflocks, cruels, coverlids, waddings, or other manufactures, or pretended manufactures, made of wool slightly wrought up, or otherwise put together, so as the same may be reduced to, and made use of as wool again; matrasses or beds stuffed with combed wool, or wool fit for combing or carding, fuller’s earth, fulling clay, tobacco-pipe clay, from and out of this kingdom, and the isles of Jersey, Guernsey, Alderney, Sark, and Man into foreign parts; having, in many respects, been found insufficient to answer the good purposes intended thereby; they are by this act repeated.” Except so much of an act, passed in the 9th and 10th of William 3. intituled, An act for the explanation and better execution of former acts made against transportation of wool, &c. as relate to wool shorn, laid up, or lodged within ten miles of the sea side, within the counties of Kent or Sussex, or either of them, or to any person or persons residing within fifteen miles of the sea in the said counties of Kent or Sussex. And from and after the passing this act, all the powers, provisions and regulations herein contained, respecting all or any of the before enumerated articles, goods or commodities, shall commence, take effect, and be in force, in such manner as are herein after mentioned.

If any person or persons whosoever shall, from and after the passing this act, bring, Sect. 2. deliver, send, receive, or take, or cause, or procure to be brought, delivered, sent, received, or taken into any ship, vessel, or boat, any rams, sheep, or lambs of any sort or description whatsoever, of the breed of the kingdom of Great Britain, or of the isles of Jersey, Guernsey, Alderney, Sark, or Man, being alive, to be carried or conveyed out of the said kingdom, or any of the said isles; the said rams, sheep, and lambs, and also the ship, vessel, or boat, on board of which the same shall be taken, or received, shall become forfeited, and liable to be seized and secured, for the benefit of any person or persons seizing the same; and every such person and persons so offending, his, her, and their aiders, abettors, procurers, and comforters, knowing thereof, and who shall be thereof convicted, shall, for every sheep or lamb which shall be brought, delivered, sent, received, or taken with any such intent as aforesaid, into any ship, vessel, or boat, forfeit the sum of three pounds, of lawful money of Great Britain, and shall also suffer solitary imprisonment in the common gaol or house of correction of the county, riding, division, or stewardry wherein such offender or offenders shall be respectively convicted, for the space of three months, without bail, or mainprize, and until such forfeiture shall be paid; but the whole of the said imprisonment for non-payment of the forfeiture, not to exceed twelve months. For a second offence, the forfeiture to be five pounds for every sheep, with six months imprisonment, and two years for non-payment of the forfeiture; but not to extend to carrying sheep on board for the necessary provision of the master and mariners, and passengers of any ship or vessel on her voyage.

No live wether sheep to be shipped on board any ship or vessel, for necessary food or Sect. 3. provision for the master, and mariners, or passengers, without a licence from the collector or comptroller of the customs at the port from whence they are shipped, specifying the number of sheep so taken on board, and they must be put on board in the presence of the proper officers, appointed by the custom-house to attend for that purpose; under the penalty of twenty shillings for every sheep, and forfeiture of the same.

Where there is no officer at the shipping port, a licence must be obtained from the Sect. 4. officers at the nearest port.

Not to extend to vessels bound to, or from any place between the Mull of Cantire Sect. 5. and Cape Wrath, in Scotland.

Nor to the removal of sheep from the main land to islands within the Firths of Scot- Sect. 6,7,8. land, where estates consist of both. Provided always that the proprietors of such estates, or their tenants shall give bond to the King, under the penalty of one hundred
pounds, not to export such sheep and lambs to foreign countries, and shall take out a licence for such removals, specifying the names and situations of the islands, to and from which any sheep are removed, and the names and places of abode of the owners.

Sect. 9. Persons, who shall directly or indirectly carry, export, transport, or otherwise convey, or cause or procure to be conveyed, out of the kingdom of Great Britain, or the isles of Jersey, Guernsey, Alderney, Sark and Man, any wool whatsoever of the growth of the kingdom, or of the isles aforesaid, or any woollens, mortlings, shortlings, yarn, or worsted made of wool, &c. &c. &c. and also all and every owner or owners of any ship, or vessel, and the owners of any horse or other beast of burthen, waggon, cart, or carriage, upon which any sheep, wool, or other articles before enumerated, shall be exported, transported, carried, or conveyed, packed, or loaded, with an intent to be exported, knowing thereof, and being actually aiding, assisting, or consenting thereto; and also every master and commander, and mariner, of or in such ship or other vessel, wherein any such wool or other articles aforesaid, and which are hereby prohibited to be exported, shall be so exported, transported, carried, or conveyed, or loaden, or laid on board as aforesaid, with any such intent or purpose, knowing thereof, and being actually aiding, assisting, or consenting thereunto; and also every factor or servant, or other person whatsoever, and every collector, customer, comptroller, waiter, searcher, surveyor, or other officer or officers whomsoever, knowing thereof, and being actually aiding, assisting or consenting thereunto, and who shall be thereof convicted, shall forfeit and pay for the first offence, three shillings for every pound weight of such wool, or other the aforesaid enumerated articles, or the sum of fifty pounds, in the whole, at the election of the person or persons who shall sue for the same; and shall also suffer solitary imprisonment in the common gaol, or house of correction of the county, wherein such offender or offenders shall be convicted, for the space of three months, and until the penalty shall be paid, the whole imprisonment for non-payment of the penalty not to exceed twelve months. For the second, or any subsequent offence, the same penalty to be incurred with six months imprisonment for the offence, and two years for the non-payment of the penalty. The penalties and forfeitures to be for the benefit of the persons suing for the same; and the ship, vessel, boat, cart, waggon, carriage, horses, or beasts, on which the said articles are carried, or conveyed to be exported, shall be liable to be seized, and shall become forfeited, for the benefit of the person or persons who shall seize the same.

Sect. 10. This clause not to extend to prohibit the exportation of tobacco-pipe clay to our sugar colonies in the West Indies, under the regulations of 17 Geo. 3. continued by subsequent acts.

Sect. 11. Wool intended to be sent coast-wise if it is carried to any sea port, or other place on sea coast, or other woollen articles before enumerated, must first be entered with the proper officer of the customs, at the place from which it is intended to be conveyed to any other port or place in the kingdom, and a certificate of such entry shall accompany it; otherwise, if found within five miles of the sea coast, it shall be seized and forfeited, together with the waggon, cart, &c. conveying the same.

Sect. 12, 13, and 14. The foregoing clause not to extend to wool carrying from the place of shearing to the owner's house, though within five miles of the sea, provided the number of fleeces, and the place where it is to be housed, be certified to an officer of the customs, at the port nearest to the place where it is housed; and that it be not removed from thence, or otherwise disposed of, without notice given in writing, signed by the owner, to the officer or officers of the customs, of the intention to remove, or otherwise dispose of the same. If there be no port within five miles of the dwelling-house of the owner of the wool, the certificate, notice, &c. may be given to a justice of the peace, or any officer of his Majesty's revenue nearest at hand. Provided also, that in case any sheep shall
be shorn between the first day of March, and the first of July in any year, for the 
sole purpose of sending them to market, it shall not be necessary for the owner to certify 
the quantity and quality of the said wool so shorn, and where the same is housed, until 
the general shearing for that season of the whole of the flock or flocks of sheep belong-
ing to him is finished for that season, when he shall give an account of the quantity of 
wool, and the number of fleeces shorn from the whole.

It shall be lawful for any person or persons authorised and qualified as is herein-after 
mentioned, to seize, take, and challenge to and for his own use and benefit, all such 
wool, woolfels, mortlings, shortlings, and other the aforesaid worsted and woollen 
articles, fuller's-earth, fulling clay, and tobacco-pipe clay; as he, or they shall happen 
to see, know, or discover, to be brought, carried, or laid on shore, at or near the sea, 
or any navigable river, to the intent or purpose of being exported or conveyed out of 
the said kingdom of Great Britain, or out of the isles aforesaid, contrary to the true 
intent and meaning of this act; and the offender or offenders therein shall be subject 
and liable to the like forfeiture, pains, and penalties, as persons by this act are subject 
to for exporting, transporting, or shipping of wool, or the other commodities before 
enumerated.

Wool for the only use and behalf of the inhabitants of the isles of Jersey, Guernsey, 
Alderney, and Sark, may be exported from the port of Southampton only, under the 
following regulations: Such wool to be shipped on board ships or vessels the owners 
whereof are, at the time, actual inhabitants of the said isles. And the person or persons 
shipping the same shall deliver to the proper officers of the customs at the port of 
Southampton, a writing under the hand and seal of the governor or deputy-governor 
of the said islands respectively, specifying the quantity of tods of wool to be exported; 
that the said wool is to be used and manufactured in one of the said isles, or in some of 
the members or parts of the same; and that the party named therein is properly author-
rised and appointed to export, or cause the said wool to be exported, and has given 
bond to the King for the landing of the same in manner aforesaid.

The quantity to be exported annually from the said port of Southampton to the said 
isles, in any one year, accounting from the first day of January last past, to the first 
day of January in every succeeding year, shall not exceed the quantity here-under spe-
cified; that is to say, unto the isle of Jersey four thousand tods of uncombed wool, and 
no more; and to the isle of Guernsey two thousand tods; and to the isle of Alderney 
four hundred tods; and to the isle of Sark two hundred tods; each tod of the said un-
combed wool, not exceeding thirty-two pounds in weight. And the governors or their 
deputies, (for whom they shall answer) shall not sign any writing authorising the export-
ation to the said isles of any more than the quantities specified as above. Also it is 
enacted that if any custom-house officer at the port of Southampton shall permit more 
than the allowed quantities to be shipped for the said isles, he shall forfeit 500l. and be 
discharged from his office. And if the governor or deputy-governor of any of the said 
isles shall give, grant, or make out any licence or licences for exporting more than the 
aforesaid quantities, he or they shall forfeit 20l. for every tod of wool, so licenced to be 
exported, over and above the proportions of wool in and by this act, or the true mean-
ning thereof, limited or appointed. One moiety of the aforesaid forfeitures to be for the 
use of his Majesty; and the other moiety for the benefit of the person or persons suing 
for the same. One shilling, and no more shall be paid to the clerks, officers, or ser-
vants of the governors for signing, sealing, and entering each licence into the books to 
be kept for that purpose.

No wool nor any of the woollen articles before enumerated to be shipped but in ships, 
vessels, or boats belonging to natural-born subjects resident in Great Britain. Provided
WOOL, &c.

always, that this act shall not extend to any lamb-skins ready dressed and prepared, fit and useful for fur, or linings.

Sect. 20.

Repeals so much of the act of 9 and 10 William 3. c. 40. as prohibits persons residing within fifteen miles of the sea, in the counties of Kent and Sussex, from selling their wool to other persons residing at the same distance from the sea, under the penalty of forfeiture; and enacts the free sale of the same within the said distances, upon giving the notices of housing and removal, according to the true intent and meaning of sect. 12 of this act.

Sect. 21.

Wool laid up, or lodged within ten miles of the sea, within the aforesaid counties, may be carried to any town, field, or place, where a regular and established fair shall be held for the sale of wool. Provided always, that a permit or permits shall be taken out, from the proper offices, previous to the removal of such wool, specifying the quantity to be removed. The purchasers of the wool, sold at such fairs, shall produce a permit of the quantities purchased, to the proper officers attending the fair, who shall grant a fresh permit for the removal of the same from the said fair. And the wool, remaining unsold, shall be returned to the house or place from whence it was taken; and shall become subject and liable to the same rules, restrictions, and laws, as it would have been, in case it had never been moved, or taken to any fair as aforesaid. Persons counterfeiting certificates, licences, or permits, to forfeit twenty pounds, to any person suing for the same.

Sect. 22.

Wool, or any of the before specified woollen or worsted articles, removed or carried towards the sea, within five miles of the coast, upon any pretence whatever, between sun-setting and sun-rising, shall be forfeited; and may be seized, together with the horses, waggon, cart or carriage, for the benefit of the person or persons seizing the same. And the driver or drivers, upon conviction, shall be committed, for one month, to the house of correction. But this clause not to extend to the removal of wool shorn that day, from the shearing place to the dwelling or store-house of the farmer or grower, although such removal shall be towards the sea and within five miles of the coast thereof.

Sect. 23.

Worsted yarn not exceeding fourteen pound, prepared for knitting, may be carried to retail shops, provided it is directed to the retailer to whom it is carried, and marked according to the directions of the act or acts of parliament requiring the marking thereof.

Sect. 24.

No wool, mortlings, shortlings, wool-flocks, worsted bay, or woollen yarn, shall be packed up in any other package otherwise than packs or trusses of leather or canvass, commonly called pack cloths, or in linen or woollen; and all such packs or trusses of leather, canvass, linen, or woollen, shall be stamped or marked on the outside thereof with the word wool, in large characters, not less than three inches in length; on forfeiture, for neglect of the same, of all such wool, or other the aforesaid articles, to the person or persons seizing the same; and also upon forfeiture, by the person or persons to whom such wool or other aforesaid articles shall belong, of any sum or sums of money, not exceeding one shilling for every pound weight of such wool, or other the aforesaid articles so seized, to the person or persons seizing the same, as the court or justices before whom such wool, or other the aforesaid articles shall be condemned, shall direct: But this clause not to extend to worsted yarn packed in paper, according to the regulations of sect. 27. Justices are authorised to order any wool, &c. seized for not being stamped or marked, to be returned to the owner or owners; but they shall not in any case, mitigate the penalty below sixpence for every pound weight.

Wool or other the aforesaid woollen or worsted articles, not being packed according to the regulations of this act, shall be forfeited, together with a penalty of three shil-
WOOL, &c.

Kings for every pound weight. And persons packing wool, &c. contrary to this act, or assisting therein, shall be subject and liable to all the penalties incurred by exporters of wool, and the other articles prohibited to be exported. But persons assisting in such illegal package, giving information of the master-packers, or master-packers discovering their employers, shall be entitled to the wool, &c. so seized and condemned; and the employers alone shall be liable to the penalties on exporters of wool.

And whereas great quantities of wool are frequently lying at the public wharfs in different ports of Great Britain, which wool being under no control of the commissioners of the customs, or their officers, evil-disposed persons may, in the night-time, put the same on board vessels ready for sailing to foreign parts; and also in many cases, where wool is regularly entered to be put on board vessels bound coastwise, it is easy to put on board such vessels in the night-time, a larger number of packs of wool than have been duly entered for that purpose, and which, by being concealed under such packs as have been duly entered, cannot easily be discovered, and which wool may, after the said ships have proceeded some way on their intended voyages, be put on board other vessels bound to foreign parts; for remedy thereof, it is enacted, that every person or persons who shall keep any wharf for the reception of wool, in or at any port of Great Britain, shall enter into a bond to the use of the King's Majesty, his heirs, and successors, under the penalty of two hundred pounds, not to ship any wool illegally; and to keep a regular entry and account of the quantity of bags or cloths of wool by them received and delivered; with the time when, and the names and residence of the persons from whom such wool was so received; and to whom such wool was so delivered, with the marks and numbers upon the sheets, and the weight of such wool; a copy of which account shall be delivered to the principal officers of the customs, at the port at which such wharfingers shall reside, at the end of every six months, and often, if the same shall be required by such officers. And if any wharfinger shall refuse to enter into such bond, within six months after the passing of this act, or hereafter within one month of any person or persons beginning to keep any such wharf, they shall forfeit and pay the sum of two hundred pounds, to the person or persons who shall sue for the same; and in case such wharfinger or wharfingers shall refuse to keep and deliver the accounts above required to be kept and delivered, or shall be convicted of keeping or delivering a false account, every such wharfinger shall, for every such offence, forfeit and pay the sum of fifty pounds, to be paid to the person or persons suing for the same; and the informers against wharfingers shipping wool illegally shall, upon their conviction, be intitled to forty pounds for every offender. Wharfingers shall give an account to the proper officer, of any wool received by land carriage, or inland navigation, within seven days after the receipt thereof, under a penalty of ten pounds for every neglect.

And the better to prevent any fraudulent exportation of wool, or any of the before-mentioned woollen or worsted articles prohibited by this act, to be exported, under the pretence of carrying the same coastwise in the kingdom of Great Britain; no wool nor any of the said articles shall be put on board any ship, vessel, or boat, to be carried coastwise, or from one port to another, unless notice be first given to the commissioners or chief managers of the customs, or to the customer, or collector and comptroller of the customs, at the port from which the same is intended to be sent, of the quantity, quality, and package, together with the marks, numbers, and weight thereof, with the name of the ship, and master or commander, on board of which such goods are to be laden, together with the name or names of the owner or owners of the said goods, and the place of his or their abode or habitation, and the place and port at which the same are intended to be landed, and the name of the person or persons to whom the same are consigned; and also unless a bond be first entered into to the use of the King's
Majesty, his heirs and successors, by two good and sufficient persons, in treble the value of the said goods so intended to be carried coastwise, that the same shall (the danger of the seas excepted) be landed accordingly, which said bond shall be executed by the owner or owners of the said goods, or some person or persons by him, her, or them, appointed to execute the same, and which execution shall be deemed to be the act of such owner or owners, or shipper or shippers thereof; which said shipper or shippers, if acting as agent, or having sold such goods to any person or persons, shall and may sue for and recover, of or from the proprietor or proprietors of the goods so shipped, all such sum and sums of money as such shipper or shippers shall or may pay, expend, or be put unto, without their willful default or negligence, for or by reason of his, her, or their entering into such bond or bonds; and in case any such bond or bonds shall be so entered into for any wool, or any other the articles aforesaid, being the property of different persons, then such owner or owners, or person or persons for whose account such bond was so entered into, shall be accountable for his, her, or their share of the money so expended, in proportion to the amount of such goods so shipped; and also unless a licence be first taken out under the hands of the commissioners or chief managers of the customs for the time being, or any three of them, or from the customer, or collector and comptroller of the customs where any such bond was given, for the lading, carrying, and landing thereof, as aforesaid, which licence they are hereby required to grant without any fee or reward, or any other charge, to the person demanding the same. And if any wool, &c. be not shipped to be carried coastwise according to the directions of this act, it shall be forfeited, together with the ship, vessel, or boat, and all the guns, ammunition, tackle, apparel, and furniture belonging thereunto.

Sect. 55. Wool, the produce of any of the islands of Scotland, may be carried from one part to another of the lochs, or from the islands, to the main land of Scotland; and shall not be subject to the restrictions and regulations contained in the foregoing sections of this act, respecting the carrying of wool coastwise. Provided always that this exemption shall not authorise the carrying such wool, and other the aforesaid recited articles to open sea, but under such restrictions and regulations as are herein for that purpose mentioned and expressed.

Sect. 56. The customer, or collector and comptroller of his Majesty's customs at the port where any wool, &c. is shipped to be carried coastwise, shall, immediately on the clearance of such ship at such port, transmit a notice in writing, setting forth the quantity, quality, and package of such wool, &c. together with the marks and numbers thereof, the name of the ship, and of the master or commander thereof; to the customer, or collector and comptroller of the customs at the port to which such wool, &c. are intended to be conveyed; under the penalty of ten pounds, to be paid by the officer neglecting to transmit such notice, to the person who shall inform against such officer. And the bonds herein-before directed to be given, on shipping the said wool and other articles aforesaid, shall not be discharged until a certificate under the hand and seal of the customer, or collector and comptroller of the port or place in Great Britain where the same was landed, shall be produced to and left with the person or persons in whose possession such bond shall be kept at the custom-house of the port from whence the said wool and other articles were shipped. And the proper officer at the port of landing is to transmit such certificate within seven days, after the landing thereof, to the proper officer at the port from whence they were shipped, under the penalty of ten pounds, to be paid by the officer neglecting to transmit the same, to the person or persons informing against him. The collector or comptroller of the customs at the port, where such wool, &c. is duly landed, shall grant and deliver another certificate to the master or commander of the ship from which the same shall be landed. If
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bonds are not discharged within six months, they shall be sent to the commissioners of the customs; and if wool, &c. shipped at any port, shall not be landed at the place to which it is consigned within a reasonable time, notice thereof shall be transmitted to the officers of the customs at the port where it was shipped, who shall make proper enquiries without delay, in what manner the said wool or other articles have been disposed of.

No wool, or any other the said herein-before enumerated articles, fuller's-earth, fulling clay, or tobacco-pipe clay, shall be shipped on board any ship or vessel bound to parts beyond the seas, on any pretence whatsoever; under the penalty of forfeiture, for the benefit of the person or persons who shall inform thereof, of all such goods, and also of such ship, vessel, bottom, or boat, on which such goods shall be so laden, or put on board, and all the guns, ammunition, tackle, apparel, and furniture thereunto belonging. And, moreover, the master or commander of such ship or vessel, &c. shall, in such case, be deemed the exporter thereof, and shall be subject and liable to the pains and penalties in such case made and provided; unless such master or commander shall and do, immediately upon his being apprehended, discover and make known the person or persons who actually shipped such goods, and enter into a recognizance with two sufficient sureties, before some justice of the peace for the county, city, borough, or place, in or at which such last-mentioned goods shall be discovered, to prosecute and give evidence against such shipper, so as he may be convicted thereof.

Masters of vessels not regularly clearing out for foreign ports, as well as all persons on board, privy to any illicit transaction against this act, shall be liable to all the pains and penalties of exporters of wool, &c. But any person on board, except the master, immediately on his, or her being apprehended, giving information thereof, so as the master may be convicted, shall be intitled to a reward of forty pounds, and shall not be liable to the pains and penalties he or she would otherwise have incurred.

Masters of ships, &c. and drivers of carts, &c. shall be exempt from punishment, or forfeiture of their vessels, carts and horses, if it is proved, from the smallness of the quantity that they were not privy to wool, &c. being on board, or in such carriages, &c. But the wool, &c. so found on board, or laden on such carriages, or beasts of burthen, shall be forfeited to the person or persons who shall find, discover, and seize the same.

The officers of the customs, at all the ports in Great Britain, shall keep a register of all wool, &c. sent coastwise, and transmit a copy thereof half-yearly to the commissioners of the customs at London; where the register may be inspected by any person or persons whomsoever, on paying one shilling, and copies shall be transmitted annually to all the custom-houses in the kingdom, where they may be examined for the same fee.

If wool shipped to be carried coastwise, be unpacked on board, the master of the vessel shall forfeit forty shillings for every bag so unpacked, unless he makes oath before a justice of peace, upon his arrival at the delivering port, that it was done from absolute necessity.

Wool to be carried coastwise shall be shipped and landed in the presence of an officer at the respective ports, and at lawful quays; under the penalty of forfeiture of the wool, and payment of three shillings for every pound weight. Cocquets and certificates for carrying the said wool, &c. coastwise, to be written on paper, and not parchment, and signed by three or more of the chief officers of the ports of shipping and landing, and the exact weight of the wool (weighed in their presence) shall be expressed therein, together with the marks, numbers, &c.

Persons insuring the conveyance of sheep, wool, or other the before enumerated articles, to foreign parts, are liable to the same penalties as the exporters. Persons
paying for such insurances are liable to the like penalties, and to forfeit the articles insured, to the person or persons who shall sue for the same. Any person concerned in such insurance, upon giving information to the commissioners of the customs, shall be acquitted of the offence, and shall have the sheep, wool, &c. so insured, for their own use and benefit. Also, if the informant be insured, he shall receive back his insurance money or premium, provided he is the first discoverer, and gives the information within the space of six months. And the policies of such insurances are declared to be null and void.

It shall be lawful for the master, or commander, or any other commissioned or deputed officer of any of his Majesty’s ships or sloops, in any port, creek, or road, or in the open seas, within the limits of the station which shall be assigned to any such ships or sloops, and he is hereby required to enter and search, or cause to be entered and searched, any ship, vessel, or boat; and if upon such search any sheep, wool, or any other of the said articles hereby prohibited to be exported, shall be found therein, and the master or commander of such ship, vessel, or boat, shall not immediately produce a lawful.coquet or warrant, licensing such articles to be carried coastwise, or to the aforesaid isles, or some of them, such commander is hereby directed to take and seize such ship, vessel, or boat, and to carry the same, together with the crew and cargo thereof into some port in Great Britain, and there deliver the same into the custody of the collector and comptroller of such port.

And all the wool, and other the said articles, so found and seized, shall be lodged in the King’s warehouse in such port, into which the same shall be brought, and condemned according to law, and being so condemned shall be publicly exposed to sale, after sixty days public notice being given in writing at the custom-house of the said port, and on the Royal Exchange of London, by inch of candle, to the last and best bidder; and such ships, vessels, or boats, that shall be so seized, and which are hereby declared to be forfeited, and which shall be condemned as aforesaid, shall, together with all their guns, tackle, furniture, and apparel, be exposed to sale in like manner; and the produce of the said sales, after deducting the expenses of the prosecution and condemnation, shall be divided in manner following; that is to say, one-third part thereof to the commander or commanders, one-third to the officers of the ship or ships, sloop or sloops, that took the same, and the remaining third part to the mariners belonging to such ships, &c. to be equally divided and paid amongst the said mariners by the collectors of the said port, or such person or persons as shall be authorised to pay the same; and if such seizure shall be made upon the information of any person or persons, not being a mariner on board such ships or sloops, so appointed to cruise and search, such informer or informers shall not only be indemnified from the pains, penalties, and forfeitures, to which exporters of the aforesaid prohibited articles, their aiders and abettors, are liable, but shall also receive one-third of the produce of such sales, and the residue thereof shall be divided and distributed in manner as is before directed.

Every commander of such ship or sloop, neglecting his duty by this act required, shall lose and forfeit all pay and wages due to him, and suffer six months imprisonment; and be for ever incapable of serving his Majesty in any office in the navy, customs, excise, or salt duties; and any person or persons giving information against any such commander for neglecting his duty, shall, on the conviction of such offender, be entitled to receive the sum of forty pounds, to be paid to such informer or informers immediately after such conviction, by the commissioners of the customs, excise, or salt duties, or other of his Majesty’s revenue officers.

In order to prevent collusive seizures and agreements and fraudulent practices, it shall not be lawful for any person or persons, (except an officer of his Majesty’s customs, excise, or salt duties) who shall have cause to suspect that any sheep, wool, or any of
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the before enumerated articles, is or are carrying or conveying contrary to the directions and true intent and meaning of this act, to examine or seize such sheep, wool, &c. other than together and in company with a constable, or other officer of the peace, who are hereby required, on application being made to him or them, immediately to attend the person or persons applying for such assistance. And in case any such constable or other peace-officer, upon application made to him for that purpose, shall neglect or refuse to attend any person or persons making such application, every such constable, or other peace-officer, upon conviction thereof, shall forfeit and pay the sum of twenty pounds, one moiety thereof shall go to the person or persons suing for the same, and the other to the poor of the parish or place where the offence shall have been committed.

And to prevent any dispute relating to the authority of any person or persons, acting as an officer or officers of the customs, excise, or salt duties, in this kingdom, for putting in execution this act; be it further enacted, that every person who, by deputation, commission, or other instrument, under the hands and seals of the commissioners of the customs, excise, or salt duties, in this kingdom, or the isles aforesaid respectively, shall be appointed to act as an officer or servant under them, for putting this act in execution, shall be esteemed an officer of the customs, excise, or salt duties respectively, to all intents and purposes whatsoever.

If any officer of the revenue, or any other person or persons, shall, directly or indirectly, make any collusive seizure, or information of any of the aforesaid articles hereby prohibited from being exported; or any fraudulent or collusive agreement whatsoever, whereby the owner or claimer thereof, their agents or servants, or any offender or offenders against this act, may avoid the forfeitures, penalties, and punishments, or any part thereof incurred or inflicted by this act; he, she, and they shall, upon conviction, be subject to the like penalties as are herein-before directed to be incurred by the exporter of wool, &c. And persons not concerned in such collusive seizures or agreements, who shall first make a discovery thereof to the commissioners of the customs, shall be entitled to the benefit arising from the proceedings had thereon. And any person actually concerned in such collusive seizures or agreements, who shall first discover his offence to the commissioners of the customs, within three months after the said offence shall have been committed, and so as one or more of his accomplices therein be convicted thereof, shall not only be acquitted and discharged thereof, but shall, as a further encouragement, have and receive the sum of forty pounds, to be paid by the commissioners of the customs on the conviction of such offender or offenders; provided always that such informer or informers be not an officer of his Majesty's revenue, or owner of the goods.

Persons opposing any person or persons putting this act in execution, and obstructing, molesting, wounding, or beating them, or going disguised and armed with offensive arms or weapons, and attempting to hinder the seizure of sheep, wool, &c. carrying towards the coasts, or actually put on board any ships, vessel, or boat, to be exported contrary to the intent and true meaning of this act; or who shall rescue, or attempt to rescue, sheep, wool, &c. which shall have been seized according to the directions of this act, by night or by day, by land or by water, shall, on conviction of any such offences, be sentenced by the court before whom they shall be tried, to be transported to some place beyond the seas, for such term or terms as such court shall think fit, not exceeding seven years; and if any such offender or offenders shall return into Great Britain before the expiration of the term for which they were transported, upon conviction thereof, they shall suffer death as felons.

Persons offering, or promising bribes to custom-house officers, or other persons, to connive at, or permit the exportation or the concealment of any sheep, wool, &c. or the removal thereof, contrary to the directions of this act, shall forfeit and pay the sum
of three hundred pounds, to be recovered and applied to the use of him, her, or them, who shall inform or sue for the same, by action of debt, bill, plaint, or information in any of his Majesty's Courts of Record, at Westminster.

Officers of the customs, excise, and salt duties, neglecting the duty by this act required, or compounding for any ship, vessel, or boat, which are by this act directed to be forfeited, shall be deemed aiders and abettors in the exportation of sheep, wool, &c. and shall suffer the punishment herein enacted against the exporters thereof.

Sect. 59.

Sect. 60, 61, 62, 63.

Bonds taken, or to be taken, in pursuance of this act, shall not be chargeable with any of the duties upon stamped vellum, parchment, or paper; any law or statute made, or to be made, to the contrary notwithstanding.

In all prosecutions for offences committed against this act, the proof that the sheep, wool, &c. are not of the breed, growth, and produce of this kingdom, shall lie upon the defendant or defendants.

Prosecutions upon this, or upon the said recited acts of 9 and 10 of William III. may be commenced in any of his Majesty's Courts of Record at Westminster; or in the Court of Exchequer in Scotland; or in any court of Oyer and Terminer, great session, or gaol delivery; or at the quarter session of the peace; or before any two justices of the peace for any county, city, or place, in the kingdom, in a summary way, at the election of the seizing or informer.

But no prosecution or information shall be had, commenced, or proceeded upon, before any two justices of the peace, in a summary way, where the seizure, penalty, or forfeiture, then claimed, shall exceed in the whole the sum of two hundred pounds.

Justices assembled at any quarter session, and also such aforesaid two justices of the peace, are empowered to order all such ships, vessels, goods, carriages, and cattle, as shall be by them declared to be forfeited, and which shall have been seized by virtue of this, or the said recited acts, to be publicly sold to the highest bidder; and shall by their warrant or order levy the penalties and forfeitures incurred by any offender or offenders against this act, by distress and sale of the goods and chattels of such offender or offenders.

One clear moiety of the seizures, penalties, and forfeitures (except the penalties of the bonds) by this act directed to be inflicted upon offenders against the same (except such as are by this act otherwise directed and applied) shall, when recovered, be paid and applied to such person or persons who shall give such information to any officer of his Majesty's customs, excise, or salt duties, as may be the means of recovering the same; and after deducting the expenses of recovering such penalties, the remainder of the other moiety shall be paid to the officer or officers assisting in making any such seizures; but in case any officer or officers of his Majesty's customs, excise, or salt duties, shall make any of the seizures herein-before directed, without information, then, after deducting the expenses of recovery, the remainder of such produce shall be paid to the officer or officers seizing the same.

S. 65, 66.

It shall and may be lawful for all officers of his Majesty's customs, &c. constables and other officers of the peace; and all persons acting in their, or any of their aid and assistance, to stop, arrest, and detain all and every the person or persons who shall be found actually exporting, or attempting to export any sheep, wool, &c. or who shall be aiding, abetting, or assisting in the exporting, or attempting to export the same; and him, her, and them, to carry and convey before one of his Majesty's justices of the peace, near to the place where the offence shall be committed; and the justice or justices, if he, or they see cause, shall commit the person or persons so brought before him or them, to the county gaol or house of correction, until the next general quarter sessions of the peace, then to be tried, and dealt with as by this act is directed.

Persons, conveying offenders so arrested before justices of the peace, shall enter into
recognizances, in the sum of forty pounds to appear, and prosecute them at the next quarter sessions.

In case the goods and chattels of offenders are not sufficient to pay the penalties incurred, justices of the peace may commit such offenders to the common goal, or house of correction of the county or place where the offence was committed, for three months, unless the whole of the penalty shall be sooner paid.

But if an offender before his commitment to prison can find two sufficient sureties for the payment of the penalty, he shall be admitted to bail; and in case of non-payment at the time stipulated, the offender and his sureties, shall, and may be lawfully committed to the common gaol, for the same term of three months, or till the penalty and costs be paid.

Appeals may be made from the decisions of any justice or justices of the peace to the quarter sessions, if the offender gives notice in writing to the informer of such appeal, and enters himself with two sufficient sureties into recognizances to appear and prosecute such appeal, and to abide by the decision of such court; and in case the judgment, determination, or conviction so appealed against, shall be affirmed, he shall pay double costs, to be ascertained by order of the same court. Upon every information to be made under this act, upon oath, justices of the peace are empowered to summon and examine witnesses, who are hereby required to attend and give evidence accordingly.

All actions and informations, which shall be commenced in virtue of this act in any of his Majesty's Courts of Record, shall be tried by a jury of good and lawful freeholders, to be summoned out of any other county than that wherein the fact shall have been committed.

All prosecutions for offence against this act to be commenced within the space of three years next ensuing the offence committed.

The first three persons who have actually been concerned in exporting of sheep, wool, or any of the articles before recited, who, after their return into the kingdom of Great Britain, or within three months after their knowledge thereof, shall give information to any justice of the peace, whereby the punishment and penalties of this act may be inflicted or recovered, shall be exempt from the penalties and punishments they had incurred by aiding and abetting such exportations; provided always, that the parties making such discovery are not owners of the sheep, wool, or other articles that have been exported. Owners of ships or vessels, and the masters, commanders, or mariners, who have been aiding or assisting in loading any ship, vessel, or boat, knowing of such exportation, who upon their return shall give the first information thereof to the barons of the exchequer, or to the head officer of any port where they shall first arrive, or to any justice or justices of the peace, upon oath; and shall further enter into recognizances in the sum of forty pounds each, with two sufficient sureties, personally to appear and give evidence of the same; then such owners, masters, commanders, and mariners shall not be liable to the penalties or forfeitures in this act; but shall be, and are hereby enabled to recover and receive such benefit and advantage as is appointed to be received and allowed by this act, on conviction of such offenders.

And whereas an act of parliament was passed in the twenty-third year of the reign of King Henry the Eighth, "For the winding of wool;" whereby it was enacted; that "from thenceforth no man or persons do wink, or cause to be wound, any fleece of wool being not sufficiently rived or washed; nor wind, nor cause to be wound, within any fleece, clay, lead, stone, sand, tails, deceitful locks, cots, cols, combter, lamb's wool, or any other thing, whereby the fleece might be made more weighty, to the deceit and loss of the buyer, upon pain, the seller of any such deceitful wools to forfeit for every such fleece, sixpence, the one moiety, to the King, the other to the finder and prover of such deceit." And it was provided in and by the said
act, that "the same act concerning riving and washing of any wool, should not in any wise extend to any shire or shires, the inhabitants whereof had not customably used before that time, to rive or wash their sheep afore they were shorn, nor should in any wise be hurtful or prejudicial to any person or persons that had used customably to sell their wool by tale or number of the fleeces, and not by weight; any thing in the said act to the contrary notwithstanding." Which said statute was made perpetual in and by another act of Parliament, passed in the thirteenth year of Queen Elizabeth, intituled, "An act for reviving and continuance of certain statutes; and whereas the said laws have not now the good effects thereby proposed and intended, by reason of the said penalty being so small, and one moiety thereof being directed to be paid to the King, and the great expence attending the recovery of the same," be it therefore enacted, that from and after the passing this act, every person and persons offending against the said last-mentioned acts, shall, in lieu of every sixpence, which by the said acts, or either of them, might be recovered, forfeit and pay the sum of two shillings, the whole whereof shall be paid to the finder or prover of the above-mentioned deceits; and the offences against the said acts, or either of them, from henceforth shall and may be proceeded upon, heard, and determined by and before any one justice of the peace, residing at or near the place where such offence or offences shall be committed, in a summary way; and such said justice of the peace shall be, and he is hereby empowered to cause the respective person or persons, against whom any such information shall be laid, to be summoned at a certain time and place to be fixed by such justice, and he is hereby authorized, empowered, and required, upon the appearance or default of such person or persons, to examine into, and give judgment in the premises.

Justices are empowered to discharge ill founded complaints, if it appears to their satisfaction, that no fraud was intended; but that the clay, sand, or earth, found on the fleeces, became mixed or connected with the same, by reason of the necessary pasturing, folding, keeping of the sheep, subsequent to the riving or washing of them. The penalties incurred for, or in respect of, the false winding of wool, or the selling or disposing thereof, if not paid within three days after conviction, shall be levied by distress, by warrants under the hands and seals of the justices.

Persons complained of for selling wool, deceitfully wound, may, if it was done without their privy, require the appearance of the person or persons who wound the same, before the justices, who shall determine, with whom the offence lies, and act accordingly.

Persons, thinking themselves aggrieved by the decision of any justice of the peace, may appeal to the next quarter sessions of the peace. But no conviction shall be set aside for want of form, or through the mistating of any fact, circumstance, or other matter whatsoever; provided the material facts alleged in such conviction, or judgement, and upon which the same shall be grounded, be proved to the satisfaction of the court.

And whereas by an act of Parliament passed in the twenty-seventh year of King Edward the Third, intituled, "the officers of the staple and merchants repairing to it, shall be sworn to maintain the staple and the laws and customs of it," it was ordained, that a certain number of winders of wool, and other officers therein mentioned, be sufficiently ordained for the place where the staple is, and they and the correctors, and all manner of officers of the staple, besides the constables, shall be sworn before the mayor of the staple, that they lawfully shall execute their office, without fraud or deceit; and whereas all winders, now to be sworn, do repair to the mayor of the staple at Westminster, for the purpose of being so sworn, whereby the persons so desirous of being sworn are subjected to great expence and inconvenience; be it therefore enacted, that it shall and may be lawful for the justices of the peace, who shall hereafter be assembled at any
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general quarter sessions of the peace, within the kingdom of Great Britain, or any ad-
journment thereof, and they are hereby empowered and required to administer to every
such person as shall be desirous of becoming a sworn winder of wool, and shall produce
a certificate under the hands of any two growers of wool, testifying to the satisfaction
of such justices, that such person is properly qualified to become a sworn winder of
wool, an oath to the following purport and effect; that is to say,

A. B. I do swear that I will truly and justly, without deceit, wind and fold all and singular
the wool which I shall take upon me to wind and fold, without leaving or putting
any clay, lead, stones, sand, tails, deceitful locks, lamb's wool, or any other thing,
whereby the fleece may be made more weighty, to the deceit and loss of the buyer;
and that I will not use any other deceit, craft, guile, or fraud, in the winding or
folding of any such aforesaid wool.

An entry of the administering and taking of which oath shall be made in the records
of the said session, and a certificate thereof shall be delivered by the clerk of the peace,
or other proper officer, to the person or persons who shall have taken the same. Provided
always, and be it enacted; that nothing herein contained shall be construed to hinder
or prevent any one from employing any person in winding or folding of wool, al-
though such person or persons shall not have been sworn in manner before mentioned.

No prosecution shall be commenced for any offences committed against any acts now in force, before the first day of May, 1788. And a general pardon is hereby extended to all persons in prison, and fugitives beyond the seas, for former offences. Also his Majesty's share of fines now due, or which may become due in any prosecution now
pending, shall be remitted; and all persons against whom any process of outlawry hath
been sued out, for the matters aforesaid, may be at liberty to apply, by motion, to the
court out of which such process issued, to set aside, or reverse the same.

If any person or persons, who shall claim the benefit of this act, shall commence any prosecution against any officer of his Majesty's customs, excise, or salt duties, or
against any person or persons, who shall have been aiding and assisting them, for any
matter or thing done by them, by reason of any offence committed by the persons
claiming the benefit of this act; the officers or other persons so prosecuted may plead
the general issue, and give the special matter in evidence; and shall recover costs of
suit against the person or persons so bringing or commencing such action or prosecution.

But,

Nothing in this act shall be construed to extend to the discharge or release of any se-
izures of sheep, wool, &c. or of any ships, vessels, boats, horses, waggons, carts, &c.
under any act or acts of parliament now in force against the exportation of live sheep,
wool, and the other before enumerated articles; nor to the discharge and release or acquittal of any fines which have been actually levied, or may become due in consequence of any suit now depending, to any officer or other person suing for the same under the directions of the said act or acts.

Any action, suit, or information, that shall be commenced, brought and prosecuted on account of the seizure of any sheep, wool, &c. or of any ship, vessel, boat, cart, waggon, &c. or for any matter, cause, or thing done, or executed by virtue of this act, or any clause or article herein contained; shall be commenced within six months after the fact, and not afterwards; and shall be laid in the proper county where the fact was done or committed. And the person or persons so sued may file common bail, or enter a common appearance, and plead the general issue, not guilty; and may give this act, and the special matter in evidence at the trial; and that the same was done in pursuance and by the authority of this act. And if a verdict is given for the defendant or defend-

T
WOOL, &c.

The plaintiff or plaintiffs shall pay treble costs. But, though a verdict shall be given for the plaintiff or plaintiffs, they shall not be intitled to above two pence damages, nor to any costs of suit, if the court or judge, before whom the cause was tried, shall certify on the said record, that there was a probable cause for such seizure; nor shall the defendant be fined above one shilling; but the effects seized shall be restored to the plaintiffs.

Prohibits the exportation of British hare skins, British hare wool, and British coney wool.

No wool shall be shipped from Ireland, but from Dublin, Waterford, Youghall, Kinsale, Cork, and Drogheda.

For every ship which shall sail from Ireland, in order to export any of the commodities aforesaid to this kingdom, bond shall be given by two known inhabitants of or near the place, to the chief officers of the customs belonging to the port in Ireland, in double the value of the goods, before the ship shall be permitted to lade any of the commodities aforesaid, with condition, that if the ship shall take on board any of the said goods in Ireland, all the said goods shall be brought by the same ship to some port in England or Wales, and shall there be unladen, and pay the duties thereof (the danger of the seas excepted) and every ship which shall lade any of the said goods, until such bond be given, shall be forfeited as aforesaid.

All such goods, exported from Ireland into this kingdom or Wales, shall be shipped off at the ports of Dublin, Waterford, Youghall, Kinsale, Cork, and Drogheda, and from no other port; nor shall be imported into any parts of England or Wales, other than Biddeford, Barnstaple, Minehead, Bridgewater, Bristol, Milford-haven, Chester and Liverpool.

It shall be lawful to import from any of the aforesaid ports in Ireland, any wool, &c. into such ports of this kingdom as aforesaid; so as notice be first given to the commissioners of His Majesty's customs in this kingdom, or to the customer or collector in the ports to which the same is to be brought, of the quantity, quality, and package, with the marks and numbers thereof, the name of the ship and master, and the port into which they are to be imported, and so as bond be first entered into, to the use of his Majesty, with one or more sureties, in treble the value of the goods, that the same shall (danger of the seas excepted) be landed accordingly, and so as a licence be first taken, under the hands of the commissioners of the customs, or from the customer or collector, where such bond is given for the landing thereof, which licence they are to grant without fee.

All actions and informations which shall be prosecuted, by virtue of an act, for preventing the exportation of wool, or woollen manufactures, from Ireland, shall be tried in any of the four courts at Dublin, by a jury of freeholders, to be summoned out of any other county, than that wherein the fact was committed; and the first three who have been assisting in exporting of wool or woollen commodities, who shall inform any justice of peace thereof, whereby the punishment may be inflicted, such discoverer (not being the owner or part-owner thereof) shall not suffer any of the punishment.

All such wool, and other the commodities mentioned in 10 and 11 Will. III. cap. 10. which shall be carried or laid on shore near the sea, or any navigable river, to the intent to be exported out of Ireland, contrary to that act, shall be forfeited, and the offender shall be liable to the like penalties, as persons by that act are subject to for exporting of wool, &c.

The commissioners for executing the office of Lord High Admiral of Great Britain shall appoint three ships of the sixth rate, and eight or more armed sloops, constantly to cruise on the coast of Great Britain and Ireland, with orders for seizing all vessels in which any worsted, bay, or woollen yarn, or any drapery stuffs, or woollen manufac-
WOOL, &c.

tures, made up or mixed with wool or wool-flocks, shall be exported or laden from Ireland into foreign parts, &c.

All wool, and woollen or bay yarn, woofes, shortlings, mortlings, wool-flocks, 19 Geo. 2. worsted, yarn, cloth, serge, bays, kersies, says, frizes, druggets, cloth serges, shal-
loons, stuffs, and other draperies and woollen manufactures, or mixed with wool, or wool-flocks, which shall be exported from Ireland after the first of May, 1740, into the ports of this kingdom hereafter-mentioned, shall be shipped off; and entered at the ports of Dublin, Waterford, Youghall, Kinsale, Cork, Drogheda, New Ross, Newry, Wex-
ford, Wicklow, Sligo, Limerick, Galway, and Dundalk, in the said kingdom of Ireland, and from no other port or place; nor shall the same be imported into any parts of this kingdom, other than the ports of Biddeford, Barnstaple, Minehead, Bridgewater, Bristol, Milford-Haven, Chester, and Liverpool, in the same manner as if the said ports of Newry, Wexford, Wicklow, Sligo, Limerick, Galway, and Dundalk, had been particularly named for exportation of the said goods, in the act 10 and 11 Will. 3. intitled, An Act to prevent the Exportation of Wool out of the kingdom of Ireland and England, and for other purposes therein mentioned.

By this act, wool, &c. under the restriction of the above act, may be exported from 28 Geo. 2. any port of Ireland into any port of England.

After the 25th of December, 1739, no wool, or any of the said goods, shall be laden on board any ship or boat in Ireland, or imported from thence into this kingdom, but in such vessels or boats as shall be of the built of Great Britain or Ireland, and wholly owned and manned by the subjects of this kingdom or Ireland, and duly registered in the manner hereafter mentioned, under the penalty of the forfeiture of the said goods, or the value thereof, and of the vessel or boat in which the same shall be laden, toget-
er with all her ammunition and furniture.

COFFEE.

No coffee shall be put on board any ship in any of his Majesty's plantations in America, until the planter or his known agent shall make oath, or affirmation, before two justices of the peace, that the same is of the growth of such planter's plantation, which oath, &c. shall be produced to the collector, comptroller, and naval officer, by the person who shall enter such coffee; and such persons shall likewise make oath, or affirmation before the said officers, that the coffee then to be shipped is the same that is men-
tioned in such oath, &c. of the planter; and the collector, and comptroller, and naval officer, are required to deliver a certificate of such affidavit to the commander of such ship, on board which the said coffee is to be shipped; and the master of such ship shall, before clearing his ship, also make oath, that he has received such coffee on board, and that he has no other coffee on board than such, for which proofs shall be made as afore-
said, and that he will not take any more coffee on board before his arrival in Great Britain, and making a report of his lading thereof; for which affidavit and certificate the collector, and comptroller, or naval officer, shall receive 5s. and all certificates of such affidavit shall, by the commander of such ship, be produced to the collector and comptroller of the customs, at the port where such ship shall unload, and the master shall deliver to such collector and comptroller, a certificate of the collector and comp-
troller of the customs, and naval officer of the place, where such coffee shall have been shipped, or any two of them, testifying the particular quantities of such coffee, and of which such proofs shall be made, specifying the package, with the marks, numbers, and weights of each package; and the master shall likewise make oath, or affirm, that
COFFEE.

The coffee in the certificate was taken on board as in the certificate, and that after his departure he did not take on board any coffee, and that all the coffee on board his ship is mentioned in the said certificate; and upon entry of such coffee at the custom-house, and paying or securing the duties, a mark shall be set on every parcel; and thereupon such coffee shall be lodged in a warehouse, and the importer shall deliver to the collector the certificate of the affidavit of the growth of the coffee, together with the oath, and the oath, or a copy thereof, made by the planter; as also the certificate of the package, marks, and numbers of the coffee.

Ditto s. 4. No commander of any ship shall take in at America or at sea, or shall land in any of the said plantations, any coffee of the growth of any foreign country, except such as shall be exported from Great Britain, on pain of forfeiting such coffee and 200l. and likewise twelve months' imprisonment.

Ditto s. 5. If any person shall falsely make oath or affirmation, by this act directed, and thereof be convicted, &c. such person shall forfeit 200l. and be imprisoned twelve months; and if any person shall forge a certificate of the said oath or affirmation, or shall publish such certificate, knowing the same to be forged, and be convicted in any of his Majesty's courts, such person shall forfeit 200l.

Ditto, s. 6. This act shall continue to the 25th of March, 1739, and to the end of the next session of parliament.

Farther continued for seven years, and to the end of the next session of parliament by 11 Geo. 2. cap. 18. Farther continued for seven years, and to the end of the next session of parliament, by 19 Geo. 2. p. 412. Farther continued by 25 Geo. 2. to 25 March, 1759; and farther by 52 Geo. 2. till 24 June, 1766, and to the end of the then next session of parliament.

Coffee shall not be imported but in packages of 112lb. nett at least; and to be stowed openly in the hold of the vessel, on forfeiture of the goods and package; which may be seized by any officer of the customs or excise.

Coffee of the British plantations in America, or foreign coffee, which shall have been warehoused on the continent of America, to pay only half the old subsidy on importation; and to be warehoused as directed, by 10 Geo. 1. cap. 10. sect. 26. subject to the like duties, restrictions, and regulations, if taken out for home consumption; and to the like securities, &c. if for exportation, as coffee warehoused pursuant to that statute.

SUGAR.

Enacts that the acts 12, 15, and 25 Car. 2. so far as the same extend to sugar of the growth and produce of his Majesty's plantations in America, being one of the commodities enumerated in the said acts, shall be ratified and confirmed in all respects whatsoever, except only as to such sugars, as by this act shall be permitted to be exported from the said sugar colonies, by such persons, in such ships, to such foreign countries, and under such regulations as are herein described and appointed for that purpose.

After 29 September, 1739, any of his Majesty's subjects, in any vessel built in Great Britain, and navigated according to law, and belonging to any of his Majesty's subjects, of which the major part shall be residing in Great Britain, and the residue residing either in Great Britain or some of the said sugar colonies, and not elsewhere, that shall clear outwards in any port of Great Britain for any of the said colonies, may load in the said colonies any sugars of the growth and manufacture of the said colonies, and may carry the same to any foreign part of Europe, provided a licence be first taken out for
that purpose, under the hands of the commissioners of the customs at London or Edin-
burgh, subject to the regulations, and on the conditions hereafter mentioned, viz. that
notice be first given to the master in writing, or one of the owners of such vessel, to
the collector or comptroller of the port where such vessel happens to be, of the inten-
tion of such master or owner, that such ship shall proceed to some of the said sugar
colonies to lade sugars to be carried to some other part of Europe than Great Britain;
and that such master or owner, shall enter into bond, to the use of his Majesty, with
one or more sufficient securities, in the sum of 1000L. if the ship be of less burthen than
100 tons; and in the sum of 2000L. if she be of that, or greater burthen, with con-
dition, that in case a licence be granted to carry sugars from the said sugar colonies to
foreign parts, such ship shall proceed from Great Britain to the said colonies, and shall
deliver the licence to the naval officer there, in case he intends to make use of the
liberty granted by such licence, which he shall declare in writing to the naval officer
before he takes any goods on board; and that in such case no tobacco, molasses, ginger,
cotton wool, indigo, fustic, or other dying wood, tar, pitch, turpentine, hemp, masts,
yards, bowsprits, copper ore, beaver skins, or other furs, of the growth and manufac-
ture of any British plantation in America, shall be taken on board such ship, unless for
the necessary provisions in her voyage; and that such ship before she proceeds to any
foreign port shall touch at some port in Great Britain, and that the master or com-
mander shall deliver to the collector and comptroller of such port a new manifest, at-
tested upon oath (or if a quaker by affirmation) of the lading, mentioning the marks,
numbers, package, and contents of all the goods on board; and shall also bring back
the said licence, with a certificate endorsed or affixed thereto, containing an account of
the marks, numbers, package, contents, and sorts of sugars on board such ship, in the
manner hereafter directed; and that when such ship hath discharged her lading (the P. 558.
danger of the seas and enemies excepted) she shall return to Great Britain within eight
months after she has delivered her lading in any foreign part, and before she returns to
any of the plantations in America; and that in case such vessel should take on board
any merchandizes before her return to Great Britain, all such merchandizes that shall
remain on board the said ship on her arrival in Great Britain shall be entered and landed,
in like manner as other ships importing goods into this kingdom are obliged to do by the
laws of the customs, or otherwise such goods shall be forfeited.

Upon such bond being entered into, and the other requisites being duly complied
with, a licence shall be granted accordingly, giving liberty, for that voyage only, to
carry sugars of the growth of the said sugar colonies to any foreign part, in the manner
and according to the intention of this act; but no ship shall have licence to carry
sugars to foreign parts, unless it first appear by oath (or affirmation) of the master, that
the property thereof is in his Majesty's subjects, of which the major part are residing
in Great Britain, and the residue either in Great Britain or in some of the said sugar
colonies, and not elsewhere; such oath or affirmation to be in the form hereafter men-
tioned, viz.

A. B. maketh oath (or solemnly declares and affirms) that the (ship or vessel) called the P. 558.
(name) whereof be (this deponent or affirmant) is master, and hath the charge and
command for this present voyage to (place bound to) being (describe the built) (ship
or vessel) of the burthen of (number) tons, was built at (place) in the year (time
when) and that the said (ship or vessel) is wholly owned by the (person or persons)
whose (name or names) and usual (place or places) of abode (is or are) undermen-
tioned, and described by this (deponent or affirmant) that such (owner or owners) (is
or are) his Majesty's British (subject or subjects) and that no foreigner, directly or
indirectly, hath any share, part, or interest in the said (ship or vessel) to the best of
this (deponent’s or affiant’s) knowledge or belief; and that he, this (deponent or affiant) and three-fourths of the mariners navigating the said (ship or vessel) are his Majesty’s British subjects.

If any vessel licensed by virtue of this act shall take on board in any of the sugar islands, or in her voyage from thence, any sugars or other goods, being the property of any other person than some of his Majesty’s subjects, and such as shall be laden on their proper risk and account to be carried to foreign parts, the same shall be forfeited. Before any sugar be put on board any vessel at the said colonies, to be carried to any foreign port in Europe, the master shall deliver to the collector of the port where such ship is to take in her lading, the said licence, signed by the commissioners of the customs, and a certificate of such bond having been given in Great Britain as aforesaid, and shall declare in writing to the collector, whether he intends to load any sugar pursuant to such licence, which shall be done before any goods are laden on board such vessel, otherwise such licence shall be of no force; but if it be declared that sugars are intended to be laden, and carried to foreign parts, then, in order to ascertain the quantity, &c. of the sugars to be exported from the said colonies, and to prevent the exportation of any goods before enumerated, the person intending to export sugars, or other goods not enumerated, in such vessel, shall, before the same are put on board, make an entry of such sugars, or other goods with the comptroller of the customs and the naval officer, expressing the name of the ship and master, and where she lies; and also the keys and wharfs where they are to be laden, or first water-borne, in order to be laden; which shall be such only where an officer is or shall be appointed to attend the shipping thereof, or at such places as shall be mentioned in a warrant to be taken out from the comptroller for that purpose; and shall thereupon take out a warrant, whereon shall be endorsed by the exporter, the marks, numbers, contents, sorts, or proper denomination of such sugars, and shall deliver the warrant so endorsed to the searcher, and shall lade such sugars in the presence of such officer, or at the places mentioned in the said warrant, that the proper officers may attend the shipping thereof; and such officers are empowered to examine the same, before they are put on board; and if, upon examining the said sugars or any goods shipped or brought to be shipped as such, either before or after the shipping thereof, the number of casks shall appear to be greater than endorsed on such warrant; or if there be found any other sugar but such as shall be so endorsed, taken out, and delivered as aforesaid, or any of the goods before enumerated; which by law are to be carried from thence only to Great Britain, or some of his Majesty’s other plantations; or if it be discovered that any enumerated goods, other than sugar, have been put on board any vessel having liberty to trade by virtue of this act, or shall be brought to be shipped on board such vessel, or shall be put into any boat, &c. in order to be put on board such vessel, before such entry, or taking out, endorsing, and delivering of such warrants, contrary to the directions of this act, all such sugar and other goods shall be forfeited; and the vessel or carriage employed in shipping or attempting to ship any enumerated goods, other than sugars, together with the vessel on which such other goods shall be laden, and the owner of such sugar or other goods shall forfeit double the value thereof. And before such vessel shall depart with the sugar, the master shall receive the said licence from the comptroller and naval officer, with a certificate under their seals of office, containing an account of the marks, &c. of each cask of sugar so shipped; and the other officers aforesaid are to make two copies of such licence and certificates; for all which entries, &c. or copies, no more shall be taken than the accustomed fees; and the master, before he receives the said licence, shall attest the said copies under his hand, which are to be left with the collector, and comptroller, and naval officer; and the said collector and comptroller are
required, as soon as conveniently they can, to transmit one of the said copies to the commissioners of the customs in Great Britain, by whom the licence was granted when the ship sailed from Great Britain; and the master shall proceed from the said colonies directly to Great Britain, without putting into any other port unless forced by stress of weather; proof whereof shall be made on oath to the satisfaction of the commissioners; and on the return of such ship to Great Britain, the master shall produce the said licence to the commissioners, or to the collector of the port at which he shall arrive, with the endorsement or certificate annexed as before directed, and shall also deliver a true manifest, expressing the marks and numbers, with the tale and sorts of casks of all his lading, attested upon oath (or if a quaker, by affirmation) before the collector and comptroller of such port, who are empowered to administer the same; and shall also make an entry of the quantities and sorts of all the sugars laden on board the said ship at any of the said colonies, and then remaining on board and bound to foreign parts; (which entry the said collector and comptroller are to pass, without demanding any duties for such sugar; mentioning in their account, that such entries were passed by virtue of this act) and shall also declare upon oath or affirmation to what foreign ports he is bound with such lading; then such master shall be at liberty to proceed with all the goods on board mentioned in the said manifest, being none of the goods before enumerated, to any foreign port, without being obliged to land, or pay duty for the same, as aforesaid, taking with him the said licence, and a certificate under the seals of office from the said collector and comptroller, testifying that the said ship had touched at such port, and had in all respects complied with the directions of this act; but if any such vessel shall proceed to any foreign part without having first touched at some port in Great Britain, and having complied with the directions of this act, and having the same certified as aforesaid; or if any of the goods before enumerated, besides sugars, shall be found on board, or carried by any such vessel to any foreign parts, then the liberty granted by such licence shall become void, and such vessel, and also the master, and all others concerned, shall be liable to the same penalties as they would have been liable to if this act had not been made.

If the commissioners of the customs in Great Britain, or the collector and comptroller of the port where the vessel shall touch, shall, upon information on oath, have cause to suspect that some enumerated goods, other than sugars, are on board such vessel, and shall thereupon judge it necessary to unlace the goods from such ship, or any part thereof; in such case, the officers of the customs, or any persons employed by them, may enter and remain on board such ship, and unlace the same or any part thereof, as they shall judge necessary, to enable them to examine any part of such ship and all the goods on board, and detain her so long as shall be necessary for the purpose, and also may open and examine any cabins, &c. or any concealments, or other places in the sides of such ship, or any part thereof, or any trunk, cask, &c. to discover whether any more, or other goods are on board, than such as are mentioned in the manifest delivered by the master, and may seize all goods not mentioned therein, which shall be forfeited; but in case no goods be found on board but what are mentioned in the said manifest, then the officers who shall unload or unpack any goods shall re-load and re-pack the same, and repair such damage as shall be done by unloading or unpacking thereof, without being liable to any other costs for demurrage, or on any other account whatsoever; but if any other goods are found on board besides such as are mentioned in the master’s manifest (except the necessary provisions of the ship) then the master shall be at the charge of re-loading and re-packing all the goods unladen or opened, and of repairing all other damages occasioned thereby; and the officers concerned shall not be at any expense, or be liable to any costs whatsoever.

If any ship shall have on board any sugar, for which licence shall have been granted
as aforesaid, or any other goods not enumerated in the act before-mentioned, and the owners, or their agent, on the arrival of such ship in Great Britain, shall be desirous to enter and pay the duty, and land the goods, or any part thereof, they shall have liberty so to do, the master first making a report of his whole lading with the proper officers of the customs, in like manner as he was required to do before the making of this act.

If the master, or person taking charge of any vessel, for which a licence has been granted, shall, on his arrival in any of the said sugar colonies, have delivered to the collector, comptroller, or naval officer, the said licence, with a certificate of bond being given in Great Britain, as aforesaid; and before he lades any goods shall declare in writing, upon oath, or affirmation, before any two of them, that the sugars he intends to lade are to be carried to some place to the southward of Cape Finisterre; then the said master may, in case he has in all respects complied with the directions of this act, proceed thither directly with such vessel, taking with him such licence and oath, or affirmation, endorsed thereon by the collector, &c. together with an account of the marks, &c. of sugars laden by virtue of such licence, likewise endorsed thereon, or contained in a certificate annexed, in the manner before directed, and may there land the same, without first touching at any port in Great Britain; but in such case the master shall, within eight months after landing the said sugars, and before such vessel shall go again to any of the plantations in America, return to some port of Great Britain, and there deliver his said licence to the commissioners of the customs, or the collector and comptroller of such port, with such oath or affirmation endorsed thereon, and certificate annexed thereto as aforesaid, together with a certificate from the consul or two known British merchants of good credit, residing at the places where such sugars were landed, testifying the landing thereof as aforesaid; and the master shall likewise make oath or affirmation before the collector to the truth of such certificate, and that none of the goods before enumerated, except sugar, were taken on board at any of the said colonies, or landed at the place mentioned in the certificate; and shall likewise make an entry with such collector, of the quantity and sorts of all the sugars laden on board the said ship at any of the said colonies, and landed at any port to the southward of Cape Finisterre, which entry the collector or comptroller are to pass, without demanding any duties for the same, mentioning in their accounts, that such entries were passed, by virtue of this act; and in case the said master shall neglect or refuse to make such entry, on his return to Great Britain, he shall forfeit 100l.

Upon the return to Great Britain of any ship or vessel which shall carry sugars from the sugar colonies to any foreign parts, the master shall, in either case before-mentioned, bring back, and deliver to the commissioners of the customs, or to the collector of the port where such vessel shall arrive, the said licence, together with a certificate, signed and sealed by the consul, or two known British merchants of good credit, at the port where such sugar was landed, certifying the landing thereof, with the number of casks landed, and the mark, number, and contents of each cask, with the name of the ship and master, and that they verily believe that no tobacco, or other goods before enumerated, except sugar, have been there landed out of such vessel; and upon such licence being returned, with the oath or affirmation of the master, and an account of the lading endorsed thereon, or annexed thereto as aforesaid; and the several other things required by this act being duly complied with, the bond given before granting such licence shall be discharged and delivered up; otherwise such bond shall be forfeited, and may be prosecuted in the manner directed by this act.

In case any ship or vessel shall, after unloading such sugars, or any part thereof, take on board any goods before her return to Great Britain, all such of the said goods as remain on board at her arrival in Great Britain, shall be entered and landed on the
return of such vessel to Great Britain, and before her departure from thence, and shall be subject to such regulations, as the like goods imported in any other ship are subject to by the laws of the customs.

This act not to excuse any vessel trading to or from the said sugar colonies being registered pursuant to the act 7 and 8 Will. 3. on proof of the property made by one or more of the owners in the manner, and under the penalties inflicted by the said act.

No master or owner of any vessel, carrying sugars as aforesaid, shall advance to any mariner during the time he shall be in parts beyond the seas any money or effects, upon account of wages, exceeding one moiety of the whole wages due from the time of his departure from Great Britain, till such vessel shall return to Great Britain; and if any master or owner shall advance any wages to any seamen above the said moiety, such master or owner shall forfeit double the money he shall so advance.

If any person shall grant any false certificate, or counterfeit, erasure, or alter any licence, oath, or certificate, made pursuant to this act, or shall knowingly publish or make use thereof, such person shall forfeit 500l. to be recovered, and disposed of in the manner directed by this act, and such licence, &c. shall be void.

Nothing in this act shall be construed to give liberty to carry sugars from any of the said sugar colonies to Ireland. (This clause is repealed by 20 Geo. 3.)

This act shall continue in force five years, from the 29th of September, 1792, and 26 Geo. 3. c. 52.

By an act passed 7 and 8 Will. 3. for preventing frauds and regulating abuses in the plantation trade; and by another act of 5 Anne, for an union of the two kingdoms of England and Scotland, no ship or vessel shall pass as a ship of the built and property of Great Britain, Ireland, Guernsey, Jersey, or any of his Majesty's plantations in America, or a prize ship made free, so as to be qualified to trade to, or from, or in any of the said plantations, till the persons claiming property therein shall make oath, and register the same in manner therein directed; and if any ship's name so registered shall be altered, or any transfer of property to another port, such ship is thereby directed to be registered de novo, on delivering up the former certificate to be cancelled; and if the property be altered in the same port by the sale of shares in any ship, after registering, such sale is to be acknowledged, by endorsing on the register before two witnesses; notwithstanding which the certificates of the register of several ships have been frequently sold to foreigners, and delivered to the purchasers; and the ships of foreigners under colour thereof have been admitted to trade to and from the plantations, though of foreign extraction, contrary to law, to the prejudice of the navigation of Great Britain and the plantations; for preventing which it is enacted, that after the 25th of December, 1742, no ship or vessel, required by the said acts to be registered, and carrying merchandizes to and from any of his Majesty's plantations in America, or to and from one plantation to another, shall be deemed qualified to trade within the intent of the said acts, till the master, or person having charge of the ship, shall, upon oath or affirmation before the governor or collector of the customs, of every the said plantations, where they shall arrive, give a just and true account of the name and burthen thereof, and of the place from whence she came, and of all particulars in the following form, viz.

A. B. maketh oath (or, if a Quaker, solemnly affirms) that the ship or vessel, called the whereof he, this deponent or affirmant, is master, or hath the charge and command, during this present voyage, being of the burthen of tons, came last from and that she is, as he verily believes, the same ship or vessel described, meant, and intended in, and by, the certificate now produced by him; and that the same does now, as he believes, belong.
wholly to his Majesty's British subjects, and that no foreigner has, directly or indirectly, any share, property, or interest therein, to his knowledge or belief.

P. 713.

If any ship or vessel shall load or unload any goods, &c. in any of the plantations in America before such proof be made, the same shall be forfeited, and may be prosecuted, recovered, and divided, in like manner as if she had not been registered, as directed in the act 7 and 8 Will. 3.

After the 25th of December, 1742, if any ship or vessel duly qualified to trade to, and from, and in his Majesty's plantations, shall happen to be in any of the said plantations, and the certificate of the register shall be lost or mislaid, the master or other person, having the charge of the said ship or vessel, may make oath, or affirmation, before the governor or collector of the customs, in the port where the ship or vessel shall happen to be, in the following form:

A. B. being the master, or having the charge of the ship or vessel called the

does swear (or solemnly affirm) that the said ship or vessel has been, as he verily believes, registered according to law, to qualify her to trade to, from, and in his Majesty's plantations in America, and that he had a certificate thereof, granted at the port of but that the same is lost or mislaid, and that he cannot find the same, and does not know where the same is, or what is become thereof, and that the same hath not been, nor shall be, with his privy or knowledge sold or disposed of to any person or persons whatsoever; and that he, this deponent or affiant, and three-fourths of the mariners navigating the said ship or vessel are his Majesty's British subjects, and the said ship or vessel does now, as he believes, belong wholly to his Majesty's British subjects, and that no foreigner has, to his knowledge or belief, any share, property, or interest therein.

P. 714.

The said master, or other person navigating the said ship or vessel, shall give 500l. security, if the ship be of one hundred tons burthen, and so in proportion for any greater burthen, to the collector of the port where the ship shall be, in his Majesty's name, and to his use, with condition that the ship was duly registered according to law, for qualifying the same to trade to, from, or in his Majesty's plantations in America; and that the certificate of the said register, if found, shall be delivered up to the commissioners of the customs, to be cancelled, and that no illegal use has been, or shall be made thereof; that the same has not been, or shall be fraudulently disposed of; that the said ship or vessel wholly belongs to British subjects; and that no foreigner has any share, property, or interest therein; and on making such oath, or affirmation, and giving such bond, the governor and collector of the customs shall freely give the master, &c. of such ship or vessel a fresh certificate, which shall enable him to trade for that voyage only; and the officers taking the said oath and bond shall transmit an account thereof to the commissioners of the customs.

If the certificate of the register of any ship be lost, and the master, or person having charge of the ship, and one or more of the owners, shall make proof to the satisfaction of the commissioners of the customs, in case the owners, or any of them, shall reside in Great Britain or Ireland, Guernsey, or Jersey; or of the governor, or collector of the customs, residing in any of his Majesty's plantations in America, if she was registered in such plantation; and none of the owners shall reside in Great Britain, or Ireland, Guernsey or Jersey, upon oath, or affirmation, of the loss of such certificate, also of the name, burthen, built, property, and other particulars, required by the act 7 and 8 Will. 3. in the same manner, and before the same persons as are required on original registers, and shall give 500l. security, if the ship be of one hundred tons, and so in
proportion for any greater burthen, to the collector of the port where the ship shall belong, and that the original certificate hath not been, nor shall be fraudulently disposed of, or used contrary to law; and that if the same be found, it shall be delivered up to the commissioners to be cancelled; in such case the said commissioners, and the governor, and collector of the customs, residing at the plantations respectively, are required to permit such ship or vessel to be registered de novo, and the proper officers shall deliver a certificate thereof to the owners as directed by the act 7 and 8 Will. 3. and therein mention the name by which the ship was formerly registered, and that such a certificate of a new register is granted in pursuance of this act instead of a former certificate, which appears by such proof, as this act requires, to be lost; and that such new register and certificate shall have the same effect with the original, and a duplicate shall be transmitted to the commissioners.

After the 29th September, 1742, all plantation bonds taken in Great Britain, pursuant to any former act of parliament, whereby the goods therein enumerated are to be brought to Great Britain, shall be with condition, that within eighteen months from the date thereof (the danger of the seas excepted) a certificate shall be produced from the collector and comptroller of the port where such goods shall be delivered, that they have been there landed and discharged; otherwise such bonds shall be forfeited, and the penalty sued for in the Court of Exchequer in England, Scotland, or Ireland, respectively.

This act shall not extend to bonds given for ships lading sugars, in any of his Majesty's sugar colonies in America, by licence from the commissioners, to be carried directly to any foreign part of Europe, pursuant to an act passed 12 Geo. 2.

By two clauses in the act 12 Car. 2. it is enacted, that no goods or commodities whatsoever, of the growth, production, or manufacture of Africa, Asia, or America, shall be imported into England, Ireland, or Wales, islands of Guernsey or Jersey, or town of Berwick upon Tweed, from any other places or countries, but only from those of the said growth, production, or manufacture, or from those ports where the said goods and commodities can only be, or usually have been, first shipped for transportation, under the penalty of the forfeiture of all such goods as shall be imported from any other place or country, contrary to the true intent and meaning thereof; as also of the ship in which they were imported, with all her guns, furniture, ammunition, tackle, and apparel; and there is a proviso in the said act, that it shall be lawful for any of the people of England, Ireland, Wales, islands of Guernsey or Jersey, or town of Berwick upon Tweed, in vessels, or ships to them belonging, and whereof the master and three-fourths of the mariners, at least, are English, to load, and bring in from any of the ports of Spain or Portugal, or Western Islands commonly called Azores, or Madeira or Canary Islands, all sorts of commodities of the growth, production, or manufacture of the plantations or dominions of either of them respectively; and disputes having arose on the construction of the said proviso, whether the goods of the growth, production, or manufacture of the plantations of Spain or Portugal, may be imported for account of aliens, from the places, and in the manner expressed in the said proviso, and whether such goods belonging to aliens, so imported are not liable to be forfeited, together with the ship, which tends to the prejudice of the British navigation, as likewise detrimental to the public revenue; it is therefore enacted, that it shall be lawful for any persons to import the goods mentioned in the said proviso, and in such ship so navigated, as is therein expressed, although such goods are the property of aliens.
INDIGO.

It shall be lawful to import, in any ship belonging to Great Britain, or any state in amity, from any place, indigo of all sorts.

The said act 13 Geo. 1. cap. 25. and this act shall continue seven years from the 24th of June, 1734, &c.

Continued till June 1, 1747, and from thence to the end of the next session of parliament, by 14 Geo. 2. p. 660. and further continued till the first of June, 1754, and to the end of the then next session of parliament by 20 Geo. 2. p. 972.

And as several acts have been made to encourage the growth of this, and several other commodities in his Majesty's American colonies, I think they may properly be introduced in this place, as affairs in which navigation has a considerable concern; therefore, before I conclude the subject of shipping, I shall let my readers see what premiums have been given by parliament, on the importation of them here.

It is hereby enacted, that from and after the 25th of March, 1749, all persons who shall import into this kingdom, directly from any of the British colonies in America, in vessels that may legally trade there, and manned as by law is required, any good and merchantable indigo, free from any false mixture, and fit for dyers use, being the product of the colony from whence the same is imported, shall be intituled to 6d. for every pound thereof, to be paid out of the customs upon demand, by the collector of the port where the same shall be imported, and for want of sufficient money in his hands, he shall certify the same to the commissioners of the customs, who shall cause the bounty of the indigo, imported into England, to be paid by the receiver-general of the customs in England, and of that imported into Scotland, by the receiver-general there.

Every person loading indigo, on board any vessel in any of the British colonies in America, shall, before the clearing out of such ship for any port of Great Britain, produce to the governor, lieutenant-governor, collector and comptroller, of the customs, and naval officer, or any two of them, a certificate, signed and sworn to before some justice there, by the planter, his known agent or factor, that a quantity of indigo (expressing the weight) had been sent from his indigo work, or plantation, where the same was made, in order to be shipped off or sold by him to the person therein named, and was of the growth and produce of the said plantation, situate in the district or parish of within the island or colony of which certificate shall be attested by the said justice, to have been signed and sworn to in his presence, and he is required to do the same gratis.

The merchant, at the time of producing such certificate, shall also sign a certificate before the governor, lieutenant-governor, collector, &c. or any two of them, that the indigo shipped by him, is the same mentioned in the certificate; and they shall thereupon deliver to him a certificate, under their hands and seal of office, of his having received such certificate; and that at the same time a certificate from the planter or agent, &c. had been produced and left with them, pursuant to the directions of this act; and no person importing indigo shall be intituled to the premium, unless he shall produce such certificate to the chief officer of the customs at the port in Great Britain, where the same shall be imported.

On the importation of any indigo into Great Britain, a certificate shall be given, by the master or commanding officer, that the same was shipped on board the said ship, within such British colony in America, as is mentioned in the certificate; and also a certificate, signed by two officers of the customs of the port where the same is entered and landed, specifying the weight; and that the said indigo is good and merchantable, free from false mixtures, and of such quality as to be intituled to the said premiums;
INDIGO.

which certificate the said officers are to grant, within ten days after the landing thereof, unless they can assign sufficient cause for their refusal; upon producing which several certificates to the proper officer, as aforesaid, he shall pay the premium to the importer.

If any person shall make entry of foreign-made indigo, under the name of British plantation-made, or shall mix any foreign indigo, or other false mixture with that made in the British plantations, in order to claim the premium, he shall forfeit all such indigo; and in case of such mixture, the quantity so mixed, both foreign and British plantation-made, and double the value thereof, shall be forfeited by the person making such mixture.

No certificate shall be granted for the said premium on indigo that is not good and merchantable, and free from any false mixture.

The officers of the customs, before their making out any such certificate, shall examine the indigo by opening each package, and seeing the whole contents, to discover whether the indigo is good and merchantable, and free from any false mixture.

No certificate shall be granted by the officers of the customs for any indigo which is not worth 3s. when the French, or other indigo of equal goodness with the best French, is worth 4s. per pound; and so in proportion, if the best French or other indigo of equal goodness shall be at the higher or lower price.

If any dispute shall arise concerning the quality of such indigo as is imported into the port of London, the commissioners of the customs may call two or more dyers, dry-salters, brokers, or others well skilled in that commodity, who shall declare their opinion upon oath, as to the quality thereof, if required, and determine whether the said indigo is intitled to the premium or not; and in case of any dispute in any of the out-ports in England, samples of the indigo shall be sent up to the commissioner of the customs at London; and in the out-ports in Scotland, to the commissioners of the customs at Edinburgh, in such manner as the respective commissioners shall direct, in order to be inspected and adjudged there.

No fee shall be demanded or taken by any officer of the customs, for the examining or delivering such indigo, or for signing certificates for the premium; under penalty of forfeiting his office and 100l. &c.

No certificates or debentures, made in pursuance of this act, shall be chargeable with any stamp duties.

If any British plantation-made indigo from America shall, after the 25th of March, 1749, be exported from Great Britain, the exporter, before the entry thereof, shall pay to the collector or chief officer of the customs of the port, the whole of the premium, over and above any duty such indigo is subject to at exportation by any former act.

If any person shall be found fraudulently to export such indigo, without paying the premium as aforesaid, he shall forfeit the indigo, and double the value thereof.

If any dispute shall arise, whether the said indigo, or any part thereof, so to be exported, is of the growth and manufacture of the British plantations in America, or of foreign product, the onus probandi shall lie on the claimer and not on the prosecutor.

If any governor, collector, or any other persons, shall, during the continuance of this act, falsely make a certificate of the produce and manufacture of any indigo, not being of the British plantations in America, or shall counterfeit any such certificate, in order to obtain the premium aforesaid, he shall forfeit 200l. and if the offender be a collector, or any other officer of the customs, he shall also lose his office, and be incapable of serving his Majesty, &c.

This act shall be in force for seven years, to commence from the 25th of March, 1749, and from thence to the end of the then next session of parliament.

Further continued by 28 Geo. 2. till 25 March, 1763, and to the end of the session.
As the importation of bar-iron from his Majesty's colonies in America, into the port of London, and the importation of pig-iron from the said colonies into any port of Great Britain, &c. will be a great advantage, not only to the said colonies but also to this kingdom, &c. It is enacted, that from and after the 24th of June, 1750, the duties, now payable on pig-iron, made in, and imported from his Majesty's colonies in America, into any port of Great Britain, shall cease; and that no duty shall be payable upon bar-iron made in, and imported from the said colonies, into the port of London.

No such bar-iron so imported into the port of London shall afterwards be exported or be carried coastwise to be landed at any other place in Great Britain, except for the use of his Majesty's dock-yards, upon pain that the same, and the vessel, be liable to such forfeiture and seizure, as prohibited or uncustomed goods clandestinely exported or imported, or the vessel on board of which the same shall be exported or imported, are now liable to by law; and also upon pain that the exporter, and master, and mariners of the vessel shall be subject to the like penalties and punishments as the master or mariners of vessels laden with prohibited or uncustomed goods, or goods clandestinely exported or imported are now liable by law; and no officer of the customs shall grant any cocket, &c. for exporting or carrying coastwise any such bar-iron so exported, except for the use of his Majesty's dock-yards, upon pain of forfeiting 200l. &c. and if any such cocket, &c. shall be granted, the same shall be void.

No bar-iron whatsoever shall be permitted to be carried coastwise, unless mention be made in the certificate of the day on which the duties payable on the importation thereof were paid, and of the names of the persons by whom paid.

No bar-iron imported into the ports of London, by virtue of this act shall be carried or conveyed by land-carriage to any place beyond ten miles from any part of the port of London, except to his Majesty's dock-yards for the use of the same, upon pain of the offender paying 20s. for every hundred weight thereof.

Every person loading pig, or bar-iron on board any vessel in any of his Majesty's colonies in America, shall, before clearing out for any port of Great Britain, make oath before the governor or lieutenant-governor, collector and comptroller of the customs, and naval officer, or any two of them (which oath they are to administer without fee) that the pig or bar-iron so shipped (the true weight whereof shall be expressed in the oath) was made at within the colony of ; in which oath also the name of the person to whom the iron shall be sold or consigned shall be expressed; and thereupon the said governor, lieutenant-governor, collector and comptroller of the customs, and naval officer, or any two of them, shall give to the person making such oath, a certificate under their hands and seal of office, of the same having been made before them.

No such pig or bar-iron shall be imported duty-free, as aforesaid, unless the same shall be stamped with some marks denoting the colony or place where the same was made, and unless the importer shall produce such certificate to the chief officer of the customs at the port where the same shall be imported, and unless oath be made by the master of the vessel, before such officer (which he is to administer without fee) that the said iron is the same mentioned in the certificate.

All pig or bar-iron, which shall not be stamped and certified as aforesaid, shall be subject to the payment of the same duties to which it was liable before the making of this act.

If any governor, lieutenant-governor, collector, or comptroller of the customs, naval
IRON.

officer, or chief officer of the customs as aforesaid, shall falsely make any such certificate, he shall forfeit 200l. for every such offence, and his office, &c. and if any merchant, &c. shall falsely make any oath required by this act, he shall incur the penalties of wilful and corrupt perjury; and if any person shall knowingly counterfeit any such stamp or certificate, or publish the same knowing it to be counterfeited, he shall incur the penalties of forgery.

After the 24th of June, 1750, no mill, or other engine for slitting or rolling of iron, or any plating-forgé to work with a tilt hammer, or any furnace for making steel, shall be erected or continued in any of his Majesty's colonies in America, upon pain that every person offending herein shall, for every such mill, engine, forge, or furnace, forfeit 200l.

Every such mill, engine, forge, or furnace, erected or continued contrary to the directions of this act, shall be deemed a common nuisance; and every governor, &c. of any of his Majesty's colonies in America, where any such mill, &c. shall be erected or continued, shall, upon information thereof made to him by two witnesses upon oath (which oath he is to administer) cause such mill, &c. to be abated within thirty days after such information, upon pain of forfeiting 500l. for every such offence, &c.

All bar-iron, which shall be imported from any of the British colonies in America into the port of London, shall be entered at the custom-house at London; and every bar shall be marked or stamped in three different parts, with such mark as the commissioners of the customs shall direct, two of the said marks at the distance of one yard from each end of the bar, and the other near the middle thereof.

If any person shall counterfeit, destroy, or deface any of the said stamps, with an intent to convey the same to any place ten miles from the port of London, contrary to this act, and be legally convicted thereof, he shall forfeit 100l. &c.

Every governor, &c. of any of his Majesty's colonies in America, shall transmit, within six months after the said 24th of June, to the commissioners of trade and plantations, a certificate under his hand and seal of office, containing a particular account of every mill or engine for slitting or rolling iron, and every plating-forgé to work with a tilt hammer, and every furnace for making steel, erected in his colony, at the time of the commencement of this act; expressing therein also such of them as are used, and the names of the proprietors, and place where erected, and number in the said colony; upon pain of being subject to the like penalties and forfeitures, as for any other offence committed by them against this act, &c.

The importation of bar-iron is extended to all the ports of Great Britain.

Likewise the clauses relating to the carrying iron coastwise, and by land beyond ten miles from London, are repealed.

LAWS AND REGULATIONS RESPECTING THE CORN TRADE.

All former laws and regulations, so far as they regard the prices, and the duties corn imported or exported are repealed; and from and after the first day of January, 1774, it is enacted, that whenever the price of middling British wheat, at the ports and places where wheat shall be imported into this kingdom, shall appear, according to the methods directed by the several acts of parliament for ascertaining the rates and prices of corn and grain imported, or as hereinafter to be directed by this act, to be at or above 48s. per quarter; middling British rye, peas, and beans respectively at or above 32s. per quarter; middling British barley, beer, or bigg at or above 24s. per quarter; and, middling British oats at or above 16s. per quarter: all customs and duties
CORN TRADE, &c.

now payable respectively upon wheat, wheat-flour, rye, pease, beans, barley, beer, bigg, and oats imported into this kingdom, shall respectively cease, determine, and be no longer paid, or payable during the respective continuance of such respective prices as aforesaid; and in lieu of the former duties, a duty of only 6d. per quarter shall be laid on all wheat; of 2d. on every hundred weight of wheat-flour; of 3d. on rye, pease, and beans; of 2d. on barley, beer, or bigg; and oats per quarter.

Corn, grain, &c. imported at the usual ports allowed to import it, may be warehoused in the King's warehouses under the joint locks of the King and the importers, duty free; but upon taking out any part thereof for home consumption, the duties are to be paid down in ready money; to be returned upon exporting any part to foreign countries, upon giving bond to the collector of the customs, that it shall not be relanded in any part of Great Britain or Ireland, &c.

But corn, grain, &c. imported from Ireland and warehoused intended for home consumption, if not so disposed of, may be carried back to Ireland, under the like securities and restrictions, as are required for the exportation of any other foreign corn, grain, or flour.

Whenever middling British wheat shall appear to be at or above 44s. per quarter; rye, pease, or beans at 28s.; barley, beer, or bigg at 22s.; oats at 24s.; at the ports where they intended to be exported: It shall not be lawful to export the same directly or indirectly, under the penalty of forfeiture of the commodity, and of the ship, vessel, or boat on which it is laden; and 20s. per bushel additional fine, on every bushel of corn, grain, &c. attempted to be exported by offenders against this act.

Not to extend to the sustenance of ships of war, nor to vessels carrying the said articles coastwise. Nor to grain exported to Ireland; nor to such of our forts, garrisons, and settlements in foreign parts, as shall by this, or subsequent acts, be allowed certain specified quantities yearly; though British corn, &c. be above the price at which it is allowed to be exported.

After the first of January, 1774, all the former bounties, allowed by law upon the exportation of any sort of corn or grain, cease and determine, and the following bounties took place, and still continue; all the regulations of this act being made a permanent law. Whenever middling British wheat, or malt made of wheat, shall be under 44s. per quarter, a bounty of 5s. per quarter shall be allowed upon the exportation in British shipping, whereof the master, and two-thirds of the mariners, at least, are of his Majesty's subjects. On rye, when under 28s. per quarter, a bounty of 3s. On barley, beer, or bigg, when under 22s. a bounty of 2s. 6d. per quarter; and the same on malt made of these grains. On oats, when under 14s. a quarter, 2s. and 2s. 6d. for oatmeal, reckoning 226lb. averdupois to the quarter.

When oatmeal does not exceed 16s. in Scotland, per boll, weighing eight stone troy; it shall not be imported from Ireland, or any foreign parts beyond the seas, into the said country, under forfeiture of the ship and her appurtenances, and a penalty of treble the value of the oatmeal, on all persons aiding or assisting in landing it. But when oatmeal in any port or place in Scotland does exceed the price of 16s. per boll, the importation from Ireland, or any other part beyond the seas, is allowed.

In the year 1756, a very great scarcity of corn happened all over Europe, and large exports having been made the preceding year from Great Britain, the poor suffered greatly from the dearness of this first necessary of life; for remedy thereof sundry acts of parliament were made, which continued in force till the year 1759, when plenty was again restored. In the month of June 1767, wheat was at the enormous price of 3l. 12s. per quarter, and all other grain in proportion. An act was then made to prohibit, for a limited time, the exportation of corn, malt, meal, flour, bread, biscuit and starch. Also an act to discontinue the duties on the importation of corn and flour; and to permit the
importation in neutral ships. But in the year 1780, the abundance of corn was so great, that an act was passed, to allow the exportation in foreign ships belonging to any nation in amity with Great Britain. Also, half the bounty allowed on exportation in British bottoms.

The officers of the customs shall admeasure all corn whereon there is an allowance payable for exportation, and such admeasurement shall be made by a measure containing four Winchester bushels; and if such corn shall be brought to be shipped in sacks, the officers are to make choice of two of these sacks, out of any number not exceeding twenty, before the same shall be put on board, and thereby compute the quantity intended to be shipped, and, according to such computation, the allowance shall be paid to the exporter, upon his producing a certificate from the officers of the customs, attesting the quantity and quality of the corn shipped for exportation.

The like regulations shall be extended to the ascertaining the prices and quantity of barley, oatmeal and wheat malt, intended for exportation; provided, that nothing in this act shall alter the present practice of shipping corn from the port of London; but the same may be measured by sworn meters, by whose certificate the searchers or other officers of the customs are to certify the quantity of corn shipped for exportation, as has been practised.

It shall be lawful for the justices of peace, for the several counties within England, Wales, and Berwick, wherein foreign corn shall be imported, at their quarter sessions, to give in charge to the grand jury, to make presentment of the market prices of middling English corn of the sorts mentioned in an act 22 Car. 2. cap. 13.

Registers were appointed to be kept of the prices at which corn is sold in the several counties of Great Britain, and of the quantity exported and imported. The justices at the quarter sessions to order weekly returns to be made throughout the year, of the prices of wheat, rye, barley, oats, beans, and bigg, from not less than two, or more than six market towns in each county, to appoint a person to receive the said returns. Meal-weighers in London to make a weekly return of the average prices. The persons making the returns to be paid out of the county rates. The returns to be transmitted to the treasury, where a person is to be appointed to receive them, and to publish them, or abstracts from them weekly in the London Gazette. Commissioners of the treasury to keep an account of the quantities of corn exported and imported, and of the duties and bounties paid thereon. This proved a very salutary act for ascertaining the true price of corn throughout the kingdom, and for judging of the plenty or scarcity.

The following is a copy of the weekly returns, when corn rose above the price at which the bounty stops:

**AVERAGE PRICES of CORN, from Oct. 14, to Oct. 19, 1780.**

<table>
<thead>
<tr>
<th>Per. Bushel</th>
<th>Wheat</th>
<th>Rye</th>
<th>Barl.</th>
<th>Oats</th>
<th>Beans</th>
</tr>
</thead>
<tbody>
<tr>
<td>London</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>COUNTRIES INLAND.</td>
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<td></td>
</tr>
<tr>
<td>Middlesex</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Surry</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Hertford</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Bedford</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Cambridge</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Huntington</td>
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<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Northampton</td>
<td>7 1/4</td>
<td>9/8</td>
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<td>4</td>
</tr>
<tr>
<td>Rutland</td>
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<td>Nottingham</td>
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<td>4</td>
</tr>
<tr>
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<td>9/2</td>
<td>7/4</td>
<td>4</td>
</tr>
<tr>
<td>Stafford</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
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</tbody>
</table>

**COUNTIES upon the COAST.**

<table>
<thead>
<tr>
<th>Wheat</th>
<th>Rye</th>
<th>Barl.</th>
<th>Oats</th>
<th>Beans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essex</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
</tr>
<tr>
<td>Suffolk</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
</tr>
<tr>
<td>Norfolk</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
</tr>
<tr>
<td>Lincoln</td>
<td>7 1/4</td>
<td>9/8</td>
<td>9/2</td>
<td>7/4</td>
</tr>
<tr>
<td>York</td>
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**VOL. I.**
### CORN TRADE, &c.

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**WALES.**

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And in the month of December following, wheat rose to 58s. per quarter, when an embargo was laid on all ships laden with corn for exportation, and the ports were opened for the importation of American wheat and flour in British built ships.

By this act, which commenced and took place September 29, 1789, additional regulations are made, which merit insertion in this place, the subject being of the first importance. To guard, as much as possible, against false or partial returns, every corn-factor, from whom any return is required by the 21 George III. shall, within one calendar month from the time of his beginning to deal by commission in the sale of corn and grain, take the following oath, or, being one of the people called Quakers, affirm; *videlicet,*

I A. B. do swear (or affirm) that the returns of the prices and quantities of British corn and grain, which henceforward shall be, by or for me, sold and delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn *bona fide* sold and delivered, by or for me, within the period to which they shall refer, with the prices and names of the buyers respectively; and, to the best of my judgment, conformable to the direction of an act passed in the twenty-first year of the reign of his present Majesty, intituled, "An Act for further regulating and ascertaining the importation and exportation of corn and grain, within the several ports and places therein mentioned.

Any person carrying on the trade or business of a corn-factor, without taking the said oath, is subjected to a penalty of fifty pounds.

The inspector of the corn returns at the Corn Exchange, London, to receive from every corn-factor in London, and the suburbs, a weekly return of the corn brought into the Thames, eastward of London Bridge, which was sold by him during the preceding week.

The average prices formed from the weekly returns, to be deemed the common price of middling British corn within London, Essex, Kent, and Sussex.

For the purposes of this act, the maritime counties of England are to be divided into districts; and the justices at the next Michaelmas sessions, shall select a number of principal market towns, from which, and the sea ports having peculiar jurisdictions, the price of corn for each county shall be taken.

Millers purchasing British corn and grain for sale, are, by this act, obliged to make true and just returns, upon oath, of the quantities so bought by them, within three calendar months after the passing this act; or within one month after they shall begin to deal in corn and grain; the returns to be weekly accounts, and to be delivered to the corn inspector of the market, where the purchases were made; under a penalty of ten pounds for every omission.

No debenture for a bounty on exportation of any corn, grain, or flour, shall be made out or granted for the allowance of any bounty on any corn, grain, or flour, entered or shipped for exportation from any port within any of the districts, during the time that
foreign corn, or grain of the same species is allowed to be imported into such districts at the low duties.

No warrant, cocket, &c. shall be granted for carrying to sea, from any port within England, Wales, and Berwick, to any other port of the same, any foreign corn after importation thereof; and no person shall transport any foreign corn, or foreign corn mixed with English, under penalty, that all such corn that shall be transported or laden contrary to this act shall be forfeited, and every offender shall forfeit 20s. for every bushel of such corn, and the ship upon which such corn shall be laden, shall be forfeited: and the master and mariners of such ship, wherein such offence shall be committed, knowing such offence, and assisting thereunto, shall be imprisoned three months.

If any person beat, wound, or use any violence to hinder one from buying corn, and shall stop or seize on any carriage laden with wheat, flour, &c. and destroy the same, or shall take away, or hurt any of the horses or drivers, &c. upon conviction, he shall be sent to gaol or house of correction, and be kept to hard labour, not exceeding three months, nor for less than one, and shall be once publickly whipped at the market place on a market day.

If any person after conviction shall commit any of the offences a second time, or shall pull down or destroy any storehouse, or place where corn shall be kept to be exported, or shall enter on board any ship, and from either of these depositaries carry away or destroy any corn, meal, &c. such offenders shall be adjudged guilty of felony, and shall be transported for seven years.

The inhabitants of every hundred in England, wherein such offence shall be committed, shall make satisfaction for all damages sustained, not exceeding 100l.

Provided that no persons be enabled to recover damages by this act, unless they by themselves or their servants, within two days after damage done, shall give notice of such offence to one of the constables of the hundred or to the headborough, &c. of the town, &c. in or near which such fact shall be committed, and shall within ten days after such notice give in their, or their servents examinations upon oath, before any justice of peace where such fact shall be committed.

Where any offence shall be committed against this act, and any one of the offenders shall be apprehended and convicted within twelve months after the offence, no hundred shall be liable to make satisfaction.

No person shall be enabled hereby to sue or bring any action against any hundred till after the expiration of one year, nor unless the parties sustaining such damage shall commence their action within two years after the offence.

MASTER OF SHIP.

Having now concluded that part of the article of shipping, which concerns exports and imports, and inserted abstracts from all the laws in force relative thereto, particularly specifying those which were passed in the years 1779 and 1780, in favour of the commerce of Ireland, removing the restraints to which it was before oppressively subjected; I shall proceed to some other particulars, respecting the obligations which the masters of merchant ships, and the seamen are under, both by the laws of conscience, and those of their country.

A master of a ship is appointed by the owners under a supposition of his having a sufficient capacity and integrity to discharge the trust reposed in him, by a faithful, prudent, and discreet management of the ship, and affairs committed to his care .......

He hath no property, either general or special, in his being constituted, though the law...
looks upon him as an officer, who must render and give an account for whatsoever is put into his custody and under his direction; and therefore whatever misfortunes happen, or losses occur, be they through negligence, wilfulness, or ignorance, either in himself or mariners, he must be responsible.

A master of a ship, so appointed by B. owner, treats with the plaintiff to take the ship to freight for 80 tons, to sail from London to Falmouth, and so from thence to Barcelona, without altering the voyage, and there to unfold, at a certain rate per ton: and to perform this the master and merchant entered into a charterparty; the former obliging the ship and her appurtenances (valued at 300l.) though the owners of the ship were no parties thereunto; the master deviates and commits barterry, and the merchant thereby becomes a sufferer in the loss of his voyage and goods, for the merchandize (being fish) arrived not till Lent was passed, and then rotten. The factor, to whom the cargo went consigned, in order to procure satisfaction for his employer, sueth the master in the court of admiralty at Barcelona, and upon an appeal to a higher court in Spain, obtains sentence against the master and the ship; which coming to the merchant’s hands, the owner brings an action of trover for the ship; the master sues in chancery to stop the suit, and another brought by the owner for freight, claiming deductions out of both, for his damages sustained by the master’s breach of articles; for if the owner gives authority to the master to contract, he shall bear the loss; but in case of bottomry after the voyage begin, the master cannot oblige the owner beyond the value of the ship; but this case is on contract.

Lord Chancellor. The charterparty values the ship at a certain rate, and you shall not oblige the owners farther, and that only with relation to the freight, not to the value of the ship; the master is liable to the deviation and barterry, but not the owners; else masters would be owners of all men’s ships and estate.

The master of a ship buying provisions for a ship, and having money from the owners to pay for provisions, nevertheless takes them upon credit, and fails. The owners are liable to pay the debt in proportion to their respective shares in the ship.

The master of the ship took beef, sails, &c. on credit, and failed; the owners were obliged to pay, and not allowed to defend themselves, by insisting that the master was liable only, and that they had given him money to pay the plaintiff. He is but their servant, and therefore for his purchases they are answerable, and continue so till he has paid the creditor, though they gave him money for that purpose.

As soon as merchandizes, or other commodities, are put aboard a ship, whether she be riding in port, haven, or any other part of the seas, he that is Exercitor Navis (master of her) is chargeable therewith, and if the same be there lost or purloined, or sustain any damage, whether in the haven or port, before, or upon the seas, after she is on her voyage, either by the mariners or by any other through their permission, he that is the commander must answer the damage, for the very lading the goods aboard the ship subjects him thereto. And with this agrees the common law, where it was adjudged, that goods being sent aboard a ship, and the master having signed his bills of lading for the same, the goods were stowed; and, under pretence of being press-masters, divers persons, in the night, entered the ship, and robbed her of those goods; the merchant brought an action at common law against the master; and the question was, whether he should answer the same; for it was alleged on his part, that there was no default or negligence in him, as he had a sufficient guard, the goods were all locked up under hatches, and the thieves came as press-masters, and by force robbed the ship; and that the same was Vis Major, which he could not prevent: and lastly, that though he was master, or Exercitor Navis, yet he had no share in the ship, and was

* To which the Civil Law does sometimes allow.
but in the nature of a servant, acting for a salary. But notwithstanding, it was adjudged to the plaintiff; for the master at his peril must see that all things be forthcoming which are delivered to him, let what accident soever happen (the act of God, or an enemy, perils, and dangers of the seas only excepted) but for fire, thieves and the like he must answer; and is in the nature of a common carrier; and that though he receives a salary, yet is a known and public officer, and one that the law looks upon to answer; and the plaintiff hath his election to charge either master or owners, or both, at his pleasure, though he can have but one satisfaction.

If a master shall receive goods at the wharf, or key, or shall send his boat for the same, and they happen to be lost, he shall likewise answer both by the marine and common law.

Mayor and Com. de London, against Hunt.

Error of judgement in B. R. in assumpsit brought by the Mayor and Commonality against Hunt, where they declared of custom that they and their predecessors, Mayors, &c. had of every master of a ship 8s. per ton, for every ton of cheese brought from any place in England, to the port of London, ab Oriente de London Bridge (to the eastward of London Bridge) in the name of Weighage; and that the defendant being master of a ship had brought to the port of London so many tons which at that rate came to so much, which he had not paid; upon non assumpsit, verdict and judgment for the plaintiff. Upon which Hunt the defendant brought a writ of error, and two errors were assigned: 1. That the action did not lie against the master, but that the duty was due from the merchants, owners of the goods; but the judgment was affirmed, for that the master is entrusted with the goods and hath a recompence from the merchants for bringing the goods, and is responsible for them, and therefore shall be charged for the duty; as it would be infinite to search for the owners of the several goods which are all in the custody of the master who brought them into port, and therefore he shall be charged.

If goods are shipped, and an embargo or restraint is afterwards issued by the Prince or State where the master then is, and then he breaks ground or endeavours to sail away, and in consequence thereof any damages ensue, he shall be responsible for the same; the reason is, because his freight is due, and must be paid; nay, although the very goods be seized as bona contrabanda.

A ship was let out to freight to J. S. in England, at 8l. 10s. per ton, to go to Bourdeaux, then an embargo is laid; she afterwards proceeds to Bourdeaux, and the master without discovering his first contract, agrees with the correspondents there of J. S. to allow him 6l. 10s. per ton; upon this last agreement he recovered at law; and equity would not relieve, because the performance of the first agreement was hindered by the embargo.

A master ought not to sail in tempestuous weather, nor put forth to sea, without having first consulted with his company; nor must he stay in port or harbour without just cause, when a fair wind invites his departure.

If a vessel proves leaky or disabled, the master ought not for this cause to put any of his merchants goods aboard any enemy's ship, without letters of safe conduct, as by so doing they may be made prize, and he be obliged to answer the damages consequent to the action.

Nor shall he put into any creeks or other places disallowed, except driven in by tempest, but into such ports as are by law appointed.

Nor ought he to ship any merchandizes, but only at the public ports and keys.

He must not lade any prohibited or unlawful goods, whereby the whole cargo may be in danger of confiscation, or at least subject to seizure or surreption.

He may not sail without able and sufficient mariners, both for quality and number.

The ship was libelled against in the Admiralty, for that the master, being taken by a French privateer, had ransomed the ship for 300l. and had sued for the payment of it, and was carried prisoner to Dunkirk, and the money was not paid, &c. and sentence was given in the Admiralty against the ship; and upon motion for a prohibition, it was denied by Holt, Chief Justice, then alone in court; because the taking and pledge being upon the high sea, the ship, by the law of the Admiralty, shall answer for the redemption of the master by his own contract. *Ex relatione m'ri place.*

Motion was made for a prohibition to the Court of Admiralty, where a suit was prosecuted against a ship, which the master had hypothecated for necessaries, being upon the sea in stress of weather; and the suggestion was, that the agreement was made, and the money lent upon land, viz. in the port of London, it being a Venetian vessel, which came here by way of trade, and not stress of weather, but per Holt, Chief Justice, the master of the ship has power to hypothecate, but he cannot sell it; and, by the pawnning, the ship becomes liable to condemnation. This was resolved in solemn debate, in the case of Costard v. Lewstic, 2 Will. and Mar. B. R. Then there is no remedy there for the hypothecation, but by way of contract: Therefore, since the King's Bench cannot do right to the parties, it will not hinder the Admiralty from doing them right; for if the King’s Bench allows the hypothecation, and yet denies the remedy, it will be a manifest contradiction.—An action was brought upon the stat. 2. Hen. 4. cap. 11. for suing in the Admiralty on an hypothecation, and it was held to be out of the statute, in the time of Lord Chief Justice Hale. And as to the objection, that the contract was made upon the land, and the money paid there, it must of necessity be so; for if a man be in distress upon the sea, and compelled to go into port, he must receive the money there, or not at all. And if his ship be impaired by tempest, so that he is forced to borrow money to refit, otherwise she will be lost and for security of this money, he pledges his ship, since the cause of the pledging arises upon the sea, the suit may well be in the Admiralty Court: But because there was a precedent, where a prohibition in such case had been granted, the Court granted the prohibition, and ordered the plaintiff to declare upon it, for the law seemed clear to them, as before is said.

The defendant, as executrix to the master of a ship, libelled in the Admiralty Court for the wages owing to the testator by the owner; upon which the plaintiff, to have a prohibition, suggested the stat. of 13 Rich. 2. cap. 3. that the Admiralty Court shall not have cognizance of contracts made upon the land, and shews this contract to have been made upon the land, &c. and this case was moved in several terms, but opposed; and the council for the prohibition urged, that prohibitions are grantable *de jure*, and are not discretionary in the Court, Raym. 3. 4. That the case in Winch. rep. 8. was the first case where a prohibition was denied, in case of a suit by mariners for their wages, in the Admiralty Court, and the denial was grounded upon compassionate reasons, because they were poor men, and because there they might join in action, but here they must sever; but the said case is contrary to the reasons and grounds of the law; for where the contract is made upon the land, though the service was done upon the sea, it is out of the jurisdiction of the Admiralty; and so *vice versâ*, if the service was done upon the land, and the contract upon the sea, 12 Co. 79, 80. Staufn. 51, b. Hob. 212. A consultation is always denied in case of a suit by mariners, if there is a charter-party; and the sealing writing cannot make any difference in reason, Raym. 3. *A prohibition granted*
MASTER OF SHIP.

where the master libelled alone; and _contra_, it was said for the defendant, that the case of mariners was now settled, and ought not to be stirred; but that the great reason why they are permitted to sue there is, the ship is the debtor, and by the law of the Admiralty they may attach her, which they cannot do by the common law; and in the Admiralty Court they may all join in suit, whereas by the common law they must bring several actions: That the case of the master is not different, for the ship is security to him, and he is but a mariner, and his wages are wages at sea; but however, where the master dies in the voyage, as he did in this case, there can be no reason to exclude his executors from suing in the Admiralty, because he had no opportunity of bringing his wages to account with the owners. And in 2 vent. 181. Allison v. Marsh, the purser, though an officer of the ship, was allowed to sue for his wages in the Admiralty. And in 2 Keb. 779. pl. 6. Rex. v. Pike, a prohibition was denied where the master and mariners joined in a suit in the Admiralty for their wages (but Holt said, that a prohibition ought to have been granted _quoad_ in the said case) and he cited a case Hil. 27. and 28 Car. 2. C. B. between Cooker and Older, where Atkins and Ellis, Justices, were of opinion, that a prohibition ought to be granted to the suit in the Admiralty Court, by the master of a ship for his wages, though North, Chief Justice, and Wyndham, Justice, held the contrary opinion. But Holt, Chief Justice, said, that it is an indulgence, that the courts at Westminster permit mariners to sue for their wages in the Admiralty Court, because they may all join in suit; and it is grounded upon the principle, _quod communis error facit jus_, but they will not extend it to the master of the ship, especially if he was master at the beginning of the voyage here in England, and the contract was made with him here. Possibly if the master of a ship died in the voyage, and another man took upon him the charge of the ship upon the sea, such case might be different. As in the case of Groswick v. Louthsly, where it was held in this Court lately, that if a ship was hypothecated, and money borrowed upon her at Amsterdam, upon the voyage, he who lent the money may sue in the Admiralty for it; and this Court granted a consultation in that case: But in another case, where the money was borrowed upon the ship before the voyage, the King's Bench granted a prohibition, and the parties acquiesced under it. There are many precedents in the Court of Admiralty of suits by the mariners for their wages, but none for the master of the ship: and the cases differ; for the mariners contract upon the credit of the ship, and the master upon the credit of the owners of the ship, of whom generally he is one, &c. It was moved, that the Court would compel the plaintiff to put in bail to the action to be brought for the wages at common law, or otherwise deny the prohibition, which it was said had been done often: Holt, Chief Justice, confessed that the Court had sometimes interposed, and procured bail to be given, but it was by consent, and in case of the proprietor himself; but in regard that in this case the plaintiff was a purchaser without notice, there was no reason, and a prohibition was granted.

· Ballam libelled in the Admiralty against a ship of Norway, for that she being in great S. C. 1 distress for want of an anchor and cable, the master contracted with Ballam, who delivered them on board, &c. upon which a motion was made in this Court for a prohibition to be directed to the judge of the Admiralty, to prohibit him from proceeding in the said suit, upon a suggestion that the said contract was made upon the land, viz. at Ratcliffe, upon the river Thames, the said ship being then there; and a rule was made, that the defendant should shew cause why a prohibition should not go; upon which it was shewed for cause: 1. That of late times the Admiralty had been always encouraged, and that they ought to have cognizance of all things incident to the navigation, therefore they shall have cognizance of a suit for mariners wages. 2. That in this case the defendant would be without remedy, if a prohibition should be granted; because the master of the ship with whom the contract was made, was dead, and the part owners.
were foreigners. 3. That the contract being upon the land will not hinder the Admiralty to hold plea, as was held in the case of Costard v. Lewstie, where a libel was in the Admiralty against a ship upon a hypothecation made of her at land, and that appeared upon the instrument of hypothecation, which mentioned it to have been made at Rotterdam; and yet a prohibition was denied after great consideration. Now here, though the anchor, &c. were sold upon the land, yet the stress of weather which disabled the ship, was upon the high sea, and therefore the original cause being within the jurisdiction of the Admiralty, will draw the residue to it as incident. 

Set non allocatur, for, per curiam, this is not like the case of Costard v. Lewstie: 1. Because it does not appear in this case, that this ship was in her voyage when she became in distress, for want of an anchor, &c. and at the time of the contract. 2. There was no hypothecation here, as there was in the case cited; now where there is an hypothecation, if the Admiralty should be prohibited to proceed, &c. the party would be without remedy, for no suit can be against the ship at common law upon it. Now it is true, that by the maritime law every contract with the master of a ship implies an hypothecation; but it is otherwise by the law of England; therefore this being a contract made with the master upon the land, it is the common case; the Admiralty cannot have cognizance of such a suit, and therefore a prohibition was granted: But, at the importance of the defendant's council, the court gave order that the plaintiff should declare upon it, &c.

Watson was master of a merchant ship, which was taken at sea by a French privateer; Watson agreed with the captain of the privateer for the ransom of the ship and goods at 1200l. and as a pledge or security for the payment of the money, Watson was detained and carried into France; but the ship and goods were released, and brought into Bristol, where the ship was unladen, and the goods landed (after custom paid) and delivered to one Day; but whether in trust for the benefit of the master, or for the use of the owners, was not agreed. Watson commences his suit in the Court of Admiralty against the owners, to compel them to pay the 1200l. and redeem him; and thereupon a warrant was issued out of that Court to arrest the ship and goods, in quodam causæ salvagii, in order to compel the defendant to appear there, and the ship and goods were seized thereon: A prohibition was prayed as to the goods, suggesting the seizure on land ines na corpus comitatus, and so not within their jurisdiction; it was insisted, that the master had no power to make such an agreement, nor to subject the goods to the payment of his ransom, without the express authority and consent of his owners. The power of hypothecation in a voyage for necessaries is incident to his office, and allowed for the necessity of the thing, and the benefit of the owner; but this is not so, for this is a redemption, and a new buying of the ship; and if this be allowed lawful, it will give a power to the master to do an injury to the owners, by obliging them to the performance of an agreement of his making, upon any terms never so unreasonable, and to compel them to pay more than the ship and goods are worth, as the agreement in this case is: Besides, the power of the master is only over the ship, and he has no power over the goods and lading to make any disposition thereof; admitting the master has such power to subject the goods to the payment of his ransom, yet he ought not to bring the suit in his own name, but the suit ought to be carried on in the name of the vendee, or purchaser of the goods. Admitting this suit proper, yet the seizure is illegal; for the Court of Admiralty cannot award such process; as their first process to compel the party to appear is in the nature of an execution against the goods, and they can no more begin with such process than an inferior court; and as a prohibition shall be awarded to any inferior court case, so ought it in this, though the party have not yet appeared, nor a writ exhibited; and so was it done in the case of Capt. Sands and Sir Jos. Will. and Mar. 

It was insisted, that no prohibition ought to go in this case, for that
things are considerable if we go into the merits of the cause, but that not being before us, I give no opinion therein.

A ship was outward bound to and being in distress at sea in her voyage put into Boston in New England, and there the master took up money, which he applied in necessaries for the ship; and, as a security for the repayment, by w. of hypothecation, made a bill of sale to the party, of part of the ship, who now libelled in the Court of Admiralty against the ship and owners, to compel the payment of the money. Serjeant Darnall moved for a prohibition, and a day was given to hear Counsel on both sides. On the day, Serjeant Darnall insisted, that as this case is, there ought to go a prohibition, because it appears, upon the face of the libel, that this hypothecation was upon land in port, viz. at Boston, and not upon the sea, as it ought to be, to give that Court a jurisdiction. Besides this appears to be a bill of sale of part of the ship, upon which the party may have his remedy at common law, and not a proper hypothecation. Also the proceedings are against the owners as well as against the ship; and, if the owners are liable, they are chargeable at common law.

Mr. Cheshyre against the prohibition. It makes no difference whether the hypothecation were upon the sea or upon land, being done in a voyage; and a prohibition has been denied upon the same point as this case, in this Court, between Costard and Louthesly, Trin. 1 Wil. and Mar. where the hypothecation was in port, viz. at Rotterdam. The same was adjudged here, Hil. 1696, between Benoir and Jeffrys; and about a year since between Justin and Ballam, a prohibition was granted, because it did not appear there was any hypothecation. In this case the necessity of the thing requires that it be done at land and it would be prejudicial to navigation, if this suit in the Admiralty should not be.

Holt, Chief Justice. The case of Costard and Louthesly was the same as this; and there, on a demurrer to a declaration in a prohibition, a consultation was awarded by the whole court. When an hypothecation is made, either for money to buy necessaries, or for necessaries for the ship in a voyage, the Court of Admiralty have a jurisdiction, for the party has no other remedy; we cannot give him any remedy against the ship; and if the suit there should not be allowed, the master will have no credit to take up necessaries for the use of the ship.

Powel, Justice, of the same opinion.

Holt, Chief Justice. No master of a ship can have credit abroad, but upon the security by hypothecation; and shall we hinder the Court of Admiralty from giving remedy, when we can give none ourselves? It will be the greatest prejudice to trade that can be, to grant a prohibition in this case. Indeed, if a ship be hypothecated here in England before the voyage begin, that is not a matter within the jurisdiction of the Court of Admiralty, for it is a contract made here, and the owners can give security to perform the contract. Which Powel agreed.

Holt, Chief Justice. There is no difference whether the hypothecation be alleged in the libel to be made in port, or appears so to be by the suggestion, as it was in the case of Costard and Louthesly; and as to what you say, that this is a bill of sale, and so a remedy at law, that is not so, for the master has no authority to sell any part of the ship, and his sale transfers no property; but he may hypothecate. And since the proceedings in the Court of Admiralty are against the owners as well as against the ship, let a prohibition go quaoad the proceedings against the owners, and let them go on to condemn the ship. To which the rest of the judges agreed.

The preceding few cases may serve to show the power lodged in the captain to engage his ship for payment of what cash he may take up for his repairs and use; and though the law disallows of his selling her, yet she is obliged for the fulfilling his con-
MASTER OF SHIP.

tracts so far as her value, and that of her freight (as has been shewn before); though he on his part must give a just account to the owners, how the money he has received was expended, and is consequently answerable to them for the same, and to act upon the trust reposed in him, and the good conduct expected from him.

He must not carry any counterfeit cocketts or other fictitious and colourable ship-papers, that may occasionally involve the goods of the innocent with the nocent.

Nor must he refuse the payment of any just and ordinary duties and port charges, customs or impost, to the hazard of any part of his lading; yet if he offers that which is due and he ought to pay, then he is excused.

Boats, anchors, and sails are distrainable if the master refuses to pay port duties, but no part of the cargo, for the ship and its masters are answerable for these duties, as was adjudged in favour of the Mayor and Burgesses of Newcastle, Salkeld 249, Michaelmas Term, 10 Will. 3. But Chief Justice Holt gave a separate opinion from the Court, that the cargo is likewise liable. It is, however, the safest way to distrain things belonging to the ship, or to the master.

In some foreign ports it is the practice, upon any dispute respecting the payment of harbour dues and fees, and the refusal of the payment of debts contracted by the master, to unhang the rudder of the ship, and to deliver it to the quay-master or some other officer of the place, till the matter in litigation is decided, or satisfaction is made for the demands of the creditors on the master. This is the established custom at Ostend in particular, and as it absolutely prevents the sailing of a ship on her voyage, should be carefully attended to by the owners and freighters, in their orders to their agents in such ports, that they may readily make themselves responsible in such cases, and thereby guard against the consequences of the obstinacy and perverseness of many masters, who very often will not submit to the advice of the agent or factor to whom the ship is consigned.

Every master ought carefully to examine his rigging and tackle before proceeding on a voyage, that he may not sail with any insufficient and defective; nor ought he to go with fewer or smaller cables than is usual and requisite for a ship of equal burthen with his; for, if any damage happens in delivering the goods, either in a lighter or otherwise, by the breaking of a rope or the like, he must be answerable for it; but when once out of his custody, he is no further responsible; so that if on taking them out of the lighter at the wharf or key, they are any ways damnified, the wharfinger then (and not the master) must be accountable for it. But if fine goods, or the like, are put into a close lighter to be conveyed from the ship to the key, it is usual in this case for the master to send a competent number of his mariners to look to the merchandise, and if then any part thereof be lost or embezzled, the master is responsible*; and not the wharfinger; but if such goods are to be sent on board a ship, there the wharfinger at his peril must take care that the same be preserved.

On his arrival at his destined port, his first care should be to see his ship well anchored and moored, and, after she is reladen, not to depart till she is cleared; for if any damage happens through his, or his mariners fault or neglect, whereby the cargo is prejudiced, he must answer the same.

If there is a consul or vice consul appointed by his sovereign, or by any commercial company authorised by the crown, to appoint such an officer, resident at the port where any merchant ship arrives, it is the duty of the master to report his arrival with his own name, the name of the ship, and whereof her cargo principally consists, and to put himself under his protection, as far as his authority extends, during his stay in port. If the master does not conform to the legal orders of the consul of his nation, and any accident

* Pasch. 26 Car. ruled at Guildhall by L. C. Holt.
or damage happens to his ship or cargo, he will be answerable, and not the owners or freighters. As in the following case: A master of an English ship had moored her in the harbour of Ostend, in a place judged improper by the quay-master; on being ordered to remove her to another, he refused to obey either quay-master, or the consul. The quay-master thereupon cut the cables, and the ship being adrift, bulged against the opposite side of the bason, and was considerably damaged. The consul, at the request of the merchant to whom the cargo was consigned, protested against the master, in favour of the owners, and he paid the damages. He would have been imprisoned by the magistrates of Ostend, if the consul had not interceded.

And as the law subjects him to the aforesaid things in port, so it does to many others in his voyage; as that if he deviates in his course without just cause, or steers a dangerous and unusual one, when he may have a more secure passage (though to avoid illegal impositions he may somewhat change it); nor may he sail by places infested by pirates, enemies, or other places notoriously known to be unsafe, nor engage his vessel among rocks, or remarkable sands, not being necessitated thereto by violence of wind and weather, or deluded by false lights.

No master is answerable for the contracts of his mariners, unless he has recommended them to credit, but they may be detained for debts, or misdemeanours.

He that will charge a master with a fault in relation to his duty, by the marine law, must not think that a general charge is sufficient, but he ought to assign and specify the very fault wherewith he is so charged.

So he that will infer, that such or such a sad disaster hath happened, or been occasioned by reason of some fault in the mariners, must not only prove the fault itself, but must also prove the fault did dispose to such a sad event; or that such a misfortune could not have happened, without such a fault precedent.

If an infant, being master of a ship, contracts to bring goods from any port to England, and there to deliver them, but does not deliver them according to agreement, but wastes and consumes them, he may be sued in the Admiralty Court although he be an infant; for this suit is but in nature of a detinue or a trover and conversion at the common law; and a prohibition denied for that cause.

A master can set out his vessel to freight, take in goods and passengers, mend and furnish his ship, and to that effect he may (if need be) in a strange country, borrow money upon the ship, some of the tackle, or sell some of the merchandise; and in this latter case, the highest price that the remainder is sold for, must be paid to the merchant or owner of them, who in return must pay freight as well for what (through necessity) was so sold, as for what remained. Leg. Oleron 1. But if the ship in the voyage afterwards should happen to be cast away, then only shall be tendered the price that the goods were bought for.

By the common law, the master of a ship should not impawn the ship or goods; for any property, either general or special, was not in him, nor is such power given unto him by the constituting of him a master. Yet the common law hath held the law of Oleron reasonable, that if a ship springs a leak at sea, or is in want of victuals and other necessaries, whereby she is either in danger, or the voyage may be defeated, that in such case of necessity the master may impawn for money, or other things, to relieve such extremities, by employing the same to that end; and therefore he being the person trusted with the ship and the voyage may be reasonably thought to have the power given to him implicitly, a stress of weather on his voyage, and having no money, may by the owners must inde in the case of exti
can scarce ever happen, unless a ship is driven into a place inhabited by barbarians; for it is usual in the ports of all civilized nations, to take the master's bills of exchange on the owners or freighters for repairs or provisions.

But if the master takes up money to repair or victual a ship when there is no occasion, he only shall become debtor; or if he takes up more money than was necessary, so that the lender advances a far greater sum than was wanted, the owners shall not be liable; for this would be to encourage collusion between the masters and foreign agents or merchants supplying them, supposing both to have fraudulent designs. The master therefore ought to be furnished by the party who has undertaken the repairs or victualing in the foreign port, with fair attested bills of the necessary acts done for the ship, and of the money advanced for the same.

But a master for any debt of his own cannot legally impawn or hypothecate the ship, &c. for the same is no ways liable, but in case of necessity, for the relief and completing of the voyage.

Nor can he sell or dispose of the same without an authority or licence from the owners; and when he does impawn or hypothecate the vessel or furniture, he ought to have the consent and advice of his mariners.

A ship being repaired, &c. in the Thames, he is not liable, but the owners.

Though the master cannot on every case of necessity impawn the vessel or furniture, for if she be freighted, and he being (an owner) is to join with the rest in buying provisions for the voyage, and perhaps he wants money (a great sign of necessity) yet he cannot impawn the vessel or furniture, otherwise, or for more, than his own share in her, the which he may transfer and grant, as a man may do an eighth or fifth part in land or houses; but such obligation of the vessel must be in foreign parts or places where the calamity or necessity is universal on the vessel, that will oblige all the owners.

If the vessel happens afterwards to be cast away, and the mariners by their great pains and care recover some of the wreck and lading, the master in that case may pledge the same, and distribute the product among his distressed sailors, in order to their carrying them home to their own country: But, if the mariners no way contributed to the salvage, then their reward is lost and sunk with the vessel. And if there be any considerable part of the cargo saved, he ought not to dismiss the mariners till advice from the freighters or laders; for otherwise, perchance, he may be made liable.

If merchants freight a vessel at their own charges, and set her to sea, and she happens afterwards to be weather-bound, the master may impawn either ship or lading at his pleasure, or at least such as he could most conveniently raise money on, rather than see the whole voyage overset or lost; and, if he cannot pawn the lading, he may sell the same, that is, so much as is necessary; in all which cases his act obliges; however, orders and instructions from his owners are as carefully to be regarded and followed as the magnet.

When a master shall arrive with his ship at Gravesend, he shall not be above three days coming from thence to the place of discharge; nor is he to touch at any quay or wharf till he comes to Chester quay, unless hindered by contrary winds or draught of water, or other just impediment, to be allowed by the officers: And likewise he or his purser are there to make oath of the burthen, contents, and lading of his ship; and of the marks, number, contents, and qualities of every parcel of goods therein laden, to the best of his knowledge; also where, and in what port, she took her lading, in what country built, and how manned, who the master during the voyage, and who the owners; and in out-ports must come to the place of unlading, as the condition of the port requires, and make entries on pain of 100l.—Nor is such a master to lade aboard any goods outward to any place whatsoever, without entering the ship at the custom-house, her captain, master, burthen, guns, ammunition, and to what place she intends,
and before departure to bring in a note under his hand, of every merchant that shall have laid aboard any goods, together with the marks and numbers of such goods, and be sworn as to the same, on pain of 100l.

Note, There is a list of all foreign-built ships in the Exchequer.

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MARINERS, AND THEIR DUTY AND WAGES.

The mate of a ship, as well as a single mariner (or a number of them) may sue in the Admiralty Court for their wages, as the mate only differs from the sailors in title, being a servant to the master with whom he contracts as the mariners do.

Upon a motion for a new trial in an action for a seaman’s wages, Holt, Chief Justice, said, that if the ship be lost before the first port of delivery, then the seamen lose all their wages; but, if after she has been at the first port of delivery, then they lose only those from the last port of delivery; but if they run away, although they have been at a port of delivery, yet they lose all their wages. *Ex relatione m'ri Jacob.*

If a ship be taken by the enemy before she arrives at her first port of delivery, the seamen cannot recover any wages; but if she has delivered her cargo, and is taken on her return, they will recover wages for the outward-bound voyage, and half the time of delivering the cargo at the first port of delivery, and no more. As was adjudged in the case of seamen belonging to an East Indianman, taken by the French on her return home, by Chief Justice Holt. See Raymond’s Reports, 739, 10 Will. 3.

In an action brought for mariners’ wages, for a voyage from Carolina to London, it appeared, that the plaintiff served three or four months; and before the ship came to London, which was the delivering port, he was impressed into the Queen’s service, and afterwards the ship arrived at the delivering port; and ruled by Holt on evidence at Guildhall, that the plaintiff should recover *pro tanto* as he served, the ship coming safe to the delivering port. Afterwards, in another cause in such an action it appeared that the plaintiff was hired by the defendant at Carolina, to serve on board the Jane sloop, whereof the defendant was master, from Carolina to England, at 3l. per month; that he served two months, then the ship was taken by a French privateer, and ransomed, and, just as she came off Plymouth, the plaintiff was impressed, &c. and then the ship came safe into the river Thames, where she disposed of her cargo; and, by Holt, the plaintiff can have no wages, the ship having been taken by the enemy and ransomed. Mr. Raymond insisted that in that case he should recover *pro rata*, and that the usage among merchants was so; which Holt said, if he could prove, it would do; but, wanting proof of it, the plaintiff was nonsuited.

The suit here was for seamen’s wages, upon the arrival of the ship at Guinea. Powell, Justice, said, he remembered a case of the like nature, where a suit was commenced in the Court of Admiralty, by sailors for their wages, upon the arrival of the ship at Newfoundland; and though the merchants all held it no port of delivery, yet the Court of Admiralty held it the contrary, and so did the Court of Common Pleas, upon a motion for a prohibition.

Every seaman that shall serve in any of his Majesty’s ships, or in any ship belonging to any subject of his Majesty’s dominions, shall allow out of the wages for such service 6d. *per mensem*, for support of Greenwich Hospital, &c. which monthly allowance shall be collected as shall be appointed by the commissioners for executing the office of Lord High Admiral.

Licences shall be given, by order of his Majesty, or the commissioners of the Admiralty, to any landmen desirous to apply themselves to the sea-service, to serve in mer-
CHANT SHIPS OR OTHER TRADING VESSELS, WHICH SHALL BE A PROTECTION AGAINST BEING IMPRESSED, FOR TWO YEARS FOLLOWING THE DATE OF SUCH LICENCE; PROVIDED THAT SUCH LANDMEN BRING TO THE REGISTER TWO INHABITANTS, OR KNOWN IN THE PLACE WHERE THEY SO ENTER THEMSELVES, WHO SHALL ASSERT THEIR KNOWLEDGE OF SUCH LANDMEN FOR TWO YEARS PAST, AND IN WHAT BUSINESS THEY HAVE KNOWN THEM EMPLOYED; AND, IF ANY PERSON SHALL VOUCH ANY ONE FOR A LANDMAN WHO SHALL BE PROVED TO BE A SEAMAN, HE SHALL FORFEIT 20L. AND ANY SEAMAN TAKING ANOTHER'S NAME, OR ANY PERSON COUNTERFEITING ANY LICENCE, SHALL FORFEIT 20L. AND BE LIABLE TO SUCH FURTHER PUNISHMENT, AS BY LAW MAY BE INFLECTED FOR SUCH MISDEMEANOUR.

FOR THE BETTER COLLECTING THE DUTY OF 6D. PER MENSEM, GRANTED BY THE 7 WILL. 3. CAP. 8 & 9 WILL. 21. IT SHALL BE LAWFUL FOR THE COMMISSIONERS FOR REGISTERING OF SEAMEN, OR THEIR DEPUTIES, BY WARRANT, TO CAUSE ALL MASTERS OF SHIPS, NOT IN HIS MAJESTY'S SERVICE TO APPEAR BEFORE THEM, AND SUCH MASTERS UPON OATH TO EXAMINE, AS TO THE NUMBER, WAGES, AND TIME OF SERVICE, OF EVERY PERSON BELONGING TO SUCH SHIPS; AND IF SUCH MASTERS SHALL REFUSE TO APPEAR, OR SHALL OBLIGATINGLY REFUSE TO GIVE A DISCOVERY OF THE MATTERS AFORESAID, UPON THEIR OATHS, SUCH OFFENDERS SHALL FORFEIT 10L. TO THE USES MENTIONED IN THE SAID ACT, TO BE RECOVERED BY ACTION, &C.

REPEALED AS TO THE REGISTERING OF SEAMEN, BY 9 ANN. CAP. 21. SECT. 64.

THE COMMISSIONERS, &C. SHALL TAKE THE SOLEMN AFFIRMATION OF QUAKERS, INSTEAD OF THEIR OATH.

FORASMUCH AS DIVERS PERSONS HAVE PERSONATED SEAMEN, WHO HAVE SERVED OR ARE SUPPOSED TO HAVE SERVED ON BOARD HIS MAJESTY'S SHIPS, AND THEREBY HAVE RECEIVED MONEY AT THE PAY-OFFICE, OR ELSEWHERE, AND HAVE ALSO FORGED LETTERS OF ATTORNEY OR BILLS OF SALE, ASSIGNMENTS, OR LAST WILLS, IN THE NAMES OF PERSONS WHO HAVE SERVED, OR WERE SUPPOSED TO HAVE SERVED, ON BOARD HIS MAJESTY'S SHIPS, AND DO ALSO PROCURE MEN AND WOMEN TO PERSONATE, AND DIVERS WICKED PEOPLE DO OF THEIR OWN ACCORD PERSONATE, THE WIVES, RELATIONS, OR CREDITORS OF SUCH SEAMEN, AND THEREBY HAVE FALSELY TAKEN OUT LETTERS OF ADMINISTRATION TO SUCH SEAMEN, OR HAVE FORGED LETTERS OF ATTORNEY, BILLS OF SALE, OR OTHER AUTHORITIES, IN THE NAMES OF THE EXECUTORS OR ADMINISTRATORS OF SUCH SEAMEN FOR THE RECEIPT OF SUCH WAGES; EVERY SUCH PERSON, THEIR AIDERS OR ABETTERS, THAT SHALL BE CONVICTED OF THE SAID CRIMES, SHALL OVER AND ABOVE THE PENALTIES INFLECTED BY ANY LAWS IN FORCE FORFEIT 200L. WITH COSTS, &C.

NO WILL OF ANY SEAMAN CONTAINED IN THE SAME INSTRUMENT, PAPER, OR PARCHMENT WITH A DITO, I. 6. LETTER OF ATTORNEY SHALL BE GOOD IN LAW.

NO PERSON SHALL TAKE MORE THAN 1S. FOR THE SEAL, WRITING, OR SINGING FORTH LETTERS OF ADMINISTRATION, GRANTED TO THE WIFE OR CHILDREN OF ANY SEAMAN DYING IN THE PAY OF HIS MAJESTY'S NAVY, UNLESS THE GOODS OF SUCH SEAMAN AMOUNT TO 20L. AND IF ANY OFFICER TAKE MORE HE SHALL FORFEIT TO THE PARTY GRIEVED 10L.

APRENTICES TO SEA SERVICE.

IT SHALL BE LAWFUL FOR TWO JUSTICES OF PEACE, AS ALSO FOR MAYORS, ALDERMEN, BAILIFFS, AND 2 ANN. C.6. OTHER CHIEF OFFICERS AND MAGISTRATES OF ANY CITY, OR TOWN CORPORATE; AND LIKEWISE FOR THE CHURCH-WARDENS AND OVERSEERS OF THE POOR OF THE SEVERAL PARISHES, WITH THE APPROBATION OF SUCH JUSTICES OF PEACE, MAYORS, &C. TO BIND OUT ANY BOYS OF THE AGE OF TEN YEARS OR UPWARDS, OR WHO SHALL BE CHARGEABLE, OR WHOSE PARENTS ARE CHARGEABLE TO THE PARISH, OR WHO SHALL BEG FOR ALMS, TO BE APPRENTICES TO THE SEA-SERVICE, TO ANY OF HER MAJESTY'S SUBJECTS, MASTERS OR OWNERS OF ANY SHIP BELONGING TO ANY PORT WITHIN ENGLAND, WALES, OR BERWICK, UNTIL SUCH BOYS SHALL ATTAIN THE AGE OF TWENTY-ONE YEARS; AND THE AGE OF EVERY SUCH BOY SHALL BE MENTIONED IN HIS INDENTURES, TAKEN FROM A COPY OF THE REGISTER
book, wherein the time of his being baptized is entered (where the same can be had) which copy shall be given and attested by the minister or curate of such parish, without fee, and may be wrote without stamp: And where no such entry can be found, such justices, mayors, &c. shall inform themselves of such boy's age, and insert the same in the indentures; and the age so inserted, shall be taken to be his true age.

2 Ann. c. 6. sect. 2. The church-wardens and overseers of the parish, from whence such boy shall be bound apprentice, shall pay to such master, at the time of his binding, 50s. to provide clothing and bedding.

Ditto s. 3. The overseers of the poor of every township or village may execute the powers hereby directed.

Ditto, s. 4. No such apprentice shall be impressed, or suffered to enter into her Majesty's service, till he arrive to the age of eighteen years.

Ditto, s. 5. The church-wardens and overseers shall send the indentures to the collector of customs, residing at any port whereunto such masters of such ship belong; who shall enter all indentures so sent and make an endorsement of the registry thereof, without fee; and such collector, neglecting to enter such indentures, and endorse the same, or making false entries, shall forfeit 5l. to the use of the poor of the parish, from whence such boy was bound; and such collector shall transmit certificates to the Admiralty, containing the names and ages of every such apprentice, and to what ship he belongs; and, upon receipt of such certificates, protections shall be given for such apprentices, till they attain their ages of eighteen years, without fee; which certificates are not required to be wrote on stamped paper, &c.

Ditto, s. 6. Every person to whom any poor parish boy shall be put apprentice, according to 43 Eliz. cap. 2. may with the approbation of two justices of peace of the county, dwelling in or near the parish where such poor boy was bound, or with the approbation of any mayor, alderman, bailiff, or other chief officer or magistrate of any city, borough, or town corporate, where such poor boy was bound by indenture, turn over such poor boy apprentice to any master of such ship, for the remaining time of his apprenticeship; all which indentures of assignment are to be registered, and certificates thereof transmitted, by such collector at the ports where such parish apprentices shall be so assigned over, in manner aforesaid; and protections shall be given for such apprentices, till they attain their age of eighteen years.

Ditto, s. 7. All such poor boys, till they attain their ages of eighteen years, shall be exempted from payment of 6d. per month to Greenwich Hospital.

Ditto, s. 8. All masters or owners of ships of thirty to fifty tons shall be obliged to take one such apprentice, and one more for the next fifty tons, and one more for every hundred tons such ship shall exceed the burthen of one hundred tons; and such master or owner refusing to take such apprentice, shall forfeit 10l. for the use of the poor of the parish from whence such boy was to be bound.

Ditto, s. 9. Every master or owner of such ship, after his arrival into port, and before he clears out, shall give an account under his hand to the collector of such port to which he belongs, containing the names of such apprentices as are then in his service.

Ditto, sect. 10. Every such apprentice shall be sent to the port to which his master shall belong by the church-wardens and overseers of the parish from whence such apprentice is bound; the charges to be provided, as the charges for sending of vagrants.

Ditto, sect. 11. The counterpart of such indentures shall be attested by the collector at the port (where such apprentice shall be bound or assigned over) and the constable or other officer, who shall bring such apprentices; which constable, &c. shall transmit the counterparts of such indentures to the church-wardens and overseers of the parishes from whence such apprentices shall be bound.

Ditto s. 12. Two justices of the peace, dwelling in or near the ports, and all mayors, aldermen,
The master of every ship, not in her Majesty's service, is required to deduct out of the wages accruing to such seaman 6d. *per mensem*, and pay the same to such officers as shall be appointed by the commissioners for executing the office of Lord High Admiral.

It shall be lawful for the commissioners executing the office of Lord High Admiral, to appoint receivers of the said duty, and to authorise such receivers to depute the collectors, or other officers of the customs, of the out ports and of the ports of Ireland, or such other as they shall think fit, to collect the same; and it shall be lawful for the commissioners executing the office of Lord High Admiral, to make such allowance to them out of the said duties as they shall judge reasonable.

It shall be lawful for the said receivers, or their deputies, by warrant to summon all masters, or (in their absence) the owners of ships not in her Majesty's service, to appear at the office of the said receivers, &c. (so as the person summoned be not obliged to travel above ten miles) which receivers, or their deputies, are empowered to examine every such master or owner as to the number and times of service of all persons belonging to such ships, who are chargeable with the said 6d. *per mensem*; and, if such masters or owners shall refuse, when summoned (not having a reasonable excuse) to appear, or if they shall obstinately refuse to make discovery of the matters aforesaid upon their oaths, or shall neglect to pay the monies due to the hospital within fourteen days after they shall be cleared inwards, such offenders shall forfeit 200l. &c. And if any such master shall attempt to go to sea with his ship, before he hath paid the said duties for the voyage preceding, such receivers, or their deputies, are empowered to stop such ship, and, upon the death or removal of any master, the owners shall deliver to the succeeding master a true account of the said duty due to the hospital, and money sufficient for the payment of the same, and in default thereof, such receivers or their deputies, may stop such ship from proceeding to sea.

In all cases where by this act an oath is required to be taken, the solemn affirmation of quakers shall be accepted instead of such oath; and, in case any quaker shall, upon such affirmation, declare any matter which shall be false, or if any other person shall, pursuant to this act, willingly make a false oath, (being lawfully convicted) shall suffer like punishment, as persons convicted of wilful perjury.

No private contracts made by any seaman shall obstruct or delay the payment of the duties appropriated to the said hospital.

This act shall be a public act, &c.

Nothing in this act shall oblige the payment of 6d. *per mensem*, by any masters or servants of the boys or vessels belonging to the port of London, and employed within the North Foreland, in bringing corn, fish, or other provisions, for London.

The commissioners of the Admiralty shall consider as qualified for an admission into the said hospital, any seaman who shall offer himself to be admitted, and shall produce a certificate of his having been wounded or hurt in defending any ship belonging to the subjects of her Majesty against enemies, or in taking any ship from the enemy, and thereby disabled from sea service. This sect. confirmed by 8 Geo. 2. cap. 29. sect. 10.

The governors, ministers, and consuls, appointed by his Majesty in foreign parts, or, where none such are resident, any two British merchants there residing, are required to send and provide for all seafaring men and boys, subjects of Great Britain, that shall by shipwreck, capture, or other unavoidable accident, be driven or cast away to such foreign parts; and the said governors, &c. are required to subsist such seafaring men and boys, after the rate of 6d. *per diem* each, and to send bills of their disbursements, with proper vouchers to the commissioners of the navy, who are to cause immediate payment to be made of such bills; and the said governors, &c. shall put the said men and boys on board the first ship belonging to his Majesty that shall arrive at any parts.
every such ship; and no treasurer, or other officer belonging to such offices; shall make out or pay any bill for the freight of any ship so employed, or pay any wages to any master, &c. till such master, &c. shall produce to such treasurer, &c. an acquaintance signed by the receiver or his deputy, whereby it shall appear that such master, &c. hath paid the said duty of 6d. per month, and that he is not more than 30 days in arrear to the hospital; and if any default shall be made by any secretary, &c. he shall forfeit 50l.

All masters of merchant ships, or other private vessels, liable to the duty of 6d. per month, shall pay the said duty before any such ships shall be cleared inwards, in any of the ports of Great Britain or Ireland, or the islands of Guernsey, Jersey, &c. or of the colonies in America; and no officer of the customs shall clear inwards any merchant ship liable to the said duty, or grant any warrant, to give or make out any cocket, transiras, returns, or discharges to such ships, nor suffer them to go out of port till the master, &c. produce to the officer an acquaintance signed by the receiver, whereby it shall appear, that such master, &c. hath paid the said duty, and that he is not more than thirty days in arrear: And every master of such ship who shall neglect to pay the 6d. per month, also every officer of the customs who shall make default in the premises, shall forfeit 20l.

2 Geo. 2.
c. 38. s. 1.

It shall not be lawful for any master of a ship, bound beyond the seas, to carry any mariner, except his apprentices, from the port where he was shipped to proceed on any voyage beyond the seas, without first coming to an agreement with such mariners for their wages, which agreement shall be made in writing, declaring what wages each seaman is to have for so long time as they shall ship themselves for, and also to express in the agreement the voyage for which such seaman was shipped; and if any such master shall carry out any mariner, except his apprentice, upon any voyage beyond the seas, without first entering into such agreement, and he and they signing the same, he shall forfeit 5l. for every such mariner, to the use of Greenwich Hospital, to be recovered on information on the oath of one witness, &c. and in case he refuses to pay the forfeiture, it shall be levied by distress, &c.

Ditto, s. 2.

If any seaman ship himself on board any merchant vessel, on an intended voyage for parts beyond the seas, he shall be obliged to sign such agreement within three days after he shall have entered himself, which agreement shall be conclusive to all parties for the time contracted for.

SERVICE AND DESERTION, DISOBEDIENCE, &c.

Ditto, s. 3.

If any seaman shall desert, or refuse to proceed on the voyage, or shall desert in parts beyond the seas, after he shall have signed such contracts, he shall forfeit to the owners of such ship the wages due to him at the time of deserting or refusing to proceed on the voyage.

Ditto, s. 4.

If any such seaman shall desert, or absent himself from such ship, after he hath signed such contract, upon application made to any justice of the peace by the master, or other person having charge of the ship, it shall be lawful for such justice to issue his warrant to apprehend such seaman; and if he shall refuse to proceed on the voyage, and shall not give a sufficient reason for such refusal, to the satisfaction of the justice, to commit him to the house of correction, to be kept to hard labour, not exceeding thirty days, nor less than fourteen.

Ditto, s. 5.

If any seaman shall absent himself from the vessel to which he belongs without leave of the master, or other chief officer having charge of such ship, he shall for every day's absence, forfeit two days' pay to the use of Greenwich Hospital.
If any seaman, not entering into the service of his Majesty, shall leave the vessel to which he belongs, before he shall have a discharge in writing from the master, or other person having charge of such vessel, he shall forfeit one month's pay.

On the arrival of any vessel into Great Britain, from parts beyond the seas, the masters shall pay the seamen their wages, if demanded, in thirty day's after the vessel's being entered at the custom-house; (except where a covenant shall be entered into to the contrary) or at the time the said seamen shall be discharged, which shall first happen, deducting out of the wages, the penalties by this act imposed, under penalty of paying to such seamen that shall be unpaid twenty shillings, over and above the wages to be recovered as the wages may be recovered; and such payment of wages shall be good in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever.

No seaman, by signing such contract, shall be deprived of using any means for the recovery of wages, which he may now lawfully use; and where it shall be necessary that the contract in writing should be produced in court, no obligation shall lie on any seaman to produce the same, but the master or owner of the ship; and no seaman shall fail in any action or process for recovery of wages, for want of such contract being produced.

The masters or owners of ships shall have power to deduct out of the wages of any seaman all penalties incurred by this act, and to enter them in a book, and to make oath, if required, to the truth thereof; which book shall be signed by the master and two principal officers belonging to such ship, setting forth, that the penalties contained in such book are the whole penalties stopped from any seaman during the voyage; which penalties (except the forfeiture of wages to the owners, on the desertion of any seaman, or on refusing to proceed on the voyage) shall go to the use of Greenwich Hospital, to be paid and accounted for by the masters of ships coming from beyond the seas to the same officer at any port, who collects the 6d. per month, which officer shall have power to administer an oath to every master touching the truth of such penalties.

If any masters or owners of ships shall deduct out of the wages of any seamen any of the penalties by this act directed, to the use of Greenwich Hospital, and shall not pay the money to some officer who collects the 6d. per month, in the port where the deduction shall be made, within three months after such deduction, they shall forfeit treble the value to the use of the hospital; which, together with the money deducted, shall be recovered by the same means, as the penalties for not duly paying the 6d. per month.

This act shall be a public act.

This act shall continue five years, &c.

Nothing in this act shall debar any seaman from entering into the service of his Majesty; nor shall such seaman for such entry forfeit the wages due to him during his service in such merchant ship; nor shall such entry be deemed a desertion.

Continued by 8 Geo. 2. cap. 21. to 25 March, 1749, &c. Further continued by 23 Geo. 2. p. 487. to 25 March, 1764; and from thence to the end of the then next session of parliament.

Where any goods shall be laden on board any English ship of the burden of two hundred tons or upwards, and mounted with sixteen guns or more, if the commander shall yield up the goods to any Turkish ships, or to any pirates or sea rovers, without fighting, he shall upon proof thereof made in the Court of Admiralty, be incapable of taking charge of any English ship as commander; and if he shall hereafter take upon him to command any English ship, he shall suffer imprisonment by warrant from the said Court, during six months for every offence; and in case the persons taking the said goods shall release the ship, or pay unto the master any money or goods for freight.
or other reward, the said goods or money, or the value thereof, as also the master's part of such ships so released, shall be liable to repair the persons whose goods were taken, by action in the Court of Admiralty; and in case the commander's part of the ship, together with such money and goods, shall not be sufficient to repair all the damages sustained, the reparations recovered on the master's part of the ship shall be divided pro rata, amongst the persons prosecuting and proving their damages, and the persons damaged shall have their action against the master for the remainder.

No master of any such English ship, being at sea, and having discovered any ship to be a Turkish ship, pirate, or sea rover, shall depart out of his ship.

If the master of any English ship, though not of the burthen of two hundred tons, or mounted with sixteen guns, shall yield his ship unto any Turkish ship, pirate, or sea rover, (not having at least his double number of guns) without fighting, such master shall be liable to the sentence of this act.

Upon process out of the Court of Admiralty, it shall be lawful for all commanders of his Majesty's ships, or the commanders of any other English ships, to seize such ships or masters so offending, according to the process, and the same to send in custody, into any ports of his Majesty's dominions, to be proceeded against according to this act.

Provided that none be hereby encouraged to violate the rights of the port of any foreign prince or state in amity.

If the mariners or inferior officers of any English ship laden with goods shall decline or refuse to fight, and defend the ship, when they shall be thereunto commanded by the master, or shall utter any words to discourage the other mariners from defending the ship, every mariner who shall be found guilty of declining, or refusing, as aforesaid, shall lose all his wages due to him, together with such goods as he hath in his ship, and suffer imprisonment, not exceeding six months; and shall during such time be kept to hard labour for his maintenance.

Provided, that if any ship shall have been yielded, contrary to the will of the commander, by the disobedience of the mariners, testified by their having laid violent hands on him, the master shall not be liable to the sentence of incapacity, nor to any action for the losses sustained by the merchants, unless he shall have received back, from the takers, his ship, or some reward.

Masters may re-imburse themselves out of the wages of their mariners for losses happening by their negligence. As was adjudged in the case of Lane against Sir Robert Cotton. Raymond 650, Easter Term, 13 Will. 3. Goods were stolen from on board the ship in the river.

Every mariner who shall have laid violent hands on his commander, to hinder him from fighting in defence of his ship and goods, shall suffer death as a felon.

When any English ship shall have been defended by fight, and brought to her port, in which fight any of the officers or seamen shall have been wounded, it shall be lawful for the Judge of the Admiralty, or his Surrogate, or the Judge of the Vice-Admiralty, within which the ship shall arrive, upon petition of the master or seaman, to call unto him such as he shall be informed to be adventurers, or owners of the ship and goods, and by advice with them to raise upon the owners and adventurers by process of the Court such sums of money, as himself with the major part of the adventurers or owners present, shall judge reasonable, not exceeding two per cent of the ship and goods; according to the first costs of the goods by the invoice (which the owner or his factor is to produce) or by the oath of the owner, or his correspondent; which money shall be paid to the Register of the Court, who shall receive 3d in each pound, thence to be distributed amongst the captain, master, officers, and seamen of the said ship, or widows and children of the slain, according to the direction of the Judge, with the approbation.
of three or more of the owners or adventurers, who shall proportion the same unto the ship's company, having special regard unto the widows and children of such as shall have been slain, and to such as shall have been wounded or maimed.

In case the company belonging to any English merchant ship shall take any ship which shall first have assaulted them, the officers and mariners shall, after condemnation of such ship and goods, have such part thereof as is practised in private men of war.

If any captain, master, mariner, and other officer, belonging to any ship, shall willfully cast away, burn, or destroy the ship, or procure the same to be done, he shall suffer death as a felon.

This last sect. is the same per 1 Ann. st. 2. cap. 9. and is something enlarged 11 Geo. 1. cap. 29. sect. 5.

No commander of any ship, outward-bound, shall receive on board any gunpowder, either as merchandise or store for the voyage (except for his Majesty's service) before such ship shall be over-against Blackwall; upon pain of forfeiting for every fifty pounds weight of gunpowder 5l. and in proportion for a lesser quantity.

The commander of every ship, coming into the Thames, shall put on shore all powder, either before the arrival of such ship at Blackwall, or within twenty-four hours after his ship shall come to an anchor there; or at the place of her unloading; upon pain of forfeiting 5l. for every fifty pounds weight of gunpowder found on board, and in the like proportion for a lesser quantity; and if any gunpowder shall be found on board such ship above Blackwall, after the time limited for unloading the same, the commander of every such ship shall, for every fifty pounds weight of gunpowder, forfeit 5l. and in proportion for a lesser quantity.

If any commander or other officer of any ship (except his Majesty's ships) shall, while such ship be in the river of Thames, between London Bridge and Blackwall; keep any gun shotted, or shall fire, or permit to be fired, any gun on board such ship before sun rising, or after sun setting; such commander, or officer, shall, for every such gun shotted, forfeit 5s. and 10s. And if any commander, or other officer of any ship, or any other person on board, shall, while such ship be in the river, between London Bridge and Blackwall, permit to be heated, or melted on board such ship any pitch, tar, rosin, or other combustible matter, every person so offending shall forfeit 5l.

It shall be lawful for the masters, wardens, and assistants of the Trinity House, by instrument under their common seal, to authorise an elder brother to go in a boat between sun rising and sun setting to any ship, and to go on board the same (his Majesty's ships always excepted) in order to search for powder, guns shotted, and the heating and melting combustible matters, within the limits wherein such offences are prohibited; and, if the commander or other officer in such ship shall, upon demand, refuse to permit any person so authorised to come on board such ship, and make due search, every such commander, or officer, shall forfeit 5l.

No person shall cast out of any ship, or vessel, within any haven, road, channel or river; flowing to any port or town within the King's dominions, any ballast, rubbish, gravel, or other wreck or filth; but only upon the land above the full sea mark, upon pain to forfeit 5l.

In case any ship should be laid up or moored in St. Saviour's Dock (except such ships as shall be loading, or delivering their cargoes, and except such ships, not exceeding two at one time, as should lie at Ship Wright Yard at the north west corner of the dock, during the time such ships shall be repairing) the master of every such ship shall forfeit for every day such ship shall so continue to be laid up and moored, 20s.

Every person herein mentioned shall be exempted from being impressed into his Majesty's service.
jesty's service; that is to say, every person being of the age of fifty-five years, or under eighteen years, and every foreigner, whether seaman or landman, who shall serve in any merchant ship or privateer belonging to the subjects of Great Britain.

Every person of what age soever, who shall use the sea, shall be exempted from being impressed for the space of two years, to be computed from his first going to sea; and every person who having used the sea shall bind himself apprentice to serve at sea, shall be exempted for the space of three years, to be computed from the time of binding.

Substance of the Act of the 20th of George 2. establishing the Corporate Company for the Relief and Support of sick, maimed, and disabled Seamen; and of the Widows and Children of such as shall be killed, slain, or drowned in the Merchants' Service.

The preamble to this act observes, that by one made in the 7 and 8 Will. 3. certain encouragements were given to seamen to register themselves for his Majesty's service; and if any such should, by age or other accidents, be disabled for future service, and should not be able to maintain themselves comfortably, and the children of such disabled seamen, and the widows and children of such of them as should be killed or drowned in the sea service, were to be provided for in the Royal Hospital of Greenwich, so far as the said hospital should be capable to receive them, and the revenue thereof would extend; and for the better support of the said hospital, 6d. per month is by the said act to be allowed out of the wages of every seaman in the merchants' service, as well as in the navy; and that so much of the said act as relates to the registering of seamen was repealed by an act of 9 Ann. whereby every seaman in the navy (though not registered) is intituled to the benefits of the said hospital; and that by an act of 10 Ann. any seaman is to be considered as fully qualified for an admission into the said hospital, who shall produce a certificate of his having been hurt or disabled for sea service, in defending any ships of the subjects of this kingdom against an enemy, or in taking any ship from an enemy: And that by an act of the 8 Geo. 1. every seaman on board a merchant ship, who shall be maimed in fight against any pirate, is to be admitted into the said hospital, preferable to any other seaman disabled merely by age: And that by an act of the 8 Geo. 2. seamen on board any merchant ship, who shall be maimed in fight against an enemy, should be admitted into the said hospital, in like manner as any other seaman, wounded or disabled in his Majesty's service: And whereas the said hospital is not capable to receive, nor the income thereof sufficient to provide for the seamen in the service of the navy, intituled to the benefits thereof, so that the seamen in the merchants' service, maimed and disabled in fight and proper objects of charity have seldom or never been admitted into the same hospital; and as there is no provision made by either of the said acts for such seamen in the merchants' service as are disabled by accidental misfortunes, or for those worn out by age, or for the widows or children of such as shall be killed or drowned in the said service; and as the seamen in the said service are willing to allow 6d. per month out of their wages, to be applied for the relief of such as shall be disabled or worn out by age, and of the widows and children of those killed in the said service; and as they have during the course of this war, manifested their courage, and deserve all due encouragement; and the establishing the said charity will tend to the honour and good of the public: It is enacted, that Alexander Hume, John Bristow, John Bance, Esqrs. &c. and their successors, to be elected in the manner hereafter appointed, shall be one body corporate and politic, by the name of the President and Governors for the relief and support of sick, maimed, or disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned in the merchants' service; and that by the same name of the President and Governors, they shall have perpetual succession, and a common seal, with power to
or worn out, unless he shall have served five years in the merchants' service, and paid 6d. per month out of his wages for that time, for the purposes of this act.

If any person shall forge, counterfeit, alter, or unfairly obtain any such certificate, the same, upon discovery thereof, shall be null and void; and the person applying for relief shall be for ever incapable of receiving any benefit from this act, and shall be punished as an incorrigible rogue.

For the more constant and ordinary management of the monies to be raised for the purposes aforesaid, there shall be for ever hereafter, from time to time, a president and twenty-one assistants, and committees of the said corporation.

The said president and assistants (therein named) shall continue so to be till the 24th of June, 1748: On which day yearly, or within five days before or after (ten days notice being first given, in the London Gazette, of the day fixed by the general court of the said president and governors) a new election of a president and twenty-one assistants shall be made for the year following, and taken by the said president and governors then present.

At all general courts of the president and governors, and at the several full courts of assistants, the president shall have a vote, and act as a member; and, in case of an equality of votes, shall have the casting voice.

There shall be four general courts at least held every year, viz. on the 24th of June, the 29th of September, the 25th of December, and the 25th of March, or within five days before or after either of the said days, of which ten days notice shall be given in the London Gazette; and the president and assistants may call a general court at any other time, as the affairs of the corporation shall require, or at the request of thirteen members, signifying the same by writing under their hands, provided notice be given as aforesaid of the time and place of meeting.

The president with five or more of the assistants shall make a full court of assistants or committees; and shall meet upon Wednesdays weekly, in or near London, or at such other time and place as they shall appoint; and such court when assembled shall have power to apply the monies arising by this act for the relief of such seamen, and their widows and children, as are before described; and to lay out the surplus thereof, and any monies contributed by well disposed persons, in parliamentary securities, or in the purchase of such lands, &c. as are before allowed, and under their common seal to enter into any contracts for the purposes aforesaid, for the better carrying on the said charity; and to appoint and remove at pleasure any officers and servants, or other persons employed (except such officers and persons as are directed to be chosen at a general court of the corporation); and to appoint such salaries, perquisites, or other rewards for their service, as they shall think proper; and to transact and determine all such matters as shall appear to be necessary for affecting the purposes hereby intended.

The management and accounts of the president and assistants shall be liable to such audit and inspection, allowance, disallowance, and control of all or such of the members, as by any by-laws of the corporation shall be appointed.

There shall be a receiver of the corporation, who shall be chosen by a majority of the president and governors in a general court as aforesaid, who shall be allowed such salary as they shall think proper, and be removed at pleasure, and another person chosen in his room.

If any vacancy shall happen by death or removal of any person chosen at a general court, it shall be filled up at a general court of the president and governors, after ten days notice given of such election in the London Gazette.

For keeping up a competent number of members, and for perpetuating the succession thereof, and for filling up the places of presidents and assistants, the president and thir-
MARINERS, &c.

Teen governors, present at a general court to be held as aforesaid, shall elect other fit persons to be members in the room of such of the persons above-named, or to be from time to time elected members, who shall die, or refuse to accept of, or continue to be members.

The president and thirteen governors, assembled in a general court, may make and constitute such by-laws, &c. as shall seem necessary for the establishing the said corporation, and the officers, servants, and persons employed by them; and for the applying the money, and providing for the persons intitled to the benefit of this act; and for the auditing the accounts, and the controlling, allowing, or disallowing the transactions of the said president and assistants, and of the officers, servants, and persons; and for putting the said laws in execution, and for revoking and altering the same at pleasure; which by-laws, &c. shall be duly observed, so as they be reasonable, and not repugnant to the statutes, customs, or laws of this kingdom or any of the express regulations of this act.

If the president shall at any time not attend, the courts of assistants, or governors at a general court, shall depute any other member to preside and act as president in his absence, and do all other acts and things at the said courts as the president is impowered and required to do.

For the encouragement of benefactors to so good a design, it is enacted, that if any person shall, at one or more payments, contribute 50l. for the purposes of this act, he shall be declared a governor of the said corporation.

Every seaman or person employed in any vessel belonging to a subject of England, and every master or owner navigating the same (other than such apprentices under the age of eighteen, as are exempted from payment of 6d. per month to the hospital at Greenwich, by an act of 2 Anne, and persons employed on the coasts of England in taking fish brought fresh on shore; and persons employed in boats or vessels that trade only from place to place within any river in England, or in open boats upon the coasts thereof) and pilots employed on board vessels, shall, after the 29th of September, 1747, pay 6d. per month, and proportionably for a lesser time, during their employment, for the purposes aforesaid.

The master, owner, or commander of every vessel is to deduct out of the wages, &c. of every such seaman, &c. (except as before excepted) the said duty of 6d. per month, and shall pay the same to such receivers as the president and governors or the trustees of the out-ports shall appoint, if such seaman, &c. shall have, or be intitled to, wages, shares, or profits.

The president and governors, at a full court of assistants, shall appoint one or more receivers of the said duty at the port of London; and also depute the collectors or other officers of his Majesty’s customs in the several out-ports of England, or other persons, to receive the same there (except in such out-ports where separate trustees shall be appointed by virtue of this act) and the said several receivers are required to collect and pay over the said duty, according to the instructions in writing, which shall from time to time be sent them by the president and governors; for which allowances shall be made them out of the said duties, as the president and governors shall think fit.

Every master or other person navigating, or having the care of any merchant vessel, shall keep a book by way of muster-roll, in which shall be entered his own, and the names of the persons employed on board, with the usual place of their abode when on shore; and over against each name, the time and place of entering into such service, and in what ship he performed his last voyage; a duplicate whereof shall be signed by the said master, or other person having the care of such vessel, and shall be delivered, before her departure, to the collector of the said duties, at the port to which she belongs; and the said master, &c. shall keep such a muster-roll during the voyage, and shall enter.
when and where any person shall be discharged from, or shall leave or desert such vessel, and others shipped on board, describing them as before directed; and when and where any of them received any hurt or damage, or were killed or drowned: a duplicate whereof shall be signed and delivered as aforesaid, at the ship's return to the port to which she belongs; true copies whereof shall be made, and filed by the collectors, and the original duplicates transmitted by them to the president and governors to be filed and kept by such officer as they shall appoint: and the said masters and receivers, &c. in default of any of the premises, shall severally forfeit 20l. sterling for every such offence. For the better discovery of what shall be due from persons serving on board merchant ships, &c. the collectors shall summon by warrant under their hands all such masters, &c. or (in their absence) the owners of such vessels, to appear at their office (so as they be not obliged to travel above ten miles for the making such appearance) and to examine them upon oath (which oath the said collectors are to administer) to the truth of the copy of such muster-roll, and the number and times of service of each person chargeable with the said duty; and upon their refusal to appear, or make oath as aforesaid, they shall be fined 20l. sterling.

For the more easy and effectual collecting the said duty, from the masters, &c. of merchant vessels employed in the service of his Majesty, the secretaries or chief clerks of the publick offices of the crown, usually hiring, &c. vessels for that service shall deliver a duplicate of the list of the numbers and names of such ships, and of the masters and owners thereof, respectively, and of the seamen, &c. to the collectors of the said duty at the port of London, or out-ports to which they severally belong, as is by an act of 2 Geo. 2. to be delivered to the collector of the port of London, of the duty of 6d. per month given to the Royal Hospital at Greenwich; and the said secretaries and other officers belonging to the said offices, and the masters, &c. of such vessels, shall do every other act for the due payment of the duty, as is required to be done by the said act of 2 Geo. 2. for the payment of the duty of 6d. per month to the said Royal Hospital and shall be liable to the like penalties and forfeitures for any default herein.

Every master, &c. liable to the payment of the said duty, shall pay all such monies as shall, from time to time, be due to the collectors appointed at the port only to which such vessel does belong, and before such vessel shall be cleared inwards, by the officers of the customs in any of the ports of England; and no officer of the customs shall clear inwards any merchant ship liable to the said duty, or grant any warrant, cocket, transire, return, or discharge, or suffer such vessel to go out of port, until the master, &c. shall produce a certificate from the receiver of the said duty being fully paid, and that he is not more than three months in arrear for the same, or that he is exempted from the payment of the said duty by virtue of the exceptions herein contained; and the persons making default in any of the premises, or acting contrary to the directions before-mentioned, shall forfeit 20l. sterling for every such offence.

If the master, &c. shall not produce such certificate to the tide-surveyor, when he shall come on board to clear such vessel, the tide-waiter shall be continued on board at the expense of such master, owner, or commander, until such certificate is produced.

In all cases where an oath is required to be taken, the solemn affirmation of Quakers shall be accepted instead thereof; and if any Quaker shall refuse to make such affirmation, he shall be subject to the like forfeitures and penalties as any other person refusing to take an oath is liable to by this act; and any person convicted of false affirming or swearing, before any collector, &c. hereby authorised to administer oaths, he shall suffer penalties, &c. as persons convicted of wilful and corrupt perjury are by the laws of England liable to.

The charge and expenses of obtaining this act shall be paid out of the first monies to be raised and contributed by virtue hereof at the port of London.
From and after the 24th of June, 1747, the owners and masters of vessels belonging to persons residing at any of the out-ports of this kingdom, may meet within the limits of the said ports at any proper time and place appointed by five or more of them, by giving ten days previous notice, to be fixed at the custom-house wharf, key or other publick place, at such out-port; and may from time to time appoint by an instrument:

in writing under their hands and seals fifteen persons to be trustees for such out-port, for receiving and applying the said duty of 6d. per month, at such out-port for the relief of the seamen employed on board the vessels belonging to such persons respectively; and such of their widows and children as shall be entitled thereto by this act; and the said trustees shall continue to the 26th of December next after such election, and until new trustees are nominated and confirmed, and within ten days after every 26th of December yearly, the said owners and masters shall meet and appoint in like manner fifteen persons to be trustees for the year ensuing, and the said trustees shall continue until new ones are elected and confirmed; and the said instrument shall be sent to the president and assistants, who are to confirm the same under the common seal of the corporation, without fee or reward within ten days after the receipt thereof; and the said trustees, when so confirmed (five whereof shall be a Quorum) shall be vested with the same powers to make by-laws, and to revoke or alter the same, and for receiving and applying benefactions, and for appointing receivers and other officers for collecting and applying the said duty, as are given to the president and governors aforesaid, according to such rules, orders, and regulations as shall be established in pursuance of this act; and the said receivers and other officers shall have the same powers as other the receivers and officers before appointed, and shall be liable to the same penalties and forfeitures.

And whereas by letters patent, bearing date the 18th of December, in the sixth year of the reign of King Edward VI. certain merchants therein named and their successors, residing at the port and city of Bristol, are incorporated by the name of the master, wardens, and commonalty of merchant-venturers of the city of Bristol; which society is willing, for the benefit of the seamen employed in the service of the merchants, &c. belonging to the said city and port, to undertake the collection and application of the said 6d. per month, payable there, and of any donations of well-disposed people; it is therefore enacted, that the master, wardens, assistants, and treasurer of the said incorporated society, for the time being, shall be trustees, and shall be vested with the like power, &c. for collecting, recovering, and applying, &c. the said duty and any donations, at the said city and port; and for appointing receivers and other officers for the said purposes as are granted by this act to the president and governors aforesaid, according to such rules, orders, and regulations as are or shall be established by virtue of this act; and such receivers and other officers shall have the same powers, &c. as those to be appointed in pursuance of this act, and shall be subject to the like penalties and forfeitures; and the said master, wardens, assistants, and treasurers, shall also have power to take and receive any lands, tenements, and hereditaments in such manner, and for the like purposes only, as the said president and governors are by this act empowered to take and receive.

And whereas the guild of masters and pilots, seamen of the Trinity House of Kingston upon Hull, are willing for the benefit of the seamen employed in the service of merchants, &c. belonging to the said town and port, to undertake the collection and application of the said duty, and any donations of well-disposed people there, it is therefore enacted, That the said guild of masters and pilots, seamen of the Trinity house of the town and port of Kingston upon Hull, for the time being, shall be trustees, and shall be vested with the like powers for collecting, recovering, and applying, &c. the said duty and any donations, and for appointing receivers and other officers,
as are granted by this act to the president and governors aforesaid, according to such rules, orders, and regulations as are or shall be established by virtue of this act; and such receivers and other officers shall have the same powers, &c. as those to be appointed in pursuance of this act; and shall be subject to the like penalties and forfeitures.

Nothing herein contained shall oblige the receivers or collectors of the said duty, who shall be appointed by the trustees of any of the respective out-ports, to send duplicates of the muster-rolls (directed to be delivered to them by the master or person having care of any vessel) to the said president and assistants; but such duplicates, after making and filing copies thereof, shall be delivered by such collectors, &c. to the said trustees respectively, to be by them kept for their use.

No seamen, &c. in the merchants’ service, shall be intitled to any benefit from this act at the port of London, or any out-port, but those who are liable to, and shall pay the said duty at the said ports respectively.

Those seamen who shall have been longest in the said service, and contributed most towards the said duty, shall be first provided for as worn out or decrepit.

If any seaman or other person employed on board any vessel shall, in the discharge of his duty, either on shore or on board, break any limb, or be otherwise hurt, so that immediate care is necessary to be taken of him, the president and governors of the port of London, and the respective trustees for the out-ports, shall provide proper relief for such person, until he shall be so well recovered of such hurt as to be removed and sent with safety to the port to which such vessel does belong; and the expense thereof, not exceeding 2d. per mile, shall be paid by the president and governors at the port of London, or by the trustees for the out-port to which such person shall be sent.

If any seaman or other person shall serve five years or more in the merchant service, and shall have paid the 6d. per month for that time, and shall be adjudged by the president and assistants, or the respective trustees, a proper object of relief, he shall be provided for at the port where he shall have paid the greatest part of the said duty for the last five years of his service.

If it shall happen that seamen employed in the merchant service, within the limits of this act, shall be shipwrecked or taken by the enemy, and on their return from imprisonment may be travelling with passes to the place of their abode, the president and governors, and the respective trustees may relieve them in such manner as they shall think proper.

Where certificates directed to be produced by this act cannot be obtained, such other certificates as shall be satisfactory to the president and governors, or trustees respectively, shall be admitted to intitle the party to the pensions or other relief provided by this act.

And whereas the united company of merchants of England, trading to the East Indies have at their own expence provided for such seamen employed by them, as have been rendered incapable of service, and for the widows and children of such as have been killed or drowned in their service, and have established a fund for that purpose, and are therefore desirous, that the persons employed in the said service may be exempted from the payment of the said 6d. per month; it is therefore enacted, that no officer, seamen, &c. of any vessel employed in the service of the said company, shall, during the time of such service, be liable to the payment of the said duty.

No officer, or seaman, &c. during his employment in the service of the said company, nor the widows or children of such of them as shall be killed or drowned, shall be intitled to any benefit of this act during the time they shall be employed in the said service.

All pecuniary forfeitures and penalties incurred by virtue of this act shall be sued for
and recovered in any court of record in England, wherein no essoin, protection, privilege, wager of law, or more than one imparlance shall be allowed; and if a verdict shall pass p. 859. For the plaintiff in any such action he shall be allowed double costs; and one moiety of the forfeitures, &c. shall be applied to the uses of this act, and the other to the person who will sue for the same in manner aforesaid.

This act shall be deemed a public act, and be judicially taken notice of as such by all judges and other persons, without specially pleading the same; and all actions or suits which shall be commenced against any person for any thing done in pursuance of this act, or in relation to the premisses, shall be brought within three months next after the fact committed; and shall be laid in the county or place where the fact was done, and not elsewhere; and the defendant may plead the general issue and give this act and the special matter in evidence, and that the same was done in pursuance thereof; and if it shall so appear, or if such action, &c. shall be brought after the time limited, or in any other county or place, the jury shall find for the defendant; or if the plaintiff shall become nonsuited, or suffer a discontinuance of his action, or verdict shall pass against him, the defendant shall have double costs; and shall have such remedy for the same as defendants have for costs of suit in any other cases by law.

The procuring the preceding act is an instance of the benevolent regard our merchants have for the future support at home of those seamen who shall suffer by valiantly defending their property, either in ship or goods, and for the distressed families of such who shall unhappily lose their lives in their service; while the following acts serve no less to demonstrate both theirs, and the government's indulgent attention to secure a sufficiency for them abroad, when reduced by misfortunes to the necessity of claiming it; and the charitable dispositions they contain, plainly evince as well the prudence as the beneficence of the promoters and compilers of them, justly challenging our tribute of praise for such shining instances of tenderness and compassion, in a comfortable provision for the accidental sufferings of the brave, till then left destitute and disregarded. I mean, by law, for though the 22d and 23d Car. 2. cap. 11. sect. 10. (before recited) provides something for the maimed and slain, yet it is too small to supply the loss of limbs, or give maintenance to the afflicted relicts of a sailor, untimely snatched away; it is therefore from these statutes only the mariner must expect redress, and a reflection on their existence will naturally encourage him to deserve their protection by a punctual compliance with his duty.

An act for making perpetual an act for the better regulation and government of seamen in the merchant service, and for extending the provisions thereof to his Majesty's colonies in America; was made in the first year of his present Majesty. It is thereby enacted, that from and after the 1st of May 1764 all the provisions, penalties, matters, and things, in the act of the 2d of Geo. 2. be extended to his Majesty's dominions in America; and the forfeitures applicable to Greenwich Hospital to be paid there to the officer constituted by the Admiralty; and masters of ships deducting any of the said forfeitures out of the seamen's wages, and not duly paying over the same, forfeit treble the value to the said hospital.

It shall be lawful for persons authorised by the majority of the British merchants and factors residing in Portugal, being assembled with the consul general, or his deputy, in any of the ports of Portugal, to recover from all commanders of British ships trading from Great Britain or Ireland, or any other his Majesty's dominions, to any of the dominions of the King of Portugal, the following sums, viz. any sum not exceeding 200 reis per ton on all tonnage goods (except wheat, barley, rye, coals, timber, boards, and lumber) and 100 reis per ton on wheat, barley, &c. and 15 per cent. on the freight of all other goods exported from any of the king's dominions to any place in the dominions of the king of Portugal; and all bills of lading shall specify to pay the monies ac-
Accordingly, under denomination of contribution, as per act of parliament; and the persons paying the same shall be reimbursed by the freighters, or the persons to whom the goods shall be consigned; and if no bill of lading shall appear, and no freight or tonnage is settled between the owner of the goods and the master of the vessel, the freight or tonnage shall be valued by two different British merchants on the place, one to be chosen by the consul general, and the other by the master of the ship, within ten days after unloading the goods; and if the person so chosen shall not agree to the same in five days, such two persons shall choose a third (being a British merchant on the place) who shall decide the valuation in three days.

All masters of ships, trading from Great Britain, Ireland, or any other his Majesty's dominions to the dominions of the King of Portugal, and unloading there, shall within ten days after their arrival deliver to the consul general, or deputy consul, residing there, or to such person as shall be appointed, a manifest upon oath, specifying the particulars of the cargo, or of such part thereof as shall be unloaded there, and to whom consigned, which oath the consul general, &c., is to administer gratis.

The consul general, or his deputy shall detain the clearances outwards of all British and Irish ships till payment.

The monies shall be applied in manner following, viz. to the minister residing there 300 mill-reis per annum, by equal quarterly payments, and the remainder for the relief of shipwrecked mariners, and other distressed persons, his Majesty's subjects, and to such other charitable and public uses as shall be appointed by the majority of the British merchants and factors residing at Lisbon, and other ports in Portugal, being assembled with the consul general, or any of his deputy consuls.

Persons formerly liable to pay the four reis per mill, shall, after payment of the sums required by this act, be exempted from the same.

The consul general, or his deputy consuls, residing in Portugal, shall, as they see occasion, call a general meeting of the British merchants and factors, and shall cause such meetings as often as shall be desired, by writing under the hands of any five British merchants or factors.

This shall be a public act, &c.

An act like the preceding was made for his Majesty's subjects trading to Cadiz and Port St. Mary's, specifying that any sums of money not exceeding one ryal plate per ducat, shall be received from all masters of British and Irish vessels, trading to those places, on the freight of goods (except tonnage goods) imported into the said ports, and on all tonnage goods, any sums not exceeding two ryals plate per ton, to be collected and disposed of in the same manner as directed for that raised in Portugal, and the other part of this act being verbatim like that, is here omitted to be repeated.

It shall be lawful for persons appointed by the consul, named for his Majesty's subjects trading to the port of Leghorn, together with the majority of the British merchants and factors there, to recover from all commanders of British or Irish ships, trading from any part of his Majesty's dominions to the said port, any sums not exceeding one livre per ton on all tonnage goods imported into the said port, and all bale goods, not exceeding one third of a livre per bale, or parcel: to be recovered and applied with like directions as in 9 Geo. 2. cap. 25, for the consulage duty at Cadiz and Port St. Mary's.

Mariners must help one another both at sea and in port, and never quit the ship without leave from the master, when she is at anchor.

If mariners get drunk and wound one another, they are not to be cured at the charge of the master or ship, as the damage is not received in the service of either; but if any of them are hurt, or taken ill, in doing their duty, the expense of their cure the ship must defray; and if his dissortlets render him unfit to continue on board, he shall be
left on shore, and have those accommodations and assistance his case requires; and though the ship must not be detained to attend his recovery, yet, if this happens afterwards, he shall have his full wages, deducting only what the master may have expended for him.

If goods are thrown overboard in order to lighten, and by this means save the ship in a storm, upon proof thereof, by the oaths of the master, &c. he shall be acquitted, though the ship, freight, and remainder of the cargo shall be brought into an average, to make good what was so thrown away for the preservation of the whole.

Though a ship shall be seized for debt, or otherwise become forfeited, the mariners must receive their wages, unless in some cases, where they are forfeited as well as the ship; as in case of committing piracy, with letters of marque, by reason of which all will be forfeited; but lading of prohibited goods on board, such as wool, &c. though it subjects the ship to a forfeiture, yet it disables not the mariner of his wages; for the sailors having honestly performed their parts, the ship is tacitly obliged for their wages; but, if the ship perishes at sea, they lose their wages; and the owners their freight: and this being the marine custom is allowed as well by the common as civil law.

Barretty of the mariners is a disease so epidemic, that it is difficult for a master with the greatest care to prevent it, and though he may not really be faulty yet the law will always adjudge him so, and impute sailors' offences to his negligence; and were it otherwise, the merchant would be in a very dangerous condition; and the reasons why a master should be responsible for his crew are, because it is of his own choosing, and under his correction and government, and on shipboard know no other superior but himself, and if they are faulty he may correct and punish them (in a moderate manner) and justify the same by law; and the fact being proved against them, he may re-imburse himself out of their wages.

This act explains and amends an act of 7 Geo. 2. cap. 15. intituled, An act to settle how far owners of ships shall be answerable for the acts of the masters or mariners.

From and after September 1, 1786, no person, or persons, who is, are, or shall be owner or owners of any ship or vessel, shall be subject or liable to answer for or make good, to any one or more persons, any loss or damage, by reason of any robbery, embezzlement, secreting, or making away with, of any gold, silver, diamonds, jewels, precious stones, or other goods or merchandize, which shall, from and after that day, be shipped, taken in, or put on board any ship or vessel, or for any act, matter or thing, damage or forfeiture; done, occasioned, or incurred, from and after the passing this act, without the privy and knowledge of such owner or owners; further than the value of the ship or vessel, with all her appurtenances and the full amount of the freight due, or to grow due, for and during the voyage wherein such robbery, embezzlement, secreting, or making away with as aforesaid, shall be made, committed, or done; although the master or mariners, shall not be in any wise concerned in or privy to such robbery, embezzlement, secreting, or making away with; any law, custom, or usage, to the contrary thereof in any wise notwithstanding.

No owner or owners of any ship or vessel shall be subject or liable to answer for or make good, to any one or more person or persons, any loss or damage which may happen to any goods or merchandize whatever; which from and after September 1, 1786, shall be shipped, taken in, or put on board any such ship or vessel; by reason or means of any fire happening to or on board the said ship or vessel.

No master, owner or owners of any ship or vessel, shall be subject or liable to answer for, or make good, to any one or more person or persons, any loss or damage which may happen to any gold, silver, diamonds, watches, jewels, or precious stones, which from and after the passing this act, shall be shipped, taken in, or put on board any such ship or vessel; by reason or means of any robbery, embezzlement, making
away with, or secreting thereof, unless the owner or shipper thereof shall, at the time of shipping the same, insert in his bill of lading, or otherwise declare in writing to the master, owner or owners of such ship, or vessel, the true nature, quality, and value of such gold, silver, diamonds, watches, jewels, or precious stones.

Enacts that if several freighters or proprietors of such gold, silver, diamonds, jewels, or precious stones, or other goods or merchandize, shall suffer any loss or damage, by any of the means aforesaid, in the same voyage (fire only excepted) and the value of the ship or vessel with all her appurtenances, and the amount of the freight due, or to grow due during such voyage, shall not be sufficient to make full compensation to all and every one of them, then such freighters or proprietors shall receive their satisfactions thereout in average, in proportion to their respective losses or damages; and in every such case, it shall and may be lawful to and for such freighters or proprietors, or any of them, on behalf of himself and all other such freighters and proprietors, or to and for the owners of such ship or vessel, or any of them, or on behalf of himself and all the other part owners of such ship or vessel, to exhibit a bill in any court of equity for a discovery of the total amount of such losses or damages, and also of the value of such ship or vessel, appurtenances and freight, and for an equal distribution and payment thereof amongst such freighters and proprietors, in proportion to their respective losses or damages, according to the rules of equity; provided always, that if any such bill shall be exhibited, by or on the behalf of the part-owners of such ship, the plaintiff or plaintiffs shall annex an affidavit to such bill or bills, that he, or they do not collude with any of the defendants thereto; and shall thereby offer to pay the value of such ship or vessel, appurtenances, and freight, as such court shall direct; and such court shall thereupon take such method for ascertaining such value, as to them shall seem just, and shall direct the payment thereof, in like manner as is now used and practised in cases of bills of interpleader.

Provided always, that nothing in this present act contained shall extend, or be construed to extend, to impeach, lessen, or discharge any remedy, which any person or persons now hath or shall or may hereafter have, against all, every, or any the masters and mariners of such ship or vessel, for or in respect of any embezzlement, secreting or making away with any gold, silver, diamonds, jewels, precious stones, or merchandize, shipped or loaded on board such ship or vessel, or on account of any fraud, abuse, or malversation of and in such masters and mariners respectively; but that it shall and may be lawful to and for every person or persons so injured or damaged, to pursue and take such remedy for the same, against the said master and mariners respectively, as he or they might have done before the making of this act.

When goods are once delivered to a master, they are not subjected to be attached in his hands, nor can any custom whatsoever support the same, for they are in law as it were bailed to the ship, until the freight and all other charges are paid: and it is very much doubted whether an attachment can be made in London of any goods lying on board ship, in the river of Thames (though the port of London) notwithstanding freight, and all other charges are paid off.

Commissioners of bankruptcy issued a warrant to seize goods of a bankrupt on board two ships in Topsham bay in Devonshire; the goods were consigned to persons in Holland, who had not paid the bankrupt for them; the masters refused to deliver the goods notwithstanding the warrant, which occasioned the commissioners coming to demand them, though they were still refused.

Sir Peter King moved for an order upon the masters for their contempt.

The court at first greatly doubted, whether they could make an order in aid and assistance of the warrant of the commissioners of bankruptcy, the statute having vested a large power in them; besides, the persons, to whom the goods were consigned, would
be indebted to the creditors of the bankrupt, which creditors may recover by the law of Holland.

Sir Peter King. We shall rather lose the goods than follow them into Holland.

Lord Chancellor. Their refusing to deliver the goods upon warrant is no contempt to this court, though the commissioners act under a commission under the broad seal: the masters in this present case have some colour to detain the goods, for upon a delivery of them, they may be disappointed of freight, and the assignees of the commission must stand in the same place as the bankrupt, and be subject to his contract.

But, however, an order was made upon the masters to deliver the goods upon payment of the freight, and the masters to be indemnified by the creditors against a bill of lading, which was sent by the consignees.

I have now finished the subject of ships and seamen, which has been spun out to a great length by the necessary quotations of the cases and laws so interesting a topic calls for; and I think the omitting of any of them would have rendered the discourse defective. I shall now, according to my proposed method, proceed to treat of other marine affairs; such as

Freight, Charterparties, Bills of Lading, Demurage, and Bottomry.

Freight is the sum agreed on for hire of a ship, entirely or in part, for the carriage of goods from one port to another, or to many ports; and must be paid in preference to all other debts, for whose payment the goods stand engaged, but as those are responsible to the ship for her hire, so is the ship to the owner of the goods, in case of damage or waste, through any defect of the vessel or sailors.

Charterparty (Charta Partita, i.e. a deed or writing divided) is the same in the civil law with an indenture as the common law. The parties are either the owners of ships on the one part, and merchants on the other; or masters of ships, invested by the owners with power to enter into charterparties, and merchants. It is necessary to state this distinction, because the owners often charter a ship outwards, and leave it to the discretion of the master to procure the best back freight he can in the foreign port to which the cargo is consigned. The charterparty settles the agreement, as the bills of lading do the contents of the cargo, and binds the master to deliver them well conditioned at the place of discharge, according to the agreement; and for performance, the master or the owner obliges himself, ship, tackle, and furniture.

The taking a ship to freight is the hiring her of her master or owners, either in part or the whole, and either by the month for an entire voyage, or by the ton; and the contract, reduced into a writing, is commonly called a charterparty, executed between the freighter and the person who lets the ship, and expressive of the different particulars agreed on, as aforesaid.

The master or owners generally covenant to provide both a sufficiency of tackle and mariners, and to fit the ship in every respect for performing the voyage agreed on; and the merchant, on his part, stipulates to comply with the payment, promised for freight, on delivery of his goods, and both oblige themselves in penalties for non-compliance; the nature and form of which will be shewn in the subsequent copy of a charterparty, and the consequent security of a bill of lading, both which I have inserted for my readers government.

If there be a verbal agreement only, and earnest given, and the same be broke off by the merchant, according to the Rhodian law, he loses his earnest; but, if the owners or master repent, they forfeit double.
But by the common law of England the party damned to may bring his action on the case, and recover all damages on the agreement.

If, by the time appointed in the charterparty, the ship is not ready to take in, or the merchant (after the days of demurrage commonly granted) not ready to load, the parties are at liberty, and the suffering one hath his remedy against the other by action, to compensate the damage.

If part of the loading be on board, and some intervening misfortune prevents the merchant from shipping the whole in time, the master is at liberty to contract with another, and shall have freight by way of damage for the time that those goods were on board after that limited; for such agreements, being of a conditional nature, a precedent failure as to a complete loading will determine the same, unless afterwards affirmed by consent; and though it be no prudence for every merchant or master to depart from the contract, on a non-compliance of articles, yet it is the highest justice that ships and masters should remain free; for otherwise, by the bare lading of a cask or bale, they might be defeated of the opportunity of passage, or season of the year.

So, on the other hand, if the vessel be not ready, the merchant may ship the remainder of his goods on board another and discharge the first, and recover damages against the master or owners for the rest; this being grounded on the like reason as the former.

Charterparties have always by the common law had a genuine construction as near as may be, and according to the intention and design, and not according to the literal sense of traders, or those that merchandise by sea, yet they must be regularly pleaded; and therefore in an action of covenant or an indenture dated the 9th Oct. 38 Eliz. wherein was recited, whereas by indenture of charterparty dated, Sept. 8, 38 Eliz. between the plaintiff and Francis Cherry, the plaintiff having hired of him a ship, for a voyage to Dantzic, upon taking the ship it was agreed between them, that the ship should be laden with corn at Dantzic, and sail from thence to Leghorn: Now by the said indenture, in consideration the plaintiff had agreed, that the defendant should have the moiety of corn, quod tunc fuit, (what then was) or afterwards should be laden in the ship during the said voyage, the defendant covenanted to pay the moiety of the money for the said corn, quod tunc fuit, or afterwards should be laden, &c. and alleges in fact (in fact) that Oct. 9, 38 Eliz. the ship was laden with sixty lasts of corn, and for not performance of this covenant the action was brought; the defendant pleaded, that deed was sealed and delivered Oct. 28, 38 Eliz. & quod ad tunc vel postum (and that at that time or afterwards) there was not any corn laden there, and traverseth the delivery Oct. 9, or at any time afterwards before the 28th Oct. 38 Eliz. and it was adjudged upon demurrer, that in regard the plaintiff declared upon a deed dated Oct. 9, 38 Eliz. it shall be intended to have its essence and delivery at that time, and no other; and if he should confess it to be delivered at any other time, it would be a departure from his declaration, and the word tunc is referred to the delivery, and not to the date; and if it were delivered ten months after the date, he should not have the benefit of the corn laden before the delivery: And therefore the defendant was adjudged not to be charged with paying for any corn before the delivery of the deed, the words of the deed being, that he should pay for the corn then laden, &c. which (then) is referred to the time of the essence of the deed by the delivery, and not to the date.

Atkinson contracted with Buckle for the carriage of an hundred quarters of barley, and promised to deliver unto him the hundred quarters of barley a ship-board at Barton Haven in the county of York, to carry them for him, and for the carriage thereof did promise to pay him so much; and Buckle promised to carry the same for him, and accordingly brought his ship to the said haven, expecting there the delivery of the hundred quarters of barley; but Atkinson came not to deliver the same to him, whereupon
Buckle brought his action of the case upon the promise, and upon non assumptis pleaded, had a verdict and judgment, which was affirmed upon a writ of error.

Covenant upon a charterparty between Bolton owner, and Lee and Morgan merchants, freighters of a ship, let by Bolton, on freight, for a voyage to Guinea, at 48l. per mensem, and there was a mutual covenant between the parties, & quemlibet eorum modo sequente (and each of them in the following manner) and then divers covenants follow, concerning the ship's tackle and performance of the voyage; and then a covenant for the payment of the freight (viz.) when the ship arrived at Guinea, the freight then due, was, upon notice, to be paid in England; and when she arrived in England, the residue, from the time of the last payment, was to be paid. And saith that at such a time the ship arrived, and that six months and ten days were then past, which came to so much, whereof notice was given; and that after such a time the ship arrived in England, and that the freight for six months, from the time of the last payment, came to 287l. 4s. and that the defendant had not paid any of the sums; upon which the defendant demurred, and took these exceptions to the declaration.

1. For this, that the action is brought against one of the defendants only, omitting the other, sed non allocatur (but not allowed), the covenant being between them, et quemlibet eorum, (and each of them) is joint and several of every part.

2. For that it appears upon computation, the plaintiff demanded more upon the first breach than is due, by 30s. and less than is due upon the second by 16s. and though that the first may be cured by the jurors finding less, or by the plaintiff's releasing the overplus, yet where he demands less than is due, it is incurable; and cited several books there quoted for that purpose in assumptis, where, as in this case, only damages are to be recovered; and on the other part was cited, Cro. Jac. 498. Pemberton v. Shelton, and 529, Parker v. Curson and Uxor. See 2 Levinz 4. Hulme and Sambers; and 2 Vent. 129. Welby and Philips. Hale C. J. took a difference between this case of covenant and debt, and held, that after verdict it had been cured without question; but upon demurrer there may be some doubt, the demurrer being general; but had the demurrer being special, it had been ill, and ruled judgment, pro quer. 2 Levinz 56, and 3 Keble 39 and 50, Bolton and Lee.

If goods are fully laden on board, and the ship hath broke ground, and the merchant Ad Leg. Rhod. on consideration determine again to unload them, and not prosecute the adventure, by the marine law the freight is due.

And if the ship in her voyage becomes unable, without the master's fault, or that the master or ship be arrested by any foreign prince, or state, in her voyage, the master may either mend his ship, or freight another; but if the merchant will not consent thereto, then the freight becomes due, for so much as the ship hath earned; otherwise the master is liable for all damages that shall happen; and therefore if that ship to 1. 14. c. 2. Digest. Paulus, in which the goods were translated perished, the master shall answer; but if both the ships perish, then he is discharged: but in case of extreme necessity, as that the ship would be in a sinking condition, and an empty ship is passing by, or at hand, he may translate the goods; and if that ship sinks or perishes, he is there excused; but then it must be apparent that the ship seemed probable and sufficient.

If a master shall weigh anchor, and sail after the time covenanted or agreed for his departure, if any damage happens at sea after that time, he shall refund and make good all such misfortune; yet if a charterparty is made, that the plaintiff shall sail from London to Lisbon, with the first wind and opportunity, &c. in consideration of which the merchant did covenant to pay so much for freight; the ship departs not with the first wind and opportunity, yet afterwards breaks ground, and arrives at her port, the freight in this case is become due; for there is nothing can bar the ship of her freight, but the not departure, for only that in law is traversable, being material to avoid the payment.
of the freight; but to say the ship did not depart with the next wind, is but a circumstance, which, in strictness of law is not traversable.

If it be agreed, that the master shall sail from London to Leghorn in two months, and freight accordingly is agreed on, if he begins the voyage within the two months, though he does not arrive at Leghorn within the time, yet the freight is become due.

The East India Company might by charterparty keep a ship they had freighted a long time in India, and did so keep her until she was unfit for service, and could not come home; they were obliged in chancery to pay the damage, though by the charterparty it was payable at the return of the ship.

So where no freight was to be paid for the cargo outwards, but freight for the cargo homewards, and the factor abroad had no goods to load her homewards, payment of the freight was decreed.

And if a ship is freighted to go to any place to load, and on arrival there the factor cannot, or will not put any thing on board her, after the master has staid the days agreed on by charterparty, and made his regular protests, he shall be paid, empty or full.

Though the officers and mariners gave bond not to demand wages, unless the ship returned to London, she arrived at a delivering port and afterwards was taken by the enemy, they had their wages to the delivering port.

If a ship is freighted from one port to another, and thence to a third, fourth, and so home to the port from whence she first sailed (commonly called a trading voyage) this is all but one and the same voyage, so as it be in conformity to the charterparty.

A merchant agrees with a master, that if he carries his goods to such a port, he will then pay him such a sum; in the voyage the ship is assaulted, entered and robbed by pirates, and part of her lading taken forth, and afterwards the remainder is brought to the port of discharge; yet the sum agreed upon is not become due, for the agreement is not by the master performed.

Though by the civil law this is vis major or casus fortuitus (the greater force or an accidental case) there being no default in the master or his mariners, and the same is a danger or peril of the sea, which if not in naval agreements expressed, yet it is naturally implied; for it is certain, that if those goods which the pirates carried away had been in stress of weather thrown overboard, the same would not have made a disability as to the receipt of the sum agreed on; for both by the common and marine law, the act of God, or that of an enemy, shall no ways work in private actions.

If a ship be freighted by the ton, and she is full laden according to the charterparty, the freight is to be paid for the whole, otherwise but for so many ton as the lading amounted to.

If freight be contracted for the lading of certain cattle, or the like, from Dublin, to West Cheshire, and some of them happen to die before the ship’s arrival, the whole freight is become due as well for the dead as the living.

But if the freight be contracted for the transporting them, at so much per head, if death happens, there ariseth due no more freight than only for such as are living, at the ship’s arrival at her port of discharge, and not for the dead.

When cattle or slaves are sent aboard, without any previous agreement for lading or transporting them, but generally, then freight shall be paid as well for the dead as the living; and if freight be contracted for the transporting of women, and they happen in the voyage to be delivered of children, no freight becomes due for the infants.

If goods are sent on board, generally, the freight must be according to that commonly paid for the like accustomed voyages.

If a ship shall be freighted, and named to be of such a burthen, and being freighted by the ton, shall be found less, there shall be no more paid than only by the ton, for all goods that were laden on board.
And if a ship be freighted for two hundred tons or thereabouts, the addition of thereabouts is commonly reduced to be within five ton, more or less, as the moiety of the number ten, whereof the whole is compounded.

If a ship be freighted by the great, and the burthen of it not expressed, yet the sum certain is to be paid.

If a freighter, by loading prohibited or unlawful goods, occasions the ship’s detention, or otherwise impedes her voyage, he shall pay the freight contracted and agreed for.

When a ship is freighted out and in (or out and home) there is no freight due till the whole voyage is performed; so that if she be cast away coming home, the freight outwards, as well as inwards, becomes lost.

A part owner of a ship sued the other owners for his share of the freight on finishing her voyage: but the other owners had fitted her out, in which the complainant would not join, whereupon the other owners complained in the Admiralty; and by order there, they gave security, if the ship perished in the voyage, to make good to the plaintiff his share, or to that effect; in such a case, by the law marine and course of the Admiralty, the plaintiff was to have no share of the freight; it was referred to Sir Lionel Jenkins to certify the course of the Admiralty, who certified accordingly, and that it was so in all places, for otherwise there would be no navigation; whereupon the plaintiff’s bill was dismissed.

If a master lets out his ship, and afterwards secretly takes in other goods unknown to the first freighter, by the law marine he loses his freight; and if it should so fall out, by law, that any of the freighter’s goods should for safety of the ship be cast overboard, the rest shall not become subject to the average, but the master must make the damage good; though, if the goods are brought into the ship secretly and unknown to him, it is otherwise; and goods so brought in, may be subjected to what freight the master thinks fit.

When a ship puts into any other port than that she was bound to by agreement, the master shall answer all damages that shall accrue thereby; but if she was forced in by storm, enemies, or pirates, he must afterwards proceed to that he was obliged to by the contract.

In construction of law, the lading of the ship is tacitly obliged for the freight, the same being in point of payment preferred before any other debts to which the goods so laden are liable, though such debts, as to time, were precedent to the freight; for the goods remain, as it were, bailed for the same; nor can they be attached in the master’s hands, though it is commonly conceived otherwise.

As ships deserve wages like a labourer, the actions touching the same are, in the eye of the law, generally construed favourably for the ship and owners; and therefore if four parts in five of them shall make up their accounts with the freighters, and receive their proportions, yet the fifth man may sue singly by himself without joining with the rest, and this as well by the common law as the law marine.

If a ship in her voyage happens to be taken by an enemy, and afterwards is re-taken by another ship in amity, and restitution is made, and she proceeds on in her voyage, the contract is not determined, though the taking by the enemy divested the property out of the owners; yet by the law of war, that possession was defeasible, and being recovered in battle afterwards, the owners become re-invested; so the contract, by fiction of law, became as if she never had been taken, and so the entire freight becomes due.

It was covenanted by a charterparty, that a ship should return by a certain time within the river of Thames, (the dangers of the sea excepted) and afterwards in the voyage, and within the time of the return, the ship was taken upon the sea by enemies unknown to the covenanter, and being detained by them could not return within the
river of Thames, within the time mentioned in the covenant. Resolved, this impediment was within the exception, for these words intend as well any danger upon the sea by pirates or men of war, as dangers of the sea, by shipwreck, tempest, or the like.

If freight be taken for a hundred tons of wine, and twenty of them leak out, so that there is not above eight inches from the bulge upwards, yet the freight becomes due; but, if they be under eight inches, some conceive it then to be in the election of the freighters to flank them up to the master for freight; but most think otherwise; for if all had leaked out (if there was no fault found in the stowage, by a survey from the Trinity-house) there is no reason the ship should lose her freight; for the freight arises from the tonnage taken, and if the leakage was occasioned through storm*, the same perhaps may come into an average.

It is certain if a ship freighted by the great be cast away, the freight is lost; but if by the ton or parcels, and part thereof is saved from the wreck; doubted whether pro rata, she ought not to be answered her freight†.

If a ship by charterparty, reciting her to be of the burthen of 200 tons, is taken to freight for a sum certain, to be paid at her return, the sum certain is to be paid, though the ship amounts not to that burden.

In case a ship is freighted after the rate of 20l. for every month that she shall be out, to be paid after arrival at the port of London; and the ship is cast away coming up from the Downs, but the lading is all preserved, in this case the freight is become due; for the money arises so monthly by the contract, and the place mentioned is only to shew where payment is to be made; for the ship deserves wages like a mariner who serveth by the month; and though he dies in the voyage, yet his executors are to be answered pro rata. Besides, the freight becomes due by indenture on the delivery or bringing up of the commodities to the port of London, and not of the ship.

If a man freights a ship out, and covenants that the ship should sail out of that port to Cadiz with the first fair wind and opportunity, and the freighter covenants, that for the freight of all the premises he would pay unto the master 18s. if the master does not aver that the ship did not arrive at the port of Cadiz, he cannot maintain an action against the freighter.

If the master enters into a charterparty for himself and owners, the master in that case may release the freighters, without advising with the owners; but if the owners let the ship out to freight, whereof J. J. is master, though the master covenant in the same charterparty and subscribes, yet his release in that case will not bind the owners, but the owners’ release on the other hand will include the master; and the reason is, for that the master is not made a proper party to the indenture. And so it was ruled, where an indenture of charterparty was made between Scudamore and others, owners of the good ship called the B, whereof Robert Pitman was master, on the one part, and Vandenstene on the other part; in which indenture plaintiff did covenant with the said Vandenstene and Robert Pitman, and bound themselves to the plaintiff and Robert Pitman for the performance of covenants in 600l. and the conclusion of the indenture was—In witness whereof the said Robert Pitman put his hand and seal, and delivered the same: in an action of covenant, for not performing certain covenants in this indenture, the defendant pleaded the release of Pitman, whereupon the plaintiff demurred, and it was adjudged that the release of Pitman did not bar the plaintiff because he was no party to the indenture; and the diversity in that case was taken and agreed between an indenture reciprocal between parties on the one side, and parties on the other side, as that was; for there

* Masters should take care to make their regular protests after a storm, as they may suffer severely by omitting it.
† It is common to give up what is saved to the assured, that the assured may recover the whole insurance.
no bond, covenant, or grant, can be made to, or with any that is not party to the deed; but where the deed indented is not reciprocal, but is without a between, &c. as omnibus christi fidelibus, &c. there a bond, covenant, or grant, may be made to divers several persons.

If an indenture of charterparty be made between A. and B. owners of a ship of the one part, and C. and D. merchants of the other part; and A. only seals the deed on the one part, and C. and D. on the other part; but in the indenture it is mentioned that A. and B. covenant with C. and D. and C. and D. covenant with A. and B.: in this case, A. and B. may join in an action against C. and D. though B. never seals the deed, for he is a party to the deed, and C. and D. have sealed the other part to B. as well as to A.

Covenant upon a charterparty by which the master of a ship covenants to sail with the first fair wind to Barcelona, and that the mariners shall attend with a boat to relade the ship, and then to return with the first fair wind to London, and to unload and deliver the goods; and the merchants covenant to pay so much for freight, and so much for demurrage every day; the master brought his action for the freight and demurrage, and declares that he sailed such a day, with the first fair wind, and upon all the other points. The defendant pleads quáod the freight, that the ship did not return directly to London, but went to Alicante and Tangier, and made divers deviations, and by these delays the goods were spoiled; and as to the demurrage, that this was occasioned by the negligence of the mariners, in not attending with the boat to relade the ship, to which the plaintiff demurred; and per curiam pro quer. for that the covenants are mutual and reciprocal, upon which each shall have his action against the other, but shall not plead the breach of one in bar of another, for perhaps the damage of the one side and the other are not equal.

If a factor freights a ship, by order and for account of another, out and home, and a charterparty is accordingly made and indented between him and the master, the factor is liable for the freight and performance of all covenants; but if the ship be only freighted outwards, and loaded by the factor, the goods shipped are only liable for the freight, and no demands to be made on the freighters in virtue of the charterparty but the person who receives the goods is to pay it, according to the tenour of the bill of lading.

If a ship is freighted out and home, and after having delivered her cargo at the place agreed on, there are no goods provided for her re-lading, the master must stay the days of demurrage agreed on by charterparty, and make his regular protest for his freighter's non-compliance, who will in this case be obliged to pay him empty for full; though should the master not wait the time stipulated, or omit to make his protest, he will lose his freight; and in case the master, on his finding no goods provided by his freighter, should determine to load some on his own account, as salt, or the like, this will not obstruct his recovering his freight; for if the ship had been laden only with salt by the merchant, which (it may be) would not pay half the freight, yet the shipper or proprietor may at pleasure abandon the same to the master for his freight, and he can demand no more by the charterparty; but if the master take in such salt on his own account, before the days of demurrage are expired, and that by some condition made with his freighter, he may claim freight, then this latter is to have the benefit of the salt in deduction of the said freight.

Form of a Charterparty of Affreightment.

This charterparty, indented, made, &c. between A. B. of, &c. mariner, master, and owner of the good ship or vessel called, &c. now riding at anchor at, &c. of the bur-
vol. i.
then of two hundred tons, or thereabouts, of the one part, and C. D. of, &c. merchant, of the other part, witnesseth, that the said A. B. for the consideration herein-after mentioned, hath granted, and to freight letten, and by these presents doth grant, and to freight let, unto the said C. D. his executors, administrators, and assigns, the whole tonnage of the hold, sternsheets, and half deck, of the said ship or vessel, called, &c. from the port of London to, &c. in a voyage to be made by the said A. B. with the said ship, in manner hereafter mentioned (that is to say) to sail with the first fair wind and weather, that shall happen after, &c. next, from the said port of London, with the goods and merchandize of the said C. D. his factors, or assigns, on board, to, &c. aforesaid (the dangers of the sea excepted) and there unlade and make discharge of the said goods and merchandizes, and also shall there take into and aboard the said ship again, the goods and merchandizes of the said C. D. his factors, or assigns, and shall then return to the port of London, with the said goods, in the space of, &c. limited for the end of the said voyage. In consideration whereof the said C. D. for himself, his executors, and administrators, doth covenant, promise, and grant to and with the said A. B. his executors, administrators, or assigns, by these presents, that the said C. D. his executors, administrators, factors, or assigns, shall, and will, well and truly pay, or cause to be paid unto the said A. B. his executors, administrators, or assigns, for the freight of the said ship and goods, the sum of, &c. (or so much per ton) within twenty-one days after the said ship's arrival, and goods returned and discharged at the port of London aforesaid, for the end of the said voyage: And also shall and will pay for demurrage (if any shall be by the default of him the said C. D. his factors or assigns) the sum of, &c. per day, daily, and every day, as the same shall grow due. And the said A. B. for himself, his executors, and administrators, doth covenant, promise, and grant to and with the said C. D. his executors, administrators, and assigns, by these presents, that the said ship or vessel shall be ready at the port of London, to take in goods by the said C. D. on or before, &c. next coming. And the said C. D. for himself, his, &c. doth covenant and promise, within ten days after the said ship or vessel shall be thus ready, to have his goods put on board the said ship, to proceed on in the said voyage; and also on the arrival of the said ship at, &c. within, &c. days, to have his goods ready to put on board the said ship, to return on the said voyage. And the said A. B. for himself, his executors, and administrators, doth further covenant and grant to and with the said C. D. his executors, administrators, and assigns, that the said ship or vessel now is, and at all times during the said voyage shall be, to the best endeavours of him the said A. B. his executors and administrators, and at his and their own proper costs and charges, in all things made and kept stiff, staunch, strong, well apparelled, furnished, and provided, as well with men and mariners, sufficient and able to sail, guide, and govern the said ship, as with all manner of rigging, boats, tackle, apparel, furniture, provision, and appurtenances fitting and necessary for the said men and mariners, and for the said ship during the voyage aforesaid. In witness, &c.

The following is the Form of a Charterparty, whereby the Owners of one Moiety of a Ship let to Freight their Share to the Owners of the other Moiety.

This charterparty, indented, made, &c. between A. B. and C. D. of London, merchants, owners of the one moiety or half part of the good ship or vessel called the Neptune, of the burthen of 200 tons, with the like moiety of all the sails, masts, tackle, apparel, furniture, ordnance, and appurtenances thereunto belonging, now riding at anchor in the river of Thames, within the port of London, of which the said C. D. is master of the one part, and E. F. and G. H. of London, merchants, owners of the other moiety and residue of the said ship, with the masts, sails, tackle, ordnance, furniture,
and apparel thereunto belonging, on the other part, witnesseth, that the said A. B. and C. D. have granted and letten to freight, and by these presents do grant and let to freight, all their said part and moiety of the said ship and premises, unto the said E. F. and G. H. for a voyage with her (by God's grace) to be made in manner and form following:

That is to say, that the said A. B. and C. D. for them, their executors, administrators, and assigns, do hereby covenant and grant to and with the said E. F. and G. H. for them, their and each of their executors and administrators by these presents, that the said ship (being already laden) shall, with the first good wind and weather, after the date hereof (God permitting) sail directly from the said river of Thames to the port of Leghorn in Italy, (the perils and dangers of the seas excepted) and there unladen and discharge such goods and merchandizes as shall be directed and appointed by the said E. F. and G. H. or one of them, their, or one of their factors or assigns, in good condition; and from thence shall sail, and take her direct course, as wind and weather shall serve, with as much speed as may be (the perils and dangers of the sea excepted) to Venice, and there shall stay and abide the space of twenty working days, next after her arrival there, to unlade all such goods and merchandizes as shall remain on board for account of E. F. and G. H. after her first delivery at Leghorn as aforesaid; and to relade such goods, wares, and merchandizes as the said E. F. and G. H. or either of them, their, or either of their factors or assigns, shall think fit to charge and relade aboard and into the said ship, that is to say, so much as the said ship can conveniently carry, over and above her victuals, tackle, ammunition, apparel, and furniture.

And the said ship with her said lading shall with the first good wind and weather, after the expiration of the said twenty days, sail and proceed from the said city of Venice to London, with the said goods, within the time, &c. In consideration whereof the said E. F. and G. H. for themselves, and either of them, their and either of their executors and administrators, do covenant, promise, and grant to and with the said A. B. and C. D. and either of them, their and either of their executors, administrators, and assigns, by these presents, that they the said E. F. and G. H. or one of them, their, or one of their executors, administrators, or assigns, shall and will well and truly pay or cause to be paid to the said A. B. and C. D. or one of them, their, or one of their executors or administrators, within the said city of London, for every ton of such wares and merchandizes as shall be laden or unladen in the said ship, during the said voyage, the sum of, &c. (counting the tonnage according to custom; or if a certain sum is agreed for the voyage, out and home, or so much per month) for the part and interest of the said A. B. and C. D. in the said ship, and for, and in respect of the freight and hire of their part of her; which said money is to be paid in manner and form following, that is to say; one third part thereof upon the right discharge of the said ship, and another third part thereof within the space of six weeks then next following, and the remaining third part thereof within the space of two months next ensuing after the end and determination of the said six weeks. And also shall and will pay for demurrage (if any shall be by default of the said E. F. and G. H. their factors or assigns) the sum of—per day, daily, and every day, as the same shall grow due.

And the said A. B. and C. D. for them, and either of them, their and either of their executors and administrators, do covenant and grant to and with the said E. F. and G. H. or their executors and administrators, by these presents, that the said ship, for their part, shall be strong and staunch, and well and sufficiently tackled and apparelled, with sail, sail-yards, anchors, cables, ropes, gun-shot artillery, gunpowder, and all other instruments, tackle, and apparel, needful and necessary for such a ship, and for such a voyage, together with an able master, and sufficient number of mariners.

And to the performance of all, and every the covenants, grants, articles, and agree-
ments, on the parts, and behalves of every of the said parties, truly to be helden, performed, and kept, in all things as is aforesaid, the said parties to these presents, do bind themselves to one another: that is to say, the said A. B. and C. D. do by these presents bind themselves, and either of them, and their several executors and administrators, goods, and their part and interest in the said ship, with the furniture thereof, to the said E. F. and G. H. and to their executors and administrators; and the said E. F. and G. H. do in like manner bind themselves, and either of them, their and either of their executors, administrators, and assigns, and all their goods and interest in the said ship, to the said A. B. and C. D. their executors and administrators, in the sum or penalty of one thousand pounds, of lawful money of Great Britain, by the party or parties infringing the said covenants, or any of them, to the other party or parties truly observing, to be paid by virtue of these presents.

If before the departure of the ship there should happen an embargo, occasioned by war, reprisals, or otherwise, with the country to which the ship is bound, so that she cannot proceed on her voyage, the charterparty shall be dissolved without damages or charges to either party, and the merchant shall pay the charges of unlading his goods; but if the restraint arises from a difference between the parties themselves, the charterparty shall still remain valid in all its points.

If the ports be only shut, and the vessels stopped for a time, the charterparty shall still be valid, and the master and merchant shall be reciprocally obliged to wait the opening of the ports, and the liberty of the ships, without any pretensions for damages on either side.

However, the merchant, at his own charges, may unlade his goods during the shuttering up of the port, upon condition either to relade them, or indemnify the master. The great variety of circumstances which different voyages occasion, naturally produce a correspondent diversity in charterparties; and were I to quote a series of all that offer on this head, I should greatly exceed the limits I have prescribed myself. I therefore rather omit it, as from those preceding others may be formed, to answer every purpose required; I shall, therefore, to what has already been said about freight, add here the copy of a bill of lading, which is a writing wherein masters of ships acknowledge the receipt of goods aboard, and oblige themselves to deliver the same in good order and condition at the place where they are consigned to. There must always be three made out, and in England they are to be on stamped paper, otherwise they are invalid, of which, one should be remitted per first post after signing to the person the goods go to, the second remain with the shipper, and the third, made out on an unstamped paper, be given to the master for his government, in ascertaining the specific merchandise he has on board.

**The Form of a Bill of Lading, viz.**

Shipped in good order by A. B. merchant, in and upon the good ship called whereof C. D. is master, now riding at anchor in the river of Thames, and bound for Alicant in Spain, ten bales, containing fifty pieces of broad cloth, marked and numbered as per margin, and are to be delivered in the like good order and condition at Alicant aforesaid (the dangers of the sea excepted) unto E. F. merchant there, or to his assigns, he or they paying for the said goods per piece freight, with prime and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading of this tenor and date, one of which bills being accomplished, the other two to stand void. And so God send the good ship to her designed port in safety. Amen.

Dated at London.
BILLS OF LADING, &c.

The difference between a bill of lading and a charterparty is, that the first is required and given for a single article or more, laden on board a ship that has sundry merchandise shipped for sundry accounts. Whereas a charterparty is a contract for the whole ship. Bills of lading ought to be signed by the master within twenty-four hours after the delivery of the goods on board. But upon delivery of the goods, the master, or other person officiating for the master in his absence, is to give a common receipt for them, which is to be delivered up, upon the master's signing the bills of lading.

Upon delivering the goods at the port of destination to the shipper's factors or assigns, giving up the bill of lading sent to the factors or assigns is not a sufficient discharge, but the master may insist upon a receipt.

Demurrage, or demurrage, is an allowance made to the master of a ship by his freighters, for staying longer in a place than the time first appointed for his departure, or his stay at the delivering ports; and is generally inserted in the charterparty to be paid daily as it becomes due; the days are always limited, so that on expiration thereof, and protests duly made, the master is at liberty to proceed, as is before mentioned. The price is regulated by the burthen of the ship.

Bottomry is the act of borrowing money upon the keel or bottom of a ship by engaging the vessel for the re-payment, so that in case she miscarries, the lender loses his money, though, if she finishes her voyage and arrives in safety, the borrower is to re-pay the loan with a premium or interest agreed on (which is always adequate to the risk) and if this is denied, or deferred, the lender shall have the ship.

Bottomry is likewise called faenus nauticum, pecunia trajectitia, and sometimes usura marina, though improperly, for notwithstanding the interest in these contracts is always much larger than that the law prescribes for monies lent on landed securities, yet it is never accounted usury, as marine loans are furnished at the hazard of the lender, which the others are not; and where the risk is greatest on the advanced monies, the profit ought reasonably to be so too.

Money lent on bottomry is commonly on the ship only, though sometimes it is upon the person of the borrower, and sometimes on both; the first is where a man takes up money, and obliges himself, that if the ship agreed on arrives at such a port, then to re-pay the loan, with the interest stipulated, but if the ship miscarries, then nothing. But: Sea Laws, 200, 201.

When money is lent at interest, it is delivered at the peril of the borrower, and the profit of this is merely the price of the loan; whereas the profit of the other is a reward for the danger and adventure of the sea, which the lender takes upon himself, and makes the interest lawful. Usura marina joins the advanced money and the danger of the sea together; and this obligatory sometimes to the borrower's ship, goods, and person.

The interest on bottomry may amount to 30 or 40 per cent. and yet not fall within the statute of usury. As thus, 5 per cent. for the legal interest of the principal sum advanced, 15 per cent. for the hazard of the voyage outwards, 10 per cent. for the hazard of the return home, or more, according to the agreement, and it is to be remembered, that the lender will consider the premium or price for insuring the principal at home, whether he pays it, or takes it upon himself.

Where bills or bonds of bottomry are sealed, and the money is paid, if the ship receives injury by storm, fire, &c. before the beginning of the voyage, then only the person borrowing runs the hazard, unless it be otherwise provided; as that, if the ship shall not arrive at such a place, at such a time, &c. there the contract hath a beginning, from the time of the sealing: But if the condition be, that if such ship shall sail from London to any port abroad, and shall not arrive there, &c. then, &c. there the contingency hath not its beginning till the departure.

A master of a ship may not take up money on bottomry in places where his owners reside, except he be a part owner, and then he may only take up as much as his share.
in the ship will answer; for if he exceeds that, his own estate is liable to make satisfaction;* but when a master is in a strange country, where there are no owners, nor any goods of theirs, or of his own, and for want of money he cannot perform his voyage, he may in this case take up money on bottomry, and all the owners are chargeable thereto; but this is understood, where money cannot be procured by exchange or any other means: and in the first case, the owners are liable by their vessel, though not in their persons; but they have their remedy against the master.

Some masters of ships, who had insured or taken up money on bottomry, to a greater value than their adventure, having made it a practice to cast away and destroy the ships under their charge, it is made felony, and the offenders to suffer death.

By another statute it is enacted, that after the 1st of August, 1746, every sum lent on bottomry, or at respondentia, upon any subject's ship to, or from the East Indies, shall be lent only on the ship, or the merchandizes laden on board her, and so expressed in the condition of the bond, and the benefit of salvage shall be allowed to the lender, his agents, &c. who alone shall have a right to make assurance on the money lent; and no borrower of money on bottomry, or at respondentia, as aforesaid, shall recover more on any assurance than the value of his interest on the ship or effects, exclusive of the money borrowed. And if the value of his interest doth not amount to the money borrowed, he shall be responsible to the lender for the surplus, with lawful interest for the same, together with the assurance and all charges, &c. notwithstanding the ship and merchandize be totally lost.

All his Majesty's subjects were prohibited during the continuance of the late war to lend money on bottomry or respondentia, on any ships or goods belonging to France, or to any of the French dominions or plantations, or the subjects thereof, and in case they did, the contracts and agreements to be void, and they or any agent or broker interfering therein was to forfeit 500l. &c.

Some have practised the taking up monies on a fictitious supposition, the condition reciting, whereas there is such a ship (naming her) bound to Amsterdam, whereof such a man is master (although there be neither such a ship or master existing) that if that ship shall not arrive at such a place within twelve months, the money agreed on shall be paid; but if the ship shall arrive, then nothing; this is an unreasonable way of raising money copied from the Italians; and though it is also very unconscionable, and, as to eternal right, unjust; yet it has had a currency between the necessitous and avaricious part of mankind, and it was adjudged t that such a contract was good, according to the common law of this realm, and that on a special verdict; but though it has this sanction, yet the prohibiting insurance, interest or no interest (as by the aforesaid act) will tend to render it at least less practicable, if not utterly to destroy it.

The Form of a Bill of Bottomry.

To all people to whom these presents shall come, I A. B. of, &c. owner and master of the ship called, &c. of the burthen of two hundred tons, now riding at, &c. and bound for, &c. in the West Indies, send greeting; whereas I, the said A. B. am at this time necessitated to take up, upon the adventure of the said ship, called, &c. the sum of 100l. for setting forth the said ship to sea, and furnishing her with provisions for the said voyage: which C. D. of, &c. merchant, hath on request lent unto me, and supplied me with, at the rate of 20l. for the said 100l. during the said voyage: Now, know ye, that I the said A. B. do by these presents for me, my executors and administrators, covenant and grant to and with the said C. D. that the said ship shall with the first fair

wind, after the day, &c. depart from the river Thames, and shall, as wind and weather shall serve, proceed in her voyage to, &c. in the West Indies; and having there tarried until, &c. and the opportunity of a convoy (if in time of war) or being sooner dispatched (which shall first happen) shall return from thence, and shall as wind and weather shall serve, directly sail back to the river of Thames, to finish her said voyage: And I the said A. B. in consideration of the said sum of 100l. to me in hand paid by the said C. D. at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, with the freight, tackle and apparel of the same, to pay unto the said C. D. his executors, administrators, or assigns, the sum of 120l. of lawful British money, within one and twenty days next after the return and safe arrival of the said ship, in the said river of Thames, from the said intended voyage. And I the said A. B. do for me, my executors and administrators, covenant and grant, to and with the said C. D. his executors and administrators, by these presents, that I the said A. B. at the time of sealing and delivery of these presents, am true and lawful owner, and master of the said ship, and have power and authority to charge and engage the said ship, as aforesaid; and that the said ship shall at all times, after the said voyage, be liable and chargeable for the payment of the 120l. according to the true intent and meaning of these presents. And, lastly, it is hereby declared and agreed, by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away, before her next arrival in the said river of Thames, from the same intended voyage, that then the said payment of the said 120l. shall not be demanded, or be recoverable by the said C. D. his executors, administrators, or assigns; but shall cease and determine, and the loss thereby be wholly borne and sustained by the said C. D. his executors and administrators: And that then, and from thenceforth, every act, matter and thing herein contained, on the part and behalf of the said A. B. shall be void; any thing herein contained to the contrary notwithstanding. In witness, &c.

Of Ballast.

Though ballast has been adjudged to be no part of a ship's furniture, yet it is so requisite to the sailing of most vessels, as to render an enquiry into its cost; and the laws about it, very necessary, while treating on maritime affairs. It generally consists of sand, gravel, or stone, though any heavy matter answers the purpose, which is to sink the vessel to its proper depth in the water, or so to adjust weight and counterpoise, as to enable her to bear sail without oversetting.

All masters of ships, lying in the river of Thames, shall pay to the corporation of Trinity House, for all ballast demanded and entered at the ballast office, the rates following, viz. for every ton consisting of twenty hundred weight, carried to any ship employed in the coal trade, 12d. and for every ton carried to any other British ship 15d. and for every ton carried to any foreign ship 19d. And the corporation of Trinity House shall pay for the raising and carrying every ton of ballast, 9d. whereof 6d. shall be paid to the two ballastmen, and 3d. for the use of the lighters.

Nothing in this act shall alter the price of washed ballast.

If any ballastman shall deliver any ballast, which shall fall short of quantity; or shall neglect to deliver to any ship such quantity as the rulers of the ballast office shall by their usual tickets direct; or shall deliver more, or other ballast than shall be directed, every ballastman so offending, and oath being made of the fact within ten days after the offence, or within ten days after the next return of such ship, by the master, or other officer of any such ship, before any supervisor of the ballast office, being an elder bro-
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ther, shall for every ton, which shall appear to fall short, and for every ton, directed by the ballast-rulers, which such ballastman shall neglect to deliver, and for every ton delivered contrary to the directions of the said rulers, forfeit 2s. 6d.

The said master, wardens, and assistants, shall make good to the master of such ship; the quantity or value of the ballast, which shall be found deficient; and in case such recompence shall not be made within ten days after the same shall be demanded, the Corporation shall forfeit 50l. &c. which recompence the Corporation are empowered to stop out of the wages to such ballastmen, over and above the penalties.

Ditto, s. 5.
No person shall oblige any ballastman to deliver ballast, which shall be directed by the rulers of the office to be carried to any other ship; and if any person shall fraudulently receive any greater quantity of ballast, than they shall enter and pay for at the office, every person so offending, and being thereof convicted, upon oath of one witness, before a justice of peace for the city of London, or the counties of Middlesex, Essex, Kent, or Surrey, within their respective jurisdictions, shall for every ton of ballast forfeit 2s. 6d.

Ditto, s. 6.
If any ballastman shall refuse to work for the wages herein-mentioned, or having contracted to serve for any term, shall quit such service, or shall depart from the service of the Corporation, without giving three months' notice in writing to the supervisors of the ballast office; or shall refuse to work, or shall not work in such stations in the river Thames as the Corporation shall appoint, or shall work in any station contrary to the orders of the rulers of the office, given in writing, or shall join in any combination to raise wages, or obstruct the service of the Corporation, or the navigation of the river, every person so offending and being convicted as aforesaid, shall forfeit 5l.

Ditto, s. 7.
The Corporation of Trinity House shall cause marks to be set on the stem and stern of every lighter, between every two gauge marks now placed on the stem and stern, that the tonnage of every such lighter may be distinguishing by a gradual progression of two tons and a half.

Ditto, s. 8.
It shall be lawful for the masters of ships, taking ballast, to meet in the square at Billingsgate, on the third Monday in June, in every year, and to adjourn as the majority of them shall think fit, and by writing under the hands and seals of the major part of them, to appoint persons, having been masters or mates of ships, to inspect the ballast lighters; which persons are empowered to examine the marks; and in case such persons shall suspect that any of the marks have been altered, and shall at the ballast office require the said lighter to be re-weighed, the Corporation shall, within ten working days after such request, cause such lighter to be re-weighed; and in case the same shall be found to be of as great tonnage, as by the marks shall be noted, the charge of such re-weighing shall be paid by the persons requiring the same; and in case such persons shall not pay the charge within ten days after such re-weighing, they shall forfeit 5l. but if such lighter shall be found of less tonnage than the marks denote, the charge of such re-weighing shall be borne by the Corporation, who shall cause the marks on the stem and stern of such lighter to be placed in such manner as to denote the true tonnage; and in case the Corporation shall neglect to have such lighter re-weighed, or to make the same according to this act, the Corporation shall forfeit 50l.

Ditto, s. 9.
No more than two lighters shall be required to be re-weighed in any one week.

It shall be lawful for any master of a ship to appoint two persons belonging to such ship (whereof the mate to be one) to go on board any lighter, bringing ballast to such ship, to inspect the marks before and after the delivery of such ballast; and every ballastman shall immediately, before the delivery of ballast to any ship, trim such lighter so as to make the same swim, at equal marks at the stem and stern, and pump all the water out; and if any person working on board such lighter, shall hinder any person so
appointed from going on board such lighter, or shall begin to deliver the ballast before
such lighter shall be trimmed to swim at equal marks, and the water pumped out, every
person so offending shall forfeit 5l.

If any ballastman shall work, or deliver ballast, in any lighter not weighed, marked, Ditto, sect.
numbered, and allowed by the Corporation; or shall alter or counterfeit the gauge mark, 11.
or the number of such lighter, he shall forfeit 10l.

If any ballastman shall demand and receive from any master or officer, of any ship, Ditto, sect.
any money, on account of ballast, or the delivery of the same, he shall forfeit 40s.

The ballastmen employed in the service of the Corporation shall be subject to the
regulations of the Corporation, provided such regulations do not extend to the lowering
the wages.

It shall be lawful for any master of a ship to carry as ballast from London, or any Ditto, sect.
part of the river Thames, any dung, chalk, soap ashes, flints, clay, or other goods, now
claimed to be furnished as ballast, subject to the restrictions herein-after mentioned.

The master of every such ship shall first make entry at the ballast office, or with the Ditto, sect.
officer of the said Corporation at Gravesend, of the said goods, and the name of such
ship, and of the master.

At the time of such entry, the master of such ship shall pay for such licence to the Ditto, sect.
Corporation 1d. for every ton of the said goods.

If any master of a ship shall put on board any of the said goods before such entry and Ditto, sect.
payment, or shall ship any greater quantity than shall be so entered and paid for, he,
on conviction before one justice, shall forfeit 5l. &c.

Provided that the whole quantity of dung and compost, licensed to be shipped for the Ditto, sect.
use of the coasters and colliers, does not exceed three thousand tons in any one
year, to commence from the first of June; and that the whole quantity of chalk and chalk
rubbish does not exceed three thousand tons; and that the quantity of soap ashes and
all other commodities herein licensed, does not exceed two thousand tons, in any one
year.

All entries of the goods so licensed, which shall be shipped in the last seven days of Ditto, sect.
May, shall be made at the Trinity House in London, and not at Gravesend.

It shall be lawful for any master of any ship to carry as ballast, from any part of the Ditto, sect.
river Thames, any bricks, tiles, lime, or other merchandiseable commodity, without
paying any thing to the Corporation.

This act shall be a public act, &c.

This act shall continue from the first of June, 1733, for five years, and to the end of Ditto, sect.
the next session of Parliament.

Continued for seven years, &c. by 11 Geo. 2. cap. 12, and further continued for 11
years, and from thence to the end of the then next session of Parliament by 18 Geo. 2.
P. 548, and further continued by 35 Geo. 3. c. 84.

And as it has been the practice of many unthinking masters of vessels, regardless of
the public welfare, to throw their ballast out any where, to the great detriment of
many ports, &c. the Legislature thought proper to prevent the continuance of so pre-
judicial a custom, by passing the subsequent law; the preamble to which sets forth,
that masters and other persons belonging to ships, coming into havens, navigable
hores, &c. do throw out their ballast, either on the shore or on the side, and below
the usual sea mark, and do other annoyances, to the detriment and obstruction of navi-
gation, &c.

For remedy whereof, it is enacted, that if, after June 1, 1746, any master or owner, 19 Geo. 2.
or any person acting as master of any ship or other vessel whatsoever, shall cast, throw
out, or unlade, or, if after the day aforesaid, there shall be thrown out, &c. of any
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vessel, being within any haven, port, road, channel, or navigable river, within Eng-
land, any ballast, rubbish, gravel, earth, stone, wreck, or filth, but only upon the land,
where the tide or water never flows or runs; any one or more justices for the county or
place where or near which the offence shall be committed, upon information thereof,
shall summon, or issue his warrant, for bringing the master or owner of the vessel, or
other person acting as such, before him, and upon appearance or default, shall proceed
to examine the matter of fact, and upon proof made thereof, either by confession of the
party, or on view of the justice, or upon the oath of one or more credible witnesses
(which oath the said justice is to administer) he shall convict the said master, &c. and
fine him at his discretion for every such offence any sum not exceeding 5l. nor under 50s.
&c. and for want of sufficient distress, the justice is to commit the master, or person
acting as such, and convicted as aforesaid, to the common gaol or house of correction,
for the space of two months, or until payment of the penalties.

The following act explaining and amending the former, passed 32 Geo. 2.

The act of 6 Geo. 2. for the better regulating lastage and ballastage in the river
Thames, being near expiring, it is enacted that all the powers, clauses, and pro-
visions therein, other than such as are hereby amended, shall continue in force until
the 24th of June, 1770, and from thence to the end of the then next session of Parlia-
ment.

Dung, compost, soil, earth, chalk, rubbish, soap ashes, soap waste, flints, tobac-
co-pipe clay, or other clay, or any other goods, claimed to be furnished as ballast by the
Trinity House, (subject nevertheless to the payment of rates and duties, and under the
provisos and restrictions afore-mentioned) may be shipped in colliers or coasters from
London, or any part of the Thames, so that the same doth not exceed 3000 tons, over
and above 2000 tons, allowed to be shipped by the lessees or occupiers of lastalls on
the condition after-mentioned; of chalk and chalk rubbish 3000 tons, and of soap
ashes and other commodities claimed to be furnished as ballast by the Trinity House,
2000 tons.

Before shipping the ballast claimed by the Trinity House, the master or owner shall
make a due entry at the ballast office of the Trinity House, London, or at the Trinity
House, at Gravesend, (unless the ballast be shipped in the last seven days of the month
of May, then the entry at London only) and of the ship's name and of the master, and
at the same time to pay to the Corporation 1d. a ton for a licence.

If any of the commodities be shipped before entry, or any greater quantity shipped
than entered, to forfeit 5l.

Bricks, tiles, lime, or merchantable commodities, to be shipped without paying for
licence.

All lighters and other vessels employed for carrying dung, &c. on board any ship or
vessel, to be first weighed, marked, and numbered, by an officer of the Trinity House,
on the penalty of 5l. and a gauge mark of the number and tonnage of the vessel to be
painted on the stem or stern of the vessel; if removed to forfeit 5l.

If the gauge mark has been removed, altered, or changed, the Corporation may re-
weigh the lighter, and, if the tonnage is more than marked, the owner to forfeit 5l.

The Trinity Company to find lighters to take ballast from ships, within three days
after notice from the master, unless frosty or tempestuous weather, on forfeiture of 56l.

The owner or master to pay 6d. per ton to the Company for lighterage.

The master to forfeit 5l. for unloading any ballast below high-water mark; and 40s.
to be paid by any person throwing any dirt, rubbish, ashes, &c. from any wharf, quay,
or bank, or from any barge or lighter.
OF PILOTS, &c.

Of Pilots, Lodesmen, or Locmen.

By these different denominations are signified the same officer, whose business it is to conduct any vessel or ship into a road or harbour, over bars or sands, or through intricate and dangerous channels, being occasionally called in to the master's assistance when sailing as above, or by unknown shores, and diffident of his own skill and judgment; though in many parts, where the approach or entance to harbours, &c. are hazardous and difficult, the taking a pilot is not a voluntary act, but obligatory on the master, otherwise, in case of a loss, he must make it good; and the following laws are now in force concerning them in England: After a pilot is taken on board, the master has no longer any command of the ship, till she is safe in harbour, and the pilot is liable to an action for an injury done by his personal misconduct, although a superior officer is on board. (Stott. Clement's Cases, Rep. 107.) But when the ship is safe in harbour the master resumes the government of the same, and is to see to her bed and lying; the pilot being no longer liable, though for his own convenience he may still be on board. The same rule holds good, if a pilot goes on board only to conduct a ship through some dangerous place, as for instance, Yarmouth Roads; after passing them, the master must resume the command, and the pilot is no longer responsible. Yet it may happen, that the pilot shall continue on board, the remainder of the voyage; for example, he may want to go to Newcastle; but he is only to be considered as a common passenger, after he has conducted the ship through the hazardous passage, for which purpose he came on board, neither can he charge any wages, salary, or fee, though he should keep the helm during the whole voyage, except for the duty done in passing the Roads.

If a master of a ship finds himself in tempestuous weather, in any reputed dangerous place, usually denominated Pilot's Water, and a pilot offers to come on board, which offer he refuses to accept; the master in such cases is liable to his owners, freighters, or insurers, for the damage or loss of ship and cargo, if either happen in his attempting the passage without a pilot.

The master of an English collier is held by the Flemings and the Dutch to be pilot sufficient to conduct his ship from Newcastle to their ports; accordingly, in the case of a ship freighted at Shields by a Flemish merchant at Ostend with coals for that port, he refused to allow the charge of a pilot: The affair was referred to arbitration, the British Vice-Consul Mortimer, being one of the arbitrators; when it appeared, that the ship was driven by stress of weather into Yarmouth Roads, which are pilot's water, and a pilot offering his service, he accepted him. Had he done otherwise, he would have been answerable to his owners for the ship if it had been lost, and to the freighter for his coals; it was therefore decided, that the freighter was bound to allow the pilotage. Pilotage is allowed in most charterparties, but not in those made for colliers in England.

The 48th Geo. 3. c. 104, repeals all prior provisions relative to pilots, and contains the following regulations:

An Act for the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the British Seas.

[25th June, 1808.]

'Whereas ships and vessels have frequently been wrecked, and many lives and much property have been lost, from the ignorance and misconduct of persons taking charge of such ships or vessels as pilots: And whereas the Corporation of Trinity House of Prince...
Deptford Strond have, as well by usage for more than three centuries as by grants from the crown, and under the authority of an act passed in the fifth year of the reign of his late Majesty King George the Second, been empowered to appoint pilots, loadsmen, or guides, to conduct ships or vessels into and out of and upon the river of Thames, through the North Channel to or by Orfordness and round the Long Sand Head through the Queen’s Channel, or other channels into the Downs, and from and by Orfordness, and up the North Channel, and up the river Thames and Medway, and the several creeks and channels belonging or running into the same, and to make such orders and constitutions as should be needful for the wholesome government of seafaring men and maintenance and increase of navigation, and of all seafaring men within the said river of Thames; in pursuance of which powers the said Corporation have from time to time appointed a sufficient number of pilots for the purposes before-mentioned: And whereas there hath been time out of mind, and now is, a Society or Fellowship of pilots of the Trinity House of Dover, Deal, and the Isle of Thanet, who have had the pilotage and loadman of all ships from the said places up the rivers Thames and Medway; which said Society or Fellowship have been confirmed by various acts of Parliament for regulating the pilots of the Society or Fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque Port Pilots, notwithstanding which many persons not having licence or authority, or competent knowledge or experience, have taken upon themselves to act as pilots for conducting ships or vessels to and from and upon the said rivers, to the great hazard of such ships or vessels and their cargoes, and the lives of their crews: And whereas the provisions of the said acts have been found inadequate to the regulation of pilotage and the prevention of such mischiefs, and it is therefore necessary that further and more effectual regulations should be made for that purpose, and that all the provisions and regulations relating to the several descriptions of pilots aforesaid should be repealed: And whereas acts of parliament have been passed for establishing separate and peculiar jurisdictions in relation to pilotage in certain ports and on different parts of the coast of England, which by reason of the same being limited have been found insufficient to answer the good purposes intended thereby, and it is therefore necessary that more effectual regulations should be made in relation to pilotage on the coasts of England: And whereas it is necessary for duly enforcing the laws respecting quarantine, on which the health of his Majesty’s subjects essentially depends, that the names and places of residence of all pilots in England should be known by those whose duty it is to convey information respecting those laws from time to time to them: May it therefore please your Majesty that it may be enacted; and be it enacted by the King’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all and every the clauses, provisions, powers, penalties, forfeitures, matters, and things relating as well to pilots appointed by the said Corporation of Trinity House of Deptford Strond as to pilots of the Fellowship of Dover, Deal, and the Isle of Thanet, and to the pilotage by and regulation of all such pilots as aforesaid, and also as to the conduct of all persons in matters of pilotage, within the jurisdiction of the said Corporation of the Trinity House of Deptford Strond and the liberty of the Cinque Ports, which are contained in any act or acts of Parliament hereunto made, shall be and the same are hereby repealed, except only so far as such acts relate to any rates of pilotage due or to become due before the commencement of the respective new rates to be established under the provisions of this act, to any penalty for forfeiture incurred or to be incurred, or other act, matter, or thing done or to be done before the establishment of the new rules and regulations which are to be made under the provisions of this act, or before the commencement of the operations of any of the provisions of this act in relation to any such matters as aforesaid.

II. And be it further enacted, That from and after the first day of October, one
thousand eight hundred and eight, it shall be lawful for the master, wardens, and assis-
tants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity
doctrine of St. Clement in the parish of Deptford Strond in the county of Kent, (commonly
called the Corporation of Trinity House of Deptford Strond,) and they are hereby re-
quired to appoint and license under their common seal, fit and competent persons, duly
skilled, as pilots, for the purpose of conducting all ships and vessels sailing, navigating,
and passing up and down or upon the rivers of Thames and Medway, and all and every
the several channels, creeks, and docks thereof or therein, or leading or adjoining
thereto, as well between Orfordness and London Bridge, as from London Bridge to the
Downs, and from the Downs westward as far as the Isle of Wight, and in the English
Channel from the Isle of Wight up to London Bridge, which vessels shall be conducted
and piloted by such pilots so appointed and licensed, and by no other pilots or persons
whomsoever, except pilots appointed by the Society or Fellowship of the Trinity House
of Dover, Deal, and the Isle of Thanet, (commonly called Cinque Port Pilots,) so far
as such pilots are hereby authorised to pilot ships and vessels from the Westward up to
London Bridge, and from London Bridge downwards to the Westward; that is to say,
from any port or place between the Isle of Wight and the said bridge, according to the
provisions in that behalf herein-after contained, and also save and except, as well all
colliers as also all ships and vessels trading to Norway and to the Cattegat and Baltic,
and likewise round the North Cape and into the White Sea, and save and except all con-
stant traders inwards from the ports between Boulogne inclusive, and the Baltic, such
ships and vessels having British registers, and coming up or going down the North
Channel by Orfordness, but not otherwise; and likewise save and except all coasting
vessels, and all Irish traders using the navigation of the river of Thames as coasters: Pro-
vided always, that it shall be lawful, after the passing of this act, for any pilot or pilot
heretofore appointed by the said Corporation of Trinity House of Deptford Strond, or
by the Society or Fellowship of the Trinity House of Dover, Deal, and the Isle of
Thanet, to pilot or conduct any ship or vessel within such limits as such pilot or pilots
might lawfully have conducted and piloted the same before the passing of this act, under
and by virtue of the licences or authorities granted to such pilots respectively as afore-
said, which respective licences shall continue in force notwithstanding this act, so that
such pilots respectively do in all things conform themselves to the provisions of this act,
and the rules and regulations to be established under the same.

III. And it be further enacted, That from and after the first day of October, one
thousand eight hundred and eight, the respective rates or prices herein-after enumerated
in the table marked (A.) in the schedule to this act annexed, may be lawfully demanded
and received by any pilot licensed by the said Corporation of Trinity House of Deptford
Strond, for the piloting or conducting of any ship or vessel from place to place, as
expressed in the said table; and that no greater rates or prices, or other reward or
emolument, shall, under any pretence whatsoever, be demanded, solicited, or received,
than such rates or prices.

IV. And it be further enacted, That each and every pilot already appointed or to be
appointed by the said Corporation of Trinity House of Deptford Strond, under the au-
thority of this act (except only such pilots as shall be appointed by the said Corporation,
upon their receiving certificates of examination by any sub-commissioners of pilotage
as hereby directed) shall from time to time and at all times hereafter pay or cause to be
paid to the said Corporation of Trinity House of Deptford Strond, or to such person or
persons as they shall appoint to receive the same on their behalf, the sum of three guineas,
in the month of January yearly, which payment shall be accepted by the said Corpora-
tion in lieu and satisfaction of and for all the ancient and accustomed duties payable by
such pilots to the said Corporation, under the provisions of an act passed in the fifth
year of the reign of George the Second, or any other statute or charter whatever, and
shall be applied for the use and benefit of the poor of the said Corporation (after first de-
fraying thereout the expences incurred by the said Corporation) from time to time in car-
rying this act into execution; and in case such annual payment shall not be duly made
by the said pilots respectively, it shall be lawful for the said Corporation to suspend the
persons so making default from acting as pilots, until due payment shall be made of such
annual sums.

V. And be it further enacted, That no person shall be licensed by the said Corpora-
tion of Trinity House of Deptford Strond, as a pilot for the rivers of Thames or Med-
way, or the channels leading thereto or therefrom, under the provisions of this act, who
shall not have served as mate for three years on board a square-rigged vessel, or shall
not have been in the actual command of a square-rigged vessel for one year, or who shall
not have been employed in the pilot service of the Corporation of Trinity House of
Deptford Strond for seven years, or who shall not have served an apprenticeship of five
years to some pilot vessel licensed under this act.

VI. And be it further enacted, That no person shall be licensed or be allowed to
take charge as a pilot of any ship or vessel drawing more than fourteen feet water in the
rivers of Thames or Medway, or any of the channels thereof, until such person shall
have been licensed, and shall have acted as a pilot for three years under lawful authority,
on pain of forfeiting ten pounds for every such offence, as well by the person acting as
such pilot, as also by the master or commander, or other person having charge of such
ship or vessel, who shall permit any such person to take charge as a pilot of the same,
contrary to the provision aforesaid.

VII. And be it further enacted, That no person shall, from and after the first day of
October, one thousand eight hundred and eight, take charge of any ship or vessel as a
pilot belonging to the Society or Fellowship of pilots of Dover, Deal, and the Isle of
Thanet, commonly called Cinque Port Pilots, before he shall be examined by the mas-
ter and two wardens, or by four wardens of the said Society or Fellowship for the time
being, touching his abilities, and shall be approved and admitted into the Society or
Fellowship of the Trinity House of Dover, Deal, and the Isle of Thanet, at a court
of loadmanage, holden by the Lord Warden of the Cinque Ports, for the time being,
or his deputy, and the commissioners for loadmanage for the time being; and if any
person shall presume to act as a pilot belonging to the said Society or Fellowship, with-
out having been so examined, approved, and admitted as aforesaid, every such person
shall for the first offence forfeit ten pounds, for the second twenty pounds, and for every
other offence forty pounds.

VIII. And be it further enacted, That the master and such wardens of the said
Society or Fellowship of Pilots of the Trinity House of Dover, Deal, and the Isle of
Thanet, as shall be appointed from time to time, to examine into the skill and ability
of any person on his being first admitted as a pilot into the said Society or Fellowship,
shall take the oath marked (C.) in the schedule hereunto annexed, to be administered
to him by the register of the Court of Loadmanage, who is hereby authorised to ad-
minister such oath.

IX. And be it further enacted, That from and after the first day of October, one
thousand eight hundred and eight, the respective rates or prices herein-after enumerated
in the table marked (B.) in the schedule to this act annexed, may be lawfully demanded
and received by any pilot licensed by the Society or Fellowship of Pilots of Dover, Deal,
and the Isle of Thanet, for the conducting of any ship or vessel from place to place, as
expressed in the said table; and that no greater rates or prices, or other reward or
emolument shall, under any pretence whatever, be received than such rates or prices.

X. And be it further enacted, That a proper and sufficient number of pilots of the
Cinque Ports, not less than eighteen at any one time, and in succession from time to time, without intermission or any unnecessary delay, shall, at all seasonable times by day and night, constantly ply at sea, or be afloat between the South Foreland and Dungeness, to take charge of ships and vessels coming from the Westward, and proper signals shall be established, to be made at and from signal houses now erected, or which may be erected on commanding situations near to Dover, to give notice of fleets of vessels coming from the Westward; and upon the making of any signals, giving notice of the approach of any fleet from the Westward, all Cinque Port Pilots not on duty at the time, shall, according to such rules and regulations as to number, rotation, or otherwise as shall be made in that behalf, forthwith prepare to go afloat, and shall go off in sufficient time to fall in with such ships and vessels, on pain of forfeiting, in case of neglect herein, for the first offence the sum of twenty pounds, and for the second the offender shall be suspended from acting as a pilot for twelve months, and for the third offence shall forfeit his licence to act as such pilot, and shall be rendered thereby incapable of acting thereafter as a pilot.

XI. And be it further enacted, That the master or other person having the command of any ship or vessel coming from the Westward, and bound to any place in the rivers of Thames or Medway, not having a duly qualified Cinque Port Pilot on board, shall, on the arrival of such ship or vessel off Dungeness, and until she have passed the Buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, unless in the mean time she shall have received a proper Cinque Port Pilot on board, display and keep flying the usual signal for a pilot to come on board; and if any duly qualified Cinque Port Pilot shall be within hail, or approaching and within half a mile, with the proper distinguishing flag or vane flying in his vessel or boat, the master or other person having the command of such ship or vessel shall, by heaving to in proper time, or by all practicable means, consistently with the safety of the ship or vessel, facilitate such pilot getting on board, and shall give the charge of piloting of his ship or vessel to such Cinque Port Pilot, and every person commanding any such ship or vessel, who shall decline to take any such Cinque Port Pilot on board, or to give such charge of his ship or vessel to such pilot, or who shall not heave to, or otherwise facilitate such pilot coming on board as aforesaid, shall be subject to the penalties by this act imposed for neglecting or declining to take on board a pilot, and for navigating his vessel without a pilot, contrary to the provisions of this act: Provided always, that if any ship or vessel bound to the rivers Thames or Medway, shall anchor any where in the Downs between the South Foreland and a line drawn from Sandown Castle and the South Buoy of the Brake, having any licensed pilot other than a Cinque Port Pilot on board, it shall be lawful for a Cinque Port Pilot to repair on board the same, at any time before such ship or vessel shall have been at an anchor one hour, with the signal for a pilot flying, and to take charge of her up the said rivers, but not otherwise.

XII. And whereas, great convenience to trade will arise by putting an end to the present prevailing usage of Cinque Port Pilots quitting ships or vessels at Gravesend, or elsewhere in the Thames or Medway, at their discretion; be it therefore enacted, That from and after the expiration of twelve months next after the passing of this act, if any Cinque Port Pilot, taking charge of any ship or vessel into the Thames or Medway, shall quit such ship or vessel at Gravesend, or in any other part of the Thames or in any part of the Medway, before such ship or vessel shall have arrived at the place to which such ship or vessel is bound in the said rivers Thames or Medway respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall, with such consent, come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilottage to be performed, every such pilot shall forfeit for every such offence all pay or reward to which...
he might be entitled for having conducted or piloted such ship or vessel into the rivers Thames or Medway, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this act, or of the rules and regulations to be established in pursuance hereof, any pilot shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination.

XIII. And be it further enacted, That the Lord Warden of the Cinque Ports for the time being, or his deputy, with the assent of the commissioners of loadmanage, and of the masters and wardens of the Society or Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, or the major part of them, at an assembly commonly called a Court of Loadmanage, to be held by the said Lord Warden or his deputy, shall, within four calendar months after the passing of this act, proceed to make and shall make sufficient rules and orders for enforcing the due observance of the provisions of this act by all Cinque Port Pilots, and for providing for the good government and regulation of all such pilots, as well relating to the services of the said pilots in going off to and taking charge of and conducting and navigating his Majesty’s ships and vessels, and the ships and vessels in his Majesty’s employ, and also all ships and vessels whatever and wheresoever, within the proper and usual limits of such pilots, or wherein they shall for the time being act or be, and for effectually securing the performance of all the duties and services of such pilots at all times; which rules and regulations when so made shall be forthwith printed and transmitted to the Custom-house in London, that the same may be seen by all persons interested therein; and copies thereof shall be delivered to every member of the said society, and also to every new member of the said society on his election; and a copy or extract thereof shall be annexed to or indorsed upon the licence or warrant of every pilot belonging to the Cinque Ports, as well those already admitted and licensed as all others hereafter to be licensed as such pilots; and it shall be lawful in such rules and regulations to establish penalties and forfeitures for the enforcing such rules and regulations and better ordering of the said pilots, and for suspending or depriving any of the said pilots for breaking such rules or orders, or omitting to do any thing required by the same to be done, or for acting in anywise contrary to such rules or orders.

XIV. Provided always, and be it further enacted, That if such rules and regulations in relation to Cinque Port Pilots shall not be made and transmitted as aforesaid, within four calendar months after the passing of this act, or if such rules and regulations, when made and transmitted, shall appear to be in any material point erroneous, insufficient, or defective, it shall be lawful for any owner of ships, or other persons interested in the matter of such rules or regulations, to apply to his Majesty’s Most Honourable Privy Council, who shall thereupon cause proper and sufficient rules and regulations to be drawn up for the purposes aforesaid, in case no such rules and regulations shall have been made and transmitted as aforesaid, or shall amend, correct, or enlarge any such rules and regulations as shall have been made and transmitted; which rules and regulations so made or so amended, corrected and enlarged, shall be distributed, published, and made use of in such manner as his Majesty’s said Privy Council shall in that behalf appoint and direct, and the same shall take effect from such time as in the said rules or regulations shall be expressed in regard to the commencement thereof.

XV. And whereas under the provisions of an act passed in the third year of his late Majesty King George the First, the number of pilots of the Cinque Ports was to be one hundred and twenty at the least, and it has been found by experience, that the said number is inadequate to the increased trade and navigation of this kingdom; be it therefore enacted, That within four months after the passing of this act, the number of Cinque Port Pilots shall be increased to one hundred and forty at the least; to which number of one hundred and forty, twenty more shall be added, whenever such further
OF PILOTS, &c.

addition shall be directed to be made by an order of his Majesty's Privy Council, upon application made to his Majesty in council for that purpose by the Corporation of Trinity House of Deptford Strond; and that a further addition of twenty Cinque Port Pilots shall be made to the number above-mentioned, increasing the whole number to one hundred and eighty, by the like authority, whenever such last-mentioned addition shall be applied for by the Corporation of the Trinity House of Deptford Strond to his Majesty in council.

XVI. And be it further enacted, That whenever the increased numbers of the said pilots shall respectively take place as herein-before provided, the numbers so increased shall from thenceforth be kept up from time to time by the appointment of pilots in succession, as often as any vacancy or vacancies shall happen by death, incapacity, or dismissal; provided that after the conclusion of a definitive treaty of peace with France, no vacancy shall be filled up as aforesaid, without a special permission in that behalf given by his Majesty's Privy Council, upon the recommendation of the said Corporation of Trinity House, unless the number of pilots shall at any time by death or otherwise be reduced below one hundred and forty, in which case the vacancies shall be filled up from thenceforth from time to time, so as not to exceed one hundred and forty in the whole.

XVII. And whereas certain harbours near the Downs have become much frequented as places of safety, and ships and vessels lying in or sailing through the Downs are oftentimes compelled to run for those harbours, and it is therefore necessary to make provision for the piloting of such harbours; be it therefore enacted, That all pilots whose licences or warrants shall authorize them to pilot ships or vessels from any place to the Westward up to London Bridge, shall qualify themselves, and shall be examined as to their qualification and ability to conduct any ship or vessel into and out of Ramsgate harbour, and the harbours of Dover, Sandwich, and Margate, and shall be obliged to pilot any ships or vessels into and out of the said harbours; and if any such pilot shall refuse to take charge of or conduct any ship or vessel into or out of any of the said harbours, such pilot shall forfeit all pay and reward to which he might otherwise be entitled for the piloting of any such ship or vessel, and shall be subject to such fine or other punishment as shall be established in that behalf by the rules and regulations of the Corporation or society to which such pilot shall belong.

XVIII. Provided always, and be it further enacted, That every licensed pilot who shall take charge of and conduct any ship or vessel into or out of Ramsgate harbour, or into or out of Dover, Sandwich, or Margate, shall be entitled to and shall receive for such piloting at and after the rate of five shillings for every foot of the draught of water of the ship or vessel so piloted and conducted by him into or out of any such harbour, if such ship or vessel shall have been so piloted and conducted into or out of the same in moderate weather; but if under any circumstances of distress, then such pilot shall be entitled to such further sum of money, to be calculated according to the extent and circumstances of such distress, as the commissioners of salvage established under the Lord Warden of the Cinque Ports shall upon application either of the pilot, or owner, or master of any such ship or vessel, upon inquiring into all such circumstances direct; and such commissioners shall and they are hereby required upon any such application made, to inquire into all such circumstances, and to determine the amount of the sum so to be paid for the piloting of any such ship or vessel into the said harbours respectively, without any fee or reward for so doing.

XIX. Provided always, That on the arrival of any ship or vessel, and as soon as she shall be moored in any of the said harbours, it shall be lawful for the pilot to demand the pilotage due to him as aforesaid, and to quit the ship forthwith.

XX. And be it further enacted, That it shall be lawful for the said Corporation of Piaget payable when ship is moored.

Trinity House of
Trinity House of Deptford Strand, and they are hereby required to appoint from time to time (as often and for such periods as they in their discretion shall think fit) proper and competent persons at such ports or places in England as they may think requisite (except within the liberty of the Cinque Ports, and all such other ports and places within or for which provision shall have been made by any act or acts of Parliament, or by any charter or charters for the appointment of pilots) not to exceed five nor less than three persons at each port or place for which any such appointment shall be made, which persons so to be appointed shall be called Sub-Commissioners of Pilotage, and shall take the oath in the schedule hereunto annexed marked (D.) for the faithful discharge of their duty, and such persons so to be appointed shall and they are hereby authorized (so long as their respective appointments shall not be revoked or superseded by the appointment of other persons in their places) to examine into the qualification of persons to act as pilots for such respective ports and places, and the adjoining coasts specified in their respective appointments as aforesaid; and it shall be lawful for the said Corporation, upon their receiving a satisfactory certificate under the hands of any three of the persons so to be appointed, where the whole number for any port or place shall consist of four or five, and by any two where the whole number shall consist of three, that the person examined as aforesaid is duly qualified to act for such port or ports and the adjoining coasts, to give a licence to such person to act as a pilot within the particular limits (describing the same) for which he shall have passed such examination, which licence shall be granted in the first instance for one year, and shall afterwards from year to year be subject to renewal and confirmation, or otherwise, at the discretion of the said Corporation of Trinity House.

XXI. Provided always, and be it further enacted, That nothing in this act contained shall be construed to prevent any ship or vessel which shall be brought into any port or ports in England by any pilot duly licensed, from being afterwards removed in such port or ports by the master or mate thereof, or other person having the command, for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

XXII. And be it further enacted, That when and as soon as the said Corporation of Trinity House of Deptford Strand, shall have licensed pilots for any particular port or ports, and their respective coasts near the same as aforesaid, they shall cause notice of such appointment to be published, by fixing up such notice in writing at the Trinity House, and at the Custom House in London, and also at the respective Custom Houses of the ports for which and for the coasts near the same such appointment shall be made, and shall also afterwards cause such notice to be published in the London Gazette, and in one or more newspapers circulated in that part of the country where the ports shall respectively be situated, which publication in the London Gazette shall be good and sufficient evidence of the notice having been given; and from and after a time or times to be limited in the said notices, which shall not in any case or in relation to any ships or vessels whatever, be less than six weeks from the publication thereof as aforesaid, and shall be proportionably more at the discretion of the said Corporation, in relation to ships and vessels engaged in foreign voyages at the time of such publication, all ships and vessels sailing, navigating, or passing into or out of the said respective ports or upon the coasts thereof, shall be conducted and piloted by such pilots only as shall be so licensed as aforesaid, and by no other pilots whomsoever.

XXIII. And be it further enacted, That if any person suspended or deprived of his licence as a pilot, shall, during the time of such suspension, or after such deprivation, take upon himself to conduct any ship or vessel except in cases of distress, and in cases where no licensed pilots can be found, such person shall be liable to all such penalties to be recovered and applied in like manner and form as are provided by this act, against...
any person who shall conduct or pilot any ship or vessel without ever having been licensed to act as a pilot.

XXIV. Provided always, and be it further enacted, That every pilot who shall be suspended, or adjudged to have forfeited his licence, and every person, who having complained of any such pilot, shall be dissatisfied with the adjudication made upon the matter of such complaint, by the corporation, society, or persons who shall have cognizance of such complaint, may appeal to his Majesty's Privy Council, who shall thereupon hear the appeal, and confirm or annul any former determination or adjudication in the premises, or, at their discretion, make any particular and special order relating thereto, and to the matter of such appeal, as the case may require.

XXV. Provided always, and be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage, nor shall any owner or owners of any ship or vessel or consignee of goods, be prevented from recovering any loss or damage upon any contract of insurance of the same, or upon any other contract relating to any ship or vessel, or any cargo on board the same, by reason of no pilot being on board of any such ship or vessel, (unless it shall be proved that the want of a pilot shall have arisen from any refusal to take a pilot on board, or from the negligence of the master of the ship or vessel, in not heaving to for the purpose of taking on board any pilot, who shall be ready, and offer to take charge of such ship or vessel.)

XXVI. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to any ships or vessels belonging to his Majesty, his heirs and successors.

XXVII. Provided always, and be it further enacted, That none of the clauses, provisions, penalties, or regulations of this act, shall extend or be construed to extend to any vessel not exceeding the burthen of sixty tons, having British registers, nor to any master or owner of any such vessel in respect thereof, or of the navigating of the same in any channel, river, port or place whatever.

XXVIII. And be it further enacted, That nothing in this act contained shall be construed to extend to deprive any persons of any remedy by civil action against pilots or other persons, which they might have had if this act had not been passed.

XXIX. And be it further enacted, That nothing in this act shall extend or be construed to extend, to give any authority to the Corporation of the Trinity House of Deptford, within any ports or districts having separate jurisdiction in matters of pilotage under any act of Parliament or charter, or to alter or repeal any provisions contained in any act or acts of Parliament relating to the pilots of any ports or districts, in relation to which provisions shall have been made in any act or acts of Parliament as to pilots or pilotage, or the pilotage within the limits prescribed by any act or acts of Parliament relating to pilotage, for such ports, other than and except as herein particularly provided.

XXX. Provided always, and be it further enacted, That nothing in this act contained shall extend to prevent or hinder the master or mate of any ship or vessel, or owner or part owner, residing at Dover, Deal, or the Isle of Thanet, from conducting or piloting his own ship or vessel up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports.

XXXI. Provided also, and be it further enacted, That it shall be lawful for any licensed pilot to supersede any person not licensed as a pilot, in the charge of any ship or vessel within the limits of his licence; and every master of any ship or vessel shall continue any unlicensed person, or any licensed person acting out of the limits for which he is qualified as a pilot, after any pilot licensed to act within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of the ship or vessel, and every person assuming or continuing in the charge or conduct of any
ship or vessel without being duly licensed to act within the limits in which such ship or vessel shall actually be, after any pilot duly licensed and qualified to act in the premises shall have offered to take charge of such ship or vessel, shall respectively forfeit for every such offence a sum not exceeding fifty pounds or less than twenty pounds.

XXXII. And be it further enacted, That it shall be lawful for the Corporation of Trinity House of Deptford Strond, and they are hereby authorized and required to establish, vary, and alter, from time to time, as circumstances shall render the same necessary, regular rates of pilotage, in relation to all pilotage performed in any river, port, or place, or upon any coast whatever, by any pilot or pilots who shall be licensed by the said Corporation, upon their receiving certificates of examination from any sub-commissioners of pilotage hereby directed to be appointed; which rate shall be regulated by and proportioned as well to the size and draught of water of the vessels as to the distance piloted, the detention and responsibility of the pilot, and such other circumstances as the said Corporation may think fit to take into consideration in fixing and establishing such rates, of which establishment or alterations of rates of pilotage notice shall be given by hanging up printed tables thereof, corrected from time to time as variations therein shall be made, at the several custom-houses at the ports to which the said rates shall apply.

XXXIII. Provided always, and be it further enacted, That if the major part in number of the pilots who shall be licensed by the said Corporation of Trinity House of Deptford Strond for any particular port or place in consequence of their receiving certificates of examination as aforesaid, shall be dissatisfied with the rates so established or altered, or in case any owners of ships or vessels interested in any such rates shall be dissatisfied with such respective rates, it shall be lawful for such parties respectively to appeal to the Lords of his Majesty's Most Honourable Privy Council, calling to their assistance any such persons as they may think fit, to hear and determine the matter of such appeal or appeals, and to settle, alter, and regulate such rates as to them shall appear to be expedient, in case the matter of such appeal shall, in the discretion of the said Committee of Privy Council, appear to require the making any orders therein.

XXXIV. And be it further enacted, That all persons licensed to act as pilots or in pilot vessels by the said Corporation of Trinity House by virtue of this act, shall from time to time, and at all times hereafter, be subject to the regulation and government of the master, wardens, and assistants of the said Corporation, who are hereby authorized and empowered, as well for ensuring the good conduct and constant attendance of such pilots upon their duty, as for enforcing the general purposes of this act, from time to time to make and frame all such bye laws, rules, orders, regulations, and ordinances as they shall think fit, therein specifying and directing also what annual or other sums shall be paid by any such pilots to the sub-commissioners of pilotage for the examination of such pilots, and for granting and renewing or confirming their licences from time to time; and it shall be lawful for the said master, wardens, and assistants of the said Corporation respectively, to annex such reasonable penalties and forfeitures for the breach of such bye laws, rules, orders, and ordinances when made, as to them shall seem expedient in that behalf, and from time to time to annul, alter, and amend, all or any of the existing bye laws, and to make such other and new bye laws, rules, orders, and ordinances as they shall think proper, so as such bye laws, rules, regulations, and ordinances be made conformable to the true intent and meaning of this act, and shall not be repugnant to the laws of this realm: Provided always, that no bye laws shall have force or effect before they shall have been examined, sanctioned, and approved by the Chief Justice of his Majesty's Court of King's Bench, or by the Chief Justice of his Majesty's Court of Common Pleas, the sanction and approbation of either of which Chief Justices shall be verified under his hand and seal; and all and every such bye laws,
laws, rules, orders, and ordinances when so made and confirmed as aforesaid, shall be observed and kept, and put in execution, and have the same force and effect and operation, to all intents and purposes, as if the same were respectively enacted by this act.

XXXV. 'And in order that all such bye laws, rules, and regulations, may be previously examined by the parties interested therein;' be it enacted, That copies of all proposed bye laws shall be transmitted to his Majesty's Privy Council and to the Commissioners of Customs in London, three calendar months before the same shall be submitted to such Chief Justice as aforesaid, and the commissioners of the customs are hereby required, upon the receipt of such copies, to cause the same to be printed and hung up, as soon as the same can be done, in the several custom-houses of the principal ports in Great Britain, to be open to the inspection of all persons interested therein at all seasonable times.

XXXVI. And be it further enacted, That all copies of such bye laws, rules, orders, and ordinances, as shall be so made and confirmed as aforesaid, shall be printed and shall be hung up in some public or conspicuous place in the several custom-houses of the ports in England, within the limits for which the pilots respectively shall be licensed, and also at the Trinity House in London.

XXXVII. And be it further enacted, That every person who shall apply for a licence to act as a pilot by virtue of this act, shall, before any licence shall be granted to him, execute a bond in a penal sum at the discretion of the said Corporation of Trinity House of Deptford Strond, or the Society or Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, in an amount not exceeding one hundred pounds, to be paid to the said Corporation or Society, their successors and assigns, with a condition subjoined thereto for better securing the due obedience of such pilot to the bye laws, rules, orders, regulations, and ordinances which shall be made and framed pursuant to this act; which bonds shall be capable of being given in evidence in any court of law or equity, without being stamped according to the laws relating to the stamp duties.

XXXVIII. And be it further enacted, That the master or person commanding any ship or vessel bound to the river of Thames, and which shall repair to Standgate Creek for the performance of quarantine, shall pay the full charges of pilotage up to Gravesend or Standgate Creek; and every pilot conducting any such vessel to Standgate Creek, shall be entitled to such pay per diem for the days he shall be obliged to remain on quarantine as shall be in that behalf allowed for such detention by the rates of pilotage to be established by virtue of this act.

XXXIX. And be it further enacted, That if any pilot taking charge of any ship or vessel into the rivers Thames or Medway, shall quit such ship or vessel at Standgate Creek before such ship or vessel shall have arrived at the place to which such ship or vessel is bound in the rivers Thames or Medway respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall come on board and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed; every such pilot shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel to Standgate Creek, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this act, or of the rules and regulations to be established in pursuance hereof, any pilot shall be liable for quitting a ship or vessel before she shall arrive at her place of destination.

XL. And be it further enacted, That a particular description of the person of every pilot shall be indorsed on the back of his licence; and every captain or master, or other person having the command of a ship or vessel, on receiving a pilot on board, shall inspect his licence, and if he shall have reason to think that such pilot is not the person.
to whom the licence was granted, such captain or master, or other person having the
command of such ship or vessel, is hereby required forthwith to transmit a copy of such
licence to the Corporation, or persons by whom such license shall have been granted,
stating the date thereof, together with such account and description of the person pro-
ducing such licence or warrant, as may lead to the discovery of the offender.

XLI. And be it further enacted, That from and after the first day of December, one
thousand eight hundred and eight, if any pilot licensed by virtue of this act, or other-
wise duly licensed, shall keep or be concerned in keeping, either by himself or any
agent or servant, or other person, or shall in anywise be interested in keeping of any
public house or tavern, or place of public entertainment, or in the selling of any
wine or spirituous liquors, or tobacco or tea (unless such pilot shall have kept, or been
concerned or interested in the same before the first day of March, one thousand eight
hundred and eight, and shall be duly authorized by the Corporation or authority under
which such pilot shall act, to continue in such business or employment); or if any pilot
licensed as aforesaid shall be convicted of any offence against any law or laws relating to
the revenues of customs or excise, or shall be concerned in, or shall wilfully connive at
any indirect practices or frauds against the revenues of customs or excise, or shall pro-
cure, abet, connive at, or participate in any destruction, spoil, concealment, fraud,
exaction, or corrupt practice relating to ships or vessels, or persons in distress at sea,
or by shipwreck, or relating to the tackle, apparel, or furniture, or the cargoes of such
ships or vessels, or relating to the crew or passengers belonging thereto, or the monies,
goods, or chattels of any of them, then and in every such case every such pilot shall
shall (over and above all other punishments, mulcts, and penalties for such offences,) be dis-
missed from being a pilot, or shall be suspended from acting as such, at the discretion
of the Corporation or other authority from which such pilot’s licence was derived.

XLII. And be it further enacted, That no person shall take charge of any vessel, or
in any manner act as a pilot, or receive any compensation for acting as a pilot, unless
he shall be authorized thereto, by some lawful licence, nor until such licence shall have
been registered by the principal officers of the custom-house of the place at or nearest
to which such pilot shall reside, which officers are hereby required to register the same
without fee or reward, nor without having his licence at the time of his so acting in his
personal custody ready to be produced, and which he shall actually produce to the
master of any ship or vessel, or other person who shall be desirous of employing him as
a pilot; nor shall any person, although duly licensed to act as a pilot, act in that capac-
ity out of or beyond the limits expressed in his licence, or beyond the extent of his
qualification therein expressed; on pain of forfeiting a sum not exceeding thirty pounds
nor less than ten pounds for the first offence, and for any second or subsequent offence
any sum not exceeding fifty pounds nor less than thirty pounds.

XLIII. And be it enacted, That on the death of any pilot, his executors and ad-
ministrators, or one of them, or the person or persons to whose hands the licence of
such deceased pilot shall come, shall, without wilful delay, transmit such licence to
the corporation, company, or persons by whom such licence was granted, on pain of
forfeiting for any neglect therein, or for refusal to deliver the same when lawfully de-
manded, a sum not exceeding twenty pounds nor less than forty shillings.

XLIV. And be it further enacted, That it shall be lawful for the said Corporation of
Trinity House of Deptford Strond, and also for the said Society or Fellowship of Pilots
of Dover, Deal, and the Isle of Thanet, and also for all other corporate bodies, or other
persons having lawful authority to appoint pilots within the limits of their respective
jurisdictions, to license vessels of such size and description as shall appear to them to
be proper for the purpose of having pilots constantly in attendance in such vessels at
sea; and for the better support of such pilot vessels, it shall be lawful for any number
of pilots licensed by virtue of this act, or otherwise lawfully licensed, with the consent
of the said corporate bodies, or persons by whom respectively such pilots have been or
shall be appointed as aforesaid, to constitute a joint stock company or companies for the
providing and maintaining of such pilot vessels; which companies, and the said vessels,
shall at all times be subject to such rules and regulations as shall from time to time be
sanctioned and approved in that behalf by the said corporate bodies, or persons by whom
respectively such pilots shall respectively have been licensed.

XLV. And be it further enacted, That every pilot boat or vessel, or other boat or ves-

sels in the pilot service of any corporation or society established by law in relation to
pilotage, or of any persons authorized to act as a pilot by such corporation or society,
shall at all times and on every station be fitted with black sides, and have the upper
strake next the gunwhale painted white, and shall while afloat carry a vane at the mast-
head, or else a flag on a sprit or staff, or in some other equally conspicuous situation,
which vane or flag shall be of large dimensions, proportioned to the size of the boat or
vessel carrying the same, and shall be half red and half white, in horizontal stripes, of
which the uppermost shall be white, and the same shall at all times be kept and pre-
erved in a clean and distinct condition, so as to be easily discerned at a proper and
sufficient distance, and every such boat or vessel shall also have the name of the prin-
cipal pilot thereof for the time being, painted in broad white letters of three inches in
length on a black ground on her stern, and on each bow such number as shall be ex-
pressed in the licence of such principal pilot; which name and numbers shall not be hid
or concealed by any person at any time, on pain of forfeiting the sum of twenty pounds
for such omission or evasion, to be paid by such principal pilot, who shall at all times
be answerable for the due observance of the matters aforesaid, by every person on board
such boat or vessel; and every other boat not in the service of any corporation or
society carrying off a pilot, shall exhibit a similar flag on a sprit or mast, to distinguish
that she has a pilot on board.

XLVI. And be it further enacted, That if any boat or vessel, not having a licensed
pilot on board, shall without lawful authority carry such distinguishing vane or flag as
aforesaid, the owner or owners, or the master or other person having charge of such
boat or vessel, displaying or carrying any such vane or flag, shall for every such offence
forfeit and pay the sum of one hundred pounds.

XLVII. And be it further enacted, That every pilot licensed by virtue of this act, or
otherwise duly licensed, who shall, when disengaged or on any frivolous pretext,
decline to take charge of any ship or vessel, unless such cause shall be shown by the
pilot as shall justify his not taking charge of the ship, or who shall decline, on being
required by any captain of any of his Majesty's ships, or the master or other person
having the charge of any ship or vessel, to come on board of any ship or vessel, or who
shall decline, when required by any commissioned officer in his Majesty's navy, or by
any principal officer of his Majesty's customs, or by any other person or persons interested
as principal or agent for or on behalf of any ship or vessel wanting a pilot, to go off to
and take charge of any ship or vessel when it shall be safe so to do; or who shall exact
or demand, or bargain for any greater fee or reward, or any greater price or hire for
pilotage than as are or shall be allowed by such rates or rules as are or shall hereafter
be legally established in that behalf; or who shall in any wise delay going on board any
such ship or vessel, or taking charge thereof when on board or alongside thereof, or who
shall quit any such ship or vessel, or decline the piloting thereof after he has been en-
gaged or after going alongside thereof, without leave of the owner, master, captain, or
person having the chief command of such ship or vessel, or before the service shall have
been performed for which he was hired, or shall by drunkenness render himself incapable of
conducting such ship or vessel, or shall negligently or wilfully run such vessel on shore,
or lose the same, or do any injury to the same or to the tackle or furniture thereof, or who shall lend his licence to any unlicensed person, to enable or assist him towards acting or claiming to act as a licensed pilot, shall forfeit for every such offence any sum not exceeding one hundred pounds, nor less than ten pounds, and shall be liable to be dismissed from being or suspended from acting as a pilot, at the discretion of the said Corporation of Trinity House of Deptford Strond, or at the discretion of such other corporate body, or person or persons by whom such pilot was licensed.

XLVIII. And be it further enacted, That in case any pilot licensed by virtue of this act shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel, to employ or make use of any boat, anchor, cable, hawser, or any other matter or thing in or for the service or pretended service of such ship or vessel, beyond what shall actually and bond fide be necessary and proper for the use thereof, with intent thereby to enhance or increase the charge or expence of pilotage or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or for the gain or emolument of any other person or persons whomsoever, then and in every such case the person so offending shall forfeit and pay a sum not exceeding fifty pounds nor less than ten pounds, and shall also be liable to be deprived of his licence, or to be suspended from acting as a pilot for a limited time, at the discretion of the said Corporation of Trinity House of Deptford Strond, or other authority by which he is or shall be licensed.

XLIX. And be it further enacted, That in case any person licensed to act as a pilot by virtue of this act, or otherwise duly licensed, or any person not being a pilot, but acting under pretext or colour of pilotage, shall wilfully and knowingly conduct, lead, decoy, or betray any ship or vessel into danger in any manner not already provided against by any statute or statutes; or shall unnecessarily or improperly cut any cable or cables, of or belonging to any ship or vessel, or cause or procure the same to be cut unnecessarily and improperly; or if any such person shall, by wilful misrepresentation of any circumstances upon which the safety of any ship or vessel shall appear materially to depend for the time being, obtain or endeavour to obtain the charge and conduct of any ship or vessel, then and in every such case the person so offending, or who shall aid in, procure, abet, or connive at the committing of any such offence or offences, shall forfeit and pay a sum not exceeding one hundred pounds, nor less than twenty pounds; and in case the person so offending shall be a pilot, he shall be either dismissed from being a pilot, or suspended from acting as such for a limited period, at the discretion of the Corporation or other authority by whom such pilot was licensed.

L. And be it further enacted, That if any such licensed pilot vessel or boat shall run before any ship or vessel, not having a licensed pilot on board, for the purpose of directing the course of such ship or vessel until a pilot can be put on board, the pilot on board such pilot vessel, or the person having charge of her, shall be entitled to the full pilotage for the distance run, until a duly licensed pilot shall be put on board, as if such person had been actually on board such ship, and had the charge of her as a pilot.

LI. And be it further enacted, That no pilot shall be taken to sea by the commanding officer of any of his Majesty's ships, or by any master of any ship or vessel in the merchant service, without his free consent, except in case of absolute and unavoidable necessity; and in such case every pilot so taken to sea shall have and receive ten shillings and sixpence per diem, until he shall be returned to the port or place where he was taken on board, or until he shall have been discharged from the ship for a sufficient time to have enabled him to return there.

LII. And whereas it is expedient that the surplus rates of pilotage imposed by this act on ships not having British registers, should be applied for creating a fund for such pilots belonging to the Trinity House of Deptford Strond, and of the Fellowship of the
Cinque Ports as shall be superannuated; be it enacted, That all such excess of rates as aforesaid, which shall pertain to the establishment of the Trinity House, shall be paid to a receiver or receivers, to be appointed in that behalf by the said Corporation at some place or places convenient for the making of such payment within the port of London, and shall be applied by the said Corporation in the manner herein-after directed; and if such extra rates of pilotage shall pertain to the establishment of the Cinque Ports, then the same shall be paid to a receiver or receivers, to be in that behalf appointed by the Lord Warden and the Court of Loadmanage, at some convenient place or places for the payment thereof within the said port of London, and shall be applied by the said Court in the manner herein-after in that behalf directed; that is to say, in both cases to create a fund for the better support and maintenance of such pilots as shall become incapable of discharging their duty from advanced age, or from any accident, or permanent infirmity, to be applied and distributed in such manner, and under such rules and regulations as the Corporation of the Trinity House of Deptford Stre, and the Lord Warden and the Court of Loadmanage of the Cinque Ports shall respectively order and provide, of which receipts and appropriations the said Corporations and Courts respectively shall annually lay an account thereof before Parliament, within ten days after the commencement of each session.

LIII. And be it further enacted, That all sums of money which shall become due to any licensed pilot for pilotage, shall and may be recovered from the owners or masters of ships or vessels, or from the consignees or agents thereof, not being foreign ships or vessels, who shall have paid or made themselves liable to pay any other charge for the ship or vessel in the port of her delivery, and shall and may be levied in such and the like manner according to the amount of any such sums of money respectively, as any penalty or penalties may be recovered and levied under and by virtue of this act, demand thereof being made in writing at least fourteen days before such levy.

LIV. And be it further enacted, That the consignees or agents of all foreign ships and vessels, who shall have paid or engaged to pay any charge whatever in relation to such ship or vessel, shall be liable to the payment of, and shall pay all sums for pilotage outwards, due to the pilot or pilots who shall have piloted such ships or vessels, on proof being made within fourteen days after such pilotage shall have been performed, on the oath of such pilot before any justice of the peace, that the same has not been paid by the captain of such ship or vessel; and in such case the sums of money so due for pilotage shall be recoverable in like manner as any penalty under the sum of ten pounds may be recovered by virtue of this act; and such consignees or agents of foreign ships or vessels are hereby authorised and empowered to retain in their hands respectively, out of any monies which they may have received for or on account of such foreign ship or vessel, or the owner or owners thereof, so much as shall be sufficient to pay and discharge such pilotage outwards, and any expenses attending the same.

LV. And be it further enacted, That the master of every ship or vessel which shall be piloted or conducted by any other than a duly licensed pilot, within any limits for which pilots have been or shall be appointed by any lawful authority, shall forfeit double the amount of the sum which would have been demandable for the pilotage of such ship or vessel, together with five pounds for every fifty tons burthen of such ship or vessel: Provided always, that nothing in this act shall extend to subject penalties any master of any ship or vessel who shall act himself as pilot in passing up and down the English Channel, or elsewhere in passing by any part of the coast of England, in the course of any voyage, or within the limits of the port or place to which his ship belongs, not being a port or place in relation to which provision hath heretofore been made by any act or acts of Parliament, or by any charter or charters for the appointment of pilots, or who shall employ any person as a pilot, or who shall act himself as such for the conduct of any ship or vessel.
of his ship or vessel, in any case where and so long as a duly qualified pilot shall not offer assistance or make a signal for that purpose: Provided also, that this act shall not extend or be construed to extend to hinder any persons from assisting any ship or vessel in distress at any time or place, nor shall subject such persons, or any master of any ship or vessel employing such persons, to the penalties of this act, in respect of such assistance given during the distress of such ship or vessel, or in consequence thereof, or under any circumstances which have rendered it necessary for such master to avail himself of the best assistance which at the time could be procured; any thing herein contained to the contrary thereof in anywise notwithstanding.

LVI. And be it further enacted, That every person having the command or charge for the time being of any ship or vessel, who shall report, or be privy or consenting to any other person's reporting to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of pilotage to the pilot entitled thereto, double the amount of such pilotage; and any person having the command or charge for the time being of any ship or vessel, or having any interest, share, or property therein, who shall fraudulently alter any marks on the stem or sternpost thereof, denoting the draught of water, or shall be privy to and consenting thereto, shall for any such offence forfeit and pay the sum of five hundred pounds.

LVII. And, in order to prevent or settle controversies concerning the draught of water of ships and vessels which shall be from time to time in the river of Thames (not having British registers), be it enacted, That whenever any difference about the draught of water of any ship or vessel shall arise between the master or other person having the command of any such ship or vessel; and any person who shall have piloted the same into the said river, or who shall be required to pilot the same therefrom, pursuant to the directions of this act, the said Corporation of Trinity House, or some proper officer or person appointed by them, shall admeasure the draught of water of such ship or vessel, and shall settle and determine the same between the parties, upon application made by either of them to the said Corporation within twelve hours after such ship or vessel shall have arrived at her moorings in the river, or before the cargo thereof shall be begun to be unladen, or before such ship or vessel shall quit her moorings on any outward voyage; for which admeasurement the officer or person making the same shall be paid one guinea, if the ship or vessel shall be below or in the Pool, and half-a-guinea if above the Pool, by the person requiring such admeasurement, or making application for the same to the said Corporation.

LVIII. And be it further enacted, That every master or other person having the command for the time being of any ship or vessel required to be piloted according to the directions of this act, shall, on coming into the port of London, and in making the entry or report of his ship or vessel inwards, insert or cause to be inserted in such entry or report the name of the pilot or pilots employed or engaged by him, or by the owner of such ship or vessel to pilot the same into the said port of London, and which insertion shall be made (without fee or reward) by the proper officer of the customs, in the said entry or report, who shall also report the same to the Corporation of the Trinity House monthly; and also that the principal searcher or clearing officer of the customs at Gravesend, shall demand and take the name or names of the pilot or pilots of all ships or vessels clearing outwards from the port of London, and shall transmit monthly lists of such names to the said Corporation of the Trinity House, on pain of forfeiting a sum not exceeding five pounds nor less than forty shillings, to be paid by every person who shall neglect to comply with the foregoing regulations respectively.

LIX. And be it further enacted, That lists of the Christian and surnames, ages, and places of residence, of all pilots in England, shall, with the dates of their appointments,
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on or before the thirty-first day of December, one thousand eight hundred and eight, be transmitted to the Corporation of Trinity House of Deptford Strond, at their Court House in London, distinguishing the limits within which such pilots are appointed to act respectively, and thenceforward from time to time as each appointment of a pilot shall take place; and also duplicates of such lists to the commissioners of the customs in England, annexing to the lists to be transmitted to the Trinity House the rates of pilotage, and also stating the rules and regulations made and established in relation to such pilots, in case such rules and regulations shall have been made by any other authority than by act of Parliament, or by the said Corporation of Trinity House of Deptford Strond, and the same, when so completed, shall be transmitted as aforesaid by the respective bodies politic and corporate, and other persons authorized to appoint pilots in any of the ports, harbours, or rivers, or on any of the coasts of England, by whom such pilots shall have been appointed respectively; and the said bodies politic and corporate, and other persons authorized to appoint pilots as aforesaid, shall and they are hereby required to transmit to the said Corporation of Trinity House, at their said Court House in London, annually on the thirty-first day of December, or within one calendar month afterwards, a list corrected up to the said thirty-first day of December annually, of the names and residence of the pilots within their several jurisdictions, and stating such alterations as may have been made (if any) in the rules and regulations for governing pilots within the respective districts.

LX. And whereas by two acts passed in the forty-fifth and forty-sixth years of his present Majesty, for the more effectual performance of quarantine, pilots are required
on going on board ships arriving from foreign parts, in certain cases to give information to the commanders thereof respecting proclamations and orders in council relative to the performance of quarantine, which renders it necessary that notice of such proclamations and orders, which may have been issued subsequent to the departure from England of such ships, should be previously communicated to all pilots throughout England; be it further enacted, That the said commissioners of the customs shall, within one month, from the thirty-first day of December, one thousand eight hundred
and eight, transmit to the principal officers of the revenue under their management at the several ports in England, the names and places of residence of such pilots in the lists so transmitted to them as shall reside within the limits of each port respectively, and so from thenceforward the name of each pilot of whose nomination they shall receive notice from the proper authority, in order that the said principal officers at the several ports may be enabled to communicate to every pilot within the limits of the ports respectively all proclamations or orders in council respecting the performance of quarantine by ships arriving from infected places, which the said officers are hereby required to do.

LXI. And be it further enacted, That all the provisions, clauses, penalties, and forfeitures, contained in an act passed in the eighth year of the reign of Queen Elizabeth, or any other act or acts made and in force for the preservation of beacons and sea marks, shall extend and be construed to extend to all vessels duly appointed to exhibit lights therein for the preservation of ships and vessels at sea, and to all persons removing, injuring, or destroying such vessels or lights; which offences may be laid and tried in any county in England.

LXII. And be it further enacted, That every person who shall ride by, make fast to, or remove, or wilfully or negligently run down, or run foul of any vessel appointed or placed to exhibit lights, or any buoy or beacon belonging to the said Corporation of the Trinity House of Deptford Strond, or belonging to or placed by any other Corporation having lawful authority to place the same, shall forfeit for every such offence any sum
not exceeding fifty pounds, nor less than ten pounds, together with the expense of replacing or making good any damage occasioned by such misconduct.

LXIII. And whereas by an act passed in the thirty-ninth year of the reign of his present Majesty, intituled, An Act for rendering more commodious and for better regulating the port of London, the dock master or dock masters appointed by the West India Dock Company, under and by virtue of the said act, have full power and authority to direct the mooring, unmooring, moving or removing of all ships and other vessels, lighters, and craft, as shall be within the distance of two hundred yards from any entrance out of the said river there into the works of the said Company, as to the time or times, and manner of their entrance into, lying in, or going out of or from the same: And whereas the powers given to the said dock master or dock masters, under and by virtue of the said recited act, have not been found sufficient to enable him and them to enforce obedience to his and their orders and directions, to pilots having the charge or direction of navigating ships and vessels within the aforesaid distance of two hundred yards of the respective entrances into the said docks from the river Thames; be it therefore enacted, That from and after the passing of this act, if any pilot or pilots having the charge or direction of navigating any ship or vessel within the aforesaid distance of two hundred yards from the respective entrances into the said docks from the river Thames, and either intended to go into, or having recently come out of the docks, basons, or other works of the said Company, shall neglect or refuse to obey such orders or directions as shall or may from time to time be given to such pilot or pilots by the said dock master or dock masters under and by virtue of, and agreeably to the powers vested in him and them by the said recited act, touching or relating to the mooring, unmooring, moving, or removing of such ships or vessels so being under the charge or direction of such pilot or pilots as aforesaid, then and in every such case every pilot so offending shall forfeit and pay a sum not exceeding fifty pounds and not less than twenty pounds; and every such pilot shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the Corporation, or other authority by whom such pilot was licensed.

LXIV. And be it further enacted, That the Corporation of the Trinity House of Deptford Strond, and the Court of Lordmanage of the Cinque Ports, and all other Corporations for managing or directing pilots in any part of England, under the authority of any act of Parliament or charter, shall annually, within one month after the first day of January in every year, transmit to the office of the receiver of the sixpenny duty in the port of London, a list of all the vessels, of every description, employed by them, or by persons under their authority, for the purposes of pilotage, with the number of men and boys belonging to or serving in any such vessel.

LXV. And be it further enacted, That all fines, penalties, or forfeitures by this act imposed or to be imposed by any bye law made under the authority thereof, the manner of levying whereof is not herein directed, and which shall not exceed twenty pounds, or in respect of which any sum less than twenty pounds may be awarded at the discretion of any justice hearing the offence, may be levied and recovered within six calendar months after the offence or offences committed, or within such other time as is herein-after in that behalf directed, before any justice or justices of the peace for the county, city, division, or place where the offence shall be committed, or if committed by any pilot, before any justice of the peace or magistrate of the city, town, or port to which such pilot shall belong; or if committed by any owner or master of any ship, by any justice of the peace or magistrate of the county, city, town, or port at which such owner or master shall reside, or to which the ship of such owner or master shall belong; or if committed by any pilot of the Trinity House of Deptford Strond, or the Cinque
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Ports, or by any other person on any part of the sea from Folkstone to the mouth of the river Thames, or up the rivers Thames or Medway, then by any justice of the peace of the counties of Kent, Surrey, Essex, or Middlesex, or by any magistrate of the city of London; and such justice and justices is and are hereby empowered and required, upon complaint to him or them made, to grant a warrant to bring before him or them such offender or offenders at the time or place in such warrant specified; and if on conviction of the offender or offenders respectively, or on his, her, or their confession, or on the evidence of any one or more credible witness or witnesses upon oath (which oath such justice or justices is and are hereby empowered to administer) such fine, penalty, or forfeiture shall not be forthwith paid, it shall and may be lawful to and for such justice or justices so commit every such offender to the common gaol or house of correction for the county, city, or place where the offender shall be committed, there to remain without bail or mainprize, for any time not exceeding six calendar months nor less than twenty-one days, until such fine, penalty, or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid: Provided always, that no justice or magistrate shall in any case award any sum exceeding twenty pounds.

LXVI. And be it further enacted, That all fines, penalties, or forfeitures exceeding the sum of twenty pounds by this act imposed, for any offence or offences committed against this act, or in which any greater sum may be awarded than twenty pounds, and in which the party prosecuting such offence shall proceed for any greater sum than twenty pounds, shall and may be recovered by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record at Westminster, wherein no essoign, protection, wager of law, or any more than one imparlance shall be allowed, within twelve calendar months next after the offence or offences shall be committed, or within such other time as is herein-after in that behalf directed: Provided always, that in case the said respective periods of six calendar months and twelve calendar months, or either of them, within which fines, penalties, or forfeitures are to be sued for as aforesaid, shall in any case or cases elapse and run out before any prosecution hereby authorized or directed shall have been commenced for the recovery of such fines, penalties, or forfeitures; and if it shall in manner herein-after mentioned be made to appear, as soon after as the circumstances of the case shall reasonably admit, that the commencement of the prosecution has been delayed by reason of the absence of any party or parties, whether offending or complaining, or by the absence of any necessary witness or witnesses; then upon such circumstances being stated by affidavit, in writing, made before any judge of any of his Majesty's Courts of Record at Westminster, it shall thereupon be lawful for any such judge or judges to order or authorize the commencement of such prosecution, within such further time as such judge shall think fit to limit in that behalf, and in such case the prosecution or prosecutions so ordered or authorized, shall and may be commenced and prosecuted within the time or respective times so limited, in like manner and with the like effect, in all respects, as if such prosecutions had been commenced and prosecuted within the said respective periods of six months and twelve months hereby limited: Provided always, that nothing herein contained shall extend to affect or impede the jurisdiction of the Court of Ladmanage, as far as respects the pilots appointed under the authority of the said Court; and provided also, that nothing in this act contained shall extend or be construed to extend to affect or impair the jurisdiction of the High Court of Admiralty.

LXVII. And be it further enacted, That in case any person against whom a warrant shall be issued by any justice or justices, before or after any conviction for any offence against this act, shall escape, go into, or reside, or be in any other county, riding, division, city, liberty, town or place, not of the jurisdiction of such justice or justices granting such warrant or warrants; or if the goods and chattels of any offender con-
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... goods shall be, may indorse the original warrant, which shall authorize the peace officers to execute it, &c.

... If convicted of any offence in pursuance of this act, shall be in any county, riding, division, city, liberty, town, or place, other than where the said party was convicted, or warrant of distress granted, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place into which such person shall escape, either before or after conviction, or where his goods and chattels shall be after such conviction, and they and every of them are hereby required, upon proof made upon oath of the hand-writting of any justice or justices granting such warrant or warrants, to indorse his or their name or names on such warrant; and the same, when so delivered, shall be sufficient authority to all peace officers to execute such warrant in such other county, riding, division, city, town, or place out of the jurisdiction of the justice or justices granting the said warrant; and any justice or justices respectively, on the offender or offenders being apprehended and brought before him or them within their respective jurisdictions, may proceed to hear and determine the complaint, in the same manner as if it had originally arisen within his or their respective jurisdictions, and may direct the offender or offenders to be carried to the justice or justices who granted the original warrant, to be dealt with according to law.

LXVIII. And be it further enacted, That one-third of all fines or penalties to be levied in pursuance of this act, or under any bye-law made in pursuance thereof, by whomsoever incurred, shall go to the person who shall inform or sue for the same, and the remainder of all such fines or penalties shall be paid and applied to the fund of the Trinity House of Deptford Strond, and shall be applied, after defraying thereout the expenses of carrying this act into execution, in such manner and for the like purposes as the other funds of the said Corporation are by law or usage applicable, in case such fines or penalties shall be incurred by pilots licensed by the said Corporation, or by any other person or persons, in relation to any matters wherein such last-mentioned pilots shall be in anywise concerned; and in case such fines or penalties shall be incurred by pilots of the Cinque Ports, or by any other person or persons in relation to any matters wherein such last-mentioned pilots shall be in anywise concerned, then the remaining two-thirds of such last-mentioned fines or penalties shall go to such fund as hath been or shall be established by the persons having the direction of the Cinque Port Pilots, and shall be applied to the use of such respective funds, after defraying out of such funds and penalties, the respective expenses incurred in carrying this act into execution.

LXIX. And be it further enacted, That if any person who shall be summoned as a witness before any justice or justices of the peace, shall refuse or neglect to appear at the time by such summons appointed, having no just cause for such neglect or refusal, it shall be lawful for such justice or justices, on proof of such summons having been served, and of a tender of reasonable expenses having been made to such person on his being served with such summons, to issue his or their warrant under his hand and seal, or their hands and seals, to bring such person before him or them; and if on appearance, or on being brought before any justice or justices, such person shall refuse to be examined on oath concerning the premises, without having some just cause for such refusal, it shall be lawful for such justice or justices, by warrant under his hand and seal, or their hands and seals, to commit such person to the house of correction of the county, city, division, or place where any such person shall be apprehended, there to remain for any time not exceeding six months nor less than fourteen days, as any such justice or justices shall direct.

LXX. And be it further enacted, That every person who in any examination upon oath under the provisions of this act, shall wilfully give false testimony or a false account of the matter sworn to by him, shall be liable to be prosecuted for the same by indictment; and, if duly convicted of false swearing in the premises, shall be subject and
liable to such punishments, disqualifications, and disabilities, as any person would be subject or liable to for wilful and corrupt perjury in any other case by the laws and statutes of this realm.

LXXI. And be it further enacted, That where any distresses shall be made for any sum or sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor shall the party or parties making the same be deemed a trespasser or trespassers on account of any defect or want of form in the summons, conviction, warrant of distress, or the proceedings relating thereto; neither shall the party or parties be deemed a trespasser or trespassers ab initio, on account of any irregularity which shall be afterwards committed; but the party or parties aggrieved by such irregularity shall and may recover the full satisfaction for the special damage sustained in an action on the case.

LXXII. And, for the more easy and speedy conviction of offenders against this act, be it further enacted, That all and every justice and justices of the peace before whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up according to the following form; videlicet,

BE it remembered, That on the day of in the year of our Lord A. B. is convicted before me [or, us] one [or, two, as the case may be] of his Majesty’s justices of the peace for the [here specify the offence, and the time and place when and where committed, as the case may be] contrary to an act passed in the forty-eighth year of the reign of King George the Third, intituled, [here insert the title of this act]. Given under my hand and seal [or our hands and seals] the day and year first above written.

And no certiorari or other writ or process, for the removal of any such conviction, or any proceedings thereon, into any of his Majesty’s Courts of Record at Westminster, shall be allowed or granted.

LXXIII. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before mentioned of any offence or offences against this act, or against any rule, order, or by law made in pursuance thereof, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days’ notice of such appeal to the person or persons appealed against, and of the matter thereof, and within fourteen days next after such notice entering into a recognizance before some justice of the peace for such county, city, or place, with sufficient sureties conditioned to try such appeal, and for abiding the determination of the Court therein; and such justices shall, upon due proof of such notice having been given, and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable, and the decision of the said justices therein shall be final, binding, and conclusive; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by certiorari or any other writ or process whatsoever, into any of his Majesty’s Courts of Record at Westminster or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding.

LXXIV. And be it further enacted, That if any suit or action shall be brought or prosecuted against any person or persons for any thing done or to be done in pursuance
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of this act, in every such case the action or suit shall be commenced within six calendar
months next after the fact committed, and not afterwards, and shall be laid or brought
in the county, city, or place where the cause of action arises, and not elsewhere; and
the defendant or defendants in such action or suit may plead the general issue, not
guilty, and give this act and the special matter in evidence at any trial to be had there-
upon, and that the same was done in pursuance and by the authority of this act; and
if it shall appear so to be done, or if any such action or suit shall be brought after the
time limited for bringing the same, then the jury shall find for the defendant or defen-
dants; or if the plaintiff or plaintiffs shall become nonsuited or suffer a discontinuance
of his, her, or their action or actions, or if a verdict shall pass against the plaintiff or
plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs,
the defendant or defendants shall have treble costs, and shall have such remedy for the
same as any defendant or defendants hath or have for costs of suit in other cases by law.

LXXV. Provided always, and it is hereby further enacted and declared by the autho-

rity aforesaid, That nothing in this act contained shall extend, or be construed to ex-
tend, to prejudice or take away any right, property, authority, or jurisdiction of the
mayor of the city of London, or of the mayor and commonalty and citizens of the city
of London, to, in, and upon the river of Thames aforesaid.

"Public act. § 76."

LXXVII. And be it further enacted, That this act shall be in force for four years
from the passing thereof.
SCHEDULES to which this Act refers.

SCHEDULE A.

A TABLE of the RATES of PILOTAGE for piloting Ships from the River to the Downs, and up and down the North Channel from and to Hooley Bay; or from or of the Entrance of the Thames to London, and to Sea, from the River.

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>Under 7 Feet</th>
<th>From 7 Feet to 10 Feet</th>
<th>11 Feet</th>
<th>12 Feet</th>
<th>13 Feet</th>
<th>14 Feet</th>
<th>15 Feet</th>
<th>16 Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>From the Sea, Orfordness, the Downs, Hooley Bay, and vice versa</td>
<td>Nore or Warsps</td>
<td>£.</td>
<td>s.</td>
<td>d.</td>
<td>£.</td>
<td>s.</td>
<td>d.</td>
<td>£.</td>
<td>s.</td>
</tr>
<tr>
<td></td>
<td>Gravesend, Chatham, Standgate Creek, or Blackstakes</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>10</td>
<td>0</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Longreach</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>10</td>
<td>0</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Woolwich or Blackwall</td>
<td>5</td>
<td>15</td>
<td>0</td>
<td>8</td>
<td>5</td>
<td>0</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>8</td>
<td>11</td>
<td>0</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>From the Nore or Warp, or thereabouts, &amp; vice versa</td>
<td>Gravesend or Standgate Creek</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>15</td>
<td>0</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Longreach or Chatham</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>3</td>
<td>15</td>
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<tr>
<td></td>
<td>Woolwich or Blackwall</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>0</td>
<td>4</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>3</td>
<td>10</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

Upward:

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Under 7 Feet</th>
<th>From 7 Feet to 10 Feet</th>
<th>11 Feet</th>
<th>12 Feet</th>
<th>13 Feet</th>
<th>14 Feet</th>
<th>15 Feet</th>
<th>16 Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Longreach</td>
<td>Nore or Warsps</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>7</td>
<td>6</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Woolwich or Blackwall</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Moorings or London Docks</td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Downward:</td>
<td>Sheerness or Blackstakes</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>10</td>
<td>0</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Chatham</td>
<td>3</td>
<td>10</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Upward:</td>
<td>Woolwich or Blackwall</td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Downward:</td>
<td>Sheerness or Blackstakes</td>
<td>3</td>
<td>10</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Chatham</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Upward:</td>
<td>Moorings or London Docks</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Downward:</td>
<td>Sheerness or Blackstakes</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Chatham</td>
<td>4</td>
<td>10</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>10</td>
</tr>
</tbody>
</table>

Ships not having British Registers to pay One-fourth more of the Rates of Pilotage than stated in the above Table, except chiefly laden with Corn or other Provisions.

For Half a Foot exceeding the above Draughts of Water the medium Price between the two Limits.

For intermediate Distances a proportionate Rate:

For removing a Ship or Vessel from Moorings into a Dry or Wet Dock:

<table>
<thead>
<tr>
<th>Tons</th>
<th>£.</th>
<th>s.</th>
<th>d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 300</td>
<td>0</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>300 to 600</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>600 to 1000</td>
<td>1</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>above 1000</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>
SCHEDULE A.—continued.

A TABLE of the RATES of PILOTAGE for piloting Ships from the River to the Downs, and up and down the North Channel from and to Hosely Bay; or from off the Entrance of the Thames to London, and to Sea, from the River.

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>17 Feet.</th>
<th>18 Feet.</th>
<th>19 Feet.</th>
<th>20 Feet.</th>
<th>21 Feet.</th>
<th>22 Feet.</th>
<th>23 Feet. and upwards.</th>
</tr>
</thead>
<tbody>
<tr>
<td>From the Sea, Orfordness, the Downs, Hosely Bay, and vice versa</td>
<td>Nore or Warps</td>
<td>10</td>
<td>5</td>
<td>0</td>
<td>11</td>
<td>16</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Gravesend, Chatham, Standgate Creek, or Blackstakes</td>
<td>12</td>
<td>15</td>
<td>0</td>
<td>15</td>
<td>6</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Longreach</td>
<td>14</td>
<td>6</td>
<td>0</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Woolwich or Blackwall</td>
<td>15</td>
<td>8</td>
<td>0</td>
<td>17</td>
<td>14</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>10</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>From the Nore or Warp, or thereabouts, and vice versa</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gravesend or Standgate Creek</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Longreach</td>
<td>5</td>
<td>10</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Woolwich or Blackwall</td>
<td>6</td>
<td>8</td>
<td>0</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>8</td>
<td>13</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>Upward:</td>
<td>Longreach</td>
<td>3</td>
<td>2</td>
<td>6</td>
<td>3</td>
<td>7</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Woolwich or Blackwall</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>5</td>
<td>10</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>10</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>From Gravesend Reach, and vice versa</td>
<td>Downward:</td>
<td>Sheerness or Blackstakes</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Chatham</td>
<td>7</td>
<td>10</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Upward:</td>
<td>Woolwich or Blackwall</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>12</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>5</td>
<td>12</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>From Longreach</td>
<td>Downward:</td>
<td>Sheerness or Blackstakes</td>
<td>7</td>
<td>10</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Chatham</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>10</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Upward:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Moorings or London Docks</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Sheerness or Blackstakes</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>10</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Chatham</td>
<td>8</td>
<td>10</td>
<td>0</td>
<td>9</td>
<td>0</td>
<td>9</td>
<td>10</td>
</tr>
</tbody>
</table>

In the River Thames above Gravesend:

For a Boat of a Class carrying an Anchor of above 4 cwt. with a corresponding Tow-line, the Rate: 2 2 0 per Trip for the whole Distance from Gravesend to London, and in proportion for any part of that Distance.

Ditto with an Anchor above 2 cwt. and corresponding Tow-line: 1 1 6 Ditto with an Anchor under 2 cwt. &c.: 1 1 0

And for each Man's Service in these Boats, 10s. 6d. per Tide.
### SCHEDULE (B.)

A Table of the respective Rates to be received by the Pilots of the Cinque Part Establishment, according to the Regulations established by this Act.

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>Under 7 Feet</th>
<th>From 7 Feet to 10 Feet</th>
<th>11 Feet</th>
<th>12 Feet</th>
<th>13 Feet</th>
<th>14 Feet</th>
<th>15 Feet</th>
<th>16 Feet</th>
<th>17 Feet</th>
<th>18 Feet</th>
<th>19 Feet</th>
<th>20 Feet</th>
<th>21 Feet</th>
<th>22 Feet</th>
<th>23 Feet and upwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standgate Creek</td>
<td>Gravesend</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4 27 6 d.</td>
</tr>
<tr>
<td>The Downs</td>
<td>Longreach</td>
<td>5 10 6 b.</td>
<td>0 6 9 0 9 15 0 10 12 6 11 7 12 6 13 1 14 1 16 17 20 4 23 2 25 4 27 6 29 8 0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Blackwall or London</td>
<td>6 8 0 8 11 0 9 15 0 10 10 0 11 10 0 2 0 13 7 0 14 2 0 15 18 0 18 9 0 22 6 0 25 4 0 27 6 0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standgate Creek</td>
<td>Gravesend</td>
<td>3 8 0 3 13 0 4 4 0 4 14 6 5 5 0 5 15 6 5 6 0 6 16 7 7 0 7 17 6 3 8 0 8 18 6</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

N.B. One Fourth Part is to be added to the respective Rates in the several foregoing Classes for Ships not having British Registers.

For every Half Foot exceeding 10 Feet of the above Draughts of Water an increased Rate equal to the Medium between the Two Limits is to be paid.

For intermediate Distances a proportionate Rate equal to Half the Difference between the Two Limits.

Ships and Vessels which shall be boarded by Pilots Westward of the Downs are to pay the several Rates following:

1. From off Dungeness to the Downs...
2. From the Westward of Falkstone to the Downs...
3. From the Westward of Dover to the Downs...
4. From off Dover and Westward of the South Foreland to the Downs...
5. From off the South Foreland and to the Northward of that Promontory to the Anchorage in the Downs, or for cowling on board when at Anchor there...

Ships not having British Registers to pay One-fourth more of the Rates of Pilotage than is stated in this Table, except such as are chiefly laden with Corn and other Provisions.

To all the several Rates above-mentioned shall be added 2 3 per Cent. when the Number of Cinque Port Pilots shall be increased to 140; 2 10 per Cent. when they shall be increased to 160; and 2 20 per Cent. when they shall be increased to 180; of which increased Numbers respectively, Notice shall be given by the Lord Warden of the Cinque Ports, or by his Authority, in the London Gazette, and in one or more Newspapers, circulating in the Counties of Middlesex and Kent.

<table>
<thead>
<tr>
<th>In the River above Gravesend.</th>
</tr>
</thead>
<tbody>
<tr>
<td>For a Boat of a Class carrying an Anchor of above 4 Cwt. with a corresponding Tow Line, the Rate...</td>
</tr>
<tr>
<td>Ditto with an Anchor above 2 Cwt. and corresponding Tow Line</td>
</tr>
<tr>
<td>Ditto with an Anchor under 2 Cwt., &amp;c.</td>
</tr>
</tbody>
</table>
OF PILOTS, &c.

SCHEDULE (C.)

OATH to be taken by the Master and Wardens of the Society of Cinque Port Pilots.

'I A. B. do swear, that I will diligently and impartially examine and inquire into the capacity and skill of

in the art of piloting ships and vessels over the flats and round the Longsand Head, and up the rivers of Thames and Medway, and into Ramsgate, Dover, Sandwich, and Margate harbours, and also upon the coasts of Flanders and Holland; and will make true and speedy return thereof to the Lord Warden of the Cinque Ports for the time being, or his deputy, without favour, affection, fee, or reward.

So help me God.'

SCHEDULE (D.)

OATH to be taken by Sub-Commissioners for Pilotage.

'I A. B. do swear, that I will diligently and impartially examine into the capacity and skill of

in the art of piloting ships and vessels into roadstead, port, or harbour, and upon the coast following, videcet, [here describe the limits within which the person examined is intended to act as a pilot] and will make true and speedy return thereof to the Corporation of Trinity House of Deptford Strond, without favour, affection, fee, or reward, other than such fee or reward as is allowed by the bye laws or regulations duly established in that behalf.

So help me God.'

So far the marine laws of England are our guide, but as it often happens that disputes arise, for which they have not made any special provisions, British consuls, whose office obliges them to be arbitrators for their countrymen; as well as merchants at home, who are called upon to arbitrate between British and foreign subjects, should be well acquainted with the marine laws of other maritime states, especially such as are held in general esteem, and are respected in the courts of judicature of the kingdoms and states of Europe.

We shall begin with the laws of France, which however are founded in a great measure upon the laws of Oleron, instituted by Richard I, King of England, upon his return from the Holy Land about the year 1195; Richard at that time having extensive possessions in France, amongst others the town of Oleron in Gascony, situated on the river Gave, belonged to him.

In France no one can serve as a pilot until he is at least twenty-five years old; and has passed a strict examination of his knowledge in the fabric of ships, and concerning the tides, banks, currents, the rocks, and other dangerous parts, in the rivers, ports, and havens, where they are established.

They are obliged after they are approved and admitted always to have their boats furnished with anchors and with oars, that they may always be in a condition to succour ships on their first signal.

No mariner, that is not admitted a pilot, as above, shall offer to conduct any vessel, except where a licensed pilot is wanting; and, in this case, the master of the ship may take a fisherman, though this must quit the care of the vessel to a regular pilot, in case such a one offers, before they have passed the dangerous parts, and a satisfaction shall be made the fisherman for his assistance out of what would have been due to the pilot, had he taken charge of her from the beginning.

If any pilot is drunk when he offers to engage in his function, he shall forfeit 100 sous, and be suspended for a month.

Ships that are nearest are to be piloted first, under penalty of 25 livres to the pilot.
who shall prefer one that is more distant; and they are equally prohibited to go farther than the roads to meet the ships, or to enter them against the master's liking; nor to quit them until they are anchored and moored in port; and, if it is in going out, not until the ship is in open sea, on penalty of losing their stipend, and being mulcted in 30 livres.

For the vessel's security, and the pilot's discharge, the master shall declare what water the ship draws, on pain of forfeiting to the pilot 25 livres for every foot he conceals.

Pilots must not exact more for their assistance than what is regulated by their officers, and contained in the tariffs in the register office, and fixed upon the key, excepting in cases of storms, and evident danger, when it shall be settled by the arbitration of the ordinary officers, with the intervention and advice of two merchants.

The marine ordinances declare all promises void, that are made to pilots under the apprehension of a shipwreck.

The pilot, who through ignorance strands a vessel, shall pay 100 livres, or, if incapable, shall be whipt, and be for ever deprived of exercising his function again. And he who maliciously runs a ship ashore shall suffer death, and his corpse be fixed to a mast near the place of the wreck.

It is likewise the obligation of the pilots to see that the buoys and sea marks are well placed, and to examine whether there be no alteration in the ordinary depths and passages, that they may give advice to their officers, or to the master of the key or port.

As for the port it is free to all masters and captains, as well French as foreigners, to take those pilots they like best, without being obliged at their going out to make use of those that brought them in.

By the sea laws of Whisby, in the Isle of Gotland (formerly the emporium of the north, and the residence of merchants of every nation towards the close of the twelfth century, when their marine laws were submitted to, and passed for just on all the coasts of Europe from Muscovy to the Mediterranean) when a ship comes to a harbour or river, and the master doth not know the coast, nor the river, he ought to take a pilot of that country to carry her up the river or harbour; which pilot shall be maintained by the master and paid by the merchant: also, if it is thought convenient in any river, or off any dangerous coast, to take on board a pilot of the country, though the merchant opposes it, if the master, the ship's pilot, and the major part of the seamen are for it, he may be hired, and shall be paid by the ship and cargo, as averages are calculated for goods thrown overboard, Leg. Wisb. art. 44 and 60. And by the ordinances of Koningsburgh, if a master in this case is obliged to pay exorbitant pilotage, it shall be made good by the ship and cargo as gross average. The ordinary pilotage comes within common average.

In Holland the regulation of pilots is suitable to the other equitable marine institutions of that republic; as the pilots pay varies in the different provinces of that state, and our extensive commerce with it renders a continual use of them necessary, I shall give my reader an account of that part of their laws which I think may be of service, and merit his regard, in as brief a manner as the importance of the subject to all that are, or may be, concerned in the Dutch trade will permit, without curtailing any thing I shall deem requisite for their information.

The states of Holland and West-Frieze, in their ordinance about the pilots of Huysduyven, Petten, Calans-ogg, Texel, and the neighbouring parts, order that.

No one shall be admitted as a pilot, who is not strong and robust, not less than twenty-five or above sixty years of age, who shall have sailed at least four years in the openings of that country, and have an entire knowledge of the currents of the Texel, and he shall then have a mark given him of his admittance.
OF PILOTS, &c.

To prevent all disputes, the governors or steersmen of the pilot boats may put aboard the vessel that wants one, such sworn pilot as he thinks most capable, without any hindrance from the others, under penalty of 6 florins, except the master elects any other than him proposed.

No other pilots but those who have been examined and authorised as aforesaid, and have received the badge of their office (which they are to show, as well as this present ordinance, to all commanders before they undertake to conduct them either in or out, under penalty of forfeiting 24 florins for each offence) shall dare to undertake the charge of any ship going out or coming in, &c.

The pilots are obliged to conduct the ships, as far as on this side the Vlaak, and if the captains desire to be piloted farther, the pilots may not refuse, though thereby they are detained, one, two, or three days extraordinary aboard; they shall have 6 florins besides their common pay, if the ship is only in ballast, or 9 florins if she is loaded, provided that all foreign ships (except only those which bring oxen) pay 9 florins, if empty, and 13 florins 10 stivers, if laden; and, if a pilot remains aboard more than the said three days, he shall have 40 stivers a day, besides his ordinary salary, the same as the pilots of Vlieiland and of Terscheling have, according to the fifth article of their ordinance; but when in winter, a pilot has conducted a ship into a good road, free from the danger of the ice, and remains there two or three days, the pilotage is earned, and it shall be free to the captain to detain the pilot on board paying him 40 stivers per day. If it happens that a pilot having conducted the vessel on this side the Vlaak, and the master cannot pay him, either for want of money, or otherwise, so that the pilot is obliged to come up with the ship to the place designed, the master shall give him twelve florins besides his pilotage, and may for this make use of him until their arrival; but, if the pilot is accidentally detained through want of a boat, &c., to put him ashore, in such case, the master is not obliged to pay him any more than his pilotage.

All pilots shall be obliged to board the ships at a league without the shallows or flats, and those which shall not enter them but on this side the first buoy shall only have half pilotage.

All ships and gallys which come from the west, from the Levant; from Barbary, Genoa, the Canaries, from Spain, France, England, Muscovy, Greenland, Denmark, Sweden, Koningsberg, Dantzick, Bergen, Dronthien, Nileus, Hamburg, and other places in their neighbourhood, as also the galliots, or other vessels, laden with charcoal, of whatsoever nation they are, as well foreigners as natives, who will enter the Texel, shall be obliged to take pilots, and to pay them on the footing of the present ordinance, when they come to offer themselves without the buoys, provided that the vessels from the north shall pay 24 stivers the foot to Nieuw Diep, and 24 stivers the foot to this side of the Vlaak, and that they are free in the road of the merchants, or Koopperders Reed. The vessels coming from Normer, Dronthien, and Romsdaal, with bale goods, iron, fish, oil, and other commodities, shall pay as much as those from the Baltic; without exception: but the galliots or smacks coming from l'Eyder, Jutland, or Norway, either in ballast or laden with cattle, shall pay 15 stivers the foot, if the pilots go aboard them beyond the openings, and the pilots may leave them when they have conducted them into the road of the merchants; but if a pilot quits his ship before bringing her into the said roads, he shall forfeit 12 florins; and, if the captain will be piloted on this side the Vlaak, he shall augment the pilot's salary 5 stivers per foot, paying 20 instead of 15. And if the captain refuses to pay the pilot, this latter may follow him to his destined port, to recover his salary, and the charges occasioned him, for which charges he shall be allowed 12 florins; the vessels, which have a third of their loading, shall pay as is ordered in the 24th article, and all that is taken with the tackle, or that is laden in a
OF PILOTS, &c.

ship from hand to hand, whether it be oils, bales, sacks, casks, lead, &c. shall be reputed merchandize, except all sorts of wood, which shall not be esteemed such.

The pilots shall be obliged to go and come once a month through the openings to sound the depths exactly, to visit the banks and shores, and nicely to examine the buoys and their ropes, to see that they are not worn out, and whether the shallows are any thing altered, which they shall be also obliged to do, as often as there shall happen tempestuous bad weather; and, if they perceive any change in the shallows, banks, or elsewhere, they shall be obliged immediately to declare it to the Lords Commissioners, that they may immediately remedy it.

And if it happens that the pilot runs the ship ashore, whether through villainy, disaster, inadvertency, or imprudence, the commissioners shall take cognizance of it, and punish him according to the exigence of the case, either by suspension, discharging, banishing, or by a greater punishment, even with death; but if it happens through an extraordinary casualty, as by an unforeseen mischance of a sudden change of wind, or of the current, or other similar accidents, the penalty shall be moderated by the Commissioners, as they shall think just: ordering to this effect the respective officers to inform themselves exactly, of what has passed, and to send their declarations to the Commissioners, as also, if the case require it, to seize the pilot, and proceed against him according to what he has done.

Ships or other vessels shall pay for piloting out, viz.

<table>
<thead>
<tr>
<th>Feet Water</th>
<th>Stivers, Pence</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>12</td>
<td>10</td>
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</tbody>
</table>

And those that draw above twelve feet water shall pay 12 stivers the foot.

And in case of refusing payment, the pilot, on the ship's return, may pursue the captain to the place he is bound to, to recover his due, with charges, for which he shall be allowed 12 florins; but the vessels going to the north are excluded; and those which have a third or more of their cargo, shall pay pilotage as follows.

<table>
<thead>
<tr>
<th>Feet Water</th>
<th>Stivers</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>1.5</td>
</tr>
<tr>
<td>7</td>
<td>2.2</td>
</tr>
<tr>
<td>8</td>
<td>2.2</td>
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<td>9</td>
<td>2.5</td>
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<tr>
<td>10</td>
<td>2.7</td>
</tr>
<tr>
<td>11</td>
<td>3.0</td>
</tr>
<tr>
<td>12</td>
<td>3.5</td>
</tr>
<tr>
<td>13</td>
<td>4.0</td>
</tr>
<tr>
<td>14</td>
<td>4.5</td>
</tr>
<tr>
<td>15</td>
<td>5.0</td>
</tr>
<tr>
<td>16</td>
<td>5.5</td>
</tr>
</tbody>
</table>

Those that draw more feet water, shall pay for every surplus foot 12 florins, and 6 florins for each half foot, but nothing for the quarter of a foot.

And every pilot shall be obliged to abide aboard till the ship is got without, and shall not undertake to carry out another till he has conducted the first into open sea, on penalty of 12 florins mulet, and suspension for twelve weeks; and when the wind is fair for getting out, the pilot's boat must not take any one to carry aboard, but the captain of the ship which the pilot is going to take under his care, on forfeiture of 8 florins;
but if it happens that some other captain go in the same boat, they shall be obliged each of them to carry a pilot with them, to conduct their ships abroad, if they do not declare that their pilot is left aboard, and tell their name and surname; on penalty to the boatman or pilot who undertakes it (be it through malice, ignorance, or contempt of the laws) of 9 florins, for each captain that he has carried aboard without a pilot, and shall be obliged on his return ashore, to declare to the officer the names of the captains that he has carried aboard, and that of the pilots, as above, on penalty of 18 florins.

When the pilots arrive on board, they shall immediately demand of the captain or mate how much water the ship draws, which they shall be obliged to declare without reserve, on pain of forfeiting sixteen florins.

The following pilotage shall be paid for the entrance of ships, according to the feet they draw of water counting by feet and half feet, which the captains shall be obliged to pay, except those which come from the North as in the 9th Article, viz. in summer, to commence from the 1st of April to the 1st of September, to be counted from the day that the ship passes the Vlaak, and not from the day that she shall be got in.

**For every ship or vessel that draws**

<table>
<thead>
<tr>
<th>Feet Water</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>7, 8, 9</td>
<td>F. 12</td>
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<tr>
<td>10</td>
<td>13</td>
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<tr>
<td>10½</td>
<td>13</td>
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<td>11</td>
<td>15</td>
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<td>11½</td>
<td>16</td>
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<td>11¾</td>
<td>16</td>
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<td>12</td>
<td>18</td>
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<tr>
<td>12½</td>
<td>19</td>
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<td>13</td>
<td>20</td>
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<td>13½</td>
<td>23</td>
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<td>14</td>
<td>26</td>
</tr>
<tr>
<td>14½</td>
<td>29</td>
</tr>
<tr>
<td>15</td>
<td>32</td>
</tr>
<tr>
<td>15½</td>
<td>36</td>
</tr>
</tbody>
</table>

**In winter, to begin from the 1st of September to the last day of March.**

<table>
<thead>
<tr>
<th>Feet Water</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>7, 8, 9</td>
<td>F. 18</td>
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<tr>
<td>10</td>
<td>19</td>
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<tr>
<td>10½</td>
<td>19</td>
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<td>22</td>
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<td>11¾</td>
<td>23</td>
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<td>24</td>
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<td>12½</td>
<td>26</td>
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<td>13</td>
<td>28</td>
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<tr>
<td>13½</td>
<td>31</td>
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<tr>
<td>14</td>
<td>34</td>
</tr>
<tr>
<td>14½</td>
<td>38</td>
</tr>
<tr>
<td>15</td>
<td>43</td>
</tr>
</tbody>
</table>

And every vessel that draws more than twenty feet water, shall pay for every foot over, 2½ florins, though only feet and half feet should be paid for, without reckoning any thing for the quarter of a foot, under penalty of 20 florins.

All vessels coming from the Levant, Barbary, the Canaries, from Spain, France, England, Muscovy, and all other parts, as in the 9th art. with a third or more, of their lading, shall be deemed as full, and shall pay 3 florins instead of 2, provided that the rest of their cargo consists only in salt, or in common goods; and the vessels which
OF PILOTS, &c.

shall not have a third of their lading, shall pay according to the preceding regulations, made in this ordinance.

_All ships coming from Guinea shall pay_

<table>
<thead>
<tr>
<th>Drawing</th>
<th>8 Feet Water</th>
<th>F. 20</th>
<th>14+ Feet Water</th>
<th>F. 58</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>21</td>
<td>10</td>
<td>15</td>
<td>65</td>
</tr>
<tr>
<td>9</td>
<td>23</td>
<td></td>
<td>15+</td>
<td>73</td>
</tr>
<tr>
<td>9+</td>
<td>25</td>
<td></td>
<td>16</td>
<td>81</td>
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<tr>
<td>10</td>
<td>27</td>
<td></td>
<td>16+</td>
<td>94</td>
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<tr>
<td>10+</td>
<td>29</td>
<td>10</td>
<td>17</td>
<td>108</td>
</tr>
<tr>
<td>11</td>
<td>32</td>
<td></td>
<td>17+</td>
<td>123</td>
</tr>
<tr>
<td>11+</td>
<td>34</td>
<td></td>
<td>18</td>
<td>138</td>
</tr>
<tr>
<td>12</td>
<td>36</td>
<td></td>
<td>18+</td>
<td>155</td>
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<tr>
<td>12+</td>
<td>39</td>
<td></td>
<td>19</td>
<td>172</td>
</tr>
<tr>
<td>13</td>
<td>42</td>
<td></td>
<td>19+</td>
<td>191</td>
</tr>
<tr>
<td>13+</td>
<td>46</td>
<td>10</td>
<td>20</td>
<td>210</td>
</tr>
</tbody>
</table>

This being the tax of pilotage during winter; and ships coming from America, from Brazil, or the neighbouring coasts, half laden, shall pay as those which come from Guinea; but those which shall come from America, or from the Streights with salt, shall only pay as other ships laden with salt, according to the present ordinance.

Provided, that the pilots who shall bring in any ships in a great storm, or such as are without anchors, masts, cables, or rudder, shall have, besides their ordinary hire, as much as the commissary, or the arbitrators which he shall have established, think proper to adjudge.

And all pilots shall be likewise obliged to carry all ships and captains out to sea, whenever they are required, and this on reasonable terms; and no pilot shall undertake to carry out more than one ship at a time, under penalty of 25 florins and suspension of six weeks: Neither is it permitted to any pilot who has undertaken to conduct a ship out, to resign her to another, under pain of 6 florins mullet, but if any such pilot happens to fall sick, the captain may take any other he pleases.

When pilots are to carry out, or bring in ships, they cannot oblige captains to take more than one, nor charge him for any damage that their boat may have suffered in going aboard, or before the ship, on penalty of 25 florins, unless that it be by express order of the captain, in which case he must produce proofs of the said order; in want of which, he shall not be allowed more than a common pilotage.

And in case that a ship appears either by night or by day, without meeting with any pilot, and her company desire any fisherman (not admitted to the function) to conduct her in, the fisherman is obliged to declare to the captain that he is no sworn pilot; in the mean time, he may enter the ship, and undertake to bring her in; but if afterwards, it happens that a pilot comes aboard to offer his service, he shall be preferred, and the fisherman obliged to quit her, except he agrees with the pilot that they share the pilotage between them, which shall be at the election of one and the other.

But if the fisherman has once brought the ship within the first buoy, before the sworn pilot got on board, the fisherman shall not be obliged to abandon her, nor to yield up the moiety of the pilotage.

_Item, all ships being in danger, their captains may demand and take two pilots, paying a double reward; but, if there remains more than one pilot aboard without the captain's vol. I._

2 H
OF PILOTS, &c.

order, those that remain unprovided shall have nothing to pretend to but what the captain pleases to give them freely, as he shall think proper.

When a pilot has brought in a ship, and received his salary, he shall be obliged to give the captain an acquaintance, which shall contain the number of feet the ship draws, and the sum he has received; which acquaintance he shall sign or mark, and the captain shall be obliged to demand one, upon which to reimburse himself the pilotage from the merchants, in want whereof these latter shall not be obliged to pay him any thing; and besides this, the captain and the pilot shall forfeit 6 florins each.

We forbid every one, whosoever he be, to insult, abuse, or injure any of the pilots admitted and sworn, either in the streets, at the water-side, in the public or private houses, or to deride them for their employments, on penalty of 6 florins for the first time; 12 florins, and an arbitrary correction, for the second; 18 florins, and banishment for two years, for the third.

If it happens that any ship is forced to enter by the openings to anchor, either by a contrary wind or otherwise, and would go out again, she shall pay 15 stivers per foot pilotage; but such as would be conducted within the Vlaak shall pay full pilotage; and if the pilot has brought the ship safely into the Amelander Diep, either by the captain's order, or constrained thereto by bad weather, the pilot shall be obliged to remain on board, at the will of the captain, until a proper season offers for getting out, and the pilot shall have six florins, once for all, for his time, besides his victuals.

If any captain desires his ship to be conducted in the Balg the pilots shall be obliged to carry them for 20 stivers the foot, for which the said pilots are to convey the ships as far into the Balg as the captains please; and as a great number of boats or barges are commonly employed in going before large ships, to sound the coast for their security, there shall be paid for each boat, whether they have one or more men in them, the two-thirds of the salary of one florin per foot, provided the said boats shall have a third more, for ships laden with merchandise in the article 24; the whole, without any dispute, on penalty of 12 florins, besides the pilotage; and it is to be understood, that when a ship in winter, or in the icy seasons, shall have been conducted into the Balg, by order or consent of the captain, or his mate, the pilotage shall be earned, and afterwards a half pilotage shall be paid for carrying the vessel from the Balg to the Vlaak.

Ships which return from the East, from Norway, and the adjacent parts, although they had taken and hired a pilot, on going, even with the consent of the commissary, they shall nevertheless be obliged, on their arrival before the place, to take another to conduct them through the openings, and to pay him the pilotage upon the footing of this present ordinance, the which pilotage shall be parted between the two pilots; and him that shall have been taken to bring the ship shall be free, after he has brought the ship in the road of the merchants, or Koopvaarders reed.

Each pilot boat, or galliot, shall carry a white vane or weather flag at the top of the mast in which may plainly be seen the number of 1, 2, 3, 4, 5, &c. to the number of boats that there shall be, or else the number shall be marked in large figures of two foot square, with black tar, at the top of each great sail of the boats: and if a pilot boat passes by a small ship, without putting a pilot aboard her, with a view of going to a larger, the captain may declare it, and in this case all the pilots who shall have so neglected him, shall forfeit 25 florins each; and all who shall go to sea without their number marked in their flag, or in their great sail, shall also pay 25 florins each, and shall be suspended six weeks; those who shall have found any one in fault, and not declared it to the officer, shall pay the same mulct.

The States, at the time of making the foregoing ordinance, for the pilots of Huysduynen, Petten, Calan-oog, Texel, and the adjacent parts, made another for the pilots...
OF PILOTS, &c.

of Vlieland and Ter Schelling, and the neighbouring territories, differing chiefly from the other in the names of the places, and something in the charges of pilotage, which I shall particularly mention.

Every captain of a ship that enters by the Vlie with a pilot of Ter Schelling shall be obliged to pay 6 stivers every time, more than the ordinary pilotage, for the relief of poor and aged pilots.

The pilots shall be obliged to go aboard the ships at a league beyond the Flats, and those who only embark on this side the first, second, third, or fourth buoy, shall have no more than 15 instead of 20 stivers per foot; and if any pilot having conducted a ship up the Vlaak, is detained either by bad weather, or the want of a boat to carry him ashore, in this case he shall have 1 florin per foot; but if, in winter time, the ship is stopped by ice, the pilot shall endeavour to carry her into the Ruys ou Sloop, and, having secured her there, he shall remain four days to see whether the weather will change, and, if then the ice continues, he has earned his pilotage, and may quit the ship, and the captain shall pay him 3 florins for his attendance the four days; and, if the captain will detain him yet longer, he shall pay 15 stivers per foot, besides his provisions; but if the captain will absolutely be carried up the Vlaak, the days of pay shall cease on heaving up the anchor, and the pilot shall be obliged to conduct him for 16 stivers the foot; and we prohibit all others but sworn and admitted pilots, to undertake the bringing any ship from Piereveld, by the opening of the Vlie, on penalty of 25 florins.

All vessels coming from the East, West, from Muscovy, and the adjacent parts, as also those from Bergen, Drontheim, and Nileus, and all charcoal vessels drawing eight feet water, which will enter by the Vlie, shall be obliged to take a pilot to bring them in, although they have taken one at the Sand, or elsewhere, without leaving the captains at liberty to refuse, or to excuse paying the pilotage; and in case of refusal, the pilots may follow the captains to the places they are bound to, to recover the pilotage and charge of their journey, which shall be settled at 12 florins, provided that the galliots, or other small vessels, which draw no more than four, five, and six feet water, shall pay to the Sloop 24 stivers the foot, and to this side of the Vlaak, 34 stivers the foot; the ships coming from Normer, Drontheim, or from Roomsdaal, laden with iron, oil, &c. shall pay as much as those which come from the Baltic, without exception; but the galliots or other vessels which only draw 10 feet water, or less, coming from l'Eyder, Jutland, or Norway, with their ballast of salt, or laden with beeves, shall pay 15 stivers per foot, if the pilots enter them without the openings, and conduct them to the Sloop, where they may quit them; but if a pilot leaves a ship before he has brought her to the said place, he shall forfeit 12 florins; and, if the captain will keep the pilots till on this side the Vlaak, they shall pay them 5 stivers for each foot more than the 15; and, in regard of laden ships, it shall be regulated, according to the 9th article, except for those who are only in ballast, or those which are laden with wood or cattle.

Those vessels which have one-third of their cargo shall pay pilotage, as directed in Art. 14, 15, art. 16, for the Texel; and those coming from the East and North, shall pay entrance as underneath, according to the feet they draw, to be counted by feet and half feet; but the galliots or small vessels coming from the North, which only draw from four to six feet, shall be exempt, as in the preceding article, viz. in summer to commence the 1st of April, provided the vessel passes the Vlaak that day, for afterwards the distinction shall not be made of the pilotage of the summer and winter, but of the day that the ship passes the Vlaak, and not the day of her entrance.
OF PILOTS, &c.

Every Ship or Vessel which draws

5, 6, 7, 8 to 9 Feet Water  F. 12

9½ ........................................ 12 10
10 ........................................ 13
10½ ........................................ 14: and the remainder to 20 feet, exactly
the same as article 20 in the preceding ordinance.

And for the winter’s pilotage to commence from the 1st of September, if the vessel
passes the Vlaak that day, till the last of March;

Every Ship or Vessel which draws

4, 5, 6, 7, 8 to 9 Feet Water  F. 18

9½ ........................................ 18 10
10 ........................................ 19 10
10½ ........................................ 20 5: and the rest as far as 20 feet, is
the same as in article 21 of the foregoing ordinance: as are all the other articles which
I have omitted here, being only repetitions of the others quoted before; and as most
of the marine laws in the northern, and other kingdoms where there are any, are taken
either from the sea laws of Wisby, or from the Dutch, who have incorporated most
of the Wisby laws, and improved upon them, I shall not enlarge further on this
subject.

OF WRECKS, FLOTSAM, JETSAM, AND LAGAN.

A wreck, (in Latin, wreccum maris, and in French, wreck de mer) signifies in our
law such goods as, after a shipwreck, are cast upon land by the sea, and left there
within some county; for they are not wrecks so long as they remain at sea, in the
jurisdiction of the Admiralty.

Flotsam, is when a ship is sunk, or otherwise perished, and the goods float upon
the sea.

Jetsam, is when a ship is in danger of being lost, and in order to save by light-
ening her, some goods are cast into the sea, notwithstanding which she afterwards
perishes.

Lagan, or ligan, are those heavy goods which are cast into the sea, before a ship is
lost, in order to preserve them; and that they may be found again (if providence permits)
a buoy is generally fastened to them.

The King shall have flotsam, jetsam, and lagan, when the ship perisheth, or when the
owners of the goods are not known; but when the ship does not perish, è contra.

A man may have flotsam and jetsam by the King’s grant; and may have flotsam
within the high and low water-mark by prescription, as it appears by those of the
west countries, who prescribe to have wreck in the sea, so far as they may see a Hum-
ber barrel.

By the grant of wreck will pass flotsam, jetsam, and lagan, when they are cast upon
the land; but, if they are not cast upon the land, the admiral hath jurisdiction, and
not the common law, and they cannot be called wreck.

By the common law all wrecks belong to the crown, and therefore they are not
chargeable with any customs, because goods coming into the kingdom by wreck, are
OF WRECKS, &c.

not imported by any body, but cast ashore by the wind and sea: but it was usual to seize wrecks to the King's use, only when no owner could be found; and, in that case, the property being in no man, it in consequence belongs to the King, as Lord of the Narrow Seas.

Though when a man, dog, or cat, escapes alive out of any ship that is lost, neither the ship, nor any thing therein, shall be adjudged wreck, but the goods shall be saved and kept a year and a day by the sheriff, to be restored to any person who can prove a property in them; and if nobody appears to claim in that time, they shall be forfeited as wreck; the year and day shall be accounted from the seizure; and, if the owner of the goods dies before the expiration of that term, his executors or administrators may make proof, though, if the goods are bona peritura (perishable goods) the sheriff may sell them within the year, taking care he does it to the best advantage, and account for their product.

The owners, claiming a wreck, must make sufficient proof of their title within the year and day; and they are to do it by their marks or cocketts, by the custom-house books, or the testimony of reputable men.

Where goods are wrecked on shore, and the lord of the manor takes them, having power so to do, he shall not pay custom, neither by the common law, nor by the statute law; for by the common law shipwrecked goods could not be charged with customs, for the wreck being wholly the King's, he could not have a custom of what was all his own. Neither by statute law, because such wrecked goods cannot be said to be brought into the kingdom, as merchandise for sale. Hill. 23 and 24, Car. 2.

Enacts, that the sheriffs and Justices of the peace of every county, or of a city or town, and all mayors, bailiffs, and other head officers of corporations and port towns near adjoining to the sea, and all constables, tithingmen, and officers of the customs, in all such places, upon application to them made on behalf of any commander of a ship in danger of being stranded, or run on shore, shall command the constables near the sea coast where such ship shall be in danger, to call together as many men as shall be necessary, to the assistance, and for the preservation of such ship; and if there shall be any ships of war, or other ships, lying at anchor near the place, the officers of the customs, and constables, &c. are to require the assistance of the superior officers by their boats, and what hands they can spare: and if such officers shall refuse or neglect to assist, they shall be liable to the penalty of 100l. to be recovered by the chief officer of the ship in distress.

No person shall enter into such ships in distress, without leave from the commander or constable, &c. and the masters and constables may, by force, repel persons, who shall press on board the said ships without leave. And if any goods are carried off from any such ship, and found on any person, if they are not delivered to the owner on demand, such person shall pay treble the value of the goods, recoverable by the owner in an action at law. Also, if any officer of the customs, or his deputy, abuse the trust reposed in him by this act, and shall be convicted thereof, he shall forfeit treble damages to the party grieved, and be incapable of any employment in the customs. Persons defacing the marks of any goods on board such ship shall make double satisfaction, or be sent to the house of correction to hard labour for twelve months.

And for the encouragement of such persons as shall give their assistance to such ships or vessels so in distress, it is further enacted; that the said collectors of the customs, and the master or commanding officer of any ships or vessels, and all others who shall act or be employed in the preserving any such ship or vessel in distress, or their cargoes, shall, within thirty days after the service performed, be paid a reasonable reward for the same, by the commander, master, or other superior officer, mariners, or owners of the ship or vessel so in distress, or by the merchant, whose ship, vessel or goods shall be
OF WRECKS, &c.

so saved. In default, the ship or goods may be detained by the officer of the customs or his deputy, till all the persons employed in the saving the said ship or cargo, shall be reasonably gratified for their assistance and trouble; or good security to the satisfaction of all parties shall be given for the payment thereof. If any difference arises touching the gratuitous deserved by any of the persons so employed, the said master or merchant, and also the said officer of the customs, shall nominate three justices of the peace in the neighbourhood, who shall thereupon adjust the quantum of the monies or gratuitities to be paid to the several persons acting or being employed in the salvage of the said ship, vessel, or goods, and such adjustments shall be binding to all parties, and shall be recoverable in an action at law to be brought in any of her Majesty's Courts of Record. If no owner appears to claim the goods saved, they shall be put into the custody of the chief officer of the customs, and if not claimed in twelve months he shall sell them by public sale, and transmit the amount to her Majesty's Exchequer, there to remain for the use of the owners. This act shall be read four times in the year, in all the parish churches and chapels of every sea-port town, and upon the sea coast in this kingdom, viz. upon the Sunday next before Michaelmas-day, Christmas-day, Lady-day, and Midsummer-day, in the morning immediately after prayers, and before the sermon.

If any person or persons shall make, or be assisting in the making, any hole in the bottom, side or any other part of any ship or vessel so in distress as aforesaid, or shall steal any pump belonging to any such ship or vessel, or shall be aiding or abetting in the stealing such pump, or shall wilfully do any thing tending to the immediate loss and destruction of such ship or vessel, such person or persons shall be, and are hereby made guilty of felony, without any benefit of his, her, or their clergy. This act was made perpetual by 4 Geo. 1. c. 12.

For the effectual preventing the wilful casting away, burning, or otherwise destroying of ships, by the owners, masters, and mariners thereof, and thereto belonging; it is enacted, that if any owner of, or captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn, or otherwise destroy the ship of which he is owner, or unto which he belongeth, or in any manner direct or procure the same to be done, to the prejudice of any person or persons that shall underteke any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, he shall suffer death. And the 11th of Geo. 1. cap. 19. sect. 76. after reciting the above clause, and mentioning that doubts have arisen about the trial and punishment for the said offences, enacts, that if the said offences are committed within the body of any county in the realm, they shall be tried in the same courts in such manner and form as other felonies are tried and determined; and if the said offences are committed upon the high seas, they shall be tried and adjudged by the Admiralty Court.

If a man has a grant of wreck, and goods are wrecked upon his lands, and another taketh them away before seizure, he may bring an action of trespass, &c. for before they are seized, there is no property gained to make it felony.

If goods wrecked are seized by persons having no authority, the owner may have his action against them; or if the wrong-doers are unknown he may have a commission to inquire, &c.

Goods lost by tempest, piracy, &c. and not by wreck, if they afterwards come to land, shall be restored to the owner.

When a ship is ready to sink, and all the men therein, for the preservation of their lives, quit the ship, and afterwards she perishes, if any of the men are saved and come to land, the goods are not lost.

A ship on the sea was chased by an enemy; and the men therein, for the security of their lives, forsook her; she was afterwards taken by the enemy, and spoiled of her
OF WRECKS, &c.

... goods and tackle, and then turned adrift; after this, by stress of weather, she was cast on land, where it happened her men safely arrived: and it was resolved that this was no wreck.

The act, 12 Ann. st. 2. cap. 18. shall not affect the ancient jurisdiction of the Admiralty Court of the Cinque Ports, but the officers of the said court shall put the said act in execution, within the jurisdiction of the Cinque Ports.

In the year 1759, the following act passed, which having reduced the greatest part of the former laws into this act, for the guidance of masters of ships and other persons concerned in shipping, it is here inserted.

The preamble begins that, Whereas, notwithstanding the good and salutary laws now in being, against plundering and destroying vessels in distress, and against taking away shipwrecked, lost, or stranded goods, many wicked enormities have been committed, to the disgrace of the nation, and to the grievous damage of merchants and mariners, of our own and other countries: Be it enacted, that, if any person or persons shall plunder, steal, take away, or destroy any goods or merchandise, or other effects, from, or belonging to, any ship or vessel which shall be in distress, or shall be wrecked, lost, stranded, or cast on shore, in any part of his Majesty's dominions (whether any living creature be on board or not) or any of the furniture, tackle, apparel, provision, or any part of such ship or vessel: or shall beat, or wound, with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life, from such ship or vessel, or the wreck thereof; or, if any person or persons shall put out any false light or lights, with intent to bring any ship or vessel into danger, then such person or persons so offending, shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death, as in cases of felony, without benefit of clergy.

Provided, that when goods of small value shall be cast on shore, and stolen without circumstances of cruelty or violence, the offender on conviction, be punished as in cases of petit larceny.

It shall be lawful for any justice of the peace, upon information being made to him on oath, of any part of the cargo, or effects of any ship, lost or stranded, being unlawfully carried away, and concealed, to issue his warrant for searching any house, &c. as in other cases of stolen goods; and, if the same shall be found in such house, &c. or in the possession of any person not legally authorised to keep the same, and the owner of such house, or the person in whose custody the same shall be found, shall not give an account to the satisfaction of the justice of the peace, how he came by the goods, it shall be lawful upon proof of such refusal, and he is required, to commit the offender to the common gaol for six months, or until he shall have paid the owner treble the value of the things unlawfully detained.

If any person shall offer to sale any effects belonging to any vessel lost as aforesaid, and unlawfully taken away, or suspected so to have been, it shall be lawful to seize, and carry the same, or give notice thereof with all convenient speed, to some justice of the peace; and if the person offering them to sale, or some other person in their behalf, shall not appear before the justice within ten days after such seizure, and make out to the satisfaction of the justice, his property in the goods, or in some person who employed him, then the goods shall be delivered for the use of the right owner, upon payment of a reasonable reward for such seizure, to be ascertained by the justice, to the person who seized the same, and such justice shall commit the offender to the common gaol for six months, or until he shall have paid the owner treble the value of the goods.

In case any person, not employed by the master, &c. in the salvage of any vessel or the cargo, &c. shall, in the absence of persons so employed, save any such ship, goods, &c. and cause the same to be carried, for the benefit of the owners or proprietors, into
port or place of safe custody, immediately giving notice to some justice of the peace, magistrate, custom-house or excise officer, or shall discover to any magistrate or officer where any such goods are wrongfully bought, sold, or concealed, such person shall be intitled to a reasonable reward, to be paid by the master or owner of such vessel, in like manner as salvage is to be paid, by 12 Anne, intitled, an act for the preserving all such ships and goods thereof, which have happened to be forced on shore, or stranded upon the coast of this kingdom, or any other of his Majesty's dominions, or else in the manner herein after prescribed, as the case shall require.

For the better ascertaining the salvage, and putting the acts in execution, the justice of the peace, mayor, bailiff, collector of the customs, or chief constable, who shall be nearest where any ship is stranded or cast away, shall forthwith give notice for a meeting of the sheriffs or their deputies, the justice of the peace, mayor or other chief magistrate of towns corporate, coroners, and commissioners of land-tax, or any five or more of them, who are required and impowered to employ proper persons for saving ships in distress, and ships and goods as shall be stranded or cast away; and also to examine persons concerning the same, or the salvage thereof, to adjust the quantum of such salvage, and distribute the same, in case of disagreement, among the parties: and that every person, attending and acting at such meeting, shall be allowed four shillings a day, out of the effects saved by their care and direction.

But if the charges and rewards for salvage, directed by the act 11 Anne, and by this present act, be not paid or security given within forty days, the officer of the customs, concerned in such salvage, may borrow money on the goods, &c. by bill of sale, on such part of the goods, &c. as shall be sufficient, redeemable upon payment of the principal sum and interest, at four per cent.

And if oath shall be made before any magistrate, lawfully impowered to take the same, of any theft, and the examination taken shall be delivered to the clerk of the peace, for the county, &c. or his deputy; or if oath shall be made of the breaking any ship, contrary to the act, 12 Anne, and the examination delivered to the clerk of the peace or his deputy, he shall cause the offender to be prosecuted, either in the county where the fact was committed, or the county adjoining, where any indictment may be laid by any other prosecutor; and if the fact be committed in Wales, then the prosecution may be carried on in the next adjoining English county: the charge of such prosecution by the clerks of the peace to be settled by the justices at session, and paid by the treasurer of the county, &c. the clerk of the peace, on refusal or neglect to carry on such prosecution, to forfeit one hundred pounds for every offence, to any person who shall sue for the same.

The Lord Wardens of the Cinque Ports, the Lieutenant of Dover Castle, the Deputy Warden of the Cinque Ports, and the judges officiate, and commissary of the Court of Admiralty of the Cinque Ports, two ancient towns and the members thereof, for the time being, and every person appointed by the Lord Wardens of the Cinque Ports, shall put the acts in execution within the jurisdiction of the Cinque Ports, two ancient towns, and their members, in the same manner, as the justices, &c. in other places.

If any person, appointed to put this act in execution, shall be wounded in such service, such person or persons, so wounding him, shall, upon trial and conviction, at the assizes or general gaol delivery, or at the general or quarter sessions for the county, &c. be transported for seven years, to some of his Majesty's colonies in America.

Any justice of the peace, in the absence of the sheriff, may take sufficient power to repress all violences and enforce the execution of this act.

To prevent confusion among persons assembled to save any ship, &c. all persons shall conform to the orders of the master, or other officers, or owners; or for want of their presence or direction, to any of the persons appointed to put this act in execution,
in the following subordination: first, to the orders of the officer of the customs, then of
the excise, the sheriff of the county, or his deputy, a justice of peace, the mayor or
chief magistrate of any corporation, the coroner, the commissioner of the land-tax;
then of any chief constable, petty constable, or other peace officer: and, whoever acts,
knowingly or wilfully, contrary to such orders, shall forfeit five pounds, and in case of
non-payment, be sent to the house of correction, for any time not exceeding three
months.
Nothing in this act extends to Scotland.

Of Salvage, Average, or Contribution.

Salvage is an allowance made for saving of a ship or goods, or both, from the dan-
gers of the seas, pirates, or enemies; it is provided for by several English statutes, many
of which have been given under the preceding head, as properly relating to wrecks on
shore and ships stranded on the coasts of England.

We are now to treat of salvage in general at sea; and on foreign coasts.

Salvage is allowed by all nations, it being reasonable that a man should be rewarded
who hazards his life, or employs his time, in the service of another: more especially as
without his aid the lives and property of the parties in distress most probably would have
been lost.

The only difficulty, therefore, that can arise on the subject of salvage, is, as to the
proportion of the sums of money, or other gratuities to be allowed; and where there
are no stated laws or customs to go by, we must be guided by the particular circumstan-
ces of different cases. This should be the line of conduct observed by arbitrators. For
though great promises may have been made in the hour of danger by the master and
mariners, yet when the decision comes before a court of judicature, or arbitrators, they
are to guard against exorbitant demands for salvage, and the reward must be regulated
by the pains and trouble the salvers were put to. Leg. Oleron.

For the charges of salvage, very great allowances have been made to divers and sal-
vers, as the half, the third, or the tenth of the things saved, according to the depth of
water, out of which they were fished, whether fifteen, eight, or one fathom. Generally,
a tenth part for salvage on the coast, and a fifth for him, who, saving himself, carries
something with him, as gold, silver, jewels, or valuable papers, which being easy of
transportation are sometimes saved by the mariners who escape from a shipwreck.

Where things are cast up by shipwreck, or left through casting in storms, the laws of
Rhodes allow to the finder a fifth part for the saving, and in France they allow one third
part for salvage.

If the ship only perish, and the goods be saved, then the goods shall pay the tenth
or the fifth, as the difficulty of the saving thereof shall require: and gold, silver, silk,
and the like, being of easy transportation, shall pay less than goods of greater weight,
and more burdensome for carriage, which are in greater danger. Malines Lex Merc.
p. 119.

Salvers may detain goods till agreement is made, and security given, for the payment
of the salvage; but they cannot convert them to their own use, in case the quantum of
the salvage is disputed; they must remain as deposits till the contest is decided, and
must then be delivered up to the owners, upon payment of the sums awarded for the
salvage.

If goods are abandoned or given up to the salvers, there can be no claim for salvage;
for salvage can never exceed the benefits to be derived from it. Lord Kain's Prin. of
Equity, p. 373.

Though effects, recovered from shipwreck should afterwards be irrecoverably lost,
OF SALVAGE.

Yet salvage must be allowed for the recovery. In like manner as for a ship, taken again by an enemy after a ransom or recapture.

Anchors are the most common things found at sea; and if they are fished up, without any buoy or cable floating to direct the salvors, one half is allowed; but if there is a buoy or cable, then only one third. But as it frequently happens that disputes arise concerning the finding of anchors and cables; a remedy is provided by stat. 3. Geo. 1. c. 13. s. 6. The Lord Warden of the Cinque Ports shall nominate, under his hand and seal, three or more persons in each of the Cinque Ports, two ancient towns, and their members, to adjust any difference relating to salvage, between the master of any ship that has in bad weather been forced from her anchor and cable, and the persons bringing them on shore: and if any vessel be forced from her cables and anchors by extremity of weather, and leave the same in any roads within the jurisdiction of the Cinque Ports, and the salvage cannot be adjusted between the persons concerned; the same shall be determined in twelve hours by any one or more of the persons appointed as aforesaid.

The master and seamen’s wearing apparel are always excepted from the allowance of salvage.

If a ship is found adrift at sea, having been abandoned by the master and crew, the allowance for salvage will be much more than if any person had been found on board.

Case: An outward bound Dutch East-Indiaman struck upon the sands off the port of Dunkirk; the master and his crew, imagining she would go to pieces, as it blew a hard gale, too hastily abandoned her, and made the best of their way in their boats to Ostend, the surf not admitting of their making their harbour of Dunkirk. Two days after, a passage-boat belonging to Dover found the ship adrift, having worked herself off with the tides, and brought her safe into Dunkirk. The master soon arrived there, and disputed the quantum of the salvage, which the Admiralty Court at Dunkirk adjudged to be one half, and it was paid accordingly.

The valuation of a ship, in order to ascertain the rate of salvage, may be determined by the policy of insurance, if there is no reason to suspect she is undervalued; the same rule may be observed with respect to goods, where there are policies of insurance upon them. Where this is not the case, the salvors have a right to insist upon proof of the real value, which may be done by the merchants’ invoices, and they must be paid accordingly.

Average and contribution are synonymous terms in marine cases, and signify a mean proportion of loss between the owners of goods thrown overboard in a storm (in order to preserve the remainder, with the ship, and lives of the men) and the proprietors of those that are saved, and of the vessel.

And as ships in their voyages are exposed to storms, and often saved from perishing, by casting goods overboard to lighten them, it has, therefore, been always allowed, and is justified by law and custom, and in case of imminent danger any thing may be thrown away to evade it. Though as heavy goods seem most likely to answer the purpose, and are generally least in value, they should be first destined to destruction.

However, to make this action legal, the three following essential cases ought to concur:

1st. The ship must be in evident hazard of perishing, with her cargo and crew.

2d. The resolution the captain takes on this melancholy occasion should be in consequence of a consultation held with his officers and sailors, to endeavour to save themselves, ship and cargo, either by throwing some goods overboard, or by cutting some of the masts, &c. away, and by occasioning these extraordinary expences strive to secure the remainder for the proprietors’ benefit.
3d. That the ship and cargo, or the part of them that are saved, has been saved by
that means used, with that sole view.

Agreeable to these three axioms, it must be concluded, that all the expence and los-
ses, which are thus voluntarily made to prevent a total one of ship and cargo, ought to
be equally borne by the ship, and her remaining lading. And this is called general or
gross average.

But what is broken or lost by a storm, as anchors, cables, masts, sails, cordage, &c.
is not to be comprehended in gross averages, because the tempest only was the occasion
of this loss, and it was not made by the deliberation of the master and his crew, with
the view to save the ship and lading; though on the contrary, if after advice taken by
the company, or major part of them, the captain cuts away, or abandons any thing of
the ship or cargo, with a view to prevent a greater misfortune, all that is so cut away,
&c. must be brought into a general average.

If the ship happily out-wethers the storm, and arrives in safety at her destined port,
the captain must make his regular protests, and beside, jointly with the major part of
his crew, must swear, that the goods were cast overboard for no other cause, but purely
for the safety of ship and lading; and the method of elucidating and clearing up this
point varies according to the several countries and places they arrive at.

The ship arriving in safety, those goods she brings with her must come into a general
average, and not only those that pay freight but all that have been saved and preserved
by such ejection, even money, jewels, clothes, &c.

But a man's apparel in use, and victuals, &c. put aboard to be spent, are totally ex-
cluded from the contribution.

The loss of anchors, masts, and rigging, occasioned by common accidents at sea:
the damages which happen to merchandise by storms, capture, or shipwreck, wet or
rotting (not owing to any neglect of the master) are losses to be borne by, and the ex-
peneses paid by the thing that suffered the damage. And this is called simple or parti-
cular average.

In the rating of goods by way of contribution, this order used to be always observed,
viz. If they are cast overboard before half the voyage be performed, then they are to
be esteemed at the prise they cost; and if after, then at such price as the rest, or the
like sorts, shall be sold at the place of discharge; and this regulation continues still in
France and Holland, though here and elsewhere the lost and the saved are sometimes
estimated as the latter sell.

The owner of the goods that have been thus ejected, or his factor, should take care
to have the loss valued before the ship's discharge, in which the master ought to assist,
and settle all averages before he unloads.

And it is not only the goods that are thrown over that must come into the average,
but those also which shall have received any damage, by the action of the others' eject-
ment, by wet, &c.

In stating an average on goods, regard should be had to what deductions ought to be
made from the invoice amount, covered for draw-backs, bounties, and other allowance
at the custom-house on exportation: also for discounts, and abatements of duties, &c.
on importation; and for prompt payment on sales, together with the usual leakage,
wetage, &c. It should likewise be considered whether the damaged goods, (although
the whole of the goods which were loaded may be delivered) are increased or diminished
in weight or quantity by means of the sea water, as hemp, sugar, &c. The true weight
or quantities, as shipped and landed, should be discovered and compared; and the se-
veral differences of qualities attended to, particularly in large parcels or cargoes of goods
of the same denomination, in order to find on which qualities the damages may have.
OF SALVAGE,

happened: for unless all these circumstances be adverted to as the case may require, the average will be stated erroneously. Weskett's Digest of Laws of Insurance.

Average is to be allowed as often as it happens, either once or oftner although the ship afterwards should be lost in the same voyage. Ord. of Copenh.

If goods shipped in England are in tempest thrown overboard, in order to preserve the vessel and crew, and these goods are taken up and preserved by another English ship, the owners bringing trover, it lies, because delivered upon the land.

It is lawful for persons to cast goods overboard out of a ferry-boat, in case of a tempest, to preserve their lives; but, if the ferryman surcharge the boat with goods, the owners of them shall have their remedy against him, but not otherwise.

So if an ejection of goods from any ship is occasioned by the indiscretion of the master's lading her above birth-mark, it is customary in such cases, by the marine laws, to have no contribution made, but satisfaction is due from the ship, masters, or owners. Lust. Sermus, s. 27. & Si. 23. ad Leg. Aquil.

And as this law doth take care, that such common calamities shall be borne by all the interested parties, by a general contribution, so the common law takes notice of the misfortunes, and makes provisions for the master's indemnification; and therefore if the owner of such ejected goods shall bring an action against the master or the owner of the vessel, the defendant may plead the special matter, and the same shall bar the plaintiff.

As the common law looks upon the goods or cargo as a pawn or pledge for the freight, so the marine law looks upon them likewise as a security for answering any average or contribution, and that the master ought not to deliver them (as above,) till the contribution is settled, they being tacitly obliged for the one as well as the other.

If a lighter, skiff, or the ship's boat, into which part of the cargo is unladen to lighten the ship, perish, and the ship be preserved, in that case contribution is to be made; but if the ship be cast away, and the lighter, boat, or skiff, be preserved, there no contribution or average is to be had, it being a rule no contribution but where the ships arrive in safety.

If a ship be taken by enemies or pirates, and the master to redeem her and cargo promises a certain sum of money, for performance whereof he becomes a pledge or captive in the hands of the captor; in this case, he is to be redeemed at the expense of the ship, lading, and money (if any on board) all being obliged to contribute for his ransom, according to each man's interest.

So where a pirate takes part of the goods to spare the rest, contribution must be paid.

But if a pirate takes by violence part of the goods, the rest are not subject to gross average, unless the merchant hath made an express agreement to pay it after the ship is robbed.

Though if part of the goods are taken by an enemy, or by letters of marque and reprizal, è contra.

In settling a gross average, an estimate must be made of all the goods lost and saved, as well as of what the master shall have sacrificed of the ship's appurtenances to her preservation, and that of her cargo; and if any thing flung into the sea is again recovered, contribution is only to be made for the damage it shall have received.

The pilot's fee, that brought the ship into a port or haven for her safeguard (it being not the place she was designed for) must be contributed to, as the raising her from the ground must be, when there is no fault in the master.

If a master of a ship lets her out to freight, and in consequence thereof receives his lading, and afterwards takes in some goods, without leave of his freighters, and on a
storm arising at sea, part of his freighters' goods are thrown overboard, the remainder are not subject to an average, but the master must make good the loss out of his own purse.

If a ship is taken by force and carried into some port, and the crew remains on board to take care of, and reclaim her, not only the charges of such reclaiming shall be brought into a general average, but the wages and expenses of the ship's company during her arrest, and from the time of her capture and being disturbed in her voyage. But the sailors' wages, &c. of a ship detained in port by order of state, shall not be brought into an average, and the reason assigned for it is, that in the preceding case, the crew remained aboard to take care of the vessel, whilst they were endeavouring to reclaim her, and these charges were occasioned with the sole view of preserving the ship and cargo for their proprietors; but in this latter case, there was no room for such a pretence, as the embargoe sovereign would not have either ship or cargo, but only hinder their departure for some political reasons, wherefore it could not be said, that the ship's company remained on board to prevent an entire loss; the only motives to be offered for an average.

Nevertheless, it seems that both reason and justice require that the expence and wages of a ship's company, detained in port by a prince's order, should be brought into a general average; for if, on one side, the merchants who have laden her, are considerable sufferers by the delay, in the arrival of their goods at the destined ports, the owners of the ship are not less so, more especially if the crew is large, and the detention long; and those who drew up the ordinance of Lewis XIV. very well perceived in part, that to oblige the owners of a vessel so detained to support the whole expence, would be a great hardship and injustice, as the 7th article of the said ordinance (under the title of Averages) expresses in direct terms, viz. The food and wages of sailors, belonging to a ship embargoe by an order of state, shall be also reputed as part of general averages, if she is hired by the month; but if she is freighted by the voyage they shall be borne by her alone.

From whence, I think it ought to be concluded, that although a ship freighted by the month or voyage, is only mentioned in the foregoing, yet when the proprietors of a vessel hire her crew by the month, they have a right to bring the expence and wages of their sailors into an average, for the whole time that the ship shall be detained; though on the contrary, they cannot justly pretend to bring the expence of the mariners into an average, when they are hired for the voyage, as the expence only is always the same, whether they be hired for the month or voyage, and being occasioned by the will of the sovereign who laid the embargoe, I do not see that there ought to be any distinction, unless there were some goods aboard, which were the cause of her arrest; for in this case it would be reasonable, that the said merchandizes should pay the whole expence.

Though it must be noted, the charges of unloading a ship, to get her into a river or port, ought not to be brought into a general average, but when occasioned by an indispensable necessity to prevent the loss of ship and cargo; as when a ship is forced by a storm to enter a port to repair the damage she has suffered, if she cannot continue her voyage without an apparent risque of being lost; in which case, the wages and victuals of the crew are brought into an average from the day it was resolved to seek a port to refit the vessel, to the day of her departure from it, with all the charges of unloading and relading, anchorage, pilotage, and every other due and expence, occasioned by this necessity.

The master of a ship, who is obliged, from the aforesaid motives, to cut away, or throw overboard, any of his masts, rigging, &c. has a privileged hypothecation, and the right of detention of the goods he shall carry to their destined port, till they contribute
to a general average; and it is to be observed, that goods cast overboard to lighten the ship, make no derelict.

Having now gone through what I thought necessary to offer on the subject of general and particular averages, I shall just mention a word or two, of what we term petty average, being a small duty joined to primage, which custom has made a master’s perquisite, extra of the freight, and is commonly here 5 per cent. as it has been settled in France and Holland, &c. though 10 per cent. is commonly paid in the latter, notwithstanding two public edicts which limit it, as aforesaid, to half the sum: the origin of it was, an allowance made to masters of vessels for sundry petty expences, to which the lading was obliged to contribute, but has been, for some years past, transmuted to the terms aforesaid; and I shall not now enlarge on this subject of averages, but refer my reader to what I shall have occasion to say more about them, under the title of insurance; in the mean time, I shall content myself with the quotations offered, in hopes I have neither exceeded nor fallen short of my readers’ expectations, in my treating this extensive theme, which of itself would furnish sufficient matter for an entire volume.

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OF BRITISH PORTS, HAVENS, LIGHTHOUSES, AND SEA MARKS.

A PORT, harbour, or haven, is a place where ships may shelter from bad weather, and where custom-houses are appointed to supervise their lading and unlading; these in England have many members and creeks belonging to them, which are distinguished as follows, viz.

Members, are those places, where anciently a custom-house hath been kept, and where officers or their deputies attend, as they are lawful places of exportation or importation.

Creeks, are places where commonly officers are, or have been, placed by way of prevention, not out of duty or right of attendance, and are not lawful places of exportation or importation, without a particular licence or sufferance from the port or member under which it is placed.

The several licensed Ports for lading and landing of Goods, with their Dependencies, as they now account at the Custom-house, are, viz.

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**Note.** All the ports and havens in England are *infra* *Corpus Comitatus*, and the Court of Admiralty cannot hold jurisdiction of any thing done in them. Holland's case, Earl of Exeter, 30 H. 6. And because he held plea in the Admiralty of a thing done *infra* *portum de Hull*, damages were recovered against him, two thousand pounds.

And the port of London being of great importance, in regard of the customs, the limits of it have been settled by the Exchequer, and declared to extend, and to be accounted, from the promontory, or point, called North-Foreland, in the Isle of Thanet, and from thence northward, in a supposed line to the opposite promontory, or point, called the Nase, beyond the Gun-fleet, upon the coast of Essex, and continued westward, through the river of Thames, and the several channels, streams, and rivers falling into it, to London Bridge, save the usual and known rights, liberty, and privilege to the ports of Sandwich and Ipswich, and either of them, and the known members thereof, and of the customers, comptrollers, searchers, and other deputies, within the said ports of Sandwich and Ipswich, and the several creeks, harbours, and havens, to them, or either of them, respectively belonging, within the counties of Kent or Essex.

This account of ports, &c. might have been omitted till I came to treat of the customs; but, as I thought it more properly introduced here, I have inserted it, and shall subjoin an abstract of the laws in force concerning them. For though it is probable few or none of my readers may be interested in the trade of them all, yet, that every one may meet the information he may occasionally want, I shall briefly mention what has been publickly enacted, for their establishment and preservation.

**Burlington.—** From the first of May, 1677, until the 1st of May, 1704, the duties herein mentioned shall be paid for the repairing the port or pier of Burlington, *viz.* one.
farthing for every chaldron of coals, laden on board any vessel at the port of Newcastle, or at Sunderland, Blythe, Seaton, Sluice, or any other member of the port of Newcastle, which shall be paid to Arthur, Lord Viscount Irwin, &c.

All Monies raised for the duties aforesaid, &c. shall be by the commissioners applied to the repairing the said port or pier of Burlington, &c.

Continued by 1 Geo. 1. cap. 49. 5 Geo. 1. cap. 80. for twenty-five years, from the 24th of June, 1750, and 26 Geo. 2. for twenty-five years, from the 24th of June, 1758.

By this act, vessels belonging to Great Yarmouth in Norfolk are exempted from this duty, the masters having a certificate, upon oath, before the mayor of Yarmouth, that the owners of such vessel, or the greatest part, are inhabitants of that town.

Dover.—From the 1st of May, 1700, to the 1st of May, 1709, there shall be paid by the master of every English ship, of the burthen of twenty tons, and not exceeding three hundred tons, for every lading and discharging within this realm, from, to, or by Dover, or coming into the harbour there, not having a certificate testifying his payment before that voyage, towards the repair of Dover harbour, 3d. for every ton, and of the Aliens' ships, of the burthen aforesaid, the like sum (excepting ships laden with coals, grindstones, or Purbeck or Portland stones) and for every chaldron of sea coals, or ton of grindstones, one penny half-penny; the same to be paid to the customer or collector of the customs, in such port, whence such ship shall set forth, or where such ship shall arrive, before they lade or unlade; the account of the number of tons to be made according to the entry of the goods of every ship in the custom-house, and no entry of the goods to be allowed without information made on oath by the master, containing the burden thereof, and payment made of the sums aforesaid; of which payment the master shall have allowance of the merchants, according to the rates of the goods, by way of average, &c.

Provided that no coaster or fisherman shall pay the duty oftener than once in one year.

Ships belonging to Weymouth and Melcomb Regis, and Lyme Regis, shall be exempted from paying to the harbour of Dover, so as they bring a certificate upon oath before the mayor, under the common seal of the said corporations, that the ships belong thereto, and the inhabitants of the said corporations are owners of the major part of such ships.

All ships English built, and manned according to the act of navigation, belonging to Great Yarmouth, shall be exempt from paying the said duties, if the master produces a certificate as above, &c.

Ships belonging to Ramsgate in the Isle of Thanet, shall be exempted from paying to Dover harbour, bringing a certificate as before, &c.

Every ship that shall go through the gates of the works of the harbour shall, before she go into the gates, take down her sars, so that she may not go sailing in, upon pain that every captain of such ship, so sailing in, shall forfeit to the wardens, and assistants of the harbour, ten shillings, for the use of the harbour, to be recovered by action of debt, &c.

Continued by 2 Anne, cap. 7. 4 Geo. 1. cap. 13. and 9 Geo. 1. cap. 30. to the first of May, 1744. Further continued for twenty-one years by 11 Geo. 2. cap. 7. This act further continued for 21 years, by 31 Geo. 2.

Minehead.—From the 24 of June, 1701, for one and twenty years, there shall be paid (besides the ancient acknowledgments accustomed to be paid to Tregonwell Luttrell, Esq. and his ancestors) for goods imported or exported, into, or out of, the port of Minehead, the duties following, viz. such sum of money, not exceeding one half-penny per stone for wool, and one penny per stone for woollen and bay yarn imported as the trustees hereafter appointed shall appoint; each stone to contain eighteen pounds, the duties to be paid by the person into whose possession, or by whose order, the goods
shall be delivered; and the wool imported shall be weighed at the town-hall, according to custom; and for every ton of all other goods there shall be paid 6d. per ton, by every master of a ship that shall take on board or land any goods in the port of Minehead.

For every ship which shall come into the harbour (the said port not being their discharging port) there shall be paid by the master the tonnage and keelage following, viz. for every ship using the coasting trade, of thirty tons, and not amounting to fifty tons, 1s. and of fifty tons and upwards 2s. and for every ship of thirty tons, and not amounting to fifty, trading to other parts of Europe, or to his Majesty’s plantations in America, 2s. 6d. and of fifty tons, and upwards 5s. and for every ship of thirty tons, and not amounting to fifty tons, and trading to any place in Asia, Africa, or America, (other than his Majesty’s plantations,) 5s. and of fifty tons 10s. and the master paying the said keelage shall have allowance for the same of the merchants, by average.

All money raised by the duties, and recovered for the forfeiture, &c. shall be by the Ditto, s. 2. trustees applied to the building out a new head, clearing the beach, and other works for maintaining the pier and harbour, &c.

After the said term, so long as the harbour shall be kept up, there shall be paid to Ditto, s. t. the Lord of the Manor of Minehead, the duties following, for goods imported, for the maintenance of the new head and other works, viz. for every twenty stones of wool, 1d. for every twenty stones of woollen and bay yarn 2d. for every ton of salt 2d. for every quarter of corn 2d. for every chaldron of coals 2d.

Continued by 10 Anne, cap. 24, for sixteen years, and by 11 Geo. 2. cap. 8. from the 24th of June, 1738, for forty years.

Whitby.—From the first of May, 1702, for nine years, there shall be paid unto the Ditto, s. 11. trustees herein named, viz. the Lord of the Manor, Ralph Boys, and others, for rebuilding the piers of the port of Whitby, by the owners of every ship that shall load coals at the port of Newcastle, or at Sunderland, Blithe, Seaton, Sluice, or any other member of the said port, one farthing per chaldron, and for all the coals landed within the port of Whitby, for every chaldron, town measure, 6d. and for every ton weight of salt, landed at the port of Whitby, 2s. and for every quarter of malt, corn, and grain, 4d. and for all foreign goods imported in English bottoms, 3d. per ton; and all foreign-bottoms importing such goods, 6d. per ton; and for all butter shipped off from Whitby, 1d. per firkin; for all dried fish and mud fish, shipped off from Whitby, 1d. per score; for all baralled fish so shipped off, per barrel, 3d. Every English ship, which shall enter within the piers, shall pay 1s. and for every top of such ship 4d. and all foreign ships 2s. and for every top of such ship 4d. &c.

All money received by virtue of this act shall be employed for the re-building and repairing the said piers, except the charge of collecting, &c.

If the duties shall raise 6000l. over and above the charge of collecting and interest, the duty of one farthing per chaldron upon coals shall cease.

All ships English built, and manned according to the act of navigation, belonging to Ditto, s. 11. Great Yarmouth, shall be free from the said duty of one farthing per chaldron; so as the master of such ship, or some mariner on his behalf, produce a certificate made upon oath before the bailiffs of Yarmouth, that such ship does belong to Yarmouth, and that the inhabitants thereof are owners of the major part of such ship.

Continued until the 1st of May, 1723, by 7 Anne, and by 7 Geo. 1. the duties before granted (except the said duty of one farthing per chaldron) were made perpetual; and by 8 Geo. 2. it was enacted, that from and after the 1st of June, 1735, the said duty of one farthing per chaldron by 1 Anne, should be revived for the term of thirty-one years, to commence from the 1st of June, 1735. And to rebuild or repair the east and west piers of the said harbour, an additional duty of a farthing per chaldron is granted by
23 Geo. 2. p. 667, to be paid from and after the 1st of June, 1750, for 31 years, by all vessels loading or shipping coals at the port of Newcastle upon Tyne, or at Sunderland, Blythe, Seaton, Sluice, Cullercoats, or any other harbour, colliery, or place reputed a member of the port of Newcastle, &c.

Parton.—During the term of eleven years, there shall be paid unto the trustees named in the act, for the enlarging and repairing the pier and harbour of Parton in Cumberland, by every coal owner that shall put coals on board any vessel there, 2d. for every 192 gallons of coals, within ten days after such coals are shipped; and by every master of every ship that shall load coals there 2d. for every 192 gallons; and, after the expiration of the said eleven years, one farthing for every 192 gallons, to be paid by the master of the ship, before each ship goes out of the harbour.

Ditto, s. 4.

All such money shall be employed for the enlarging, repairing, and cleansing the harbour, &c.

11 Geo. 1.
c. 16. s. 1.

The duties upon coals granted by 4 Anne, cap. 18. for enlarging the pier and harbour of Parton, in the County of Cumberland, shall be continued from the first of May, 1725, for fifteen years.

Ditto, s. 2.

The perpetual duty of one farthing, granted by the said act, shall cease; and, in lieu thereof, every master of a ship shall, for fifteen years, pay one halfpenny for every 192 gallons of coals, which shall be laden on board such ship within the said harbour.

There shall be paid for all goods herein after mentioned, which shall be discharged out of any ship in the harbour, coming coastwise, from the 1st of May, 1725, for fifteen years, the duties following, viz. for every hogshead of tobacco 3d. for every hogshead of sugar 6d. for every ton of wine or excisable liquors 2s. for every ton of hemp or flax 1s. 6d. for every hundred of deals 8d. for every last of pitch or tar 8d. for every ton of iron 1s. for every ton of raft or other timber 4d. for every barrel of herrings 1d. for every pack of linen, containing two hundred weight, 1s.; which duties shall be paid by the merchant into whose custody the goods shall be delivered.

11 Geo. 1.
c. 16. s. 5.

Every master of any ship shall pay for such ship, upon her arrival in the harbour from any port of her discharge in Europe, other than the kingdoms of Great Britain and Ireland, and the Isle of Man, 4d. per ton; and for every ship, upon her arrival from the port of her last discharge in Asia, Africa, or America, 8d. per ton, to be admeasured as described in 5 Will. and Mar. cap. 20. and 8 Anne, cap. 12. sect. 4. Provided, that for every ship which shall come in for security, and not for their discharge, there shall be paid one fourth of the tonnage, and no more.

Ditto, s. 6.

After the termination of the said fifteen years, one third part of the duties shall forever continue for the perpetual repairing of the harbour.

5 Geo. 2. c. 13. s. 1.

If the purposes are fully answered, &c. before the expiration of the said term, the duties shall cease; and the duty of a halfpenny for every 192 gallons of coals exported from the said harbour, and one third part of the duty on tonnage of ships (which, by the act of 11 Geo. 1. cap. 16. are made perpetual) shall commence.

8 Ann. c. 8. s. 1.

Catwater.—Benjamin Joules, his executors, &c. shall clear the harbour of Catwater near Plymouth and Sutton Poole in Plymouth, and reduce the shoals so, that any fourth rate ship may safely go in and out, over any part of them, at half tide or ebb; and, after the removal of the shoals, he shall keep the water to the same depth, &c.

Ditto, s. 4.

And after the 25th of March, 1710, the said Benjamin Joules shall have the sole ballasting and unballasting of ships belonging to her Majesty, and all other ships in Plymouth Sound, Hammoaze, Catwater, and Sutton Poole, or within the road between.

Ditto, s. 5.

St. Nicholas Island, and the main land; and every master, &c. belonging to any ship that shall come into the said harbours or road, and deliver or receive ballast, shall deliver
and receive the same, to and from the said Benjamin Joules, under pain of forfeiting 3l. &c. to hold and enjoy the said sole liberty of ballasting, &c. unto the said Benjamin Joules, his executors, &c. for seventy-one years.

The said Benjamin Joules shall be bound to furnish all ships with ballast; and shall ballast and unballast the same upon such terms as are herein-mentioned, viz. the ships of her Majesty at 9d. per ton; all ships of the inhabitants of Plymouth or Saltash, at 9d. per ton; all other ships of her Majesty's dominions, at 10d. per ton, and all foreign ships at 12d. per ton.

Liverpool.—The mayor, &c. and common-council of Liverpool, shall have power 8 Ann. c. to make a wet dock or basin, with wharfs, sluices, and canals, upon the ground set a 12 t. 2. part for that purpose.

There shall, from the 24th of June, 1710, for one and twenty years, be paid unto the said mayor, &c. for every vessel (ships in her Majesty's service excepted) coming into or out of the said port, with any merchandize (the limits whereof are as far as a place in Hoyle Lake, called the Red Stones, and from thence all over the river Mersey to Warrington and Frodsham bridges) by the masters of such ships, the duties herein after described, viz. for every ship trading between the port and St. David's Head or Carlisle, for every ton 2d. for every ship trading between St. David's Head and the Land's End, or beyond Carlisle to the Shetlands, or the Isle of Man, for every ton 3d. for every ship trading to Ireland, for every ton 4d. for every ship trading to Norway, Denmark, Holstein, Holland, Hamburgh, Flanders, or any part of France, without the straits of Gibraltar, or Jersey, or Guernsey, for every ton 8d. for every ship trading to Newfoundland, Greenland, Russia, and within the Baltic, Portugal, and Spain, without the Straits, Canaries, Madeiras, Western Islands, Azores, for every ton 12d. Such duties to be paid at the time of such ship's discharge at the custom-house, so as no ship shall be liable to pay the duty but on going the same voyage both out and home.

All ships liable to the payment of the duties shall be measured, by taking the length of the keel as she treads on the ground, and the breadth to be taken within board by the midship beam, from plank to plank; and half that breadth for the depth, then multiply the length by the breadth, and the product by the depth, and divide by 94.

After the said term of 21 years, there shall be paid to the mayor, &c. one fourth part of the duties before mentioned, &c.

Nothing in this act shall charge any ship which shall be forced into the harbour, and shall unlafe in order to repair and relade: nor to charge any ship which shall sell in the harbour any part of her lading, only in order to refit or victual.

This act shall not charge any ship belonging to, or bound to, or from the port of Ches: in case such ship shall neither load nor discharge within the limits of the port of Liverpool.

The act of 8 Anne, cap. 12, for making a dock at Liverpool, and an act 3 Geo. 1: 11 Geo. 2, (not printed) whereby the duties were further continued for fourteen years, are further continued for 31 years.

Every ship trading from Liverpool to Gottenburgh, or any other place in Sweden without the Baltic, shall be charged with the duty of 8d. per ton.

After the said term of 31 years, so long as the dock and other works shall be kept in repair, there shall be paid to the mayor, &c. and their successors, one fourth of the duties before mentioned.

Dover and Rye.—No new walls or stops shall be set up that may hinder the flux and reflux of the sea between the mouth of the harbour of Rye in Sussex, bounded by two points called the Camber and Castle Point, New Shut, near Craven Sluice in Sussex and Kent, &c.

The duty of 3d. per ton, granted by 11 Will. 3. cap. 5. shall be appropriated for the 9 Geo. 1. c. 50. t. 2.
benefit of the harbours of Dover and Rye in manner following, viz. one third thereof shall be paid to the treasurer for Dover harbour, and the other two thirds to the treasurer for the harbour of Rye.

The powers given by the act 9 Geo. 1. cap. 30. for restoring the port of Rye, are transferred to the warden of the Cinque ports, the mayor and jurats of Rye, &c.

Continued for 21 years by 11 Geo. 2. cap. 7. sect. 1. One moiety of the duties continued for 21 years by 31 Geo. 2.

WATCHETT.—The duties by the private act 6 Anne, for repairing the harbour and key of Watchett, in the County of Somerset, granted for 21 years, from the 25th of March, 1708, shall, after the expiration of the said term, be paid for the further term of 21 years.

Ditto, sect. 2. Nothing herein shall discontinue the payment of the duties by the said act, 6 Anne, made payable for the constant reparation of the key or harbour, after the expiration of the 21 years.

BRIDPORT.—That the havens and piers of Bridport, in the county of Dorset, may be rebuilt, and sluices made, with convenient wharfs, the bailiffs and capital burgesses of Bridport shall be trustees for the said purposes; and at Bridport mouth, being an open piece of land, lying between the East and West cliffs, and from the sea northward as far as Irepool, on which ground the ancient harbour was, may lay out the new intended harbour and piers, and the sluices, wharfs, and landing places, and the ways to the harbour.

There shall be paid to the collector, to be appointed as herein after mentioned, for every weigh of salt, for every last of wheat, rye, barley, malt, or other grain, for every chaldron, Winchester measure, of coals and culm, and for every ton of other goods, discharged out of any ship in the said haven, or which shall be exported from thence, 1s. to be paid before the same be landed; and there also shall be paid for every ship, of the burden of ten tons or upwards, which shall come into the said haven, 2d. for every ton such ship, &c. shall contain; which duties shall be paid by the master, &c.

Ditto, sect. 7. When the havens and piers shall be rebuilt, and the monies expended thereon reimbursed, the duties shall cease; and from thenceforth there shall be paid to the collectors for every weigh of salt, for every last of wheat, rye, barley, malt, and other grain, and for every chaldron of coals and culm, Winchester measure, and for every ton of other goods discharged in the said haven, or exported, 6d. and for every ship, &c. which shall come into the haven, 1d. per ton and no more.

YARMOUTH.—After the 25th of March, 1723, for 21 years, and to the end of the next session of parliament, there shall be paid by every master of a ship which shall unload within the haven of Great Yarmouth, or in Yarmouth road, extending from the south part of Scrathy in Norfolk to the north part of Corton in Suffolk, at the time of unloading, for the goods following, viz. for every chaldron of coals, Winchester measure, last of wheat, rye, barley, malt, or other grain, for every weigh of salt, and ton of other goods (fish excepted) such sums, not exceeding 12d. as the mayor, aldermen, burgesses, and commonalty of Great Yarmouth, in common council assembled, shall appoint; to be applied as follows, viz. part of the said duties not exceeding 6d. towards clearing and improving the haven, piers, and jetees; and 3d. other part of the said monies shall yearly, on the 24th of June, be divided in manner following, viz. one penny halfpenny to the chamberlain of Norwich to be applied towards clearing the channel of the river Yare, between the two mills in Norwich and Hardly Cross, &c. and one halfpenny, other part of the said 3d. to such persons as shall be yearly named by the justices at their quarter sessions at Norwich, for the county of Norfolk, to be applied towards clearing the river Bure, called the North river, and for such other purposes as the justices shall appoint; and one halfpenny, other part of the said 3d. to such person
the county of Norfolk, to the north part of the town of Corton, in the county of Suffolk; for every chaldron of coals, Winchester measure, last of wheat, rye, barley, malt, or other grain; and for every weigh of salt; and for every ton of all other goods or merchandizes (fish only excepted) the respective sums following, viz. for the term of seven years, or such other less term as twelve commissioners, or seven of them (five being commissioners for the county of Norfolk, Suffolk, and the city of Norwich) shall order, a sum not exceeding 1s. 6d. And after the expiration of the said, or other lesser term of years, during the remainder of the term of twenty-one years, and from thence to the end of the then next session of Parliament, the sum of 10d. or such other greater sum as the commissioners as aforesaid shall order, not exceeding the sum of 12d.

The sum of 3d. part of the duties granted by this act shall every year be divided, and paid upon the first Tuesday in June, by the chamberlains, &c. of Great Yarmouth, in the manner and proportions following, viz. 1d. 2q. unto the chamberlain of the city of Norwich, &c. to be applied towards clearing and deepthening that part of the channel of the river of Wenson, commonly called Yare, which lies between the new mills in Norwich and Hardly Cross; and for preventing filth and mud from falling therein, and for dildelling and cleansing the river in such manner, as the said corporation shall direct, &c. and the sum of 2q. to be applied towards clearing and deepthening the river Bure, commonly called the North River, and all those branches thereof which lead from St. Bennet's Abbey to Dillham, and from Eastwick-Bridge to Hickling, in the county of Norfolk, in such manner as the justices shall direct, &c. and the sum of 2q. to be applied towards clearing and deepthening the river Waveney, in such manner as the justices shall direct, &c. and the sum of 2q. residue of the said 3d. to be applied towards repairing the bridge and public quays belonging to the said borough of Great Yarmouth, &c.

The sum of 3d. other part of the duties is to be divided and paid in the manner following, viz. the sum of 2q. to be applied towards the further clearing and deepthening the river Bure, commonly called the North River, and the branches thereof, which lead from St. Bennet's Abbey to Dillham, &c. and the sum of 2d. 2q. residue of the said 3d. to be applied towards the effectual clearing and deepthening of that part of the river Yare leading from Yarmouth to Norwich, called Braydon, &c.

The last-mentioned sum of 3d. is not to be raised, unless notice in writing, &c. be given to the mayor of Great Yarmouth, &c.

The last-mentioned 3d. when raised, is to be annually accounted for, &c. and the overplus (if any) of the said 3d. 2q. part of the said 3d. is to be applied in clearing and deepthening the North River, and its branches, &c. and the overplus (if any) of the 2d. 2q. residue of the said 3d. is to remain in the hands of such person as the corporation of Great Yarmouth in common council shall appoint, to be applied in clearing and deepthening the channel of Braydon, in such manner as the commissioners shall think fit.

During the term of seven years, the sum of 4d. other part of the duties, is to be applied in clearing and deepthening the haven, and repairing the piers and jettee, and all the capsterns, cables, and ropes belonging thereto, &c.

If in any year, during the said term of seven years, the said sum of 4d. shall not be sufficient for clearing and deepthening the haven and repairing the piers and jettee, seven or more of the commissioners, &c. upon application of the corporation of Great Yarmouth, &c. are empowered to direct such further part of the residue of the duties, as they shall think necessary to be applied, with the said 4d. towards the said purposes, and for no other use.

No part of the said sum of 4d. is to be applied in erecting any new works in the haven, or in pulling down any parts of the piers and jettee.
The said sum of 4d. and such further sums (if any) as the commissioners shall direct, to be applied as aforesaid, are to be annually accounted for, &c. and the overplus (if any) is to be applied in amending and improving the haven and piers, &c.

During the said term of seven years, or other less term, the sum of 8d. or such part thereof, as shall not have been disposed of by the commissioners, in manner before directed, residue of the duties, is to be applied in improving and extending the haven and piers, and in erecting new works, as the commissioners as aforesaid shall direct, according to the provisions herein-after mentioned.

Seven or more commissioners, &c. at their first, or some subsequent meeting, at Great Yarmouth, are to direct such works to be undertaken, as, with the advice of some skilful engineer or engineers, they shall think necessary for improving and extending the haven and piers, &c.

During the term of seven years, or other less term, the chamberlains of Great Yarmouth, &c. are to pay the money arising by the said sum of 8d. to such persons as the commissioners shall direct.

The surplus (if any) of the said sum of 8d. is to be applied in completing such new works, as the commissioners shall direct.

If at any time, before the expiration of the said term of seven years, the commissioners shall signify to the mayor, &c. that, in their opinion, the work is completed, and the haven and piers effectually improved and extended, then the payment of the sum of 8d. is to cease, except in the case herein-after excepted.

After the expiration of the said term of seven years, or sooner determination of the payment of the said sum of 8d. the sum of 4d. part of the remaining duty is to be applied, during the remainder of the term of twenty-one years, and from thence to the end of the then next session of Parliament, in clearing and depthing the haven, and keeping in repair the piers and jettee, in such manner as the corporation of Great Yarmouth in common council shall direct.

If in any year, during the remainder of the said term of twenty-one years, &c. it shall appear to seven or more of the commissioners, &c. that the said sum of 4d. directed to be applied in clearing and depthing the haven, and keeping the piers and jettee in repair, will not be sufficient for those purposes, they may direct a further sum, not exceeding 2d. to be raised until their next annual meeting, to be applied by the corporation of Great Yarmouth, in repairing and improving the haven, &c. in such manner as the commissioners shall judge necessary, &c.

The said further sum of 2d. or any part thereof, is not to be raised unless notice that the same is necessary, &c. be first given to the mayor, &c.

The collectors and receivers may, at all seasonable times, enter into any vessel, within the haven or road, in order to see what goods shall be on board, before the unloading thereof; and, if the duties shall not be paid by the master upon the unloading, they may, by warrant from the mayor, or deputy-mayor of Great Yarmouth, distrain the vessel, her apparel, and furniture, and, after ten days, sell the same, rendering the overplus upon demand, after deducting the duties and all charges.

Such fish-oil, or fish livers, as shall be obtained in any fishing voyage, and such remainder of salt, bread, beer, and other provisions, as shall be taken into any vessel for accomplishing a fishing voyage, or into any vessel for the maintenance of the ship's crew, upon a voyage to be made with such vessel, and not spent therein, are exempted from the said duties.

On the re-exportation of all coals and other goods, for which the duties of this act, on the importation, shall have been paid, any collector or receiver of the duties (upon proof made before him in writing, upon oath, of the payment of the said duties, and
which oath he is to administer) is to repay, out of the monies in his hands, &c. all such duties to the re-exporter, as shall have been paid on the importation.

From and after the 25th of March, 1750, no vessel is to lie, or be moored, with her side towards the quay, longer than one tide, unless upon some unavoidable occasion: and the mayor, or deputy-mayor, is to take such order therein, as he shall think reasonable; and, if any master shall refuse to obey such order, for altering the situation of his ship, and laying her head towards the quay, he is to forfeit 40s. &c.

Margate.—The droits called poundage and lastage, and other duties, shall be continued for the maintenance of the pier and harbour of Margate.

It shall be lawful for the pier-wardens and collectors, to go on board any vessel belonging to Margate, making use of, or being within the harbour, and to take account of what duty is payable for any goods on board; and, in case of non-payment, to detain such goods, and also the tackle of the vessel: and, in case of neglect of payment by the space of ten days, they may sell the goods to satisfy as well the duty as their charges, &c.

The money shall be laid out in repairing the pier and harbour.

Sunderland.—The commissioners appointed to put in execution the private act 3 Geo. 1. for the preservation and improvement of the river Wear and port and haven of Sunderland, in the county of Durham, or any seven of them, (whereof the chairman to be one) are empowered, at any public meeting, to grant or charge the duties by that act granted, as a security for 3500l. by them already borrowed, or for any further sum to be borrowed for the purpose in the said act.

The commissioners shall have power to finish the pier already begun, and also to erect piers and other works, for the preservation and improvement of the haven, &c.

The preamble sets forth, that the town of Sunderland, near the sea, situate on the river Wear, in the county of Durham, is well inhabited by rich and able merchants and tradesmen, having a port capable of containing many hundred ships at one time, &c. and that by an act of 3 Geo. 1. intitled, an act for the preservation and improvement of the river Wear, and port and haven of Sunderland, in the county of Durham, certain persons therein named, were appointed commissioners of the said river and haven, and duties granted for the effectual cleansing and preserving thereof, for the term of twenty-one years; and that by another act of 13 Geo. 1. for the more effectual preservation and improvement of the river Wear, &c. divers additional powers were granted to the said commissioner, who in pursuance of the execution thereof, before the expiration of the term limited, erected, at a great charge, a pier and a quay near the mouth of the river on the south side, and did other beneficial acts for the opening and improving of the said river, &c. and, in order to have more effectually cleansed and preserved the same, the commissioners proposed to have lengthened the said pier, and to have built other works on the north side of the river, but the money arising from the duties not being sufficient to perform such additional works, &c. it is enacted, that the Right Reverend the Bishop of Durham, the Right Honourable Thomas, Earl of Scarborough, &c. shall be commissioners of the said river, port, and haven, within the limits herein-after set forth, and shall be so called for the purposes herein mentioned, for the term of twenty-one years, to commence from the 24th of June, 1747.

The commissioners, or seven of them, may purchase and take leases of any lands near the said river, for the erecting piers or other works, &c. and employ workmen, keels, &c. to remove any rocks, gravel, &c. below high-water marks, &c. provided that thereby they do not damage the lands, quarries, quays, straits, wharfs, or beacons, of any person whatsoever, &c.

The commissioners, or seven of them, may at all times hereafter survey the said river.
OF BRITISH PORTS, &c.

so far as to the New Bridge, and no farther; (to which place they may make and keep it navigable for the said term of 21 years) and also the port, haven, and harbour of Sunderland, as far as the same extends from Souter Point, about two miles from the Bar of Sunderland, towards the north east, and so into the sea to five fathoms at low-water, and from thence in a supposed direct line, till it falls opposite to that land called Ryhop Dean, about two miles towards the south, and the impediments and annoyances, &c. therein, and may hear and determine all such abuses, differences, and things, as concern the same, &c.

The commissioners, before the 24th of June, 1759, shall remove all sands, shoals, p. 401. and other obstructions, between Biddisford and Newbridge, and shall effectually make the said river navigable, to carry boats, keels, and vessels of the burden now used upon the said river; and shall, from time to time, keep it so navigable, between the said two places, for the residue of the said term of 21 years.

From the 24th of June, 1747, for the term of 21 years, and from thence to the end p. 498. of the then next session of Parliament, every coal-owner, for the time being, and their fitters, and coal factors, shall severally pay for all coals and cinders brought to the said river, and delivered from the Staith, aboard any ship or other vessel, the sums following, viz.

The coal-owners respectively, any sum not exceeding 2d. 2q. for every chaldron of coals or cinders, during the said term of 21 years, brought for them to the river, and delivered as aforesaid; and so in proportion for any greater or less quantity.

And the fitters or coal-factors respectively, any sum not exceeding 2q. during the said term, for every chaldron of coals or cinders, brought and delivered as aforesaid, to be applied as herein-after directed.

The commissioners, or seven of them, (whereof the chairman for the time being to be one) at any public meeting by writing under their hands and seals, (without any stamp thereon) may assign over, &c. the duties, or any part thereof (the charge of making such assignment to be paid out of the duties) for all, or any part of the term for which they are granted, as a security for any sum to be borrowed for the purposes herein mentioned, to such person or persons, or their trustees, who shall lend the same, with interest not exceeding 5l. per centum per annum; out of which monies, &c. p. 558. shall be paid, in the first place, the charges of obtaining and endeavouring to procure this act.

Cinders to be burnt from coals, subject to the duties before-mentioned, shall not pay the duties payable for cinders, on their being put on board any ship or other vessel, in order to their being exported or water-borne to any other place; and no duty shall be paid for any coals or cinders that shall be lost in any keel or boat sunk in the said river, &c. or within five fathoms, at low-water, beyond the bar of the river; or for any coals used in making salt, and glass, glass bottles, vitriol, and burning lime-stones into lime, within the limits of the said river, &c. so as the owners and consumers thereof (being required) by the oath of themselves, or any other person, to the satisfaction of the commissioners, &c. prove that such cinders, so exempted, were burnt from coals, for which duties, as aforesaid, had been paid; or that such coals or cinders, so exempted, were lost as aforesaid; or that the coals, so exempted, had been used in making salt, &c. within the said river, port, or haven. And if any staithmen, &c. (summoned to appear and to be examined on oath, touching the quantities of coals and cinders by them delivered, from time to time, on board) shall not appear, or refuse to be examined on oath, they shall be charged such sums, &c.

All duties, fines, and sums of money, to be levied by this act, not otherwise directed to be applied, shall be paid to such persons as the commissioners shall appoint; and such money, or so much as shall not be applied towards payment of the charges of pro-

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curing this act, and of the principal and interest of the money borrowed, and the ex-

P. 603. pence of putting this act in execution, shall be employed in lengthening the present

pier, and in purchasing or procuring leases of grounds, as aforesaid, to build any other

quays, walls, or jetties on, and in erecting the same, and in doing such other

works for the improvement of, and the deepening, cleaning, and preserving the said

river, &c. as the commissioners, &c. shall from time to time direct.

If by the building of any pier, or other works, and the different direction thereby
given to the sea and tide flowing into the river, &c. the quays and grounds of any
person shall be beat down, overflowed, or otherwise dammified, the commissioners, &c.
out of the monies arising by this act, shall cause such quays to be repaired, or rebuilt,
and the land to be effectually secured against such sea and tide, within twelve months
after any such accident; and shall likewise cause to be paid to the proprietors of lands
and grounds, or to such other persons as shall make proof of any damages done by them,
in the execution of this act, such sums as shall be assessed by a jury, &c.

4 Geo. 2.
c. 17. s. 1.

Newhaven.—That the haven and pier of Newhaven in Sussex may be rebuilt. John
Alford, Esq. and others are constituted commissioners; and it shall be lawful for them
to lay out the said harbour and pier.

Ditto, s. 2.

There shall be paid the sums of money following, viz. for every chaldron of coals,
grindstone, and other goods, paying duty by the chaldron, exported or imported, in
the said haven, 1s. For every ton of coals, paying duty by the ton, salt, plaister of
Paris, tarris, tobacco-pipe clay, stone, and marble blocks, lead, iron, or other goods,
paying duty or freight by the ton, 1s. For every load of timber, wainscot boards,
trelens, and all other converted timber, 1s. For every load of tan or bark, 2s. For
every hundred of single deals, spars, ufris, pipe, hogshead, and barrel staves, 1s.
For every hundred of double deals, 2s. and of 3 inch deals, 3s. For every quarter of
wheat, peas, tares, beans, and all heavy seeds, 3d. For every quarter of barley, malt,
oats, saint-loin, and light grains, 2d. For every hogshad of wine, and other liquids,
6d. For every hogshead of sugar, tobacco, and dry goods, 9d. and for every tierce
thereof, 9d. For every barrel of pitch, tar, groceries, and all other goods in barrels,
4d. For every bundle, bale, and chest of hemp, linens, woollens, glass, fruits, earthen
ware, not exceeding three hundred weight, 3d. For every hundred weight of alum,
cheese, tallow, colours, shot, nails, chains, and wrought-iron, brasiers' and pewterers'
wares, and all other goods paying duty or freight per hundred weight, 1d. For every
gross of bottles, 3d. For every hundred feet of paving stones, or paving marble, 2s.
For every thousand of tiles, bricks, and clinkers, 1s. For every ship (fishing vessels
excepted) that comes to load or unload, 2d. per ton, according to their light bills; for
every vessel that comes in, and neither loads nor unloads, 2s. each, from twelve to
fifty tons, and if above fifty tons, 4s. For all goods not enumerated, one twelfth part
of the usual freight from London to Newhaven.

Ditto, s. 3.

Which duties shall be paid by the person who ships or receives goods, the master
to pay the tonnage of the ship; and no officers of customs of the port of Lewes shall

take entries or make out cockets, for shipping or discharging goods, or for clearing any ships,
until the duties be paid, or security given; or shall permit any ship to go out of the
haven, until the master produces a receipt for the duties aforesaid.

Ditto, s. 4.

The collectors may go aboard and distress for non-payment, and, in case of neglect
for ten days, may sell ship and furniture.

Ditto, s. 6.

When the justices, at their quarter sessions for Sussex, shall certify, that the com-
missions are reimbursed, one half of the duties shall cease, and the other half shall
continue, for keeping the haven, pier, and sluices in repair.

4 Geo. 2.
c. 19. s. 1.

Ilfordcombe.—The several duties following shall be paid to Sir Boucher Wray, his
heirs and assigns, lords of the manor of Ilfordcombe, in the county of Devon; (the
OF BRITISH PORTS, &c.

greatest) part of which acknowledgements were anciently paid to the lords of the
manor, viz.

For woollen, and bay yarn, and flocks, 2d. per stone, each to contain 18lb. and for Ditto, s. 9.
every ton of other goods, imported or exported out of the said port, 8d.

For every ship which shall come into the said harbour (the same not being their dis-
charging port) the keelage following, viz. for every ship using the coasting trade, be-
longing to the said port, 6d. For every ship not belonging to the said port, using the
coasting trade, 1s. 6d. For every other ship coming from his Majesty's plantations, or
bound thither, 2s. 6d. the master paying the said duty of keelage, shall have allowance
of the merchant by way of average; for every ship that pays keelage, there shall be paid
by the master 6d. for each top which such vessel beareth; and for the keelage of every
boat belonging to any other port or place, 4d.

For the support of the light-house (which light shall be set up at Michaelmas, and Ditto, s. 4.
continue till the first of March, in every year) there shall be paid, during such season,
by every ship belonging to the said port, 6d. and by every other ship, 1s.

And for laying up, or leasing of ships in the harbour, and to the fishery, there shall
be paid the duties following, viz. For every ship belonging to the harbour, 4s. 4d. For
every other ship, 6s. 8d. For every boat employed in the herring fishery, 4s. 4d. And
for every boat fishing for mackerel, for the season, 4s. 4d. And for every barrel of herring
4d. And for every horse-load of goods imported and exported, 3d.

For the keeping of a taw-boat there shall be paid such duties, and such orders ob-
served, as follows: First, the owner of such taw-boat shall have for going to any ship,
three shares; and the owner of the boat and company shall have one-third of every
pilot ship; the owner of such port to have his part, whether the pilot be shipped within
the harbour or without; and the keeper of such boat shall have one man's share; and
no boat shall serve, but such taw-boat only, which is to attend the place; and, if any
other boat shall serve, the owner of such boat shall forfeit 6s. 8d. unless upon extremity
of weather, then the owner of the taw-boats shall appoint other boats to assist him;
and the owner of such taw-boat shall have from every such special boat, one share;
and the keeper of the taw-boat shall attend, and keep the boat and warp always in
readiness.

There shall be paid by the master of every vessel belonging to Ilfordcombe, who Ditto, s. 7.
shall use the warp, 6s. 8d. and by the master of every vessel belonging to any other
port, 13s. 4d.

For keeping weights in the harbour, by the said Sir Boucher Wray, his heirs and Ditto, s. 8.
assigns, the orders herein-after mentioned shall be observed, viz. no person shall weigh
any goods, bought or sold there; with any other weights; and if any person shall weigh
with other weights, such person shall forfeit 3s. 4d. and there shall be paid for every ton
so weighed, 2d.

There shall be paid for every dicker of leather there landed, 3d. For every hogshead Ditto, s. 9.
of tobacco, 3d. For every weigh of coals or culm, 6d. For every horse, 1d. For every
bullock, 2q. For every score of sheep, 4d. For every dozen of earthen ware, imported
or exported, 2q. For every mease of herrings unsalted, carried out of the port, 3d.
For every ton of ballast taken on board in the port, 2d. For every ton of lime-stone
landed in the harbour, 1d. For every ton of groceries, or saltery wares, 1s. 6d. For
every hundred of barrel staves, 4d. For every bundle of hoops, 2q. For every pack
of bays or stuff, 8d. And for every hundred weight of cheese, 2d. And for the leasing
or laying up of every such fishing-boat as shall not pay duty, 2s. 2d.

And for all other goods, not particularly mentioned, imported or exported, such sums Ditto, sect.
of money shall be collected, as duties appertaining to the said quay, light-house, and 10.
warp-house, according to such moderate values, as are proportionable to the rates above expressed, and as are paid in the adjacent ports.

All monies raised by the duties, or recovered by forfeitures, shall be laid out in repairing and maintaining the piers, quay, light-house, warp, warp-house, boats, and harbour of Ilfordcombe.

The water-bailiff hath power to go aboard ships, and to distrain for non-payment, and, after ten days, to sell the distress and satisfy the duties, penalties, and costs.

Nothing in this act shall diminish any of the ancient rights which the freemen of Bridgewater have enjoyed by virtue of a charter granted by King John.

SCARBOROUGH.—The King erected a Corporation of two persons, called the Masters, or Keepers, of the Quay or Pier of Scarborough.

The master and keepers shall receive of the owners of tenements in Scarborough, the fifth part of the yearly rents, for the maintenance of the quay or pier, at the feast of Pentecost and St. Martin.

From the 24th of June, 1732, until the 24th of June, 1768, the duties after-mentioned shall be paid, for the enlarging and keeping in repair the piers of Scarborough, to wit, 2q. for every chaldron of coals laden on board any ship in the port of Newcastle, or any member of the port of Newcastle; which duties shall be paid to the bailiffs and burgesses of Scarborough, as they in common council assembled shall appoint, by every master of a ship, before such ship be suffered to proceed in any voyage, to be paid near the place where such ship shall take on board such coals.

Till the 24th of June, 1783, there shall be paid to the said bailiffs and burgesses for coals landed within the port of Scarborough, 1s. per chaldron, town's measure; for cinders 1s. per chaldron. For every weigh of salt, 2s. For every gross of glass bottles, 2d. For fir timber imported in English bottoms, 3d. per ton; for every hundred of fir deals, 3s. of half deals, 1s. 6d. of middle balks, 3s. of double ufrs, 3s. of single ufrs, 1s. of capraevens, 3s. of small balks, 1s. of small spars, 6d. of battins, 1s. of pale-boards, 2d. great masts a-piece, 3s. middle masts a-piece, 1s. 6d. small masts a-piece, 6d. oak timber and oak plank per ton, 3d. Wine and brandy per ton, 5s. And for all the above-enumerated goods, which shall be imported in foreign bottoms, double duties; and for all foreign goods not above-mentioned, imported in English bottoms, 3d. per ton, and for foreign bottoms, 6d. per ton; and for butter shipped off from Scarborough, 1d. per firkin. For dried fish and mud fish shipped off, 2d. per score. For barrel fish so shipped off, per barrel 4d. For tallow so shipped off, 3d. per hundred weight. Every ham of bacon, 2d. Neats tongues per dozen, 3d. Pickled pork per barrel, 1s. For every fitch of bacon, 2d. Rabbit skins per pack, 2s. 6d. Calves' skins per dozen, 3d. Leather per hundred weight, 1s. And for every English ship which shall enter within the piers, 6d. and for the top, or cross trees, of such English ship, being of the burden of 150 tons, 4d. And for every foreign ship so entering, 1s. and for the top, or cross trees, of such foreign ship of 150 tons, 8d.

In default of payment it shall be lawful for the collectors to distraint.

All ships within the port of Scarborough shall lie, moor, and ballast, in such place as they shall be directed, under the penalty of 5l. &c.

The ancient toll for supporting the piers shall be paid.

All ships British built, and manned according to the Act of Navigation, belonging to Great Yarmouth, shall be free from the said duty of 2q. per chaldron of coals, so as the master, or some mariner on his behalf, produce a certificate, made upon oath before the mayor of Yarmouth, and under the seal of mayoralty, that such ship does belong to Yarmouth, and that the inhabitants thereof are owners of the major part of such ship.
cessors, for ever; and they were at liberty to enclose and improve the same, and receive the profits thereof, and apply the same for maintaining and repairing the intended works and fences, and for making such further works, from time to time, as occasion should require, for making and keeping the said river navigable; and reciting, that severable considerable sums had been laid out pursuant to the said act, but the river was not made navigable, the provisions for making it so being insufficient, and the time thereby granted, for making the same navigable, was expired: And reciting, that the sands, soil, and ground, not bearing grass, commonly called the White Sands, from Chester to the sea, and lying between the county of Chester, on the north side, and the county of Flint on the south, are of great breadth in most places; and that the river's not being navigable was chiefly owing to the breadth of the sands, and to the shifting of the channel, as the winds and tide varied; and that the said sands, soil, and ground were not, nor were likely to be, of any benefit to any person whatsoever, unless the river was bounded in, and made navigable by sea walls, which required a very great expence, as well to erect, as to maintain and repair from time to time, as occasion should require; but that yet, if the said sands, soil, and ground, were recovered from the sea, by sea walls, and the channel thereby confined to one certain course, it would not only effectually make the river navigable, but that vesting the White Sands in the undertakers, would be a considerable encouragement to the undertaking thereof: and reciting, that the making the said river navigable would be a means to advance the trade of the city, and that a great benefit would accrue thereby to the inhabitants, and to the towns and countries adjacent, as also be a means to increase the number of seamen and watermen, and to promote the public good of this kingdom; Nathaniel Kinderly, in the said act named, his heirs and assigns, and such persons as he, &c. should appoint, were by the said act of 6 Geo. 2. appointed undertakers of the said navigation, and impowered at their own charges, to make and keep the said river Dee navigable from the sea to Wilcox Point; that there should be sixteen feet water in every part of the river at a moderate spring tide, for ships to come and go to and from the said city; and to that end, to make the channel to run through the White Sands, or the common salt marshes adjoining, or through the marshes of John Wright, Esq.; commonly called Brewer’s-hall Marsh, as they should think fit; and the said Nathaniel Kinderley, his heirs, assigns, and nominees, had farther powers granted them by the said act, as therein mentioned. And as they would necessarily be at a very considerable expence in making the river navigable, and keeping up the same, it was by the said act of 6 Geo. 2. enacted, that immediately after the said Nathaniel Kinderly, his heirs, assigns, or nominees, should make the said river Dee navigable and passable for ships in manner as aforesaid, all merchants and proprietors of any goods that should be brought into the said river and channel, and that should be laden at, or shipped off, or sent from Chester, or from any other places between the said city and Park-gate in the county of Chester, on the north side of the said river, and between the city of Chester and town of Flint in the county of Flint, on the south side of the said river, should pay to the said Nathaniel Kinderly, his heirs, &c. the several duties in the said act mentioned; also certain sands, marshes, and salt grass, and other lands therein mentioned, were, so soon as the said river was made navigable, vested in the undertakers, for their proper use, under the provisos in the said act mentioned; and commissioners were appointed by the said act, for settling all matters, about which any difference should arise between the undertakers and proprietors of any of the lands adjoining to the river; and the commissioners were thereby empowered to settle and assess recompense to be made for damages that might happen to any of the lands or fisheries, by reason of the said navigation: and the undertakers were directed to invest 1000l. in south-sea annuities, or other government securities, in the name of Thomas Revel, John Manley, and Benjamin
Hoare, Esqrs. and John Bland, banker, to answer the damages last mentioned, for three years after the navigation should be fully completed: and it was thereby also enacted, that if the said undertakers should not begin before the 24th day of June, 1735, and make the said river navigable, according to the true meaning of the act, on or before the 24th day of June, 1742, all and every the powers and interest of the said Nathaniel Kinderley, his heirs and nominees, should be utterly void; and that it should not be lawful for any proprietor or undertaker, or their heirs, or any persons claiming under any of them, to dispose of their interest in the said undertaking, or any share thereof, until such time as the said river should be made navigable: and the said Nathaniel Kinderley did afterwards, by an instrument in writing, dated the 9th day of July, 1733, and duly executed, declare, that his name was made use of in the said act of 8 Geo. 2. in trust for Thomas Watts and Richard Manley, Esqrs. and such other persons as they should appoint to be concerned in the said undertaking; and the said Nathaniel Kinderley did afterwards duly nominate certain persons, being forty in number, to be undertakers of the navigation: and by indenture quadrupartite, made April 9, 1734, between Nathaniel Kinderley, of the first part, Thomas Watts and Richard Manley, of the second part, Joseph Davies and William Parsons of London, gentlemen, of the third part, and ninety other subscribers to the said indenture, or to the schedule thereof, of the fourth part, and duly executed by all the said parties; it was agreed, that the said subscribers should raise a joint stock of 40,000l. in the manner and on the trusts therein mentioned; which trusts were, amongst other things, to lay out the 1000l. to be deposited as a fund to answer the damages before specified; and also to lay out such sums as should be necessary to recover and preserve the navigation of the river Dee; and the residue (if any) of the said 40,000l. was to be in trust for the said subscribers, in proportion to the sums by them respectively paid in: and it was by the said indenture further agreed, that the duties and tonnage by the said act made payable to, and the sands, soil, ground, marshes, and salt grass, thereby vested in the said Nathaniel Kinderley, his heirs, &c. should remain to the use of the said subscribers in proportion to the sums by them respectively paid: it was also agreed, that the said joint stock of 40,000l. should be divided into 400 shares, each consisting of 100l. and that each of the subscribers should be entitled to so many shares as he should have subscribed and paid in 100l. and several provisions were made for the management of the undertaking, for recovering and preserving the navigation, and of the affairs relating thereto. And the said undertakers, the assigns or nominees of the said Nathaniel Kinderley, between the 27th of August and 9th of November, 1735, did invest 10,000l. in the purchase of 9290l. old South Sea annuities, in the names of Thomas Revel, John Manley, Benjamin Hoare, and John Bland, as trustees for the purposes in the said act mentioned; and the said Benjamin Hoare afterwards refusing to accept the said stock in the South Sea company's books, or to act in the said trust, the annuities were in pursuance of a decree of the High Court of Chancery, made the 18th day of February, 1737, transferred into the names of Thomas Revel, John Manley, and John Bland, upon the same trusts: and the undertakers began the said undertaking before the 24th day of June, 1735, and laid out the monies advanced upon the said indenture, in making the deposit of 10,000l. in south sea annuities, &c. and great progress was thereby made in recovering the said navigation; but the same not being perfected, and it being necessary to raise further monies for that purpose, it was by deed poll, bearing date the 17th day of August, 1736, agreed to advance ten per cent. more, on each of their respective subscriptions, for the purposes in the said indenture expressed concerning the said 40,000l. And afterwards there being a necessity to raise further monies for the perfecting the navigation, by another deed poll, bearing date March the 3d, 1736, it was agreed by the subscribers thereto, to advance 20 per cent. more on their respective subscriptions.
subscriptions: and the subscribers to the said indenture, and to the deeds poll, and undertakers of the navigation, having paid in 47,830l. the same was laid out in making the said deposit, and in cutting a new channel for the river Dee, through the adjacent marshes, near ten miles in length; and making a dam and sluices cross the old channel, and deepening thereof, and making other works necessary for the recovering and preserving the navigation, and the charges necessarily attending the undertaking; and the river was, in April, 1737, turned into the new channel, and hath ever since continued to run through the same; and ever since ships and vessels of considerable burden have sailed through the new channel up to Wilcox Point; and the undertakers being, by the said act, directed and empowered to make and keep the river navigable from the sea to the said point; that there should be sixteen feet water in every part of the river at a moderate spring tide, for ships to come and go to and from the said city, several trials and soundings were made, to ascertain the height the water flowed to, at a moderate spring tide, and thereby the same was fixed to be level with the height of nine feet above the apron of the ten gate sluice part of the works of navigation erected by the undertakers; and a pile was, in 1738, fixed in the river near the said ten gate sluice, on which the height of nine feet from the apron of the ten gate sluice was marked, and set for the standard height of the water at a moderate spring tide, and the same has since been commonly called the standard; and the undertakers finished the undertaking in making the said river navigable, according to the intent and true meaning of the said recited act of 6 Geo. 2. before March 25, 1740, and have since that time been at very great expences in keeping the same navigable, according to the true meaning of the act; and the joint stock of the said undertaking having been laid out as aforesaid, and proving insufficient for securing the works, and inclosing and improving the sands and grounds vested in the said undertakers; at a general meeting, held December 11, 1740, they did agree, that the said joint stock should be increased to 52,000l. and that application should be made to parliament to incorporate the undertakers: and by one other act made 14 Geo. 2. intituled, an act for incorporating the undertakers of the navigation of the river Dee, it was amongst other things enacted, that William Allix, and the several other persons therein named, proprietors of the undertaking, and the representatives of such subscribers to the said indenture or deeds poll as were dead, their several and respective successors, &c. should be erected into one company for the purposes aforesaid, and be incorporated by the name of The Company of Proprietors of the Undertaking for recovering and preserving the Navigation of the River Dee, and have perpetual succession, and a common seal, and have power to do all such acts as the said Nathaniel Kinderley, his heirs, &c. might have done, by virtue of the said act of 6 Geo. 2. and to take all such duties, tonnage dues, and payments whatsoever, as the said Nathaniel Kinderley, his heirs, &c. were empowerment to do by the said act; and to embark, enclose, improve, and apply to the use of the said company, the white sands, soil, and ground, and other lands whatsoever, by the said act vested in the said Nathaniel Kinderley, his heirs, &c. upon the terms in the said act mentioned, in the same manner as the said Nathaniel Kinderley, his heirs, &c. might have executed the same, by virtue of the said act, subject to the limitations, &c. in the said act mentioned; as by the act of 14 Geo. 2. will more fully appear: and the tonnage rates and duties, which, by the said act 6 Geo. 2. are charged for all goods brought into, or laden in the said river, are by experience found to be too high, and a discouragement to the trade of the city; and the mayor and citizens of Chester, and the merchants and traders of Chester, have therefore requested the company of proprietors of the undertaking to consent that the same may be repealed, and that in lieu thereof easier tonnage duties may be appointed, which the said company have consented to; the doing whereof is an encouragement to trade, and for the common good of the undertaking, that the said acts of 6 and
OF BRITISH PORTS, &c.

14 Geo. 2. should be explained and amended, in the several other particulars hereafter mentioned:

It is therefore enacted, that after May 20, 1744, the said several rates of tonnage, payable to the said company of proprietors, by the several acts before recited, or either of them, shall be no longer payable; and that so much of the said acts as relate to the payment thereof shall be absolutely repealed.

After May 25, 1744, there shall for ever be paid unto the said company, and their successors, or to their collectors, for every ship, sloop, hoy, bark, barge, lighter, boat, or other vessel, coming into or going out of, or navigating in the river, and new channel, with any goods or merchandize (lead, oysters, slates, and paving stones, excepted) by the master or owner of such ship, &c. or other vessel (every one of whom are by this act made liable to the same) the several rates, tonnage, keelage, or duties, according to the full of their reach and burden, herein-after particularly described, for every ton of burden of such ship, &c. or other vessel, that is to say; for every ship or other vessel coming to, or going from, the city of Chester, or to, or from any other place, between the city of Chester and Park Gate, on the north side of the river, and between the city of Chester and the town of Flint, on the south side of the river, to or from any part of Great Britain, or Wales, or the other places or countries herein-after mentioned, the several rates and duties following; that is to say, for every ship, sloop, hoy, bark, barge, lighter, boat, or other vessel, going to, or coming from any part of Great Britain or Wales, between the said city and St. David's Head, or Carlisle, for every ton 2d. And for every ship, &c. going to, or coming from any place between St. David's Head and the Land's End, or beyond Carlisle, to any part in, or on this side the Shetlands, or to, and from the Isle of Man for every ton 3d. and for every ship, &c. going to, or coming from any part of Ireland, for every ton 4d. and for every ship, &c. going to, or coming from any place, up the King's Channel, beyond the Land's End, or beyond the Shetlands, for every ton 4d. and for every ship, &c. going to, or coming from every part of Norway, Denmark, Holstein, Holland, Hamburgh, Flanders, or any part of France without the Straits of Gibraltar, or the Islands of Guernsey or Jersey, for every ton 8d. and for every ship, &c. going to, or coming from any place in Newfoundland, Greenland, Russia, and within the Baltic, Portugal, or Spain, without the Straits, Canaries, Madeiras, Western-Isles, Azores, for every ton 1s. and for every ship, &c. going to, or coming from any place in the West Indies, Virginia, or any other part of America, Africa, Europe, or Asia, within the Straits, or not named before, any part of Africa without the Straits, or Cape de Verde Isles, for every ton 1s. and 6d. for every sloop, hoy, bark, &c. carrying goods from, or bringing goods to, the city of Chester, or through any part of the said new channel, in order to be put on board, or discharged from any ship, &c. lying at Park Gate, Flint, or any other place within the port of Chester, and below the said new channel, made by the said undertakers, for every ton 2d. and so in proportion for a greater or less quantity than a ton; such duties to be paid at the time of such ship or other vessel's discharge, either inwards or outwards, at the custom-house in the port of Chester, so as no ship or other vessel shall be liable to pay the duty but once for the said voyage, both out and home, notwithstanding such ship or other vessel may go and return back, with a lading of any goods or merchandize.

And it being by the said act of 6 Geo. 2. (among other things) provided, that if any ship or vessel, employed by the cheesemongers of the city of London, in the cheese trade to the city of Chester, should not go up to the city, or within any parts of the intended works of navigation, but should have their lading put on board such ship or vessel, by boats or keels, 6d. per ton, and no more, should be paid to the said Nathaniel Kinderley, his heirs, &c. by the master or owner of every such boat or keel, for all cheese or lead,
so to be put on board such ship or vessel, in full satisfaction and discharge of all duties and tonnage whatsoever; it is hereby further enacted, that after the 25th of May, 1744, the said duty of 6d. per ton, made payable by the above recited proviso, shall cease, and be no longer payable; and that, in lieu of the said duty of 6d. per ton, for such boats or keels, a sum of 2d. per ton, and no more, shall from May 25, 1744, be paid to the said company, and their successors, by the master or owner of every such boat or keel carrying cheese, (lead being exempted by this act from the payment of any tonnage) to be put on board such ship or vessel, in full satisfaction of all duties and tonnage whatsoever.

17 Geo. 2. P. 583. All ships, &c. or other vessels, coming into, or going out of the said river, and new channel, and liable to the payment of the duties of tonnage by this act imposed, shall be measured, by taking the length of the keel, so much as she treads on the ground, and the breadth to be taken by the midship beam from plank to plank, and half that breadth shall be accounted for the depth of every such ship or vessel; then multiply the length by the breadth, and the product thereof by the depth, and divide the whole by ninety-four, and the quotient shall give the true contents of the tonnage; according to which method, all ships, and other vessels, shall be measured, and the several duties of tonnage thereby be computed, and collected accordingly.

If the lading of any ship, or other vessel, which shall be liable to the payment of the duties of tonnage, imposed and payable by this act, according to the burden of such ship or other vessel, by admeasurement thereof, in manner as before directed, shall consist partly of lead, oysters, slates, or paving stones (which are exempted by this act from the payment of tonnage) and partly of other wares and merchandizes, in respect whereof such ship or vessel will be liable to the payment of the duties and tonnage by this act imposed; in every such case, there shall be a deduction made from the tonnage of every such ship, or other vessel, in proportion to the quantity of such lead, oysters, slates, or paving stones, contained in every such ship or other vessel:

In all cases where skins or wool shall be imported, such skins or wool shall pay the rates of tonnage by weight only, and not according to the burden of such ship, or other vessel by admeasurement thereof; and where the lading shall consist partly of skins, or wool, or both of them, and partly of other wares and merchandizes, in respect whereof such ship or vessel will be liable to the payment of the duties of tonnage by this act imposed, a deduction shall be made from the tonnage or burden of such ship, or other vessel, in proportion to the weight of such skins or wool, and if any dispute arises concerning the true weight of such skins or wool; the importer shall, at his own costs and charges, provide proper and convenient weights, beams, and scales, for weighing the same.

If the master, or other person, taking charge of any sloop, hoy, &c. carrying goods from, or to the city of Chester, or through any part of the said new channel, in order to be put on board, or discharged from any ship or other vessel, lying at Park Gate, Flint, or any other place within the said port of Chester, and below the said new channel, &c. or carrying any goods from, or to the city of Chester, to, or from any part of Wales, shall choose to pay the duty, and tonnage, according to the weight and quantity of the goods, and not according to the burden of the sloop, &c. by the admeasurement thereof; and such master, &c. shall make such declaration, upon entering of any such sloop, &c. inwards or outwards; in such case, the duty and tonnage shall be paid according to the weight of the goods, and not according to the burden of such sloop, &c. by admeasurement thereof.

In case any dispute shall arise between the collector of the tonnage payable by this act, and the master or other person having charge of any ship, or other vessel, such collector shall weigh, measure, or gauge all goods, wares, or merchandizes, at the time
of the shipping or unshipping thereof; and if such goods shall, upon such weighing, measuring, or gauging, appear to be of as great or greater quantity than such collector did affirm and insist the same to be, before the weighing thereof, &c. the master, &c. taking charge of the said vessel, shall pay the costs and charges of such weighing, measuring, &c.

The several rates of tonnage, payable by this act, shall be paid by the masters or owners of every such ship or vessel, before they shall be cleared inwards or outwards, by any of the officers of His Majesty’s customs, at the port of Chester; and if any such officer shall clear any ship, until the masters produce an acquittance, or if any master refuse, or neglect, to pay the said duty, the offender shall, for every default, forfeit 20l. to the company, &c.

The said collectors may go on board any ship, hoy, &c. to take the dimensions thereof, and to demand the duties payable by this act; and for non-payment thereof, or refusal to let such officer take the dimensions, he may distrain, and, after ten days, sell the distress, &c.

It being provided by the act of 6 Geo. 2. that Nathaniel Kinderley, his heirs, &c. shall make a wet dock for the ships to lie in; and that there shall be paid to Nathaniel Kinderley, &c. for every ship or vessel, laden within the said dock, 9d. per ton; the said duty is hereby altered to 6d. per ton, and no more, &c.

The term of three years after completing the said work of navigation being expired, and the trustees of the 10,000l. deposit, having, by sale of part of the South-Sea annuities, (in which the said 10,000l. was invested) raised and paid all the monies that have been ordered to be paid by them, by virtue of 6 Geo. 2. and the residue of the said deposit, which, at present, consists of 7180l. 3s. 8d. Old South-Sea annuity stock, remaining in the names of the said Thomas Revel and John Bland, the survivors of the said trustees (John Manley being dead;) it is enacted, that they shall, on or before the 25th day of May, 1744, transfer to the company and their successors the said 7180l. 3s. 8d. remaining in their hands or names.

The tonnage duties, arising by this act, shall, at all times hereafter, be liable to answer the damages in the act of 6 Geo. 2. mentioned, under the same regulations, and subject to be levied and applied to the same uses, as the duties of tonnage, imposed by the same act (and hereby repealed) were thereby made subject to.

In case the tonnage duties shall not be sufficient to pay such damages, then all and singular the White Sands, and all other the premises, by the said act of 6 Geo. 2. vested in Nathaniel Kinderley, &c. and, by the said subsequent act of 14 Geo. 2. in the said company, and their successors, are hereby declared to be subject to the payment, or satisfaction, for all such damages as shall be directed to be paid, in pursuance of the said act of 6 Geo. 2.

The river being subject in dry seasons to be filled up with sand, so that, at a moderate spring tide, it may frequently happen, that there may not be sixteen feet water in every part of the river, until the said sands shall be removed, by the freshes coming down the river; it is therefore enacted, that, instead of sixteen feet water, at a moderate spring tide, the said company and their successors shall, at all times hereafter, maintain the said river Dee, from the sea to Wilcox Point, that, on the computation of a moderate spring tide, as marked on the standard, there shall be fifteen feet water in every part of the channel, for ships and vessels to come and go to and from the said city.

The mayor, &c. of the city, shall appoint one proper person, and the company another, which persons are hereby constituted the supervisors of the navigation of the river Dee, and each of them shall have full power to sound the said river, or any part thereof, for three successive tides, as often as they shall be required so to do by the
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said mayor, &c. or the said company, or the collectors appointed to receive the tonnage; and if, upon any such soundings so made, the channel of any part of the river shall appear to be choked up, so that there would not, at a moderate spring tide (according to the height marked on the standard) be in the channel of every part of the river, from the sea to Wilcox Point, fifteen feet water; and, in case either of the supervisors shall make an affidavit thereof in writing, before any justice of the city or county of Chester, describing the particular parts of the river which shall be too shallow, &c. and, if the said company shall, for the space of four calendar months, suffer the said river to continue choked up, so that, on the computation of a moderate spring tide, as marked on the said standard, there shall not be 15 feet water in the channel, &c. as often as the said event shall happen, the payment of the tonnage rates shall be suspended, and not collected until the said depth of fifteen feet shall be regained; from which time the tonnage duties shall be again revived, and become payable as before, and so toties quoties.

17 Geo. 2.  
F. 501.

If the company neglect to cleanse and deepen the river eight months after the said term of four months shall be expired, so that, on a computation of a moderate spring tide, &c. there shall not be fifteen feet water in the channel, &c. the commissioners empowered by the act 6 Geo. 2. at a meeting to be held for that purpose, of which twenty days notice shall be given in the London Gazette, and by fixing notice in writing on the castle gate of Chester, by warrant under their hands, shall appoint proper persons, to enter into and upon the White Sands, lands, &c. by this or the former acts vested in the company, and to take possession thereof, and receive the rents and profits thereof, and to distress or entry respectively, so as such possession, receipt of rents, and powers of distress, shall not extend to avoid any lease, which may hereafter be granted by the company to any tenant, at the improved rent, without taking any fine for the same, or to compel such tenant to pay any more than the arrears of rent really due; and so as such possession, receipt of rent, and power of distress, shall continue no longer than until the depth of fifteen feet shall be regained, and the money expended in regaining thereof, and the charges occasioned by such entry, possession, and distress, shall be satisfied; and the money so to be raised and received, shall be employed for those respective purposes, as the major part of the said commissioners shall direct.

Provided, that no such order made by the said commissioners shall be binding, unless thirteen at least in number shall be present at such meeting.

The said supervisors shall (if required) weekly sound the river and shall make an affidavit in writing of the truth of such soundings.

The supervisors shall, at the expence of the company, on or before the 29th of September 1744, cause to be erected in such parts of the river as they shall think fit, two or more piles of timber, or other durable materials, to be therein fixed, so as the tops thereof shall be exactly level with the height of nine feet above the apron of the ten gate sluice, as the same is marked on the standard, which piles and standard shall for ever hereafter be kept in repair, and renewed as occasion shall require; and if any person shall wilfully damage or destroy the same, they shall for every such offence forfeit 200l. &c.

F. 502.

Two ferry-boats shall, at all times after May 25, 1744, be constantly kept by the said company and their successors, at their own expences, at such parts of the new channel, as the ferry-boats already appointed have worked at, since the making the said navigation, with proper and sufficient attendants, and all substantial and effectual ropes, tackle, and necessaries proper thereunto, for the public use and benefit of all
his Majesty's subjects, passing and repassing in those parts; and the persons attending such boats shall ferry over all passengers, when required, without being paid any thing for the same.

The commissioners appointed by the act 6 Geo. 2. or any thirteen of them, at any of their meetings, may set out one or more convenient roads, in any places over the sands, soil, and ground, vested in the company, lying on the north side of the new channel, within the extent of the said channel, to lead to and from the said two ferries, or either of them, to the said city of Chester, and to the towns of Shotwicke and Shough Hall, in the hundred of Worral, in the said county of Chester; and every such road shall be for ever maintained and repaired at the expense of the company and their successors.

If the said company and their successors shall neglect to maintain and repair the said roads, or to supply such ferry-boats with sufficient attendants, &c. on every such neglect the said commissioners, impowered by the act of 6 Geo. 2. may assess on the said company such reasonable penalty as they shall think fit, &c.

The said company, assembled in a general court, shall have power to call in from their members proportionably, according to their respective shares in the capital stock, any further sums of money, as by such general court shall, from time to time, be judged necessary, not exceeding, with the call of five per cent. already made pursuant to the said former act, in the whole the sum of forty per cent. And if any members, &c. who have or shall be required to pay in money upon any calls, &c. shall neglect to pay their shares of the money so called for, at the time appointed, by notice in the London Gazette, and on the Royal Exchange in London, the said company may not only stop the share, dividend, and profit, which shall become payable to such members so neglecting, and apply the same towards payment of the share of money so called for, till the same shall be satisfied, but also may stop the transfers, or assignments of the shares of every such defaulter, with interest after the rate of eight per cent. per annum for the money, so by them omitted to be paid, from the time the same was appointed to be paid, until the payment thereof; and the shares and stock-shares, and stocks of such defaulters, shall be liable to make good the monies so appointed to be paid, and interest as aforesaid; and, if the principal and interest shall be unpaid, by the space of three months, then the company, &c. shall have power to sell and assign so much of the said stock of such defaulters, as will satisfy the same, rendering the surplus (if any be) to the proprietors; and the money so called for and paid in, shall be deemed capital stock, &c.

The said joint stock of the said company, created and established, in pursuance of this and the former act, and the share and interest of each particular member thereof, shall be deemed, in all the courts of law and equity, and elsewhere, to be a personal estate to all intents and purposes whatsoever, and not a real estate; and shall go to the executors or administrators of the persons dying possessed thereof, interested in, or entitled thereto, and not to the heirs of such persons; and the proprietors of the said joint stock, their executors, &c. shall be respectively entitled to all the benefits and advantages by the first recited act, vested in Nathaniel Kindery, his heirs, &c. in proportion to their respective interests in the joint stock of the said company.

The method of assigning, transferring, and accepting of any interest, in the said joint stocks, shall be in the following form, viz.

I A. B. in consideration of paid to me by C. D. do hereby bargain, sell, assign, and transfer to the said C. D. in the joint stock of the company of proprietors of the undertaking for recovering and preserving the navigation of the river Dee; to hold to him the said C. D. his execu-
ors, administrators, and assigns, subject to the rules, orders, and bye-laws of the said company.

Witness my hand, the
day of

I, the said C. D. do hereby accept of the said
of the said joint stock, subject to the rules, orders, and bye-laws of the said company.

Witness my hand the day and year aforesaid.

Which transfer and acceptance shall be signed in the company's books, to be kept for
that purpose: and it being witnessed by one witness to the signing thereof, shall be
valid to all intents and purposes.

Nothing in this act, or in the acts of 6 and 14 Geo. 2. or either of them contained,
shall extend to hinder or restrain Sir John Glynne, Bart. lord of the manor of Hawarden
in the county of Flint, his heirs, &c. or any other persons entitled to the right of com-
mon thereon, from enjoying the lands, grounds, or salt marshes, lying on either side of
the banks and forelands of the new channel, &c.

The new channel, and the banks, and forelands on each side thereof, and the fore-
land of the breadth of twenty feet, next adjoining to the outside foot of the north bank
of the new channel, and so much more of the common salt marshes next adjoining to
the said twenty-feet-foreland, as will be necessary for making a convenient ditch or
mound, to fence and separate the said twenty-feet-foreland from the rest of the common
salt marshes, and the several pieces of marsh lands containing three acres and five acres,
shall be for ever hereafter vested in the company, &c. In consequence whereof, and
as a recompence for such part of the marsh-lands, as are hereby vested in the company,
and of all other damages done to the common salt marshes, the said company shall make
good and keep in repair the foreland and fences of the new cut or channel, so as thereby
to prevent the common salt marshes lying within the manor or parish of Hawarden, on
either side of the new cut, from being destroyed or washed away, by the flux or reflux
of water through the said new cut, or through the gutters or other inlets running
through the marshes; and in case, at any time hereafter, the common salt marshes lying
on either side of the new cut, and within the manor or parish of Hawarden, or any part
thereof, shall, in any one year, be so far injured or destroyed, by reason of the said
forelands not being kept in repair, or by reason of the said navigation, or of any works
to be made in pursuance of the said act 6 Geo. 2. so that there shall be thereby, in any
one year, the quantity of fifty acres or more of land, part of the said salt marshes, de-
stroyed; from thenceforth, as often as the said event shall happen, any fifteen or more
of the commissioners empowered by the said act 6 Geo. 2. or their successors, who shall
be present at any meeting to be held for that purpose, of which three months' notice
shall be given in the London Gazette, and by affixing notice in writing thereof on the
Castle Gate of Chester, by warrant under their hands and seals, may allot such quantity
of the lands adjoining to the common salt marshes, by the former act or one of them
vested in the company, as shall be equal in value to such part of the said marshes, as
shall have been so washed away, by way of recompence for the same; the lands so to
be allotted to lie as near the common salt marshes as conveniently may be; which deter-
mination of the commissioners shall be final, and binding to all parties interested, unless
the company, or the lord of the manor of Hawarden, or any persons having interest in
the said marshes, shall think themselves thereby aggrieved, and shall make application
to the next court of great session for the county of Flint, to have the value of the lands
determined by a jury, in which case, the justices of the said court of great session shall
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Cause the value of the land so destroyed, and of the lands to be given in lieu thereof, to be settled, assessed, decreed, and ascertained by the same rules and methods, by which, by the act of 6 Geo. 2. they are empowered and directed to settle the damage therein mentioned; and such determination of the justices of the said great session shall not be removed, but binding and conclusive to all intents and purposes, &c. and the lands so decreed in lieu for such part of the said common salt marshes, which shall, by the means aforesaid, be destroyed, shall for ever thereafter be the property and inheritance of, and be enjoyed by the same persons and their heirs who were before entitled to a right of common in the said salt marshes, under the like limitations, and with the like advantage as they might have held the said marshes in case they had not been destroyed; and, according to their respective estates therein, discharged from the rights of entry and distress, of any other person whatsoever; but the same shall not avoid any lease, which may be hereafter really granted by the company to any tenant or occupier of any part of the said lands for any term of years not exceeding twenty-one, at the improved rent, without taking any fine, or to compel such tenant to pay any more than the rent reserved on such lease; and, if the common salt marshes, which, by the means aforesaid, shall, in any one year, be destroyed, shall not exceed fifty acres, the commissioners appointed by the said act of 6 Geo. 2. or any jury to be appointed in pursuance of the said act, shall decree what recompense shall be paid by the company, or their successors, which recompense shall be paid to the lord of the manor of Hawarden, for the time being, the rector of the parish of Hawarden, for the time being, and to Thomas Powis, &c. and shall be by them applied for the use of the lord of the said manor, and the persons having a right of common in the common salt marshes, lying within the said manor of Hawarden, as the said commissioners, &c. with the consent of the lord of the said manor, &c. shall direct or appoint; which damages the lord of the said manor is hereby empowered to claim and make out accordingly; and, if the company, or the lord of the manor, shall be dissatisfied with the determination of the commissioners, they are hereby respectively empowered to apply to the justices at the next great session to be held for the county of Flint, &c.

The company shall keep five ways, of the breadth of twenty feet each, and at the distance of one mile, or thereabouts, from each other, over the ditch or mound which is intended to fence the bank and forelands on the north side of the river, from the rest of the salt marshes, for the cattle feeding on the salt marshes, on the north side of the channel, to go to and from the said channel to water.

A survey of the marsh lands on the south part of the new cut, and of the gutters and other receptacles of water therein, shall, on or before Sept. 29, 1744, be taken by two surveyors, one to be appointed by the company, and the other by the lord of the manor of Hawarden, who shall truly survey and admeasure the same, and make an exact plan thereof, distinguishing what parts thereof are firm land, and what are gutters or waste lands; and the surveyors shall within one month after Sept. 29, transmit an attested copy of such plan, under their hands, to the clerk of the peace of the county of Chester, to be kept among the records of the said county, to which all persons may have recourse, gratis, &c.

If any of the said gutters or waste lands, to be described in the survey, shall hereafter be filled up, and become firm land and grassed over, it shall be set against the like quantity of the marsh lands which shall be washed away; and the said company shall be obliged to make a recompense only for the residue of the said marsh lands, which may be destroyed as aforesaid.

It shall not be lawful for the company, or their under-tenants, &c. at any time hereafter, to build cottages on the said pieces of marsh land, containing three acres, and five acres, or on the banks or forelands on either side of the new cut, or on the fore-

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land of 20 feet in breadth herein-before declared to be vested in the company, without the licence of the lord of the manor within which the same shall lie, first obtained in writing under his hand and seal; and the said company, &c. shall not have any right of common on the said common salt marshes, as appendant to the soil of the new cut, or the banks or forelands thereof, &c.

This act shall not extend to prejudice the proprietors, of any royalties and liberties of fishing and fowling upon the river, &c.

Nothing herein, or in the said act of 6 Geo. 2. contained, shall extend to hinder Sir John Glynne, owner of the castle and manor of Hawarden, or his heirs, from enjoying all such rights and privileges, royalties and jurisdictions, as he or his ancestors might have done, in case this or the said former act had never been made; so that such rights, &c. do not infringe on the rights and powers given the undertakers by the said act.

Nothing in this act shall affect any right or property that John Theedam, of the Inner Temple, London, Gent. his heirs, &c. hath or have to the White Sands, lands, and hereditaments in the former act of 6 Geo. 2. mentioned; but the said rights, &c. shall remain to him, his heirs, &c. for ever, as if this act had never been made.

No person shall hang any net or other engine in, over, or across the channel of the said river, or fix any stakes in the same, or on the banks thereof, to the prejudice of the channel, or hinderance of the navigation.

Nothing in this act contained shall take away or lessen the powers given by the said act of 6 Geo. 2. to the commissioners appointed in pursuance of the said act; but they shall have the same powers and authorities as they had before the making this act; and all other clauses and things in the said act of 6 and 14 Geo. 2. which are not hereby repealed or varied, are ratified and confirmed.

All actions and suits at any time heretofore commenced or prosecuted in any courts of law or equity, between the mayor and citizens of the said city, and the company, or between any of the merchants and traders of the city, or other persons, and the said company, relating to any of the matters aforesaid, and depending at the time of passing this act, shall immediately cease and be discontinued; and no actions or suits shall be hereafter commenced or carried on by the company against the mayor and citizens of the said city, in respect of the use or occupation, or of the rents or profits of such part of the rood, as by the said act of 6 Geo. 2. was vested in Nathaniel Kinderley, his heirs, &c. antecedent to the said 25th day of May, 1744, or against any of the merchants or traders of the city of Chester, or any persons, on account of any sums of money due for any of the duties or tonnage made payable by the said recited act of 6 Geo. 2. and hereby repealed, as aforesaid, or upon any security given for the same.

All actions commenced for any thing done in pursuance of this act shall be brought within twelve months after the fact committed, and laid in the county where the cause of action shall arise, &c.

This act be deemed a public act, &c.

This act recites the former, and confirms an agreement entered into between the company, Sir John Glynne, and others, as to right of common and other affairs; and likewise as to allowance of a certain sum of money to Sir John Glynne, for making a new bank with one or more sluices, and to keep the same in repair; and likewise empowers the company to make a call not exceeding 20 per cent. more than was allowed by the last act.

LOYNE or LUNE, and LANCASTER.—The preamble sets forth, that the town of Lancaster in the county Palatine of Lancaster; from its great and extensive commerce to the West Indies, and other foreign parts, is now become a very considerable port, and has, for some time past employed and maintained great numbers of ships and mariners,
town of Lancaster) now belonging to Mary Mason, widow, through and over the Bridge Field and Hay Field, to the fence that divides the Hay Field from the Summer Pasture; and they are to keep up and repair (as often as occasion requires) the said fence, wall, and stile, and all the hedges, ditches, mounds, and fences, separating the lands settled by this act from the rest of the vicarage lands, so as to prevent any trespasses or damages to be done to the said vicar or his successors; and they are also to cause a sufficient watering place, or reservoir of water, to be made in such convenient part in the said Bridge Field (not settled by this act) as the said James Fenton shall appoint, for watering the cattle, depasturing in the vicarage lands; and in case of any overflow thereof, the waters are to be turned into the river Loyne, at their expence, upon application made to any of them for that purpose, so as to prevent any damage to be done to the said lands; and upon their refusal or neglect so to do, the vicar and his successors may turn off the said water or watering place into the river, by such ways, and in such manner, as he shall think proper.

The occupiers of such parts of the vicarage lands as are not settled by this act, shall have the liberty of taking sand all along the close called the Summer Pasture, betwixt the banks thereof and the low-water mark in the river Loyne, in order to cultivate the said lands, with free liberty of ingress and regress for that purpose; and of driving their cattle, depasturing in the vicarage lands, over the Summer Pasture, to water; the ways for these purposes to be appointed by the commissioners and trustees, and by the vicar; and, upon their refusal or neglect to comply therewith, the vicar may appoint such ways for the purposes above as he shall think proper, and he and his tenants may make use thereof; and the vicar (until the division-wall above described is built and finished) is to have the herbage of such parts of the said Bridge Field and Hay Field, as are above mentioned, and intended to be allotted to the quay; and no doors or ways are to be opened through the division-wall or fence, without the licence of the vicar for the time being.

The Mayor of Lancaster for the time being, Francis Reynolds, Edward Marton, Esqrs. &c. are appointed commissioners and trustees for executing the powers and purposes of this act, until the first Wednesday in May, 1755, &c.

Such merchants or other persons as shall, in his or their own right for the time being, be possessed of a sixteenth, or other greater part of any vessel of the burthen of fifty tons or upwards, then actually belonging to the town or port of Lancaster, are empowered to meet at the Exchange on the first Wednesday in May, 1755, and so on every first Wednesday in the said month, in every third year, for ever, and nominate sixteen substantial inhabitants of the town, to be joined with the mayor for the time being, to be commissioners and trustees for building a quay or wharf, with all other necessary works and conveniences upon the premises settled by this act, and for letting or otherwise disposing of the the same for the advantage of the said navigation; and for making places of security by erecting piers or moles at the mouth of the river for the preservation of the shipping, and for doing all matters and things which they shall think requisite for improving the navigation of the said river Loyne, and for the other purposes of this act.

From and after the 30th of April, 1750, there shall be paid unto the commissioners and trustees, or their collectors, for the term of twenty-one years, for every vessel coming into or going out of the river Loyne, between Lancaster Bridge and the Perch at Cockersand Abbey, (ships of war, and other vessels in his Majesty's service, and ships driven in by stress of weather, and not lading or unlading within the port, and ships laden with coal or other fuel, only excepted) the several duties of tonnage following, viz.
For every ship or vessel coming into or going out of the port of Lancaster, and trading to or from any port or place in Europe within the Straits or Mediterranean Sea, or in Africa, America, or Greenland, 1s. for every ton of the burthen of such ship.

For every ship or vessel coming into or going out of the said port, and trading to or from any foreign port or place in Europe (except Ireland, the Isle of Man, and the Straits, or Mediterranean Sea) 8d. for every ton of the burthen of such ship.

For every ship, vessel, bark, or lighter, coming into or going out of the said port, and trading to or from any port or place in Great Britain, situate south of Holyhead, or north of the Mull of Galloway, 6d. for every ton of the burthen of such ship or vessel.

For every ship, vessel, bark, or lighter, coming into or going out of the said port, and trading to or from any port or place in Ireland, to the Isle of Man, 4d. for every ton of the burthen of such ship or vessel.

For every ship, vessel, bark, or lighter, coming into or going out of the said port, and trading to or from any port or place in Great Britain, north of Holyhead, or south of the Mull of Galloway, 2d. for every ton of the burthen of such ship or vessel.

And for every ship, vessel, bark, or lighter, coming in ballast into the said river Lойne, and not lading or unlading within the said port, for every ton one-fourth part of the rates charged on any ship or vessel of the same burthen.

The duties are to be paid at such time and place as the commissioners and trustees shall appoint; but no vessel is liable to pay the duties inwards and outwards for the same voyage.

All vessels, subject to the payment of the said duties, are to be measured according to the rules of admeasurement laid down in the act of 6 Geo. 1. intitled, an act for preventing frauds and abuses in the public revenues of excise, customs, &c. and the duties of tonnage are to be computed accordingly.

After the expiration of the term of twenty-one years, one moiety of the said duties is to cease, and the other moiety is to be continued, and paid in the manner aforesaid, for keeping the quay and other works in repair.

No officer of the customs of the port of Lancaster shall clear any vessel until the master produces a certificate of the payment of the duties of this act, &c.

The commissioners and trustees are empowered to make bye-laws, &c. and to contract bond fide for building the quay, &c.

The commissioners, &c. are empowered to borrow a sum not exceeding 2000l. on the duties, at 5 per cent. per annum, wherewith to make the new intended quay, &c.

The collectors are empowered to go on board any vessel to measure her, and demand the duties; and for non-payment, &c. may distress; and, after ten days, sell the distress, &c.

All persons who shall have any business to transact upon the said quay or wharf in the mercantile way or otherwise, and for the benefit of lading and unlading vessels on the south-west side of the river Lойne, may pass and repass freely through the custom-house yard with carriages, and otherwise, to and from the said quay, as need shall require.

The commissioners, &c. for the unlading any vessel that may come on ground on the Seale Ford, or on the shoals thereabouts, may open a road out of the Summer Pasture aforesaid, over Lancaster Marsh, over which all persons in the mercantile way may pass and repass with carriages, as occasion shall require, to and from the quay at Lancaster.

The commissioners, &c. may agree for the purchase of the weigh-house, standing in the custom-house yard, with the appurtenances; and use the site and soil thereof, for
the making the new quay aforesaid, and dispose of the materials for such purposes as they shall think requisite.

The commissioners, &c. may contract for the purchase of the lands, tenements, and hereditaments, which shall be adjudged necessary and convenient for the purposes aforesaid, &c. And this act shall be deemed a public act, &c.

Southwold.—The preamble sets forth, that there had been, for time immemorial, a sea port or harbour for shipping at Southwold, in the county of Suffolk, which is situated very conveniently, not only for the preservation of vessels navigating in the British seas, but also for the importation and exportation of many useful commodities, and for the benefit of trade in general; but that the road lying before the said port is so obstructed with sand, as to prevent laden vessels, except such as are of a very small burden, from passing into or out of the harbour; to the end therefore the said harbour may be opened, and made commodious for shipping, and be of public utility to the trade and commerce of this kindom, it is enacted, that from the 25th of March, 1747, for the term of twenty-one years, and from thence to the end of the then next session of Parliament, there shall be paid unto the commissioners and trustees for the purposes of this act, or to such person as seven of them shall appoint, under their hands and seals, the rates and duties herein-after mentioned, for and towards the opening, cleansing, scouring, widening, deepening, repairing, and improving, &c. the said harbour, viz.

For every English ship or vessel, which shall sail into the said harbour and shall neither land nor unlade there, the sum of 1d. 2q. per ton, according to their light bills.

For every chaldron of coals, culm, and cinders, exported or imported, laid on board of, or landed or discharged out of, any English vessel in the port of Southwold, the sum of 1s.

For every last of wheat, rye, barley, malt, oats, and other grain, exported or imported, &c. in any English vessel, the sum of 1s.

For every ton of rock salt, exported or imported, &c. in any English vessel, the sum of 1s.

For every hogshead of wine, brandy, rum, or other spirituous liquor, exported or imported, &c. in any English vessel, the sum of 1s.

For every ton of chalk, imported there to be burnt into lime, for any other purpose than that of manuring land, the sum of 1d.

For every firkin of butter, and for every weigh of cheese, exported or imported, the sum of 1d.

For every ton of grocery wares, and other goods, wares, and merchandizes, fish, butter, and cheese, only excepted, exported, or imported, &c. in any English vessel, the sum of 1s. 6d.

For every ton of lead, exported or imported, &c. in any English vessel, the sum of 1s.

For every greater or less quantity of any of the said goods or merchandizes than what are before-mentioned, proportionably to the prices herein-before set.

For every foreign vessel which shall sail into the said harbour, and shall not land or unlade there, and for all goods, wares, and merchandizes, which shall be exported or imported, laden on board of, or discharged from out of, any such vessel in the said port, double the duties herein-before laid.

Which sums shall be paid at the landing or shipping off the said commodities; and, in default thereof, the collector of the said duties may go on board and distrain such vessel, with her tackle and furniture, or the goods and merchandizes, or any part thereof, and make sale of the same; and no custom-house officer shall clear any vessel, till the master produces a certificate of having paid the duties, &c.
every master of any ship that shall load or take any coals on board there, 2d. for every 192 gallons; and, from and after the expiration of the said term of twenty-one years, 1d. for every 192 gallons of coals that shall be shipped there, to be paid by the master of the vessel; the said respective sums of 2d. for twenty-one years, and 1d. afterwards, for so long time as the said harbour and other works provided for by this act, shall be kept up in good repair, to be paid by the master of the vessel upon reasonable demand, after shipping the said coals, and before such ship goes out of the harbour, or proceeds on her voyage.

From and after the 25th of March, 1749, during the term of twenty-one years, the master, &c. of any vessel, not taking on board a lading of coals, shall pay 6d. per ton, according to her tonnage, for such ship upon her arrival in the said harbour, from Great Britain or Ireland, or the Isle of Man; the tonnage to be ascertained in the manner described by an act of 5 and 6 Will. and Mar. intitled, an act for granting to their Majesties several rates and duties upon tonnage of ships and vessels, and upon beer, ale, and other liquors, for securing certain recompenses and advantages in the said act mentioned, &c.

Four pence per ton shall be paid by the master of every vessel which, during the term aforesaid, shall be driven by stress of weather into the harbour of Ellenfoot, or shall come there for security or preservation, and shall not take in a lading of coals; and, after the expiration of the said term of twenty-one years, one-third part of the duties rated upon the tonnage of ships shall be paid in manner aforesaid, for so long time as the harbour and other works shall be kept in good repair.

The monies received shall be applied towards amending, enlarging, deepening, and cleansing the said harbour, and keeping the same and the pier, and other works, continually in good repair; and shall not be employed to any other use, &c.

If the duties payable by the proprietors, who shall ship any coals aboard any vessels at Ellenfoot, shall not be paid within ten days after shipping thereof, the collector, by warrant from two or more commissioners, may distraint all such coals, &c. and sell them in three days, deducting the duties, &c.

If the collector and the master of any vessel, charged with the said duties, cannot agree about and adjust the tonnage, the collector may, at all times convenient and seasonable, enter into and admeasure such ship, according to the directions of the act referred to, which admeasurement shall be the rule to charge the vessel then, and at all times afterwards; and if at any master, taking in coals as aforesaid, shall not, upon reasonable demand, pay the duty; and if any master of a vessel, chargeable according to the tonnage thereof, shall not upon like demand, after the said tonnage is agreed unto or ascertained, pay the duty, the collector may distraint any tackle, apparel, or furniture, in, upon, or belonging to such vessel, and sell the same within three days, deducting the duties, and charges, &c.

No officer whatsoever of his Majesty's customs shall clear any vessel, until the master produces a certificate of having paid the duties, &c.

The commissioners, or seven of them, may contract with any workmen, &c. bond fide, for doing all other part of the work, and are empowered to appoint the place for building the pier, and enlarging the harbour, upon such ground adjoining to the river Ellen, or the south-west side nigh Ellenfoot, as they shall think most convenient and necessary, &c.

For the more speedy completing the said works, the commissioners, or seven of them, are empowered to borrow, at 5 per cent. interest, any sum not exceeding 2000l. sterling; and to assign over the duties, by indenture under the hands and seals of nine of them, as a security for repayment of the principal and interest.

The money so borrowed shall be applied by the commissioners, in the first place, for
the said magistrates, their collector, &c. either of the respective proprietors, or from
the keeper of any warehouse wherein the goods shall be deposited, upon the first land-
ing, or to whom the same shall be delivered, or who shall take charge thereof, or shall,
carry off the same from the wharfs or quay, at the election of the persons authorized to
receive the same; and also the duties and customs upon exportation of goods, except
for such stone only as shall be taken out of one vessel into another in the said harbour,
may be demanded from the waggoner, carter, carrier, or other persons bringing or de-
delivering the same on board, at the option of the receiver of the said rates; and also the
duties upon vessels, coming into the said harbour, and for such stone as shall be taken
out of one vessel into another in the said harbour, may be demanded of the masters, or
persons having charge of such ships.

On non-payment of the rates within twenty-four hours after demand, the said magis-
trates are empowered to sue for and recover the same by action of debt, bill, plaint, or
information, in any of the courts of record at Westminster, &c.

All masters of vessels, coming into or going out of the said harbour, shall, as soon as
conveniently may be, deliver to the collector, at his request, his wharfage bill, or a true
account of all goods on board, and shall permit him to take a copy thereof, at his own
expense, under penalty of forfeiting 5l. for every such offence, &c.

The quay masters, for the more commodious lading and unlading vessels, or taking
in or casting out ballast, shall order all masters, and other persons having charge of
any vessels, lying in the said port or harbour, to station, anchor, and moor the same,
in such proper births, near unto or adjoining the said wharfs or quays, as they shall ap-
point; and if any master of any vessel shall refuse to comply with such orders, he shall
forfeit 40s. &c.

As often as any damage shall happen to be done to the bridge, wharfs, or quays, by
any vessel breaking loose from its moorings, through default of the mariners; the mayor,
&c. or any three of them, upon the same being notified to them upon oath, shall detain
such vessel till the damage be ascertained and adjusted by three indifferent persons upon
oath; and, if it shall appear to them that the damage has been done through wilful de-
fault or neglect, they shall liquidate the sum payable for the same, and return their ad-
judication, signed by them, unto the mayor, &c. who shall thereupon summon the
master of such vessel, and demand payment; and, upon non-payment thereof, within
three days after demand, they shall distress the vessel, and all her tackle, apparel, and
furniture; and, within three days after, payment not being then made, the collector,
or quay master, by a written order from the mayor, &c. shall sell the same, &c.

All the monies to be raised by this act, and all penalties and forfeitures, shall be ap-
plied in cleansing and keeping the harbour in order, and for keeping the bridge, wharfs,
quays, and other public buildings and works within the said borough and town in repair,
as the said magistrates shall think requisite.

None shall be exempted from keeping such wharfs or quays in repair, which they
were obliged to, by tenure or usage, &c. before the making of this act.

This act shall be deemed a public act, &c.

The first Table or Schedule referred to, viz. Of Petty Customs, or Wharfage Duties,
payable by virtue of this Act.

For every chaldron, Winchester measure, of coals, culm, cinders, grindstones, and
other goods, paying duties to the King by the chaldron, which shall be imported into,
and exported from, the said harbour of Weymouth and Melcombe Regis, 2d.

For every ton of tobacco pipe-clay, bushel iron, and stone, except such stone as shall
of one vessel into another in the said harbour, 3d.
The second Table, or Schedule, referred to, viz. Of Harbour Dues, and Ballast Duties, payable by virtue of this Act, by, or from the Master of every Ship or Vessel, or the Person having Charge of the same.

For every British ship or vessel, not belonging to the inhabitants of the said borough and town, which shall lade or unlade in the said harbour, 2s.

For every such ship or vessel, which shall sail into the said harbour, and neither lade nor unlade there, 1s. 6d. and so in proportion for parts of ships or vessels, not belonging to such inhabitants.

For every ship or vessel belonging to inhabitants of the said borough, and town, which shall lade or unlade in the said harbour, 1s. and so in proportion for parts of ships or vessels belonging to such inhabitants.

For every foreign ship or vessel which shall sail into the harbour, and neither lade nor unlade there, 3s.

For every such ship or vessel which shall lade or unlade there, 1d. per ton, according to their light bills.

For every ton of stone taken out of one vessel into another in the harbour, 1d. 2q.

For every ton of ballast taken into any ship from the quay, or otherwise, in the harbour, 1s.

For every ton of ballast put out of any ships on the quay, 4d.

For every ton of ballast put out of one ship into another in the harbour, 2d.

For every ton of ballast taken on board any foreign ship or vessel, either from the quay, or in the harbour, 2s.

For every ton of ballast put out of such ship or vessel, 8d.

Ramsgate and Sandwich.—The preamble sets forth, that frequent losses of the lives and properties of his Majesty’s subjects happen in the Downs, for want of a harbour between the North and South Forelands, the greatest part of the ships employed in the trade of this nation being under a necessity, at going out upon, as well as returning from their voyage, to pass through the Downs; and frequently, by contrary winds, being detained there a long time, during which they, especially the outward bound ships, are exposed to violent storms and dangerous gales of wind, without having any sufficient harbour to lie in or retreat into, or from whence they can receive any assistance; and as a harbour may be made at the town of Ramsgate, convenient for the reception of ships, of and under 300 tons burden, and from whence larger ships in distress in the Downs may be supplied with pilots, anchors, cables, and other assistance and necessaries; and, by the smaller ships taking shelter in this harbour, the larger ships may take the anchorage, which, at present, is occupied by the smaller, and by that means their anchors will be fixed in more holding ground, and the ships not so exposed to the ocean: for carrying therefore a work of such public utility into execution, it is enacted, that the Lord Warden of the Cinque Ports, and his Deputy for the time being, the Right Hon. Robert Lord Romney, Andrew Stone, Esq. the Hon. James Pellham, Esq. &c. shall be trustees for the enlarging, building, and maintaining the harbour at Ramsgate, by erecting piers or such other works, and doing all other matters, as five, or more of them, at their general meeting, shall think most proper for putting in execution the powers of this act.

The first meeting of the trustees shall be on the first Tuesday in July, 1742, in the Guildhall of the City of London; and five or more of them shall meet, from time to time, at such places as they shall judge most convenient for carrying on and effecting the purposes of this act.

Fifteen or more of the trustees at a public meeting, fourteen days’ notice whereof shall be given in the London Gazette, shall settle the several rates and duties herein-after
mentioned, which shall commence from and after the 10th of July next ensuing, viz. any rate or duty not exceeding 6d. per ton, to be paid by every British or foreign ship, vessel, or crayer of 20 tons burden or upwards, and not exceeding 300 tons, for every lading or discharging, or ship in ballast within this realm, from, to, or by Ramsgate, or coming into the harbour there, not having a receipt testifying the payment thereof before on that voyage, towards the building and maintaining of Ramsgate harbour: and, on every ship above 300 tons, any rate not exceeding 2d. for each ton of the burden of such ship, except ships laden with coals, grindstones, Purbeck, Portland, or other stones: and on every chaldron of coals, or ton of grindstones, Purbeck, Portland, or other stones, a rate not exceeding 8d. and such rates, when settled by the trustees, shall be published in the London Gazette, for the information of all parties, and shall be paid to the customer, or collector of the customs, or their deputies, or other such persons as shall be appointed by the trustees to receive the same in such port or place, whence such vessels or ships shall set forth, or where they shall arrive before their sailing from such port, on their outward-bound voyage, and before they unload their goods on their homeward-bound voyage; the tonnage to be ascertained according to the rules laid down in the Act 8 Ann. intitled, An Act for making a convenient dock or basin at Liverpool, for the security of all ships trading to or from the said port of Liverpool.

Foreign ships, passing or being detained in the Downs, shall be subject to the same rates as ships cleared out, or entered into any of the British ports, to be levied and recovered in the same manner, as the other rates imposed by this act.

Where the tonnage of any vessel, chargeable with the said rates, cannot otherwise be settled and adjusted, the collector, or such person as five trustees shall appoint, may enter into, and admeasure such ship, according to the direction of this act; and, if any person shall obstruct the admeasurement of such ship, he shall forfeit 10l. for every such offence, &c.

No vessel, outward-bound, shall be cleared at the office of the customs, nor shall any vessel be allowed to enter at the said office, on a homeward-bound voyage, inward, without information on oath by the master or owner, of the burden of such vessel, &c. and after oath made, and payment of the duty, and producing an acquittance for the receipt thereof, the master or owner shall be allowed, from the merchant, for every ton of goods laden on board such ship on his account, a like sum per ton, as the same is charged by this act; and the customers or other officers, receiving the said duties, shall keep an account thereof, &c. to which all persons may have free access at all seasonable times gratis. And shall, once in every month in the port of London, and once in every three months in the out-ports, return and pay over the sums received by them, &c.

If any ship or vessel, other than has before excepted, whether British or foreign, above 300 tons, shall, after the commencement of this act, take shelter in the harbour of Ramsgate, she shall pay for every ton a like rate as ships of or under 300 tons, and above 19 tons are liable to, allowance being made to the master or owner for any rate paid before by him on that voyage, by virtue of this act, and such ship shall ever after be liable to the same rates.

No coasting vessel or fisherman shall pay the rates more than once in one year.

The collectors, &c. may go on board any vessel, and demand the duties; and for non-payment, may distrain such vessel, tackle, &c. and, in ten days after, make sale thereof, &c.

If any master of any vessel shall elude the payment of the said duties, the same shall be recovered, as the fines and penalties are herein-after directed.

Five or more trustees and persons employed by them, may remove any obstructions that may be necessary to be taken away, for the enlarging, building, and maintaining
the said harbour at Ramsgate, or for the better attaining the purposes of this act, making satisfaction to the owners of the premises.

Five or more trustees may contract for the making or doing all or any part of the work or business to be done in completing the said harbour, and for timber, stones, or other materials, which shall be used therein; and they may agree with the owners and occupiers of all such buildings, grounds, or estates, as shall be necessary for the execution of the purposes of this act.

All bodies politic or corporate, whether aggregate or sole, and all feoffees in trust, executors, administrators, guardians, or trustees whatsoever; for, or on behalf of, any infants, femes covert, or cestisque trusts, and all persons seized, possessed of, or interested in any lands, tenements, or hereditaments, which shall be judged necessary for the purposes aforesaid, are empowered to agree with the trustees, or five or more of them, at any of their public meetings appointed for the sale thereof, and to sell and convey the same; and all contracts and conveyances, which shall be so made for the purposes aforesaid, shall be valid to all intents and purposes.

And all feoffees in trust, executors, &c. are indemnified for what they shall do by virtue of this act; and, if it shall happen that any person, body or bodies politic or corporate, shall decline, or refuse to treat or agree about the sale of the said lands and tenements, five or more trustees shall issue their warrant to the sheriff of the county, to summon and return a jury of twenty-four persons qualified to be returned for trials of issue, joined in any of the courts at Westminster, to appear before them at the time and place appointed, and also to return issues upon every such persons, the sum of £10, which shall be duly estreated and levied; and, for default of a sufficient number of jurymen appearing, the sheriff, or his deputy, shall return twelve indifferent men of the standers-by, or that can be speedily procured, to make up the jury, who shall view the lands and tenements in question, and shall, upon their oaths, which oaths, and also proper oaths to such persons as shall be examined as witnesses, five or more of the trustees, shall administer, enquire into the value thereof, and assess such damages and recompence for the same as they shall think fit; and the trustees shall give judgment for the sums to be assessed by such jury; which verdict, and the determination thereupon pronounced by five or more trustees, and the recompence assessed, twenty days notice at least in writing of the time and place for their meeting being first given to every person concerned, or left at his or her dwelling-house, or usual place of abode, or with some tenant or occupier of some land or tenements of the party near the harbour of Ramsgate, in case such party cannot be found to be served with such notice, shall be binding to all intents and purposes, against all parties whatsoever; and the said decrees shall be set down in writing under the hands and seals of the trustees, who shall make the same; and kept amongst the records of the sessions for the county of Kent, and the same, or copies thereof, shall be admitted as evidence in all courts of law or equity: and, upon payment or tender of such sum to the parties, at his or their dwelling-house, or, if they have none, at the house of some tenant or occupier of some lands of the party, near the said harbour of Ramsgate, and, in case of their refusal, upon payment of the said sum into the hands of such person as five trustees shall appoint, for the use of the parties interested; it shall then, and not before, be lawful for the trustees, or their workmen, to make use of the said lands as they shall think requisite for the purposes of this act, and they are indemnified against the said owners and occupiers, &c.

If the trustees shall build any works relating to the said harbour, upon any lands or tenements, the property whereof is not, at or before such time, claimed or ascertained, and, if any person shall afterwards claim the same, and prove his title thereto, then the value thereof, before the works were erected, shall be ascertained by a jury in manner before directed; and, upon payment, or tender of the money that shall be assessed,
OF BRITISH PORTS, &c.

the property of such person in the said lands shall cease, and the same be vested in the trustees.

Fifteen, or more, trustees may borrow any sum not exceeding 70,000l. for the purposes aforesaid, and assign over the duties as a security for repayment of the same, with interest not exceeding 5l. per centum per annum; and the same shall be applied towards the enlarging and completing the said harbour; the charges of passing this act to be first paid.

Any persons may advance the whole, or any part of the said sum of 70,000l. for the absolute purchase of annuities, to be paid for the natural lives of such persons as shall be nominated by the contributors at the time of payment of their respective contributions; the said annuities not to exceed the rate of 8l. 10s. per annum for every 100l. and to be payable at the Bank of England, or at such other place in London, as fifteen or more of the trustees shall direct, to the purchasers, their executors, administrators, or assigns, at such times and in such proportions, as shall be agreed upon.

The rates shall not be liable to the payment of the interest of any greater sum than 50,000l. at any one time, upon annuities for lives.

One or more books shall be provided and kept by the trustees, in which shall be entered the names and places of abode of the purchasers of any of the said annuities, and of all persons by whose hands they shall pay in any sum upon this act, and also of the persons for whose lives the annuities shall be purchased, and the purchase money, and days of payment; to which books the respective purchasers, and persons empowered by them, shall have recourse, at all seasonable times gratis; and if any doubt arises, as to the life of any person, on which an annuity shall be payable, five or more trustees may depute any person, before each payment, to visit such annuitant; and, if such person shall be refused admittance to the said annuitant, at any seasonable time, the annuity shall from such time cease, till the life of the said annuitant be proved to five or more trustees at their public meeting, either by his or her personal appearance, or by the oaths of two credible witnesses; when the said annuity, together with the arrears, shall be paid.

The said annuities shall be paid out of the monies arising by the duties of this act; and the contributors, their executors, and assigns, shall enjoy the annuities, during the natural lives of the persons nominated by them, and shall have absolute and indefeasible estates therein; and the same shall be free from all taxes.

The contributors, or their assigns, upon payment of the consideration money, or any part thereof, unto fifteen trustees, or to such person as they shall appoint, shall have receipts for the same; and, upon payment of the purchase money, shall have an order in parchment for payment of the annuity, during the natural life of the person nominated, in which shall be inserted, how much the sum paid by such contributor, together with the other sums paid in on annuities before that time, do amount to, that it may be known how nearly the said sum of 70,000l. is complete, and when it shall be completed; which order shall be made by five or more trustees at a public meeting, and, after signing thereof, shall be good in law.

The annuitants, or their assigns, may, from time to time, assign over the said annuities, or any part thereof; and an entry thereof shall be made gratis, in a book to be kept by such person as five or more of the trustees shall appoint for that purpose, at the charge of the trustees, in such place within London as fifteen or more trustees shall appoint.

The rates shall be chargeable with the payment of the annuities; and, upon default of payment thereof, within forty days after the times they shall be made payable, they shall vest in the annuitants until the same be paid, with interest, and the charges occa-
sioned thereby; and they shall have the same power, &c. of collecting and levying the said duties as the trustees were invested with.

The money arising by sale of the annuities shall be applied in the first place, in paying off monies borrowed at interest, as aforesaid; and afterwards for discharging the expenses of enlarging and building the said harbour.

The trustees shall meet once in every year, fourteen days notice whereof shall be given in the London Gazette; and they, or fifteen or more of them, at such meeting, shall examine what annuities have determined during the preceding year, and shall ascertain the rates necessary to be raised for the succeeding year; and the same shall be levied according to the proportions before mentioned, and shall be advertised in the London Gazette; but, if they shall continue the rates of the succeeding year or years, according to the proportion of the former year, or shall neglect or refuse to meet for the purposes aforesaid, then the rates shall be levied according to the proportion directed by the last advertisement in the London Gazette for that purpose, which shall be the rule to go by, until the said rates shall be again ascertained and published according to the directions of this act.

As soon as the sum of 70,000l. shall be raised and paid to the trustees, by granting annuities, and the interest of the several annuitants shall cease by their deaths, the duties granted by this act shall absolutely cease and determine; and if, after the determination of the annuities, and finishing the said harbour, any surplus shall remain in the hands of the trustees, the same shall be paid into the Chamber of London; and an account thereof be laid before the parliament at their then next sitting.

Fifteen or more of the trustees may appoint collectors, a surveyor, treasurer, &c. of the duties, and appoint them salaries, and displace them at pleasure.

They are to take security for such officers, and meet once yearly to examine and audit their accounts.

The accounts so stated and signed by the trustees shall be laid, within three months after, before the mayor and court of aldermen in London, and such four as the court shall appoint, not being trustees, may summon, and examine upon oath, every person they shall think fit: and, finding any one guilty of embezzlement or misapplication of the said money, they shall impose on him any fine, not exceeding double the sum embezzled.

The said fines shall be levied by distress, &c. and in default of such distress, the offender shall be committed to the common jaol of the county, where he shall live, until payment, &c.

If the trustees shall erect a bason in the said harbour, every vessel before she goes into the gates, shall take down her sails, so that she may not go sailing in; upon pain of forfeiting 10l.

If the bason shall be so filled with shipping, as not to admit, with safety, more vessels, five or more trustees, or such person as they shall appoint, may remove into the harbour such ship or vessel, as he or they shall think proper, the master, within twenty-four hours after notice in writing given to him, or left on board his ship for that purpose, neglecting to remove the same within a convenient time; those vessels to be first removed out of the bason, as shall be laid up or moored, or are not upon an outward or homeward-bound voyage; next, such as are upon an outward or homeward-bound voyage, but which may with the least danger be removed, and lie in the said harbour; that ships coming in, and less capable of taking the ground, may have the benefit of the bason; and the said master shall pay the charges of removing such vessel, to be levied and applied as the fines and penalties are directed by this act.

If any master, or other person, shall obstruct the removal of such ship, he shall
forfeit 100l. And if any person, employed by the trustees, shall wilfully abuse his authority of removing such ships, and shall be judged so to have done, by five or more of the trustees, &c. they shall impose any fine on him, not exceeding 100l. &c.

If any trustee shall die, or refuse to act, nine or more of the remaining trustees may appoint others, &c.

The property of all the piers, docks, wharfs, and other works, and also of the ground whereon such works shall be erected, as well as all such right and property, as now appertaineth to the said pier or harbour of Ramsgate, shall be vested in the trustees; and they, or five, or more of them, may bring actions, and prefer bills of indictment, against any persons who shall steal, break down, or spoil any of the works or materials, or do any thing whereby damage may accrue to the works or harbour; and they may let out, for the best rent that can be had, such wharfs, docks, or lands, as are vested in them, for any term not exceeding sixty years, the rent to be applied towards enlarging and completing the said harbour; and upon the expiration of the said trusts, and determination of the leases, the property of the said piers, docks, wharfs, and other works, and also of the said lands, tenements, or hereditaments, shall be vested in, and disposed of by authority of parliament.

The trustees, in the letting such wharfs, docks, or other works, shall expressly mention what sums shall be taken by the respective tenants, of the master of any vessel which shall occupy the same; and, if the tenant shall demand or take more than the sum stipulated, he shall, for every such offence, forfeit treble the sum demanded, more than he shall be allowed to take by such agreement, &c.

All the receipts, payments, debts, credits, and contracts, made with and by the artificers and workmen employed, and also an account of all monies received and borrowed, and all other proceedings of the trustees, shall be entered into one or more books, &c.

No trustee shall have any office, or place of profit arising by any of the said duties; and the trustees shall at all their meetings, defray their own expenses, and shall give such public notice of their meetings, as shall be agreed upon by five or more of them.

From and after the first Tuesday in July, 1749, all duties on shipping, which may have heretofore been demanded at the port of Ramsgate, under any pretence whatsoever, shall absolutely cease; and no demand shall be made of any duty, other than what is made payable by this act.

This act shall not extend to charge with any of the said rates or duties, any ship or vessel, which shall be bound to or from the town of Sandwich, in the county of Kent; the master producing a certificate verified upon oath, under the hand or seal of the mayor of Sandwich, attesting that the inhabitants of the said town own the whole or major part of such vessel; and all such vessels may pass in and out of the harbour without paying duty.

Out of the money arising by the rates, the treasurer or receiver shall pay 200l. per annum, during the continuance of this act, into the hands of the mayor and jurats of Sandwich, or to such persons as they shall authorize to receive the same, by four equal quarterly payments, viz. upon September 29, December 25, March 25, and June 24; the first payment to be made upon the 29th of September, 1749; the said money to be applied, in the first place, in discharging the expenses incurred by the corporation of Sandwich, on account of applying for, or making this act, or in any manner relating thereto; and afterwards in cleansing, deepthing, and preserving the said haven, or in erecting and maintaining a pier, or such other works for that purpose, as the mayor and jurats shall, by writing under their hands and seals, direct; and, if the said sum shall not be paid within fourteen days after it shall become due, the mayor and jurats may recover the same against the said treasurer or receiver, together with the damages sustained by the non-payment, and full costs of suit by action of debt, bill, &c.
The receipt of the said mayor and jurats, or of such person as they shall appoint to receive the said sum, shall discharge the said treasurer or receiver for the payment thereof.

The said mayor and jurats shall cause a book or books to be kept of the dates and sums of money received and disbursed, and of all their proceedings, in execution of the trust hereby reposed in them; to which books all persons interested shall have free access gratis, &c.

From and after the 24th of June, 1749, no more than two vessels shall lie abreast in the said haven longer than one tide, unless upon some unavoidable occasion, of which the mayor shall judge, and shall take such order therein as he shall think reasonable: and, if the master of any vessel shall not obey such order of the mayor for removing his ship, he shall forfeit any sum not exceeding 40s. &c.

If it shall appear to the trustees, or fifteen of them, that it will be for the benefit of the trade and navigation of this kingdom, to erect any works at the haven of Sandwich, more than the annual sum of 200l. will be sufficient for; they may, at any meeting to be held for that purpose, fourteen days notice thereof being given in the London Gazette, order any sum not exceeding 10,000l. out of the duties aforesaid, to be applied to that purpose.

All vessels belonging to the towns of Dover, Weymouth, and Melcombe Regis, Lyme Regis, and Great Yarmouth, shall be exempted from payment of the duties aforesaid, the masters or owners producing a certificate, verified upon oath before the respective mayors of the said places, that the said vessels belong thereto, and that the inhabitants are owners of the greatest part of such ships.

This act shall be deemed a public act, &c.

Beverley Beck, and Hull.—By 13 Geo. 1. several small tolls and duties were laid on divers goods and merchandizes, which, after May 1, 1727, should be laden or unladen on or from any ship, boat, or other vessel, in any part of the said beck, or river Hull, and payable to the mayor, aldermen, and capital burgesses of Beverley, and their successors, or to the person by them appointed, to be applied for the purposes in the act mentioned; and, since passing the said act, a considerable sum hath been borrowed on the tolls thereby granted; which, though applied with the income of the tolls and duties, according to the directions of the act, is insufficient to answer the intention; and the beck is now in great danger of being choked, by the sludge and soil brought by the tide, and earth falling in from the banks, which must be repaired and supported by piles and other works; and, as the cleansing, deepening, and preserving the said creek, and amending and maintaining the banks, staiths, roads, and ways, will require more money than can be raised by the present duties, which are in many respects unequal, and not duly proportioned to the value of goods; therefore, for better enabling the mayor, &c. of Beverley, to perform the things before-mentioned, it is enacted, that, after May 1, 1745, there shall be paid for the purposes aforesaid, by every master or other person, having management of any ship, or other vessel; passing up or down the said beck, or river Hull, to lade or unlade goods, at any part of the beck, or public staiths, or at Gravel, or Beck-End, or between Figgam Clow and Swinmore Clow on the river Hull, or at any places along the said beck or river, within the limits of Beverley, before unlading, or having laden, before they go out of the liberties aforesaid, over and above the tolls payable by the former act, these additional duties, viz.

For every chaldron of coals, Winchester measure, 2d.

For every quarter of oats, barley, or malt, 1q.

For every quarter of wheat, rye, mesledine, beans, peas, rapeseed, hempseed, linseed, or any other kind of seed or grain, 1q.
For every hundred weight of flour, 3d.
For every hogshead of salt, 4d.
For every ton of salt in bulk, 2d.
For every 3 hogsheads of sugar, tobacco, molasses, or other goods packed in hogsheads, 8d.
For every 4 hogsheads of wine or rum, 1s. 8d.
For every hogshead of brandy, or other spirits, 4d.
For every 8 barrels of soap, raisins, oil, pitch, tar, or packed with other dry goods, 4d.
For every butt of currants, 8d.
For every 2 pipes of Smyrna raisins, 8d.
For every 16 bags of nails, 4d.
For every ton of iron or lead, 8d.
For every 32 firkins of butter, 4d.
For every 20 hundred of cheese, 7d.
For every ton of timber or stone, 2d.
For every 2 bags of hops, 8d.
For every quarter of oatmeal, 2d.
For every hundred of pipe staves, 1d. 2d.
For every dozen of cinders or charcoal, 2d.
For every 20 sheep skins, 1q.
For every quarter of bark, 1q.
For every pack of wool, or other goods, 1d.
For every 12 dozen of bottles, 1d.
For every 4 bushels of roots, or fruit, 2d.
For every ton of hemp, lime, or flax, 7d.
For every quarter of ferne ashes, 2d.
For every small runtlett of liquor, not exceeding 10 gallons, 1q.
For every small cask or parcel, not exceeding 112 pounds, 1q. and so in proportion for a greater or less quantity or weight of any of the above-mentioned goods, &c.
And for every ton of any other sort of goods or lading not mentioned, according to the custom of water tonnage, 12d. And so in proportion for any greater or less quantity, except cobbles or pebbles for repairing causeways in the town or liberties.

Which tolls and sums shall be paid to the mayor, aldermen, and capital burgesses of Beverley, and their successors, or to a person by them appointed to receive them, and, after deducting the necessary charges of obtaining this act, be applied, with the duties granted by the former act, to pay the debt, and cleanse and preserve the beck, and repair and keep up the banks, staiths, and roads, and to no other use.

The powers, provisos, penalties, &c. in the former act contained, relating to the tolls thereby granted, and not hereby repealed or altered, shall be in force from May 1, 1745, and extend to the additional tolls hereby granted, and to every person whom the same or this present act may concern.

In case any person, having management of any ship or vessel, passing up or down the river Hull or the beck, laden or unladen, and who by the former act is obliged to give in a true account in writing of the quantity of goods, or number of tons, with which he is laden, shall give in a false account thereof, being convicted on oath before the mayor, or any two justices of the said town, shall forfeit 20s. &c. and shall also pay the duties by the said acts made payable for all such goods as remain in such vessels, which he shall not have given an account of, or paid duty for, but such person shall not be subject to the forfeiture of 20s. unless his lading exceed three tons more than he shall have given an account of, or paid duty for.

The receiver, or collector, appointed by the mayor, &c. of Beverley, may enter into
any ship or vessel which shall pass up or down the said beck, or river Hull, within the liberties aforesaid, and search, and take an account of the lading thereof; and, for discovery of any goods, &c. chargeable with these duties, and the quantities thereof, may open, bore, gauge, weigh, and measure any thing laden in such vessel; and taste liquor, measure coals, and weigh or measure other goods, finding proper weights, measures, and instruments, for the purposes aforesaid, and making satisfaction for any loss or damage done to goods thereby; and, for the like discovery, to measure and mark the portage or tonnage of any vessel usually passing within the said liberties; and if any master of such vessel, or other person, shall hinder such collector, or other person appointed to enter such vessel, to search or take an account of the lading thereof, or of the sorts or quantities of goods, by any means aforesaid, or to measure or mark the portage, &c. the master or person so offending shall forfeit 20s. &c.

Nothing in this act shall take away or lessen duties, which, before making this and the former act, were payable to the mayor, &c. of Beverley, at the river Hull, or Beverley Beck, or otherwise; but the same shall continue to be paid on all sorts of goods and merchandizes as before.

The remainder of this act is concerning the roads, and cleansing the streets, which, having no relation to the subject I am treating of, is omitted, &c.

Kirkcaldy.—The town of Kirkcaldy is said to be well situated for carrying on a foreign trade, having coal and salt works near adjoining, and that an improved trade would be very beneficial both for the town and country; but these advantages cannot be had, unless the harbour, which is very ruinous, be repaired and made commodious, which will require a larger sum than the revenue of the town will answer, it is therefore enacted, that, after June 1, 1742, for the term of twenty-five years, and to the end of the then next session of parliament, a duty shall be paid of two pennies Scots, or one sixth part of a penny sterling, besides the duty paid to his Majesty, on ever: Scot’s pint of beer or ale, either brewed, brought in, tapped, or sold in the town or liberties of Kirkcaldy; the duty to be paid by the brewers for sale, or the sellers of the said liquors, to the magistrates and town council, or such receivers as they shall appoint.

The provost, bailiffs, and council, are appointed trustees to repair and keep in repair the said harbour, and other public works, as they shall think proper, and to collect, receive, and dispose of the money arising by the duty, appoint proper officers to gauge the vessels and worts, which the brewers shall permit in the same manner as the officers of excise are permitted.

The trustees are empowered to make orders and give directions for gauging, collecting, and disposing of the money arising by the duty as they shall think most proper for the purposes hereby granted, and to appoint collectors, who shall dispose of the collected money, as the majority of the trustees shall direct, for repairing and maintaining the harbour and other public works.

Proper books shall be kept by order of the trustees, wherein the particulars of all disbursements shall be entered; and once every year, the first being thirty days after the said first day of June, 1742, and so successively every year, the accounts shall be fairly drawn out and stated by the collectors, and delivered to the majority of the trustees on oath, which oath any one of the trustees has power to administer.

And for the more speedily effecting the purposes of this act, the majority of trustees, by an act of the town council, may borrow money, and assign over the duty as a security to the lenders, at common interest.

Persons not paying the duty when demanded, may be summoned before any of the magistrates; and, if they do not then appear, or pay the duty, any one of the magistrates may make an order for the payment; and, if they refuse to pay three days after notice of such order, the collectors may have a warrant to distrain; and if payment be
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not made ten days after the distress they may sell the same, and deduct for reasonable charge, not exceeding a fifth part of the sum distrained for, rendering the surplus to the owner, if any be, and demanded.

Any ale or beer brought in, or sold in the said town and privileges, having not paid the duty, shall be forfeited, with the cask for the use of the town.

If any dispute arise between the sellers and collectors, the differences shall be decided by the vouchers taken by the excise officers; and the excise officers are required to give authentic copies of the said vouchers once in six weeks to some of the trustees or their collectors, for that purpose.

If any conceal or embezzle any wort, ale, or beer, to avoid paying the duty, the parties convicted before any two of the magistrates shall forfeit the value of what shall be concealed, and ten pounds Scots for the court charges, for which distress may be made.

The majority of trustees, with consent of the overseers after named, may farm out the duty for the best price they can get, and apply the money as this act directs.

The Right Hon. John, Earl of Rothes, the Right Hon. James, Earl of Morton, the Right Hon. James, Earl of Murray, &c. or any three, are appointed overseers of the duty, and receipts and disbursements thereof, and shall meet on the first Wednesday in August, 1743 at Kirkcaldy, and so successively, on the first Wednesday in August yearly, and adjourn as they shall think proper, to examine the disbursements, and the application thereof: and, if the major part of the said overseers present shall find any misapplication of the money, or other abuse of the powers granted by this act, they may adjudge the offenders, or embezzlers, to pay the value of what is embezzled, with full costs and damages; which sentence shall be final; and, if any of the overseers shall die, remove, or refuse to act, any three of the remaining overseers may chase others in their places.

No distress taken by authority of this act, shall any ways affect the King's duty of excise; nor shall any persons be charged with any quantity of wort, if it shall appear that the duty hereby made payable has been once paid.

This act shall be deemed a public act, and shall be judicially taken notice of, &c.

Anstruther-Easter.—In the preamble it is said, that a great trade has been carried on in the town of Anstruther Easter, in the county of Fife, in Scotland, particularly of fishery, and that a custom house has been erected there for many years, on account of the commerce of the said town, and that the harbour thereof is very safe and convenient for ships, and esteemed the most commodious in that part of the country; and, it having been judged necessary, for the improvement and preservation of the said harbour, as also for facilitating the sailing of ships in and out with more safety, that a cross pier should be erected, which was accordingly begun, and some progress made therein; but, as the completing the same will require a larger sum than the revenue of the town will answer, it is therefore enacted, that after August 1, 1749, for the term of twenty-five years, and to the end of the then next session of parliament, a duty of two pennies Scots, or one sixth part of a penny sterling, besides the duty payable to his Majesty, should be laid on every Scot's pint of ale or beer either brewed, brought in, tapped, or sold in the town or liberties of Anstruther Easter; the duty to be paid by the brewers for sale, or the sellers of the said liquors, to the magistrates and town council, or such collectors or receivers as they shall appoint: and the said magistrates and town council, and their successors in office for the time being, are appointed trustees to clean, deepen, rebuild, repair, and improve the said harbour and piers, and for executing all other powers given by this act; and the money raised by the said duty shall be vested in the trustees, and be applied to the several purposes aforesaid, the charges expended in passing this act being first deducted.

The trustees are to appoint proper officers to gauge the brewers' vessels and worts.
which the brewers shall permit in the same manner as the officers of excise are permitted.

The trustees are empowered to make orders, and give directions for gauging the vessels, and collecting and disposing of the money arising by the duty, as they shall think most proper for the purposes hereby granted; and shall be paid to the collectors appointed, who shall dispose of the collected money as the majority of trustees shall direct, for the purposes aforesaid, and to no other use.

Proper books shall be kept, by order of the trustees, wherein an account of all receipts and disbursements shall be entered; and also for what use the payments were made; and once every year, viz. within thirty days after the said first day of August, 1749, and so successively every year, the accounts shall be fairly drawn out, and stated by the collectors, and delivered to the majority of trustees on oath; which oath any one of the trustees is to administer.

And for the more speedily effecting the purposes of this act, the majority of trustees, by an act of the town-council, may borrow money, and assign over the duty as a security to the lenders, at legal, or less interest, the charges thereof to be paid out of the duty; and the money so borrowed shall be applied in the first place, to pay off the charges of obtaining this act, and then for the purposes aforesaid.

Persons not paying the duty when demanded, may be summoned before any of the magistrates; and if they do not then appear or pay the duty, any one of the magistrates may make an order for the payment; and, if they refuse to pay, three days after notice of such order, the collectors by warrant, may distrain, &c.

Any ale or beer brought in, or sold in the said town and privileges, having not first paid the duty, shall be forfeited, with the cask, for the use of the harbour.

If any dispute arise between the sellers and collectors, touching the quantity of wort or beer chargeable, the difference shall be decided by the vouchers taken by the excise officers, &c.

If, after August 1, 1749, any person shall conceal or embezzle any wort, ale, or beer, to avoid paying the duty, the offender shall forfeit the value of what is concealed, and ten pounds Scots, for which distress may be made.

The majority of the trustees, with consent of the overseers after named, may farm out the duty by way of public roup, for the best price they can get, and apply the money as this act directs.

Sir John Anstruther of Anstruther, Baronet, John Anstruther the younger of Anstruther, Esq. Sir Philip Anstruther of Balkaskie, Baronet, &c. or any three, are appointed overseers of the duty, &c. and shall meet on the first Wednesday in August, 1750, at Anstruther-Easter, and so successively on the first Wednesday in August yearly, and adjourn as they shall think proper, to examine the receipts and disbursements, and the application thereof; and, if the major part of the said overseers present shall find any misapplication of the money, or other abuse of the powers granted by this act, they may examine the party and witnesses, and make such an order upon conviction as they shall judge reasonable, and adjudge the offenders to pay the value of what is embezzled, with costs, &c.

No distress, taken by authority of this act, shall any ways affect the King's duty of excise.

This act shall be deemed a public act, and shall be judicially taken notice of as such by all persons whatsoever.

KINGHORN.—In the preamble it is said, that the harbour of the town of Kinghorn, in the county of Fife, has not only been of great advantage to the said town, but to the whole of that part of the united kingdom of Great Britain, and those advantages cannot be continued and established unless the harbour, which has been for some years last past,
and now is in a ruinous condition, be effectually repaired, and made commodious for shipping, and all such persons as shall make use thereof; and as the whole revenue of the town, applicable towards the repairing of the said harbour, is not near sufficient to keep the same in good repair, it is therefore enacted, that after June 1, 1749, a duty of two pennies Scots, or one sixth part of a penny sterling, besides the duty of excise payable to his Majesty, should be laid on every Scots pint of ale and beer, either brewed, brought in, tapped, or sold in the town or liberties of Kinghorn, &c.

The provost, bailiffs, and council of the town of Kinghorn, &c. are appointed trustees for the re-building or amending, and keeping the said harbour in repair, and for collecting and disposing of the money arising by the said duty; and the majority of them are empowered to appoint officers to gauge the brewers' vessels, worts, ale, and beer, which the brewers shall permit to be done in the same manner as the officers of excise are permitted.

The trustees, or a majority of them, are empowered to make orders, and give directions for gauging the vessels, and collecting and disposing of the money arising by the duty, as they shall think most proper for the purposes hereby granted; and the same shall be paid to the collectors appointed, who shall dispose of the collected money as the majority of trustees shall direct, towards the rebuilding or repairing the harbour, and for preserving the same, and other public works of the town, the charges of passing this act being first deducted, and to no other use.

Proper books shall be kept by order of the trustees, wherein an account of all receipts and disbursements shall be entered, &c. and once every year, viz. within thirty days after the first day of June, 1749, and so successively every year, the accounts shall be fairly drawn out and stated, &c.

And for the more speedily effecting the purposes of this act, the majority of trustees, by an act of the town council, may borrow money, and assign over the duty as a security to the lenders, at legal or less interest, the charges thereof to be paid out of the duty; and the money so borrowed shall be applied, as the duty arising by this act, for the purposes aforesaid.

Persons not paying the duty when demanded, may be summoned before any of the magistrates, who may distrain for it, and sell the distress, &c.

Any ale or beer brought in, or sold in the said town, &c. having not first paid the duty, shall be forfeited, &c.

If any dispute arise between the collectors and sellers, &c. it shall be decided by the vouchers taken by the excise officers, &c.

If, after the first of June, 1749, any person shall conceal or embezzle any wort, &c. the offender, on conviction, shall forfeit the value, and ten pounds Scots, &c.

The majority of trustees may farm out the duty by way of public roup, for the best price they can get, and apply the money as this act directs.

John Saint Clair of Saint Clair, the Honourable Lieutenant-General James Saint Clair of Inveriel, Robert Ferguson of Reath, &c. Esqrs. or any three, are appointed overseers of the duty, &c. and shall meet on the first Wednesday in August, 1750, at Kinghorn, and so successively on the first Wednesday in August yearly, to examine the receipts, &c.

No distress, taken by authority of this act, shall any ways affect the King's duty of excise, &c.

This act shall take place, and be in force from and after the first of June, 1749, for thirty-one years, and from thence to the end of the then next session of Parliament.

This act shall be deemed a public act, &c.

N. B. As this last act is, in many particulars, verbatim the same with the two preceding ones, I have abbreviated it wherever the sense of it would admit; not to
trouble the reader with unnecessary repetitions, especially where there are two many unavoidable ones already.

23 Geo. 1. for cleansing and making navigable the channel from the Hithe at Colchester to Wivenhoe, several duties were granted on goods and merchandises, which should be brought in and to the said channel, and landed or shipped from Wivenhoe, or the New Hithe in Colchester, or between either of the said places, for the term of twenty-one years, for the uses and purposes mentioned in the said act; and several powers were vested in the mayor, aldermen, assistants, and common council of Colchester only, for appointing collectors, &c. to receive the duties; which act, and all the powers and authorities thereby given, and one moiety of the duties, except upon corn and grain, were by an act of 5 Geo. 1. continued until the 1st of May, 1740; and further power was thereby given to the mayor and commonalty only, for recovering the said duties; and by one other act of 13 Geo. 2. intitled, an act for enlarging the term granted by an act passed the 9 and 10 Will. 3. for cleansing and making navigable the channel from the Hithe at Colchester to Wivenhoe, and for making the said acts and another act of 5 Geo. 1. for enlarging the term, &c. more effectual; it is enacted, that the said two former acts, together with the additional powers granted by the act of 13 Geo. 2. should be in force from the 1st of May, 1740, for ever; and that the duty on sea coal should, after the said 1st of May, be 3d. per chaldron, and no more, payable for the term of forty years; and by the said act it was declared, that no other duty, except the arrears due under the former act, should be raised upon any other goods or merchandises whatsoever; and the said mayor and commonalty of Colchester only were, by the last-mentioned act, vested with further power for suing for the duties and the arrears under the former acts; and as a very large lock, which has been erected several years since in the channel, has been found of great use and service to the navigation, and is now in a decaying condition, and much out of repair, and the channel in some parts is much choked up, so that the navigation is greatly obstructed, which has been occasioned principally by there being great arrears of the duties, granted by the recited acts, for many years due, and still unpaid; and also a large sum of money remaining in the hands of the representatives of the late receiver-general of the duties, which ought to have been recovered and applied for repairing the said lock and cleansing the channel; but as the power of the mayor and commonalty of Colchester had ceased for many years past, in whose name only the said duties were to be recovered, and discharges given, the said duties and arrears cannot now be recovered and collected, for want of power to give discharges for the same; and there being no other fund to raise money for the purposes aforesaid, the same cannot now be done without further provision being made for it, by authority of Parliament; it is therefore enacted, that the several parcels of land severed, and lying between the present channel, and the place where the old channel was, and also the present channel, lock, and lock-house, and all the powers, matters, and things, which, by the three former acts before-mentioned, were vested in the mayor, aldermen, &c. of Colchester, or the commissioners named for any of the purposes therein mentioned, and not hereby altered or varied, shall, from the first of May, 1750, be in force, and be vested in the justices of the peace of the east division of the county of Essex, for the time being, the Honourable Richard Savage Nassau, Charles Gray, &c. who are hereby constituted commissioners for putting the said several former acts, and this act, in execution, and the survivors of them, &c. for the term of thirty years, and to the end of the then next session of Parliament, &c.

From and after the 1st of May, 1750, an additional duty of 3d. a chaldron shall be paid on sea coal, over and above the duty of 3d. payable thereon, by virtue of the act Geo. 2. for the space of thirty years, and no other duty, except the arrears due
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under the former acts, shall be raised on any goods or merchandizes whatsoever, and the commissioners are empowered to levy and recover the duty of the said act 13 Geo. 2. and the additional duty hereby granted; together with the money remaining in the hands of the representatives of the late receiver-general of the duties; and also all sums of money due from any persons on account of the said duties, or penalties, forfeitures, &c.

The commissioners, after paying the expences of this act, may dispose of the monies, 23 Geo. 2. towards the several uses and purposes mentioned by the former act, in such manner as they shall think proper.

The commissioners, at any of their meetings, may borrow money, at a legal or less interest, on the credit of the duties, and assign over the same, the charges thereof to be paid out of the duties, for any term during the continuance of the last-mentioned and this act, as a security for re-payment thereof; and the said money, after payment of such of the expences of obtaining this act as the sums before directed to be applied for that purpose shall be deficient, is to be applied for the several uses and purposes mentioned in the present and former acts.

Six days notice, exclusive of the days of notice and meeting, under the hand of the clerk to the commissioners, is to be fixed on the outside of the door of the Moothall, or on the market-place of the town of Colchester, of the meeting of the commissioners, to borrow money on credit of the duties.

All mortgages and assignments for re-payment of the monies, so to be borrowed, are P. 385. to be entered at length in a book, to be kept for that purpose, by the clerk of the commissioners, which may be perused at seasonable times, by any persons whomsoever, on payment of 1s. only.

The commissioners at any of their meetings may place out at interest, in the names of three or more of them, any sums which shall not be immediately necessary to be applied for the purposes before-mentioned, upon any real or parliamentary securities, or the public funds; and may call in and apply the same, and the interest arising thereby, from time to time, in the support and maintenance of the said lock, and cleansing the channel and other purposes aforesaid.

The commissioners, at any of their meetings, are empowered to chuse and appoint one or more collectors or receivers of the duties granted by the said act of 13 Geo. 2. and by this act, who are to give security to three or more commissioners, for the monies that shall be received by them, and for the faithful execution of their office; and they may also appoint a clerk, and such other officers and servants, as shall be needful to be employed about the premises; and may remove them, and elect others in their place, in case of death, or such removal; and may allow them reasonable salaries out of the monies to be raised.

Thirteen commissioners, at the least, two of which are to be justices of the peace of the east division of the county of Essex, are to be present at all meetings, for the purpose of putting this, or the former acts, in execution; and three days notice of every such meeting, exclusive of the day of meeting, under the hand of the clerk, is to be fixed upon the outside of the door of the Moothall, or on the market-place of the town of Colchester.

Persons accepting of any place of profit, or other trust relative to the said duties, or farming any quay within the limits of this act, are made incapable of acting as commissioners.

The prescriptive or other rights of the borough of Colchester are to continue and remain the same as if this act had not been made, in all things not interfering with the directions and due execution thereof.

All suits or actions, to be brought for any thing done under any of the former acts,
shall be commenced within six months after the commencement of this act; and, if any action or suit shall be brought for any thing that shall be done in pursuance of any of the said former acts, or this present act, it shall be commenced in six months after the fact committed, and shall be brought in the county of Essex; the defendants may plead the general issue, that the same was done by the authority of the said former acts, or this act; and if it so appear, or if the suit be brought in any other county, the jury shall find for the defendants; or if the plaintiffs become nonsuit, or discontinue their action, or a verdict pass against them, or on demurrer, judgment is given against them, the defendants shall have treble costs, on the certificate of the judge before whom the cause was tried, and shall have the same remedy as defendants have for costs in other cases by law.

This act shall be deemed a public act, and shall be judicially taken notice of as such by all judges, &c. without specially pleading the same.

Whitehaven.—Whereas the town of Whitehaven in the county of Cumberland is, of late years, greatly improved in trade and shipping, and is yet capable of further improvements therein, to the great advancement of her Majesty's revenue, the increase of shipping and navigation, and the benefit of the said inhabitants, and of the adjacent country, if the harbour of the said town can be preserved, and was enlarged and regulated in a proper manner: and whereas the application of the accustomed duties, besides several very considerable sums, are found insufficient to defray the growing charges of maintaining the said harbour, and of making such new works as are still necessary for securing it; to the end therefore that such course may be for ever established as shall be effectual for the purposes aforesaid,

It is enacted, that all that precinct, included within the limits and bounds hereinafter expressed, viz. beginning at the wharf, on the north-west ends of Marlborough-street, and from thence in a line north-east and by north, till the middle of Lowther-street open upon it, and from thence in a straight line parallel to the range of the same street, directly to the low-water mark, from thence, by the low-water mark to the rock whereon the new mole is begun to be erected, and so along the said rocks, by the low-water mark, till it answer the line of the said mole, from thence along that line till it comes up to the said mole, and so along the said mole, till it join upon the old pier at the platform, and from thence, including the said platform, along the new wharf, till it meet with the wharf of the West Strand, near the house of Mary Addison, widow, from thence along the same wharf by the custom-house quay, in a straight line to the west side of the timber-yard, and so along the wall of the said yard, to the north-west corner thereof, and from thence by the north-west wall of the same yard to the wharf where it began, as the same has lately been set out and bounded, is, and shall be from henceforth for ever, the harbour of Whitehaven aforesaid, and appropriated to the lying, anchoring, and mooring of all such ships, vessels, and boats, as shall have occasion, at any time or times hereafter, to make use of the same, and to no other use or purpose whatsoever.

No houses, enclosures, or buildings whatsoever, shall, at any time hereafter, be made nearer the said harbour than is hereafter limited, viz. On the West Strand, nearer than the present houses, &c. there; on the new wharf, between Mrs. Addison's house and the north-east corner of Henry Walker's ground-plot, nearer than the range of the said house and ground; and from thence to the iron o'ar steaths, nearer than forty-eight yards at Henry Walker's drawn to forty yards; at the said steaths from thence to the north-east corner of the said steaths, nearer than the east range of the same; and from thence to the anchor-smith's nearer than eighteen yards; and from thence to the platform, nearer than the range of Hewson's smyth; and from the platform along the new mole, to the elbow of the said mole, nearer than twelve yards; and from thence to the
low-water mark, nearer than a line stretching to the north-west; and along the counter-
mole intended to be made on the north-east side of the harbour, nearer than the range
of the north-east side of Lowther-street; nor from thence to the timber-yard, nearer
than fifteen yards; but that all the space aforesaid shall be left free and open for the
erecting of posts, for the mooring of ships and vessels, and for the other uses of com-
mon wharfs or quays for the conveniency of the shipping in repairs or otherwise; and
that nothing shall be taken or demanded, for or upon the account of wharfage, for the
use of any of the said wharfs or quays, nor for any cranage thereon, unless James Low-
ther, Esq. or his heirs, &c. and eleven or more of the trustees herein-after appointed,
shall agree to erect or make any crane or cranes, or other engine, on the said wharfs,
or any of them, which they are hereby empowered to do, as they shall think conveniend,
for the better lading and unlading of any goods; in which case a reasonable cranage, or
recompence, shall be paid for the uses of the said harbour, by such merchants or others
as shall be willing to make use of the same, and not otherwise.

Provided, that the said James Lowther, his heirs, &c. Lords of the Manor of St. 7 Anne,
Bees, in the said county of Cumberland, shall and may, from time to time, continue
the watch-house, and the block-maker's shop, and store-room at the end of the pier,
and repair or rebuild the same, and receive the rents and profits thereof to his and their
own use.

A sufficient way, open and free for carts and other carriages, shall be left along each
of the said wharfs, and along the said pier, and through the wharf between Henry Wal-
kier's ground plot and iron oar steaths, from the ground of the said James Lowther
behind the same wharf, not less than three yards, next adjoining upon the said steaths;
any thing in this act contained to the contrary notwithstanding.

And as it is found necessary to complete and finish the new mole aforesaid, and to
make a counter-mole and head on the north-east side of the said harbour, to strengthen
and repair the pier with a new bulwark, and other works, and to cleanse and deepen
the said harbour; be it further enacted, that, in lieu of the aforesaid accustomed duties
of anchorage, which have been heretofore usually paid, all which duties are hereby
wholly and for ever taken away and discharged, there shall be paid, from and after the
25th of March, 1709, for the term of fourteen years then next ensuing, the several
rates and duties herein-after mentioned, viz. One half-penny for every ton, computing
192 gallons, Winchester measure, to the ton, for all coals that shall be delivered to be
put on board any ship or vessel in the said harbour for exportation; which duty on coals
shall be paid by the master, or other person, who shall have the rule or command of
such ship or vessel, after the said coals are so shipped, and before such ship or vessel go
out of the said harbour, and shall be discounted with the owner or proprietor of the said
coals out of the price of the same; and the said master, &c. is hereby empowered to
discount and detain the said duty accordingly.

There shall be paid for all goods and merchandize, which shall be imported and
landed or discharged out of any ship or vessel in the said harbour, from and after the
said 25th of March, for and during all the term aforesaid, the several rates and duties
following, viz. For every hogshhead of tobacco, 3d. For every hogshhead of sugar, 6d.
For every ton of wine, brandy, or other excisable liquors, 2s. For every ton of hemp
or flax, 1s. 6d. For every hundred of deals, 8d. For every last of pitch or tar, 8d.
For every ton of iron, 12d. For every ton or raft of other timber, 4d. For every
barrel of herrings 1d. For every pack of linen, containing two hundred weight, com-
puting 112 pounds to the hundred weight, 1s. And proportionably for every greater
or less quantity of the said goods and merchandizes respectively; and for all other
goods and merchandizes so imported, 2d. in every 20s. of the value, as they shall be
rated and charged at the custom-house; all which sums of money and duties upon im-
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Portation shall be paid by the merchant, or other person into whose custody or possession, or by whose order, the said goods and merchandize shall be delivered.

From and after the said 25th of March, for and during the term aforesaid, every master, &c. commanding any ship or vessel, shall pay for every such ship or vessel, upon her arrival at the said port and harbour from any other port or place in the kingdoms of Great Britain or Ireland, the sum of 2d. per ton; and from any port or place of her last discharge in Europe, other than the kingdoms of Great Britain or Ireland, the sum of 4d. per ton; and from any port or place of her last discharge in Asia, Africa, or America, the sum of 8d. per ton, according to the tonnage of each ship or vessel so arriving there; the said tonnage to be admeasured as is described in an act the 5th and 6th of Will. and Mar. intituled, an act for granting to their Majesties several rates and duties upon tonnage of ships, &c.

Provided, that for every ship or vessel, which, during the term aforesaid, shall, by stress of weather, be drove into the said harbour of Whitehaven, or shall otherwise come into the same for security or preservation, the said port or harbour not being the port of their discharge or lading, there shall be paid one-fourth part of the aforesaid duties of tonnage upon shipping, according to the ports or place from whence they shall arrive as aforesaid respectively, and no more.

From and after the expiration of the aforesaid term of fourteen years, one-third part of the rates and duties herein before charged upon the tonnage of ships and vessels, and no more, shall for ever continue, and be paid in manner aforesaid, for the perpetual repairing, cleansing, and maintaining of the said harbour of Whitehaven.

And, for the better collecting and disposing of the several sums of money, rates, and duties, hereby made payable, as well after the expiration of the said term as during the continuance of it, and for the making and ordering of the works herein before enumerated, and for the perpetual good order and regulation of the harbour aforesaid, be it enacted, that the said James Lowther, his heirs and assigns, Lords of the Manor of St. Bees aforesaid, for the time being, or, in his or their absence, any persons deputed by them, under their hands and seals, and six other persons to be likewise nominated, appointed, and changed, from time to time, by the said James Lowther, his heirs and assigns aforesaid, under their hands and seals, and William Feryes, Clement Nicholson, Thomas Lutwidge, Robert Blacklock, Elisha Gale, &c. merchants, until the first Friday in the month of August, 1716; and if, during that term, any of them happen to die or resign, then such person and persons, as the greater part of the survivors of them shall nominate and elect, during the residue of the said term, and from thenceforth fourteen persons to be chosen, nominated, and appointed, every three years, by ballot, by the majority of the inhabitants of the said town of Whitehaven, at the time of such election, dealing, by way of merchandize, in the goods subjected to the payments and duties aforesaid, or any of them; or being master, or having any part or share, not less than one-sixteenth, of any ship or vessel then actually belonging to the port of Whitehaven; the first election to be made on the first Friday in August, 1716, aforesaid, at the Court-house in the town of Whitehaven; and so, from time to time, on every first Friday of every month of August, in every third year after the said first election successively for ever, shall be, and are hereby constituted and appointed trustees, for the ordering and directing the collection, receipt, and disposal of the sums of money and duties, which, from time to time, by virtue of this act, shall become due and payable, and for ordering and directing the building, and making the works in this act before enumerated, and for deepening, cleansing, and regulating the said harbour of Whitehaven, in such manner as in this act is provided.

And to the end the said duties and payments may be duly collected, levied, and paid, according to the true intent and meaning of this act, it is further enacted, that it shall
be lawful for eleven or more of the said trustees, to chuse and appoint such collectors and receivers of the duties and monies payable by this act, and to displace them, and appoint others, as they shall think fit.

Provided, that the said trustees take for such collectors, &c. good and sufficient security for the faithful discharge of their respective duties, &c.

The said collectors and receivers shall receive for their pains, in executing their offices, such sums as the trustees shall think fit, not exceeding, for all together, 12d. in the pound; and the trustees are hereby empowered to meet on the first Friday in the month of June, in every year, or oftener if they think fit, at the Court-house in Whitehaven, to audit the said collector's, &c. accounts, which, with all their proceedings relative to the trusts, shall be fairly entered into books provided for that purpose.

All the sums of money and duties, collected by virtue of this act, shall be applied and disposed for the uses of the said harbour, and in such manner as is in this act directed, and for no other use, intent, or purpose whatsoever, viz. Eleven or more of the said trustees shall, and may, from time to time, direct and order the making of the aforesaid works, and the deepening and cleansing of the said harbour, in such manner as they shall think most necessary and conducive to the ends and purposes aforesaid, according to the true intent and meaning of this act; and shall likewise order and direct the fixing and erecting of posts for mooring, on the said pier and wharfs as they shall think expedient, and the perpetual repairing of the said pier, moles, wharfs, and mooring posts, and the cleansing and maintaining of the said harbour; and shall order the removal of all annoyances to the said harbour and wharfs, and may contract with workmen; but first repay the charges of passing this act, &c.

Provided always, that no other walls, enclosures, or breast-works, but what are directed in this act, be made within the limits of the said harbour, upon any pretence whatsoever, without the consent and approbation of the said James Lowther, his heirs, &c. and of seventeen, or more, of the rest of the said trustees for the time being.

And be it further enacted, that no ship shall unlade any ballast in the said harbour in the night time, nor throw any thing into it, either of stone, rubbish, &c. There shall not be kept any fire, nor any lighted candle, except in a lanthorn, or in case of necessity, on board any ship or vessel lying in the said harbour, under different penalties, &c. That, if any ship or vessel shall, through mismanagement or carelessness, run foul, or bilge upon the pier, moles, or new wharf belonging to the said harbour, whereby the same shall be any ways damned off, the master or ruler of such ship or vessel shall, with all convenient speed, upon notice, repair the damages so sustained, at the charge of such ship or vessel, under the penalty of double the value thereof, for every such neglect. That, for the natural securities of the said harbour, no person shall quarry, take or carry away any stones, either below the high-water mark, or from the Bairgh, &c.

Provided nevertheless, that the said James Lowther, &c. and any seventeen or more, of the rest of the trustees, may, from time to time, as they shall see occasion, explain or alter all, or any, the aforesaid orders, in this act particularly provided, or the penalties of the same; and also substitute or make any further or other orders and bye-laws, for the better government and regulation of the said harbour, and the wharfs aforesaid, and under such penalties, not exceeding 6s. 8d. for any one offence, as they shall judge requisite for that purpose; and that they may also, by the like concurrence, make any other work or works, in or about the said harbour, as well for the better preserving, securing, cleansing, and deepening the same, as also for the more convenient docking, repairing, and cleansing of ships or boats, or for any other uses, improvement, or accommodation of the said harbour, or of the shipping therein, as they shall find neces-
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sary or expedient; any thing in this act contained to the contrary thereof notwithstanding.

And for the more effectually preventing the throwing of ashes, &c. into the harbour, fifteen or more of the trustees, with the consent of the said James Lowther, may appoint and agree with a scavenger, within the said town for carrying away the dirt, &c.

All penalties for any offence committed within the precincts of the said harbour, after deducting the charges of prosecution, and allowance to informers, as the trustees shall think fit, shall be applied to the uses of the said harbour, which penalties may be recovered by distress and sale, &c.

In case the collectors and masters of ships cannot agree about the tonnage, it shall be lawful for the said collectors, at all convenient and seasonable times, to enter into such ships, and to admeasure the same, according to the directions of the act of Parliament herein-before referred unto, which admeasurement shall be the rule to charge such ships, then, and at all times afterwards; and, in case any master, &c. do not, upon reasonable demand, pay the aforesaid duty upon coals, chargeable upon him by this act, and to be discounted upon the coal owner, as aforesaid; and likewise, in case any such master do not, upon like reasonable demand, after the tonnage of the said ship is agreed unto, pay the said duty upon tonnage, it shall be lawful for the collectors to take any tackle, &c. belonging unto such ship or vessel, by way of distress, and to sell the same, in case payment is delayed for three days, &c.

And, in case the sums, appointed by this act to be paid for any goods or merchandizes imported, shall not be paid by the merchant, or owner thereof, upon reasonable demand made, the collectors may distress all, or any part thereof, or any other goods belonging to the said merchants or owners, which shall then or afterwards come to, or be found in, the precincts of the said harbour; and, in case of non-payment in three days, may sell the same, &c.

The officers of the customs at the port of Whitehaven, shall permit the collectors of the duty hereby given, without fee, to resort unto, inspect, and take cognizance, of any entries which shall be made there, of any goods or merchandize chargeable by this act; and the said officers of the customs shall not discharge any ship outwards or inwards, until the duties hereby granted for tonnage on ships and coals shall be paid, to be proved by the master's producing a certificate thereof under the collector's hand, &c.

And, the better to cleanse and deepen the said harbour, it shall be lawful for eleven or more of the trustees, to order the digging and removing any stones, &c. within the precincts of the said harbour, &c. and likewise they shall have free liberty to dig, quarry, and take all such stones, within the said harbour as may be useful for walling or otherwise, and to use the same in the works of the said harbour, and to sell such part of them as there shall be no occasion for, and apply the money arising by such sales to the uses of the said harbour only; and if there be not stones sufficient for the said work, to be got within the precincts of the said harbour, they shall have liberty to quarry and take so much more, as, together with the stones arising within the said harbour, shall be necessary for the uses and purposes of it, in any place or places upon the sea shore, within the manor of St. Bees, beyond the aforesaid line, drawn from the western points of Tomhead-Rocks to the Baugh.

Eleven or more of the trustees shall, by writing under their hands, appoint a pier-master, to continue during their pleasure, who shall have power to order the regular lying, anchoring, and mooring of ships and vessels in the said harbour, and to determine any difference that may happen in relation thereto, and to cause a due execution and observance of the rules in this act, appointed, &c. and the trustees are hereby empowered to allow such person a salary, not exceeding 20l. per annum, &c.
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And, for the better security of ships, which may have occasion to put into the said

harbour in bad weather, all that part of Whitehaven-Bay, lying on the north-east of the

said intended counter-mole, shall be always left with a free and open beach to the full

sea; and no walls, wharfs, or breast-works, shall, at any time, be made there, upon

any pretence whatsoever, in any such depth of water, as may endanger any ship or ves-

sel to strike or run upon the same, without the consent and approbation of seventeen of

the trustees for the time being.

Provided nevertheless, that, as the land shall happen to gain on the sea, on the north-

east side of the said counter-mole, it shall be lawful for such persons as shall be owners

of such lands to advance any buildings or other works, at their will or pleasure, so as

not to endanger the striking of any ship or vessel thereon; any thing herein contained

to the contrary thereof notwithstanding.

And as the temporary duties, granted by this act cannot of a long time raise such a

sum of money as may be sufficient for the aforesaid extraordinary works, which are to

be done at the said harbour; it is therefore further enacted, that eleven or more of the

said trustees are hereby empowered by deed or deeds, indented under their hands and

seals, to convey and assure all the said duties hereby granted, or any part of them, for

all, or any part of the said term of fourteen years, as they shall judge requisite, to any

person or persons, who shall be willing to lend or advance any sum or sums of money

thereupon, at interest, not exceeding the rate of six pounds per centum per annum,

which money, so lent or advanced, shall be employed for and towards the uses of the

said harbour, according to the true intent and meaning of this act, &c.

If any action, suit, &c. shall be commenced, &c. against any person, for any thing

that he shall do in pursuance of this act, &c. he may plead the general issue, &c. And

this act shall be taken, and allowed in all courts as a public act, &c.

Continued by 10 Anne for 14 years.

The preamble recites the acts 7 and 10 Anne, and shews their deficiency; and then

this act continues the said two recited acts for twenty-one years, to commence after the

10th day of April, 1740, except so far as either of them are by this act enlarged, altered,
or otherwise explained.

It is further enacted, that the trustees appointed by the former, or this present act,
have power to mortgage all or any part of the duties, subject to the fore-mentioned
debt of 938l. 17s. 7d. 3q. to any person who shall advance money thereon, to effect the
necessary purposes of this act, and secure the repayment of the sums so advanced, with
interest for the same.

The money directed to be borrowed by this act shall be applied, in the first place to

discharge the sum of 938l. 17s. 7d. 3q. borrowed by authority of former acts, with the
interest, and afterwards for making such new works as may be necessary for improving
the said harbour, and keeping the same in good repair.

After the said sums are paid off, and the harbour judged by the justices of the quar-
ter-sessions, to be in good repair, the temporary duties shall cease, and a moiety only
of the duties on tonnage of vessels granted by the former acts, shall continue, to keep
the harbour in repair for ever.

This act shall be deemed a public act, &c.

The rest of the preceding act is only relative to mending the roads, and setting up

turnpikes in the neighbourhood of Whitehaven; and consequently, having no affinity
with the maritime affairs we are now treating of, its insertion here would be superfluous
and unnecessary.

GREENOCK.—The town of Greenock, in the county of Renfew, being advantageously
situated on the river Clyde, for carrying on both foreign and coasting trade, the
rior, with the inhabitants thereof about the year 1705, began to raise money by a voluntary subscription, for building a harbour there, and some progress hath been made therein, which, if completed, would be of great advantage to the town, and to the trade and navigation of those parts; but the produce of the subscription has been found insufficient to answer that purpose, and to defray the expense of cleansing the harbour, and of performing other works which are absolutely necessary to be done, to render the same useful and commodious: and, as the building of a new church, town-house, &c. are necessary and much wanted, but the inhabitants are not able to raise money to answer the expense thereof, nor to complete the harbour, and keep all the said works in repair, without the aid of Parliament; it is enacted, that from and after June 1, 1751, for the term of thirty-one years, and to the end of the then next session of Parliament, a duty of two pennies Scots, or one-sixth part of a penny sterling, over and above the duty of excise payable to his Majesty, shall be laid upon every Scot’s pint of ale or beer, brewed, brought in, tapped, or sold, within the town of Greenock, and baronies of Easter and Wester-Greenock, and Finnart, or the liberties thereof; to be paid by the brewers for sale, or venders thereof, to John Alexander, writer, and present bailiff, Robert Donald, Robert Rac, &c. merchants, who are appointed trustees for cleansing and repairing the said harbour and piers, and for building a new church, &c. and for putting in execution all other the powers of this act; and the money so to be raised shall be vested in them, and be applied to the several uses and purposes aforesaid; the charges of obtaining this act being first deducted.

The remainder of this act is the same as the preceding ones of Kirkcaldy, Anstruther-Easter, and Kinghorn, so excuse to insert it; and before I shut up this article of ports and havens, I shall remark, that every act concerning them, makes any ballast, stone, rubbish, or any thing else hurtful, thrown into them, penal, in conformity with the general act of 19 Geo. 2.

Leith Harbour.—By this act, power is given to the magistrates of Edinburgh to contribute 2000l. and likewise to receive contributions from other persons, towards improving and enlarging this harbour, and erecting conveniencies for building, repairing, lading, unlading, and laying up of ships and vessels, and for the building of warehouses, wharfs, and quays; but, as no duty is laid on shipping by this act, we shall take no further notice of it.

Poole.—The mayor, bailiffs, burgesses, and collectors, &c. may demand payment of the several duties appointed by this act, in respect of goods, &c. imported into Poole harbour, and also of ballast duties and boomage, from the master of the vessel wherein such goods, &c. shall be imported, at the time he shall make his entry, with the officers of the customs, of the cargo of such vessel; and may also demand payment of the duties on goods, &c. exported from, reladen at, or taken out of any other vessel in the said port or harbour, in order to be exported, from the master at the time he shall clear out.

On non-payment of the duties, the mayor, or any justice of the peace, of the town of Poole, may, by warrant, distress or stop such vessel till the duties are paid, with the costs and charges of such distress.

The master to deliver to the collector of the duties, in writing, an account of all goods on board, subject to these duties, on penalty of 10l. for every offence.

Salt and rice, for which the duty shall have been paid on importation, to be exempted.

The master to forfeit 40s. if he refuses or neglects to station his vessel in such place as the quay-master shall assign for taking in or throwing out ballast, for lading or unloading his vessel.
All goods, landing on any quay or wharf, shall be removed in three days from the landing, or the owners forfeit 12d. per ton, for every ton of goods remaining after that time, and likewise 12d. per ton for every forty-eight hours they shall remain there.

No person to empty any ballast, &c. into the harbour, on pain of being deemed a public nuisance, and their being punished accordingly.

Twenty hundred weight of scale goods, or two hundred and fifty-two gallons of liquids, or forty square feet of measurable goods, to be deemed a ton. If any dispute arises as to tonnage, to be determined by the mayor and two justices, and four younger brothers of the Trinity House, or the majority of them.

The Table or Schedule of Harbour Duties, Quayage, or Wharfage, Boomage, and Ballast Duties, chargeable on the Goods, and to be paid by the Master.

For every ton of goods, imported or exported, shipped or unshipped, laden or<ul>

- Every decked vessel of 10 tons burthen, or under, shall pay 6d.
- Ditto 20 tons, or above 10, 1s.
- Ditto 30 tons, or above 20, 2s.
- Ditto 40 tons, or above 30, 3s.
- Ditto 50 tons, or above 40, 4s.
- Ditto 60 tons, or above 50, 5s.
- Ditto 100 tons, or above 60, 6s.
- Ditto above 100 tons, 7s.

For ballast the following duties shall be paid: For every ton of ballast, shipped or unshipped within Poole stakes, 6d. But it shall be lawful to ship or unship ballast in the channel leading to Wareham, to the westward of the south-west buoy, or any part of the Isle of Purbeck, within North-Haven Point to Poole, or from Poole to Wareham, or any part of the channel to the west of the said south-west buoy, or any part of the Isle of Purbeck, within North-Haven Point aforesaid; but if the goods shall be imported in decked vessels into or out of the little channel within Poole stakes, then the duties to be paid.

For boomage the following duties shall be paid, except for vessels employed in fishing or dredging.

- Tobacco-pipe clay to be exempted from all duties.
- Milford Haven.—In this session of parliament 10,000l. were granted towards carry­ing on works for fortifying and securing the harbour of Milford Haven, on account of its convenient situation for fitting out fleets, and stationing cruziers; but as no duties were laid on shipping for perfecting this useful work, I shall omit mentioning any thing further in relation to it.

Having thus given a summary of the laws in being relative to the ports and harbours of Great Britain, with which all masters of ships, owners, and merchants should be well

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acquainted; the first, that they may duly conform thereto, and the two latter, that they may form a just estimate of all the expences to be incurred by their ships and merchandize in our home ports; it will be necessary to add some directions for the better observance of the laws and regulations of foreign ports, British masters of ships being often very negligent, or wilfully obstinate upon this subject, so that in general they pay more forfeitures or penalties in foreign ports than those of any other nation, and occasion more trouble to their consuls, who are often obliged to interpose their good offices to save them from corporal punishment. Indeed, it is a lamentable truth, that they acquire such a contempt of legal authority from the licentiousness of the times at home, that they submit to it with great reluctance abroad, and sometimes prove refractory even to their natural protectors. In all foreign ports implicit obedience, it is expected, should be paid to the harbour or quay master, his deputy, and other assistants. A prudent captain will therefore take care to moor his ship in the part of the harbour or bason assigned him by the said officers. And his next care should be to obtain from the factor or merchant to whom he is consigned, a copy, whether printed or written, of the regulations established by the magistrates of the places for the masters of all ships and vessels entering their harbour. I am particular upon this head, because in many foreign sea ports, the harbour dues are farmed out to low people, at a rack rent, who, intending to make the most of their bargains, carefully conceal the said regulations from strangers, wishing that they should violate rather than observe them, that they may be enabled to levy fines and penalties. Sometimes also, the office of baillie, which answers to our sheriff, is purchased from the prime minister or prince of the country, by men of mean rank and avaricious principles, and the power of convicting offenders being vested in them, like English trading justices of the peace, they live by fees for commitments and discharges. This happened to be the case while the editor was British Vice Consul at Ostend; and it was not until he had presented a strong memorial to the court of Brussels, that an order was sent to the magistrates of Ostend to print their port regulations, and to distribute a sufficient number of them to the British and Danish Consuls, the only two then resident, and also to all masters of ships requiring copies.

The Emperor having just made Ostend a free port, by which wise commercial revolution, the oppressions under which the trade and navigation of the Austrian Netherlands laboured are mostly removed, and the port greatly resorted to by vessels of all nations, especially British, in the time of war with France, Spain and Holland, we cannot do a more acceptable service than to insert a copy of the above-mentioned regulations, which were drawn up by an eminent Flemish civilian, and founded upon those of other maritime countries.

Directions for Masters of Ships and Vessels in the Port and Key of Ostend.

I. It is forbid to all masters, pilots, sailors, fishermen, bilandermen, and others to make fire on board their ships or vessels in the quay or bason, on any pretext whatever, under a fine of ten guilders.

II. To make fast either to the piles or posts of the harbour, or to those serving to uphold or preserve the quay or bason, under the same penalty as above.

III. To throw any filth or dirt whatsoever, into the bason under the same fine.

IV. To come into the quay or bason and there to take place without the knowledge and consent of the quay master, under the same penalty.

V. To place their ships or vessels on the floor, being of oak, of the sluice at the end of the quay, idem.

VI. To change birth, or hawl their ships or vessels, either in the harbour or in the quay, without the quay master's leave, idem.
OF FOREIGN PORTS, &c.

VII. To incumber or stop up the entrance of the quay or bason with their ships, vessels, and bilanders, under three guilders fine.

VIII. To land on the quay anchors, guns, carriages, masts, &c. and other such articles, without the quay master's knowledge, under a penalty of three guilders for each piece.

IX. To abuse by word or deed the quay master when he is performing his duty, under a fine of twelve guilders, besides arbitrary correction, often imprisonment.

X. It is likewise ordered that all masters, pilots, sailors, fishermen, bilandermen, and others, do put a sail betwixt the ships and the bilander, when they want to be ballasted in the quay or bason, under ten guilders fine.

XI. To hawl their ships or vessels out of the bason on the very first order of the quay master, idem.

XII. To land their gunpowder, and get it transported to the burgher's magazine immediately after the vessel is made fast in the quay or bason, under fifty guilders fine.

XIII. To obey instantly and without reply to the quay master's command, either to go out of the bason, or to hawl their ships or vessels a-head or a-stern, or any other thing whatsoever, under six guilders fine; and further, to indemnify the masters of any ships that might suffer delay by his refusal, whereon credit shall be given to the quay master.

XIV. On such or the like occasions the quay-master is authorised to take people, at the expence of the captains refusing, to hawl away and change their births, to cut their lashers, and act as he will judge proper, without being responsible for any damages.

XV. Every captain is obliged to hoist his colours on Sundays and holy days, saints' days innumerable, under three guilders fine: he must also hoist his colours at any time the quay-master advertizes him so to do.

XVI. Finally, every ship or vessel arriving in the harbour laden, or in her ballast, pays three stivers (pence) per last for lights, and one stiver key dues; being together four stivers per last.

Besides a due attention to the regulations of ports, masters of trading vessels should be careful not to give offence to the military governors, or the officers on guard, in garrisons. To avoid it they should inquire what military orders are given out with respect to the harbour, and oblige their crews to observe them. As they vary in different places, it is impossible to enumerate them; but one instance may serve to explain this hint. Firing a musket, or even a pocket pistol, on board a ship or on shore, without leave obtained from the commanding officer, or giving previous notice of the intention in firing it, is an offence liable to punishment by imprisonment. In the month of November, 1765, a boy on board an English collier fired at a bird flying across the bason; the officer on the quay-guard was alarmed, sent a file of soldiers on board, and demanded the boy: the master concealed him, and refusing to deliver him up, was himself carried on shore, and kept in custody till the matter was compromised by the intercession of the British Vice Consul. But it may so happen, that no such protector is on the spot, in which case great inconveniences may arise from ignorance of the established customs in sea ports which are garrison towns.

Heavy forfeitures and penalties are likewise often incurred by purchasing spirituous liquors and wines, in retail quantities, at improper places, and of improper persons. At Ostend, and in other foreign ports, publicans are only allowed to sell liquors to their guests in their own houses; and if a sailor carries a bottle of ale, spirits, or wine from an inn or ale-house, he may be fined or imprisoned for defrauding the Cantein, an office appointed by the magistrates for the sale of such liquors, in any quantity under a gallon, annually farmed out to the highest bidder.
OF LIGHT-HOUSEES.

In a word, no care or circumspection can be too great on the part of masters of trading ships, to keep themselves and their crews free from all molestation in the ports to which their cargoes are consigned.

OF LIGHT-HOUSEES.

A Light-house is a marine term for a tower, commonly advantageously situated on an eminence near the sea coast, or at the entrance of some port or river, for the guidance of ships in dark nights, by the illumination of a fire or candles burnt on the top of them. The first we read of was called Pharos, from the Greek word Phos, in Latin Lumen, light, and Oras, Latin Videre, to see; and this was so superb a fabric, as to be reckoned one of the seven wonders of the world, and to give a general name to all successive ones: it was built by Ptolemy Philadelphus, on a small island at the mouth of the Nile, near Alexandria in Egypt, and is said to have cost that King 800 talents. It is recorded to have been built square, upon four pillars of glass resembling crabs, 300 cubits high, on which a fire was nightly burnt to warn approaching pilots of those dangerous coasts, and by this means direct them to shun the risks they were exposed to: but though this was so justly celebrated both for its use and magnificence, it was equalled, if not exceeded, in fame by the renowned Colossus of Rhodes, which served for the same purpose. This inanimate monster was a brazen statue of Apollo, set up at the entrance of that island’s harbour, with its feet resting on the two shores; it was about forty-two yards high, and its stride so great that the largest ships sailed into the port between its legs: this gigantic figure was dedicated to the Sun, and its prodigious size may be ascertained by the dimensions of its little fingers, which it is said few men were able to embrace. It was the work of Chares, a disciple of the celebrated sculptor Lysippos, who was twelve years in perfecting it, and it is reported to have cost about 44,000L sterling; though I should imagine this to be very far short of its value, as, when broken to pieces, it loaded 900 camels. It remained erect for the space of 1360 years, and was then thrown down by an earthquake, in which its prostration it continued for a long time, till the Saracens became masters of the isle, and sold it to a Jew, who quickly destroyed this master piece of art, to accommodate his removing it by the means of the afore-mentioned animals.

The tower of Cordon on the river Bourdeaux, the Pharo of Messina, the lanthorns at Genoa, Barcelona, &c. are respectively serviceable to the ships using those parts; as ours on Scilly, the Eddystone, Caskets, Portland, Dungeness Forelands, Skerries, &c. besides the floating light at the Nore, are to navigation, in a more extensive manner.

That on the Eddystone was begun by its ingenious projector, Mr. Henry Winstanesley, of Littlebury in the county of Essex, gent. in the year 1696, and, after great labour and expence, was finished in something more than four years, though a much less space of time would have sufficed, had not the many difficulties of stormy weather, hardness of the rock, tides, and other impediments he had to struggle with, protracted the work, and rendered the first lodgment, or foundation of the building, very hazardous and troublesome; however, a person of Mr. Winstanesley’s enterprising genius was not to be intimidated by the impediments that presented to obstruct the prosecution of his intended fabric; but he watched every spurt of fair weather, and ebb of the sea, as well to commence as to carry it on, and happily ran through his toils by concluding it in the aforesaid time, though the light was put up on the 14th of November, 1698, and it thenceforward was inhabited: it stood till the 27th of November, 1703; when Mr.
OF LIGHT-HOUSEES.

Winstanley, unfortunately being in it, found he had been building his tomb, as that dreadful storm laid the rock once more bare, and buried both him and his works in the sea; a plain proof of the deficiency of human contrivance, and of the insecurity of the best projected fabrics, when Providence interferes. Its re-building was begun in July, 1706, by John Rudyard, gent. a light put up therein, and made useful, July 28, 1708, and finished completely in 1709; since which it hath withstood the tempests it is exposed to, firm and secure.

This light-house bears from Plymouth, or the entrance of the sound, S. and by W. and from Ram-head S. and half a point eastwardly, and is distant from the anchoring in the aforesaid sound four leagues, and from Ram-point about three leagues and a half, this being the nearest shore to the said house; and the Isle of Maystone bears from the light-house about N. E. and is also four leagues distant south. All ships, coming from the east or west to Plymouth, have much the same advantage of the light: all the rocks near this house are on the eastwardly side, and stretching north, but most southerly, and all are covered at high water; but on the west side any ship may sail close by the house, there being twelve or thirteen fathoms water, and no hidden rock; though towards the E. and by N. about a quarter of a mile distant from the house, there lies one that never appears but at low spring tides, and is the more dangerous as it is little known.

The sea ebbs and flows at this rock on spring tides 19 feet, and then at high water all the rocks are covered, though a smooth sea; and it is high water at the same time as at Plymouth; but it runs tide and half tide; so that it runs east three hours after it is high water, and yet the sea falls lower; and it runs west three hours after it is low water, and yet the sea riseth.

At low tides, especially spring tides, three great ranges of rocks appear very high, and lie almost parallel, stretching towards the S. E. and N. W. the house standing the westernmost of all. The aforesaid hidden rock is a full cable’s length from all these others, and lies as aforesaid.

There is always a family living in it, to tend its light; and the following acts have been made for its management and support, viz.

From the time of placing a light useful for shipping in Eddystone light-house, there shall be paid to the master, wardens, and assistants of Trinity-house of Deptford Strond, by the masters and owners of all English ships and barks which shall pass by the said light-house, except coasters, 1d. per ton outward bound, and 1d. per ton inward bound, viz. of the merchants one moiety, and of the owner the other moiety; and of all such aliens’ ships as shall pass by the said light-house 2d. for every ton of the burden of the ship; and every coaster passing by the said light-house shall pay 2s. for each time: the said duties to be collected by such persons as the said master, &c. shall appoint, in such port whence such ship shall set forth, or where such ship shall arrive, before they lade or unlade; the said duties to be recovered by action of debt, &c.

The duties in the act 4 and 5 Anne, cap. 20. directed to be paid by any ship passing by Eddystone light-house, shall be paid for every such ship, as well those belonging to her Majesty’s subjects as strangers, which shall pass by the said light-house, from or to any port, and shall be received of the master of such ship in any part of Great Britain or Ireland, and may be recovered in any of her Majesty’s courts of law.

No customs-house officer shall make out any cocked, or other discharge, or take any report outwards, for any ship, until the duties granted by the said act, and payable by the master of such ship, shall be paid; and that such master produces a light-bill, testifying the receipt thereof.

It shall be lawful for every person authorized by the Trinity-house to go on board any foreign ship to receive the duties, and, for non-payment, to distrain any tackle be-
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longing to such ship; and, in case of any delay in payment, for three days after distress, it shall be lawful for the receivers of the said duties to cause the same to be appraised by two persons, and to sell the said distress.

This act and also the said former act shall be public acts.

The following act is concerning the light-house built on the island or rock called Skerries, lying in the sea near Holyhead, in confirmation of letters patent granted to William Trench, Esq. for building it, and recovers the same duties as the preceding one, though all the others receive but half.

All the powers and duties granted in letters patent, bearing date at Westminster the 13th of July, 13 Anne, to William Trench, Esq. deceased, for erecting a light-house on the island or rock called Skerries, near Holyhead, in the county of Anglesea, shall have continuance for ever, subject to a proviso, as to the maintaining of the light-house in the letters patent contained, and to the trust in the act mentioned, and shall be vested in Sutton Morgan, clerk, who married the only surviving child of the said William Trench.

Sect. 2.

The said Sutton Morgan, his heirs and assigns, may demand of masters and owners of every ship or bottom passing, crossing, or sailing in or through St. George's channel, by Holyhead or Wicklow, to or from any foreign port, or which shall pass or cross the said channel to or from any place in Great Britain, southward of Holyhead, from or to Wicklow, or any place northward thereof in Ireland, or that shall pass, cross, or sail from any place northward of Holyhead, and sail between Holyhead and the Calf of Man, or in any way in St. George's Channel to the southward of Dublin; and likewise from all coasters passing to or from any place in Great Britain, north of Holyhead, from or to any port, &c. south thereof, 1d. per ton coming into, and the like sum going out of, the said ports in Great Britain or Ireland, and double such duties for any foreign ship.

Sect. 3.

Ships laden with coals in Great Britain, north of Liverpool, for Ireland, or the greatest part of their lading being coals, and passing from Great Britain to Ireland, shall only pay one voyage in every year; the same to be paid the first voyage yearly, before clearing out of the custom-houses, either in Great Britain or Ireland.

Sect. 4.

In consideration of the benefit the pacquet-boats sailing betwixt Holyhead and Dublin receive by the said light-house, the post-master-general shall pay to the said Sutton Morgan the annual sum of 50l. without fee, quarterly.

Sect. 5.

If any person, having the command of any ship, shall refuse to pay the duties, it shall be lawful for the said Sutton Morgan, his heirs, &c. to seize any goods of any master or owner of such ship, and to keep the same till the duties are paid: and, in case of delay in payment three days after such seizing, he may cause the same to be appraised by two sworn appraisers, and afterwards sell the goods.

Sect. 6.

Nothing herein shall charge any of his Majesty's ships of war.

Sect. 7.

The said Sutton Morgan shall be freed from the payment of 5l. per annum quit-rent, reserved by the letters patent.

Sect. 12.

This act shall be a public act.

Little Cumray Light-House.

By this act the trustees are empowered to erect a light-house on this island, at the month of the river Clyde, and to fix such beacons, buoys, land or sea marks, on any place in the firth, as they shall think necessary for rendering the navigation more safe and convenient.

The master or owner of every vessel, bound outwardly on any foreign voyage, passing the light-house, to pay 1d. sterling per ton, and 1d. per ton passing inwards from
any foreign voyage to the northward, whether they pass by the middle passage
between the islands of Cumray and Bute, or by the east side of Little Cumray,
or between th: islands of Bute and Arran, and whether they discharge in the Clyde
or not: every foreign vessel to pay 2d. per ton, inwards and outwards; every vessel
of 30 tons or upwards, trading to or from any part of Great Britain or Ir lanc only, to
pay 2q. per ton every time they pass; and for every vessel of fifteen tons, under
the same restriction, 2d. per ton per annum; the year to commence from June 24, and the
payment for the current year to be made before clearing the port.

On refusal to pay the duties, the trustees have power to distain any part of the tackle
of the ship, and sell the same, returning the overplus.

There are also some light-houses erected for the service of private ports, as at Ilforde
Combe, on St. Bee's Head near Whitehaven. And large lanthorns are ordered by
the statute, to be set up on poles at the heads of some quays, such as at the harbour
of Minehead, on the river Severn, &c. and duties are assigned for maintaining them.
See 10 Anne, cap. 24.

The masters, wardens, and assistants of the Trinity House at Deptford Strand, may
at their costs set up beacons, and marks for the sea, in such places near the coasts, or
forelands, as to them shall seem meet.

No steeple, trees, or other things standing as sea marks, whereof to the owner or
occupier of the place, where the same doth stand, before the 1st of March next, notice
shall be given by the Queen's letters under her signet, shall, at any time hereafter, be
taken or cut down, upon pain that every person, by whose consent such offense shall
be committed, shall forfeit 100l. &c. and if the persons offending be not of the value,
they shall be deemed convict of outlawry.

And no man may erect a light-house, beacon, &c. without lawful warrant and 3 ind. 204,
authority.

N. B. the above-mentioned Trinity House is a kind of college at Deptford, belonging
at first to a company or corporation of seamen only, with authority, by the King's char-
ter, to take knowledge of those that destroy sea marks, &c. but now many gentry, and
some nobility, are made members or elder brothers of that community.

OF LETTERS OF MARQUE AND REPRISAL.

Letters of marque or mart are extraordinary commissions granted by the Lords of the
Admiralty, or by the vice-admirals of any distant province, to the commanders of
merchant ships for reprisals, in order to make reparation for those damages they have
sustained, or the goods they have been despoiled of by strangers at sea. Or to cruise
against and make prize of an enemy's ships or vessels, either at sea or in their harbours.

We may therefore distinguish two species of letters of marque, those which are
special for the reparation of injuries sustained by individuals at sea, after all attempts
to procure legal redress have failed; and those which are general, being issued by the go-

government of one state against all the subjects of another, upon an open rupture
between them.

They seem to me always to be joined to those of reprisal, for the reparation of private
injury; but, when the hurt of an enemy is solely intended under a declared war, the
former only are granted to privateers, as will be shewn in the subsequent chapter.

These commissions in the law, have other appellations besides reprisals or letters of
marque, as pignoratio, clarigatio, and androplepsia, and though by virtue of these
any capture they license becomes legal, yet private authority will not justify the pro
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Ceedings, as it only can be done by the power of that prince or state, whose subject the injured person is, nor is the same grantable even by them, but where the suffering person has justice denied him, or illegally delayed.

A subject cannot for his own benefit make a reprisal without a proper commission, and, if he should do so even during war, the ship which he might capture would be a droit of admiralty and belong to the King or his grantee. 1 Bla. Com. 259. n. 8. Carth. 399. 2 Wood. 483.

This custom of reprisals is now become a law by the consent of nations, and has been generally confirmed by an article in almost every treaty of peace that has for a century past been made in Europe, under its proper restrictions and limitations; as in that concluded with Spain the 13th of May, 1667, (Art. 3.) that with France the 21st of July, 1667, (Art. 16.) that with Holland of the same date, (Art. 31.) that with Denmark the 11th of July, 1670, and almost all others made since; and it was constituted by them, grounded, according to the great Justinian, on the urgency of human necessities, as without this great license would be given and tolerated for the committing of depredations and injuries, especially if only the goods of rulers were made liable, who seldom possess anything that the injured can come at for satisfaction; whereas the effects of those private men, whose dealings in trade are various, may be seized for recompence, sometimes with the greatest ease, and freest from risque or danger.

And as the benefit of this obligation was common to all nations, they, which were at one time sufferers, would at another time be eased by it, and princes are not only accountable for public injuries, but in prudence should endeavour to prevent private ones, and, by setting the good example of protecting foreigners from wrongs, add strength to their just demands of redress, whenever their own subjects have occasion to request it from them.

If therefore the injured party cannot obtain his definitive sentence or judgment, within a fit time, against the person of whom he complains, or if there be a judgment given against apparent right and law, and no relief can be had from the impiety of such a decree, the bodies and moveables of the prince's subjects, who render not right, may be apprehended and taken.

But in the prosecution of this there must be,
1. The oath of the party injured, or other sufficient proof, touching the pretended injury, and of the certain loss and damage thereby sustained.
2. A proof of the due prosecution for the obtaining satisfaction in a legal way.
3. Of the delay or denial of justice.
4. A complaint to his own prince or state.
5. Requisition of justice, by him, or them, made to the supreme head or state, where justice in the ordinary course was denied.
6. Persistence still in the denial of justice.

And all this preceding letters of reprisal, under such cautions, restrictions, and limitations, as are consonant to the law of nations, and subsisting treaties, and as the special case shall require, may issue not only by the jus gentium and civile, but by the ancient and municipal laws of the kingdom.

The reprisals grantable by the laws of England are of two sorts, ordinary and extraordinary; the ordinary are either within or without the realm, and are always granted to English merchants, who have suffered in their persons or effects, and have had their goods spoiled, or taken from them, beyond the sea, by merchants-strangers, and cannot upon suit, or the King's demanding justice for him, obtain redress; in such case the injured person proving that he has prosecuted the offenders in a legal course, and had justice delayed, or denied him, he shall have a writ out of chancery to arrest the merchants-strangers of that nation, or their goods here in England, which is granted
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to the subject oppressed, not as a matter of favour, but of common right, by the Lord Chancellor or Keeper of England, who always in such case hath the approbation of the King or Council, or both, for his so doing.

The other ordinary reprisals, granted for reparation out of the realm, are always under the great seal of England, and cannot be revoked or annulled; and the reason is because the person injured hath petitioned, and hath according to law made out by proof his loss, and no regard having been paid to letters of request sent to the prince of the offender, nor reparation made; then the letters patent of reprisal, being sealed, immediately create and vest a national debt in the grantee, to be satisfied in such manner, and by such means, as the said letters patent do direct, out of the goods and estates of his subjects, who refuses or prolongates doing right; but, though these letters patents are revocable, yet, if the supreme power thinks the execution of them cannot well be effected without endangering the peace of both states, this may justly cause their respite till a more proper occasion; for the statute of 4 Henry V. c. 7. does not restrain the King's prerogative and authority, which he had at the common law, in judging the conveniency and time when they shall be executed; and as the King hath the legislative power of peace and war, in a public treaty for the nation's good, they may be notified and then revoked by the great seal, in pursuance of that treaty, and princes are always cautious in the framing and composing such letters patent, so as they may not be reckoned a breach of the peace, which granting them (for particular satisfaction) in the ordinary way, does not amount to.

The extraordinary reprisals are by letters of marque, for reparation at sea, or any place out of the realm, grantable by the secretaries of state, with the like approbation of the King or Council, or both; but they are only during the King's pleasure, and to weaken the enemy during the time of war, and may, at any time, be revoked.

In the case of the King v. Carew, 1 Vern 54, 5. 2 Wood 440, it was held that a treaty of peace containing a clause against prejudice by letter of marque and reprisal, was a repeal of the letters of marque and reprisal.

But, before granting letters of marque, there gradually precede two or three letters of request, and, according to the satisfaction, sufficient or insufficient, returned in answer, commissions are awarded or denied; and the prince or state, whose subject the injured person is, should not value his misfortune at so low a rate, as to refuse him the former, for that would be to accumulate injuries, and should likewise, if justice be denied, after such request, arm him with power to take satisfaction by reprisal, Vi, Manu, & Militari.

It appears that a request of satisfaction must be made as well to the aggressor, as to the sovereign power of the state to which he belongs, 2 Woodes 437.

Subjects cannot by force hinder the execution even of an unjust judgment, or lawfully pursue their right by force, by reason of the efficacy of the power over them; but foreigners have a right to compel, which yet they cannot use lawfully, so long as they may obtain satisfaction by judgment; though, if that ceases then reprisal is let in.

Judgment is obtained either in the ordinary course, by way of prosecution, or suit, or appeal from the same, after sentence or judgment given, to a higher court; or else in the extraordinary way, which is by supplication, or petition, to the supreme power; but we must understand that to be when the matter in controversy is, tam quoad merita quam quoad modum procedendi; not doubtful; for, in doubtful matters, the presumption is ever for the judge or court.

But the reprisal must be grounded on wrong judgment given, in matters not doubtful, which might have been redressed in some shape, either by the ordinary or extraordinary power of the country or place, and the which was apparently perverted or denied.
though, if the matter be doubtful, it is then otherwise; for in cases dubious or difficult, there is a presumption always, that justice was truly administered by them who were duly elected and appointed for that purpose.

And yet, in this latter case, some are of opinion, if it was dubious, and, if the judgment was against apparent right, the stranger oppressed is let into his satisfaction; and the reason is, because the judge's authority is not the same over foreigners as over subjects, for the motive or cause above-mentioned.

If an English merchant shall prosecute a suit in the ordinary courts of law beyond seas, and sentence or judgment shall pass against him, from which he appeals to the supreme court, and there the first judgment or sentence is confirmed, though the complaint hath received a judgment contrary to right and equity, yet this will be no cause for letters of reprisal, though, perhaps, it may occasion letters of request, if the circumstance and reasons are strong for the same, to have a re-hearing.

But, if an Englishman shall have right to recover a debt there, and the debtor is committed to the custody of an officer till payment, and he wilfully lets the prisoner escape, who then becomes insolvent, this circumstance may occasion letters of reprisal.

In England, if a foreigner bring an action personal against I. S. and the matter is found special or general, and the party prays judgment, and the court refuses it, and then the defendant dies, and with him the action, the nature of it being such, the party is here without remedy, and the same may occasion letters of reprisal, if it be accompanied with those circumstances that evince an apparent denial of justice, i.e. putting it off from term to term without cause.

An Englishman prosecutes his right in the legal courts beyond seas, and the military governor opposes the prosecution, and by force conveys away the debtor, and his goods, and the sentence or judgment is obtained: its ultimate end being execution, is, by the aforesaid means, frustrated, and may occasion letters of reprisal.

If any person shall be murdered, spoiled, or otherwise damaged, in hostile manner, in the territories or places belonging to any king, to whom letters of request are issued forth; and, if no satisfaction be made for the injury, letters of reprisal may be granted, as the petitioning parties are not in such cases compelled to resort to the ordinary prosecution; but the prince of the country, against whom the same are awarded, must repair the damage out of his, or their estates, who committed the injuries; and, if that proves deficient, it must then fall as a common debt on this country.

Such letters of request generally allot a time certain for damages to be repaired, and, if not complied with, reprisals are to issue: thus, after the massacre at Amboyna, and other depredations committed by the Flemish on the English, his Majesty, 1625, issued forth his letters of request to the States of Holland, for satisfaction within eighteen months, otherwise letters of reprisal should be granted; and King Charles 2. issued letters of request to the said States, for satisfaction to be granted to William Courten, Esq. for depredations made by their subjects on two of his ships; but, not obtaining it in the limited time, he granted to the partners and heirs of the said Courten his letters of marque, in the form following:

Charles II. by the grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. to all christian people to whom these presents shall come, greeting: whereas our loving subject William Courten, Esq. deceased, and his partners, Anno 1643, by the depredation and hostile act of one Gailand, commander in chief of two ships belonging to the East India Company of the Netherlands, was, between Goa and Macao, in the Strait of Malacca, deprived, and most injuriously spoiled of a certain ship named the Bona Esperanza, and of her tackling, apparel, and furniture, and all the goods and lading in her, upon a very hopeful trading voyage to China, which were
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carried to Batavia, and there all, de facto, without due process of law, confiscated. And that also in the same year, another laden ship of our said subject called the Henry Bonadventure, being come on ground near the Island Mauritius, was there, both ship and goods, seized upon by some of the officers and ministers, and others under the command of the said East India Company, and utterly detained from the right owners. And whereas the said William Courten, and his assigns in his lifetime, used all possible endeavours to recover the said ship and goods, and to procure further justice against the malefactors, and yet could obtain no restitution or satisfaction, whereby they became to be much distressed and utterly undone in their estates and credit; and that therefore, and upon the most humble supplications and addresses of Francis Earl of Shrewsbury, and William Courten, Esq. grandchild and heir of the said William, deceased, Sir John Ayton, and Sir Edmund Turner, Knights, George Carew, and Charles Whittaker, Esqrs. on the behalf of themselves and divers others, interested in the said two ships Bona Esperanza, and Henry Bonadventure, and in the estates of the said William Courten, deceased, Sir Richard Littleton, Baronet, and Sir Paul Pindar, Knight, deceased, that we would take their case into our princely consideration, we, out of a just sense we then had, and still have, of their unjust sufferings, in that business, both by our own letters under our sign manuel, to the States General of the United Provinces, and by Sir George Downing, Knight and Baronet, our envoy extraordinary, to whom we gave especial command so to do, required satisfaction to be made, according to the rules of justice, and the amity and good correspondence, which we then desired to conserve with them firm and inviolable; and whereas after several addresses made to the said States General by our said envoy, and nothing granted effectual for relief of our said subjects, whom we take ourselves in honour and justice concerned to see satisfied and repaid, we lately commanded the said Sir George Downing to intimate and signify to the said States that we expected their final answer, concerning satisfaction to be made for the said ship and goods, by a time then prefixed and since elapsed, that we might so govern ourselves thereupon, that our oppressed subjects might be relieved according to right and justice; and yet no satisfactory answer has been given, so that we cannot but apprehend it to be not only a fruitless endeavours, but a prostituting of our honour and dignity, to make further application, after so many denials and slightings: and whereas John Exton, doctor of laws, judge of our High Admiralty Court of England, upon our command to certify to us the value of the losses and damages sustained by the said William Courten and partners, whose interest is now vested in our loving subjects Sir Edmund Turner, Knight, and George Carew, Esq. and partners, hath, upon full examination, and proof thereof made by witnesses in our High Court of Admiralty, reported and certified under his hand, that the same do amount to the sum of one hundred and fifty-one thousand six hundred and twelve pounds:

Now know ye, that, for a full restitution to be made to them, for their ships, goods, and merchandizes, of which the said William Courten, and the assigns of the said William Courten, and partners, were so despoiled as aforesaid, with all such costs and charges as they shall be at, for the recovery of the same, we, by the advice of our privy council, have thought fit, and by these presents do grant, license, and authorise, under our great seal of England, unto our said subjects, Sir Edmund Turner and George Carew, their executors, administrators, and assigns, for, and on behalf of themselves, and other persons interested as aforesaid, to equip, victual, furnish, and set to sea, from time to time, such, and so many ships and pinnaces, as they shall think fit; provided always, that there be an entry made and recorded in the Admiralty Court of the names of all ships and vessels, and of their burden and ammunition, and for how long time they are victualled, and also of the name of the commander thereof, before
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the same or any of them be set forth to sea; and with the ships and pinnaces, by force of arms, to set upon, take, and apprehend any of the ships, goods, monies, and merchandizes of the States General, or any of the subjects inhabiting within any of their dominions or territories, wheresoever the same shall be found, and not in any port or harbour in England or Ireland, unless it be the ships and goods of the parties who did the wrong. And the said ships and goods, monies, and merchandizes, being so taken, and brought into some port of our realms and dominions, an inventory thereof shall be taken, by authority of our Court of Admiralty, by the judge or judges thereof for the time being, and upon proof made before him or them, that the said ships, goods, wares, merchandizes, or money did belong to the States General, or any of their subjects, as aforesaid, they shall be judged lawful prize of the said Sir Edmund Turnar and George Carew, their executors, administrators, and assigns, as aforesaid, to retain and keep in their, or any of their possessions, and to make sale, and dispose thereof in open market, or however else, to their, and every of their best advantage and benefit, in as ample manner as at any time heretofore hath been accustomed by way of reprisal, and to have and enjoy the same as lawful prize, and as their own proper goods: so that neither captain, master, nor any of the company, that shall serve in his own person, or shall promote and advance the said enterprise, in manner and form aforesaid, shall, in any manner or wise, be reputed or challenged, for any offender against any of our laws. And that also it shall be lawful for all manner of persons, as well our subjects as any others, to buy the said ships, goods, and merchandizes, so taken and apprehended by the said captains, masters and others, and adjudged as aforesaid, without any damage, loss, hindrance, trouble, or molestation, or incumbrance, to befall the said buyers, or any of them, in as ample and lawful manner, as if the ships, goods, wares, and merchandizes, had been come, and gotten by the lawful traffic of merchants, or of just prizes in time of open war.” Provided always, that all ships, goods, and merchandise, taken by virtue of this our commission, shall be kept in safety, and no part of them wasted, spoiled, or diminished, or the bulk thereof broken, until judgment hath first passed, as aforesaid, that they are the ships and merchandizes of the States General, or their subjects as aforesaid. And if by colour of this our commission, there shall be taken any ships, goods, or merchandizes, of any of our loving subjects, or the subjects of any prince or state in good league or amity with us, except the States General, or their subjects as aforesaid, and the goods therein laden, sold, and embezzled, or diminished, or the bulk thereof broken, in any place before they shall be adjudged to belong to the States General, or some of their subjects, as aforesaid, then this commission shall be of no sufficient authority to take the said ships, goods, and merchandizes, or to warrant, or to save harmless, such as shall receive, buy, or intermeddle therein; but both the prizes so taken, and the said ship of war, shall be confiscated to our use. “And further, we do hereby declare, that it is our will and pleasure, that this our commission shall remain in full force and power, to all intents and purposes, until the said Sir Edmund Turnar and George Carew, their executors, administrators, and assigns, as aforesaid, shall, by virtue thereof, have, by force of arms, apprehended, taken, seized, recovered, and received, from the States General, or their subjects, one hundred and fifty-one thousand six hundred and twelve pounds, according to the appraisement to be made by sufficient appraisers, upon oath nominated and authorised in our said Court of Admiralty, of all such ships, goods, wares, and merchandizes, as shall be taken from the said States General, or any of their subjects, by virtue of this commission, or shall otherwise receive satisfaction of the debt aforesaid, by composition to be made between those of the East India Company of the Netherlands, and the said Sir Edmund Turnar and George Carew, their executors, administrators, and assigns, aforesaid. Notwithstanding it so happen, the present difference between us and th
States General depending upon general reprisals, may be agreed and composed, and that in the interim a peace and good correspondence may be renewed between us and the said States General. In which case, nevertheless, it is our will and pleasure that in the execution if this our commission no violence shall be done to the persons of the said subjects of the said States General, but only in case of resistance; and that after, in cold blood, the subjects of the said States General, if hurt or wounded, shall be used with all convenient offices of humanity and kindness. And further, our will and pleasure is, that although it shall happen, that all hostility between us and the States General, and our respective subjects shall cease, yet this our commission shall be and remain in full force and power to the said Sir Edmund Turner and George Carew, their executors, administrators, and assigns, as aforesaid, by virtue thereof, to apprehend, take, and seize, by force and arms, so many more of the said ships and goods of the States General, or any of their said subjects, as, besides the said sums before-mentioned, shall counter-vail, satisfy, and pay all such costs and charges, as the said Sir Edmund Turner and George Carew, their executors, administrators, or assigns, as aforesaid, shall, from time to time, make proof to have disbursed and paid towards the equipping, manning, paying, furnishing, and victualling of the said ships, so licensed and authorised as aforesaid, by this our said commission, to be equipped, manned, furnished, and victualled, by the said Sir Edmund Turner and George Carew, their executors, administrators, and assigns as aforesaid, for the purposes aforesaid.” And our will and pleasure is, and we do hereby require our judge or judges of our High Court of Admiralty, for the time being, and all other officers of the admiralty, and all other judge or judges, officers, ministers, and subjects whatsoever, to be aiding and assisting to the said Sir Edmund Turner and George Carew, their executors, administrators, and assigns, as aforesaid, in all points in the due execution of this our royal commission, and to proceed to adjudications, and adjudge all ships, merchandizes, monies, and goods, by virtue thereof to be taken, according to our princely intention hereby signified and favourably interpreted and construed, in all respects, to the benefit and best advantage of the said Sir Edmund Turner and George Carew, their executors, administrators, and assigns, as aforesaid. In witness whereof, we have caused these our letters to be made patent. Witness ourselves at Westminster, the 19th day of May, in the seventeenth year of our reign.

By the King.

It is not the place of any man’s nativity, but that of his domicil and abode, not of his origination, but of his habitation, that subjects him to reprise; the law doth not so much consider where he was born, as where he lives; therefore if letters of reprisal should be awarded against the subjects of the Grand Duke of Tuscany, and a native of Florence, but denizenized or naturalized in England, should have a ship, in a voyage to Leghorn, taken, the capture is not lawful, nor can she be made a prize. Yet, by the laws of England, a natural-born subject cannot divest himself of his allegiance, though he happens to be commorant, or a dweller in the enemy’s country.

It does not appear from any precedents, that reprisals can be granted on misfortunes happening to persons on their goods, residing or being in foreign parts in time of war there; for, if any misfortune happens, or is occasioned to their effects, or to their persons, they must contentedly sit down under their loss; it being their own fault that they would not fly or quit the place, when they foresaw the country was exposed, or would be subject, to the spoil of soldiers and devastations of the enemy.

By right, there are many persons exempted, and those whose persons are so privi....
leged have also protection for their goods, some by the law of nations, some by the
civil law, others by the common law; among which the ambassadors, by the laws of
nations, their retinue and goods, are exempt, coming from him who awarded reprise;
the law of nations not only provides for the dignity of him that sends, but also the secure
going and coming of him that is sent.

Travellers through a country, whose stay is but short, and a merchant of another place
than that against which reprisals are granted, although the factor of his goods was of that
place, are not subject to reprisals.

When ships are driven into port by storm or stress of weather, they have an exemption
from the law of reprisals, according to the jus commune, though by the law of England,
it is otherwise, unless expressly provided for in the writ or commission; but, if such
ships fly from their own country to avoid confiscation, or for some other fault, and are
driven in by stress of weather, they may, in such case become subject to the prize;
though it is unlawful to make seizure in any ports for reprisals, but in that prince's who
awarded them, or in his against whom the same is issued; for the ports of other princes
or states are sacred, and the peace of them not to be violated or disturbed, but justly
to be observed and maintained.

If any ship, carrying letters of reprise, attacks a vessel, and she refuses to yield, she
may be assaulted and entered; and, if it falls out, though by accident, that some of
those who resist are slain, the fault will lie at their own doors, for endeavouring to
hinder the execution of what is right, and which the law both approves and war-
rants.

If a ship carries letters of marque and is insured as a private trader only, the insurance

By the law of nations, ipso facto, the dominion of the things taken by those to whom
letters of marque are granted become the captor's, till the debt and costs, that is, the
original damage, and subsequent charges, are satisfied; which being done, the residue
ought to be restored. So the Venetians used their equity, having taken the ships of
Genoa: they did not spoil any of the lading, but preserved the same very carefully till
the debt was paid, which done, an entire restitution of the things was made, without
any diminution.

As to the property acquired by the capture, see Grotius De Jur. Bel. l. 3. c. 2. s. 7.
2 Wooddes 438, 449. 1 Wil. 211, 229.

When, perhaps, for the fault of a few a debt becomes national, by reason of which the
goods of the innocent become liable, if taken, for satisfaction in such case the person so
suffering is entitled to contribution for his relief, being put to the whole burthen, where
more are bound to the same thing.

There appears also to be an obligation on the government and individuals, who refuse
the satisfaction to reimburse the person upon whom the reprisal is made.

Yet, when depredations have happened to foreign merchants, our kings, on com-
plaint, have often issued commissions to inquire of the same; and it was so done upon
the petition of some Genoese merchants, who complained against the inhabitants of the
isle of Guernsey, for a depredation in taking away and detaining their merchandise
and goods to a very great value, out of a ship wrecked by tempest near that isle, and
the commissioners were empowered to punish the offenders, and to make restitution and
satisfaction for the damages.

The like complaint was made by the merchants of the Duke of Bretagne, of certain
depredations committed by the subjects of the King of England, who issued forth
the like commission to give them reparation and damages for the same; so that if
the subjects of the King of England should have their goods taken by way of
reprise for the satisfaction of such debt or damage, they may have the benefit of the like commissions, to make themselves whole out of the estates of the offenders.

OF PRIVATEERS OR CAPERS.

Privateers and capers are synonimous terms for the same thing, with this only difference, that the latter are smaller vessels than the others; they are generally esteemed private ships of war, fitted out by particulars in order to annoy the enemy, though the commission is neither lasting nor so honourable as that given to the commander of a king's ship, the one being certain, and continued whilst his behaviour is unexceptionable, the other only temporary and occasional; the one appointed by his Majesty, the other by a subject, with the prince's approbation, and liable to be turned out at the owner's pleasure; and, though such appointments are ancient, and very useful in a war, by distressing the enemy, yet many esteem the action but one remove from piracy; as the undertakers are supposed to have no immediate injury done them, nor have any other motive but the hopes of gain, to animate them to the engagement, or to induce their commencing a trade of rapine and spoil on the persons and goods of innocent traders; and, by these means, to increase the horrors and calamities which war naturally brings with it, and inspires; but whosoever reflects, that every individual is injured, when the nation in general is so; and that, if this has a right to vindicate or revenge its wrongs, particulars must be justified in affording their assistance; we must conclude that, in so doing, they only comply as good subjects, whilst their proceedings remain directed by authority, and their successes against the enemy are managed with that humanity our own natures and the law of nations enjoin.

However, leaving these disputes to be determined by casuists, I shall proceed to inform my reader of the nature and power of such armed vessels, and on what footing they have generally been fitted out in the late and former wars; and this has been under two different and distinct commissions, as will hereafter be shewn.

The one of them is customarily granted to the petitioners for it, after they, at their own expence, have fitted out a privateer; and empowers them to appropriate to their own use whatever prize they make, after a legal condemnation, and the government allows them besides $1 for every man aboard a man of war or privateer taken or destroyed at the beginning of the engagement, and $10 for every gun she had mounted, with liberty of cruising where they please; and in case we are at war with more potentates than one, as lately with the French and Spaniards, they must have commissions for acting against them both, otherwise a captain carrying only one against the Spaniards, and in his course meets with and takes a Frenchman, this prize is not good, but would be taken from him by any man of war he met, and could not be condemned, for him, in the admiralty, as many experienced in the late war.

The prize acts passed at the commencement of a war usually provide that ships, and goods taken from the enemy, whether by king's ships or privateers shall be first condemned before any solid right is vested in the captors. 2 Wooddes 449.

It has been held however that this right if it may be so called, is assignable at law. See the case of Morrough v. Corrins. 1 Wils. 211. Though equity will interfere to relieve against an unprovided contract for the assignment of it. See Baldwin and Rochford. 1 Wilson 229.

* 18 and 17 Geo. 2.  
† 4 and 5 Will. and Mar.
OF PRIVATEERS.

The manner of fitting out these privateers has commonly been at the joint expence of several merchants, and is always very expensive; as warlike stores are at all times costly, and their prices more especially raised on these occasions, when the demand for them is considerably increased.

Private ships of war may be insured, interest or no interest. 19 Geo. 2. c. 30.

In some of these adventures, the men on board go on the terms of no purchase no pay; and, in this case, the produce of whatever is taken goes half to the ship, for the owners, and half to the men, divided to them according to the articles of agreement; but when the men sail for wages the captures appertain entirely to the owners, except a small part, which is commonly stipulated to be given the sailors, extra of their wages, in order to animate them in their behaviour; and both ways of arming are regulated by the articles entered into between the owners and mariners, of which I shall add a copy at the end of this chapter, for my reader's information.

The division of prizes have been regulated by many statute provisions. The 33 Geo. 3. c. 66. s. 9. provides that prizes made by privateers shall be divided between owners and captors as they agree. The stat. 45 Geo. 3. c. 72. s. 2. provides that prizes taken by ships of war, or hired armed ships, shall be divided according to the King's proclamation.

The other commission afore-mentioned is granted to privateers taken into the king's service, which notwithstanding are fitted out at the expence of private persons, and then let out to the government, who generally pay them so much per month for their hire, and engage to repair them, in case of damage, and to pay the value agreed for, in case of loss.

In King William's reign many large private ships were engaged for in this manner, and sent abroad as convoys, &c. but since our marine is to greatly increased, the government does not so much stand in need of the merchants' assistance in this shape as they formerly did, and consequently do not so often call for it.

No privateer may attempt any thing against the law of nations, as to assaulted an enemy in a port or haven under the protection of any prince or republic, be he friend, ally, or neuter; for the peace of such place must be kept inviolable.

And, at the time of granting these private commissions, great care is always taken, by bond, to preserve the leagues with our allies, neutrers, and friends, according to the various and several treaties subsisting between us; and it is for this reason that security is demanded, and given by responsible men, not concerned in the ship, to the value of 1500l. for all ships carrying less than 150 men, and 3000l. for every ship carrying more, that they will give full satisfaction for any damage or injury that they shall commit in their courses at sea, contrary to and in breach of the aforesaid treaties, and also under the penalties of forfeiting their commissions, and for which their ships are likewise made liable.

If a suit be commenced between the captor of a prize and the claimer, and there is a sentence or decree given for the party reclaiming, such sentence or decree, upon security given, shall be put in execution, notwithstanding the appeal made by him that took the prize, which shall not be observed, in case the sentence shall be given against the claimers.

And whereas the masters of merchant ships, and likewise the mariners and passengers, do sometimes suffer many cruelties and barbarous usages when they are brought under the power of ships which take prizes in the time of war, the takers in an inhuman manner tormenting them, thereby to extort from them such confessions as they would have to be made: It is agreed, that both his Majesty and the States General shall, by the severest proclamations, forbid all such heinous and inhuman offences; and as many as they shall, by lawful proofs, find guilty of such acts, they shall take care that they
be punished with due and just punishment, and which may be a terror to others; and shall command that all the captains and officers of ships, who shall be proved to have committed such heinous practices, either themselves, or by instigating others to act the same, or by conniving while they were done, shall, besides other punishments to be inflicted proportionally to their offences, be forthwith deprived of their offices respectively: And every ship brought up as a prize, whose mariners or passengers shall have suffered any torture, shall forthwith be dismissed and freed, with all her lading, from all further proceeding and examinations against her, as well judicial as otherwise. 2 Wood. 449.

Ships may freely sail to and trade with all kingdoms, countries, and estates, which shall be in peace, amity, or neutrality, with the prince whose flag they carry, and who is at present at peace with us, and are not to be molested by us, on account of any hostilities that may at present subsist, or hereafter may happen, between his Britannic Majesty and those estates, provided such ships are not bearers of contraband goods.

By statute 24 Geo. 3. c. 47, owners of privateers shall give security that their ships shall not be employed in smuggling.

Private ships of war having foreign spirits on board, in less than vessels of 60 gallons (other then for ships use) or tea above a certain quantity, to be forfeit with guns and lading. 22 Geo. 3. c. 21. s. 4. 33 Geo. 3. c. 34.

And to avoid disputes about the understanding the term of contraband goods, they are expressly determined to be only arms, pieces of ordnance, with all implements belonging to them, fireballs, powder, matches, bullets, pikes, swords, lances, spears, halberds, guns, mortar-pieces, petardes, bombs, grenades, fire-crancels, pitched hoops, carriages, musquet rests, bandoliers, saltpetre, musquets, musquet-shot, helmets, art. 3. corslets, breast-plates, coats of mail, and the like kind of armature, soldiers, horses, and all things necessary for the furniture of horses; holsters, belts, and all other warlike instruments whatsoever.

All other goods whatsoever are, by the afore-mentioned treaties, permitted freely to be carried, except to places besieged, and therefore a privateer has no right to put any hindrance thereto; but if he makes a prize of a ship laden entirely with the above-mentioned contraband goods, both ship and lading will be condemned; and if part be prohibited goods, and the other part not, the former only shall become prize, and the ship and the remainder be set free; and, in case the captain of the merchant ship will deliver to the captor that part of his cargo which is prohibited, the other shall receive it without compelling the merchantman to go out of her course to any port he thinks fit; but shall forthwith dismiss her, and upon no account hinder her from freely prosecut- ing her designed voyage.

If such ships shall be attacked in order to be examined, and shall refuse submitting thereto, they may be assaulted and entered by force; and if the persons aboard do not yield and surrender, those that resist may be slain.

But if any privateer wilfully commits any spoil, depredations, or any other injuries, either on the ships of friends or neutrals, or on the ships and goods of their fellow sub- jects, they will be punished, in proportion to their crimes, either with death or other- wise, and their vessels may likewise be subject to forfeiture.

Whether a ship taken be a lawful prize or not, shall be tried in the Admiralty; and no prohibition shall be granted. In the war between us and Denmark, a Scotch privateer took a ship as prize, being a Danish one, and she was condemned as a lawful prize by the Admiralty in Scotland, and brought her upon the land; and S. libelled in the Admiralty of England, suggesting that she was not a Danishmark, but a ship of London. per curiam. In as much that the matter is prize, or not prize, no prohibition.

One who had letters of marque in the last Dutch war, took an Ostender for a Dutch ship, and brought her into harbour, and libelled against her as a prize; and the Ostender...
libelled in the Admiralty against the captor for damages sustained by hurt the ship had received in port; and a prohibition was prayed, because the suit was for damage done in port, for which an action lies at the common law; but the prohibition was denied, as the original was a caption at sea, and the bringing her into port, in order to have her condemned as a prize, is but a consequence of it, and not only the original but also the consequence shall be tried here.

And therefore if he, who hath letters of marque or reprisal, takes the ships and goods of that nation against whom the same are awarded, and carries them into the port of any neuter nation, the owners may there seize her, or there the admiral may lawfully make restitution, as well of the ships and goods to the owners as the captive persons to their liberty, for that the same ought first to have been brought infrà presidia of that prince or state by whose subjects, and under whose commission, the same was taken.

And this is entirely agreeable to the common law; for a Dunkirker, having taken a French vessel, was driven into Weymouth, and sold her there before she was brought infrà presidia dom. regis Hisp. and in this case it was ruled, that if a ship be taken by piracy or letter of marque and reprisal, and is not brought infrà presidia of that prince or state by whose subjects the same was taken, it could not become a lawful prize, nor were the owners by such a capture divested of their property; but, if the capture be by King's ships, the property will immediately be in the captors, and never be divested, unless afterwards it be recovered by its former proprietors, or be in battle regained.

If two ships with letters of marque accidentally meet with a prize at sea, though only one attacks and takes her, yet the other being in sight shall have an equal share of the prize, though he afforded no assistance in her capture; because his presence however struck a terror in the enemy, and made him yield, which perhaps he would not have done had his conqueror been single; so that all ships that are in sight, though they cannot come up to assist in the engagement, are entitled by the common law to an equal distribution in the spoil.

But privateers under convoy are not entitled to share prizes unless actually assisting.

Stat. 33. Geo. 3. c. 66. s. 11. 45 Geo. 3. c. 72. s. 25.

But if those to whom letters of marque are granted should, instead of taking the ship and goods appertaining to that nation, against which the said letters are awarded, wilfully take, or spoil the goods of another nation in amity, this would amount to a down-right piracy, and the persons so offending would, for such fault, forfeit their vessel, and the penalties in which their securities are according to late custom bound on taking out such letters, notwithstanding their commission; but this must be understood, where such a capture is done in a piratical manner; for it is made upon a strong presumption, supported by many circumstances and appearances, that a caption is just, as belonging to him against whom the reprisals are granted, though, if on examination it proves otherwise, and the suffering parties have their ship and goods restored, yet the captors are not liable to punishment, though sometimes they may be to damages. On the contrary, they are justified in endeavouring to recover their right, or distress the enemy, for which the letters were granted them, though in effecting it they may be mistaken, as it is natural for the enemy to cover their effects in the best manner they can. It would be impossible always to determine the affair at sea, therefore it is allowable to bring a dubious capture into port, in order to more nice and just scrutiny and inspection, otherwise the goods of an enemy would often escape, as it frequently happened in the late war. However, to guard against unlawful seizures, the government have wisely directed sufficient caution to be given, as before-mentioned, for the due observance of the letters according to law, before they permit their issuing; and where there is a breach committed, the penalties are inflicted.

And in order to avoid all illegal proceedings, but to act with due regularity and con-
formity with the tenor of the letters granted, whenever a prize is taken and brought \textit{infra præsidia}, the captor must exhibit all the ship's papers and captivated mariners to be examined in order to adjudication; till when, bulk ought not to be broken, nor may the captain of the captor suffer any embezzlement of the lading, or sell, barter, or dispose of any part without commission, as the subsequent acts will shew.

By stat. 45 Geo. 3. c. 72. s. 30. it is enacted, that if any commander, &c. shall break bulk on board (except of necessity to be allowed by Admiralty), or embezzle, &c. belonging to a prize, he shall forfeit his whole share of the prize money and treble the value of the thing embezzled.

The use of this sort of vessels we were taught by our neighbours, and obliged by their example to encourage them, who, in the first long war, almost covered the seas, and, like locusts, devoured every thing they could overpower; and, in the late war, we sufficiently experienced their utility, if distressing the enemy may be termed so, as they advantageously inculcated the lesson of the original teachers, and almost ruined the trade of the first inventors of these annoyances, so destructive to the peaceful mercantile employ; and that we might not be tardy in encountering the enemy at their own weapons, the legislature have thought proper to encourage this way of molesting them, in the following acts; which I insert at length, though a great part being only temporary are now expired, but will, in all probability, be revived in any future war.

The Lord High Admiral, Commissioners of the Admiralty, or any three of them, or their Deputies elsewhere, shall, after the 4th day of January, 1739, grant commissions, or letters of marque, on request of any owners of vessels, on their giving the usual security, to any person whom such owner shall nominate commander, or, in case of death, successive commanders of such vessels, except only for the payment of the tenths of the prizes to the Lord High Admiral, or Commissioners of the Admiralty, for the attacking and taking any fortress by land, or any ship, stores, merchandizes, &c. possessed by the enemy, in any sea, creek, haven, or river, and that such ship, &c. being first adjudged lawful prize shall wholly belong to the owners of such privateers, and the captors, in such proportion as shall have been beforehand agreed on between themselves paying the duties hereafter mentioned.

This provision has been confirmed by different statutes from time to time, and finally so by stat. 45 Geo. 3. c. 72. s. 9. By the same statute the Admiralty may revoke letters of marque, sect. 15.

The Judge, &c. of such Court of Admiralty shall, if requested thereto, finish, within five days, the usual preparatory examination for trial of prizes, and the proper monition shall be issued and executed in three days after request; and, in case no claim of such capture shall be duly entered, and attested on oath, giving twenty days' notice after the execution of such monition; or if there be such claim, and the claimants shall not, within five days, give security, to be approved of by such Court of Admiralty, to pay double costs to the captors, in case the same be judged lawful prize; then the Judge, &c. of such Court of Admiralty, on producing to him the examination, or copies thereof, and producing on oath all papers taken in such capture, or on oath made that no such papers were found, shall immediately acquit such capture, or condemn it as lawful prize. And, in case such claim be duly entered, and security given, and no occasion appears to examine distant witnesses, then such judge, &c. shall examine the present witnesses, and, within ten days after claim and security, proceed to sentence the capture as aforesaid. But if the matter appears doubtful to the judge, &c. and it be found necessary to examine witnesses remote from such Court of Admiralty, and such examination be de-

\* The issuing of commissions to privateers is regulated by the statute 19 Geo. 3. c. 67.
sired, and an absolute determination insisted on, on both sides, then the capture shall be appraised forthwith, by sworn appraisers, on the part of the captor; for which purpose the judge shall cause the goods found on board to be unladen and put in proper warehouses, with separate locks, of the collector and comptroller of the customs, and, where there is no comptroller, then of the naval officer, and the agents of the captors and claimants; at the charge of the parties desiring the same, the claimants giving security within fourteen days after making such claim, to pay the captors the full value appraised, if adjudged lawful prize; after which security, the judge shall order the said prize to be delivered to the claimants, or their agents.

And if the claimants refuse to give security, the judge shall take security of the captors, to be approved by the claimants, to pay the claimants the appraised value, if it be adjudged not lawful prize; and the judge shall proceed thereupon to make an interlocutory order, for delivering the same to the captors or their agents.

All captures brought into any of our American colonies shall stay there without breaking bulk, under the joint care of the collector and comptroller of the customs; or where there is no comptroller, of the naval officer of that port, and the captors and their agents, till the same shall be cleared or condemned by final sentence; and on condemnation as lawful prize, if taken by a privateer, shall be immediately delivered to the captors and their agents, subject to their own disposal.

If any judges, or other officers in his Majesty's dominions abroad, neglect to perform any of the matters to them referred, relating to discharging or condemning the captures, as aforesaid, shall forfeit 500l. &c.

There shall not be paid above 10l. to all the judges and officers of any Court of Admiralty abroad, for the condemnation of any capture under 100 tons burthen, nor above 15l. if the capture be of that, or any greater burthen; and on payment of either of the said sums, the judges, &c. shall be liable to all the several penalties imposed by this act, if they neglect to do their duties within the respective times limited.

If any captors or claimers shall not be satisfied with the sentence given, in such Court of Admiralty abroad, they may appeal to commissioners appointed under the great seal of Great Britain, for determining such appeals; to be allowed as appeals to such commissioners as are now allowed from the Court of Admiralty in England, if it be made within fourteen days after sentence, and security given to prosecute with effect, and pay treble costs if the sentence be affirmed; provided the execution of any sentence appealed from shall not be suspended, if the parties appellate give security to the court who passed sentence to restore the ship, &c. or the value, to the appellants, if the sentence be reversed.

Any commanders, officers, &c. who shall embezzle any part of the capture, shall forfeit treble the value of such embezzlement, &c. And by stat. 45 Geo. 3. c. 72. s. 30. their share of prize money is added to the forfeiture. Military stores captured are exempted 43 Geo. 3. c. 194. s. 2.

Provided that nothing in this act contained shall exempt any prizes from paying the usual customs, or being subject to the laws in being, in any of his Majesty's dominions.

His Majesty, his heirs, &c. are empowered to grant charters, commissions, &c. in this or any future war, to enable any societies or particular persons to join in any adventures by sea or land in America, to surprize, take, or destroy any moveables or immoveables belonging to the enemy, and to vest the property of all things so taken in any parts of America, whether ships, goods, stores of war, settlements, factories, places of strength, &c. together with all profits and advantages accruing from the same, in what manner and under such regulations as his Majesty, his heirs, &c. shall think fit, and to confirm the said benefits by any further grants.
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Provided that no charter, &c. shall restrain any of his Majesty's subjects from having a free trade to any part of America.

There shall be paid by the treasurer of the navy, on bills made forth by the commissioners, to be paid according to course, without fee, to the officers, seamen, &c. that shall have been on board such privateers, in any action where any ships of war or privateers shall be taken from the enemy, or destroyed, 5l. for every man which was living on board any ship so taken or destroyed, at the beginning of the engagement between them; the numbers to be proved by the oaths of three or more of the chief officers or men belonging to such ships of the enemy, at the time of their being taken or destroyed, before the mayor, or other chief magistrate of the port whereon such prize, or the men of any ship destroyed, shall be brought; which oaths the said mayor, &c. is hereby required to administer, and grant a certificate thereof, without fee, directed to the commissioners of the navy; upon producing which certificate, with an authentic copy of the condemnation of such ship so taken, or, if destroyed, on producing a certificate from the mayor, &c. the commissioners or their agents shall, within fifteen days, make out bills for the amount of such bounty, directed to the treasurer of the navy, payable to and to be divided among the owners, officers, &c. of any privateer, as by written agreement among themselves shall be directed.

The bills made out for the bounty aforesaid shall be payable to the agents of owners, P. 141. &c. of privateers, to be divided as by written contract, &c.

All captures, commonly called flota ships or galleons, or any register ships, bound from Buenos Ayres or Honduras, or any goods on board the said ships, shall be adjudged in his Majesty's High Court of Admiralty, and not by any Court of Admiralty out of Great Britain.

If any ships, &c. belonging to his Majesty's subjects, shall be taken by the enemy, and afterwards retaken by any men of war, or privateers under his Majesty's protection, the said ships, &c. so retaken, shall be restored to their proper owners, paying, in lieu of salvage, an eighth part of the value, after having been in possession of the enemy twenty-four hours; and, if above twenty-four hours, and under forty-eight hours, a fifth part; and, if above forty-eight hours, and under ninety-six hours, a third part; and, if above ninety-six hours, a moiety thereof: all which payments shall be made without deduction; and if any ship so retaken shall appear to have been set forth by the enemy, while in their custody, as a man of war, the owners of such ship retaken shall pay a full moiety of the real value, without deduction.

If any ship, &c. be taken by any privateer, through consent or connivance, such ship, &c. as also the tackle, apparel, furniture, and ammunition of such privateer, shall be judged good prize; and the bond given by the captain shall be forfeited to his Majesty, &c.

No privateer, touching at any of the American plantations, shall carry from thence any servant without consent of the owner, or any other person without his ticket of leave to depart, but in all cases be subject to the laws of the country.

For the encouragement of the officers and seamen of his Majesty's ships of war, and all other British ships having commissions or letters of marque, and for inducing all British seamen who may be in any foreign service to return into this kingdom, and become serviceable to his Majesty, and for the more effectually securing and extending the trade of his Majesty's subjects, it is enacted, [the same as the preceding act entire, with the following additions, viz.] that all commanders of private ships of war, or merchant ships having letters of marque, shall, on going into any of those ports or harbours, be subject to the several directions and forfeitures by such laws made and provided.

Some doubts having arisen upon the construction of several clauses in the foregoing
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Act of 13 Geo. 2, it is therefore enacted, that, after the first day of July, 1744, all proceedings in any of his Majesty's Courts of Admiralty, concerning the adjudication and condemnation of prizes taken from the Spaniards, shall be according to the method directed and prescribed by this present act.

Nothing in this act contained shall restrain his Majesty, his heirs and successors, from giving such further rules and directions to his respective Courts of Admiralty, for the adjudication and condemnation of prizes, as by his Majesty, &c. with advice of his Privy Council, shall be thought necessary.

And as in all private ships of war, or merchant ships that shall take out letters of marque, it is expedient, for the better discipline and government of such ships, that all persons who shall enter themselves on board should be under proper regulations, to pay obedience to the lawful commands of the chief commanders of the said ships: It is therefore enacted, that all offences committed by any officer or seaman on board any privateer or merchant ship, taking letters of marque, during the present war with Spain or France, shall be punished in such manner as the like offences are punishable on board his Majesty's ships of war.

All offenders who shall be accused of such crimes as are cognizable only by a court-martial, shall be confined on board such privateer, &c. in which such offence shall be committed, until they shall arrive in some port in Great Britain or Ireland, or can meet with such a number of his Majesty's ships of war abroad as are sufficient to make a court-martial; and, upon application made by the commander of such privateer to the Lord High Admiral of Great Britain, or the Commander in Chief of his Majesty's said ships of war abroad, they are hereby authorized and required to call a court-martial, for trying and punishing the said offences.

The statutes 33 Geo. 3. cap. 66. sect. 21. 45 Geo. 3. cap. 72. sect. 62. also provide, that offences on board private ships of war shall be punished as on board the fleet.

For advancement of the trade of Great Britain to and in the several British sugar colonies in the West Indies in America, for the better encouragement of his Majesty's ships, and private ships of war, and the annoying and diminishing the power and wealth of his Majesty's enemies in those parts, and for the increase of shipping and seamen; for these and other services, it is enacted, that no mariner, or other person, who shall serve, or be retained to serve, on board any privateer, or trading vessel that shall be employed in any of the British sugar colonies in the West Indies in America, &c. shall be impressed or taken away by any officer belonging to any of his Majesty's ships of war, unless such mariner shall have before deserted from such ship of war, at any time after the 24th of June, 1746; upon pain that the officer so impressing, &c. contrary to the tenor and true meaning of this act, shall forfeit to the master or owner of such vessel, 50l. for every man he shall take, with full costs of suit, &c.

Every master or commander of a privateer, or trading vessel, before he shall receive, in any of the parts aforesaid, any seamen, &c. to serve on board, shall endeavour, by all the means he reasonably can, to discover whether such person hath deserted from any man of war; and in case any commander shall receive any mariner on board, without first having made such endeavour towards a discovery, or if he shall know such a one to be a deserter, he shall forfeit 50l. for every man he shall so entertain, &c.

And every master of a merchant ship, or commander of a privateer, before he shall set sail from any port belonging to any of the said British sugar colonies, shall deliver to the chief officer of the customs of the port he sails from, an exact list of all the men belonging to such vessel, containing their names, ages, and description of their persons, upon pain of forfeiting 10l. for every man he shall receive on board, &c.

Upon the death or alteration of any seaman the list must be altered, and shewn to the
captains of men of war; and, in case any man belonging to his Majesty's ships of war shall be found on board, whose name is not in the list, the master or commander shall forfeit 50l. for every such man, &c.

The preamble sets forth, that by the preceding act of 13 Geo. 2. the sole property of all vessels and merchandize taken from the Spaniards, is given to the officers, &c. on board every privateer, being first adjudged lawful prize, and divers rules are therein established for the condemnation of such prizes; and by the said act a bounty is given to the officers and seamen, on their taking or destroying the enemy's ships, and that by the foregoing act of 17 Geo. 2. it was found necessary that the same encouragement should be given to the captors of French ships, &c.

All sales, bills of sale, contracts, agreements, and assignments of shares of prizes, &c. taken from the enemy by ships of war, or having letters of marque, which shall be made at any time after the said first of June, shall be void and of none effect.

The agents are to pay the respective shares of prizes and bounty money to all seamen, &c. as shall appear in person, or, in their absence, to their lawful attorneys, empowered by them, in manner herein-after directed, or to their executors, &c. without any regard to bargain or sale whatsoever, concerning the same.

After the said 1st of June no letter of attorney, made by any seaman, &c. in any ship of war, or having letters of marque, or by their executors, &c. in order to empower any person to receive any share of prizes or bounty money, shall be valid, unless the same be made revocable, and for the use of such seamen, and be signed and executed before, and attested by, the captain and one other of the signing officers of the ship, or the mayor or chief magistrate of some corporation.

As every war produces alterations, the following have been made since that which commenced in 1756.

If any captor or claimant shall not rest satisfied with the sentence given in the Admiralty Court abroad, the party aggrieved may appeal to the commissioners of appeals in cases of prizes in Great Britain; the same to be allowed in like manner as appeals from the Court of Admiralty in this kingdom, so as the same be made within fourteen days after sentence, and security be given to prosecute such appeals, and answer the condemnation, and to pay treble costs, in case the sentence be affirmed.

The execution of any sentence shall not be suspended by reason of such appeal, in case the party appellate give security, to be approved of by the Court, to restore the ship or effects, or the full value thereof, to the appellant, in case the sentence shall be reversed.

If any person, who was not a party in the first instance, shall interpose an appeal from a sentence given in any Admiralty Court, such person or his agent shall at the same time enter his claim, otherwise such appeals shall be null and void.

All appraisements and sales of ships or merchandizes, taken by his Majesty's ships of war, are to be made by agents, appointed in equal numbers by the flag-officers, captains, officers, ship's company, and others entitled thereto, viz. If the flag-officers, or flag-officer, of any fleet or squadron, which shall take any prize, or the majority of such flag-officers, if more than one, shall appoint one or more agents to sell or appraise the same, then the captains and commanders shall nominate the like number to act for them, and all the other officers shall appoint the like number to act for them; and all the crews of the several ships' companies, entitled thereto, shall appoint the same number of agents to act on their behalf.

But nothing herein is to extend to alter any agreement between the owners, officers, and seamen of privateers.

All agents for receiving the bounty for head-money are to exhibit and register in the Court of Admiralty, where the prize shall be condemned, their letters of attorney ap-
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pointing them agents; and if any agent shall refuse or neglect so to do for six months after condemnation, he is to forfeit 500l. to be recovered by the prosecutor.

If any agent is appointed after condemnation, he must make the same registry under the same penalty.

After the sale of any prize taken by any of his Majesty's ships of war, public notice is to be given by the agents of the day appointed for payment of the shares to the captors; after which, if any men's shares shall remain in their hands, either belonging to such men as shall be run from his Majesty's service, or not be legally demanded in three years, the same are to go to the use of Greenwich Hospital.

If any vessel shall be taken by collusion by a man of war, the commander or captain shall forfeit 1000l. one moiety to the use of his Majesty, the other to the prosecutor; and he shall forfeit his employment, and be incapable of any office under his Majesty, during the space of seven years; and the goods, ship, tackle, &c. so taken by collusion, shall be adjudged good prize to his Majesty.

Persons belonging to his Majesty's service who shall run away from their ships before notification of the payment of prizes or bounty money, are not entitled to their shares; but the same shall go to Greenwich Hospital.

And, if they run away after notification given, they forfeit such part of their shares as shall remain in the agent's hands.

All agents, &c. who shall dispose of any prize, are, within three months after the day of the first payment to the captors, to transmit to the treasurer of Greenwich Hospital, &c. a true state of the produce of such prizes, together with an account of the payment of the several shares to the captors, as shall then have been made; and all persons authorized to receive bounty bills are, in like manner, to transmit an account of the payment of the shares; and all agents, &c. who shall dispose of any prizes taken by any of his Majesty's ships of war, or that shall have received or disposed of any bills for bounty, are, within three months after the term of three years, limited by this act, to make out an exact account of the produce of such prize and bills for bounty; as also of the payments of the several shares to the captors, together with a true account upon oath, to be taken before the treasurer of the said hospital, &c. in writing under his hand and seal, of all sums then remaining in their hands, which money and accounts they are at the same time to deliver, taking an acquittance for the same.

The persons directed to deliver the accounts before-mentioned, and to pay the money within the time before limited and appointed, on neglect are to forfeit 100l. exclusive of the money then in their hands; one-third to his Majesty, the other two-thirds to the said hospital, with costs of suit.

If any fraud shall appear in the accounts, every person, his aids and abettors, are to forfeit 100l. over and above the aforesaid penalties; one-third to his Majesty, one-third to the hospital, and the other to the informer, with costs of suit.

No agent may be sued by any person who shall make a run from his Majesty's service, in the lists certified of the names of the officers, seamen, &c. actually on board any of his Majesty's ships of war, at the taking of any prize, until the end of three months after the expiration of the three years limited for the claiming of prizes and bounty money, unless such person shall, before any action brought, obtain a certificate of his R being taken off, and the forfeiture of his share of such prize and bounty money discharged by the commissioners of the navy, who subscribed the said lists, and shall produce such certificates to the agents, and unless the agent shall refuse thereupon to pay the said prize and bounty money within two months after such demand and certificate produced.

By section 4 of this statute it is enacted, that whereas the clandestine importation and running of spirits, tea, and other prohibited goods, into this kingdom, has, since
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the present hostilities, been carried on to a great degree in large vessels fitted out and armed as privateers: and whereas, by means of this illicit commerce, so prejudicial to the public revenue, and the fair trader, the powers with whom Great Britain is now at war may, and it is apprehended do, often receive intelligence very detrimental to this kingdom: For the better preventing whereof, be it further enacted by the authority aforesaid, that, from and after the first day of May one thousand seven hundred and eighty-two, if any ship or vessel whatsoever, which shall be commissioned by letters of marque, or general reprizals, or otherwise, by his Majesty’s commissioners for executing the office of Lord High Admiral of Great Britain, shall be found at sea in any part of this kingdom, at any distance from the coasts thereof, having on board any foreign brandy, or other foreign spirituous liquors, in any vessels or casks which shall not contain sixty gallons at the least, except only for the use of the seamen then belonging to and on board such ship or vessel, not exceeding two gallons for each seaman, or any tea, not exceeding the quantity of six pounds weight, or any other goods whatsoever which are or may be liable to forfeiture, by any act of parliament, upon being imported into Great Britain, then not only all such goods, but also the ship or vessel on board which they shall be found as aforesaid, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited and lost, and the same shall and may be carried and delivered into the care and custody of the collector and comptroller of his Majesty’s customs, at any port in this kingdom which shall be nearest to the place where such ship or vessel shall be found, and the same shall be seized, prosecuted, recovered, and disposed of, by such ways and rules, and in such manner and form, as such vessels and goods would be liable to be seized, prosecuted, recovered, and disposed of, by any law in force, if the same had been found within the limits of any port of this kingdom; and the letters of marque, or general reprizal, or any other commission granted for such ship or vessel, shall be null and void; any law, custom, or usage, to the contrary notwithstanding.

This provision was (amongst other things) confirmed and again enacted by the statute 33 Geo. 3. c. 34. which act was only to continue in force during the continuance of the then present war, and of course upon the expiration of that war ceased to have effect. The provisions of it, however, together with some additional enactments were subsequently re-enacted by the statute 45 Geo. 3. c. 72. the sections of which particularly applying to the present subject are hereafter given.

By the 10th section of this statute, it is enacted that the owners of all privateers, &c. 34 Geo. 3. cap. 41 shall give security by bond to his Majesty in double the value of the ship that she shall not be employed in smuggling, &c.

The preamble of this statute states, that whereas ships taken by the enemy, and condemned as prize, with their tackle, apparel, and furniture, (except sails,) are now by law subject and liable to duty on the sale thereof in this kingdom, or in case of condemnation out of this kingdom, on their first arrival therein: and whereas it is expedient that ships of war, or private ships or vessels of war, which shall be taken and legally condemned as prize, with their tackle, apparel, and furniture, should not be liable or subject to the payment of any duty whatever; be it therefore enacted by the King’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that no ship of war, nor any private ship or vessel of war, which shall be taken from the enemy, and legally condemned as prize, nor the sails, or any of the tackle, apparel, or furniture belonging to such ship or vessel, shall be charged or charge.

* A mistake; rectified by 22 Geo. 3. cap. 49. by omitting the word, ‘not.’
able with, or subject or liable to pay, any duty whatever; any law, custom, or usage to
the contrary notwithstanding.

II. And be it further enacted by the authority aforesaid, that in case any duty shall
have been paid according to the laws now in force for ships or vessels of the description
before mentioned, taken since the commencement of hostilities in the present war, or
upon the sails, tackle, apparel, and furniture of the same, it shall and may be lawful
for the commissioners of his Majesty’s customs, or any four or more of them, in Eng-
land, and the commissioners of his Majesty’s customs in Scotland, or any three or
more of them respectively, to order repayment of such duty so paid, and to cause the
same to be repaid in such manner as they the said commissioners respectively shall
judge proper.

The preamble of this statute sets forth, that “whereas an act, passed in the forty-
third year of the reign of his present Majesty, intituled, an act for the encouragement
of seamen, and for the better and more effectually manning his Majesty’s navy; for re-
gulating the payment of prize money; and for making provision for the salaries of the
judges of the Vice-Admiralty Courts in the Island of Malta, and in the Bermuda and
Bahama islands: and whereas since the passing of the said act, and the issuing of the
several orders and proclamations therein mentioned, divers injurious proceedings have
also been had in certain countries, styling themselves, the Italian and Ligurian Repub-
lics, and in Spain, in derogation of the honour of his Majesty’s crown, and the just
rights of his subjects: and whereas his Majesty, by his order in council, dated the seven-
teenth day of August one thousand eight hundred and three, was pleased to order that
general reprisals be granted against the ships, goods, and subjects of countries styling
themselves the Italian and Ligurian Republics: and whereas his Majesty, by his order
in council of the eleventh day of January one thousand eight hundred and five, was
pleased to order, that general reprisals be granted against the ships, goods, and subjects
of the King of Spain, so that as well his Majesty’s fleet and ships, as also all other ships
and vessels that should be commissioned by letters of marque, or general reprisals, or
otherwise, by his Majesty’s commissioners for executing the office of Lord High Admi-
ral of Great Britain, shall, and lawfully may, seize all ships, vessels, and goods belong-
ing to the said countries, or the King of Spain, or to any persons being subjects of the
said countries, or of the King of Spain, or inhabiting within any of the territories of the
countries, styling themselves the Italian and Ligurian Republics, or the King of Spain:
and whereas his Majesty hath, by his royal munificence, been graciously pleased, by his
proclamation dated the thirty-first day of January one thousand eight hundred and five,
to declare his intention to give the benefit of all prizes taken during the present war to
the captors thereof, being in his Majesty’s service, or duly commissioned: and whereas
it is expedient to make further regulations as to prize agents, and the business of prize
agency, and it will greatly tend to the better execution of the provisions of the said act,
and of such other provisions as may be necessary, for regulating the distribution of prize
money, that the whole thereof should be consolidated into one act, and for that purpose
that the said recited act should be repealed:” Be it enacted by the King’s Most Ex-
cellent Majesty, by and with the advice and consent of the Lords Spiritual and Tempo-
ral, and Commons, in this present Parliament assembled, and by the authority of the
same, that the said recited act shall be, and the same is hereby repealed, save and ex-
cept as to all acts, matters, and things done, or required to be done under the same,
or in pursuance of any of the clauses or provisions thereof; which shall be, and are
hereby declared to be as good, valid, and effectual, and remain in full force, to all pur-
poses, as if the same had been done under and in pursuance of the provisions of this act.

And, as a further encouragement to the officers, seamen, marines, soldiers, and
of privateers.

others, on board his Majesty's ships of war, as also of privateers, to attack any ships of war or privateers belonging to the enemy; be it enacted, that there shall be paid by the treasurer of his Majesty's navy, upon bills to be made forth by the commissioners of the navy, to be paid according to the course thereof, without fee or reward, unto the officers, seamen, marines, soldiers, and others, who shall have been actually on board any of his Majesty's ships, or ships of war, or hired armed vessels or vessels, or of any privateer or privateers at the actual taking, sinking, burning, or otherwise destroying any ship or ships of war or privateers belonging to the enemy since the second day of May one thousand eight hundred and three, and during the present war, five pounds for every man who was living on board any ship or vessel so taken, sunk, burnt, or otherwise destroyed at the beginning of the attack or engagement between them; the numbers of such men to be proved by the oath of three or more of the chief officers or men who were belonging to the said ship or vessel of war, or privateers of the enemy, or belonging to any of them at the time of their or their being taken as prize, sunk, burnt, or otherwise destroyed, or in case so many as three shall not survive the engagement, upon the oaths or oath of such of them as shall survive, before the mayor or other chief magistrate of the port within any of his Majesty's dominions, whereunto any prize, or officers or men of such ships as were taken, sunk, burnt, or otherwise destroyed, shall be brought, or before the British Consul or Vice-Consul residing at any neutral port to which such prize, or officers or men shall be brought, which oaths the said mayor or other chief magistrate of any such port, or Consul or Vice-Consul, are hereby respectively empowered and required to administer, and shall, without fee or reward, forthwith grant a certificate thereof; and also of the deponents or deponent, (if less than three), having likewise made oath, and to the best of his or their knowledge and belief, no other person or persons belonging to the enemy's ships or ship survived the engagement, which certificate shall be directed to the commissioners of his Majesty's navy; and upon the production thereof to them the said commissioners, together with an authentic copy of the sentence or decree of condemnation of such ship so taken, or where such certificate cannot be had and obtained, then upon producing only a copy of the sentence or decree of condemnation, whereby the number of men on board such ships of the enemy shall appear to have been proved, as if such ships be sunk, burnt, or otherwise destroyed, on producing only a certificate from the mayor or other chief magistrate, or Consul or Vice-Consul as aforesaid, the said commissioners of his Majesty's navy, or such person or persons as they shall appoint for that purpose, shall, according to the course of the navy, within fifteen days make out bills for the amount of such bounty, directed to the treasurer of the navy, payable to and to be divided amongst the officers, seamen, marines and soldiers on board his Majesty's ships of war, or hired armed ships, in manner, form, and proportion as by his Majesty's proclamation for granting the distribution of prizes already issued or to be issued for that purpose, is or shall be directed and appointed, and amongst the owners, officers, and seamen of any private ship or vessel of war, in such manner and proportion as by any agreement in writing they shall have entered into for that purpose, shall be directed: Provided nevertheless, that in all cases where such oath and certificate cannot be administered and granted at the first port whereunto any prize, or officers or men of such ships as have been or shall be taken, sunk, burnt, or otherwise destroyed, shall be brought, such oath or oaths relating to any prize or prizes that shall be taken, or to any ships of his Majesty's enemies that shall be sunk, burnt, or otherwise destroyed aforesaid, shall and may be administered and taken by and before the mayor or other chief magistrate of any port within any of his Majesty's dominions, or by or before the British Consul or Vice-Consul residing at any neutral port whereunto any prize or prizes, or officers or men of any ships belonging to his Majesty's enemies as have or shall be taken, sunk, burnt, or otherwise destroyed,
shall at any time afterwards he brought, proof being first made by affidavit before such person or persons of the inability of making such oath or oaths, and obtaining such certificate at the said first port, and the mayor or other chief magistrate, Consul or Vice-Consul, shall thereupon grant such certificate and certificates as are herein-before directed, which certificate and certificates shall be good and effectual to all intents and purposes, as if the same were granted by the mayor or other chief magistrate, Consul or Vice-Consul, of the port to which such prize or prizes, officers or men as aforesaid shall be first brought, any thing herein contained to the contrary thereof in any wise notwithstanding: Provided always, that where such oath of the number of men on board any ship or ships so taken, burnt, sunk, or otherwise destroyed, cannot be had by reason of the total destruction of the officers and crew of such ship or ships; then and in every such case the number of men on board such ship or ships at the beginning of the attack or engagement shall be ascertained by such evidence as under the circumstances of the case, shall, by the Judge of the High Court of Admiralty, or by the Judge of any other court duly authorized, be deemed sufficient proof thereof: provided likewise, that in any cases in which doubts shall arise whether the party or parties claiming head money are entitled thereto, the same shall be summarily determined by the Judge of the High Court of Admiralty, or by the Judge of any other Court of Admiralty in which the prize shall have been adjudged, subject nevertheless to an appeal to the Lords Commissioners of appeal in prize causes.

Provided always, and be it enacted, that if any ship or vessel, or boat, taken as prize, or any goods therein, shall appear and be approved in any Court of Admiralty having a right to take cognizance thereof, to have belonged to any of his Majesty's subjects of Great Britain or Ireland, or of any of the dominions and territories remaining and continuing under his Majesty's protection and obedience, which were before taken or surprised by any of his Majesty's enemies, and at any time afterwards again surprised and retaken by any of his Majesty's ships of war, or any privateer, or other ship, vessel, or boat under his Majesty's protection and obedience, that then such ships, vessels, boats, and goods, and every such part and parts thereof as aforesaid, formerly belonging to such his Majesty's subjects, shall in all cases (save in such as are hereafter excepted) be adjudged to be restored, and shall be, by the decree of the said Court of Admiralty, accordingly restored to such former owner or owners, or proprietor or proprietors, he or they paying for and in lieu of salvage (if retaken by any of his Majesty's ships or hired armed ships) one-eighth part of the true value of the ships, vessels, boats, and goods, respectively so to be restored, which said salvage of one-eighth shall be answered and paid to the flag officers, captains, officers, seamen, marines, and soldiers in his Majesty's said ship or ships of war, to be divided in such manner as before in this act is directed, touching the share of prizes belonging to the flag officers, captains, officers, seamen, marines, and soldiers, where prizes are taken by any of his Majesty's ships of war; and if retaken by any privateer or other ship, vessel, or boat, one-sixth part of the true value of the said ships, vessels, boats, and goods; all which payments to be made to the owner or owners, officers and seamen of such privateer, or other ship, vessel, or boat, shall be without any deductions, and shall be divided in such manner and proportions as shall have been agreed on by them as aforesaid; and in case such ship, vessel, or goods, shall have been retaken by the joint operation or means of one or more of his Majesty's ships, and one or more private ship or ships, then the Judge of the High Court of Admiralty, or other court, having cognizance thereof, shall order and adjudge such salvage to be paid to the recaptors by the owner or owners of such retaken ship, vessel, or goods, as he shall, under the circumstances of the case, deem fit and reasonable, which salvage so to be adjudged shall be accordingly paid by the owners of such retaken ship, vessel, or goods, to the agents of the recaptors, in such proportions as
the said court shall adjudge; but if such ship or vessel so retaken shall appear to have been, after the taking by his Majesty's enemies, by them set forth as a ship or vessel of war, the said ship or vessel shall not be restored to the former owners or proprietors, but shall in all cases, whether retaken by any of his Majesty's ships, or by any privateer, be adjudged lawful prize for the benefit of the captors.

VIII. And be it further enacted, that all regulations herein contained respecting prizes, shall apply to all cases of bounty money granted by this act, and of salvage upon recaptures from his Majesty's enemies.

IX. And be it further enacted, that the Lord High Admiral of Great Britain, or the commissioners for executing the office of Lord High Admiral of Great Britain for the time being, or any three or more of them, or any person or persons by him or them empowered and appointed, shall, at the request of any owner or owners whom they shall deem fitly qualified of any ship or vessel registered pursuant to the directions of an act, passed in the twenty-sixth year of the reign of his present Majesty, intituled, an act for the further increase and encouragement of shipping and navigation, or of an act, passed in the thirty-fourth year of the reign of his present Majesty, intituled, an act for the further encouragement of British mariners, and for other purposes therein mentioned, (such owner or owners giving such bail or security as herein-after is mentioned or expressed) cause to be issued in the usual manner, one or more commission or commissions, or letter or letters of marque and reprisal, to any person or persons whom such owner or owners shall nominate to be commander, or in case of death, successively commanders of such ships or vessels, for the attacking, surprizing, seizing, and taking by and with such ship or vessel, or with the crew thereof, any place or fortress upon the land, or any ship or vessel, arms, ammunition, stores of war, goods, or merchandise, belonging to or possessed by any of his Majesty's enemies in any sea, creek, haven or river; and that such ship or ships, vessel or vessels, arms, ammunition, stores of war, goods, and merchandise whatsoever, with all their furniture, tackle, and apparel so to be taken by or with such private owner or owners ship or vessel according to such commission and commissions, or letter or letters of marque, after final adjudication as lawful prize in the High Court of Admiralty, or in any other Court of Admiralty in his Majesty's dominions, which shall be duly authorized thereto as aforesaid, shall wholly and entirely belong to and be divided between and among the owner or owners of such ship or vessel, and the several persons who shall be on board the same, and be aiding and assisting in the taking thereof, in such shares and proportions as shall be agreed on with the owner or owners of such ship or vessel as shall be the captor thereof, their agents or factors, as the proper goods and chattels of such owner or owners, and the persons who shall be entitled thereto by virtue of such agreements among themselves; and that neither his Majesty, his heirs or successors, nor any admiral, vice-admiral, governor, or other person commissioned by or claiming under his Majesty, his heirs and successors, nor any other person or persons whomsoever, other than the owner or owners of such ship or vessel, being the captor of such prize ship or vessel, arms, ammunition, stores of war, goods and merchandise, and the person claiming under such agreements, shall be entitled to any part or share thereof, except as to the customs and duties hereafter mentioned, any law, usage, or custom to the contrary thereof in anywise notwithstanding; provided always, that nothing in this act contained shall extend or be construed to extend to entitle any person or persons to any interest in such ships or vessels, goods or merchandise, as may be captured by any private ship or vessels of war belonging to or hired by, or in the service of his Majesty's commissioners of customs or excise, but that the same ships or vessels, goods and merchandise, so captured, shall belong to his Majesty, and be applied and disposed of in such man-
be given by the divers or persons

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any of the said other courts, or his deputy, or the person or persons so commissioned as aforesaid, shall make diligent enquiry, and certify him or themselves of the sufficiency of such bail and security, and make thereupon a report to such Judge or his surrogate, before any such commission or letter of marque shall be granted.

XII. And be it further enacted, that if any collector, customer, or seacher of his Majesty's customs, or his or their lawful deputy or deputies, shall grant a certificate for any ship or vessel which shall not be of the burthen and force specified in the commission or letter of marque granted to the commander or commanders thereof, or shall certify to a greater burthen or force than she really is, he shall for every such offence forfeit his said office, and be for ever incapable of holding any office under government whatsoever, and shall also forfeit the sum of one hundred pounds: provided always, that the burthen of such ship or vessel so to be certified, shall be ascertained by the certificate of registry granted for such ship or vessel, under and pursuant to the directions of the said recited acts made in the twenty-sixth and thirty-fourth years of the reign of his present Majesty, or an authenticated copy thereof, in case the ship shall be at sea, which certificate or authenticated copy shall be produced to the said Lord High Admiral, or commissioners for executing the said office of Lord High Admiral of Great Britain, before the issuing of any commission or letter of marque for such ship or vessel: provided nevertheless, that it shall not be necessary in the case of ships belonging to or hired by, or in the service of his Majesty's commissioners of customs or excise, to produce such certificates or authenticated copies, in order to the obtaining a commission or letter of marque.

XIII. Provided also, and be it further enacted, that all and every ship and vessel for which such commission or letter of marque shall be granted as aforesaid, and for and during the time that such commission or letter of marque shall remain in force under the authority of this act, and no longer, shall be deemed and taken to be a ship or vessel licensed pursuant to an act of parliament, made and passed in the twenty-fourth year of the reign of his present Majesty, intituled, an act for the more effectual prevention of smuggling in this kingdom, although the owner or owners of such ship or vessel shall not have been furnished with the licence required by the said recited act.

XIV. Provided also, and be it further enacted, that in case the owner or owners, commanding master, or other person having or taking the charge or command of any ship or vessel for which such commission or letter of marque shall be issued, as aforesaid, shall be guilty of any offence contrary to any act or acts of parliament now in force, or hereafter to be made for the protection of his Majesty's revenues of customs or excise, or for the prevention of smuggling in this kingdom, such owner or owners, commanding master, and other persons, shall forfeit the commission or letter of marque so issued for such ship or vessel, over and besides any other penalties and forfeitures which he or they shall have incurred by reason of such offence.

XV. And be it further enacted, that it shall be lawful for the Lord High Admiral of Great Britain, or the commissioners for executing the office of Lord High Admiral of Great Britain for the time being, or any three or more of them, at any time or times hereafter, to revoke and make void, by any order or orders in writing under his or their hand or hands, any commission or commissions, or letter or letters of marque which hath or have been, or shall be issued forth to any person or persons who hath, have been, or shall be nominated commander or commanders of any ship or vessel, either in pursuance of his Majesty's orders in council, or this present act: provided nevertheless, that the secretary of the Admiralty for the time being shall, with all convenient speed, after every and any such commission or letter of marque shall be so revoked, cause notice thereof in writing to be forthwith sent to the owner or owners of the ship or vessel named or described in such order of revocation, or to his, her, or their agent or agents.
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sirity or sureties, or some or one of them; and in case such ship or vessel shall be in the Channel, the said order of revocation shall be effectual to supersede and annul the said commission or letter of marque at the expiration of twenty days from and after such notice given as aforesaid, or sooner if notice shall be actually given in writing by the secretary of the Admiralty to the captain or commander thereof; and in case such ship or vessel shall be in the northern seas, at the expiration of thirty days; and in case such ship or vessel shall be to the southward of Cape Finisterre, or in the Mediterranean, at the expiration of six weeks; and in case such ship or vessel shall be in North America, or the West Indies, at the expiration of three months; and in case such ship or vessel shall be in the East Indies, at the expiration of six months from and after such respective notices shall be given as aforesaid; that any commander or commanders, owner or owners, agent or agents, surety or sureties, of any such ship or vessel whereof such commission or letter of marque issued or to be issued forth as aforesaid, shall be so revoked as aforesaid, may complain thereof to his Majesty in council within thirty days next after the secretary to the Admiralty for the time being shall cause notice thereof to be given as aforesaid; and the determination of his Majesty in council touching every such complaint shall be final: provided always, that in case any such order of revocation shall be superseded, such commission and letter of marque shall be deemed and taken to have continued in force, and all prizes taken by virtue thereof shall belong to and be the property of such owners and captors, in such manner as the same would have been in case such order of revocation had not been made: provided also, that no person shall be liable (before he shall have received personal notice of such order of revocation) to be punished for doing any matter or thing which he might have lawfully done under the authority of such commission or letter of marque, in case such order of revocation had not been made.

XIX. And be it further enacted, that in case at any time or times any commander or commanders of any of his Majesty’s ships or vessels of war, or of any hired armed ship in his Majesty’s service, or of any private ship or ships, or vessel or vessels of war commissioned as aforesaid, shall agree with the commander or commanders, or other person or persons of or belonging to any neutral or other ship or ships, vessel or vessels, or their respective cargo or cargoes thereof, or any part thereof, for the ransom of any such ship, vessel, or cargo, or any part thereof, after the same shall have been taken as prize, and shall, in pursuance of such agreement or agreements, actually quit, set at liberty, or discharge any such prize or prizes, instead of bringing the same into some port or ports belonging to his Majesty’s dominions, that then all and every of the commander or commanders of such ship or vessel of war, or hired armed ship, or such private ship or ships, or vessel or vessels of war, who shall agree for any such ransom, and shall quit, set at liberty, or discharge any such prize or prizes in manner aforesaid, unless in case of extreme necessity, to be allowed by the Court of Admiralty, shall forfeit and suffer such penalty or fine as the court shall adjudge, not exceeding the sum of one hundred pounds; and the commander of such private ship shall likewise forfeit his letter of marque.

XX. And be it further enacted, that in case any ship or vessel, or any goods or merchandise shall be taken or retaken and restored by the commander or other person having the charge or command of any privateer, or other ship, vessel, or boat under his Majesty’s protection and obedience, clandestinely, or by collusion or connivance, or by consent (unless the same shall be afterwards allowed and approved of by the Court of Admiralty) of such commander or other person, without being brought to adjudication, the ship and vessel, and goods and merchandise so taken, or retaken, and restored, and also the ship’s tackle, furniture, apparel, arms, and ammunition, shall upon proof thereof, to be made in any Court of Admiralty having legal cognizance thereof, be de-
anded and adjudged to be good prize to his Majesty, and any bond given by the cap-
tain or commander of such vessel or boat shall be and is hereby declared to be forfeited
to his Majesty; and in case any such ship or vessel, or any goods or merchandize as
aforesaid shall be taken or retaken, and restored by any commander, captain, or other
officer having the command of any ship or vessel of war, belonging to his Majesty, clan-
destinely, or by collusion or connivance, or by consent (unless the same shall afterwards
be allowed and approved of by the Court of Admiralty) of such commander, captain, or
other officer, shall forfeit the sum of one thousand pounds, and the said goods and mer-
chandize, and the ship, tackle, apparel, furniture, guns, and ammunition so taken or
retaken, and restored in manner aforesaid, shall be, and are hereby directed to be ad-
judged in all Courts of Admiralty having legal cognizance thereof, as good prize to his
Majesty.

XXI. Provided nevertheless, and be it hereby enacted, that if a ship be retaken be-
fore she has been carried into an enemy's port, it shall be lawful for her, if the recaptors
consent thereto, to prosecute her voyage, and it shall not be necessary for the recaptors
to proceed to adjudication till six months, or till the return of the ship to the port from
which she sailed; and it shall be lawful for the master, the owners, or their agents, with
the consent of the recaptors, to unladen and dispose of their cargoes before adjudication;
and in case the vessel shall not return directly to the port from whence she sailed, or
the recaptors shall have had no opportunity of proceeding regularly to the adjudication
within six months, on account of the absence of the said vessel, the Court of Admi-
ralty shall, at the instance of the recaptors, decree the restitution to the former owners,
paying salvage, upon such evidence as to the said court shall, under the circumstances
of the case, appear reasonable, the expense of such proceeding not to exceed the sum
of fourteen pounds.

XXII. And whereas good and necessary laws are in force within several of his Majes-
ty's colonies and plantations in America, for preventing the carrying off from the said
colonies or plantations any servant or slave without the consent of the owner, or the
carrying off from thence any other person or persons whomsoever, until such person
shall have taken out his ticket from the secretary's office within such respective colony
or plantation, in such manner, and under such penalties and forfeitures, as in and by
the said several laws is declared and provided; be it therefore enacted, that all com-
manders of private ships of war, or merchant ships having letters of marque, shall, upon
their going into any of the ports or harbours in the said colonies or plantations, be sub-
ject, and they are hereby declared to be subject, to the several directions, provisions,
penalties, and forfeitures in and by such laws made and provided; any thing in this act
contained to the contrary thereof in anywise notwithstanding.

XXV. Provided always, that nothing in this act contained shall entitle any private
ship or vessel having a commission for war, and which shall receive general orders and
instructions from and put herself under the convoy of any of his Majesty's ships or ves-
sele, to share in any prize or prizes taken by such ships or vessels of his Majesty, or by
such private ship or vessel having a commission for war or letter of marque, whilst the
said commissioned ship or vessel shall remain under the care and protection of such con-
voy, unless such private ship or vessel shall have received orders from the commander
of the convoying ship to chase or otherwise act hostilely against the enemy, and shall
have been actually aiding and assisting in such captures.

XXVI. And whereas in all private ships or vessels of war, or merchant ships or ves-
sels for which commissions or letters of marque shall be taken out, and likewise hired
armed vessels taken into his Majesty's service, it is expedient, for the better disciplin-
ing and government of such ships and vessels, that all persons who enter themselves on
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board the same should be under proper regulations, and pay obedience to the lawful
commands of the captains and chief commanders of the said ships and vessels; be it
therefore enacted, that all offences committed by any officer or seaman on board any
vessel having taken a commission or letter of marque during the present hostilities, or
on board any hired armed vessel in his Majesty’s service, shall be tried and punished in
such manner as the like offences are tried and punished when committed by any person
belonging to his Majesty’s fleet: provided always, that all offenders who shall be accused
of such crimes as are cognizable by a court martial, shall be confined on board such
privateer or merchant ship or vessel carrying letters of marque, in which such offence
shall be committed, until they shall arrive at some port in Great Britain or Ireland, or
can meet with such a number of his Majesty’s ships of war abroad as are sufficient to
make a court martial; and upon application made by the commander of such ship or
vessel carrying letters of marque, or hired armed vessels in his Majesty’s service, to the
Lord High Admiral of Great Britain, or to the commissioners for executing the office
of Lord High Admiral of Great Britain, for the time being, or to the commander in
chief or senior officer of his Majesty’s said ships of war abroad, the said Lord High Ad-
мирал, or commissioners for executing the office of Lord High Admiral of Great Britain,
for the time being, or any three or more of them, or such commander in chief or senior
officer abroad, are hereby authorized and required, in the usual manner, to call a court
martial for trying and punishing the said offences.

XXVIII. “And whereas great numbers of ships of foreign nations may pass the seas
laden with naval stores, intended to be carried to the ports of France, or of other coun-
thries at war with his Majesty, whereby his Majesty’s enemies may not only be enabled
and encouraged to fit out and arm privateers to destroy the trade of his Majesty’s sub-
jects, but may also be supplied with materials to build and fit out ships of war to annoy
and invade his Majesty’s dominions: and whereas divers ships of foreign nations laden
as aforesaid, may be taken and brought into the ports of Great Britain, and the pur-
chase of such naval stores laden on board such ships of foreign nations, for the service
of his Majesty, may in many cases be expedient, without proceeding to the condemna-
tion thereof;” be it therefore further enacted, that it shall and may be lawful to and for
the principal officers and commissioners of his Majesty’s navy or victualling for the time
being, or their officers or agents, during the continuance of the present war, to purchase
on the account, or for the service of his Majesty, his heirs and successors only, all or
any such naval stores found on board any such ships of foreign nations, which have been,
or shall or may hereafter be brought into any of the ports of this kingdom by any of his
Majesty’s ships or vessels, or by any private ships or vessels of war, or other ships or
vessels having a commission or letters of marque, and that the commissioners and offi-
cers of the customs for the time being shall and may permit and suffer such naval stores
so purchased as aforesaid, to be entered and landed within any of the ports of this king-
dom; any thing in an act of parliament passed in the twelfth year of the reign of his
late Majesty King Charles the Second, intituled, an act for the encouraging and increas-
ing of shipping and navigation or in any other statute made subsequent thereto contain-
ed, to the contrary thereof, in any wise notwithstanding.

XXX. And be it further enacted, that if any commander or commanders, officer or
officers, seamen, marines, soldiers, or others, shall break bulk on board, (except in
the case of necessity, to be allowed by the Court of Admiralty), or embezzle any of the
money, jewels, plate, goods, merchandise, tackle, furniture, or apparel of or belonging
to any prize or prizes, such commander, officer, seaman, marine, soldier, or other per-
son, shall for every such offence forfeit his whole share in such prize to his Majesty for
the use of the Royal Hospital at Greenwich, and so to be adjudged on proof thereof by
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the Court of Admiralty, in which such proof shall be made, and shall also forfeit treble the value of all such money, jewels, plate, goods, merchandise, tackle, furniture, or apparel, as he or they shall embezze.

XXXI. And be it further enacted, that all such captures as aforesaid, which shall be brought into any of his Majesty's dominions abroad, in order to be proceeded against to condemnation in any of his Majesty's Courts of Vice Admiralty, being thereto duly authorized, shall, without breaking bulk, stay there, and be under the joint care and custody of the collector and comptroller of the customs, and where there is no comptroller, then of the naval officer of the port or place where the same shall be brought, and the captors or claimants thereof, or their agent or agents, subject to the direction of such Court of Vice Admiralty, until the same shall by final sentence have been either cleared and discharged, or adjudged and condemned as lawful prize, or that such interlocutory order as aforesaid shall have been made for the releasing or delivering the same; and upon the final condemnation or adjudication thereof as lawful prize, shall be immediately delivered unto the captors thereof or their agents.

XXXII. And be it further enacted and declared, that it shall be lawful for the Judge of the High Court of Admiralty, or the Judge of any other Court lawfully commissioned to take cognizance of prize, upon due proof of the breach of any of his Majesty's instructions relating to prizes, or of any offence against the law of nations committed by the captors in relation to any prize, or to the persons taken on board the same, to condemn the prize to his Majesty's use and disposal, save as herein above is directed with respect to breaking of bulk or embezzelement; and where the prize hath been taken by a ship having a commission or letter of marque, to revoke the same, and to pronounce the bond to be forfeited, and to compel payment of the penalty secured thereby, subject nevertheless to an appeal to the Lords Commissioners of appeals in prize causes.

XL. And be it further enacted, that no Judge, register, or deputy register, marshal, or deputy marshal, or any other whomsoever, of or belonging to any Court of Admiralty or Vice-Admiralty, nor any person or persons practising either as advocate, proctor, or otherwise, in any such Court or Courts, shall be concerned, or interested directly or indirectly as owner, part owner, sharer, or adventurer in any private ship or ships, or vessel or vessels of war whatsoever having any commission or commissions, or letter of marque as aforesaid; and in case any such Judge, register, deputy register, marshal, deputy marshal, or other officer, advocate, or proctor whatsoever, shall, notwithstanding this act, be directly or indirectly concerned or interested as aforesaid, such Judge, register, deputy register, marshal, deputy marshal, or other officer respectively, shall, for every such offence, (being thereof lawfully convicted in any of his Majesty's courts of record in Great Britain, or at any general session of the peace in any of his Majesty's colonies or plantations in America,) absolutely forfeit his office and employment in and belonging to any such Court of Admiralty or Vice-Admiralty, of what kind or nature soever such office or employment may be, and shall also forfeit and pay to the use of his Majesty, his heirs and successors, the sum of five hundred pounds; and every such advocate or proctor respectively, shall for such last mentioned offence (being thereof lawfully convicted in manner aforesaid), be from thenceforth absolutely disqualified, and rendered incapable of practising either as an advocate or proctor in any of his Majesty's Courts of Admiralty or Vice-Admiralty wheresoever.

XLI. And be it further enacted, that no register or deputy register, nor any marshal, or deputy marshal of or belonging to any of his Majesty's Courts of Admiralty or Vice-Admiralty whatsoever, shall, either directly or indirectly, by himself or themselves, or by any agent or agents, or other person or persons whomsoever, act or be concerned in any manner, either as an advocate or proctor in any cause, matter, or business what-
to which he belongs.

Penalty, forfeiture of office.

Six small privateers taken from the enemy may be included in one adjudication.

Continuance of act during the war, except as to matters in judgment, &c.

Annuities to Judges. See s. 59, 54, 55.

Letters of attorney, s. 92, 93, 97.

Personalizing grants, &c. s. 121.

Treasurer of Navy, &c.

Greenwich Hospital. See s. 58, 91, &c. 94, &c. 101, &c.

soever, that shall be depending in any such Court or Courts of Admiralty or Vice-Admiralty, to which such register, deputy register, marshal, or deputy marshal, shall then belong; and that every register, deputy register, marshal, or deputy marshal, who shall be guilty of such offence (being thereof lawfully convicted, either upon an information or indictment in manner aforesaid), shall from thenceforth absolutely forfeit his respective office and employment of register, deputy register, marshal, or deputy marshal, in and belonging to the same court.

XLV. "And, for the encouragement of the capture of such armed ships, belonging to the enemy," be it further enacted, that it shall be lawful for the captors to include in one adjudication any number, not exceeding six, of such small armed ships, having a commission or letter of marque from the enemy, not exceeding seventy tons each, and which shall have been taken within the space of three months preceding the application to the Court of Admiralty for such adjudication.

CXXIII. Provided always, and be it further enacted, that this act shall continue in force during the present war, and no longer; save and except as to all such matters and things as shall be depending in judgment in the High Court of Admiralty, or other Courts of Admiralty in his Majesty's dominions abroad, or Court of Appeal, or in any Court of Record in Great Britain, at the time when the present war shall cease; and also save and except as to all such other matters and things which shall be brought into judgment, before the said High Court of Admiralty, or other Courts of Admiralty in his Majesty's dominions abroad, or Court of Appeal, or in any Court of Record in Great Britain, in consequence of any capture or captures made during the present or any former war, or of any offence or offences committed contrary to this act; and also save and except as to the power by this act given to his Majesty, to grant to any Judge of any court or Vice-Admiralty any such annuity as aforesaid, and in such cases, and on such conditions as aforesaid, in respect whereof this act shall continue in full force until such matters, and every thing dependant thereupon, shall be finally adjudged and determined; and also save and except the regulations contained in this act regarding letters of attorney and orders of petty officers and seamen, non-commissioned officers of marines, and marines; and also save and except as to the clauses and provisions herein contained, by which the punishment attached to the crimes of personating seamen, and of forgery when committed with intent to defraud any person or persons, is extended and made applicable to such offences when committed with intent to defraud any corporation or corporations; and also save and except all regulations regarding all powers and interests given to the Treasurer of the Navy, and the commissioners and governors and other officers of Greenwich hospital, all which shall continue in force until repealed by any subsequent act of Parliament.

The provisions of this act have been extended to cases arising under subsequent orders of reprisal, by 48 Geo. 3. c. 132, 49 Geo. 3. c. 128. s. 40. and to royal and parliamentary grants to captors, by 49 Geo. 3. c. 123, sect. 30 and 31. and during hostilities, vessels condemned and sold by commissioners of customs and excise may be commissioned as privateers, 43 Geo. 3. c. 128, s. 5. and see sect. 10. of the 45 Geo. 3. c. 72, above given.

GENERAL OBSERVATIONS ON PROCEEDINGS.

The expence at the Admiralty-Office of a letter of marque, or a commission is 1l. 2s. 6d. and at the Commons 9l. 14s. 6d. but proctors, when employed, generally charge fifteen guineas.
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An Order from the Lords of the Admiralty to the Judge of the High Court of Admiralty, to make out the Commission.

By the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c.

Whereas by his Majesty’s commission under the great seal of Great Britain, bearing date the we are required and authorized to issue forth and grant commissions to any of his Majest’s subjects, or others, whom we shall deem fitly qualified in that behalf, for the apprehending, seizing, and taking the ships, vessels, and goods belonging to or the vassals and subjects of the King, or others inhabiting within any of his countries, territories, and dominions, and such other ships, vessels, and goods as are or shall be liable to confiscation, pursuant to the respective treaties between his Majesty and other princes, states, and potentates, and to bring the same to judgment in his Majesty’s High Court of Admiralty of England, or such other Court of Admiralty as shall be lawfully authorized in that behalf, for proceedings and adjudication, and condemnation to be thereupon had, according to the course of Admiralty and law of nations, with other powers in the said commission expressed; a copy whereof, together with his Majesty’s instructions under his royal signet and sign manual, remains with you: these are therefore to will and require you forthwith to cause a commission, or letter of marque, to be issued out of the High Court of Admiralty unto commander of the ship called the burthen about tons, mounted with guns, and navigated with warlike manner, the said ship called the whereof the said is commander, and to apprehend, seize, and take the ships, vessels, and goods belonging to or the vassals and subjects of the King, or others inhabiting within any of his countries, territories and dominions, and such other ships, vessels, and goods as are or shall be liable to confiscation, pursuant to the respective treaties between his Majesty and other princes, states, and potentates, according to his Majesty’s commission and instructions aforesaid. And you are to insert therein a clause, injoining the said to keep an exact journal of his proceedings; and therein particularly to take notice of all prizes which shall be taken by him, the nature of such prizes, the time and place of their being taken, and the value of them as near as he can judge; as also the station, motion, and strength of the enemy, as well as he can discover by the best intelligence he can get; of which he is, from time to time, as he shall have opportunity, to transmit an account to our secretary, and to keep correspondence with him by all opportunities that shall present. Provided always, that, before you issue such commission, security be given thereupon, according as is directed by his Majesty’s instructions afore-mentioned, and hath been used in such cases. The said commission to continue in force until further order: for which this shall be your warrant. Given under our hands, and the seal of the office of Admiralty, this day of 17.

To Judge of the High Court of Admiralty.

By command of their Lordships.
GEORGE the Second, by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith; To all People to whom these presents shall come, greeting: Whereas we, by our declaration of the nineteenth day of October, in the year of our Lord one thousand seven hundred and thirty-nine, for the reasons therein contained, have declared war against Spain; And whereas we, by our declaration of the twenty-ninth day of March, in the year of our Lord one thousand seven hundred and forty-four, for the reasons therein contained, have declared war against France. And whereas we, by our commission under our great seal of Great Britain, bearing date the eighteenth day of June following, have willed, required, and authorized our High Admiral of Great Britain and Ireland, &c. for the time being, and our commissioners for executing the office of our High Admiral of Great Britain and Ireland, &c. and the commissioners for executing the said office, for the time being, or any three or more of them, to issue forth and grant commissions to any of our loving subjects, or others, whom our High Admiral aforesaid, or our said commissioners for executing the said office, and the commissioners for executing the same for the time being, shall deem fitly qualified in that behalf, for the apprehending, seizing, and taking the ships, vessels, and goods belonging to France and Spain, or the vassals and subjects of the French King or King of Spain, or either of them, or others inhabiting within any of their or either of their countries, territories, and dominions, and such other ships, vessels, and goods as are or shall be liable to confiscation, pursuant to the respective treaties between us and other princes, states, and potentates, and to bring the same to judgment in our High Court of Admiralty of England, or such other Court of Admiralty as shall be lawfully authorized in that behalf for proceedings and adjudications, and condemnation to be thereupon had, according to the course of Admiralty and laws of nations, and with such clauses to be therein inserted, and in such manner, as by our said commission more at large appeareth. And whereas our said commissioners for executing the office of our High Admiral aforesaid, have thought fitly qualified, who hath equipped, furnished, and victualled a ship called of the burthen of about tons, whereof he the said is commander. And whereas the said hath given sufficient bail, with sureties, to us in our said High Court of Admiralty, according to the effect and form set down in our instructions made the said eighteenth day of June, one thousand seven hundred and forty-four, and in the eighteenth year of our reign, a copy whereof is given to the said captain. Know ye therefore, that we do by these presents grant commission to, and do license and authorize the said to set forth in warlike manner the said ship called the under his own command; and therewith, by force of arms, to apprehend, seize, and take the ships, vessels, and goods belonging to France and Spain, or the vassals and subjects of the French King or King of Spain, or either of them, or others inhabiting within any of their or either of their countries, territories, and dominions, and such other ships, vessels, and goods, as are or shall be liable to confiscation, pursuant to the respective treaties between us and other princes, states, and potentates, and to bring the same to such ports as shall be most convenient in order to have them legally adjudged in our said High Court of Admiralty of England, or before the Judges of such other Admiralty Court as shall be lawfully authorized within our dominions; which being condemned, it shall and may be lawful for the said to sell and dispose of such ships, vessels, and goods, so adjudged and con
demned in such sort or manner as by the course of Admiralty hath been accustomed, except in such cases where it is otherwise directed by our said instructions. Provided always, that the said keep an exact journal of his proceedings, and therein particularly take notice of all prizes which shall be taken by him, the nature of such prizes, the times and places of their being taken, and the values of them, as near as he can judge; as also of the station, motion, and strength of the enemies, as well as he or his mariners can discover by the best intelligence he can get, and also of whatsoever else shall occur unto him, or any of his officers or mariners, or be discovered or disclosed unto him or them, or found out by examination or conference with any mariners or passengers of, or in, any of the ships or vessels taken, or by any other person or persons, or by any other ways and means whatsoever, touching or concerning the designs of the enemies, or any of their fleets, vessels, or parties, and of their stations, ports, and places, and of their intents therein, and of what merchant ships or vessels of the enemies bound out or home, or to any other place, he or his officers or mariners shall hear of, and of what else material in those cases may arrive to his or their knowledge; of all which he shall, from time to time, as he shall or may have opportunity, transmit an account to our High Admiral of Great Britain for the time being, or our said commissioners for executing the office of our High Admiral aforesaid, or the commissioners for executing that office for the time being, or their secretary, and keep a correspondence with him or them by all opportunities that shall present. And further provided, that nothing be done by the said or any of his officers, mariners, and company, contrary to the true meaning of our aforesaid instructions, but that the said instructions shall be by them, and each and every of them, as far as they or any of them are therein concerned, in all particulars well and duly performed and observed. And we pray and desire all kings, princes, potentates, estates, and republics, being our friends and allies, and all others to whom it shall appertain, to give the said all aid, assistance, and succour, in their ports, with his said ship, company, and prizes, without doing or suffering to be done to him any wrong, trouble, or hindrance; we offering to do the like when we shall be by them thereunto desired. And we will and require all our officers whatsoever, to give him succour and assistance as occasion shall require. In witness whereof we have caused the great seal of our High Court of Admiralty of England to be hereunto affixed. Given at London the day of in the year of our Lord one thousand seven hundred and forty-four, and in the eighteenth year of our reign.

Extract from the Registry of the High Court of Admiralty of England.

GEORGE R.

Instructions for the Commanders of such Merchant Ships and Vessels as may have: Letters of Marque, or Commissions for Private Men of War against the King of Spain, his Vassals and Subjects, or others inhabiting within any of his Countries, Territories, or Dominions, by Virtue of our Commission granted under the Great Seal of Great Britain, bearing date the thirtieth Day of November, 1799. Given at our Court at St. James's, the thirtieth Day of November, 1799, in the thirteenth Year of our Reign.

I. That it shall be lawful for the said commanders of merchant ships and vessels authorised by letters of marque, or commissions for private men of war, to set upon by force of arms, and subdue and take the men of war, ships, and other vessels whatsoever, as also the goods, monies, and merchandizes belonging to the King of Spain, his vassals and subjects, and others inhabiting within any of his countries, territories, and:
OF PRIVATEERS.

dominions; and such other ships, vessels, and goods, as are, or shall be, liable to confiscation, pursuant to the treaties between us and other princes, states, and potentates: but so as that no hostility be committed, nor prize attacked, seized, or taken, within the harbours of princes and states in amity with us, or in their rivers or roads within shot of their cannon.

II. That all ships, of what nation soever, carrying any soldiers, arms, powder, ammunition, or any other contraband goods, to any of the territories, lands, plantations, or countries of the King of Spain, shall be seized as prizes.

III. That the said commanders of such merchant ships and vessels shall bring such ships and goods as they have seized, or shall so seize and take, to such port of this our realm of England, or some other port of our dominions as shall be most convenient for them, in order to have the same legally adjudged in our High Court of Admiralty of England, or before the Judges of such other Admiralty Court, as shall be lawfully authorised within our dominions: but if such prize be taken in the Mediterranean, or within the Straits of Gibraltar, then the captor may, if he doth not think fit to bring the same to some port of England, or other our dominions, carry such ship and goods into the ports of such princes or states as are in alliance or amity with us.

IV. That after such ship shall be taken and brought into any port, the taker shall be obliged to bring or send, as soon as possible may be, three or four of the principal of the company, whereof the master and the pilot to be always two, of every ship so brought into port, before the Judge of the Admiralty of England, or his surrogate, or before the Judge of such other Admiralty Court, within our dominions, as shall be lawfully authorised as aforesaid, or such as shall be lawfully commissioned in that behalf, to be sworn and examined upon such interrogatories as shall tend to the discovery of the truth, touching the interest or property of such ship or ships, and of the goods and merchandizes found therein: and the taker shall be further obliged at the time he produceth the company to be examined, to bring and deliver into the hands of the Judge of the Admiralty of England, his Surrogate, or the Judge of such other Admiralty Courts within our dominions, as shall be lawfully authorised, or others commissioned as aforesaid, all such passes, sea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings as shall be delivered up, or found on board any such ships; the said taker or one of his chief officers, who was present and saw the said papers and writings delivered up, or otherwise found on board at the time of the capture, making oath, that the said papers and writings are brought and delivered in, as they were received or taken, without any fraud, addition, subduction, or embezzlement.

V. That such ships, goods, and merchandizes, taken by virtue of letters of marque, or commissions for private men of war, shall be kept and preserved, and no part of them shall be sold, spoiled, wasted, or diminished, and that the bulk thereof shall not be broken before judgment be given in the High Court of Admiralty of England, or some other Court of Admiralty lawfully authorised in that behalf, that the ships, goods, and merchandizes are lawful prize; and that no person or persons, taken or surprized in any ship or vessel as aforesaid, though known to be of the enemy's party, shall be in cold blood killed, maimed, or by torture or cruelty inhumanely treated, contrary to the common usage and just permission of war; and whosoever shall offend in any of the premises, shall be severely punished.

VI. That the said commanders of such merchant ships and vessels, who shall obtain the said letters of marque or commissions, as aforesaid, for private men of war, shall not do or attempt any thing against the true meaning of any article or articles, treaty or treaties, depending between us and any of our allies, touching the freedom of commerce in the time of war, and the authority of the passports, or certificates under a cer-
OF PRIVATEERS.

tains form in some one of the articles or treaties so depending between us and our allies, as aforesaid, when produced and shewed by any of the subjects of our said allies; and shall not do or attempt any thing against our loving subjects, or the subjects of any prince or state in amity with us, nor against their ships, vessels, or goods, but only against the King of Spain, his vassals and subjects, and others inhabiting within his countries, territories, or dominions, their ships, vessels, and goods, except as before excepted; and against such other ships, vessels, and goods, as are or shall be liable to confiscation.

VII. That after condemnation of any prize, it shall or may be lawful for the commanders of such merchant ships or vessels, or the owners of the same, to keep such and so many ships, vessels, goods, and merchandizes as shall be condemned to them, for lawful prize, in their own possession; to make sale or dispose thereof in open market, or otherwise, to their best advantage, in as ample manner as at any time heretofore has been accustomed in cases of letters of marque, or of just prizes in time of war; other than wrought silks, Bengals, and stuffs mixed with silk or herba, of the manufacture of Persia, China, or East India, or calicoes painted, dyed, printed, or stained there, which are to be deposited for exportation, according to the directions of an act made in the eleventh year of the reign of the late King William, entituled, an act for the more effectual employing the poor by encouraging the manufactures of this kingdom: and that it shall be lawful for all manner of persons as well our subjects as others, according to law, to buy the said ships, vessels, goods, and merchandizes, so taken and condemned for lawful prize, without any damage or molestation to ensue thereupon to the said buyers, or any of them, by reason of the contracting or dealing for the same.

VIII. That if any ship or vessel, belonging to us or our subjects, or to our allies or their subjects, shall be found in distress, by being in fight, set upon, or taken by the enemy, the captain, officers, and company, who shall have such letters of marque or commission as aforesaid, shall use their best endeavours to give aid and succour to all such ship or ships, and shall, to the utmost of their power, labour to free the same from the enemy.

IX. That our subjects, and all other persons whatsoever, who shall either in their own persons serve, or bear any charge, or adventure, or in any sort further or set forward the said adventure, according to these articles, shall stand and be freed by virtue of the said commission; and that no person be in any wise reputed or challenged for an offender against our laws, but shall be freed, under our protection, of and from all trouble and vexation that might in any wise grow thereby, in the same manner as any other our subjects ought to be by law, in their aiding and assisting us; either in their own persons, or otherwise, in a lawful war against our declared enemies.

X. That the said commanders of such merchant ships and vessels, or their owners or agents, before the taking out commissions, shall give notice in writing, subscribed with their hands, to our High Admiral of Great Britain, for the time being, or our commissioners for executing the office of our High Admiral, or the commissioners for executing that office for the time being, or the Lieutenant or Judge of the said High Court of Admiralty, or his surrogate, of the name of their ship, and of the tonsnage and burthen, and the names of the captain, owners, or setters out of the said ship, with the number of men, and the names of the officers in her, and for what time they are victualled, and also of their ordnance, furniture, and ammunition, to the end the same may be registered in the said Court of Admiralty.

XI. That those commanders of such merchant ships and vessels, who shall have such letters of marque, or commissions as aforesaid, shall hold and keep, and are hereby enjoined to hold and keep, a correspondence, by all conveniences, and upon all occasions; from time to time, with our High Admiral of Great Britain for the time being, or our
commissi

XII. That no commander of a merchant ship or vessel, who shall have a letter of marque or commission as aforesaid, shall presume, as they will answer it at their peril, to wear any jack, pendant, or any other ensign or colour usually borne by our ships; but that, besides the colours borne usually by merchant ships, they do wear a red jack with the Union-Jack, described in the canton at the upper corner thereof near the staff; and that one-third part of the whole company of every such ship or vessel so fitted out as aforesaid, shall be land-men.

XIII. That such commanders of merchant ships and vessels who shall obtain such letters of marque or commissions, as aforesaid, shall also, from time to time, upon due notice being given them, observe all such other instructions and orders as we shall think fit to direct, for the better carrying on of this service.

XIV. That all persons who shall violate these instructions shall be severely punished, and also required to make full reparation to persons injured, contrary to these instructions, for all damages they shall sustain by any capture, embezzlement, demurrage, or otherwise.

XV. That before any such letters of marque, or commissions, issued under seal, bail, with sureties, shall be given before the Lieutenant and Judge of our High Court of Admiralty of England, or his surrogate, in the sum of three thousand pounds sterling, if the ship carries above one hundred and fifty men: and, if a lesser number, in the sum of fifteen hundred pounds sterling: which bail shall be to the effect, and in the form following:

Which day, time, and place personally appeared

who submitting themselves to the jurisdiction of the High Court of Admiralty of England, obliged themselves, their heirs, executors, and administrators, to our Sovereign Lord the King, in the sum of

pounds of lawful money of Great Britain, to this effect; that is to say, that whereas

is authorised by

letters of marque, or a commission for a private man of war, to arm, equip, and set forth to sea, the ship called the

of the burthen of about

tons, whereof he the said

goeth captain, with men, ordinance, ammunition and victuals, to set upon by force of

arms, and to subdue, seize, and take the men of war, ships, and other vessels whatsover, together with the goods, monies, and merchandizes belonging to the King of

Spain, or to any of his vassals and subjects, or others inhabiting within any of his coun-
OF PRIVATEERS.

tries, territories, or dominions whatsoever, and such other ships, vessels, and goods, as are or shall be liable to confiscation, excepting only within the harbours or roads within shot of the cannon of princes and states in amity with his Majesty: And whereas he, the said has a copy of certain instructions, approved of and passed by his Majesty in council, delivered to him to govern himself therein, as by the tenor of the said commission, and of the instructions thereto relating, more at large appeareth: if, therefore, nothing be done by the said or any of his officers, mariners, or company, contrary to the true meaning of the said instructions, but that the commission aforesaid, and the said instructions, shall in all particulars be well and duly performed and observed, as far as they shall the said ship, captain, and company any way concern; and they, or any of them, shall give full satisfaction for any damages or injury which shall be done by them, or any of them, to any of his Majesty's subjects or allies, or neutrals, or their subjects; and also shall duly and truly pay, or cause to be paid, to his Majesty, or the customers or officers appointed to receive the same for his Majesty, the usual customs due to his Majesty, of and for all ships and goods, as aforesaid taken and adjudged for prize; and moreover, if the said shall not take any ship or vessel, or any goods and merchandizes, belonging to the enemy, or otherwise liable to confiscation through consent, or clandestinely, or by collusion, by virtue, colour, or pretence of this said commission, that then this sail shall be void, and of none effect: and unless they shall so do, they do all hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same shall be found, to the value of the said sum of pounds, before-mentioned. And in testimony of the truth thereof, they have hereunto subscribed their names.

By his Majesty's command,

HARRINGTON.

Exam. S. HILL, Register.

An Additional Instruction to all such as have or shall have Letters of Marque, or Commissions for private Men of War, in pursuance of a Warrant from his Majesty, dated the seventh Day of April, 1748, directed to the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c. and of a Warrant in Pursuance thereupon, made by the Right Honourable the Lords Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c. dated the ninth day of April, 1748, directed to Sir Henry Penrice, Knight, Judge of the High Court of Admiralty of England.

That all captains and commanders of ships, who have or shall have letters of marque, or commissions for private men of war, are hereby required and enjoined to observe carefully and religiously the terms of the treaty marine, between his late Majesty King Charles the Second and their High Mightinesses the States General of the United Netherlands, concluded at London the first of December, 1674, Old Style, and confirmed by subsequent treaties: and they are hereby required to give security, pursuant to the tenth article of the aforesaid treaty marine, for the due performance thereof.

Exam. SAMUEL HILL, Register.

The following are such articles of agreement as were commonly entered into by the captains of privateers, in the late war, and their crews; which I publish as a copy for
my readers to have recourse to, in cases wherein future ruptures may render them useful, viz.

Articles agreed between captain A. B. commander of the private man of war, called the Terrible, with twenty guns mounted, carrying nine pound shot, twenty brass patteringes, four mortars, and some wall-pieces, manned with two hundred men, now lying at Church-Hole, designed to cruise against the French and Spaniards, on the one part; and the said ship’s company on the other, witnesseth:

1. That the said captain A. B. for himself, and in behalf of the owners of the said ship Terrible, shall put on board her great guns, swivels, powder, shot, and all other warlike ammunition necessary for them; as also small arms, and provisions sufficient for the said ship’s company for a six-month’s cruise at sea, from their sailing from the Downs; in consideration of which, the owners or their assigns shall be reimbursed, out of the first prize or prizes taken by the said ship Terrible, before any dividend is made thereof, the whole charge of warlike stores, great guns and small arms excepted, victualling, advance-money, and the expences the owners are at for the surgeon’s chest, and a set of music; after which one half of the nett proceeds of such prize or prizes as shall be taken, to be for the account of the owners, and at the disposition of the managers; and the other half of such nett proceeds to be the sole property of the ship’s company; the captain’s share of which to be six [in some eight] per cent, and the residue to be divided in the proportions mentioned in the eleventh article of these presents.

2. That, for preserving decorum on board the said private man of war, no man is to quit or go out of her, on board of any other vessel or vessels, or on shore, without leave obtained of the commanding officer on board, under the penalty of such punishment as shall be esteemed proper by the captain and officers.

3. That it shall be entirely in the captain’s power to cruise where he shall esteem most beneficial for the interest of the owners and ship’s company.

[In some, it is to cruise where the managers, and in others, where the owners shall direct.]

4. That if any person be found a ringleader of mutiny, or causing a disturbance on board, refuse to obey the command of the captain and officers, behave with cowardice, or get drunk in time of action, he or they shall forfeit his or their share, to be divided amongst the ship’s company; and be otherwise punished according to law.

5. That all clothes, bedding, watches, and rings in wear, buttons, buckles, and what else is deemed small plunder by custom, is to be divided amongst the ship’s company, according to their several stations; the captain not to interfere with them: the cabin utensils, in present use, for the commander.

6. That if any person shall steal, or convert to his use, any part of the prize or prizes, or be found pilfering any money or goods, and be convicted thereof, he shall forfeit his share to the ship and company.

7. The captain has the power of taking out of any prize, or prizes, whatever stores he may judge necessary for the ship Terrible, without paying for them; provided the prize is not disabled thereby.

8. That whosoever first spies a sail, which proves to be a prize, shall have seven pounds, [in some only one guinea, in others five,] and the first man proved to board a prize before she strikes, shall have a gratuity of ten pounds [in some ten, and in others fifteen guineas] for his bravery, to be deducted out of the gross sum of the prize.

9. That if any private man shall lose a leg, arm or eye, in the time of action; or in the ship’s service, he shall besides the advantage of Greenwich Hospital, have a gra-
OF PRIVATEERS.

...uity of 25l. and in proportion to the officers, exclusive of shares [in others only 20l. to a private man, 50l. to the captain, 40l. to the first lieutenant, and 30l. to each of the other lieutenants, master, and surgeon] the said sums to be deducted out of the gross sum of the prize; and in case of mortality under cure, the said gratuity and shares to be made good to their assigns.

10. That for the further encouragement of the said private man of war’s company, it is agreed, that the chief officers shall have six guineas, the petty officers and able seamen five guineas, able bodied landmen three guineas, and boys one guinea, advanced to them in the hope. [In some, the officers and seamen have only five guineas and the landmen two.]

11. That the half of the next proceeds of all prizes, taken by the ship Terrible which is appropriated to the ship’s company be divided against them in the manner following, after the captain’s 6 or 8 per cent. [as shall be agreed] is taken thereout as above.

When the captain has not the above-mentioned 6 or 8 per cent. but divides with the ship’s company, he commonly has 12 shares as follows, viz.

<table>
<thead>
<tr>
<th>Shares</th>
<th>Shares</th>
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<tbody>
<tr>
<td>The captain</td>
<td>12</td>
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<tr>
<td>The first lieutenant</td>
<td>6</td>
</tr>
<tr>
<td>The second lieutenant</td>
<td>4</td>
</tr>
<tr>
<td>The third lieutenant</td>
<td>3</td>
</tr>
<tr>
<td>The master</td>
<td>3</td>
</tr>
<tr>
<td>The first mate</td>
<td>3</td>
</tr>
<tr>
<td>The second mate</td>
<td>2</td>
</tr>
<tr>
<td>The surgeon</td>
<td>3</td>
</tr>
<tr>
<td>The surgeon’s mate</td>
<td>2</td>
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<tr>
<td>The lieutenant of marines</td>
<td>3</td>
</tr>
<tr>
<td>The gunner</td>
<td>3</td>
</tr>
<tr>
<td>The gunner’s mates, to each</td>
<td>2</td>
</tr>
<tr>
<td>The carpenter</td>
<td>3</td>
</tr>
<tr>
<td>The carpenter’s mates, to each</td>
<td>2</td>
</tr>
<tr>
<td>The boatswain</td>
<td>3</td>
</tr>
<tr>
<td>The boatswain’s mates, to each</td>
<td>2</td>
</tr>
<tr>
<td>The purser</td>
<td>3</td>
</tr>
<tr>
<td>The cooper</td>
<td>1</td>
</tr>
<tr>
<td>The music, to each of them</td>
<td>2</td>
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</table>

12. That on the death of the captain, the command do devolve on the next officer, and so on in rotation; and, for the encouragement of the able seamen, and others, on the loss of officers, they are to be replaced out of the ship’s company, according to their gallant behaviour, as the captain shall appoint.

13. That whoever deserts the said ship Terrible, within the time here-under mentioned, shall forfeit his prize money to the owners and company, to enable them to procure others in their room.

14. All and every one on board does covenant and agree to serve on board the said ship Terrible, the term of six months, beginning at the said ship’s departure from the Downs.

15. And lastly, for the true performance of all, and every the afore-mentioned covenants and agreements, each and every of the said parties do bind themselves, their heirs, executors, and administrators, in the penal sum of five hundred pounds, lawful money...
OF PRIVATEERS.

of Great Britain, firmly by these presents: in witness whereof the said parties to these presents have hereunto severally set their hands and seals, the day of in the year of our Lord 1746, and the twentieth year of the reign of our Sovereign Lord King George the Second.

The wording of ransom bills has been various, though the substance the same; I have therefore only added here the form of one; which I give my reader, both in French and English, as they are commonly printed for privateers to carry with them.

I John Stout, commander of a private ship of war, called the Success, by virtue of his Britannic Majesty’s commission, dated at London, the twenty-fourth day of August, 1746, to seize all subjects and vassals, ships, goods, monies and effects whatsoever, of the French King, and King of Spain, having taken a ship or vessel called the Malheu- reux of Nantes, whereof John Martel was commander, burden about two hundred tons, bound from the said port to Cadiz, under French colours, laden with wheat, in the latitude of and longitude from London; the said ship and cargo belonging to Messrs. La Bourdonnage and Comp. of Nantes, subjects of the French King, which ship and wheat I have agreed to ransom for one thousand eight hundred pounds sterling, to be paid in London, within two months from the date hereof, to the order of Mr. James Fillpurse; in consideration whereof, I have set the said ship and cargo at liberty, to proceed for the said port of Cadiz, where she shall be obliged to arrive within the space of thirty days from the date hereof, after the expiration of which time, this agreement shall not warrant her from being taken again by any English ship of war or privateer; for the true payment of which ransom, I have received as hostage, Mr. Thomas Lecroy, belonging to the said ship, who is not to be set at liberty until the said ransom be fully and truly paid, as above-mentioned; I therefore pray and desire all friends and allies to suffer the said ship Malheureux, to pass and proceed to the said port of Cadiz, without any let or molestation within the said covenanted time. And I the said John Martel, commander of the said ship the Malheu- reux, as well as in my own name, as in the name of the aforesaid Messrs. La Bourdon- nage and Comp. owners of the said ship and cargo, have voluntarily submitted myself to the payment of the said ransom of one thousand eight hundred pounds sterling, in London, as aforesaid; for which I have given the said Mr. Thomas Lecroy for hostage, who, upon the payment of the said sum as agreed, shall be immediately released and set free, and at full liberty to return to his own country, or wheresoever he shall think proper; hereby promising not to act contrary to the conditions of this agreement, whereunto we have, with the said hostage, interchangeably set our hands, on board the said private ship of war, this third day of September, 1746.

Signed and delivered in the presence of
A. B.    E. F.
C. D.    G. H.

John Stout.
John Martel.
Thomas Lecroy.

In French.

Je Jean Stout, commandant de l’armateur nommé le Succès, en vertu d’une com- mission d’une lettre de marque de sa Majesté Britannique, signée à Londres le vingt-quatrième jour du mois d’aout, de l’an 1746, pour prendre & saisir les vaisseaux, biens, & effets des sujets de la France & d’Espagne, ayant saisi sur, & pris, le vaisseau nommé
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changed, as humour and caprice directs, and the strongest or most profligate becomes a chief by mutual consent; and as no community can subsist without some sort of government, so these make a shew and profession of one; do sometimes comply with agreements made, more especially with those who supply them with necessaries, though this may reasonably be supposed to proceed more from the motives of self-preservation than from any intention of doing right or justice to those iniquitous persons who carry on such a villainous and contraband trade: it is true, all are not equally bad; for we have heard of some who have governed with more moderation, and not entirely shook off humanity, as the generality of them have; but even the best of them are offensive to the fair trader, and, by commencing pirates, they become obnoxious to those laws which otherwise were made to protect them.

There are, however, instances where success has made a company of them so powerful as to induce them to settle, and form themselves into a commonwealth: it was to this that Algiers, Tripoli, and Tunis owe their establishment, and which they have supported for many years, though they really still subsist by their quondam profession, or what is very like it; and only observe the treaties made with them so long as the rabble will permit, and it suits their convenience; yet they avoid quarrelling with all the European States at once, but take them by a sort of rotation, and plunder from them what they can, one after another, for which they sometimes smart, though too seldom: however, since their becoming a state, and professing allegiance to the Grand Signor, Princes have thought proper to treat with them, and to admit their Ambassadors on the same footing as those from other potentates, with respect to their immunities and privileges.

It is undoubtedly both for the honour and interest of all princes to suppress pirates, and not suffer them by any means to find shelter or refuge in any part of their dominions, but on the contrary to arm against them, and provide such remedies as may restrain their progress, which our Kings have always done, though it is dubious whether obliged thereto by the civil or common law of this kingdom.

By the ancient common law piracy if committed by a subject, was held to be a species of treason, being contrary to his natural allegiance and by an alien to be felony only, but now since the statute of treasons, 25 Edw. 3. c. 2. it is held to be only felony in a subject. * 4 Bla. Com. 71.

If a master of a ship, after making the best defence he could, is taken by a pirate, and for the redemption of his ship and cargo willingly submits to become a slave to his captors, the said ship and cargo are, by the law marine, tacitly obliged to contribute to the obtaining his freedom; but if a pirate, by feigning himself distressed, with the usual signals, or pretending to be stranded, leaky, or in any other danger, shall, by these means, allure the master to vary his course in order to afford his assistance, and so falls into the trap the pirate has laid for him, although he frees the vessel and her lading by remaining a slave, they are no ways obligated to contribute to his redemption, as his capture was occasioned by his own folly in being so decoyed.

A ransom promised to a pirate is not binding by the civil law, therefore no wrong is created by not complying with it; and the reason is, that the law of arms is not communicated to such, neither are they capable of enjoying that privilege which lawful enemies may challenge in the caption of another: however, this hath its limits; for a pirate may have a lawful possession, which he cannot be denied claiming at law, if injury or wrong be done him, and this is in consequence of his taking a legal course; for by that he submits to the magistrate, and pays obedience to the laws in his demanding justice.

If a pirate attacks and takes a merchant-ship, and afterwards redeems her, on the master's swearing to pay him a certain sum, at a time and place agreed on, if he does not
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comply with his oath, he is supposed by some not to be guilty of perjury, as a pirate is not a determinate but a common enemy, and with whom they think neither faith nor oath is to be kept; others pretend nothing can free him from a compliance with his vow, as it is not men only that are concerned in it, but God also, who is certainly no friend to perjury. However, with humble submission to better judgments, I think some distinction ought to be made in concurrence of circumstances; for suppose, either at sea or land, a robber claps a pistol to the breast of the person he has seized, and makes him swear to do such things as he cannot perform without great prejudice to himself and his dependents, as the payment of a sum of money, which may distress his circumstances and ruin his family; I say, in such a case, or other similar ones, I believe no one will pronounce the oath to be binding, which the terrors of a threatening enemy had forcibly drawn from him that made it.

An Englishman committing piracy on the subjects of any prince or state in amity with the crown of England, is within the statute of 28 Hen. 8. and so it was held where one Winterson, Smith, and others, had robbed a ship of one Maturine Guattier, belonging to and bound from Bourdeaux, with wines for England, and the same was felony by the law marine, and the parties were convicted accordingly.

So also, if a natural born subject commit any act of hostility against any other of his Majesty's subjects under colour of a commission from a foreign power, this, though it would only be an act of war in an alien, is piracy in a subject. 11 and 12 William 3. c. 7. It is a general rule that a subject of a state at enmity cannot commit piracy. 2 WOODD. 432.

And so if the subject of any other nation or kingdom, being in amity with the King of England, commit piracy on the ships or goods of the English, the same is felony, and punishable by virtue of the above act; and it was so adjudged, where one Careless, captain of a French man of war, and divers others, attacked four merchant-ships, going from the port of Bristol to Caermarthens, and robbed them of about 1000l. for which he and the rest were arraigned, and found guilty of the piracy.

A charge of piracy may properly be preferred in any country to which either the party accused, or the owner of the property belongs, and semblie in any country. 2 WOODD. 427.

But, before the 25th of Edw. 3. if the subjects of a foreign nation and some English had combined in the committing of piracy, it would have been treason in the English, and felony in the foreigners; an instance of which is quoted by Shard, where a Norman, being commander of a ship, had, together with some English, committed robberies on the sea, and being taken and tried, they were found guilty, the Norman of felony, and the English of treason, who accordingly were drawn and hanged. But at this day, by the laws marine, they would both receive judgment as felons, without distinction.

If the subjects of a prince at enmity with the crown of England, shall sail aboard an English pirate, with other English, and then a robbery is committed by them, and they are afterwards taken, it is without doubt a felony in the English, but not in the foreigners; for they cannot be tried by virtue of the commission upon the statute; for it was no piracy in them, but the depredation of an enemy, for which they shall receive a trial by martial law, and judgment accordingly.

Piracies committed in the British seas, by the subjects of any power in amity with the crown of England, are properly punishable by this crown only; and if a Spaniard robs a Frenchman on the high sea, their princes being both then in amity with the crown of England, and the ship is brought into a port of this kingdom, the Frenchman may proceed criminaliter against the Spaniard to punish him, and civiliter to have restitution of his vessel; but if the vessel is carried infra presidia of that prince by whose subject the same was taken, there can be no proceedings civiliter, and doubted of.
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If criminaliter, but the Frenchman must resort into the captors or pirate's own country, or where he carried the ship, and there proceed. March. Rep. 110.

Molloy de Jure Mar. p. 82, s. 12.

If a piracy be attempted on the ocean, and the pirates are overcome, the captors may immediately punish them with death, and not be obliged to bring them into any port, provided this occurs in places where no legal judgment can be obtained.

The statute 22 and 23 Car. 2. c. 11. s. 11. provides, that if the company belonging to any English merchant ship, take any ship which first assaulted them, the officers and mariners shall receive such share of the condemned ship and goods as is usually given to private ships of war. See 2 Woodes 434.

Ditto.

And therefore, if a ship should be on a voyage to America, or on a discovery of those parts still unknown to us, and in her way be attacked by a pirate, whom she fortunately overcomes, in this case, by the laws marine, the vessel becomes the captor's property, and the pirates may be immediately executed, without the solemnity of condemnation. 3 Bulstrode 148. 2 Woodes 433, 4.

So likewise, if a ship be assaulted by pirates, and in the attempt they are subdued and taken, and carried into the next port, if the judge openly rejects their trial, or the captors cannot wait till judgment shall be given without certain peril and loss, they may do justice on them themselves, without further delay or attendance.

Rot. Adm. '28 Eliz. m. 24.

If a pirate at sea attacks a ship, and in the engagement kills a person in her, though he has not succeeded in taking her, the pirates are all principals in the murder, if the common law hath jurisdiction of the cause; but by the law marine they only who gave the wound shall be principals, if they can be known, and the rest accessory; and where they have cognizance of the principal, the courts at common law will send them their accessory, if he comes before them. As to who are accessory, and how they are triable and punishable, see statute 11 and 12 William 3. c. 7. s. 10. and 8 Geo. 1. c. 24. hereinafter set forth.

A Dutchman, naturalized by the Duke of Savoy, and living at Villa Franca in his dominions, procured a commission from the States of Holland, and coming to Leghorn, there rid with the colours and ensigns of the Duke of Savoy: the English ship Diamond, being then in port, took in her lading, and proceeded on her voyage, in which she was surprised and taken by that Caper, and carried into Villa Franca, and there condemned and sold; but afterwards returning to England, the original proprietors, having notice of it, made a seizure; and upon trial, adjudication passed for them: though the ship of war and captors were of Savoy, and carried their prize thither, yet being taken by virtue of a Dutch commission, according to the law marine she must be carried infrà presidia of that Prince or State by virtue of whose commission she was taken; nor does such carrying of the ensigns or colours of the Duke of Savoy, who was then in amity with the crown of England, nor the commander's being a subject of that Prince, make him a pirate, or subject him, or those to whom the interest of the prize was transferred, any ways to be questioned for the same criminaliter; for that the original quaod, the taking, was lawful*, as one enemy might take from another; but civiliter, the same might be, for that the captor had not entitled himself to a firm possession.

And therefore, in all cases where a ship is taken by letters of marque or piracy, if the same is not carried infrà presidia of that Prince or State by whose subject the same was taken, the owners are not divested of their property, but may reseize wheresoever they meet with it. Mich. 8 Jac. in B. R. Browenlow, 2 part, Weston's case.

If a pirate attacks a ship, and only takes away some of her men, with an intention to sell them for slaves, this is piracy by the law marine; and if a bale or pack of mer-

* 3 Bulstrode, 28.
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chandize be delivered to a master to carry abroad to a certain port, and he goes away with it to another, and there sells or disposes of it*, this is no felony; but if he opens the bale or pack, and takes any thing out, *amno furandi, this act may amount to such a larceny as he may be indicted for in the Admiralty, though it does not amount to a reprisal; yet if the said master should carry the lading of this ship to the port appointed, and after re-take the whole pack or bale back again, this may amount to a piracy; for he being in the nature of a common carrier, the delivery had taken its effect, and the privity of the bailment is determined.

In case a ship shall be attacked by a pirate, and the master for her redemption shall give his oath to p y a sum certain; though there be no taking, yet is the same piracy by the law-marine; but by the common law there must be an actual taking, though it be but to the value of a penny, in the same manner as it is in a robbery on the highway.

And if a ship shall be riding at anchor, with part of the mariners in her boat, and the rest on shore, so that none remain in the ship, yet if she be attacked and robbed, the same is piracy.

A merchant has procured letters of marque or reprise, and delivered the commission to others to endeavour a satisfaction; and if those so commissioned commit piracy, the vessel is certainly forfeited; but the merchant is no ways liable to make satisfaction; for though the superior by the civil law is answerable for the actions of his servants, yet this question must be decided by the law of nations, in virtue of which such commissions are awarded or granted, the merchant by it will be exempted from answering for the behaviour of those he commissioned, unless it can be proved he foreknew that they would commit such a piracy, or spoliation, or that he had any way abetted or consented to the same, by which the right may be forfeited, and the civil law let in, to acquire satisfaction.

If goods are taken by a pirate from one ship, and he afterwards attacks another, by whom he is subdued, he thereby becomes, according to the law marine, an absolute prize to the captor, after a legal condemnation. And,

By the statute of 27 Edw. 3. cap. 13. if a merchant lose his goods at sea by piracy or tempest, not being wrecked, and they afterwards come to land, if he can make proof they are his goods, they shall be restored to him, in places guildable, by the King's officers and six men of the country; and in other places, by the Lords of them, or their officers, with six men of the country. If a pirate takes goods at sea, and sells them, the property is not thereby changed, no more than if a land thief steals and sells them.

This law hath a great affinity with that of the Roman, called de Usu Captione, or the Atinian law; as Atinius therein enacted, that the plea of prescription, or long possession, should not avail in things that had been stolen, but the interest which the right owners had should remain perpetually. No right to the spoil rests in the piratical captors, no right is derivable from them to any re-captors in prejudice, and this appears not only to have been the opinions of the writers on general jurisprudence, but to have been always maintained in our courts of common law. Grot. de Jure Belli, l. 3. c. 9. s. 16.

If a mob of rioters board a ship, and occasion a stranding, this is a loss by pirates.

Though it is held by the common law of England, that if a man commit piracy upon the subjects of another prince, though in league with us, and brings the goods into England, and sells them in a market overt, the same shall bind, and the owners are for ever excluded; and, if they should endeavour in the Admiralty to dispute the property in order to restitution, they will be prohibited.

* F. Nauta Cap. l. i. s. 3. Stab. Gianvil, l. 10. c. 13. 18 Edward 4.
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But if the goods are sold to the owners of the ship, though sold in market overt, it seems the sale is void, he being deemed a party to the test. Cro. Eliz. 685. And quere, if after conviction of the pirate by the owner of goods, the property is not revested in the original owner, though there may have been a bond fide sale in market overt 2 Woodd. 431.

A ship which belonged to several owners was sent to the Indies on a trading voyage, and upon the high sea the mariners committed piracy, for which, on her return to the River Thames, the admiral seized her as bond pyratarum; but the merchants her owners took the sails and tackle out of her, and there was a decree, that the admiral shall not have the goods stolen from other men, but the owners shall have them.

It appears by the preamble to the statute of 28 Hen. 8. cap. 15. that this offence was not punishable by the common law, but the same was determined and judged by the admiral, after the course of the civil law; but by force of the said act the same is enquired of, heard, and determined, according to the course of the common law, as if the offence had been committed on land.

But by Lord Hale*, the Court of King's Bench had certainly a concurrent jurisdiction with the Admiralty, in cases of felony committed upon the narrow seas, or coast, though it were high sea, because within the King's realm of England: but this jurisdiction of the common law courts was interrupted by a special order of the King and Council, 35 Edw. 3. and since the 38 Edw. 3. it does not appear that the common law courts take cognizance of crimes committed upon the high seas.

And for the trial of piracy, and to determine what actions come under this denomination, as also to encourage the suppression of it, the following acts have been made, viz.

27 Hen. 8. c. 4.1.

All offences of piracy, robbery, and murder, done upon the sea, or in any haven, river, or creek, where the admirals pretend to have jurisdiction, shall be inquired into, tried, heard, and determined, in such places in this realm, as shall be limited by the King's commission, as if such offences had been done upon land; and such commissions shall be under the great seal, directed to the Lord Admiral, or his Lieutenant or Deputies, and other persons named by the Lord Chancellor, to hear and determine such offences after the common course of law, used for felonies committed within the realm.

The remaining sections of this act are omitted, because the act is amended and re-enacted 28 Hen. 8. cap. 15. which follows:

28 Hen. 8. c. 15.1.

All treasons, felonies, robberies, murders, and confederacies, committed upon the sea, or in any haven, river, creek, or place, where the admirals have, or pretend to have, any power or jurisdiction, shall be enquired, heard, and determined in such shires and places in this realm, as shall be limited by the King's commission, as if such offences had been committed upon land, and such commission shall be under the great seal, directed to the admirals, &c. and to three or four such other persons as shall be named by the Lord Chancellor, after the common course of the law used for treason, felonies, &c. committed upon land, within this realm.

The keeper of the great seal when there is no Chancellor, may appoint commissioners to hear and determine piracies under this statute. Dyce 211. b.

Such persons to whom such commissions shall be directed, or four of them, shall have power to inquire of such offences by the oaths of twelve lawful inhabitants in the shire limited in their commission, as if such offences had been committed upon land within the shire; and every indictment found before such commissioners, of any treasons, felonies, or other such offences committed upon the seas, or in any haven, river,
or creek, shall be good in law; and such process, judgment, and execution, shall be
had against every person so indicted, as for treason, felony, or other such offences done
upon land; and the trial of such offences shall be by twelve men, inhabiting in the
shire limited within such commission, and no challenge to be had for the hundred; and
such as shall be convicted of any such offences shall suffer such pains of death, losses
of land and goods, as if they had been convicted of the same offences done upon land.

For treason, robberies, felonies, murders, and confederacies, done upon the sea, or in any place above rehearsed, the offenders shall not have benefit of clergy.

This act shall not extend to any person for taking any victualls, cables, ropes, an-
chors, or sails, which such person, compelled by necessity, taketh of any ship which
may spare the same, so the person pay for the same, money or money-worth, or deliver
a bill obligatory to be paid, if the taking be on this side the Straits of Marrock, to be
paid within four months; and if it be beyond the said straits, to be paid within twelve
months; and that the makers of such bills pay the same at the day limited.

When any such commission shall be directed to any place within the jurisdiction of
the five ports, such commission shall be directed to the Lord Warden of the ports, or
his Deputy, and three or four such other persons as the Lord Chancellor shall name.

If one or more of any such persons shall be absent, and being present, and one or
more of any other persons may be present, the commission shall be directed to the
fourth person present, and such persons as the Lord Chancellor shall name.

And if any such commission shall be directed to any place within the jurisdiction of
the five ports, and the said person shall be absent, and being present, and one or
more of any other persons may be present, the commission shall be directed to the
fourth person present, and such persons as the Lord Chancellor shall name.

This statute was made perpetual by the statute, 6 Geo. 1. c. 19.

It is ordained that all the piracies, felonies, and robberies, committed upon the sea, or in any haven, river, creek, or place, where the admirals have power or jurisdiction, may be tried at sea, or upon the land, in any of his Majesty's islands, plantations, c.

or the seal of the Admiralty, directed to such commissioners as his Majesty shall think fit, who may commit such offenders, and call a Court of Admiralty thereupon, to consist of seven persons at the least.

And for want of seven, then any three of the commissioners may call others, as therein is mentioned, and the persons so assembled may proceed, according to the course of the Admiralty, to issue out warrants for bringing persons accused of piracy or robbery before them to be tried, and to summon witnesses, and take examinations, and do all things necessary for the hearing and final determination of any case of piracy, &c. and to give sentence of death, and award execution of the offenders, who shall thereupon suffer loss of lands, goods, and chattels.

So soon as any court shall be assembled, the King's commission shall be read, and the court shall be proclaimed, and then the President of the Court shall take the following oath, viz.

I A. B. do swear in the presence of Almighty God, that I will truly and impartially try and adjudge the prisoner or prisoners, which shall be brought upon his or their trials before this court, and honestly and duly on my part, put his Majesty's commission for the trying of them in execution, according to the best of my skill and knowledge; and that I have no interest, directly or indirectly, in any ship or goods, for the piratically taking of which any person stands accused, and is now to be tried.—So help me God.

And he having taken this oath, shall administer the same to every person, who shall sit and have voice in the court, and thereupon the prisoners shall be brought before them; and then the register shall read the articles against such prisoners, wherein shall be set forth the particular facts of piracy, robbery, and felony, with the time and
place, and in what manner it was committed; and each prisoner shall be asked, whether he be guilty or not guilty; whereupon he shall immediately plead guilty or not guilty; or else it shall be taken as confessed; and if any prisoner shall plead not guilty, witnesses shall be produced by the register, and sworn and examined in the prisoner’s presence; and after a witness has answered all the questions proposed by the President, and given his evidence, it shall be lawful for the prisoner to have the witness cross-examined, declaring to the court what questions he would have asked, and the President or the court shall interrogate the witness accordingly; and every prisoner shall have liberty to bring witnesses for his defence, who shall be sworn and examined, and afterwards the prisoner shall be heard for himself; which being done, the prisoner shall be taken away, and all other persons, except the register, shall withdraw; and the court shall consider of the evidence; and the President shall collect the votes of the court, beginning at the junior, and ending with himself; and, according to plurality of voices, sentence shall be given, and pronounced publicly in the presence of the prisoner, being called in again; and, according to such sentence, the persons attainted shall be put to death, in such manner, and in such place upon the sea, or within the ebbing or flowing thereof, as the President, or the major part of the court, by warrant directed to a Provost-Marshal, which they shall have power to constitute, shall appoint.

Some public notary shall be register of the court; and in case of his absence, death, or incapacity, or for want of a person so qualified, the President shall appoint a register, giving him an oath, duly, faithfully, and impartially to execute his office; which register shall prepare all warrants and articles, and provide all things requisite for any trial, according to the substantial and essential parts of proceeding in a Court of Admiralty in the most summary way; and shall make minutes of the proceedings, and enter them in a book, and shall transmit the same with the copies of all articles and judgments, unto the High Court of Admiralty of England.

Sect. 7.

If any of his Majesty’s ships shall commit piracy or robbery, or any act of hostility, against others his Majesty’s subjects upon the sea, under colour of any commission from any foreign state, or authority from any person whatsoever, such offenders, and every of them, shall be adjudged pirates, felons, and robbers; and being convicted, according to this act, or 28 Hen. 8. cap. 15. shall suffer pains of death, and loss of lands and goods.

Sect. 8.

If a commander of a ship, or any mariner, shall, in any place where the admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with the ship, or any boat, ordnance, ammunition, or goods, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy, or rebel; or consult, or confederate with, or attempt to corrupt any commander, officer, or mariner, to yield up or run away with any ship or goods, or turn pirate, or go over to pirates; or if any person shall lay violent hands on his commander, to hinder him from fighting in defence of his ship and goods, or confine his master, or endeavour to make a revolt in the ship, he shall be adjudged a pirate, felon, and robber, and being convicted according to this act, shall suffer death, and loss of lands and goods.

Sect. 9.

All persons who shall, either on land or upon the seas, knowingly set forth any pirate, or assist or maintain, procure, command, counsel, or advise any person to commit any piracies or robberies upon the seas, and such person shall thereupon commit any such piracy or robbery, all such persons shall be adjudged accessory to such piracy and robbery; and after any piracy or robbery committed, every person who, knowing that such pirate or robber has committed such robbery, shall, on the land or upon the sea, receive, entertain, or conceal any such pirate or robber, or receive any ship or goods by such
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pirate or robber, piratically and feloniously taken, shall be adjudged accessory to such piracy and robbery; and all such accessories may be inquired of, heard, and determined, after the common course of the law, according to the statute 28 Hen. 8. cap. 15. as the principles of such piracies and robberies ought to be; and, being attainted, shall suffer death, and loss of lands and goods.

When an English ship shall have been defended by fight against pirates, and any of the officers or seamen are killed or wounded, the Judge of the Admiralty, or his Surrogates in London, or the Mayor, or chief-officer in the out-ports, assisted by four substantial merchants, may, by process out of the said court, levy upon the owners of such ships, &c. a sum not exceeding 2l. per hundred, of the value of the freight, ship, and goods, so defended, to be distributed among the officers and seamen of the said ships, or widows and children of the slain.

A reward of 10l. for every vessel of a hundred tons or under, and 15l. for every one of a greater burthen, shall be paid by the captain, commander, or master, to the first discoverer of any combination for running away with or destroying any such ship, at the port where the wages are to be paid.

This act shall be in force for seven years, &c. Made perpetual 6 Geo. 1. cap. 19. Sect. 11.

The commissioners appointed by 28 Hen. 8. cap. 15. or by this act, shall have the sole power of hearing and determining the said crimes, within all the plantations in America, governed by proprietors, or under charter from the crown, and shall issue their warrants for apprehending any pirates, &c. within any of the said plantations, in order to their being brought to trial within the same, or any other plantation in America, or sent into England; and all governors, &c. in the plantations, governed by proprietors, or under charters, shall assist the commissioners and officers, and deliver up the pirates, &c. in order to their being tried, or sent into England.

If any of the governors in the plantations shall refuse to yield obedience to this act, such refusal is declared to be a forfeiture of all charters granted for the government or proprietor of such plantation.

When any commission, for the trial and punishment of the offences aforesaid, shall be directed to any place within the jurisdiction of the Cinque Ports, such commission shall be directed to the Lord Warden, &c.

All officers or sailors, who shall desert the ships wherein they are hired to serve for that voyage, shall forfeit all wages due to them.

In case any master of a merchant ship shall, during his being abroad, force any man on shore, or wilfully leave him behind in any of his Majesty's plantations, or elsewhere, or shall refuse to bring home with him all such of the men which he carried out, as are in a condition to return, such master shall suffer three months' imprisonment.

All persons who shall commit any offences for which they ought to be adjudged pirates, by the act 11 and 12 Will. 3. cap. 7. may be tried as by the act 28 Hen. 8. cap. 15. and shall be debarred from the benefit of clergy. Nothing in this act to extend to Scotland.

By 8 Geo. 1. cap. 24. s. 1. if any commander of a ship, or other person, shall trade with any pirate, or shall furnish any pirate, felon, or robber, upon the seas, with ammunition, provision, or stores, or shall fit out any ship knowingly, and with a design to trade or correspond with any pirate, &c. upon the seas; or if any person shall consult, combine, or correspond with any pirate, &c. knowing him to be guilty of any piracy, felony, and robbery, such offender shall be adjudged guilty of piracy, &c. and shall be tried according to the statute 28 Hen. 8. cap. 18. and 11 and 12 Will. 3. cap. 7. and, being convicted, shall suffer death, and loss of lands and goods; and if any person belonging to any ship, upon meeting any merchant ship on the high seas, or in any
port, haven, or creek, shall forcibly board or enter such ship, and, though they do not seize and carry her off, shall throw over-board or destroy any of the goods, they shall be punished as pirates.

Every ship fitted out with a design to trade or correspond with any pirate, and all the merchandizes put on board the same with an intent to trade with any pirate, shall be forfeited, one moiety to the King, and the other to the informer, to be recovered in the High Court of Admiralty.

Sect. 3.
All persons declared accessories, by 11 and 12 Will. 3, to any piracy, are by this act declared principal pirates.

Sect. 4.
Any offender convicted of any piracy, &c. by virtue of this act, shall not have benefit of clergy.

Sect. 5.
And to encourage seamen and mariners to defend their ships from pirates, the said act ordains, that in case any mariner, on board any merchant ship, shall be maimed in fight against any pirate, upon due proof thereof, he shall not only have and receive the rewards appointed by 22 and 23 Ch. 2. cap. 11. but shall be provided for in Greenwich Hospital, preferable to any other seaman who is disabled from service by age.

Also, in order to encourage the defence of merchant vessels against pirates, the commanders or seamen wounded, and the widows of such seamen as are slain, in any piratical engagement, shall be entitled to a bounty to be divided among them, not exceeding one-fiftieth part of the value of the cargo on board. Blackstone’s Comment. vol. 4.

Lord Mansfield said, in the case of Goss and Withers, that in Spain, Venice, and England, the goods go to the captors of a pirate, against the owners, as there can be no condemnation to entitle the pirate; and this is agreeable to Grotius de Jur. Bell. and to Locceniuss de Jur. Marit.

However, by the marine ordinance of France, in 1681, the ships and effects of their subjects, or of their allies, retaken from pirates, and reclaimed within a year and a day from the declaration which shall be made of them at the Admiralty, shall be restored to the proprietors, on paying one-third of the value of the ships and goods, for charges of the recapture. This ordinance is accounted, by the French writers, a great instance of their national generosity. But the stipulations in treaties of commerce and navigation between England and other powers go still farther, and therefore shall be recited in this place.

"For the greater freedom of commerce and navigation, it is agreed and concluded, that the King of Great Britain and the States General, shall not receive into their havens, cities, and towns, nor suffer that any of the subjects of either party do receive pirates or sea rovers, or afford them any entertainment, assistance, or provision, but shall endeavour that the said pirates and sea rovers, or their partners, sharers, and abettors, be found out, apprehended, and suffer condign punishment, for the terror of others: and all the ships, goods, and commodities piratically taken by them, and brought into the ports of either party which can be found; nay, although they be sold, shall be restored to the right owners, or satisfaction shall be given either to the owners, or to those who by letters of attorney shall challenge the same, provided the right of their property be made to appear in the Court of Admiralty by due proofs according to law. Treaty with Holland 1667. It was the violation of this treaty on the part of the Dutch which contributed to the rupture between Great Britain and Holland, at the close of the year 1780. The Regency of Amsterdam had not only protected, but given every aid in their power to Paul Jones, a native of Great Britain, who, under a commission granted to him by the rebel subjects of the King of Great Britain in America, engaged and took his Majesty’s frigate the Serapis, a sloop called the Countess of Scarborough
OF PIRATES.

and two or three British merchant ships, all of which he carried to the Texel, and sold the merchant vessels and their cargoes, himself appearing publicly on the Exchange of Amsterdam, where he was caressed by the merchants, and the magistrates supplied Jones with provisions, ammunition, &c. for refitting and putting to sea, notwithstanding the repeated remonstrances of Sir Joseph Yorke, the British Minister at the Hague, who demanded restitution of the King's ships, and the seizure of Paul Jones the pirate."

If any commander, or other officer, or seaman of a merchant ship, that carries guns &c. arms, shall not fight and endeavour to defend themselves when attacked by a pirate, or shall utter any words to discourage the other mariners from defending the ship, by which means she is taken by the pirate, in such case, the said commander, &c. shall forfeit all the wages due to him or them, to the owner of the ship, and suffer six months' imprisonment.

No master, or owner of any merchant ship, shall pay to any seaman beyond the seas, any money or effects on account of wages, exceeding one moiety of the wages due at the time of such payment, till such ship shall return to Great Britain, Ireland, or the plantations, or to some other of his Majesty's dominions where to they belong, on forfeiture of double the money so paid, &c.

This act shall extend to all his Majesty's dominions in Asia, Africa, or America, and shall be a public act, and shall continue seven years, &c. made perpetual 2 Geo. 2. cap. 28.

The act 11 and 12 Will. 3. ch. 7. does not alter the offence, or make the offence felony, but leaves it as it was before this act, viz. felony only by the civil law, but giveth a mean of trial by the common law, and inflicteth pains of death, as if they had been tainted of any felony done upon the land.

The indictment must mention the same to be done on the high seas.

If any person be feloniously stricken or poisoned upon the sea, or at any place out of a ship, England, and dies in England, or stricken or poisoned in England, and dies on the sea, or out of England, the fact is triable in any country, according to the course of the common law, except challenges for the hundred.

A pardon of all felonies does not extend to piracy, but the same ought especially to be named; and though there be a forfeiture of lands and goods, yet there is no corruption of blood, nor can there be an accessory of this offence tried by virtue of this statute, but if there be an accessory upon the sea to a piracy, he must be tried by civil law.

The statute of 85 Hen. 8. cap. 2. taketh not away the statute for treasons done upon the sea, nor is clergy allowable to the party on the statute 28 Hen. 8.

Though a port be locus publicus usque para oceani, yet it has been resolved more than once, with respect to all ports, that not only the town, but the water is infra corpus comitatis.

If a pirate enters into a port or haven of this kingdom, and assails and robs a merchant ship at anchor there, this is not piracy, because the same is not done super alium mare, upon the high sea, but a downright robbery at common law, for that the act is infra corpus comitatis, and was inquirable and punishable by the common law before the statute of 28 Hen. 8. cap. 15. An instance of which was in Hide & Al. who robbed the ship of one captain Smeke of some merchandise, appertaining to Mr. Moss, a merchant in London, and for which they were indicted at the common law, and found guilty, anno 12 Car. 2. at the Old-Bailey.

By the recited act of 1 Will. 3. it is, amongst other things, enacted, that all piracies and robberies committed on the sea, or in any haven or place, where the admirals have power or jurisdiction, may be examined and adjudged, according to the directions of
the act, in any place at sea or land, to be appointed by the King's commission. And also, that if any of his Majesty's natural-born subjects, or denizens of this kingdom, shall commit any piracy or robbery, or act of hostility, against others of his Majesty's subjects on sea, under colour of commission from any foreign prince or state, or pretence of authority from any person, they shall be deemed pirates, felons, and robbers, and being convicted according to the said act, or of 28 Hen. 8, therein recited, shall suffer such pains of death, &c. as pirates, &c. ought to have and suffer: And whereas, during the war with France and Spain, divers subjects have entered into the service of his Majesty's enemies, on board privateers, or other ships, having commissions from the crowns of France and Spain, and committed hostilities against his Majesty's subjects on the sea, in the West Indies, &c. and as doubts have arisen whether, as such offenders have been guilty of high treason, they can be guilty of felony within the intent of the said act, and as such be tried by the Court of Admiralty thereby appointed; to put an end to the said doubts, therefore, it is enacted, that all persons, being natural-born subjects or denizens of his Majesty, who, during the present or any future wars have committed, or shall commit, any hostilities on the sea, or in any haven, river, creek, or place where the admirals have power of jurisdiction, may be tried as pirates, felons, and robbers, in the said Court of Admiralty, on ship-board, or on land, as persons guilty of piracy, &c. are by the said act directed to be tried; and being convicted thereof, shall suffer such pains of death, loss of lands, goods, and chattels, as other pirates, &c. by the said act of 11 Will. 3, or any other act, ought to suffer.

Any person who shall be tried and acquitted, or convicted according to this act, for any of the said crimes, shall not be tried again for the same fact, as high treason. Sect 3 Inst. 112. 1 Hawk. P. C. c. 281.

Nothing in this act shall extend to prevent any persons, guilty of any of the said crimes, who shall not be tried according to this act, from being tried for high treason within this realm, according to the aforesaid act of 28 Hen. 8.

If such a robbery be made in a creek or port, in such cases, it has by some been conceived that clergy is allowable, upon the statute of 28 Hen. 8. But if it be done super altum mare, there is no such allowance, as was ruled by the opinion of Sir Lionel Jenkinson, and the rest of the Judges, upon the piracy committed by Cusack and others, who were executed anno 1674. And if the robbery be committed on great rivers, within the realm, esteemed always as common highways, there it has formerly been doubted, whether the benefit of clergy ought to be granted; however it was seemingly settled by the Judges in the aforesaid case of Hide, and was confirmed by the following act, viz.

Divers wicked and evil-disposed persons, being encouraged to commit robberies and theft upon navigable rivers, &c. by the privilege, as the law now is, of being admitted to the benefit of their clergy; for the more effectual preventing such felonies for the future, is is enacted, that all persons, who shall at any time, from and after the 24th of June, 1751, feloniously steal any goods or merchandize, of the value of 40s. in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging thereto, or from off any wharf or quay adjacent to any navigable river, port of entry or discharge, within Great Britain, or shall be present and assisting in committing any of the said offences, being thereof convicted or attainted, or being indicted, shall of malice stand mute, or will not directly answer to the indictment, or shall peremptorily challenge above twenty persons returned to be of the jury, shall be excluded from the benefit of clergy.

* By stat. 32 Geo. 2. c. 25. s. 20, a session of Oyer and Terminer and Goal Delivery for the trial of offences committed upon the high seas, within the jurisdiction of the Admiralty of England, shall be held twice in every year at the Old Bailey.
OF PIRATES.

One Cobham was arraigned in Southwark, before the commissioners of Oyer and Terminer, for a piracy and robbery committed on a Spaniard, and refusing to plead, it was moved by the Attorney-General, whether he ought not in this case to have the primo forte & dure, and it was the opinion of the court he should from the words and reasonable intendment of the statute 28 Hen. 8. c. 15. and judgment was given accordingly. But by 12 Geo. 3. c. 20. standing mute in piracy amounts to a conviction, and the court shall award the same judgment as on a conviction by verdict or confession. 

1 Hawk. P. C. 281.

If a man is taken on suspicion of piracy, and a bill is preferred against him, and the jury find ignoramus, and the Court of Admiralty will not discharge him, that of the King's Bench will grant a Habeas Corpus, and if there be a good cause, discharge him, or at least admit him to bail; but if the court suspects that the party is guilty, perhaps they may remand him; and therefore in all cases, where the Admiralty legally have an original or a concurrent jurisdiction, the courts above will be well informed before they will meddle or interfere. See the case of the King v. Marsh. 3 Bulst. 27.

Aiding or assisting the escape of a man in custody for piracy, though the matter is an offence at law, yet the admiralty having jurisdiction to punish the principal, has likewise power to punish such an offender, who is looked upon quasi an accessory to the piracy; but on rescuing a prisoner from an officer of their's, they may examine the cause, but they cannot proceed criminally against the offender.

The exemplification of the sentence of the Court of Admiralty, under their seal, is conclusive evidence in a court of common law.

And although the statute of 28 Hen. 8. c. 15. does not alter the offence, or make it felony, but leaves it as it was before that statute, viz. felony only by the civil law, and gives a mean of trial by the common law, and inflicted such pains of death, as if they had been attainted of any felony; yet it was resolved by all the judges and the rest of the commissioners then present, that his Majesty having granted letters of reprisal to Sir Edmund Turner and George Carew, against the subjects of the States General of the United Provinces, which grant was afterwards called in by proclamation, then notified in the treaty of Breda, and finally suppressed under the great seal; that several having put in execution the said commission, under a deputation from Carew only, without Turner, were indicted for piracy, though they were acquitted, as it was decreed that the same was not a felonious and a piratical spoliation in them, but a caption in order to an adjudication; and though the authority they acted under was deficient, yet not being done by the captain and his mariners, animo defractandi, it could by no means be made piracy.

It has been customary to grant commissions to the commanders of ships bound to the East Indies, for the seizing of pirates, and as I find they have always been to the same purpose, though sometimes variously worded, I shall add the copy of one of them taken from the original.

ANNE, R.

ANNE, by the Grace of God, Queen of England, Scotland, France, and Ireland, Defender of the Faith, &c. to our trusty and well-beloved A. B. commander of the ship Triton, burthen four hundred and twenty tons, thirty guns, and seventy men, of to any other the commander of the same for the time being, greeting; whereas, we are informed there are several pirates and sea rovers, which do infest the seas of India, whither you are now going, we have therefore thought fit to authorise and empower,
and accordingly do by these presents authorise and empower you, to apprehend, seize, and secure the persons of any such pirates, free-booters, and sea rovers, being either our own subjects, or of other nations associated with them, as you shall meet with in any of the ports or places, or upon any of the coasts or seas of India, or in any other seas whatsoever, together with their ships and vessels, and all such merchandize, money, goods, and wares, shall be found on board, or with them, in case they shall willingly yield themselves; but if they will not submit without fighting, then you are by force to compel them to yield; and we do also require you to bring, or cause to be brought, such pirates, free-booters, and sea rovers, as you shall seize or take, to a legal trial, to the end they may be proceeded against with the utmost severity of law. And we do hereby enjoin you to keep an exact journal of your proceedings in the execution of the premises, and therein set down the names of such pirates, and of their officers and company, and the names of such ships and vessels, as you shall, by virtue of these presents, seize and take, and the quantities and qualities of all arms, ammunition, provision, and lading of such ships and vessels, and the true value of the same as near as you can judge, and also to secure and take care of all bills of lading, invoice, cockets, charterparties, and all other papers and writings, of what kind soever, as shall be found on board such ships and vessels: and we do hereby strictly charge and command you, as you will answer the same at your utmost peril, that you do not in any manner offend or molest any of our subjects, or the subjects of our friends and allies, their ships or goods; by colour or pretence of these presents, or the authority hereby granted. In witness whereof, we have caused our great seal of England to be affixed to these presents. Given at our Court at St. James's the eleventh day of October, 1704, in the third year of our reign."

In the admiral's patent, he has granted to him bona piratarum; the proper goods of pirates only pass by this grant, and not piratical goods. So it is of a grant de bonis jecomm, the grantee shall not have goods stolen, but the true and rightful owner: but the King shall have the piratical goods, if the owner be not known.

When a pirate is condemned and executed, he is commonly hung in chains on a gibbet fixed by the river side, as an object to deter others from following such courses which might, sooner or later, bring them to the same unhappy end.

During the war, commenced in 1756, several persons, masters of privateers, were executed for piracy; the facts were, that neutral ships, Dutch and Danes, were stripped in the English Channel by small privateers, and plundered, sometimes by the masters and people of the privateer disguised, at other times more openly. This occasioned the new act concerning privateers, inserted under that article. See ante.

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OF CONVOYS AND CRUISERS.

The word Convoy, in a mercantile sense, means a fleet, or any number of merchant vessels sailing together to a particular place of destination under protection. And the protection granted to them by the marine department of the state to which they belong, consisting of one or more ships of war, is likewise called a Convoy.

The King of Great Britain in time of war grants convoys for the protection of his subjects carrying on their commerce on the ocean, upon application being made by the merchants to the commissioners for executing the office of Lord High Admiral, who appoint such a force as they think proportioned to the danger they are likely to encounter from the enemy on their voyages; and even in times of peace, convoys are
ordered by the government to guard and defend our trading vessels from the assaults of pirates, or encroachers on our commerce, more especially in our fisheries, and other parts of the West Indies; where they may be exposed to such attacks by commercial intruders. The sailing of all convoys is publicly advertised, and the days fixed for their departure, that ships may get to the rendezvous, or destined places, from whence they are to set sail by the times appointed, and there receive orders from the commanding officer relative to their future proceedings, which the masters must take care punctually to observe, otherwise they alone will be answerable for any loss or miscarriage that may happen through such neglect.

In France and other countries, masters disobeying the orders of the commanders of convoy, or departing from their convoy, are punished by fine and imprisonment, besides being responsible with their property to their owners for the losses that may ensue by such conduct. In England, they are only liable to a civil action for damages, to indemnify the owners and merchants, for the ships and cargoes captured by their wilful disobedience; but by the statute 43 Geo. 3. c. 57, herein-after mentioned, the masters are subjected to penalties for offences of this nature. See the provisions of this statute infra. But the difficulties that arise in determining when the masters have made the insurance void are almost innumerable; and fall properly under the head of insurance, of which hereafter. If the fault lies on the commodore, he is made punishable by the subsequent law, viz.

The captains, officers, and seamen, of all ships appointed for convoy of merchant ships and others, shall diligently attend upon that charge, without delay, according to their instructions; and whosoever shall be faulty therein, and shall not faithfully defend the ships and goods in their convoy, or shall demand any money, or reward, from any merchant or master for convoying of such ships belonging to his Majesty's subjects, shall be condemned to make reparation of the damage, as the Court of Admiralty shall adjudicate, and also be punished criminally by pains of death, or other punishment, as shall be adjudged by the court-martial.

Confirmed by 22 Geo. 2. p. 693. art. 17.

By the statute 43 Geo. 3. c. 57. intituled, "An Act for the better protection of the trade of the United Kingdom during the present hostilities with France," it is enacted, that no British vessel except vessels not required to be registered; vessels licensed by the Admiralty, &c.; vessels proceeding to join convoy (except as to clearance bond); vessels sailing from one place to another in the kingdom; vessels of the East India or Hudson's Bay Companies; vessels sailing from foreign ports where convoy is appointed, &c.; and vessels laden with the produce of the fishery at Newfoundland, &c. (except from the port of St. John's while any admiral, &c. shall be stationed there,) shall sail without convoy; and that if the master of any vessels sailing under convoy shall separate from such convoy without leave, he shall forfeit 1000l., and if laden with naval or military stores he shall forfeit 1500l., which penalties may however be mitigated to any sum not less than 50l.

It also enacts, that all insurances on vessels sailing without convoy, &c. shall be void with respect to the property of the master or parties privy to the offence, and if any loss is settled or paid on such policy, a penalty of 200l. is incurred for every such offence; and that no vessel shall be cleared outwards till a bond be given to the collector of the customs not to sail without convoy.

No fee, gratuity, or reward is allowed to be demanded or received for any licence granted in pursuance or under the authority of this statute.

And it is enacted, that the Admiralty shall give notice in the London and Dublin Gazettes, and to the commissioners of customs, that masters shall have flags on board to answer the signals, without which they shall not be cleared outwards; and that, &c.
OF CONVOYS, &c.

Ters in danger of being boarded by the enemy shall make signals, and if boarded, destroy instructions as to convoy, and for neglecting to do so shall forfeit 200l.

Sect. 12.
The penalties inflicted by this statute are given half to the King and half to informer, if sued for within a year; if not sued for within that time the whole penalty given to the King, to be sued for in the name of the Attorney-General; and the statute is to continue during the present hostilities with France.

Sect. 17.
And by the statute 45 Geo. 3. c. 72. it is enacted, that commanders deserting their convoys shall forfeit their share of prize.

Sect. 23.
By the treaty with Holland in 1667, it is stipulated, that the men of war or convoys of either nation, meeting or overtaking at sea any merchant ship or ships belonging to the subjects or inhabitants of the other, holding the same course, or going the same way, shall be bound, as long as they keep one course together, to protect and defend them against all and every one who would set upon them.

Cruizers are commonly the best sailing ships, appointed by the Admiralty to cruize in some certain latitudes, in order to meet with, and apprehend, or destroy the enemy; they are generally of the smallest rates, and must by no means leave their stations during the time limited, except forced thereto by some damage received, or by stress of weather. By the 6 Ann. cap. 13. it was enacted, that beside the line-of-battle ships, forty-three others should be employed as cruizers and convoys for the better preservation of trading vessels; four of which were to be third-rates; sixteen fourth-rates, and the rest of sufficient force to guard our commerce; they were to attend, as before-mentioned, in certain stations, and the Commissioners of the Admiralty may direct those of the navy, or some one or more persons, resident at such places as his Majesty shall appoint, to superintend and oversee every thing relating to those cruizers.

Several subsequent acts have confirmed the above, and increased the number of cruizers as necessity has required, to the no small security of our maritime interest.

Having now described the different modes of attacking an enemy at sea under proper authority, it follows in order, that we should treat of the consequence of success under the articles

OF CAPTURES, CONDEMNATIONS, AND APPEALS.

I have already had occasion to mention several circumstances concerning prizes, under the preceding article of Letters of Marque, &c. however, shall add a few more here, and begin with the distinctions made concerning them, which are of three sorts, viz.

1. Ships and goods taken by letters of marque, and by jus reprisaliarum.
2. Those taken from pirates or sea rovers; and
3. Those taken from professed enemies.

The first, as has been before-mentioned, belong entirely to the captors, after a legal condemnation, as the second does after an account thereof is given to the admiral, and the third were to be proceeded in, according to the power which authorised the capture.

It has been also granted to companies, to appropriate the prizes made in consequence of an infringement of their charters; as to the East India*, who have a right to all ships, &c. trading within their limits, for which they may sue in any of the courts at Westminster; as that of the South Sea may, though their grant is yet more ample, viz. The Company shall have all ships and goods which shall be taken as prize, by the ships employed or licensed by it, within their limits, or by such ships of her Majesty, as she

OF CAPTURES, &c.

shall allow for defence of the trade, without any account, save only that the officers and seamen on board the said ships of her Majesty, which shall be assisting to the taking any such ships or goods as prize, shall have such share thereof as her Majesty shall direct by the charter of incorporation; and it shall be lawful for the Company and their servants, and other persons employed and licensed by them, to seize by force of arms, the persons, ships, goods, or effects, of any of the subjects of her Majesty, who shall frequent, trade, or adventure into the South Seas, or other the limits aforesaid, and to detain, to the use of the Company, the ships, goods, and effects, so seized, and to send into Great Britain the persons of such of the subjects of her Majesty as shall be so seized, in order to their being prosecuted according to law.

It has been observed in a preceding part of this work, that no prize can be disposed of, nor any of her cargo touched, till after a legal condemnation in the Court of Admiralty here, or elsewhere; and that no delays be made in the process, it is enacted, that the Judge of such court shall, if requested thereto, within five days after request to him made, finish the usual preparatory examination of the proof of the capture being lawful, or that the proper motion shall be properly issued and executed within three days after request made to do so; and if there is no claim to the capture within twenty days, or the security required by the statute shall not be given within five days, then the Judge of the Admiralty shall, upon production of papers, &c. proceed without delay to acquit or condemn the capture; and if legality of capture be doubtful, and foreign evidence is necessary for settling those doubts, the Judges may cause the capture to be appraised by persons appointed by the captor and duly sworn, and after such appraisement, security shall be given to pay the captors the amount thereof, if adjudged lawful prize, and upon such security being given, the Judge shall cause the capture to be released and delivered up to claimant.

By stat. 15 Geo. 2. c. 31. s. 6. security must also be given by claimants for payment of costs.

By stat. 17 Geo. 2. c. 34. s. 4. it is enacted, that if claimants refuse to give security capitators may give such security and proceed to trial; and Judges abroad delaying a trial are subject to a penalty of 500l. to be recovered qui tam. with costs. &c.

For condemning a prize in the Admiralty Courts abroad no larger sum than 10l. shall be paid if the vessel be under the burthen of 100 tons, nor more than 15l. if above that burthen, under the like penalties.

The whole of these provisions were confirmed and re-enacted by the statute 29 Geo. 2. c. 34. s. 3, 4, 6 and 7.

Execution shall not be suspended if upon an appeal an appellate give security. 29 Geo. 3. c. 34. s. 9. (As to appeals see the next division of this chapter.)

By the statute 43 Geo. 3. c. 134. prize goods may on condemnation be landed in Great Britain, and secured in warehouses, upon payment of the duties and customs therein mentioned; and military or ship stores are exempted from duty; and goods condemned abroad are entitled to the benefit of the act, on production of certificate of condemnation. And all prizes (except ships of war) condemned abroad shall pay the duty on their first arrival.

The statute 21 Geo. 3. c. 5. s. 3. makes provisions and regulations as to prizes condemned in the port of London.

And by the statute 45 Geo. 3. c. 72. it is enacted amongst other things, that no procutor shall be concerned only for one party, under a penalty of 500l., forfeiture of the office, and disqualification. The section 43 of this act confirms and re-enacts the provisions of the stat. 13 Geo. 2. c. 34. above mentioned; and the statute further provides that on reversal of sentence after sale the net proceeds shall be deemed the value; and that six small privateers taken from the enemy may be included in one adjudication;
and that all books, &c. found on board captures shall be brought into registry of Admiralty Court.

By statute 49 Geo. 3. c. 123. s. 5. it is enacted, that notice of condemnation shall be transmitted to the treasurer of the navy by the navy agent, and subjects him to a penalty of 500l. for neglect of doing it.

Appeals from the Vice-Admiralty Courts in America, and our other plantations and settlements, may be brought before the Court of Admiralty in England, as being a branch of the Lord High Admiral's jurisdiction, though they may also be brought before the King in Council. But in cases of prize-vessels taken in time of war, in any part of the world, and condemned in any Court of Admiralty or Vice-Admiralty as lawful prize, the appeal lies to the Commissioners of Appeals, and not to Judges' Delegates. And this by virtue of divers treaties with foreign nations, by which particular courts are established in all the maritime countries of Europe for the decision of this question, Whether lawful prize or not? For this being a question between subjects of different states, it belongs entirely to the law of nations, and not to the municipal laws of either country, to determine it. The original court for deciding this question in England is the Court of Admiralty; and the Court of Appeal is in effect the King's Privy Council, the members of which are, in consequence of treaties, commissioned under the great seal for this purpose.

The Commissioners of Appeals, formerly appointed by our Sovereigns, were half their Privy Counsellors, and some others mentioned in the appointment, to whom appeals were to be made, both at home and abroad, as above; but as some difficulties arose about the commission, the following act was made to remedy and solve them, viz.

His Majesty, in order to bring appeals from sentences in causes of prizes, pronounced in the Courts of Admiralty, to a speedy determination, did, by his commission, bearing date the 11th of July, in the twenty-second year of his reign, revoke a former commission granted to all his Majesty's then Privy Counsellors, and all other his Privy Counsellors for the time being, during pleasure; and did also, by the same commission, appoint all his Privy Counsellors then being, as also Sir Thomas Parker, Knight, Lord Chief Baron of the Exchequer; Sir Martin Wright, Sir Thomas Dennison, and Sir Michael Forster, Knights, Justices of the Court of King's Bench; Sir Thomas Abney, Sir Thomas Burnet, and Sir Thomas Birch, Knights, Justices of the Court of Common Pleas; Charles Clark, Edward Clive, and Henage Legge, Esqrs. Barons of the Court of Exchequer, and the Chief Baron of the Exchequer for the time being, to be commissioners, for hearing and determining such appeals, during pleasure, &c. and as some objections have been raised against the last-mentioned commission, on account of the Lord Chief Baron of the Exchequer, the Justices of the King's Bench and Common Pleas, and the Barons of the Exchequer, who were not of the Privy Council, being joined therein; it is therefore enacted, that the said commission, and all the powers granted therein, shall be deemed good in law; and the Commissioners, as well the said Lord Chief Baron, and the said Justices and Barons therein named, and the Lord Chief Baron of the Exchequer, and the Justices of the King's Bench and Common Pleas, and the Barons of the Exchequer, for the time being, although they should not be of the Privy Council, are empowered, during his Majesty's pleasure, to receive and determine all such appeals, and to use all other jurisdictions, according to the true intent of the said commission.

No sentence upon the hearing of any such appeal shall be valid, unless a majority of the commissioners present be of the Privy Council.

By the statute 41 Geo. 3. c. 96, intituled "An Act for the better regulation of his Majesty's prize courts in the West-Indies and America, and for giving a more speedy and effectual execution to the decrees of the Lords Commissioners of Appeals."
OF BILLS OF HEALTH AND QUARANTINE.

Judges of two Vice Admiralty Courts in any two of the islands, and at Halifax in America, are appointed with salaries of 2000l. per annum each; and by this act it is amongst other things enacted, that on appeals the Court may, at the request of appellant, direct the property to be sent to England for sale, and the proceeds deposited in the Bank, or the proceeds may be sent and deposited; and if any difficulty arise before or after appeal, the captors or claimants may apply by their proctors to the Admiralty Court here, or the Commissioners of Appeal, for directions.

In cases of appeal, service of process on commander of King's ships, or his registered agent in this kingdom, or upon his Majesty's law office in the court below, or in cases of captures by privateers upon the commander or owners, or any or either of them, or upon the sureties to the letters of marque, is good service upon the parties.

By statute 45 Geo. 3. c. 72. appeals may be made to Commissioners for hearing prize causes, and appellants, not parties in the first instance, must enter their claims on appeals; and it is provided that the appellants shall take out inhibitions within twelve months, unless on special cause; and that on appeals, captures shall be appraised, and on security for the value, be delivered, or the effects sold, and the money deposited; and if such security be given, the captured vessels shall be entitled to a pass to protect her from future captures.

Whenever sentence of condemnation is appealed from, the Judge may order the proceeds of sale to be brought in, and invested in public securities, &c. and the Lords of Appeal may order proceeds to be paid into Court; and the Judge of the Admiralty and Vice Admiralty Courts, shall order and enforce distribution of proceeds after lapse of time for appeal.

OF BILLS OF HEALTH AND QUARANTINE.

The dreadful ravages made by pestilential disorders in those countries most subject to them, makes every prince and state fearful of receiving the infection, by the admission of goods from suspected places; and, to avoid it, they are always insin on ships bringing certificates from the magistracy of the port they last came from, declaring their country to be free from any contagious distemper: these are termed bills of health, of which copies are annexed, and, coming in this form, they are called clean ones, in opposition to foul ones, which are given to ships when they proceed from infected places, and these always obstruct their admittance to trade, till they have performed a quarantine of as many days as the guardians of health, where they arrive, may judge necessary, being commonly from ten to forty; on expiration of which, it is customary abroad for physicians to examine the ship's crew, and strict search is made on board, by persons appointed, to see whether the number of sailors corresponds with those mentioned in the bills of health; and, if any difference appears, it will be difficult in any country, and impossible in some, to obtain admission afterwards; therefore it behoves every captain to be very circumspect in having the exact number of his company inserted.

But though the sailors are not admitted to a communication with the shore, till the afore-mentioned prudent precautions have preceded; yet all commodities, unsusceptible of the infectious taint, such as corn, &c. are permitted immediately to be landed at proper places by the mariners, from whence they are afterwards conveyed to those destined for their consumption or sale.

Several foreign states have set apart and appropriated certain parcels of lands for the

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...fore-mentioned purposes, which they have enclosed, and erected buildings, both for the reception of goods and passengers, to lay their quarantine in, where the latter are comfortably accommodated, under the vigilance of guards, appointed to hinder any one's too near approach to these recluse: such are the Lazarettos at Marseilles, Venice, &c. and the expenses vary on these occasions, according to the difference of climes and accommodations.

All ships performing quarantine here do it at Stangate Creek, under such regulations as his Majesty in Council is pleased to appoint; and every merchant who had any goods from Italy, during the plague at Messina, was obliged to shew his documents, that is, the bills of lading, invoices, letters, or any other papers in which his goods were mentioned, to gentlemen in the secretary of the customs' office, appointed to examine them; and the merchandise, after lying the time ordered, was opened, aired, and underwent the appointed search, before it was permitted to be put into lighters, and brought to London, &c.

But the frequency of the plague in different parts of the Levant, making a revival of those laws necessary, the act of 26 Geo. 2. c. 6. was passed, which, after being explained and amended by various subsequent acts, was finally repealed, together with the 39th and 40th Geo. 3. c. 80, and all other acts relating to quarantine, by the statute 43 Geo. 3. c. 10, which is intituled "An Act for making further provision for the effectual performance of quarantine," and the preamble of which sets out that:

Whereas by an act, passed in the thirty-ninth and fortieth years of the reign of his present Majesty, intituled, an Act for erecting a lazaret on Chetney Hill, in the county of Kent, and for reducing into one act the laws relating to quarantine, and for making further provisions therein, and by other acts antecedent thereto, provision was made as well for purchasing lands for erecting a lazaret as for defraying the expenses of building the same, and for maintaining a proper establishment of officers necessary for enforcing a due performance of quarantine; in pursuance of which, lands were purchased at Chetney Hill, in the county of Kent, and progress was made in the erection of a lazaret there; but the funds granted by the said act of the thirty-ninth and fortieth years of his present Majesty having been found insufficient for completing the same; and for the payment of competent salaries to the officers who were to have the charge thereof, and other necessary expenses attendant on the quarantine service, according to the plan which had been approved of and directed by his Majesty, by and with the advice of his Privy Council, a further sum was granted by an act of the last session of Parliament: and whereas it is expedient that provision should be made for a due application of the same; be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for the Lords Commissioners of his Majesty's Treasury, or any three or more of them, or the Lord High Treasurer for the time being, from and after the commencement of this act, to give directions for completing the said lazaret, upon the said lands so purchased on Chetney Hill, in the county of Kent, with all necessary and convenient accommodations, for the purpose of performing quarantine, according to the plan which has been approved of and directed by his Majesty, by and with the advice of his Privy Council; or to such other plan as his Majesty, by and with the advice of his Privy Council, may from time to time approve and direct; and for defraying the expenses attending the same, to cause any part of the money so granted to be issued when it shall be necessary for the said service; and the said lazaret, when completed, and all the buildings and accommodations thereto belonging, shall be under the manage-
ment, order, and direction of such officers as shall be appointed by the Lords Commissio-
ners of his Majesty's Treasury, or any three or more of them, or the Lord High
Treasurer for the time being, for keeping the same fit and ready for the reception of
persons and goods, and for their due performance of quarantine; and such officers re-
spectively shall have such salaries as shall from time to time be appointed by his Majesty,
by and with the advice of his Privy Council; and the salaries of the said officers, and
all contingent expences, shall be defrayed out of the funds, and in the manner in which
the charges and expences of performing quarantine are at present defrayed, until such
time as a revenue shall be raised sufficient for those purposes, in the manner herein-after
mentioned.

II. Provided always, and be it enacted, that until the said lazaret shall be in a state
fit and proper to be used, it shall and may be lawful for the Lords Commissioners of his
Majesty's Treasury to provide one or more floating lazarets, which shall be used for all
the purposes for which the said Lazaret is intended by this act; and all the rules, regu-
lations, and provisions in this act contained, shall be deemed and taken, for all intents
and purposes, to be applicable to such floating lazaret or lazarets, until the lazaret
on shore shall, by his Majesty, his heirs or successors, by and with the advice of his or
their Privy Council, and by order of the same, notified by proclamation, or published
in the London Gazette, have been declared to be fit for the due performance of quaran-
tine therein.

III. And whereas it is reasonable that the owners of ships, vessels, and cargoes,
which in future shall have to perform quarantine, should defray the charges incurred
thereby; be it further enacted, that there shall be raised, levied, collected, and paid to
his Majesty, his heirs and successors, the several and respective duties of customs herein-
after mentioned; that is to say,

For every ton burthen of every ship or vessel, which ship or vessel, or the cargo of
which or any part whereof shall have performed quarantine in any port or place in Great
Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and which shall
have arrived from any part of Turkey, or from any port or place in Africa, within the
Streights of Gibraltar, or in the West Barbary on the Atlantic Ocean, with a clean bill of
health, seven shillings and six-pence:

For every ton burthen of every such ship or vessel, which shall have so arrived without
a clean bill of health, fifteen shillings:

For every ton burthen of every such ship or vessel, which ship or vessel, or the cargo
of which or any part whereof shall have performed quarantine in any port or place in
Great Britain, or the islands aforesaid, and which shall have arrived from any port or
place whatever, (except from any part of Turkey, or from any port or place in Africa,
within the Streights of Gibraltar, or in the West Barbary on the Atlantic Ocean) with a
clean bill of health, three shillings:

For every ton burthen of every such ship or vessel which shall have so arrived without
a clean bill of health, ten shillings:

For every ton burthen of every such ship or vessel arriving in any port or place in
Great Britain, or the islands aforesaid, with a cargo which in whole or in part shall con-
sist of goods, wares, or merchandise, the growth, produce, or manufacture of Turkey,
or of any port or place in Africa, within the Streights of Gibraltar, or in the West Bar-
bary on the Atlantic Ocean, and which ship or vessel, or the cargo of which or any
part whereof shall have performed quarantine in any port or place in Great Britain, or
the islands aforesaid, and which shall have arrived from any port or place whatever,
seven shillings and six-pence:

For every ton burthen of every ship or vessel which shall have so arrived under such [Sec. § 12.]
circumstances as shall induce his Majesty, by and with the advice of his Privy Council,
or the Lords or others of the Privy Council, or any three or more of them, under the authority herein-after given, to subject such ship or vessel to the like quarantine as ships arriving from Turkey with clean bills of health, seven shillings and six-pence:

For every ton burthen of every ship or vessel which shall have so arrived under such circumstances as shall induce his Majesty, by and with the advice aforesaid, or the Lords or others of the Privy Council, or any three or more of them as aforesaid, to subject such ship or vessel to the like quarantine as ships arriving from Turkey without clean bills of health, fifteen shillings.

For every ton burthen of every ship or vessel, which ship or vessel, or the cargo of which or of any part whereof shall have performed quarantine in any port or place in Great Britain, or the islands aforesaid, and which ship or vessel shall enter inwards in the port of London, an additional duty of one shilling:

All which several and respective duties shall be raised, levied, collected, and paid, and shall be sued for, recovered, and accounted for in the same manner, and subject to the same rules, regulations, penalties, and forfeitures, as any duties of customs are now subject to by law, as far as the same are applicable thereto: Provided always that no ship or vessel of war, or transport or other ship or vessel employed in the service of his Majesty's Government, nor any ship or vessel which shall not be bound to any port or place in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and which shall have really put into any port or place in Great Britain, or the islands aforesaid, in distress; nor any ship or vessel which shall have been obliged to perform quarantine only by reason of having certain goods, wares, and merchandise on board, and not producing the proper declaration or document as to their growth, produce, or manufacture; nor any ship or vessel arriving in any port or place in Great Britain, or the islands aforesaid, with a clean bill of health, from any port or place whatever, except from any part of Turkey, or from any port or place in Africa, within the Straights of Gibraltar, or in the West Barbary on the Atlantic Ocean, in ballast, or whose cargo shall consist wholly of salt; nor any ship or vessel which shall, together with its cargo, have duly performed quarantine in the lazarets of Malta, Ancona, Venice, Messina, Leghorn, or one of them, and shall sail from thence, and arrive at any port or place in Great Britain, or the islands aforesaid, with proper documents and vouchers attesting the same, to the satisfaction of his Majesty, his heirs, or successors, or of his or their Privy Council, shall be liable to or charged with any duty under this act.

IV. Provided always, and be it further enacted, that if after making good (in the manner herein-after mentioned) to the consolidated fund of Great Britain, of the sum of sixty-five thousand pounds, granted by the act of the thirty-ninth and fortieth years of his present Majesty, and of thirty thousand pounds, granted by an act of the last session of Parliament, or of so much thereof as shall be found necessary to issue for the services aforesaid, it shall appear to the Lord High Treasurer, or the Lords Commissioners of his Majesty's Treasury for the time being, that the duties hereby granted are more than sufficient to defray the charges and expenses already incurred, and also such further expenses as may be necessary for carrying the several purposes of this act into execution, it shall and may be lawful for the said Lord High Treasurer, or Lords Commissioners for the time being, from time to time, by any warrant or warrants under the hands of the said Lord High Treasurer, or of the said Lords Commissioners for the time being, or of any three or more of the said Lords Commissioners, to order and direct, that the duties hereby granted shall be reduced in such proportion and manner as they shall think proper, and also by like warrant or warrants (in case the said necessary expenses shall afterwards require an increase of the said duties) to order and direct that the same shall be again raised and increased to any amount not exceeding the sums which have been before granted by Parliament as aforesaid; and such warrant or war-
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V. And be it further enacted, that no ship or vessel, upon which the tonnage duty by this act imposed shall be due and payable, shall be permitted to be cleared inwards in any port of Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, unless the said tonnage duty shall have been first duly paid to the proper officers of the customs appointed to receive the same, or the commissioners of the customs shall otherwise direct; and that the tonnage of every ship or vessel shall be computed and taken, for the purpose of ascertaining the said duties, according to the register thereof, under the provisions of an act, passed in the twenty-sixth year of His present Majesty’s reign, intituled, an act for the further increase and encouragement of shipping and navigation; and in case of any dispute or doubt relative thereto, the same shall be ascertained by admeasurement, in the mode and manner prescribed in the said last-mentioned act.

VI. And be it further enacted, that it shall and may be lawful for the owner or owners of any ship or vessel, in respect of which any of the duties imposed by this act shall have been paid, to demand and recover from the respective importers, proprietors, or consignees of any goods or merchandize brought or imported in any such ship or vessel, such sum or sums of money as shall be equal to the just and reasonable contribution which the proportion of tonnage that such goods and merchandize bear to the tonnage burthen of the ship shall require, and no more; such proportion of tonnage to be ascertained according to the usage of merchants in like cases.

VII. And be it further enacted, that the monies arising from the duties hereby granted shall be paid into the receipt of His Majesty’s Exchequer, and carried to and made part of the consolidated fund of Great Britain; and that in the office of the auditor of the receipt of His Majesty’s Exchequer there shall be provided and kept a book or books, in which all the monies arising from the said duties and paid into the said receipt shall be entered separate and apart from all other monies paid or payable to His Majesty, his heirs or successors, upon any account whatsoever.

VIII. And be it further enacted, that the money so raised, levied, collected, and paid, shall be applied in the first place to defray the annual expenses of the said floating lazaret, and land lazaret, and all other annual expenses which shall be incurred in the execution of this act; and in the next place to make good any money that shall have been issued for purchasing the lands on Chetney Hill, and for the erecting of the said lazaret, and for providing the necessary and convenient accommodations thereto belonging, in manner herein-before mentioned, and to no other purpose whatsoever.

IX. And whereas it is expedient that the said herein-before recited act, passed in the thirty-ninth and fortieth years of the reign of his present Majesty, and every other act or acts heretofore passed concerning quarantine, together with such further provisions as are found to be necessary to be made in respect thereof, should be reduced into one act; be it therefore enacted, that the said act so passed in the thirty-ninth and fortieth years of the reign of his said present Majesty, as aforesaid, be repealed; and that every other act or acts heretofore passed, in so far as the same do or may be deemed or construed to relate to the performance of quarantine, shall be and the same are hereby repealed; save and except so much of the said act passed in the thirty-ninth and fortieth years of the reign of his present Majesty as relates to the repeal of former acts, and to the payment and recovering of any duties imposed by the said act, which shall be due and unpaid at the time of passing this act, and also save and except as to any offence or offences done or committed before the passing of this act, by any person or persons,
againt any law concerning quarantine; and as to any fine, penalty, forfeiture, or punishment, fines, penalties, forfeitures, or punishments, to which any such person or persons may be liable by reason of the same; and also as to any action, suit, prosecution, or other proceeding brought or commenced, or which shall hereafter be brought or commenced, for or on account of any such offence or offences so done or committed as aforesaid.

X. And be it further enacted, that all ships and vessels, as well his Majesty's ships of war as all others, coming from or having touched at any place from whence his Majesty, his heirs or successors, by and with the advice of his or their Privy Council, shall have adjudged and declared it probable that the plague, or any other infectious disease or distemper, highly dangerous to the health of his Majesty's subjects, may be brought; and all ships, vessels, and boats receiving any person, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or any other articles whatever, from or out of any ships or vessels so coming from or having touched at such infected place as aforesaid, whether such persons, goods, wares and merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles, shall have come or been brought in such ships or vessels, or such persons shall have gone, or articles have been put on board the same, either before or after the arrival of such ships or vessels at any port or place in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and whether such ships or vessels were or were not bound to any port or place in Great Britain, or the islands aforesaid; and all persons, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or any other articles whatever, on board of any such ships or vessels so coming from or having touched at such infected place as aforesaid, or on board of any such receiving ships, vessels, or boats as aforesaid, shall be and be considered to be liable to quarantine within the meaning of this act, and of any order or orders which shall be made by his Majesty, his heirs or successors, by and with the advice of his or their Privy Council concerning quarantine, and the prevention of infection from the time of the departure of such ships or vessels from such infected place as aforesaid, or from the time when such persons, goods, wares, merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles, shall have been received on board respectively; and all such ships, vessels, and boats as aforesaid, and all persons, (as well pilots as others,) goods, wares, and merchandise, and other articles as aforesaid, whether coming or brought in such ships, vessels, or boats, from such infected place as aforesaid, or going, or being put on board the same, either before or after the arrival of such ships, vessels, or boats, at any port or place in Great Britain, or the islands aforesaid; and all persons, goods, wares, and merchandizes, and other articles as aforesaid, on board any such receiving ship, vessel, or boat, as aforesaid, shall, upon their arrival at any such port or place, be obliged to perform quarantine in such place or places, for such time and in such manner as shall from time to time be directed by his Majesty, his heirs, or successors, by his or their order or orders in council, notified by proclamation, or published in the London Gazette; and that until such ships, vessels, and boats, persons, goods, wares, and merchandise, and other articles as aforesaid, shall have respectively performed and shall be duly discharged from such quarantine, no such person, goods, wares, or merchandise, or other article as aforesaid, or any of them, shall either before or after the arrival of such ships, vessels, or boats, at any port or place in Great Britain or the islands aforesaid, come or be brought on shore, or go and be put on board any other ship, vessel, or boat, in order to come or be brought on shore, in any such port or place, although such ships or vessels so coming from such infected place as aforesaid may not be bound to any port or place in Great Britain, or the islands aforesaid, unless in such manner and in such cases, and by such
license as shall be directed or permitted by such order or orders made by his Majesty, his heirs or successors, in council as aforesaid; and all such ships, vessels, and boats, whether coming from such infected place as aforesaid, or being otherwise liable to quarantine as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandise, and other articles as aforesaid whether coming or brought in such ships, vessels, or boats, or going or being put on board the same, either before or after the arrival of such ships, vessels, or boats, at any port or place in Great Britain or the islands aforesaid, and although such ships, vessels, or boats, shall not be bound to any port or place in Great Britain, or the islands aforesaid, and all commanders, masters, or other persons having the charge or command of any such ships, vessels, or boats, whether coming from any infected place, or being otherwise liable to quarantine, as aforesaid, shall be subject to all the provisions, rules, regulations, and restrictions contained in this act, or in any order or orders which shall be made by his Majesty, his heirs and successors, in council as aforesaid, concerning quarantine and the prevention of infection; and to all the pains, penalties, forfeitures, and punishments, contained in this act, for any breach or disobedience thereof, or of any order or orders of his Majesty in council, made under the authority thereof.

XI. "And whereas certain sorts of goods and merchandise are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into Great Britain, or the islands aforesaid;" be it enacted, that all such goods and merchandise as shall be particularly specified for that purpose in any order or orders made by his Majesty, his heirs or successors, in council, concerning quarantine and the prevention of infection as aforesaid, which shall be brought or imported into any port or place in Great Britain or the islands aforesaid, from any foreign country or place, in any ship or vessel whatever, and the ships or vessels in which the same shall be brought, and also all ships and vessels which shall arise from any port or place whatever under any alarming or suspicious circumstances as to infection, shall be subject and liable to such regulations and restrictions as shall be made by such order or orders of his Majesty, his heirs or successors, in council as aforesaid, respecting the same.

XII. And be it further enacted, that it shall and may be lawful for the Lords and others of his Privy Council, or any three or more of them, to make such order as they shall see necessary and expedient upon any unforeseen emergency, or in any particular case or cases with respect to any ship or ships, vessel or vessels, arriving and having any infectious disease or distemper on board, or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although such ship or ships, vessel or vessels, shall not have come from any place or places from which his Majesty's goods, his heirs or successors, by and with the advice of his or their Privy Council, may have adjudged and declared it probable that the plague, or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares, and merchandise, and other articles as aforesaid, on board the same; and in case of infectious disease or distemper appearing or breaking out in Great Britain or the islands aforesaid, to make such orders, and give such directions, in order to cut off all communication between any persons infected with any such disease or distemper and the rest of his Majesty's subjects, as shall appear to the said Lords or others of his Majesty's Privy Council, or any three or more of them, to be necessary and expedient for that purpose; and likewise to make such orders as they shall see fit for shortening the time of quarantine to be performed by particular ships or vessels, or particular persons, goods, wares, merchandise, or any other articles, or for wholly releasing particular ships or vessels, or particular persons, goods, wares, merchandise, or other articles from quarantine,
absolutely or conditionally; and generally to mitigate the strict performance of quarantine in particular cases, as special circumstances shall appear, in their judgment, to require; and all such orders so made by the Lords or others of the Privy Council, or any three or more of them as aforesaid, shall be as good, valid, and effectual, to all intents and purposes (as well with respect to the commander, master, or other person having the charge of any such ship or vessel, and all other persons on board the same, as with respect to any other persons having any intercourse or communication with them, and to the penalties, forfeitures, and punishments, to which they may respectively become liable), as any order or orders made by his Majesty, his heirs or successors, by and with the advice of his or their Privy Council, concerning quarantine, and the prevention of infection as aforesaid, and notified by proclamation or published in the London Gazette.

XIII. And be it further enacted, that if the plague, or such other infectious disease or distemper as aforesaid, shall appear on board any ship or vessel within the Straights of Gibraltar, the commander, master, or other person having charge thereof, shall immediately proceed to some one of the [foreign*] lazarets, and there perform quarantine, until such time as the land lazaret to be erected as aforesaid shall, by his Majesty, his heirs or successors, by and with the advice of his or their Privy Council, and by order of the same, notified by proclamation, or published in the London Gazette, have been declared to be fit for the due performance of quarantine therein; but if such plague, or other infectious disease or distemper as aforesaid, shall appear on board any ship or vessel without the Straights of Gibraltar, then the commander, master, or other person having the charge or command thereof, shall (unless such land lazaret shall have been so declared to be fit for the due performance of quarantine therein) immediately proceed to the harbour of Saint Helen’s, Tean and North Withel, being two of the islands commonly called the islands of Scilly, or to such other place as his Majesty, his heirs or successors, by and with the advice of his or their Privy Council, shall from time to time direct and appoint; where being arrived he shall make known his case to some officer of the customs there, who shall immediately acquaint the governor, deputy governor, or other principal magistrate thereof, and also the principal officer of the customs at some port in England near thereunto; and the said principal officer of the customs at such near port in England shall with all possible speed send intelligence thereof to the commissioners of the customs in the port of London; and the said governor, deputy governor, or other principal magistrate shall, in like manner, with all possible speed, send intelligence thereof to the Privy Council, to the end that such measures may be taken for the comfort and support of the crew and passengers on board such ship so infected, and such precautions used to prevent the spreading of the infection, as the case shall require; and the said ship or vessel shall there remain until directions shall be given relative thereto by the Lords or others of his Majesty’s Privy Council, or any three or more of them; nor shall any of the crew or passengers on board thereof go on shore; but in case the said commander, master, or other person having charge of the said ship or vessel so infected, shall not be able to make the said islands of Scilly, or other place so appointed by his Majesty as aforesaid, or shall be forced by stress of weather or otherwise to go up either of the channels, it shall not be lawful for him to enter with such ship or vessel into any other port or place in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, but he shall remain in some open road till he receives directions relative thereto from the Privy Council, and he shall use every necessary means in his power to prevent any of the ship’s company or passengers from going out of his ship, and to avoid all intercourse with other ships, vessels, or persons; and such ship’s company or passengers shall, until such commander, master, or other person shall have received such directions, remain in such ship, and shall avoid all intercourse.
with other ships, vessels, or persons; and such master, and every other person on board such ship or vessel shall obey such directions as he shall receive from the Lords or others of his Majesty's Privy Council, or any three or more of them as aforesaid; and the said commander, master, or any other person on board such ship or vessel as aforesaid, who shall not act conformably to the provisions and regulations herein directed, or shall act in disobedience to such directions as shall be received on board such ship or vessel from the Lords or others of the Privy Council, or any three or more of them as aforesaid, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

XIV. And be it further enacted, that every commander, master, or other person having the charge of any ship or vessel liable to the performance of quarantine, shall be and is hereby required at all times when such ship or vessel shall meet with any other ship or vessel at sea, or shall be within four leagues of the coast of Great Britain or Ireland, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, to hoist a signal to denote that his ship or vessel is liable to the performance of quarantine; which signal shall be, in the day time, if the said ship or vessel shall have a clean bill of health, a large yellow flag of six breadths of bunting at the main-topmast head; and if such ship or vessel shall not have a clean bill of health, then a like yellow flag, with a circular mark or ball entirely black in the middle thereof, whose diameter shall be equal to two breadths of bunting; and in the night time the signal shall in both cases be a large signal lantern, with a light therein, (such as is commonly used on board his Majesty's ships of war,) at the same mast-head; and such commander, master, or other person, shall keep such signals respectively, as the case shall be, hoisted during such time as the said ship shall continue within sight of such other ship or vessel, or within four leagues of the said coasts or islands, and while so in sight, or within such distance, until such ship or vessel so liable to quarantine as aforesaid shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander, master, or other person having charge of such ship or vessel so liable to the performance of quarantine, shall forfeit and pay for every such offence the sum of two hundred pounds.

XV. And be it further enacted, that if any commander, master, or other person having the charge or command of any ship or vessel, and knowing that the same is not liable to the performance of quarantine, shall hoist such signals as aforesaid, or either of them by day or night respectively, such commander, master, or other person as aforesaid, shall forfeit and pay the sum of two hundred pounds.

XVI. And be it further enacted, that, from and after the first day of June one thousand eight hundred and six, as to all ships or vessels arriving from any places beyond the Cape of Good Hope, or Cape Horn, in South America; and after the first day of August one thousand eight hundred and five, as to all ships or vessels arriving from any parts of Africa or America, not beyond those Cape, and from the West Indies and Mediterranean; and from and after the first day of May one thousand eight hundred and five, as to all ships and vessels arriving from other places; every commander, master, or other person having the charge of any ship or vessel coming from foreign parts, shall give to the pilot who shall go on board such ship or vessel a written paper containing a true account of the names of the place and country at which such ship or vessel shall have loaded, and also of all the places at which any such ship or vessel shall have touched on the homeward voyage, on pain of forfeiting the sum of two hundred pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of his Majesty in Council, made after the departure of any such ship or vessel from Great Britain, and then in force, ships and vessels coming from any place mentioned in any such paper shall be
liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person aforesaid of such ship or vessel, on pain of forfeiting the sum of fifty pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal according to the provisions of this act, and under the penalties in this act contained, for any neglect or refusal in respect of hoisting such signals.

XVII. And be it further enacted, that in case any pilot shall bring or conduct, or cause to be brought or conducted, any ship or vessel liable to the performance of quarantine, into any place which is not, or which shall not be specially appointed for the reception of ships and vessels so liable after receiving such paper as aforesaid, whereby it shall have been made appear that such ship or vessel was liable to the performance of quarantine, or without requiring and receiving such paper as aforesaid of and from every such commander, master, or other person having the charge of any ship or vessel coming from foreign parts, unless compelled by stress of weather, adverse winds, or accidents of the sea, such pilots shall for each and every such offence forfeit and pay the sum of one hundred pounds.

XVIII. And, to the end that it may be the better known whether any ship or vessel be actually infected with the plague, or other infectious disease or distemper as aforesaid, or whether such ship or vessel, or the mariners or passengers coming, or the cargo imported in the same, are liable to any orders touching quarantine; be it further enacted, that when any country or place shall be known to be, or suspected to be, infected with the plague, or other such infectious disease or distemper as aforesaid, or when any order or orders shall be made by his Majesty in Council concerning quarantine, and the prevention of infection as aforesaid, then and in such case, as often as any ship or vessel shall attempt to enter into any port or place in Great Britain, or of the isles of Guernsey, Jersey, Alderney, Sark, or Man, whether such port shall have been appointed for the performance of quarantine or not, the superintendent of quarantine, or his assistant, if there shall be such superintendent or assistant at such port or place, or if not, the principal officer of his Majesty's customs at such port or place, or such officer of the customs as shall be authorized by the commissioners of the customs, or any four or more of them, to act in that behalf, shall go off to such ship or vessel, and shall at a convenient distance from such ship or vessel, demand of the commander, master, or other person having charge of such ship or vessel, and such commander, master, or other person having charge of such ship or vessel shall upon such demand give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall be such superintendent or his assistant, or other officer of the customs authorized as aforesaid, be required, to all such questions or interrogatories as shall be put by him, by virtue and in pursuance of such regulations and directions as his Majesty, by order in council, shall be pleased to prescribe; and in case such commander, master, or other person having charge of such ship or vessel, shall, upon such demand made as aforesaid, refuse to make a true discovery in any of the particulars concerning which he shall be interrogated in manner aforesaid, or in case he shall not be required to answer such questions or interrogatories upon oath, shall give a false answer to any such question or interrogatory as aforesaid, such commander, master, or other person having charge of such ship or vessel, for every such offence shall forfeit and pay the sum of two hundred pounds.

XIX. And be it further enacted, that in case it shall appear upon such examination or otherwise, that such ship or vessel is under such circumstances as shall render it liable to perform quarantine, and that the port or place where it so arrives, or at which it attempts to enter as aforesaid, is not the port or place where it ought so to perform quarantine, in such case it shall and may be lawful to and for the officers of any of his
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Majesty's ships of war, or of any of his Majesty's forts or garrisons, and all other his Majesty's officers, upon notice thereof given to them or any of them respectively, and to and for any other person or persons whom they shall call to their aid and assistance, and such officers and other persons are hereby required, to oblige such ship or vessel to go and repair to such place as hath been or shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns upon such ship or vessel, or by any other kind of necessary force whatsoever; and in case any such ship or vessel shall come from or shall have touched at any place infected by the plague, or any other infectious disease or distemper as aforesaid, or shall have any person on board actually infected with the plague, or such other infectious disease or distemper, as aforesaid, and the commander, master, or any other person having charge of such ship or vessel, knowing that the place from whence he came, or at which he had touched as aforesaid, was infected with the plague, or such other infectious disease or distemper, or knowing some person on board to be actually infected with the plague, or such other infectious disease or distemper as aforesaid, shall refuse or omit to disclose the same upon such examination as aforesaid, or shall wilfully omit to hoist the signal herein-before directed, to denote that his ship or vessel is liable to the performance of quarantine, at the times and on the occasions herein with respect to the same, such commander, master, or any other person having charge of such ship or vessel, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy.

XX. And be it further enacted, that every commander, master, or any other person having charge of any ship or vessel which shall be ordered to perform quarantine as aforesaid, shall forthwith, after his arrival at the place appointed for the performance of quarantine, deliver, on demand, to the superintendent of quarantine, or his assistant, or to any other officer of the customs authorized as aforesaid to act in that behalf, and which superintendent, assistant, or any other officer as aforesaid, is hereby required to make such demand, his bill of health and manifest, together with his log-book and journal, under pain of forfeiting the sum of one hundred pounds, if he shall wilfully refuse and neglect so to do.

XXI. And be it further enacted, that if any commander, master, or any other person having charge of any ship or vessel liable to perform quarantine, and on board of which the plague, or any other infectious disease or distemper shall not then have appeared, shall himself quit, or shall knowingly permit or suffer any seaman or passenger coming in such ship or vessel to quit such ship or vessel by going on shore, or by going on board any other ship, boat, or vessel, before such quarantine shall be fully performed, unless in such cases and by such proper licence as shall be directed and granted, and by virtue of such order or orders to be made concerning quarantine, and the prevention of infection as aforesaid; or in case any commander, master, or any other person having charge of such ship or vessel shall not, within a convenient time after due notice given for that purpose, cause such ship or vessel, and the lading thereof, to be conveyed into the place or places appointed for such ship, vessel, and lading, to perform their quarantine respectively, then all in every such case every such commander, master, or other person as aforesaid, for every such offence shall forfeit and pay the sum of five hundred pounds; and if any person coming in any ship or vessel liable to perform quarantine (or any pilot or other person going on board the same, either before or after the arrival of such ship or vessel at any port or place in Great Britain, or the islands aforesaid) shall, either before or after such arrival, quit such ship or vessel by going on shore in any port or place in Great Britain or the islands aforesaid, or by going on board any other ship, vessel, or boat, with intent to go on shore as aforesaid, before such ship or vessel, so liable to quarantine as aforesaid, shall be regularly discharged from
the performance thereof, it shall and may be lawful for all persons whatsoever, by any kind of necessary force, to compel such pilot or other person so quitting such ship or vessel so liable to quarantine, to return on board the same; and every such pilot or other person so quitting such ship or vessel so liable to quarantine, shall for every such offence suffer imprisonment for the space of six months, and shall forfeit and pay the sum of two hundred pounds.

XXII. And be it further enacted, that when any ship or vessel which has performed quarantine in any foreign lazaret shall arrive in any of the ports of Great Britain, or the isles of Guernsey, Jersey, Alderney, Sark, or Man, with a clean bill of health, no goods or merchandize shall be permitted to be landed or unshipped, unloaded or moved in order to be landed out of such ship or vessel; but the commander, master, or other person having the charge or command of such ship or vessel, shall immediately upon his arrival give notice thereof; and of the foreign port or ports in which such ship or vessel hath performed quarantine, to the principal officer of his Majesty’s customs at the port where he shall arrive, or at the port nearest thereto, in order that the same may be forthwith laid before his Majesty’s Privy Council; and if the commander, master, or other person as aforesaid, or any person whatsoever, shall land, or shall unship, unload, or move, in order to land any goods or merchandize out of the said ship or vessel, before an order of his Majesty’s Privy Council shall be made, giving directions therein, or otherwise than shall be directed in the said order, every such person shall, for every such offence, forfeit and pay the sum of two hundred pounds.

XXIII. And whereas disobedience or refractory behaviour in persons under quarantine, or liable to the performance of quarantine, or in other persons who may have had any intercourse or communication with them, may be attended with very great danger to his Majesty’s subjects; be it further enacted, that all persons liable to perform quarantine, and all persons having had any intercourse or communication with them, whether in ships or in a lazaret, or elsewhere, shall be subject, during the said quarantine, or during the time they shall be liable to quarantine, to such orders as they shall receive from the superintendant of quarantine or his assistant, or from the principal officer of the customs at any port or place where there is no such superintendent or assistant, or from any other officer of the customs authorized as aforesaid to act in that behalf; and the said officers are hereby empowered and required to enforce all necessary obedience to the said orders, and in case of necessity to call in others to their assistance, and all persons so called in are hereby required to assist accordingly; and such officers shall, and they are hereby empowered and required to compel all persons liable to perform quarantine as aforesaid, and persons having had any intercourse or communication with them, to repair to such lazaret, ship, vessel, or place, and to cause all goods, wares, and merchandize, and other articles comprised within any such orders to be made as aforesaid, to be conveyed to such lazaret, ship, vessel, or place duly appointed in that behalf, in such manner and according to such directions as shall be made by order of his Majesty in Council as aforesaid, or of the Lords and others of the Privy Council, or of any three or more of them; and if any person or persons liable to perform quarantine as aforesaid, or any person or persons having had any intercourse or communication with him, her, or them, shall wilfully refuse or neglect to repair forthwith, when required and directed so to do by such officer as aforesaid, to the said lazaret, ship, vessel, or place duly appointed in that behalf, or having been placed in the said lazaret, ship, vessel, or place, shall escape or attempt to escape out of the same before quarantine duly performed, it shall and may be lawful to and for the said quarantine officers, and also the watchman and other persons appointed to see quarantine performed, and each of them, and they are hereby respectively required, by such necessary force as the case shall require to compel every such person, so refusing or neglecting as aforesaid,
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and every such person so escaping or attempting to escape as aforesaid, to repair or return to such lazaret, ship, vessel, or place so appointed as aforesaid; and every person so refusing or neglecting to repair forthwith, as aforesaid, to the said lazaret, ship, vessel, or place and also every person actually escaping as aforesaid, shall be adjudged guilty of felony, and suffer death as in cases of felony without benefit of clergy.

XXIV. And be it further enacted, that it shall be lawful, for any constable, head- Persons quitting borough, tythingman, or any other peace officer, or any other person, to seize and apprehend any person that shall, contrary to the provisions of this act, have quitted or come on shore from any ship or vessel liable to perform quarantine, or who shall have escaped from or quitted any ship or vessel under quarantine, or from any lazaret, ship, vessel, or place, appointed in that behalf; for the purpose of carrying such person before any justice of the peace or magistrate, and it shall be lawful for any such justice of the peace or magistrate to grant his warrant for the apprehending and conveying of any such person to the ship or vessel from which he or she shall have come on shore, or to any ship or vessel performing quarantine, or lazaret, from which he or she shall have escaped, or for the confining of any such person in any such place of safe custody, (not being any public jail,) and under such restrictions as to having any communication with any other persons, as may, in the discretion of any justice of the peace or magistrate, (calling to his aid, if he shall see fit, any medical person,) appear to be proper, until such person can be safely and securely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Privy Council, as to the disposal of any such person, and to make any further order or grant any further warrant that may be necessary in that behalf.

XXV. And whereas orders have been given by the Lords of his Majesty’s Privy Council for persons on shore, who had intercourse with the crew and passengers of a vessel coming from a place from whence it was judged that there was danger of infection being brought, to be sent afloat for the performance of quarantine, in like manner with such crew and passengers; be it enacted, that such orders so issued as aforesaid by the Lords of his Majesty’s Privy Council for the prevention of infection, shall be taken and considered to have been, and are hereby declared to be good and valid in law; and all persons who may have been concerned in advising, issuing, or carrying into execution the said orders or any of them, shall be, and are hereby indemnified for the same, and shall be and are hereby freed and discharged from all actions, suits, or other proceedings, which have been or shall be brought and commenced against them, for or on account or by reason of the said orders or any of them, or of any other matter or thing done in pursuance thereof.

XXVI. And be it further enacted, that if any officer of his Majesty’s customs, or any other officer or person whatsoever to whom it doth or shall appertain to execute any order or orders made or to be made concerning quarantine, or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall knowingly and wilfully embezzle any goods or articles performing quarantine, or be guilty of any other wilful breach or neglect of his duty in respect of the ships, persons, goods, or articles performing quarantine, every such officer and person so offending shall forfeit such office or employment as he may be possessed of, and shall become from thenceforth incapable to hold or enjoy the same, or to take a new grant thereof; and every such officer and person shall forfeit and pay the sum of one hundred pounds; and if any such officer or person shall desert from his duty when employed as aforesaid, or shall knowingly and wilfully permit any person, ship, vessel, goods, or merchandize, to depart or be conveyed out of the said lazaret, ship, or other place as aforesaid, unless by permission under an order of his Majesty, by and with the advice of his Privy Council, or under an order of three or more of the Lords or others of his Privy Council, or if any person...
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... hereby authorized and directed to give a certificate of a ship having duly performed quarantine or airing, shall knowingly give a false certificate thereof, every such person so offending shall be deemed guilty of felony, and suffer death, as in cases of felony, without benefit of clergy; and if any such officer or person shall knowingly and wilfully damage any goods performing quarantine under his direction, he shall be liable to pay treble damages and full costs of suit to the owner of the same.

XXVII. And be it further enacted, that if any person not infected with the plague, or other infectious disease or distemper as aforesaid, nor liable to perform quarantine, shall enter the said lazaret, or other place so appointed as aforesaid, whilst any person or persons infected with the plague, or being under quarantine shall be therein, such person so entering the said lazaret, or other place so appointed as aforesaid shall perform quarantine there; and if he or she shall return or attempt to return from thence, unless in such cases and by such licenses as shall be directed and granted by virtue of such order or orders of his Majesty in Council, or of the Lords or others of his Majesty's Privy Council, or any three or more of them, as aforesaid, it shall and may be lawful to and for the quarantine officers, watchmen, and other persons appointed to guard or secure the said lazaret or other place so appointed as aforesaid, by such necessary force as the case shall require, to compel such persons so returning or attempting to return, to repair into the said lazaret or other place so appointed as aforesaid, there to continue and perform quarantine; and in case such person shall actually escape out of the said lazaret, or other place where he or she ought to have performed quarantine, before he or she shall have fully performed the same, he or she shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

XXVIII. And be it further enacted, that after quarantine shall have been duly performed by any ship or vessel, person or persons, obliged to perform quarantine as aforesaid, according to this act, and to such order or orders made as aforesaid, and upon proof to be made by the oaths of the master or other person having charge of such ship or vessel, and of two of the persons belonging thereto, or upon proof to be made by the oaths of two or more credible witnesses, before the collector or principal officer of the customs, at the port where such quarantine shall be performed, or at the port nearest thereunto, or before any justice of the peace living near to the port or place, or when such quarantine shall have been performed within any of the said isles of Guernsey, Jersey, Alderney, Sark, or Man, before any two jurats or magistrates of any of the said isles respectively, that such ship or vessel, and all and every such person and persons respectively, have duly performed quarantine as aforesaid, and that the ship or vessel, and all and every person and persons are free from infection; and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said ship, or person acting for him, then, and in the said respective cases such collector or principal officer of the customs, or such justice of the peace, or such jurats or magistrates as aforesaid, respectively, are hereby required to give a certificate thereof, and thereupon such ship or vessel, and all and every such person or persons so having performed quarantine, shall be liable to no further restraint or detention upon the same account for which such ship or vessel, person or persons, shall have performed quarantine as aforesaid.

XXIX. And be it further enacted, that all goods, wares, and merchandize, and other articles liable to quarantine as aforesaid, shall be opened and aired in such place or places, and for such time and in such manner, as shall be directed by his Majesty, his heirs and successors, by such order or orders to be made as aforesaid; and after such orders shall have been duly complied with, a certificate thereof shall be given by the chief officer appointed to superintend the quarantine and airing of such goods, wares, and merchandize, and other articles, or by the person acting for him, and proof thereof...
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shall be made by the oaths of two or more credible witnesses, before the collector or other principal officer of the customs at the port lying next to such place or places where such goods, wares, or merchandize, or other articles, shall have been opened and aired as aforesaid, or before any justices of the peace living near the same, or before any two jurats or magistrates of the said isles of Guernsey, Jersey, Alderney, Sark, or Man, respectively; which collector or other principal officer, or such justice, or jurats or magistrates respectively, as the case may be, shall also make certificate of such proof having been made; and upon the production of such certificates to his Majesty's Commissioners of the customs in England or Scotland, respectively, or to the governor or lieutenant governor, commander in chief, or chief magistrates of any of the said last-mentioned islands, as the case may be, such goods, wares, and merchandize, and other articles, shall be forthwith discharged from any restraint or detention upon the same account, by order of the said commissioners, or any three or more of them, or of the said governor, lieutenant governor, commander in chief, or chief magistrate respectively.

XXX. And be it further enacted, that if any person shall knowingly and wilfully forge or counterfeit, or procure to be forged or counterfeited, any certificate directed for and required to be granted by this act, or shall publish as true any such forged or counterfeited certificate, knowing the same to be forged or counterfeited, he or she shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

XXXI. And be it further enacted, that if any person shall land or unship, or shall move, in order to the landing or unshipping thereof, any goods, wares, or merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other articles whatsoever, from on board any ship or vessel liable to perform quarantine as aforesaid, or shall knowingly receive the same after they have been so landed or unshipped, every such person shall forfeit and pay a sum not exceeding the sum of five hundred pounds, nor less than the sum of one hundred pounds; and if any person or persons shall clandestinely convey, or shall secrete or conceal for the purpose of conveying, any letters, goods, wares, or merchandize, or other articles as aforesaid, from any ship or vessel actually performing quarantine, or from the lazaret or other place where such goods, wares, merchandize, or other articles as aforesaid, shall be performing quarantine, every such person so offending as last aforesaid shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

XXXII. And be it further enacted, that in case it shall at any time happen that any part of Great Britain, Ireland, or the isles of Guernsey, Jersey, Alderney, Sark, or Man, or France, Spain, or Portugal, or the low countries, shall be infected with the plague, or any other such infectious disease or distemper as aforesaid, it shall and may be lawful to and for his Majesty, his heirs and successors, by his or their proclamation, to prohibit and restrain all small boats and vessels under the burthen of twenty tons, from sailing or passing out of any port or place of Great Britain, or the isles of Guernsey, Jersey, Alderney, Sark, and Man, or any of them, until security be first given by the master of every such boat or vessel respectively, to the satisfaction of the principal officer of the customs, or the chief magistrate of the ports or places from whence such boat or vessel shall sail, by bond taken by such officer or magistrate, to the King, his heirs or successors, with sufficient sureties in the penalty of three hundred pounds, with conditions that if such boat or vessel shall not go to or touch at any country, port, or place to be mentioned for that purpose in such proclamation, and if neither the master or other person having charge of such boat or vessel, nor any mariner or passenger in such boat or vessel, shall, during the time aforesaid, go on board any other ship.
or vessel at sea, and such master, or other person having charge of such boat or vessel, shall not permit or suffer any person or persons to come on board such boat or vessel at sea, from any other ship or vessel, and shall not, during the time aforesaid, receive any goods and merchandise whatsoever, out of any other ship or vessel, than such bond shall be void; for the making of which bond no fee or reward whatsoever shall be taken; and in case any boat or vessel, for which such security shall be required by such proclamation, shall set sail or pass out of any port or place of Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, and Man, or any of them respectively, before such security be given as aforesaid, every such boat or vessel so sailing or passing out of any port or place, contrary to the true intent and meaning of this act, together with her tackle, apparel, and furniture, shall be forfeited to his Majesty, his heirs and successors, and the master of and every mariner sailing in any such boat or vessel, shall severally forfeit and pay the sum of twenty pounds.

XXXIII. And be it further enacted, that the publication in the London Gazette of any order in Council, or of any order by three or more of the Lords or others of his Majesty's Privy Council, made in pursuance of this act, or his Majesty's Royal Proclamation, made in pursuance of the same, shall be deemed and taken to be sufficient notice to all persons concerned of all matters therein respectively contained.

XXXIV. And be it further enacted, that all forfeitures and penalties aforesaid, that shall be incurred by reason of any offence committed against any part of this act, shall and may be recovered by suit in any of his Majesty's Courts of Record at Westminster, in which no essoign or wager of law, or more than one imparlance shall be granted, or in Scotland by summary action in the Court of Session, or by prosecution before the Court of Justiciary there, or by suit in any of his Majesty's Courts in the islands of Guernsey, Jersey, Alderney, Sark, or Man; and every such forfeiture and penalty shall belong and be given, one moiety to the person who shall inform and sue for the same, and the other moiety to his Majesty, his heirs and successors, to be applied towards defraying the expenses of erecting and maintaining the lazaret as aforesaid.

XXXV. Provided always, and be it further enacted, that it shall not be lawful for any person or persons whatsoever, to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, information, or prosecution, or actions, bills, plaints, informations, or prosecutions, in any of his Majesty's Courts in England or Scotland, or any proceeding or proceedings before any justices of the peace of any county, riding, division, city, town, stawarthy, or place, for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this act, or against any order or orders made by his Majesty, his heirs or successors, in Council, or by any three or more of the Lords or others of his Majesty's Privy Council as aforesaid, unless the same be commenced, prosecuted, entered, or filed in the name of his Majesty's Attorney General in England, or Advocate in Scotland, respectively, or in the name or names of some officer or officers of the customs in England or Scotland, respectively; and if any action, bill, plaint, information, or prosecution, actions, bills, plaints, informations, or prosecutions, or any proceeding or proceedings before any justices as aforesaid, shall be commenced, prosecuted, entered, or filed, in the name or names of any other person or persons than is in that behalf before-mentioned, the same shall be and are hereby declared to be null and void.

XXXVI. Provided also, and be it further enacted, that in case any prosecution, suit, complaint, or other proceeding as aforesaid, shall be commenced or depending by any officer or officers of the customs, for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this act, or against any order or orders made by his Majesty, his heirs or successors, in Coun-
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... or by any three or more of the Lords or others of his Majesty’s Privy Council as aforesaid, it shall and may be lawful for his Majesty’s Attorney General in England, or Advocate in Scotland, respectively, to stop all further proceedings therein, as well with respect to the share of such fine, penalty, or forfeiture, fines, penalties, or forfeitures, to which any such officer or officers shall or may claim to be entitled, as to the share thereof belonging to his Majesty, if upon consideration of the circumstances under which any such fine, penalty, or forfeiture, fines, penalties, or forfeitures, may have been incurred, it shall appear to them respectively to be fit and proper so to do.

XXXVII. And be it further enacted, that in all cases wherein, by or by virtue and in pursuance of this act, any examinations or answers shall be taken or made upon oath, the person who shall be authorized and required to take such examinations and answers, shall and shall be deemed to have full power and authority to administer such oaths; and if any person who shall be so interrogated or examined, shall wilfully swear falsely to any matter, concerning which such person shall depose or make oath on such examination or in such answers, or if any person shall procure any other person so to do, he or she so swearing falsely, or procuring any other person so to do, shall be deemed to have been guilty of, and shall be liable to be prosecuted for wilful and corrupt perjury, or subornation of wilful and corrupt perjury, as the case may be, and shall suffer the pains, penalties, and punishments, of the law, in such case respectively made and provided.

XXXVIII. And be it further enacted, that all offences committed against any of the provisions of this act, not being felony, and every offence or disobedience to any order of Council, made for the better carrying into execution this act, for which no specific penalty, forfeiture, or punishment, is provided by this act, shall and may be tried, heard, and determined before any two justices of the peace of the county, riding, division, city, or place, where such offence or disobedience shall happen; and if any person shall be convicted of any such offence or disobedience, he or she shall be liable to such forfeiture and penalty, not exceeding the sum of fifty pounds for any one offence, or to such imprisonment not exceeding three months for any one offence, as shall, in the discretion of the two justices who shall have heard and determined the same, be judged proper; and such forfeiture and penalty shall be paid, one moiety to the person suing for the same, and the other to his Majesty, to be applied as the moieties of other forfeitures and penalties herein-before directed to be applied.

XXXIX. Provided always, and it is hereby enacted, that no attainer of felony by virtue of this act, shall be extended to work any corruption of blood, or forfeiture of any goods, chattels, lands, tenements, or hereditaments.

XL. And be it further enacted, that in any prosecution, suit, or other proceeding against any person or persons whatsoever, for any offence against this act, or any act which may hereafter be passed concerning quarantine, or for any breach or disobedience of any order or orders which shall be made by his Majesty, his heirs or successors, by and with the advice of his or their Privy Council concerning quarantine, and the prevention of infection, and notified or published as aforesaid, or of any order or orders made by three or more of the Lords or others of the Privy Council as aforesaid, the answer or answers of the commander, master, or other person having charge of any ship or vessel, to any questions or interrogatories put to him by virtue and in pursuance of this act, or of any act which may hereafter be passed concerning quarantine, or of any such order or orders as aforesaid, may and shall be given and received as evidence so far as the same relates or relate to the place from which such ship or vessel came, or to the place or places at which such ship or vessel touched, and the having been directed to perform any ship or vessel shall have been directed to perform quarantine by the superintendent of quarantine or his assistant, or where there is no such superintendent or assistant...
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by the principal officer of the customs at any port or place, or other officer of the customs authorized as aforesaid to act in that behalf, the having been so directed to perform quarantine may and shall be given and received as evidence that such ship or vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant or defendants in any such prosecution, suit, or other proceeding, to shew that the ship or vessel did not come from or touch at any such place or places as is or are stated in the said answer or answers, or that such ship or vessel, although directed to perform quarantine, was not liable to the performance thereof; and where any ship or vessel shall in fact have been put under quarantine at any port or place, by the superintendent of quarantine or his assistant, or other officer of the customs authorized as aforesaid to act in that behalf, and shall actually be performing the same, such ship or vessel shall, in any prosecution, suit, or other proceeding against any person or persons whatever, for any offence against this act, or any other act which may hereafter be passed concerning quarantine, or against any order or orders concerning quarantine, and the prevention of infection, which shall be made by his Majesty in council, or by three or more of the Lords or others of his Privy Council as aforesaid, be deemed and taken to be liable to quarantine, without proving in what manner or from what circumstances such ship or vessel became liable to the performance thereof.

XLI. And be it further enacted, that whenever any person or persons shall be charged with any offence against this act, or any act which may hereafter be passed concerning quarantine, or with any breach or disobedience of any order or orders which shall be made by his Majesty, his heirs or successors, in council as aforesaid, or of any order or orders made by the Lords or others of the Privy Council, or any three or more of them as aforesaid, and the same shall be made appear to any judge of his Majesty's Court of King's Bench by affidavit or by certificate, of an indictment or information being filed against such person or persons in the said court for such offence, it shall and may be lawful for such judge to issue his warrant in writing under his hand and seal, and thereby to cause such person or persons to be apprehended and brought before him or some other judge of the said Court, or before some one of his Majesty's justices of the peace, in order to his, her, or their being bound to the King's Majesty with two sufficient sureties in such sum as in the said warrant shall be expressed, with condition to appear in the said Court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any of the offences aforesaid; and in case such person or persons shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice of the peace respectively, to commit such person or persons to the common jail of the county, city, or place where the offence shall have been committed, or where he, she, or they shall have been so apprehended, until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the said Court of King's Bench in term time, or by one of the judges of the said court in vacation, and the recognizances or recognizances to be taken thereupon shall be returned and filed in the said Court, and shall continue in force until such person or persons shall have been acquitted of such offence, or in case of conviction shall have received judgment for the same; and sooner ordered by the said Court to be discharged: and that where commitment as aforesaid, or commitment as aforesaid, or to be delivered to the party or the gaoler, or to the gaoler, or shall be so persons shall be committed or bound to answer to such person or persons, of a copy of the indictment or information or cause to such person or persons, that unless such person or persons shall, or shall hereafter be committed and delivered for the prosecutor of such indictment, or to such person or persons, that unless such person or persons shall, or shall hereafter be committed and delivered for the prosecutor of such indictment: or of a copy of the indictment or information or cause to such person or persons.
entered in the said Court to such indictment or information, an appearance and the plea of
not guilty will be entered thereto, in the name or names of such person or persons re-
spectively; and in case he, she, or they shall thereupon, for the said space of eight days,
after such delivery of a copy of the indictment or information as aforesaid, neglect to
cause an appearance, and also a plea or demurrer to be entered in the said Court to such
indictment or information, it shall be lawful for the prosecutor of such indictment or
information, upon an affidavit being made and filed in the said Court, of a delivery of a
copy of such indictment or information, with such notice indorsed thereon as aforesaid,
to such person or persons, or to such gaoler, keeper, or turnkey, as the case may be,
which affidavit may be made before any judge or commissioner of the said Court au-
thorized to take affidavits in the said Court to cause an appearance and the plea of not
guilty to be entered in the said Court to such indictment or information, for such person
or persons respectively; and such proceedings shall be had thereupon, as if the defend-
ant or defendants in such indictment or information had appeared and pleaded not
guilty, according to the usual course of the said Court; and that if, upon the trial of
such indictment or information, the defendant or defendants so committed and detained
as aforesaid, shall be acquitted of all the offences therein charged upon him, her, or
them, it shall be lawful for the judge before whom such trial shall be had, although he
may not be one of the judges of the said Court of King's Bench, to order that such
defendant or defendants shall be forthwith discharged out of custody, as to his, her, or
their commitment as aforesaid; and such defendant or defendants shall be therefore
discharged accordingly.

XLII. And be it further enacted, that all offences committed contrary to, or in
breach or violation of this or any other act hereafter to be passed, or of any order or
orders of his Majesty, his heirs or successors, now or hereafter to be made in his or
their Privy Council, concerning quarantine, and the prevention of infection, and notified
by proclamation, or published in the London Gazette, or of any order or orders
made by three or more of the Lords or others of the Privy Council as aforesaid, whether
the said offence shall be done and committed within the body of any county or
upon the high seas or elsewhere, shall and may be tried, heard, and determined in any
county within England or Scotland, or in the proper Courts of the Isles of Guernsey,
Jersey, Alderney, Sark, or Man, respectively.

XLIII. And be it further enacted, that if any action or suit shall be commenced
against any person or persons, for any thing done in pursuance and execution of this
present act, or of any order of Council made by virtue thereof, the defendant or defen-
dants in such action or suit may plead the general issue, and give this act and the special
matter in evidence at any trial to be had thereupon, and that the same was done in pur-
suance and in execution of the said act; and if it shall appear so to have been done,
then the jury shall find for the defendant or defendants; and if the plaintiff shall be non-
suited or discontinue his action after the defendant or defendants shall have appeared,
or if judgment shall have been given upon any verdict or demurrer against the plain-
tiff, the defendant or defendants shall and may recover treble costs, and have the like
remedy for the same as the defendant or defendants hath or have in other cases by law;
and that no such action or suit shall be brought against any person for any matter or
thing done in pursuance or execution of this act, but within the space of two months
after such matter or thing shall have done.

XLIV. And be it further enacted, that this act shall commence and take effect, ex-
cept as is herein-before otherwise provided, on the fifth day of April one thousand
eight hundred and five, and may be altered, varied, or repealed, by any act or acts to
be made in this present session of Parliament.
of bills of health and quarantine.

By the statute 46 Geo. 3. c. 98. additional and further provisions for the effectual performance of quarantine in Great Britain, were enacted as follows: the preamble recites that,

"Whereas, by an act passed in the forty-fifth year of the reign of his present Majesty, intituled an act for making further provision for the effectual performance of quarantine, certain signals are directed to be used on board of ships or vessels having clean bills of health, and certain other signals on board of ships or vessels not having clean bills of health, and it will be more conducive to the public safety that a third signal should be used on board of ships or vessels having the plague or other infectious disease or distemper highly dangerous to the health of his Majesty's subjects actually on board, be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the tenth day of October one thousand eight hundred and six, every commander, master, or other person having the charge of any ship or vessel, on board whereof the plague or other infectious disease or distemper highly dangerous to the health of his Majesty's subjects, shall actually be, shall be, and is hereby required, at all times when such ship or vessel shall meet with any other ship or vessel at sea, or shall be within four leagues of the coast of Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, to hoist a signal to denote that his ship or vessel has the plague, or other infectious disease or distemper highly dangerous to the health of his Majesty's subjects actually on board thereof, which signal shall be in the day time a flag of yellow and black, borne quarterly of eight breadths of bunting at the main top-mast head, and in the night time the signal shall be two large signal lanterns (such as are commonly used on board of his Majesty's ships of war), one over the other at the same mast head; and such commander, master, or other person, shall keep such signal hoisted during such time as the said ship or vessel so having the plague, or such other infectious disease or distemper as aforesaid, on board thereof, shall continue within sight of such other ship or vessel, or within four leagues of the said coasts or islands; and while so in sight, or within such distance until such ship or vessel so having the plague, or such other infectious disease or distemper as aforesaid, on board thereof, shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander, master, or other person, having charge of such ship or vessel, shall forfeit and pay for every such offence the sum of two hundred pounds.

II. "And whereas it is by the said recited act enacted, that every commander, master, or other person, having the charge of any ship or vessel coming from foreign parts, shall give to the pilot who shall go on board such ship or vessel, a written paper containing a true account of the names of the place and country at which such ship or vessel shall have loaded; and also of all the places at which any such ship or vessel shall have touched on the homeward voyage: and whereas ships and vessels are or may be, by the order of his Majesty, his heirs or successors, in council, made liable to quarantine by reason of their having on board thereof certain sorts of goods and merchandize more especially liable to retain infection; and it is expedient that the pilot going on board of such ships and vessels should also be informed of the cargo thereof; be it therefore enacted, that from and after the said tenth day of October every commander, master, or other person, having the charge of any ship or vessel coming from foreign parts, which shall not be liable to quarantine in respect of the place from whence such ship or vessel comes, shall give to the pilot who shall go on board of such ship or vessel, a written paper containing a true account of the different articles composing the cargo of such ship or vessel, on pain of forfeiting the sum of two hundred pounds for any
neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of his Majesty in Council then in force, ships and vessels having on board any of the articles mentioned in such paper, shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person having the charge of such ship or vessel, on pain of forfeiting the sum of one hundred pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal according to the provisions of the said recited act, and under the respective penalties in the said recited act, or in this act contained for any neglect or refusal in respect of hoisting such signals; and in case any pilot shall bring, or cause to be brought or conducted, any ship or vessel liable to the performance of quarantine, into any place which is not, or shall not be, specially appointed for the reception of ships and vessels so liable after receiving such paper as aforesaid, whereby it shall have been made appear that such ship or vessel was liable to the performance of quarantine, or without requiring and receiving such paper aforesaid, unless compelled thereto by stress of weather, adverse winds, or accidents of the seas, such pilots shall for every such offence forfeit and pay the sum of one hundred pounds.

III. And whereas, by the said recited act, provision is made for ascertaining whether ships and vessels be liable to quarantine by means of interrogating the commander, master, or other person having the charge of such ships or vessels, for which purpose it is necessary that ships or vessels should be brought to at the requisition of the officer of quarantine, which salutary provision has in some instances been and may again be eluded by the pilot on board, or by the commander, master, or other person having the charge of such ships or vessels; be it therefore enacted, that if any pilot being on board, or any commander, master, or other person having the charge of any ship or vessel coming from foreign parts, whether such ship or vessel shall be liable to quarantine or not, shall be required by any officer authorized by the Commissioners of the customs, or any four of them, to act in the service of quarantine, to bring to such ship or vessel, to the end that the commander, master, or other person having the charge thereof may be interrogated according to the provision of the said recited act, and shall neglect or refuse to bring to such ship or vessel as soon as it can be done with safety, in obedience to such requisition, every such pilot, commander, master, or other person, having the charge of any such ship or vessel, shall for every such offence forfeit and pay the sum of one hundred pounds.

IV. And whereas, by the said recited act, certain duties are imposed on ships and vessels which have performed quarantine; and by the same act a ship or vessel may be rendered liable to the performance of quarantine by receiving any person or persons from or out of any other ship or vessel coming from or having touched at an infected place, under which provision a ship or vessel not being originally liable to perform quarantine may be rendered so liable by force and against the will of the master and crew; and it is reasonable that such ship or vessel should be relieved from the payment of the said duties; be it therefore enacted, that no ship or vessel shall be rendered liable to perform quarantine solely by reason of having received on board thereof, by force or against the will of the master and crew, any person or persons, shall be liable to or charged with any duty under the said recited act, provided that it shall appear to the satisfaction of the Commissioners of the customs that such person or persons was or were received on board against the will of the master and crew of such ship or vessel.

V. And whereas the mode prescribed by the said recited act for certifying that all goods, wares, and merchandise, and other articles liable to quarantine, have been duly opened and aired, conformably to the provisions in the same, have been found incon-
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... be it therefore enacted, that so much of the said recited act as relates to the certificates and proof of opening and airing such goods, wares, merchandise, and other articles, shall be, and is hereby repealed; and that after such orders for the opening and airing of such goods, wares, and merchandise, and other articles, shall have been duly complied with, proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, wares, and merchandise, and other articles, shall have been opened and aired, and of one of the guardians, or if there be no guardian, then of one of the officers authorized by the Commissioners of the customs, or any four of them, to act in the service of quarantine in such lazaret or vessel, or if there be no such officer, then by the oaths of two or more credible witnesses serving in the said lazaret or vessel, before thesuperintendent of quarantine, or his assistant, in case such opening and airing shall be had at a port or place where such superintendent or assistant shall be established, or otherwise before the principal officer authorized by the Commissioners of the customs, or any four of them, to act in the service of quarantine at such port or place; which oath such superintendent, assistant, or principal officer is hereby authorized to administer; and such superintendent, assistant, or principal officer, as the case may be, shall make certificate of such proof having been made; and upon the production of such certificate to the proper officer of the customs, authorized by the said Commissioners, or any four of them, such goods, wares, or merchandise, and other articles, shall be liable to no further restraint or detention either at the port or place where such quarantine shall have been performed, or at any other place whereto they may be afterwards conveyed.

VI. And be it further enacted, that it shall and may be lawful for his Majesty, his heirs and successors, by his or their order in Council, or for the Lords and others of his or their Privy Council, or any three or more of them, by their order from time to time, as often as they may see reason to apprehend that the yellow fever, or other highly infectious distemper prevails on the continent of America, or in the West Indies, to require that every ship and vessel coming from or having touched at any port or place on the continent of America, or in the West Indies, shall come to an anchor at certain places to be appointed from time to time by the Commissioners of his Majesty's customs in England and Scotland, (who are hereby respectively authorized to make such appointment) for the purpose of having the state of health of the crew of such ship or vessel ascertained before such ship or vessel shall be permitted to enter the port whereto she may be bound, or any other port of Great Britain; but that such ship or vessel shall not be deemed liable to quarantine, unless it shall be afterwards specially ordered under that restraint.

VII. And whereas it may be necessary for the public security to prevent all communication whatever with ships or vessels performing quarantine without clean bills of health; and the danger of such communication is greatly increased by persons not being prevented from going within the stations allotted for the performance of quarantine by such ships or vessels; be it therefore further enacted, that it shall and may be lawful to and for his Majesty, his heirs or successors, by his or their order or orders in Council, notified by proclamation, or published in the London Gazette, to prohibit all persons, ships, boats, and vessels whatsoever, from going under any pretence whatsoever, within the limits of any station, which, by his Majesty, his heirs or successors, by any such order or orders in Council, has been, or may be assigned for the performance of quarantine by any ships or vessels without clean bills of health; and that, if any person whatsoever after such notification or publication of any such order or orders in Council, shall presume under any pretence whatsoever, to go with any ship, boat, or vessel within the limits of any such station, he or she shall, for every such offence, forfeit and pay the sum of five hundred pounds.
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VIII. And be it further enacted, that if any person shall knowingly and wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed or required to be granted by any order of his Majesty, his heirs or successors, in Council now in force, or hereafter to be made touching quarantine, and the prevention of infection, or shall publish as true any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged or counterfeited, interlined, erased, or altered, or shall knowingly and wilfully utter and publish any such certificate, with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

IX. And be it further enacted, that the Consuls and Vice Consuls of his Majesty, his heirs and successors, shall, and are hereby empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside.

X. And be it further enacted, that in all cases wherein by virtue and in pursuance of this act, or any other now in force or hereafter to be made touching quarantine, any examinations or answers shall be taken or made upon oath, the person who shall be authorized and required to take such examinations and answers, shall, and shall be deemed to have full power and authority to administer such oaths; and if any person who shall be so interrogated or examined shall wilfully swear falsely to any matter, concerning which such person shall depose or make oath on such examination or in such answer, or if any person shall procure any other person so to do, he or she so swearing falsely or procuring any other person so to do, shall be deemed to have been guilty of, and shall be liable to be prosecuted for wilful and corrupt perjury or subornation of wilful and corrupt perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law, in such cases respectively made and provided.

The following is the form of an English Bill of Health, which is given at the custom-house, signed by the benchers, and costs five shillings, viz.

"Omnibus Christi fidelibus, ad quos presentes litterae pervenerint, nos ministri serenissimi principis domini nostri Georgii Tertii regis in portu civitatis Londini salutem. Cum pluris sit ac honestum veritatis testimonium perhibere, ne error et deceptio praedicti ipsius opprimat: quemque navis nancipata

cujus nauticus sub Deo est
discedere et ab hinc Deo volente pro

in eadem nave adpellerere; hinc est quod universitati vestrae temporis presentium innocenciam deinque veritate testam facimus, quod, Deo optimo maximo summa laus attributur, in hac civitate nulla pestis, plaga, nec morbus aliquis percullosus, aut contagiosus, ad praesens existet. In cujus rei testimonium sigillum officii nostri apponi facimus. Datum hoc in regio velonica civitatis Londini predicte

anno salutis Christianae secundum

computationem eclesie Anglise millesimo septingentesimo

annoque regni dicti serenissimi domini nostri Georgii Tertii Dei gratia Magna Britannia, &c. Fidei Defensoris, &c."

The subsequent is copied from a Bill of Health, given at Alicant in Spain, being the same with those of all the other parts of that kingdom; and differing only in form, from
those of Italy and other parts, this duplicate may suffice to shew the nature and contents of them all.

"Universis cujusvis auctoritatis salutem in Domino; nos regimen illustris civitatis Alicantis, et Villæ de Muchamel. Testamur, quod dicta civitas et villa, Deo auspice, optimâ gaudent salute, et nullius contagiosi morbi vestigio inficiuntur; et fidei facimus à nostro portu discedere navem nominatam cujus dux est cum nautis, et propt asservit viam dirigit versus quare oramus ut illa ejusque nauæ, simul cum mercibus, absque dubio de valetudine personarum, et locorum unde veniunt, recipiantur. In quorum fidei has nostras literas manu scrivæ nostri firmatas et sigillo maiori nostræ civitatis munitas illi concedimus. Datis Alicantis, die mensis anno à nativitate Domini."

Pro illustri et semper fidelissimâ civitate Alicantis, N. P.

OF EMBARGOES OR RESTRAINTS OF PRINCES.

An embargo is commonly understood to be a prohibition of ships sailing on the breaking out of a war, to hinder their giving any advice to the enemy; but it has a much more extensive signification; as they are not only stopped from the afore-mentioned motives, but are frequently detained to serve a prince in an expedition; and for this have often their lading taken out, if a sufficient number of empty ones are not procurable to supply the state's necessity, and this without any regard to the colours they bear, or whose subjects they are; so that it frequently happens, that many of the European nations may be forcibly united in the same service, at a juncture that most of their sovereigns are at peace and in amity with the nation against which they are obliged to serve.

Vattel lays it down, as a general rule, that a nation is not at liberty to seize that part of her enemy's property which is in her dominions at the time of the declaration, because it came into her power upon the faith of previously existing peace. But declarations of war are not construed to take effect merely from the time when a formal notification of hostility is given; there are certain preceding acts, of a hostile nature, which are deemed to be virtually declarations of war, to certain intents and purposes, though they may be explained away and annulled by a subsequent accommodation between the governments. When, therefore, a nation receives certain injuries, for which she sees no prospect of obtaining redress, she is reduced to consider hostilities as virtually declared, and issues an embargo upon the commerce of the offending state, then lying within her ports, in order to indemnify herself in the only way in which, perhaps, it may be possible for her to obtain indemnification at all. In this case, the hostile property, which comes to her hands after the commission of the injury, may be, and is regarded, as having come to her hands after the declaration of hostilities, though that declaration have not been duly and formally notified; and, therefore, the case of embargo is not within the prohibition of Vattel, which reaches to the exemption only of goods in our hands at the time of the declaration, and does not cover property coming into our territory after that declaration, whether such declaration be only virtual, or whether it be announced with all the fulness of formality. Upon the right of seizing on property under this implied kind of declaration, and upon the effect of the seizure in
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the event of an accommodation being adjusted before the formal notification of war, Sir William Scott most satisfactorily comments in the case of the Boedes Lust. In 5 Rob. Rep. 346. that case, an embargo had been laid upon Dutch property by Great Britain, previously to an open declaration of war, but under such circumstances of injustice on the part of Holland, as were considered by the British Court as amounting to an implied declaration of war; and the formal declaration, which afterwards supervened, was deemed to have a retrospective effect, confirming all that had been done by the embargo under the implied declaration. “The seizure,” said Sir William Scott, “was at first equivocal, and if the matter in dispute had terminated in reconciliation, the seizure would have been converted into a mere civil embargo, so terminated. That would have been the retroactive effect of that course of circumstances. On the contrary, if the transactions end in hostility, the retroactive effect is directly the other way. It impresses the direct hostile character upon the original seizure; it is declared to be no embargo; it is no longer an equivocal act, subject to two interpretations; there is a declaration of the animus, by which it is done; that it was done hostili animo, and is to be considered as an hostile measure ab initio. The property taken, is liable to be used as the property of persons trespassers ab initio, and guilty of injuries, which they have refused to redeem by an amicable alteration of their measures. This is the necessary course, if no particular compact intervenes for the restitution of such property taken before a formal declaration of hostilities.” So, in the case of the Herstelder, Sir William Scott observed, 1 Rob. Rep. 114. “That actual hostilities are not to be reckoned merely from the date of the declaration, but that such declaration has been applied with a retroactive force.”

Some have doubted the legality of the thing, but it is certainly conformable to the law both of nature and nations, for a prince in distress to make use of whatever vessels he finds in his ports, that are fit for his purpose, and may contribute to the successes of his enterprizes; but under this condition, that he makes them a reasonable recompence for their troubles, and does not expose either the ships or men to any loss or damage.

An embargo laid on ships and merchandise in the ports of Great Britain by virtue of the King’s proclamation is strictly legal, when the proclamation does not contradict the old laws, or tend to establish new ones; but only to enforce the execution of such laws as are already in being, in such manner as the King shall judge necessary: thus the established law is, that the King may prohibit any of his subjects leaving the realm: a proclamation therefore forbidding this in general for three weeks, by laying an embargo upon all shipping in time of war, will be equally binding as an act of Parliament, because founded upon a prior law. Blackstone’s Comment. vol. 1. p. 270.

But besides embargoes in time of war, there are others of a special nature, which sometimes arise from a very extraordinary emergency in time of peace, and which are founded upon state necessity, or the salus populi, and which are termed civil embargoes; yet the proclamations by which they are laid may be illegal, contradicting an established law. This was the case respecting the embargo to prevent the exportation of corn in 1766; such exportation being allowed by law at the time; and therefore the preamble to the stat. 7 Geo. 3. c. 7. for indemnifying all persons advising or acting under the order of council, laying an embargo on all ships laden with corn or flour, during the recess of Parliament in 1766, says “which order could not be justified by law, but was so much for the service of the public, and so necessary for the safety and preservation of his Majesty’s subjects, that it ought to be justified by act of Parliament.” This embargo, as was allowed, saved the people from famine; yet it was declared illegal by the above act of the legislature, including the King himself who laid it, which was therefore needful to sanctify it; and the proprietors of the embargoed ships and cargoes were accordingly indemnified by government.

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OF PROTECTIONS AND PASSPORTS.

This civil embargo cannot be imposed upon British ships in a foreign port, unless by the concurring authority of the state to which that port belongs; for the King has no right to disturb the peace of neighbouring nations by any seizures, however useful to the interests of his own people. This may be collected from the judgment of Sir William Scott, in the case of the Gertruyda. Even within the jurisdiction of this kingdom the prerogative of the King, with respect to the imposition of embargoes, is of a nature by no means unlimited, or absolute, as is sufficiently shewn by the embargo of 1766 above-mentioned. Among the many reports that are to be found, of the great case of Sands and the East India Company, there is one in Salkeld, p. 32, where it is set down as agreed, that the King may lay embargoes; but then it must be for the public good, and not for the private advantage of a particular trader or company.

OF PROTECTIONS, PASSPORTS, AND SAFE CONDUCTS.

Passports are commonly granted to friends, and safe conducts to enemies, though custom has made the meaning of those terms to be much the same in this place: in a military treatise they would be differently construed; but they only signify here that protection a prince affords to either ships or men against the afore-mentioned embargoes, or his granting to some individuals a leave to trade, denied to others, or his permission for them to come into his kingdom while a general prohibition subsists, and sometimes even during a war with a state whose subjects they are. It is a permission from a neutral state to the captain or master of a ship to proceed on a voyage proposed, and usually contains his name and residence, the name, description, and destination of the ship, with such other matters as the practice of the place requires. This document is indispensably necessary for the safety of every neutral ship. Hubner says, that this is the only paper that is rigorously insisted upon by the Barbary corsairs, by the production of which alone, their friends are protected from insult.

This has often happened in our disputes with Spain, where our ships went currently in the beginning of the war commenced in 1718, on many other occasions, under the protection of a pass, which his Catholic Majesty granted to several, and which served for one voyage: these passes had blanks left for the names of ships, captains, &c., and at first cost about twenty dollars; though, when a stop was put to granting any more, their price rose in proportion to their scarcity; and the few who had any remaining, made a very considerable advantage of them: the same has been practised by many of our former Kings, and confirmed by several subsequent acts, viz.

18 Hen. 6. c. 3.

In all safe conducts to be granted to any persons, the names of them, of the ships, and of the masters, and the number of the mariners, with the portage of the ships, shall be expressed.

19 Hen. 6. c. 8.

 Merchants aliens may lade ships of Spain, and other parts, adversaries and enemies of the King, if the masters, or merchants of such ships have letters patent of the King of his safe conduct, making mention of the name of the ships, and of the masters; and if any such ship charged with such merchandizes of such merchants be taken upon this sea, by the King's people, not having the King's letters patent within the board of such ships at the day of the taking, nor that such letters patent be in the Chancery inrolled, the takers may enjoy the same.

20 Hen. 6. c. 1. s. 2.

 Sect. 3.

All letters of safe conduct to be granted to the King's enemies, or others, shall be inrolled in Chancery, before such letters be delivered; and all letters of safe conduct, not inrolled before delivery, shall be void.

If any goods be taken by the subjects of the King upon the sea, charged in any ship,
belonging to enemies, not having letters of safe conduct inrolled, they that take the goods shall them enjoy.

The subjects taking such ships, not having letters of safe conduct within the said 20 Hen. 8. ships, and bringing them within the realm, shall not be endamaged for such taking, if they be ready to make restitution, within reasonable time after knowledge is made to them of the letters of safe conduct, inrolled in Chancery before the taking.

If any subjects attempt to offend upon the sea, or in any port under the King's obedience, against any strangers in amity, league, or truce, or by safe conduct, the Chancellor shall have authority to cause such person to be delivered, and the goods or ship taken to be restored, &c.

If any person shall, within his Majesty's dominions, or without, falsely forge or counterfeit any pass for any ship, commonly called a Mediterranean Pass, or shall alter or erase any pass made out by the Commissioners for executing the office of Lord High Admiral; or shall publish as true any forged, altered, or erased pass, knowing the same to be forged, &c. every such person, being convicted in Great Britain or Ireland, or his Majesty's plantations, where such offence shall be committed, shall be guilty of felony without benefit of clergy.

Passports under the King's sign manual, or licences from his Ambassadors abroad, are now more usually obtained, and are allowed to be of equal validity with the ones observing the above regulations of enrolment, &c. In order to prevent foreigners from arriving and continuing in England for the purpose of promoting sedition and confusion in the country, the statute 33 Geo. 3. c. 4. was passed, imposing various restraints on all aliens; but which statute was repealed by 42 Geo. 3. c. 92. which enacted provisions nearly similar to the statute 33 Geo. 3. c. 4. and was subsequently itself repealed by the statute 43 Geo. 3. c. 155. making various provisions respecting aliens, and enacting, amongst other things, that his Majesty may, by his proclamation, order all aliens to register themselves as may be therein directed, and to obtain a licence under such restrictions as shall be specified, and to give an account of all arms in their possession, and if necessary to deliver them up.

By 45 Geo. 3. c. 32. s. 3. it is enacted, that aliens residing in any place surrendered to his Majesty may act as merchants or factors, taking the oath of allegiance; but this act is only to be in force during the war.

The law of England, as a commercial country, pays a very particular regard to foreign merchants in innumerable instances, and particularly by Magna Charta it is provided, that all merchants (unless publicly prohibited beforehand) shall have safe conduct to depart from, to come into, to tarry in, and to go through England for the exercise of merchandize, without any unreasonable imposts, except in time of war; and if a war breaks out between us and their country they shall be attached (if in England) without harm of body or goods till the King or his Chief Justiciary be informed how our merchants are treated in the land with which we are at war, and if our's be secure in that land they shall be secure in ours.

There was formerly appointed in these realms a conservator of safe conducts, and as the same person had also the care of truces, it naturally leads me to treat of them.

OF LEAGUES AND TRUCES.

Leagues or Truces are either with enemies, friends, or neuters, and those made with the former are for a limited time, or perpetual.
Perpetual is where peace finishes all disputes, and restores a perfect amity between the contracting parties.

And treaties for a time are termed Truces, which are also general or particular.

General Truces include all the states of both princes, in regard to their subjects and commerce; whilst particular ones are only for certain places, or certain persons, with a limitation of their trade, and sometimes go no farther than a bare suspension of arms.

A truce, however, whether general or particular, is an agreement on a cessation of all hostilities during the time stipulated, and ought not to be infringed or broken on any account: it frequently is a parent of peace, as it allows room for consideration, and to treat of it; and, besides, affords opportunity for settling the jarring interests of princes, who are to be comprehended in it.

When any one is bound by alliance not to make peace or truce without the consent of his ally, and whose agreement seems doubtful, they add in the treaty, that it shall take place for all those the contractors shall name, and they shall set down no prefixed time, but that it shall continue till he refuse, and some reasonable time ascertained after.

A general truce is sometimes settled for so long a term as to become equal to a peace; and such are commonly made betwixt princes equal in power, who are unwilling to quit any thing of their supposed right by peace, and yet desire to live quietly in their present state, and by this medium satisfy their point of honour. Such truces are likewise, from the foregoing considerations, less subject to a breach than a peace that is made perpetual, as princes, who by this latter find themselves aggrieved, will seek out plausible reasons to forsake or evade it; but in the other, when the limited time is expired, they have only to renew or excuse it.

Some alliances are contracted for an enterprize, and for one sole effect, in that part in which the allies are interested; and these are generally called Leagues, and have been sometimes here confirmed by act of Parliament, and are such agreements as are always made by command of the supreme power; and these, as well as safe conducts, are or ought to be of record, that is, inrolled in Chancery, that the subjects may know who are friends, and can have actions personal here, or who the contrary, and can have none.

It is a general maxim, that in all treaties the power of the one party and the other ought to be equal; nor are they to be held firm till ratified.

Leagues commonly are offensive, and the ordinary causes for which princes and republics make them are either to facilitate a conquest, or to balance the power of an ambitious and enterprising neighbour; such were those entered into against the opulence and growing greatness of the Spaniards, and since in opposition to the attempts of Lewis XIV. to acquire universal monarchy.

But though leagues are generally offensive, yet many are confined only to the defensive part, and these entered into with the sole view of guarding against the sinister intentions or attempts of any vicinal power, of which I might produce many instances; but as what I have already said on the subject may suffice for a place in a mercantile treatise, I shall not intrude any farther on my reader's time or patience by enlarging on it, but proceed to the articles:

DECLAMATIONS FOR WAR AND PEACE.

peace, is one of the royal prerogatives belong-
OF PROCLAMATIONS.

yet they have seldom failed to ask the advice of Parliament in both cases, and generally war or peace are approved and confirmed by Parliament. Moreover, if the conditions of peace are found to be dishonourable or disadvantageous to the nation by a majority of the representatives of the people in Parliament, or of the Peers, an impeachment will lie against the ministers who have advised them; for the King can do no wrong. And the same course may be taken when the nation is improperly plunged in a war by the mal-administration of the King’s servants. There are two methods of engaging in a war with a foreign state; the first, and the most honourable is by a solemn declaration publicly proclaimed, copies of which are sent off to all the British Ambassadors, Ministers, and Consuls, residing in the different countries, and at the courts of all foreign princes. This serves as a general notice of the rupture between the two powers being irreconcilable by negotiation, and prepares the subjects of each state, so that they may regulate their commercial concerns accordingly. This practice is founded on the law of nations, and used formerly to be one of the criterions by which we distinguished a civilized people from barbarians.

The reason given by Grotius why, according to the law of nations, a denunciation of war ought always to precede the actual commencement of hostilities, is not so much that the enemy may be kept upon his guard, (which is a matter rather of magnanimity than right,) but that it may be certainly clear that the war is not undertaken by private persons but by the will of the whole community, whose right of willing is in this case transferred to the supreme magistrate by the fundamental laws of society.

At present, a fatal change in the system of politics has taken place; and the European powers make no scruple of going to war, without making the usual proclamations, to the great injury of their subjects, who may entertain hopes of a reconciliation of differences, so long as such declarations are suspended, and may venture their property on the ocean, under the sanction of peace, not imagining that privateers and ships of war will be authorized to seize them prior to a declaration of war. No nation can properly justify this conduct; and posterity will load with reproaches the names of those statesmen, whether Spanish, French, or British, who first brought this foul practice into use.

In order, however, to legalize a war, it must not only be commenced or declared by one of the contesting states, but such commencement or declaration must be made by that particular branch of the state which is invested by the constitution with this important prerogative. "If," says Brooke in his Abridgment, "all the people of England would make war with the King of Denmark, and the King, (that is, our own King,) will not consent to it, this is not war, but when the peace is broken by Ambassadors the league is broken."

It was usual by declarations of war to cut off all intercourse with the enemies of our country; but since the late custom of going to war without any public proclamation, intercourses have been carried on highly detrimental to public affairs, by those who perhaps did not look upon themselves as traitors to their King and country, whereas if a proclamation had declared such correspondence to be treasonable, they would not have carried it on.

War and peace are always proclaimed by the Herald at Arms, accompanied by proper Notaries and a body of the Life-Guards; and when they enter the city of London, they are joined by some of the city officers: the proclamation is read by the notaries to the herald, who repeats it, all being bare-headed, first at St. James’s, then at Charing-Cross, Temple-Bar, Cheapside, and the Royal-Exchange.

When war is proclaimed, it is customary to prohibit, though not always, all commerce with the enemy, by interdicting the entrance of any of the commodities of his
OF PROCLAMATIONS.

country into our's, as was done in the war with Spain in 1740, by the act of Parliament, 13 Geo. 2. c. 27.

No principle is now more clearly established than when war takes place between two nations, all commercial intercourse between them must immediately cease. Hostilities once commenced, any attempt at trading on the part of the subjects of either state, unless by the permission of the Sovereign, is interdicted and becomes ipso facto a breach of the allegiance due to their respective Sovereigns, and as such is interdicted by the general maritime law of Europe; by that law which does not spring from the institutions of this or that particular state, but which having its source in natural reason and natural justice is alike binding on the whole community of the civilized world. So indisputable is this proposition, so necessarily, as it were, does it grow out of the very nature of war itself, that all the great writers who have treated on the law and practice of nations, assume it as a point which is incontrovertible. This rule is founded upon the principle that war puts every individual of the respective belligerent governments into a state of mutual hostility, and there is no such thing as a war for arms and a peace for commerce. In that state all treaties, civil contracts, and rights of property, are put an end to, and the law imposes a duty on every subject to attack the enemy and seize his property, though by custom this is restrained to those individuals only, who have commissions from their government for that purpose. Trading, which supposes the existence of civil contracts and relations, and a reference to courts of justice, and the rights of property, is necessarily contradictory to a state of war; besides it is criminal in a subject to aid and assist the enemy, and trading affords that aid in the most effectual manner by enabling the merchants of the enemy’s country to support their government. Export duties are to be paid, when goods are brought from an enemy’s country, which is furnishing the very sinews of war to the hostile government; and such trading would facilitate the means of conveying intelligence and carrying on a traitorous correspondence with the enemy, which would more than counterbalance any advantage likely to accrue to individuals from such trading. These considerations apply with peculiar force to maritime states, where the principal object is to destroy the marine and commerce of the enemy, in order to force them to peace.

It was observed by Sir William Scott, in the cause of the Hoop, “that by the law and constitution of this country, the Sovereign alone has the power of declaring war and peace. He alone, therefore, who has the power of entirely removing the state of war, has the power of removing it in part, by permitting, where he sees proper, that commercial intercourse, which is a partial suspension of the war. There may be occasions, where such an intercourse may be highly expedient. But it is not for individuals to determine on the expediency of such occasions on their own notions of commerce, and of commerce merely and possibly on grounds of private advantage, not very reconcilable with the general interests of the state. It is for the state alone on more enlarged views of policy, and on consideration of all circumstances that may be connected with such an intercourse, to determine, when it shall be permitted, and under what regulations. In my opinion, no principle ought to be held more sacred, than that this intercourse cannot subsist on any other footing, than that of the direct permission of the state. Who can be insensible to the consequences that might follow, if every person in a time of war had a right to carry on a commercial intercourse with the enemy, and under colour of that, had the means of carrying on any other species of intercourse he might think fit? The inconvenience to the public might be extreme: and where is the inconvenience on the other side, that the merchant should be compelled, in such a situation of the two countries, to carry on his trade between them, if necessary, under the eye and control of the government charged with the care of the public safety?” And after enumerating all the cases which
tended to establish this rule, Sir William Scott observed, "The cases which I have produced prove, that the rule has been rigidly enforced, where acts of Parliament have, on different occasions, been made to relax the navigation law, and other revenue acts; where the government has authorized, under the sanction of an act of Parliament, a homeward trade from the enemy's possessions, but has not specifically protected an outward trade to the same, though intimately connected with that homeward trade, and almost necessary to its existence; that it has been enforced, where strong claim, not merely of convenience, but almost of necessity, excused it on behalf of the individuals; that it has been enforced, where cargoes have been laden before the war, but where the parties have not used all possible diligence to countermand the voyage after the first notice of hostilities; that it has been enforced, not only against the subjects of the crown, but likewise against those of its allies in the war, upon the supposition that the rule was founded on a strong and universal principle, which allied states in war had a right to notice, and apply mutually to the subjects of each other."

The principal cases, which establish the illegality of commerce between belligerents, are the Hoop, and Pott v. Bell and others. In the first case, Mr. Malcolm, of Glasgow, and other Scotch merchants, had traded to Holland, for articles necessary for the agriculture and manufactures of that part of the country, for which they had several times before applied for and obtained the King's licence; but after the passing of certain acts of Parliament, having, upon application to the commissioners of the customs at Glasgow, been informed (erroneously as it afterwards appeared) that such licences were no longer necessary, they had omitted to obtain one on that occasion, in consequence of which, the cargo being taken was condemned as prize, on the general ground, that all trading with an enemy, without the King's licence, was illegal and a cause of confiscation. And in the case of Potts v. Bell, a British subject shipped from the enemy's country, on board a neutral ship, goods which he had purchased of the enemy during hostilities, and it was decided, that an insurance upon such cargo was illegal and void. These cases shew, that there is no distinction between trading with an enemy and with an enemy's country, and that aid is considered as being equally given to the enemy, whether goods be furnished immediately by the enemy, or through the medium of a neutral merchant, and that the danger of a traitorous correspondence is the same.

This strict exclusion of trade between belligerents has been carried so far as to prohibit a remittance of supplies even to a British colony, during its temporary subjection to an enemy. This extreme point is established by the case of the Bella Guidita. In that case, Grenada, a British possession, had been seized by the French, but by the public acts, both of France and of this country, it appeared, that the island was not considered to have entirely changed its national character; the French having made ordinances with respect to it, which they would not have made in the case of an island strictly French, and the British legislature having even enacted, in the 20th year of his present Majesty, that it being just and expedient to give every relief to the proprietors of estates there, no goods of the produce of Grenada, on board neutral vessels going to-neutral ports, should be liable to condemnation as prize. Notwithstanding all these evidences, that the character of Grenada was not to be considered strictly hostile, notwithstanding even the express permission to export the produce of that island, a neutral vessel sent from England with goods to be imported into Grenada was seized, as employing itself in an illicit intercourse with the enemy, and condemned in the Vice-Admiralty Court of Barbadoes; upon appeal to the Privy Council by the proprietors of the cargo, the sentence was affirmed.
OF THE ADMIRALTY.

As the kingdom of Great Britain is on all sides surrounded by the sea, there will ever be a necessity for a strong maritime force to protect and defend it; our wooden walls are our bulwarks and redoubts, to which we owe our safety, and the protection of that advantageous commerce we carry on.

And for transacting of marine affairs, the Lord High Admiral hath courts of his own, of which that at London is principal and chief, where all process and proceedings run in his name, and not in the King's, as they do in all the Courts of common law. The first title of Admiral of England, expressly conferred upon a subject, was given by patent of King Richard II. to the Earl of Arundel and Surry; and it appears, that anciently he had jurisdiction of all causes of merchants and mariners, happening not only upon the main sea, but in all foreign parts, within the King's dominions, and without them, and was to judge them in a summary way, according to the laws of Oleron and others.

In the reign of Edward III. the Court of Admiralty was established, and Richard II. limited its jurisdiction. Of late times this high office has been generally executed by commissioners, who by statute are empowered to use and execute the same authorities as were formerly exercised by the Lord High Admiral.

But the requisites are, on every new commission being made out, resigned, by some deed or writing to the crown. The number of commissioners is not limited by statute, but, for many years past, the commissioners have consisted of a first commissioner, who presides at the board, and six others who take place in the order in which they are named in the commissions. They are stiled Lords of the Admiralty, and the First Lord is, in effect, Lord High Admiral, having the supreme direction of the board, except that no order or commissions are valid when signed by him alone, it being necessary for two more to sign with him, notwithstanding which he is not to be commanded by them.

Subject to this authority are all the naval officers and shipping, and all the marine boards; as the Navy-Office, Victualling-Office, Sick and Wounded Offices, Deptford, Woolwich, Chatham, Sheerness, Plymouth, and Portsmouth Dock-Yards. As are also all the ships and vessels of war; their admirals, commanders, lieutenants, officers, and men.

The Lords Commissioners of the Admiralty have the general direction of the affairs of the navy; they determine the number and size of the ships to be built, repaired, and put into commission: but it is a vulgar error to suppose that the First Lord has the appointment of the destination of fleets in time of war; he has only his vote as a single minister in the Cabinet Council, though, being at the head of the marine department, his advice may influence the determination of the King, and the rest of his ministers.

The Admiralty grant their commissions to such person as his Majesty directs, whereby he is appointed admiral and commander in chief of the fleet, for the expedition which is designed. And such admiral, when out of the British Channel, appoints all officers, as vacancies happen, who must be, and generally are, confirmed by the Admiralty, if no material objection occurs.

Jurisdiction of the Admiralty.

The jurisdiction of the Lord High Admiral, or of the Lords Commissioners for executing the office, is over Great Britain, Ireland, and Wales, with the dominions and
JURISDICTION OF THE ADMIRalty.

lands belonging to them: as also over all his Majesty's colonies, plantations, factories, and other settlements, dominions, and territories whatsoever in parts beyond the seas.

But it must be super altum mare, and not in partibus transmarinis. Hales P. C. 54. And the death of the party, as well as the stroke, shall be super altum mare. Ibid.

The admiralty hath cognizance of the death or maiming a man, committed in any ship riding in great rivers, beneath the bridges thereof, near the sea. So by the statute c. 3. s. 3. for offences within that statute; but the jurisdiction infra primum pontes, shall only be for death or mayhem. Hob. 79, 213.

But if a man be killed on any arm of the sea, where the land is seen on both sides, the coroner is by common law to inquire of it, and not the admiralty; for the county may take cognizance of it, and where a county may enquire the Lord Admiral has no jurisdiction.

All ports and havens, as has been before observed, are infra corpus comitatus, where the admiralty has no jurisdiction; and, between high and low-water-mark, he and the common law have it by turns, one upon the water, and the other upon the land.

The admiralty hath power to arrest ships for the service of the King or Commonwealth; and every commander, officer, or soldier of ships of war, shall observe the admiralty's command, &c. on pain of death, or other punishment.

The Lord Admiral hath power to grant commissions to inferior admirals, &c. to call Dorte courts martial for the trial of offences against the articles of war, and these courts determine by plurality of voices, &c.

An Admiralty process is made out in the admiralty's name, who has under him a Judge, commonly some learned civilian; and though the proceedings are according to civil law, and the maritime laws of Rhodes and Oleron, the sea being without the common law, yet, by stat. 28 Hen. 8. murder, robbery, &c. at sea, may be tried by special commission to the Lord Admiral, &c. according to the laws of England.

Piracy also upon the sea is within the jurisdiction of the Admiralty, and an accessory to piracy is triable before the admiral, since the statute 28. H. 8. c. 15. 3 Inst. 112.

Sir L. Jenk, 1 vol. p. 94.

The Admiralty is said to be no court of record, on account of its proceeding by the civil law.

But the Admiralty has jurisdiction where the common law can give no remedy; and all maritime causes, or causes arising wholly upon the sea, it hath cognizance of.

The Admiralty hath jurisdiction in cases of freight, mariners' wages, breach of charter-parties, though made within the realm; if the penalty be not demanded; and likewise in case of building, mending, saving, and victualling ships, &c. so as the suit be against the ship, and not only against the parties; but it was held that if a charter-party of affrightment, which is a marine contract, be made at land, and the breach of covenant happen at sea, the Admiralty hath no jurisdiction. 1 Woodd. 141. Hob. 212.

Mariners' wages are contracted on the credit of the ship, and they may all join suits in the Admiralty, whereas in common law they must all sever; and, on the contrary, the master of a ship contracts on the owners' credit, and not the ship's, and therefore he cannot prosecute in the Admiralty for his wages; but a mate may. 1 Salk 38.

The ship is the debtor, and by the law of the Admiralty they may attach her, which by the common law they cannot do. 1 Ld. Raym. 577.

It is allowed by the common lawyers and civilians, that the Lord Admiral has cognizance of seamen's wages and contracts, and debts, for making ships; also of things done in navigable rivers, concerning damages to persons, ships, goods, annoyances of free passage, &c. of contracts, and other things done beyond sea, relating to navigation and marine trade.
The Admiralty law for wages (so that freight is the mother of wages, that none are paid whilst loading and unloading) may be superseded by special agreement, Champion v. Nicholas. Strange 405.

But if a contract be made beyond sea for doing of an act, or payment of money within this kingdom, or the contract is upon the sea, and not for a marine cause, it shall be tried by jury; for where part belongs to the common law, and part to the admiralty, the common law shall be preferred; and contracts made beyond sea may be tried in B. R. and a fact be laid to be done in any place in England, and so tried here.

Where a contract is made in England, and there is a conversion beyond sea, the party may sue in the Admiralty, or at common law.

So where a bond is made and delivered in France: an obligation made at sea, it has been held, cannot be sued in the admiral’s court, because it takes its course, and binds according to the common law.

The Court of Admiralty cannot hold plea of a matter arising from a contract made upon the land, though the contract was concerning things belonging to the ship; but the Admiralty may hold plea for the seamen’s wages, &c. because they become due for labour done on the sea; and the contract made upon land is only to ascertain them.

Though where there is a special agreement in writing, by which seamen are to receive their wages in any other manner than usual; or if the agreement at land be under seal, so as to be more than a parole contract, it is otherwise.

If goods delivered on shipboard are embezzled, all the mariners ought to contribute to the satisfaction of the party who is the sufferer, by the marine law, and the cause is to be tried in the Admiralty.

By the custom of the Admiralty, goods may be attached in the hands of a third person, in causa maritima & civili, and they shall be delivered to the plaintiff after defaults, on caution to restore them, if the debt, &c. be disproved in a year and a day; and if the party refuse to deliver them, he may be imprisoned quoque, &c.

The Court of Admiralty may cause a party to enter into a bond, in nature of caution or stipulation, like bail at common law; and if he render his body, the sureties are discharged; and execution shall be of the goods, or the body, &c. not of the lands.

Some sailors clothes were bought in the parish of St. Catharine, near the Tower, London, and were delivered in the ship: on a suit in the Admiralty for the money, prohibition was granted; for this was within the county. The same of a ship at Blackwall, &c.

But the Admiralty may proceed against a ship, and the sails, and tackle, when they are on shore, although alleged to be detained on land; yet upon alleging offer of a plea, claiming property therein, and refusal of the plea, on this suggestion, a prohibition shall be had.

The Admiralty Court may award execution upon land, though not hold plea on any thing arising on land.

And, upon letters missive or request, the Admiralty here may award execution, on a judgment given beyond sea, where an Englishman files, or comes over hither, by imprisonment of the party who shall not be delivered by the common law.

When sentence is given in a foreign Admiralty, the party may libel for execution of that sentence here; because all Courts of Admiralty in Europe are governed by the civil law.

Sentences of any Admiralty in another kingdom are to be credited, that our’s may be credited there, and shall not be examined at law here; but the King may be peti-
tioned, who may cause the complaint to be examined; and, if he finds just cause, may send to his ambassador where the sentence was given, to demand redress; and upon failure thereof, will grant letters of marque and reprisal.

If one be sued in the Admiralty, contrary to the statutes 13 and 15 R. 2. he may have a supersedeas, to cause the Judge to stay the proceedings, and also have action against the party suing.

A ship being privately arrested by Admiralty process only, and no suit, it was ad. 39 Eliz. c. 3, judged a prosecution within the meaning of the statutes, and double damages, &c. shall be recovered.

And if an erroneous judgment is given in the Admiralty, appeal may be had to delegates appointed by commission out of Chancery, whose sentence shall be final.

The Lord High Admiral of Great Britain doth, by virtue of his place, appoint, in divers parts of the kingdom, his several substitutes, or vice admirals, with their Judges and marshals, by patent under the great seal of the High Court of Admiralty, which vice-admirals and Judges do exercise jurisdiction in maritime affairs, within their several limits; and in case any person be aggrieved by any sentence or interlocutory decree that has the force of a definitive sentence, he may appeal to the High Court of Admiralty.

Besides the above-mentioned vice-admirals, &c. the Lord High Admiral hath under him many officers differing in degrees and qualities, as some are of a military and others of a civil capacity, some judicial and others ministerial; so that the marine jurisdiction may justly be deemed a separate commonwealth or kingdom, and the Lord High Admiral be reputed as a viceroy of it.

There is, under this court, a Court of Equity, for determining differences between merchants; and in criminal affairs, which is commonly about piracy: the proceeding in this Court was formerly by accusation and information, according to the civil law, by a man's own confession, or eye-witnesses, by which any one was to be proved guilty before he could be condemned; but that being found inconvenient, there were two statutes made by Hen. 8. that criminal affairs should be tried by witnesses and a jury, and this by a special commission of the King to the Lord Admiral, wherein some of the Judges of the realm are ever Commissioners, and the trial, according to the laws of England, directed by those statutes.

There seems to be divisum imperium between the common law of England and the Admiralty; for so far as low water-mark is observed in the sea, is counted infra corpus comitatus adjacentis, and the causes thence arising are determinable by the common law; yet when the sea is full, the admiralty hath jurisdiction here also, so long as the sea flows, over matters done between the low water-mark and the land, as appears in Sir Henry Constable's case.

There is another branch of Admiralty jurisdiction called the Prize Court, which is perfectly distinct; and holden by a separate commission to that of the Judge of the Admiralty.

This is the sole and exclusive judicature for determining in the first instance, whether any maritime capture or seizure, is or is not lawful prize.

And it is held that the jurisdiction of this Court extends not only to prizes and captures taken actually at sea, but also to all prizes and captures taken at land by ships or detachments from them, &c. See the whole of the law as to this part of the Admiralty jurisdiction, collected together in Doug. Rep. 391. in nolita, where the judgment of Lord Mansfield in the case of Lindo v. Rodney, and others, is fully given.

When this Court acts within the scope of its authority, and the suitors are dissatisfied with their decisions, an appeal may be had from the Prize Court to the Lords Commissioners in prize causes, all of whom usually are, and a majority of such, give sen
JURISDICTION OF THE ADMIRALTY.

The management of the navy royal, under the Lord High Admiral, is committed to the care of the principal officers and commissioners of it; and as all the laws, or regulating and ordering His Majesty's navies and forces by sea, were in the 22 Geo. II. collected and formed into one body, I have determined to give my reader an abstract of it, in hopes the inspecting so excellent a code may afford him pleasure.

The preamble sets forth, that the several sea-laws having been found not to be so full, clear, expedient, or consistent with each other, as they ought to be, therefore, to amend and explain the same, and to reduce them into one uniform act, it is enacted, that from and after the 25th of December, 1749, the articles and orders following, as well in time of peace as in war, shall be observed and put in execution in manner herein-after mentioned.

1. All commanders, captains, &c. of His Majesty's ships of war, shall cause the public worship of Almighty God, according to the Liturgy of the Church of England, to be reverently performed in their respective ships; and shall take care that prayers and preaching be performed diligently, and that the Lord's day be observed according to law.

2. All flag-officers, and persons belonging to His Majesty's ships of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court martial shall think fit to impose, &c.

3. If any officer or other person of the fleet shall give or entertain intelligence to or with any enemy, or rebel, without leave from the King or the Lord High Admiral, &c. and be thereof convicted by a court martial, he shall be punished with death.

4. If any letter or message from any enemy or rebel be conveyed to any officer, or any other person in the fleet, and such person shall not, within twelve hours, have opportunity, acquaint his superior officer with it; or if any superior officer, being acquainted therewith, shall not in convenient time reveal the same to the commander in chief, every person so offending shall suffer death, &c.

5. All spies, who shall bring or deliver any seducing letters or messages from any enemy or rebel, or endeavour to corrupt any person in the fleet, they shall suffer death.

6. No person in the fleet shall relieve an enemy or rebel with money, victuals, powder, shot, arms, ammunition, or any other supplies, directly or indirectly, upon pain of death, &c.

7. All writings whatsoever, that shall be taken or found on board ships which shall be taken as prize, shall be preserved, and the originals shall, by the commanding officer of the ship which shall take such prize, be sent entirely and without fraud to the Court of Admiralty, or such other Court or Commissioners as shall be authorized to determine whether such prize be lawful capture, there to be viewed, made use of, and proceeded upon, according to law, upon pain of forfeiting his share of the capture, &c.

8. No person in or belonging to the fleet shall take out of any prize any money, plate, or goods, unless it shall be necessary for the better securing thereof, or for the necessary use or service of any of his Majesty's ships of war, before the same be adjudged lawful prize; but the entire account of the whole, without embezzlement, shall be brought in, and judgment passed upon the whole, without fraud, upon pain that every person offending shall forfeit his share of the capture, &c.

9. If any vessel shall be taken as prize, none of the officers or persons on board her shall be stripped of their cloaths, or pillaged, beaten, or evil-intreated, upon pain that the offender shall be punished as a court martial shall sentence.
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10. Every flag-officer, captain, and commander in the fleet, who, upon signal or order of fight, or sight of any ship or ships, which it may be his duty to engage, or who upon likelihood of engagement shall not make the necessary preparation for fight, and shall not in his own person, and according to his place, encourage the inferior officers and men to fight courageously, shall suffer death, or other punishment, &c. and if any person in the fleet shall treacherously or cowardly yield, or cry for quarter, on being convicted, shall suffer death.

11. Every person in the fleet who shall not duly observe the orders of the admiral, flag-officer, commander of any squadron or division, or other his superior officer, for assailing, joining battle with, or making defence against any fleet, squadron, or ship, or shall not obey the orders of his superior officer, in time of action, to the best of his power, or shall not use all possible endeavours to put the same effectually in execution, being convicted thereof, shall suffer death, &c.

12. Every person in the fleet, who through cowardice, negligence, or disaffection, shall, in time of action, withdraw or keep back, or not come into the engagement, or shall not do his utmost to take or destroy every ship which it shall be his duty to engage, and to assist and relieve all and every of his Majesty's ships, or those of his allies, which it shall be his duty to assist and relieve, being convicted thereof, shall suffer death.

13. Every person in the fleet, who, through cowardice, negligence, or disaffection, shall forbear to pursue the chase of an enemy, pirate, or rebel, beaten or flying; or shall not relieve and assist a known friend in view, to the utmost of his power, being convicted, shall suffer death.

14. If any action, or any service shall be commanded, and any person in the fleet shall presume to delay or discourage the same, upon pretence of arrears of wages, or any pretence whatsoever, and be convicted thereof, he shall suffer death, &c.

15. Every person in, or belonging to the fleet, who shall desert to the enemy, pirate, or rebel, or run away with any of his Majesty's ships, or any ordnance, ammunition, stores, or provision belonging thereto, to the weakening of the service, or yield up the same cowardly or treacherously, being convicted, shall suffer death.

16. Every person in or belonging to the fleet, who shall desert or entice others to do, shall suffer death, or such other punishment, as the circumstances of the offence shall deserve, and a court martial shall think fit; and if any commanding officer of any of his Majesty's ships of war shall receive or entreat a deserter from any other of his Majesty's ships, after discovering him to be such, and shall not, with all convenient speed, give notice to the captain of the ship, to which such deserter belongs, or if the said ships are at any considerable distance from each other, to the secretary of the Admiralty, or to the commander in chief, every person so offending, and being convicted, &c. shall be cashiered.

17. The officers and seamen of all ships appointed for convoy of merchant ships, or of any other, shall diligently attend upon that charge without delay, according to their instructions; and whosoever shall be faulty therein, and shall not perform their duty, and defend the ships and goods in their convoy, without either diverting to other parts, or occasions, or refusing, or neglecting to fight in their defence, if they be assailed, or running away cowardly, and submitting the convoy to peril and hazard, or shall demand or exact any money or other reward from any merchant or master, for convoying of any vessels intrusted to their care, or shall misuse the masters or mariners thereof, shall be condemned to make reparation of the damage to the merchants, owners, or others, as the Court of Admiralty shall adjudge, and also be punished according to the quality of their offences, by death or other punishment, according as shall be adjudged by the court martial.
18. If any captain or other officer of any of his Majesty's ships shall receive on board, or permit to be received on board such ship, any goods or merchandize, other than for the sole use of the ship, except gold, silver, or jewels, and except the goods and merchandizes belonging to any vessel which may be shipwrecked, or in imminent danger of being shipwrecked, either on the high seas, or in any port, creek, or harbour, in order to the preserving them for their proper owners, and except such goods or merchandizes as he shall be ordered to receive on board by order of the Lord High Admiral of Great Britain, or the Commissioners for executing the said office, and be convicted thereof, &c. he shall be cashiered, and be for ever afterwards rendered incapable to serve in any place or office in the naval service of his Majesty, &c.

19. If any person in, or belonging to the fleet, shall make or endeavour to make any mutinous assembly, upon any pretence whatsoever, and be convicted thereof, &c. he shall suffer death: and if any person shall utter any words of sedition or mutiny he shall suffer death, or such other punishment as a court martial shall deem him to deserve: and if any officer, mariner, or soldier, shall behave himself with contempt to his superior officer, such superior officer being in the execution of his office, he shall be punished according to the nature of his offence by the judgment of a court martial.

20. If any person in the fleet shall conceal any traiterous, or mutinous practice, or design, being convicted thereof, &c. he shall suffer death; and if any person shall conceal any traiterous or mutinous words spoken by any, to the prejudice of his Majesty or government, or any words, practices, or designs, tending to the hindrance of the service, and shall not forthwith reveal the same to the commanding officer, or being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same, he shall be punished as a court martial thinks he deserves.

21. If any person in the fleet shall find a cause of complaint of the unwholesomeness of the victual, or other just ground, he shall quietly make the same known to his superior, or captain, or commander in chief, as the occasion may deserve, that such present remedy may be had as the matter may require; and the said superior, &c. shall, as far as he is able, cause the same to be presently remedied; and no person upon such, or any other pretence, shall attempt to stir up any disturbance, upon pain of such punishment as a court martial shall think fit to inflict, &c.

22. If any officer or other person in the fleet shall strike any of his superior officers; or draw, or offer to draw, or lift up any weapon against him, being in the execution of his office, on any pretence whatsoever, and be convicted thereof, &c. he shall suffer death; and if any person shall presume to quarrel with any of his superior officers, being in the execution of his office, or shall disobey any lawful command of any of his superior officers, and be convicted thereof, &c. he shall suffer death, &c.

23. If any person in the fleet shall quarrel, or fight with any other person in the fleet; or use reproachful or provoking speeches, or gestures, tending to make any quarrel or disturbance, he shall, upon being convicted, suffer such punishment as the offence shall deserve, and a court martial shall impose.

24. There shall be no wasteful expense of any powder, shot, ammunition, or other stores in the fleet, nor any embezzlement thereof, but the stores and provisions shall be carefully preserved, upon pain of such punishment to the offenders, abettors, buyers, and receivers, being persons subject to the naval discipline, as shall be by a court martial found just.

25. Every person in the fleet, who shall unlawfully burn, or set fire to any magazine or store of powder, or ship, boat, ketch, hoy, or vessel, or tackle, or furniture thereunto belonging, not then appertaining to an enemy, pirate, or rebel, being convicted of any such offence, by the sentence of a court martial, shall suffer death.
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26. Care shall be taken in the conducting and steering any of his Majesty's ships, that through wilfulness, negligence, or other defaults, no ship be stranded, or run upon any rocks or sands, or split, or hazarded, upon pain that such as shall be found guilty therein, be punished by death, &c.

27. No person in, or belonging to the fleet, shall sleep upon his watch, negligently perform the duty imposed upon him, or forsake his station upon pain of death, &c.

28. All murders committed by any person in the fleet, shall be punished with death, &c.

29. If any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy, with man or beast, he shall be punished with death, &c.

30. All robbery committed by any person in the fleet, shall be punished with death, &c.

31. Every officer, or other person in the fleet, who shall knowingly make, or sign a false muster, or muster book, or who shall command, counsel, or procure the making or signing thereof, shall, upon proof of any such offence, &c. be cashiered, and rendered incapable of further employment in his Majesty's naval service.

32. No provost-marshal belonging to the fleet shall refuse to apprehend any criminal, whom he shall be authorized, by legal warrant, to apprehend, or to receive, or keep any prisoner committed to his charge, or wilfully suffer him to escape, being once in his custody, or dismiss him without lawful order, upon pain of such punishment as a court martial shall deem him to deserve; and all officers, and others in the fleet, shall do their endeavour to detect, apprehend, and bring to punishment all offenders, and shall assist the officers appointed for that purpose therein, upon pain of being proceeded against, and punished by a court martial, &c.

33. If any flag officer, captain, or commander, or lieutenant belonging to the fleet, shall be convicted before a court martial, of behaving in a scandalous, infamous, cruel, oppressive, or fraudulent manner, unbecoming the character of an officer, he shall be dismissed from his Majesty's service.

34. Every person being in actual service, and full pay, and part of the crew belonging to any of his Majesty's ships of war, who shall be guilty of mutiny, desertion, or disobedience to any lawful command, in any part of his Majesty's dominions on shore, when in actual service relative to the fleet, shall be liable to be tried by a court martial, and suffer the like punishment for every such offence as if the same had been committed at sea.

35. If any person who shall be in actual service, and full pay in his Majesty's ships of war, shall commit upon the shore, in any place out of his Majesty's dominions, any of the crimes punishable by these articles and orders, he shall be liable to be tried and punished for the same, in like manner, as if the said crimes had been committed at sea.

36. All other crimes, not capital, committed by any person in the fleet, which are not mentioned in this act, or for which no punishment is hereby directed to be inflicted, shall be punished according to the laws and customs in such cases used at sea.

No person convicted of any offence, shall, by the sentence of any court martial, be adjudged to be imprisoned for a longer term than two years.

No court martial shall proceed to the punishment, or trial of any offence, except the offences specified in the 5th, 14th, and 15th of the foregoing articles and orders, which shall not be committed upon the main sea, or in great rivers only, beneath the bridges of the said rivers nigh to the sea, or in any haven, river, or creek, within the jurisdiction of the Admiralty, and which shall not be committed by such persons, as, at the time of the offence, shall be in actual service, and full pay, in the fleet; such persons only excepted, and for such offences only, as are described in the 5th and the foregoing articles and orders.
No court martial, constituted by virtue of this act, shall proceed to the punishment or trial of any land officer or soldier, on board any transport ship, for any offences specified in the said articles.

From and after the 25th of December, 1749, the Lord High Admiral of Great Britain, or the Commissioners for executing the said office, are empowered to grant commissions to the commanders in chief of any fleet or squadron of ships of war, to call and assemble courts martial, consisting of commanders and captains, and if such commander in chief shall die, be recalled or removed from his command, then the officer upon whom the said command shall from time to time devolve, shall have the same power to call and assemble courts martial, as the first commander in chief shall be invested with.

No commander in chief of any fleet or squadron of his Majesty's ships, or detachment thereof, consisting of more than five ships, shall preside at any court martial in foreign parts; but the next officer in command shall hold such court martial and preside thereat.

From and after the 25th day of December, 1749, if any commander in chief in foreign parts shall detach any part of his fleet or squadron, he shall by writing, under his hand, empower the chief commander of the squadron or detachment ordered on such separate service, and in case of his death or removal, the officer to whom the command shall belong, to hold courts martial during the time of such separate service, or until he shall return to his commander in chief, or shall come under the command of any other his superior officer, or return to Great Britain or Ireland.

Where any material objection occurs, which may render it improper for the person next in command to the senior officer, or commander in chief of any fleet or squadron, in foreign parts, to hold courts martial or preside thereat, the Lord High Admiral, or the Commissioners for executing the said office, as also the commander in chief of such fleet or squadron, may appoint the third officer in command to preside at or hold such court martial.

From and after the 25th of December, 1749, the Lord High Admiral, or the Commissioners for executing the said office, are empowered to direct any flag officer or captain of any of his Majesty's ships of war who shall be in any port of Great Britain or Ireland, to hold courts martial in such port, provided such officer be the first, second, or third in command in such port, as shall be found most expedient, and for the good of the service; and such flag officer or captain shall preside thereat.

From and after the 25th of December, 1749, no court martial shall consist of more than thirteen, or of less than five persons, to be composed of such flag officers, captains, or commanders, then and there present, as are next in seniority to the officer who presides at the court martial.

The Lord High Admiral, or the Commissioners for executing the said office, or any officer empowered to order or hold courts martial, shall not direct or ascertain the particular number of persons of which any court martial shall consist.

If any court martial shall be appointed to be held at any place where there are not less than three, nor yet so many as five officers of the degree of a post captain, or of a superior rank to be found, the officer who is to preside shall call to his assistance as many of the commanders of his Majesty's vessels under that rank as, together with the post captains, will make up the number of five, to hold such court martial.

From and after the 25th of December, 1749, no member of a court martial, after trial is begun, shall go on shore till sentence be given, but remain on board the ship in which the court shall first assemble, except in case of sickness, to be judged of by the court, upon pain of being cashiered; nor shall the proceedings of the court be delayed by the absence of any members, provided a sufficient number remain to com
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pose the court, which shall sit from day to day, Sunday always excepted, until sentence be given.

From and after the said 25th of December, all the officers present, who are to constitute a court martial for the trial of offenders, shall, before they proceed to trial, take an oath before the court, to be administered by the Judge Advocate or his deputy, in the words following, viz.

"I A. B. do swear, that I will duly administer justice, according to the articles and orders established by an act passed in the twenty-second year of the reign of his Majesty King George the Second, for amending, explaining, and reducing into one act of Parliament, the laws relating to the government of his Majesty's ships, vessels, and forces by sea, without partiality, favour, or affection; and if any case shall arise, which is not particularly mentioned in the said articles and orders, I will duly administer justice according to my conscience, the best of my understanding, and the custom of the navy in the like cases; and I do further swear, that I will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court martial, unless thereunto required by act of Parliament.

So help me God."

And so soon as the said oath shall have been administered to the respective members, the President of the Court shall administer to the Judge Advocate, or the person officiating as such, an oath in the following words:

"I A. B. do swear, that I will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court martial, unless thereunto required by act of Parliament.

So help me God."

If any person in the fleet, being called upon to give evidence at any court martial, shall refuse to give evidence upon oath, or shall prevaricate, or behave with contempt to the court, such court martial is empowered to commit the offender, for any time not exceeding three months, in case of such refusal or prevarication, nor longer than one month in case of such contempt; and every person who shall either commit, or corruptly procure or suborn any person to commit willful perjury, shall be prosecuted in the King's Bench by indictment or information; and every issue joined thereon shall be tried by a jury of Middlesex, or such other county as the said court shall direct; and the offender, upon conviction, shall suffer the pains and penalties enacted to be inflicted for the like offences by an act of 3 Eliz. and 2 Geo. 2. &c.

In every such information or indictment, it shall be sufficient to set forth the offences charged upon the defendant, without setting forth the commission for holding the court martial, or the particular matter tried, or directed to be tried, before such court.

From and after the 25th of December, 1749, no sentence of death given by any court martial held within the Narrow Seas, except in cases of mutiny, shall be executed till after report of the proceedings shall have been made to the Lord High Admiral, or the commissioners for executing the said office, and his or their direction shall have been given therein; and if the said court shall have been held beyond the Narrow Seas, then such sentence of death shall not be executed but by order of the commander of the fleet or squadron wherein sentence was passed; and where sentence of death shall be passed in any squadron detached from any other fleet or squadron upon a separate service, then such sentence, except in cases of mutiny, shall not be executed but by order of the commander of the fleet or squadron from which such detachment shall have been...
made, or of the Lord High Admiral, or the commissioners for executing the said office; and where sentence of death shall be passed in any court held by the senior officer of five or more ships which shall happen to meet in foreign parts, then such sentence, except in cases of mutiny, shall not be executed but by order of the Lord High Admiral, or commissioners for executing the said office.

The Judge Advocate, or his deputy, is to administer an oath to witnesses at any trial by a court martial; and in the absence of the Judge Advocate, or his deputy, the court shall appoint any person to execute the said office.

From and after the 25th of December, 1749, all the powers given by the several articles and orders established by this act shall be in force, with respect to the crews of such of his Majesty's ships as shall be wrecked, or be otherwise lost or destroyed; and all the command and authority given to the officers shall be in force as effectually as if such ships, to which they did belong, were not so wrecked or destroyed, until they shall be discharged from his Majesty's further service, or removed into some other ship of war, or until a court martial be held to inquire into the causes of the loss of the said ship; and if it shall appear, by the sentence of the court, that the said officers or seamen did their utmost to preserve or recover the said ship, and since the loss thereof have behaved obediently to their superior officers, according to the discipline of the navy and the articles aforesaid, then all the pay and wages of the said officers and seamen, or of such of them as shall have done their duty, shall be paid to the time of their discharge or death; or, if they shall be then alive, to the time of the holding of such court martial, or their removal into some other of his Majesty's ships; and every person who, after the wreck or loss of his ship, shall act contrary to the discipline of the navy, and the articles and orders aforesaid, shall be sentenced by the said court martial, and punished, as if the ship to which he did belong was not so wrecked or destroyed.

From and after the said 25th of December, all the pay and wages of such officers and seamen of any of his Majesty's ships as are taken by the enemy, and, upon inquiry at a court martial, shall appear by the sentence of the said court to have done their utmost to defend the said ship, and since the taking thereof to have behaved obediently to their superior officers, according to the discipline of the navy and the articles aforesaid, shall be paid from the time of their being so taken to the time of the holding of such court martial, or until they shall be discharged from his Majesty's service, or removed into some other ship of war, or, if they shall die in captivity, or before the holding of such court martial, to the time of their death, in such manner as if the ship to which they did belong respectively was not so taken.

No person, not flying from justice, shall be tried or punished by any court martial for any offence against this act, unless complaint of such offence be made in writing to the Lord High Admiral, or to the commissioners for executing the said office, or any commander in chief of his Majesty's squadrons or ships empowered to hold courts martial; or unless a court martial to try such offender shall be ordered by the Lord High Admiral, or the commissioners for executing the said office, or the said commander in chief, either within three years after such offence shall be committed, or within one year after the return of the ship or squadron, to which such offender shall belong, into any of the ports of Great Britain or Ireland, or within one year after the return of such offender into Great Britain or Ireland.

From and after the said 25th of December, if any captain or other officer of the fleet shall receive, or suffer to be received on board, any goods or merchandizes, contrary to the true intent and meaning of the eighteenth article of this act, he shall for every such offence, over and above any punishment inflicted by this act, forfeit and pay the value of such goods and merchandizes, or the sum of 500l. at the election of the inform-
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ers, or person who shall sue for the same, so that no more than one of these forfeitures shall be sued for and recovered against the same person for one and the same offence; one moiety to the informer, and the other to Greenwich Hospital, &c.

This act shall not extend to take away from the Lord High Admiral, or the commissioners for executing the said office, or any vice-admiral, or judge of the Admiralty, or his or their deputies, or any officers or ministers of the Admiralty, or others having or claiming any admiral power or authority within this realm, or any other the King’s dominions, or from any person or court whatsoever, any power, right, jurisdiction, pre-eminence, or authority, which any of them lawfully hath, or had, or ought to have and enjoy before the making of this act, so as the same person shall not be punished twice for the same offence.

The repeal of the before-recited statutes, or any thing herein contained, shall not discharge or prevent any prosecution or suit which is or shall be commenced against any person, for any offence committed on or before the said 25th of December, 1749, or to be committed against the said statutes; but all persons who have been, or shall, before the said 25th of December, be guilty of any such offence, shall and may be prosecuted, condemned, and punished for the same, as well after as before the said 25th of December, as if the said statutes had not been repealed.

Since the above act the following was made, for the encouragement of seamen to enter into his Majesty’s service, during the war begun in 1756.

The preamble sets forth, that the encouragement of seamen, employed in the royal navy, will greatly tend to augment the marine force of this realm, whereon, under the good providence and protection of God, the security of these kingdoms, and the support and preservation of their commerce, do most immediately depend: And that, by an act 1 Geo. 2. and another of the same session, several provisions and regulations were enacted and prescribed for the benefit and encouragement of seamen employed in the royal navy, and for preventing frauds and abuses in purchasing their wages; which provisions and regulations, from various difficulties in carrying the same into execution, have been found in a great measure ineffectual to answer the purpose thereby intended: and that the establishing a regular method for the punctual, frequent, and certain payment of the wages or pay due to inferior officers and seamen employed in the royal navy; the enabling such officers and seamen more easily and readily to obtain such payments, and to allot and remit any part thereof, for the support and relief of their wives and families; and the preventing, as far as may, the unwary, the ignorant, or the necessitous, from being defrauded and injured by the extortion and usury of wicked and evil designing persons, are of the utmost consequence to the public service: therefore, for effectuating these important and compassionate purposes, it is enacted, that from and after November 1, 1758, every volunteer, who shall enter his name with a commission officer, appointed for entering volunteers in the royal navy, and shall receive from him a certificate thereof, which is to be given him gratis, is entitled to wages from the date thereof, including the day of the date, if he appears on board within fourteen days, if the ship is not above one hundred miles from the place of entering; twenty days if above one hundred miles; or thirty days if above two hundred miles; and shall be allowed the usual conduct money, and also two months’ wages advance, at the first fitting out of the ship, and before the ship proceeds to sea.

Every supernumerary man serving ten days in any ship, shall be borne for and entitled to his wages upon the books of such ship, and to all other benefits, as if he was part of the complement: but men lent from one ship to another, shall continue to be borne for the ship from which they were lent, till discharged.

Every inferior officer or seamen, who shall be turned over from one ship to another, in case the ship into which he is turned over, is then, or shall, come into a port of
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Great Britain, where there is a commissioner of the navy, shall be paid all the wages due to him in the ship from which he was turned over, before the ship in which he was turned over shall proceed to sea, unless directed otherwise by special order from the Admiralty, in cases of the greatest exigency only; and if the ship proceed to sea, the wages shall be paid as soon as such ship shall come again into any port of Great Britain, where there is a commissioner.

Every officer or seaman, who shall be turned over, shall not be rated in a lower degree than he served in the former ship; and above his wages, shall receive two months advance before the ship shall proceed to sea.

As often as any ship, which shall have been in sea pay twelve months or more, shall arrive in any port of Great Britain, or on the coast thereof, the master shall cause five complete pay-books to be made out for the time such ships shall have been in pay, except the last six months, and transmit such books, together with three alphabets, and a slop-book to the Navy Board: and as soon as such ship shall arrive in any port of Great Britain, where there is a commissioner, immediate payment shall be made of the wages due to the officers and seamen, their executors, &c. deducting the advance money and all defalcations, leaving always six months' wages unpaid and no more. And all wages, due to any ships, shall be paid as soon as may be, or within two months at farthest, after the arrival of such ship in port to be laid up.

If any inferior officer or seaman, who was absent at the payment of his ship, or his captain for him, shall apply to the Navy Board, in case such ship shall be in any port of Great Britain, where there is a commissioner, the pay-lists shall be sent to such commissioner, who shall forthwith cause the wages to be paid to such person.

The commander shall make out a ticket upon the death of every petty officer or seaman, and shall transmit the same to the Navy Board, who are to cause the day of receipt to be indorsed thereon, and shall examine and sign the same for payment within one month after the receipt thereof: and the same shall be delivered, and payment thereof made, without fee or reward, to the executors, administrators, or attorney, or the executors, &c. of such officer or seaman.

When any inferior officer or seaman shall be rendered unserviceable, the commander shall give him a certificate of his discharge, and make out a ticket for his pay, unless the ships shall be in some port of Great Britain, or on the coast thereof, or shall belong to some squadron from which he is not separated; in which case he is to make a report to the commander in chief, and receive his orders thereupon, and shall send the ticket to the Navy Board; and deliver only to such officer or seaman the certificate of his discharge, containing an exact copy of the ticket, and a description of his person. The commissioners of the navy shall cause the day when such ticket was received, to be indorsed thereon; and, after examination, shall assign the same for payment, within one month at farthest after making such indorsement. And if any officer or seaman shall present such certificate at the Navy Office, the commissioners are forthwith to examine such certificate, and the person presenting the same; and being satisfied therein, shall testify the same on the certificate; and the ticket shall be immediately delivered him, and the money paid at the pay-office to such officer or seaman only, without fee or reward. If the tickets shall not have been transmitted to the Navy Office, the money appearing to be due by the copy, shall be paid as if the certificate had been received. Such officer or seaman, being desirous to receive his wages at any port of Great Britain, where a commissioner resides, may produce his certificate to him, who being satisfied of the truth thereof shall sign and transmit the same to the Navy Board; who, within four days after receiving it, are to send the ticket if received, otherwise a copy of the certificate, to the commissioner at such port, who shall cause immediate payment thereof to be made, without fee or reward. And send such officer or seaman to the nearest
hospital, where he is to be received and victualled, from the time of presenting such certificate until payment is made.

If such certificate be lost or destroyed, or not presented in person, or the money paid before the general payment of the ship's company, the ticket shall be cancelled, and the wages paid as if no ticket had been made out.

When any inferior officer or seaman shall, by order of the commander, be set ashore, and be sent to any hospital or sick quarters, such commander shall make out a sick ticket for the wages due to such person, and transmit the same with such officer or seaman to such hospital or sick quarters; and if he shall be regularly discharged from thence as unserviceable, a certificate of his discharge with the sick ticket annexed, shall be delivered to him; and if he shall present the same to a commissioner at any port of Great Britain, such commissioner, being satisfied thereof, shall sign the same on the certificate, and transmit the certificate and sick ticket to the Navy Board, who are to cause the day it was received to be indorsed thereon, and also to cause it to be examined by the muster-books, if received; and then within four days, to cause a ticket or pay-list to be made out for such person's wages, and to send the same to the commissioner; who shall cause immediate payment to be made of the wages of such seaman, without fee or reward; who, notwithstanding such discharge, shall be maintained in such hospital or sick quarters, until the payment be made.

The payment of tickets, certificates, or pay-lists, shall not be delayed, though the muster or pay-books shall not be regularly received at the Navy Board; but if any errors shall be made in any certificate, ticket, or pay-list, the loss shall be made good out of the commander's wages.

As often as any ship, which shall not be in the port of Great Britain, or on the coast thereof, shall have twelve months' wages due, the commander shall cause the inferior officers and seamen's names to be called over, and shall do the same whenever twelve months' wages shall be due; and if any of them shall deliver in writing the name and place of abode of his wife, father, or mother, and desire, that the whole or any part of such wages then due, except the last six months, should be paid to his said wife, father, or mother, by the Receiver-General of the Land-Tax, Collector of the Customs, Collector of the Excise, or Clerk of the Cheque at any dock-yard, the commander is to send a list of such persons to the Navy Board, who shall make out two bills for the payment of the wages so allotted by each person, one of them to be sent to the persons respectively specified in such lists, and the other to the receiver, &c. And if the person to whom any such bill is sent, shall, within six months of the date thereof, produce the same to such receiver, &c. together with a certificate, properly authenticated of their being the wife, father, or mother, of such officer or seaman respectively, such receiver, &c. upon being satisfied of the truth of such certificate, which he is to inquire into upon the oath of the person producing the same, is immediately, without fee or reward, to pay the sum mentioned in such bill, taking a receipt. Such bill, together with the duplicate thereof, being produced at the Navy Office, shall be immediately assigned for payment by the Commissioners of the Navy, and repaid by the treasurer to such receiver, &c. or their orders; but if payment of the bill be not demanded within six months, the sum contained in such bill is to be repaid to such inferior officer or seaman, &c.

In like manner when wages shall be paid at the pay-office or any of the out-posts, any inferior officer or seaman, desirous to remit the whole or any part of his wages to his wife, children, parents, or any other person, may have a bill for the same, as in the last clause.

If any receiver, &c. shall not have in his hands public money sufficient to pay any bill tendered, and shall refuse payment thereof, he is to indorse on the back of the bill
the cause of his delay, and appoint for payment some day within two months. And if any receiver, &c. shall unnecessarily refuse payment, or he or any person employed under him, take any gratuity for such payment, any three commissioners of the branch of business he is under, may fine such person in any sum not exceeding fifty pounds; to be levied as are those for offences against the laws of customs and excise, and to be paid to the informer.

The wages, &c. earned by an indentured apprentice, shall be paid to his master, as hath been usual, unless such apprentice was above eighteen years of age, when his indentures were executed, or shall be rated as servant to an officer, to whom such apprenticeship is not known; in which case the officer shall be entitled to the pay, according to the practice of the navy.

Commanders of ships are to transmit to the Navy Board, complete pay-books and lists, and tickets made out, and also once in two months muster-books, not only for the said two months, but from the time the ship shall have been in commission, or was last paid; on failure, the Navy Board are not to grant them the general certificate for their wages, unless by particular order from the Lords of the Admiralty, in cases of necessity, and its being made appear to them, that their directions were complied with as far as the nature of the service would admit, and as safe opportunities offered; and if any commander shall not excultate himself within twelve months after his arrival in Great Britain, he shall forfeit all his wages to the chest at Chatham; and be liable to such other punishment, not extending to life and limbs, as a court martial shall inflict.

No letters of attorney made by inferior officers or seamen, or their executors, &c. shall be valid, unless declared therein revocable, and unless the same be signed before and attested by the commander, and another of the signing officers, or by a clerk of the cheque; and if made after such person shall be discharged from the service, then to be signed before, and attested by, the chief magistrate where such seamen shall reside; or if made by executors, &c. to be signed before, and attested by, the minister and churchwardens, or in Scotland, by the minister and two elders, of the parish where such executors, &c. reside.

All letters of attorney, other than such as are made and attested as aforesaid, are null and void.

No more than 1s. shall be taken by any Ecclesiastical Court, &c. for the probate of any will or letter of administration, granted to the widows, children, parents, brothers, or sisters, of inferior officers, seamen, or mariners dying in the service, and for attending the same, unless the goods and chattels are of the value of 20l. nor more than 2l. unless the value of 40l. nor more than 3s. unless the value of 60l. nor more than 1s. for issuing commissions to swear such widows, &c. being executors or administrators to inferior officers, &c. unless the goods and chattels are of the value of 20l. nor more than 2s. unless the value of 40l. nor more than 3s. unless of the value of 60l. under penalty of 50l. to be paid by the offender to the party aggrieved, to be recovered with full costs of suit in any Court of Record.

Whosoever shall personate or assume the name or character, or procure any other, to personate or falsely to assume the name or character of any officer, seaman, or other person, intitled to wages, &c. for service done in the royal navy, or of the executor, administrator, wife, relation, or creditor, of any officer, &c. in order to receive any wages, &c. or shall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, or other power in order to receive any wages, &c. or shall willingly or knowingly take a false oath, or procure a false oath to be taken, to obtain the probate of a will or letters of administration, in order to receive any wages, &c. due, or supposed to be due, shall be guilty of felony, and suffer death.

When the pay-books are closed, tickets shall be made out, on application to the
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Navy-Board, to the seamen who shall not have received their wages; and such tickets shall be paid in course once a month.

British governors, ministers, and consuls, residing at foreign parts, or any two British merchants, are required to provide for seafaring men and boys, subjects of Great Britain, who shall be in foreign parts by shipwreck, capture, or other unavoidable accidents, or who shall be discharged as unserviceable from the British navy, and subsist them at sixpence per diem each, and send them home as soon as possible in any British ships.

The bills of their disbursements, with vouchers, are to be sent to the Navy Board, who are to cause immediate payment. And every master of a ship is to take so many as the said governors, &c. shall direct, not exceeding four to every hundred tons. Such masters to be allowed sixpence per diem, for all such as shall exceed their complement, upon producing a certificate from the governors, &c. of the number taken on board, and making affidavit of the time they were subsisted, and that they did not want of their complement, or how many they did want of their complement, and for what time.

No volunteer shall be liable to be taken out of his Majesty’s service by any process, except for some criminal matter, unless for a real debt, and unless the plaintiff, or some other person in his behalf, make affidavit that to his knowledge, the sum due to the plaintiff with costs of suit amounts to 20l. at least; a memorandum of which oath is to be marked on the back of the writ or process, for which no fee shall be taken; and if any person shall be arrested contrary to the intent of this act, any judge of such court may examine into the same on oath, and discharge such seaman without fees, on proof of his belonging to one of the King’s ships, and being arrested contrary to the intent of this act; and may award reasonable costs, for recovery whereof he shall have the same remedy as the plaintiff, if he had judgment.

But plaintiffs, upon notice first given in writing to such seaman, or left at his last place of abode, may file a common appearance, so as to entitle them to proceed to judgment and outlawry, and to have an execution thereupon, except against the bodies of such seamen.

Persons employed to receive seamen’s wages, prize-money, &c. shall take no more than sixpence in the pound; and if they shall take any more, to forfeit 50l. with full costs of suit, to the prosecutor: and if such person belong to any office in the navy, he shall lose his place, and be incapable of holding any place of profit in any such office.

All persons in offices belonging to the navy taking fees, contrary to this act, are liable to the same penalty.

By the statute 29 Geo. 2. c. 27. the provisions of the above act are extended to officers, seamen, &c. employed on lakes, waters, or rivers, in North America.

OF CONSULS.

Of all the commercial institutions established by modern nations, for the protection of the rights and privileges of merchants, masters of ships, and mariners, trading to and residing in each other’s dominions, none deserves our attention more than that of the appointment of Consuls, whose office, duties, privileges, and powers, will be the subject of this chapter. It is a high-sounding title; but bears no affinity to that of the Consuls of the ancient Roman Commonwealth, who were supreme magistrates, generals, and legislators: whereas the officer we are now treating of has no jurisdiction beyond the limits of commercial concerns, neither does his authority extend to any per-
sons who are not the natural-born subjects of the prince from whom he receives his commission.

The institution has been found so necessary and useful, that all the maritime powers of Europe have adopted it. Consuls from each reside in the sea-port towns, and, in some instances, in the capitals of the different nations with whom they respectively carry on any considerable commerce. In France, they have likewise a consular office and jurisdiction of an especial nature, being instituted for the internal regulation of trade and commerce in their own ports. But as these have no relation to the general establishment of consuls in foreign countries, I shall refer those, who may have any particular interests in such a detail, to the very long and accurate account of the French Judge Consuls in Postlethwayte’s Universal Dictionary of Trade and Commerce, article Consuls; translated from the French of Mons. Savary, folio, 2 vols. fourth edit. Lond. 1774; and shall proceed to the appointment of British Consuls.

Our consuls were originally elected by the British merchants, residing in foreign ports, from amongst their own body; and being recommended by them to the Secretary of State for the department in which the ports were situated, the Secretary laid the recommendation before the King, who confirmed the election, and issued the commission under his sign manual accordingly. This laudable custom was founded upon clear demonstration, that merchants residing upon the spot were the best judges of the commercial interest of their own country, and best able to promote its increase, and to prevent its diminution. But, in process of time, the corruption of court favour and court influence extended itself to this as well as to all other offices held under the crown. Ministers of State established a claim to dispose of all offices of honour and profit, subject to the jurisdiction of their respective departments. Their recommendation, then, whether proceeding from friendship or purchase, was substituted in the place of that of the merchant; and men were appointed from home, who were so far from being qualified, that very often they had not had a commercial education. At present the appointment lies with the two Secretaries of State for the southern and the northern provinces. The northern Secretary appoints all the consuls residing in the northern kingdoms of Europe, and the southern all those residing in the south. Some of our commercial corporate companies, however, still retain the privilege of appointing their own consuls.

One reason assigned for a revolution in the mode of appointing our consuls was, that the office of a consul was incompatible with that of a merchant, and that it was impossible for him to maintain the dignity of his office if he carried on trade upon his own account; for it might induce him to act partially upon many occasions. This is so far true, that consuls ought not to be suffered to trade; for, having salaries annexed to their office, they ought to decline all commercial interest from the time of their appointment; and this rule being observed, the propriety of appointing men who have been brought up in the mercantile line still remains in full force. The French strictly enjoin their consuls in all foreign countries not to carry on any commerce whatever, under penalty of dismissal from their office. But the British consuls, contrary to sound policy, are still permitted to trade in all the ports where it is not prohibited, as it ought to be, by the Sovereign of the country. This remark will be justified, when we come to the consideration of the peculiar duties of their station.

The admission of a consul to reside and exercise his functions in any part of the dominions of a foreign power depends upon circumstances. Where the right of sending consuls to reside in each other’s dominions is expressly stipulated in commercial treaties, subsisting between the crown of Great Britain and the States to whom they are sent, they may object to the person appointed, and by their ambassador make requisition for the appointment of another, assigning proper reasons for their rejection of the first;
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but they cannot reject the King's commission: whereas those potentates with whom we have no commercial treaties, stipulating the appointment of a consul, may not only refuse the person but the commission itself, without violation of the peace and amity subsisting between the powers so refusing and this country; for the law of nations does not include this appointment; however, it is usual to grant permission. Yet the difference is essential; for the consul, whose residence is founded upon a treaty, may proceed to much greater lengths, in the exercise of his authority, than he who is only admitted by permission; every point, however clear, will be disputed with the latter by the magistracy of the place where he resides, jealous of their own jurisdiction, and they will be supported by their Sovereign and his ministers. This distinction was not noticed in any of our commercial works; and it is only by experience that the Editor of this has been enabled to insert it, the British consuls in the Austrian Netherlands being on sufferance only. And, that we may establish this distinction upon proper authority, here follow the copies of two commissions, the first founded upon treaty, the second on permission only. They were formerly issued in Latin; but, since our language has been perfectly understood in all the courts of Europe, the practice has been disused, and therefore it is unnecessary to give the Latin form, as inserted in former editions of this work.

I.

GEORGE R.

GEORGE the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. to all and singular to whom these presents shall come, greeting. Whereas it hath been found expedient that some person of known probity be appointed to act as Consul in the town of Alicant, in the kingdom of Spain, and to take care of the commerce of our subjects, who reside or commonly go there to trade; know ye, therefore, that we, entirely confiding in the probity, affection, prudence, and experience, especially in mercantile affairs, of our trusty and faithful subject, Samuel Tucker, Gentleman, have nominated and appointed, and by these presents do nominate and appoint him our Consul in the said town of Alicant, together with all its members and appurtenances; giving and granting unto him full power and commission to aid and protect all our subjects that inhabit or frequent the said town, its territories and jurisdiction, or who do, or who shall carry on a trade, or transact business in those parts, harbour, and coasts; advising and assisting them, agreeable to the articles and treaties of peace and alliance relating to trade, and firmly concluded between the crowns of Great Britain and Spain, and their respective dominions; and to defend our subjects, in case of need, in their trade, goods, and whatever else shall appertain unto them, before all judges and magistrates; and to take cognizance of, determine, and compose all differences, controversies, and litigations, which do or may happen between them; and to defend and preserve them in every thing relating to their right, liberty, and freedom of mutual trade and commerce; and further, to substitute, as he shall think fit, one or more deputies, or Vice-Consuls, to act for him in all and every one of the aforesaid places; and to do all and everything which may promote the good of our subjects, the increase of mutual friendship between the two kingdoms and people, and the freedom and security of commerce; and further, that he use and enjoy all and every the rights, honours, immunities, liberties, and emoluments, which any other Consul in the aforesaid town did or could of right enjoy. And we earnestly intreat the most serene and potent Catholic King, our brother, and we desire all others whom it may in any wise concern, in a friendly manner, what we strictly enjoin all our subjects by these presents, that they acknowledge and admit the said Samuel Tucker as our Consul in the aforesaid town. In witness whereof, we have caused these our letters to be made
patent, and signed and sealed with our own hand. Given in our Palace at St. James's the eleventh day of December, in the year of our Lord one thousand seven hundred and twenty-eight, and in the second year of our reign.

By his Majesty's command,

HOLLES NEWCASTLE.

II.

GEORGE, R.

GEORGE the Third, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c. to our trusty and well-beloved Michael Hatton, Esq. greeting. Whereas we have thought fit, for the advancement of trade and commerce in the several ports of Ostend, Nieuport, and Bruges, in the province of Flanders, to constitute a proper person to be our Consul in those ports, who may, as there shall be occasion, countenance and protect our subjects, being merchants there; we, in consideration of the good testimony we have received of your loyalty to us, and of your ability to serve the said merchants, in the execution of the office of Consul in those ports, do, by these presents, constitute and appoint you, the said Michael Hatton, to be our Consul in the said ports of Ostend, Nieuport, and Bruges, together with all their members and dependencies in the said province of Flanders, and over all our subjects who inhabit, frequent, or trade to the said ports, their members or territories; to have, hold, exercise and enjoy the said office of our Consul, by yourself, or your sufficient deputy or deputies, for and during our pleasure, with all and singular the rights, profits, privileges, and immunities which you yourself have, or any other Consul here-tofore hath enjoyed, or which any of our Consuls do or ought to have and enjoy, in any of the dominions of any princes or states where Consuls usually reside; and we do hereby enjoin and require all our subjects dwelling in, frequenting, or trading to the said places or ports, to pay that respect which is do to you as our Consul, and to your deputy. Given at our Court at St. James's the twentieth day of February, 1761, in the first year of our reign.

By his Majesty's command,

HOLDERNESS.

The British Consul has no right to return home, even for a short space of time, without applying for leave of absence to the Secretary of State; which having obtained, he is to appoint a deputy or deputies to take care of the commercial affairs of his nation during his absence: these are no more than temporary deputies, and are generally merchants of the place. But if the Consul, holding some other appointment from the crown, is absent for a considerable length of time, or, being infirm, obtains leave to remain in his native country, the deputy, appointed to reside constantly for him, may be appointed by him; but he must be presented to the Secretary of State, and being approved by him as the sufficient deputy under the commission, he becomes an officer of the crown, takes the title of Vice-Consul, and carries on a correspondence with the public officers, in every respect the same as the Consul: and, though his commission is signed by the Consul, being a copy of his own with the requisite alterations, he has no power to remove the Vice-Consul, so appointed, without the approbation of the Secretary of State. If there are any subordinate deputyships within the jurisdiction of the consulship, it is the Vice-Consul, in this case, who is to appoint persons to act in those stations, not the Consul, who has given up the entire authority he held under the King's commission.

In some countries, as in Portugal, Spain, and Italy, where there is a scarcity of
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British subjects, it has been customary for the Consul-General to appoint natives of such countries to act as their deputies at inferior ports; but this is an unwarrantable and impolitic practice, founded, like many others, upon avaricious principles in our great men, whose salaries are amply sufficient to enable them to send for deputies from home.

A Consul is not, in the literal sense of the word, a public minister; but it is a mistake to assert, that he has no State affairs to transact; for it is expected from him, that he should correspond with the ambassador from his sovereign residing at the court of the prince within whose dominions his consular station lies, and send him information of any transactions, of what nature soever, which may prove detrimental to the political or commercial interests of his King and country. And, in case there is no ambassador or other public minister residing at the said court, he is to transmit his intelligence directly home to the Secretary of State, under whose department he serves.

But though the Consul be not a public minister, under the protection of the law of nations, he enjoys some important privileges, annexed to his office, which distinguish him from the private inhabitants of the place where he resides. These, where the Consul is admitted only by permission from the prince or state, are regulated generally by the customary privileges granted to them in the countries where the right of fixing Consuls is founded upon treaties. The principal are, a free entry for his furniture and baggage upon his first establishment—An exemption from the excises, or inland duties on liquors, and other articles of consumption, for himself and family—A seat on the bench with the magistrates of the place, when obliged to appear at their assemblies to act as counsel for the subjects of his nation, in all cases of dispute between them and the natives of the place—An exemption from lodging the military in his house—A guard, when required, to aid and assist him in the maintenance of his authority over the subjects of his own country trading to the port; which, however, does not extend to those who are constantly resident in the place, and who, in all cases, whether civil or criminal, as well as the Consul himself, are subject to the jurisdiction of the country—The privilege of receiving a polite message from the magistrates, requesting his attendance, when necessary, at their assemblies, instead of a formal summons or citation, which, if he means to support the dignity of his sovereign, he must never obey. There are likewise some trifling personal advantages; but, as they do not affect his office, it is better to leave it to the good sense of the Consul to discover, and use them with discretion, than to mention them as precedents in this place; lest they should be too eagerly contended for, to the detriment of the commercial interests of his country.

It appears to be doubtful, whether a Consul, by virtue of his office, is privileged from arrest. From the report of Barbuit's case, Cas. Temp. Talb. 281. it may be gathered, that the opinion of the Lord Chancellor Talbot, who tried the cause, was, that a Consul is not privileged from arrest; but as the question only arose collaterally, it was not expressly determined; this case is observed upon, and the decision approved of by Lord Mansfield, in the case of Triquet v. Bath, 3 Burr. Rep. 1481. At all events, it is quite clear, that one who had been appointed Consul-General, but dismissed from his employment, and another person resident here appointed in his stead, is not privileged from arrest, though at the time of such arrest, he had not received any official notification of his dismissal, or of the appointment of the other person. See the case of Marshall v. Critico, 7 East. Rep. 447. where Lord Ellenborough says, "this is not a privilege of the person, but of the state, which he represents; and that state having divested him of the character in which he claims his privilege, and appointed another person here to exercise it; there is no just reason why the defendant should not be subject
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to process as other persons, nor for the state by which he had been so dismissed from his employment to take offence at his arrest."

That the difference between a Consul and a public minister may appear in the most striking point of view, the following case, inserted in the former editions of this work, is reprinted.

The governor of Cadiz, having once affronted and confined the Dutch Consul, the States General complained thereof to the Court of Madrid, as of a violence done to the law of nations, instead of urging the non-execution of those treaties, from which alone they ought to have expected safety for their pretended minister, and not elsewhere. Some years since they attempted to make their Consul, who resided at Genoa, pass for a public minister; but the Senate wrote them, that it did not acknowledge him as such, and that all which it could grant, or they expect for him, was the peaceable fruition of those rights and privileges, which custom had bestowed on this kind of employment: the generality of Consuls are only merchants, who, notwithstanding their office of judge in the controversies that may arise among those of their own nation, carry on at the same time a traffic, and are liable to the laws of the place where they reside, as well in civil as in criminal matters, which is altogether inconsistent with the quality of a public minister; though, where it is otherwise, and a Consul does not trade, I think a proportionable regard and respect ought to be paid as due to his character.

In the year 1634, the Republic of Venice had almost broke with Pope Urban VIII. on account of the violence offered by the governor of Ancona, to the Consul of that sage Senate, who, in state and maritime affairs, stands in the foremost rank of preceptors.

The Consul’s name was Michael Oberti, a native of Bergamo, whose family had discharged that office for many years; but the governor suspecting his having given some advices, that occasioned the republic’s gallies to take some small vessels belonging to Ragusa, for having smuggled the duties that are paid in the gulfs, so persecuted the Consul, that he was forced on a voyage to Venice, to acquaint the Senate therewith. He was no sooner departed, than the governor put a garrison in his house, and carried off his furniture and papers, even those which related to the functions of his employment; the Senate complained hereof, and demanded reparation with so much warmth, that the French ambassador, apprehending they might proceed to an open rupture with the Pope, endeavoured to adjust the difference to the satisfaction of the parties offended; but before the accommodation could be perfected, the governor caused the Consul to be summoned, and for contumacy condemned him to banishment, under the pretext, that during the contagion which reigned, he had unladed goods contrary to the prohibition. There was more of passion than justice in this sentence, as Oberti could prove that he had done nothing without the magistrate’s approbation; so that this iniquitous and unjust proceeding gave more offence to the Senate than the first, and a repetition of the French ambassador’s good offices was necessary, to dispose the minds of the jarring parties to an accommodation, which he at last accomplished, upon condition, that the governor should repeal the outlawry and suffer Oberti’s re-establishment; and that the Senate, who should afterwards recall Oberti, should substitute in his place whomsoever it pleased. Michael dying before all this could be executed, the Senate put his brother in his room; but this last was no sooner arrived at Ancona, than the governor caused him to be imprisoned, and would not release him till he had given security for his leaving the town, and not returning.

The French ministers, who had laboured in the reconciliation, and engaged their words for performance of the conditions, which, as above expressed, allowed the Ve-
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netians to nominate any other for Consul that they should think fit, were very much chagrined at this proceeding; and the Senate, to shew its resentment, refused audience to the nuncio, and forbade its ambassador to ask one of the Pope, till they had received ample satisfaction, which the governor was forced to give.

We shall now give a general sketch of the functions of a British Consul residing in a foreign port, and of the respect and obedience due to him from his fellow subjects, being merchants, masters of ships, or mariners, resorting to the said port, a subject which has been so totally neglected by our commercial writers, that it is high time to supply the deficiency.

A British Consul, in order to be properly qualified for his employment, should take care to make himself master of the language used by the court and the magistracy of the country where he resides. If the common people of the port use another, he must acquire that also, that he may be enabled to settle little differences, without troubling the magistracy of the place for the interposition of their authority. Such are accidents happening in the harbour, of the ships of one nation running foul of and doing damage to each other, &c. At Ostend, the vulgar tongue is Flemish, but public business with the magistracy and with the Court of Brussels is transacted in the French language.

At his first establishment, he should procure a tariff, or specification of the import duties on all commodities arriving at his port from Great-Britain or Ireland. Also, of the duties on all commodities exported from the said port, and destined for any port belonging to the dominions of his sovereign. He must take especial notice of all prohibitions to prevent the export or import of any articles, as well on the part of the state wherein he resides, as of the King his master; that he may admonish all British subjects against carrying on an illicit commerce to the detriment of the revenues, and in violation of the laws of either. And it is the more essential, that he should attend diligently to this part of his duty, because there are merchants and factors in every country, who for selfish ends will encourage smuggling, and hazard the detention, nay, even the confiscation of ships, and the imprisonment of the masters and mariners to the great injury of owners, freighters, and other parties concerned.

It is his duty likewise to make himself master of the municipal laws of the country; and of all the ordinances of the magistracy, that his fellow subjects may not be involved in difficulties and distresses, through ignorance, or be fined and imprisoned through the artifices of extortionate farmers of the inland excises, or mercenary officers of the police, resembling our trading Justices. They are to consider themselves as the lawful protectors of all British subjects trading to, residing in, or travelling through the places within their jurisdiction, but more especially of all masters of British ships and mariners: they are not to suffer the natives to offer them any insult, or do them any wrong, nor the custom-house or other officers of the government of the country to impose on them, illegally to detain their persons, ships, or merchandise; or exact money from them on fraudulent pretexts; and in all cases of this nature, when the Consuls cannot obtain redress from the administration on the spot, they are to prefer their complaint by memorial to the British minister, residing at the Courts on which their consulsips depend. If there is no such minister, they are to transmit the memorial themselves to the Court, and failing of redress, if the complaint be well founded and important, the same should be transmitted to his Majesty’s principal Secretary of State for that province. They have a right to demand audience of the prime minister or ministers of the sovereign or state wherein they reside, as persons invested with public characters, in the absence or non-residence of ambassadors, or other public ministers from their own sovereign. The Editor had frequent occasion to demand it, in the absence of the late Sir James Porter, his Majesty’s minister plenipotentiary at the
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Court of Brussels, and he always obtained it with great politeness from the late Count Cobentzel, Prime Minister for the Austrian Netherlands, a most accomplished statesman—and from his late Royal Highness Prince Charles of Lorraine, uncle to the present Emperor, Governor General of the low countries.

If any insult or outrage is offered to the inhabitants of the country where British Consuls reside, by British subjects, the magistrates before they proceed to the punishment of the offenders, will usually complain to the Consuls, who ought to interpose their authority, to summon the offending parties before them, and, if they will not appear voluntarily, to compel them by an armed force: upon their appearing, he is to order them to make immediate satisfaction, and, if they refuse this, he must resign them to the civil jurisdiction of the magistrates, or to the military law of the garrison; always persisting, however, in being present, and acting as counsel or advocate, upon all trials of British subjects, whether their lives or properties be at stake. But if an accusation is brought against them for offences, alleged to have been committed within the dominions or jurisdiction at sea of their natural sovereign, it is the duty of a British Consul to claim cognizance of the cause for his sovereign; to insist upon the release of the parties, if detained in prison by the magistracy of the place, on any such accusation brought before them; and that all judicial proceedings against them do instantly cease. He is likewise to demand the aid of the power of the country, civil and military, to enable him to secure and put the accused parties on board such British ship as he shall judge fit, that they may be conveyed to Great Britain, to be tried by their proper Judges.

A remarkable case of this kind happened in the beginning of the year 1768, at Ostend. Peter Horseman, master of a merchant ship, was driven into that port by stress of weather, being bound for Hamburgh from Seville. On his passage he had anchored some days off the Mother-Bank, Spithead; and during this time his sailors, as he alleged, had mutinied, and signed a round robin*. Upon coming on shore, the British Vice-Consul, Mortimer, being absent, his duty having called him for a few days to Dunkirk, he laid a charge of mutiny against three of his men before the magistrates, who caused them to be arrested by their officers, threw them into prison, loaded them with irons, and would have proceeded to trial; but upon the Vice-Consul's return he presented a memorial, insisting that the men should be released, and given up to him, in order to their being sent to England, consigned to the Lord Warden of the port of Dover, to be by him detained till orders should arrive concerning them from the Court of Admiralty, the offence, if committed at all, having happened within the territorial jurisdiction of the King of Great Britain. The magistrates of Ostend persisted in maintaining their civil jurisdiction over the prisoners, and prepared without delay for the trial. The British Vice-Consul drew up a memorial, and transmitted it to Sir William Gordon, his Majesty's minister at Brussels: that court gave evasive answers; and the Vice-Consul, finding the lives of British mariners at stake, applied to the Board of Admiralty at London, stating the case. The Lords of the Admiralty sent the case to their solicitor, who gave it as his opinion, that the Vice-Consul was perfectly in the right; and that Lord Weymouth, Secretary of State for the northern department, ought to lay the matter before the King, in such manner that the Imperial ambassador should be required instantly to write to Vienna, that orders might be given to the government of Brussels to stop all judicial proceedings against the said sailors, and to release them, which was done accordingly.

It is the duty of British Consuls to recover all wrecks, or cables, anchors, &c. belong-

* A sea term for a mutinous conspiracy against the captain, in which the persons signing the agreement write their names in a circle round the paper, so that it may not appear who was the first or ringleader.
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ing to the King's ships, found at sea by the fishermen, or other persons, and brought into the ports where they reside; to pay the accustomed salvage, and to inform the Navy Board in England of his proceedings thereon; also, to relieve all distressed British mariners, to allow them sixpence daily for their support, to send them home in the first British vessels that sail for England, and to keep a regular account of his disbursements, which he is to transmit yearly, or oftener if required to the navy office, attested by two British merchants of the place.

He must likewise give free passes to all poor British subjects wishing to return home, directed to the captains of the King's pacquet boats, or ships of war, requiring them to take them on board.

No merchant ship of his nation shall leave the port wherein a British Consul resides without his passport, which he shall not grant till all just demands on the master and the crew from the government of the country be satisfied; and, for this effect, he ought to see the governor's pass, if a garrisoned town, or the burgomaster's; unless the merchant or factor, to whom the ship was consigned, makes himself responsible for all consequences.

The consul is the natural arbitrator between the masters of British ships and the freighters, being inhabitants of the place wherein he resides, and he must therefore attend, if required, at all arbitrations where property is concerned.

His fees are regularly established in countries where large factories of his nation are settled: in some places they are regulated by the burthen of the ship, in others by the length of the voyage; but where there is no fixed rule, they are regulated by precedent. And it is remarkable, that the Consuls of other nations are protected by the sovereigns, and authorized to take the Consul's fees; but the British have not any authority whatever to support their claim, where there is no commercial treaty. If a master refuses to pay, he cannot detain the ship; for the owners and freighters would bring their actions for damages: but that excellent Chancellor, Lord Hardwicke, held, that the Consul might send on board, and seize any piece of valuable furniture belonging to the cabin, which would not hinder the navigation of the ship, and detain it for his fee.

Another hardship upon British Consuls is, that they are often obliged to imprison disorderly seamen, upon the complaint of their masters, as an indispensable duty of their office; yet every one of these seamen has it in his power to bring his action against the Consul for false imprisonment in the Courts of law in England, when it is probable the master is on a voyage in some other part of the world.

Therefore, it is the duty of the Consul to be very cautious how he confines or punishes British seamen, or masters of ships, upon their mutual complaints against each other; and to keep a regular and well-attested account, fairly written in a book for that purpose, of all his official transactions, entering therein—the date of the arrival of every British ship, the master's name, name of the ship, burthen, quality of lading, place from whence she came, to whom consigned, and his departure.

British Consuls should strictly mark the progress of the commerce of other nations in the places of their residence, study the means of improving that of their own, and transmit intelligence to the Secretary of State, when it is upon the decline, assigning the causes, and proposing suitable remedies.

Lastly, with respect to religion, they are to take care to give no offence themselves, nor suffer any insult or indecency to be offered by British subjects to the established religion of the country; neither are they to make a public profession of their own, nor to hold assemblies for Protestant worship in Roman Catholic countries, unless expressly stipulated by treaty, or permitted: But, on the other hand, being always allowed the free exercise thereof privately in their own houses, they are not to be molested therein, nor are they to be prevented attending or assembling at the houses of their Consuls for such.
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purposes: and the said Consuls are to take care that no Protestant be forced to comply with any of the rites and ceremonies of the religion of the country; such as compelling parents to send their children to be baptized by their priests, or to be educated in the Romish faith. Neither are they to suffer the seizure of any bibles, common prayers, or other religious books, in the houses of British subjects, though such books are strictly prohibited by the laws of the country to other inhabitants. And, as cases of this kind sometimes happen, it may not be improper to observe, that a book taken out of a house, by a priest or friar, should be claimed as the common property of the owner; and the offender should be proceeded against at common law, not by memorial; the common law of every country affording relief in such instances.

The office of a British Consul is much more difficult in time of war than in time of peace; especially on account of the great care he must take to prevent any violation of the neutrality of the port in which he resides, by the masters of British merchant ships; for which reason, and because the system of the maritime powers of Europe has just undergone a revolution tending to diminish and restrain that universal empire of the seas heretofore claimed and maintained by Great Britain, we have thought it right to introduce a new chapter, on the freedom of navigation, immediately after the present, and before that on insurance, as they seem to be subjects intimately connected; for it is part of the Consul's duty to inform the owners or underwriters of a ship, if required, whether the master has or has not made void the policy of insurance by violating the freedom of navigation, or the neutrality of ports.

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Although it cannot be expected that merchants should study thoroughly all the laws of nations, yet it may be supposed that most of them know something of the contents of the treaties of commerce; and that there is a difference in the treaties of commerce between England and Denmark and Sweden, and between England and Holland, and England and France and Spain; and that only between the four last, the rule "of free ships making free goods, though belonging to enemies, except contraband," had been reciprocally established; however, for the use of those who may be desirous to know what passed with regard to navigation in former wars, as well as the late, I here subjoin some remarkable passages which I have met with on this subject, with some observations that may considerably elucidate it.

From the letters written by that great statesman John de Witt, Pensionary of Holland, and others received from the Dutch ambassadors employed at the Courts of France and England during his ministry, which were published at the Hague 1723-24, in four parts in 4to, it appears that this minister, being sensible that Holland's wealth depended chiefly upon keeping peace, and having a free and unmolested navigation from and to all parts, laboured hard to obtain from England and France, by particular treaties of commerce, the concession that free ships should give freedom to all goods, even those belonging to enemies, except contraband. — His letters wrote to, and those received from, William Boreel, in 1653-54, part 1, page 77, 78, shew that France by a provisional treaty made in 1646, and by a declaration of the French King in 1651, having allowed this rule to the Dutch, was the first who deviated from it. Mr. Boreel writes, page 66, 68, "they now say that their enemies ought not to be protected nor served by ships of the states, in carrying their goods: that such goods would be taken out of the Dutch ships, and confiscated as good prize." He adds, "and the French may perhaps even fall upon maintaining their old maxim, que la robe d'ennemi confisque celle
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d'ami.”—His letters wrote to, and those received from, William Nieuport, 1656, part 3, page 226, 230, 332, 333, 340, 426, 427, show that the Dutch never could obtain from England, during the time of Oliver Cromwell, that this rule should be allowed; and it seems that England, considering herself to be the first of the maritime powers, thought it more political that Holland should always remain in the same interest, and go along with her. We find in Aistma, or Aitzema, 36th book of State Affairs and of War, anno 1656, that upon Mr. Nieuport’s so often repeated solicitations about the marine treaty, the answer given by the English was, that the demand of “free ships, free goods,” and passport to their form, was very unjust; and the reasons they alleged are as strong as any that have been made use of since.

Here follow extracts from the letters written by the Dutch ministers in France and England, to the Pensionary J. de Witt, at the Hague, from 1653 to 1657—W. Boreel, the Dutch ambassador at Paris, to the Pensionary, December 26, 1653.—“I perceive well enough that France would go farther in regard to the marine treaty, which I am soliciting, if the war with Spain was not a hindrance.—They now maintain the maxim, that their enemies must in no manner be protected or served by any of the ships belonging to the subjects of their High Mightinesses, for the carrying their goods, on peril, that if any such goods be met with in Dutch ships, they shall be made good prize, and as such be taken out and confiscated: which however is departing from a law they maintained in former times, under Francis the First, and Henry the Third, which was que la robe d’ennemi confisque celle d’ami: whereas now in Dutch ships the goods belonging to their, and other neutral, subjects shall not be confiscated. I have made all possible endeavours to obtain, that free ships should make free goods, but as yet without success.”

—— From Pensionary De Witt’s answer, 8th of January 1654—“I observe from your’s of the 26th of December that, notwithstanding you used all your endeavours you could not obtain that free ships should make free goods; whereupon I cannot but believe that the French ministers must misapprehend the matter, or you explain it wrong; since in the draughts of the treaty sent over, it stands clearly explained, that free ships shall make free goods: Que les navires qui trafiqueront & seront libres rendront aussi tout leur charge libre, bien qu’il y eut dedans de la marchandise, même des grains & legumes, appartenants aux ennemis.”—From Mr. Boreel’s letter, Paris, 15th of January, 1654—“It is true, that taking the sense of the words from the first article of the provisional treaty, together with the 18th article of this proposed treaty, they confirm clearly your opinion: but they say that by the words, a free ship shall make free goods, are only meant goods of friends, but not of enemies: and in the same manner they misconstrue the declaration of the 29th of May, 1651, which the King made to me, and which is now subsisting, and must subsist till we come to a nearer treaty of marine and alliance: it says, Le roi fait defense, &c. de ne point prendre ni amener dans les ports de France des navires Hollandais chargés de marchandises, quand même elles appartiendront aux ennemis, pour ou qu’ils ne transportent pas des troupe, marchandises de contrabande, &c. What can be clearer than these words? But the people here interpret them as they please, and make use of their power in judging and executing, and although I complain continually, it is without fruit and redress.”—By these letters it appears clear enough, that the French first began to misconstrue the sense of the words of free ships making free goods.—From ambassador William Nieuport’s letter, London, the 12th of May, 1756, to the Pensionary De Witt—“I am afraid that the gentlemen here will not admit in the treaty of marine, the rule of free ships making free goods, and vice versa; nor agree to the formularies of passports proposed: however, I shall use my best endeavours towards it, and as soon as I can obtain any thing from them upon paper I shall send it over.” From a letter of the Pensionary, 23d of February, 1659, to William Nieuport,
at London—“And I can assure you, that if, by concluding a marine treaty, the
High Mightinesses, immediately after having received the draughts sent of a marine
treaty, gave it to the commissaries, who, upon taking it into consideration, quickly
discovered that the principal point whereupon this treaty should be built, which is to
prevent unjust searches when they meet at sea, viz. that free ships make free goods,
was left out; and it is impracticable for the Dutch to agree to it in the manner it is
proposed: wherefore, &c.”—From a letter of the Pensionary, 23rd of February 1657,
to William Nieupoort at London—“And I can assure you, that if, by concluding a
marine treaty, their High Mightinesses can only obtain the end proposed in their last
resolutions, though in what they most desire, namely, that free ships shall make free
goods, it should remain deficient, it might take away some of the animosity, and pre-
vent the persons at the helm from hearkening to any of the advances made by Spain,
and other potentates, to their High Mightinesses.”—Which is enough to shew that the
great Pensionary De Witt, whilst Cromwell governed in England, could not gain upon
him his favourite maxim, “that free ships should make free goods.” However, in King
Charles the Second’s reign, this rule was allowed by the treaty of marine concluded the
28th of June, 1667; and on this occasion Sir William Temple, in a letter of the 21st
of May, 1667, to my Lord Ambassador Coventry, writes, “Mr. Godolphin assured me,
that all parts of the treaty of commerce are so much to our desire and advantage, that
he hoped to see many a rich man in England by it.” It would seem that Mr. Godol-
phin’s maxim was, that England should have nothing so much in view as a free naviga-
tion for her merchants: and, indeed, this is certainly of the greatest consequence; but
the way to have made it effectual would have been to be always watchful, and keep a
navy power superior to that of our neighbours, and not to suffer, at the time of treat-
ing, part of our naval strength to be surprized and burnt at Chatham, the 15th of June,
by the then vigilant and powerful Dutch fleet: by which action, it seems, they for-
warded the conclusion of such a treaty of marine and peace as they had long desired in
vain.

But, as merchants, it is not so much our business to inquire whether it was good
policy to make such treaties, as to know how long they were strictly kept—J. Meerman,
one of the Dutch Ambassadors in London, in a letter to the Pensionary, dated
February the 1st, 1668, says, “that, having complained to the King that the priva-
teers of Ostend, with commissions from Spain, disturbed their navigation, his Majesty
answered, that he had also heard of it, and considered it as acts of pirates; and he
would give orders, if any of his subjects should be found on board those privateers, to
have them hanged.” Mr. Meerman further says, “It would seem as if these privateers
were not all acquainted with the fourteenth article of the treaty of Marque, concluded
by their High Mightinesses with the King of Spain, which says, that free ships shall
make free goods.” In King William’s reign, when England and Holland were allied
in a war against France, they went some steps farther; for their declarations and noti-
fications made to all courts inform us, “they would not permit any neutral nation to
navigate and trade with France at all.”—It doth not appear that, in the last wars,
England went farther beyond the bounds of neutrality than formerly. History will
afford examples enough, that whatever power gets the better at sea or land, in time of
war, commonly makes the most of it: the fair trader always suffered by the sinister
dealings of the unfair ones; and so much as one side studied to conceal truths, the other
studied to discover them.

By an extract from Sir Leoline Jenkins’s Memoirs, see Masqued Property, neutral mer-
chants will perceive, that during the war, anno 1676, some used to behave in the same
manner, and that the same things were practised, and the same constructions made in
our courts then, as in the last wars: we do not find that in France or Spain they have
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een dealt with much better, although they might justly have expected more favour, since those crowns, having hardly had any shipping of their own left wherewith to carry on trade, ought, in good policy, to have set the example of letting all neutral shipping pass unmolested, which would have been much to their advantage, if they who remained masters of the sea would have given the same freedom. But might not those who fought the battles ask, what signifies our being masters at sea, if we shall not have liberty to stop ships from serving our enemy? And, when we examine to the bottom of the thing, it appears very evident, that sea battles are not fought so much to kill people, as to be masters of trade, whereby people live; and, by stopping the supplies of our enemies, to compel them in the end to live in friendship with us.

Ships and vessels belonging to the subjects of either of the parties may not only pass, traffic, and trade from a neutral port or place, to a place in enmity with the other party or from a place in enmity to a neutral place; but also from a port or place in enmity to a port or place in enmity with the other party, whether the said places belong to one and the same prince or state, or to several princes or states, with whom the other party is at war.—Treaty with Holland, 1764.

The like freedom of commerce and navigation was agreed upon by the treaty of 1676, with Spain; and of 1676, with France; and confirmed by the subsequent and other articles of the treaty of Utrecht.

It shall be lawful for all and singular the subjects of the Queen of Great Britain and of the Most Christian King, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandizes laden thereon, from any port to the places of those who are now, or shall be hereafter at enmity with the Queen of Great Britain or the Most Christian King; it shall likewise be lawful for the subjects and inhabitants aforesaid, to sail with the ships and merchandizes aforesaid, and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or of either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforesaid to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same prince or under several. And as it is now stipulated concerning ships and goods, that free ships shall also give a freedom to goods, and that every thing shall be deemed to be free and exempt, which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading, or any part thereof, should appertain to the enemies of either of their Majesties, contraband goods being always excepted, on the discovery thereof, matters shall be managed according to the sense of the subsequent articles: it is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this condition, that although they be enemies to both or to either party, they are not to be taken out of that free ship, unless they are soldiers, and in actual service of enemies.—Treaty with France, 1718.

As it appears by art. 23, in the treaty of 1654, with Portugal, that Oliver Cromwell: agreed with the Portuguese to the rule of "free ships making free goods," which he afterwards would not allow to the Dutch, it would seem that he had not yet well considered how inconsistent it was for a nation, whose weight chiefly lay in its superiority of maritime strength, to allow this rule to any one; or else he must have more in view, viz. That the English nation should reap the chief benefit of the trade from their East and West Indies, whilst they were contesting for the possessions thereof with the Dutch. The Portuguese in their situation at that time must have found it difficult to supply themselves; and therefore might well allow, art. 11, "that the people and inhabitants of Great Britain, might navigate and trade freely and safely from Portugal to Brazil, paying the duties and customs which others pay who trade into those countries;" and
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"that they should have the same freedom as had been granted by any former treaty, or should be granted hereafter, to the inhabitants of any other nation in alliance and friendship with that crown."—But this freedom ceased when they had no longer contest about their possessions; for, as their friends and allies monopolized the trade of those places where they had been admitted, and got footing in the East and West Indies, the Portuguese excluded them, in return, from trading to those settlements which they still retained.

Remarks.—The treaty of Utrecht, with France, 1713, was not confirmed by that of Aix-la-Chapelle, 1748; a sort of tacit acknowledgement of that right the French had assumed, as it suited their interest, of rejecting the whole of the former treaty, as some articles, particularly the 9th, could not, by the express tenor of them, take place without an act of Parliament; which, however, was never passed. The aforesaid treaty with Holland of 1667, was confirmed by the treaty of 1674; which is now the maritime regulation between the two powers.—By the 8th article of this treaty it is agreed, "that all which shall be found on board the vessels belonging to the subjects of either of the contracting parties, shall be accounted clear and free, although the whole lading, or any part thereof, shall by just title of property belong to the enemies of the other, contraband goods only excepted."—Here, as in the treaty of Utrecht, the dispute is entirely owing to the general terms of the stipulation; one side taking them in their full extent, while the other insists upon such restrictions and limitations to be put upon them, as right reason, and the nature of things, necessarily require; and therefore, in 1758, when the French, finding themselves unable to carry on their own trade in their own bottoms, resolved to employ the Dutch, and not only exempted their vessels from the tax of 50 sous per ton, but opened to them all their ports in America, the mischief of suffering the rule to pass in general terms, became notoriously manifest; and Great Britain resolved to make use of those means, which God had put into her hands to remedy it. Accordingly, great numbers of those Dutch vessels were taken, and some of them adjudged to be lawful prizes by our Court of Admiralty.—The States being extremely vexed to see the net which they had so cunningly woven, and spread over us by the treaty, now prove at length, upon the first trial, too weak to hold us, and forcibly broken, did not spare to make heavy complaints of the breach. Similar proceedings lately gave rise, upon occasion of our late war with France, to a warm contest between the two most natural friends in Europe.—Sir Joseph Yorke presented, on the 21st of March 1780, a very strong memorial to the States General, in which he "enumerates the various points, in which they have violated the treaty, by granting convoys to naval stores going to France, &c. and the absolute silence they have kept as to the formal demands of stipulated succours from the republic:"—But their High Mightinesses still giving no answer thereto, our court published, on the 17th of April 1780, a declaration, "that the subjects of the United Provinces are henceforward to be considered upon the same footing with those of other neutral States not priviledged by treaty; and his Majesty doth suspend, provisionally, till further order, all the particular stipulations respecting the freedom of navigation and commerce in time of war, of the subjects of the States General, &c. and more particularly those contained in the treaty of 1674."—On the 3d of April 1780, however, a memorial was presented to the States by Prince Gallitzin, on the part of the Empress of Russia, with a copy of a very extraordinary declaration, which she had made to the belligerent powers, purporting, "that she was determined to maintain a free trade and navigation of her subjects, and not to suffer either to be hurt by those powers; that her definition of the limits of a free trade is founded upon the clearest notions of natural right, and that what she called contraband, is literally taken from the treaty between Russia and Great Britain, 1734—that she invites the States General to make a common cause with
her; and had made the same invitation to the Courts of Copenhagen, Stockholm, and Lisbon, in order that by their united endeavours a natural system, founded on justice, might be established and legalized in favour of the trade of neutral nations, and serve as a rule for future ages.

OF INSURANCES.

Insurance, or assurance, is a contract or agreement by which one or more particulars, called insurers, assurers, or underwriters, take on them the risque of the value of the things insured, in consideration of a premium paid by the assured, and by this means commodiously divide the hazard of every adventure, to the great benefit of trade, and the case and advantage of every one concerned therein. Indeed, the utility of this species of contract in a commercial country, is so obvious that it could not escape the notice and approbation of our best writers upon commercial subjects; and their recommendation has not only extended, but considerably improved the practice. Insurances give fresh vigour to the active principles of universal commerce, and great security to the fortunes of private people; for by dividing amongst many that loss, which would ruin an individual, it is made to fall light and easy on the whole society. The risk likewise, of importation and exportation being thereby diminished, men will more easily be induced to engage in extensive commercial connections, to take a share in important concerns, and to unite in hazardous enterprizes, since a failure in the object will not be attended with those dreadful consequences to them and their families, which must be the case in countries where insurances are unknown. See the preamble of the statute 43 Eliz. c. 12.

Mr. Molloy, in his Jure Maritimo, and Mr. Malynes, in his Lex Mercatoria, say that Suetonius, in his life of Claudius Caesar, conceives that emperor to have been the first who brought in this custom of insurance, though Monsieur Savary, in his Dictionnaire de Commerce, imputes it to the Jews, in the year 1182. James Allan Park, Esq. an excellent writer upon insurances, remarks, that the origin of insurance, like that of many other customs, which depend rather upon traditional than written evidence, and for the honour of inventing and introducing which rival nations contend, has occasioned much doubt among the writers upon mercantile law. In fact, it is involved in so much obscurity that, after all the researches which he had made on occasion of his compiling his admirable system of the law of marine insurances, he could not promise any very satisfactory solution of this doubt; but whoever was the first contriver, or original inventor of this useful branch of business, it has for many ages been practised in this kingdom, and supposed to have been introduced here jointly with its twin brother, exchanges, by some Italians from Lombardy, who at the same time came to settle at Antwerp, and among us; and this being prior to the building the Royal Exchange, they used to meet in the place where Lombard-street now is, at a house they had, called the Pawn-house or Lombard, for transacting business; and as they were then the sole negociators in insurances, in all policies of insurance to this day, a clause is inserted, in the following words:—"This writing or policy of insurance, shall be of as much force and effect, as any writing heretofore made in Lombard-street:" which is a strong confirmation of the general opinion, that we are indebted for the introduction of this great commercial benefit into England to the ingenious and active people above-mentioned.

And as insurances in time grew more general in England, and some difficulties arose
touching the recovery of losses, upon actions on assumpsits; and so little were the judges acquainted with the nature of the contracts, that so late as the 30th and 31st of the reign of Queen Elizabeth, it became a question where an action upon a policy of insurance should be tried; the policy having been effected in London, and the ship detained in the river Soane in France. The policy was on a ship from Melcombe Regis in the county of Dorset, to Abbeville in France. The plaintiff declared, that the ship in sailing towards Abbeville, viz. in the river Soane, was arrested by the King of France. The parties came to issue upon the question, whether the ship was so arrested or not; and it was tried before Lord Chief Justice Wray, in the City of London: and a verdict was found for the plaintiff. In arrest of judgment it was moved, that this issue arising merely from a place out of the realm, could not be tried in London. But it was resolved by the court, that this issue should be tried where the action was in this case brought; for the promise, which is the ground and foundation of the action, was made in London; and the arrest now in issue, is not the ground of the action, which is founded on the assumpsit, and the arrest is the breach of the assumpsit. "This," says Mr. Park, "is the most ancient case I have been able to find upon the subject of insurances." Subsequent perplexities having arisen in the Courts of Judicature, the attention of the legislature to this national object was awakened, and it was found necessary to pass an act of Parliament, in which the principles of this species of contract are clearly defined, and made the basis of that legal protection and encouragement of the practice which was become essential to the extension and prosperity of commerce.

The purpose of this statute was, to erect a particular court for the trial of causes relative to policies of insurance, in a summary way; and to that end it ordained, that a commission should issue yearly, directed to the judge of the Admiralty; the recorder of London, two doctors of the civil law, two common lawyers, and eight merchants, empowering any five of them to hear and determine all such causes, arising in London; and it also gave an appeal from their decision, by way of bill, to the Court of Chancery.

And in pursuance thereof, an office was erected and kept on the west side of the Royal Exchange; but this act did not exclude others from making insurances, in whose policies was inserted, that they should be of as much force as those heretofore made in Lombard-street, at the Royal Exchange, or anywhere else. But there being some defect in the aforesaid act, touching the power of the commissioners, which was limited to London, its continuance was not of long duration.

And by a new act of Parliament the court was revived, and larger powers were given to the commissioners for carrying it into execution; so that, in consequence of this last act, insurances multiplied, and all disputes concerning them were determined by the commissioners; but as private persons were not excluded thereby from carrying on this business as before, and the commissioners taking no cognizance of any policies not made in their office, whilst the recovery of losses thereon were made easy at common law; and some partiality having been practised by the commissioners, and an appeal being allowed from their determinations to the Court of Chancery, the business of this Court fell off, and the granting commissions was discontinued.

After this, no law was made in England concerning insurances, except one to prohibit insuring on marriages, births, christenings, and service; but all was transacted by private office-keepers, till an act was passed in the year 1720, by which his Majesty was enabled to grant two charters, for erecting two corporations for insuring ships and merchandize, and lending money on bottomry, which are now called the Royal Exchange Assurance, and the London Assurance; which corporations are to have perpetual succession, subject to redemption, or power of revocation, as is here under men-
tioned; the corporation to have liberty to chuse their governors, directors, officers, and servants, as should be prescribed in the charters: the governors and directors to continue for three years; to have a seal, and be capable to purchase land not exceeding 1000l. per ann. and may sue and be sued in their corporate capacity.

Each corporation to pay into the Exchequer 300,000l. towards discharging the debts of the civil government.

Each to raise such sums as his Majesty should direct, not exceeding 1,500,000l. for paying the 600,000l. and to enable them to pay losses, and lend money on bottomry and government securities, which money is to be raised at general courts, by taking subscriptions, or by calls, or otherwise, as the general courts shall think fit or expedient, and stock liable to calls may be sold for that purpose; and proprietors refusing calls to pay 8 per cent. interest; may take up money to advance on parliamentary securities; stock transferable and devisable; a personal estate not to be taxed; governors, directors, &c. may be members of Parliament, but not to be bankrupts on account of such stock; to have power to make by-laws, as by charters; no other corporation or partnership to insure ships, or lend money on bottomry, on penalty of forfeiting the money assured, and the policy to be void; and in case of bottomry, the security to be void, and the contract to be voidus. None to be governors, &c. or to have stock in both corporations. The Parliament, at any time within thirty-one years from the date of the charters, upon three year's notice in the London Gazette, fixed up on the Royal Exchange, and payment of 300,000l. to each corporation, may then, and not till then, void the said corporations. If, after thirty-one years, the King shall adjudge the continuance of the said corporation to be hurtful, or inconvenient to the public, he may by letters patent void the same, without any inquisition, or scire facias, in which cases the like power shall never he grantable again.

The South Sea and East India Companies may advance money on bottomry to their captains, &c.

The said two corporations, having each paid into the Exchequer 111,250l. in part of the 300,000l. and having covenanted to pay 38,750l. further part thereof in three months, the residue of the sums amounting together to 300,000l. shall be released.

Some acts have since passed to regulate certain proceedings at law, where the corporations were parties, giving them power to plead generally. And these are all the acts relating to insurances in England, till the following, made for the better regulation, thereof, and to prohibit them on French effects, viz.

The preamble observes, that the making assurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have either been fraudulently lost and destroyed, or taken by the enemy in time of war; and such assurances have encouraged the exportation of wool, and the carrying on many other prohibited and clandestine trades, which by means of such assurances have been concealed, and the parties concerned secured from loss, as well to the diminution of the public revenue as to the great detriment of fair traders; and by introducing a mischievous kind of gaming, or wagering, under the pretence of assuring the risk of shipping and fair trade, the institution and laudable design of making assurances hath been perverted; and that which was intended for the encouragement of trade and navigation, has, in many instances, become hurtful and destructive of the same. For remedy whereof, it is enacted, that, after the 1st day of August, 1746, no assurance shall be made by any person or persons, bodies corporate or politic, on vessels belonging to his Majesty or his subjects, or on any goods, merchandizes, or effects on board the same, interest or no interest, or without further proof of interest than the policy, or by way

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of gaming or wagering, or without benefit of salvage to the assurer, and that every such assurance shall be null and void to all intents and purposes.

Sect. 2. Assurance on private ships of war, fitted out by his Majesty's subjects solely to cruise against his enemies, may be made by or for the owners, interest or no interest, free of average, and without benefit of salvage to the assurer.

Sect. 3. Merchandizes or effects from any parts in Europe or America, in the possession of the crowns of Spain or Portugal, may be assured in such way and manner as if this act had not been made.

Sect. 5. After the said first of August, all money to be lent on bottomry, or at respondentia, upon ships belonging to his Majesty's subjects, bound to or from the East Indies, shall be lent only on the ship, &c.

Sect. 6. In all actions, &c. brought after the said first of August, by assured, upon any policy of assurance, the plaintiff, or attorney, &c. within fifteen days after he shall be required so to do in writing by the defendant, &c. shall declare in writing the sum he hath assured, &c. in the whole, and what sums he hath borrowed at respondentia, or bottomry, for the voyage, or any part of the voyage, in question.

Sect. 7. After the said first of August, any person, &c. sued in an action of debt, or covenant, &c. on policy of assurance, may bring the money into Court; and if the plaintiff shall refuse to receive the same, with costs to be taxed in full discharge of such action, and shall afterwards proceed to trial, and the jury shall not assess him damages exceeding the sum so brought, the plaintiff, on every such action, shall pay to the defendant costs, to be taxed.

Sect. 8. This act shall not extend to, or be in force against, persons residing in any part of Europe, out of his Majesty's dominions, for whose account assurance shall be made before the 29th of September, 1746; nor against persons residing in any parts of Turkey, Asia, Africa, or America, for whom assurances shall be made before the 29th of March, 1747.

21 Geo. 2. Insurance on ships or goods appertaining to the crown and subjects of France, or lending them money on bottomry, is prohibited by this act; though, as it was only temporary, and its duration limited to that of the then war, it expired, and became void.

This branch of business at first was confined to maritime affairs solely, though at present it is extended to the insuring not only shipping and merchandizes, but also houses, furniture, lives, liberties, &c. according to the different agreements for that purpose. These contracts are called Policies, from the Spanish word Policia, and that originally from the Latin Pollicitatio, or promise, and are now made either at the public or private offices. Of the former, we have only the two before-mentioned in England established by charters; though of the private ones, we have many in this city, and of late years in some others, as Bristol, Exeter, Liverpool, Hull, Newcastle, and Glasgow, where great business is transacted, and I believe on as fair a footing as in any part of the world; though policies having been filled up in such various terms, and such unprecedented expressions inserted, according to the different conceptions, fancies, or exigencies of the insured, it has naturally occasioned many disputes, and consequently brought on many remarkable trials, and wise decisions of the utmost importance to the mercantile world; for which reason all the modern cases are added in this edition to the more remote, and classed under several distinct heads, that they may be more readily referred to, when similar cases shall induce merchants and lawyers to search for precedents, to determine their own line of conduct, &c. I shall also take occasion to mention the method and obligation of insurances made in France and Holland, in order to give full satisfaction on this head, and render my book as complete as possible.

Assurances, as I have before observed, are of various kinds, both in regard of the
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marine and terrene property; of the first, some being on ships, or parts of ships only; others on merchandize singly; and others on ships and goods jointly; and these are again branched out to run either by the month, or for a time stipulated, or to one single port, or out and home, with liberty to touch at the different places mentioned in the policy, or for a trading voyage.

Although policies of assurance are not to be ranked with specialty contracts, not being seal, yet they have always been held as sacred agreements, and of the first credit; so much so, that, when once they are underwritten, they can never be altered by any authority whatever, because it would open a door to an infinite variety of frauds, and introduce uncertainty into a species of contract, of which certainty and precision are the most essential requisites.

In a case before Lord Chancellor Hardwicke, this doctrine was admitted in its full extent. The plaintiff had insured a ship at and from London to Ostend, from thence to Rotterdam, and from thence to the Canaries, warranted an Ostend ship, which ship was afterwards taken. The bill was brought to have the policy rectified, for that the intention of the parties was mistaken therein; which was, that the warranty was too general; and that the voyage should have been stated to take place from Ostend only, and not from London. His Lordship, as there was no evidence to vary the contract from the written words, ordered the bill to be dismissed.

But there are some exceptions to the foregoing general rule. For instance, after signing, policies are frequently altered by consent of the parties; and such policies are good, agreeably to the maxim consensus tollit errorem; though upon the making of such alterations a new stamp is required. See 9 East. 351.

Enumeration of Causes which make Policies null and void.

Those made on houses, lives, or liberties, must be paid according to the tenor of the agreement, in the full sum assured, as these sort of policies admit of no average; and for the first, often with their furniture, against fire, several offices are erected in London, with the limitation to this branch only.

Assurances may likewise be made on goods sent by land, or by hoys, &c. on rivers; and this is often done, more especially on jewels, &c.

They may likewise be made on ships and goods, lost or not lost, which is commonly done when a ship hath been long missing; and these words being inserted in the policy, oblige the underwriters to pay, although the ship was lost at the time of making such insurance, except the assured saw the ship wrecked, or had then certain knowledge of her being so; in which case the subscription shall not oblige, as this is accounted a mere fraud.

So likewise, if the assured shall, on a rotten vessel, get insured more than she is worth, with the villainous design to destroy her, and shall afterwards give directions to have his roguish intentions put in execution, this fraudulent act will not oblige the insurers, but expose the perpetrators of it to condign punishment for their knavery.

If on a voyage a ship becomes innavigable she shall be presumed not to have been sea worthy at the beginning of the voyage, unless it be made appear that her disability arose from sea damages, or other misfortune. 2 Marshall, 365.

It shall not be lawful, from and after the passing of this act, for any person or persons to make or effect, or cause to be made or effected, any policy of assurance on any ship or vessel, or upon any goods, merchandizes, or effects, or property whatever, without first inserting, or causing to be inserted, in such policy, the name or names, or the usual style and firm of dealing, of one or more of the persons interested in such assurance; or without, instead thereof, first inserting the name or names, or the usual
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stile and firm of dealing, of the consignor or consignors, consignee or consignees, of the goods or property so to be insured; or the name or names, or the usual stile and firm of dealing, of the person or persons residing in Great Britain, who shall receive the order for and effect such policy, or of the person or persons who shall give the order or directions, the agent or agents immediately employed to negotiate or effect such policy. The statute further declares, that every policy made or underwrote, contrary to the true intent and meaning of this act, shall be null and void to all intents and purposes.

The name of the broker, in the policy described agent, is a sufficient compliance with the statute, 1 Bos. and Pul. 345.; and a general agent may insure without an express order where it is for his correspondent's interest that he should do so, and he need not describe himself as acting as agent. 1 Bos. and Pul. 316.

If a ship be insured from the port of London to Cadiz, and before she breaks ground is burnt, insurers not liable; but if the words are, at or from the port of London, they are liable in such case.

An insurance from London to void for uncertainty, though private instructions for the port; yet the blank in the policy will not bind the insurer, policies being now generally made free of average, and without benefit of salvage, many disputes on these heads are avoided.

An insurance made on prohibited goods not binding, unless they were prohibited after the insurance made; as on wool, leather, &c. for such insurances would tend to destroy commerce, which is directly to thwart the true intention of all policies.

Persons who, by way of insurance or otherwise, shall undertake or agree that any sheep, wool, or any other of the enumerated articles in the statute, shall be carried or conveyed to any parts beyond the seas, from any port or place whatsoever within this kingdom, or, in pursuance of such undertaking or agreement, shall deliver, or cause or procure to be delivered, any sheep, wool, &c. in parts beyond the seas, such person or persons, their aiders and abettors, shall, upon conviction, be liable to the same punishments as the exporters. The like penalty follows, upon the person or persons paying any premium for such insurances, sect. 48. All policies of insurance which shall be made on goods and merchandise, laden or to be laden on any ship or vessel bound from Great Britain to foreign parts, which shall afterwards appear to be wool, woollen or worsted yarn, &c. shall be deemed and taken to be null and void, notwithstanding any words or agreement whatsoever which shall be inserted in such policy of insurance; and nothing shall be recovered by the assured from the insurer for loss or damage, or for the premium which shall have been given for such insurance. This clause liberates the underwriters in cases, which frequently happen, of insuring merchandise on board, without specifying to them the species of commodity insured.

Under the head of prohibited goods must be comprehended all commodities prohibited to be exported or imported by positive statutes, or by the King's proclamation, in time of war; or which from the nature of the commodity, and by the law of nations, must necessarily be contraband; and the policies insuring any such are absolutely null and void.

Where the words of the policy are, the ship warranted to depart with convoy, it shall be intended she shall keep with convoy during the voyage, if possible; and if she depart wilfully from the convoy, it is a fraud; but if having departed with convoy, by stress of weather she loses the convoy, and is taken, insurers are liable.

The warranty to sail with convoy, means such convoy as government shall appoint, and sailing with any other force will not satisfy the warranty. 1 Marshall, 263.

If there be thieves on shipboard among themselves, the master of the ship is to answer for that, and not the insurer; though the words of the policy insure against losses by

Jeffries v. Leg & Cumm., Carth. 516; 3 Lev. 290; 1 Shaw, 323; 2 Saull, 443.

Lex. Mer. easter, 151.
thieves, yet they are to be construed to mean assailing thieves. But, if thieves come under pretence of being press-masters, and rob the ship, either the owners or the master is liable. 1 Marshall, 157.

*Subpressio veri aut allegatio falsi* is sufficient to discharge the policy: it is a general rule, that the insured shall inform the insurer of all material circumstances which have come to his knowledge or information, at the time of making the policy, in order that the contract may be fairly adjusted; which being a contract upon chance, cannot be valid, if one party knows more than the other: equality in contracts, by the law merchant, is essential. Therefore, all misrepresentation whatever, though it happened by mistake, if in a material point, will affect the policy, and render it null as much as actual fraud. A decision was given, which confirms this proposition, in the following case:

This was an action on a policy of insurance on the ship Mary and Hannah, from New York to Philadelphia. At the time when the insurance was made, which was in London on the 30th of January, the broker represented the situation of the ship to the underwriter, Fraser, as follows: “The Mary and Hannah, a tight vessel, sailed with several armed ships, and was seen safe in the Delaware on the 11th of December, by a ship which arrived at New York.” In fact, the ship was lost on the 9th of December, by running against a cheveau de frise placed across the river. The cause came on to be tried before Lord Mansfield at Guildhall. The defence was founded on the misrepresentation as to the time when the ship was seen; and the representation and the day of the loss being proved, the jury found for the defendant. A rule was obtained to show cause why a new trial should not be had; and, after arguments at the bar, Lord Mansfield said, “There was no evidence of actual fraud in the present case, and no question of that sort seemed to be made. But there was a positive averment that the ship was seen in the Delaware on the 11th of December. The underwriter was deceived as to that fact, and entered into the contract under that deception. In insurances upon ships at a great distance, their being safe up to a certain day is always considered as a very important circumstance. I am of opinion, that the representation concerning the day was very material.” The other judges delivering the same opinion nearly in the same words, except adding, “That the safety of the ship is the most material fact of any, in cases of insurance,” the court discharged the rule for a new trial, and the verdict of the jury which had voided the policy was confirmed. And it was further ratified by the House of Lords, on the 8th of April, 1783, in the case of Stewart and others, against Dunlop and others; briefly this: the clerk of the plaintiff made insurance, by his master’s orders, on a ship which the clerk knew to be taken by the enemy, from a conversation he had with the master of a ship arrived at Greenock; and though it appeared in evidence, that the plaintiff knew nothing of the conversation, nor consequently of the loss of the Peggy, at the time he insured her, yet the Lords of Session in Scotland decreed, that the insurance made by the plaintiff would not have been made, if the brigantine Henrietta had not arrived in the road of Greenock the day preceding, and brought intelligence that the ship Peggy was taken; and, therefore, that the policy was void. On the appeal from this decree, the House of Lords affirmed the decree. And this is the strongest case, with respect to misrepresentation without fraud, that could well happen; for here the master suffered for the concealment of a material circumstance by his clerk, who was considered as his agent; and who, unknown to him, had been enjoined secrecy by the person who informed him the Peggy was captured. Let this, then, be considered as a general admonition, inserted here expressly to point out the great care and attention that ought to be given by owners and masters of ships, when insuring them, to give a true and exact representation of every material circumstance respecting them, and to instruct their agents or clerks to do the same.
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A person having received a letter that his ship sailed from Carolina, in company with another ship, and that the other ship lost sight of this ship in the night; that the captain informed the person who wrote the letter, that she was leaky in such a latitude; and that, after they lost sight of the ship, there had been a hard gale for twenty-four hours: after this letter received by the merchant’s agent, he made insurance without producing it. The ship was afterwards taken near the Land’s End by a Spanish privateer, and carried back into St. Sebastian’s. This, though the ship was not lost by the leak or the storm, was adjudged sufficient to avoid the policy; because if the insurer had known what the insured did, at the time of making the insurance, he would not have done it, or at least not on the same terms. See the case of Seamen v. Fonnerneau to the same point, Stra. Rep. 1183; and the late case of Lynch v. Hamilton, 3 Taunt. Rep. 37.

The foregoing cases may properly be considered as doubtful with respect to intentional fraud, and may pass under the denomination of deceptious; but while the sums that are recoverable on policies of insurance are of such amount, as to tempt sharpers and rogues by profession, to cheat honest and respectable merchants, it becomes our duty to lay before them some cases of absolute fraud of late date; that underwriters may be put upon their guard, and carefully examine every document and evidence upon the subject of losses, before they pay the sums they have respectively underwritten; and they should keep up a good understanding and harmony with each other.

This was an action brought for the recovery of a total loss, on a policy of insurance made on goods and merchandise on board the Bona Fortuna, at and from North Bergen to any ports or places whatsoever, until her safe arrival in London. It was underwritten thus:—“Warranted neutral ship and property.” The cause was tried before Lord Mansfield at Guildhall, when it was admitted that the plaintiff had goods on board to the amount of the sum insured; and it appeared that the ship on her voyage was by the force of winds and stormy weather, wrecked, cast away, and sunk in the seas, whereby the said goods and merchandise were totally lost. But it was likewise proved that the ship or vessel the Bona Fortuna, and the property on board, at and before the time she was lost, were not neutral property, as warranted by the said policy. Lord Mansfield, and the rest of the court, were of opinion, that it was too clear a case to bear an argument. This was no contract; for there was a falsehood in the warrant, in respect to the condition of the things insured; the plaintiff insured neutral property, and this was not neutral property.

A short time after the decision of Woolmar against Muilman, another case similar to it was tried before the same learned judge. The insurance had been made on goods on board a ship warranted Portuguese; and it was made during the French war, when the premium would have been much higher on an English ship. The plaintiff gave partial evidence of her being Portuguese; and that she was obliged, on account of perils of the sea, to put into a French port, by which the cargo was spoiled. This was admitted by the defendant, but he contended that during her stay at the French port, she was libelled, and condemned as not being Portuguese, and that although the goods were lost by a different peril, yet, in fact, the ship was not Portuguese, though insured as such, and that this vitiated the policy ab initio. Verdict for the defendant, the underwriter.

And now since the judgment of the House of Lords in the case of Lothian v. Henderson, 9 Bos. and Pul. 499; it may be assumed as the settled doctrine of an English court of law, that all sentences of foreign courts of competent jurisdiction, to decide questions of prizes, are to be received here as conclusive evidence, in actions upon policies of insurance, upon every subject, immediately and properly within the jurisdiction of such foreign courts, and upon which they have professed to decide judicially.
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This was an action to recover on a policy of assurance on goods on board the Matty and Betty, at and from the coast of Africa to her last discharging port in the British West Indies. The objection made to paying the loss was, that there had been a material concealment, or misrepresentation of the true state or situation of the ship and voyage at the time of underwriting the policy. The ship had been sent out to trade on the coast of Africa, with directions to proceed from thence to the British West Indies, and to stop at Barbadoes, if she could get a sale; if not, to proceed to Montego Bay. On the 2d of October she sailed from St. Thomas's on the coast of Africa, with a cargo of slaves, and was taken on the 6th of December following by an American privateer. A letter was received by a house at Liverpool on the 21st of February following, mentioning that the ship was well, and had sailed from St. Thomas's on the 2d of October. This information was communicated next day to the plaintiffs, who wrote the same evening to two different brokers, to get a new insurance on the ship, (there having been one before) and another on the cargo, which last was the subject of the present action. In the instructions to the brokers, the plaintiffs say nothing of the ship from the time of her first sailing; but to one of the brokers, they wrote thus: “We should be glad, if you would give us 600l. more on the ship, as she is rather long; and we think not prudent to run so large a risk at so critical a time. We expect to hear soon of her.” It had afterwards occurred, that the policy might be effected, if intimation was not given of the letter which had been received. The broker, therefore, by direction of the plaintiffs, added to the instructions; “the above ship was on the coast the 2d of October,” but said nothing of her having sailed from St. Thomas’s. The policy was dated the 21st of March.

Lord Mansfield said, the insured is bound to represent to the underwriter all the material circumstances of the ship and voyage. If he do not, though by accident only, or neglect, the underwriters are not liable—a fortiori, that is, with much stronger reason, if he suppress or misrepresent from fraud. The question is, whether this be one of those cases which is affected by misrepresentation or concealment. If the plaintiffs concealed any material part of the information they received, it is a fraud, and the insurers are not liable. The jury found for the defendant, agreeably to his Lordship’s direction.

The policy, in this case, was on the brig Richard, at and from Plymouth to Bristol. Several letters passed between the plaintiff and the broker, who effected the policy, as to the premium at which the insurance could be obtained: at last, it was underwritten at four guineas per cent. The broker’s instructions stated, the ship ready to sail on the 24th of December. The broker represented to the underwriter, that the ship was in port, when, in fact, she had sailed the 23d of December.

Lord Mansfield said, this was a material concealment and misrepresentation; the jury, however, hesitated: his Lordship then laid down the following as general principles.—In all insurances it is essential to the contract, that the assured should represent the true state of the ship, to the best of his knowledge; on that information, the underwriters engage. If he states that as a fact, which he does not know to be true, but only believes it, it is the same as a warranty. He is bound to tell the underwriters the truth. In the present instance, the only material point is this: had the ship sailed, or was she in port? Upon this, the jury found for the underwriter.

It is decided, that if a misrepresentation be made to the first underwriter, it will affect all the subsequent underwriters, who are induced, perhaps, by the subscription of the first, to subscribe the policy. Per Lord Mansfield in Pauzon v. Watson, Camp. Rep. 789.
and it is not necessary that such misrepresentation should be repeated to all. See Marsden v. Reid. 3. East. 373. ; and a representation made by a broker when the names of the underwriters are put on a slip is binding on the assured unless altered, or withdrawn between that time and the execution of the policy. Edwards v. Footner. 1 Campb. N. P. C. 530. But the misrepresentation must in all cases be of matter collateral to the contract. 1 Taunt. 117.

Before we take leave of this important subject, it is essential to notice, that there are exceptions to the general rule against concealment, which the insured should be apprized of. Aliud est celare, aliud tacere: there are many matters, as to which the insured may be innocently silent. First, as to what the insurer knows, however he came by that knowledge. Secondly, as to what he ought to know. Thirdly, as to what lessens the risk. An underwriter, for instance, is bound to know political perils, as to the state of war and peace. If he insures a privateer, he needs not be told her destination. And as men reason differently from the same facts, he needs not be told another's conclusions from known facts. See Park's System of the Law of Marine Insurance, p. 183, where these exceptions are stated from Blackstone's Reports.

Information respecting the subject matter of a warranty, either express or implied, need not be communicated to the underwriter, unless there be a specific request on his part for such information, as in case of the seaworthiness of a ship there being an implied condition or warranty that she is seaworthy, their is no need of a representation of it, for if she sail without being so the policy is void. See Shoobred v. Nutt, Park 229; and see Haywood v. Rodgers, 4 East. 590.

And it will be presumed, that the underwriter is acquainted with the usage and circumstances of the branch of trade to which the policy relates, and consequently the assured is not bound to make a disclosure thereof; if the usage of trade is general, it is immaterial for this purpose that it is not uniform. See the cases of Vallance v. Dewar. 1 Campb. N. P. C. 505. Ougier v. Jennings, ib. 505. n. Kingston v. Knibbs, ib. 508. n.

Deviation is understood to mean a voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the specific voyage insured.

This cause was tried before Mr. Justice Yates. The plaintiff insured goods in a vessel bound from Dartmouth to Liverpool: the ship sailed from Dartmouth, and put into Loo; a place she must of necessity pass by, in the course of the insured voyage. But as she had no liberty given her by the policy to go into Loo, although no accident befel her in going into or coming out of Loo, for she was lost after she got out to sea again, yet the judge held this to be a deviation without necessity; and a verdict was accordingly found for the underwriter.

The action was brought to recover upon a policy on goods, and other merchandize, laden on board the ship called the Charming Nancy, from Dunkirk to Leghorn. The ship came to Dover, to procure a Mediterranean pass, and was afterwards lost. Lord Mansfield was of opinion, that the calling at Dover was a deviation, voiding the policy; and the plaintiff was nonsuited. This appears to be a hard case, as the deviation was for the benefit of the insurer, in protecting his property from pirates by the Mediterranean pass. It must have turned upon express words in the policy.

If the master of a vessel put into a port not usual, or stay an unusual time, it is a deviation; and if the deviation be but for a single night, or an hour, it is fatal.

The ship George was bound from Cork to Jamaica, with a convoy, in the course of a war: the captain, in concert with two other vessels, took advantage of the night, and, being ships of force, cruised, and thereby deviated out of the direct course of their voyage, in hopes of meeting with a prize.

Lord Camden, then Chief Justice of the Common Pleas, before whom the cause was
tried, clearly held, and a special jury of merchants, agreeably to his directions, determined, that from the moment the George deserted, or deviated from the direct voyage to Jamaica, the policy was discharged.

In a modern case, however, it seemed to be the general opinion of Lord Mansfield and a special jury, that if a merchant-ship carry letters of marque she may chase an enemy, though she may not cruize, without being guilty of a deviation.

On an insurance of the Mary, at and from London to Cork and the West Indies, the question was, whether a ship, having letters of marque, could chase an enemy’s ship without being said to have deviated. The facts were, that in the night the Mary had descried a Spanish sail; and, after chasing, lost sight of her for six hours, till the morning, when they engaged. The Mary did not make a prize of the Spanish ship; but proceeded on her voyage, and was afterwards captured. It was agreed on all hands, that a ship in such circumstances might not cruise; but several witnesses spoke to the usage and practice of ships, which carry letters of marque, chasing an enemy. It was admitted, on the part of the insurers, that, if an enemy came in the way, the ship must defend or engage; but contended, that, if the letter of marque lost sight of the enemy, it was no longer chasing but cruising. Lord Mansfield left it, upon the evidence, to the jury, who found for the plaintiff, thereby deciding the question in the affirmative.

If two ports of discharge are mentioned in the policy, and the ship intends going to both, she must take them in the order named in the policy, otherwise it will be a deviation. Beatson v. Haworth. 6. T. R. 531.

Deviation discharges a policy from that time only; therefore damage happening before a deviation may be recovered, notwithstanding there be afterwards a deviation.

In case of deviation, the insurers are not bound to return the premium, because they have begun to run a risk.

But though the consequences of a voluntary deviation are thus fatal to the validity of the contract of insurance, yet, whenever the deviation arises from necessity and a just cause, the underwriters remain liable. The necessities and causes, most generally known and admitted, we shall briefly state; and only observe; that their validity has been determined in a variety of cases, in our Courts of Judicature.

The first ground of necessity that justifies a deviation is going into port to repair. 1 Atkyns, 543. Delany v. Stoddart, 1 T. R. 23.

The next excuse for quitting the direct course is, stress of weather. Upon this subject one leading principle runs through all the cases—that whatever happens by the act of God, shall not be imputed to man. Besides, it should seem that great latitude ought to be given, in the construction of the law, to deviations which have for their object the preservation of ship and cargo for the benefit of the underwriters, who, if there had been no deviation on account of stress of weather, might have suffered by a partial or total loss.

A deviation may also be justified to avoid an enemy, or seek for convoy; because upon the principle just advanced, it ought not to be deemed a guilty deviation to go out of the course of the voyage to avoid danger, or to obtain a protection against it. Many other circumstances may occur, which will have precisely the same consequences: for, wherever the master of a ship does that which is for the general benefit of all parties, the act is as much within the intention and spirit of the policy, and consequently as much protected by it, as if expressed in words.

If a ship has liberty to touch at a port, it is no deviation to take in merchandize there, unless she thereby exceed the time allowed her to stay there. Urquhart v. Barnard. 1 Taunt. 450. so also taking in goods after signal from convoy to prepare for sailing, does not avoid the policy unless delay is occasioned thereby. 12 East. Rep. 191.
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If any of the circumstances above stated do really and bond fide happen, so as to render a deviation absolutely necessary, the ship must pursue such voyage of necessity in the direct course, and in the shortest time possible, otherwise the underwriters will be discharged; because a voyage super-added by necessity, ought to be subject to the same qualifications, and entitled only to the same sort of latitude, as the original voyage, it having become by operation of law a part, as it were, of that original voyage.

An intention to deviate from the due course not carried into execution will not be considered a deviation. Foste v. Wilmer, Stra. 1249. Thellusson v. Ferguson, Doug. 361. Kewley v. Ryan, 2 H. Bl. 343.

A ship in her voyage was seized by the government, and turned into a fire ship; the question was, whether the insurers were liable. Holt thought it was within the word detention; but the cause was referred.

Where the policy is against restraint of princes, that extends not where the insured shall navigate against the law of nations, or where there shall be a seizure for not paying of customs, or the like.

If a man pays money on a policy of insurance, supposing a loss where there was none, this shall be money received to the use of the insurer, for which he may maintain an action.

Per Holt, Nisi Prius, the captain of a ship may be changed, without notice to the insurers; especially as our present policies always contain the words, "or whosoever else shall go for master in the said ship."

Goods insured by agreement, valued at 600l. and the insured not to be obliged to prove any interest, yet the insured was ordered to discover what goods he put on board, that the value of his goods saved may be deducted out of the 600l.

The policy ran, till the ship should have ended and be discharged of her voyage. Arrival at the port is not a discharge till she is unladen.

If goods be insured as the goods of an ally, when they are the goods of an enemy, it is a fraud, and the insurance not good.

Insurance from London to the East Indies, warranted to depart with convoy, declaration sets forth, that the ship went from London to the Downs, and from thence with convoy, which the court held to be sufficient; contrâ Holt. But now the words "to depart with convoy" are clearly decided to mean that the ship shall depart with convoy for the voyage. See 3 Lev. 321. Carth. 217. Lilly v. Ewer, Doug. 72.

Damages happening to perishable goods from their own nature, not to be borne by the assurer.

One, having no interest in a ship, lent 300l. on a bottomry bond, and insured 450l. on the ship; the bond was recovered, but the policy decreed to be delivered up.

And formerly, if one had no interest, though the policy ran, interest or no interest, the insurance was void; and the reason was, because insurances were made for the benefit of trade, and not that persons unconcerned therein, or uninterested in the ship, should profit by it; and in this case, if the ship survived the time limited in the bottomry bond, and was lost within the time limited in the policy, if insurance good, the defendant might be intitled to money on the bond, and policy also; but since this, insurances have been constantly adjudged good, on interest or no interest, till the aforementioned act of 19 Geo. 2. cap. 37, prohibited it.

One lends 250l. on a bottomry bond, and afterwards insures on the same ship, the ship is lost, he shall have both the benefit of the insurance and the bond too.

On a special verdict it was found, that the ship was lost per fraudem & negligentiam magistri, and fraud was held to be barrastry, though mere negligence might not.

Insurance, interest or no interest, the ship was taken by the enemy, and kept for nine days; but before it was carried infrà presidia, viz. a place of safety, it was retaken
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by an English man of war. And whether such taking was such a loss as would entitle the assurer to recover, was the question; and the court seemed to be of opinion for the defendant.

First, because they would be never more favourable to an insuror non bona fide, or a wagerer, than to one that insures bona fide; for they held, that an insuror, having interest, could not recover; the property not being altered by the taking. But no judgment given.

A merchant having a doubtful account of his ship, insures, without acquainting the insurers what danger she was in: this held to be fraudulent, and the court relieved against the policy.

Where it was found by a special verdict, that the insuror had no interest in the ship, and the court was of opinion that made no difference.

A. made a policy, and declared under his hand, on the back, that the insurance was made for and on account of B. and afterwards A. brought an action on the policy; and though the declaration of B.'s interest appeared at the trial, Lee, C. J. was of opinion, that A. notwithstanding, might maintain the action; and verdict, pro quer. See also 1 Bost. and Pul. 945, 316. S. P.

A ship was taken by a Spanish privateer off Viana, so near the neutral shore as to make a dispute whether a prize or not, and the ship was carried into the neutral port; insisted for the defendant, that as she was not carried infra presidia hostis, the property was not changed, and therefore no proof of a total loss, and verdict for plaintiff.

The Snow Tryal, William Jefferys, master, was taken up by the government of Carolina, as a flag of truce, to go to the Havanna, with pretence to bring from thence some Palatines, lately taken and carried in there on board an English ship, the Lydia, Captain Abercrombie; and by this occasion several Carolina merchants laded goods aboard her, to a very considerable value, and directed their friend, Mr. James Crockatt of London, to get 10,000l. insured on them; and at the same time, to inform the underwriters of every circumstance of the voyage; that the cargo consisted of eighty or ninety negroes, and the rest manufactures of Great Britain and Germany, all which was to be regularly cleared out for Providence, where the vessel was to have liberty to call, in her way down, for a pilot: the assured also mentioned the probability, that one master of the Spanish language might be cloathed with the character of captain of the flag, by the aforesaid government, and Jefferys only appear as pilot, though this latter was to sign all bills of lading; and the same insurance was ordered from the Havanna to Carolina, as was made to the Havanna. Mr. Crockatt got the 10,000l. insured at four private offices, at and from South Carolina to the Havanna, and at and from thence back to South Carolina, with liberty to touch at Providence, outward and homeward bound, upon any kind of goods, laden or to be laden aboard the ship called the Tryal, a flag of truce ship, William Jefferys, master, beginning the adventure from, and immediately following the lading thereof aboard the said ship at South Carolina, and so to continue until the said ship, with the goods whatsoever, shall be arrived at the Havanna, and so shall further continue till arrived back at South Carolina, and the same there safely landed; and it shall be lawful for the said ship, in this voyage, to stop and stay at any ports or places whatsoever, more especially at Providence.

At the foot of some of the policies are these words, viz. "Warranted a flag of truce for the voyage;" and in the others, after describing the voyage, "the ship being a flag of truce for the voyage."

The Tryal sailed from South Carolina to the island of Providence, after the captain had received his credentials from the governor as commander of a flag of truce ship, where she arrived, and disposed of part of her cargo, and then sailed directly towards the Havanna; and being arrived near the entrance of the harbour, was seized by a Spa
nish ship of war, and carried into the said place, where her lading was condemned and sold, and the ship, officers, and sailors, detained near five months; at the expiration of which time, the governor of the Havanna permitted them to return, with some English that had been made prisoners, but without the Palatines they went to reclaim; and the governor gave the captain a protection, to screen him in his return from being molested by men of war or privateers.

Mr. Crockatt, on receiving advice of the above-mentioned loss, demanded it of the insurers; who, thinking they had reason to deny the payment, suffered themselves to be sued for it; and Mr. Crockatt, to support his demand, offered to produce the invoice, bill of lading, credential letters, and an affidavit under the seal of the province of Carolina, attesting, that the goods contained in the invoice were shipped, and witnesses who were ready to prove, vivâ voce, the capture and sale of the goods at the Havanna, the detention of the mariners, and that the ship returned as a flag of truce, with forty-nine English prisoners, to Carolina.

On the other hand, the underwriters, to invalidate the insurance, pretended that this was an illicit trade; that the ship was not a flag of truce, or, if she was so, that she was insured, by warranting her to be so, did, in effect, engage that the goods should be exempt from seizure; that, to entitle the plaintiffs to a recovery, it was incumbent on them to shew the condemnation, and the reasons of the confiscations at the Havanna, and many other arguments were used to set aside the policy; but the jury found a verdict for the plaintiffs.

The Mary, Captain Wilson, was hired at London to carry goods to Dublin, and an insurance was made on ship and freight; but in her passage she ran ashore on the sand called Artelow Grounds, and was there deserted by the captain and sailors, who went ashore to save their lives, supposing the ship irretrievably lost; but some fishermen, hearing of the wreck the night before, went out after her, and early in the morning spied a sail off Meyenhead, near Artelow in the county of Wicklow, and about thirty miles from Dublin, lying afloat in about ten or eleven fathom of water, and about a mile and a half from shore, which proved to be the aforesaid ship Mary; and on coming up with her, in the last quarter ebb, they found the ship lying to, with her gib-sail hauled to windward, and her mizen-sail set, and, on boarding her, found her entirely deserted, without one person therein.

After the fishermen had got in, they sounded the pumps, and found so little water in her, that two hands cleared her in an hour's time, after which she leaked but very little; and some few hours after, the fishermen meeting with a pilot, agreed with him for half a guinea to carry her into Polebegg, which is a place where ships bound for Dublin, that draw much water, are unladed and discharged, where she was delivered to Captain Wilson, who took her in charge, and was afterwards moored, and all her cargo delivered safe and undamnified, and the freight accordingly paid for the same.

The ship was, after her discharge, removed from Polebegg to the bank side, and there laid on the ground, to search if she had received any damage; and it was found that nine or ten feet of her sheathing was rubbed off; and about the same quantity of her false keel broke, and the ship strained very much, so that they were forced to carry her back to Polebegg, and there moor again.

The plaintiff demanded the whole insurance, which was 700l. on a supposed proof of the ship's being rendered unfit for any future service, by her being run ashore as aforesaid; and the defendant tried to invalidate his claim, by first endeavouring to prove, that she could not be of near the value insured, as she was an old New England built ship, and sold a little before, to be broke up, for 150l. but the purchaser resold her to another, who sold the moiety thereof to the plaintiff, as he asserts, for 400l. the truth of which sale the defendant suspects, as well upon account of the lowness of the
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tion and endeavours that have been made use of by the assured and his agents for their release, they have hitherto proved fruitless, and without success; therefore we, the underwriters on this policy, do agree to pay Mr. Thomas Boehm, the assured, the remaining 48 per cent. in one month from the date hereof, which the said Mr. Thomas Boehm obliges himself to refund and pay back again, in case his said goods should be hereafter released, and arrive safe at Leghorn, according to the tenor of this policy, we engaging ourselves to make good any average or damage that may ensue in this adventure; and the assured promises and obliges himself to continue his utmost endeavours that his said goods may be restored and discharged."

The present defendant only signed the first of these agreements, but never paid the money pursuant thereto; though all the rest of the underwriters signed both, and have paid their money long ago.

The plaintiff proved, that the defendant was acquainted, when he underwrote the policy, with the reasons for inserting the words, that the goods should be warranted to be inserted in the bills of lading for neutral account: he also proved his interest, and that the goods were his, till delivered; that all the underwriters on this ship have paid their losses, to the afore-mentioned value of between 30 and 40,000l. and that even the defendant himself had paid one on her: he also proved by a person, vivâ voce, who had seen the ship at Cadiz, and heard the captain and Swedish consul discourse about their solicitations for freeing the goods, which, joined to the before-mentioned copy of her condemnation, he thought sufficient proofs of the loss; but the defendant being of a contrary opinion, and not satisfied therewith, stood a trial, when the jury found a verdict for the plaintiff.

In the case of Berens v. Rucker, 1 Bla. Rep. 112, where a ship warranted neutral had been captured as an enemy's ship, and the owners, after an interlocutory decree against them, had agreed to a compromise, it was holden that this being done bonâ fide the insurer was liable for the sum paid by the insured under such compromise.

In order to satisfy a warranty of neutrality it is necessary, 1st. that the vessel insured should belong to a neutral state, and 2d. that the vessel should be navigated, not only according to the law of nations, but also in conformity to the particular treaties subsisting between the country to which she belongs and the belligerent states. Barzilla v. Lewis, Park. 359, and a MSS. note of Buller J. cited by Lawrence J. in Pollard v. Bell, 8 T. R. 441; see also 7 T. N. 705, and Baring v. Christie, 5 East. 398. But where a ship is neither insured as a neutral nor represented as a neutral at the time when the insurance is effected, although she be in fact a neutral, it is not necessary that she should be documented as such. Dawson v. Atty, 7 East. 967.

The Dartmouth galley being fitted out as a privateer, sailed (in company with the Fortune) in October, 1744, on a cruise, and the plaintiffs being concerned therein, got insurance made on their part for one calendar month, of which the defendant underwrote 200l. and the said ships, after being out two days, fell in with two French men of war, with whom the Dartmouth engaged, and after a gallant defence was taken by them, though not till the captain and two more were killed, and several wounded, when the lieutenant seeing the inequality of the combat, ordered the colours to be struck, and surrendered, on which the conquerors ordered the Dartmouth's people to hoist out their barge, and go as many as could on board the man of war, but the Dartmouth's men finding an opportunity sailed away, and got off; their enemies pursuing and overtaking them, they were obliged finally to submit, and the men of war sent a lieutenant, with a sufficient power, to take possession of the Dartmouth, in whose custody the men continued only about an hour and a half or two hours; the lieutenant and his companions, when she was leaky, by one of the men of war running foul of her, and started the engagement, called to his commanders to send a boat for them;
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as they feared sinking, which they immediately complied with, and the lieutenant of the Dartmouth, and about ninety of her men, were carried into France, and the boatswain being left on board with about twenty more (including nine wounded ones) searched for, and in a great measure stopped her leaks, and taking advantage of the Freuchmen's fears and the night, in two days after got safe again into Dartmouth; and soon after her arrival there, was refitted by the owners, and sailed on another cruize.

After this the said ship was kept insured from month to month, and the defendant underwrote several subsequent policies on her, being always told by the office-keeper that he was of the first policy, and neither he nor the plaintiff ever pretended to demand any thing of him on account thereof.

In about six months after the expiration of the aforesaid policy, the defendant paid the plaintiffs a loss on her, having continued to insure her monthly, from the policy in question, and the plaintiffs when they received it, never so much as insinuated, or pretended they had any right to the first insurance; however, the plaintiffs have now claimed it, as the taking of the ship, and carrying of her men away, entirely overset the cruize, and she could not be refitted and sail on another before the expiration of the month for which she was insured, and consequently this proved an entire loss to the assured; but in support of the contrary, it is alledged by the defendant, and confirmed by the opinion of several very considerable merchants, that this could not be counted a total loss, more especially as it is not on a cruize, the words of the policy being, to be insured, lost or not lost, to any ports or places, for one calendar month, but no mention at all made of any cruize; and on which account the defendant supposes there could be no interruption to a thing never guarded against; and, besides, the ship was so far from being a total loss to the owners on the first risk, that she afterwards met with great success by taking a very rich prize.

And if this doctrine offered by the plaintiffs had taken place with respect to insurances made for time, every collier might bring this as a plea, as they are always insured on those terms, though it was never apprehended, that every little accident which happened within the times and obliged them to refit, was deemed a total loss.

The plaintiffs were nonsuited, because unprepared to shew the impossibility of her being fitted out again before the expiration of the insurance.

The plaintiff caused insurance to be made for himself or others, lost or not lost, on the good ship L'Heureux, captain Beatrix, from Bayonne to Martinico, the adventure beginning at and from Bayonne to Martinico, and Cape Francois in St. Domingo, with liberty to touch and stay at any ports or places whatsoever, without prejudice to the insurance, and without other proof of interest in case of loss, than the present policy, and the French and American livres to be valued eleven-pence each, without further account to be given; and for this the assured paid thirty guineas per cent. to have twelve guineas per cent. returned, in case the ship should depart with convoy from Bayonne or L'Isle D'Aix.

The said ship sailed two days after in prosecution of the aforesaid voyage, and was taken, brought to London, and condemned; on which the assured demanded of the defendant his subscription, which he refused to pay for different reasons, as will be hereafter mentioned.

Several merchants in France, particularly at Bourdeaux and Bayonne, after the commencement of the French war of 1744, fitted out a great number of ships under a pretence and appearance of sending them to the French settlements in America, &c. and got them insured to their full value at Marseilles, and other places in that country; and as the laws of France prohibit every person from making larger insurance than what their interest is, they, without discovering what they had done in their own country, requested several gentlemen here to get insurance made for them, often to three or foue
times more than their real interest was; and the said ships being generally taken or lost, the underwriters, without suspecting any fraud, paid their subscription, by which means the French, concerned in these practices, got more than they would have done by any fair adventures.

These sorts of transactions became at last so notorious in France, that Mons. the Count de Maurepas, director of the marine in that country, about May, 1747, took notice of it, and sent a letter to a merchant at Nantes, desiring him to inquire of his correspondent in England, into the valuations of the several ships and cargoes mentioned in the letter (and amongst them of the Heureux, captain Beatrix, before-mentioned) with the amount of the insurances made thereon, declaring in the said letter, that there were great frauds committed by persons of Bayonne and Bourdeaux, in fitting out ships and making large insurances thereon, and then putting those ships in the way of being taken by the English. This gentleman sent a copy of the above-mentioned letter to Mr. Henry Loubier, a merchant of this city, who generously communicated the same to several of the principal underwriters; and they in consequence of this advice, chose a few gentlemen from among themselves as a committee to inquire into these frauds; and they found that several gentlemen in England had procured insurances to be made on French ships from Bourdeaux and Bayonne to the West Indies, either upon the terms of interest or no interest, or without further proof of interest than the policy, to the amount of 100,000 l. of which near the half was disputable losses, by there being great reason to believe, that these insurances were fraudulent, and among others the ship in question; upon which a bill in Chancery was filed, and an injunction obtained, but on the plaintiff’s swearing he knew no fraud, the injunction was dissolved.

The committee sent an answer to Mr. Maurepas’ letter, authenticated by a notary public, whereby it appeared, that the ship and cargo in dispute were sold in England for 788 l. 11s. 3d. viz. the cargo for 388 l. 11s. 3d. and the ship for 400 l. and there was insured on her in England, 2790 l. and at Marseilles, it was found, upon inquiry, that 12,000 livres had been insured, which (reckoning a livre at 11d.) amounts to 550 l.

The preceding circumstances were offered to the court in order to discharge the defendant from paying the insurance, but it not being in his power to prove them, though he supposed them matters of fact, and it appearing plainly that the plaintiff had not in the least been guilty of any fraud, and the policy being expressly valued, and that in case of loss, the assured should not be obliged to prove his interest by any other means whatsoever, save by the present policy, as is mentioned in the beginning of this case, and had paid an adequate premium to the risk, which to the underwriters was rather less than would have been on an interest to be proved; as in this latter case they are liable to averages, which on policies like this in question of interest or no interest, they are solely answerable for a total loss; and the jury found a verdict for the plaintiff.

The same was tried on three other ships under the same circumstances, on which large sums had been insured, and had the same determination.

The plaintiff, being concerned in the Salamander privateer, made insurance on her, as well in his own name, as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain, in part or in all, lost or not lost, at and from the Downs, or elsewhere, to any ports or places whatsoever, for and during the space of three calendar months, to commence from the 21st of December, 1744, upon the body, tackle, &c. of the said ship; and to continue until the said ship, with her tackle, &c. should be arrived at, as above-mentioned, and there had moored at anchor twenty-four hours in good safety; and it should be lawful for the said ship in that voyage, to proceed and sail to, and touch, and stay at, any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. for so much as concerned the assured, was and should be valued at, interest or no interest, free of average.
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and without benefit of salvage to the assureds, touching the adventure, &c. which they, the assureds, are contented to bear, and did take upon them in that voyage, &c. and in case the said ship should not be heard of in twelve months after the expiration of the above-mentioned three months, the assureds agreed to pay the loss, and the assured to repay the same, if afterwards the said ship shall be heard of in safety. The defendant underwrote two different hundred pounds at separate times, on the aforesaid policy, and the ship proceeded on her voyage, on the 21st of December as above-mentioned, and was taken by the French, on the 2d of February following, after an engagement of more than an hour with a much superior force, and after several of her men were killed and wounded; and being thus conquered, 117 of her men, including the captain and all the officers, most of her small arms, and the commission were removed into the enemy's ship, and carried into France, leaving only seventeen English on board the Salamander, of which five soon after died of their wounds, and two French officers with twenty-four of their men; and the said ship was in possession of these their adversaries, from four of the clock in the afternoon of the said 2d day of February, until five of the clock in the afternoon of the 5th day of the same month, during all which time she was absolutely in the power of the enemy, and was, at the last-mentioned period, retaken by the Hunter privateer, Capt. Richard Veale, who put thirty of his men and two officers on board her, and kept her cruising with him for eight days, when the said captain Veale engaged, and took a French ship, with which, together with his own ship and the Salamander, he endeavoured to gain some port in England or Ireland, but the wind and weather not permitting, he carried them all to Lisbon, a neutral port, where he lay a considerable time; during which captain Veale took out of the Salamander two carriage guns, and thirty hundred weight of bread for his ship's use; and the captain of the Dursley privateer, being in partnership with the Hunter, also took out two carriage guns for the use of his ship; of all which captain Veale made a manifest, and sent to his owners, that they might be accountable for them where they ought.

Captain Veale levied and instituted a cause or suit in the Vice-Admiralty Court at Gibraltar, against the said ship, the Salamander, &c. and on the 29th of April, 1745, obtained a decree from the judge thereof, that the said ship, &c. should be restored to her rightful owners, they paying, in lieu of salvage, one-third part of the full, true, and real value thereof, free and clear from all charges and deductions whatsoever; but as her capture had entirely overset her voyage before the expiration of the three months, for which she was insured, the plaintiff demanded the insurance of the defendant, which being denied, he sued him for the same; and on the trial at Guildhall, the jury brought in their verdict special, which occasioned its being argued before the judges of the King's Bench in Hilary Term, 1746, and the dispute in question seemed to turn on this point, viz. whether a policy made free of average can affect the insurer but by a total loss. This was strongly urged in favour of the defendant, whose counsel supposed that the recapture prevented the total loss which would have happened, had the enemy carried her into France; and that he was freed by the policy from payment of the average ordered to be paid in lieu of salvage, so that consequently the plaintiff's demand on him was ill founded and unjust; but the arguments on the contrary side being strong and conclusive, I shall transcribe the greatest part of them; and the questions now upon the special verdict are two, one to be considered upon the first, the other on the second count in the declaration.

1st. Whether the property of the prize was divested by the taking; and

2dly. Whether, as it is found that the voyage was totally broke, and the purpose thereof defeated by the capture, and no restitution made to the owners, there is not a breach of the policy, sufficient to give the plaintiff a right of action, notwithstanding
the recapture, and though the property be not changed, and the insurance be made free of average.

1st. It is found that the ship was taken by the enemies as a prize, and that a hundred and seventeen men, including the captain and officers, with the greatest part of the small arms, commission, &c. were carried into France, and only seventeen men were left on board, all of which, except three, were wounded, and five of them died soon after, so that they were not able to navigate the ship: but two French officers and twenty-four men were put aboard, and the said ship so conquered remained in the possession of the enemy, from the second to the fifth of February, and during all that time, was absolutely in their power; and that thereby the voyage insured was totally prevented.

These facts, according to the laws of France, Spain, Holland, Sweden, and other European nations, are sufficient to divest the property of the prize; but according to the opinion of some writers, who draw their notions from the rule of the civil law, the property of a ship taken at sea, is not divested till the prize is brought infrà fines, or infrà præsidia capientium.

If the question therefore is to be determined by the present law of nations, it is with the plaintiff; for thereby the property of a prize is changed,

By a firm possession of twenty-four hours.

But if by the opinion of certain doctors of the civil law, it is against the plaintiff; The prize not being brought infrà fines hostium.

It seems to be agreed by all the contending writers upon this question, that the legal principle, which vests the property of a prize, is:

Such a taking as enables the captor to retain and defend the possession; but their dispute is concerning what circumstance is declarative of such ability, and upon this head it is that a variety of difficulties have arose.

Van Bynkershock, speaking to this, says,

"Quando autem ita adepti videamur, possessionem, ut retinere, vel non retinere possimus, causarum varietas definire non permittit."

They all likewise agree, that when the spes probabitis recuperandi is lost, or the parties may be said deposuisse animum recuperandi, the property becomes the captor's.

But they cannot settle what shall be evidence thereof, though they confess it would be beneficial to the public, and reasonable in itself, to put an end to an infinity of litigation, by reducing the question to a certainty; yet, notwithstanding so necessary an end is fully agreed upon, the means leading to it are not: the doctors, adhering zealously to the rules of the civil law, contend, that the criterion for determining the question, shall be a bringing the prize infrà præsidia; the law of nations regarding the general interest and convenience of the subjects, and to give all possible encouragement in the time of war for the retaking of prizes from the enemy, hath ordained that a possession of twenty-four hours shall be sufficient.

And now it is for the judgment of the court, to which side they will pay the deference; that is, whether to the opinion of such doctors, as Alber. Gent. Petrinus Bellus, and Van Bynkershock, or to the law and constant practice used in other nations.

If they adhere to the doctors, the question is not finally settled amongst them; for some contend, that there must be a bringing infrà fines capientium, others only infrà classem, and some into a neutral port, &c. and some go so far as to say, that after a bringing infrà præsidia, there must be a sailing to a new destination.

But by the law of nations, of modern or later institution, the certainty sought for is definitive, viz. a possession of twenty-four hours; and the authorities to prove the law of nations on this question, are,
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1. "Recentiori jure gentium inter Europeos populos introductum videmus ut talia capta censeantur, ubi per horas viginti quatuor in potestate hostium fuerint. Gro. l. 3. cap. 6. s. 4.


5. "Quiquid verò clarissimi interpretum disputent de praedà prius in presidia deducenda, quàm fiat possidentis, alius tamen consuetudine et moribus Europorum hodie observatur, ut nimium praedà capientium fiat, et præsertim naves hostium de quibus hic sermo est, si a victore per diem et noctem possessa fuerint. Loc. l. 2. c. 4. s. 8.

6. "Si aucun navire de nos sujets est repris sur nos ennemis après qu’il aura demeuré entre leur mains pendant 24 heures, la prise en sera bonne, et si elle est faite avant les 24 heures, il sera restitué au propriétaire. Ordon. touchant la Marine, Tit. Prizes, act 8.

7. "Simon Greenewegen, an author frequently quoted as an authority by the best writers, and who was a celebrated lawyer * in the last century, and of a family that had for a long course of years sat at the helm of the government, proves that the law requiring a ship to be brought infrà presidia is abrogated, and puts it down as such in his treatise De Legibus abrogatis, et inusitatis in Hollandiâ, vicinique regionibus, where he distinguishes what shall be said to be prizes by the civil law, and what by the law of nations, to which end, in lib. 49. tit. 15. de Captivis, &c. he makes several divisions and subdivisions of the subject, and has two subdivisions de Navibus, viz. First, Captæ, quæ dicuntur jure civili; secondly, Gentium; and under this head Gentium quotes the passage aforesaid from Grotius, and adds, that now in Holland a prize may be good, nullo habito respectu temporis, quo navis in hostium potestate fuerit, dum tamen, infrà presidia perducta non fuit. Sim. Grec. de Leg. Abr. p. 359."

As by the law of other nations a possession of twenty-four hours undoubtedly divests the property of a prize, one might conclude that, as this question has not been judicially determined by this court, it would be reasonable to put the subjects of England upon the same footing with those of France, Spain, Holland, Sweden, &c. especially in mercantile contracts, which ought to have the same construction in one trading country as another, and more especially as this kind of insurance, interest or not, is a branch of trade peculiar to us: but if this will not do, the question upon the second count is to be considered, which is,

Whether, upon this count, there hath not been a breach of the policy, or contract of insurance, sufficient to give the plaintiff a right of action, upon interest or not?

It is found that the prize was fitted out to cruise against the King’s enemies; that all her men, except seventeen, as aforesaid, were taken and carried into France, and those left not able to navigate the ship, and that the voyage described in the policy was thereby totally prevented; and that, at the time of the verdict, the ship remained at Lisbon, not restored to the owners.

This seems to be a breach, taking the policy either upon the ground of

A CONTRACT of a WAGER.

Considering it as a contract, the agreement is, that the ship shall not be prevented in the voyage, by any of the perils or risques in the policy, amongst which are all surprisals

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at sea, arrests, restraints, and detaiments of all kings, princes, and people, whatsoever; and here has been a surprisal at sea, and a detention, whereby the whole voyage insured was totally broke, as is found by the verdict; and this is a much stronger case than Degaiba and Ludlow,† where the court, for very good reasons, determined unanimously for the plaintiff, as appears by the judgment of Lord Chief Justice King, delivered as the opinion of the whole court; whereby it also appears, that a total loss is not necessary in all cases to give the plaintiff a right of action upon a policy, interest or not.

The defendant's counsel insisted in his argument, that as the policy was made free of average, nothing could affect the insurer but a total loss, because all other losses are included within the import of average, by the words of the contract.

This is a mistake, and appears to be so from the words of the policy, which immediately follow, viz. And without benefit of salvage to the insurer.

If nothing but a loss of the whole could affect the insurer, is it not consistent that he should renounce the benefit of salvage; for what could he have to do with salvage, in case he was chargeable if any thing was saved?

This, therefore, is a construction not warrantable, being absolutely inconsistent with the express words of the policy, which are, Free of average, and without benefit of salvage to the assurer.

And as such a construction is inconsistent, another is to be sought, which is not so repugnant, and which may permit the words before-mentioned to stand with more propriety, and this may be done, by confining the import of average to a limitation; and the definition of average in the first article of the Ordinance of Fontainbleau, touchant la Marine, Titre Avarie, establishes such a limitation of the import of this word as will give it a consistent place, as it stands in a policy of insurance: it is by the said Ordon. defined thus;

"Toute depense extraordinaire qui se sera pour les navires et marchandises conjointment ou separatement, et tout dommage qui leur arrivera depuis leur charge et depart, jusques a leur retour et decharge, seront reputes avaries. Ordon. of 1681, Tit. 7. des Avaries."

And it is certain, that the true import of the word average is, such damages as happen to the ship or cargo during the voyage, as the loss of anchors, masts, cables, &c. but that which breaks up the voyage, as in this case, a capture by enemies, whereby the whole end, purpose, and design of the cruise was absolutely defeated, by the actual taking of all the men, arms, provisions, commission-officers, &c. cannot, from the obvious nature, circumstances, and reason of the thing, and the authority of the case of Degaiba and Ludlow, be esteemed barely as an average to which the insurer is not liable, but must be considered as a total breach of the contract of insurance to which he is liable.

If the construction contended for by the defendant was to prevail, the insurer would rather be indemnified from than subjected to the perils insured against; for if a taking happens at the beginning of a voyage, insured from one port to another, or for time only, and the voyage be thereby broke up, or the time elapsed, the recovery of the ship will ruin the insured, and be a general release to the insurer, who will also be thereby indemnified from all the risks in the policy; whereby, if no such capture had happened, the ship might have been lost, and a capture and detention breaking up the voyage insured, might put the insurer in a better condition than if there had been no capture at all, which cannot be the meaning of the parties, being inconsistent with the apparent design of an insurance.

† Hartley v. Pringle; besides, in this case, the ship insured is not to this hour, as appears by the verdict, restored to the owners; neither was it * worth their while to pay salvage and charges;
OF INSURANCES.

and raise men to bring her home; and suppose they had, and she had been taken again by the enemy, the time of insurance was expired, and the insurer in such case would have said he was not liable.—Therefore must be considered as a total breach of the policy, and not as a bare average.

1st. Here was a taking and a detention.

2dly, All the men, commission-officers, &c. taken and carried into France, and never retaken.

3dly, Though ship retaken, not restored, and possibly never may.

4thly, If restored, her men, arms, provisions, &c. being taken, could not pursue the purpose of the voyage, and therefore the insured may abandon the benefit of the salvage.

5thly, The verdict has found the voyage was thereby totally defeated, and that is sufficient.

There are many cases where the plaintiff on a policy, interest or not, has recovered, though no total loss of the ship, but because by the perils in the policy, she was rendered unable to perform the voyage, as in the case of the Ludlow Castle, and the case of the Providence, between Carter and Barrel, where the ship came into St. Ives, bound for London, but being leaky, the cargo was unloaded, and the ship sold at St. Ives; though it was proved she might, at a considerable expense, have been made fit to perform the voyage, yet, as without it the voyage could not have been performed, the plaintiff recovered, though no loss at all of the ship.

So, in the present case, if the ship had been retaken in an hour, she could not have pursued the voyage; for all the men, &c. were taken and carried into France, and therefore she could not navigate herself, neither could she have performed the voyage insured.

But, taking it upon the footing of a wager, as put by the defendant's counsel; What is the wager? It is, that such a ship, for and notwithstanding any arrests, restraints, &c. will sail from London to Jamaica, or sail for three calendar months upon a cruise, as the adventure may be. If, therefore, by any arrest, taking, detention, &c. the ship is totally prevented from proceeding in the voyage, is not the wager lost? Has not the contingency insured against happened?

Upon this case, for the reasons aforesaid, and many others arising upon the nature of the contract of assurance, and particularly upon the authority and reason in Depaiba and Ludlow, the plaintiff hoped for the judgment of the court in his favour, which accordingly was given; and the judges were unanimous in their opinion.

I have enlarged considerably on this case, more than on any others, as it is that which settled definitively this nature of insurance, which before was almost always contested, when any little difficulty happened; and though the late act prohibits the continuance of a business it deems hurtful to the public, yet this decision may be a government for disputes in other parts where it is permitted, or in case the aforesaid act should ever be repealed.

The question as to the length of possession by an enemy, which is deemed sufficient to divest the property out of the original owner, or the effect of a recapture in revesting it, can never be directly raised between the insurer and insured; for in every case of capture the insurer is answerable to the extent of the sum insured for the loss actually sustained, whether the capture be lawful or unlawful, whether by friends, or by enemies, and whether the property in the thing insured be changed by the capture or not. Marshall on Ins. 423. and where by reason of the capture the object of the voyage is defeated, or the salvage demanded upon a recapture is excessive, a total loss may always be recovered. See Marshall on Ins. 484. Goss v. Withers. 2 Burr. 694, &c.
OF INSURANCES.

Cases of Warranty to sail with Convoy.

A species of warranty, which most frequently occurs in policies of insurance, in time of war, is that of sailing under the protection of convoy; that is, certain ships of force, appointed by government, to sail with merchantmen from their port of discharge to the place of their destination. When the nature of a convoy is considered, it is highly reasonable that the policy should be forfeited, if the insured fail to comply with so material a condition; because the risk which the underwriter takes upon himself is very considerably increased, in time of war, by the want of convoy. Accordingly, by the laws of this, and of all other maritime powers, if the insured warrant that the vessel shall depart with convoy, and it do not, the policy is defeated, and the underwriter is not responsible.

We have already seen, that every warranty must be strictly and literally complied with, and that a liberal and substantial performance, merely, will not be sufficient. Hence, in a warranty to sail with convoy, it becomes material to consider what shall be deemed a convoy, within such a condition. Upon this point it has been solemnly settled by the Court of King's Bench—"That it is not every single man of war, which chuses to take a merchant ship under its protection, that will constitute such a convoy as the warranty means; but it must be a naval fore, under the command of a person appointed by the government of the country to which they belong." The reason of such a decision is wise, because government must be supposed to be better informed of the designs and strength of the enemy, and what degree of force will be sufficient to repel their attempts. But let it be observed, that a single man of war, frigate, or sloop, may be deemed sufficient to protect one or more merchantmen; and if the captain has received his orders to protect them, though his force may prove insufficient, and the ships are captured, this is to be considered as sailing with convoy according to the warranty in the policy.

The case, in which the above points were settled, came before the court upon a rule to shew cause why the verdict, which the defendant had obtained, should not be set aside, and a new trial had. It was an action to recover upon a policy of insurance on the ship Arundel, Captain Mann, at and from Jamaica to London, warranted to depart with convoy. The facts appearing, on the report of Lord Mansfield, who tried the cause, are these: on the 25th of July, the Arundel sailed from Morant harbour to Kingston, where she met the Glorieux man of war, Captain Cadogan, who was likewise on his way to join Admiral Graves at Bluefields. Lord Rodney had appointed Admiral Graves to rendezvous at Bluefields, in order to take the fleet of merchant-ships, which were to sail from thence upon the 1st of August, under his command, and to convoy them to Great Britain. Captain Mann, upon their meeting in Kingston harbour, asked for sailing orders from Captain Cadogan, who said he had none, not having himself at that time joined the Admiral; but he was sure that Admiral Graves would not sail from Bluefields till the Glorieux joined him: however, if he should have sailed, he, Captain Cadogan, would give Captain Mann sailing-orders, and take every care of the Arundel in his power. They proceeded together, and arrived at Bluefields, on the 28th of July; but they found that Admiral Graves had sailed two days before. The Glorieux and Arundel then sailed from Bluefields, the former firing guns, giving signals, and behaving in every respect like a convoy. Upon the 5th of August a signal was made that the fleet was in sight, and on the seventh they joined it off Cape Antonio. The Arundel was lost in September in a dreadful storm, which dispersed the whole fleet, and in which a vast number of the ships perished. Upon this evidence,
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the jury were of opinion, under the direction of the Chief Justice, that the terms of the warranty had not been performed; and they therefore found a verdict for the underwriters, defendants in the cause. After this question had been fully argued at the bar, the three judges, Mr. Justice Ashurst being at that time one of the Lords Commissioners of the Great Seal, delivered their opinions severally.

Earl Mansfield—"Though the underwriters and insured are equally innocent, yet I cannot help saying, that now, as well as at the trial, my inclination led me to wish, that the plaintiffs were in the right. But the more it is argued, the less it is liable to dispute. There are hypothetical contracts, and conditional contracts. In the former, the contract depends upon an event taking place; there is no latitude, no equity; the only question is, Has that event ever happened?" Then going over the particulars of the case, and amongst other things referring to the usage of merchants, as to what is esteemed a convoy by them, that "a convoy is a naval force, under the command of that person whom government has appointed," he applies it to the facts given in evidence at the trial; and decides, that at the time of sailing from Bluefields, where the risk of the voyage commenced, the Glorieux was no part of the convoy, and therefore the warranty was not complied with.

Mr. Justice Willes differed in opinion from Lord Mansfield: he went upon this ground, that the terms of the policy had been liberally and substantially complied with. "When Captain Mann found that the fleet was gone, he did every thing in his power for the security of the ship; for he put himself under the protection of the Glorieux, which was appointed by Lord Rodney to make a part of the convoy. The loss of the Arundel happened long subsequent to her joining the fleet; I am therefore of opinion, that the warranty in this policy has been substantially performed."

Mr. Justice Buller—"In deciding this case, it is not necessary to say, whether sailing orders are essential or not. The present question is simply this: Did the Arundel sail with convoy? This is a condition which must be literally complied with, as all the cases agree. As to the question itself, it is a question of fact; and the facts of the case seem to me to prove, that the Glorieux was no part of the convoy. Admiral Graves had sailed before they arrived; and that circumstance which Lord Mansfield stated seems very material, that no orders were left behind for the Glorieux. I say, that, on this evidence, she was no part of the convoy; for, in order to make her so, it must appear that she was under the orders of Admiral Graves. Did he leave her behind to take care of the ships that remained? If so, it would alter the case very materially. But there was no such idea; for, if there had, the Glorieux would have remained at Bluefields for the rest of the ships until the first of August: on the contrary, Captain Cadogan, finding that Admiral Graves was gone, immediately followed; for his sole object was to join that admiral. Ships must sail under the convoy appointed by the government of the country, who proportion the strength of it to the necessity of the times. To what end would this care be taken, if merchantmen were to sail under the protection of single ships, which they may happen to meet? I am therefore of opinion, that if a ship do not sail with the convoy appointed by government, it is not a sailing with convoy, within the terms of the policy." The rule for a new trial was then discharged.

Although the decisions of the Court of King’s Bench require no additional authority to support them, yet it will be proper, by way of illustration, to point out to the reader in what cases the opinions of foreign writers agree with the determinations of the English courts of justice. Monsieur D’Emerigon, a very distinguished writer upon this branch of jurisprudence, puts this case: "On avoit fait des assurances sur une navire, de sortie de Marseilles jusqu’aux detroits de Gibraltar; et dans la police il étoit dit, que le navire partiroit de Marseilles sous l’escorte d’un batiment de roi; autrement,
assurance nulle. Une fregate, chargée de munitions de guerre pour Algesiras, se trouvait à l’Estaque. Le navire assuré mit à la voile sous les auspices de cette fregate qui lui accorda protection, et qui partit en même temps. Consulté sur ce cas, je fus d’avis qui si le navire étoit pris par les ennemis, les assureurs seroient fondés à refuser le paiement de la perte: car une chose est d’etre sous l’escorte d’un batiment de roi, et autre chose est de naviguer simplement sous ses auspices.”

Generally speaking, sailing instructions are necessary to a compliance with the warranty to sail with convoy, but they may be dispensed with upon some occasions, as from misfortune, stress of weather, or other circumstances absolutely preventing the master from obtaining them. Where he departs with the convoy, it shall be deemed a sailing with convoy. Webb v. Thompson. 1 Bos. and Pul. 5. 2 Stra. 1250.

Having now seen what shall not, and what shall be deemed a convoy, let us proceed to investigate and confirm, by cases, what shall be considered as a departure with convoy, within the meaning of a warranty in the policy to depart with convoy. The rule in this case is short and clear, that such a warranty implies that the ship shall go with convoy from the usual places of rendezvous, at which the ships have been accustomed to assemble; as Spithead or the Downs for the port of London, and Bluefields for all the ports in Jamaica. And that such warranty does not limit the ship to depart with convoy, from her port of lading or discharge, but protects her by the assurance, while on her way from such port to the usual rendezvous to join the convoy. This doctrine was admitted, and has been made a precedent ever since, in the following remarkable case.

The plaintiffs being merchants residing at Gibraltar, and one of them coming to London, to purchase goods fit for that place, bought to near the value of 3000l. and, in order to forward them to the aforesaid place, he took freight on the ship Ranger, Captain Taylor, which he saw put up, as accustomary, at the Royal Exchange and Portugal coffee-house, with a declaration inserted in the same advertisement, that the ship was to sail with the first convoy; and in consequence thereof he shipped his merchandize, and made insurance thereon, to the amount of 2830l. inserting in the policy the words, warranted to depart with convoy, in conformity with the above-mentioned placart of the captain.

The ship, when laden, sailed from Gravesend the 4th of May, 1746, on her voyage, and arrived in the Downs the 7th, where she continued to the 12th, in company with the Otter sloop of war, some English merchant ships, and three Dutch East India ships.

Captain Taylor, whilst he lay in the Downs, having received intelligence that the convoy at Spithead was ready to sail, went on board the Otter sloop, in order to solicit the commander’s taking him under his protection to Spithead; but this the said gentleman informed him was not in his power to comply with, as he was ordered on a cruise over to the coast of France; whereupon Captain Taylor went on board the commodore of the Dutch East India ships, who promised to take the Ranger under convoy to Spithead.

On the said 12th of May, the Otter sloop, the Dutch, and the Ranger weighed anchor, as did also some English ships, for the benefit of that convoy; and a few hours after they were under sail, the Otter sloop parted from them on her cruise, and the Ranger proceeded and kept company with the three Dutch ships till between four and five o’clock the next afternoon, being the 13th; when, in her direct course to Spithead, she was attacked by a French privateer, called the Resource, within three miles of the Dutch East Indiamen, and eighteen of Spithead, where she was to join the convoy for Gibraltar, and, after some resistance, she was taken and carried into Havre de Grace, and there regularly condemned.
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The plaintiff, on the aforesaid capture, applied to the respective underwriters, and among them to the defendant, requiring satisfaction for his loss; but they absolutely refused paying any thing, insisting, that the ship had not sailed according to the terms of the policy, viz. at and from London to Gibraltar, warranted to depart with convoy; but as she departed without convoy, which she ought not to have done, and was taken in consequence thereof, the insurers are not held to satisfy a loss, which they never obliged themselves to be answerable for; that the ship ought to have staid till a convoy had offered, and not gone to seek one at such a distance, as evidently exposed her to be taken in getting thither.

On the contrary, the plaintiffs pleaded, that they had complied with the tenor of the policy; that the defendant misconceived the natural construction of the words, "warranted to depart with convoy," as they did not imply, that the ship ought to have departed with convoy from the port of London,* as the rendezvous for ships bound to Gibraltar and the Straits is generally at Spithead, where they join the convoy; and although there may possibly be an instance or two of a convoy sailing from the Nore and the Downs to Gibraltar, yet this is an uncommon accidental thing, and was not to have been expected on this occasion; on the contrary, it was then known that the convoy for those parts was to be at Spithead, and many ships went there from London to take the benefit of it, so that the warrant could only be understood from Spithead, as it was from the convoy there the captain was to take his sailing orders; besides, as it was unsafe to lie in the Downs without a man of war, the plaintiff conceives the Ranger would have run a much greater risk, in continuing there after the Otter's departure, than she did in sailing with her and the Dutch ships, though they were no regular convoy; and the plaintiff paid the same premium for his insurance as given on several ships at the same time with a warrant to depart from any port of the channel; and it was the opinion of several merchants, that ships sailing with convoy, are to make the best of their way to the convoy, and not to stay for any intermediate one.

The jury found a verdict for the plaintiff.

A similar decision was made in the year 1781, by the Admiralty of France, which is reported in the work of Emerigon. Upon this kind of warranty, however, it is to be observed, that although the words commonly used are, "to depart with convoy," or "to sail with convoy;" yet they extend to sailing with convoy throughout the whole of the voyage, as much as if those words were inserted. Indeed to suppose the contrary would introduce a variety of frauds; as a ship would sail out of harbour with the convoy, continue with it for an hour or two, then leave it, and run every peril, at the risk of the underwriter. Therefore, a ship warranted to sail with convoy to her destined port of delivery, and putting herself under the protection of a convoy designed to go only part of the voyage with her, and then to take under its charge merchantmen for some other destination, though she could find no other convoy in the port of her departure, is not justified in sailing with such a convoy.

The sailing with convoy required by stat. 43 Geo. 3. c. 57. (mentioned, ante) is a sailing with convoy for the voyage. See Cohen v. Hinckley, 1 Taunt. 249.

This was decided in an action brought for money had and received by an underwriter, for a return of premium. The policy was on the ship the Parker Galley, at and from Venice to the Currant Islands, and at and from thence to London, at a premium of five guineas per cent. to return 2 per cent. if the ship sailed with convoy from Gibraltar, and arrived. The ship touched at Gibraltar on her way home, and sailed from thence

* No convoy ever sails from the port of London. Abbott's Law relative to merchant ships and seamen, 2nd edit. p. 216.
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under convoy of the Zephyr sloop of war; but the convoy was destined only to go to a certain latitude, about as far as Cape Finisterre, being ordered on the Lisbon station; and accordingly, the ship and convoy separated, and the ship arrived safe at London. The only question in the cause was, whether, by the terms of the policy, the condition for the return of premium was, a departure from Gibraltar with such convoy as could be met with, for whatever part of the voyage that might happen to be, or a departure with convoy for the voyage. The trial came on before Lord Mansfield and a common jury, when a verdict was found for the plaintiff.

This verdict gave great dissatisfaction to the merchants in the city, and more especially to the underwriters; and a rule was obtained to shew cause why there should not be a new trial. The evidence, from his Lordship’s report, appeared to be this: the plaintiff had called witnesses, one of whom was Mr. Gorman, an eminent merchant, to prove that for some years past, when convoy for the voyage, or the whole voyage, was intended, those explanatory words had been added; and that, by this usage, the expressions of sailing with convoy, and sailing with convoy for the voyage, had received distinct technical meanings; with convoy, signifying, whatever convoy the ship should depart with, whether for a greater or less part of the voyage. Several policies were also produced, which had been filled up at the office of the same broker who had prepared that which had given occasion to this cause, in which the words “for the voyage,” or “for England,” were added. The captain proved, that at the time when he left Gibraltar no other convoy was to be had. The witnesses for the defendant swore, that they understood the words “with convoy” to mean convoy for the voyage; and the broker said, that at the time this policy was signed, he understood, and apprehended it was so understood by all the parties, that the convoy was to be for the voyage, and that the return was such as was usual, when convoy for the voyage was meant.

The case being fully argued at the bar, Lord Mansfield afterwards gave his opinion in favour of making the rule absolute for a new trial. His Lordship took notice, that on the words, he was strongly of opinion that the policy meant a departure with convoy intended for the voyage; yet he thought that the evidence was properly admitted at the trial, because the sense contended for by the plaintiff was not inconsistent with the words of the policy, and therefore it was material to see what was the usage. His Lordship further said, that he laid great stress on Mr. Gorman’s testimony, whom he did not consider as a common witness; and concluded with this memorable observation, of the first importance to the mercantile world, and which we cannot but wish the lawyers would adopt: “Certainly critical niceties ought not to be encouraged in commercial concerns; and wherever you render additional words necessary, and multiply them, you also multiply doubts and criticisms. It may be hard, because words have been added in some instances, to force a construction in this case, from the omission of them.”

On these grounds the court granted a new trial, which came on before Lord Mansfield at the sittings after Trinity Term, 1779, when a verdict was found for the defendant, the underwriter.

But although it has been settled, that a ship must depart with convoy for the whole voyage, yet in the last case it was truly said by Lord Mansfield, that an unforeseen separation is an accident to which the underwriter is liable. And the first decision upon this subject was such, that it never has been departed from in any one instance.

Assumisit on a policy of insurance, made in the usual form, “from London to Cadiz, warranted to depart with convoy.” Upon the general issue pleaded, the jury found a special verdict; stating, that the ship did depart from the port of London in company of the convoy intended, and sailed together as far as the Isle of Wight, in pursuance of the voyage towards Cadiz, and there they were separated by stress of weather; that the convoy put into Torbay, and the insured ship into the port of Fowey in Cornwall:
that three days afterwards, the wind setting right to bring the convoy down the Channel, the master of the insured ship sailed out of Fowey, on purpose to meet the convoy; but it did not come: and then the insured ship was seized with another storm, so that she could not return from whence she came, but was driven upon the French coast, and there taken by the enemy. 1

After several arguments on this special verdict, the plaintiff had judgment, per totam curiam, for the whole loss; and the principal reason was, because there was no manner of neglect, or other default, found in the master of the ship; but it appeared he had done all in his power to keep in company of the convoy. It is found expressly, that he departed with convoy from his first port, which answers the words of the policy: but it would have been otherwise, if any fraud or neglect had been found in the master of the insured ship after her departure, notwithstanding he departed out of the first port with convoy; for the meaning of the words, "warranted to depart with convoy," is, that the insured ship should keep company with the convoy during the whole voyage, if possible.

Even where the ship has by tempestuous weather been prevented from joining the Park convoy at all, at least of receiving the orders of the commander of the ships of war, if she do every thing in her power to effect it, it shall be deemed a sailing with convoy, within the terms of the warranty.

The plaintiff had insured on goods in the John and Jane, from Gottenburgh to London, with a warranty to depart with convoy from Fleckery. In July, 1744, the ship sailed from Gottenburgh to Fleckery, and there she waited for convoy two months. 1250.

On the 21st of September, at nine in the morning, three men of war, who had one hundred merchant ships in convoy, stood off Fleckery, and made a signal for the ships there to come out, and likewise sent in a yawl to order them out. There were fourteen ships waiting, and the John and Jane got out by twelve o'clock, and one of the first; the convoy having sailed gently on, and being two leagues a-head. It was a hard gale; and by six in the afternoon, the ship came up with the fleet; but could not get to either of the men of war for sailing orders. It was stormy all night, and at day-break the ship in question was in the middle of the fleet; but the weather was so bad, that no boat could be sent for sailing orders. A French privateer had sailed amongst them all night: and, it being foggy on the 22d, attacked the John and Jane about two, who kept a running fight till dark, which was renewed the next morning, when she was taken. For the defendant, the underwriter, it was insisted, that this ship was never under convoy, nor are ships ever considered so, till they have received sailing orders; and, if the weather would not permit the captain to get them, he should have gone back.

But the Chief Justice Sir William Lee and the jury were of opinion, that, as the captain had done every thing in his power, "it was a departing with convoy:" and those agreements are never confined to precise words; as in the case of departing with convoy from London, when the place of rendezvous is Spithead, a loss in going thither is within the policy. Verdict for the plaintiff.

If convoy has sailed, the ship cannot legally endeavour to overtake it. 1 Taunt. 249.

The security of trade in time of war has been considered as depending so essentially on ships sailing with convoy, that the statute 48 Geo. 3. c. 57. was passed for the purpose of regulating the departure of merchant ships with convoy, and which act is to continue in force during the present hostilities with France.

The provisions of this act have been already given (see the chapters on convoys and cruisers, ante), and therefore a repetition of them here is unnecessary. See the cases, Cohen v. Hinckley, 1. Taunt. Rep. 249.; and Henderson v. Hinde, ibid. p. 250.
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The plaintiff having underwrote the William and Anne, Captain Strachan, at and from Virginia or Maryland to London, had a mind to re-insure himself, and accordingly ordered Mr. Alexander Hoskins, a broker, to get it done; who having complied with the commission, certified on the policy, that the interest was in the plaintiff.

The insurance was made, interest or no interest, free of average, and without benefit of salvage; but under the policy was this clause, In case of retain, the assurers to have benefit of salvage, and pay average, the same as if wrote on interest.

The ship sailed from Virginia on her voyage to London; and being about two hundred and fifteen leagues to the westward of Cape Clear, after a voyage of three weeks, she was taken by two French privateers, and carried into a place in Newfoundland, called by that nation Cape de Grate, and commonly occupied by them in the fishing-season, where she continued in the enemy's possession and power forty-one days; during which time, the enemy took out of her a great part of her cargo; and after so rifling her, and in their way condemning her, the captain agreed to ransom her with what remained of her lading; and the ransom bill being signed, and his mate left as an hostage, they permitted him to pursue his voyage to London, where he afterwards arrived.

Soon after the ship's arrival, the merchants who were concerned in the cargo, and had been insured, applied to their underwriters for satisfaction; when most of them settled the average, for what was pillaged, at fifty per cent. one at forty, and the present plaintiff paid his quota thereon, and afterwards applied to the defendant, who had re-insured him, to settle his policy; and it was agreed between them, that it should be on the same footing as the major part of the aforesaid underwriters on interest had done, which the broker, in this insurance, understanding was done at fifty per cent. he endorsed on the back of the policy these words,

"Adjusted this loss at fifty pounds per cent. to pay in one month, London, 12 December, 1745; and signed by the defendant,

"Daniel Flexney."

Though at the time the defendant signed the above-mentioned note, he told the plaintiff, that some of the underwriters, on the original policies, had paid an average only of forty per cent. and therefore he would pay no more; and at the same time, with his pen drew a line through the word fifty, and above it wrote forty, which occasioned some dispute between them; but the indorsement so signed by the defendant remained uncanceled.

The defendant afterwards refused making any satisfaction, under a supposition of his having no obligation thereto, for which his principal reasons were, viz.

1st, That although he had signed such an adjustment at forty per cent. yet he is not bound by it, because the plaintiff objected to it at the time of signing, and insisted on fifty.

2dly, That although the ship was in the enemy's possession, and carried into Cape de Grate, yet she afterwards proceeded on the same voyage, and arrived safe in London, therefore there could be no loss, so as to recover under a policy interest or no interest.

To the first of which objections, the plaintiff admits that he did find fault with the defendant for striking out the word fifty, and inserting forty, yet as the defendant did not then think proper to cancel the said adjustment, but permitted it to remain on the back of the policy, the plaintiff apprehended he had a right to recover under the said

... to Cape de Grate, and detained till ransomed, that this will...
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amount to a total divestiture or alteration of the property, and be deemed such a loss as will entitle him to recover; this case seeming to be of a quite different nature from a recapture before the ship is carried into an enemy's port.

Verdict for the Plaintiff.

The plaintiff having caused himself to be insured 50l. interest or no interest, free of average, and without benefit of salvage, on the Prosperous Esther, Captain Miln, from and immediately following her last arrival at Maryland or Virginia, and to continue till her arrival at London; and not caring to appear in it, he directed his broker, Mr. Hart, to get the policy made in his name, which was accordingly done, and as she was deemed a missing ship, the premium was after the rate of sixty guineas per cent.

The ship sailed on her voyage from Virginia, and in forty days after was taken by a French privateer, about a hundred leagues to the westward of the Land's End, and was detained by the enemy six days at sea, and then both ship and cargo ransomed for 3500l.; but Captain Miln, instead of coming directly to London, where he was bound, on pretence of bad weather, put into Ilfracombe in Devonshire, from whence he wrote to his owner, Mr. Dick of London; but the said gentleman's affairs being then unhappily situated, and he having, prior to his misfortunes, assigned the ship, and two policies of insurance thereon to Mr. Alexander Black, who apprehending by what Captain Miln wrote, that the ship and cargo was much damaged since the capture, and therefore that the value might fall short of a sufficiency to pay the ransom bill, and incident charges, he rather chose to come upon the insurers for his money, than to have the trouble of taking the ship and cargo under his care, and therefore abandoned the whole to Captain Miln, to enable him to pay the ransom bill.

And thereupon Messrs. Simonds of London, merchants, agents for the captors, ordered Captain Miln to carry the ship and cargo to Bristol, there to be disposed of, instead of bringing her to London, which was accordingly done; and after paying the captain and sailors their wages, amounting to upwards of 300l. the nett proceeds fell short of the ransom bill, owing to the damage she received in her voyage after the capture.

The defendant supposes this was a gaming policy, though the plaintiff insists upon its being a re-insurance; and having applied to the defendant, after underwriting, for his consent to have it declared so, he absolutely refused to admit it.

The plaintiff seemed to lay a good deal of stress on a supposed indiscretion in the captain, by paying more for the ship and cargo than they were worth; but had they escaped the damages subsequent to the ransom, they would undoubtedly have sold for more than they cost freeing, and never have been abandoned by the owners.

The plaintiff likewise insists, that the ship sailed from Virginia, but never arrived at London, according to the terms of the policy, and therefore the insurance was due; but the defendant, in reply, pretends, that the ship's putting into Ilfracombe, was a deviation, and consequently not within the risk of the policy; and besides, he thinks this is not to be considered as a total loss, in the case of interest or no interest, as it is a mere wager, whether the ship arrives or not; the ship did arrive in England, and is now in being, and this was a ransom at sea, only for the benefit of the concerned, but the defendant could reap no advantage by it, whether it was prudently done or not; and it might occasionally have been more for his interest, if the ship had continued at sea in the enemy's possession, as there was a chance of her being re-taken, before she had been carried infra presidia, and if she had, and arrived safe, there would have been no loss within the terms of the policy; as he presumes there is no room to claim a loss in cases of a recapture: several merchants, insurers, and brokers, being of opinion that on
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A policy, interest or no interest, a capture at sea is never considered as a total loss, unless the prize is afterwards carried into the enemy's port, and that the abandoning the ship and cargo by the owners, after her arrival, will not alter the case.

The jury found a verdict for the plaintiff.

The Broomfield was insured, at and from the Leeward Islands to Bristol, interest or no interest, free of average loss, and without benefit of salvage, and among other underwriters, the defendant subscribed; the ship in her passage home was taken by a Spaniard, who took out four of her men and the captain, and put nine of his men aboard, and ordered them to carry her to Bilboa, for which place her course was directed; and on her voyage there, after having been in possession of the enemy thirty-nine hours, she was re-taken by the Terrible privateer belonging to Liverpool, and carried into Waterford, from whence some proposals were made to the owners of the Terrible, in order to her release and permission to prosecute her intended voyage to Bristol: but not being agreed to, she was brought to Liverpool, and after a commission of appraisement had issued out of the Admiralty, she and her cargo were sold, to pay the salvage due to the re-captors, as by act of Parliament.

One of her quondam owners now bought the whole, and afterwards parcelled her out among several gentlemen at Bristol, who became copartners with him, to which place she was ordered, and where she arrived; though, as the plaintiff supposes this could not be an arrival agreeable to, or within the intent and meaning of the policy in question, under the circumstances above stated, viz. of her capture, recapture, appraisement, and sale, and with an entire new set of owners, he thinks he is entitled to a total loss.

The defendant, on the contrary, urges that this was no more than a bare capture and recapture, which he says has never been deemed a total loss; in reply to which the plaintiff affirms, that this was still more, for the ship after being retaken, was carried into Waterford by the privateer, kept some considerable time there, afterwards was carried into Liverpool, and there, as above-mentioned, with the cargo, appraised and sold to pay the salvage, and a new set of owners engaged before she set out for Bristol, by which the whole voyage was altered and lost.

And to justify this plea, he quoted my Lord Chief Justice Lee's sentiments, when he gave judgment in the case of the Salamander, viz.

"We must not judge this cause by the rules of the civil law, but we must judge it by the rules of the common law, and determine on this policy as an agreement and contract between the parties, whose intention and meaning, when they enter into it, must govern; and although in the civil law, to make a forfeiture of an insurance there must be a total loss of property, that is not a reason why it should be required in this case, because here the policy by the words of it extends to accident, where there may be no loss of property, as taken by pirates, enemies, men of war, &c. And this his Lordship declared, as taken notice of by Lord King, in the case of De Paiba and Ludlow, where there was no alteration of property by that capture, as Sweden was not at war with England, and yet that was deemed a total loss; but in the present case, here was a capture by an enemy; and his Lordship further said, that the question on the Salamander was not, whether the property of the privateer was lost by this capture, but whether the capture was such a peril as is insured against? The judges were unanimously of that opinion, and judgment was given for the plaintiff."

Verdict for the defendant.

This action was brought by the plaintiff against the defendant, on a policy of insurance,
which the latter underwrote so long ago as in November, 1743, on the ship George and Henry, Captain Bower, at and from Jamaica to London, interest or no interest, free of average, and without benefit of salvage to the insurers, with a warranty annexed to the policy, viz. "Warranted the said ship to sail from Jamaica, with the fleet that came out under convoy of the Ludlow Castle man of war."

The said ship did sail accordingly, with the fleet under the aforesaid convoy; but in a great storm that happened some time after their sailing, wherein many ships were lost, the George and Henry received so much damage as obliged her to bear away for Charles Town in South Carolina, where she put in, and upon examination, was found quite unfit to put to sea again; whereupon her cargo was taken out and laden aboard other ships for London, and she condemned and broke up.

In consequence of which the plaintiff demanded his insurance; and all the underwriters, being satisfied of the truth of the afore-mentioned facts, paid their loss, except the defendant, who went so far as to settle it, and according to custom, underwrote the policy in the following words and figures,

"Adjusted the loss on this policy, at ninety-eight pounds per cent. which I do agree to pay one month after date, London, 5 July, 1745.

HENRY GOULDNEY."

When this note became due, he thought himself no way bound by it, but insisted on fuller proof; particularly of the ship's sailing under convoy, as warranted, and of her condemnation at Carolina; but it having been always the custom that after such adjustments as above, with promise of payment at a certain day, are made between the insured and insurer, no further evidence it ever required, but the loss constantly paid; it was upon this account, that

The jury found a verdict for the plaintiff.

And my Lord Chief Justice, considering it as a note of hand, declared that the plaintiff had no occasion to enter into the proof of the loss.

It is not yet positively determined, whether an adjustment is conclusive against the underwriter or not. In the case of De Garron v. Galbraith, Park 118, Lord Kenyon was of opinion that the plaintiff should produce other evidence, and that shutting the door against inquiry after an adjustment, would be putting a stop to candour and fair dealing among underwriters, and that if any fraud was practised, or there was any misconception of law or fact upon which an adjustment was made, such an adjustment is not conclusive against an underwriter; but his Lordship would not extend the principle. See also the case of Christian v. Coome. 2 Esp. N. P. C. 489, to the same effect. In the case of Herbert v. Champion, 1 Camb. C. N. P. 134, Lord Ellenborough expresses his opinion, that an adjustment is merely an admission on the supposition of the truth of certain facts stated, that the assured are entitled to recover; yet that before actual payment of the money, the assured may avail himself of any defence furnished either by the facts or law of the case. But in the case of Shepherd v. Chewter, 1 Camb. N. P. C. 274, Lord Ellenborough observed, that "an adjustment was prima facie evidence against the defendant, but it certainly did not bind him unless there was a full disclosure of the circumstances of the case, unless they were all blazoned to him as they really existed," thereby in some measure supporting the opinion of Lord Kenyon in De Garron, and Galbraith, and Christian v. Coome; but it seems upon the whole, that a mere adjustment is not in any case, or under any circumstances, conclusive, and the utmost effect which can be given to it, is to transfer the burthen of proof from the assured to the underwriters. See Mr. Campbell's note, 1 Camb. Rep. N. P. 276.
The Tiger, Captain Harrison, being bound from London to Gibraltar, the plaintiff got an insurance made on her, interest or no interest, free of average, and without benefit of salvage to the insurers; and at the foot of the policy there was a warranty, that the ship should depart with convoy, from some port in the channel.

The said ship proceeded on her voyage as far as the Downs, and sailed from thence under convoy, as warranted: but soon after her departure she received a very considerable damage, which obliged her to return to Dover Pier to refit; and after the necessary repairs were finished, she sailed again, in prosecution of her voyage, and for her security therein, to join the convoy at Spithead; but having got as far as the Isle of Wight, she proved so leaky as obliged her to a second return, and she once more arrived at Dover, to search for her leaks.

Her owners, on this, thought it advisable to have her surveyed by men of skill and judgment, and thereupon two ship carpenters, and two masters of ships having examined her, declared that they had surveyed both sides from stem to stern above the wales, and the transom, after the planks were ripped off, and found the timbers to be very rotten, and in so bad a condition that except all her upper works were pulled down and new built, they did not judge her in a fit condition to proceed on her intended voyage; and that if she was so repaired, the charges would come to more than she would be worth, with all belonging to her.

The plaintiff insists that she was a very good ship when she set out on her voyage, and she was only rendered otherwise by the bad weather she had met with, which at last not only rendered her unfit for her voyage, but occasioned her proving a total loss to the owners; that she would have weathered the storm, in all probability, unhurt, had not the Swift privateer drove foul of her; that when her first hurt was repaired, the builder supposed her stronger than before the storm; though when she was laid open, her transom, as before-mentioned, and most of her long timbers were found rotten, so that notwithstanding it is possible she might have performed her voyage, yet had her defects been known, no body would have cared to venture in her.

Mr. Burton, who fitted her out in the Thames, declares she was in very good condition, and fit for any voyage; though he did not examine her timbers, but only caulked her, and mended her outside and floor timbers; but it is natural to suppose, that if her timbers were sound in October, when these repairs were done, they could not have been rotten in January, when she received her damage.

And the defendant grounds his reasons for not paying the said insurance, first, on that part of the policy's contents, which asserts the ship to be tight, staunch, and strong, and, barring future accidents, able to go through the voyage; whereas he supposes this vessel not to have been so, as he thinks is clear, from the preceding affidavit, and from the verbal evidence of one of the surveyors; to which he adds, in order to make the proof of her defects the stronger, that on her first setting out she belonged to two Jews, who, on her return to Dover Pier the first time, sold her to Mr. Richard Glover, a considerable merchant of this city, who ordered her to be repaired, and actually laid out upon her £150. though as it appears, it was in a manner thrown away, as on her second return she was condemned, broke up, and sold in parcels; and her incapacity to proceed on her voyage having been so apparent, from the foregoing survey, as to induce Mr. Glover to desire the shippers to take their goods out, and though he had got £300. insured on her, he seemed so sensible of the deceitful bargain with the Jews, in selling him an old rotten ship, that he never demanded one farthing of the said insurance from the underwriters.

That the plaintiff had no interest in the vessel, and therefore this was only a gaming policy; and as it is a general rule in all cases of interest or no interest, that there must be total loss before the insured can recover, and the insurer by this policy being free
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from average, or a partial loss, it seems to be the principal question in this case, whether the ship brought into Dover Pier, there condemned as being rotten, divided into lots, and sold, will be considered in the agreement or wager, as a total loss? And to enforce to the contrary, the defendant remarks, that there was no loss at sea, no capture, but a deliberate act done by the owner, upon a regular survey, which occasioned her being broke up, not by reason of the damage she had received, but from the rottenness of the principal parts of her works.

Verdict for the plaintiff.

Agreeably to this decision, Earl Mansfield in delivering his opinion, in a late case concerning neutral property, by way of illustration of his argument, referred to a similar point of law; the question being, whether a ship warranted in the policy to be neutral property, is deemed to be continued so during the whole voyage. Which was determined in the negative. "So," added his Lordship, "by an implied warranty every ship must be tight, staunch, and strong; but it is sufficient if she be so at the time of her sailing. She may cease to be so in twenty-four hours after her departure, and yet the underwriters will still continue liable. The warranty is that things stand so at the time, not that they shall continue."

A ship is presumed not to have been seaworthy, unless it be made appear that her disability arose from sea damage or other misfortune. Marsh. 365.

The plaintiffs having received orders from Mr. John Jones, of Boston in New England, to make some insurance for him on the Reprisal, Captain Gowen, and also on her goods and freight, at and from Cape Fare, in North Carolina, to Bristol; underneath the policy for the ship only was inserted the subsequent words or declaration, viz. The following insurance is on the ship only, valued at the sum insured, on which part the defendant underwrote 100l.

The ship sailed from Cape Fare, with a cargo of pitch, tar, &c. in prosecution of her voyage for Bristol, and got within one hundred and fifty leagues to the westward of Cape Clear in Ireland, where she was attacked and taken by three French ships, bound for Newfoundland, where they carried her and her cargo to a French port, called Carpoon, after having first taken out all her men, and dispersed them aboard their own ships.

On their arrival at the aforesaid port, the captors took out all her pitch, being two hundred and three barrels, some tar, what rice was aboard, &c. and after detaining her about three or four weeks in the said port, the captors offered Captain Gowen his ship, and remaining cargo for 9500 livres, about 425l. sterling, which he accepted, and became the purchaser thereof on those terms, leaving his son as an hostage for the payment of the ransom.*

The ship departed from Carpoon for Bristol, and on her voyage met with very bad weather, which broke her rudder, and was forced to put into Appledore in Devonshire, the first port they could make with safety; where the captain, first and second mates, boatswain, and a foremast-man, made a protest on their oaths, giving such an account as the preceding.

The captain having purchased the ship and cargo, as before-mentioned, on his arrival at Appledore applied to Mr. Perkins of Bristol, to whom he was consigned by Jones, the owner, who refused to pay the ransom-money, or have 'any thing to do with ship

* By the stat. 22 Geo. 3. c. 25. s. 1. it was declared that no ransom of any ship, &c. taken by an enemy, should be legal, and a penalty of 500l. is incurred by the doing it. This act has expired, but its provisions have been continued by all the subsequent prize acts. See stat. 33 Geo. 3. c. 66. s. 37, 38; 43 Geo. 3. c. 160. s. 34, 35; and 45 Geo. 3. c. 72. s. 16, &c. now in force.
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or cargo; and then the captain came to London to the insurers; and those on the goods empowered and desired him to sell the cargo for what he could, in order, that, if it produced more than the ransom, they might have the benefit; but the insurers on the ship would not intermeddle, or give any direction about it.

The captain returned to the ship, and sold that and the cargo jointly, for above 100l. less than the redemption-money, after deducting charges; and he has been obliged to pay, or give security for the remainder, to procure his son's liberty.

The ship being thus taken and carried into an enemy's port, where she was detained a considerable time, and had great part of her cargo taken out by the captors, and afterwards meeting with other misfortunes, occasioned her producing less than the ransom-money, and consequently to prove a total loss, to be made good by the insurer.

The preceding is a state of the case, and of the plaintiffs' demands, who think themselves entitled to a total loss, as the policy was valued; but the defendant, on the contrary, pretends that, as part both of the ship and goods were saved, he is entitled to an average, and not subject to an entire loss; but

The jury found a verdict for the plaintiffs.

The plaintiff made an insurance in London, on the Tryal privateer, fitted out at Bristol, for two calendar months, where the ship might then be, on a cruise, or in any port or place whatsoever or wheresoever; the said ship to be valued at interest or no interest, free of average, and without benefit of salvage.

The said privateer being fitted for a cruise, sailed from Bristol on the 29th of May, 1746; and some days after she was met by a French privateer of a superior force, who attacked, and, after a brave defence, took her.

She had been in the enemy's hands about eight hours, without their removing any of her men or stores, when Admiral Martin, with his whole fleet, appearing, retook the Tryal; and, hearing of the gallant behaviour both of the captain and crew, they unanimously agreed to give up their salvage to them, and accordingly drew up and signed an instrument for that purpose; and the admiral ordered her to be furnished with all necessaries, and sent a man of war sloop to see her safe into Bristol, where she arrived the latter end of June, being between three or four weeks before the insurance expired.

These circumstances, the plaintiff thinks, entitles him to a total loss, as the voyage was overset, and the policy being on interest or not, will admit of no average.

The defendant agrees to the last assertion; but, for that very reason insists, he has no loss to pay, as he is free from a partial one, and there can be no total one where the ship is arrived, and, as he insists, might have been fitted out again before the limited term of the two months expired, had the owners not determined the contrary; and, besides, though the ship was taken, yet as she was never carried infrà presidia of the enemy, or was so taken as to be beyond a possibility of a re-capture, and having returned to Bristol so long time before the two months expired as was sufficient to refit her in, the defendant supposes that the neglect of the owners ought not to be imputed to the underwriters, more especially as several ship-builders attended to prove there was time enough, as several merchants did to give their opinion with regard to the loss.

Verdict for the plaintiff.

If the object of the voyage be lost, it is sufficient to give the plaintiff a right to recover as for a total loss. Per Lawrence J. 6 T. R. 425.

The plaintiff was owner of the ship Love and Unity, which he let out to freight to one Bateman Humphrys, for a voyage to Lisbon and back again; and the freighter was by charterparty obliged to victual and man her, which he did accordingly, putting in
the master and crew, and, embarking himself, proceeded on his voyage, and arrived safe at Lisbon. He delivered the outward-bound cargo, and put the ship up for London, in hopes of getting a freight home; on advice of which, the owner and plaintiff got her insured. "at and from Lisbon to Gravesend, warranted to sail with the convoy."

The freighter, being at Lisbon, meditated a fraud; which iniquitous scheme he perpetrated in the following manner, viz. he made up rolls of lead about the size of moidores, six and thirties, and three pound twelves, packed up, and sealed, as such monies are usually packed up and sealed, and made packages likewise in imitation of those of diamonds, and then sent them on board. He took bills of lading from the captain, as for real money and diamonds, sent those bills of lading home to different merchants, and drew considerable sums upon the credit of them, as well as made large insurance, in order, as is supposed, to have lost the ship in the voyage home, and make the insurers pay as though such effects had actually been on board; but the captain, as it is imagined, suspecting something of the fraud before the ship sailed, opened one or more of the packages, and discovered the cheat, finding nothing but lead and glass, instead of gold and diamonds; of which he giving information to the English consul there, the freighter ran away, and the captain and crew left the ship, the captain coming to England.

The plaintiff, on knowing what had occurred, by the master's arrival, immediately applied to the insurers, and desired them to send to Lisbon for the ship, or furnish him with money to go and fetch her; but they were of opinion, and accordingly acquainted him so, that as the ship was at the port she was insured from, and had not proceeded on her voyage, it was the business of the owner, not the insurers, to find master and mariners to navigate her; the consequence of which was, that the ship lay there neglected till she was broke to pieces, whereupon the plaintiff brought this action for the recovery of a total loss.

The defendant thinks himself not obliged, as he presumes the words in the policy, at and from, can only mean to give the ship leave to stay at the port a reasonable time to procure a lading, and take it in, and not to lie there till she rots, without attempting the voyage; as this would be to make the insurer at all events liable, sooner or later, whereas he supposed he undertook a risk for two or three months only.

But, I presume, the underwriters would be obliged by the barrety of the master and sailors, as I imagine the act of deserting the ship would be construed, and therefore, abstracted from all other arguments, would on this point only be condemned.

Verdict for the plaintiff.

Barrety may be committed either by desertion of the ship, by wilful deviation, in fraud of the owner, by running away with the ship, by sinking her, or by defeating, or delaying, the object of the voyage with a criminal intent. See the cases of Vallies v. Wheeler, Cowp. 143; Earle v. Rowcroft, 8 East. 134; and see Marshall on Ins. 442 to 460.

The plaintiff in the present case brought an action against the defendant, for an insurance this latter underwrote on the Mediterranean, at and from Bristol to Newfoundland, the ship valued at the sum insured, without further proof of interest than the policy.

It appeared upon the trial of this cause, that the plaintiffs, who were merchants at Bristol, were owners of the ship in question, and had sent her out upon a voyage from thence to Newfoundland; that she carried with her a letter of marque, and in her voyage met and took a French ship, which she brought back to Bristol; that she
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soon set out again upon the same voyage, and took another prize, which she also returned with.

Upon the ship's coming back, the plaintiffs applied to the insurers for a return of part of the premium, which was ten guineas per cent. in regard they had not run so much risk as if the ship had proceeded the whole voyage, and the insurers returned three per cent.

A new policy was made for the voyage now under consideration, in the same manner and on the same terms as the last, and the ship set out on her voyage, and took another prize.—The captain, who was the plaintiff's only witness, said, their directions to him for the preceding voyages were, that in case he took any thing to return with it to Bristol, or not, as he should think proper; but in this last voyage their directions were, if he took any thing, to send it home by part of the crew, and with the other part to proceed on the voyage; and that he would have done so, but the sailors, after the capture, would not proceed on the voyage, but would return to take care of her to Bristol; and that all the crew, except the mate, surgeon, and one other, were of this mind, and swore if the captain would not go back, they would not touch a rope, nor do the least thing towards navigating the ship; on which the captain was forced to comply, and set his ship homeward, as guard or convoy to the prize; that in going back to Bristol, the Mediterranean was taken, though the prize got in safe, and for this loss the plaintiffs brought their action.

On the part of the defendant it was insisted, that this was a deviation for the benefit of the assured, and that the insurers were therefore discharged.

It appeared on the captain's evidence, that the plaintiffs had given a part of all prizes to the captain and ship's crew; and that it was for the care and protection of this prize, which made the sailors insist to go back with her, which was the first cause and ground for the deviation, and therefore, and for that the plaintiffs were likewise themselves to be greatly benefited by the prize, the defendant insisted he should not pay.

But it appearing also from the evidence of the captain, that his orders for this voyage were positively to proceed, notwithstanding any capture he should make, and that he would have done so, if he could have prevailed on the sailors, and that his returning was wholly owing to their refusal to proceed, and his incapacity to go on without them, the Lord Chief Justice and the jury were of opinion with the plaintiffs, and the jury brought in their verdict accordingly.

Necessity will always excuse a deviation; and the cases of necessity most commonly adduced to justify a departure from the direct course of the voyage insured are stress of weather, (1 T. R. 22.) want of necessary repair, (1 Atk. 545. Park. 301.) joining convoy, (2 Salk. 445. 2 Stra. 1365. Cowp. 601.) escaping from or avoiding an enemy, and mutiny of the crew; which last evidently appears to be a good excuse for deviation, by the above case of Elton v. Brogden.

The plaintiff being part owner of the ship Onslow, an East India ship, then lying in the Thames, and bound on a voyage to China, and back again to London, insured it at and from London to any ports and places beyond the Cape of Good Hope, and back to London; free from average under ten per cent. upon the body, tackle, apparel, ordnance, ammunition, artillery, boat, and other furniture of and in the said ship: beginning the adventure upon the said ship, from and immediately following the date of the policy, and so to continue and endure until the said ship, with all her ordnance, tackle, and apparel, shall arrive as above, and hath there moored at anchor twenty-four hours in good safety. And it shall be lawful for the said ship, in this voyage, to proceed, and sail to, and touch, and stay at any ports or places whatsoever, without prejudice to this assurance. The perils mentioned in the policy are the common perils, viz. of the
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The ship sailed, and arrived in the river Canton in China, where she was to stay, to clean and refit, and for other purposes. Upon her arrival there, the sails, yards, tackle, cables, rigging, apparel, and other furniture, were by the captain's order taken out of her, and put into a warehouse or storehouse, called a bank-saul, built for that purpose on a sand-bank, or small island, lying in the said river, near one of the banks called Bank-Saul Island, about 200 or 220 yards in length, and 40 or 50 yards in breadth, in order to be there repaired, kept dry, and preserved till the ship should be keeled, cleaned, and refitted. Some time after this, a fire accidentally broke out in the bank-saul belonging to a Swedish ship, and communicated itself to another bank-saul, and from thence to the bank-saul belonging to the Onslow, and consumed the same, with all the sails, yards, tackle, cables, rigging, apparel, and other furniture belonging to the Onslow, which were therein.

The question in this case was, whether the insurers were liable to answer for this loss, so happening upon this bank-saul, within the intent and meaning of this policy? It was stated, that it was the universal and well-known usage, and had been so for a great number of years, for all European ships which go a China voyage, when they arrive near this Bank-Saul Island in the river, to unrig the ship, &c. and to act in every respect as captain Pelly had done; and that the so doing was prudent, and for the common benefit of the owners of the ship, the insurers and insured, and all persons concerned in the safety of the ship. It was objected, that this was not a loss by sea, but at land. But it was answered, that the loss being upon a sand-bank in the river, and in the only port where the English can clean and refit their ships, it was a loss at sea, and the policy expressing an insurance from fire, it was to all intents within the meaning thereof; and a verdict was given for the plaintiff, subject to the opinion of the Court of King's Bench; and Lord Mansfield afterwards delivered the opinion of the court, confirming the said verdict.

Where a ship, having been chased by an enemy of superior force, and the captain, in order to prevent her from falling into the hands of the enemy, set her on fire, it was held that this loss was covered by the policy, and that it was immaterial whether it was occasioned by a common accident, or by lightning, or by an act done in duty to the state. Gordon v. Rimington, 1 Campb. C. N. P. 123.

Of Re-Assurance and Double Insurance.

Re-Assurance, as understood by the law of England, may be said to be a contract, which the first insurer enters into, in order to relieve himself from those risks which he has incautiously undertaken; by throwing them upon other underwriters, who are called re-assurers. This species of contract has obtained a place in most of the commercial systems of the trading countries of Europe; and it is allowed by them, at this day, to be politic and legal: and the law of England adopted this regulation, and permitted the underwriters upon policies to insure themselves against those risks for which they had inadvertently engaged to indemnify the insured; or where, perhaps, they had involved themselves to a greater amount than their ability would enable them to discharge. But though such a contract seems perfectly fair and reasonable in itself, and might be productive of very beneficial consequences to those concerned in this important branch of trade, yet, like many other useful institutions, it was so much abused, and turned to purposes so pernicious to a commercial nation, and so destructive of those very benefits it was originally intended to promote and encourage, that the legislature
was at last obliged to interpose, and by a positive law to cut off all opportunity of practising those frauds in future, which were become glaring and enormous.

Accordingly it was enacted, that it should not be lawful to make re-assurance, unless the assurer should be insolvent, become a bankrupt, or die; in either of which cases, such assurer, his executors, administrators, or assigns, might make re-assurance, to the amount before by him assured, provided it should be expressed in the policy to be a re-assurance.

From this act, says Park, it is apparent that all kinds of re-assurance are not prohibited; but wherever such a contract tends to the advancement of commerce, or to the real benefit of an individual, in such cases it shall be permitted. Thus, in case of insolvency or bankruptcy, it is advantageous to the creditors in general, as well as to the individual, that a re-assurance should be made: for by these means, the fund of the bankrupt's estate is not diminished in case of loss, and the insured has a better security for the payment of the amount of his damages, or at least a proportion of it. If the insurer die, it is no less necessary and beneficial to his successors than it was in the former case of a bankruptcy; because it will provide assets to satisfy the insured, in case a loss should happen, and thus secure the estate of the deceased for the benefit of his heirs.

The statute is worded in such express terms, excluding every species of re-assurance, except in three instances of death, bankruptcy, or insolvency, that a doubt, as it should seem, could hardly be founded upon it. But as it was held, that the first clause prohibiting insurance, interest or no interest, did not extend to foreign ships, so it was argued, that re-assurance made here on the ships of foreigners did not fall within the act. This point, therefore, came on to be considered by the Court of King's Bench, in the year 1787, in the form of a special case; stating, that a re-assurance was made by the defendant on a French vessel, first insured by a French underwriter at Marseilles, and who, at the time of subscribing the second policy, was solvent. The court were unanimously of opinion, that this policy of re-assurance was void; and that every re-assurance in this country, either by British subjects or foreigners, on British or foreign ships, is void by the statute, unless the first assurer be insolvent, become a bankrupt, or die.

But there is another kind of assurance, which is called double insurance, and which has been not unfrequently confounded with re-assurance, by merchants and commercial writers; it is for this reason, that we shall state the difference accurately in this place.

A double insurance is, where the same man is to receive two sums instead of one, or the same sum twice over, for the same loss, by reason of his having made two insurances upon the same goods, or the same ship. The first distinction between these two contracts is, that a re-assurance is a contract made by the first underwriter, his executors or assigns, to secure himself, or his estate; whereas a double insurance is entered into by the insured. A re-assurance, except in the cases provided for by the statute, is absolutely void: a double insurance is not void; but still the insured shall recover only one satisfaction for his loss. This requires explanation.

Where a man has made a double insurance, he may recover his loss, against which of the underwriters he pleases; but he can recover no more than the amount of his loss. This depends upon the nature of insurance, and the great principles of justice and good faith. An insurance being merely a contract of indemnity, in case of loss, it follows as a necessary consequence, that a man shall not recover more than he has lost, or receive satisfaction greater than the injury he has sustained. It being thus settled, that the insured shall recover but one satisfaction, and that in case of a double insurance he may fix upon which of the underwriters he will for the payment of his loss, it is a prin-
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ciple of natural justice, that the several insurers should all of them contribute, in their several proportions, to satisfy that loss against which they have all insured. These principles have been fully declared to be law in several cases.

First, in the year 1763, it was ruled by Lord Mansfield, Chief Justice, and agreed to be the course of practice, that upon a double insurance, though the insured is not intitled to two satisfactions, yet upon the first action he may recover the whole sum insured, and may leave the defendant therein, to recover a rateable satisfaction from the other insurers. See 1 Blackstone's Reports, p. 416.

Thus also it was determined in another cause at Guildhall, many years after. It was an action to recover on a policy of insurance on a ship from Newfoundland to Dominica, and from thence to the port of discharge in the West Indies. It was a valued policy on the ship and freight, and on the goods as interest should appear. The ship sailed from St. John's the 17th of December, 1775, and the plaintiff declared as for a total loss. The defendant underwrote for 200l. and paid into court 124l. This sum was paid on a supposition, that the underwriters on a former policy should bear a share of the loss. The plaintiff had originally insured at Liverpool, on a voyage from Newfoundland to Barbadoes and the Leeward Islands, with an exception of American captures; but the plaintiff afterwards, for the purpose of securing himself against captures, and having altered the course of his voyage, made the present insurance. The plaintiff insisted he was intitled to receive the full amount of his insurance from the defendant, and not any part from the Liverpool underwriters, because the voyage last insured was different from that insured at Liverpool. A verdict was given for the plaintiff for his full demand, with liberty for the defendant to bring an action against the Liverpool underwriters, if he thought fit.

Accordingly, in the Easter Term following, an action was brought for money had and received to the use of the plaintiff, who was the defendant in the first cause, in order to recover a contribution for the loss which he had been obliged to pay. The plaintiff had paid 200l. loss, and 47l. costs. The question was, whether the defendant, one of the Liverpool underwriters of the first policy, was liable to contribute any thing, and what? it was insisted by the counsel for the defendant, that the insurance in London was an illegal re-assurance; and therefore the plaintiff might have made a good defence on that ground, as defendant in the action brought against him; and, if so, he could not now recover against the present defendant. Lord Mansfield said—"The question seems to be, whether the insured has not two securities for the loss that has happened; if so, can there be a doubt that he may bring his action against either? it is like the case of two common securities for money, where, if all the money be recovered against one of them, he may recover a proportion from the other. Then, this would bring it to the question, whether the second insurance is void as a re-assurance? but a re-assurance is a contract made by the insurer to secure himself; and this is only a double insurance." Upon this direction, the jury found for the plaintiff.

Though only a single satisfaction can be recovered on a double insurance by the same person, yet different persons having distinct interests may insure the same thing to the amount of such interests, even to the full value of the thing insured, and each may recover to that amount. See Observations of Ashurst, J. in Smith v. Lascelles. 2 T. R. 188; and 1 Marshall on Ins. 119.

Of Bottomry and Respondentia-Bonds, as connected with Cases of Insurance.

Bottomry is a contract, by which the owner of a ship borrows money to enable him to carry on the voyage, and pledges the keel or bottom of the ship, as a security for the re-payment. If the ship be lost, the lender also loses his whole money; but if
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not, he shall receive his principal, and the stipulated interest, which is called marine interest, however it exceed the legal rate. This interest, however high and exorbitant it may seem, can never be deemed usurious, provided the money lent be bond fide put in risk; but in order to entitle the lender of money upon a bottomry or respondentia contract, the risk must have actually commenced, otherwise the contract will become a simple loan, even though the borrower covenant to perform the voyage. See Marshall on Ins. 647, 8.

By the law of England freight may be insured, and consequently it may be hypothecated upon a bottomry contract. Marsh. 644.

When the loan is not made upon the vessel, but upon the goods, then the borrower only is personally bound to answer the contract, who is said to take up money at respondentia. In this consists the chief difference between bottomry and respondentia; in most other respects they are the same.

The borrower, on respondentia, can only insure the surplus value of the goods, over and above the money borrowed.

The lender alone can make insurance on the money lent.

Bottomry and respondentia may be insured, provided it be specified to be such interest, in the policy.

When a person insures a bottomry interest, and recovers upon the bond, he cannot also recover upon the policy.

This was an action on the case, upon a policy of insurance made on goods and merchandizes, laden or to be laden on board the good ship or vessel called the Denham, whereof was Master Captain William Tryon, “at and from Bengal to any ports or places whatsoever in the East Indies, until her safe arrival in London,” which policy was underwritten by the defendant for 200l. for a premium of 10l. per cent. The plaintiff declared for a total loss. The defendant pleaded the general issue.

The case came on to be tried at Guildhall, London, on the 1st of December, 1762, before Lord Mansfield; it appeared in evidence, that the defendant underwrote the policy and received the premium as stated in the declaration; that before the underwriting of the policy, the plaintiff had lent to William Tryon, the master of the ship, upon the goods then laden and to be laden on board the said ship, on account of the said William Tryon, the sum of 764l. on respondentia, for which a respondentia bond was executed by Captain Tryon and one Joseph Bustol, to the plaintiff.

The bond was in the common form; and recited, “That the above named Alphonse Glover had, on the day of the date, lent and advanced to the above bounden William Tryon the sum of 764l. upon the merchandizes and effects laden and to be laden upon the account of the said William Tryon; on board the good ship or vessel called the Denham, of the burthen of 499 tons or thereabouts, now in the river Thames, whereof he the said William Tryon is the Commander.” And the condition was, “That if the said ship should, with all convenient speed, proceed and sail from and out of the said river Thames on a voyage to any parts or places in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, and from thence should sail and return into the said river Thames at or before the end or expiration of thirty-six calendar months to be accounted from the day of the date of these presents, and that, without deviation, the dangers and casualties of the seas excepted; and if the above bound William Tryon, and Joseph Bustol, or either of them, their or either of their heirs, executors, or administrators should, within thirty days next after the said ship or vessel should be arrived in the said river Thames from the said voyage, or at the end and expiration of the said thirty-six calendar months, to be accounted as aforesaid, which of the said times should first or next happen, well and truly pay, or cause to be paid, unto the said Alphonse Glover, his executors, administrators, or assigns, the
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The court declared that the words ought to be inserted, it being the established law and custom of merchants—and Lord Mansfield owned that at the trial, and also since, upon the arguments before the court, he did lean to support this insurance. And his reason for so doing, was, that he was satisfied of its being a fair insurance, and that the doubt which had arisen upon it was only occasioned by a slip in omitting to specify, as it was intended to have been done, "That this was a respondentia interest." This slip however could not be rectified, for the court after taking some time to consider the case, nonsuited the plaintiff solely for the omission. This case being thereby rendered highly interesting to caution merchants in respect to the careful wording of policies, we having given the substance, and for the entire arguments of the eminent counsel concerned on both sides, we refer the gentlemen of the law, or merchants having similar cases at issue, to Parker's Laws of Shipping and Insurance, with a Digest of adjudged Cases, 4to. Lond. 1775.

In a respondentia bond, the condition of which, after reciting that the money was lent upon the goods laden and to be laden on board a ship out and home, was similar to the condition in the above case of Glover v. Black; it was held that the contract was a mere personal obligation from the borrower to the lender, and did not give the latter any specific pledge or lien on the home cargo, or the proceeds thereof. 4 East. 319.

There were nine causes in all, upon the several insurances of the East India ship the Winohelsea, Captain Howe Commander; they had been tried by special juries at different times; the charter-party, bearing date the 20th of August, 1761, was according to a printed form which had been long in use, in which, among many other provisions, a stipulation was made for 20l. 8s. 4d. a day, demurrage, for so long a time as she shall be detained in India, China, or elsewhere within the said limits, in the service and employment of the said company; March the 25th, 1762, the ship sailed; September 19th, she arrived at Bombay; November the 4th, she left Bombay the first time; March 5th, 1763, she arrived at Calcutta. On the 28th, the presidency and council of Bengal entered into a new agreement with the captain, reciting, "that the charter-party, would expire on the 11th of February, 1764, but that the president and council, finding it expedient to detain the ship in India, and desirous of having the time limited in the charter-party prolonged, &c. the indenture therefore witnesseth, that the captain lets the ship to freight for one whole year from the said 11th of February, 1764, &c."

In July, 1763, the ship arrived at Bombay, the second time. The beginning of 1764, she arrived at Bengal; March 19th, she left Bengal to go to Bombay; and on the 21, she was lost. A copy of the new agreement had been sent to London by the captain, whose letter was received and publicly read in a coffee-house, in the month of April, 1763; and other insurances were made upon the ship after this new agreement was publicly known. The underwriters insisted, that the policies were void, because at the time of underwriting, they were not expressly told of the new agreement "to detain the ship in India for a year longer than the enlarged time provided for by the charter-party, which expired on the 11th of February, 1764."

The causes were tried at first with different success: but all the nine verdicts were at last uniform for the plaintiffs, the insured, against the underwriters. The reasons that governed the court were, that the underwriters are bound and presumed to know the course of the East India trade, the times of the charter-party, and the destination of the India ships, which are under the direction of the company, and not of the owners. That the charter-party is a printed form of a very long standing.—That, besides the liberty thereby given, to prolong the ship's stay for one year, it is very common, by a new agreement, to detain her a year longer, for no ship comes home in ballast, and the longer a ship is kept, the more beneficial it is to the owners. That the words of the policy are adapted to this usage, being without limitation of time or place, and without
any reference to the first voyage particularly mentioned in the charter-party. The terms of the policy precisely describe the risk, in its utmost latitude; and necessarily extend to every prolongation of stay, and every country voyage—That any of the defendants might have learned at the India-house all that was to be known. That the chance of her stay is one of the risks insured—Finally, that this ship was insured at the same premium, after the prolongation of her stay in India was known.

Upon the whole, the ultimate decision of the court upon these causes establishes the following rule for the information of underwriters and all persons making insurance upon East India ships, "That policies of insurance upon East India ships, include the chance of their being detained in India, and the risk of their country voyages there."

So in the case of Vallance v. Dewar, 1 Camb. C. N. P. 503, which was an action on a policy of insurance on ship, freight, and cargo of the ship Courier, lost or not lost at and from Newfoundland to a port in Europe—and wherein it appeared to be the usage of the Newfoundland trade, that when ships arrive on the coast, they are either employed for some time in fishing (called banking), or they make an intermediate voyage in the American Seas before beginning to take in their homeward cargo, during which they are protected by a separate policy; it was held that on effecting the policy above-mentioned it was not necessary to disclose the fact to the underwriters, as their risk only commences from the time when the banking, or intermediate voyage, ends, and they are bound to know the nature and circumstances of the branch of trade to which the policy relates. See also the case of Noble v. Kennovy, Doug. Rep. 510, to the same effect; and Ougier v. Jennings, C. P. Sittings at Guildhall after E. T. 1800. Cor. Lord Eldon Ch. J. 1 Campb. C. N. P. 503, n. a. Kingston v. Knibbs, lb. 508, in notis.

Miscellaneous Observations and singular Circumstances respecting Insurances.

A circumstance which rarely happens must be noticed in this place; because it vacates and annuls, ab initio, the contract of insurance. It is this; whenever an insurance is made on a voyage, expressly prohibited by the common, statute, or maritime law of the country, the policy is of no effect. The principle, upon which such a regulation is founded, is not peculiar to this kind of contract; for it is nothing more than that which destroys all contracts whatsoever; that it can never be presumed that men will make an agreement forbidden by the laws; but if they should attempt such a thing, it is invalid, and will not receive the assistance of a court of justice to carry it into execution.

The most material case upon this point is, that of Johnson and Sutton, which came on to be argued in the year 1779, and received the solemn opinion of the Court of King's Bench.

It was an action on a policy of insurance on goods on board the ship Venus, "lost or not lost, at and from London to New York, warranted to depart with convoy from the Channel for the voyage." The cause was tried before Lord Mansfield at Guildhall, and a verdict was found for the plaintiff. The defendant obtained a rule to shew cause why there should not be a new trial.

The facts, upon his Lordship's report, appeared to be these: the ship was cleared for Halifax and New York. She had provisions on board, which she had a license to carry to New York, under a proviso in the prohibitory act of 16 Geo. 3. cap. 5. But one half of the cargo, including the goods which were the subject of this insurance, was not licensed, and was not calculated for the Halifax market, but for New York. There had been a proclamation by Sir William Howe, to allow the entry of unlicensed goods at New York; and though there were bonds usually given at the Custom-house here, by...
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which the captain engaged to carry the goods to Halifax, those bonds were afterwards cancelled, on producing a certificate from an officer appointed for that purpose at New York, declaring that they were landed there. The commander in chief had no authority under the act of Parliament to issue such proclamation, or to permit the exportation of unlicensed goods. The Venus was taken in her passage to New York by an American privateer. The first section of the statute prohibits all commerce with the province of New York, amongst others, and confiscates all ships and their cargoes which shall be found trading, or going to, or coming from trading with them. In section the second, there is a proviso excepting ships laden with provisions for the use of his Majesty’s garrisons or fleets, or for the inhabitants of any town possessed by his Majesty’s troops, provided the master shall produce a license specifying the voyage, &c. and the quantity and species of provisions; but by the same proviso it is declared, that goods not licensed, found on board such ships, shall be forfeited.

After argument upon the motion for a new trial, Lord Mansfield said—"The whole of the plaintiff's case goes on an established practice, directly against an act of Parliament. If the defendant did not know that the goods were unlicensed, the objection is fair as between the parties. If he did, he would not deserve to be favoured. But, however that may be, it was illegal to send the goods to New York, and in pari delicto, potior est conditio defendentis. It is impossible to bring this within the cases cited, (cases of insurance on ships trading contrary to the revenue laws of foreign countries) because here there was a direct contravention of the law of the land." The rule for a new trial was made absolute. See also the case of Potts v. Bell, 8 T. R. 548. But in order to render an insurance illegal it is necessary that the illegality should exist during the course of the voyage insured. Hence a policy on goods purchased with the proceeds of an illegal cargo is binding. Bird v. Appleton, 8 T. R. 562. And in like manner the assured may recover on a policy, although the ship in a prior voyage had been guilty of some transgression, for which she was liable to be seized. See the same case.

If a ship, though neutral, be insured on a voyage prohibited by an embargo, laid on in time of war by the prince of the country, in whose ports the ship happens to be, such an insurance is also void. This depends upon the power of an embargo, the right of laying on which by the Sovereign of Great Britain, in time of war, is undoubted; although, in a time of peace, it may be a different question. The right being admitted, it follows of course, that any act done in contravention of a proclamation of this nature is illegal and criminal, because it is equally binding as an act of Parliament, and a contract founded on such illicit proceedings is consequently void.

By the laws of almost all countries, the exportation and importation of certain commodities are declared to be illegal: to act contrary to that prohibition is clearly a contempt of legal authority, and consequently a moral wrong. If the act itself be illegal, the insurance to protect such an act must also be contrary to law, and therefore void. Agreeably to this principle, it seems to have been laid down by the writers upon the subject, as a general and universal proposition—that an insurance being made; although in general terms, does not comprehend prohibited goods; and therefore, when the insured shall procure such commodities to be shipped, by means of which the ship and cargo are confiscated, the insurance is discharged; but they made the following exception, the underwriter being ignorant of it; a distinction which our courts of law will not admit; and accordingly all the modern cases have been decided against the insured; even though the underwriter knew the goods were prohibited, because the act itself being unlawful, and the lader knowing it at the time of the lading, such assurance cannot oblige the insurer to answer the loss; for the same is not such an assurance as the law supports.

But although insurances upon goods, the exportation or importation of which is pro-
hibited by the law of England, or by the law of nations, be illegal, yet, where the prohibition is founded merely on the law of a foreign state, the insurance will be valid, because one nation never takes notice of the revenue laws of another. Planche v. Fletcher, Doug. 250.

Abandonment, as it regards contracts of insurance, is understood to be a cession and abandonment, on the part of the insured to the insurer, of his right to all the property that may happen to be recovered from shipwreck, capture, or any other peril stated in the policy, before he can demand a remuneration from the latter for a total loss: for, by a total loss, we do not always mean, that the thing insured is absolutely lost and destroyed; but that, by some of the usual perils, it is become of so little value as to intitle the insured to call upon the underwriter to accept of what is saved, and to pay the full amount of his insurance, as if a total loss had actually happened.

Indeed the word abandonment conveys the idea, that the whole property is not lost; for it is impossible to cede or abandon that which does not exist. When the underwriter has discharged his insurance, the abandonment being made, he stands in the place of the insured, and is intitled to all the advantages resulting from that situation.

The doctrine of abandonment has obtained a place in the laws of all the maritime nations in the world, where insurance has been known. There is no difference in the definition of the word; and they all agree, that when an abandonment is made, it must be a total, not a partial one; that is, one part of the property insured shall not be retained, and the other abandoned; a regulation certainly founded in justice.

But, with respect to the cases and circumstances in which the insured is intitled to exercise this power, the regulations of some foreign countries vary from the decisions of our courts of law: however, as the principles of abandonment in no country have been more accurately defined than in England, and that not by the speculative opinions of private writers, but by the solemn and deliberate judgment of that great modern luminary of the British law, Earl Mansfield, and other grave and learned judges of the land, we may venture to affirm, that the decisions of our courts, founded upon those principles, are established upon the solid and permanent basis of reason and equity, consequently are to be considered as of the first authority.

From these decisions we may collect, that the right to abandon must arise upon the object of the insured being so far defeated, that it is not worth his while to pursue it. For instance, if the voyage be lost, or not worth pursuing; if the salvage be very high, suppose a half; if further expense be necessary; if the insurer will not engage at all events to bear that expense, though it should exceed the value, or fail of success. Under these and many other similar circumstances, the insured may disentangle himself, and abandon, notwithstanding there has been a re-capture.

It is material to observe, that the right to abandon must depend upon the nature of the case at the time of the action brought, or at the time of the offer to abandon: a determination founded on the equity of the contract between the parties; because an insurer ought never to pay less, upon a contract of indemnity, than the value of the loss, and the insured ought never to gain more.

But it is evident, that there may be circumstances in which it would be contrary to every principle of justice to suffer the insured to abandon: suppose a ship to be taken and escape immediately, which would be no hindrance to the voyage, or another to be captured and instantly ransomed, which would amount only to a partial loss; in these cases, the insured could not be allowed to demand a remuneration for a total loss.

In many of the maritime countries on the continent of Europe, the time, within which the abandonment must be made, is fixed by positive regulations. Thus, in France, it is ordained, that all cessions or abandonments, as well as demands in virtue of the policy, shall be made as follows: in six weeks, for losses happening on the coasts
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of the country where the insurance was made: in three months, in other provinces of the kingdom: in four months, on the coast of Holland, Flanders, and England: in a year, in Spain, Italy, Portugal, Barbary, Muscovy, Norway; and in two years, for the coasts of America, the Brasilis, Guinea, and other distant countries. When these terms are elapsed, the demands of the assured shall not afterwards be admitted.

In the law of England, till lately, we had no limitation of time, with respect to abandonment. But in a very modern decision it has been held, by the Court of King's Bench, that as soon as the insured receive accounts of such a loss as intitles them to abandon, they must, in the first instance, make their election whether they will abandon or not; and, if they abandon, they must give the underwriters notice in a reasonable time, otherwise they forego their right to abandon, and can never afterwards recover for a total loss; and it seems that it is the province of the judge to direct the jury as to what is a reasonable time under the circumstances. See Lord Ellenborough's observations in Anderson v. Royal Exch. Assur. 7 East. 43. The assured cannot lie by and treat the loss as an average loss, and take measures for the recovery of it without communicating that fact to the underwriters, and letting them know that the property is abandoned to them. Per Lord Kenyon in Allwood v. Henckell, Park. 172.

But if the insured, hearing that his ship is much disabled, and has put into port to repair, express his desire to the underwriters to abandon, and be dissuaded from it by them, and they order the repairs to be made, they are liable to the insured for all the subsequent damage occasioned by that refusal, though it should amount to the whole sum insured: because the reason why notice of abandonment is deemed necessary is, to prevent surprize, or fraud, upon the underwriter; but, in the case put, they have, by their own act, superseded the necessity of notice.

It is of the utmost consequence to all persons concerned in insurances in England to know, that where the sentences of foreign courts, in causes of insurance, have not differed materially from our laws, or from the law and custom of merchants, the decision of the foreign judicatures has been held conclusive in our own, in numerous cases tried before Lord Mansfield; and others, which, upon motions for new trials, received the solemn decision of all the Judges of the Court of King's Bench.

Nor is this all; for, even where the laws of other countries differ from those of England, if the contract of insurance regards a ship belonging to such countries; though the underwriter be a British subject, the decision in our courts will follow that of the foreign tribunal, if any has been had, or will proceed upon the ground of established usage amongst merchants in those countries. This appeared in a cause tried in the King's Bench at Guildhall, before Lord Kenyon, Chief Justice.

It was an action on a policy of insurance upon a respondentia bond on ship and goods; at and from B. to C. The ship was Danish, and an average loss was sustained upon the goods to the amount of 6l. 15s. per cent. and the plaintiff, as holder of a respondentia bond, had been called upon to contribute; and now brought his action against the English underwriters for the amount of that contribution.

Lord Chief Justice Kenyon said—"By the laws of England, a lender upon respondentia is not liable to average losses; but is intitled to receive the whole sum advanced, provided the ship and cargo arrive at the port of destination. The plaintiff contends, that as, by the laws of Denmark, such lenders upon respondentia are liable to average, and bound to contribute according to the amount of their interest, the insurer must answer to them. The Danish consul has proved that he received a judgment of the Court of Copenhagen, the decratal part of which proves the law of Denmark to be as the plaintiff has stated it. The opinions of several men of eminence in that country have been offered on each side; but I reject them, because the solemn decision of a
court of competent jurisdiction is of much greater weight than the opinions of advocates, however eminent, or even than the extra-judicial opinions of the most able judges. It seems as if, in this case, the underwriters were bound by the law of the country, to which the contract relates."

Verdict for the plaintiff.

The above is not the only case in which the insurers have been held liable to indemnify; the insured having been obliged, by the law of a foreign country, to pay a larger sum than by the laws of England could have been demanded; and, in the following case, the learned judge seems to have relied chiefly on the usage of merchants which had been proved.

It was an action on a policy, upon a cargo of fish from Newfoundland to any port of Spain, Portugal, or Italy. The ship met with bad weather, and put into Alicant and Leghorn to repair. The captain, being owner, presented a petition to the Commercial Court of Pisa to adjust the general average, as he had put in for the general benefit of all concerned. The court, according to its usual course, which appears to be a very extraordinary one, adjusted the loss by charging the cargo at its full value: but the ship only at one half, and the freight at one third: and they also charged, as a part of the general average, the seamen's wages and provisions, while in port. The defendant, as underwriter, had paid into court as much as would cover the average, if adjusted according to the memorandum in the policy, and the law and usage of England. The question was, Whether the plaintiff having been compelled to pay beyond that sum, according to the calculation of the sentence of the Court of Pisa, it was conclusive upon the defendant, and the plaintiff was intitled to recover his average by the same standard. The plaintiff called several brokers, who said, that in repeated instances they had adjusted averages under similar sentences of the Court of Pisa; and the underwriters, though with reluctance, had always paid them.

Mr. Justice Buller—"On the general law, the plaintiff would fail; but in all matters of trade, usage is a sacred thing. I do not like these foreign settlements of average, which make underwriters liable for more than the standard of English law. But if you are satisfied it has been the usage, upon the evidence given, it ought not to be shaken."

The plaintiff had a verdict accordingly.

Of a return of premium it is needless to cite any cases, as the principle, upon which the whole of this doctrine depends, is simple and plain, admitting of no doubt or ambiguity. The risk or peril is the consideration for which the premium is paid: if the risk be not run, the consideration for the premium fails; and the equity implies a condition, that the insurer shall not receive the price of running a risk, if, in fact, he runs none. It is just like the contract of bargain and sale; for if the thing sold be not delivered, the party who agreed to buy is not liable to pay. Thus, to whatever cause it be owing that the risk is not run, as the money was put into the hands of the insurer merely for the risk of indemnifying the insurer, the purpose having failed, he cannot have a right to retain the sum so deposited for a special cause. The causes tried and decided upon this principle are accurately reported by Park, p. 368, and sequel. And see the case of Tyrie v. Fletcher, Cowp. 668; where Lord Mansfield states the rule to be, that where the risk has not been run, whether its not having been run was owing to the fault, pleasure, or will of the insured, or other cause, the premium shall be returned; because a policy of insurance is a contract of indemnity; but where the risk has once commenced, there shall be no apportionment or return of premium afterwards. See also Loraine v. Thomlinson, Doug. 587. And upon an insurance at and from a
place if an usage can be proved warranting a division of the risk, the insured will be entitled to an apportionment of the premium, in case one of the risks be not run. Long v. Allen, Marsh. 570.

The two following cases are of so singular a nature, that they cannot properly be classed under any general rule, or common instances.

Policy of insurance, to warrant a ship for twelve months. The ship did not perish within the time of twelve months, accounted according to the solar months of January, February, &c. but within twelve lunar months of twenty-eight days to the month; and it was resolved, that the policy was not forfeited.

After citing a clause in the statute of 6 Geo. 1. c. 18, which prohibits any other society or partnership whatsoever from making insurances, or lending money on bottom, except the two corporations established by that act, viz. the Royal Exchange and the London Assurance Offices, our author relates, that upon this clause, a question lately arose at Guildhall.

This was an action brought against the defendant, to recover a sum of money received by him from one Bristow to the plaintiff's use. The plaintiff was an underwriter, and the defendant was a broker; and a loss having happened upon a policy underwritten by the plaintiff, he had been obliged to pay it: but Bristow, having agreed to take half the plaintiff's risk, had paid his moiety of the loss into the hands of the defendant; to recover it from whom this action was brought.

Lord Chief Justice Kenyon—"I am of opinion that the plaintiff cannot recover; for this is clearly a partnership within the act of Parliament. If a single name appears upon the policy, as in this case, the insurer shall never be allowed if a loss happen, to defeat a bond jide insurance, by saying to an innocent person, there was a secret partnership between another and myself, and therefore the policy is void. But here, the plaintiff is himself the underwriter, who comes to enforce an illegal contract: it is a partnership pro hac vice; and this party cannot apply to a court of justice to enforce a contract founded in a breach of law."

No motion was ever made to set aside the non-suit: but, two or three days after, Lord Kenyon took occasion to mention to the counsellors at the bar, that he had stated the case to the other judges of the Court of King's Bench, who were unanimously of the same opinion with his Lordship.

To the great variety of new cases of insurance introduced in the present edition, we have only to add the following just observations from Weskett's Complete Digest of the Theory, Laws, and Practice of Insurance, a work of great merit, Fol. London 1781: —"As there are in England but very few express laws and regulations concerning insurance, nor any distinct court, commissioners, or other persons, appointed particularly, as in other countries, for the decision and adjustment of losses, average, salvages, recaptures, and the almost infinite variety of matters and differences that arise therefrom, the only resort in cases of dispute being to our common law courts, with enormous expenditure, trouble, and uncertainty; it is the more needful for an insurer to be well acquainted with commercial and maritime affairs in general, and the doctrines, laws, usages, and practice concerning them, as well abroad as at home; since all those various and sometimes intricate transactions, accounts, documents, &c. which occur amongst merchants, mariners, and other persons in the course of foreign traffic; and other events may occasionally come under his cognizance, especially in time of war, and require the exercise of a suitable judgment upon them; which, if he is unable to do for himself, he must necessarily be subject to, and his fortune chiefly depend upon the deceit, imposition, and fraud, or at least the ignorance of many of the persons he has to deal with."

Having mentioned the various branches of insurance engaged in by our underwriters,
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It is proper in this place to give the copy of a policy on goods, those on ships and goods, or ships only, and this again either outwards or homewards, or out and home, or to one certain port, only differing in the aforesaid circumstances.

In the name of God, Amen.

as well in his own name, as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and causeth himself and them, and every of them to be insured, lost, or not lost, at or from upon any kind of goods and merchandizes whatsoever, laden or to be laden aboard the good ship or vessel, called the whereof is master, under God for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandizes, from, and immediately following the lading thereof aboard the said ship and so shall continue and endure, until the said ship, with the said goods and merchandizes whatsoever, shall be arrived at and the same there safely landed; and it shall be lawful for the said ship, in this voyage, to stop and stay at any port or places whatsoever without prejudice to this insurance; the said goods and merchandizes, by agreement, are and shall be valued at without further account to be given by the assured for the same. Touching the adventures and perils which we the assured are contented to bear, and do take upon us in this voyage; they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter mart, surprisals, taking at sea, arrest, restraint, and detainments of all kings, princes, and people, of what nation, condition, or quality soever; barretry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detri

ment, or damage of the said goods and merchandizes, or any part thereof. And in case of any loss or misfortune, it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safe-guard, and recovery of the said goods and merchandizes, or any part thereof, without prejudice to this insurance; to the charges whereof we the assured will contribute each one according to the rate and quantity of his sum herein insured. And it is agreed by us the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard-street, or in the Royal Exchange, or elsewhere in London. And so we the assured are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured at and after the rate of per cent. And in case of loss, which God forbid, the assured to abate pounds per cent.

In witness whereof, we the assured have subscribed our names and sums assured in London.

N. B. Corn, fish, salt, fruit, flour, and seed, are warranted free from average, unless general, or the ship be stranded. Sugar, tobacco, flax, hemp, hides, and skins, are warranted free from average, under five pounds per cent. And all other goods, also the ship and freight, are warranted free from average under three per cent. unless general, or the ship be stranded.

The written clauses or words inserted in the usual printed forms of policies, in order
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to express the meaning of the parties to the contract, which, from some particular circumstances, the printed form may not sufficiently explain, are equally binding with the printed clauses, and in many cases may control them.

Of Foreign Insurances.

Insurances made in France and Holland, being the only countries where any thing considerable is transacted in this species of business, out of our own, I shall begin with the latter, as superior to the other in point of commerce, and more largely concerned with the merchants of Great Britain than any other maritime power on the continent of Europe.

It is generally believed, and by many affirmed, that more insurances are made at Amsterdam than with us, or indeed in any other part of the world; their extensive commerce by sea, and the extraordinary number of vessels continually sailing from thence, naturally occasions many to follow the practice of insuring; but what has yet augmented this business, and multiplied the policies of insurance almost to infinity, has been that honour and integrity with which their underwriters were formerly characterized, as their policies were then only subscribed by men of large fortunes; but whether great losses, or a subsiding of that courage, before so conspicuous in the very small number of the rich, then constituting the body of underwriters, for Mr. Savary and Mr. Ricard say, they did not exceed fifty or sixty, occasioned their withdrawing from business, I shall not pretend to determine; but it is certain, their number in the present century has greatly increased, and their chicaneries are at least equal to those of their neighbours and contemporaries; and had they not admitted business on worse terms than here, that is, at lower premiums, there would not have been that recourse to their city, as the many failures amongst the insurers plainly demonstrated they had changed their set, and that many of less credit and fortune were admitted to subscribe, than the wealthy few above-mentioned.

The first ordinance in that city, which regulated the policies of insurance, was about the end of the sixteenth century; it was originally digested into thirty-six articles, but many of these have since been reformed, new-modelled, or explained by twelve subsequent ordinances, of which the principal ones are those of the years 1600, 1601, 1606, 1607, 1614, 1626, and 1688, and it is by this last, that the policies of insurance may be said to remain fixed, though some few alterations have been made since.

But Mons. Jean Pierre Ricard, in his book, Le Negoce d'Amsterdam, having given an account of the articles made at the several times above-mentioned, with his remarks on them; I shall translate as much of them as I judge may be worth my reader's regard, and in doing it shall follow the author's method.

No. I.

1st Article, "Declares all contracts of insurance null and void, which are made in this city contrary to law, by any stipulations, conditions, or words they shall contain."

Remark. This article is not always strictly followed; for many insurances are made which are not exactly conformable to the ordinance, and others directly contrary to it, as will be seen in the following remarks; but when this happens, a clause should be inserted in the policy, by which the insurers expressly renounce all the laws, ordinances, and placards, which are against such an insurance; and in case of a loss, and that the insurers will not settle it amicably, the assured may cite them before the sheriffs, or the court of Holland, to bring them to reason, and not before the Chamber of Assurances,
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because the renunciation made by the insurers includes an exclusion from this court, which can only determine in conformity with the ordinance.

2d Article, "Prohibits the making insurance on goods for more than \( \frac{1}{4} \) of their clear cost abroad, when it does not exceed 12,000 guilders; but permits the surplus of that sum to be insured, provided the assured runs the risk of the \( \frac{1}{4} \) of the 12,000 guilders."

Remark. This article is very rarely observed, and there is hardly any one policy which does not contain these words, And the assured may cause himself to be insured the whole, without risking the tenth, we taking on us the entire value, even with the premium included; and I do not see what occasion the assured has to run a risk of the tenth, as the difference of 1200 guilders on an insurance of 30 or 40,000 is but trifling to the underwriters: however, notwithstanding it is so inserted in the policy, that the whole is insured, yet if the insurer disputes payment in case of a loss, and is cited before the commissioners, they will have no regard to this clause; but, on finding that the assured has not run the risk of the tenth of the 12,000 guilders, they will make him run it, by obliging him to return the premium of what exceeds the tenth, or by adding it to that part of the loss which the assured ought to bear.

3d Article ordains, "That the policies contain the name of the ship and of the captain, that of the places where she is to lade, and go to, under penalty of the policy's being void, if the fault is in the assured; but if it comes from the broker, he shall be answerable for it."

Remark. It is very necessary to observe this article, in all its contents, nicely; because the assured not only have an opening to deceive the insurers by wilfully omitting the name of ship or master in the policy, but many disputes may happen, and the underwriters may, by having already insured a very large sum on the same ship, be rendered scrupulous of signing such policies.

However, there are cases where it is impossible to know upon what vessel there will be an interest, by reason of the distance of the place from whence goods and effects are expected; as, for example, from Curaçao, Surinam, Archange, or other remote parts, from whence effects, and the advice of their lading, are frequently received together; and as it would be very hard for a merchant, who expects effects from those parts, to find that he is unable to get himself insured, only for want of the name of the ship and captain, it may be remedied by inserting in the policy, that the insurance is on goods, to be laden by such a one, on one of the first ships that shall come from thence.

The Spaniards frequently get insured at Amsterdam, on any vessel or vessels which have laded goods at La Vera Cruz, or elsewhere in the Spanish West Indies, to their address; but there is found such deceit in these contracts, by the concerned sending false declarations, that they had not received any thing upon any ship of the flota or flotilla when they had, and returning the premium, as has made the greatest part of the insurers resolve not to underwrite to those gentlemen, but on condition to make no returns, although the assured should have no interest in the fleet.

4th Article ordains, "That the insurance on goods shall begin from the moment they are brought on the quay, to be carried on board the ship destined to transport them, and shall endure till they are arrived at the place of their consignment, and are unladed in safety, and free from damage."

Remark. There are some who imagine they have no right to be insured till the goods are laded, and bills of lading signed; and others, who receiving advice from abroad, of freight being taken on a ship and captain named, believe they ought not to insure, till they receive advice of the departure of the ship, or at least till they have got the bill of lading and invoice, in which they greatly err; for, besides that the policy expresses on goods laden or to be laden, the article before-mentioned seems to suppose the insurance

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made before the embarking; but it is not to be imagined, that if the merchandise has suffered in going on board, and is afterwards insured, that the insurer is obliged to pay the damage, on pretext that it is said in the policy, that the insurance shall commence from the moment that the goods are upon the quay, &c. This would be very unjust, therefore, it ought to be understood only, when the assurance is made before the goods are taken out of the warehouse, or before they are sent aboard; for besides the risk which the assured runs in shipping them, which is greater in some places than in others, he likewise exposes himself to pay a higher premium than if he had insured sooner, because the more insurances there are made on a ship, the higher premiums the insurers demand; and it is further to be remarked on this article, that although the risk is not finished till the goods are unladen and safe, that, as at Amsterdam, they are frequently left in the lighters for five or six days, or more, the insurers are not obliged for any damage that may happen to them, only for the first day.

5th Article says, "That if, in a year and a day after the insurance made, or after the ship's departure, if it is for any part of Europe or Barbary, there is no news of her at the place from whence she sailed, nor at that she was bound to, she shall be esteemed as lost, and the assured may demand payment from the insurers in three months; but for places more distant, the term shall be that of two years."

Remark. It too often happens that ships founder at sea, so that no person escapes to tell the story; and our underwriters do not postpone payment according to the preceding terms, as this would oblige them to a total loss, that is cent. per cent.; but in order to lessen it something, when they see the assured has no advice of the ship, and when she stays two or three times longer than she should, so that there is no room to suppose her safe, they themselves endeavour to agree with the assured, and commonly pay ninety-six per cent. on such occasions.

6th Article declares, "Those assurances to be null and invalid which are made three months after the departure of the ship destined for the coast of Europe, Barbary, and the adjacent parts, or those made in six months after the ship's departure for more distant places, if the assured does not advertise the insurers thereof, and if he does not get himself insured on good and bad news; that is, lost or not lost."

Remark. That as the articles 20 and 21 have an affinity with the foregoing, I shall remark on them all together.

20th Article imports, "That it is permitted to insure ships, merchandise, and effects, that are lost, pillaged, or damaged, even after the loss, &c. has happened, provided that the assured has no advice of the loss," &c.

21st Article says, "That the assured shall be supposed to have known of the loss, &c. if he has omitted to make insurance, till after he can have received advice either by land or sea, counting three leagues of way, or two hours of time; and that then the assurance shall be void, notwithstanding, or maugre, all the proofs of ignorance the assured may be able to give; unless he is insured on good or bad news, and that he can swear that when he made the insurance he had not the least account of the loss," &c.

Remark. By these three articles, which seem to be made in favour of the insurers, they are notwithstanding sometimes exposed to the cheats of people, who make no conscience of a false oath, provided it brings gain, and therefore the insurers seldom underwrite in these cases to unknown persons, or at least in prudence they should not; and what may be gathered from the said third article, is, that the ignorance of the assured, in regard of the ship, or touching the good or bad advices concerning her, are the two only conditions which can render the insurance valid, and therefore the oath is very necessarily ordained in these cases; for what would be more unjust than to insure a thing known to be lost, which could never enter the thoughts of an honest
man; but as these articles permit an insurance to be made, whilst the loss, pillage, or
damage remains unknown, consequently it may be done on a vessel suspected to be lost
after a storm, or feared to be taken by an enemy, from some confused flying reports
about her, though without learning any thing certain; for example, suppose a storm to
happen, with many ships in the Texel, and that severall of them were seen to drive, and,
among others, such and such a one, and that it is feared they may be lost; in which
case, the concerned, knowing that there will at least be large averages, and that there
is no room to suspect a total loss, if no advice is received in two or three days; yet as
this is uncertain, and cannot possibly be known, the interested person may make in-
surance, if he can find those that will underwrite, after the advices above-mentioned, on
payment of a premium proportionable to the risk: it is the same with respect to a ship
which is said to be taken by the enemy, though the report is unconfirmed, and all other
similar cases, in which the insurance will stand good, provided it is inserted in the
policy the last news there was of the vessel, and that the insurance is upon good and bad
advices, of which the assured can swear that he knows of no others at the time of mak-
ing the said insurance.

7th Article declares, "That the insurance shall be null, if the assured makes his ship
to touch at any other ports than those mentioned in the policy; but if this is done by
the master, either through choice or necessity, without the assured’s order, it shall not
hurt the insurance."

Remark. This article, though so very clear as to explain itself, is notwithstanding
very often the occasion of many disputes between the assurers and assured; the
former endeavouring to make the first part of it serve as a just plea for non-payment of
a loss or average happening in any port not mentioned in the policy, if a declaration of
the captain and crew is not very express, that he was obliged to go into it through ne-
cessity; in which case the insurers have nothing to reply, because the affidavit of the
master and his men is credited, and the underwriters are condemned without the least
difficulty; but as it frequently happens that a ship goes into some port by order of the
owner, or principal freighter, unknown to the other laders, it is very important to re-
mark the sense of this article, and to distinguish him who knew that the vessel would
touch at certain ports, from him who laded only for one, and did not know that she
was to call at others: For example, ships are daily set up at Amsterdam for Bourdeaux,
and the merchants lade aboard them, without inquiring or imagining that they are to
stay at any place by the way, and make their insurances directly for that place; never-
thelass it happens that some one has a considerable parcel of goods to ship for Rochelle,
and not finding a ship ready to depart for that port, he agrees with the master lading
for Bourdeaux to take his goods for Rochelle, and obliges him to deliver them before
he proceeds to Bourdeaux; if this is transacted without the knowledge of him who
makes insurance for Bourdeaux only, and any mischance happens to the ship at
Rochelle, this shall not occasion a nullity in the policy of him who was ignorant that
the vessel must call at the latter; but there will be one in the policy of an owner of
such a ship, who has got insurance made on her directly for Bourdeaux; because, ac-
cording to this article, he could not direct her going into any other port but that men-
tioned in the policy, and that it is supposed he knew, when he made his assurance, that
the ship was to touch at Rochelle; for if he did not know it till after his policy was
signed, he ought to have got a clause inserted therein, that the ship should have liberty
to call there.

It every day happens, that vessels which are lading for Marseilles, Genoa, and Leg-
horn, take in goods for Cadiz, Seville, Barcelona, and other ports in their way, without
its being known to those who shipped for the first three places, and who only got their
interest insured to that of one of them, where the merchandize went consigned, without
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inserting in the policy, a liberty for the ship to touch by the way at the aforesaid ports, and the insurers do not use to make any dispute about it with the shippers who were ignorant of it, because they know well enough that it is customary for such ships to take in merchandize for different places; but an owner who insures, for example, from Amsterdam to Leghorn, without putting in the policy, that the ship may touch at, or go into all ports that are in her route, his insurance shall be discharged, if the vessel is lost in any one of the ports in which he shall have entered, &c.

8th Article, "Limits the assured to six months for abandoning any ship or effects to the insurers, which some foreign power has stopped and retains, when the retention is on the coasts, or within the limits of Europe or Barbary; and one year, if it is in any more remote place, counting from the day that the brokers shall have advertised the insurers thereof, by directions from the assured: and it permits these latter, within the times so limited, to take their precautions against the underwriters, by securities, pawns, or otherwise, as they shall think proper; permitting them besides, or their agents, to lade the merchandize reclaimed and released, upon other ships, to be carried to the place they were designed for; and if the assured omit it, the insurers may do it; in which case, these latter shall only be obliged to defray the expense of lading and freight, and to pay for any damage the goods may have suffered, during their embargo."

9th Article, makes an exception in the before-mentioned time, in respect of perishable commodities, such as wines, fruits, grains, &c. in regard of which, "The assured shall not be obliged to wait the expiration of the said six months, but may endeavour to obtain their release in the manner he deems best, though he must make the insurers acquainted with the condition the merchandize is in."

Remark. In the two preceding cases of a detention or an arrest, the insurers leave the care of reclaiming what shall be so stopped to the assured: but these should not fail to be well and duly authorized by the insurers, which authorization is invalid, except made by the Huissier, an officer, of the Chamber of Insurances; and therefore it imports the assured not to neglect having it made by him that may effectually serve them, in case the insurers should make any wrangling about the charges of reclaiming, &c. as these commonly are exorbitant, and frequently occasion great disputes; to avoid which the assured should absolutely do nothing without the consent of the underwriters; and when the sum is pretty heavy, it will be adviseable to engage one or two of them to act in concert with the assured, at least in obtaining the releasement of the embargoed effects.

If the merchandizes reclaimed are released, and laden on some other ship, in order to finish the voyage, the assured should not fail to make the insurers declare it by a clause at the bottom of the policy, by which they acknowledge to be advised that the ship, upon which the merchandize insured was laden, having been embargoed, it was shipped on board such other vessel, and that they continued the same risk, as they ran on the first ship, to their destined port.

10th Article, "Prohibits the making insurance on the body of the ship, guns, and warlike stores, for above two-thirds of their value, and to insure in any manner whatsoever the freight, stores, powder, balls, victuals, or such like consumable things."

Remark. This article was too burthensome to owners of ships, in obliging them not to insure above 24,000 guilders, upon an interest of more than 35 or 36,000; so that their risks were reduced to an eighth part of the value of ships, by the first article of the ordinance of the 26th of January, 1698, as will be seen hereafter.

11th Article, "Prohibits masters of ships, mates, sailors, men at arms, and all others who serve aboard, to insure their salaries, or any thing that belongs to them, except they have goods with them above the import of their wages."
Remark. This article is founded on substantial reasons, of which the principal is, as I imagine, that as the owners are not obliged to pay the mariners after losing their ship, these latter commonly endeavour all they can to save her, when in danger, in order to secure their pay; and it is certain that they would not act on such occasions with so much zeal, if their wages were insured.

12th and 13th Articles, "Limits the time in which the assured are obliged to bring their action of damage or average against the insurers, viz. a year and a half, if the loss or damage has happened on the coast of Europe or Barbary, and in three years, if it has happened in more distant regions; to be reckoned from the time of the ship’s entire discharge, or from the time in which the loss has happened."

Remark. The case very seldom happens, that the assured wait so long a time to demand their loss or average from the insurers or at least to let them know that they have one to settle, which is sufficient for commencing an action against them in case of refusal, even when they cannot know till a long time after, what the said loss or average will amount to.

14th Article says, "That all the preceding orders are to be understood for assurances made on every thing that goes by sea," &c.

15th Article, "Regards the insurances made on goods, carried by land, or rivers, the which the merchants may contract among themselves, as they shall think proper, except that the assured shall run the risk of the \( \frac{1}{2} \) as in the second article of this ordinance, and that the carters and waggoners shall not insure above half the value of their carts, wagons, or horses, and nothing of their wages."

Remark. There are very few of these sorts of insurances made at Amsterdam, therefore I shall not make any observations on this, or the subsequent article 16, which is only "To allow the assured a year’s time to demand from the insurers the recovery of the loss or average which has happened to the goods, going by land or river."

17th Article ordains, "That if insurance is made upon grains, fruits, wines, oils, salt, herrings, sugar, quicksilver, tallow, butter, cheese, hops, syrup, honey, seeds round or flat, and such like things as are subject to corruption: upon ammunition, and upon silver coined and uncoined; they shall be specified in the policy, upon penalty of its being otherwise null and void."

Remark. The alteration of this article will be seen in what follows, at number 3.

18th Article, "Permits the contracting parties in assurances, to make them before notaries, registers, or other public officers, or by private notes of particular persons, or before creditable witnesses."

Remark. As this ordinance was made on the 31st of January, 1598, it appears that but few insurances were made then, and they were permitted to be under a private firm, and upon common paper; but the number of them having considerably increased since that time, it was necessary, as will be seen in the sequel, to ordain a set form, and to have it marked by the Secretary of the Chamber. For a long time, all sorts of policies were drawn up indifferently, under the twelve stiver seals; but by the regulation made by the States of Holland and West Frisland, upon the duty of the small seal, of the 28th of August, 1716, in the 58th article, "It is ordained, that all the policies for sums under 500 guilders, shall for the future be made under the twelve stiver seals; those of 500 guilders, and less than 10,000, under the twenty-four stiver seals; and those of 10,000 and upwards, under the forty-eight stiver seals."

But as it would be imprudent in the brokers to hazard a sealed policy, when their employers order them to get a sum insured at a limited price, or on such conditions, as they doubt will not be complied with, they have small policies on common paper, which they often get the underwriters to sign, and afterwards to transfer their firms to such as are ordained by law, when the insurance is completed.
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19th Article, "Orders all those concerned in policies, to make them out according to the ordinance, and to keep a copy, verbatim, of all the hand-writing therein."

Remark. This is so much the more necessary, as the assured may happen to tear or lose a policy, or some knave who has got himself insured, may alter something therein to his benefit, and the disadvantage of the insurers; in which case, and in other similar ones, the copy which the broker keeps, may serve for a proof and testimonial.

I have already noticed the Articles 20 and 21, under the 6th.

22d Article, "Permits the assured to demand a return of premium from the insurers, except ½ per cent. if he does not lade the goods, or those are not shipped for him, on which the insurance was made, or if he has insured more than the value of the merchandise he has shipped, or is shipped for him."

Remark. When a return of premium is demanded, it should be done as soon as possible, to remove all suspicion from the insurers, of an intention to cheat them in case of damage; and if the insurance is made on a ship coming from a distant port, in the expectation of having some goods by her, which on her arrival is found to be otherwise, the assured should shew the underwriters, when he demands the return, the letters he may have received, with the advice that his correspondents could not send him anything by that occasion; or at least a declaration from the captain, attesting, that he brought nothing for the assured; for without this, he will not be unlike those people, who finding their merchandise safe arrived, are so dishonest to affirm they had nothing aboard, in order to procure a return.

23d Article, "Ordains, that the last underwriters shall participate in the insurance, as much as the first, either in profit or loss."

Remark. With regard to profit or loss, one insurer may have more than another in the same insurance; for when a very large sum is to be insured, and a good part of it is done at a certain price; for example, at three per cent. but a sufficiency to complete it is not to be obtained on these terms, the premium is raised to four per cent. in which case the last underwriters gain one per cent. more than the first, if the adventure arrives safe, and lose one per cent. less than the others, in case it does not; but it is not in this respect, that this article is to be understood, for it only ordains, that each insurer shall partake of the profit or loss, in proportion to the sum he has signed for, viz. if one insurer, who has underwrote at three per cent. gains the premium, he that has underwrote for four or five per cent. gains it also; and if he that has signed for three per cent. pays fifty or sixty per cent. loss or average, he that has by his firm obtained four or five per cent. shall pay neither less nor more than the other.

24th Article, "Orders upon pain of nullity, not to make insurance upon the life of any one, nor upon any wager of a voyage, nor any such inventions."

Remark. As there is no point of practice, or subtlety in the world, either to gain or preserve money, which has not been found out or invented at Amsterdam, this article is not always religiously observed, and there are people, who having a post, which, for example, may bring them in 5000 guilders per ann. get that sum insured on their life for a certain number of years, that if they die, their family may enjoy the revenue, for the remainder of the term insured; but these are very ticklish insurances.

25th Article imports, "That the assured having abandoned in form to the insurers, the latter shall have three months time allowed to pay the sum they have underwrote for."

Remark. The insurers are obliged to pay the sum insured, entire, without any deduction, in case they take the above-mentioned three months to do it in; but the common custom is for them to have two per cent. abated in case of prompt payment on losses well proved, for if the proofs are insufficient, the insurers endeavour to take advantage of this circumstance, to pay as little as possible, and the assured must get as
much as they can, or wait till they have procured proofs of the loss, in all the forms by law required.

26th Article, "Says that if the gross average does not exceed one per cent. the insurers shall not be obliged to pay it."

Remark. Averages of two or three per cent. happen so often, that the insurers find no advantage in this article, and therefore they have for a long time agreed to sign no policy which does not free them from any average under three per cent. as also to be free from the ex pense of Jours de Planche, which are those days a ship is to lie, by custom or charterparty, more than what is necessary to lade or unlade her cargo, and as, they are frequently obliged to pay averages upon wools, flax, and hemp, they have for some years past agreed among themselves, not to insure on these three sorts of merchandise, except free of average, under ten per cent.

Nevertheless, when the insurers are sued, the Commissioners of the Chamber have no regard to these clauses, but condemn the underwriters to pay all averages that exceed the one per cent. in conformity to the ordinance.

27th Article, "Frees the insurers from paying the damage or loss, upon things that corrupt and spoil from their own imperfect nature, when some foreign cause or mischance has not contributed to it."

Remark. If the grain, fruits, or other such merchandise, happens to heat, or the wine, brandy, oils, and other liquors, are spilt and leaked, without any thing's contributing to it, the damage is the assured's; but if it is occasioned by the sea-water in a storm, or by a shock of the ship against some bank of sand, or any similar cause, the damage is for the insurer's account.

28th Article, "Obliges the assured to advertise the insurers of the advices they receive, of the mischances, embargoes, and damages, which happen to the ships or effects insured, and that brokers, or other public persons, do make minutes of such advertisements."

Remark. The assured are so much the more obliged to give this notice to their insurers, as it is they who must pay the damage, in case of a disaster; and if the assured does the least thing unknown to the underwriters, and without their consent or authority, and that what the assured shall have done to prevent a greater ill, turns out the reverse of what he expected, there are many cases in which the insurers would not be obliged for the damage, and others in which they may have room to wrangle a great deal, to lessen their loss.

29th Article, "Imports, that this ordinance ought to be understood generally, for all the insurances which shall be made in this city, as well by the subjects of this country as by strangers, and upon all sorts of merchandise and effects, going and coming, both by sea, and land; and if they are contrary to the ordinance, they shall be null and invalid, as is mentioned in the first article."

Remark. I have already observed on the first article, that many insurances were made, which are not entirely conformable to the ordinance; and I have nothing more to add here, but that use and custom have introduced many things which are contrary, but he ought to be extremely sedulous, on making any insurance contrary to the ordinance, in taking care what insurers underwrite the policy, and to insert all such clauses, as may leave no room for dispute, or to have them annulled by the Chamber of Insurances, or by the other courts of justice, in case of being obliged to come before them, which will in a great measure depend on the ability and forecast of the broker.

30th Article, "Forbids the Commissioners of the Chamber of Assurances, their secretary and clerk, and all insurance brokers, to insure or to be insured, directly or indirectly."

Remark. It may be seen, that this prohibition, with respect to the commissioners
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and secretary, is taken away by the ordinance No. 4. But in regard to the sworn brokers, as they take an oath not to do any business for their own account, when they are admitted, they can neither insure nor be insured without contravening or breaking their oath; nevertheless there are many who have ships and parts, which they every day get insured.

31st Article, "Orders to punish exemplarily all those who shall use any fraud, misdemeanour, or cheat in assurances.

Remark. Insurances were invented and introduced, purely with the design to relieve merchants in case of a loss, by sharing as much as they thought proper to get insured; therefore, it would be acting very unjustly, to aim at gaining or enriching one's self, by making the insurers lose, as has happened more than once, by thieves and knaves, who have insured large sums on ships aboard which they had nothing, or things of a very small value, which they have in concert with the captains procured to be lost, or by some such other tricks: it is therefore of the utmost importance to the insurers, that this article be pursued to the greatest rigour, and it may be seen in the ordinance Numb. VII. Art. 2. that these sorts of cases are reserved to be judged by the Lords Echevins, or Sheriffs,

32d Article, "Ordains, that all accidents of insurance shall be brought in the first instance before the Commissioners of the Chamber, which they shall judge upon the footing of the ordinance; and for their employ, they shall have jointly with the secretary one-third per cent. on the sums brought for their determination, payable by the plaintiff".

33d Article, "Authorises the Commissioners of the Chamber to order a delivery of the money demanded, wholly, or partly, if they think proper, after the verification of the policies and proofs, and that it appears to them, that the notification of the loss to the insurers was made three months before, permitting those who have obtained the possession, to remain with the money, under a sufficient security, to return it with interest, after the rate of twelve per cent. per ann. if the commissioners find afterwards that it ought to be returned."

34th Article, "Permits an appeal from the sentence of the commissioners, to the echevins, or sheriffs, of the city."

35th Article, "Ordains, that the execution of the sentences given by the commissioners, shall be performed in the same manner, as that of the sentences given by the seigneurs echevins."

36th, and last article of the ordinance, No. I. "Directs those who appeal to the seigneurs echevins, from the sentence of the commissioners, to do it in ten days, and to give in their articles in ten days after, paying at the first audience twelve guilders as a mulct, if the sentence of the commissioners is confirmed by the said seigneurs."

Remark. I shall content myself with giving the sense of these four last articles just as they are, without entering into a detail of the cases that may happen, when obliged to litigate them with the insurers, because that there is an infinity, which almost all differ one from another, in the whole, or in part, and which the solicitors, who plead these sort of affairs often, know so well how to embroil, that the process may last longer than it ought; I shall only remark on this subject, a passage in the Treatise of Averages, wrote by the famous Quintyn Wytsen, which is so very often cited in justice, upon the matter of averages and insurances, where he says, "that the insurer is regarded by all as a pupil;" that is to say, they are protected in justice as orphans, and that they are never condemned to the utmost rigour, as it may be done in a cause between particulars; and it is for this same reason, that I advise all those, who have any difference with the insurers, to agree it amicably, as well as they can, and avoid a suit, as they may be certain they will often get more by a friendly adjustment than by a lit-
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For the insurers had rather grant something than be prosecuted, because this makes them decried as wranglers; but it must at the same time be confessed, that if too much is demanded of them under this belief, they rather choose to go to law, in which they are not quite wrong.

And as in process of time some new cases have happened, not mentioned in the ordinance, the magistrates of this city have, from time to time, made additions and amplifications, and changed those articles which they found not to be essential. The additions are contained in the eleven regulations, or ordinances following, which I shall mark from No. II. to XII. to follow the order, in which they are couched in "The Manner of Proceeding before the Justices of Amsterdam," from whence I have taken them.

No. II.

The 30th of January, 1626, "The Lords Justices, willing to amplify the second article of the preceding ordinance, have ordained, that when any one is insured, and the insurer fails and becomes insolvent, the assured may set aside the insurance, by his notifying it to him, by a notary and two witnesses, at the place of his last habitation, or to his assignee; leaving however the premium, which he cannot reclaim, and afterwards he may get himself insured by another underwriter, on good and bad advices."

This amplification was undoubtedly made to prevent the difficulties which might result, from what the article 2, where it is spoke of, ordains, that the assured shall run the risk of $\frac{1}{10}$ for all under 12,000 guilders, according to which, a man, who has got 10,800 guilders insured on goods worth 12,000, cannot insure any more; and one of the insurers happening to fail, and the assured being desirous to get some other to underwrite in his room, it would seem by the policy, that he should have got himself insured for more than he was permitted, if he had not given it over, in the forms directed in this amplification, which may serve him for proof in case of need; but as I have mentioned under the second article, that any one might get himself insured entirely, I shall only observe here, that if an insurer happens to fail, the assured should by no means omit desisting from his insurance, in the forms prescribed by this amplification.

No. III.

The 9th of May, 1614, "Our Lords of Justice having examined the 17th article of this ordinance, and found that great abuses have resulted from it, they thought proper to alter it; and to ordain, that, hereafter, all sorts of merchandizes and effects whatsoever, shall be comprehended under the general name of merchandize or effects, corruptible; but that he that would insure upon gold, silver, coined or uncoined, precious stones, or jewels, and ammunition, shall be obliged to have it expressed in the policy, on penalty of its being nulled."

The 17th article above-mentioned orders to specify in the policy, the merchandizes which are subject to perish through their own nature; which was quite needless, because the 27th article of the same ordinance exempts the insurers from paying the damage which shall happen without any foreign cause; and whether these sorts of merchandize are named in the policy or not, when any damage happens, the question is, to know what cause produced it; but with regard to gold, silver, jewels, and warlike stores, the 17th article remains in its full force.

No. IV.

In February, 1600, and in the month of June 1601, "Our Lords of Justice ordered that the Commissioners of the Chamber of Insurances, and their secretary, might be insured."
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'The 30th article of the first ordinance had prohibited it, as may be seen in the said article.

No. V.

"This ordinance provides, that all the different accidents which arise from averages, shall be carried, in the first instance, before the Commissioners of the Chamber of Insurances, to be by them regulated and decided, in the manner established with respect to insurances, in the last articles of the first ordinance, and that the execution of the sentences shall be performed according thereto."

No. VI.

"The first part of this ordinance provides, that they shall every three days proceed against those, who being cited before the chamber, shall not appear; and that for the first, second, third, and fourth fault of non-appearance, they shall be condemned upon a second omission, in a mulct of six stivers; on the third in twelve stivers; and at the fourth, eighteen stivers; and that the commissioners may condemn or absolve for the principal at the fourth neglect; however, without decreeing a security in virtue of the said fault, unless the commissioners see, by the deduction of the cause, that it is disposed so that he ought to be ordained to give it, instead of a definitive sentence, in virtue of the fourth fault.

"The second part ordains, that the decay or ruin of the ships that go from hence to the Indies, whether it happens going or coming, shall be on account of the insurers, unless these vessels happen to be employed in an extraordinary manner in the said Indies, for the trade thereof; and that all the merchants shall be obliged to place their merchandize, upon which the averages ought to be regulated, according to their true value; and that this may be done with the greater honesty, the effects brought under contribution shall be put into the hands of the commissioners, to the end that they may be enabled to determine equitably."

This ordinance was made the 20th of June, 1606, before the establishment of the India Company, and regards more the particulars who traded there, than the company, who never insure that I know of; but since that it charges the insurers with the perishing of ships in a country so distant, there is much stronger reason that they should be answerable for the same misfortunes in those seas which are a great deal nearer, in which the insurers would certainly be greatly to be pitied, if the commissioners had not some regard to them, which is left to their discretion in the ordinance, No. XI.

To commit the effects put under contribution of an average into the commissioners' hands, that they may judge equitably, is very often impossible, and when it is otherwise the thing would be equally troublesome to the commissioners and merchants; therefore, in such cases, the commissioners themselves have the ships taxed that lie before the city, and order the merchants, who have an interest in the lading, to bring in an account of the just value of their goods to the chamber, and as this is often done after the goods are sold, those who have disposed of theirs insert the produce in their accounts, and those that are still unsold they pass according to the price current; and upon the taxation of the ship, these different accounts of the merchants, and the estimation of the damage happened, the commissioners regulate the average, and decree the repartition in their sentence.

No. VII.

This ordinance, made the 14th of June 1607, contains five articles; of which the 1st Article ordains, "That the fines proceeding from the faults obtained before the chamber, shall be exacted by the Huissier of the Chamber; of which he shall have
the third for his trouble, and if he cannot recover them, they may be exacted by the Serjeant of Monsieur, the officer.

2d Article, "Directs the commissioners to send before the Lords Echevins all those causes of insurance in which they have found any fraud." This is properly a confirmation and amplification of that which is said in the first ordinance, article 31.

3d Article decrees, "That when in any danger, some gross goods shall have been thrown overboard from between decks on ships coming from the Levant, they shall be brought into an average on ship and cargo."

This is a law generally received by all Europe, to bring into a gross average all that is thrown into the sea, all that is cut away, broken, or lost in the danger, to save that which remains aboard; which makes me believe, that this article was only made to stop the mouths of some wranglers, who it is probable would maintain, that what is put between decks, being thrown overboard in the danger, ought not to be brought into an average.

4th Article, "Authorizes the commissioners to condemn the parties, in all or half of the expences, or to decide them as they shall think proper."

5th Article, "Enjoins the commissioners not to carry to the insurers' account, when they regulate any average, only what they shall find ought to be carried to averages."

To understand this article aright, it must be observed that averages are frequently regulated in one manner between the proprietors of the ship and those interested in the cargo, and in a different one, with regard to the insurers, who are not obliged generally to pay all that is brought into an average upon ship and goods, but only certain articles, according to the circumstances of the case, which would be too long to deduce here.

No. VIII.

This ordinance also contains five articles, of which the

1st Article, "Decrees, that all the premiums of insurance, which do not exceed 7 per cent. shall be paid in ready money; without deducting them from the damage in these causes, which shall be brought before the Chamber, but they shall be counted and held as paid."

2d Article, "Ordains, that the premiums exceeding 7 per cent. shall be paid in six months after signing the policy; but if the premiums on going and coming amount to more than the 7 per cent. and to 14 per cent. inclusive, the half shall be paid down, and the other half in six months after, with the interest of 12 per cent. per ann. after the expiration of the said six months, to the time of payment."

In obedience to the first of these articles, or both of them, the insurers never sign a policy, that they do not insert at the same time, that they have received the premium, although they do not receive it till two or three months after, and sometimes never, because they have an open account with every broker, and if a loss happens, they draw upon him, without having enjoyed the premiums. It is true they may recover of him directly, and it were to be wished, for their sakes, that they gave less credit to some brokers, who use the premiums to pay every thing else but them; if they gave so much less credit to the brokers, the insurers would not suffer, as they often do, when any one of the former becomes insolvent; for if the merchants, by employing the brokers, give them an opportunity of gaining their brokerage, they are only answerable to the insurers for the premiums; and if those were paid in ready money, the brokers would not be exposed to this risk.

In regard to the premiums in going and coming, the custom observed for a long time has been in the same manner as above, but the broker will not engage with the insurers only for the premium out: and when the ship is arrived, or is upon her way home, the insurer assigns the premium of her return on the assured; but as it Be-
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quently happens, that some of the assured sail during the interval of the voyage, by
which the underwriters lose the premium on the ship's return, it is now some years
since they have obliged the brokers to be answerable for both, in which I think they
have acted very prudently.

3d Article, "Ordains, that when the chamber of assurances has made a reparation of
the average or damage, the insurers shall be obliged to pay it directly, and in default
thereof, they shall pay the assured an interest on the sum in which they have been
condemned, after the rate of 12 per cent. per annum, to be reckoned from the day the
reparation is made, till the time of its discharge."

This case occurs so rarely, that I have never seen an example of it; but on the con-
trary, a loss or an average is no sooner regulated by the chamber, than the insurers are
the first who desire to pay, unless they think themselves unjustly dealt by, and have an
intent to appeal.

4th Article, "Directs the commissioners not to make any reparation of total losses,
till the three months of abandoning be expired, according to the 25th article of the
first ordinance."

I have remarked upon the said 25th article, that in such case, the insurers ought to
pay the entire loss, but in agreeing it amicably, they only pay 98 per cent. which is
better both for one and the other, than to go to law, for many reasons.

5th Article, "Orders that the brokerage on insurances shall not exceed 4 per cent.
as well on going and coming, as on going or coming only; to be paid half by the
insurers, and the other half by the assured."

The custom is, that the insurers only pay the brokerage at 4 either going or coming,
and 4 per cent. outwards and homewards; and if this is not agreed to, as the brokerage
for going or coming singly is 4 per cent. the brokers may with reason, first make the
insurance outwards, and some days after make that homeward, in order to get double
brokerage; and I do not doubt of their having done so, since the making of this or-

dinance, &c.

No. IX.

It is ordained by this amplification of the preceding ordinance, No. VIII. "That
all the premiums of insurance, at whatever per cent. they may be, and let them be
what they will, shall be paid immediately on signing the policy, under penalty of
their being null; provided that on those which are made for going and coming, the
premiums for going shall be paid directly, and the premiums for returning shall be
paid on the arrival of the vessels; and of all the insurances which are made by the
month, the premiums shall be paid down for as many months as shall be stipulated in
the policy."

No. X.

As the foregoing ordinance does not very clearly explain itself in saying, that the
premiums on the homeward bound voyage shall be paid on the ship's arrival, this article
is added, and imports, that the premiums on her coming back, shall be paid when the
vessel shall be returned, and the voyage finished.

It may be seen by these two articles, what I have said under the second article of
No. VIII.

No. XI.

In reply to the advice which the commissioners of the chamber requested of the
burgomasters, how they should regulate the damage upon wood, sugar, and other mer-
chandizes, which came from the Azores Islands; as a very great difference is found in
the price, between those bought with ready money, and those taken in barter; and
also upon what the said commissioners represent, that in long voyages, where the as-
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...insured gain largely, the vessels decay considerably, and if they are lost, the insurers pay a great deal more than the ships would have sold for, if they had arrived in safety.

"Our Lords of Justice ordained, that the woad should be reckoned, till further order, upon the footing of 800 rees the quintal, unless the concerned can prove in eight months, that the woad was bought in the said isles at a higher or lower price; and with respect to sugars and other merchandize, the commissioners may value them as they shall think proper."

"And touching the ships, which, by the length of their voyages, are worn out, worm-eaten, or become unnavigable, the commissioners were authorized to act according to their discretion."

It is very just to have regard to the price of the goods which are to contribute to an average, when the calculation is to be made, more especially when some part of them have been taken in barter, and the other paid for with ready money; in which case those that are received in barter, would cost a good deal more if passed at the price they were taken at in barter, than those purchased with ready money, and would not however be any thing better, and notwithstanding they would pay considerably more than they ought towards the average. For example, a quintal of wood shall have been taken in barter for 1200 rees, and a quintal of the same bought for 600, with ready money; and if the average is regulated on the footing of these two purchases, the quintal taken in exchange will pay double the average that the quintal bought with ready money will, which would be visibly contrary to reason, and to the ordinance No. VI. which directs, that things should be put at their true value.

In respect to the decay of ships, it is certainly very equitable, that it should be regulated, as well in the regulation of losses as in that of averages; for it is certain, that on many occasions the insurers lose, and pay the damage which happens to ships, whilst the proprietors gain a great deal above it.

No. XII.

This amplification decrees, "That henceforward any abandon, registering, or authorization, in matters of insurance, shall not be done but by the secretary or huissier of the Chamber of Insurances, who are sufficiently authorized for it by this ordinance, which prohibits all notaries, brokers, and other persons to undertake the doing any act under penalty of its being null."

If the assured judge that the insurers have any room to make a dispute, they ought not to fail making the abandon, registering, or authorization, as it is ordered here above, because all that they get done by their brokers is null and invalid, if the affair comes before the Chamber, and that these pieces must absolutely be drawn up there, and signed by the huissier to be valid.

The 5th of March, 1688, the following ordinance was published:

"Those who would get insurance made on ships or effects already departed from the place of their lading, shall be obliged to declare it on the policy, and to note the time of their departure, except they are ignorant of it; and if they are so, they are expressly to declare it in the policies, on penalty of its being null."

As this article has a relation to or affinity with the articles 6, 20, or 21, of the first ordinance, reference may be made to what I have said under the 6th.

The same day, 5th of March, 1688, the subsequent order was also published:

"The Lords of Justice having been advised, as well by many merchants as insurers, that divers changes were daily made in the print of policies, and that almost every broker added some novelty, which obliged both the merchants and insurers to read, as well what was printed as wrote in them, and that this was a troublesome practice, by reason of the many affairs they had to transact at the bourse and elsewhere, from
whence proceeded a great number of frauds, bad tricks, &c. the which the said lords willing to prevent, have enacted and ordained, that henceforward no one shall print or offer any policy which does not contain, word for word, the same as those that follow; and they must be marked by the secretary of the Chamber of Insurances, who shall have three stivers as his due for each; and no policy shall be made which is not marked by him, in want of which, they shall be invalid; and the brokers who offer any policies, with other contents than what is in the subsequent forms, shall pay, for each, fifty guilders mulct."

A Form of the licensed Policies upon Ships.

We the underwriters do assure you, Mr. or any other to whom it may appertain, in the whole, or in part, friend or enemy, without any exception, viz. every one for the sum here subscribed, of (in this blank is inserted the voyage the ship is to make) upon the body and tackle of the ship, which God preserve, with her guns, ammunition, apparel, and appearances belonging to the said or to any other, called of which is captain or any other who may be put in his place, the risk, perils, and adventures, which we take upon us, from the day and hour, that until the time that the said ship, shall be arrived as above, with her guns, ammunition, apparel, and appurtenances, and entirely unladen; and the said ship may go forward, retreat, turn, and go about to the right, left, and on every side, in the manner that the captain or captains may think proper, for the benefit and advantage of the said voyage; the above-mentioned dangers, consisting in all the perils of the sea, of storms, fire, and winds, arrest of friends or enemies, detention of kings, queens, princes, lords, and communities, letters of marque and countermarque, imprudence of captains, or barrety of the mariners, and in all other perils and adventures which can happen to the said ship, of whatsoever sorts they may be, foreseen or unforeseen, ordinary or extraordinary, without excepting any one, provided they happen without any design, or knowledge of the assured; we put ourselves in all the aforesaid cases in your place, to pay you the assured, or to your agent, all the damage that you shall have suffered, viz. each one in proportion to the sum he shall have underwrote, as well the first as the last insurer, and that within one month after we shall have been duly advised of the loss or damage; and in that case, we give to you the assured, and to all others, a full power, whether it turns to our advantage or to our loss, to lend a hand to save the ship and its appurtenances, to sell it, and to distribute the money, if the case requires it, without demanding either our consent or permission: we also paying the charges, which shall be occasioned in this affair, and likewise the damage which shall have happened, whether any thing is saved or not; and, in respect of the account of charges, a certificate shall be added to the oath of him that furnished them, without any contradiction; provided that there shall be paid us in ready money, for the price of this assurance, per cent. engaging for this effect, and submitting our persons and goods present, and to come, according to law; renouncing, as men of honour, all claines and exceptions, which may contradict the present. So done at Amsterdam, &c.

N. B. The policies on goods are the same with the above, only varying the terms, as in the English one, therefore I omit the translation.
A new Amplification of the Ordinance of the Chamber of Assurances, and Averages, of the City of Amsterdam.

The Lords of Justice of the city of Amsterdam having seen and examined the request of many considerable merchants of the said city, presented to them to-day, beseeching that there may be some alteration and redress made in matter of insurances; and after having heard the advice of the Commissioners of the Chamber of Insurances and averages, have thought proper to enact and ordain, as they do by these presents;

1st Article, "That henceforward insurance may be made on the body and tackle of ships for seven-eighths of their true value; however, without permission to make any on their freight, powder, ball, victuals, or such like things which are consumed; and the assured shall be obliged to run risk of the one-eighth, as well for what is above as under two thousand livres de gros, derogating and altering in this respect the 10th Article of the Ordinance of the Chamber of Insurances."

The 10th article of the first ordinance altered by this, forbids the insuring ships for above two-thirds of their value, which was sufficient to discourage all those who should have a design to build ships, it obliging them to run the risk of one-third of their value, which might not suit every one; so that it is with reason they have changed the said 10th article of which we are speaking; and it is even very much wished, that they had not obliged the owners of ships by this article, to run the risk of the one-eighth; for, besides its causing many disputes, there is not naturally any necessity to oblige a man to run a risk, which an insurer would take on him for the premium he receives: there is even, if I may be permitted to say so, a wide door opened to chicanery in this amplification, which only speaks of the body of the ship, without making mention of the apparel and appurtenances, which are very often worth as much, or half as much, as the body of the ship; I, however, very well know, that when the Commissioners of the Chamber have a ship taxed, it is taxed with all its apparel and appurtenances, and without contradiction from the insurers; but I do not know what would happen if some one amongst them would stick to the letter of the ordinance, which only gives commission to insure the body; it may be said, that a ship cannot go to sea without sails, masts, &c. so that her apparel and appurtenances being absolutely necessary to perform the voyage, they may be, and effectually are, comprehended with the body of the ship; however, this would not shut the mouths of some wranglers, if they were in such a case. But not to extend my criticism any further, I shall only say, that when an insurance is made on the body of a ship, it is very necessary to value it in the policy, and to insert that it is with all its appurtenances and dependencies, and such other clauses as an expert broker should find à propos to put in it, according to the cases and circumstances.

2d Article of this amplification says, "That in like manner it shall be permitted to insure the single ransom, or redemption of captains and sailors, who run a risk of being taken by corsairs; and that upon policies, of which the plan shall be given here-with, the which ought to be marked by the Secretary of the Chamber, who shall have three stivers for each, as for other policies; upon penalty, that if they are not marked by the said secretary, they shall not be valid, and that the brokers who shall make any policies in a different manner shall pay fifty guilders mulct for each," &c.

The 24th Article of the first ordinance, prohibits the making insurance on any lives whatsoever; and many people confound liberty with life, imagining that insuring the one was not more lawful than the other, which occasioned many difficulties between the owners of ships, and their captains bound to the Mediterranean and the adjacent parts, where they run the risk of being taken by the Turks, when at war with them, and it was undoubtedly for that, that this article was made; and on the least rupture that we
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now have with any one of the states of Barbary, the captains designed for the Mediterranean will by no means sail, till their owners have insured 3 or 4000 guilders upon their liberty, in order to redeem them with this money, in case they are so unfortunate as to be taken.

3d Article of the said amplification, “Decrees, that any insurance made upon money given à la grosse, a term used in Holland for lending money at a large interest like bottomry, upon goods, shall not be valid, unless it be expressly mentioned by all the bills of lading of the goods, how the money was taken up, with the date of the day and the place, from whom it was taken, and to whom it was delivered, and for whose account; but the assurance being made from a place, where no bill of lading was signed, it must be proved by the contract de grosse, or bottomry,” &c.

The 4th and 5th Articles, authorize the commissioners to condemn, from the second non-appearance, those whom the insurers have cited before the Chamber for the payment of premiums, and to proceed to other causes every two days, and to condemn upon the third default.

The Form of a Policy of Insurance upon the Liberty of a Person.

We, the underwriters, insure you or to whom it may appertain, viz. Each for the sum here under signed, to on condition to go every way, during the whole voyage, and with liberty to touch in all places and in all countries in the way; to advance, retreat, get into port, unlade and lade, at the will of the captain or mate, whether it is with the liking and consent of the assured or his deputy or not; and that upon the body and person of bound for upon the ship, which God preserve, called commanded by captain and in case that the said ship should happen to be lost, and not accomplish her voyage, we run the same risk on the ship or ships upon which the said may embark, to pursue and finish his aforesaid voyage, be it either by sea or land; and we only run the risk of his being taken, by any nation whatsoever, whether Turk, Moor, or Barbarian, or other infidel pirates, from whom in case that the said happens to be taken, and ransomed, which God avert, we promise to pay immediately to the assured, or to the bearer of these presents, without any abatement, each the sum by us insured for his redemption, with the other charges that this affair may occasion; and that as soon as the advice shall be received, and that it shall appear to us that he is released, or his ransom paid, and that the bills of exchange have been accepted; but the sums by us insured must be employed only in his ransom and concurrent expenses, and for nothing else; and for the accomplishment of the above, we engage our persons and effects, present and to come, submitting them to all laws and tribunals of justice, the whole sincerely without fraud or deceit; and we have agreed for the premium.

So done in Amsterdam, &c.

Policies of insurance in France are generally drawn up in the Registry Office of Insurance, in those places where one is established; and in those places where there are none, the policies may be made either before a notary public, or under a private form.

In foreign places where French consuls are settled, the policies of insurance may be entered in the Chancery of the Consulate, before two witnesses; and all these policies must mention the name and place of abode of the insured, his condition, whether proprietor or agent, and the goods or effects on which the insurance is made: they must
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likewise contain the name of the ship and master, the place from whence the goods are
or must be laded, of the haven or port from whence the ship is to sail, or shall have
sailed, of the ports where she is to lade and unlade, and of all those where she is to
touch: they must also express the time when the risks are to begin and finish, the
sums that are insured, the premium given, the submission of the contracting parties to
arbitration in case of dispute, and all other clauses in general on which they are agreed,
according to the use and customs of the sea; about all which, his Most Christian Ma-
jesty published an ordinance in the month of August, 1681, where, at titre 6, du libre 3,
every part of insurance is fully directed.

Besides the insurances we have hitherto mentioned, others are made in France, called
secret or anonymous ones, which are performed by correspondence with foreigners,
even in time of war.

It is inserted in the policies of this sort of insurance, that it is for a friend’s account,
whosoever he may be, without naming the person; and in case the ship or merchan-
dizes so insured happen to be lost, the assured must notify it, and his abandoning the
insurance, by an act in form, either by the register, a notary, or bailiff, demanding
payment of the sums insured, in consequence of his relinquishing in the time agreed by
the policy.

Insurances are made in many parts of France, particularly in most of the maritime
towns; and in the beginning of the year 1770, a Chamber of Insurance was established
at Paris, with a fund of twelve millions of livres, in which some alterations were made
about ten months after; but as the articles in their policies differ very little from the
Dutch, to avoid repetitions, I shall not enlarge on them.

An office for insurances was likewise established about the latter end of the same
year at Stockholm; and another about six months after at Naples, with a capital of
100,000 crowns. And a company has been long settled at Copenhagen for this purpose;
besides which, large insurances are made in Norway, and the terms generally the same
as in Holland.

All policies must be made on stamped paper, and no insurance permitted on life,
wages, provision, ammunition, or materials; only on ship and goods, and on these no
more than nine-tenths of their real value.

The insurers pay no average on demurrage, or losses under 3 per cent. nor on wool,
hemp, flax, sugar, and stock-fish, under 10 per cent. And the laws are so rigorous,
that if the insurance is made for above nine-tenths of the real value, as afore-mentioned,
the premium is sunk, and the perpetrators suffer death.

When a policy on goods is signed, the underwriters are answerable for all damages
they may receive, from the time of their carrying from the shore, until their being duly
delivered on shore again; and if credit is given on the premium, it bears half per cent.
interest per month.

On a loss of ship or goods, the assured may have it notified to the insurers, with
full proofs; and if the latter do not pay the loss within three months, he must pay the
assured half per cent. monthly, from the time of the loss being notified to him, until its
discharge.

A ship bound to any part of Europe, and no news heard of her within a year and a
day, the insurance is due; and if the voyage is to any other part of the world, two
years are allowed; and it is to be noted, that a year and a day, in law, is understood to
be a year and six weeks.

If the voyage is altered, and premium returned, half per cent. is allowed the under-
writers, as in other parts; and the insurance in this country is void, and the capital
confiscate, if not made on stamped paper.
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Venice, Leghorn, Genoa, Pisa, Hamburg, and many other maritime cities, have their underwriters, and pretty considerable insurances are sometimes made there; but those I have before mentioned are the principal places where large sums are underwrote for, with the greatest security.

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OF ARBITRATORS, ARBITRAMENTS, ARBITRATION BONDS, AND AWARDS.

An arbitrator is an extraordinary private judge, between party and party, chosen by their mutual consent, to determine controversies between them.

And he is so called either from arbitrium, free will, as some derive it; or because he has an arbitrary power, as is supposed by others; for if arbitrators observe the submission, and keep within due bounds, their sentences are definitive, from which there lies no appeal.

The power of arbitrators is to be regulated by the contracts between the parties, as to what concerns the differences which they are to determine, and whatever they decree beyond that is of no effect.

The award of arbitrators is definitive, and, being chosen by the parties, they are not tied to such formalities of law as judges in other cases are, and yet they have as great power as other judges to determine the matters in variance; but their determination must be certain, and it is to be according to the express condition of the bond, by which the parties submit themselves to their judgment.

After a definitive sentence is given, the functions of arbitrators cease, and they have not power to retract or alter it.

No matters wherein the public is concerned, or besides those of a private nature, which regard property between person and person, can be submitted to the decision of arbitrators. The differences arising between merchants, relating to their commerce, and between parties, in relation to their partnerships, and also accounts of guardianships, and other administrations, are proper subjects for arbitration. Therefore all articles of partnership should contain a clause, by which the partners bind themselves to submit to arbitrators in the disputes that may arise between them. And if the same was done in the contract, and policies of assurance, it might prevent many suits at law.

It has been a custom to choose two, one by each of the contending parties, with a liberty for them to choose an umpire in case of disagreement; but as this method has on many occasions exposed the arbitrators to some disgusts, from those whose differences they were labouring to reconcile, it has been a practice for some time past to nominate three in the bond, by which means their different opinions remain secret, and consequently unknown to the concerned, who are too apt ungenerously to reflect on a determination, which will naturally differ from the opinion at least of one of the parties, and excite in an uncandid manner a censure, where at least their thanks are due.

The Chancery will not give relief against the award of the arbitrators, except it be for corruption, &c. and where their award is not strictly binding by the rules of law, the Court of Equity can decree a performance.

Where a submission to an award is made a rule of court, and it is part of the rule that the parties shall file no bill in equity, it is in the discretion of the court of law whether they will enforce that part of the rule by attachment or not. 2 Vern. Jun. 461.
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When the arbitrators make an award upon one day, they cannot make another between the parties on any other day; nor can they do it part at one time and part at another, although the times are within the submission.

Though the arbitrators may agree upon a thing one day, and on another thing at another time, and at last make an award of the whole.

Arbitrators are to award what is equal between the parties, and not on one side only, and the performance of it must be lawful and possible; and the award must be final.

If the arbitrators make an award of money to be paid to a stranger, &c. unless the parties have benefit by it, it will be void.

If an award be made between A. of the one part, and B. of the other part, whereby it is awarded that A. shall pay 10l. to B. and 5l. to a stranger, and that B. shall give A. a general release, the award as to the 5l. is void, but good for the residue. See 2 Saund. 298; and see the case of Addison v. Gray, 2 Wils. 299.

And a party is not to be made a judge in his own case by award.

For it is a general rule in equity, that when it appears that any one of the arbitrators was any way interested in the matters in controversy referred to them, the award is to be set aside.

Where a thing is to be done on payment of money, a tender of the money is as much as an actual payment.

Action of debt may be brought for money adjudged to be paid by arbitrators, declaring on the award; and also action of debt upon the bond, for not performing the award.

When there is but one arbitrator, which happens where the matter is referred to 8 Rep. 98, two, or they cannot agree, but leave it to be determined by a third person, it is called an umpireage.

But the arbitrators are to refuse, and declare they will make no award before the umpire shall proceed; though an umpire's award shall be good, where the arbitrators make a void award, which is no award.

It is said an umpireage cannot be made till the arbitrators' time is out, and if any other power be given to the umpire, it is not good; for two persons cannot have a several jurisdiction at one time.

But this seems to be contradicted by the practice afore-mentioned, of nominating three arbitrators in the bond, except the distinction consists in sounds only, as neither of the three is termed an umpire; and where arbitrators have the power of electing an umpire they may choose him and call in his assistance as soon as they begin to take the subject into consideration; and this is convenient practice, as it secures a decision upon a single investigation of the controversy. Roe on demise of Wood v. Doe: 2 T. R. 644.

An arbitration is generally an effect of moderation in the contending parties, who think it more safe to refer the matter in dispute to the determination of friends, than to venture a trial at law, more especially as the one is costly, and the other transacted gratis; and although there is no particular obligation to oblige parties in England to refer their differences to arbitrators, as is the custom in France, yet our statutes recommend these references to the subjects, and more particularly to merchants and traders, as an useful expedient to end their disputes with the greater ease and expedition.

The civilians make a difference between arbiter and arbitrator; an arbiter being tied to proceed and judge according to law, mingled with equity; but an arbitrator is wholly at his own discretion, without solemnity of process, or course of judgment, to hear and determine the controversy referred to him, so as it be justa arbitrium boni viri.

Arbitrators should give their award without entering into particulars, or assigning their reasons for it, as this might expose them to a chancery suit from a dissatisfied
party, and it should be in writing, and within the time limited by the arbitration bonds.

There should be appointed by the award some reciprocal act, to be done by each party to the other, which the law requireth to be *quid pro quo*, although it be never so small, and reciprocal acquaintances should be directed, either general or particular ones, according as the nature of the decision shall require.

The arbitrators are not to award any thing, whereby any matter already determined by a decree in chancery, or a judgment at common law, or any sentence judicially given in the cause, be infringed or meddled with; for sentences of judicial courts of record are always of a higher nature than arbitrators' awards, and justly challenge both obedience and respect; though civilians themselves do frequently call merchants in to their assistance, when the matter in dispute is relative to trade, and sometimes recommend the decision of a mercantile point to a trader, after they have long and curiously debated it, without bringing it to a conclusion.

5 Rep. 98. Arbitrament (in Latin *arbitrium*) is the sentence or determination, pronounced by arbitrators, and published when they have heard all parties, and this is either general, of actions, demands, quarrels, &c. or special, of some certain matters in controversy: it may be also absolute or conditional.

Hard. 44. To every arbitrament, five things are incident, viz. First, matter of controversy. Secondly, submission. Thirdly, parties to the submission. Fourthly, arbitrators. And, fifthly, giving up the arbitrament.

Jenk. Cent. 129. Arbitrators cannot refer arbitraments to others, if the submission be not so; but an arbitrament that one shall release to another, by advice of a certain person, is good, because it is a reference only for the execution of it.

Submissions to arbitrations are usually by bond, and the parties who bind themselves, are obliged to take notice of the award, at their peril; but things relating to a freehold, debts due on bond, or on certain contract, criminal offences, &c. are not arbitrable.

For ending suits by arbitrament, the following act is the only one made in any late reign, viz.

9 and 10 Will. 3. c. 15. sect. 1. After the 11th of May, 1698, all merchants and traders, and others desiring to end any controversy, suit, or quarrel, for which there is no other remedy, but by a personal action or suit in equity, by arbitrament, may agree, that their submission of the suit to the award, or umpirage, of any person or persons, shall be made a rule of any of his Majesty's Courts of Record, which the parties shall choose, and may insert such their agreement in their submission, or the condition of the bond of promise; and upon producing an affidavit of such agreement, and upon reading and filing such affidavit in the court so chosen, the same may be entered of record in such court, and a rule of court shall be thereupon made that the parties shall submit to, and finally be concluded by such arbitration or umpirage; and in case of disobedience thereto, the party neglecting, or refusing, shall be subject to all the penalties of contemning a rule of court, and process shall issue accordingly, which shall not be stopped or delayed by any order, &c. of any other court, either of law or equity, unless it appear on oath, that the arbitrators or umpire *misbehaved themselves*, and that such award was corruptly or unduly procured.

Sect. 2. Any arbitration or umpirage, and set aside by any or complained of, in the day of the next one does not extend. In consequence of the super...
enforce their execution when legal, by the same process of contempt, as is awarded for disobedience to such rules and orders as are issued by the courts themselves.

Submissions to arbitration were entered into by a rule of court at the common law when a cause was depending, and the above statute was intended to give the same efficacy to awards where no suit or action was instituted. 2 Burr. 701. A verbal agreement to abide by an award cannot be made a rule of court. 7 T. R. 1. Nor can a submission to an award be made a rule of court where an indictment has been preferred for the subject referred. 8 T. R. 320. An agreement to enlarge the time of making an award must contain a consent to make it a rule of court, otherwise no attachment will be granted for non-performance. 8 T. R. 57.

An Arbitration Bond.

Know all men by these presents, that I, A. B. of the parish, &c. in the county, &c. merchant, am held and firmly obliged to C. D. of, &c. in the county aforesaid, Esq. in —— pounds of good and lawful money of Great Britain, to be paid to the said C. D. or his certain attorney, his executors, administrators, or assigns, to which payment, well and truly to be made, I oblige myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated at the day of in the twenty-fourth year of the reign of our Sovereign Lord King George II. and in the year of our Lord God one thousand seven hundred and fifty-one.

The condition of this obligation is such, that if the above bound A. B. his heirs, executors, and administrators, for his and their parts, and behalves, do in all things well and truly stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, final end, and determination of E. F. and G. H. arbitrators indifferently named, elected, and chosen, as well on the part and behalf of the above bounden A. B. as of the above-named C. D. to arbitrate, award, order, judge, and determine, of and concerning all, and all manner of action and actions, cause and causes of actions, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time or times, heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said parties, so as the said award be made, and given up in writing, under their hands and seals, ready to be delivered to the said parties on or before the next ensuing the date above-mentioned: but if the said arbitrators do not make such their award of, and concerning the premises by the time aforesaid, that then if the said A. B. his heirs, executors, and administrators, for his and their part and behalf, do in all things well and truly stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end, and determination of J. K. umpire, indifferently chosen between the said parties, of, and concerning the premises, so as the said umpirage do make his award or umpire of, and concerning the premises, and deliver the same in writing under his hand and seal, to the said parties, on or before the next ensuing the date above-said, then this obligation to be void, or otherwise to be, and remain in full force and virtue.

Signed, sealed, and delivered,
in the presence of
L. M.
N. O.

Note, if there is no umpire, the latter part must be omitted, viz. from, "but if the said arbitrators," &c.

Though I have before observed, it is now customary to choose three arbitrators, and have them nominated in the bonds.
The aforesaid bond must be mutual between the parties, and the following clause may be added at the end of the condition, as the agreement mentioned in the preceding act of Parliament, viz.

And the above-mentioned A. B. doth agree and desire, that this his submission to the award above-mentioned, be made a rule of his Majesty’s Court of King’s Bench, or any other Court of Record, pursuant to the act of Parliament for this purpose provided, and the like for the other party submitted to such award.

Award is the judgment and arbitration of one or more persons, at the request of two parties who are at variance, for ending the matter in dispute, without public authority; and may be called an award, because it is imposed on both parties to be observed by them dictum, quod ad custodiendum, seu observandum, partibus imponitur.

An award may be by word or in writing, but it is usually given in the latter, and must be exactly according to the submission. If an award be according to the submission by bond, though it is void in law, if it be not observed, the obligation will be forfeited.

Where arbitrators award a thing against law, it is void; if more is awarded than submitted, the award will be void; but when an award seems to extend to more than in the submission, the words de et super præmissis, restrain it to the thing submitted.

An award may be void in some part, and good in another part, if it makes an end of all the differences submitted; and if an award be good in part, and void in part, the good shall be performed.

An award without a deed of submission will be good, in bar of a trespass.

But the delivery of the award in writing, under hand and seal, &c. must be pleaded and be exactly replied to by the plaintiff, in action of debt on an award, or it will be ill on demurrer.

The submission to an award may be by bond, covenant, or by an assumptum or promise; or without all this, by a bare agreement, to refer the matter to such a person or persons.

A husband may submit to an award, for himself and his wife, for her goods and chattels, to bind her; but an infant may not make any submission to an award, or any other for him, for it will be void.

If several persons do a wrong to a man, and one of these, and he to whom the wrong is done, submit to an award; the other persons, who were no parties to the submission, may take advantage of it, to extinguish the wrong.

And where the award of recompense for a wrong done is performed, that wrong is altogether determined; also the award of a personal chattel doth alter the property of it, and give it to the party to whom awarded, that he may have detinue for it.

A submission is of all actions and demands, &c. though there be but one cause or matter between them; an award may be made for this; and where two things are submitted, and the award but one, it is good, if the arbitrators have no further notice of the other; though it be of three things, or some particulars with a general clause of all other matters, in that case they must make the award for the things particularly named, without any other notice given.

If the submission be by divers persons, and the arbitrators award between some of them only, this is good, but if a submission is of certain things in special, with a proviso in the condition, that the award be made of the premises, &c. by such a day, there the award must be made of all, or it will be void.

An award of all actions real, when the submission is of actions personal, is not good.

Yet if the submission be of things personal, and the award is, that one of the parties shall do an act real, in satisfaction of a personal injury, &c. or a submission be of one
thing, and the award made of something incident to, or necessarily depending upon it; or if the submission is of all actions real and personal, and the award only of matters personal, &c. it will be good in these cases, if nothing else is notified to the arbitrators.

An award made only on one side, without any thing on the other, is void in law; as, 8 Rep. 72, that one shall pay or give bond for money to the other party, and he do nothing for it; but if it be to give bond to pay, or to pay a debt, and that the other shall be discharged of the debt, &c. this is good; so where it is that one party shall pay money to the other, and then the other shall release all actions to him.

If divers trespasses be referred to arbitration, and the award is, that one of the parties shall make the other parties amends, or give release, and say not what amends, or what release, &c. it is void for uncertainty.

Award was, that each party should give to the other a general release of all demands, 1 Cro. 688, provided that if either of them dislike the award, within twenty days after made, and within that time pay 10s. the award to be void; it was held, that the first part of the award was good, and the proviso repugnant and void.

Arbitrators are to make their award secundum allegata et probata (according to what is alleged and proved) but they may not enjoin any oath to the witnesses; the award ought to be published; and no one is bound to perform, till he can know what the award is.

A submission to award may be revoked and countermanded before the award made, 8 Rep. 78, where there is no specialty to abide the award of J. S. &c.

A submission was to an award by bond, and at the end of the condition of the bond Salik. 72, was this clause, and if the obligor shall consent that this submission shall be made a rule of court, then, &c. Upon motion to make this submission a rule of court, it was opposed, because these words do not imply his consent; but if he would forfeit his bond, he need not let it be made a rule of court; yet because this clause could be inserted for no other purpose, the court took the conditional words to be a sufficient indication of consent and made the award a rule of court.

A matter was referred, by consent of Nisi Prius, to the three foremen of the jury; Salik. 73, and before the award was made, one of the parties served the arbitrators with subpoena ex Chancery, which hindered their proceedings to make the award. And the court held this a breach of the rule, and granted an attachment Nisi Causa.

Upon a submission to the award of the three foremen of the jury, who made their award, the defendant moved to set it aside; because they went on without giving him time to be heard, or to produce a witness; and Holt, Chief Justice, said, the arbitrators being judges of the party's own choosing, the party shall not come and say, they have not done him justice; and put the court to examine it; aliter, where they exceed their authority; however the award was examined and confirmed, and the plaintiff moved for an attachment for not performing it; and the court held, that the non-performance, while the matter was sub judice, was no contempt; then the plaintiff moved for his costs, and that was denied; upon which Powell, Justice, said, that seeing they could not give the party any costs, he should never be for examining into awards again.

H. bound himself on a bond, to stand to the award of I. S. which submission was made a rule of court. The party, for whose benefit the award was made, moved the court for an attachment for non-performance, which was granted; pending that, he brought an action of debt upon the bond; upon this Serjeant Darnell moved, that he might not proceed both ways, and likened it to the cases, where the court stays actions on attorneys' bills, while the matter is under reference before the master: sed per curiam, the motion was denied, and this difference taken; where the court relieves the party by
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way of amends in a summary way, as in the case cited, there it is reasonable; otherwise here, where the plaintiff has no satisfaction upon the attachment; and the defendant was put to answer interrogatories.

Attachment lies not, for not performing an award made upon a rule of court without a personal demand. Holt, Chief Justice, remembered the first attachment of this kind was in Sir John Humble's case in Keyling's time, in which, and ever since, a personal demand has been thought necessary. In such cases of award, though they be not legally good, an attachment lies for non-performance; aliter, if possible; but the party is excused as to that part which is impossible only.

Debt on obligation to perform an award, which was, that the defendant should enjoy a house, of which the plaintiff was lessee for years, during the term, paying to the plaintiff 20s. yearly; and for non-payment of this, the action was brought; and it was held to lie.

The Form of an Award made by two Arbitrators on a Submission.

To all people to whom this present writing indented of award shall come. We E. F. of, &c. and G. H. of, &c. send greeting. Whereas there are several accounts depending, and divers controversies and disputes have lately arisen between A. B. of, &c. of the one part, and C. D. of, &c. of the other part, touching and concerning, &c. And whereas for putting an end to the said differences and disputes, they the said A. B. and C. D. by their several bonds or obligations, bearing date, &c. are reciprocally bound each to the other, in the penal sum of, &c. to stand to, abide by, perform, and keep the award, order, and final determination of us, the said E. F. and G. H. arbitrators, indifferently chosen, between the said parties, to arbitrate, &c. [as in the bond] so as the said award be made in writing, under our hands and seals, and ready to be delivered to the parties in difference, on or before, &c. next, as by the said in part recited bonds, or obligations, with the conditions thereunder written, may appear. Now, know ye, that we the said arbitrators, whose names are hereunto subscribed, and seals affixed, taking upon us the burden of the said award, and having fully examined, and duly considered the proofs and allegations of both the said parties, do, for the settling amity and friendship between them, make and publish this our award, by and between the said parties, in manner following; that is to say, first, We do award and order, that all actions, suits, quarrels, and controversies whatsoever had, moved, arisen, or depending between the said parties, in law or equity, for any manner or cause whatsoever, touching the said premises, to the day of the date hereof, shall cease and be no farther prosecuted; and that each of the said parties shall bear and pay his own costs and charges, in any wise relating to, or concerning the said premises; and we do also award and order, that the said A. B. shall pay, or cause to be paid to the said C. D. the sum of, &c. within the space of, &c. And further, we do hereby award and order, that the said C. D. shall, on or before, &c. pay or cause to be paid to the said A. B. the sum of, &c. or give sufficient security for the same to the said A. B. And lastly, we do award and order, that the said A. B. and C. D. on the receipt of the several sums of, &c. shall in due form of law, execute each to the other of them, or to the other's use, general releases, sufficient in law, for the releasing, by each to the other of them, his heirs, executors, and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premises aforesaid, or any matter or thing thereunto relating, from the beginning of the world to the day of the date, &c. [here mention the date of the arbitration bonds] last past. In witness have hereunto set our hands and seals, the, &c. in the year, &c.
OF ARBITRATORS, &c.

An Umpirage, for Want of a Determination by Arbitrators chosen.

To all, &c. I, I. K. of, &c. send greeting. Whereas there are several accounts depending, &c. [here go on as in the former award, until you come to] to stand to, &c. the award, order, and final determination of E. F. of, &c. and G. H. of, &c. arbitrators indifferently chosen, between the said parties, to arbitrate, &c. [as in condition of the bonds] so as the said award was made in writing under the hands and seals of the said arbitrators, and ready to be delivered to the parties in difference, on or before, &c. last past; and if the said arbitrators did not draw up the said award in writing, and deliver the same as aforesaid, on or before the said, &c. then the said parties were to stand to, abide, observe, perform, and keep the award, umpirage, final end and judgment of me, the said I. K. umpire indifferently chosen, between the said parties, for the composing and ending of differences aforesaid; so as my said award, umpirage, and determination be made in writing, under my hand and seal, and ready to be delivered to the said parties, on or before, &c. as by the said in part recited bonds or obligations, with the conditions thereunder written may appear. And whereas the said E. F. and G. H. did not make up their said award between the said parties, within the time limited by the said in part recited bonds or obligations, as aforesaid; whereby, and on which account, the compassing, ending, and determining of the said differences and matters in dispute now depends wholly upon me: now, know ye, that I, the said I. K. having taken upon me, the business and charge of the said award and umpirage, and being willing to set the said parties at peace and concord, by making a final end of the controversies between them; and having deliberately, and at large, heard, examined, and duly considered the grievances, allegations, titles, vouchers, and evidences of both the said parties, in relation to the said premises in dispute, do make, publish, and declare, and deliver this my award or umpirage, in the manner following, that is to say, first, I arbitrate, award, judge, order, and determine, that, &c. [here insert the several particulars of the award] In witness, &c.

An Award or Umpirage by a single Person, elected to arbitrate.

To all, &c. I, E. F. of, &c. send greeting. Whereas, &c. [Here go on as in the award made by two arbitrators, until you come to, stand to, &c.] the award, order, and final determination of me the said E. F. indifferently elected and chosen between the said parties, to arbitrate, &c. [as in the conditions of the bond] so as my said award or umpirage be made in writing under my hand and seal, and ready to be delivered to the said parties, on or before, &c. as in and by the said in part recited bonds, or obligations, and the conditions thereof, may appear. Now, know ye, that I, the said E. F. [here go on as in the last precedent.] In witness, &c.

The Form of a Submission to an Arbitration, in order to make it a Rule of Court.

Be it remembered, that A. B. of, &c. and C. D. of, &c. being desirous finally to end and determine divers controversies, suits, and quarrels that have lately arisen between them, did on, &c. agree to submit and refer all the said controversies, suits, and quarrels, to the award and determination of E. F. of, &c. and G. H. of, &c. arbitrators, for that end indifferently chosen, by the said parties; which said award is to be made in writing, under the hands and seals of the said arbitrators, and ready to be delivered to the said parties, on or before, &c. And the said parties did mutually promise and oblige themselves, that they would obey, perform, and execute such award, as the said

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arbitrators should make in the premises. Now the said parties do further agree, that
the said submission shall be made a rule in his Majesty's court of, &c. at Westminster,
and that they will be finally concluded by the arbitration that shall be made in the pre-
mises by the said arbitrators, pursuant to such submission. Witness, &c.

I shall add to the preceding specimens, the Form of a general Release as Part of an
Award; and with it close this chapter.

Know all men by these presents, that I, A. B. have remised, released, and for ever
quit-claimed, and by these presents, do, for me, my heirs, executors, and administra-
tors, remise, release, and for ever quit-claim, unto C. D. his heirs, executors, and ad-
ministrators, all, and all manner of actions, cause and causes of actions, bills, bonds,
 writings, obligations, debts, dues, duties, accounts, sum and sums of money, judge-
ments, executions, extents, quarrels, controversies, trespasses, damages, and demands
whatsoever, both in law or equity, or otherwise howsoever, which against the said
C. D. I ever had, now have, and which I, my heirs, executors, and administrators,
shall or may have, claim, challenge, or demand, for or by reason, or means of any
mater, cause, or thing, from the beginning of the world to the day of the date of these
presents. In witness whereof, I have hereunto put my hand and seal, the
day of, &c.

A. B.

Sealed and delivered in the
presence of
R. M.
S. E.

OF ALIENS, NATURALIZATION, AND DENIZATION.

23 Edw. 3.
c. 2.
An alien is one born in a strange country, out of the allegiance of the King, being
quite contrary to a denizen or natural subject; though a man born out of the land, pro-
vided the place of his nativity be in any of his Majesty's dominions beyond sea, or born
of English parents, out of the obedience of the King, if the parents at the time of his
birth were of such obedience, is no alien.

7 Rep.
And if one born out of the King's obedience, come and reside in England, his chil-
dren, begotten and born here, are not aliens, but denizens.

All persons being the King's natural-born subjects, may inherit, as heirs, though their
ancestors were aliens.

If an ambassador, or any other British minister, or person invested with any public
character, under a commission from the King of Great Britain, or of a commercial com-
pany, enjoying rights and privileges under an act of Parliament, or by letters patent
from the crown, have any children in a foreign country, by a wife, who is an English
woman, they are by the common law natural-born subjects, and not aliens.

And if an English merchant, residing beyond sea, marries a woman of the country, by
whom he has a child, and then dies, this child is born a denizen, and shall be heir to
him, notwithstanding the wife be an alien.

Those which are born in the English plantations, are subjects born, as are those like-
wise born on the King of England's seas.

7 Rep. 18.
There are two incidents that are regularly necessary to make one a subject born:
OF ALIENS, &c.

First, that his parents, at the time of his birth, be under the actual obedience of the King; or, secondly, that the place of his birth be within the King's dominions.

It is the place of birth that makes the disability of an alien to have lands, &c. The blood is not the disability, but the place where born.

An alien can hold no land by descent or purchase, or be tenant by the courtesy, or in dower.

An alien can have no real or personal action for or concerning lands, tenements, or hereditaments, to him and his heirs; albeit he can have no heir, yet he is of capacity to take a fee simple, but not to hold; for the King, upon office found, shall have it by his prerogative.

A devise of lands to an alien is void.

And if a man be bound to an alien enemy in an obligation, the bond is void to him, but the King will have it.

Aliens may obtain goods, and personal estate, by trade, &c. and may maintain actions for the same; they may also have action of assault and battery, and for support of their credit.

But they cannot bring any real action, though he may a personal, unless it be for a house, for a necessary habitation, being for the benefit of trade.

An alien enemy cannot maintain any action whatsoever, nor get anything lawfully within this realm.

Aliens, living under the protection of the King, may have the benefit of a general pardon.

No alien shall be returned on any jury, nor be sworn for trial of issues between subject and subject, &c. but where an alien is party in a cause depending, the inquest of jurors are to be half denizens, and half aliens; but in cases of high treason this is not allowed.

An alien shall not have any vote in the choice of knights of the shire, or burgesses to Parliament.

And all aliens are incapable of being members of Parliament, enjoying public offices, &c.

If an action is brought against an alien, and there is a verdict and judgment against him, yet he may bring a writ of error, and be plaintiff there, and that such plea is not good in that case.

Though an alien may purchase and take that which he cannot keep or retain, yet the law hath provided a mean of inquiry before he can be divested of the same; for until some office be found, the freehold is in him.

And this office, which is to gain the King a fee, or freehold, must be under the Great Seal of England; for a commission under the Exchequer Seal is not sufficient to entitle the King to the lands of an alien born, for the commission is what gives the King a title, for before that he hath none.

An alien cannot purchase lands for his own benefit, but he may for that of the crown; therefore if land be devised to an alien, the crown shall have it; yet if an alien, tenant in tail, suffers a common recovery before office found, the recovery is good.

If an alien and a subject born, purchase land to them and their heirs, they are joint tenants, and shall join in assize, and the survivor shall hold place, till office found.

By the finding of this office, the party is out of possession, if the same be of house or lands, or such things as do lie in livery; but of rents, common, advowsons, and other inheritances incorporeal, which lie in grant, the alien is not out of possession, be they appellant or in gross; therefore if an information or an action be brought for the same, the party may reverse the office in that court where the action or information is brought for the King.
OF ALIENS, &c.

And if the King obtains not the possession within the year after the office found, he cannot seize * without a scire facias.

An alien infant, under the age of twenty-one years, cannot be a merchant trader within this realm, nor can he enter any goods in his own name at the Custom-house; neither indeed can an infant carry on trade at all though he be a natural-born subject. Cro. Jac. 494, &c.

If an Englishman shall go beyond sea, and shall there swear allegiance to any foreign prince or state, he shall be esteemed an alien, and shall pay the same duties as they; but, if he returns and lives in England, he shall be restored to his liberties.

An alien enemy committent here by the King's license, and under his protection, may maintain debt upon bond, although he came not with safe conduct.

The eldest son of an alien, being also an alien, cannot inherit; but the land shall descend to the younger brother, if a denizen: as, for instance, if there be three brothers, of which the eldest is an alien, the other two naturalized, and the middle brother purchases, and dies without issue, the younger brother shall have the land.

Concerning the rule of descent, a proximity of blood is not so much to be regarded as the municipal laws of the country in which the question ariseth; for the several laws of divers kingdoms have variously disposed the manner of descents, even in the same line and degree of nearness: for instance, the father certainly is as near of kin to the son as the son is to the father, and is nearer in proximity than a brother, and therefore shall be preferred as next of kin in administration of the son's estate.

According to the laws of England, the son's dying without issue, or brothers or sisters, the father cannot succeed, but it descends to the uncle.

There are two kinds of descent, according to the common law of this realm, viz.

1st, Lineal, from the father, or grandfather to the son, or grandson; and
2dly, Collateral or transversed; as from brother to sister, uncle to nephew, and è converso: and both these again are of two sorts.

1st, Immediate, as in lineals, from father to son.

2dly, Mediate, as in lineals, from grandfather to grandchild; where the father dying in the life-time of the grandfather, is the medium differens of the descent; collateral, as in the lineal, from uncle to nephew, or è converso.

And this is mediate descent, or mediate ancestor, though to many purposes it may be immediate; for the father dying in the life-time of the grandfather, the son succeeds in point of descent in the lands immediately to the grandfather; and in writ of entry shall be supposed to be in the grandfather, and not in the post & cui.

This is called a mediate descent, because the father is the medium through whom the son derives his title to the grandfather.

In immediate descents there can be no impediment, but what arises in the parties themselves; for instance, the father seized of lands, the impediment that hinders the descent must be in the father or son, as if either of them be an alien.

In mediate descents, the disability of being an alien, in him that is called the medius antecessor, will disable a person to take by descent, though he himself have no such disability.

In lineal descents, if the father be an alien, and hath issue a denizen born, and die in the life-time of the grandfather; the grandfather dies seized, the son shall not take, but the land shall escheat.

In collateral descents, A. and B. brothers: A. is an alien, and has issue C. a denizen born; B. purchases lands, and dies without issue; C. shall not inherit, because A. which was the medius antecessor, or medium differens, is incapable.

But in any descents, the impediment in an ancestor, who is not medius antecessor, from whom, and to whom, will not impede the descent.
OF ALIENS, &c.

As for instance; the grandfather and grandmother, being both aliens, have issue, the father, a denizen, who hath issue the son, a natural-born subject; the father purchases lands, and dies, the son shall be heir to the father, notwithstanding the disability of the grandfather, and yet all the blood that the father hath is derived from the disabled parents; for they are not medi antece sors, between the father and the son, but paramount.

The law does not hinder, but that an alien is of the same degree and relation of consanguinity as natural-born subjects, or denizens born, the son, the father, and brother, though aliens; the son, father, and brother, our law takes notice of as well as natural-born subjects; and so it was adjudged; for he shall be preferred in administration, though an alien, as next of kin.

But in cases of inheritance, the law takes no notice of him, and therefore, as he shall not take by descent, so he shall not impede the descent to the younger brother; as, for instance, A. an alien, B. and C. naturalized by act of Parliament, all brothers; B. purchases lands, and dies, sine prole, without issue, C. shall inherit, and not A.

A. an alien, B. and C. his brothers, both naturalized by act of Parliament; B. purchases lands, and dies without issue, the same shall not come to A. nor to his issue; 15 Car. 2. though a denizen, but shall come to C. and his issue; the law taking no notice of A. as to impede the succession of C. or his issue, though it work a consequential disability, to bar the issue of A. parallel to what the law calls corruption of blood, which is a consequent of attainer.

Again, in a lineal descent, if there be a grandfather, a natural-born subject, the father of an alien, and the son a natural-born subject; the father is made a denizen, yet he shall not inherit the grandfather; and if the father dies in the life of the grandfather, the grandchild, though born after the denization, doth not remove either the personal, or the consequential impediments, or incapacity of the father.

In collateral descents, the father, a natural-born subject, has issue two sons aliens, who are both made denizens; one dies without issue, the other shall not inherit him.

A. an alien, marries an English woman, who is seized of lands, and has issue; the father and mother die, yet the issue may inherit the mother, non obstante the incapacity of the father being an alien.

The statute de natis ultra mare declares the issue, born of an English man upon an English woman, shall be a denizen; and the construction has been, though an English merchant marries a foreigner, and has issue by her born beyond the seas, that issue is a natural-born subject.

But if an English woman goes beyond the sea, and there marries an alien, and has issue beyond the sea, that issue are aliens.

Yet if an English woman marries an alien beyond the seas, and then comes into England, and has issue, they are not aliens, but may inherit.

No alien, or persons not born within the allegiance of the King, or naturalized, or made a free denizen, shall exercise the occupation of a merchant, or factor, in any of his Majesty's plantations or territories in Asia, Africa, or America, upon pain of forfeiture of all his goods, which are in his possession, &c.

All such persons as shall be born on board any of the ships employed about the trade of the South Sea Company, or in any of the places which shall be discovered or possessed by the company, shall be deemed natural-born subjects.

Naturalization is the making an alien the King's natural subject by act of Parliament, whereby he becomes as much a subject, to all intents and purposes, as if he was born so; for by naturalization, a person's issue, before the naturalization, shall inherit.

A stranger, naturalized by act of Parliament, may have lands by descent, as heir at law, as well as have them by purchase; but until he is naturalized, or made denizen, a stranger is not generally under the King's protection, to have the benefit of the laws.
No person of the age of eighteen years, or above, shall be naturalized, unless he have received the Lord's Supper within one month before any bill exhibited for that purpose, and also shall take the oath of supremacy and allegiance in the Parliament House, before his bill be twice read; and the Lord Chancellor, if the bill begin in the Upper House, and the Speaker of the Commons House, if the bill begin there, shall have authority during the session to administer such oaths.

The clause in the act 12 Will. 3. cap. 2. whereby it is enacted, that no person born out of these kingdoms, though he be naturalized, except such as are born of English parents, should be capable of being of the Privy Council, &c. shall not extend to disable any person, who, before his Majesty's accession to the crown, was naturalized.

No person shall be naturalized, unless in the bill exhibited for that purpose there be a clause to declare, that such person shall not be enabled to be of the Privy Council, or a member of either House of Parliament, or enjoy any office of trust, or have any grant from the crown; and no bill of naturalization shall be received without such clause.

Children born out of the allegiance of the crown of Great Britain, whose fathers shall be natural-born subjects, shall, by virtue of the act 7 Anne, cap. 5. and of this act, be natural-born subjects.

Provided that nothing in 7 Anne, cap. 5. or this act, shall make any children, born out of the allegiance of the crown, to be natural-born subjects, whose fathers, at the time of the birth of such children, were, or shall be attained of high treason, either in this kingdom, or in Ireland, or were liable to the penalties of high treason or felony in case of their returning into this kingdom or Ireland, without license of his Majesty; or were, or shall be in the service of any foreign state, then in enmity with the crown of Great Britain.

If any child, whose father, at the time of the birth of such child, was attained of high treason, or liable to the penalties of high treason or felony in case of returning without license, or was in the service of any foreign state in enmity with the crown, excepting all children of such persons who went out of Ireland in pursuance of the articles of Limerick, hath come into Great Britain or Ireland, or any other of the dominions of Great Britain, and hath continued to reside within the dominions aforesaid for two years, at any time between the 16th of November, 1708, and the 25th of March, 1731, and during such residence hath professed the Protestant religion, or hath come into Great Britain, &c. and professed the Protestant religion, and died within Great Britain, &c. at any time between the 16th of November, 1708, and the 15th of March, 1731, or hath continued in the actual possession or receipt of the rents of any lands in Great Britain, &c. for one year, at any time between the said 16th of November, 1708, and the 25th of March, 1731; or hath, bona fide, sold or settled any lands in Great Britain or Ireland, and any person claiming title thereto, under such sale or settlement, hath been in actual possession or receipt of the rents thereof for six months, between the said 16th of November, 1708, and the 25th of March, 1731, every such child shall be deemed a natural-born subject of the crown of Great Britain.

And for the better encouraging foreign seamen to serve on board British ships, it is further enacted, that every such foreign seaman who shall, after the first day of January, 1739, have served during the war, on board any British man of war, merchant ship, or privateer for two years, shall be deemed a natural-born subject of Great Britain, and shall enjoy all the privileges, &c. as an actual native of Great Britain.

Provided that no person, thus naturalized, shall be of the Privy Council, a member of either House of Parliament, or have any place of trust, civil or military, or have any grant of lands, &c. from the crown.

Enacted, that after the 1st day of June, 1740, all foreigners, who have inhabited or shall inhabit for seven years, or more, in any of our American colonies, and shall not
be absent from some of the said colonies more than two months, at any one time, during the said seven years; and shall take and subscribe the oaths, and make, repeat, and subscribe the declaration appointed by the act of 1 Geo. I. or, being a Quaker, shall make and subscribe the declaration of fidelity, and take and affirm the effect of the abjuration oath, appointed by the act 8 Geo. I. and also make and subscribe the profession of his Christian belief, appointed by the act 1 W. and M. before any one of the judges of the colony, wherein such persons have inhabited, or shall inhabit, shall be adjudged to be his Majesty's natural-born subject of this kingdom, to all intents and purposes, as if they had been really born in the same; that the said judges shall give the said oaths, &c. in open court, between the hours of nine and twelve in the forenoon, which shall be entered in the same court, and also in the secretary's office of the colony wherein such person shall so inhabit; for doing whereof two shillings shall be paid at such respective place, under the penalty of 10l. for every neglect: every secretary is also required to make such entry, in a book to be kept for that purpose in his office, on notification by a judge of the same colony, under the like penalty.

All persons duly qualifying themselves to be naturalized, except Quakers or Jews, shall receive the sacrament of the Lord's Supper in some Protestant congregation in Great Britain, or in some of the American colonies, within three months next before their taking and subscribing the said oaths and declaration; and shall at the time of taking and subscribing the said oaths, &c. produce a certificate, signed by the person administering the said sacrament, and attested by two credible witnesses, whereof an entry shall be made in the secretary's office of the colony wherein they shall inhabit, as also in the court where the said oaths shall be taken, without fee or reward.

Whenever a Jew presents himself to take the oaths pursuant to this act, the words, "upon the true faith of a Christian," shall be omitted in administering the same; and the taking the said oaths, without those words, as the Jews were permitted to take the oath of abjuration by the act of 10 Geo. I. shall be deemed a sufficient taking according to this act.

A certificate, under the seal of any of the said colonies, of any person's having conformed in the several particulars required by this act, shall be deemed a sufficient testimony thereof, and of his being a natural-born subject of Great Britain, to all intents and purposes, in every court within the King's dominions.

The secretary of every respective colony shall send over to the Commissioners of Trade at London, at the end of every year, to be computed from the 1st of June, 1740, exact lists of the names of all persons who have that year intitled themselves to the benefit of this act, under penalty of 50l. for every neglect; all which lists shall be entered in a book, by the said commissioners, to be kept at the office for public view.

Foreign Protestants who have served in the Royal American Regiment, or as seamen in America for two years, and shall take the oaths, &c. appointed by 1 Geo. 1. c. 13. and shall produce certificates of their having received the sacrament in some Protestant church, within six months of the time of their taking the oaths, &c. shall be deemed natural-born subjects.

Provided that no such naturalized person shall be of the Privy Council, or a member of either House of Parliament, or capable of enjoying any place of trust in Great Britain or Ireland, civil or military, or of taking any grant from the crown to himself, or any in trust for him, of any lands, &c. in Great Britain or Ireland.

After reciting the before-mentioned act, it adds, "and as many of the people of the congregation called the Moravian Brethren, and other foreign Protestants, not Quakers, who scruple the taking of an oath, are settled in his Majesty's colonies in America, and demean themselves there as a sober, quiet, and industrious people, and many others of the like persuasion, are desirous to transport themselves thither; and if the benefit of
OF ALIENS, &c.

the said act of 13 Geo. 2. were extended to them, they who are now there, would thereby be encouraged to continue their residence, and others would resort thither in greater numbers; whereby the said colonies would be improved, their strength increased, and their trade extended: It is therefore enacted, that from and after the 25th of December, 1747, all foreign Protestants, who conscientiously scruple the taking of an oath, and who are born of the liegeance of his Majesty, who have or shall reside for seven years in any of his Majesty’s colonies in America, and shall not have been absent out of some of them longer than two months at any one time during the said term, and shall qualify themselves, as by the recited act of 1 W. and M. and 8 Geo. 1. is directed, before the chief or other judge of the colony, wherein they respectively have or shall so reside, shall be deemed to be his Majesty’s natural-born subjects, to all intents and purposes, as if they had been born within this kingdom; which said affirmation and subscription of the said declaration, the said chief, or other judge, is to administer and take, and the same shall be done in every respect, as in the said recited act of 13 Geo. 2. is set forth and directed, and lists shall be transmitted,” &c.

No person shall be naturalized by virtue of this act, unless he shall have received the sacrament, &c.

The provisions contained in the act of 13 Geo. 2. &c. shall extend to foreign Protestants, who conscientiously scruple the taking of an oath, and who shall be qualified as aforesaid.

The said foreign Protestants shall enjoy the privileges of natural-born subjects, and all the benefits of this act, and the said act of 13 Geo. 2.

No person who shall become a natural-born subject of this kingdom by virtue of this act, shall be of the Privy Council, &c.

Nothing in this act, or in the recited act of 13 Geo. 2. shall extend to naturalize any person who by virtue of an act of 4 Geo. 2. intituled “An act to explain a clause in 7, Annæ,” &c. is declared not to be intituled to the benefit of the said act of 7 Annæ, but all such persons shall remain in the same state and condition to all intents and purposes, as they would have been in, if the said recited act of 13 Geo. 2. or this act had never been made.

According to law, no one can be naturalized but by act of Parliament, and that cures the defect as if they had been born in England; and acts of this nature may be so penned, as to cure defects in the father or ancestor, as well as in the parties themselves, which it will not do except express words to that purpose are inserted.

Children born of parents, subjects within any of the places or guards possessed by the King’s army when in an hostile manner he forcibly enters the territories of another, prince or state, shall be deemed natural-born subjects, and stand in no need of naturalization.

It has been conceived, that a foreigner, being naturalized in Ireland, may clothe him with the title of a natural-born subject of that country, but not qualify him as one of this.

Denization is the enfranchising an alien: making him a subject by the King’s letters patent, and he is called Donaison, because his legitimation proceeds ex donazione regis, from the King’s gift. Such a one is enabled in many respects to do as the King’s native subjects do, to purchase and possess lands, enjoy any office or dignity; and when he is thus enfranchised, he is said to be under the King’s protection, or esse ad fidem Regis Anglie, before which time he can possess nothing legally, in England. But notwithstanding this, it is of naturalization; for a stranger naturalized may inherit land by descent, which a denizen cannot; and in the charter, whereby a person is made a denizen, there is commonly contained some clause that expressly abridges him of that full benefit which natural subjects enjoy.
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When the King makes a denizen by letters patent, he may purchase lands, and his issue, born afterwards, may inherit them; but those he had before shall not: and though a denizen is enabled to purchase, he cannot inherit the lands of his ancestors, but as a purchaser he may enjoy them; and he may take lands by devise.

Aliens made denizens are incapable of offices in the government, to be members of Parliament, &c.

It is so high a prerogative to make aliens denizens, that the King cannot grant his power over to any other.

OF BANKS AND BANKERS.

A Bank is a public office for keeping and circulating money, to be employed in exchanges, discounts, government-loans, &c. or to be otherwise disposed of for the profit of the proprietors.

In other words, a bank may be denominated a common repository, where many persons agree to keep their cash, to be always ready at their call, or subject to their directions.

The word bank is derived from the Italian, Banca or Banco, as those of that nation used formerly to exercise the function of exchangers, or bankers, in all the public places, or bourses of their trading cities, seated on forms with benches to count their cash, write their letters, and draw their bills of exchange on; and some authors add, that when any of them had the misfortune to fail, his bench was broke, either as a mark of infamy, or to put another in its place, and from this occurrence they pretend the word bankrupt, in French banqueroute, is derived.

And from which circumstance, we may see that this business was originally confined to private persons; but the advantages arising from it to commerce being very diffusive and general, several states thought proper to incorporate some of the most considerable of their subjects for the purposes of carrying it on with a greater security to the concerned; whilst other potentates retain the protection and management in their own hands.

Before we proceed to an illustration of the constitutions of the most reputable banks now existing, in most of the capital cities of Europe, which will be done according to the order of time in which they were instituted; it will be necessary just to mention the different kinds of banks, as they differ widely from each other in their principles and practice.

Some are instituted wholly on the public account, and put under the direction of the magistrates, who are obliged to take such care of the management, that the money or bullion deposited therein, shall always be kept for the use of the proprietors, and shall never be let out for profit or advantage; of this kind is the famous bank of Amsterdam, which is administered with so great a strictness and fidelity, that it is said, a magistrate, who was one of the directors of it, was sentenced to death, for making use of a sum of money but for one day, though he paid it in the next. Wherefore, from an opinion the proprietors entertain of the equity of its administration, they judge themselves so secure that their money lies always ready to answer their demands, that they seldom draw out large sums, but make their mutual payments by transferring the sums from one man's account to another's; and from this great ease and convenience it is come to pass, that payments made by assignments on this bank are valued at from 3 to 5 and 6 per cent. above the payment of money, which difference between the bank and current money is called the agio.

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A second sort of banks is such as consist of a company of monied men, who being duly established and incorporated by the laws of their country, agree to deposit a considerable fund or joint stock, to be employed for the profit and advantage of the whole society, in all those ways which are compatible with the nature of such an undertaking; as borrowing upon their own credit; and lending money upon good securities; buying and selling bullion, gold and silver, and foreign specie; discounting of bills of exchange, or other secure debts; receiving and paying the cash of other persons; and of this kind is the Bank of England.

A third sort is the banks of private men, of which we shall treat distinctly in a separate chapter.

As to the first kind, it is certain, that nothing can be so infallibly safe, as where the value is kept always ready in specie; and here also the ease and security of traders are effectually provided for, in the receipts and payments of their money; but yet this kind of bank is so much the less useful to the public, as it can neither be helpful to government on emergencies, nor to traders, in accommodating them with money.

The security of the second kind consists in the certain knowledge of its fund or stock, the solidity of its institution, and the incorruptible fidelity of its management; wherein it is always the interest of the concerned to give the public the utmost satisfaction: and in this respect the Bank of England must be secure beyond all apprehension to the contrary, as well on account of the great sums they have lent to government, upon the faith of the British Parliament, which is sufficient always to keep them above all suspicion of failure, as from the known skilful and profitable management of those who have been successively concerned in the direction. Besides, as an incorporated body, they are not, like private men, subject to death. And as this kind of bank has all the conveniences of the former, it has also this beyond it, that its capacity of lending money is an invaluable accommodation to the community, since it will always have a tendency to keeping the interest of money low, and be an effectual and permanent check to usury, which is the greatest bane to trade and navigation.

Of the Bank of Genoa.

The most considerable corporate body in the republic of Genoa, is that which is called St. George's Bank, the most ancient establishment of the kind in Europe, though the date of its institution is not certainly known: but we may be assured it is of much greater antiquity than that of Venice, the republic of Genoa being founded A.D. 950. The fund was constituted from such branches of the public revenue as were set apart by the government, and such sums as should be borrowed during the exigencies of the commonwealth; which fund hath never been violated, under the greatest troubles and perplexities of the state. The administration of this bank being for life, and partly in the hands of the citizens, gives this body a great authority in the state, and a powerful influence over the people. This bank is generally considered as a great load to the state, and as a kind of inferior senate, which breaks the uniformity of their aristocratic government. The people, however, receive no small advantage from it, both as it is a check to their aristocracy, and distributes the power among more private members of the republic; and while the state kept itself clear of the quarrels of the great belligerent powers of Europe, this bank maintained a circulation for the support of public credit and commerce; but having unhappily taken part in their wars in the last and the present century, they exhausted their public treasure, their commerce declined, and with it their public credit, and the reputation of St. George's Bank, which will never recover its original importance.
OF BANKS AND BANKERS.

Of the Bank of Venice.

This is commonly called Banco del Giro, on account of the continual rotation of its cash, and is properly a receptacle, or office for public deposits, or a general and perpetual cash currency for all merchants and traders.

It was established by a solemn edict of the republic, which ordains, that all payments, as well of large purchases, as bills of exchange, shall be only made in bank; and that all debtors and creditors shall be obliged to pay and receive their money there, which is effected by a single transfer from the accounts of the one to that of the other; so that the credit and debit only change names, without any real or effective money being paid.

However, payments are sometimes made in cash, particularly for the retail business; or when strangers insist on ready money, or some persons are better pleased to have their funds in their own keeping; and the necessity of sometimes making these effective payments, was the occasion of opening a ready money office, for those who required it; and it has been experienced, that this current cash has not caused any sensible diminution in the funds of the bank; but, on the contrary, the liberty of withdrawing the money at the proprietor's pleasure, has rather increased than lessened them.

By this means the republic, without restraining the liberty of trade, and without paying any interest, makes herself mistress of five millions of ducats, at which the funds of this bank are fixed, and at the same time supplies the necessities of state, without being obliged to have recourse to extraordinary impositions; and the good order always observed in the bank's administration, for which the republic is security, has rendered its establishment so solid, that there is room to judge it will last as long as the government itself.

In this bank the writings are kept, in liras, solidi, and denari de grossi, of which one lira is worth ten ducats de banco, or two hundred and forty grossi, the ducat being composed of twenty-four grossi.

The money of exchange, is always understood to be bank ducats, which are imaginary, and a hundred of these make a hundred and twenty ducats current, so that the difference between bank and current ducats is twenty per cent. the brokers being prohibited to negotiate at a higher price.

The bank is shut up four times a year, viz. the 20th of March, 20th of June, 20th of September, and the 20th of December; and it remains shut each time for the space of twenty days: however, this does not prevent their negociations, as well in ready money as bank, to be wrote off at its opening.

The bank is likewise shut upon extraordinary occasions, viz. eight or ten days at the carnival, and as long for Passion week; it is likewise shut every Friday, when there is no holiday, to make their balance.

The bills of exchange drawn for the fairs, or otherwise, must all be payable in bank, and a seller cannot refuse payment of his goods in the same manner, except by an agreement to the contrary.

Bills of exchange here have six days grace, and in default of payment, the protest must be made on the sixth day, otherwise the holder stands to the damage; but from the moment the bank is shut, a debtor cannot be forced to the payment of bills, neither in ready money nor otherwise, nor can be protested against for it, till on the sixth day after the bank opens, except when there is a failure, in which case every one may use their diligencies, provided their bills are fallen due.
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Of the Bank of Amsterdam.

This bank, formerly supposed to be the most considerable and richest in Europe; was established on the 31st of January, 1609, by the authority of the States General, under the direction of the burgomasters of this city, who are security for the same, and constituted themselves perpetual cashiers for its inhabitants, to whom it is of the greatest convenience and service, as millions may be paid in a day, by the simple assignations of a draught on it, without the intervention of any real cash.

The funds of this bank are related to be so great as is hardly credible, many authors quoting their value to be, at least, that of three thousand tons of gold, and these rated at a hundred thousand guilders per ton, make, at only thirty-five shillings per pound sterling, the prodigious sum of 58,571,406l. but as this value is unascertained, I shall give Sir William Temple's opinion of it instead of my own, who speaking of this bank, in his Remarks on the State of the United Provinces, says, "In the city of Amsterdam is the bank, so celebrated in all the world, on account of the greatness of its treasure, which exceeds that of all others hitherto known, real or imaginary: the place where it is lodged is a great vault under the town-house, provided with doors, locks, and every other security necessary for its safety and preservation; and it is certain, that when any one goes to see the bank, he will find there a very great treasure in bars and ingots of silver, in plate, and an incredible quantity of sacks full of metal, said to be gold and silver, as I believe, in effect they are; though as there are none but the burgomasters who have any direction in this bank, and as there is no one who keeps any account of what is brought in or carried out at different times, it is impossible to know, or even guess with any exactness, the proportion there is between the real and imaginary treasure of it; as it does not solely consist in the effective gold and silver, but also in the credit of the city, and of the state, of which the funds and revenues are as great as that of some kingdoms, and it is obliged to be answerable for all the money brought in: the greatest payments made between the merchants of this city, are in bank bills, so that it may be said, that this bank is properly the general chest, in which every one incloses his money, because they deem it there to be in greater security, both for paying and receiving, than if they had it in their own coffers; and the bank is so far from being obliged to pay an interest on the money deposited in it, that what is there worth more than the current money, in which small payments are handily made, because it neither admits nor receives any cash, but of the best and most valuable species, and those that are most current, as well in Germany as in the Low Countries."

By its establishment, it is ordained, that the payment of bills of exchange, and wholesale goods, shall be only in bank, except the sum be under three hundred guilders, and nothing less than this can be wrote into bank, without paying six stivers, except it be by the East and West India Companies, who are exempt from this duty, and may write in what small sums they please, so that the debtor is obliged to carry his money in there, and the creditor from thence to receive it.

The payments are made by a simple transfer, or assignation of one to the other, so that he that was creditor on the bank books before, becomes debtor from the moment he has assigned any sum to another, who is wrote down as creditor in his room.

Although the Bank of Amsterdam has no account of current cash open like that of Venice, this does not hinder, notwithstanding its regulation, but that it sometimes makes payments in ready money; and there are particular cashiers without the bank, who make the payments for an eighth per cent. that is to say, two stivers and a half for a hundred guilders.

This contravention is tolerated as beneficial to trade, forasmuch as sometimes one is
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Obliged to make a payment in effective money, more especially in retail affairs; and it often happens that some persons are better pleased to have their cash ready for use elsewhere, than in the public bank, either for negociations or to pay bills of exchange, when their express tenor is to be paid not in bank, but in ready current money.

It is by this bank, that the city of Amsterdam is supported in so much splendour and magnificence, and without interrupting commerce, possesses the greatest part of the cash of its inhabitants, who are not less rich for having their fortunes in the bank, as these they may convert into ready money whenever they please, and again bring them into bank when it shall be agreeable.

And to carry on this sort of business or exchange, an application need only be made to certain merchants, or particular cashiers, who are commonly to be met with between ten and eleven o'clock at the Dam, or before the town-house or bank, with whom the negociation may be adjusted for an agio, which they endeavour to effect on the highest terms when they are sellers, and on the lowest they possibly can when they buy.

The difference between buying and selling, is ordinarily from a sixteenth to an eighth per cent. and the agio varies from three to six per cent. sometimes more, and at other times less, according to the difference in exchange or the scarceness of the specie.

When a payment is made in ducatoons, or rix-dollars, and not in a small kind of money, less is given for the agio, because the large coins are received at the bank.

These money negociations are likewise made at the bourse, or at home, between merchant and merchant, with or without the intervention of brokers, who have one per mil. for their pains, paid equally between the buyer and seller.

To have an account opened for a person in the bank, he must pay ten guilders for once only.

The bank only receives ducats of gold, ducatoons, rix-dollars, old louis-d'ors, and other such-like species, and they have reduced the ducatoons to sixty stivers instead of sixty-three, as they passed in ready or current money, the rix-dollar to be forty-eight from fifty, and other sorts of coins in proportion.

The bank never engages for the specie it receives, but on the footing of five per cent. under their common value in current money, viz. the ducatoon at the value just now mentioned, which is the true original of the agio, and which consequently must be five per cent.

Ingots of gold, and bars of silver are likewise deposited there, of which the price is regulated according to their value after the assay, which is made by the city assayer, and all sorts of money; and species of gold and silver are also deposited, and principally dollars, for which the bank gives its receipts, called receipts of Mexican dollars, and which are commonly negociated at change.

Those who have cash in bank may draw it out whenever they please, on paying a sixteenth per cent. for the care of it: and if at the time of taking it out, the agio should be under five per cent. the treasurer will pay the difference, forasmuch as that when it was received, there was charged on it the five per cent.

The books of the bank are kept in guilders, stivers, and pennings, of which twenty stivers make a guilder, and sixteen pennings or deniers a stiver.

Any one drawing on the bank more than he has there, incurs a penalty of three per cent. on the sum he overdraws.

The bank is shut up twice a year, viz. in January or February, and in July or August, and remains so eight, ten, or fifteen days, during which time the books are balancing.

It is shut up besides, on the feasts of Easter, the Ascension, and Christmas, and on fast days, and about the 22d of September, when the fair begins.

If the six days grace, which are allowed on bills of exchange, happen to expire whilst
the bank is shut, the bearer of them is in time to protect them, in case of non-payment, the second or third day after its opening.

When any one who has an open account with the bank, happens to die, his heirs must prove by a good title, the right they have to demand, the passing the sums to their credit, which were due to the deceased.

Whenever any difference happens between merchants and tradesmen about the bank, it shall be summarily settled by the commissioners named for this purpose by the magistracy of Amsterdam.

There are some certain days in the year, when the money may be disposed of the very moment it is brought in, which is often improved by vain and designing men, who, without having a farthing property in that fund, get large sums credited on their account, though the debtor side cancels them immediately, yet by this game they either flatter their pride or advance their credit, as the debit sponge is not seen by many.

The bank makes no negotiable bills, but, as before-mentioned, gives receipts for effects deposited, which may be sold; for example, a person having one thousand louis-d’ors of the sun, which are commonly from guild. 11 8st. to 11 14st. current money, and wanting ready cash, endeavours to sell his gold, for which he is only offered guild. 11 8st. but resolving not to admit this low price, in hopes of a speedy rise, he carries them to the bank, which takes them on the footing of guild, 10 14st. each, making guild. 10,700 bank money, which he may dispose of at an half per cent. less than he must allow for six month’s care of it, as customary; and if during that time, the louis are in demand, he withdraws them, or sells his receipt, as he thinks proper: but if on the contrary they still keep low, though with an appearance of soon rising, he carries his receipt to the bank, where they debit his account in the proper office, guild. 53: 10st. for the half per cent. mentioned in the receipt, and on these terms he may prolong the deposit to the time it suits him to withdraw it, paying every six months the aforesaid sum; and this is the only case in which the bank gives receipts that are negotiable; and if the aforesaid one is sold, the buyer, before he can make use of its value, must restore to the bank the 10,700 guild. advanced, and the half per cent.

No seizure can be made of money in the bank, and whenever a sum is to be entered, in which there is pennings, it is never wrote in with more nor less than 8, so that if there be 7, 9, 10, 11, or 12, 8 only are inserted; but if there be above 12, then there is wrote in a stiver.

There were formerly only four book-keepers in the said bank, and as many comptrollers, but since, some have been added, and every one in their turn, receives the notes that have been entered in the books, to distribute to others according to their number; for example, the first book contains four or five hundred leaves, and the four books only make an end of the year, and are put on the archives after balancing.

If a man wants to know what has been wrote in on his account, he must go to the bank, between seven and eight in the morning, and if he lets this time relapse, he must pay two stivers, and if he delays it till after nine, he must pay six stivers.

The officers of the bank are paid by the city, and all that is received for correcting accounts, retardation of hours, and forfeits, is for the poor, as the fractions of the stiver are for the comptrollers.

After opening the bank from the time of balancing, all those who have open accounts ought to make a note of what remains due to them, and therein they should mark the folio of the bank book, in which their account is, how many sums they have got written, if any, since the preceding account, their name and surname, and then ask the commissioners who have the page of their account, whether that remainder or balance agrees
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with the bank books, which he tells them, and also whether the folio is continued or changed; if the sum disagree, he also informs them of it, and in this case, he must make an extract of the bank account as it stands in your book, to examine it, and see from whence the error or difference of the sums proceeds, for which verification twelve stivers are generally paid, a little more or less: the account being thus examined, they return it when asked for, and if they find it does not agree with that stated in the bank book, on finding the mistakes, they note them, if otherwise, they put at the foot of the said account, seen, or else, agrees with book-keepers, and afterwards they put the name and surname of him to whom it belongs, with the exact balance, deducting one stiver for every sum, which he has written to the credit of his new account, which he ought to note conformably in his own books. This verification is made twice a year, under penalty of twenty-five guilders mulet; and although it has not been possible to examine the account which they have in bank, they may however, at the opening of it, get the sums wrote to the bearers of bills of exchange, and for merchandizes bought of the India Companies, provided that it be entered as some part, and if they have got too much wrote, they will be subject to the fine of three per cent. as aforesaid; but this privilege is only for that day; for in regard of other days, if you are sure that you have cash wrote on to the credit of your account, it may be disposed of the same day, and wrote off to another and another.

When traders or merchants, who have accounts with the bank, cannot go themselves to get them examined as aforesaid, they may send some other in their room, with a power, made in the same manner as is before directed, for those persons carrying the notes to be wrote on.

When a person's bank account is full, and the book-keepers are obliged to open another, from the time of his being advertised thereof, he ought to take care to go to see whether the articles agree, as he does at the opening of the bank.

The book-keepers send daily to those who desire it, a note of the sums that have been wrote in to their credit; and for which they are paid six, eight, or ten ducatoons per ann. from each merchant or banker, who has this advice given him, which is divided among the said book-keepers, after deducting the expence of a servant they keep for this purpose.

The bank observes the following rules, which it is necessary for those who keep cash there to be apprized of.

1st. No one can dispose of his money paid in till the next day, except he pays half per cent. upon the sum he desires to draw out the same day; for example, if I have got wrote in 6000 guilders, and have a mind to draw out 4000 of them the same day, my note will not pass, neither then, the subsequent day, nor afterwards, till I have paid twenty guilders for the said half per cent.

2dly. There are, however, commonly three days in the year, as has been just hinted before, on which the money may be disposed of that is brought in the same day; viz. the second day after opening the bank, when it has been shut for balancing; and at the Feast of Pentecost.

3dly. If any more is disposed of than is in the bank, the penalty of three per cent. and the overdraft must be paid before any note.

4thly. As the bank shuts up twice a year, all who have accounts open must balance with it, in six weeks after opening, on penalty of twenty-five guilders.

5thly. When an account is once opened in the bank, whatever enters to its credit costs nothing; and formerly only a stiver was charged for every sum that went out, or was paid to another; but as business was considerably augmented in the year 1714, and occasioned a great number of clerks to be added to the Bank, for the dispatch of the notes, brought in to be wrote, it was ordained, that instead of one stiver, two should be
paid from the first of February, 1715, which has continued ever since, and is always charged the first article in a new account.

When it happens that, through mistake or forgetfulness, a man writes off a sum to one he is not indebted to, instead of to him he is owing to, although he immediately gives advice of the error, and that the sum is not yet entered in the bank books, he cannot withdraw his note from the bank by acknowledging he was mistaken, not even though he carries the person with him in whose favour the note is wrote, to declare that the drawer does not owe him any thing, the book-keepers will say that he must pay, as it is wrote in the books; and that, if he has made a mistake, the person in whose favour the error was committed, has only to return it the next day, wrote in on the account.

All those who have any thing to write in bank, are obliged to carry their notes themselves, in the same manner as those who have accounts are to go and demand the balance; or if they will save themselves the trouble, they must empower one of their counting-house to act for them, which will authorize their doing the one and the other; this procuration, as has been observed before, costs thirty-two stivers, which is paid for down, and must be renewed at the end of a year and six weeks; and if it should happen, that a man is obliged to make a pretty long voyage, and has given an authenticated procuration to his wife, or some other person, to make all sorts of payments, without having left a proportional number of bank notes, signed in blank, to the sums he imagines he may have to pay during his voyage, if the person to whom he has given the said power, signs the bank notes, without having the letter of attorney registered there, none of them will pass; and in this case, the person so authorized must carry and leave an authentic copy of his power at the bank, and that he signs all the notes with his name, adding, by procuration of such a one; and the noting the said power costs fifty stivers, which is paid out of hand.

The time of writing in bank, is from seven or eight in the morning to eleven; but after eleven to three, every note carried in, will cost six stivers, and after three, none are admitted.

When a man who has an account with the bank is ill, and unable to sign his draughts, or to go there to sign a power, the person who transacts his affairs ought to inform the bank of his disorder, and incapacity to attend there, for either of these purposes, though he is desirous of paying what he owes; in which case, a declaration drawn out by a notary, and signed by the physician, and one or two of his nearest neighbours or relations, should be carried to the bank, which on receipt of it, sends a servant to see in what condition the sick person is, and if he finds him really as is declared, his agent is authorized to sign the draught, in the same manner as if he had signed the letter of attorney at the bank; but if the infirm is in a condition to sign, he that is empowered may request the book-keepers to draw out a procuration for that purpose, and to send it with him to be signed, which they do, accompanied by a servant of the bank, who carries the book of procurations with him to the sick man, who signs that drawn out for him in the book; in the presence of the bearer, and from the time that a power is thus executed, he that it is made to, may sign and carry the notes to the bank, although he has not yet got the extract of the power, which oftentimes is not delivered in eight or ten days; but when once the bank has delivered it, he is obliged always to shew it when he carries the draught there, or demands a balance; if the sick man dies after executing the power, and before it is delivered to him in whose favour it is made, it will not be delivered to him at all, because the person being dead, his procuration is of no effect.

When any one who has an account in the bank is dead, after having made a will, his heirs, or the guardians he has appointed, must carry to the bank an authenticated copy of the said will, paying fifty stivers down for noting it; at the same time they desire to
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Know the balance of the deceased's accounts, to see whether that of his books corresponds with the bank, and they may have the balance transported to a fresh account, either in the name of the widow, heirs, their guardians, or the executors, without its costing them the ten guilders, which is always paid for opening a new one.

But if one who keeps cash at the bank dies intestate, those who pretend to be his heirs, or meddle with the succession, must first be authorized by the proper judges, and bring a copy of the sentence to the bank, before they will be permitted to dispose of the deceased's balance.

The agio has been always fluctuating, ever since the bank's establishment, though not in so great a degree of late years as formerly; in the year 1693, it was up to twelve and thirteen per cent. on account of the bad schillings of six stivers which were reduced to five and a half; and at the beginning of the month of April, in that year, after the diminution, it returned to two and a half, and as high as six per cent.; it afterwards fell and rose till the year 1703, when it was down to one and a half and two per cent.; but since then it has got up again, and commonly passes now from four to five per cent.

During the height of the war between France and the United Provinces, in the year 1672, many who had cash in the bank were eager to withdraw it, believing that if the French King, already master of Utrecht, should become so of Amsterdam, they would lose it all; and this money was refused to none: but some impatient ones, imagining that the funds would not be sufficient to pay such a great number of creditors, found people who salved or cured this imaginary ill, by giving them ready money for four or five per cent. loss, which occasioned the bank money to become on a par with the current, and even under; but affairs were afterwards settled in the manner as at present.

I have already mentioned that the bank's receiving none but the finest coin, and these at about five per cent. under their current value, is the occasion of the agio, or more properly the agio itself; and as this difference is readily to be found by Practice, or the common Rule of Three, I judge my enlarging thereon would only be superfluous.

Of the Bank of Rotterdam.

This bank is not so considerable as that of Amsterdam, of which we have been speaking, though the difference in its government is very little. It was established the 18th of April, 1635, and keeps accounts with those merchants who choose it, both in bank and current money: the first to pay all foreign bills, which are in bank money; and the second for the discharge of negociations made at Rotterdam on foreign parts, which are always in current money.

The bank daily regulates the agio on its cash, which is constantly fixed to a pillar of the bourse, that every one may know it; and as the rest of its regulations are similar to the last bank treated of, I shall not detain the reader longer upon this.

Of the Bank of Hamburg.

Although the funds of this bank are not near so considerable as those of that of Amsterdam, the integrity and exactness with which every thing is managed has given it a great reputation over all Europe, and more particularly in the North.

The citizens and corporation are the sureties for this bank, in which the senate has no inspection; and the directors, being four in number, are chose by the plurality of votes from among the principal of the freemen.

Their duty is to see that the regulations be punctually observed, and to furnish the
cashiers with money when any payments are to be made, which however is done without touching the treasure, the directors taking care to provide it from other funds.

In regard to the capital of this treasure, it is supposed to be very considerable; but as the book-keepers take an oath not to disclose the entries and extracts of the bank, nor what each particular deposits, it is very difficult to conclude any thing with certainty; and this obligation to secrecy hinders a creditor from knowing what any one has in the bank, so that no seizure can be made there.

The book-keepers, who, like the directors, are four in number, are obligated to give the comptrollers two balances weekly; and none but citizens are permitted to have an account in the bank, and from such only it will receive any cash by way of deposit, without any interest; and it is by these notes on the bank that they have the convenience of paying their bills of exchange, and for the purchase of many sorts of merchandise, by only making a transfer of their value.

Nothing less than an hundred mark lubs can be wrote into bank, and two shillings are paid for every sum not exceeding three hundred marks; but whatever is above this may be wrote in gratis.

There are certain hours in the day appointed for writing into bank, viz. from seven to ten in the morning: but if any one has a mind to write in from ten to one, and from three to five in the afternoon, he may do it by paying two shillings for each sum; and it is also in the same morning hours that a person may inform himself, whether the sums due to him have been entered, which he may also do from ten to one, on paying two shillings lubs to the book-keeper; to avoid which, there are many merchants who agree with the bank for a yearly stipend, to have the liberty of writing into the bank at any hour they please from seven to one, which is commonly from twenty to forty mark lubs, according to the extent of the merchant's business, and the quantity of affairs he has to transact.

When any one has a mind to open an account with the bank, he must pay fifty rix-dollars of three marks, or forty-eight shillings lubs.

The bank is shut every year from the last of December to the fifteenth of January following, and the species that are commonly received in it are rix-dollars, with their parts of halves, quarters, and eighths, which are generally worth an eighth, often a quarter, and even sometimes a half per cent. more than the money which is wrote by notes into bank; that is, if there is a want of rix-dollars in specie, an eighth, quarter, and as far as a half, must be wrote into bank more than the money received; but on the contrary, if one has cash in specie to put in, the bank only makes good an eighth, and sometimes a quarter per cent. benefit.

The bank-books and writings are kept in marks, shillings, and deniers lubs; and it is to be observed, that the fractions are never wrote under one shilling or six deniers.

Those who have effects in jewels, precious stones, silver, &c. and want to raise money on them, may carry them to the bank, where they are exactly inventoried, a loan is advanced at a very moderate interest, and they remain deposited as a security for the payment of principal and interest in six months, which, if not complied with, the things are sold at the bar of the bank to the highest bidder, after having advertised the day of their sale and delivery.

Of the Bank of England.

When we consider the vast extent, great variety, and national importance of the business of the Bank of England; the solidity, permanency, and universality of its domestic and foreign credit; the known magnitude of its capital; the reputed stores of
wealth in gold and silver specie, and bullion, deposited within its walls; and the
discreet administration of the whole; we may boldly affirm, that no bank of any other
nation in the known world, can be placed in competition with this noble institution.

It was originally founded on a charter granted by William 3. of glorious and
immortal memory; was ingrafted into the restored constitution of our country by an act
of Parliament, passed in the 5th year of the reign of that illustrious monarch and his
good Queen Mary, and improved and extended by divers subsequent acts of the Legis-
lature. The substance of which acts, in order that all the powers, rights, and privi-
leges vested in the corporate body, and all the business transacted by, or to be trans-
acted with the Company, may be clearly understood, is given correctly in this, and the
following pages.

Every year, beginning from the 1st of June, 1694, the sum of 140,000l. out of 5 & 6 Will.
monies to arise by duties of tonnage, since expired, and by an excise on beer, &c. c. 20. § 17.
hereby granted, being a moiety of the rates granted by 2 Will. and Mary, stat. 2.
cap. 10. shall be a fund for the annuities in the act mentioned, and for the purposes
hereafter expressed, and any deficiencies to be supplied out of the unappropriated
revenues.

For raising 1,200,000l. part of 1,500,000l. granted by the act, the yearly sum of 140,000l. shall be kept apart in the receipt of Exchequer, and paid as in the act is
directed.

Their Majesties, by commission under the great seal, may appoint persons to take
subscriptions on or before the first day of August, 1694, by any persons, natives
or foreigners, &c. for raising and paying into the receipt of the Exchequer 1,200,000l.
part of the sum of 1,500,000l. and the yearly sum of 100,000l. part of the said yearly
sum of 140,000l. shall be applied to the use of such persons, as shall make such sub-
scriptions and payments in the proportion hereafter mentioned, viz. each weekly
payment shall, by the auditor of the receipt, be divided into five-seventh parts, and two-
seventh parts, which five-seventh parts are appropriated towards the payment of the
said yearly sum of 100,000l. and shall be paid to the contributors, raising the sum of
1,200,000l.

Their Majesties, by letters patent, may appoint in what manner the said sum of
1,200,000l. and the said yearly sum of 100,000l. or any part thereof, may be transferred
to such persons as shall accept of the same, and incorporate such subscribers, to be one
body corporate, by the name of The Governor and Company of the Bank of England,
and they shall be capable to purchase and retain lands, &c.

The Commissioners of the Treasury, &c. are required, without further warrant, to direct their warrants yearly, for the payment of the said 100,000l. to the contributors
of the said 1,200,000l. and the auditor of receipt of the Exchequer, and all other
officers of the Exchequer, are enjoined to issue the said monies without fee, and under
the penalties inflicted upon any officer for diverting any money appropriated by this act.

The Corporation so to be made, shall not borrow, under their common seal, any
further sum than 1,200,000l. so that they shall not, at any one time, owe more, unless
by act of Parliament, upon funds agreed in Parliament; and if any more shall be bor-
rrowed under the common seal, every member of the said Corporation shall, in their
private capacities, be liable in proportion to their several shares to the repayment of
such monies; with interest; and in such case, an action of debt may be maintained in
any of the Courts of Record at Westminster, by the creditors, to whom any such secu-
ritv, under the common seal of the Corporation, shall be made, against all, or any of
the members of the Corporation, in proportion to their shares, wherein judgment may
be be recovered, as if security were given in their private capacities, any agreement to
the contrary notwithstanding.

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5 & 6 Will. and Mar. c. 20. s. 21.

The Corporation shall not trade, or suffer any person in trust for them to trade, with any of the effects of the Corporation, in the buying or selling of any merchandise or goods; and every person so trading, or by whose order such trading shall be made, shall forfeit treble the value of the goods and merchandise traded for, to such person as will sue for the same in the Courts of Record at Westminster.

Sect. 28.

But the Corporation may deal in bills of exchange, and in buying or selling bullion, gold or silver, or in selling goods mortgaged to them, and not redeemed within three months after the time, or such goods as shall be the produce of lands purchased by the Corporation.

Sect. 29.

All bills obligatory and upon credit, under the seal of the Corporation, may, by endorsement thereon under the hands of the proprietors, be assigned, and the assignee may sue in his own name.

Sect. 30.

If the Governor, or other members of the Corporation to be established, shall, upon account of the Corporation, purchase any lands or revenues belonging to the crown, or lend to their Majesties, their heirs, or successors, any money by way of anticipation on any part of the revenue, other than such part only on which a credit of loan shall be granted by Parliament, then the said Governor or members so consenting to lend, being thereof lawfully convicted, shall forfeit treble the value of such sum so lent, whereof one-fifth part shall be to the informer, to be recovered in any Court of Record at Westminster, and the residue to be disposed of by Parliament.

Sect. 31.

Amercements, fines, and issues against the said Corporation, upon account of any suits to be brought against them, shall not be pardoned; and if such be estreated into the Exchequer, the officers of the Exchequer, who are to pay the yearly sum of a hundred thousand pounds, may, out of that, detain so much as the said amercements, fines, or issues amount unto.

Sect. 32.

If any person shall obtain a judgment against the Corporation, and shall bring execution thereupon into the officers of the Exchequer, then the said officers are required to pay the sum in the execution mentioned to the plaintiffs, or their assigns; and the said officers may detain so much of the yearly sum of a hundred thousand pounds as the debt shall amount to.

Sect. 33.

Any member of the House of Commons may be a member of this Corporation, notwithstanding stat. 5 and 6 Will. and Mar. cap. 7.

9 & 10 Will. 3. cap. 29.

The present stock of the Bank of England shall be enlarged by new subscriptions.

Before such enlargement, the stock shall be computed by seven of the present members, and seven of the new subscribers; and if the clear stock amount not to one million two hundred thousand pounds, the old members to make it up in tallies, orders, bank-bills, or notes; but if it exceed one million two hundred thousand pounds, then the surplus to be divided among the old members.

Sect. 22.

Seven commissioners, appointed by his Majesty for that purpose, shall take such new subscriptions before the 24th of June, 1697.

Sect. 23.

Four-fifths of each subscription shall be, at the time of subscribing, answered by tallies and orders, upon the first, third, or fourth aid of four shillings per pound, the quarterly poll, three-fourths of the customs, the salt act, two-thirds of the additional excise, the additional imposition, the stamp act, the three hundred thousand pounds per ann. on tonnage and poundage, the duties on marriages, births, burials, &c. on wines, vinegar, and tobacco, &c. and joint stocks, &c. on low wines, &c. on the six thousand pounds per week out of the excise, or the five hundred pounds per week out of the post-office; and the other fifth part in bank-bills or notes.

Sect. 24.

After the 24th of June, 1697, interest of eight per cent. per ann. shall be allowed for the tallies, and orders so subscribed, out of the funds granted by this act, viz. the tonnage and poundage; the duties on wine and vinegar, granted by stat. 1 Jac. 2. cap.
3. the duties on tobacco and sugar, by 1 Jac. 2. cap. 4. the additional impositions on goods and merchandizes, by 2 Will. and Mar. stat. 2. cap. 4. and 4 and 5 Will. and Mar. cap. 5. the stamp act, 5 and 6. Will. and Mar. cap. 21. and the duty on houses, by 7 and 8 Will. cap. 18.

The interest payable to the bank upon so many tallies or orders as the bank is already possessed of, whereof the principal shall be equal to the said fifth-part subscribed in bank bills or notes, shall be likewise augmented to eight per cent.

The new subscribers shall, after the said 24th of June, be members of, and united to, the Bank of England.

During the continuance of this bank, no other bank, or fellowship in nature of a bank, shall be erected, or permitted by act of Parliament.

The interest due on tallies and orders, subscribed into the bank, shall be accepted as so much principal money.

The bank may borrow by bills, over and above the one million two hundred thousand pounds, to which they were at first limited, any sum not exceeding the sum subscribed, under an obligation of paying the said bills in money upon demand; and in default thereof, on demand made at the bank between nine and twelve in the forenoon, and the default proved by affidavit in writing before one of the Barons of the Exchequer, the said bills to be paid at the Exchequer, out of the first money due unto the bank, other than the fund of a hundred thousand pounds per annum; but these bills shall be distinguished from the debts contained within the said one million two hundred thousand pounds, and expressed to be made by virtue of this act.

The capital stock and fund of the said bank shall be exempt from taxes.

After completing the said subscriptions, the interest of all tallies and orders subscribed, together with the said hundred thousand pounds per annum shall be applied to the use of the members of the bank, proportionably to each member's share therein.

The stock of the bank shall be accounted a personal, and not a real estate, and shall go to executors, and not to heirs.

No contract or agreement, either by word or in writing, for buying or selling of bank stock, shall be good in law or equity, unless it be registered in the books of the bank within seven days, and the stock be transferred within fourteen days.

No act of the bank shall forfeit the stock thereof, but the same shall be subject to their debts.

It shall be felony without benefit of the clergy, to forge or counterfeit the common seal of the bank, or any sealed bank bill, or any bank note, or to alter or erase any such bills or notes.

The officers of the Exchequer shall keep account of all monies appropriated to the bank, either upon the fund of a hundred thousand pounds per annum, or any other parliamentary funds, or for tallies belonging to the bank; and shall duly direct, record, and make payment thereof, under the penalty of loss of place, incapacity, and double damages.

The monies arising by the continuation of the subsidy of tonnage and poundage, &c. of wines, vinegar, and tobacco, &c. by the additional impositions on goods and merchandizes; by stamped vellum, &c. by marriages, &c. and by the duties on houses, from the times that the said duties are severally continued as aforesaid, till the first of August, 1706; and by the surplus of the duties on wine, vinegar, and tobacco, &c. over and above the one million five hundred thousand pounds credit given thereupon, and the interest thereof arising by the act 7 and 8 Will. 3. cap. 10. continued till the 29th of September, 1701; and also on houses, after the repayment of seven thousand three hundred and eighty-two pounds, eleven shillings, and four pence, borrowed thereon, by 7 and 8 Will. cap. 18. and the interest thereof; and of all the bills signed at the
Mints for the six-pence per ounce upon plate, brought in between the 4th of May, 1696, and the 4th of November, 1696, granted for seven years, from the 25th of March, 1696; and upon salt, &c. after the repayment of one million seven hundred and twenty-four thousand pounds, borrowed thereon, and the interest thereof, arising by the act 7 and 8 Will. 3. cap. 31. shall be the general fund for making good the particular funds in this act expressed, and shall be applied accordingly.

The monies arising by the said general fund, after the 28th of June, 1698, as well by the said duties on houses, and additional impositions, as for the said duties on vellum, &c. continued from the 28th of June, 1698, to the first of August, 1706, and for tonnage and poundage, &c. continued from the 25th of December, 1699, to the first of August, 1706, and for marriages, &c. and for wines, vinegar, tobacco, &c. continued from the 28th of September, 1701, to the first of August, 1706, and by the said surplus on wines, vinegar, and tobacco, &c. and on salt, &c. shall be applied towards principal and interest of the said first, third, and fourth aids of four shillings per pound; the quarterly poll; the three-fourths of the customs; the duties on salt, &c. the two-thirds of the additional excise; the additional impositions; the duties on vellum, &c. on marriages, &c. on wines, vinegar, and tobacco, &c. and the three hundred thousand pounds per annum out of tonnage and poundage, in proportion to the respective deficiencies, as computed in this act. And every twenty-eight days, an account shall be made up at the Treasury of all the monies brought in, applicable to the said deficient funds, which shall be applied proportionally, as well to the Bank of England, as other persons intituled to principal and interest thereon.

Out of the said general fund the interest due to the bank shall be made up eight pounds per cent.

Where any revenue is appropriated by Parliament for repayments in course, the same shall be paid accordingly: but the new funds in this act shall be applied as hereby prescribed.

In case of judgment of forfeiture given against the bank, the yearly payments out of the Exchequer, and all the estate belonging to the bank, shall be vested for three years in twenty-four persons, to be chosen by the bank, who shall have power to receive the monies due to the bank, as if no such judgment had been given; and to pay and discharge the debts and contracts, due at the time of such judgment; after which, the surplus shall be divided amongst the several members; and then the said yearly payments shall be vested in the particular members, in proportion to a list thereof, to be made up by the said trustees, and shall be assignável in a book to be kept by the auditor of the receipt.

The bank may employ a clerk to copy the docket's of any extents, judgments, &c. in any of the offices of record at Westminster, paying as for a search only.

No member of the bank shall be adjudged a bankrupt, by reason of his stock in the bank, nor shall the stock be subject to foreign attachment.

The monies received out of the exchequer for the bank, shall be divided amongst the members proportionably, for their particular use.

The debts of the bank shall never exceed their capital stock, under penalty of subjecting the several members, so far as their dividends received will extend, to satisfy the debts to any person, who may recover the same with treble costs.

If the said funds for interest shall appear insufficient, they shall be made up of such aids, &c. as shall be granted in the then next session of Parliament; and if upon the first of August, 1706, or within three months after, the produce of the several aids, &c. shall not be sufficient to discharge the principal and interest intended to be discharged by this act, the same shall be supplied out of such aids, &c. as shall be granted the next session of Parliament.
In all future elections, not above two-thirds of the directors of the preceding year shall be chosen.

The Bank of England shall make dividends of the monies which shall be received by them, by virtue of the tallies and orders which have been subscribed into their stock, pursuant to the above act 8 and 9 Will. 3. cap. 20. once in every six calendar months at least.

The Governor and Company of the Bank of England, until they shall be repaid all monies which they shall lend upon this act, for or in part of 420,000l. being the last part of 820,000l. authorised to be borrowed on the weekly payment of 3,700l. out of certain branches of excise, which interest for such 420,000l. after the rate of seven per cent. shall not be obliged to make dividends of the monies to be received by them, by virtue of any tallies or orders subscribed into their stock, in pursuance of the above act 8 and 9 Will. 3. cap. 20. but at such times only as shall be ordered by a general court.

During the continuance of the Bank of England, it shall not be lawful for any other body corporate, or for other persons united in partnership, exceeding the number of six, in England, to borrow money on bills or notes payable at demand, or at less time than six months. This clause is repeated in stat. 7. Ann. cap. 7. s. 61. and stat. 3. Geo. 1. cap. 8. sec. 44.; and therefore the said sections are omitted in the said acts here following.

Recites that by an act 5 Will. and Mar. cap. 20. the Bank of England was erected, 1,200,000l. was lent to their Majesties, for which there is payable to the Governor and Company, the yearly sum of 100,000l. out of the duties of excise, redeemable by Parliament; reciting another act made 8 and 9 Will 3. cap. 20. for making good the deficiencies of several funds and for enlarging the capital stock of the bank.

And another act made 5 Ann. cap. 13. for continuing duties on houses, to secure a yearly fund for circulating Exchequer bills, now expired, reciting also, that the Governor and Company did lately admit new subscriptions for doubling their stock of 2,201,171l. 10s. at the rate of 115l. to be paid for every 100l. subscribed; and that subscriptions have been made for that sum; it is enacted, that 2,201,171l. 10s. be added to the stock of the bank, which before such additions, consisted only of the like sum; so that the whole capital stock now shall amount to 4,402,343l. and the new subscribers shall be incorporated with the present members of the bank, and be taken to be one body politic and corporate, by the name of The Governor and Company of the Bank of England.

The said capital stock shall be assignable in the same manner as the original capital stock.

The bank is to pay into the Exchequer 400,000l. before the 25th of August, 1709.

The Bank of England, thus enlarged, shall for ever be a body corporate, and enjoy the yearly fund of 100,000l. out of the excise.

The stock and funds of the bank, and the interest of every member therein, shall be exempted from taxes, and shall be deemed a personal estate, and shall go to executors and not to heirs, and shall not be liable to foreign attachment.

The original fund of 100,000l. per ann. and all profits for the management of the Corporation, shall be applied to the use of the members of the Corporation ratably.

It shall be lawful for the bank at any time to reduce their capital stock, increased as aforesaid, by dividends; taking care that the total of their debts do not exceed the value of their capital; and in case the Governor and Company by any dividend, shall reduce their capital without proportionably reducing the total of the debts, so that the value of their capital shall not be sufficient to answer their debts; in such case, the particular members who shall receive such dividend, shall be severally liable, so far as
the shares by them received will extend, to pay the debts which shall remain due to any persons, who may sue for the same, besides treble costs, by action of debt or upon the case, &c.

It shall be lawful for the said Governor and Company to call in any sums of money, which they in a general court shall think necessary, to be paid by their members proportionably, which shall have before been divided, out of the said capital of £4,402,348l. and in case any member shall neglect to pay his share, at the times appointed, by notice in the London Gazette, and fixed up on the Royal Exchange, it shall be lawful for the Governor and Company to stop the dividends of such members, and also to stop the transfers of their shares, and to charge the defaulters with interest at six per cent. and in case the principal and interest be not paid in three months, they shall have power to sell the stock of such defaulters, to pay the same.

Every person who shall be elected Governor, Deputy-Governor, or Director of the Bank of England, shall, during that year, be incapable of being chosen Director for the management of the affairs of the united Company of Merchants of England, trading to the East Indies, and vice versa.

The bank shall continue a body corporate, and enjoy their yearly fund of £100,000l. subject to the following power of redemption:

Upon twelve months' notice, after the 1st of August, 1742, upon repayment by Parliament to the bank of £1,600,000l. and all arrears of the said £100,000l. per ann. and of all money owing to them upon tallies, Exchequer orders, or parliamentary funds, such funds, for redemption whereof other provision is made, excepted, the said yearly fund of £100,000l. shall cease.

After such redemption the Corporation shall cease.

It shall be lawful, as well for the bank as for any others, to lend money to the Treasurers of the Navy, &c. upon South-Sea stock, pursuant to the stat. 10 Ann. cap. 19. s. 185.

The Governor and Company of the Bank of England, being willing to deliver up to be cancelled, as many Exchequer bills as amount to £2,000,000l. in principal money, and to accept an annuity of £100,000l. being five per cent. for the same, to commence from Christmas, 1717, redeemable upon one year's notice.

The bank shall, before Christmas 1717, deliver up as many Exchequer bills as shall amount to £2,000,000l. in principal money, to be cancelled.

After Christmas 1717, the bank shall for ever have one annuity, of £100,000l. being five per cent. computed on the said sum of £2,000,000l. which yearly sum shall be paid out of the aggregate fund, and duties on houses, and shall be paid to the bank for ever, at the four usual feasts.

Upon one year's notice to be given at Christmas 1717, or at any quarterly feast after, and upon repayment to the bank of the £2,000,000l. and of all arrears of the said yearly sum of £100,000l. the said yearly sum shall cease.

For the better payment of the annuity of £100,000l. standing orders shall be signed by the Treasury.

As the several duties chargeable with the payment of the said annuity shall be brought into the Exchequer, such money shall be issued upon such orders, weekly or otherwise, towards discharging the several annuities thereon charged, to grow due at the end of the quarter of a year, so as such weekly payments exceed not the sums of the several quarterly payments, which shall grow due at the end of each quarter.

The said annuity of £100,000l. shall be deemed personal estate; and the same and the stocks which the bank now have, and those they shall be entitled unto by virtue of this act, and the sums payable to them in respect of any such stock, shall be free from all taxes, and not liable to foreign attachment.
THE BANK OF ENGLAND.

The said duties on houses, aggregate fund, and other duties, shall be continued to his Majesty, his heirs, and successors for ever, and shall be raised, &c. by such methods, &c. as are prescribed by the respective acts now in force.

The monies of the said duties, &c. which shall be brought into the Exchequer for purposes in this act, except the charges for raising, &c. the same, are appropriated for discharging the growing payment on the said annuity of 100,000l. which payments are to be satisfied without charge, but subject to redemption. And in case any officer of the Exchequer shall misapply any of the monies, or shall not keep books, and do all other things by this act required, he shall forfeit his office, and be incapable to serve his Majesty in any employment of trust or profit, and be liable to pay double the sum misapplied, with costs to the party grieved; to be recovered in any of the courts at Westminster.

The annual sum of 100,000l. shall be preferred in payment before the yearly sum of 120,000l. to the civil list.

After satisfying the payment aforesaid, the deficiencies on the original fund of 100,000l. per ann. payable to the bank out of five-seventh parts of certain duties of excise, see 5 and 6 Will. and Mar. cap. 20. s. 19. before recited, shall be satisfied out of the monies by this act appropriated; after which the yearly sum of 4000l. shall be issued to the sheriffs.

The surplus of the duties, &c. hereby appropriated at the end of any quarter, shall attend the disposition of Parliament.

In case the produce of the said duties, &c. shall be deficient, such deficiency shall be made good out of the produce of the said duties, &c. in any subsequent quarter.

If such deficiency shall happen at the end of any year, reckoning each year to end at Michaelmas, such deficiency shall be made good out of the next aids to be granted in Parliament.

It shall be lawful for the bank, from time to time, as they shall see cause, to call for, from their members, in proportion to their respective interests in the capital stock, any sums of money, as in a general court shall be judged necessary; and all executors, &c. shall be indemnified in paying the same; and if any member shall neglect to pay his share of the money so called for, at the time appointed, by notice in the London Gazette, and fixed upon the Royal Exchange, it shall be lawful for the bank not only to stop the dividend of such member, and to apply the same towards payment of the money so called for, but also to stop the transfers of the share of every such defaulter, and to charge him with an interest of five per cent. per ann. for the monies so by him omitted to be paid, till payment thereof: and if the principal and interest shall be three months unpaid, the bank shall have power to sell so much of such defaulter's stock as will satisfy the same, rendering the overplus to the proprietors; and the bank may, in a general court, when they shall adjudge their affairs will admit thereof, cause any sum of money so called in, to be divided amongst the then members, in proportion to their respective shares in the capital stock.

The bank may borrow money on any contracts, &c. under their common seal, upon credit of their capital stock, at such interest as they shall think fit, though it exceed the interest allowed by law, and give such security as shall be to the satisfaction of the lenders; and they may contract with any persons, upon such terms as they shall find necessary, for the better enabling them to perform such things as they are to do in pursuance of this act, and take subscriptions from such persons for that purpose; and such contract, &c. shall not be chargeable with stamp duties.

No member of the bank, for any thing in this act contained, shall be disabled from being a Parliament man, or adjudged liable to be a bankrupt.
THE BANK OF ENGLAND.

3 Geo. I. c. 2 s. 43.

The bank may in a general court make such addition to their capital stock, in regard of their undertaking to discharge Exchequer bills, as they shall think fit; and so much as shall be so declared, shall be deemed capital stock, and the members of the bank, who shall have a share in such stock, may transfer the same in method, &c. prescribed by any statute or charter now in force for assignments.

The bank shall continue a corporation, and enjoy the said several annuities, till all the said annuities shall be redeemed, according to the provisos in this act.

Sect. 50.

For encouragement of such persons as are willing to advance monies for paying of the principal sums amounting to 8,762,625l. upon the Lottery Acts of 9 and 10 Ann. for redeeming annuities on act 12 and 13 Will. III. cap. 12. to patentees, out of the weekly sum of 8,700l. out of the excise, for which the persons advancing the same are to have annuities of five per cent. redeemable by Parliament: It is enacted, that till the annuities of five per cent. shall be redeemed by the Parliament, the bank shall employ two persons within their office of London, one to be their chief cashier, the other their accountant general; and the monies coming into the Exchequer for the payment of such annuities, shall be paid quarterly to the said cashier, by way of impost and on account, and the accountant-general shall inspect the receipts and payments of the cashier, and the vouchers relating thereto; and all the monies to be advanced for such annuities shall be one capital joint-stock, on which the said annuities shall be attending; and all persons in proportion to the monies they shall advance, shall have a share in such stock, and in the annuity attending the same; and such shares shall be transferable and advisable as is prescribed by the act 1 Geo. I. cap. 19. and no stamp duties shall be chargeable on such transfers: and the bank, notwithstanding the redemption of any of their own funds or annuities, shall continue a Corporation, relating to the receiving, &c. the annuities last mentioned, till the same be redeemed by Parliament; and no fees shall be taken for paying the said annuities, or for such transfers. Nevertheless, the Treasury may allow out of the monies to be impressed as aforesaid, salaries to the cashier and accountant-general.

Sect. 51.

Transfers of bank stock shall not hereafter be made liable to any higher duties than are now payable for the same.

Sect. 52.

The bank may, under their common seal, assign the said annuities of 100,000l. or any part thereof, and also such annuities of five per cent. per annum to any persons whatsoever, and so toies quotas; which assignments shall not be subject to any tax, so as an entry be made of such assignments in the office of the auditor of the receipt.

Sect. 54.

Nothing in this act shall hinder the making good any deficiency in the yearly fund of 116,578l. 12s., mentioned in the act 1 Geo. I. cap. 2.

Sect. 55.

Any vote of the House of Commons signified by their Speaker in writing, and delivered at the office of the bank, shall be deemed a sufficient notice within this act.

21 Geo. I. c. 9 s. 1.

The Governor and Company of the Bank of England having agreed, that from the feast day of St. John Baptist, 1727, their annuity of 100,000l. upon the sum of 2,000,000l. See 3 Geo. I. cap. 8. s. 6. before recited, shall be reduced to four per cent. It is enacted, that after the nativity of St. John Baptist, 1727, the said annuity shall cease, and the Governor and Company of the Bank, subject to the proviso of redemption in this act contained, shall have in lieu thereof, one annuity of 80,000l. which shall be payable out of the duties on houses, and the aggregate fund; and shall be paid to the said Governor and Company, and their successors for ever, from Midsummer, 1727, at the four usual feasts, in such manner and on such conditions, as in the former act 3 Geo. I. cap. 8. in relation to the said annuity of 100,000l.

Sect. 2.

On repayment by Parliament to the Bank of England, of the principal sum of 2,000,000l. and of all arrears of the said annuity, the annuity shall cease.

Sect. 3.

If at any time payment be made of any sum, not less than 500,000l. in part of the
principal sum, and of all arrearages; then so much of the said annuity as shall bear proportion to the monies so paid in part of the principal shall cease.

The annuity shall be deemed personal estate; and the same and the stock which the 21 Geo. 1. Company now have, or may be entitled unto, by virtue of this act; and all the principal sums and annuities payable to the Company in respect of any such stock, shall be free from taxes, and shall not be liable to foreign attachments.

The former acts, and all the powers, &c. therein contained, such alterations as are made by this accepted, shall continue to be used, &c. and the Governor and Company of the Bank of England shall continue a Corporation, and shall enjoy these annuities till they shall be redeemed, &c.

If any person shall alter, forge, or counterfeit any bank bill, or bank note, made for payment of money, by, or for the said Governor and Company, or any bank note, or shall erase any such bill or note, or any endorsement thereupon, or shall tender in payment, utter, &c. any such altered, forged, or counterfeited bill or note, or any erased or altered bill or note, or the endorsement thereupon, &c. knowing such bill or note, or endorsement, to be altered, forged, counterfeited, or erased, and with intention to defraud the said Governor and Company, or any other person; every such person shall be adjudged a felon.

The Governor and Company of the Bank of England having agreed to pay into the 1 Geo. 2. Exchequer 1,750,000l. for the purchase of an annuity of 70,000l. subject to redemption; 10 Stat. 3. c. 8. sect. 1. It is enacted, that every year after the feast day of St. John Baptist, 1728, a yearly fund of 70,000l. being four per cent. for the sum of 1,750,000l. shall be payable in manner herein expressed, for the satisfying the annuities to be purchased in pursuance of this act, till redemption thereof by Parliament.

The said yearly fund of 70,000l. shall be payable out of the monies, which after the said feast of St. John Baptist, 1728, shall arise into the Exchequer for the duties on coals and culm, granted by 9 Ann. cap. 22. continued by 5 Geo. I. cap. 9. and made perpetual by 6 Geo. I. cap. 4.

The Governor and Company of the Bank of England shall advance into the receipt of his Majesty's Exchequer, the sum of 1,750,000l. by the 24th of July, 1728.

On payment by the bank, of the said sum of 1,750,000l. in manner aforesaid, the Governor and Company, and their successors and assigns, shall be intitled to receive at the receipt of the Exchequer, out of the said yearly fund, one annuity of 70,000l. to commence from the 24th of June, 1728, and to be paid by half-yearly payments, at Christmas and Midsummer, till redemption thereof by Parliament, and the said annuity of 70,000l. shall be free from taxes.

An order shall be signed by the Treasury for payment of the said annuity, and the same shall not be determined by the death or removal of any of the Commissioners of the Treasury, &c.

As the money of the said duties shall be brought into the Exchequer, the same shall be issued upon the said orders towards discharging the said annuity, to grow due at the end of the half year in which such payment shall be made; so as such payment do not exceed the half-yearly payment which shall grow due.

The said annuity shall be a personal, and not a real estate, and shall not be liable to foreign attachment.

If after the 24th of June, 1728, the produce of the said imposition on coals and culm shall be so deficient, as that the monies arising therefrom shall not be sufficient to discharge the half year's annuity then due, then the deficiency of such half year shall be supplied out of the surplus monies of the said duties arising in any subsequent half year; and if at any time after the 25th of December, 1728, such produce shall be so deficient, at the end of any one year, computing the same to begin at Christmas yearly,
as that the same shall not be sufficient to discharge the whole year’s annuity then due, every such yearly deficiency shall be made good out of the first supplies which shall be granted in Parliament; and if no such supplies shall be granted within six months, then the same shall be made good out of any monies which shall be in the receipt of the Exchequer of the sinking fund, except such monies of that fund as are appropriated to particular uses.

Whatever monies shall be so issued out of the sinking fund, shall be replaced out of the first supplies to be granted in Parliament.

If there should be any surplus monies arising by the duties at the end of any year, computing the same to end at Christmas yearly, after the said annuity of 70,000l. and all arrears thereof are satisfied, &c. such surplus shall be reserved for the disposition of Parliament.

Upon repayment by Parliament to the Bank of England, of the said 1,750,000l. and of all arrears, the said annuity shall cease; and after such redemption, the monies arising by the said duties shall not be applied but as shall be directed by future acts of Parliament.

If at any time after the 25th of December, 1729, payment be made to the bank of any sum, not less than 500,000l. in part of the principal sum, at which the annuity is redeemable, and also of all arrears of the said annuity, then so much of the annuity, as shall bear a proportion to the monies so paid in part, shall cease.

The bank shall continue a Corporation till the redemption of the whole annuity of 70,000l.

All former powers granted to the bank for assigning any annuities or capital stock, formerly purchased by them, and now belonging to them, shall be revived; and the Governor and Company are empowered to transfer the said annuity of 70,000l. as they shall think proper; subject, nevertheless, to redemption by Parliament, and without power to enlarge their capital stock out of the same.

After reciting the act of 12th Ann. sess. 2. cap. 9, for laying additional duties on soap and paper, and on certain linens, silks, calicoes, and stuffs, and upon starch, and exported coals, and upon stamped vellum, parchment, and paper, &c. and that the Governor and Company of the Bank of England have agreed to pay into the Exchequer 1,250,000l. for the purchase of an annuity of 50,000l. subject to redemption by Parliament, to be charged on the surplus monies to arise from the said additional duties; it is enacted, that yearly, from the feast of St. John Baptist, 1729, a yearly fund of 50,000l. being after the rate of four per cent. for the sum of 1,250,000l. be settled for satisfying the annuities to be purchased in pursuance of this act, till redemption thereof by Parliament.

The said yearly sum of 50,000l. shall be payable out of the overplus monies of the said additional duties, which shall remain after satisfying, &c. so much as shall be due to the South Sea Company, on their annuity and additional allowance for charges of management, granted by the act 6 Geo. I. cap. 4. and the Treasury shall quarterly, in every year, after the feast of St. John Baptist, 1729, at the four usual feasts, or within six days after, cause the overplus monies of the said additional duties to be computed, and applied towards making good the said yearly sum of 50,000l. without diverting any of the monies which by the said act 6 Geo. I. cap. 4. ought to be reserved for satisfying the said annuity to the South Sea Company.

The Governor and Company of the Bank of England shall pay into the Exchequer 1,250,000l. before the 6th of October, 1729.

On payment of the said 1,250,000l. the Company shall be intitled to one annuity of 50,000l. from the 24th of June, 1729, to be paid by quarterly payments till redemption thereof by Parliament; and the said annuity of 50,000l. shall be free from taxes.
Orders shall be signed by the Treasury for payment of the said annuity, &c. as per 2 Geo. 2. Geo. 2. stat. 2. cap. 8. s. 6. sect. 7.

The said annuity shall be a personal estate, and shall not be liable to foreign attachment.

If the overplus moneys of the said additional duties shall be deficient, &c. the deficiency shall be supplied, as in the preceding act of 1 Geo. 2. stat. 2. cap. 8. s. 9, 10, 11. sect. 8.

Upon repayment by Parliament to the Bank of England, of the said sum of 1,250,000l. sect. 11. and of all arrears of the said annuity of 50,000l. the said annuity shall cease, and the moneys arising by the surpluses of the said additional duty shall not be issued, or applied to any other use, but as shall be directed by future acts of Parliament.

If payment be made to the bank of any sums, not being less than 500,000l. at a time, in part of the said principal sum, and if payment be then made of all arrears of the said annuity, then so much thereof as shall bear proportion to the moneys so paid in part of the said principal sum, shall cease.

The bank shall continue a Corporation till redemption of the said annuity of 50,000l. sect. 12. The bank may assign the said annuity of 50,000l. or any part thereof, but subject to sect. 14. such redemption by Parliament.

Out of the sinking fund there shall be paid to the bank, 500,000l. for redeeming a proportionate part of the annuity of 80,000l. granted to them by stat. 11. Geo. 1. cap. 9.

At the feast of St. Michael, 1738, there shall be issued to the Governor and Company of the Bank of England, the sum of 1,000,000l. out of any of the aids granted in this session of Parliament, for redeeming the annuity of 40,000l. part of the annuity of 60,000l. in further part of the principal sum of 2,000,000l. being the amount of Exchequer bills, delivered up by the bank according to the directions of the act 3 Geo. 1. cap. 8. and in respect wherein, an annuity of 80,000l. was payable to the bank by act 11 Geo. 1. cap. 9. and of which an annuity of 20,000l. was redeemed by payment of 400,000l. pursuant to the act 2 Geo. 2. cap. 3.

Reciting the several acts of 7 and 12 Ann. made concerning the bank, which continued the Governor and Company an incorporation till 1742, subject, however, to powers of redemption, as therein mentioned.

And the time of the said two former acts being expired, the Company, by this act, are engaged to supply the government with the further sum of 1,600,000l. before December 25, 1742, at different payments, as demanded by the Treasury, each payment not to be more than 400,000l. and at a month's notice.

The said sums to bear an interest of three per cent. till August 1, 1743, and on any default, the said Company may be sued in any of his Majesty's courts at Westminster, and shall forfeit twelve per cent. damages, and full costs, for which their stock and funds shall be liable.

The several provisos contained in the recited acts of 7 and 12 Ann. and all provisos in any other acts for determining the said fund of 100,000l. per annum are hereby repealed; and the said Company, and their successors, shall continue to enjoy the said entire yearly fund, to be paid out of the duties of excise, with perpetual succession, and privilege of exclusive banking, and all other abilities, &c. granted to them, by any acts of Parliament, grants, or charters; subject nevertheless to such restrictions, and other agreements, as are prescribed by any acts and charters now in force; and also to the power of redemption, as in this act is hereafter contained.

At any time, twelve months after August, 1764, on repayment of all monies lent by the bank, with interest, &c. the said yearly fund of 100,000l. shall determine.

No other bank shall be allowed by Parliament; nor shall any body politic or corporated, or other persons whatever, united in partnership, above the number of six,
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throughout England, borrow or take up any sums of money on their note, payable for less time than six months, during the continuance of such privilege to the Governor and Company, who are hereby declared to be a corporation, with privilege of exclusive banking, subject to redemption on a year's notice, after August 1, 1764, and repayment of the several sums lent, with interest, viz. 3,200,000l. and all arrears of the 100,000l. per ann. and all principal and interest owing them on all tallies, Exchequer orders, Exchequer bills, or parliamentary funds, except such funds as are otherwise provided for, which the Governor and Company, or their successors, shall have remaining in their hands, or be entitled to, at the time of such notice given, as aforesaid.

The Governor and Company may enlarge their capital with any further sum, not exceeding 1,600,000l. additional stock; and may take in subscriptions from such persons, and at such times, as they shall think proper; and all such subscribers, whether natives or foreigners, having paid the money subscribed for, shall be united to, and incorporated with, the said Governor and Company, and adjudged to be one body politic and corporate, by the name of The Governor and Company of the Bank of England; subject to the same regulations, and intitled to the same privileges and advantages with the present members of the said Corporation.

The capital stock, increased as aforesaid, shall be assignable and transferrable in the same manner as the original capital stock was, before the making this act; and, together with the produce, shall be free from all manner of taxes, charges, or impositions whatever; and the transfers of the additional stock shall not be chargeable with any other stamps or duties than were used in transferring the former stock.

No person concerned in the stock of this Company, whether as governor, deputy-governor, director, manager, or member, shall be disabled from serving as a member of Parliament, or be liable to any penalty, or disability, prescribed by any acts of Parliament, for not qualifying themselves to execute any trust with respect to affairs of this Corporation, as persons, who execute any office or place of profit or trust, are liable to, by any law now in force, or liable to be a bankrupt within the meaning of any statutes of bankruptcy.

It is the true intent and meaning of this act, that the Governor and Company, and their successors, shall enjoy the said annuity of 100,000l. in respect of their original capital stock of 1,600,000l. till August 1, 1743, besides the interest of the 1,600,000l. to be advanced as aforesaid, which interest the said Governor and Company are to receive back by way of discount.

Any vote or resolution of the House of Commons, signified by the Speaker in writing, and delivered at the public office of the said Governor and Company, and their successors, shall be deemed a sufficient notice within the meaning of this act.

Any persons who shall forge, counterfeit, or alter, any bank note, bill of exchange, dividend warrant, or any bond or obligation under the common seal, or any endorsement thereon; or shall offer to dispose of the same, or demand any money, pretended to be due thereon, of the said Company, or any of their officers or servants, knowing such note, &c. to be forged, &c. with an intent to defraud the said Company, or their successors, or any other persons whatever; the offenders being duly convicted, shall be deemed guilty of felony, and suffer death as felons, without benefit of clergy.

If any officer, or servant of the Company, being intrusted with any note, &c. belonging to the Company, shall embezzle any such note, &c. the offender, being duly convicted, shall be deemed guilty of felony, and shall suffer death, without benefit of clergy.

By the charter it is ordained, that there shall be for ever, of the members of the Company, a Governor, Deputy-governor, and twenty-four Directors; which said Governor, Deputy-governor, and Directors, or any thirteen, or more, the Governor or Deputy-governor to be always one, shall be a Court of Directors, for managing the affairs of the
Corporation; but as this limitation, by the unavoidable absence, or otherwise, of the Governor and Deputy-governor, may be of great hindrance to the business of the Corporation, it is therefore enacted, that whenever a Court of Directors is met, if the Governor and Deputy shall be absent for the space of two hours, after the usual time of proceeding to business, the Directors then met, being not less than thirteen, may chuse a chairman by majority, and proceed to business; and all acts done by them shall be as valid, as if the Governor or Deputy had been present.

This act shall be deemed a public act, and judicially taken notice of as such by all judges, &c. without specially pleading the same.

The preamble recites an act passed in 16 Geo. II. intitled, an act for repealing the several rates and duties upon victuallers, &c. and for transferring the Exchequer bills unsatisfied thereupon, to the duties for licenses to sell spirituous liquors, and strong waters by retail, &c. whereby it was enacted that from the twenty-fourth of June, 1748, the several duties imposed by an act of 12 Geo. I. upon all victuallers, and retailers of beer, within the cities of London and Westminster, and the weekly bills of mortality, should thenceforth cease; and that, after the said twenty-fourth of June, 1748, the principal sum of 481,400l. in Exchequer bills (part of the sum of 500,000l. advanced to his Majesty's Exchequer by the Bank of England, upon credit of the said duties, at three per cent. per annum interest) made forth in pursuance of the said act of 12 Geo. I. which then remained unsatisfied, with the interest thereon, and the charges of circulating the same, should be transferred from the duties then charged therewith, and be charged (together with the sum of 518,600l. to be raised by the before recited act of 16 Geo. II. towards the supply for 1748) upon the duties payable to his Majesty by another act of the said 16 Geo. II. intitled an act for repealing certain duties upon spirituous liquors, &c. and in pursuance of the first recited act of Geo. II. the said sum of 481,400l. in Exchequer bills, as also the said further sum of 518,600l. were charged upon the said duties, arising by licenses, at an interest of three per cent. per annum. And whereas the bank is willing that the said sum of 986,800l. in Exchequer bills, remaining unsatisfied, on the aforesaid duties, may be cancelled and discharged, and in lieu thereof to accept of an annuity of 39,472l. being the interest on the said sum at four per cent. to be charged on the same securities; and also are willing to advance unto his Majesty's Exchequer, towards the supply granted for the service of the year 1746, the sum of 1,000,000l. upon the credit of the duties arising by the malt and land tax for 1746, at four per cent. per annum. for Exchequer bills to be issued for that purpose; provided they may have a power to create and dispose of the said sum of 986,800l. of bank stock (to be joined and incorporated with their present capital) in such manner, and at such times, as they shall think proper; with such further powers, privileges, and advantages, as have usually been granted by former acts on that occasion: the Parliament, thinking it will be of advantage to the public to accept the said proposal of the bank, have enacted, that the Bank of England, by the 25th March, 1746, shall deliver up unto persons nominated by the Treasury, all the said Exchequer bills charged upon the duties aforesaid, amounting to 986,800l. to be discharged and cancelled as the Treasury shall think fit, without issuing again the same, or any of them.

All the interest due on the said Exchequer bills to be delivered up to be cancelled, with the charges of circulating the same, shall be paid off.

In lieu of the said sum of 986,800l. in Exchequer bills to be delivered up to be cancelled, the bank, from the 25th of March, 1746, shall receive from the Exchequer an annuity of 39,472l. being four per cent. interest on the said sum of 986,800l. until redemption thereof by Parliament.

The said annuity shall be paid from time to time, with preference to all other payments whatsoever, out of the monies that shall arise into the Exchequer, from the di-
ties for licenses to sell spirituous liquors and strong waters by retail, in pursuance of the act of 16 Geo. II.

The said annuity shall be paid at four quarterly payments, viz. on the feasts of St. John Baptist, St. Michael, Christmas-day, and Lady-day; the first payment to be made on St. John's Day, 1746; subject nevertheless to redemption, as provided for by this act; and the said annuity of 89,472l. shall be free from all taxes and charges.

For the better and more regular payment of the said annuity, orders shall be signed by the Treasury for the payment thereof, which shall be valid in law; and shall not be determinable by the death or removal of any of the commissioners of the Treasury, or determination of their power and offices, nor shall the Treasury revoke or countermand any orders so signed.

And for the more speedy payment of the said annuity, it is enacted, that weekly, or otherwise, as the monies arising by the said duties shall be paid into the Exchequer, the same shall be issued upon the orders for discharging the quarterly annuity, so as such weekly payments do not exceed the sum which shall be due at the end of every quarter.

The said annuity shall be adjudged to be a personal, and not a real estate, and shall not be liable to any foreign attachment.

If at any time after the 25th of March, 1746, the produce of the duties arising by licenses aforesaid, at the end of any quarter, shall be insufficient to pay the quarter's annuity, in every such case, the deficiency shall be supplied out of the overplus monies of the said duties, which shall be in any subsequent quarter; and if at the end of any one year, computing the same to end at Lady-day, yearly, the produce shall not be sufficient to pay off the whole year's annuity then due, the deficiency shall be made good out of the first supplies; and if no supplies be granted within six months after, then to be paid out of the sinking fund, such monies therein excepted, as by former acts are appropriated to other uses.

Whatever money shall be issued out of the Sinking Fund, shall be replaced out of the first supplies granted by Parliament.

Upon repayment by Parliament to the bank of the said principal sum of 986,800l., in full without deduction, &c. and of all arrears of the said yearly sum of 39,472l. then, and not till then, the said annuity shall cease, and be accounted redeemed; and after such redemption, the monies, arising from the said duties for licenses, shall be applied as any future act shall direct.

If, at any time after the 25th of March, 1746, payment be made to the bank of any sums not less than one moiety of the said 986,800l. at any one time, and also of all the arrears of the annuity, then so much of the annuity, as shall bear proportion to the monies paid in part of the whole principal sum, shall cease, and be understood to be redeemed.

The company of the bank may admit, and take in by sale, call, or subscription, or by such other methods as they shall judge proper, from such persons, upon such terms, and at such times, as they shall approve, for enlarging their present capital to a sum not exceeding the further sum of 986,800l. additional stock, over and above what they are empowered to create, by any former act in that behalf, and from time to time, in a general court, and from such time as they shall direct, to order the same, or any part thereof, to be added to the present capital of the bank; from which time such monies shall be deemed as part of the said capital stock, and shall be proportionably enlarged thereby; and all persons on whose account any monies shall be paid in, as directed to, towards the said sum, they, their executors, administrators, and assigns, shall be deemed members of, and incorporated with, the company; and shall with the other members of the corporation, be taken to be one body politic and corporate, by the name of the Governor and Company of the Bank of England, subject to the same rules, and enjoying
the same privileges, with the present members of the Corporation; and all executors, administrators, guardians, and trustees, shall be indemnified in making payments upon such calls, &c. as aforesaid.

The capital of the bank so increased shall be transferrable, in the same manner as the original stock was before this act; and, together with the produce thereof, shall be free from all taxes, &c. whatsoever; and the transfers and assignments of stock in the Company's books shall be liable to no higher stamp, or other duties, than are now payable for the same.

The Company of the Bank, and their successors, shall continue a Corporation, and enjoy all the privileges, &c. belonging thereto, until the complete redemption of the said annuity of 39,472l. in as full manner as the same are specified in an act of 15 Geo. 2. intituled, An Act for establishing an agreement with the Governor and Company of the Bank of England, for advancing the Sum of one Million six hundred thousand Pounds, &c. or in any other act relating to the said corporation.

The bank shall advance to the Exchequer, towards the supply for the service of the year 1746, 1,000,000l. upon the credit of the duties arising from the land-tax and malt act, for the said year, to be paid at such times, and in such proportions, as the Treasury shall direct; so that they be obliged to pay no more than 250,000l. at any time, nor without fourteen days' notice before each payment.

Upon payment of the said million, or any part thereof, by the bank, the Treasury shall make out Exchequer bills for the same, payable out of the duties granted by the said two acts, together with an interest of four per cent. per annum. until repayment of the principal aforesaid; and the said bills shall be subject to the rules prescribed in the last recited acts which relate to Exchequer bills thereby authorized to be made forth.

In case the bank shall make failure in any of the said payments, appointed by this act to be made into the Exchequer, at or before the times limited in that behalf, the same shall be recovered to his Majesty's use by action of debt, or on the case, &c. in any of the courts of Westminster, &c. in which suit, &c. the Governor and Company of the Bank of England may be declared indebted to his Majesty the monies of which they shall have made default in payment, &c. which shall be sufficient; and upon such action, &c. there shall be further recovered damages after the rate of ten per cent. for the monies so unpaid, besides full costs of suit.

The bank is to continue a corporation until the several annuities established by Parliament are redeemed. 4 Geo. 2. c. 9. s. 33. — 15 Geo. 2. c. 19. s. 13. — 16 Geo. 2. c. 13. s. 32. — 17 Geo. 2. c. 18. s. 28. — 18 Geo. 2. c. 9. s. 33. — 19 Geo. 2. c. 6. s. 15. and c. 12. s. 59. — 20 Geo. 2. c. 3. s. 55. and c. 10. s. 45. — 21 Geo. 2. c. 2. s. 36. — 22 Geo. 2. c. 28. s. 14. — 23 Geo. 2. c. 16. s. 11. — 23 Geo. 2. c. 15. s. 31. — 29 Geo. 2. c. 7. s. 39. 30 Geo. 2. c. 19. s. 51. — 31 Geo. 2. c. 22. — 32 Geo. 2. c. 10. — 33 Geo. 2. c. 7. — 1 Geo. 3. c. 7. — 2 Geo. 8. c. 10. — 3 Geo. 8. c. 12. And by several subsequent acts for new loans, to the present time. It being one of the clauses of every bill for raising money by annuities payable at the bank. For preventing the forgery of bank notes, bank bills of exchange, and bank post bills, the statutes 41 Geo. 3. c. 39. and 45 Geo. 3. c. 89. were passed, by which statutes it is, amongst other things, enacted, "That any person not authorized by the bank, who shall make, &c. or have any frame, &c. for making paper with the bank water marks, or make, &c. or publish such paper, or who shall assist in so doing, shall be transported for 14 years; with some exceptions therein mentioned: and persons knowingly receiving, &c. any forged bank note, &c. or blank bank note, &c. are guilty of felony, and shall be transported for 14 years." 41 Geo. 3. c. 39. s. 5. — 45 Geo. 3. c. 89. s. 45-6.

Unauthorized persons engraving, &c. any bank note, blank bank note, &c.; or using any engraved plate, &c.; or knowingly having such plate in their custody, or uttering...
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Such bank note, &c. guilty of felony, and shall be transported for 7 years. 41 Geo. 3. c. 39. s. 6, and 45 Geo. 3. c. 89. s. 7. But note the different wording as to the uttering.

In the first session of the fifteenth Parliament of Great Britain, and in the month of June, 1781, the last act of Parliament was passed for renewing the charter of the bank, upon condition that the company should lend to government 2,000,000l. at 3 per cent. for three years, to enable administration to pay off the like sum of the navy debt. Having now finished what relates to the stock, I shall describe the nature of the mercantile money transactions at the bank.

And, first, whoever has a mind to keep cash with the bank, must give a specimen of his firm, in a book kept for this purpose, and apply to the first clerk of these accounts, commonly called the drawing accounts, who will give him a book, wherein his account is opened, which book he takes away with him, and for which it is customary to give half a crown; the person will likewise receive a parcel of cheques, of whose numbers an account is taken by him that delivers them out, on which he is to draw on the bank, as he shall have occasion.

In the books, which are of several sizes, different columns are adapted for the entry of cash, paid and received; and also, for the entry of bills deposited till due, when they become cash to be passed forward, which is done the first time the book is carried to the bank, after they are received.

Whenever you have any cash to pay in, you carry it to the bank, with your book, in which you have credit immediately given for it; and on the contrary when you want to pay, you draw the sum on one of your checks, in the following manner.


Pay to Mr. A. B. or bearer, on demand, two hundred pounds, ten shillings, and two pence; for account of C. D.

£ 200 : 10 : 2.

Which is immediately complied with, and your account debited in the bank books; and whenever you are desirous of having your account examined, you carry your book, and leave it for a day or two in the Accountant’s office; and on your taking it again, you will find every draught you have made, entered, and your checks returned you, cancelled: and no money will be paid, either to yourself or your order, without such a draught, or what is called a write off, which are printed slips of paper, with blanks left for the sums wanted, and are always laying, with pens and ink, at a desk in the great hall, for every one to make use of at pleasure, and when filled up are as follows:

August the 21st, 1790.

Write off from my bank book, one hundred and fifty-seven pounds, ten shillings and six-pence.


Which you give to any one of the clerks sitting on the left hand going into the hall for that purpose, with your book, and he debits you the sum therein desired, and gives you money or notes for it, which you please; reserving the write off as a voucher.

If you have any accepted bills payable in London, and, to save yourself the trouble, have a mind that the bank should receive them, you must indorse, and carry them with
your book to the bank, and have them entered by the proper clergymen, who sit at one end of the great hall; and after this deposit, the value will be carefully received, or the bills duly protested; if the former, their import will be credited in your account; if the latter, the bills will be returned, and the charges of protesting debited to you.

If you would have the bank pay any bills that are drawn on you, you may accept them payable at the bank; and in this case, you must, before they fall due, give the bank an order to pay them when presented, advising their consents, from whence, and by whom drawn, &c.; or you may, at the time of acceptance, write an order on them to the cashiers, as a draught, to pay them when due, though, besides this, a separate order must be left there for their discharge.

The bank will discount bills for any sum, if the holders and acceptors are to the Directors' satisfaction; the foreign ones after the rate of four, and inland at five per cent. per annum; and in order to get this transaction effected, you must describe the bills on a slip of paper, with your name and the acceptor's names, and deliver it, with the bills, to a clerk who attends for this purpose in the same office where the checks are delivered, and he carries it to the committee, who either accept or reject the proposal, without assigning any reason for their behaviour; if the former, the money is immediately paid you by the proper clerk, with a deduction of the discount.

The bank will receive by way of deposit, from any person keeping cash with them, bullion, foreign specie, jewels, or any such effects that are not bulky, and take care of them till called for; but they will give no receipt with them, nor otherwise oblige themselves to be answerable for their safety; as they charge nothing for their clerks' attendance, either at their receipt or delivery, nor for the deposit; but they are sealed up, and ticketed with the name of their owners, &c. who may receive them in the same form they were delivered whenever they think proper.

No body is obliged to pay a personal attendance for any transaction with the bank, but may send another with their book of entries, &c. as most merchants do their clerks; and all possible dispatch is given to every one in their turn.

The bank, besides discounting bills, will advance money on government securities, or on a deposit of foreign specie, or bullion, but never on jewels or estates; and they will likewise buy gold and silver bullion, after assaying, Spanish dollars, &c. though seldom at so high a price as private purchasers, these latter often buying for their own use, but the bank by way of merchandize, on which a profit is expected.

The business of this Corporation was for many years carried on at Grocers Hall in the Poultry, though the first subscription was taken at the Mercers in Cheapside, whilst the other was getting ready, till they erected the spacious pile they at present occupy, in Threadneedle Street, where offices are appropriated for every branch of their employment; their cash, notes, and every thing of value, are preserved in the subterraneous vaults, to guard them from fire, and the whole building secured by very strong substantial fastenings; and since the dreadful riot in the month of June 1780, when an attempt was actually made to break in and rob the bank, a military guard has been appointed to do duty day and night, as regularly as in a garrison; the church adjoining to the bank, called St. Christopher le Stocks, having been purchased under a special act of Parliament, and pulled down, for the purpose of enlarging the building, and erecting a guardhouse and barracks for the military nightly guard; which works have been completed in a superb manner; and in the best style of modern architecture.

Here it may be proper to observe, that the public creditors of the nation, whose accounts are kept in books at the bank, need not be under any future apprehension of loss or confusion arising in their respective accounts from accidents happening to them at the bank. For, as the directors of the bank only undertake the management of the public funds, that is to say, the transfers, paying of interest, &c. for government, at their
THE BANK OF ENGLAND.

Office, for the conveniency of the public; duplicates of all the books are deposited in his Majesty’s Exchequer, at Westminster.

The Corporation is under the management of a Governor, Deputy-governor, and twenty-four Directors; of which latter, three attend from ten o’clock till twelve, Sundays and holidays excepted, for fourteen days together, and are then succeeded by the like number for the same term, till the whole have taken their rotation; and Thursday being their court day, the Governor, Deputy, and all the Directors meet, except such as are out of town, or are hindered by sickness, as they are very punctual and exact in their attendance on the business of the Corporation; for which the Governor has 200l. the Deputy 200l. and each of the Directors 150l. per annum. They are chosen yearly by a general court, out of the principal proprietors of bank stock, and are always gentlemen of large fortunes, but more respected and esteemed for their strict adherence to integrity and honour.

The qualification of the Governor is 4000l., of the Deputy-governor 3000l., and for the Directors 2000l. bank stock, and that a person may be privileged to vote at their election, he must possess 500l. of the said stock.

As for the clerks, the regularity of their attendance is secured by excellent rules; amongst others, they are obliged to enter their appearance, at nine o’clock every morning, in a book kept in the great hall for that purpose, which book is carried into the parlour to the sitting Directors every day, and if any are found missing, inquiry is made if they are absent the whole day, or any part of it, and if proper reasons are not assigned for the failure of an hour’s attendance, a fine is imposed. Sufficient security to the amount of 1000l. is likewise taken for their fidelity; and in justice to those gentlemen, it ought to be recorded, that their celerity and exactness in the dispatch of business cannot be equalled by any set of men of the same denomination in any of the other public banks in Europe.

From the preceding account of the bank’s establishment and direction, it will readily be seen how much easier affairs are transacted here than in any one of those established in foreign countries; in ours, no fines are extorted, no personal attendance required, nor any delays occasioned by shuttings-up, or non-attendance in the afternoon, as the Bank of England is never shut but three days in a year, Sundays excepted, and transacts business from nine in the morning to three in the afternoon, when that of the day ends, as to the receipt and payment of money; though the clerks have still about half, or three quarters of an hour’s employ to balance the transactions of the day, which after the aforesaid hours, they immediately apply themselves to perform. Here is no obligation laid on any one to pay in bank money, or to be satisfied with bank notes; but every one is at liberty to insist on payment in the current coin of the kingdom; yet, as the former are the readiest payment, and a few minutes may convert them into cash, they are commonly preferred, especially for any large sum; so that our bank, compared with the most celebrated and best of the foreign ones, must in every shape be preferred by the mercantile part of mankind, as well as by those gentlemen whose large personal estates would make them at a loss sometimes for a place of security, if there were no bank subsisting to serve them. And if the comparison with the best abroad places ours in so advantageous a light, what shall we say, when we reflect on the shocking consequences of those unstable and disreputable banks, particularly the Caisse d’Escompte erected of late in France, where the fatal effects are felt to this very day? How ought every Englishman to thank Providence for his lot, in being a native of a country secured by the most wholesome laws, under the government of the best of Kings, and where every individual enjoys his property unmolested?
Of Bankers.

This is an employment of great antiquity, for there was a species of it among the Romans, though very different in the exercise of it from what the practice is at present; in that famous empire, they were deemed public officers, who, as one may say, united the officers of exchangers, brokers, commissioners, and notaries, all in one; negotiating exchanges, undertaking trusts, intervening in purchases and sales, and dextrously managing all the necessary acts and writings of so many different functions.

The bankers of the present times differ very widely from the above description, as those in foreign parts do even now from the English. However, it must be acknowledged that the Bank of England does not, in all respects, correspond with the idea of a national bank; if it did we should have no occasion for the business of private banking, of which we are to treat in this chapter. The discretionary power lodged in the hands of the Directors of the Bank of England admits a possibility of partiality in the great business of discounting, which may limit its utility, and cramp mercantile credit, and this should never be the case in a commercial country. Upon some occasions they have even suspended discounting for a time, whereas a general national bank ought to lay no restraint whatever, if the bills offered are good; that is to say, drawn by a known responsible man on persons of like responsibility, and endorsed by one or more of the same description. The only argument that can be brought against making the Bank of England, a general national bank, to answer all the purposes of banking is, the multiplicity of business they are already engaged in for government, on account of the national debt, in addition to the common business in the circulation of cash and notes. And certain it is, that by using proper precautions, the following class of men may be made nearly as useful as a national bank. In France, Holland, &c. they may more properly be termed remitters, as the principal part of their business consists in negotiating exchanges; Mr. Savary calls them merchants, traders, or dealers in money, who make contracts and remittances thereof, and confine themselves to such transactions only: we have also some gentlemen of great fortune, who act on the same footing here in England; but when we speak of an English banker, he is always to be understood as one acting in a different character and manner from those last mentioned; as these limit their traffic to what may properly be called banking; their dealings being similar to the bank's, and their advantages arising from the same negotiations, only in a more limited degree; for their shops are the depositories or receptacles of their customers' money, which is paid in and drawn out by the proprietors, as in the bank, at their pleasure; and the bankers will also discount bills, and advance money on such securities as the bank does, from which their business differs not materially; and though they have no public stock as the bank has, the profits arising from their negotiations are their own.

Bankers are generally gentlemen of large estates and monied property, and though some have unluckily failed, it is an uncommon catastrophe, the business being certainly as lucrative as it is genteel.

The denominations was in England first given to some monied goldsmiths, in the Reign of King Charles the second, as will appear by the following paragraph in an act of Parliament made the 22d and 23d of that Prince's reign, viz. "Whereas several persons being goldsmiths, and others, by taking up or borrowing great sums of money, and lending out the same again for extraordinary hire and profit, have gained and acquired to themselves the reputation and name of bankers, &c." and their business, as
has already been said, is copied by the banks in all parts, though with very considerable additions and improvements.

By 6 Anne, c. 22. s. 9. during the continuance of the Bank of England, no company of private bankers are to exceed six in partnership.

The business of private banking having increased considerably of late years, and the lists of bankers, not only in London, but in every capital city and town in Great Britain, amounting to four times the number that subsisted when the last edition of this work was published, it is our indispensable duty to enlarge a little on so interesting a subject.

The principle upon which the public credit of Great Britain has been enlarged and supported, has been the free circulation of paper money; whether consisting of credit given in the books of account for annuities of various denominations in consideration of sums of money in specie paid for them; or in Exchequer, navy, or other bills, bonds, &c. being government securities. Also in maintaining and encouraging the acceptance of bank notes as equal in value to their amount in the current coin of the nation; thereby making such paper money as much the medium of our exchanges with each other, and even with some foreign countries, as gold and silver.

Private persons, availing themselves of the same principle, have been enabled to throw into the commercial circulation of the kingdom their own notes, bills, and other paper securities, and on this basis a great number of banking houses have of late years been established; a certain quantity of specie, however, proportioned to the extent of their paper credit is requisite for each house, that they may be ready to answer all demands for specie, where it is required to be given in exchange for bills become due; for their own notes issued payable on demand; or for the draughts of their customers who have deposited cash in their hands. We therefore plainly perceive in the first instance, that bankers ought to be men of considerable property.

Now let us state their great utility to merchants, shopkeepers, and many other classes of the people. In the first place, they will frequently discount bills for merchants and tradesmen, their customers, which the bank, from the smallness of the sums, or from the security not being generally known or acknowledged, will reject. If the banker is satisfied that his customer for whom he discounts is a man of considerable property, it is a secondary object only with him, whether the bills are drawn upon or accepted by persons equally responsible. And as the banker's profit consists in making as much interest of the monies laying in his hands uncalled for, as possible, without loss of time; discounting of course must constitute a great part of his business. And, if there were not a great number of bankers always ready to discount the bills that are circulated in trade, commercial credit would be stagnated, and the trading part of the nation would be thrown into a state of anarchy.

In many trades, great part of the business is transacted by notes or bills drawn to become due at remote periods—three, six, nine, and twelve months after date. If the holder of these could not convert them into cash, it would be impossible for him to go on, because his workmen must be paid weekly in cash. To exemplify this in one instance—A bookseller employs a printer and pays him with his note of hand at three months after date; he is perfectly satisfied with this transaction; but, if he receives payments chiefly in this manner, he must have an immense fortune indeed to be able to pay all his workmen weekly in cash. But by discounting the matter is easily settled, and the interest he pays for the advance of the money must be computed and deducted from his profit, which however will always bear a proportion to this circumstance.

But there is another superstructure of private credit, built upon the principle of public credit.—What is become of the immense sums raised by three and four per cent. consolidated bank annuities and other government securities?—expended long since in
our wars; but while the annual interest of the nominal capitals is regularly paid, and that a price can be had at market for the principal itself, through the medium of transfer books; public credit supplies the place of non-payment of the principal in specie. Thus a number of persons in different parts of the kingdom, or even in different parts of so large a metropolis as London, agreeing to draw upon each at distant dates, and having a certain degree of commercial credit, may, by the means of discount, raise astonishing sums of money, to answer temporary purposes, and provided that from the profits of commerce, or even the sale of merchandises arriving from foreign countries within the given time, they can be answerable in specie for each other's draughts, all will be well, and this system of credit may be not only strictly just, but necessary and expedient for the support of commerce under certain circumstances. For instance, a merchant may be in expectation of valuable cargoes from a distant country, and in time of war the delay of convoys, and other incidents, may impede their arrival till some months after the time he had rationally calculated. In the interval pressing demands come upon him from the manufacturers of goods he has exported to the country from which he expects his return with profits in valuable imports. If a friend lends him his paper for three months, that is to say, allows him to draw upon him, and that friend is a man of established credit, whose paper his banker will discount—here is a difficulty removed—perhaps the failure of a good man prevented.

So far, no mischief has arisen, but on the contrary a benefit has been conferred, to which no solid objection can be made. But unhappily this circulation of good paper, upon justifiable emergencies, has opened a door to an extensive circulation of bad paper, upon the worst principles; and as bankers of all other persons are most liable to be imposed on, and, if they are dishonest, to impose upon others, an explanation of this species of spurious credit properly belonged to this chapter.

But as accommodation bills to a considerable amount have lately occasioned some remarkable law-suits, and embarrassed the courts of justice to such a degree, that their decisions are likely to become the subjects of appeal to the supreme tribunal of the British Empire, the House of Lords, for whose final deliberation and determination a case is preparing by the judges; we shall enlarge upon this species of bills of exchange, under that head.

Taking it for granted that the bankers, being men of great experience, will take as much care of themselves as possible, we shall only mention, for the information of the public at large, that detections have been made of late years of persons who have sustained entirely upon the circulation of paper money, by drawing upon each other, and converting part of the money so raised, by discounting or passing their bills with tradesmen, to their own use; and when their credit has failed, which must inevitably be the case sooner or later, they have absconded. To leave no doubt upon the mind of any person whom this may hereafter concern, it is necessary to explain, that by increasing the sums drawn for, they have been enabled to live upon part of the spoils for one, two, or three years, and at the close, when perhaps they have escaped to the continent, it is a general sweep of the whole amount of the last bills they could get discounted.

With respect to the power of bankers to commit frauds of this nature, we shall state it only as a power, which they certainly may, but we do not know that any of them have, ever exercised, and which we hope they never will. A combination of a banker with one or more of his customers, or with some country bank, may enable him to raise money upon bills drawn upon him to a considerable amount. It should, therefore, be a rule with all persons, keeping large sums in the hands of bankers, to inquire,—first, into the solidity of their capital. Secondly, how they employ the balances that remain
with them—that is to say, the difference between their receipts and disbursements—for it will readily be perceived that if the former did not exceed the latter considerably, they could not subsist. If these balances are vested in government or other good securities, readily convertible into cash, at a short notice, to answer extraordinary calls, such bankers may be confided in; but, if they are liable to be paid away to settle losses in stock-jobbing accounts, their customers are in great jeopardy.

The last conveniency I shall mention of private bankers, is, that tradesmen sleep in security, without the dread of fire or thieves, who lodge their money, above their petty cash, in their hands, which some do every evening. The houses and vaults of bankers being secured in an extraordinary manner, and properly guarded, which cannot be the case generally, with the habitations of private citizens.

Bankers will lend money on plate, jewels, title deeds of houses and lands, and other similar securities, such as the receipts for subscriptions to government loans, &c. when they are well acquainted with the owners.

See the statute 41 Geo. 3. c. 57. s. 1, 2, 3.

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**OF USURY.**

3 Inst. 151. It is literally defined to be money given for the use of money, or the gain of any thing by contract, above the principal, or that which was lent, exacted in consideration of the loan, whether it be of money or any other thing.

Some declare usury to be an exaction of profit for a loan made to a person in want and distress; and Mr. Malynes, in his "Lex Mercatoria," terms it a biting, from the etymology of the Hebrew word nesbech, by Mr. Humphreys in his annotations on nesbech, which he supposes a general one for usury; but after all, it properly consists in extorting an unreasonable rate for money, beyond what is allowable by law.

The letting money out at interest, or upon usury, these being formerly regarded as synonymous terms, was against the common law; and in times past, if any one after his death was found to have been an usurer, all his goods and chattles were forfeited to the King, &c. and according to several ancient statutes, all usury was unlawful; but now, neither the common nor statute law absolutely forbid it.

On the contrary, a reasonable, that is, a lawful, interest may be taken for money. And how can it possibly be otherwise, when government itself pays several rates of interest, half-yearly, to public bodies of men; and private individuals, for immense principal sums borrowed at various times, from the public at large, for the exigencies of the state, in times of war. The stat. 27 Hen. 8. cap. 9. allowed ten per cent. for money lent on mortgages, &c. which was revived by 13 Eliz. cap. 8. and 21 Jac. 1. cap. 17. ordained eight per cent. The 12 Car. 2. cap. 13. lowered interest to six per cent. and 12 Ann. cap. 16. to five per cent. at which it has remained fixed ever since.

It hath been adjudged on this last statute, that a contract for six per cent. made before the statute, is not within the meaning of it; and therefore that it was still lawful to receive such interest, in respect of such a contract. And if a man, when interest was at six per cent. lent money at that rate, and after the statute comes and sinks the interest to five per cent. if he continues the old interest on that bond, the bond shall not be void as usurious, but it is said the party shall be liable to forfeit treble value.

The receipt of higher interest than the law allows, by virtue of an agreement subsequent to the first contract, doth not void an assurance fairly made; and a bond made
OF USURY, &c.

to secure a just debt, payable with lawful interest, shall not be avoided by a corrupt usurious agreement between others, to which the obligee was no ways privy; nor shall mistakes in drawing writings make void any fair agreement.

If the original contract be not usurious, nothing done afterwards can make it so; and a counter bond, to save one harmless against a bond made upon a corrupt agreement, will not be void by the statutes; but if the original agreement be corrupt between all the parties, and so within the statutes, no colour will exempt it from the danger of the statutes against usury.

A fine levied, or judgment suffered, as a security for money, in pursuance of an usurious contract, may be avoided by an averment of the corrupt agreement, as well as any common specialty, or parole contract. And it is not material whether the payment of the principal and the usurious interest be secured by the same, or by different conveyances; for all writings whatsoever, for the strengthening such a contract, are void. Also a contract reserving to the lender a greater advantage than allowed, is usurious, if the whole is allowed by way of interest, or in part under that name, and in part only by way of rent for a house let at a rent plainly exceeding the known value; so where part is taken before the end of the time, that the borrower hath not the profit of the whole principal money, &c.

By Holt C. J. If A. owes B. 100l. who demands his money, which A. acquaints him he hath not ready, but is both willing and desirous to pay it, if B. can procure the loan from any other person; and thereupon B. having present occasion for his money, contracts with C. that if he will lend A. 100l. he will give him 10l. on which C. lends the money, with which the debt is paid to B. this is a good and lawful contract, and not usurious, between B. and C.

It is not usury if there be not a corrupt agreement for more than statute interest; and the defendant shall not be punished, unless he receive some part of the money, in affirmance of the usurious agreement.

There can be no usury without a loan; and the Court hath distinguished between a bargain and a loan.

If a man lend another 100l. for two years, to pay for the loan 80l. but if he pays the principal at the year's end, he shall pay nothing for interest; this is not usury, because the party may pay it at the year's end, and so discharge himself.

And it is the same, where a person by special agreement, is to pay double the sum borrowed, &c. by way of penalty for non-payment of the principal debt; the penalty being in lieu of damages, and the borrower might repay the principal at the time agreed, and avoid the penalty.

A man surrenders a copyhold estate to another, upon condition that if he pays 80l. at a certain day, then the surrender shall be void; and after it is agreed between them, that the money shall not be paid, but that the surrenderee shall forfeit, &c. in consideration whereof the surrenderee promises to pay to the surrenderer, on a certain day, 60l. or 6l. per annum, from the said day, pro usu et interesse damnum, and not lucrum, and but limited as a penalty for non-payment of the 60l. as a nomine pane, &c.

On a loan of 100l. or other sum of money for a year, the lender may agree to take his interest half-yearly or quarterly, or to receive the profits of a manor or lands, &c. and be no usury, though such profits be rendered every day.

If a grant of rent, or lease for 20l. a year of land which is worth 100l. per annum, be made for 100l. it is not usurious, if there be not an agreement that this grant or lease shall be void upon payment of the principal and arrears, &c.

But if two men speak together, and one desires the other to lend him 100l. and for the loan of it he will give more than legal interest; and to evade the statute, he grants to him 30l. per annum, out of his land, for ten years; or makes a lease for one hundred
years to him, and the lessee regrants it, upon condition that he shall pay 50l., yearly for the ten years; in this case it is usury, though the lender never have his own 100l. again.

A man granted a large rent for years, for a small sum of money; the statute of usury was pleaded; and it was adjudged, that if it had been laid to be upon a loan of money, it had been usurious, though it is otherwise if it be a contract for an annuity.

If one hath a rent charge of 30l. a year, and another asketh what he shall give for it, and they agree for 100l. this is a plain contract for the rent-charge, and no usury.

The grant of an annuity for lives, not only exceeding the rate allowed for interest, but also the proportion for contracts of this kind, in consideration of a certain sum of money, is not within the statutes against usury; and so, of a grant of an annuity on condition, &c.

Where interest exceeds 5l. per cent. per annum on a bond, if possibly the principal and interest are in hazard, upon a contingency or casualty, or if there is a hazard that one may have less than his principal, as when a bond is to pay money upon a return of a ship from sea, &c. these are not usury.

Though where B. lends to D. 300l. on bond, upon an adventure during the life of E. for such a time; if therefore D. pays to B. 20l. in three months, and at the end of six months the principal sum, with a further premium at the rate of 6d. per pound a month; or if before the time mentioned E. dies, then the bond to be void; this, differing from the hazard of a.bottomly bond, was adjudged as an usurious contract.

One hundred pounds is lent to have 120l. at the year's end, upon a casualty; if the casualty goes to the interest only, and not the principal, it is usury: the difference in the books is, that where the principal and interest are both in danger of being lost, then the contract for extraordinary interest is not usurious; but when the principal is well secured, it is otherwise.

A person secures the interest and principal: if it be at the will of the party who is to pay it, it is no usury.

And a lender accepting a voluntary gratuity from the borrower, on payment of principal and interest, or receiving the interest before due, &c. without any corrupt agreement, shall not be within the statutes against usury. Yet, this is a shameful encouragement to monied sharpers, who may receive, by way of douceur, a fourth part of the amount of the principal lent from extravagant youth, under the pressure of extreme want, and the immediate dread of a gaol.

And if one gives an usurious bond, and tenders the whole money; yet if the party will take only legal interest, he shall not forfeit the treble value by statute.

It has been a matter of great doubt whether, where money has been lent at usurious interest, a subsequent contract to repay the principal with legal interest is good or not. In Barnes v. Headley, 1 Campb. 157, it was held that such subsequent contract was void, but in a subsequent case between the same parties, 2 Taunt, 184, it was decided that a promise to pay the principal with legal interest on the cancelling of an usurious security is binding, and a bond for the principal, with legal interest, substituted upon the cancelling of an illegal one, is good and binding. 1 Campb. 165 in noitis.

Though the principal of the usurious interest are secured by separate securities, yet they both are bad. 2 Hawk. P. C. b. 1. c. 82, sect. 40. Cro. Jac. 252, 508, 2 Roll. 48. 2 Lev. 7, 8.

On an information upon the statute of usury, he who borrows the money may be a witness after he hath paid the money.

In action for usury the statute against usury must be pleaded, and a corrupt agree-
ment set forth: it is not sufficient to plead the statute, and say, that for the lending of 20l. the defendant took more than 5l. per cent. without setting forth a corrupt agreement or contract.

And in pleading an usurious contract by way of bar to an action, the whole matter is to be set forth specially, because it lay within the party's own privity; but in an information on the statute, for making such a contract it is enough to mention the corrupt bargain generally, by reason matters of this kind are supposed to be privily transacted; and such information may be brought by a stranger.

But it is not necessary to plead usury specially in bar to an action, unless such action be on a specialty; for in an action of assumpsit, usury may be given in evidence under the general issue non assumpsit, 1 Saund. 295, a. b. in notis.

In case of usury, &c. an obligator is admitted to aver against the condition of a bond, or against the bond itself for necessity's sake.

The word corruptive is necessary in a declaration for usury, &c.

Usury has been decreed in all ages, both by Jews and Christians; the former were by their laws prohibited to take it of their brethren: though Moses, as Sir Josiah Child supposes for a political reason, permitted them to receive it from strangers, as a sure means of enriching the Hebrews; and though any share of interest or usury was ill thought of by the fathers and others, in the first ages of Christianity, it has for some time past been esteemed rather an advantage than a detriment to a trading people, and consequently been encouraged, though with proper limitations, by the legislature; a lawful interest has therefore now lost the name of usury, which is only continued to those illegal exactions that are the ruin of many, when extortioners find means to evade the wholesome laws subsisting between them, and prey upon the necessities of their poor neighbours: these may justly be said greedily to drink up the widows' and orphans' tears; and we have too many of such miscreants among us, who being lost to all sense, not only of religion, but even of humanity, improve the opportunity of the pressing necessities of others to their own advantage, and grow rich and opulent upon the spoils and destruction of their fellow creatures.

All the exertions of the British legislature have hitherto been ineffectual to suppress the practice of extortionate usurious contracts, for the loan of money to distressed individuals. Various stratagems are contrived by the money lenders, who advertise in the public newspapers, to take advantage of the prodigal and the unfortunate. The most common method, which we introduce here as a caution, is to stipulate for a premium, which they will oblige the borrower to pay back on the instant, together with a year's interest in advance, and then they take the security, whether bill, bonds, or assignments of land or houses, for the specific sum lent. Thus, if you apply to them for the loan of 100l. for a year, they will demand a premium or consideration, and if the security is only personal, you will hardly obtain it under 20l. Having agreed to this exorbitant demand, and your bond or note for 100l. being prepared, that sum is laid before you, and you are directed by the money-lender, or his agent, to return 20l. and 5l. for the year's interest, this being done, you deliver the security for 100l. and carry away only 75l. If you are not ready to discharge the debt at the expiration of the year, it is possible, by granting a fresh note or bond for 120l. you may obtain the loan of the original sum you have received, viz. 75l. for another year, at the end of which, you will have to pay 125l. including the last year's interest, which is exactly 50l. for the use of 75l. for two years.

Extravagant as the above contract may appear, it falls infinitely short of some cases which within these few years have come before the courts in Westminster-hall, for recovery of the securities given for money so lent. For in some, very large sums were lent to young gentlemen of rank and fortune, and the greatest part was to be taken in
goods, the lender not having so much cash in hand; the goods were taken up of a friend of the lender, and as a young nobleman could not know what to do with linens, silks, drugs, china, &c. a third person in the confederacy was recommended by buy them of him, perhaps thirty per cent. under the estimate at which they were delivered to him in lieu of cash. In one instance, it appeared that a young baronet had received no more than 900l. in cash, part of it being the produce of goods, estimated at 1000l. and sold for his account at 700l.; for a landed security, to repay 2000l. the premium and the loss upon the goods absorbing the remainder.

It is necessary, however, in this place, to inform those numerous cormorants who prey upon the necessities of mankind, that under a statute of bankruptcy a strict scrutiny will be made into the nature of the contracts, by which they claim as creditors, and that our present discerning and upright chancellor will not suffer their debts to be proved, if it appears that they are founded on usurious contracts.

A debt made void by statute ought not to be permitted to be proved, as a debt on an usurious contract; and though the rule of the Court of Chancery is, upon a bill to be relieved against demands of usurious interest, not to make void the whole debt, but to make the party pay what is really due; in a commission of bankruptcy, the assignees have a right to insist that the whole debt is void, as an usurious contract. And unless the assignees and other creditors submit to pay what is really due, the Lord Chancellor has not power to order it, and applications of this nature have been frequently refused.

Accordingly, where A. gave a note of hand without consideration, payable to B. two months from the date, for 100l. B. indorses it over to Thompson, allowing a discount of a guinea and a half, being at the rate of 9 per cent. When the note became due, Thompson took a joint bond from the drawer and indorser for the 100l. though he paid only 98l. 8s. 6d. The commissioners had admitted him as a creditor under a commission against the drawer, but finding out this fact afterwards, they ordered his dividend to be stopped. The Lord Chancellor, upon his petition would not direct him to be admitted to his dividend, but ordered an issue at law, to try whether the bond was usurious.

But whatever might be the event of the issue directed by the court in this case, it should seem that if the contract was originally usurious, it is void, and cannot be proved even in the hands of an innocent indorsee; for upon an action brought on such a note, the defendant's plea of usury would be a complete bar. Cook's Bankrupt Laws, 2d. edit. London, 1788. See Doug. 746.

But if a bill of exchange be good in its inception, and the usury take place upon a subsequent indorsement, the bill is good in the hands of a bona fide indorsee, though as between the parties to the usury the security was void. 1 East 92. and Chitty on Bills. 4th edit. 100. and cases therein cited.

Having now seen how the law stands in our own country, let us take a concise view of the regulations established on the Continent, to prevent the pernicious consequences to society of this selfish vice.

Usury is strictly prohibited in all Christian countries; and in many, banks have been set up, with funds to let out on pawns, for those whose necessities required such assistance, and to prevent by this means the prevailing iniquitous practice of usurers; of this number was our ill-conducted charitable Corporation here, and that still subsisting at Amsterdam, under the title of the Lombard, as being first instituted by those people, or Bank of Loans, which is a spacious building erected for a warehouse, in 1550, by the overseers of the poor, who assigned it in 1614 to the city, for the purposes above-mentioned; where every one who is in want of cash may have it, on any pawns he shall bring there, as none are refused, though never so vile or valuable, provided they are saleable; so that every thing will be received, from jewels of a great price, to the least
particular of clothes or furniture; and the interest on the loan is paid in the following
manner, viz.

For what is under 100 guilders, a penning per guilder is paid weekly, which is after
the rate of 16 1-4th per cent. per annum.

From 100 to 500, is paid an interest of 6 per cent. per annum.

From 500 to 3000, there is paid 5 per cent. per annum.

And from 3000 to 10,000, or above, only 4 per cent. per annum is paid.

Whoever have brought in their effects may retrieve them whenever they please, on
returning the sum they have received, with the interest to the day of their taking them
back; though with this exception, that as the interest is to be paid monthly, that of
the month entered on must be satisfied; but to avoid this, the debtor must take care to
free his goods exactly at the month's end.

If those, who have brought in their pawns, neglect to free them at the expiration of
a year and six weeks, or that they do not prolong the time of payment, by satisfying
the interest of the past year, the Lombard sells them by auction, and reserves what
they produce more than the sum lent, charges and interest deducted, at the disposition
of the proprietors; but if they do not reclaim the said surplus in a year after, it is
given to the poor houses, and cannot then by any means be regained.

For the convenience of those who are desirous of being unknown, and therefore do
not care to carry their effects themselves to the Lombard, there are several small offices
established in the city, with this inscription before the door—Hier goatmen in de Bank
van Leeninge; that is, Here they go to the Lombard, or Bank. The people estab-
lished in these offices take an oath to the Lombard, and are obliged to carry in there
daily the effects that are brought to them, under penalty of cassation and being fined;
the Lombard pays them eight sivers per every 100 guilders that it lends on the effects
that they bring in: these people take care to carry the goods to the Lombard, where
they pawn them in their own names, and deliver the money to him who brought them
to them, with a note from the Lombard, that contains the name of the commissary, the
quality of the thing upon which the money is taken, and the sum advanced on it.

If this note happens to be lost, and the proprietor would reclaim his goods, and re-
store the sum borrowed, he is not believed on his bare word, nor will the effects be de-
ivered to him, without his giving good security to return them, if it is found that the
note has been made over to another, who comes afterwards to demand them; but if, on
the note's being lost, any one finds it, or even if it is stole from the owner, and he that
has found it, or stole it, carries it, and demands the effects, and pays the loan before
the proprietor perceives that he has lost it, the Lombard always delivers them to the
bearer, without inquiry whether he is the real proprietor or not; and the true one has
forfeited the right he had to reclaim his effects from the bank.

The public sales made in this house, are made during three days in every week. All
sorts of persons are admitted to the auction; and those which are known, have three
months' credit, particularly for diamonds and other jewels.

If it happens, as in effect it does very often, that the goods, merchandise, or jewels,
brought to the bank, have been stolen, and their owners have discovered it, they may
reclaim them, on proving the theft, giving security for their value, and returning the
sum that has been lent on them.

All the Lombard's officers are paid by the city, of which some are established to con-
troul and value clothes or furniture, others upon merchandise, and others upon jewels
and plate; for the reception of which there are three warehouses, and the appraisers
are answerable for the price at which they have valued the things that are brought in;
in case they are sold for less than the valuation, which they have put on them.

The sums that the Lombard have occasion for are drawn from the money bank, and
all the profit it produces is destined for the support of all, or the greatest part of the hospitals, by which method the bank's cash, which would otherwise lie useless, is of great benefit to the poor, without the public security being in any respect concerned.

Of these Lombards there were some established formerly in many parts of the Low Countries, and one particularly at Bruges in Flanders, where money was lent on pawns without any interest at all; and in several cities of Italy, there were, and still are, several Banks of Charity, called Montes Pietatis, where cash is lent on pledges, for which only an interest of three or four per cent. per annum is required, to pay the salaries, &c. of the assistants, and whose funds have been settled by the charitable donations of many, who have contributed largely to the poor's relief in this shape; and these different ways and means have been thought of, and carried into execution, purely to prevent that execrable sin of usury, and common pawn-broking; and to prevent the calamities the indigent suffered from it.

OF CONTRACTS, BONDS, AND PROMISSORY NOTES.

A contract, in Latin contractus, is a covenant, or agreement between two or more persons, with a lawful consideration or causes, as when a man makes the sale of any thing to another, for a sum of money, or covenants, in consideration of fifty pounds, to make him a lease of a farm, &c.

These are good contracts, because there is a quid pro quo, or one thing for another; but, if a person promises me twenty shillings, and that he will be debtor to me for it, and after, when I demand the completion of his promise, he refuses me, I cannot have any action for its recovery, because this promise was no contract, but a bare promise, or nulsum pactum, though if any thing had been given for the twenty shillings, even to the value of a penny, then it had been a good contract. Every contract doth imply in itself, an assumpsit in law for its performance; for a contract would be to no purpose, if there were not means to enforce the performance thereof.

Where an action is brought upon a contract, and the plaintiff mistakes the sum agreed on, he will fail in his action: but, if he brings this action on the promise in law, which arises from the debt, then, although he mistakes the sum, he shall recover.

There is a diversity, where a day of payment is limited on a contract, and where not; for where it is limited, the contract is good presently, and an action lies upon it, without payment, but in the other, not; if a man buys twenty yards of cloth, &c., the contract is void if he do not pay the money presently; but if a day of payment be given, there the seller may have an action for the money, and the buyer trover for the cloth.

If a man contract to buy a horse, or any thing else, but no money is paid or earnest given, nor a day set for payment thereof, nor the purchase is delivered; in these cases no action will lie for the money, or the thing sold, but it may be sold to another.

All contracts are to be certain, perfect, and complete: for an agreement to give so much for a thing, as it shall be reasonably worth, is void for uncertainty; so a promise to pay money in a short time, &c. or to give so much if he likes the thing, when he sees it.

But if I contract with another to give him ten pounds for such a thing, if I like it on seeing it; this bargain is said to be perfect at my pleasure, though I may not take the thing before I have paid the money; if I do, the seller may have trespass against me; and if he sell it to another, I may bring action of the case against him.

If a person agree with another to give so much for his horse as A. B. shall judge him to be worth; when he hath judged it, the contract is complete, and an action will lie
OF CONTRACTS, &c.

...it, and the buyer shall have a reasonable time to demand the judgment of A. B. but, if he dies before his judgment is given, the contract is determined.

In contracts, the time is to be regarded, in and from which the contract is made: the words shall be taken in the common usual sense, as they are taken in that place where spoken; and the law doth not so much look upon the form of words, as on the substance and minds of the parties therein.

A contract for goods may be made as well by word of mouth, as by deed in writing; and where it is in writing only, not sealed and delivered, it is the same as by word; but if the contract be by writing, sealed and delivered, and so turned into a deed, then it is of another nature, and in this case generally the action on the verbal contract is gone, and some other action lies for breach thereof.

Contracts, not to be performed in a year, are to be in writing signed by the party, &c. 29 Car. 2, or no action may be brought on them; but, if no day is set, or the time is uncertain, they may be good without it.

And by the same statute, no contract for the sale of goods, for ten pounds or upwards, shall be good, unless the buyer receive part of the goods sold, or gives something in earnest to bind the contract, or some note thereof be made in writing, signed by the person charged with the contract, &c.

If two persons come to a draper, and one says, Let this man have so much cloth, and I will see you paid, there the sale is to the undertaker only, though the delivery is to another by his appointment: but, if a contract be made with A. B. and the vendor scruples to let the goods go without money, and C. D. comes to him, and desires him to let A. B. have the goods, and undertakes that he shall pay him for them, that will be a promise within the stat. 29 Car. 2. and ought to be in writing.

All promises and contracts are to receive a favourable interpretation: and such construction is to be made, where any obscurity appears, as will best answer the intent of the parties; otherwise a person, by obscure wording of his contract, might find means to evade and elude the force of it. Hence it is a general rule, that all promises shall be taken most strong against the promiser, and are not to be rejected, if they can by any means be reduced to a certainty. 1. New Abridg. of Cases in Equity, 168.—But promises are not valid, if the consideration be against law: and where there are frauds in contracts, an action on the case will lie. Clarke's Epit. of Com. Law.

Contracts and agreements are in many cases of the same signification, as this latter in its Latin derivation, agrementum, or aggregatio mentium, seems to express, signifying a joining together of two or more minds, in any thing done, or to be done; and

Bonds are deeds, or obligatory instruments in writing, whereby one doth bind himself to another, to pay a sum of money, or do some other act; as to make a release, surrender an estate for quiet enjoyment, to stand to an award, save harmless, perform a will, &c. It contains an obligation with a penalty; and a condition, which expressly mentions what money is to be paid, or other thing to be performed, and the limited time for the performance thereof, for which the obligation is peremptorily binding; it may be made on parchment or paper, duly stamped, though it is usually on the latter, and be either in the first, or third person; and the condition may be either in the same deed, or in another, and sometimes it is included within, and sometimes indorsed upon the obligation, though it is commonly at the foot of it.

A memorandum on the back of a bond may restrain the same, by way of exception: A bond may be by any words, in a writing sealed and delivered, wherein, a man doth declare himself to have another man's money, or to be indebted to him; but the best form of making it, is that which is most used.

If a bond be thus, "Know all men by these presents, that I, A. B. am bound to C. D. in the sum of, &c. for payment of which I give full power to him to levy the same upon..."
profits of such lands yearly, till it be paid:" In this case, the obligee may sue upon the obligation, or levy the money according to the said clause.

Where a bond is made obli
g me, &c. leaving out the words, heredes, executores, et administratores, this is good, and the executors and administrators shall be bound thereby. But an heir is not bound unless expressly mentioned to be so in the bond, or has legal assets by descent from the obligor: see 2 Saund. 7. n. 4. and cases there cited.

An obligation made to one, to the use of A. B. will be good for him in equity.

The condition of a bond must be to do a thing lawful; wherefore bonds, not to use trades, till or sow grounds, &c. are unlawful, as they are against the public good, and the liberty of a freeman, and therefore void: and a condition of a bond to do any act, malum in se, as to kill a person, &c. is void: so also bonds made by duress, by infants, feme coverts, &c. And if a woman, through threats, or flattery, be prevailed upon to enter into a bond, she may be relieved in Chancery.

If an infant, that is, a person under twenty-one years of age, seal a bond and be sued thereon, he is not to plead non est factum, but must avoid the bond by special pleading; for this bond is only voidable, and not in itself void.

But if a bond be made by a feme covert, she may plead her coverture, and conclude non est factum, &c. her bond being void.

If a bond depends upon some other deed, and the deed becomes void, the bond is also void. A bond made with condition not to give evidence against a felon, &c. is void; but the defendant must plead the special matter.

Condition of a bond to indemnify any person from any legal prosecution, is against law, and void.

And if a sheriff takes a bond as a reward for doing of a thing, it is void.

Conditions of bonds are to be not only lawful, but possible; and when the matter or thing to be done, or not to be done by a condition, is unlawful or impossible, or the condition itself repugnant, insensible, or uncertain, the condition is void, and in some cases the obligation also.

But sometimes the obligation may be single to pay the money, where the condition is impossible, repugnant, &c.

If a thing be possible at the time of entering into a bond, and afterwards becomes impossible by the act of God, the act of the law, or of the obligee, it is become void; as if a man be bound to appear next term, and dies before, the obligation is saved. A condition of a bond was, that A. B. should pay such a sum on the 25th of December, or appear in Hilary Term after in the court of B. R. he died after the 25th of December, and before Hilary Term, and had paid nothing: in this case, the condition was not broken for non-payment, and the other part is become impossible by the act of God.

And when a condition is doubtful, it is always taken most favourably for the obligor, and against the obligee, but so as a reasonable construction be made as near as can be, according to the intention of the parties.

If no time is limited in a bond for payment of the money, it is due presently, and payable on demand.

But the judges have sometimes appointed a convenient time for payment, having regard to the distance of place, and the time wherein the thing may be performed; and if a condition be made impossible, in respect to time, as to make payment of money on the 30th of February, &c. it shall be paid presently; and here the obligation stands single.

Though if a man be bound in a bond with condition to deliver so much corn upon the 29th day of February next following, and that month had then but twenty-eight days, it has been held that the obligor is not obliged to perform the condition till there comes a leap-year.
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Where one is bound to do an act to the obligee himself, the doing it to a stranger, by appointment of the obligee, will not be a performance of the condition.

When no place is mentioned for performance of a condition, the obligor is obliged to find out the person of the obligee, if he be in England, and tender the money, otherwise the bond will be forfeited. But when a place is appointed, he need seek no farther.

And if, where no place is limited for payment of money due on a bond, the obligor, 6 El. 4, at, or after the day of payment, meets with the obligee, and tenders him the money, but he goes away to prevent it, the obligor shall be excused.

The obligor, or his servant, &c. may tender the money to save the forfeiture of the bond, and it shall be a good performance of the condition, if made to the obligee, though refused by him; yet, if the obligor be afterwards sued, he must plead that he is still ready to pay it, and tender the money in court.

The condition of a bond being for payment of money, it may be performed by giving any other thing in satisfaction, because the value of money is certain, and therefore may be satisfied by a collateral thing, if the obligee accepts it; but if the condition is to do a collateral thing, there it is otherwise, and paying money is no good satisfaction.

The acceptance of a new bond will not discharge the old one, as a judgment may. Hob. 88.

One bond cannot be given in satisfaction of another, but this is where given by the obligor himself, for it may by others.

If a bond be to pay money at such a time, &c. it is no plea for the obligor to say, that he did pay it; he must shew at what time, or else it may be taken, that the performance was after the time limited.

If a bond be of twenty years standing, and no demand be proved thereon, or good cause of so long forbearance shewn to the court, upon pleading solvit ad diem, it shall be intended paid.

Payment of money without acquittance, is an ill plea to action of debt upon a single bill; but it is otherwise upon a bond, with condition.

If several days are mentioned for payment of money on a bond, the obligation is not forfeited, nor can be sued until all the days are past: but in some cases, the obligee may prosecute for the money due by the bond presently, though it be not forfeit; and by special wording the condition, the obligee may be able to sue the penalty, on the first default.

In a bond where several are bound severally, the obligee is at his election, to sue all the obligors together, or all of them apart, and have several judgments and executions; but he shall have satisfaction at once; for if it be of one only, that shall discharge the rest. If an obligation be joint and not several, all the obligers must be sued that are bound? and if one be prosecuted, he is not obliged to answer, unless the rest are sued likewise.

Where two or more are bound in a joint bond, and only one is sued, he must plead in abatement, that two more sealed the bond, &c. and aver that they are living, and so pray judgment de billa, &c. and not demur to the declaration.

If a bond is made to three to pay money to one of them, they must all join in the action, because they are but as one obligee.

If action be brought upon a bond, against two joint and several obligors jointly, and Hob. 50, both are taken by Capias, here the death or escape of one shall not release the other; but the same kind of execution must be taken forth against them; it is otherwise when they are sued severally.

When the condition of a bond is to do two things, or has divers points, and the obligee, supposing a breach of one of them, doth sue the obligor; if, issue being joined upon that, it is found against him, and he is barred, the whole obligation is
discharged: and so long as that judgment is in force, he can never prosecute upon any other point.

If a drunken man gives his bond, it binds him; and a bond without consideration is obligatory, and no relief shall be had against it, for it is voluntary, and as a gift.

A person enters voluntarily into a bond, though there was not any consideration for it; if there be no fraud used in obtaining the same, the bond shall not be relieved against in equity. But a voluntary bond may not be paid in a course of administration, so as to take place of real debts, even by simple contract; yet it shall be paid before legacies.

An heir is not bound, unless he be named expressly in the bond, though the executors and administrators are. And if an obligation be made to a man, his heirs or successors, the executors and administrators shall have the advantage of it, and not the heir or successor, by reason it is a chattel.

A declaration need not be according to the letter of the bond, where there is any omission, &c. but according to the operation of law upon it.

In bonds to save harmless, the defendant being prosecuted, is to plead non domicicatus, &c. A bond may be from one to one, one to two, three, or more persons; or from two or more persons to one, two, three, &c. and the name of the obligor subscribed, it is said, is sufficient, though there is a blank for his christian name in the bond.

But where another christian name is in the bond, and the bond signed by the right name, though the jury find it to be his deed, the obligee cannot have judgment, for the name subscribed is no part of the obligation.

In these cases, though there be a verdict, there shall not be judgment. Where an obligor’s name is omitted to be inserted in the bond, and yet he signs and seals it, the Court of Chancery may make good such an accident; and in case a person take away a bond fraudulently, and cancels it, the obligee shall have as much benefit thereby as if not cancelled.

If a bond has no date, or a false date, if it be sealed and delivered, it is good. A plaintiff may suggest a date in a bond, where there is none, or it is impossible, &c. where the parties and sum are sufficiently expressed.

A bond dated on the same day on which a release is made of all things, usque diem datus, &c. is not thereby discharged.

And where a bond is made to another’s use, it must be so laid in the obligation, or he cannot release it, &c.

A person shall not be charged by a bond, though signed and sealed, without delivery, or words, or other thing amounting to a delivery.

A bond may be good, though it contains false Latin, or false English, if the intent appears, for they do not make the bond void.

By the condition of a bond, the intent of what sum was in the obligation may be more easily known and explained.

And the condition of the bond may be recorded, and then the plaintiff demur, &c.

Likewise the conditions of bonds may expound to whom an obligor is bound to pay money; as if A. binds himself to B. to be paid to A. whereas it should be to B. which obligation is good, and the solvendum void.

Interlineation in a bond, in a place not material, will not make the bond void; but if it be altered in a part material, it shall be void.

And a bond may be void by rasure, &c. as where the date, &c. is rasied after delivery, which goes through the whole.

Such words, whereby the intention of the parties may appear, are sufficient to make
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the condition of a bond good, though they are not proper; and it shall not be construed against the express words.

If the words in a bond, at the end of the condition, "that then this obligation to be void," are omitted, the condition will be void, but not the obligation; but if the words, "or else shall stand in force," be left out, it has no effect to hurt either the condition or obligation. The stealing of any bond or bill, &c. for money, being the property of any one, is made felony, as if the offenders had taken other goods of the like value.

The Form of a Bond for Payment of Money, with an Obligation from one to one.

Know all men by these presents, that I, A. B. of the parish of, &c. in the county of, &c. Merchant, am held and firmly bound to C. D. of, &c. in the county aforesaid; gentleman, in two hundred pounds, of good and lawful money of Great Britain, to be paid to the said C. D. or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated the twenty-third day of May, in the twenty-second year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and in the year of our Lord one thousand seven hundred and eighty-two.

The condition of this obligation is such, that if the above-bound A. B. his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the above-named C. D. his executors, administrators, or assigns, the full sum of one hundred pounds, of lawful money of Great Britain, with legal interest for the same, on or before the twenty-third day of November next ensuing the date hereof; then this obligation to be void, or otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered

in the presence of

A Bond with a Condition from two to one.

Know all men by these presents, that we, A. B. of, &c. and C. D. of, &c. are held and firmly bound to E. F. of, &c. in three hundred pounds, of good and lawful money of Great Britain, to be paid to the said E. F. or his certain attorney, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us by himself (if one of the obligors be a woman, write thus; viz. by him and herself) for, and in the whole, our heirs, executors, and administrators, and each of us, firmly by these presents. Sealed with our seals. Dated, &c.

The condition of this obligation is such, that if the above-bound A. B. and C. D. or either of them, their, or either of their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said E. F. his executors, administrators, or assigns the full sum of one hundred and fifty pounds, of lawful money of Great Britain, with legal interest for the same, on or before the, &c. which shall be in the year of our Lord, &c. then, &c. otherwise, &c.

And the conditions are the same from three or more to one, or when the obligors, as well as the obligees, are in the plural; as they are vice versa, when the obligors and
obligees, vary in the reverse to the afore-mentioned; and I think what I have quoted is sufficiently clear, to enable every one to fill up a bond suitable to his occasion; which I have done with a view more for the service of my country readers, than those in this metropolis, as these latter may readily furnish themselves with printed bonds of all sorts, which is not the case with the others, though this want they may supply by a draught themselves on stamped paper, where they have not an opportunity to get it done by an attorney, which however I would always recommend when to be effected, at least if the case is any thing more than common.

A Penal Bill for Payment of Money.

Know all men by these presents, that I, A. B. of, &c. do owe unto C. D. of, &c. the sum of one hundred pounds, of lawful money of Great Britain, to be paid unto the said C. D. his executors, administrators, or assigns, on or before, &c. next ensuing the day of the date hereof; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, to the said C. D. his executors, administrators, or assigns, in the penal sum of two hundred pounds, of like lawful money, firmly by these presents. In witness whereof I have hereunto set my hand and seal, the, &c. in the year of, &c. sealed, &c.

A single Bill for Payment of Money, that is, a Bill without a Penalty.

Know all men by these presents, that I, A. B. of, &c. do owe and am indebted to C. D. of, &c. the sum of one hundred pounds, of lawful money of Great Britain, to be paid to the said C. D. his executors, administrators, or assigns, on or before, &c. In witness, &c.

Promissory Notes being obligatory like Bonds, &c. I have thought it proper to insert them in the same chapter, though they are in many respects very different; these notes are, like a bill of exchange, assignable by indorsement, and in case a time of payment be therein ascertained, they will bear an interest, provided they are protested within three days after becoming due; so that it is best in all cases to insert a certain time of payment, except where the solvency of the drawer or debtor is doubted: the indorser becomes equally liable with the drawer of these notes; and when once an indorsable one, that is, payable to order, is transferred to a third person, it is no longer in the power of the indorser to acquit or free the drawer from being liable, either by release, or other instrument in writing, as the property the indorser before had in the note is entirely removed by his indorsement; in which it differs from a bond or obligatory bill; for there the obligee, after having assigned the same to a third person, may, by release or other speciality, destroy the validity of the obligation, and consequently free the obligor from the burden thereof.

The Form of a Promissory Note, commonly called a Note of Hand.

Three months after date, or on demand, I promise to pay to Mr. Richard Thomas, or order, one hundred and fifty pounds, for value received, in London, the 23d of December, 1790.

£ 150. A. B.

The indorsement should be the same as on a bill of exchange; and as there are some
acts of Parliament in force, which have altered the quality of these notes and inland bills, from what they were formerly, I shall give an abstract of them there, without separating what relates to the one from that concerning the other, as I deem this method the most proper; more especially as I shall soon proceed to treat of inland bills.

All bills of exchange drawn in, or dated from any place in England, &c. for the sum of 5l. or upwards, upon any person in London, or any other place, in which bills the value shall be expressed to be received, drawn payable at a certain number of days, &c. after the date thereof, may after acceptance, which shall be by underwriting under the party's hand, and the expiration of three days after the same shall be due, be protested by a notary public, or, in default of such notary public, by any other substantial person of the place, before two witnesses, refusal or neglect being first made of due payment; which protest shall be made under a copy of the said bill, in the form following:

Know all men, that I A. B. on the day of have demanded payment of the bill, of which the above is the copy, which the said did not pay; wherefore I, the said do hereby protest the said bill. Dated at this day of

Which protest shall be notified within fourteen days after, to the party from whom the bills were received, who, upon producing such protest, is to repay the said bill, with interest and charges for the protesting; for which protest there shall not be paid above six-pence; and in default of such protest, or due notice within the days limited, the person so failing shall be liable to all costs, damages, and interest.

If any such inland bills be lost or miscarry within the time limited for payment of sect. 3. the same, the drawer of the said bills shall give other bills of the same tenor, security being given, if demanded, to indemnify him, in case the said bills so lost or miscarried, be found again.

All notes signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant, or trader, who is usually intrusted by them to sign such promissory notes for them, whereby such persons &c. shall promise to pay any other person, &c. or order, or bearer, the money mentioned in such note, shall be construed to be, by virtue thereof, due and payable to such person, &c. to whom the same is made payable. And also such note payable to such person, &c. or order, shall be assignable over in manner as inland bills of exchange are, by custom of merchants; and the person, &c. to whom such money is payable, may maintain an action for the same, as they might upon such bills of exchange. And the person, &c. to whom such note so payable to order is assigned or indorsed, may maintain an action against the person, &c. who signed, or any who indorsed the same, as in cases of inland bills, and recover damages and costs of suit; and in case of nonsuit, or verdict against the plaintiff, the defendant shall recover costs.

Such actions shall be brought within the time appointed for bringing actions, per sect. 2. 21 Jac. 1. cap. 16. for limitation of actions.

No body politic shall have power to give out notes, other than they might before sect. 3. this act.

In case the party, on whom an inland bill of exchange shall be drawn, shall refuse to sect. 4. accept the same, by underwriting the same, the party to whom payable shall cause such bill to be protested for non-acceptance, as in case of foreign bills, for which protest shall be paid 2s. and no more.

No acceptance of such inland bill shall charge any person, unless underwritten or sect. 5. indorsed; and if not so underwritten or indorsed, no drawer to pay costs, damages, or
interest, unless protest be made for non-acceptance, and, within fourteen days after protest, the same be sent, or notice thereof given, to the party from whom such bill was received, or left in writing at his usual place of abode. And if such bill be accepted, and not paid within three days after due, no drawer shall pay costs, damages, or interest thereon, unless protest be made and sent, or notice given as aforesaid; nevertheless the drawer shall be liable to payment of costs, damages and interest, if any one protest be made for non-acceptance, or non-payment, and notice be sent, given, or left.

No such protest shall be necessary for non-payment, unless the value be expressed in such a bill, to be received, and unless the bill be drawn for 20l. or upwards, and the protest shall be made for non-acceptance by persons appointed per 9 Will. 3. cap. 17.

If any person accept such bill of exchange in satisfaction of any former debt, the same shall be esteemed a full payment, if he doth not use his endeavour to get the same accepted and paid; and make his protest for non-acceptance or non-payment.

Nothing herein shall discharge any remedy that any person may have against the drawer, acceptor, or indorser of such bill.

This act shall continue for three years.

Made perpetual by 7 Ann. cap. 25.

Stat. 15 Geo. 3. chap. 51. After reciting, that various notes, bills of exchange, and draughts for money for very small sums, had for some time past been circulated or negociated in lieu of cash, in England, to the great prejudice of trade and public credit; and many of such bills and draughts being payable under certain terms and restrictions, which the poorer sort of manufacturers, artificers, labourers, and others could not comply with, without being subject to great extortion and abuse, enacts—

Sect. 1. That all notes, bills, draughts, or undertakings being negotiable for payment of any money, less than 20 shillings, shall be void.

Sect. 2. If any person, by any means whatever, publish or negotiate any such notes, &c. or on which less than 20s. shall be due, he shall pay 20l. or not less than 5l.

Stat. 17 Geo. 3. chap. 30. After reciting the above act of 15 Geo. 3. chap. 51. and that the same had been attended with very salutary effects; and that in case the provisions thereof were extended to a farther sum, the good purposes of it would be further advanced, enacts—

Sect. 1. That all notes, &c. negotiable for 20s. or above, and less than 5l. that shall remain undischarged, and made within England, after 1 Jan. 1778, shall specify the names and places of abode of the respective persons, to whom, or to whose order, the same shall be made payable, and shall be dated before, or when drawn, and not on any subsequent day, and be payable within 21 days after their date, and not negotiable after the time of payment; and every indorsement shall be before time of payment, and be dated at, or not before the time of making thereof; and shall specify the name and place of abode of the person to whom, or to whose order, the money is to be paid; and that the signing of every such note, &c. and indorsement shall be attested by a witness, and drawn as follows:

Leeds, 20 Nov. 1777.

Twenty days after date, I promise to pay James Hatley, of Fleet-street, London, hosier, or his order, the sum of four pounds ten shillings, for value received by

Charles Jebb.

£ 4 10 0.

Witness
Richard Bunn.

And the indorsement toties quoties.
OF BILLS OF EXCHANGE, &c.

Norwich, 31 May, 1778.

Twenty-one days after date, pay to John Trott, of Fetter-lane, London, or his order, the sum of two pounds and two shillings, value received, as advised by William Holt.

To Matthew Wilks, of Shoreditch, in the county of Middlesex.

Witness
Mary Munt.
And the indorsement toties quoties.

Pay the contents to Benjamin Hopkins, of Guildhall, London, or his order.

Witness
John Trott.
Cristeropher Cowper.

And that all notes, &c. as before, or in which 20s. or above, and less than 5l. shall be undischarged, and issued within England, at the time aforesaid, in any other manner, and also every indorsement shall be void.

Sect. 2. Publishing or negotiating in England, any note, &c. of or under the above value, made in any other manner than hereby permitted; and also negotiating such last mentioned note, &c. after the time aforesaid, is prohibited under the like penalties and forfeitures, and to be recovered and applied as by 15 Geo. 3. chap. 51. sect. 3, &c. is directed.*

Sect. 2. That all notes, &c. issued before 1 Jan. 1778, to be payable within England on demand; and recoverable as directed by the act with respect to notes, &c. issued before 24 June, 1775, and all matters contained in 15 Geo. 3. are to be in force in England as to notes, &c. issued after 1 Jan. 1778, and previous thereto.

Sect. 3. Both acts are to continue not only for the residue of five years, in the former act, but also for the further time of five years.

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OF BILLS OF EXCHANGE; AND CONCERNING THE CROSS ONES OF EUROPE, KNOWN TO FOREIGNERS UNDER THE DENOMINATION OF ARBITRATIONS OF EXCHANGE.

The original traffic of mankind, by way of barter, becoming troublesome, necessity led them to the invention of some more easy manner of continuing their commerce; and nothing being found so commodious a medium as money, this was many ages since adopted to carry on their commercial transactions, first by the Hebrews, then by the Romans, and since continued and improved by almost every civilized nation; and for the still greater conveniency of foreign trade, they made coins of the most valuable metals, that might answer the intention of an easy carriage, by being less bulky and heavy than baser ones; and this method being generally approved of and practised by most trading people, they by degrees fell into an improvement even of this, and substituted remittances and exchanges by bills, to save the expense, risk, and trouble, which the transport of money from one kingdom to another occasioned. The Jews, banished France in the reigns of Philip August and Philip le Long, are supposed by some to have been the original inventors of it; whilst others, with greater appearance of probability, assign the contrivance to the Gibelins, on their being expelled Italy by the factions of the Guelphs; though the motives given for both are the same, viz. their

* Which is by summary proceeding before a justice of peace.
endeavours to withdraw their absconded effects with the secrecy necessary to prevent their confiscation; and to this purpose they give bills on their private friends to foreign merchants on the sums agreed on, and these were regulated by the different value of the coins exchanged; and as many of these bills came back unpaid, it gave birth to the charge of re-exchange, first begun by the aforesaid Lombards, and these, after different modifications, fixed it into a branch of business. They retired, on their first expulsion from Italy, to Lyons in France, and from thence spread themselves into many other trading cities of that, and other kingdoms of Europe; and there is still a street in Paris bearing their name, from its having been a quarter where the greatest part of them resided, for carrying on their banking business; and it is owing to the same reason, and to perpetuate the memory of the great business exercised there by these people, and by them taught to the Dutch, that the place where the Exchange stands at Amsterdam was at first, and still continues to be, called after them, as does a street in London from the same motive, so that it was these people who first sowed the seeds of these negociations in the minds of the Belgick merchants, who duly cultivated and spread them all over Europe for the easier conducting mercantile affairs, and at the same time to prevent the exportation of their current coin in lieu of these paper ones, if I may so term them; and this was found so beneficial and advantageous to trading kingdoms as to merit and engage the protection of several princes for its encouragement and increase; among which some of our former kings made several regulations concerning it; Edward III. caused certain tables to be set up at Dover and other parts of the realm, declaring the value of the sundry species of coins current in the countries trading with his subjects, and the allowance merchants were to give to be accommodated with remittances; as may be seen in the many good laws of his reign. These tables and exchanges were subject to the direction of the King's Mint-Master, who made them par pro pari, or value for value, with a reasonable allowance to those who were appointed to interfere as exchangers, for their trouble; and many acts have been passed since by succeeding princes concerning them.

But as commerce varied, so did exchanges, though they were generally reduced to four, viz. cambio commune, cambio real, cambio sicco, and cambio fictitio.

*Cambio commune,* in England, was that which was constituted by the several kings, who having received monies in England, would remit by exchange the like sums to be paid in another kingdom, according to the regulation of the above-mentioned tables.

*Cambio real,* was when monies were paid to the exchanger, and bills were drawn without naming the species, but according to the value of the several coins, and indeed was no more than the payment of money in England with a proviso to be repaid the just value in specie in another country, according to the price agreed on between the exchanger and deliverer, to allow or pay for the exchange of the money and the loss of time.

*Cambio sicco,* or dry exchange, is when a merchant hath occasion for 500l. for a certain time, and would willingly pay interest for the same, but the usurious lender being desirous to take more than the statute allows, and yet willing to avoid its penalty, offers the 500l. by exchange for Cadiz, whereunto the merchant agrees; but having no correspondence there, the lender desires him to draw his bill on the said place, payable at double or treble usance, by any feigned person, as the exchange shall then govern, with which the merchant complies; and on receipt of the bill, the banker pays the money, and remits the bill to some friend of his at Cadiz to procure a protest there for non-exceptance, the charge of which with the exchange and interest, the merchant is to pay his creditor; and these expences formerly were very considerable.

*Cambio fictitio,* is when a merchant hath occasion for goods, but cannot well spare money for their payment; and the owner of them, to secure his advantage, and avoid
the penalty of the law, acts as the usurer in the former case, and obliges the buyer to defray the expenses of re-exchange, &c.

These two last methods of raising money for the necessitous were prohibited by a act of parliament in the 3d and 4th of Henry VII. but on account of the base monies coined by Henry VIII. at the siege of Bologna, exchanges were discontinued, and the aforesaid pressures and abuses became again current in the reign of Edward VI. which occasioned all exchanges to be prohibited for a short time, but this being found of great inconvenience and detriment to trade, it was again restored; though almost quite neglected, and the illegal part of it connived at in the succeeding reign of Queen Mary.

The just and true exchange for monies that is at this day used both in England and other countries, by bills, is par pro pari, or value for value; so that the English exchange, being grounded on the weight and fineness of our own money, and the weight and fineness of those of each other country according to their several standards, proportionable in their valuation, which being truly and justly made, ascertains and reduces the price of exchange to a sum certain for the exchange of monies to any nation or country whatsoever.

As money is the common measure of things between man and man within the realm, so is exchange between merchant and merchant within and without the realm, the which is properly made by bills, when money is delivered simply in England, and bills received for the re-payment of the same in some other country either within or without the realm, at a price certain, and agreed upon between the merchant and the deliverer; for there is not at this day any peculiar or proper money to be found in specie whereupon outland exchanges can be grounded, therefore all foreign coins are called imaginary.

Having thus far premised and shown the original and nature of exchanges, I shall descend to particulars, and endeavour, in the clearest manner I can, to inform my reader of every circumstance necessary to be known in the circulation of bills; and of all steps to be taken towards their recovery; of their form, current courses, and the laws concerning them, both here and in every other part of Europe; that this nice branch of commerce may be rendered more intelligible, and be better understood than it commonly is, or can be, except duly explained. As customs in their formation, times of running, and falling due, days of grace, &c. are almost as various as each European nation is from another; and as I consider this to be the most intricate part of mercantile literature, I shall be as extensive in my sentiments and quotations about it as the nature of the thing requires, without fearing the censure of my readers for prolixity, which however I shall endeavour to avoid incurring, and be as concise as my capacity will permit, without curtailing what is necessary to be said on so important a subject.

A bill of exchange is commonly drawn on a small piece of paper, and comprised in two or three lines, being so noble and excellent, that though it cannot properly, as is conceived, be called a speciality, because it wanteth those formalities, which by the common law of England are thereunto required, as seal, delivery, and witnesses; yet it is equivalent thereunto, if not beyond, or exceeding any speciality or bond in its punctuality and precise payment; for if once accepted, it must be paid when due, otherwise the acceptor loses his credit.

There are ordinarily four persons requisite in making an exchange, besides the broker, viz. two at the place where the money is taken up, and two where it is payable; as 1st, the deliverer, giver, remitter, or negociator, being the person who delivers the money—2dly, the taker, or drawer, who receives or takes up the money by exchange—3dly, the party who is to pay the money in virtue of the bill drawn on him, commonly termed the acceptant—4thly, the person to whom the bill is made payable, and is to receive it, called the possessor or holder of it.
OF BILLS OF EXCHANGE, &c.

But sometimes only three are concerned in an exchange, viz. the drawer, the deliverer, who has the bill made payable to himself or order, and value of him, and the party that is to pay it, the deliverer carrying it himself and receiving it.

There is likewise another way, wherein only three are necessary, as 1st, the drawer, 2dly, the party on whom it is drawn, and 3dly, he to whom it is payable; for the drawer having money in his hands belonging to the person in whose favour the bill is drawn, confesses value received in his own hands, and charges it to his friend or factor, payable to his creditor.

And there is yet one way more, wherein monies may be remitted only with the intervention of three persons, 1st, the taker, 2dly, the deliverer, and 3dly, the party to whom payable, as thus: If I was at Exon, and intended for London, I would take up money there, and give bills of exchange for the same, drawn on myself, payable to whom the deliverer should appoint in town.

Money may likewise be exchanged between two persons only, viz. the drawer, and he on whom it is drawn; the drawer making a bill of exchange payable to himself or order for value in himself, subscribes the bill, and directs it to the party that owes him money, and is to pay it by exchange; by which bill, when he on whom it is drawn hath accepted it, he becometh debtor to the drawer, and this latter, before the bill falls due, doth negotiate it with another man, and by this means draws the money in at the place of his residence, and makes only an assignment on the bill, payable to him of whom he hath received the value.

All these methods of exchanges are termed real exchange, and some or all of them will naturally occur to a man in business; therefore the better to conduct my reader to a perfect understanding of them, he ought to be acquainted, that as the monies and species of almost every nation differ, not only in their current prices, but in their intrinsic value, there is a just and certain par established between them, according to the real and effective worth of each species, without any regard had to their currency in the countries where they are coined; and the par is by some authors supposed to be of two sorts, viz. the one of the real monies, and the other of exchanges, or imaginary species, though both seem to be the same thing, as having a necessary dependence upon each other.

By the par of real monies is to be understood, the equality of the intrinsic value of the real species of any country with those of another; and by that of exchanges, the proportion that the imaginary monies of any country bear to those of another. So that the rise and fall of an exchange must be attributed either to the current price of the coins of any country, or to an extraordinary demand in one place for money in another, or sometimes it is owing to both; and I think it may easily be proved from the very etymology of the word exchange, that the variation of the current coins or monies of any country in a manner constitutes and gives it being, at least has a very great influence on it, as it is only, according to the aforesaid definition, a bartering or exchanging the money of one kingdom with that of another, which is always effected by the intervention of two or three lines of writing on a slip of paper, as I have mentioned before; and I shall now proceed to show what the obligation of every one is who may be concerned in it.

And 1st, of the drawer, who in treating about, or negotiating a bill of exchange, must have a strict regard to his credit, and never give his draughts at an under-exchange, as this is a certain indication of his want both of cash and credit, though without an impeachment of either he may do his business, although something under the very height of the course, as this cannot always be obtained by every one; therefore in a drawer is not notoriously under the mark, he will transact his affairs with regard in drawing proceeds from a prospect of advantage, without
any mixture of necessity, he may watch his juncture for succeeding in his designs by regulating his draughts or remittances according to the plenty or scarcity of money or bills.

2. If, in negotiating a bill of exchange, only the price is mentioned without any other conditions, they shall in this case be construed to be such as the customs of the place to which the bill is directed ordinarily allow of, in all respects.

3. A drawer ought to observe before he subscribes a bill, and the remitter before he sends it away, that it be well and truly made, with all the necessary requisites fully expressed in it, which I shall here hint for their government; and 1st, it ought to have its date rightly and clearly expressed—2dly, that it names the place where it was made and concluded on—3dly, that the sum be expressed so distinctly both in words and figures, that no exceptions can be taken against it—4thly, that the payment thereof be ordered and commanded—5thly, that the time of payment be not dubiously expressed, nor sooner or later than has been agreed on—6thly, the remitter must especially observe that the name of the person to whom payment is to be made, be well and truly spelled; or if it be made to his order, that those words be clearly written—7thly and 8thly, he must also observe if his name be therein, and the value of him received be expressed—9thly, he must observe that the bill be subscribed by the drawer—10thly, the drawer must principally look to the direction of the bill, that it be true and directed to the right person—11thly, they must both observe, that the place wherein the payment must be made, and the coin, or species, wherein it must be paid, be fully expressed in the superscription or body of the bill: And if a drawer draws upon one who lives not at the place where the bill is intended to be paid, then the remitter must observe, that as well the place where the person lives that is to pay, as the place where the payment must be made, be expressed.

4. A drawer acts imprudently when he gives more bills than one for the same sum, to the same person, and under the same date, as this may be an occasion of mistakes; therefore if two bills for one thousand dollars are agreed for, it is better to make them for unequal sums, than five hundred each.

5. It is a custom in England for the drawer to deliver only the first bill on the day of agreement, and to recover on the 2d and 3d, which are sent to the remitter for payment before the next post goes out; and a drawer should always observe to note how many bills he gives, lest by a repeated loss he should be led into an error through forgetfulness, and give the duplicate of one he had given before.

6. Generally, in all bills of exchange, the drawer is bound to the person from whom the value is received; as the acceptor is to him to whom it is made payable; for although the drawer and acceptor are both bound in the bill, and both equally liable for the payment thereof, yet they are not commonly both bound to one man; I say commonly, for if the taker of the bill be servant to the party to whom the bill is payable, then indeed the drawer may be said to be bound to the party to whom it is payable, as well as the acceptor; or if he who pays the value be the principal, and he remits his own money by exchange, payable to his agent, in this case likewise, both drawer and acceptor may be said to be bound to the purchaser of the bill; but for the generality, in sums remitted and drawn between merchant and merchant, it is otherwise, as the drawer is properly bound to one, and the acceptor to another, though both of them are liable till the bill is satisfied; so that if the accepted bill be not paid at the time, and protest made for non-payment, and there be occasion to commence a suit in law against the drawer, it must be entered in the name of the party from whom the value was received; and in like manner, if a suit be commenced against the acceptor, it must be made and prosecuted in the name of him to whom the bill is made payable; for probably the drawer takes no great notice to whom it is made payable, being directed therein by
the person that takes the bill; neither doth he who accepts the bill much regard the purchaser of it, but only regarding the party who drew it, with whom he corresponds, and him to whom it is made payable, to whom by his acceptance he binds himself for the payment; and so likewise where there are any assignments on bills negociated, always the party that receives the value is directly bound to him of whom he hath received it, and the acceptor to the last assigned.

7. If a merchant, after accepting a bill of exchange, becomes insolvent, or hath done or suffered any thing publicly against his credit, in the interim before the bill under his acceptance falls due, the holder, on hearing such a report, should by a notary demand of the acceptor a better security, and on not obtaining it, cause a protest to be made for want thereof, and send it away by the very next post, that the remitter may have an immediate opportunity to demand and procure security from the drawer; and when the bill is due, if it is not paid, another protest must be made for non-payment, and forwarded as the other; for which protest the drawer must be answerable, and pay the charge of them jointly with those of postage, re-exchange, if the money be redrawn, commission, and brokerage.

8. When any protest is received either for want of acceptance, or better security, the person to whom it is sent must presently repair with it to the drawer or indorser of the bill, and upon sight thereof, he must give a satisfactory security, if his own is not satisfactory, for repayment of the money received, with re-exchange and charges, if it is not paid when due; and it is customary in such cases to make a deposit suitable to the value, or to procure some person of unexceptionable credit to be bound for its punctual discharge.

9. It is customary, as I have observed before, for a drawer in London to deliver his first bill to the person agreed with, on the day of its negociation, and to recover on the second or third bill, retained till the succeeding post, so that it has sometimes happened through misfortunes, though oftener with design, that the remitter has absconded or failed before payment, so that the bill arriving before the advice of the failure or knavery, is accepted and must be paid, though equity would certainly give relief to the party aggrieved, in case of fraud, provided the deceiver could be found.

10. And if the acceptor of such a bill becomes insolvent, or refuses to pay it when due, the drawer is obliged for its discharge, with re-exchange, provision, &c. although he has not received its value.

11. If a merchant draws a bill of exchange for his own account, and remits his correspondents others, or cash to discharge it, or orders him to revalue for its amount, and in this last case, the re-draughts are accepted; though the factor becomes insolvent, or retires with the money, whilst the bill is running on him, the merchant shall be obliged to pay the bill returned protested, with all charges of re-exchange, &c. by which means he furnishes not only these, but the value of the bill twice, so that a more than common regard should be had to the character of the person employed in such transactions.

12. If a drawer fails before receiving value for his bill given, and the remitter hath the bill still in his hands, he should restore it to the creditors or trustees of the drawer's effects; but if they refuse to admit it, and insist on his performing his contract, he is obliged to a compliance, and must demand acceptance, and endeavour to procure payment of the same, though not till the creditors or trustees who urge him thereto have given him satisfactory security, for the payment of re-exchange and incident charges, in case this negociation should return with protest; and till they do this, they cannot oblige him to pay them the value of the bill.

13. When a bill of exchange is accepted, and not punctually paid when due, a protest for non-payment is so far from releasing the acceptor, as some have formerly erroneously thought, that it exposes him to the payment of more than he was before liable;
as by acceptance he only obliges himself to the discharge of the sum mentioned in the bill, but under protest must pay all costs, damages, interests, &c. and for which he becomes liable to an action on the case, as soon as the protest for non-payment hath been made, and he may be arrested for the same accordingly.

14. In case of a remitter's failing, before he has paid the value, and the person to whom the bill is drawn gets advice of this occurrence before acceptance, and therefore refuses to accept it; the bill, on its returning protested, shall be paid, notwithstanding, with all charges by the drawer, under proof from the possessor, that he negotiated the said bill, and paid a just value for it: but if the bill be directly forwarded to the person to whom it is made payable; and sent him by the remitter in payment of a debt he was owing him; then it is dubious whether the drawer be obliged, as he has received no value, nor the possessor in any other shape made the same good. And though the drawer in such a case is obliged to pay extra of what the remitter owes him for the value, the re-exchange and charges, yet the said remitter stands indebted for no more than the bare import of the bill, nor can any thing more be recovered of him.

15. When a drawer acts simply for another's account without engaging as surety for the negociation, if the value by any casualty is not received, the loss will fall on him for whose account the bills were given, unless the drawer give the remitter a time for payment, without advising his principal thereof, or that he has neglected to demand the money in the customary time, or that the remitter was at the time of transacting the affair known to be insolvent, or apparently declining in his circumstances; in any of which, or similar, cases, the drawer shall suffer the loss, whether he received any benefit or not thereby, as it was occasioned by his crediting the remitter.

16. If, through the negligence of a negociator or possessor of a bill, the demanding acceptance has been omitted or postponed till the drawer has failed, and the person it is drawn on, being ignorant of what has happened, accepts the same when presented, his acceptance shall oblige him to the payment, though procured after the drawer's insolvency; but if the remitter or possessor hath neglected to demand acceptance, before the drawer's failure, and the person to whom it is directed hath advice thereof, he cannot be compelled to accept the draught, though previous to the knowledge of the drawer's misfortunes he hath acquainted him with his intention to honour his bill, and even afterwards confesses that he should have done it, had it been presented, and the acceptance demanded, before the advice of the drawer's failure reached him.

17. It is customary, in London, for the possessor of a bill to send it, on receipt, to the merchant's house, on whom it is drawn, for acceptance, and leave it there, if desired, till the next day, except the post goes out the same day it is received, which often happens from the unavoidable irregularity of its arrival, in which case it should be accepted, or protested. And in case a bill so left should happen to be lost, or mislaid, either by the person on whom it is drawn, or by any of his servants to whom it was delivered, so that it cannot be returned to him who left it, neither accepted nor unaccepted; in this case he who lost the bill, if he intended to accept, or if he had accepted it, should give a note under his hand and seal for the payment of the sum mentioned, and to the party directed in the bill, at the time limited, or to his order, upon delivery of the second, if it come in time, or if not upon that note, which is in all respects and cases to have the privilege of a bill of exchange, as it is but just and reasonable that he who hath lost another's specuality, should make it good by some means equivalent thereto; and in case of the said note being refused, protest should be immediately made for non-acceptance, and forwarded to the remitter, as that for non-payment should be, though there is neither
bill nor note to demand it on, if the contents of the lost bill are not satisfied at the time limited for payment.

18. When any person has bills sent him to procure their acceptance, with directions to return them or hold them at the orders of the seconds, &c. and the person to whom they are so sent either forgets or neglects to demand acceptance, or if he suffers the party on whom they are drawn to delay their acceptance, and the drawers in the interim fail, he is certainly very blameworthy for his carelessness and disregard of complying with his obligation, though this will not subject him to a payment of their value; but if he should be urged and pressed to procure acceptance and payment to a bill sent him, and should protract or refer the getting it done, and the acceptant, being ignorant of the drawer's circumstances, declares he would have accepted it, had it been timely presented, the person guilty of this neglect will be obliged to make good the loss, that has happened to his correspondent, purely through his omission and carelessness.

19. If an acceptor has heard that a drawer has failed, he ought not to accept any of his draughts afterwards, although he may, whilst ignorant of the drawer's circumstances, have promised honour to his bills; as his so doing may either prejudice himself, or a third person, which he should carefully avoid, and not engage his firm without a sufficient security against all claims and demands, that may be made either by the drawer himself, or any other in his right.

20. And the reasons are equally good against accepting any bill from a bankrupt drawer, though it should bear date before the time of his failure, and equal therein with the letter of advice, as fraudulent dealings are always to be feared in such cases, and consequently to be guarded against; besides it is not safe to accept a bill under these circumstances, I mean in point of law; therefore every prudent man will be cautious to secure himself.

21. If any one be drawn upon, on the account of a third person, and before accepting, has advice of the drawer's failing, he ought not to accept the draught, though he has promised the drawer he would, as his acceptance may be prejudicial to him; for if he has not effects in his hands, the person for whose account it is drawn, will naturally and reasonably scruple the satisfying the value; or if he should, it will be a detriment and loss to him, if the other has not a sufficiency in hand to answer the bills. And he ought more especially to refuse acceptance to any bills of a drawer who has failed, if the person for whose account the same is drawn, advises of the drawer's insolvency, or on suspicion of its approach, hath forbidden the acceptant to accept any of the drawer's bills for his account, although he may have directed the acceptance of them before.

22. When any drawer fails, the acceptor is not obliged to give better security for payment, but the possessor must have patience till the bill falls due, before he has any demand on the acceptor; but then the acceptor is obliged to pay, though he accepted for the drawer's account, and without any effects in hand.

23. But if an acceptor, on a drawer's having failed, denies payment of a bill, the holder is not obliged to return it with protest to the place from whence it was drawn, as it is apparent that the re-exchanges and charges are not recoverable from the drawer, who must therefore, after protests made, be proceeded against without delay by attachment, &c.

24. If an acceptant fails, or absents himself, the possessor is obliged, as soon as he has notice of the truth thereof, to get a protest made by a notary public in due time, and to send the same, with the bill, to the remitter, that he may procure satisfaction from the drawer; and advice should not only be immediately given to him, but even to the last indorser, that every one concerned may be acquainted with the occurrence,
and the drawer thereby empowered to order some other to pay his bill if he pleases, and thereby prevent the losses which re-exchanges bring with them.

25. If the holder of a bill, either through negligence, ignorance of the custom, or of the acceptor's failure, or that because the bill did not come to hand till after it was due, or from any other cause or motive, did not, or could not, have it protested by a notary public, nor send it away either before, or after it was due, till probably after the last respite day: yet this negligence or ignorance doth not hinder the possessor's having redress on the drawer and indorser, although the acceptant failed before it came due.

26. When an acceptor fails before the day of payment, and the bill is made payable to order, the possessor should, as soon as possible, get a protest made, and sent to the first remitter, though he must retain the bill till it falls due, that in case the drawer should think proper to order the payment of his bill by any other, the possessor may be ready to receive it.

27. If when an acceptor has failed, any other offers to accept and pay the bill for the honour of the drawers or of any indorser, the possessor is not obliged to admit the offer, if he has any reason to suspect the circumstances of the person who makes it; but if he has not, or if the said person will give sufficient security for his compliance, the holder cannot refuse it.

28. Though it should be remembered that it is not safe to accept a bill, whose first acceptor has failed, but under protest declarative of the motives to it, which protest should be immediately sent to the drawer, or to him for whose account it is accepted, with the notary's attestation of its being accepted for his honour.

29. Though the failure of an acceptor be certainly known, and even acknowledged by the drawer himself, yet this latter is not obliged to give any satisfaction or security to the remitter till he produces the protest; but if this is sent without the bills, or the bills without that, or both bills and protest are returned together, and these, or either of them shewn to the drawer, he is obliged to give immediate satisfaction, or caution for the payment of re-exchange and charges; though it would be imprudent in a drawer to make restitution of the value received, or of the re-exchange and charges, only upon producing a protest for the acceptant's insolvency; but upon producing this, and a requisition thereto, he should give security for the payment thereof, at the place where it is made payable, provided it can be done in time; if not, for the re-exchange, when the bill that was accepted by the insolvent person shall be produced; and till the said bill be produced, he need not restore nor repay any thing, without sufficient security to deliver the bill, and a full discharge from all future demands; and to make restitution thereof with interest, in case the said bill be paid to any person, supra protest. But if there is not time enough to order the bill's discharge at the place it was drawn on, the drawer must give the remitter security to pay it at that it was drawn from, as soon as it becomes due.

30. The drawer or indorser is as much obliged to the possessor of a bill, protested for an acceptor's insolvency, as they would be if the bill was protested for non-acceptance.

31. When a person is drawn upon and remitted to, in bills payable to himself, and advised that he has accepted the draught, if he fails before the bills become due, he must fall upon the drawer, or upon him for whose account he drew, and he is obliged to make good the re-exchange and charges, though it be not protested in form and course; but if he fails on the day of payment, or after, then the bill is declared as paid, and the loss must be borne by him for whose account it was drawn; it should be protested within the days of respite.

When a bill is drawn for the account of a third person, and is accepted according to his account, and he fails without making provision for its payment, the
acceptor is obliged to discharge his accepted draught, without having any redress against the drawer.

33. If a person on whom a bill is drawn scruples the accepting of it for the account of him it is advised to be drawn for, or if through want of advice he is ignorant for whose account it is drawn, he may accept the same, supra protest, if he pleases, for the account and honour of the drawer.

34. When a bill is made payable to order, and indorsed by a substantial man, before acceptance be demanded, and the acceptor scruples to accept it for account of the drawer, or for the account of him it is drawn for, he may, if he thinks proper, do it supra protest, for the honour of the indorser; and in this case, he must first have a formal protest made for non-acceptance, and should send it without delay to the said indorser, for whose honour and account he hath accepted the bill.

35. An acceptance, supra protest, obliges the acceptor as absolutely to the payment, as if no protest had intervened; it being indifferent to the possessor of a bill for whose account the same is accepted, and he hath his redress and remedy as sufficiently as ever against all the indorsers and drawers, if the payment be not punctually made by the acceptor at the time of its falling due.

36. The possessor of a bill must be satisfied and content with an acceptance supra protest, if offered by a responsible person, as it is of no importance to him whether it is accepted simply or under a protest, as the acceptor pays the charges, except he had orders from the remitter, not to admit of such an acceptance, in which case he should and ought to protest, if a simple acceptance is refused.

37. When a bill is accepted, supra protest, and the holder is not satisfied therewith, but by the notary public and witnesses demands a simple acceptance, and, upon refusal, makes a protest; the acceptor, if he continues resolved not to accept simply and freely, should renounce the acceptance he had made, and insist that it be so inserted in the protest; and be considered as null and void, as if it had never been done, otherwise he will act imprudently, and may suffer for it.

38. Neither the possessor of a bill, nor he that may demand acceptance, nor any third person whatsoever, may accept a bill of exchange previous to a refusal from him it is drawn on, or that he cannot be found, and hath left no order for the acceptance; in any of which cases, either the possessor himself, or any other, may accept it, under protest, after causing it to be protested for non-acceptance; and the method of accepting supra protest is as follows, viz. the acceptor must personally appear before a notary public with witnesses, whether the same that protested the bill or not is of no importance, and declare that he doth accept such protested bill in honour of the drawer, or indorser, &c. and that he will satisfy the same at the appointed time; and then he must subscribe the bill with his own hand, thus, accepted supra protest, in honour of I. B. &c.

39. An acceptance, supra protest, may be so worded, that though it be intended for the honour of the drawer, yet it may equally oblige the indorser, and in such case it must be sent to the latter; but such an acceptance tends rather to the discredit than honour of the drawer.

40. When the possessor of a bill hath admitted of a third person's acceptance, supra protest, in honour of the drawer, then the draw is freed from any obligation to give a further satisfaction to the remitter; but if the acceptance be made in honour of the indorser only, the bill is as absolutely protested in respect to the drawer, and he is as much obliged to give satisfaction, either to the indorser, for whose honour it was accepted, or to the remitter, as if the acceptance, under protest, had never been made.

41. If a bill be protested for non-acceptance, and after being accepted supra protest,
by a third person, the intended acceptant, on receiving fresh advices and orders, determines to accept and pay it: the acceptor under protest, may suffer it, though the possessor cannot be obliged to free him from his acceptance; and in case the two acceptors agree, he that was originally designed such, is obliged to pay him who has accepted supra protest his commission, charges, &c. as it was by his acceptance that the bill was prevented from being returned protested.

42. Any man that will, may, supra protest, accept a protested bill for the honour of the drawer, or any particular drawer, that was before accepted supra protest, in honour also of some one particular, but later indorser, and the first acceptor is obliged to allow of the same, and yet remain obliged for his first acceptance; but the last acceptor is obliged to pay and allow provision and charges to the first, for the reasons assigned in the preceding case.

43. He that accepts a bill supra protest, puts himself absolutely in the stead of the first designed acceptor, and is obliged to make the payment without any exception; and the possessor hath the same right and law against such an acceptor, as he would have had against the first intended one, if he had accepted.

44. When any one accepts a bill supra protest, he may lawfully demand a recompence for the credit given him, for whose honour he accepted it, at least his commission, postage, and other charges; and in case he should be forced to take his reimbursement by re-draughts on the persons for whose account he accepted and pays, his bill ought to meet with a just and ready compliance, besides a grateful acknowledgment of the favour.

45. No one should accept a bill under protest for the drawer's honour, till he has first learned the reasons from the intended acceptor, for his suffering it to be protested; but if the acceptance be in honour of an indorser, such an inquiry is needless.

46. Though the drawer of a bill, under protest for non-acceptance, and his handwriting, be ever so well known, yet every one should be cautious in accepting it supra protest for his honour, provided the person for whose account it was drawn, be unknown, and cannot be found.

47. Any one accepting a bill supra protest, either for the honour of the drawer or an indorser, though it be done without their orders or knowledge, yet hath his redress and remedy on the person for whose honour he accepted it, who is obliged to indemnify him, as if he had acted entirely by his directions.

48. If the acceptor of a bill, under protest, for the honour of a drawer or indorser, receive his approbation of the acceptance made, the acceptor may freely pay the bill, without any protest for non-payment; but if the person, for whose honour the bill was accepted, returns no answer to the advice, or replies with a disapproval thereof, unthankfully remarking that it was done without orders; in this case the acceptor, supra protest, must cause a formal one to be drawn up for non-payment, against him to whom the bill was directed, and on his continuing to refuse payment, and that has accepted it, is obliged to do it for him; he should engage the possessor to transfer all his action, right, and law of the bill to him; for though this is not absolutely necessary, yet it will corroborate his demands, when he comes to have recourse against the person for whose honour he accepted it (whether drawer or indorser) or any of the former indorsers.

49. He that accepts a bill in honour of the drawer, hath no remedy against any of the indorsers, because he obligeth himself only for the drawer; and he that accepts for the honour of an indorser, can have no advantage from any one, subsequent to him for whose honour he accepted; but he and all that were before him, the drawer included, are obliged to make the acceptor satisfaction.

50. When a bill is protested for non-payment, any man may pay the same, under...
protest, for the drawer's or indorser's honour, even he that made, or he that suffered
the protest.

51. A man after having freely and willingly accepted a bill, cannot satisfy the same
under protest, in honour of an indorser, because he, as acceptor, is already obliged to
him; but an intended acceptor, not having yet accepted the bill, may discharge them
for the honour of the indorser or drawer, as if he was a third person unconcerned.

52. When a person has bills passed on him for the drawer's account, who, having
made no provision for the payment thereof, gives the acceptor room to fear he shall
have some difficulty in obtaining a reimbursement; in such case, this latter, may suffer
them to be protested when due, and afterwards either pay them himself, or some other
for him, under protest causing the right and title to be transferred to him, to enable
him to prosecute the drawer in case of need, or by this means the more easily to pre-
vail on him to refund the value he received, when probably it would be difficult to per-
suade him to reimburse what the acceptor has paid for him.

53. No man must pay a bill under protest for non-payment, till he has declared before
a notary public, for whose honour he discharges it, whereof the notary must give an
account to the parties concerned, either jointly with the protest, or in a separate instru-
ment, or act.

54. He that pays a bill supra protest, immediately succeeds the possessor in the right
and title thereof; though there be no formal transfer made, nor no cessio actionis from
the holder to the payer; yet to prevent all disputes, it may be more advisable, espe-
cially in some cases, to have this cession made in form, and to this the possessor is
obliged whenever it is demanded of him.

55. The possessor of a bill, protested for non-payment, is not obliged to admit of
its discharge from a third person, supra protest, either in honour of the drawer or any
endorser, unless he declare and prove that the honour of that bill was particularly
recommended to him; in which case, the holder is absolutely obliged to admit the
payment from him, as if the intended acceptor had discharged it.

56. But if the protested bill be indorsed by the possessor's correspondent, and was
remitted by him, then the possessor, if he acts circumspectly, will not admit of any
payment in honour of the indorsements, but under the express condition that the payer
shall have no redress or remedy against the said correspondent.

57. He that discharges a bill protested for non-payment, in honour of the drawer,
hath no remedy against the indorsers; though he that honours a bill, protested for non-
payment, for an indorser, hath his remedy not only against the said indorser, but
against all that were before him, including the drawer, though he hath no action, law, or
right against the indorsers that follow him, for whose account the payer was willing to
discharge the bill; as has been mentioned about accepting bills, sect. 49.

58. When several persons offer to honour a bill protested for non-payment, he that
proffers to do it in honour of the drawer should first be admitted, and then, he that
intends the same for the earliest indorser.

59. When a bill is paid under protest, in honour of an indorser, and the acceptor
adviseth the payer that there is another, or that he himself, will discharge it for the
honour of an earlier indorser, or of the drawer, and this before he that paid hath reim-
bursed himself by redrawing, then he is obliged to admit of it from the second, and to
transfer his right to him, though the second payer will be obliged to refund to the first,
not only his charges, but half commission also.

60. Men should be very circumspect and cautious in accepting or paying bills for the
honour of the drawers, and still more so, when they do it for the honour of an indorser;
and ought to be very well acquainted with the character and circumstances of the person
OF BILLS OF EXCHANGE, &c.

for whom they engage their firm, or pay their money; and this precaution is more especially to be observed, when a solvent acceptor suffers a protest for non-payment; and his reasons for so doing are strictly to be inquired into, previous to a payment for the honour of any one concerned, as they may be such as might dissuade any other from paying them supra protest, though if they are entirely satisfied of the ability of the acceptor, they may with less fear pay the bill, as he is obliged for its discharge, in case the drawer or indorsers refuse.

61. If the protest for non-payment be sent away, it is unadvisable to offer payment under protest, though the bill be still retained, unless the possessor will give sufficient security to make restitution, in case the drawer or indorser should have repaid the value and charges, or otherwise agreed with the remitters.

62. A more than ordinary circumspection is likewise required in the payment of bills, under protest, that are made payable to order, and at some days sight, when there hath been any neglect in the procuring acceptance; and, above all, men should be fearful to meddle with bills that were not duly and timely protested.

63. When a bill is paid, supra protest, in honour of the drawer or indorser, the payer usually, if he has no effects in his hands, redraws the same directly on him for whose account he paid it, with the addition to the sum mentioned in the bill, of the charges of protest, brokerage, postage, and commission.

64. And when he that pays under protest hath revalued for his advance, he ought, with his advice of his draughts, to send the protest with the protested, and by him discharged, bills of exchange, jointly with the instrument of his tendered payment and its acquittance, to his correspondent, that they may be shown to the person, for whose honour he paid, at the time of demanding acceptance of his bills for reimbursement, which ought in gratitude to be punctually complied with; though if it should not, and the person drawn on refuses acceptance and payment, he may be compelled thereto, as well as to defray all the drawer’s charges and damages, the right being now in him, either by or without a transfer of it from the first possessor, as has been before explained.

65. If a drawer make any dispute, and allege that his bill was accepted, and therefore the remitter must seek his redress from the acceptor, &c. he should be informed that he must primarily be applied to before it can be sued for from the acceptor; and if a drawer has any suspicion that his bill, though accepted, will not be paid, he should recommend the care of it to some other person for his own credit, who may afterwards have recourse against the acceptor, as this latter’s refusing payment exposes him to immediate execution.

66. In case of a person’s refusing payment of his accepted bills when due, they ought to be protested, and sent with the protest to the remitter or drawer, which of the two it was that forwarded them, except they should order their correspondent to detain the bill, with a prospect of obtaining their discharge from the acceptor.

67. The possessor of an indorsed accepted bill, protested for non-payment, and not discharged supra protest, hath his redress on the drawer and all the indorsers; and therefore it is usual for the possessor of such a bill to redraw for its value, &c. on him from whom he received it, whether he be the first remitter, or any other indorser; but if he is not to be found, or has failed, or if it is more for the possessor’s conveniency, or to comply with the request of a later indorser, he may draw upon some earlier indorser, and demand of him or the drawer, restitution of the value and charges, and, in case of refusal, compel him to it; still, however, the person from whom he received, or with whom he negotiated the bill, is obliged to refund, and he again hath his redress on the acceptor, drawer, or any other earlier indorser.

68. The possessor of such a bill must not directly demand restitution from the drawer, before he has given notice of the non-payment and protest to the indorsers, lest he lose
his redress on them; and he should, as well in case of protest for non-acceptance as for non-payment, advise the remitter thereof without delay, and send him a copy of the protest, that he may get security from the drawer.

69. No bills of exchange, protested or to be protested, can be attached in the notary's hands, except only when an acceptor can demonstrate that he hath fully paid their contents, and in this case the attachment will lie; otherwise it is of no force or validity; and the notary may, nay must when demanded, restore the bill and protest to him from whom he received it, to act therewith as he shall judge convenient.

70. No person can be compelled to pay a bill which has not been accepted; nor the drawer or indorser to the making restitution, unless the bill be returned with protest for non-payment; but if it is, and the protest is in all circumstances rightly made, he that gave or negotiated the bill must make immediate and punctual satisfaction for the value, re-exchange, commission, brokerage, postage, and protest.

71. The drawer of a bill payable to order, is no further obliged, though the protested bill was indorsed in several places, and returned the same ways, than for payment of the redraught made from the place where the bill was to be discharged directly to that where it was drawn, and at such a course of exchange as then governed; and the indorsers are likewise no further obliged than for the revaluing from the place intended for its payment directly to that where it was respectively indorsed by them.

72. When a bill is in the same place successively indorsed by several persons, and is returned by protest to the last indorser, he is obliged instantly to make satisfaction, either by himself or by some other indorser before him or for him; and if he pay, and satisfy it himself, he is not then to demand provision or charges of the other indorsers or drawer in the same place, more than what he has actually paid.

73. The remitter or possessor of a bill protested for non-payment, is not precisely obliged to solicit restitution from the drawer or indorser, if he had rather seek his redress from the acceptor; and on the contrary he need not regard the acceptor, if he prefers seeking satisfaction from the drawer or indorser, nor is he obliged to allow them any time for the payment, but may, if it be not punctually complied with, proceed against which of them he pleases.

74. No drawer or indorser is obliged to make restitution on sight of the protest alone, nor on sight of the protest and the unaccepted bill, when one of them hath been accepted; but he is obliged to give a satisfactory security to the remitter on his producing only the protest, and to make payment when this and the accepted bill are presented together.

75. If a person who has accepted a bill, refuses payment when it is due, and the bill, on being returned with protest that the drawer may satisfy it, meets with a refusal from him also, and is sent back again to the possessor, this latter in such case has as much right and law against the acceptor as against the drawer, and may force either of them to a compliance.

76. Though the possessor of an accepted bill hath no redress against the drawer, if he omits to protest it for non-payment, till the days of grace are expired, yet if the drawer be still in credit, he must send to him with the protest, as till this is done, and they are returned, he cannot compel the acceptor to discharge it.

77. When a bill is made payable for the drawer's own account, and is not discharged when due, but protested for non-payment, the possessor need not return it on the drawer, but may instantly compel him to make satisfaction whenever he is found.

78. The acceptor of an indorsed bill, protested for non-payment, cannot be proceeded against by arrest or attachment, though any one or all the indorsers refuse to make satisfaction, unless the drawer also refuse to do it, and this be proved by good evidence; and the acceptor of a bill returned to the drawer with protest for non-pay-
ment, and sent back undischarged by him, is only obliged to pay the exchange and re-
exchange, provisions, and postage, without other charges.

79. And the exchange is reckoned according to the course at sight, at that time and
place where the protest is made, to the place where the payment should be made by
the drawer; but if it is not complied with there, then the sum is again increased, by
the commission and postage being added, and the course is now reckoned upon the
whole sum, according as it shall govern at that time and place upon sight, to the place
where the bill is to be paid, and the acceptor is obliged to pay the re-exchange and all
the charges, although the parcel was not effectually negociated and redrawn, i.e. re-
exchange, provision, and postage must be twice paid, &c. as provision twice for the ex-
change and re-exchange; the charges being only for postage, and protests, unless the
acceptor, by delays and excuses, forces the possessor upon some necessary charges to
recover, which the acceptor is obliged to pay; but no extraordinary ones, such as
travelling, &c. will be allowed.

80. And if the acceptor under the afore-mentioned circumstances refuse immediate
payment to the returned bill, a legal interest may be charged him, from the day that
the bill was due to the time of its discharge; though he shall not be obliged to make
good any other losses or damage than those before-mentioned, notwithstanding the ex-
pressions used in the protest, as these are not to be construed as obligatory on the
acceptor, to satisfy any loss or damage which the possessor may pretend he has suffered
from a want of punctual payment, and by this means frustrating his designs of some
beneficial engagement, or a loss of a convenient opportunity for advantageously em-
ploying the sum detained.

81. When a drawer is not of an established credit in the commerce of the place he is
settled at, it is common for some merchant, who inclines to forward and protect, at
first to indorse his bills, till time and opportunity have rendered him and his dealings
better known; but if any such friend excuses to indorse his bills, and yet has a mind to
serve him, it is frequent on such occasions for that friend to subscribe the second or
third bill, which is done by the sole setting his name under that of the drawer, without
adding a single syllable thereto, as this doth as fully and amply oblige him as it does
the drawer, though the obligation only extends to the bill so subscribed, for which the
underwriter is answerable to the remitter, or any other this latter negociates it with;
but if the remitter keeps the subscribed bill himself, and the possessor of the other two
unsubscribed would seek any redress against the security, he cannot for want of the
bill that is subscribed; but as such negociations are only practised for the safety and
satisfaction of the deliverer, without an intention in any shape to discredit the drawer,
they are usually concealed, and the subscribed bill seldom sent away.

82. And when such subscribed bills are satisfied, they should be returned to the
principal drawer, as he in the first bill acknowledges to have received the value, and
the remitter would be very imprudent if he paid it to the subscriber, though he con-
tacted with him, and regards his firm more than that of the drawer's; but the sub-
scribed should take care to inquire of the remitter or possessor, whether the bill was
punctually complied with when due, that he may for his security have that which bears
his firm cancelled.

83. Exchange is made in the name, and for the account of a third person, when any
one acts therein by the order, full power and authority of another, which is commonly
called Procuration; and these bills may be drawn, subscribed, indorsed, accepted, and
negociated, not in the name or for the account of the manager or transacter of any or
all of these branches of remittances, but in the name and for the account of the person
who authorized him.

84. And as such an unlimited power, if abused, may be of the most fatal conse-
quence to the giver of it, who certainly puts his welfare and fortune in his procurator's hands, it ought not lightly to be granted, nor till the most sedate reflections and thorough knowledge of the person will justify the step, and bring it within the limits of prudence; therefore a discreet man will not hazard his substance by such a substitution, except through mere necessity, and then will act with all the circumspection possible in his choice; and when he has passed his nomination, and authentically substituted his agent, he must advise those correspondents on whom his procurator may occasionally want to draw, &c. with his having given such a power, and desire them to honour the firm of his substitute, whenever made use of for his account.

85. And he that by such a procuration does either negotiate, draw, indorse, subscribe, or accept bills of exchange, by subscribing his own name and quality, that is, the attorney of his employer, does thereby as effectually oblige his principal as if he himself affirmed, whilst the procurator is not in the least obligated; but if any one, under the pretence of having a full power from a person of credit, transacts any business for his own account, he is not only obliged to perform all that he hath negotiated in the name of another person, but is likewise liable to be punished severely for the deceit; and such a pretence no way obliges the person whose name is made use of therein.

86. It will therefore be prudent in every remitter or possessor of bills to refuse any drawings or acceptance by the wife, servant, &c. of those they pretend to represent, unless they first produce the power they say they act under, and this be in every respect full and satisfactory, and neither antiquated, recalled, or cancelled; and it is asserted by Marius and others, that a merchant's letter to his wife, friend, servant, or any other, to accept bills of exchange, is not sufficient without a power of attorney in form; though if there should be no such instrument made to either of the afore-mentioned persons, yet if either of them have formerly in the principal's absence usually accepted his bills, and he approved thereof at his return, I believe, on proof of this, it would always be construed as his intention, and be as valid and binding as a legal and formal instrument.

87. In negociations of bills, the procurator should, before he concludes any, advise the person treating with him of the quality in which he acts, that he may be satisfied of the validity of his deputations; for if without mentioning any thing thereof previous to his contracting, either by himself or a broker, the other party is not obliged to stand to the agreement, or pay him any money if he has acted as a drawer, but may refuse to have anything to do with him; though, on the contrary, the possessor of a bill must admit the acceptance of a procurator, provided his letter of attorney be general, or expressly declaring that all bills by him accepted, are for account of the principal, or limited only to the acceptance of those bills that the possessor has; but, if the procurator be not clear and express in these particulars, then the holder is not obliged to admit the acceptance of one whose power to perform it is doubtful or insufficient.

88. When bills of exchange are drawn on one place, and made payable in another, the intention of such a draught should be mentioned at the time of agreement, otherwise it is not binding; and when bills are drawn in this manner, it is customary for the acceptor to mention the house they are to be paid at. As for example; A. B. of London draws 500 dollars on C. D. of Bilboa, payable at Madrid, which the remitter sends to his correspondent there, and he to his at Bilboa, where being presented to the said C. D. he accepts it to be paid by E. F. [or in the house of E. F.] of Madrid, and takes care to furnish the necessary fund in time for its discharge, otherwise the bill will be protested for non-payment in Madrid, as E. F. lies under no obligation to pay it, if he has not effects of the acceptor's in his hands, neither is he obliged to declare whether he will pay it or not, before it is due.
89. It is sometimes customary in cases like the above, for the remitter, if he has no correspondent at the place the bill is drawn on, to desire the drawer to send the first for acceptance, and to return it accepted to him, or elsewhere as he shall direct, which the drawer cannot well refuse, though he is not strictly obliged to a compliance; however when once consented to, and he does not return the bill accepted in a convenient time to the remitter, or forward it according to his order, this latter should send the second bill to some other person to procure acceptance, as he cannot oblige the drawer to give him any further satisfaction, in case this has not been done to the first, and if refused, to enter a protest.

90. If the acceptor of a bill does not live in the place where it is payable, as in the foregoing cases, and in order to discharge it, remits the holder other bills due at the same time as his, the said holder is not obliged to admit them in payment, and if he consents to it may justly demand his commission on them, as he has a double trouble in the recovery of his money; and on the contrary, if the possessor desires the acceptor to send him the value of the bill in others, or in specie, the acceptor is under no obligation to comply, unless he has an allowance of a provision for his pains.

91. If the person to whom the bill is addressed will not accept it, a protest must be entered against him for non-acceptance, but that for non-payment is properly made, as before observed, at the place where the bill is payable; and though the possessor is under no obligation to seek elsewhere for payment, yet he may, in case of its not being punctually discharged, proceed against the acceptor wherever he finds him.

92. Besides the afore-mentioned method of drawing on one place and paying in another, there is yet a different manner of executing such negotiations, as when bills are not made payable or remitted to the place directly where the money is, but to some other place, from whence the value is to be redrawn or remitted to the place where the payment must be made. As for example: a person has money lying at London, which he would willingly have at Dantzick, but as the Dantzicker cannot draw directly on London, he first passes his bill on Hamburgh or Amsterdam, and orders his correspondent there, to reimburse himself on London; and the motives to this sort of exchanging are either, first, because there is no course settled directly; or else, secondly, where there is, it may be more advantageous not to make use of it, but to negotiate otherwise.

93. When any one draws by commission, it must be either for the account of him on whom he draws, or else for that of a third person; if for the former, the drawer should punctually advise him of the sum drawn, and distinctly in how many bills, what date, to whom, and when payable, from whom the value, and at what exchange, and indeed the same exactness should be always observed in regard to advising whenever bills are drawn, and no draughts should be passed for the account of a third person without special order from him; and it is customary on such occasions for the acceptor to advise that he will honour such draughts, whenever they appear, previous to the drawer's making them; and the drawer on his part should give punctual advice both to his principal and the acceptor, whenever he executes his commission; and it is usual in such cases for the drawer to mention in the bill for whom he draws, by concluding it with these words, and place it to the account of A. B. as per advice from, naming the person, or the two initial letters of his name, which may prevent and obviate an exception sometimes made by an acceptor, that he did not accept nor satisfy the bill for such an account, but on the drawer's only.

94. Bills may be, and many times are, drawn upon a third person's account, who yet remains incog. to the acceptor. As for example: A. B. is straitened for cash, and C. D. his friend has none to spare him, yet willing to serve him, he makes his credit supply what his purse denies, and passes his bill on E. F. o. F. Amsterdam for the sum that
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A. B. wants, with orders to redraw the same on him [C. D.] which A. B. pays in due time. And sometimes bills are drawn for account of a third, by order of a fourth, viz. A. B. of Antwerp receives orders from C. D. of Madrid, to draw for his account on E. F. of Hamburgh, but A. B. finding no opportunity of effecting it, directs G. H. of Amsterdam to value for the sum ordered on Hamburgh for the account of C. D. of Madrid, and to remit it afterwards to him the said A. B. Or else A. draws on B. with orders to reimburse himself by draughts on C. for the account of D.; but B. should refuse such a commission, unless A. be his security; and when he draws on C. he ought to advise him that he draws by order of A. for the account of D. and also give advice to A. with all the particulars of the negociation, though it is unnecessary to correspond with D. about it, this being A's obligation.

95. He that hath orders to draw on one place, and remit to another, or vice versa, for the account of a third person, should not remit before he knows he can draw, nor draw before he knows he can remit, as by the doing one he may be in disburse, and by the other have his principal's cash lie by longer than may be pleasing; and when he hath an opportunity to do both, he should, before concluding, make his calculation whether he can execute his commission within limits, if limited, according to the terms and exchanges offered him.

96. When a remitter by commission hath sent his bill to a third person by order of his principal, and in his letter of advice hath clearly expressed for whose account it is, then neither he nor his employer can alter or recall the same, to the prejudice of him to whom the remittances are made.

97. If a remitter in commission stands del credere, as creditor, for the remittances, he acts indiscreetly if he has the bills made payable to himself or order that he may indorse them; for though this is frequently practised by the chief bankers and exchangers, with a view to conceal from the drawer the person to whom they remit it, it does not take off from the imprudence of the action, as the following reason will evince, viz.

1st, The indorser may be forgotten, and from this omission may arise endless disputes and contests; 2dly, the remitter by this means makes himself liable not only to answer all damages, &c. to his principal, but also to every possessor and indorser of the bill after him; for,

3dly, By indorsing the bill, he makes it his own bill, and obliges himself on the account of his principal, not only for the value by him received, but for all other charges and re-exchanges.

98. And though a remitter by commission does not stand del credere, he acts with equal imprudence, in having the bills, as aforesaid, made payable to himself or order, and then indorsing them, for thereby he effectually engages himself to stand del credere, without reaping any advantage therefrom.

99. Any remitter on commission that stands del credere, may, upon the return of a bill for non-acceptance, contract with the drawer for the re-exchange and charges, and on his receiving satisfaction, not only be compelled to remit, if he hath not indorsed the bill, the same value for a timely discharge, but also to give his principal the advance of the re-exchange, &c. but in case he hath indorsed the bill, he may absolutely refuse to give away those advantages, as by his indorsement he made it his own bill, and he, as well as any other drawer or indorser, may have the bill discharged when due, and appropriate the gains of re-exchange to himself.

100. A remitter by commission that stands del credere is not obliged to make good to his principal any more than the value he paid for the bill, in case it should be returned with protest, and the drawer is not able to make satisfaction, as the re-exchange and charges must be the principal's loss, if they are lost, because the remitter had pro-
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vision only on the value paid; but if he obtain satisfaction from the drawer for the re-exchange and charges, he is obliged to make the same good to his principal, though the commissions he receives from the drawer are his own, unless the just sum, with the provision and charges, be effectually redrawn on him; and in this case, he may place a commission to his principal's account, for the trouble of accepting and paying the bill.

101. And a remitter by commission with del credere is obliged, on a bill's being returned with protest for non-payment, immediately to make good its value, or to suffer it to be drawn on him, because his standing del credere obliges him not only for the drawer's sufficiency, but for its punctual discharge; though in this case the interest, re-exchange, &c. is all for his own benefit, notwithstanding the drawer, incapable to make present payment, should yet give security to make a future satisfaction; and the remitter if he gives orders for the payment of the bill, may charge his employer with what he effectually pays more than the bill was for, or what his disbursements exceed the value he paid, provided he remits the principal to recover the loss and charges he sustains from the drawer.

102. When a remitter in commission, standing security, has made bills payable to the order of his principal, or to any other person, that are returned protested, and they have been indorsed several times in different places, and consequently the advice of the protest must be for a considerable time retarded in reaching the remitter, he is notwithstanding obliged to make good to his principal the value by him paid, and that though the drawer was for a considerable time in credit after the advice thereof might have come to his hands, if it had been sent directly. And in case any one under the above circumstances executes his commission on his own bills, and they return protested, he is then obliged, both as drawer and security, to make good to his principal the re-exchange and charges, as if he had not been the drawer himself, but a stranger.

103. If any one remitting by commission with del credere, makes the bills for the account of him to whom he remits, then the risk of standing security finishes with the day of payment: so that in case the acceptor, supposing him to be the person to whom the remittance was made, should fail the very next day after the bills became due, and though a formal protest for non-payment be not entered, the loss will fall on the principal, and not on him that remits by commission; but if the acceptor fails before the day of payment, or does timely protest against himself for non-payment, then the loss is the remitter's, because he also is the drawer to him, for whose account the draught was made.

104. When a remitter by commission hath orders from his employer to make remittances to some of his correspondents, that he supposes to be substantial men, under the remitter's security, and there to wait the principal's directions, if the said remitter advise him that he has complied with his orders, and mentions to whom he remitted, and the exact sums he paid, he is not obliged to his principal, though the remitted should fail, because the del credere hath only respect to the goodness of the bills, and not to the solvency of him to whom they are sent; as the money, from the moment of his receiving it, was at the order and disposal of the principal, and this latter, if he trusted the other with it, it was a matter of choice, and at his own risk.

105. If a factor has orders to draw on one place, and remit to another with his del credere, and cannot recover for his draughts, he must suffer the loss, as his security is for the whole negociation, and not for the remittances only; and if the bills a remitter takes he returned with protest, and he cannot procure immediate satisfaction from the drawer, he may charge him an interest on the money advanced, although he then gives him security for the payment.

106. It is the duty of every one drawn on by commission to advise the drawer, immediately on hearing of the draught, whether he will accept it or not, on the conditions.
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and for the account of him for whom it was made; and if the bill be for the account of a third person, the acceptor must give him advice also of the drawer and sum passed on him for his account, and add when it falls due, and whether he will honour it or not.

107. He that is drawn upon for the account of a third person, from whom he has received no orders for accepting, nor is in cash for him, neither hath directions to re-value on the principal, acts prudently if he suffers the bill to be protested for non-acceptance, unless he knows the drawer to be a responsible man, and this inclines him to accept, supra protest, for his honour, which he may do if he pleases, and oblige the drawer afterwards to make him satisfaction; but in this case, he ought immediately to advise the drawer of such his acceptance under protest.

108. He that is drawn on for the drawer's account, or that of a third person, and scruples to accept it for the one or the other, either freely or under protest, may accept the same in honour of any indorser, supra protest, that he thinks proper to trust, and is then obliged to give the drawer, and the person for whose account it is, and also the indorser for whose honour he accepts, advice thereof; and to send the protest, with the instrument of acceptance, to the indorser, that he may use it against the drawer.

109. When the acceptor hath accepted a bill, supra protest, in honour of the drawer or any indorser, for want of advice, order, or provision, from him for whose account the bill is drawn, and he afterwards receives both orders and effects, he is then obliged to free the drawer and indorser from their obligations, and to advise them that he will pay the draught for his account for whose it was drawn, and that he therefore discharges them.

110. If any one accepts a bill with the drawer's obligation, he must at the day of payment advise the drawer, whether he for whose account the bill was drawn, had made provision for it, or otherwise disposed its payment, and if this was done, he in consequence discharges the drawer from his obligation.

111. When any one is drawn on for the account of a third, by another with whom the acceptor never had any correspondence, and consequently must be ignorant of his firm, he ought to be deliberate in his acceptance, though he has orders from his principal to honour such draughts, and should rather wait for the drawer's advice, that he may compare his letter and bill, than be precipitate in his acceptance.

112. He that verbally or by letter has promised to accept any bills drawn on him for a third person's account, and he to whom the promise was made, does, in consequence thereof, give the third person credit, relying on a punctual compliance; in this case, he that has engaged his word is obliged to fulfil it, or be answerable for all damages that shall proceed from a breach thereof, and though he cannot by law be compelled to an immediate satisfaction, a regular process will oblige him to pay at last.

113. If a factor has orders from his principal to accept a certain sum drawn by a third for his, the principal's account, at usance, and the drawer having no opportunity of complying therewith at the time, passes his bills payable at sight; in such case, the factor should not accept them simply, but if he has a mind, may, under protest, accept them for the honour of the drawer, and re-value the same on him, if he continues without orders from his principal how to reimburse himself; but if the drawer should find occasion to draw at half usance, when the other half is expired, in such case he is obliged to accept the draughts freely and without reserve.

114. If any one be drawn on by commission, and ordered to re-draw the value on some other place, which he cannot comply with, either from no money's offering, or that the exchange is not within his limits, and it does not suit his convenience to be in disburse, he may in such case re-value directly on the drawer, or on any other place, even above the limited course, if he cannot do otherwise, though on the best terms he possibly can for his principal's advantage.
115. When any person drawn on by commission hath accepted the bill, and the payment is not demanded when due, he must, notwithstanding, debit the principal for its value, because he is always obliged to pay it whenever it is asked for.

116. The acceptor of a bill on commission, drawn on him at time, may, and must demand on the drawer his accepted bill, if this latter should think proper against the time of payment to call it in, and pay its import himself, and the drawer is obliged to restore it; but he should, before he parts with it, clearly express in writing upon it, that he himself called in the bill and satisfied it, and he is obliged to allow the acceptor at least half commission.

117. It is incumbent on him to whom a bill is remitted in commission, 1st, to endeavour to procure acceptance; 2dly, on refusal, to protest, if not forbidden, though not expressly ordered; 3dly, to advise the remitter of the receipt, acceptance, or protesting it, and in case of the latter, to send the protest to him; and 4thly, to advise any third person, that is or may be concerned in it; and all this by the post's return, without further delay.

118. He that has bills remitted to him for the account of a third person, or to be at his disposal, cannot place the said bills either to his own, the remitter's, nor to any other's account, but is obliged to observe the order of him only for whose account and at whose disposal they were remitted.

119. If a bill, remitted for the account, or to be at the disposal of a third person, is indorsed or made payable at first to the receiver thereof, or to his order, he that receives the bill, if he has advised the person for whose account or at whose disposal it was directed to be, that he hath received such a bill for his account, &c. cannot revoke his word to please the remitter, but must attend the order of the said third person; though, if he hath not written nor advised him thereof, he then may at the request of the remitter, or the remitter at the instance of the possessor, observe the last order, to wait for further ones.

120. When divers bills are remitted for account of several persons, and previous to the possessor's advising the exact sum appertaining to each particular, one of the remittances should be protested for non-payment, he may, if it suits him, re-value the same on the remitter; and in case he cannot get satisfaction there, the loss will then fall on all the bills, to be proportionably divided pro rato, on the sums recoverable of the said remittance; and if the remitter stood del credere for any, he must lose pro rato with the rest.

121. When any one is drawn on for the account of a third person, and accepts the bill, under protest, for that of the drawer, advising him expressly thereof by the post's return, then the acceptor may, if he cannot obtain sufficient provision from the principal, or the necessary orders for his reimbursement before the draught falls due, re-value upon the drawer, without being obliged to seek his redress first from the third person for whose account the bill was; but if the acceptance, supra protest, was with the obligation of the drawer, then the acceptor must, if the drawer require it, have recourse first for satisfaction to the said third person, though without being further obliged than to re-value on him; and if his bill be protested, and not accepted or paid, then he hath his redress upon the drawer, who in this case must duly discharge the same.

122. And when provision for such a bill, protested with the obligation of the drawer, is not timely made by the person for whose account it was drawn, but instead thereof he gives orders to re-value for the same, either by him directly or on some other place, the acceptor must in such case, before compliance, consult the drawer, as he is obliged to satisfaction at all events, and hold him bound till the sum to be re-valued shall be punctually discharged; and if it is not, but the said re-draughts returned, protested, then the acceptor who paid the original bills, and must now satisfy those come back.
with protest, may re-value the sum, with the charges, commissions, and protest, on the
first drawer, who continued obliged to satisfy the same.

123. When a bill is accepted *supra* protest, for the account, or with the obligation
of the drawer, and the acceptor repents of the steps he has taken, as suspicious of the
drawer's compliance with his re-draughts, he should in such case suffer the bills to re-
turn protested for non-payment, after having first advised him of his intentions, that the
drawer may take new measures for their discharge.

124. If any one be drawn on for the account of a third person, and accepts the bill
freely, the acceptor in such case hath no redress on the drawer, who is freed from the
obligation of accepting any re-draught on him, as the acceptor has discharged him by
his free acceptance, and has only recourse for his reimbursement on the third person,
for whose account he accepted.

125. When a factor hath occasion to re-draw for the principal's account, to reim-
burse draughts, first drawn on him, he may pass his bills not only according to order
and within limits, but may exceed the order and limits set him; and if he hath no order,
may re-draw without it, or even expressly against it in case of need, as he is under no
obligation to be in disburse; and in case the principal will not accept his factor's bills
so drawn, under pretence that they are without, above, or against order, the acceptor
must proceed against him in law, and will undoubtedly recover both principal, charges,
and damages.

126. In all the exchanges hitherto mentioned, the drawer receives cash from the re-
mitter, for bills given him, whose import he obliges himself shall be paid in ready
money, at the time and according to the conditions therein agreed on. But there is
yet another sort, called mixt, or debt exchanges, wherein the drawer receives no
money, but gives bills in payment of a debt; and in such negociations the creditor is
deemed the remitter.

127. And such bills are made either for the recovery of an old debt, or to assure
the payment of a new one, contracted for goods bought on trust; and whether the debtor
makes the bills payable by himself or another, and whether the debtor and creditor
settle the course or not, the debt now changes its nature; and he that gives a bill of
exchange becomes thereby liable to the laws concerning them, and may, upon failure,
be prosecuted in a different manner than he could be for a book debt; and therefore a
prudent creditor will, on receiving such a bill, make an absolute agreement with the
debtor concerning the course; and upon receipt thereof, credit his account of goods,
and debit his account current for the value.

128. It is unnecessary in most countries to express whether the value of bills was
paid in monies or in any other commodities, and I think France is the only exception
to this rule, if the debtor do but effectually receive it; and he that gives a bill for the
payment of an old debt, or for goods then purchased, should demand an acquittance
from his creditor, acknowledging to have received satisfaction for such a debt, or for
such goods, in such and such a bill of exchange, or so much of the debt as the bill of
exchange amounts to; and on the contrary, the creditor must demand a receipt from
the drawer, wherein he confesses to have received the value of such a bill, either in an
old debt, or goods bought, and for full payment, or in part.

129. When a creditor hath received such a bill from his debtor in full or in part of
his debt, and it is not complied with when due, he must not be persuaded by his debtor
to neglect following the strict course and law of exchange, by protesting, &c. nor
should give the acceptor longer time, though solicited thereto, unless the debtor en-
gages under his hand that it shall in no shape be a prejudice to him, nor annul or lessen
the law subsisting against himself, but that the possessor's rights shall be preserved as
entire as if he had actually protested in due form and course; for without this the
debtor might disown any such order or request, and defy his creditor, after he had neglected to secure the payment by the means the law afforded him.

130. When a bill is drawn by order, and for account of a third person, and after being duly accepted, the acceptor fails, the drawer must make good the re-exchange and charges; but for these he hath his redress on him for whose account he drew, and may charge his account therewith, though the said person hath already made a sufficient provision for it to the acceptor, or hath honoured his re-draughts; and if both the acceptor and the person drawn for fail, the drawer hath an action on them separately to recover satisfaction.

131. If a bill be drawn, and accepted for the account of a third person, and he on whom it is drawn fails before the said third person hath made him a sufficient provision for its discharge, and if the drawer also fails, then he for whose account the draught was made, is freed from any obligation to pay it, though drawn for his account, unless the possessor will give him a satisfactory security to save him harmless both from the drawer and acceptor, or any of their creditors, assignees, &c. or unless it appears to him that the possessor is satisfied by the acceptor or some others for him, and doth relinquish all pretences to both the acceptor and drawer’s effects.

132. When the possessor of a bill, payable to his order, fails, and, to defraud his creditors, indorseth it to another, who negotiates it, and effectually receives the value, indorsing it again to a third, &c., and though the creditors, having discovered the fraud, oppose it, yet the acceptor must pay it to him who comes to receive it, on proof that he paid the real value for it; but, if the insolvent possessor has made it payable to any other directly, he might probably be allowed a provision; but previous to his recovering the principal, he must clearly prove how and when he paid the value; and must swear, that before the failure of the indorser was known, the said bill was, without any collusion or deceit, purchased by and delivered to him; and if he refuses to perform this, on an opposition from the creditors, he cannot legally receive a farthing; and in case he has recovered, he must refund it for the benefit of the creditors, and must also draw and indorse the bill that he received from the bankrupt possessor with an intent to defraud them.

133. When a bill is made or indorsed payable to any person, who, unknown to the acceptor, is become insolvent before the day of payment, if he, ignorant of the possessor’s failure, discharge the same, such payment is good and valid; but if he pay to any other upon the possessor’s order, after knowing of his insolvency, he exposes himself to the hazard of paying twice, and justly merits such a pecuniary punishment for his indiscreet and unfair proceedings.

134. When the possessor of a bill fails, and the acceptor can demonstratively prove that it was remitted for the former’s account, or upon account of a debt due to the possessor, either from the remitter or from any other on whose account the remittance was made, in this case the possessor is the true owner and principal of the bill, and the acceptor may pay it to him, and he must credit the value to the person for whose account it is; but if the bill be for the account of a third, or for the drawer’s own account, and neither of them have received any valuable consideration, from the possessor, for it, then it ought to be paid to him, as the insolvent possessor is not the true owner of the bill, but merely a demander of satisfaction; and the acceptor should be obliged, when due, to pay the same to the next order of the remitter, or the true owner of the bill for whose account it is.

135. If a suspected possessor of a bill should fraudulently twice draw effectually the same bill, and give the first to one man, with directions where to find the second accepted; and the second to another, with directions where to find the first accepted; in this case he only hath right and title to the money that first procures acceptance, he not
finding any accepted bill as he was directed, whether it be to the first or second, it makes no difference, nor whether it was first or last negoiated by the fraudulent indorser.

136. When the possessor of a bill is become a bankrupt, and in order to defraud his creditors, or others, conceals the bill, which they have good reason to conclude must still remain in his hands, the acceptor is obliged to declare whether he hath accepted such a draught, and if he answer in the affirmative, the creditors or any other interested persons, may prohibit the acceptor's paying it without their knowledge and consent; and if any one appear at the day of payment, to recover, he must declare and prove, that he is the true possessor of the bill; and if none appear, the acceptor is obliged to pay the import of it to the creditors or assignees of the bankrupt possessor, they giving security that the acceptor shall be no ways prejudiced thereby; or if he scruple doing it on their security, he may deposit it in the hands of justice, for account of the true owners thereof; and if the acceptor refuse compliance, both with one and the other, the creditors or their assignees may protest against him for non-payment, and send the same to the remitter to procure satisfaction of the drawer, and if he makes none, they may compel the acceptor thereto.

137. When a bill is made payable to the order of any person who has failed before it reach him, and he, notwithstanding, on receipt, indorses it, and makes it payable to some other, who demands acceptance thereof, and the acceptor, being ignorant of the failure of the first possessor, duly honours the same; in such case the acceptor, getting knowledge of the bankruptcy of the first possessor, and that this preceded his indorsement thereof, may refuse payment of the value to his order, as the insolvent possessor had no faculty or power, after his failure, to indorse a bill of exchange; and therefore it would be honest and prudent in the acceptor, under such circumstances, to offer payment thereof to the creditors, provided they give him a sufficient security for his indemnification, though if they refuse this, he should suffer the bill to be returned with protest.

138. It affords a just suspicion of fraud, when the debtor of a bankrupt pretends a demand on the latter's effects for having accepted and paid a third bill, at the insolvent's request, to some of his creditors, whilst his reputation stood yet unimpeached; or that the bill, whose third he subscribed, was protested, and he forced to pay the re-exchange and charges; as the debtor and creditor or possessor of such a bill may, by an undertaking between them, make many such bills to the great detriment of the bankrupt's creditors.

139. When the possessor of a bill hath neglected to procure acceptance in time, and the person on whom it is drawn refuses it afterwards upon account of the drawer's failure, the possessor has no greater privilege or preference to the drawer's effects in the acceptor's hands than the other creditors have, though the drawer drew merely on those effects, and the draught would have been duly honoured if it had been presented, and acceptance demanded, before the failure of the drawer was known.

140. Though the possessor of a bill, whose acceptor fails before it becomes due, hath an open account with him, and is his debtor for a greater sum than the bill imports, and may now set off its value, yet it would be more prudent in him to protest the bill for non-payment, and suffer it to be returned.

141. If the drawer, or the party for whose account a bill is drawn, fails before provision is made to the acceptor, then this latter paying at the time, or if not accepted or not paid, but returned with protest, the drawer is entitled to a preference, before all other creditors, upon any of the effects of the insolvent that may be in their hands.

142. When the acceptor of a bill hath remittances made him to discharge it, by the person for whose account he accepts, and he, after receiving such remittances, and before payment of the draught on him, fails, then the principal must answer the re-ex-
change and charges, and be content to come in with the rest of the acceptor's creditors; but if upon the acceptor's failure the remittances are found in his possession unreceived, then the principal, who made them, has a right to their return, and they must be paid to his order; and in case the other creditors have recovered their import since the acceptor became insolvent, they are obliged to repay the same.

143. The possessor of a bill protested for non-acceptance or non-payment, whose drawer and acceptor are both failed, must concur with the rest of the creditors, not only for the value that was paid, but also for the re-exchange and charges, and for the sum that the drawer or acceptor should have paid if they had continued solvent.

144. If both the drawer and acceptor fail, the possessor hath a just right and title to demand payment of both their effects; and it is in his option to begin with which he pleases first, and where the appearances are greatest for a speedy recovery; and if one of their effects are not sufficient for satisfaction, he may then get as much as he can of the other's, as they are both obliged.

145. And the same right that he hath to the effects or any thing else appertaining to the insolvent drawer, or acceptor, till he hath received satisfaction, he has likewise against any or all the indorsers, if the bill be returned unaccepted, and they fail; and if the bill be accepted, and the acceptor, drawer, and indorsers shall all fail, he may come upon all their effects for satisfaction.

146. The possessor may demand the full sum, with all charges, out of the goods and effects of that insolvent drawer, acceptor, or indorser, where he shall think proper first to make his claim; and what he receives there, he must place to account in part of payment of his demands; and if he does not receive full satisfaction, he cannot demand the whole again from another, but only the remainder, and so from one to another till he be entirely satisfied.

147. If the possessor of a bill, whose drawer, acceptor, and indorsers are all failed, receives something in part of payment, and the bankrupt's trustees do thereupon demand an acquittance, with the cession of the action to him or them, the possessor should not acquit nor transfer more of his right to them than for the value that he hath received.

148. When the possessor hath received from one of the bankrupts part of his demands, and applies to another of them for the payment of the remainder, he cannot cede or transfer his right of action against the person from whom he has recovered part, because he was therefore admitted into the concourse of creditors for his whole demand, and accordingly received his proportion; so that though a possessor enter into such a concourse, and receives as much of his debt as he can get from one of the failed parties, and thereupon doth absolutely discharge him, yet for the remainder he may come upon the other indorsers or drawer, till his bill be fully satisfied, only he cannot transfer his action against him whom he hath discharged.

149. When the possessor of a bill, whose drawer, acceptor, and indorsers are all failed, does first receive in part of his demands from one of the bankrupts for whose account the bill was drawn, but had either drawn, indorsed, or accepted the bill for that of another, without having any effects in hand; then the possessor must enter into an agreement with him who paid in part, jointly to demand of the others (or any one of them) that failed, the remaining sum, with charges.

150. If the possessor of an accepted bill dies without leaving executors, or any one to act in his affairs, so that no one hath authority to demand payment of it, or to give a satisfactory discharge, and yet some pretending hereto, apply for its recovery when due, and on refusal protest for non-payment; in this case the acceptor must advise the drawer of all the circumstances, and his motives for non-compliance, who must on his
part consult with the remitter to give further orders, or he may deposit the sum in the hands of justice, to be reserved for the true owners.

151. If the possessor of a bill accepted should agree and compound with the acceptor, and the drawer be the acceptor’s debtor for the sum he accepted, though the drawer be thereby discharged from the remitter and possessor, and also from the said acceptor, yet the acceptor can debit the drawer for no more of that bill than he effectually paid, according to the composition.

152. But if the possessor hath made this composition with the acceptor, without the remitter’s order or consent, the remittance being for the remitter’s account, the possessor will be liable to answer the whole sum to him.

153. If the drawer or indorsers, being insolvent, deny that the bills they have drawn and indorsed, and the acceptor has accepted, were for effects of their’s which the acceptor had in his hand, or that they have since or before acceptance made provision for the discharge thereof, they must at the instance of their creditors prove the same.

154. Besides the different species of bills before-mentioned there are others, called Conditional Exchanges, being such as the drawer doth not therein absolutely oblige himself to payment, but on certain terms agreed on; and in these bills, the condition must be clearly expressed, and on that the acceptor should accept and pay, else not; wherefore if the condition be not clearly expressed, these kinds of bills are, like bonds, liable to great disputes and contests.

If the acceptance be in writing, and the drawer intend that it shall not be only conditional, he must be careful to express the condition in writing, as well as the acceptance; for if the acceptance should, on the face of it, appear to be absolute, he cannot take advantage of any verbal condition annexed to it, if the bill should be negociated, and come to the hands of a person unacquainted with the condition; and even against the person to whom the verbal condition was expressed, the burthen of the proof will be on the acceptor. But,

A conditional acceptance, when the conditions on which it depends are performed, becomes absolute.

155. The accepting a conditional bill obliges the acceptor (whether he be the drawer himself, or any other) absolutely to the payment, if the condition agreed upon be performed, or the possessor will oblige himself to the performance. So an acceptance, on account of the ship Thetis, when in cash for the said ship’s cargo, is sufficient to bind the acceptor. See Kydd’s Treatise on the Law of Bills of Exchange and Promissory Notes. London, 1790.

156. Though the possessor of such a bill is sometimes obliged to perform the condition, and sometimes not; as exchanges grounded on impossible, unlawful, or indecent conditions, are ipso facto null and void.

157. When the possessor is absolutely obliged to the performance of the condition, it is not enough for him to mortify or destroy the bill, excusing to demand payment thereof, but he is obliged to make good to the acceptor the loss and interest that he, or any other concerned, is likely to suffer from the non-performance of the condition.

158. And on the contrary, when the possessor is not absolutely obliged, then if anything happens without the possessor’s fault, that may hinder him from performing the condition, it does not always free and discharge the drawer or acceptor, but he is in such case obliged to pay the bill, though the possessor do not perform the condition, if he will but make good the loss to the acceptor or drawer.

As for example.—A. of London contracts with B. of Leghorn, to provide for him a bale of says, on the most reasonable terms, and to send them to Leghorn at his own (A’s) risk, charging B. so much per cent. (as shall be agreed) for his commission, risk,
OF BILLS OF EXCHANGE; &c.

and disburse, in the invoice, whose import B. shall be obliged to pay, in eight days after the arrival of the said goods at Leghorn; which agreement being carried into execution, and the says shipped, and invoice sent, A. draws the amount on B. in the manner following, viz.

London, January the 7th, 1791.

Exchange for 100l. str. at 51d. pence per dollar.

Eight days after the arrival of the bale of says, per the Goodfellow, Capt. John Saunders, marked B. No. 1, at Leghorn, pay to C. D. or order, for cost of the same, the sum of one hundred pounds sterling, at fifty-one pence sterling per dollar, value in account, and place it to account, as per advice from

A.

To Mr. B.
Merchant at Leghorn.

And when B. has accepted the bill, he is obliged to comply with its contents, without any regard had to the rise or fall of the goods, or any other circumstance whatsoever that does not hinder their delivery; but if the says are lost at sea, then the acceptance is null, and the bill mortised; yet if they arrive and are delivered, though damaged, B. must receive them and pay the bill, and afterwards charge A. with what the damage shall be rated at, on a survey taken by authority.

And, if a merchant undertake to except bills to a certain amount, on condition that a cargo of an equal value be consigned to him, and an order given for insurance. If the cargo consigned do not equal the value, he is not bound to accept.

A small matter will frequently amount to an acceptance, according to the circumstances of the case: Thus, if a merchant say, "Leave the bill with me, I will look over my books and accounts between the drawer and me, call to-morrow, and accordingly the bill shall be accepted;" this is no complete acceptance, because it depends on the balance of the account, and on the merchant's having effects in his hands to answer it, so that he gives no absolute credit to the bill.

But if he say, "Leave the bill with me, and to-morrow I will accept it;" this is an acceptance; for it gives credit to the bill, and prevents the holder for taking the necessary steps against the drawer.

What shall be considered as an absolute, or conditional acceptance is a question of law, to be determined by the court, and is not to be left to the jury.

159. Among conditional exchanges may also be reckoned those bills that are given upon account of any wager, or for the assurance of things dubious. And those made upon account of a wager, &c. are either single or reciprocal and mutual. The single ones are such as follow—a person's giving a sum of money to another, who in return gives him a bill of exchange, payable for a larger sum than he received at the day of marriage, surrender of such a besieged town, or any other contingent or uncertain event, as also to secure a requital for some favour or service done, when the bill may be made as follows, viz.

London, March 7, 1791.

Fourteen days after I am nominated a Commissioner of the Excise, (or after I have obtained such a suit of law, &c.) I promise to pay to A. B. the sum of one thousand pounds, &c.

C. D.

N. B. This I think is rather a promissory note of hand than bill of exchange; however, as it is termed this latter by some good authors, I shall not presume to new name it.
160. When a conditional bill is not accepted, or if accepted, not paid, the possessor must protest, and seek his redress and satisfaction from the drawer; taking care to insert in the said protest, and also to prove that the condition was performed, or that he was ready and willing to perform it, otherwise the protest is of no value.

161. In case the possessor of a conditional bill, who is absolutely obliged to the performance of its contents, would mortify the sum, and not demand payment to avoid performing the condition, in such case the acceptor may compel him thereto, by depositing the money, and protesting against the possessor for non-performance of conditions and all damages occasioned thereby, and then proceed against him according to the law and custom of exchanges; and the reason is, because he, the possessor, would have acted in like manner against the acceptant, if he had been tardy.

162. If a condition whereon an exchange contract is grounded, was once possible, after the possessor had procured acceptance, if the possessor was obliged to perform it, or after the remitter received the bill from the drawer, provided the former obliged himself to a performance, and it should afterwards be morally impossible, their neglecting the opportunity makes them liable to satisfy all the damage and loss that the drawer, acceptor, or any other concerned, shall prove they have suffered and sustained in it, because his condition was the cause of the contract.

163. A condition may be said to be performed, though it be not actually performed by the possessor, if another acts for him and does it by his order, or if another concerned in it acknowledge it as quasi performed, and this will oblige the acceptor to pay. As thus, if A. pay to B. then pay to C. &c. or if A. and B. discount, or B. confesses himself satisfied, the condition is performed.

164. As pro forma exchanges are frequently practised, I shall mention some particulars concerning them in this general treatise of all the different species of bills; and shall first observe, that when any one would draw on his debtor, and avoid the risk of having his bill returned, he may make his draught payable to a friend, or some dependent, and for the greater formality, insert value of some one, though he has received none, and another person’s name may be used, as a remitter, with or without his knowledge and consent, or a feigned name may be inserted instead thereof; though this must only be done when the bill is made payable to a third, or any other person, or his order, or if the bill be made payable to the person whose name is used as a remitter, or his order, it must be with his consent and approbation.

165. When a feigned name is used, or any true name unrejoined, and only pro forma, the drawer must necessarily advise the person to whom or to whose order it is payable, that the value is only set pro forma, and the name feigned or used without the person’s knowledge; but if any man’s name is inserted with his consent, the bills are usually made payable to his order, who is the remitter pro forma, demanding acceptance and payment in his own name, by which means the correspondent need not know but that the bill is real, otherwise he must be acquainted with the truth, and that the bill was only made pro forma.

166. A man ought to be very circumspect in lending his name to a pro forma bill made payable to his order, as such bills cannot be drawn in, nor will be paid without his endorsement; and this, though it be only to pleasure the drawer, and for form sake, will oblige the indorser to the possessor really and absolutely, and not formally only.

167. When a bill, wherein a person’s name is used pro forma, is made payable to his order, and drawn in or negotiated and indorsed by him, the possessor must make good the value to him, and not to the drawer, though he knew certainly that the indorser’s name is only used pro forma; except the indorser, by an order under his hand, direct the holder to make it good to the drawer, or unless the indorser, at the request of the drawer, had indorsed it in blank, in which case the drawer, however, is obliged to indemnify the possessor from all damage or claims that the indorser might future make.
168. He that, to pleasure his friend, suffers himself to be made the remitter of a pro forma bill, and does draw in and indorse it, whether he receives the value himself, or pays, or assigns it to the drawer, he ought, though he has no interest in the whole negotiation, to make a minute thereof in his books, at least to enter it in his waste-book, as a memorandum; and to receive the value himself is most prudent, as the drawer's assignment on him for it afterwards will be his acquaintance.

169. When any one draws upon his debtor, and to prevent loss by protesting, makes the bill payable to the order of some person, who, after acceptance procured, will draw it in, or direct his correspondent to receive it, and for form makes the value received; he should be very cautious whose name he makes use of, and to whom he sends the bill, that in case the said remitter should happen to draw it in, and it should be protested for non-payment, and the indorser prove insolvent, he, the drawer, may not be obliged to satisfy the re-exchange to the possessor of his bill, without having received any thing for it, or if the same should be paid, he do not barter a bad debt for a worse, and quite lose his money.

170. When a drawer dares not draw in the bill, whose value he hath made received pro forma, fearing lest the person it is addressed to should not accept it, or not pay it if he did, and therefore makes it directly payable to one living at the same place with his debtor, advising his correspondent that for some particular reasons the value is made received, though only pro forma; in this case, the possessor should act with prudence and caution, in paying the amount of the bill after receiving it, which ought not to be to the drawer, without an express order from the remitter, or the person whose name is used as such, for his so doing; or unless the drawer give him a sufficient satisfaction, and he knows him to be both a solvent and honest man.

171. Among pro forma exchanges, those bills must be reckoned which are drawn on a debtor, and remitted to a creditor of the drawer's; to be paid to his order, value of the same, pro forma, and without agreeing to any course, only requesting from him to procure payment, and place it, when received, to his account.

172. A debtor, on giving such a bill to his creditor, should demand a receipt from him for the bill, with an acknowledgment that his name as remitter is only used pro forma, and obliging himself when paid, either to remit or credit it to the drawer, according to the then current course of exchange; but, if he cannot recover the bill, he must excuse putting the drawer to any further charge for protest, &c.

173. And when a creditor admits of such a bill from his debtor, he should take from him an order under his hand, to send the said bill to his correspondent, or to demand himself acceptance and payment, that in case the money should be received by his correspondent, but not remitted to him, or being remitted, the remittances are not paid, or that protests not being made in due form, &c. the debtor may have no room to complain of his creditor, who will by this means avoid exposing himself to the loss that may accrue from the correspondent's mismanagement, which, had he acted without orders, he would be liable to pay.

174. And if in such a case the debtor fixes his course with his creditor, whether before or after the acceptance is procured, and does credit his account current with the sum; or else when another, whose name is used pro forma, agrees for the course with the drawer, and pays him the value, then his exchange loses its pro forma nature, and becomes actual and real; and in case of protest, the drawer is obliged to make good the re-exchange and charges.

175. When such a bill, at the request of the debtor, is by the creditor drawn in, and the value is made him good in account current, the loss by re-exchange and charges appertains to the debtor; but if the creditor draws in the bill without the drawer's order, the loss must be his, if any happen.
Of the Loss of Bills of Exchange, &c.

176. Bills of exchange are often lost by being mislaid, the post's miscarriage, or various other accidents; it is therefore customary to give three of the same tenor or date, as has been before observed, and sometimes four or more, concerning which I shall mention some particulars, for my reader's government and information.

177. When a remitter declares to the drawer that the bills he received are lost, or so mislaid that he cannot find them, and desires him to repay their value, under a satisfactory indemnification from any future prejudice or demands about them; the drawer in this case, is not obliged to comply, though the negociation was for his own account; only, he must give other bills, and take care that these be exactly the same with the former, differing in nothing, but that, if he had given the first, second, or third before, he now adds the fourth and fifth, though this should not be done neither, after the bills are fallen due, unless the remitter give the drawer sufficient security to bear him harmless.

178. It is the duty of all possessors of bills to have a special care of them, that they may escape the afore-mentioned accidents; and it would be prudent in every merchant to fill up blank indorsements, as soon as he conveniently can, after receipt, lest he should lose them, and the finder do it for him.

179. Whenever a possessor discovers that he hath lost a bill, he ought instantly, or at least before the day of payment, to advise the acceptor thereof, with the precaution not to pay it to any other than him, or his order, and in case another come to recover, to stop it, and advise him thereof.

180. If the accepted bill be the first, and is made payable to the order of one at the place of its discharge, and he in whose favour it is, intends to draw in the second, but has lost the first that was accepted, and has no third or fourth, nor cannot procure them, as the drawer is dead, or absent, &c. he may yet draw in and negotiate the sum, if the indorser, in case his firm be unknown to the acceptor, sends a full power, by letter of attorney, to him he would have it paid to, for receiving it; but if the indorser's hand be well known, and himself in good credit, then a written order to the acceptor for its payment, with an indemnification, will be sufficient.

181. But it should likewise be remarked as an act of imprudence in an acceptor, to satisfy a bill made payable to order, though by him accepted, if that, or another of the same tenor and date, be not indorsed in due form, and delivered up to him, with the accepted one, at the time of payment, though demanded by the person whom the remitter or indorser hath empowered for that purpose; but when the accepted bill is lost, and the second, unaccepted, is regularly indorsed till it come to him to whom it is payable, the acceptor, in such case, is obliged to pay the same when due, upon a sufficient security given him to deliver up the accepted bill if it again appeared, or to indemnify him from any future demands for its value.

182. When any one misses his accepted bill, whether payable directly to the possessor or to his order, or if such a one receive advice from his correspondent that he has remitted him such a sum, in such and such a bill, &c. though on opening his letter he finds the bill is not inclosed, or if the letter and bill have miscarried, of whose forwarding he has advice by the succeeding post, and finds that the day of payment draws so near, as to hinder his getting other bills in room of the lost one, he may when it comes due, demand payment upon his letter of advice, with the tender of security to free and discharge the acceptor from any future demands of that sum, by virtue of the lost bill; and if the acceptor will not pay on those terms, he may be protested against for re-exchange and charges.
183. When an accepted bill, protested for non-payment, is lost, the drawer is not obliged to make good the re-exchange and charges, unless he obtain sufficient security to indemnify and free him from all future demands, and engage a restoration of the sum with interest, which he shall have paid for the re-exchange and charges, in case it should appear that the bill, pretended to be lost, should afterwards be paid by the acceptor or any other supra protest.

184. When an accepted bill is lost or mislaid, the remitter or possessor cannot have immediate satisfaction from either the acceptor or drawer, but must proceed against them in the ordinary course of law, as if it was for some other kind of debt, as a protest cannot be made but upon an accepted bill, or the refused offers of indemnity.

285. Marius advises, that as soon as the possessor of a bill misses it, he should have immediate recourse to the acceptor, and in the presence of a notary and two witnesses, acquaint him with its being lost; and signify to him, that at his peril, he pay it to none but those with his order; and he adds, that no one should refuse payment of a bill he has accepted because it is missing: as he asserts, that protest being made for non-payment, upon the offer of a sufficient security and indemnification, will obligate the acceptor to make good all losses, re-exchange and charges, as he wilfully occasioned them.*

So, by the statute of 9 Will. III. sect. 3. "It is provided, that in case, any such in land bill or bills of exchange, as mentioned in the former part of the act, shall happen to be lost or miscarried within the time before limited for the payment of the same, then the drawer of the said bill or bills, is and shall be obliged to give another bill or bills of the same tenor with those first given, the person or persons to whom they are or shall be so delivered giving security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange, so alleged to be lost or miscarried, shall be found again."

186. If the first accepted lost bill was made payable to him that lost it, and the second, unaccepted, should be made payable to another man, then if the money be really paid when due to him, to whom the first accepted, though lost, bill was payable, such payment is warrantable and good, and the possessor of the second can have no demand on the acceptor.

187: And suppose the said first accepted bill should be found by a stranger, who demands the money in the name of him to whom it is made payable, or that the true possessor should have assigned it to another, and taken up the value, yet neither can have any demands on the acceptor, if previous thereto he has paid it to whom it was payable, though without the accepted bill, under a proper security and indemnification.

188. If a bill of exchange be lost by him, with whom it was left for acceptance, or that he hath by mistake given it to a wrong person, or by any other change or intention the possessor cannot obtain a return of his bill, neither accepted nor unaccepted, he that lost it is obliged to give the person to whom it was payable, or to his order, a note of hand for payment of its amount on the day it becomes due, upon delivery of the second, if it arrives in time, or if not, upon the said note, which in all cases is to have the law and privilege of a bill of exchange; and, if the acceptor refuse this, the holder must immediately protest for non-acceptance, and when due must demand the money, though he has neither note nor bill, which, if refused, a protest must be regularly made for non-payment.

Where an original bill is lost, and another cannot be had, of the drawer, a protest...

* But if a bill, lost by the possessor, should afterwards come into the possession of any person, who shall have paid a full and valuable consideration for it, without knowledge of the circumstance of its having been lost, the drawer and the acceptor, if the bill was accepted, or the drawer, if it was not accepted, must pay it, when due, to such a fair possessor, so that Marius's law seems very doubtful, and the provision of the statute of Will. III. may in many cases be useless, to the loser of the bill.
may be made on a copy, especially where the refusal of payment is not for want of the original bill, but merely for another cause.

189. The possessor of a bill should be careful that it be sent to the place of payment in time for its recovery, and not detain it to the last moment, as the irregular arrival of the post may hinder it from getting there till after due, in which case, a protest will be insignificant in regard to its recovery of the drawer, as this was not timely demanded; and therefore he that constitutes himself another’s agent, and receives bills to solicit their recovery, and neglects demanding payment when they are due, or, if refused, omits protesting, will be obliged to make good the damage that shall accrue through his remissness.

190. He that is possessor of a bill, which only says, pay, without mentioning the time when, or that it is without a date, or not clearly and legibly written, payable some time after date, &c. so that the certain precise time of payment cannot be calculated or known, must be very circumspect, and demand the money whenever there is any probable appearance of the time’s being completed that was intended for its payment, or that he can demonstrate any circumstance that may determine it, or make it seem likely when it should be paid.

191. When a person hath a bill sent him to demand acceptance, with directions to hold it at the order of the second, and if the same is not produced, properly indorsed, at the time it becomes due, nor the first asked for, the possessor of this may demand payment thereof, on giving security to produce the indorsed bill, and in case of refusal he may protest for non-payment, and such a protest is of validity against the drawer; but yet, if he that hath the bill omits to demand payment, and to protest, he is no ways culpable or responsible, but the detainer of the indorsed bill may thank himself for his carelessness.

See the cases of Blesard v. Hirst, 5 Burr. 2670, Goodall v. Dolley, 1 T. R. 712. Anonymus, 1 Vent. 85. Dagglish v. Weatherby, 2 Bla. Rep. 747, and per Lord Elchoborough, in Orr v. Maginnis, 7 East, 369, 3 and 4 Am. c. 2. s. 7. and in the case of Roscow v. Hardy, 12 East Rep. 434, where the holder of a bill before it was due, having tendered it for acceptance, which was refused, kept it till due, when it was tendered for payment, and refused, and then immediately returned it on the second indorser, who not knowing of the laches, took up the bill, it was held that his ignorance of the laches of the former holder, did not entitle him to recover against the first indorser who set up such defence.

192. Though a bill be not indorsed, or the indorsement not right, but something wanting in it, yet the possessor is allowed to demand payment, and the acceptor is obliged to make it, upon delivery of the two bills, if he will under his hand and seal oblige himself to procure the third properly and truly indorsed.

193. If, through mistake, the words and figures describing the sum in a bill of exchange differ, the former are to be preferred, until further advice clear up the disagreement; as it is more natural to suppose that a man may mistake in making a few figures than in writing several words, and the former at the top of the bill only serving to express an abbreviation of the latter wrote at length in the body, and are indeed the very substance of it, and therefore more particular regard ought to be had to them than the others; and for the same reason, though the sum figured in the letter of advice and bill do agree, the words in the body of the bill should determine the affair, at least till the certainty can be known.

194. And if the name of the person to whom the bill is payable should be altered, erased, or interlined before acceptance, this will not justify the acceptor’s refusal to pay it when due to the person whose name has been so mended or interlined, as he
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must or ought to have taken notice of such an essential particular, when he accepted the bill, and should have started the objection and satisfied him about it before accepting, as this obliges him to a compliance, even though he should aver that the amendment or interleaving was made after, except he can prove it, which it will lie upon him to do.

196. If the direction on a bill of exchange be forgot, but the remitter advise his correspondent on whom it was intended to be drawn, the possessor may demand acceptance, and in case of refusal protest against the drawer, and recover the charges of him; and in case the person drawn on have a letter of advice from the drawer, desiring him to accept such a bill, he may safely do it, though it comes without a direction.

196. Another method of exchanging, very different from all those before-mentioned, is that by bills on marts and fairs, and though the English have very little concern in these negociations, I have thought it not foreign to my design of giving my readers a general notion of exchanges, to describe the nature of those particular ones; which I shall do in speaking of a few of the most considerable, and from these a just idea may be formed of all the rest.

197. There are many fairs in Europe, where business for very great sums is transacted; as at Lyons, Rheims, Rouen, Bourdeaux, Troyes, St. Denis, Dieppe, Toulon, &c. in France; Frankfort upon the Main, Leipzig, and Naumbourg, in Germany; Bolzano, in the Ferol; and Novi, subject to the Genoese; with divers others unnecessary to be mentioned here; and, as I proposed, I shall limit what I have to say concerning them in regard of bills, to those of Lyons, Frankfort, Leipzig, or Leipzig, and Naumbourg, being the most considerable of all others.

198. There are yearly four fairs at Lyons, in which each hath his payment of bills, bearing the name of the preceding fair; the first is that of the Epiphany, which always begins in January, the Monday after Twelfth-day; the second is Easter Fair, beginning on St. Nisier's day, in April; the third is August Fair, which begins on St. Dominick's day, in that month; and the fourth is the fair of All-Saints, beginning on St. Hubert's day, in November; and as each fair has its payment, the major part of the bills on this city are not made payable in fair time; and though they should, they will only be discharged afterwards in the payment of that fair, which payments are regulated as follows, viz.

199. The payment of the Epiphany begins the first, and ends the last of March; that of Easter begins the first, and ends the last of June; that of August begins the first, and ends the last of September; and that of All-Saints begins the first, and ends the last of December; so that when bills are drawn to be paid at one of these appointed times at Lyons, that is not yet begun, the drawer says, "Pay this my first of exchange, &c. in the next Epiphany payment, or in the next Easter payment, &c." but if the payment is already begun, the bill must then be drawn payable in this current, or present payment of Epiphany, or this current payment of Easter, &c.

200. It was customary formerly to make the bills drawn from Amsterdam and elsewhere, on the payments of Lyons, in golden crowns of the sun; but as this specie has been long since decried in France, the present usage in exchange is to draw for the payments of Lyons, as is practised on all other parts of that kingdom, viz. in crowns of sixty sous.

201. The bills, drawn in the above manner, are to be accepted in the first six days of the payment they are made payable in, and the person they are drawn on is not obliged to declare whether he will or will not accept till the sixth day, but after that day, the bearer may protest them for non-acceptance, though he should detain them during the whole time of that payment, to see whether any one offers to discharge them: however the protest should immediately be forwarded to the remitters; and if any one pays a
bill of exchange in the time of the payment, before the sixth day, or if this be a feast, the day following, it will be at his own risk.

202. The bearers of bills not satisfied by the last day of any payment, must protest them on the third day after the payment finishes, otherwise they will lose their right against the drawers; but if this is done inform and in the time prescribed, the holder may afterwards refuse payment from any one that offers it, and take his reimbursements on the drawer, both for principal and charges.

203. And the said possessors of bills are obliged to take their reimbursement on the drawers or indorsers in a time limited, viz. for all bills drawn from any part of France, in two months; those which are from Italy, Switzerland, Germany, Holland, Flanders, and England, in three months; and those which are drawn from Spain, Portugal, Poland, Sweden, and Denmark, in six months, to be counted from the date of the protest; and in default thereof they will lose their rights against the drawers or indorsers.

204. Frankfort has two annual fairs of great resort, viz. the first is the fair of Easter, beginning the Sunday before Palm-Sunday, that is, fifteen days before Easter; and the second is the September fair, which commences the Sunday preceding the birth of the Virgin Mary, which is the 8th of September, if this feast happens on Monday, Tuesday, or Wednesday; but if it falls out on Thursday, Friday, or Saturday, then the fair does not begin till the Sunday following, or on the Sunday which that festival may fall on.

205. Each of these fairs lasts fifteen days or a fortnight; the first week is appointed for accepting, and the second for paying the bills of exchange; the acceptance payable in fair-time is made from the Monday of its opening to the Tuesday of the succeeding week at nine o'clock in the morning, after which hour, the possessor of a bill is no longer obliged to wait for payment, but should protest, or at least note it for non-acceptance, which indeed he may do from the moment that acceptance is denied.

206. Bills on these fairs were formerly accepted verbally, but they must now be accepted in form as other bills are, by subscription of the acceptor’s name, with the day of its acceptance; and when a bill thus accepted is not satisfied before Saturday noon in the week of payment, the bearer is obliged to protest it for non-payment, by carrying it to the notary established for that purpose, between two o’clock and sun-set, that he may note it, after which he must send the protest per first post.

207. Leipzic has three fairs yearly; the first being called the New-year’s Fair, commences on the first of January, or on the second, if the first be on a Sunday; the second is at Easter, beginning always on the Monday three weeks from that feast; and the third begins the first Sunday after St. Michael, whether that day happens on a Sunday or not.

208. These fairs are opened on the appointed days by the ringing of a bell, and which rings again eight days after to finish them; so that these eight intermediate days between the two ringings is properly the fair, and the acceptance of bills is demanded on the first or second of these days; but if the persons on whom they are drawn have a mind to defer their acceptance till the week of payment, they may; which week begins immediately after the bell has rung to end the fair, and lasts till the fifth day following inclusive; so that the bills on the New-Year’s fair ought to be paid the 12th of January, and those on the fairs of Easter and Michaelmas, the Thursday in the week of payment, otherwise to be duly protested.

209. It is permitted to the holders of the bills to protest them for non-acceptance, immediately on refusal, but not to return them; on the contrary, they are obliged to keep them till the fair is entirely finished, to see if any one offers payment; and as what is called the Convoy of Nuremberg departs from Leipzic at ten at night of the protesting day, there is no room to make one after that hour, and the possessors will forfeit their right against the drawers if they let the time slip.
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210. NAUMBURG holds a very considerable fair yearly on the feast of St. Peter and St. Paul, which is commonly reckoned as the fourth of Leipzic, because the generality of the merchants attending the one have recourse to the other. This fair begins on the festival of the two saints, being always the 29th of June, and it only lasts eight days; bills are accepted on the first and second days of the fair, and ought to be paid on the 3d of July at furthest, or protested for non-payment; but it is not customary to return them with the protest till after the fifth of the said month, on which day the fair ends; and if the bills are not then paid, the holder may send them back by the first post.

211. As the preceding exchanges differ from all others, I shall here add a few necessary observations for the government of those who engage therein; as it is certain that the greatest part of those who take bills on fairs do it with the lucrative view of employing their money to greater advantage than common, either by negotiating the said bills when the time of the fairs or payments approaches, or by sending them to the places drawn on to be recovered and remitted them, which is commonly done with a considerable profit; but as there is indisputably a much greater risk in taking bills on fairs, than on places where their goodness or validity must be immediately known, those who take them on the former cannot act with too much caution in regard of the drawers.

212. And the reason is very apparent to any one who seriously reflects on such negotiations; for suppose I take a bill of exchange upon Lyons, payable at three usances, dated the 22d of April, I can immediately send it forward, and in a little time have the advice of its acceptance, when I have two debtors or securities, viz. the drawer and acceptor; whereas if I take a bill of the same date, payable in the payment of Easter fair, which finishes the 81st of July, and is the same day, as the last of grace or respite to the above-mentioned bill taken at three usances, and whose success, whether it will be accepted or not, I cannot learn till about the 13th or 14th of July, because, as I have before observed, the bills drawn upon the payments of Lyons are only accepted during the first six days of payment; now if from the 22d of April to the beginning of July the drawer of my bill fails, I have great reason to believe it will neither be accepted nor paid; whereas if that drawn at the three usances is not accepted, I shall know towards the 8th or 9th of May; and may have my recourse against the drawer, who may be in a better condition then to give me satisfaction or security than on the 13th or 14th of July, or the 10th or 11th of August, after getting my bill with protest for non-payment; and this may suffice for what regards the payments and exchanges on fairs.

213. I have already quoted sundry acts of Parliament in force, relative to inland bills of exchange, which have greatly altered their nature from what it was before their existence; I shall now introduce some new cases which have been tried in our courts of law, in which very singular and unprecedented circumstances have occurred; and have so greatly perplexed not only the gentlemen at the bar, but even the learned judges on the bench, that final decisions will be solicited, upon cases made out expressly for that purpose, from the supreme tribunal of the kingdom, the House of Lords. But before we proceed to these recent trials, it will be necessary to notice, in their order, a few decisions prior to them; and which are nevertheless of the first authority, and of unshaken validity.

214. A writ of error was brought on a judgment by nil dict in an action against the drawer of an inland bill of exchange, and it was objected that since the act of 9 Will. III. no damage shall be recovered against the drawer upon a bill of exchange, without a protest, and therefore the action lies not, there being no protest.

But Holt C. J. the statute never intended to destroy the action for want of a protest; See Holt, Rep. 121.
but only to deprive the party of recovering interest and cost upon an inland bill against the drawer without notice of non-payment by protest: for before the statute, there was this difference between foreign and inland bills of exchange; if a bill was foreign, one could not resort to the drawer for non-acceptance or non-payment without a protest, and reasonable notice thereof: but in case of an inland bill, there was no occasion for a protest; but if any prejudice happened to the drawer, by the non-payment of the person drawn upon, and that for want of notice of non-payment, which he to whom the bill is made ought to give, the drawer was not liable; and the word *damages* in the statute, was meant only of damages that the party is at of being longer out of his money by the non-payment of the drawer, than the tenor of the bill purported, and not of damages for the original debt: and the protest was ordered for the benefit of the drawer; for if any damages accrue to the drawer for want of protest, they shall be borne by him to whom the bill is made; and if no damage accrue to him, then there is no harm done him, and a protest is only to give a formal notice that the bill is not accepted, or is accepted and not paid; and if in such case the damage amount to the value of the bill, there shall be no recovery, but otherwise he ought not to lose his debt; but that ought either to appear by evidence upon *non assumpsit*, or by special pleading; and the act is very obscurely and doubtfully penned, and we ought not by construction upon such an act to take away a man's right. And the judgment was affirmed *per rotam curiam*.

215. In an action on the case on an inland bill of exchange brought by the indorser against the drawer, it was objected, that there was no averment of the defendant's being a merchant; but it was answered and resolved by the court, that the drawing of the bill was a sufficient merchandising and negociating to this purpose.

216. Acceptance of a bill of exchange after the day of payment past is usual.

So acceptance for the honour of the drawer, &c.

217. To intitle the party to an action at law in England against the acceptor of a bill, it matters not whether there be a protest; but to intitle the party to a recovery against the drawer beyond the seas or elsewhere, there must be a protest before a notary public.

218. A bill may be accepted for part, when the party on whom it was drawn had no more effects of the drawer's in his hands; though whenever this happens, there must be a protest for non-acceptance, if not for the whole sum, yet at least for the residue; and after payment of such part there must be a protest for the remainder, as the receiving part of the money upon a bill does no ways weaken it.

219. It is asserted by Marius, Scarlet, Molloy, and others that have treated of bills of exchange, that any time before the money comes due, the drawer of a bill may countermand the payment although it hath been accepted, and this is usually made before a notary, though if it comes only under the party's hand, they allow it to be sufficient, and in case of discount, or payment before it is due, they suppose the acceptor liable to pay it again in case of a countermand; from all which I must dissent, as this absolutely oversets the validity of all acceptances.

220. When a bill beyond seas is accepted, and not complied with when due, the protest for non-payment by a notary is sufficient to shew in court here, without producing the bill itself; but if a bill in England be accepted, and a special action grounded on the custom be brought against the acceptor, at the trial the plaintiff must produce the bill accepted, and not the protest, otherwise he will fail in his action at that time; therefore it is most secure that a bill once accepted be kept, and only the protest for non-payment be remitted abroad.

221. If a bill is not accepted to be paid when due, but for a longer time, the person to whom the bill is made payable must protest the same for not being accepted accord-
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ing to the tenor, yet he may however admit the acceptance; nor can the acceptor, if he once subscribes the bill for a longer time, revoke his acceptance, or blot out his name, although it is not according to the tenor of the bill; for by this act he hath made himself debtor, and owns the draught made by his friend upon him, whose right another man cannot give away, and therefore cannot discharge the acceptance; and this case will admit of two protests, if not three, viz.

1. One protest must be made for non-acceptance, according to the time the bill is payable at.
2. For non-payment when due according to the bill's tenor.
3. If the money be not paid according to the time that the acceptor subscribed for.

222. A bill was drawn payable on the 1st of January, and the person to whom it was directed accepts it to pay on the 1st of March, with which the servant returns to his master, who, perceiving this enlarged acceptance, strikes out the 1st of March, and puts in the 1st of January, and at that time sends the bill for payment, which the acceptor refuses; whereupon the possessor strikes out the 1st of January, and inserts the 1st of March again. In an action brought on this bill, the question was, Whether these alterations did not destroy the bill? and ruled, that it did not.

223. A bill of exchange, payable to a person or bearer, is not assignable, so as to 1 Salk. 126, enable the indorsee to bring an action, if payment be refused; but when it is made payable to a person or order, an express power is given thereby to assign, and the indorsee may maintain an action, and the first is a good bill between the indorser and indorsee.

224. The acceptance of a bill, although after it is become due, is binding to the acceptors, an action is maintainable thereon; the effect of the bill being the payment of the money, and not the day of payment.

225. When a bill of exchange is accepted, it is good ground for a special action upon 2 Show. 1. the case, but it doth not make a debt, &c.

226. Indebitatus assumpsit doth not lie against the acceptor of a bill of exchange, 1 Salk. 23, because his acceptance is a collateral engagement, though it will lie against the drawer; and a general indebitatus assumpsit will not lie on a bill of exchange for want of a consideration; and therefore there must be a special action upon the custom of merchants, or an indebitatus assumpsit against the drawer for money by him received to the plaintiff's use.

227. In the case of Bromwich and Lades, it was said by the Chief Justice Treeby, that bills of exchange were of such general use and benefit, that upon an indebitatus assumpsit, a bill of exchange may be given in evidence to maintain the action; and by Mr. Justice Powel, that upon a general indebitatus assumpsit, for monies received to the use of the plaintiff, such bill may be left to the jury to determine whether this was for value received or not. In this case the declaration was on the custom of merchants, and a general indebitatus assumpsit thereon. See the declarations and exceptions to it, in case of Bellasis and Hester, in 1 Lutwicb, 1589.

228. If a bill of exchange is drawn on two or more persons in these terms "To Mr. A. B. and C. D. merchants, in London," they ought both to accept the bill; for the acceptance of only one is not complying with its tenor, and it should be protested; but if it come directed "To A. B. and C. D." or to either of them; or thus, "To A. B." or in his absence "To C. D." in this case, the bill being accepted by either, it is sufficient.

229. Bankers' or goldsmiths' notes are not to be accounted cash till received. As Loc. 108, for example, A. draws a note upon a goldsmith, and sends a servant to receive the money, and to invest it in Exchequer bills; the servant got B. to give him money for
the note, with which he purchased the Exchequer bills ordered; and two days afterwards the goldsmith failed; it was adjudged that A. must answer the money to B. as the property of the note was not transferred to B. there being no indorsement; and he could not have sued upon it, it being only in the nature of a pledge or security to him.

It was the received opinion, and certainly founded on the custom of merchants in the city of London, that draughts on bankers, payable to A. B. or bearer on demand, ought to be carried for payment on the very day they are received, and when it is considered that great part of the payments for the purchase of shares in the public funds or stocks are paid by the purchasers in draughts upon their bankers at the instant of making the transfer of the stock, I still think it advisable to take the draughts for payment without delay, and not to part with the receipt for the transfer till the banker has honoured the draught.

But in point of law, it has been lately said from the bench, that if the possessor of a draught on a banker does not keep it longer than twenty-four hours after he receives it, before he tenders it for payment, and within that time the banker stops payment, the drawer is obliged to pay the money. The case was as follows: The plaintiff took the defendant's draught on his bankers, Brown and Collinson; the next morning they stopped payment, and the defendant refused to give cash for his draught, alleging, that if the plaintiff had presented it for payment as soon as possible after he received it, the bankers would have paid it. Earl Mansfield observed, that the whole rested upon custom; and the question to be determined was, Whether the plaintiff was obliged to go to the bankers on the day he received the draught, for if he had, it appeared he would have been paid? His Lordship said, it was unreasonable to suppose, that a tradesman should be compelled to run about the town with half a dozen draughts from Charing Cross to Lombard-street, and other places, on the same day. The jury were to consider that twenty-four hours was the usual time allowed, and the plaintiff kept it no longer from being paid, for the next morning the town was alarmed by the bankers stopping payment. The jury however found for the defendant.—Sittings at Guildhall after Easter Term, 1782. And upon a new trial, the Court of King's Bench confirmed the verdict.

280. A note is no payment where there was an original and precedent debt due, but shall be intended to be taken upon condition that the money be paid in a convenient time; but the taking a note in writing for goods sold may amount to payment of the money, because it is part of the original contract.

281. A servant of Sir Robert Clayton and Mr. Alderman Morris, but at that time actually gone from their service, took up two hundred guineas of Mr. Monck, a goldsmith (who knew nothing of his being discarded), without any authority from his quandam masters, who refusing to satisfy Mr. Monck for the same, he brought an action against Sir Robert and Mr. Morris, and being tried at Guildhall, it was ruled per Keeling Chief Justice, that they should answer, and there was a verdict for the plaintiff; and though there were great endeavours used to obtain a new trial, yet it was denied; the Courts at Westminster being fully satisfied that they ought to answer, for this servant had frequently received and paid cash for them; and they were obliged to comply, and paid the money.

282. A person who is no merchant, drawing a bill of exchange, makes him within the custom of merchants as to that bill.

288. If the drawer mentions, "for value received," he is chargeable at common law; but if no such mention, then you must come upon the custom of merchants only.

284. Concerning a bill of exchange being extended for the King, judgment for the plaintiff notwithstanding. Evans v. Cramlington.

285. Part of a bill of exchange cannot be assigned so as to intitle the indorsee to an
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action; if it were otherwise the party might be vexed with as many actions as the holder of the bill should think fit.

236. It is not necessary to prove a protest made by a public notary, for that would tend to destroy commerce, and public transactions of that nature.

237. "I promise to pay the bearer so much money on demand," is no bill of exchange, and declaring on the custom will not make it so.

238. A goldsmith or banker's note, accepted in payment, shall not be a payment, if the party who gave it knew the goldsmith to be in a failing condition, for such knowledge makes it a fraud.

239. Infancy pleaded by the drawer of a bill of exchange and held a good bar, being drawn in the course of trade, and not for necessaries.

But an infant cannot be a party to a bill of exchange so as to subject himself to an action on it, even for necessaries. Co. Lit. 172. a. n. 2. Trueman v. Hurst. 1 Term Rep. 41.; and an acceptance of a bill for necessaries is therefore not binding on an infant. See Williamson v. Watts, 1 Campb. C. N. P. 552.—though as the contract of an infant is only voidable and not absolutely void; he may, by a promise to pay the bill made after he attains twenty-one, render it as operative against him as if he had been of age at the time it was made. Taylor v. Croker, 4 Esp. Rep. 187; but such promise must be express. 2 Esp. Rep. 481. 2 Esp. Rep. 628.

240. An action was brought upon a note, for the payment of sixty guineas when the defendant should marry such a person, in which the plaintiff declared as upon a bill of exchange, setting forth the custom of merchants; and it was held, that to pay money upon such a contingency cannot be called trading, and therefore not within the custom of merchants; and judgment was given for the defendant.

241. A note was in this form: "I promise to pay J. S. or order, the sum of one hundred pounds, on account of wine had of him." J. S. indorsed it, and the indorsee brings an action against the drawer, and declares upon the custom of merchants; and doubted by Holt whether action would lie, and advised with merchants, who declared that such notes had been in use thirty years, and that they looked upon them as bills of exchange, but Cur. advisare vult.

Holt declared he remembered when actions on bills of exchange first began.

242. A note drawn by J. P. whereby he promised to pay 12l. 10s. to J. W. on a day certain; and he indorsed the note for value received to D. F. who indorsed it to the plaintiff for value received, who brought an action against J. W. setting forth the custom of merchants; and held the action lay.

243. By this statute it is enacted, that if any person shall forge, or procure to be forged, or assist in forging, any (inter alia) bill of exchange, promissory note for payment of money, indorsement, or assignment of any bill of exchange, or promissory note for payment of money, or any acquittance, or receipt for money or goods; or shall utter or publish, as true, any such forged bill, &c. knowing the same to be forged, with an intent to defraud any person, every such offender shall be guilty of felony without benefit of clergy. And,

244. By this statute, if any person shall falsely make, alter, forge, or procure to be falsely made, &c. or assist in falsely making, &c. any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, &c. or any warrant, or order for payment of money, or delivery of goods, or shall utter or publish any such false acceptance, bills, &c. with intent to defraud any person; every such offender shall suffer as a felon, without benefit of clergy.

Notwithstanding these positive laws, the absurd and mischievous custom of making inland bills payable to fictitious persons; that of one person indorsing another's name; and even drawing in feigned names had prevailed so generally, and got to such a height,
probably from an idea that an indictment for felony would be easy quashed, upon proving that no fraud was intended—as to make it necessary to proceed with the utmost caution, and at the same time with becoming firmness in the courts of law, to support the honour and credit of mercantile transactions within the realm, and the dignity of the legislature, whose statutes were thus openly violated with impunity.

From the rule in law therefore, that in an action against a drawer or acceptor of a bill, payable to order, there must be proof of the signature of the first indorser, and of all those to whom an indorsement has been specially made: has arisen the question which has so long agitated the commercial world on the subject of indorsements, in the name of fictitious payees.

A bill payable to the order of a fictitious person, and indorsed in the fictitious name, is not a novelty among merchants and traders. A case of that kind appears to have been brought to trial upwards of twenty years ago. It was an action by the indorsee against the acceptor of a bill of exchange, payable to Butler and Co. and their order, and indorsed in that name. The plaintiff was so far from proving it to have been indorsed by any persons using that firm, that his own witnesses said, they believed it was indorsed by Cox, the drawer. It also appeared, that there was a house of Butler and Co. with whom Cox had dealings; but it was proved that the bill in question had never been in their hands; it was admitted that the bill was a true one, and the defendant had regularly accepted it; it appeared further, that the acceptor had expressly promised to pay, at the time the holder had discounted the bill; but it was insisted, that the indorsement being fictitious, the plaintiff had failed in making out an essential part of his title. Lord Mansfield observed, that the intent of the bill was only to enable Cox to raise money, and the reason why it was not made payable to his order was, that there were other bills payable at that time to his order, and if this had been so too, there would have been too many in the same name in circulation at the same time, which would have had the appearance of fictitious credit; that names were often used of persons who never existed; the defendant, by his acceptance, and promising expressly to pay the bill, had enabled Cox to put it in circulation, and having so done, he should not avail himself of an objection that the plaintiff had not completely made out his title.

But in the years 1786, 1787, and 1788, two or three houses, connected together in trade, entering into agreements far beyond their capitals, and apprehending that the credit of their own names would not be sufficient to procure currency to their bills, adopted, in a very extensive degree, a practice, which before had been found convenient on a smaller scale. So long as the acceptors or drawers could either procure money to answer their bills, or had credit enough with the holder to have them renewed, the subjects of these fictitious indorsements never came in question. But when the parties could no longer support their credit, and a commission of bankruptcy became necessary, the other creditors felt it their interest to resist the claims of the holders of these bills, and insisted that they should not be admitted to prove their debts; because they could not comply with the general rule of law, which requires proof of the hand-writing of the first indorser. The question came before the Lord Chancellor by petition: he directed trials at law, and several have been had: three against the acceptors in the King's Bench, and one against the drawer in the Common Pleas; though not all expressly by that direction.

In the first case against the acceptor, besides the general counts for money paid by the plaintiff to the defendant's use, and money had and received by the defendants to the plaintiff's use, there were also two special counts laid on the bill itself. The first was in the terms of the bill—"that the defendant and others drew a bill of exchange on the defendant, payable to Grigson and Co. or order, three months after date, which
the defendant accepted; and that Grigson and Co. indorsed it to Lewis and Potter, who indorsed it to the plaintiff." The second count stated it to be, "a bill drawn as above in favour of certain persons trading under the firm of Lewis and Potter to the plaintiffs." The circumstances proved at the trial were these—that there was a house of trade at Nottingham under the firm of Harris, Harries, and Plant, of which the defendant was one of the partners; and that the defendant alone carried on business in Wood-street, and resided in London; that the body of the bill as well as the signatures of the drawers and acceptors, were in the hand-writing of the defendant; that no such house of trade as that of Grigson and Co. was concerned in the transaction, but that the defendant had drawn the bill payable to Grigson and Co. at the request of Lewis and Potter; that the indorsement in the names of Grigson and Co. was fictitious, and that before the bill came due, the defendant knew that to be the case; but it did not expressly appear, whether he knew it, at the time the bill was drawn; that the indorsement of Lewis and Potter was in the hand-writing of one of the partners of that house, and that they received the bill from the defendant and delivered it to the plaintiffs: that the value of the bill was paid to the house of Lewis and Potter in draughts on bankers, which were afterwards paid in cash; and that the defendant had credit given him in account with Lewis and Potter for the value of the bill.

To this evidence, the defendant's counsel demurred, as not supporting any count in the declaration.

Lord Kenyon, in giving the opinion of the court, said, that in deciding this particular case, they did not wish to have it understood that they meant to infringe on the rule as applicable to cases in general; for that generally speaking, there was no doubt but the indorsee of a bill of exchange, payable to order, must in deriving his title, prove the hand-writing of the first indorser. But that this decision proceeded on the special circumstances of this particular case; that the defendant, at the time of entering into this engagement, knew that there were no such persons as Grigson and Co. and, therefore, that in point of formal derivation of title, that which is usually done, could not be done in this case. That on the first count of this declaration, the opinion of the court did not proceed, neither was it necessary to say anything on the second; though if it had been necessary to resort to that, he himself had an opinion on it. But the counts on which the judgment of the court was given, were those for money paid and money had and received. In Lord Chief Justice Raymond's time it had been decided, that a general indubitatus assumpsit might be maintained to recover money for the value of a bill of exchange, which was not paid. That case, indeed, had been on a bill payable to bearer; but the doctrine of that case was a sufficient foundation for the opinion of the court in the present, and had been recognized in a subsequent case, by each of the judges of this court: "That to give such a bill is, as it were, an assignment of so much property, which becomes money had and received, to the use of the holder of the bill." Here the defendant, being a debtor to the house of Lewis and Potter, drew a bill, which he delivered to them, and drew it in terms, which could not be proved in a formal manner; he was not only privy to the transaction, but the very negotiator of it; and by drawing it, put himself into a situation to pay, what he was in conscience bound to pay; therefore it was an appropriation of so much money to be paid to the person who should become the holder of the bill.

In the next case, the first count stated the bill of exchange to be drawn by Livesay Vere v. and Co. on the defendants in favour of Lawrence Ashworth, who was also a fictitious person, and by him indorsed to the plaintiffs. The second count stated the bill to be payable to the bearer; the third payable to the order of the drawers, and indorsed by them to the plaintiffs; then followed the money counts. An attempt was made on behalf of the defendants to distinguish this case from the former; because there was
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no evidence that in point of fact, they received any value for the bill, and that therefore, they could not be liable on the money counts. But the court said, that the acceptance of the defendants was alone evidence that they had received value from the drawers, and that on the demurrer to evidence, the court might draw the same inference which would have been drawn by the jury. Three of the court also thought, that the plaintiffs might recover on the second count, which stated the bill as drawn payable to bearer.

The next case was against the acceptor, having also a count in which the bill was stated to be drawn payable to bearer; and the court being of opinion that it was decided by the foregoing, gave judgment for the plaintiff without hearing any argument, and added, they understood it had been agreed to turn it into the shape of a special verdict, that it might be carried up to the House of Lords. On the authority of these two last cases against the acceptor in the King's Bench, was decided the case against the drawer in the Common Pleas, the circumstances of which we shall here recite.

The plaintiff stated that the defendant on the 5th of April 1788, drew a bill of exchange, directed to Livesay and Co. by which he required them, three months after date, to pay to Mr. George Chapman, or order 1551L value received, and delivered the said bill to them, and "authorised them to negotiate and indorse the same, in the name of George Chapman, and thereby to raise money thereon," for the use of the said persons so using the names, stile, and firm of Livesay and Co. and then averred, that when the said bill was so made as aforesaid, or at any time afterwards, "there was no such person as George Chapman, the supposed payee in the said bill of exchange, but that the said name was merely fictitious," to wit, at London, &c. which said bill of exchange afterwards, to wit, &c. by one "Andrew Goodrick, being a person thereunto in that behalf lawfully authorised by Livesay and Co. upon sight thereof was accepted," according to the usage and custom aforesaid. And the said persons so using the names of Livesay and Co. being so authorised as aforesaid, afterwards and before the payment of the sum of money therein contained, or if any part thereof, and before the time thereby appointed for such payment, to wit, &c. "negociated and indorsed the said bill of exchange, in and with the name of the said George Chapman, and by that indorsement, in the name of the said George Chapman appointed the contents of the said bill of exchange to be paid to the said plaintiffs, and thereby raised money thereon, for the use of the said persons so using the names, &c. of Livesay and Co." and then and there delivered the said bill of exchange so indorsed to the said plaintiffs, "who thereupon on the credit thereof, advanced to the said persons, so using the name, &c. of Livesay and Co. the sum of money in the bill mentioned.

The circumstances stated in a special verdict on this case were these, that Emett, who was a partner with Livesay and Co. in the spinning of cotton at Clithero, wrote his name on a blank piece of paper, with a shilling stamp on it; and delivered it to Livesay and Co. for the purpose of drawing a bill of exchange, for such sum, payable at such time, and to such person or persons, as they should think fit.

That Livesay and Co. on the 5th of April, 1788, drew on this paper, above the name of Emett, a certain writing, directed to Livesay and Co. in words and figures following, viz. "Clithero, April 5th, 1788, 1551L. Three months after date, pay to Mr. George Chapman or order, fifteen hundred and fifty one pounds, value received, as advised, John Emett." That the occasion and manner of giving this paper writing were as follow: on the fifth of April, Livesay and Co. were indebted to Thomas Jeffery in the sum of 1519L. 9s. on a bill of exchange, which became due that day, and which had been previously given for goods sold by Jeffery to them. One Richard Collis, clerk to Jeffery, on that day applied to the house of Livesay and Co. for payment of that bill: he there saw Anstie, one of the partners, who informed him, that they could not con-
veniency then pay the money, but requested him to take a bill on their house for the sum, at three months date, and the interest in the mean time, and gave him the blank above-mentioned, with the name of Emett written on it, to be filled up by one of the clerks of the house.

That one Ludlow, a clerk to Livesay and Co. filled up the paper in the manner as above set forth; that immediately afterwards it was carried to Andrew Goodrick, another clerk of the house, who was authorised by Livesay and Co. to accept it, which he accordingly did, in the names of Livesay and Co.; that with the authority of Livesay and Co. the name of George Chapman was then indorsed on the said paper writing, which being so filled up, accepted, and indorsed, was then delivered to the said Collis, who then delivered up the bill for 1512l. 9s. to the said Livesay and Co. That the said Thomas Jeffery afterwards negociated the said paper writing with the plaintiffs, and received the full amount from them, only deducting a discount at four and a half per cent. and delivered the same to the said plaintiffs. That the same was duly presented for payment to Livesay and Co. who refused to pay it, of which Emett had due notice. That there was no such person as George Chapman, the supposed payee of the said paper writing, being merely fictitious: That Emett gave no further or other authority than as before set forth, and knew nothing of this transaction; that the plaintiffs had then no knowledge that the said George Chapman was a fictitious person, or of the circumstances under which the said paper writing was drawn, accepted, and indorsed; but that the said Thomas Jeffery had full knowledge of the whole of the said transactions.

In the pronouncing the judgment of the Court of Common Pleas on this case, Lord Loughborough said, the special circumstances above stated in the declaration would, in his opinion, have been sufficient to have intitled the plaintiff to recover, if the case stated in the special verdict had not in two or three instances varied from them.

The case of Minet and Gibson has been argued before the House of Lords, and the judgment affirmed. See 1 Hen. Bla. Rep. 569. The circumstances stated in the special verdict are these:

Livesay and Co. made a certain instrument in writing directed to the defendants, requiring them, three months after date to pay to J. White or order, 721l. 5s. Livesay and Co. knew, at the time of making it, that no such person existed as J. White, mentioned in the bill; an indorsement in writing was afterwards made by Livesay and Co. purporting to be the indorsement of J. White, and requiring the contents of the bill to be paid to Livesay and Co. or their order: Livesay and Co. afterwards indorsed, by A. Goodrick, by procuration of Livesay and Co. to the plaintiffs for a full and valuable consideration, when the plaintiffs became the holders of the bill; the defendants afterwards accepted, with the full knowledge that no such person as J. White, mentioned in the bill, existed, and that the name of J. White, so indorsed thereon, was not in the handwriting of any person of that name. The defendants at the time of making and accepting the bill had not, nor had they at any time since, any money, goods, or effects, of or belonging to Livesay and Co. or of the plaintiffs in their hands.

Beside the money counts, the declaration contained seven special counts on the bill. The first, stated that Livesay and Co. made a bill of exchange, directed to the defendants, requiring them, three months after date, to pay 721l. 5s. to John White, or order; Livesay and Co. well knowing that no such person as J. White existed; on which bill an indorsement was made, purporting to be the indorsement of J. White named in the bill, requiring the contents to be paid to Livesay and Co. or order; that Livesay and Co. by one Absalom Goodrick, by procuration of Livesay and Co. indorsed to the plaintiffs, and that the defendants accepted it; knowing that no such person as J. White
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existed, and that the name of J. White, so indorsed, was not the hand-writing of any person of that name.

The second count, after stating the drawing of a bill as in the first, proceeded thus; Livesay and Co. knowing that J. White was not a person dealing with or known to Livesay and Co. and using the name of J. White on the bill as a nominal person only, and intending not to deliver the same to him, or to procure the same to be actually indorsed by him; on which bill a certain indorsement was made, requiring the payment to be made to Livesay and Co. and that Livesay and Co. indorsed to the plaintiffs, without having delivered the bill to J. White, and without any actual indorsement or assignment of the bill by White.

The third count stated, that the bill was made payable to themselves, Livesay and Co. by the name and description of J. White.

The fourth, treated it as a common bill, payable to J. White, or order, and stated that J. White indorsed it to the plaintiffs.

The fifth, as payable to bearer, and that the plaintiffs were the bearers.

The sixth payable to J. White, or order, with an averment that, when the bill was made, there was no such person as J. White, the supposed payee, but that name was merely fictitious; by reason whereof the sum mentioned in the bill became and was payable to the bearer thereof, according to the effect and meaning of the bill, averring also that the plaintiffs were the bearers and proprietors thereof.

The seventh count stated, that there was a partnership, or house, of certain persons using trade, as well in the name and firm of Livesay and Co. as in the name and firm of J. White; that the last-mentioned persons made a certain other bill, the hand of one of them on their joint account, and in their copartnership, name, and firm, of Livesay and Co. being thereto subscribed, and directed it to the defendant, requiring them, three months after date, to pay to the said last-mentioned copartners, by the name of J. White, or order; 7211. 5s. and that the said last-mentioned copartners afterwards, by a certain indorsement in writing, appointed the contents to be paid to the plaintiffs, and delivered the bill, so indorsed to them.

One observation naturally presents itself to the mind on the inspection of this record: the two first counts state in substance, all the circumstances found by the special verdict; yet judgment was given for the plaintiffs, not on one of these, but on the fifth count, which states the bill as payable to bearer: it appears singular, that a court of justice should decide, that a man should have a right to recover on a general count, supported by special circumstances given in evidence, and that these very circumstances, when stated specially on record, should not be considered as sufficient to sustain the action.--It seems impossible to account for this apparent inconsistency in any other way than by advert to the declaration in the case of Vere and Lewis, and the judgment given upon it; in that, there is no count which states the circumstances specially; but the court being of opinion, that the plaintiff was entitled to recover, thought the count which states the bill as payable to bearer, was a sufficient foundation for their judgment, and a like count appearing in the case of Minet and Gibson, they gave judgment on that, without advert to the two counts, which stated the special circumstances of the case.

This inconsistency being pointed out by the counsel for the plaintiff in error, in the House of Lords, as one ground for impeaching the judgment of the court below, it was observed in answer, that there being in fact but one cause of action, the plaintiff could have judgment only on one count, and consequently judgment was necessarily entered for the defendant on all the rest; and if upon the whole record there appeared a sufficient cause of action, but the judgment was entered on the wrong count, the court of error would rectify it.

Independently of the rule which requires the proof of the hand-writing of the first in-
dorser, one preliminary objection has been made to the holder’s right of recovery in any form of action against the drawer or acceptor: the very act of indorsing on a bill, a name which belongs to nobody, is, it is said, in itself a felony; it has a general tendency to defraud, though the fraud be pointed against no particular individual; and in all cases which have arisen, has actually defrauded the holder of the bill, by imposing on him the idea of a security which does not exist. The act too of sending the bill into circulation with a fictitious name on it, it is said, is felony in him, who is privy to the transaction.

Whether each or either of these acts be in reality a felony, admits of considerable doubt, and is one point. “on which the opinion of the Judges is required by the House of Lords.” Should that opinion be given in the affirmative, the advocates on the part of the defendant to the action insisted, that the holder of the bill could not recover against either the drawer or the acceptor, because he could not make title, through the medium of a felony in another: a felony contaminates a transaction, and the civil remedy is completely merged in it, by the policy of the law, to prevent, as much as possible, crimes from going unpunished.

The case of Peacock and Rhodes, they said, could not be cited in opposition to this doctrine; for in that case, the bill having been regularly indorsed by the payee, and having, though after having been stolen, come to the hands of the plaintiff for a good consideration, he was only under the necessity of proving the hand-writing of the first indorser, and was not bound to make any part of his title through the person who stole the bill: but here the plaintiff deriving his title through the indorsement which was a forgery, was necessarily barred of his action. To this it was answered, that this proposition with respect to the effect of the felony was not true to such an extent; it was true, indeed, that a civil action could not be maintained, where the cause of action was grounded wholly on an act of felony; as if one stole a horse or money, the owner could not maintain trover, or money had and received against him, because the civil remedy was merged in the felony; if the horse came into the hands of another person, under circumstances which would not amount to a change of property, the original owner might recover him from that person; though, therefore, the felony might be an answer to an action against either the drawer or acceptor, where it appeared the defendant was guilty of the felony; yet that would not preclude the plaintiff from recovering against the other, if he did appear to be guilty.

The advocates on the other side of the question in the House of Lords, professing not to impeach the judgment of the Common Pleas, in the case of Collins and Emett, in which the defendant was perfectly innocent of the supposed felony, were satisfied to maintain, that where the fact of the felony could be fixed on the defendant, that was a bar to a civil action.

In a transaction of this kind, it is apprehended, that whoever in fact makes the fictitious indorsement, both the drawer and acceptor must in general be guilty of publishing the bill with that indorsement on it, knowing it to be fictitious.

In such a case, whether this amounts to a felony, is certainly a preliminary question; for, though, independently of that question, the plaintiff might be intitled to recover, yet if in fact it shall be decided to be felony, he must necessarily be precluded from his action, because if he were to recover at all, he must recover against the felon himself.

But it may happen that the acceptor may not know that the bill he accepts is attended by any circumstance different from those attending bills in the usual course of business; as where the bill is brought him for acceptance by a third person, either before the indorsement is made or afterwards, without intimation of the payee’s being fic-
titious: the drawer too, even in common cases, may be so far unaffected with the felony, that he may not be guilty of publishing the bill with a false indorsement on it, knowing it to be false, for it may be carried out of his hands before the indorsement is made: and in some cases, as in that of Collins and Emett, the person appearing as the drawer may be perfectly ignorant of the transaction.

In any of these cases therefore, in which the defendant may appear to have acted without knowledge of the circumstances, the question of felony cannot be considered as preliminary to the decision on the plaintiff's right of action: if the adherence to the rule which requires proof of the hand-writing of the first indorser, be so rigid, that the plaintiff can in no form of action recover without it, that is, of itself sufficient without the intervention of the felony: if an action in any form can be sustained, in which that rule may be dispensed with, then it is not through the felony that the plaintiff derives his title, and consequently he cannot be affected by the decision of that question.

If this reasoning be well founded, it follows that whatever that decision may be, the general question is still open to discussion; if in the affirmative, then in those cases only where the defendant is innocent; if in the negative, then in all cases.

In support of the judgment on the fifth count, which states the bill as being drawn payable to bearer, it has been urged that in stating an agreement or a deed in pleading, it is sufficient to state the legal operation of it, though there might be a verbal variance between that and the instrument itself: as where a lease is made jointly by B. tenant for life of C. and him in remainder or reversion, in fee; during the life of C. this may be stated as the lease of tenant for life, and the confirmation of him in remainder or reversion; that being then the legal operation of the deed: and, for the same reason, after the death of C. it may be stated as the lease of the person in remainder or reversion, and the confirmation of B.

So here, it was said, though the bill appeared on the face of it to be payable to order, yet as no body existed who could give such order, the engagement must be to pay the bill, which was, in effect, to render it payable to the bearer.

If, however, recourse must be had to the intention of the parties, it would seem that it is only in the case of a blank indorsement in the name of the fictitious payee, that the bill must be considered as in effect payable to bearer; where the indorsement is special, as it was in the present case, the intention to be attributed to the parties is, that it should be payable to the order of him to whose order it is made payable by the fictitious indorsement, and then the third count would have been better adapted to support the judgment than the fifth.

But it was objected that this argument was not applicable to the present case; for though it must be admitted that a deed must be stated according to its legal operation; yet that operation must appear on the face of the deed itself, without any collateral circumstances to explain it, contrary to the evident meaning of the words.

With respect to the joint lease of tenant for life, and him in remainder or reversion, if the several interests which they had in the land did not appear in the deed, yet the operative words of this lease were not of that fixed and determinate meaning that they could not admit of a different construction, if collateral circumstances require it, in order to give them effect: but the words “payable to order,” and “payable to bearer,” were so peculiarly appropriated to the distinct species of bills in which they were respectively used, that the one could by no possibility be construed to mean the other.

A still stronger objection to the judgment's being supported on this count, arises from a question put to the Counsel by the Lord Chancellor, whether an action could be maintained on this bill against an indorser. That an action may be maintained against an indorser of such a bill can admit of no doubt: it is from the frame of it payable to
order, and transferrable by indorsement: and in an action against an indorser, no question could arise about the fictitious payee, because, as will be seen hereafter, in that action the plaintiff derives no part of his title, through any of the parties to the bill who proceeds the defendant: but a bill payable to bearer, being transferrable by delivery, cannot regularly be indorsed; and it seems, from the question, to have been supposed that no action could be maintained against the indorser; though no doubt was entertained but that it might, even when it was held that a bill payable to bearer could not be the subject of an action by the indorsor, against the acceptor or drawer. If, therefore, the judgment were affirmed on this count, it would follow that the same instrument must, in one case, be considered as a bill payable to bearer, and in another, as a bill payable to order, both of which it cannot be: but the difficulty suggested with respect to the period when the bill shall be said to cease to operate as payable to bearer, and assume the character of a bill to order, admits of an easy solution: as against the drawer and acceptor it operates as the one; as against the indorser, it operates as the other.

So general seems to be the opinion, that there ought to be a strict adherence to the rule which has given rise to this question, that the count which states the bill in its own terms, appears to have been abandoned on all sides: the plaintiff's counsel in the case of Tatlock and Harris abandoned it; the advocates on the same side in the House of Lords abandoned it; the Court of King's Bench professed, that on it their opinion did not proceed; and the Lord Chancellor in his address to the House on the subject of the questions to be referred for the opinion of the Judges, seemed to think it could not be supported by the special verdict.

One general objection was made to all those counts which were founded on the bill itself: it is only in favour of the custom of merchants that the practice is founded of declaring on those instruments as specialities, and if such a bill was not within the custom of merchants, then the plaintiffs could not recover on those counts: that such a bill was not within the custom of merchants, it was argued, appeared from this; that in no book on the subject was there to be found any allusion to a bill of this kind; the usage had provided, and the law had acknowledged two sorts of bills, which were sufficient to answer every purpose of trade, where the parties had no sinister view; if it was wished to facilitate the circulation of the bill, it might be made payable to bearer; if to confine it within certain limits, it must be made payable to order; but this was a new invention to enable men to raise money by a fraud; and it could not be pretended, that this was within the custom of merchants.

To this it was answered; that the custom of merchants is not to be confined to those particulars which are to be found in any mercantile book; nor is the novelty of the thing a sufficient reason to reject it; it had not been done all at once; that every thing which makes a part of the law and custom of merchants at this day, was established: it was not without considerable struggles that bills, payable to bearer, obtained the same privileges as those payable to order: new facts laid the foundation of new rules; and unless the decision on the question of felony could preclude all further discussion, there could be no inconvenience in its being determined now for the first time, that where a bill was drawn in the name of a fictitious payee, and accepted, the drawer and acceptor should, by the custom of merchants, be answerable for the money, to a holder by a fair consideration.

That such a holder, in substantial justice, ought to recover against either the drawer or the acceptor, there can be no doubt: he has parted with his property, on the faith of their security; and it is not very gracious in them to tell him, that because, by their contrivance, perhaps, he has one security less than he supposed, he shall not have the advantage of those which really exist.
Such is the substance of the arguments on both sides of this important cause, and, as far as I can recollect, the points proposed for the opinion of the judges are these:*

First. Whether the publication of the bill by the defendant with the fictitious indorsement on it, he knowing at the time that it was fictitious, amounts to a felony?

Secondly. If that be not felony, whether the facts found by the special verdict support the judgment on the count, which states the bill as payable to bearer?

Thirdly. If judgment on that count cannot be supported, whether it can be supported by any other count founded on the bill as a speciality?

Fourthly. Whether on any of the other counts which state all the particular circumstances of the case, the plaintiff be entitled to recover?

It was also suggested by the Lord Chancellor, that if on the first point, the opinion of the Judges should be in favour of the defendant in error, and on the others against him, another question might not still be considered, whether, when the defendant to the action was privy to the fraud, the plaintiff might not recover in an action of deceit?

In the case of Bennett v. Farnell, 1 Campb. C. N. P. 130, it is held, that a bill of exchange made payable to a fictitious person, or his order, is neither in effect payable to the order of the drawer nor to bearer, but is completely void, though if money paid by the holder of such a bill, as the consideration for its being indorsed to him, gets directly into the hands of the acceptor, it may be recovered back as money had and received. This case was brought before the Court of King's Bench, on a motion for a new trial, when Lord Ellenborough observed, "The doctrine I have been supposed to have held, that a bill of exchange made payable to a fictitious person, or his order, is neither in effect payable to the order of the drawer nor to bearer, must be taken with this qualification, unless it can be shewn that the circumstance of the payee being a fictitious person was known to the acceptor." A new trial was refused in this case, because no such evidence had been offered at Nisi Prius, Lord Ellenborough said, he conceived himself bound by Minet v. Gibson, and the other cases upon this subject which had been carried up to the House of Lords (though by no means disposed to give them any extension,) and that, if it had appeared that the defendant knew the payee to be a fictitious person, he should have directed the jury to find a verdict for the plaintiff. See 1 Campb. C. N. P. 180. a. 9, in Addenda.

245. LETTERS OF CREDIT being a species of bills of exchange, and equally binding with them, I shall speak of them under this head, as the proper place for it; and presume it will be needless to counsel my readers to be very circumspect in giving them, as their honour and credit is as much concerned for the punctual re-payment of whatever sums are advanced in consequence thereof, as they would be for the discharge of a bill of exchange.

246. These letters are of two sorts, viz. general and special, and both given to furnish travelling persons with cash as their occasions may require; they are commonly open or unsealed, and contain an order from the writer to his correspondent or correspondents, to furnish the bearer with a certain sum, or an unlimited one; and the difference between them is, that the former is directed to the writer's friends at all the places where the traveller may come (though it is not customary to give separate letters to each place) and the other directed to some particular one; obliging himself for the repayment of whatever monies shall be advanced in compliance with the credit given, on producing a receipt or a bill of exchange, which he thinks proper to have, from the person credited.

* Kyd on the Law of Bills of Exchange, 8vo. London, 1790. A most valuable tract, as it includes the arguments in the latest cases decided by our Courts of Justice.
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247. If any money is advanced on either species of these letters and bills of exchange given for the sum on the person who wrote them, he is obliged to accept and pay the same; and in case of refusal he may be compelled thereto, rather than the drawer, as the remitter in the loan of his cash had more regard to his correspondent's sufficiency than the drawer's whom it is probable he knew nothing of; therefore, in this respect, the person giving the credit is to be reputed as the drawer.

248. And as the giver of these letters is so obliged for the punctual repayment of the money advanced, I repeat that he ought to be very cautious to whom he gives them, more especially those without limitation, as, in the hands of a dishonest person they may prove his ruin; and as it is hardly possible that he that requests the credit should be ignorant of what cash he shall want, at least with a little difference, I think the compliment, for it can be nothing else, of an unbounded credit should be excused, being really of no service either to him that pays, or him that receives it.

249. Advice by post should always follow a letter of credit, and duplicate of it accompany such advice; and it would be prudent therein to describe the bearer, with as many particulars as possible, for fear he should lose, or be robbed of his credentials, and a stranger reap the effects of them. These letters are wrote in various forms, and though a copy may be superfluous to most of my readers, yet the prospect of its being serviceable to some few, I hope, will plead my excuse for adding it here.

SIR, London, the 3d of January, 1791.

This is designed to accompany (or kiss your hands by) Mr. John Stevens, and to request your furnishing him with a thousand dollars of your money (or with as much cash as he shall require of you, if you give an unlimited credit) for which please to take his bills on me, or on any other he shall think proper to draw them; and I do hereby oblige myself for the punctual discharge, and remain,

Sir, your most humble servant,

To Mr. Thomas Richardson,
Merchant, in Leghorn.

W. B.

250. The time of paying bills is always settled between the drawer and remitter, sometimes on a certain fixed and appointed day, or at sight, or so many days after sight, or so many days, weeks, or months after date; at usance, half usance, usance and half, and two or three usos or usances.

251. A bill payable at a certain day, is due on the day mentioned, according to the style of the place it is drawn on, not where it is drawn from; so that a bill from Amsterdam, matle payable at Hamburg on the last day of November, is to be understood that day of Old Style, and vice versa for a bill drawn in the same manner from Hamburg to Amsterdam.

252. If bills are made payable at some days after sight, their acceptance is dated on the day they are presented, and from thence the days of their running are counted; but, if they are made payable at sight, they are to be satisfied without any days of grace to be allowed.

253. If a bill be made payable some weeks after date or sight, the weeks must be reduced into days, and in counting these the almanack should be consulted; and if a bill is drawn to be paid one or two months after sight or date, then the day of payment falls on the same day in the succeeding month, &c. from that in which the bill was presented or dated, although the months differed in the number of their days. As for example, a bill dated the 7th of January, and payable a month after date, is payable the 7th of February, not the 8th; and a bill dated the 30th of January, to be paid a month
after date, becomes due on the last day of February, though this month has not so many days in it as the other.

254. And when a bill is dated according to the Old Style, payable a month after date in a place where the New Style is observed, it does not always fall due a month after the Old Style date, as will be proved by supposing the bill dated the 25th of April, O. S. payable a month after date, in a New Style country, and it does not fall due on the 25th of May, O. S. which is the 5th of June, N. S. but on the 6th, for when the bill was dated it was the 6th of May, N. S. which ought to be well observed, as this will make a difference of two days in leap-years, and of three in others.

255. A bill made payable a month after date from the 28th of February, falls due on the 28th of March; but if it be dated ultimo February, then it is not due till the ultimo March, and the same in June and July, as the one hath 30, and the other 31 days.

256. Bills made payable here at sight have no days of grace allowed; but if it is but one day after sight; the acceptor may claim them, though this ought not to be practised in countries where the respite days are many.

257. To reckon the precise time of a bill’s payment, made payable after date, it is necessary to calculate the difference between the Old and New Style, and to know what usance is in every country; and for my reader’s information herein, the following places observe the New Style, viz. London, Amsterdam, Dordrecht, Haerlem, Leyden, Rotterdam, and all the United Provinces of Holland; as also Middleburgh, Ulissingen in Zealand; Antwerp, Bruges, Dornic, Ghent, Ryssel, Brussels, Valenciennes, and all Brabant, Flanders, and Artois; Paris, and all France; Spain, Portugal, and all Italy; Augsburg, Crembes, Lints, Vienna, and several places of the empire; Breslaw, and all Silesia; Colne, Dantzic, Koningsburgh, Thorne, and all Poland.

258. The places that observe the Old Style are, Russia, the Electorate of Brandenburgh, Denmark, East-Friezeland, Francfort on the Main, Geneva, and the Protestant Cantons of Switzerland, Hamburg, and all Holstein; Lubeck, and all Methenburgh; Leipzick, Magdeburgh, Naumbourgh, and all Saxony; Riga, Stockholm, and all Sweden; Strasburgh, &c.

The Popish electorates and principalities of Germany observe the New Style, and the Protestant ones continue the Old; and as the reason of this difference may not be so generally known, I beg leave to intrude so much on the patience of that part of my readers who are acquainted with it, as to inform those that are not, which I will do in a few words.

Julius Caesar, desirous of rectifying the erroneous computation of time that had prevailed till then, undertook the reformation; and as the year was corrected by him, the Vernal Equinox, which reduces day or night to an equal length all over the globe, except just under the Pole, happened in 325 to fall upon the 21st of March; and from this the Nicene Council, being then sitting, regulated the terms for the observance of Easter. But Pope Gregory XIII observing in the year 1582, that the Equinox was changed from the 21st to the 11th of March, ordered ten days to be deducted from the calendar, and the 11th to be counted the 21st; which edict was generally observed by the nations acknowledging the supremacy of the See of Rome, but it did not obtain universally, as most of the Protestant countries continued to reckon their time as formerly; and this gave rise to the different ways of computation that now obtain in Europe, distinguished by the Julian and Gregorian Calendars; and I have only to add, that since the time of Pope Gregory, the Equinox has changed a day, viz. from the 11th to the 10th of March, so that the difference between Old and New Style is eleven days. Great Britain and Ireland adopted the New or Gregorian Style by act of Parliament, in the year 1752.
OF BILLS OF EXCHANGE, &c.

259. Usance from London to any part in France is thirty days, this being declared to be a month in regard of exchanges in that kingdom, whether the month has more or fewer in it.

Usance from London to Hamburg,
Amsterdam,
Rotterdam,
Middleburgh,
Antwerp,
Brabant,
Zealand,
Flanders,—And from these places to London, is one calendar month after the date of the bill.

Usance from London to Spain,
Portugal,—And from these places to London, is two calendar months after date.

Usance from London to Genoa,
Leghorn,
Milan,
Venice,
Rome,—And from these places to London, is three months.
The Usance of Amsterdam,

Upon Italy, Spain, and Portugal, two months.
Upon France, Flanders, Brabant, Geneva, and upon any place in the Seven United Provinces, is one month.

Upon Frankfort, Nuremberg, Vienna, Augsburgh, Cologn, Leipzic, and other places in Germany; upon Hamburge and Breslaw, is fourteen days after sight, two usances twenty-eight, and half usance seven.

Usance from Dantzig, Köningsberg, and Riga, upon Amsterdam, is at one month's sight, though it is common to draw from the first at forty days' date, and from the others at forty-one, but oftener at ten and eleven.

And from Amsterdam on the said places, at a month's date, without mentioning usance; though sometimes at forty and forty-one days; and sometimes on Breslaw at six weeks date.

260. Most nations have generally agreed to allow the acceptor of a bill some small time for payment, beyond that mentioned in the bill, termed days of grace or respite: but they as generally disagree in the number, and commencement of them.

At London, Berghamo, Vienna, three days are allowed; at Frankfort, out of the fair time, four; at Leipzic, Naumbouerg, and Augsburgh, five; at Venice, Amsterdamb, Rotterdam, Middleburgh, Antwerp, Cologn, Breslaw, and Nuremberg, six; at Naples, Denmark, and Norway, eight; at Dantzick, Köningsberg, and in France, ten; at Hamburge and Stockholm, twelve; in Spain, fourteen; at Rome, fifteen; at Genoa, thirty. At Leghorn, Milan, and some other places in Italy, there is no fixed number of respite days. Sundays and other festivals are included in these days at London, Naples, Amsterdam, Rotterdam, Antwerp, Middleburgh, Dantzig, Köningsberg, and in France; but not at Venice, Cologn, Breslaw, and Nuremberg. At Hamburge and in France, the day on which the bill falls due makes one of the days of grace, but nowhere else.

261. At Venice no bills are permitted to be paid by indorsement, so that they must be payable to a certain person, and not to order, or to the procuration of him intended to receive them; and in places where there are banks, if bills fall due when these are shut, there are always some days of grace allowed the acceptor after their opening. ...
OF BILLS OF EXCHANGE, &c.

263. It was formerly agreeable to the laws of Portugal, and I believe is still so to those of Italy, though certainly quite contrary to justice and honesty, for an acceptor to be freed from this obligation in case of a drawer's insolvency before payment; but as some remarkable trials on this subject in the first-mentioned kingdom seem to have altered the laws for the better, I shall acquaint my reader both with the occasion and success of them.

263. Some few years ago, a gentleman from the city of London drew some bills on his correspondent at Lisbon, and died two or three days after insolvent; the bills were accepted, but on advice of the drawer's death and insolvency, payment was refused; and the acceptor, sheltering himself under the then subsisting law, stood a trial on being sued; but the judge, having a regard to the custom of merchants, gave a sentence against him, and he paid accordingly. However, some time after a merchant at Amsterdam drew two bills on another at Lisbon, which were indorsed by one here, to two several ones there, and were both punctually accepted; but the drawer failing, and the indorser likewise, the acceptor refused payment, which obliged the possessors to sue him for the value, and this they did in separate suits, carried on before different judges, whose opinions were so opposite, that one of the holders had a sentence in his favour, and the other against him; upon which new suits were commenced, and finally determined for them, who accordingly recovered not only the principal and charges of the bills, but those of the law-suits also; which seems to have fixed the point before contestable, and now placed it on a par with what is observed in the other parts of Europe. And though there are some few in Italy who value themselves on the protection of the laws to screen them from a payment under the afore-mentioned circumstances, yet they thereby irreparably prejudice their character, and must not expect any future credit; so that those who have any regard for either, act more like merchants and honest men, and discharge their acceptances whilst they are able.

264. In the territories of the King of Denmark, no bills must be made payable after sight for a longer term than two months; and whatever protested bills are not sued for in six months from the protest's date, shall lose their right as bills of exchange, and thenceforward be only regarded as a book debt; and all law suits concerning them must be concluded within a year. It hath long since been determined by a settled rule among the merchants at Copenhagen, and confirmed by a judgment in the highest court, that the charges on all protested bills shall be six per cent. for exchange and re-exchange, with ¼ per cent. for provision; and by a placard of the 26th of Nov. 1731, bill bonds, which are a sort of inland bills, and ordered in lieu of notes of hand, were introduced; they must be on stamped paper, and drawn at three months, but not to continue longer than four; they have a right when protested like foreign bills of exchange, to bear an interest of ¼ per cent. monthly, and must be sued for within a month after due.

265. Since I began on this subject of bills, a small dispute has happened at Leghorn about their payment, which I shall just mention for my reader's information. It has always been customary at that place to pay them in gold; but zechins have lately been so scarce there, as to bear a premium of two or three per cent. above silver; to avoid which expense several tendered payment of their bills in the last-mentioned metal, and not being admitted, some of them were returned protested, which occasioning a little confusion in their commerce, an application was made to the regency, who, as I understand, determined that bills should be paid as usual; however, some here still pretend to have an insertion in all they take for their payment in gold, which innovation I presume will wear off, as the cause that occasioned it ceases. And having treated of every particular relative to bills, but their form, that now naturally challenges a remark.
266. Bills of exchange should be written in a fair hand, cleanly, and without mistakes: their stile admits of several variations; as one or more bills are granted of the same tenor; difference in the time and place of payment; or according to the species it is to be made in; which the following forms may serve to illustrate.

London, the 18th of January, 1791. Exchange for 50l. str.

At sight of this my only bill of exchange, pay to Mr. John Rogers, or order, fifty pounds sterl. value received of him, and place the same to account, as per advice (or without further advice) from

Samuel Skinner.

To Mr. James Jenkins,
merchant at Bristol.

London, the 18th of January, 1791. Exchange for 10,000 liv. To.

At fifteen days after date (or at one, two, &c. usos) pay this my first per exchange, to Mess. John Rogers and Comp. or order, ten thousand livres Tournois, in specie known to us this day, value of dittos, and place the same to account, as per advice from

Thomas Bancraft.

To Mr. Henry Kendrick,
banquier, in Paris.

The second

London, the 18th of January, 1791. Exchange for 10,000 liv. To.

At fifteen days after date (or at one, two, &c. usos) pay this my second per exchange (first or third not paid) to Mess. John Rogers and Comp. or order, ten thousand livres Tournois, in specie known to us this day, value of dittos, and place the same to account, as per advice from

Thomas Bancraft.

To Mr. Henry Kendrick,
banquier, in Paris.

and in the third write (first or second not paid) which example may serve for all bills.

London, the 18th of January, 1791. Exchange for d. 1000.

At usance pay this my first per exchange to Mr. Ignatius Testor (or to the Procuration of Mr. Ignatius Testori) one thousand ducats banco, value of Mr. Gregory Laman, and place it to account, as per advice from

Nicholas Reubens.

To Mr. James Robottom,
merchant in Venice.

London, the 18th of January, 1791. Exchange for 1600 per 000 rs.

At thirty days sight (or usance, &c.) pay this my first per exchange to Samuel Fairfax, Esq. or order, one thousand six hundred mil. reis, value of ditto, and place it to account, as per advice from

Jeremiah Tomlinson.

To Mess. Brown and Black,
merchants in Lisbon.
London, the 18th of January, 1791.

Exchange for 273l. 15s. st. at 35 sc. 7 g. per £. st.

At two usages and a half, pay this my first per exchange, to Mr. Joseph Jacobs, or order, two hundred and seventy-three pounds, fifteen shillings st. at thirty-five shillings and seven groats per pound sterling, value of Mr. James Merryman, and place it to account, as per advice from

John Johnson.

To Mr. David Hill,
merchant in Amsterdam.

London, the 18th of January, 1791.

Exchange for 2000 dollars.

At usance pay this my first per exchange, to Mr. Richard Redman, or order, two thousand dollars, value of him, and place them to account of W. M. Esq. and Co.
as per advice from

Abraham Moreton.

To Mr. Bartholomew Jermain,
merchant in Leghorn.

N. B. Bills are drawn in the same manner on Genoa.

London, the 18th of January, 1791.

Exchange for xx 2000. at 400 reis per crusado.

At usance pay this my first per exchange, to Mr. Samuel Levi, jun. or order, two thousand crusadoes, at four hundred reis per crusado, value of ditto, and place them to account, as per advice from

John Thomas.

To Mr. Richard James,
merchant in Oporto.

London, the 18th of January, 1791.

Exchange for £108. 10 Irish st.

At thirty-one days after date, pay, in Dublin, this my first per exchange, to Mess. Richard and Thomas Moore, or order, one hundred and eight pounds ten shillings, sterling money of Ireland, value of Mr. Ezekiel Sampson, and place it to account, as per advice from

Nicholas Fairman.

To Mr. Christopher Reynolds,
merchant in Waterford.

A Bill drawn in French.

Marseille, 31 Octobre, 1790. b. m. 9.50.

A monante jours de datte, payez par cette première de change, à l'ordre de Mess. Jean Jacobson & Fils, trois mille, trois cent cinquante marcs blancs, valeur en compte.

Jean Martel.

A Monsieur

Mons. Jacob Geraers,
A Hamburgh.
OF BILLS OF EXCHANGE, &c.

The Indorsements are as follow:

Pay to Mr. James Trotter, or order, value in account. Stockholm, the 3d of November, 1790.

John Jacobson and Sons.

Pay to Mr. Levi Solomon, or order, value received. London, the 2d of December, 1790.

James Trotter.

The following is a second Bill, in Italian.

Londra, 24 Feb. 1791.

Ad uso pagate per questa seconda di cambio, una sol volta, al mio ordine, pezze sei cento di otto reale, Valuta Contoci, or Avuta del Medessimo, ponendole come per la d'viso addio

per 600 d'vr.

Al Sar. Pietro Cambanelli, à Livorna.
La prima per accettaz. in Mano di Sr. Fralli, &c.

Thomas Deacon.

London, the 18th of May, 1791.

Exchange for 3000 D.

At usance pay this my first per exchange to yourselves, or to your own order, three thousand dollars of eight rials each, gold or silver, of the currency known to us this day, value of Mr. John Crew, which place to account, as per advice from

Richard Bingham.

To Mess. Patrick Jansen and Co.
in Madrid.

Patrick Jansen and Co.

When bills are drawn at usance, or so many days date, the acceptance must be at the bottom of the bill, as in that immediately preceding; but when they are drawn payable at so many days sight, the acceptance must express the day it is made; and an indorser may divide a bill, and make part of it payable to one, and part to another, which is done in the following manner: A. possessing a bill for 200l. sterling, indorses on the first 122l. payable to B. and on the second 78l. payable to C. and sends the first to B. and the second to C. so indorsed, and on their presenting them to the party the bill is drawn on, he accepts the first for the 122l. and the second for the 78l. in conformity to their indorsements.

In France, by an ordinance of the King, in March, 1673, it is directed, that the nature of the value received for bills of exchange shall be inserted in them, and expressly mentioned, whether it was in money, merchandize, or other effects, to prevent several abuses that had crept into this branch of commerce, by the bare insertion only of value received; for it was common to give a note, in payment of a bill of exchange, both expressing value received. And this method was found to be of great prejudice to trade, by occasioning many failures, which the afore-mentioned arret was intended to prevent. And in consequence thereof, there are four sorts of bills of exchange in that country, viz. the first expressing simply, value received; the second, value received in merchandize; the third, value in himself; and the fourth, value understood. The first and second need no paraphrase, being both alike in their negociation, and their distinction only answering some ends that may occur between the drawre and deliverer, in case of any failure or fraud. The third sort is, when a merchant draws a bill of
exchange on one who owes him money, which he sends to his friend or factor, to procure acceptance and payment; and as the acceptor is a creditor of his, an inconvenience might accrue to him, should he insert value received, as his friend or factor might pretend that it belonged to him, appearing by the bill that the drawer had received the value. The fourth is, when a person taking a bill of exchange from one on whose credit he cannot rely, gives the drawer his acknowledgment of receiving the bill, whose value he obliges himself to satisfy, on having advice that the bill is paid; but if the bill returns protested, it is again exchanged for the note, the drawer defraying the charges. The times for which bills are made payable are also four, viz. at so many days sight, eight, ten, fifteen, &c. and the time does not commence running till the day after it is presented and accepted; so that a bill drawn payable at ten days sight, and accepted the last day of April, is not demandable till the 11th of May, and the reason is, that the day of acceptance which is the 30th of April, is not counted, but the reckoning begins only on the 1st of May; the 10th of May, on which the bill expires, is not counted neither, because the 10th does not finish till midnight, and consequently an action cannot be brought against the acceptor till the 11th of May, which begins the moment succeeding that on which the 10th finishes; and in effect, if one begins to count from the 1st of May, and continues to the 10th at midnight inclusive, there will be found no more than ten whole days, which is the time the acceptor had to pay the bill in.

The second method of drawing bills, is to make them payable at a day certain. For example—a drawer gives his bill to be paid on the 1st of May, which according to what is said in the preceding case, is not demandable till the second, as the day of its falling due is never counted.

And there is no obligation to procure acceptance to a bill of this tenor, as the time goes on whether accepted or not; but it is otherwise with the foregoing, payable at so many days sight; though it is certainly more advisable to get it accepted, as by this means another debtor is added to the drawer, which becomes a new security.

The third time of bills is at usance, which is according to the places drawn on, double usance, or two usances, &c. and though there is no more obligation to procure acceptance to this than to the preceding one, as the time runs on from the day of its date, yet the same reasons subsist for soliciting its acceptance as occurred then.

And there having been formerly many disputes about the time of bills falling due that were drawn payable at usance, double usance, &c. the King by this ordinance has regulated it for the future, by making usance to be thirty days, whether the months have more or less in them, the thirty days to be counted from the day the bill is dated, and not to be demanded till that succeeding the expiration of the thirtieth, as has been observed in those bills payable at so many days sight, and at a day certain; but these laws are only binding in France, on such bills as are payable there, but not on those drawn from thence on other countries, where different usages and customs are practised.

The fourth sort of terms of bills, is, when merchants draw them payable at Lyons in the fair time, which they term payment, and which they have four times a year, as has been before mentioned.

When honesty reigned among the merchants, these bills payable in payment at Lyons, were never accepted by writing, he on whom they were drawn only said verbally, "seen," and the bearer noted it in his book accordingly. The Lyonnais practised this for a long time without any accident; but integrity became slack by the corruption of the times,
and some bankers having denied that bills had been presented them, the merchants for a greater security now have them accepted in writing.

It was necessary that the bankers and merchants of Lyons, to establish this disposition in the acceptations, and to restrain many other abuses committed in their city, should seek a remedy, and therefore they proposed a regulation to the governor, &c. thereof, which was approved of, and allowed by an arrêt of council, and registered in the Parliament of Paris in the following words, viz. "That the acceptations of the said bills of exchange shall be made by writing, dated and signed by those on whom they are drawn, or by persons duly empowered by a procuration, of which the minutes shall remain with the notary; and all those which shall be made by factors, deputies, and others, not furnished with procurations, shall be null and of no effect against him on whom they are drawn, save the recourse against the acceptor."

This regulation, which was only for the city of Lyons, proved a sufficient remedy for the abuse that was committed by the want of acceptance to bills; but this did not in any shape remedy those arising from a conditional acceptance in these words, accepté pour répondre au temps, accepted to answer in time, for this is the same as saying nothing, and is contrary to the public surety; because a merchant of Paris or other places, drawing a bill of exchange on his correspondent at Lyons, who shall have no effects of his in hand, and who only accepting it with the circumstance, to answer in time, not being willing to advance for his friend, when the season of the fair, or payment is come, if remisses are made to him, he pays a creditor with a debt, if he has the opportunity, or else the contents of the bill are discharged at the end of the payment; but, if he has no provision made him, he lets the bill be protested; so that a merchant who does not understand this custom, and who has paid his money three months before, comes upon the drawers or bearers of orders, who very often have failed in the mean time; whereas if he on whom the bill is drawn, accepts purely and simply when it is presented him, he in whose favour it was would have had immediate security, and its payment when fallen due.

And however suitable to the interest of the Lyonnaise this practice might be, as they generally accepted without effects in hand, yet as it placed them on a different footing from every other trader in the kingdom, it was judged but reasonable by other merchants to find out a method that should put them all on a level, and oblige those of Lyons to a pure and simple acceptation; but though this was observed by some considerable bankers, who drew their bills, or took them with the insertion of such words as would not admit of evasion in the acceptor, yet this did not answer the intent, as many of Lyons would not accept the draughts on them in any other manner than that formerly mentioned; therefore to remedy the inconvenience and disorders which this occasioned in trade, and to place all his Majesty's subjects on a level, he directed by his ordinance, "That all bills of exchange shall be accepted by writing purely and simply; abrogating the custom of a verbal acceptance, or by these words, veu sans accepter, seen without accepting, or accepted to answer in time, and all other conditional acceptations, which shall be deemed a refusal, and the bills may be protested."

I mention those circumstances, in which I think most European nations are interested; as there is hardly one from whence a considerable trade is not carried on with Lyons, either in the commercial or banking way.

And though the happy improvement of our own silk manufactures has very considerably lessened for some years past, our trading engagements with that powerful city, yet there still remains such an intercourse, that the knowledge of transacting business there may occasionally concern many of my readers.

I have now done with bills of exchange, and exerted my endeavours to reduce every
necessary observation on them into as small a compass as the nature of the subject would permit, consistent with rendering myself intelligible, and the rules I have laid down clear and practicable; and though I might, without incurring an imputation of prolixity, have swelled a discussion of this important article into a volume instead of a chapter, I hope I have left nothing unsaid that could contribute to my purpose of clearing up every difficulty which might arise to my readers in their exchanging business; having carefully collected and communicated the sentiments of the best writers in all languages on this topic, so far as they were agreeable to that experience which a long practice in this branch of business has furnished me with; and I flatter myself that I should not be accused of vanity if I assert, that my labours herein, and endeavours to have every section such as to stand the strictest scrutiny, have by far exceeded those of other writers that have gone before me, who either have superficially run over the matter, or blindly propagated the errors of one another, through ignorance or sloth, which I have studied to rectify, and, I flatter myself, with success.

Before I treat of arbitrations, I shall say something of brokers, as a proper appendage to the preceding discourse, though they are not so much concerned in the exchanges of money and bills as they were formerly; the revolutions that happen in commerce as well as politics, having thrown the greatest part of that business into the hands of the bankers in London, and in most of the capital cities of Europe.

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OF BROKERS.

Brokers are persons sworn and authorised by the magistracy of the place where they act, and such are always regarded in preference to others, who interfere in these negociations without being licensed; as credit is given to the personal evidence, and to the books of sworn brokers in all courts of justice, and out of court, in all cases of arbitration or compromise, though it is not admitted from the others; and in most places, those who illegally exercise the function, are fined for acting without permission.

The number of sworn brokers in London is unlimited; at Amsterdam there are three hundred and seventy-five christians, and twenty-two jews, acting in trade and exchanges; besides which, there are many who practise as they do here, unsworn and unlicensed. The number of these at Amsterdam, is more than double that of the sworn brokers, and they go by the name of ambulatory brokers, and it is to be observed, that a merchant runs great risks in employing them, for in case of litigation, the bargains and contracts they have made are liable to be rendered null and void.

It is the duty of brokers to be diligent, faithful, and secret, whether their dealings be in exchange, or purchases and sales, as they are mediators in all negociations; and those licensed may properly be called public ones, from the nature of their business, which leads them to a general employ between merchants, traders, and remitters. They are called at Amsterdam, as well as here, brokers, courtiers or mackelaers, though on the coasts of Provence, and up the Levant, they are termed censals: and at Paris, the exchange brokers have, for about a century past, bartered this appellation for that of agents; and to render the office yet more honourable, about fifty years ago the quality of King's Counsellor was added to it, though the business is the same, however the denomination may differ.

Those who exercise the function of brokers ought to be men of honour, and capable of their business: and the more so, as both the credit and fortune of those that employ
them may in some measure be said to be in their hands, and therefore they should avoid babbling, and be prudent in their office; which consists in one sole point, that is, to hear all, and say nothing; so that they ought never to speak of the negociations transacted by means of their invention, or relate any ill report, which they may have heard against a drawer, nor offer his bill to those who have spread it.

Before offering any bills of exchange, which a broker is commissioned about, he ought to ask the person he applies to, whether he wants bills for such a place, or hath money to dispose of; and if the merchant queries whose the bills are which he has to negociate, he ought not to inform him, till his reply lets him know whether he wants any or not.

When a merchant has discovered his intentions to draw, or that he has bills to negociate, the broker should offer them, purely and simply, without any exaggeration in their favour or disfavour; and if he to whom they are proposed refuses them, with saying they do not suit him, it would be not only improper, but impertinent in the broker, to ask the reason of such a refusal, and the height of imprudence in him to amplify their goodness, or the solvency of their owner, in order to induce the refuser to change his intentions, and take them; on the contrary, he ought to take care never to deceive the contracting parties, but to be sincere in all his actions, without using any artifice to attain his purposed end in his negociations; and above all, he should avoid offering things for which he has no authority, as he may be taken at his word, and have the negociation remain for his own account, to his no small disadvantage, if known, both of purse and credit; and the same may happen in purchases and sales, as in exchanges.

If the owner of goods allows the broker through whom he sells them, to sell as a principal, the purchaser of goods so sold is discharged by payment to the broker in any way which would have been sufficient had he been the real owner. Coates v. Lewis. 1 Campb. C. N. p. 444. And if goods are bought by a broker, the principal is liable to the vendor if called upon when payment becomes due, although he has previously paid the price of the goods to the broker; but he is discharged if the day of payment is allowed to pass by without any demand being made upon him. Kymen v. SuwerCropp, Ib. 109. 180. c. The authority of a Broker may be countermanded at any time before a memorandum of the contract of sale is written, and signed, by him, pursuant to the statute of frauds, although he has previously entered into a verbal agreement to sell the goods. Farmer v. Robinson. 2 Campb. C. N. P. 399. n.

Where goods are sold by a broker without disclosing his principal, the purchaser is justified in paying him in a different manner from that stipulated by the terms of the contract. Alter where the principal is disclosed at the time of sale. Blackburn v. Scholes. Ib. 343, and the circumstance of the persons selling the goods being described as sworn brokers, is not sufficient notice to the purchaser that they are only agents to prevent him dealing with them as principals. Ib.

If goods in the city of London are sold by a broker, to be paid for by a bill of exchange, the vendor has a right within a reasonable time, if not satisfied with the sufficiency of the purchaser, to annul the contract. Five days considered more than a reasonable time. 2 Camb. 530.

Where a broker is authorised by one person to sell goods, and to buy such goods for another, an entry on his books of a sale of these goods from the one to the other, signed by him is in general a binding contract between the parties: the bought and sold note, which is a copy of this entry, is not sent to the parties for their approbation, but to inform them of the terms of the contract. Keyman v. Neale. Ib. 337.

A broker should take care in making an agreement between two persons, to be well assured of the place to be drawn on, and where it is; where there is a settled usage, he has
nothing to treat of but the price; though, in case the parties agree on an exchange for a place where the time of the bill's running is uncertain, that of payment must be fixed, with every other requisite to conclude the bargain.

When a broker has adjusted a remittance, he must inquire of the remitter to whom he will have the bills payable, and should always carry some slips of paper on a post-day in his pocket, on which to note it, as also the sum agreed for, the time of payment, to whom payable, from whom the value is to be received, at what price the exchange was concluded, and the day it was agreed on, which memorandum he must give the drawer, and enter a duplicate thereof in his book, that may serve as a testimonial, in case of any dispute between the contracting parties.

It is the broker's obligation to call for the bills, and carry them in time to the remitter, though this is a good deal out of use in this great metropolis, where the merchant commonly sends a clerk with them, to lessen the broker's trouble.

A prudent merchant will never attach himself entirely to one broker for fixing the price of the exchange, nor will prefer one to another in the execution of his commission, either through favour or friendship, but he who offers the most beneficial terms should be the agent on that occasion; and by such behaviour he disobliges nobody, but rather stimulates an emulation in them to procure his advantage.

It is a great fault in a merchant, whose credit is not well established, when he has a mind to draw, to make use of a broker who is but young in, or ignorant of, his business; and he who draws in virtue of a letter of attorney for another's account is obliged to declare it to the broker, who must in consequence contract in the name of the constituent, and not in his who gave the order.

An exchange once concluded with the broker, or by his mediation, ought to be carried into execution; as it is both unfair and illegal for either the drawer or remitter to retract their words given. And if a broker concludes anything either without or exceeding orders, more especially at an inferior price, the merchant has just reason to resent it, though the broker offers satisfaction, as his credit is concerned, and may be hurt beyond a possibility of reparation.

The bills of young beginners may be offered by a broker, but if he frequently tenders such as are notoriously in disrepute, he must greatly suffer in his reputation; more especially if he take on him to recommend them; and if he submits to be employed by one he knows to be insolvent, or near being so, and endeavours to draw or remit for him, when certain that his bills will not be answered, or he as a remitter not comply with his engagements, he ought to be severely punished for his knavery; and his being deprived of any future business is the least he can expect, though the punishment is not adequate to his deserts.

A broker should never ask more, nor admit less, than what the law and custom allows him; this for exchanges in London is always one per mil. for each of the parties concerned, though on purchases or sales per cent. and at Amsterdam the tariff is settled at three stivers for a hundred guilders, the half payable by the drawer, and the other moiety by the remitter, as follows, viz.

|
| A thousand ducats on Venice | £ 4 0 0 |
| A thousand dollars on Genoa or Leghorn | £ 4 0 0 |
| A thousand ducats on Madrid, or any other part of Spain | £ 4 0 0 |
| A thousand crusados on Lisbon, or any other part of Portugal | £ 4 0 0 |
| A hundred pounds sterling on London, or any other part of England, Scotland, or Ireland | £ 1 10 0 |
| A thousand crowns on Paris, or any other part of France | £ 1 10 0 |

Though when the exchange was very high, brokerage was in proportion.
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and formerly guild. 4. 10 st. were paid on negociating the thousand crowns. £ s. d.
A thousand rixdales on Francfort, Leipzic, or Breslaw .................... 3 10 0
A hundred livres de gros, or six hundred guilders, on Dantzic, Conings-berg, Anvers, Lisle, and all Flanders and Brabant .......................... 0 18 0
A thousand daelders on Hamburgh, computed 1664½ guilders .................. 2 10 0
A thousand guilders on Rotterdam, and other parts of Holland ................. 1 10 0
A thousand guilders bank money changed into current .......................... 1 0 0
A thousand guilders of gold changed into silver, and per contra ............... 1 0 0
Five hundred livres de gros for an East India action .......................... 6 0 0

And in proportion on other places of exchange; not but that some brokers impose on people they find ignorant of the above-mentioned regulations and customs, but this is a fraud, which no honest man will be guilty of.

At Paris brokerage is ½ per cent. and at Lyons forty sols is commonly given for three thousand livres Tournois, half by the taker and half by the giver of the bill; and at this last place, any one is permitted to exercise the function of a broker, it being a free city.

At Venice brokerage is ¼ per mil. at Genoa ¼ per cent at Leghorn ¼ per mil at Bologne 1 sol per hundred crowns; and in all other banking cities according to what Government has settled.

What we have already advanced, is sufficient with respect to the transactions of exchange brokers in general, and to give an idea of the nature of their business in foreign countries, which is all that is necessary; for every merchant travelling to or residing in any great mercantile city in Europe must make himself master of the local laws and regulations of the place with respect to brokers, and act accordingly: for these are liable to vary with the policy and circumstances of every country, and therefore all printed treatises upon such subjects may become obsolete and useless. But the same reasons should oblige the British merchant to study all the laws and regulations respecting brokers in his own country, on which account we shall enter into a detail on that head, and give ample information to the very time of our publication: what alterations happen afterwards, it will be easy for him to add, and thereby to make this treatise the standard for his transactions with brokers.


Various classes of brokers are comprehended under the general title of exchange brokers, viz. insurance brokers, ship brokers, East India brokers, stock brokers, auctioneers, &c. all of whom, if they transact business within the jurisdiction of the City of London, must be duly sworn and admitted to act as brokers by the Lord Mayor and Court of Aldermen, otherwise they are liable to a fine and suspension, upon information given to the said court, that they transact business without being so duly admitted.

Having already treated of exchange brokers, in the limited sense of that title, we shall proceed to insurance brokers, whose peculiar business is to bring together the parties wanting to insure ships and merchandise from the perils of the sea, and the insurers or underwriters: to settle the premium, to pay or receive the same for the parties concerned, to fill up the policies, attest them, &c. They are likewise often called upon to draw up charterparties, particularly when they are to contain any special conditions, as those conditions often relate to, and are connected with the insurance.

An insurance broker having authority to subscribe a policy, has also authority to adjust the loss on the same, and an admission of the agent's subscription, and of his having
been authorized to subscribe, binds the insurer to admit the authority to sign the adjustment.—See Richardson v. Anderson, 1 Campb. C. N. P. 45. in notes. And if an insurance broker keep the policy in his hands, he is bound to use reasonable diligence to procure the underwriters to settle, and pay any loss that may happen upon it, 2 Campb. C. N. P. 545.

If a merchant orders an insurance broker to effect a policy of insurance for him on corn without giving any directions as to those with whom the policy is to be effected, and the insurance broker effects the policy with one of the chartered companies by whose policies corn is warranted against partial losses, though the ship be stranded. Upon a large partial loss happening upon this cargo, after stranding of the ship, the merchant cannot maintain an action against the insurance broker for not effecting the policy with private underwriters, who, by the common form of a policy of insurance, would have been liable for this partial loss. Combes v. Anderson, 1 Campb. C. N. P. 528. And although an insurance broker is bound to obey the positive directions of the assured to abandon, yet if it be referred to his discretion, whether to abandon or not, and he acts bona fide, he is not liable to an action for neglecting to abandon ib. 525.

Ship brokers are employed in buying and selling ships and cargoes, either by private contract or by public sale, the latter is said to be by candle, on account of the custom of lighting an inch of candle at these public sales, and suffering the bidders to bid no longer than till the candle is burnt out, in other respects they do not differ from common auctions. In time of war, the business of ship brokers is considerably increased by the sale of prizes taken from the enemy.

East India brokers transact the business by commission of purchasing the commodities sold at the Company's public sales, and they are employed by the wholesale dealers in linen, silk, teas, spices, drugs, china, &c.

Stock brokers are persons who confine their transactions to the buying and selling of property in the public funds, and other securities for money; and they are employed by the proprietors or holders of the said securities. Of late years, owing to the prodigious increase of the funded debt of the nation, commonly called the stocks, they are become a very numerous and considerable body, and have built, by subscription, a room near the Bank, wherein they meet to transact business with their principals and with each other, and to prepare and settle their proceedings before they go to the transfer-offices at the Bank, and South Sea and India Houses, thereby preventing a great deal of confusion at the public offices, where the concourse of people is so great during the hours of transferring stock, that if the business was not prepared beforehand, it would be impossible to transact it within the given time.

But if the business of stock brokers was confined solely to buying and selling the real property of their employers in the funds, there would not be half the number that now follow this profession. It is therefore necessary to take notice that the interest which foreigners have in our funds, particularly the Dutch, gave rise to time bargains, that is to say, to contracts for purchasing and selling any quantity of stock to be delivered or adjusted at a future time. The usual times for which bargains, founded on real property, and intended to be settled bona fide, were made, were from three months to three months, four times within the year, viz. in February, May, August, and November; and these periods of settling the accounts of such time bargains were called the Rescounters, from a Dutch mercantile term for adjusting accounts current between merchant and merchant. The impossibility of ascertaining whether the commissions from abroad given by letters from foreigners, or by their correspondents here, to brokers to buy and sell stocks for time, were founded upon real property or not, gave birth to stock-jobbing, or dealing in the funds upon speculation, and the persons that
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play at this game, for gaming it is of the first magnitude, whether principals or brokers, are called stock-jobbers.

They purchase or sell for a given time, frequently without being possessed of any property in the funds they bargain for, merely upon speculation. For instance: A. imagines that a peace, or some other advantageous national event will raise the price of any given fund within the space of three months considerably above the price of the day on which he makes his time bargain: On this principle he gives his broker orders to buy a large quantity to be taken and paid for three months from that date; when the time expires, if the stock has risen according to his expectation, instead of taking it, for probably it has been bought of a person who had it not to deliver, he receives from the broker the difference in money, between the price on the day the bargain was made, and the price at the expiration of the three months, and this is his profit. If, on the contrary, the stock has fallen below the price of the day on which he purchased for three months, he must pay the difference, and this will be a losing account. It is computed that the bargains on stock-jobbing accounts made in the course of a year, exceed, by many millions, the transfers made at the books of real property; and the conclusion is apparent, that great fortunes are made and lost by stock-jobbing. It is to be observed likewise, that the brokers job for their own account, which occasions frequently failures at the stock exchange.

The whole business of stock-jobbing being contrary to law, and many persons acting as brokers therein, who have never been admitted as exchange brokers by the Lord Mayor and Court of Aldermen, it is our duty, in the next place, to give the form of admission of regular brokers, the regulations to which they are subject, and abstracts of the laws in force concerning them and stock-jobbing; after which, if any further information is wanting, we must beg leave to refer the reader to a well known treatise on the funds, entitle, “Every Man his own Broker,”* as it would far exceed our limits, and go beyond the plan of this work, to discuss the whole art and mystery of stock-jobbing.

All persons, who shall act as brokers within London, shall be admitted by the court of Mayor and Aldermen, under such directions for their good behaviour as the court shall think fit; and shall, upon their admission, pay to the Chamberlain forty shillings; and shall also yearly pay forty shillings upon the 29th of September, for the use of the Mayor and commonality and citizens of the city of London.

The principal regulations established by the said court, in virtue of the powers vested in them by the said statute are,

That every broker upon his admission is solemnly sworn, truly and faithfully to execute and perform the office and employment of a broker between party and party, in all things appertaining to the duty of the said office and employment, without fraud or collusion; to the best of his skill and knowledge.

That he do enter into a personal bond, under the penalty of five hundred pounds, the condition of which bond recites the duties sworn to in the oath of admission, which, if well and truly performed, then the obligation is void, otherwise it remains in full force.

A silver medal is likewise delivered to him, having the King's arms on one side, and the arms of the city of London on the reverse, with the broker's name, and he is ordered to produce the same upon every occasion when he is required to shew his qualification.

If any person shall take upon him to act as a broker, or employ any under him to act as a broker, or employ any person to act as a broker, under him, he is bound by this bond to the Mayor and Aldermen, for all fines and penalties mentioned in the said oath.

* "Every Man his own Broker; or, a Guide to Exchange-Alley, explaining the Nature of the Funds, the Art and Mystery of Stock-jobbing, &c. by T. Martiner, Esq. the eleventh edition, London, printed for Robinson, 1791."
act as such within the said city, not being admitted, every such person shall forfeit to
the mayor and commonalty, &c. for every offence twenty-five pounds, to be recovered
by action of debt in the name of the Chamberlain, in any of her Majesty's Courts of
Record.

Every person employed as a broker, solicitor, or otherwise, in behalf of any other
person, to make any bargain, or contract for the buying or selling of any tallies, orders,
&c. or interest in any joint stock erected by act of Parliament, or letters patent, or
bonds of any company thereby erected, who shall take any money or reward exceeding
two shillings and sixpence for every hundred pounds, and so in proportion for his ser-
vice in soliciting or procuring such contract or bargain, shall forfeit twenty pounds with
costs, to such person as will sue for the same in any of her Majesty's Courts of Record
at Westminster.

All contracts upon which any premium shall be given for liberty to put upon, deliver,
accept, or refuse, any public stock or securities, and all wagers, puts, and refusals,
relating to the present or future stock or securities, shall be void: and all premiums
upon such contracts or wagers shall be restored to the person who shall pay the
same, who shall be at liberty, within six months from the making of such
contract, or laying such wager, to sue for the same, with double costs; and it shall
be sufficient for the plaintiff to allege, that the defendant is indebted to the plain-
tiff, or has received to the plaintiff's use, the money or premium so paid, whereby the
plaintiff's action accrued according to the form of this statute, without setting forth the
special matter.

Persons, who by this act shall be liable to be sued, shall also be obliged to answer
upon oath such bill as shall be preferred against them in equity, for discovering any
such contract or wager, and the premium given.

Every person who shall make any such contract, upon which any premium shall be
given for liberty to put upon, deliver, accept, or refuse any public stock or securities,
or any contract in the nature of puts and refusals, or shall lay any wager, except such
who shall bona fide sue, and with effect prosecute, for the recovery of the premium paid
by them, and also except such as shall discover such actions in any court of equity,
shall forfeit five hundred pounds. And all persons negotiating or writing such con-
tracts, shall likewise forfeit five hundred pounds, which penalties may be recovered by
action of debt or information, in any of his Majesty's Courts of Record at Westminster;
one moiety to his Majesty, and the other moiety to them who shall sue for the same.

No money or other consideration shall be voluntarily given or received for the com-
pounding any difference, for the not delivering or receiving any public stock or secur-
rities, but all such contracts shall be specially executed; and all persons who shall vol-
untarily compound such difference, shall forfeit one hundred pounds, one moiety to
his Majesty, and the other moiety to them who shall sue for the same.

No person who shall sell stock to be delivered and paid for on a certain day, and
which is refused and neglected to be paid for, shall be obliged to transfer the same; but
it shall be lawful for such persons to sell such stock to any other, and to receive or
recover from the person who first contracted for the same, the damage which shall be
sustained.

It shall be lawful for any person, who shall buy stock to be accepted and paid for on
a future day, and which shall be refused or neglected to be transferred, to buy the like
quantity of such stock of any other person, at the current market price, and to recover
and receive from the person who first contracted to deliver the same, the damages
sustained.

All contracts which shall be made for the buying or transferring of stock, whereof the
person on whose behalf the contract shall be made to transfer the same shall not, at the
time of making such contract, be actually possessed in his own right, or in the name of trustees, shall be void: and every person on whose behalf, and with whose consent any contract shall be made to sell stock, whereof such person shall not be actually possessed in his own name or in the name of trustees, shall forfeit five hundred pounds, one moiety to his Majesty, and the other moiety to them who shall sue for the same; and every broker, or agent, who shall negotiate any such contract, and shall know that the person, on whose behalf such contract shall be made, is not possessed of stock, shall forfeit one hundred pounds, one moiety to his Majesty, and the other moiety to them who shall sue for the same.

Every person receiving brokerage in the buying and disposing of stocks, shall keep a broker's book, in which he shall enter all contracts, with the names of the principal parties; and such broker, who shall not keep such book, or shall wilfully omit to enter any such contracts, shall forfeit fifty pounds, one moiety to his Majesty, and the other moiety to them who shall sue for the same.

Nothing in this act shall extend to any contracts for the purchase or sale of stock, to be made with the privy of the Accountant General of the Court of Chancery, in pursuance of any decree or order of the said court.

Nothing in this act shall hinder any person from lending money on stock, so as no premium be paid more than legal interest.

The above act was made perpetual by 10 Geo. 2. c. 8.

It was hardly possible to frame an act, better calculated to suppress the pernicious practice of stock-jobbing; yet it is shamefully violated, and that daily, with impunity, justifying the remark made by foreigners, "That we have the best laws of any nation in the world, and the worst executed." However, the merchant and the monied man may learn one useful lesson from attending to the regulations concerning brokers, and the statute against stock-jobbing, which is, that he can have no remedy whatever for any fraud or collusion, unless he employs a licensed broker. And that he may know which are licensed, he need not have recourse to a sight of the silver medal, a list of the admitted brokers being annually printed by order of the Lord Mayor and Court of Aldermen, which is hung up in one of the walks of the Royal Exchange, and in Guildhall, and at most of the reputable coffee-houses near the Exchange.

OF THE PAR OF MONIES.

Most of what has hitherto been written concerning the par of coin is obscure and confused: the greatest part of the authors who have published any thing about it give the par of monies no longer current; however it is a thing not over difficult, as it only consists in making the comparison between the intrinsic value of the gold and silver coins of each country, and the price they pass current at; it is therefore necessary that the exact weight and standard of such monies be first known. The celebrated Sir Isaac Newton published a tract of the standard of foreign coins, which was printed at the end of Mr. Arbuthnot's work; but so many alterations have since been made in the monies of France, Spain, and some other countries, that it is necessary to examine the last arrets that have been published about them to clear up this particular. As for example: the King of Spain, by a royal decree, raised the pistole from thirty-two to thirty-six rials of plate, and by a subsequent decree, it was ordained that the dollar should be current in his dominions at 9½ rials instead of eight, which they passed at before, and these have since been raised to ten, and the pistole to forty rials: which observation might be extended to several other species, but this would be both tedious.
OF THE PAR OF MONIES:

and useless; we shall therefore give such examples only as will sufficiently and clearly demonstrate the method by which all others may be found out.

The Par of Gold Coin between London and Amsterdam.

Of 1¼ mark of gold of the standard of 22 carats are made in England 44½ guineas, as Sir Isaac Newton demonstrated to the Lords of the Treasury on the 21st of September, 1717; each guinea being then current at 21 shillings and sixpence sterling, but since it has been lowered to 21 shillings. At present 1000 new Holland ducats weigh 14 marks, 1 ounce and 11¼ engels; each mark is of the standard of 23 carats and a little more than 7 grains, from whence it follows, that there is as much pure gold in 1000 ducats as in 451 ¼ guineas. Commonly in the payments that are made among the citizens, a ducat passes in Holland for 5 guilders and 5 stivers current money, and according to this proportion, an English guinea, or 21 shillings sterling, is worth 11 guilders and 12 stivers current money, of Holland; or 9480,¾ shillings sterling are equal in value to 3250 guilders; or one pound sterling to about 36s. 11d. de gros current money; or if the agio be reckoned at 4½ per cent. it will be found very near 35s. 9d. de gros bank money.

The Par between London and Amsterdam of Silver Money.

According to the afore-mentioned report made by the said Sir Isaac Newton, in the year 1717, 11¾ ounces of pure silver, and ¼ of an ounce of alloy made 62 shillings sterling; in Holland 200 pieces of 3 guilders weigh 25 marks, 5 ounces 11¾ engels, and are of the standard of 11 penny-weights; or in 1052¾ shillings sterling there is as much fine silver as there is in the said 200 pieces of 3 guilders, and the value of 20 shillings sterling in 1717 was near to 38 sch. current money of Holland.

If the comparison be made by ducatons, or by Holland rix-dales, instead of 3 guilder pieces, it will be found very near the same value; for if it be true, as I am informed, that 200 ducatons weigh 26 marks 3 ounces 15 engels, and their standard is 11¼ penny-weight; and if 200 rix-dales weigh 22 marks 6¼ ounces of the standard of 10¼ penny-weight; when the 3 guilder pieces are fixed at 60 stivers, the intrinsic value of the ducaton will be 63 stivers 3½ déniens, and the rix-dale 50 stivers and almost 2 deniers.

The Par between France and Holland for the Gold Coin.

A mark of gold money, worth at present in France 720 livres, is exactly 30 loidors, and the standard 21 carats 7 or 7½ grains; we will take the medium, when, at 21 carats 7½ grains, each loidor ought to weigh 5½ engels; those coined in the year 1731 weight 5 engels and 10 axen, which we may deem the true weight. In 1000 Holland ducats there is then as much pure gold as in 466½ loidors. If the ducat is counted at 3 guilders 5 stivers current money, a loidor, or 24 livres French, is worth of Dutch money 11 guilders 5 stivers, and the 3 livre crown almost 58¼ de gros current money; or 64 French livres were, in 1731, of an equal value with 30 Dutch current guilders, and 16 French crowns of 6 livres are at a par with 15 three guilder pieces; or 90 ducats of Holland are worth 14 loidors. The proportions I here give are sufficiently exact; for if 1000 current guilders are reduced into French money, there will be found by the said proportions only ¾ of a loidor, or ¾ of a French-livre, less than by the intrinsic value; ¾ of a French livre are ¼ of a guilder.

If the agio of ½ per cent. upon the bank money be taken, the value of 3 French livres will be a small matter less than 53½ de gros bank money.

The weight of 1000 loidors of the sun is 33 marks, 1 ounce of the standard of 21
OF THE PAR OF MONIES.

The Par between France and Holland of the Silver Money.

The King of France, by an arrret of the 25th of May, 1726, fixed the mark of silver money at 49 livres 16 stivers, and since that time, I believe no alteration has been made, the standard is almost 11 pennyweights, and that of the ancient crown of 9 to the mark was of 10 pennyweights and 22 grains, Traité des Changes Étrangers, par Mr. Dernis, Paris 1726. At present in France there are 6 livre crowns of 8.47 to the mark, and it is said that the standard is 11 pennyweights. In making the calculation it will be found, that in 200 three guilder pieces there is as much pure silver as in 218.47 French crowns of 6 livres, or each of these crowns is worth pretty near 564 stivers current money of Holland; this is very near the same value which we have found in the gold.

The silver pieces of 24 sols, coined in France 1726 and 1727, only weigh 3\(\frac{1}{4}\) engels, and the value in Dutch money is 104\(\frac{1}{4}\) current stivers.

Almost all authors who have treated of a par, have taken for a foundation the standard of the crown by the arrret of the 16th of September, 1666, Mr. Dernis, pag. 4. was worth 100d. de gros of Holland, or that the mark of 11 pennyweights French money was worth 22 guilders 10 stivers; but at present by the pieces of 3 guilders the value of the said mark is found to be 29 guilders 7 stivers, or that of a crown of 3 livres 10.34d. de gros current money; upon which footing the calculation may be made in the present time; for it should be stated by the rule of three inverted; if, when the mark of money is fixed at 27 livres, the par is 100d. de gros, how much will the par be if the mark is worth 49\. But it is easier to make the calculation by the crowns, because it is found at present that there are 16\(\frac{1}{4}\) crowns, of 3 livres in a mark; so it is said if 16\(\frac{1}{4}\) crowns are worth 23 guilders and 7 stivers current Dutch money, how much shall one crown be worth? and it will be found as aforesaid, a little more than 564d. de gros. In the beginning of the year 1726 the par was at 67\(\frac{1}{4}\)d. de gros; it may be seen then, that it is very easy to find the par, whether the King of France rises or falls the price of the coin. In case that it changes not only the weight but the standard, the direct rule of three ought to be stated by saying, The ancient standard is to the par that is found, as the new standard is to the par sought for.

The Par between Lisbon and Amsterdam for the Gold Coin.

By an ordinance of Mons. the Count de Daun, it is seen, that the old loudor of France weighed at Milan 5 pennyweights and 12 grains, and the cruzado of Lisbon 8 pennyweights and 18 grains; 1000 of the said loudors weighed in Holland 21 marks 1 ounce and 15 engels, or each loudor 4 engels 114 azen; according to this proportion, the cruzado ought to weigh 6 engels 294 azen; if the standard is reckoned, with Sir Isaac Newton, at 21 carats 7 grains, as the ancient pistoles of Spain and France were, Koophandel van Amsterdam, 2de Deel, pag. 111 and 881, there will be found as much pure gold in 358.4 cruzados as in 1000 ducats of Holland; and putting the ducat at 5 guilders and 5 stivers, the value of a cruzado will be 14 guilders 13 stivers and 1 denier current money; and because the cruzado passes at Lisbon for 4800 reis, 400 reis are worth, 48\(\frac{1}{4}\)d. de gros current money, or a little more than 46\(\frac{1}{4}\)d. de gros bank money, if the agio be taken at 5 per cent. or 47d. de gros, if the cruzado weigh 7 engels, as it is commonly reckoned. This may be done by a yet shorter method; for by the ducat it is found, that a mark of the said cruzados is worth in Holland 338 guilders 9 stivers; and
it is said, if 160 engels are worth 388 guilders 9 stivers, how much shall 7 engels and 29½ azen be worth? in a book printed at Amsterdam, 1630, intitled, "Sleutele des Koopmans," p. 318, it is said that the par is 63½d. de gros.

A new Method to avoid the great Fractions.

In calculating the par, or in making the comparison between coins, great fractions frequently intervene. As for example: We have found in \(\frac{210}{7}\) English crowns of 5 shillings sterling, as much pure silver as in \(\frac{213}{14}\) French crowns of 6 livres, or 1 crown of 6 livres has as much fine silver as \(\frac{441}{4}\) of an English one of 5 shillings, but the working of this with so great a fraction being very troublesome, it may be changed for a less fraction that shall be almost of the same value, which may be expressed as in the following problem:

Problem.

A great fraction being given to find another, whereof the denominator is less than a certain number given, so that the value of the fraction that has been found, is the nearest that can be to that given.

I change the fraction given into another whose numerator is unity, and I do the same with the fraction which is found in the denominator, and so on.

I neglect for a moment the fractions of fractions that are found at the end, and by that will be had all similar fractions, which are alternatively the one too big and the other too little, as may be seen in the subsequent example.

The fraction given being \(\frac{441}{4}\), it is demanded which is the fraction most like it whose denominator is less than 100.

But as I think our author's solution of his problem is neither so correct nor clear as it should be, I have attempted to make it plainer and more exact, though before I proceed to the operation, it will be necessary to premise the following lemma.

To find a denominator to a given numerator, which shall make it the nearest fraction to a larger fraction before given, let the first given fraction be denoted by \(\frac{n}{a}\), and the numerator to the new fraction be \(a\), and its denominator \(x\), then we have \(\frac{a}{x} = \frac{n}{a}\), therefore \(nx = ad\) and \(x = \frac{ad}{n}\), which put into words gives this

Rule.

Multiply the numerator of the new fraction into the denominator of the large one, which then divide by the numerator of the great fraction, and you will have the denominator you sought for your new numerator: now in regard to the problem, first find the fraction whose numerator is unity, that shall be equal to \(\frac{441}{4}\), which by the foregoing lemma will be expressed \(\frac{1}{x}\), the fraction of fractions, therefore the denominator must not exceed 4. But

\(\frac{1}{2} \frac{3}{2}\) when the denominator admits a higher one, we repeat the operation, thus
\(\frac{1}{2} \frac{3}{2} \frac{1}{2}\)

w you reject from the denominator, though too great) to \(\frac{441}{4}\), when the denominator must not exceed 4. But the said fraction is altered by the said
OF THE PAR OF MONIES.

lemma to \( \frac{1}{2} \) and rejecting \( \frac{2}{5} \) for \( \frac{2}{5} \) which is too great, but the nearest of any whose denominator does not exceed 50, to the given fraction; but the work may be by the condition of the problem repeated again \( \frac{2}{5} \) writing \( \frac{1}{5} \) found as before we have \( \frac{2}{5} \); from which leaving out \( \frac{1}{5} \) there is \( \frac{2}{5} \) which is too big, though it is the fraction sought: for if the work be again repeated, you will have a denominator which shall be 817.

N. B. It appears by inspection that the higher the denominator is, the nearer you approach to the truth, for there is less omitted in the denominator, so at last the work would converge into the given fraction.

Note also, that by the said lemma you may find a fraction of a given denominator, which shall be nearest equal to a higher given fraction; and as this is of a peculiar use in fractional works, I shall give the rule it may be performed by.

Multiply the new denominator into the numerator of the first given fraction, then divide by the great denominator, and rejecting the remainder as inconsiderable, your quotient shall be your new numerator. By this you may prove the foregoing work, for if you choose a denominator 51, and would find a numerator to make it nearest to \( \frac{2}{5} \), then \( \frac{51 \times 2197}{7703} \) gives 20, as before found.

A Comparison of some Coins.

Of Silver.

<table>
<thead>
<tr>
<th>London</th>
<th>Amsterdam</th>
<th>20 crowns of 5 shill. ster. worth 19 pieces of 3 guil.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amsterdam</td>
<td>100l. ster. less 3 stl. 1000 guil. more 1 shl ster.</td>
<td></td>
</tr>
<tr>
<td>Paris</td>
<td>Amsterdam</td>
<td>16 crowns of 6 livres worth 13 pieces of 8 guilders.</td>
</tr>
<tr>
<td>Or 337 crowns of 6 livres, worth 316 pieces of 3 guilders.</td>
<td>1000 of 6 liv. less 5 sols. 1000 guil. more 8\textfrac{1}{2} sols.</td>
<td></td>
</tr>
<tr>
<td>Paris</td>
<td>London</td>
<td>76 crowns of 6 livres worth 75 crowns of 5 shill. ster.</td>
</tr>
<tr>
<td></td>
<td>Crowns</td>
<td>1000 of 6 liv. more 3\textfrac{1}{2} stl. 100l. ster. less 5\textfrac{1}{2} sols</td>
</tr>
</tbody>
</table>

Of Gold.

<table>
<thead>
<tr>
<th>London</th>
<th>Amsterdam</th>
<th>93 guineas, worth 206 ducats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amsterdam</td>
<td>100l. ster. more 4 den. 1000 guil. less ( \frac{1}{4} ) st.</td>
<td></td>
</tr>
<tr>
<td>Paris</td>
<td>Amsterdam</td>
<td>14 luidors, worth 30 ducats</td>
</tr>
<tr>
<td></td>
<td>Crowns</td>
<td>1000 of 3 liv. more 3\textfrac{1}{2} stl. 1000 guil. less 5\textfrac{1}{4} sols.</td>
</tr>
<tr>
<td></td>
<td>100l. ster. less 21\textfrac{1}{2} sols. 1000 of 3 liv. more 1\textfrac{1}{4} st.</td>
<td></td>
</tr>
</tbody>
</table>

Though Mr. Ricard has not explained the foregoing tables, I have judged it necessary to do it, that they may thereby be rendered useful.

In the first line, the 20 English crowns are not worth quite 57 guilders, therefore at that rate 100 l. sterling must produce less than it would have done had the 100 shillings and 57 guilders been exactly equal, and for the same reason must make something more sterling money; and to calculate the deficiency of the guilders, first find what part of a guilder 4 of a stiver is, which is easily discovered to be 4 of \( \frac{1}{5} \), or \( \frac{1}{5} \), or \( \frac{1}{5} \), and then the stating will be,

\[ 4 L 2 \]
OF THE PAR OF MONIES.

As $100 = \frac{1}{3}$ $5l.$
Or as $20 = \frac{1}{10}$ $1l.$ to $\frac{1}{2}$.

Therefore the guilders are only $56 \frac{2}{3}$. And by the same reasoning, the true differences of the second line in the first, and of the third line in the second table may be discovered; but the others being of a different nature, the method for them may be demonstrated by the third line in the first table, where 76 French crowns of 6 livres are worth a little more than $375s$ sterling; therefore $100l.$ sterling, must accordingly make the French money less, and to find the real value of 456 livres in shillings sterling, say,

Fr. Cro. \hspace{1cm} d. \hspace{1cm} Fr. Cro.

As 1000 of 3 liv.—3½ or $\frac{1}{4}$ of a shill.—76 of 6 livres to the sum sought.

\begin{align*}
3 & \quad 6 \\
3)3000 & \quad 3)456 \\
8)1000 & \quad 8)152 \\
125 & \quad 19
\end{align*}

Then $\frac{13 \times 19}{125 \times 48} = \frac{247}{6000}$ which must be added to 375 shillings to make the true value of 456 livres.

A Comparison between fine Gold and Silver.

I shall not treat here of the comparison made between gold and silver by the ancient Greeks and Romans, but commence my account of it much nearer our own times. Agricola says that a hundred years before he wrote, or about 1440, one part of pure gold was given in Germany for thirteen similar parts of pure silver. In the year 1457, it was regarded as a settled price, that had, notwithstanding the several alterations in the coins, subsisted for some time; the giving 84 pennings of Landsberg money for a guilder of the Rhine, 100 of these pennings weighing a mark of Erfurt, the standard was $2\frac{1}{4}$ pennyweights; if the mark of Nuremberg weighed at that time 152 engels, the mark of Erfurt would be about 149 engels that weight, or the guilder of the Rhine 23½ of fine silver. In the year 1461, the mark of silver at Erfurt contained 7½ Rheinish guilders, or the value of the said guilder a little less than 21½ engels pure silver. In the year 1528, a mark of fine gold of Nuremberg was worth 95 guilders of the Rhine, and a mark of fine silver a little more than 84 guilders of the Rhine called golden ones not coined, so that 11 marks of pure silver were worth one mark of pure gold. In the golden guilder of the Rhine there were 2½ engels that weight of fine gold, or the guilder of the Rhine at that time was esteemed as 1½ ounce of pure silver; from that time to the present, the price of gold in regard to that of silver is augmented in these parts, about $\frac{1}{2}$: an author asserts, that in 1890, gold, in respect to silver, had four times less value than in 1687, but the error proceeded from this, that he made no difference between the present Holland guilder and the ancient one of the Rhine.

In 1717, the coined silver in England was on such a footing, that 15½ marks of pure silver was of the same value with a mark of pure gold; in France 15 marks of fine silver was reckoned as a mark of fine gold; in Holland 14½ marks: in the East Indies, in some places, 12 marks; as in the kingdom of Siam in 1688. "Description du dit Royaume, par M. de la Loubere," p. 221, Amst. 1770. And in China and Japan about

---

* Dan. Angelocra, doctri de mona
rum. p. 29. 1 Haxzanius Man
man. tome 3. Leipzig. A. 17,
col. 1 Ansal. Erfurt. s\textsuperscript{e}
Angelocra, ex Agricla
p. 1688.

\textsuperscript{a} Id. de pretio mettallo-
met, col. 1633. Vide Menkenius Scriptor. Rerum Ger-
\textsuperscript{b} Id. p. 98, ex Agri-
Estimatio priscorum numerorum.
Historisch Magazyn, p. 390, Amst.
OF THE PAR OF MONEY.

10 marks. Supposing the value of silver to be settled, that of gold it is seen was greater in England than elsewhere; strangers made their payments in that metal; but because silver was more valuable abroad, the English sent their's to foreigners; and for this reason the silver coin became so scarce at home, as to occasion the diminishing the value of the guinea, by lowering it to 21 shillings, as has been before observed; for by trade, gold and silver would naturally pass from those countries where their value was less, to those where it was higher.

In 1000 Dutch ducats there are 334 carats 9½ grains of pure gold, and if these are worth 3250 guilders, how much shall 24 carats be worth? and the answer will be 367 guilders and 7 stivers, the value of a mark of pure gold in coin. We have before found by the Dutch 3 guilder pieces that a mark of 11 pennyweights pure is worth 23 guilders and 7 stivers current money; and the mark of fine silver has been found worth a little less than 25 guilders and 9½ stivers. In the same manner it is said, if 21½ carats of pure gold are esteemed in France at 720 livres, how much shall 24 carats be worth? and, if 11 pennyweights of fine silver are worth 49½ livres, how much shall 12 pennyweights be worth? By division it will be found as follows; supposing that in the English silver coin there had been no alteration made since 1717.

\[
\begin{align*}
\text{England} & : 15 \text{ marks} : 1 \text{ ounce} : 13\frac{1}{4} \text{ engels,} \\
\text{France} & : 14 \text{ marks} : 5 \text{ ounces} : 13\frac{3}{4} \text{ engels,} \\
\text{Holland} & : 14 \text{ marks} : 6 \text{ ounces} : 4 \text{ engels,}
\end{align*}
\]

In fine silver for 1 mark of fine gold.

From whence it is seen that Mr. Dernis, page 2, and Mr. Wiertz are not exact, because they say, that the proportion between pure gold and silver in Holland is fixed at 14½; and it is also found in this last-mentioned author, page 491, that the mark of fine gold is fixed in Holland at 355 guilders current money, which is very true, but if the value of a ducat is taken to be 5 guilders 5 stivers, as it commonly passes, there is an agio of 6 per cent. in the specie of ducats; I know very well that these rise and fall a trifle; but the agio on gold must not be neglected, otherwise the ducat is never worth above 4 guilders 19 stivers.

This I think sufficient to give an idea of the par of monies, and I shall finish it with an instance of an arithmetical question abbreviated, concerning Spanish wool; as it is something curious, and may be instructive.

It is known to all concerned in that trade, that the wools of Germany and Poland are sold at Amsterdam with an allowance of fifteen months' discount, and one per cent. for prompt payment; for which the merchants deduct exactly a tenth; and for those of Spain 24½. are always allowed for tare on 175½. besides a deduction of twenty-one months' discount, and one per cent. for prompt payment; and in order to investigate a shorter method for calculating these abatements on the Spanish wools than has hitherto been practised, without neglecting the fraction which is often found in the tare, our author, Mr. Samuel Ricard, invented the following rule:

**Rule.**

1st. Multiply the pounds by the price, and from the product subtract a quarter part, and the remainder will be expressed by A.

2d. Take 1 per mil. from A. and the 10th must be deducted; the remainder will be B. The difference of A. B. will be the sum sought for, which will surpass the true answer upon 11000 guilders about half a stiver.

3d. To correct this, there must be taken away from the guilders of B. ½, and sub-
tract as many deniers as there are of guilders for the remainder, and it will come to about 1½ denier too little on 1,000,000 guilders' worth of wool.

**Example.**

It is demanded how much ought to be paid for some bales of wool, which weigh, after the tare marked on the bales is deducted, 9975lb. tare 24lb. on 175lb. and each lb. at 34 stivers, with twenty-one months' discount, and one per cent. for prompt payment? the answer is 11,772 guilders, 6 stivers, and 12 deniers.

**Solution.**

\[
\begin{array}{ccc}
9975 & \text{Guild.} & 11 : 15 : 10 \\
29925 & & \\
4987 & : 8 & \\
\hline
203142 & 8 & \\
\hline
\text{B. Guild.} & 10 : 12 : 1 \\
98927 & : 2 & \\
\hline
15710 & : 12 : 8 \\
43927 & : 13 : 2 & \\
\hline
A. Guild. & 11782 : 19 : 6 & \\
20 & & \\
15659 & \\
16 & & \\
\hline
1050 & & \\
\end{array}
\]

**Correction**

\[
\text{Guild.} = 11772 : 7 : 5
\]

**Answer.** Guild. 11772 : 6 : 12

---

**OF ARBITRATIONS OF EXCHANGE.**

*Arbitration,* a construction of the French word *Arbitrage,* in exchanges, has been variously defined by the several authors who have treated of it.

One says it is a combination or conjunction made of many exchanges, to find out what place is the most advantageous to remit or draw on.

Another describes it, by saying it is only the foresight of a considerable advantage which a merchant shall receive from a remittance or draught, made on one place preferably to another.

A third construes it to be a truck which two bankers mutually make of their bills upon different parts, at a conditional price and course of exchange.

According to a fourth, it is the negotiation of a sum in exchange, once or oftener repeated, on which a person does not determine till after having examined by several rules, which method will turn best to account.

And though these several distinctions are couched in different terms, they seem, if rightly considered, to have the same meaning, whereof some may be counted the text on which the others serve as comments or expositions.

Before any person applies himself to the study of this subject, it is necessary that he should be well skilled in all the practical operations, in regard to the reducing of the
sterling money of England into the foreign monies of exchange, and of account of all places of Europe, according to the direct courses of exchange established for these purposes, and vice versa.

Also, that he should be acquainted with the methods of converting sterling money into the monies of exchange, and of account, of all other places of commerce, where-with England has no direct established courses of exchange, but is under the necessity of making use of the intermediate exchange of other places: together with the nature of the agios, and the manner of converting their bank monies into current, and the reverse.

That he should be able to calculate the par of all foreign monies throughout Europe with those of every distinct country, either according to the direct, or intermediate exchange, which makes a much greater variety of cases, than those who are not thoroughly acquainted with this extensive subject can imagine.

It is necessary likewise, as a preliminary to the practice of arbitration of exchanges, to know the intrinsic value of foreign coins, according to the most accurate assays which have been made for that purpose.

Finally, it is requisite to understand the general natural causes of the rise and fall of the courses of exchange between nation and nation, or between one trading city and another in the same nation.

Arbitrations are divided by the writers on them into simple and compound, of which I shall succinctly give some examples, and endeavour, as plainly as I can, to illustrate such rules for their operation as may render it easy both to the apprehension and performance; my predecessors having consigned me this task by unanimously leaving the solution of their questions too much in the dark to be comprehended by most of their readers, as they have contented themselves with replying to the queries, without showing their method of performing, and have thereby rendered abortive their pretended design of conveying instruction; which could no otherwise be done than by a delivery of their ideas and conceptions in such a manner as might leave them open, and easy to be followed and practised.

A simple, or single, arbitration, is to be wrought by the direct, or inverted, rule of three; and to distinguish which of these rules is to be used in working any question relative thereto, it must be observed:

1. That an arbitration must be cyphered by the direct rule of three when the first term of stating is more than the third, and that the quotient is less than the middle term. And,

2. This rule must be used when the first term is less than the third, and the quotient is more than the middle one.

And the two following remarks will show when the indirect, or inverted, rule, is to be followed:

1st. The question must be worked by the inverted rule of three when the first term is less than the third, and the quotient less than the middle number.

2d. The operation must be by this rule, when the first term is more than the third, and the quotient more than the middle term.

And whether the arbitrations be simple or compound, a price of exchange must always be supposed, when a reimbursement is ordered on any other place than that from whence it is directed.

Whosoever number of figures enter into a compound arbitration question, the first and last must be of the same species, and the rules must be commenced by the species sought for.

These maxims being well understood, and applied to the examples, will facilitate the operation of the rules of arbitration to those who pay any attention to them.
OF ARBITRATIONS OF EXCHANGE.

And as the use of some characters instead of words will considerably abbreviate the work in the solution of the subsequent examples, I have employed them to this purpose, and shall here explain them once for all.

× signifies multiplied by, as 10 × 54, is 10 multiplied by 54.

A number above a line, with another under it, specifies that the uppermost must be divided by that beneath, or the numerator by the denominator, from whence \( \frac{24 \times 67 \times 19}{15 \times 28 \times 1} \) signifies, that 24 multiplied by 67, multiplied by 19, must be divided by 15 multiplied by 28, multiplied by 12; and \( \frac{54}{234 \times 4} \) denotes, that 54 is to be divided by 234, increased by \( \frac{1}{4} \).

This signifies, equal to, as 10 = 5 × 2 = 8 × \( \frac{1}{4} \).

This premised, I proceed to my proposed

First Example.

A. of Lyons orders B. of Cadiz to draw upon him at 76 sols per dollar, provided at the same time he can remit him on London, at 42d. sterling also per dollar, but as B. drew at 75\( \frac{1}{4} \), it is demanded at what exchange he may remit on London to complete this order; and this is answered by the direct rule of three as follows:

If 76 sols give 42d. sterling, what shall 75\( \frac{1}{4} \) sols give?

\[
\begin{array}{c}
\text{42} \\
\text{=} \\
\text{150} \\
\text{300} \\
\text{21} \\
\hline
\text{76)3171(41\.44d. ster. answer,} \\
\text{304} \\
\hline
\text{131} \\
\text{76} \\
\hline
\text{55}
\end{array}
\]

Second Example.

A. of Oporto had orders to draw on Rouen, at 490 rees per crown of 60 sols, provided he could at the same time remit on Leghorn at 770 rees per dollar; but as on receipt of the said order he could get no more for his bill than 488 rees, it is demanded at what price he ought to remit on Leghorn, to recompense the said diminution in his draughts; which is solved by the inverted rule of three, in the following manner:
OF EXCHANGE.

If 488 rees—770—490

770

34160
3416

490) 375760 (766 44 or 4, the answer:
348

327
394

336
294

42

Third Example.

To be answered by the Double Rule of Three.

A. of Amsterdam orders his friend at Madrid to remit him upon Lyons, at 64 solsTournois for a new dollar of 340 maravals, and to draw upon him at 100d. de gros per ducat of 375 maravals. It is demanded at what price the exchange turns out to him between Amsterdam and Lyons.

The common way of working it.

64 sols:——340 mar.
375 mar. :——100d.:——60 s.

320
448
192

204000 Dividend, therefore 44885 = 4 85 = groots.

Divisor.

And the most compendious method by abridging the numbers I shall thus shew.

If 64

374

are equal to

340 mar. 16 sols

100 groots 15 mar.

must be equal to

35 maravals

4 groots, then

Quere 60 sols as before. But to reduce the work lower still, it appears that you may divide a member on each side of the last equation by 4, and another on each side also by 5, therefore you will have 4 sols 17 mar.

3 mar. 1 groot, where

4 multiplied by 3 is in the same ratio, or proportion, to 17 × 1 or 17, as 64 × 375 is to 340 × 100. But as the answer was found by multiplying 60 into the last ratio (or 340 × 100)

or 64 × 375) so it may be likewise had by multiplying the 60 into the foregoing ratio

viz. (whence we have the work brought into this small compass 60 × 17

which may be

4 M
OF ARBITRATIONS OF EXCHANGE.

yet more contracted, as 60 and 12 are commensurable by 6, and will become \( \frac{10 \times 17}{2} = 85 \), the same as before. This well observed fully explains the method for contracting the most extensive compound arbitrations, as well as these simple ones. The manner of stating the compound ones I shall give in another place.

Fourth Example.

B. of Amsterdam, gives an order to E. at Cadiz, to remit on Hamburgh at 124 gros lubs for 1 ducat of 375 maravadis, and to draw for him at 126 groots de gros for the said ducat. It is demanded at what price the exchange will be between Amsterdam and Hamburgh? Answer, at 32\(\frac{1}{4}\) stivers per daalder of 32s. lubs.

For \(\frac{1}{4}\) gross lubs \(\Rightarrow\) 1 ducat.

\[ \begin{align*}
1 & \text{ ducat} = 126 & \text{ groots of Amsterdam} & = \frac{8}{8} \text{ lubs} \\
31 & 1008 & (32\frac{1}{4}) & \text{ answer.} \\
93 & 78 & 62 & 16
\end{align*} \]

The four preceding examples may suffice to shew the different methods of working by the direct, inverted, and double rule of three; but those that follow being more complex, and their operations more difficult to be reduced into as small a cyphering as what has been just now done, and the common practice shews, I have borrowed the assistance of the following tables from Mr. Samuel Richard, as he did the principles of them from another, of which he himself gives the subsequent account.

"It is some years since, that Monsieur John Henry Laskosky delivered a memorial into the late Duke of Orleans's hands, then Regent of France, succeeded by a second, presented by the Marquis de Grancy ; in both which he offered to communicate to the public a very short and useful method for calculating of arbitrations, which he termed the principal part of arithmetic; provided his Royal Highness would be pleased to appoint him Secretary to the Council of Trade. In the mean time, he kept the demonstration of his problem a secret, though with offers to disclose it, if the Regent would condescend to grant him a private audience. In the first memorial there was a fragment of three tables for the Exchanges between France, Spain, and Holland; and in the second there was also a part of three other tables, for the Exchanges of Genoa, Lyons, and Venice: but whether a want of friends or other reasons impeded his success, he never was able to obtain his request. The copy of these memorials is fallen into our hands, and we have discovered the true foundation, not very difficult to be found out: I observe in this method, 1st, That the author from the over care he took to hide the origin of his tables, fell into an inconvenience, that induced him to alter or change his own rule. 2dly, That it requires more tables, and these greatly extended, to suffice for use on the principal places of exchange. 3dly, If any one would calculate with
exactness, he cannot expect profit and loss in the same table, and to remedy these defects, we have composed the following tables, which may serve for all parts, that can be proposed, if the trouble is only taken to put them into the table number 4, which is no ways difficult to be effected; and not to make a secret of this projection, we have placed the numbers so clearly, that a mathematician will immediately perceive the source. Our manner then is such, that all persons may do it, without over much attention, provided they are masters only of the first four rules of arithmetic, and it will even suffice that they know addition and subtracion in entire numbers. If any one is desirous of extending or making the table number 1, greater, it is only necessary for him that makes the calculation to have a knowledge of the coins used in exchanges."

A Rule for what is received, and for what is given.

If the money of the place remitted to is fixed, and the Exchange varies in that from whence the remittance is made, then it must be written given; as for example, a merchant at Amsterdam remits on London, Paris, Cadiz, &c. in which three last places, the coin is fixed, with respect to the first; but if the specie of the place remitting is fixed, and that the exchange of those, where the remittance is made to, rises and falls as from Amsterdam on Dantzic, Koningsburgh, &c. it ought to be written received.
### TABLE I

|   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |  


### TABLE II.

**LONDON.**

<table>
<thead>
<tr>
<th>£ 4s. Od.</th>
<th>£ 3s. 11d.</th>
<th>£ 2s. 6d.</th>
<th>£ 1s. 10d.</th>
<th>£ 2d.</th>
<th>£ 3d.</th>
<th>£ 4d.</th>
<th>£ 5d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2477</td>
<td>2482</td>
<td>2491</td>
<td>2500</td>
<td>2506</td>
<td>2511</td>
<td>2516</td>
</tr>
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### TABLE III.

**HAMBURGH.**

<table>
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<tr>
<th>Shil.</th>
<th>1/4</th>
<th>1/2</th>
<th>3/4</th>
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<th>3/2</th>
<th>2</th>
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<th>10</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1429</td>
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<td>1465</td>
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<td>1491</td>
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<td>1516</td>
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<td>1891</td>
<td>1907</td>
<td>1914</td>
<td>1922</td>
<td>1929</td>
<td>1937</td>
</tr>
</tbody>
</table>

### TABLE IV.

**Amsterdam, Antwerp, Paris, &c.**

Amsterdam and Paris. | Number fixed 6489.

If you take for Paris, London, Cadiz, or Venice, this makes no alteration, and the fixed number shall be the same.

**Amsterdam, Venice, and Lyons.**

Amsterdam and Venice. | Amsterdam and Lyons.
Venice and Lyons. | Number fixed 6489.

**Amsterdam, Paris, and Hamburgh.**

First Case.

From Amsterdam on Hamburgh and Paris.
From Hamburgh on Paris and Amsterdam.
From Paris on Amsterdam and Hamburgh.

Amsterdam and Hamburgh. | Amsterdam and Paris.
Hamburgh and Paris. | Number fixed 1470.
OF ARBITRATIONS OF EXCHANGE.

This may serve likewise for Amsterdam, Hamburgh, and Venice; but you must take half of the deniers lubs, which are given at Hamburgh for a ducat, and instead of Paris, you must read from Venice.

Second Case.

From Amsterdam on Paris and Hamburgh.
From Hamburgh on Amsterdam and Paris.
From Paris on Hamburgh and Amsterdam.
Amsterdam and Paris.  |  Amsterdam and Hamburgh.
½ Paris and Hamburgh.  |  Number fixed 8250.


Amsterdam and London  |  Number fixed 291.
                     \{ Paris,  \\
                     { Venice,  \\
London and           |  and Amsterdam.
                     \{ Genoa,  \\
                     \{ Leghorn.  \\

Amsterdam, London, and Spain.

Amsterdam and London.  |  Amsterdam and Spain.
London and Spain.      |  Number fixed 1104.

Amsterdam, London, and Lisbon.

Amsterdam and London.  |  Amsterdam and Lisbon.
London and Lisbon.     |  Number fixed 4270.

Amsterdam, Genoa, and Venice.

Amsterdam and Genoa.   |  Venice and Amsterdam.
Genoa and Venice.      |  Number fixed 6454.

Amsterdam, Dantzic, and Hamburgh.

Amsterdam and ½ Dantzic. |  Dantzic and Hamburgh.
Amsterdam and Hamburgh. |  Number fixed 2510.

Amsterdam, Lisbon, and Lyons.

Amsterdam and Lisbon.  |  Lyons and Amsterdam.
½ Lisbon and Lyons.    |  Number fixed 6489.

But if the change from Lisbon on Lyons exceed 567 reis, take ½ instead of ¼, and the fixed number will be 3479.

Amsterdam, Paris, and Spain.

Amsterdam and Paris.   |  Spain and Amsterdam.
½ from Paris and Spain. |  Number fixed 2876.
OF ARBITRATIONS OF EXCHANGE.

That is, whatever French Livres are given or received for a pistole of Spain must be reduced into sols, and the quarter part taken.

There might be chosen many other places, but to be short, we have taken no more than two particular cases, which we have in the 7th and 8th propositions.


<table>
<thead>
<tr>
<th>Berlin and Amsterdam.</th>
<th>Turin and Genoa.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amsterdam and Genoa.</td>
<td>Geneva and Frankfort.</td>
</tr>
<tr>
<td>Frankfort and London.</td>
<td>London and 10 times Berlin.</td>
</tr>
<tr>
<td>Provision.</td>
<td>Fixed number 8193.</td>
</tr>
<tr>
<td>Profit.</td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>1/ of Leghorn and Novi.</th>
<th>Genoa and Venice.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milan and Amsterdam.</td>
<td>Venice and Florence.</td>
</tr>
<tr>
<td>Amsterdam and London.</td>
<td>Florence and Leghorn.</td>
</tr>
<tr>
<td>Provision.</td>
<td>1/ Milan and Novi.</td>
</tr>
<tr>
<td>Profit.</td>
<td>Number fixed 9549.</td>
</tr>
</tbody>
</table>

For the provision at $1/4$ per cent. the fixed number is $14\frac{1}{2}$; and at $1\frac{1}{4}$ per cent. $21\frac{1}{2}$.

The Profit Table V.

<table>
<thead>
<tr>
<th>per C.</th>
<th>$t^2$</th>
<th>$t^2$</th>
<th>$t^2$</th>
<th>$t^2$</th>
<th>$t^2$</th>
<th>$t^2$</th>
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The Loss Table VI.

<table>
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<th>$t^2$</th>
<th>$t^2$</th>
<th>$t^2$</th>
<th>$t^2$</th>
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<td>526</td>
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<td>536</td>
<td>541</td>
<td>546</td>
</tr>
</tbody>
</table>

An Explanation of the Tables.

No. II. is for London; No. III. is for Hamburg; if the exchange is found in the 8ths and 16ths: No. I. is for all other places; and for Hamburg when the exchange
OF ARBITRATIONS OF EXCHANGE.

is in shillings, ½ shillings, and ¼ shillings. No. IV. serves to shew the numbers that must be added together, viz. all those that are found on the same side.

The 5th and 6th are for profit and loss. If it is found that the sum of the addition of the side in which to find that given is less than the other sum of the side where what is received is, it must be sought for in the table of profit, No. V. and when there is a loss, in that of No. VI. And that the use which may be made of these tables may the easier be comprehended, I shall here add some examples.

**First Example.**

A. of Amsterdam remits on London to B. at 34s. 5½ groots, what B. remits for the account of A. to Cadiz at 49¼d. sterling per dollar. If the merchant at Cadiz remits the produce on Amsterdam at 121¼ grts. of Holland per ducat of 375 maravedis; it is demanded how much A. hath gained or lost exclusive of the charges?

**Solution of the Tables.**

<table>
<thead>
<tr>
<th></th>
<th>He gives</th>
<th>He receives</th>
</tr>
</thead>
<tbody>
<tr>
<td>34s. 5½ grts.</td>
<td>2654</td>
<td>121¼ 7335</td>
</tr>
<tr>
<td>49¼d.</td>
<td>3457</td>
<td>7215</td>
</tr>
<tr>
<td>Fixed number</td>
<td>1104</td>
<td>120</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7215</td>
</tr>
</tbody>
</table>

2¼ per cent gained.

**The Operation.**

<table>
<thead>
<tr>
<th>Maravedis</th>
<th>d.</th>
<th>240 will give 1312⅓,⅔ maravedis.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If 49⅔</td>
<td>272</td>
<td>240 will give 1312⅓,⅔ maravedis.</td>
</tr>
<tr>
<td>Mar.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If 375</td>
<td>121¼ grts.</td>
<td>1312⅓</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>199</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td>11821</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1912</td>
<td></td>
</tr>
<tr>
<td></td>
<td>261120</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>199</td>
</tr>
</tbody>
</table>

Now the 2d and 3d terms multiplied, and divided by the first in the order they now stand, will be expressed as follows:

\[
\frac{248 \times 261120}{2 \times 199 \times 375}, \text{ which gives 425 groots.}
\]

Now the difference between 34s. 5 grts. ½ and 425 grts. is 11¼ grts. therefore

\[
\frac{11\frac{1}{4} \text{ grts.}}{34s. 5\frac{1}{4} \text{ grts.}} \times 100 = \frac{28}{827} \times 100 = 2 \frac{8}{10} \text{ nearly.}
\]
OF ARBITRATIONS OF EXCHANGE.

By the Double Rule of Three.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>49½</td>
<td>375</td>
<td>240</td>
<td>121½</td>
<td>272</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>248</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>199</td>
<td>248</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

You may now express the last three terms divided by the first two thus.

\[
\frac{240 \times 248 \times 2}{199 \times 375 \times 2} = 425, \text{ as before.}
\]

Second Example.

A. of Amsterdam remits to B. of Dantzic, at 276 gross of Poland, for one livre of gross, which B. remits on Hamburg at 115½ gross for 48 shillings lubs; if Hamburg remits what it amounts to, to A. at 33¼ stivers per daalder of two marks lubs: it is demanded how much per cent. A. has gained or lost, omitting the charges.

Solution by the Tables.

A. gives 115½
No. fixed 2510

\[\text{A. receives} \quad \frac{1}{4} \times 7115 = 1887.5 \quad \frac{1}{4} \times 1387888 = 3469720\]

9625
9587

39 or \(\frac{1}{100}\) per cent.

By the Rule of Three.

\[
\begin{array}{ccc}
\text{Gross} & \text{Shillings Lubs} & \text{Gross}
\
\text{If 115½ Shil. Lubs} & 48 & 276 \text{ will give 114¼, then}
\
\text{If 32} & 33_{\frac{1}{2}} & \text{S. Lubs}
\
\text{S. Lubs} & \text{Sti. of Amsterd.} & \text{S. Lubs}
\
\end{array}
\]

This ordered according to the foregoing example will produce 118½ stivers, which taken from the 120 stivers first given, there remains 1½ stivers, therefore:

\[
\text{S.} \quad \text{S.} \quad \text{S.}
\]

as 120—\(1\frac{1}{2}\)—100 to \(\frac{1}{4}\), the loss per cent.

By the Double Rule of Three.

\[
\begin{array}{cccc}
\text{Gross} & \text{S. L.} & \text{Gross} & \text{S. L.}
\
115\frac{1}{2} & 32 & 276 & 33_{\frac{1}{2}}
\
\text{S. L.} & \text{Sti. of Amsterd.} & \text{S. L.}
\
\end{array}
\]

The fractional terms being reduced into improper fractions, as these in the first example, the operation then will be entirely similar to the last in the said example, and gives 118½ stivers, as before.
Third Example.

Two persons A. and B. at Paris, have occasion for money at Cadiz; A. remits directly, and gives 18 livres 3 sols per Spanish pistole; B. chooses the way of Holland, and orders to be remitted him from Amsterdam at 12½ groots for a ducat of 375 maravedis; Amsterdam reckons ½ per cent. charges, and draws for his reimbursement at the rate of 56¼ groots per French crown of 60 sols; it is demanded which of the two methods proved most advantageous.

Answer; his who remitted directly.

Operation by the Tables.

\[
\begin{align*}
A. \text{ gave } & 56\frac{1}{4} \quad 3990 \\
\text{½ of 36 sols is } & 90\frac{3}{4} \quad 6067 \\
\hline
\text{Total} & 10057 \\
B. \text{ gave } & 121\frac{1}{4} \text{ groots } 7326 \\
\frac{1}{2} \text{ per cent.} & 22 \\
\text{Fixed number} & 2876 \\
\hline
10824 \\
10057 \\
\hline
\text{Seek in number VI.} & 167 \\
\hline
& 3\frac{1}{4} \text{ per cent.}
\end{align*}
\]

Otherwise,

By reflecting on the nature of the question, it appears, that what Amsterdam reckons for charges may be considered to increase the number of sols so much more than B. would otherwise have paid for the 375 maravedis; therefore first say, if 100—¾—60, or if 10—¾—6, or if 5—¾—3 must give ¾, which B. must pay at Amsterdam for his charges for every 60 sols in the value of the 375 maravedis. But instead of finding the sols B. must pay, excluding the charges, and then computing the charges, and adding them to the sols last found for B.'s whole payment, you may by parity of reason say,

\[
\begin{align*}
\text{Groots} & \quad \text{Sols} \\
\text{As } 56\frac{1}{4} \quad & 60\frac{3}{4} \\
\text{to } 121\frac{1}{4} \quad & 129\frac{1}{4} \text{ sols paid by B. for a ducat.} \\
\text{Lastly, to compare whether A. or B. has succeeded best, say,} \\
\text{2. } s. & \quad \text{the maravedis in a pistole} \\
\text{Sols} & \quad \text{Mar.} \\
\text{If } 18-3 & \quad 1088 \\
\text{will give 389 maravedis, which B. would have got instead of 375, had he changed as A. did; therefore it is manifest, that in receiving only 375 he had less than A. for the same sum of Paris money by 14 maravedis; and to make a calculate per cent. it will be as } 375 \quad \text{to } 14 \quad \text{to } 100 \text{ to } 3\frac{1}{4}, \text{ the answer.}
\end{align*}
\]

Fourth Example.

A merchant of Hamburgh orders us to draw for his account on Dantzic, at 270 gross of Poland for 1 livre de gross, and to remit the amount on London at 35 schillings per pound sterling, or at other rates which may be more advantageous for him, provided he can draw on Dantzic at 261 gross of Poland; it is demanded at how much he ought to remit to follow the last order? Answer, at 36 schillings 2½ groots.
OF ARBITRATIONS OF EXCHANGE.

Solution by the Tables.

Take the half of the gross of Poland according to the order, and the exchange will be 135 and 130½

\[
\begin{align*}
\text{Order} & \quad 135 \\
& \quad 7793 \\
& \quad 35 \text{ schil.} \quad 2721 \\
\hline
& \quad 10514 \\
& \quad 130½ \\
& \quad 7645 \\
\end{align*}
\]

2869 this must be sought for in the table for London; and the schillings and groots of gross, which correspond with this number will be found to be 36 schillings 2½ groots.

By the Rule of Three.

In this question it is obvious that as the gross of Poland given for a livre de gross decrease, the schillings given for a pound sterling must proportionally increase, to follow the condition of the last order; hence the question is an inverted one in the Rule of Three, and thus stated:

\[
\begin{align*}
\text{Gross of Poland} & \quad \text{Schillings} & \quad \text{Gross of Poland} \\
\text{If} \quad 270 \quad \text{are} & \quad 35 & \quad 261, \text{ wherefore} \\
\frac{270 \times 35}{261} \text{ gives 36 schillings, and the remainder multiplied by 12 for groots, and the} \\
\text{next by 2, for half groots, at each time dividing by 261, brings out 2½ groots nearly.} \\
\end{align*}
\]

Fifth Example.

There is an order to A. of Amsterdam to draw on Paris at 53½ groots per crown, and remit on London at 34 schillings 1 groot per pound sterling, or at other prices which might be as profitable to him who gave the order. If they can draw at 56½ and remit at 34 schillings 7½ groots; it is demanded whether he can comply with this commission, and how much this differs per cent. Answer; our correspondent receives more than he first ordered about 3 per cent.

Solution by the Tables.

\[
\begin{align*}
34 \text{ schil. 1 groot} & \quad 2606 & \quad 34 \text{ S. Groots} \\
56½ \text{ pence} & \quad 3990 & \quad 53 \quad 7½ \\
\hline
& \quad 6196 & \quad 2606 \\
& \quad 6468 & \quad 2675 \\
& \quad 3990 & \quad 3793 \\
\end{align*}
\]

A. receives by the exchange 6196 and by the order 6468

128 seek in the table of profit, and you will find about 3 per cent.

By the Rule of Three.

\[
\begin{align*}
\text{Groots} & \quad \text{S. Groot} & \quad \text{Groots Sch.} & \quad \text{Groots} \\
\text{As 53½} & \quad 84 & \quad 56½ \text{ to 35} & \quad 8 \quad \text{the rate at} \\
\end{align*}
\]
OF ARBITRATIONS OF EXCHANGE.

which A. might remit per pound sterling to London, when he drew on Paris at $56\frac{1}{4}$ grots per French crown; but he only remitted at 34s. $7\frac{1}{2}$ gts. therefore in remitting this last sum he gained 1 schil. $\frac{1}{4}$ grt. the difference between 35 schil. 8 gts. and 34 schil. 7$\frac{1}{4}$ gts. and to find what that comes to per cent. say,

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</thead>
<tbody>
<tr>
<td>If 34</td>
<td>$7\frac{1}{2}$</td>
<td>12$\frac{1}{4}$</td>
<td>100</td>
</tr>
</tbody>
</table>

Sixth Example.

There is an order to draw on Frankfort 100 rix-dollars current money of Amsterdam for 128$\frac{1}{4}$ rix-dollars of Frankfort, and to remit on London at 35 schillings bank money per pound sterling, on condition that the agio shall be 3 per cent. If after this our correspondent writes to us, to omit executing his order, if not already done, unless he receive 2 per cent. more from London than he had ordered. If they can only draw on Frankfort at 135 rix-dollars that money for 100 rix-dollars of Amsterdam, it is demanded, at how many schillings the remits must be made to follow the last order? Answer, 34 schillings $4\frac{1}{4}$ groots.

Solution by the Tables.

<table>
<thead>
<tr>
<th>128$\frac{1}{4}$</th>
<th>7586</th>
<th>135</th>
<th>7793</th>
</tr>
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<tbody>
<tr>
<td>5 per c.</td>
<td>212</td>
<td>2 per c.</td>
<td>86</td>
</tr>
<tr>
<td>35 schil.</td>
<td>2721</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>10519</td>
<td>7879</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2640</td>
<td></td>
</tr>
</tbody>
</table>

This number seek in the table for London, and you will find 34 schillings $4\frac{1}{4}$ groots correspond thereto.

For a different solution, it is easy to conceive that when the agio is high the less Frankfort money is given for current money of Amsterdam, the exchange being by banco money, consequently the less banco money must be remitted to London per pound sterling; whence it is clear, that the way to get 2 per cent. from London by remitting at the same rate as before, you must consider the agio as so much less; therefore instead of 95, we have 97 rix-dollars banco money of Amsterdam for 128$\frac{1}{4}$ rix-dollars of Frankfort, at which rate I find the banco mony of Amsterdam equal to 135 rix-dollars of Frankfort; thus,

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<tbody>
<tr>
<td>If 128$\frac{1}{4}$</td>
<td>97</td>
<td>135 will give 101$\frac{1}{8}$</td>
</tr>
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</table>

But by the question there are only 100; therefore the remittance on London must be made accordingly less, by saying,

<table>
<thead>
<tr>
<th>Schil. Banco</th>
<th>Rix-d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>As 101$\frac{1}{8}$</td>
<td>35</td>
</tr>
<tr>
<td>103</td>
<td>100 to the sum sought.</td>
</tr>
</tbody>
</table>

| 306 | 1017 |

| 10476 | Now $\frac{35 \times 100 \times 100}{10476}$ will give 34 | $4\frac{1}{4}$ the answer. |
OF ARBITRATIONS OF EXCHANGE.

Seventh Example.

T. of Berlin remits for his proper account to U. of Amsterdam, a certain sum of bank money, at 138 rix-dollars for 100 rix-dollars bank money of Amsterdam, ordering him to remit the nett produce to A. of Genoa; U. effects it at 96 groots per dollar of 5 Genoese livres. A. on his part remits this to B. who lives at Turin, at 128 sols of Piedmont for one crown of Genoese money of 7½ livres, who takes bills on Geneva at 84 Piedmont sols for one crown current of Geneva, and remits them to C. who in his turn remits the amount on Frankfort to D. at 130 rix-dollars of Frankfort for 100 crowns current of Geneva, who finally takes bills at 132 batz money of Frankfort for one pound sterling, 1 rix-dollar at Frankfort makes 22½ batz, the which he remits to T. himself. If the five commissioners, namely, U. A. B. C. and D. deduct each ½ per cent. for their provision; it is demanded at what rate the exchange must be between Berlin and London so that T. gains 3 per cent.? Answer, 6½ rix-dollars per pound sterling.

Solution by the Tables.

| 138 | 7728 | r28 | 7561 |
| 96  | 6312 | 130 | 7628 |
| 84  | 5732 | Numb. fixed | 8193 |
| 132 | 7695 | 23382 |
| 3 per c. | 128 | 73 |
| 5 provisions at ½ per c. each | 27668 |
| | 23382 |

4286 this sought in table I. there will be found 60½, wherefore take ½ and it will be your answer, 6½ rix-dollars.

Otherwise.

The general method for such extensive questions is as follows: The investigation whereof I shall clearly shew before I conclude this subject.

22½ Batz Money of Frankfort = 1 Rix-dol. Money of Frankfort.
100 Rix-dol. Money of Frankfort = 99½ Rix-dol. Mon. the provision deducted.
100 Crowns current of Geneva = 99½ Crowns current at Geneva, the provision deducted.
100 Sols of Piedmont = 99½ Sols of Piedmont, the provision deducted.
4 ¼ Sols of Piedmont = 1 Crown of Genoa.
1 Crown at Genoa = 152 Sols of Genoa.
2½ Sols at Genoa = 1 Livre at Genoa.
100 Livres at Genoa = 99½ Livres at Genoa, the provision deducted.
5 Livres at Genoa = 3 ½ Groots Banco of Amsterdam.
100 Groots Banco of Amsterdam = 1 Crown of Amsterdam.
100 Crowns Banco of Amsterdam = 99½ Crowns Banco of Amsterdam, the provision deducted.
100 Crowns Banco of Amsterdam = 133 Rix-dol. of Brandenburgh at Berlin.
how much = 1 Pound Sterling at London.
OF ABBREVIATIONS OF EXCHANGE.


22½
13

66
226½

292½
2

585
5

2925
100

292500
100

292500000
100

292500000000
100

292500000000000
100

262500000000000000

133
99½

1197
1197
44½
44½

13255½
3

39767
99½

357903
357903
13255½
13255½

3963444½
152

7926888
19327220
3963444

50½

602443588½
99½

5421991842
5421991849

2008145124
2008145124

66½

60043589358½
21

60043589358
120087078706

16½

1260914826429½
994

1184828987861
Carried over.
OF ARBITRATIONS OF EXCHANGE.

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<td>132</td>
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<td>9)1056 (117</td>
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<td>66</td>
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<td>63</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
</tbody>
</table>

\[
\begin{array}{c}
\text{Brought over.} \\
11348228937861 \\
11348228937861 \\
420304775476\frac{1}{2} \\
420304775476\frac{1}{2} \\
33\frac{1}{2} \\
\hline
125671127867456\frac{1}{2} \\
132 | \\
\hline
251342255734912 \\
877013383602368 \\
125671127867456 \\
117\frac{1}{2} \\
\hline
16588588878504809\frac{1}{2} \\
99\frac{1}{2} \\
\hline
149297299906538781 \\
149297299906538781 \\
5529529626168103 \\
5529529626168103 \\
33\frac{1}{2} \\
\hline
2925000000000000000 (5\frac{1}{2} \text{ Rix-dol. of Brandenburg for 1 pound sterling at London}) \\
[14625] \\
190829358224262830\frac{1}{2} \\
100 | \\
\hline
19082935822426283022\frac{1}{2} \\
17550 | \\
\hline
15329 \\
14625 | \\
\hline
704 |
\end{array}
\]

But to know how many rix-dollars must be remitted per pound sterling to T. so that he may gain 3 per cent. say by the rule of three direct.

If 100 \[\text{---} 5\frac{1}{2}\% \text{---} 103 \]

\[
\begin{array}{c}
103 \\
65 \\
\hline
515 \\
618 | 100 \text{ Rix-dollars of Brandenburg per pound sterling.} |
\end{array}
\]

\[
\begin{array}{c}
100 \text{66|95} \\
81.95 |
\end{array}
\]
**OF ARBITRATIONS OF EXCHANGE.**

**Eighth Example.**

C. of Genoa remits for his own account to D. of Venice, a certain sum at 104 Marchetti for 4 livres of Genoa, ordering him to remit the nett produce to E. at Florence; D. effects it at 75 crowns d’or of Florence for 100 ducats of Venice. E. takes bills on Leghorn at 119 sols for 6 livres of Florence, which he remits to F. who takes others on Novi, at 175 dollars for 100 crowns de marc of Novi, who remits them to G. who in his turn remits them to H. of Milan at 180 Soldi Imp. for a crown de marc, who makes a remiss at Amsterdam to I. of 52 sols. of Milan, whereof 140 are worth 106 Soldi Imp. for a guilder of Amsterdam, who finally takes bills on London at 34 Sch. per pound sterling, which he remits to C. himself, for whose account all these negociations were made. If six of the correspondents deduct each ½ per cent. for charges, it is demanded at what price the exchange was between Genoa and London, if C. finds that the money he has been in disburse for 6 months has brought him in an interest after the rate of 8 per cent. per annum? Answer, 55½ d. sterling per dollar of 5 livres.

**Solution by the Tables.**

| 4 of 175 is 87½ | 5909  | 114 6659 |
| 52             | 3649  | 75 5940  |
| 34             | 1804  | 119 7244  |
| Fixed number   | 9549  | 119 7244  |
| 6 provisions at ½ per cent. each | 130½  | 25174     |
| 4 per cent. gain | 170   | 21211½    |
|                |       | 3962½ which answers to 55½ d.|

**Operation for the Exact Value.**

| 1 Dollar of Genoa | 5 Livres Genoese. |
| 4 Genoese Livres  | 2¼ Marchetti Banco of Venice. |
| 12¼ Marchetti Banco of Venice | 1 Ducat Banco of Venice. |
| 1½ Ducats Banco of Venice | 99¼ Ducats Banco of Venice, the provision deducted. |
| 1 Crown d’Or of Florence | 3½ Crowns d’Or of Florence. |
| 1½ Livres of Florence | 7½ Livres of Florence. |
| ¼ Livres of Florence | 99½ Livres of Florence, the provision deducted. |
| 2,1½ ordinary Sols of Leghorn | 119 ordinary Sols of Leghorn. |
| 100 Leghorn Dollars | 1 Leghorn Dollar. |
| 1½ Leghorn Dollars | 99¼ Leghorn Dollars, the provision deducted. |
| 100 Crowns de Marc of Novi | 1½ Crowns de Marc at Novi. |
| 1 Crown de Marc of Novi | 91½ Crowns de Marc, the provision deducted. |
| 106 Soldi Imp. of Milan | 2½ Soldi Imp. or Sols of Exchange of Milan. |
| 100 Sols current of Milan | ¼¼ Sols current of Milan. |
| ½ Sols current of Milan | 99½ Sols current of Milan. |
| ½ common Stivers Banco of Amsterdam. |
### Arbitrations of Exchange

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<thead>
<tr>
<th>Description</th>
<th>Rate</th>
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<td>1 Stiver de Gross Banco of Amsterdam</td>
<td>99 1/4</td>
</tr>
<tr>
<td>99 1/4 Stivers de Gross Banco of Amsterdam</td>
<td>6 1/4</td>
</tr>
<tr>
<td>6 1/4rd. Sterling of London</td>
<td>597 1/4</td>
</tr>
<tr>
<td>1 Genoa Dollar</td>
<td>5373 1/4</td>
</tr>
<tr>
<td>248</td>
<td>5940 1/4</td>
</tr>
<tr>
<td>106</td>
<td>99 1/4</td>
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<td>58514925187 1/4</td>
</tr>
<tr>
<td>3</td>
<td>6963276097290 1/4</td>
</tr>
</tbody>
</table>

**Vol. I. 40**
After having found the exchange, which is here between London and Genoa 58½d. sterling for a dollar, it must be seen how much per cent. ought to be gained by the exchange, which the example tells us is 8 per cent. per annum. We see, besides this, that C. has been in disburse 6 months; so it ought to be worked by the Direct Rule of Three, and say,

<table>
<thead>
<tr>
<th>Sterling for a Genoa dollar.</th>
</tr>
</thead>
<tbody>
<tr>
<td>893792,000,000,000</td>
</tr>
<tr>
<td>4464960</td>
</tr>
<tr>
<td>7273847</td>
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<tr>
<td>7150336</td>
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<tr>
<td>128511.87</td>
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<tr>
<td>893792</td>
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<tr>
<td>3413261</td>
</tr>
<tr>
<td>2661876</td>
</tr>
<tr>
<td>731885</td>
</tr>
</tbody>
</table>

If 12 months gain 8, how much shall 6 gain?

\[
\begin{align*}
2 \quad \frac{4}{4}
\end{align*}
\]

The answer will be 4, that is to say 4 per cent.

Afterwards there is to be observed what has been said before of the certain and uncertain price, and of the direct and indirect rule in our example. Genoa gives the price certain, then it must give to London 4 per cent. less than it has received, and consequently it must be wrought by the Indirect Rule of Three, and say,
OF ARBITRATIONS OF EXCHANGE.

If \(100 \times \frac{58}{100} d.\) how much shall \(10\) give?

\[\begin{array}{c}
\hline
104 \times 58 \times 100 d. \text{ sterling for a Genoa dollar.}
\hline
520
613
520
93
100
9300
832
980
936
\hline
44
\end{array}\]

Having solved the two preceding problems in the most concise method that I believe is possible, except by tables; I shall now demonstrate in their explanation how to perform, in the same manner, all questions relative to arbitrations. And first, I shall deduce the rule for stating them from the second example of the Double Rule of Three preceding the tables, where the first term is fixed; the second shewing what different money was given for it; the third, how much of the same specie as the second is given for the fourth; then what quantity of the specie of the fourth, for a fifth term given, which is of the same name as the first term. Now as all such questions, exceeding five given numbers, may according to that excess be called questions of the treble, quadruple, quintuple, &c. rule of three, for whose stating I derive the rule from the foregoing remark, which will be exactly similar or agreeable to it; only I shall, for brevity's sake, call the first term, the first antecedent; the second term, the first consequent; the third term, the second antecedent; the fourth term, the second consequent, &c. and now express the rule.

The first antecedent must be a fixed exchange, and of the same denomination with the last consequent; the second antecedent must be of the same name as the first consequent; the third antecedent of the same specie as the second consequent, and so on, always making the antecedents of the same name or specie as their preceding consequent, which you cannot but do if you follow the conditions of a given question, and if you have so done you will find your last term of the same specie with the first, and then the demand or answer will be of the same name as the last consequent but one: if you find your work stand otherwise, most likely you have mistaken the first term. The question being thus prepared, it is plain that the sum of the antecedents must be regarded as equal to the sum of their consequents, as each antecedent is supposed equal to its respective consequent; therefore their products must be accordingly so; for instance, if

\[5 \times \text{by both 6 and 4, } \times \text{by both 7 and 5} = 600 = 10 \times \text{by both 2 and 3, by both 8 and 4};\]

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but as one of the antecedents in every question is unknown, whilst all the consequents are otherwise, we have an unknown, though supposed, quantity multiplied by the known antecedents, = to the product of the consequents, therefore the unknown quantity, or answer, is found by dividing the product of the consequents, multiplied by one another, by that of the antecedents, multiplied in the same manner. For example; suppose the case were, what unknown quantity \( \times \) by 59, would be equal to 472, then I say 472 divided by 59 gives the sought quantity, viz. 8. Now in order to contract the work, it is plain that it is the same thing whether you divide a product, which had divers multiplicators, or you divide one of the multiplicators, which will admit it, by that number, and then multiply by the rest (instance \( \frac{2 \times 6 \times 12}{6} = 12 = \frac{12}{6} \times 2 \times 3 \))

It is likewise evident, that if any two numbers be divided by the same number, their quotients will be in the same proportion as the numbers were. Instance 12 divided by 4 is 3, and 20 divided by 4 is 5; wherefore as 3 is to 5, so is 12 to 20; which was to be shewn. Hence it follows, that, if when a question is stated you can divide any antecedent and consequent, though they are not opposites, by the same number, the equality is still kept up; and thus you may continue to do, till you can find no antecedent and consequent commensurable by the same number, then ordering this last equation as above directed, you will have the solution; and note, that the last consequent, to which the answer is sought, is subject to the division as the rest; for the product of the last, multiplied by the other consequents, is still the same, whether the last or any other is divided by the same number; this may be seen by the last instance but one, if you call 12 the last consequent; and from what has been said, I infer, that every antecedent after the first must be of the same denomination, as well as the same specie, as its preceding consequent; and that if any antecedent or consequent consists of different denominations, you must, to retain the equality, either reduce both them and their respective consequents and antecedents into the same denomination, or otherwise make the lower denomination an aliquot part or parts of the higher, as 31s. 3s. sterling would be \( \frac{3}{4} \) and then the others remain unaltered; and note, that in the second given examples, where the antecedents and consequents are scratched, they have been divided, and the quotients stand towards the left, separated by a point, thus, \( 4. \frac{3}{4} \); and what has been here said in regard to the questions of money, holds good also for those concerning weights and measures, which may be wrought exactly by the foregoing rules.

**Example.**

If 100lb. at London be equal to 106lb. at Lyons, and 90lb. at Lyons are worth 92lb. at Paris, and 113lb. at Paris, made 90lb. at Frankfort, and 12lb. at Frankfort are given for 18lb. at Venice, and 125lb. at Venice are the value of 97lb. at Cadiz; then how many pound at Cadiz are equal to 60lb. at London? Answer, 51\( \frac{1}{7} \).

Being stated and contracted according to the preceding rules, the work will stand thus:

\[
\begin{align*}
18 \times 50 & \text{ lb. at London} = 106 \text{ lb. at Lyons}. \\
5 \times 30 & \text{ lb. at Lyons} = 4 \times 37 \text{ lb. at Paris}. \\
113 \times 1 & \text{ lb. at Paris} = 3 \times 96 \text{ lb. at Frankfort}. \\
1 \times 4 \times 7 & \text{ lb. at Frankfort} = 3 \times 9 \times 8 \text{ lb. at Venice}. \\
19 \times 9 \times 7 & \text{ lb. at Venice} = 97 \text{ at Cadiz, then how many lb. at Cadiz} = 66 \text{ at London}. 
\end{align*}
\]
OF ARBITRATIONS OF EXCHANGE.

<table>
<thead>
<tr>
<th>113</th>
<th>106</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>565</td>
<td>318</td>
</tr>
<tr>
<td>19</td>
<td>3</td>
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<tr>
<td>565</td>
<td>954</td>
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<tr>
<td>5085</td>
<td>97</td>
</tr>
<tr>
<td>10735</td>
<td>6678</td>
</tr>
<tr>
<td>Divisor</td>
<td>8586</td>
</tr>
</tbody>
</table>

92538

555228
Dividend.

10735)555228(51.7 Answer.
53675
18478
10735
77430
75145
2285

If 100 ells at Amsterdam are equal to 120 ells at Hamburgh, and 30 ells at Hamburgh make $21\frac{1}{2}$ ells at St. Gall, and 86 ells at St. Gall are equal to 60 ells at Geneva, and 15 ells at Geneva are worth $28$ ells at Dantzig; Quere, how many ells at Dantzig are equal to $45$ ells at Amsterdam? Answer, $50\frac{1}{4}$.

5. $\frac{5}{8}$ ells at Amsterdam = 2. $\frac{1}{2}$ ells at Hamburgh.
36 ells at Hamburgh = $21\frac{1}{2}$ ells at St. Gall.
48. $\frac{1}{8}$ ells at St. Gall = 3. $\frac{3}{8}$ ells at Geneva.
$\frac{1}{8}$ ells at Geneva = 28 ells at Dantzig.
How many ells at Dantzig = 3. $\frac{1}{8}$ ells at Amsterdam.
OF BANKRUPTS.

With the preceding, I finish the examples of arbitrations, having therein given an instance of every case that can happen in this curious branch of arithmetic, so that any addition would be superfluous, and unnecessarily encroach on my reader's time, without adding any thing to his instruction; which I believe he will find more truly promoted in this short tract, than he would by consulting the many volumes published on the subject; as he has here the reasons for all the operations proposed, added to the solutions, which other authors have contented themselves with giving alone.

I have only one remark to add to this chapter, which is, that those who are well skilled in this business generally agree to support their correspondent's commission free on all sides; wherefore, when it is considered what opportunities the merchant, or remitter of general credit and correspondence has, the benefits, by a judicious combination, or comparison of the exchange throughout Europe, are far more considerable than most people imagine. Those, who are shrewd exchangers themselves generally make choice for these negociations of correspondents not less so; and then they are certain of the profits they have in view, for they know that their orders will lie by unexecuted till the advantageous crisis arrives.

CONCERNING BANKRUPTCY.

Felix quem faciunt aliena pericula cautum.

The preceding chapters contain the whole theory and practice of commerce; and I hope I have been so plain and explicit in them as to render myself intelligible, and to answer my design of conveying instruction to those who have given themselves the trouble of seeking it in this work.

I have now gone through every branch of commerce, and purposely reserved this catastrophe of an imprudent or mistaken conduct to the last, as the properest place for it.
OF BANKRUPTS.

And I could wish that the misfortunes, consequent to an ill judged and indiscreet course or management, did not render this additional chapter necessary for the guidance of those who have unhappily incurred the want of it, through the gloomy vale of trouble: for could trade be always carried on with that credit which is necessary to support it, and with that success which every one hopes for, by adventuring in it, it would be the most pleasant as well as the most beneficial employ that any could undertake; but as we are all subject to the uncertain fluctuating state of humanity, our serenity will sometimes be interrupted, and our calms and sunshine be obscured and ruffled by the clouds and tempests of adversity, as well in this as in all other walks of life, and the smooth paths of business will often become rugged and strewn with thorny troubles, to the utter change of the pleasing scene, by introducing inevitable losses and misfortunes, instead of the advantages we flattered ourselves with the hopes of reaping from our commercial engagements. Thus the best laid scheme may be overset by some intervening occurrence, for a trifling accident frequently demonstrates the weakness of our judgment, and the shallowness of our designs; though whilst we submit our actions to the directions of prudence, and suffer our steps to be guided by her, we may justly be said to act like reasonable men; and however providence, for our punishment, may dispose otherwise, we certainly take the best and likeliest method of securing to ourselves that success and prosperity which we are soliciting: and in order to guard against their reverse, permit me to intrude so long on your patience as to expatiate a little on the subject of bankruptcy, and to shew the causes which naturally drive men to split on that rock, where so many thousands have been wrecked, reminding you of my motto, where you will see the great poet from whom I have taken it, pronounce that man happy who has been made wise by the misfortunes of others.

Mr. Savary says, in his Parfait Negociant, that the failures of merchants oftener proceed from ignorance, imprudence, and ambition, than from malice and design; and I am entirely of his opinion, more especially in this kingdom: for, whoever reflects on the consequences of fraud and deceit under a statute of bankruptcy here, I should think would avoid it with the utmost care; as he not only exposes himself to the penal laws, but can never expect to be cleared by his creditors, though he should not be convicted under the former, and consequently is rendered incapable of making anything his own for the future. But as I hope none of my readers are of this number, I shall direct my advice to those on whom I am in hopes it may prevail, and endeavour to guide them from running on the afore-mentioned shoals, by persuading them to aim at the dissipation of the fogs of ignorance by the sunshine of learning; to correct imprudence, and to banish vain glory or ambition. The first may be done by a strict application to business, whilst under the tuition of a merchant in an apprenticeship; or if this has been neglected, and my reader comes into trade without such usual form and instruction, I hope this work will supply the deficiency, not only by teaching every one how to act in the branch of commerce he has elected, but by displaying to him a general trade, that he may have all the variety possible to choose out of: sound judgment and common sense duly applied, will be too hard for imprudence; and ambition, I should think, would be checked by displaying the fatal consequences of it; and thus a failure proceeding from all or any of the above-mentioned causes may be prevented; though still there remains one, from which no foresight or care can defend us, I mean the immediate dispositions of Providence; whereas the above are but secondary, to which we ought cheerfully to submit with a perfect resignation, and never murmur nor repine at any of his dispensations, in a full assurance that he will afford support and comfort under the affliction, to every one who sincerely trusts in him, and when he sees convenient, will give a happy release from it. It is true these are hard lessons to mankind, and rendered more irksome by the barbarous treatment the unhappy too commonly
meet with; for though it is natural to imagine, that a man who has been truly honest in all his dealings, and esteemed for his integrity, should on a reverse of fortune meet with that pity and kind usage he has shewn to others under similar distresses; yet experience convinces us that this is rarely the case; on the contrary, it is generally found that though friends may seem many and staunch in the time of prosperity, yet on a change of circumstances they will drop off like blasted fruit, quite forgetful of favours shewn to and kindnesses done them, and at the time you become bankrupt in your fortune, you will certainly find them so in affection and returns of gratitude: favours seem no longer regarded than while you are in a capacity to continue them, and obligations are thrust among the number of the non-entities, or at least are become such unfashionable things, as only to be owned by the conscientious and benevolent.

 Acts of beneficence are not to be expected from creditors, whose losses generally sour their tempers, and keep their resentments warm against the unhappy occasion of them, even to the extinction sometimes of humanity. But one should think that the lamentations of a fallen familiar and intimate, frequently heightened by the tears of a tender wife, and affecting cries of their innocent children, would be prevailing objects to excite compassion from those who have always experienced a courteous and gentle treatment from the unhappy sufferers; but philanthropy is almost lost among us, and mankind are grown so degenerate, as to become insensible to the distresses of others; the unfortunate man is now equally shunned with the infected one, and the best usage he finds is coldness and reserve from almost every individual of his acquaintance, whilst the worst is swelled to an immoderate height by the insults offered him; contumelies and reproaches are thrown out against him; and abuses, invectives, and unmerited aspersions are frequently added to complete the catalogue, and augment his miseries; few regard him, fewer still caress him, and the paucity of those who protect or assist him, is reduced to the lowest degree of comparison. This is generally the case with those whom Fortune has prostrated and laid low; though there is still a small remnant of men among us, who are actuated by every tender sentiment of humanity, and, as opportunities offer, exercise every social virtue; whose compassion at least is extended to all afflicted objects, and their charity stretched to the utmost limits that prudence and discretion can warrant; they remain uninfluenced by the example of their neighbours, and continue fixed and immovable in the principles of goodness and benevolence; but these guardian angels are scarce, and even when found can, at best, only alleviate, and in some degree mitigate and take off the sharp edge of affliction, but they cannot restore lost credit and reputation; this is only to be done by the man himself; and the sole means is the making all the satisfaction to his creditors that his abilities will permit, either at present or in future, till his whole debts are discharged; for so long as any part of these remain unpaid, that obligation subsists. This lesson, honesty and a just reflection on things will teach men; and as the miseries consequent to, and attendant on, a failure, are extensive, it is natural to suppose the bare description will render every other persuasive superfluous, for avoiding the causes of such great unhappiness; therefore, I shall conclude this introduction with my best and sincerest wishes, that none of my readers may ever experience it, by adding one to the number of the unfortunate.

 The derivation of the word Bankrupt I have given under that of Banks and Bankers; and though, according to our laws such insolvents are generally esteemed a crafty, fraudulent, deceitful, and extravagant sort of persons, yet experience evinces the unjustness of this assertion, and that many unhappily fall into this dilemma through the badness of trade, or some inevitable accident, without bringing it on themselves either by extravagance or knavery. The laws of bankruptcy in England are therefore justly considered as laws calculated for the benefit of trade, and founded on the principles of humanity as well as justice; and to that end, they confer some privileges not only on
OF BANKRUPTCY.

the creditors, but also on the bankrupt himself. On the creditors, by compelling the bankrupt to give up all his effects to their use, without any fraudulent concealment: on the bankrupt, by exempting him from the rigour of common law, whereby his person might be confined at the will of his creditor, though in reality he had no effects to satisfy the debt: whereas the law of bankrupts, taking into consideration the sudden and unavoidable losses to which men in trade are liable, has given them the liberty of their persons, and some pecuniary allowances, upon condition they surrender up their whole estate to be divided among their creditors. But still it is cautious of encouraging prodigality and extravagance by this indulgence to debtors, and therefore it allows the benefit of the laws of bankruptcy to none but actual traders; since that set of men are, generally speaking, the only persons liable to accidental losses, and to an inability of paying their debts, without any fault of their own. I shall give a transcript of the acts now in force, and of the best reports and pleadings I can collect on the subject; and shall in the first place shew,

What Persons may, or may not, be Bankrupts.

Any person using the trade of Merchandize by way of
  Bargaining, in gross or retail,
  Exchange,
  Rechange,
  Bartery,
  Chevisance,
  or otherwise,
Or, seeking his trade or living by buying and selling, being a natural-born subject;
Or, an alien, or being a denizen, may become bankrupts.
Bankers, brokers, and factors, may be bankrupts.
An inn-keeper as such can be no bankrupt.
Nor one victualling the fleet, though he sells the overplus to merchants.

A mere buying and selling brings not a man within the statute (for buying and selling of land will not make a man liable to be a bankrupt) but it is intended of such who gain the greatest part of their living both by buying and selling of personal effects.

Having a share in a ship, being a farmer, or keeping a boarding-school, makes not a bankrupt; buying only, or selling only, makes not a bankrupt, but buying in England, and selling in Ireland does.

John Ashley went from England in 1720, and resided in Barbadoes till 1735, where he was a factor and a planter, and traded to England, by sending goods from his plantation, and receiving goods back again bought in England, and he disposed of goods sent from England in Barbadoes, for merchants in England as a factor, and being greatly indebted came to England in 1737, and committing an act of bankruptcy, a commission issued, and upon a question, whether he was within the statutes of bankrupts; upon the authority of Bird and Sedgwick (where a Gentleman of the Temple going to Lisbon, turning factor, trading to England, and breaking) was adjudged a bankrupt.

Where a man buys and sells under a particular restraint, as a commissioner of the navy, or a farmer, he is not a seller within the statute.

Sir Anthony Bateman had been a great merchant, and was Mayor of London, but had left off trade fifteen years; the court held he could not be a bankrupt upon a debt

contracted after; but the jury found him so upon such debt, and a new trial was refused.

If a trader contracts debts and leaves off his trade, he is still liable to be a bankrupt for those debts, but not for those he shall contract afterwards.

If a man whilst a trader owes a debt of 100l. to A. and leaving off his trade borrow another 100l. of the same person, and then pays him one of the 100l. without mentioning, whether in satisfaction of the former or the latter debt, yet it shall be applied to the former, and the creditor shall never charge him with a commission of bankruptcy for that which remains. Resolved per Holt.

A farmer, as such, cannot be a bankrupt; but if he deals in buying and selling potatoes, wool, &c. as a trader in those commodities, he may be a bankrupt.

No person who shall adventure any money in the East India Company, or Guinea Company, or any joint stocks of money by them raised for carrying on the trade by the East India Company or Guinea Company to be managed; or who shall adventure any money in any stocks for managing the fishing trade, called the Royal Fishing Trade; nor any member of the Bank of England, on account of his stock; no persons having shares in the London or Royal Exchange Insurance Companies, shall be bankrupts in respect thereof.

No farmer, grazier, or drover of cattle, or any receiver-general of taxes granted by act of Parliament, shall be deemed a bankrupt.

Those persons who live on their manual labour only, as husbandmen, labourers, bare handicrafts-men, &c. are not within the statutes; but such as buy wares and convert them into saleable commodities, and so get their living by buying and selling, may be bankrupts; as a shoemaker, who buys leather and sells it in shoes; an ironmonger, buying iron and causing it to be wrought into wares; a nailer, locksmith, &c.

In ex parte Harrison, 1 Bro. Ch. Ca. Lord Thurlow held, that a person who sold large quantities of bricks made of earth, taken from the waste without license from the Lord, was a trader.

A carpenter in London has been adjudged a bankrupt, but not as a working carpenter.

A clothier that buys wool, and has it made up into cloth, or works it into cloth himself, may become a bankrupt; but a taylor who makes garments only, as a servant to his customers, cannot be a bankrupt, though a salesman may.

It is held, that a vintner, brewer, baker, weaver, dyer, tanner, &c. may be bankrupts. Members of Parliament, being merchants within the description of the statutes relating to bankrupts, are made subject to the bankrupt laws; but are not liable to arrest, except in cases made felony by those laws.

So where a commission had been taken out against a clergyman who was proved to have been a trader, and had committed an act of bankruptcy: Lord Hardwicke refused to set it aside, although it was urged, that clergymen were prohibited from trading, by stat. 21 Hen. 8. c. 13. s. 5. and that all contracts made by them in trade, were by that statute declared to be void. Ex parte Meymot. 1 Atk. 196.

An action of the case will lie, for saying, of a merchant mercer, grocer, shoemaker, dyer, weaver, corn-master, or baker in London, a milliner, or any other tradesman that gets his living by buying and selling, that he is a bankrupt.

What makes a Man a Bankrupt.

1st. To depart the realm, or
2d. To begin to keep house, or otherwise,
3d. To absent himself.

13 Eliz. c. 11.
1 Jac. c. 15.
OF BANKRUPTCY.

4th. To take sanctuary.
5th. To suffer himself wilfully to be arrested, for any debt or thing not grown due, or for a just consideration.
6th. To suffer himself to be outlawed.
7th. To yield himself to prison; and
8th. To depart from his dwelling-house to the intent or purposes to defraud or hinder a just creditor or creditors of his or their just debts or duty.
9th. Willingly or fraudulently to procure himself to be arrested, or his goods, money, or chattels, to be attached or sequestered.
10th. To make any fraudulent grant or conveyance of his lands, tenements, goods, or chattels, to the intent, or whereby his creditors may be defeated or delayed in the recovery of their just debts.
11th. Being arrested for debt, shall after his arrest lie in prison two months upon that 21 Jac. 1. c. 15. or any other arrest or detention for debt. These to be lunar months.
12th. Procuring any protection; as that of foreign ambassadors, the Verge of the s. 2. Court, or any other than that of Privilege of Parliament.
13th. Being arrested for 100l. or more, of just debt or debts, and escaping out of prison.
14th. If a man conceals himself in his house but a day or an hour, to delay or defraud his creditors, it makes him a bankrupt.
15th. If a merchant-trader indebted keeps in another man’s house, or on ship-board; it is adjudged a keeping in his house; but the withdrawing must be on purpose to defraud creditors; and if a man goes sometimes at large so as he may be met with one time or other, it will excuse him.
16th. Neglecting to make satisfaction for any just debt to the amount of one hundred pounds, within two months after service of legal process for such debt, upon any trader having Privilege of Parliament.
17th. Paying or giving security to a petitioning creditor, whereby he shall privately have more in the pound than the other creditors, constitutes a fresh act of bankruptcy; supercedes the commission obtained by such favoured creditor; and another creditor by petition, shall have a new commission granted; and the first petitioning creditor shall be obliged to refund the sum or sums he had partially received from the bankrupt, and shall be excluded from all benefits whatever under the second commission; his whole debt being forfeited.
18th. Any member of Parliament being a merchant and owing more than 100l. to any one creditor, and not paying, receiving, or compounding with such creditor, or not giving bond with two sufficient sureties to be approved by a judge of the court in which the action is brought, within two months after he has been served with a summons for that purpose, shall be accounted a bankrupt.

If a man commits a plain act of bankruptcy, as keeping house, &c. though he after goes abroad, and is a great dealer, yet that will not purge the first act of bankruptcy: but if the act was not plain, but doubtful, then going abroad, and trading, will be an evidence to explain the intent of the first act; for if it was not done to defraud creditors, and keep out of the way, it will not be within the statute.

If after a plain act of bankruptcy committed, he pays off, or compounds with all his creditors, he is become a new man.

Lying in prison makes a man a bankrupt from the first arrest, that is from the time of his first arrest, upon which he lies in prison, and not where he puts in sufficient bail, for that might be infinitely prejudicial and mischievous, and no man would ever safely pay or receive from a tradesman.

The last resolution is contradicted by that in Smith and Stracey, where it is held by

4 P 2
OF BANKRUPTCY.

Holt, that if a defendant renders in discharge of his bail, and lies two months, he is a bankrupt from the first arrest, and not from the render only, but the commission being taken out before the two months were expired, it was held ill taken out.

The lying in prison two lunar months makes a man a bankrupt from the first arrest, and although the commission was taken out before the two months were expired, yet he appearing afterwards to be a bankrupt by a relation to a time before the taking out the commission, it was held sufficient.

Acts of bankrupts must be in fraudem creditorum, as if a man be outlawed it must be in fraudem creditorum.

A fraudulent deed, made long before any other act of bankruptcy committed, shall not be deemed an act of bankruptcy.

If after a commission is issued, the bankrupt should pay, or satisfy, or secure, the petitioning creditor his debt, such payment, satisfaction, or security shall be an act of bankruptcy, and the first commission shall be superseded, and a new one granted.

To prefer a bill or petition to the King, or any of his Courts, to compel the creditors to compound, or give further time, is an act of bankruptcy.

In respect to the attachments and sequestrations, they must be of the party's immediate procuring, and not by his mere default or laches to make him a bankrupt within the state. 1 Jac. I. C. 15. And what sales and conveyances made by persons, shall be deemed fraudulent within the statute to make them bankrupts may be considered two ways;

1. Either such as are made long before a person becomes a bankrupt, &c. or,

2. Such as are made some short time before; for what is done after the time of bankruptcy is totally void.

If a trader, finding himself in a sinking condition with respect to his fortune, makes a conveyance of all his land and goods to trustees, for the payment of his real debts, and then absconds; this conveyance, though it may be truly and honestly intended, shall not excuse him, for his very absenting makes him a bankrupt; but if he does not abscond, and declares his intention to pay his debts, and the trustees act accordingly, paying proportionally as far as it will go; such a conveyance, without other act, shall not make him a bankrupt, as here is no fraud.

Before the making the statute 5 Geo. II. C. 30. one Norcourt, who had long followed the business of a goldsmith, on Michaelmas day 1726, after shutting up his shop, and contemplating his inability to pay what he owed, made an assignment to one Small, of two leases, and also of two-thirds of his stock in the wine trade, which he was concerned in with one Oudley, being about the value of 500l. and this he did to give a preference to his creditor Small (though without his knowledge) and to secure his debt, who in friendship had then lately advanced him a considerable sum of money. Norcourt never opened his shop again, but went off the very next day, and was afterwards found a bankrupt, and to have become such the day after Michaelmas day; and on taking out the commission, all his estate was assigned by the commissioners to one Man, an assignee.

On this, Small, who was the assignee of these leases, and likewise of the two-thirds in the wine trade, brought his bill against Man, the assignee in the commission, and against Oudley, the partner in the wine trade, to oblige them to account; it was here objected for the defendants, that this assignment made by the trader when it was resolved by him that he would be a bankrupt the next day, and to prefer this creditor to all others, by which the equal distribution of his effects intended by the statute is prevented, must be a void assignment; besides it being made without the privity of Small, &c. is therefore fraudulent; after all which, Small comes to have this established, and through partiality to be assisted in a court of equity, which, if allowed, will effectually set aside such parts.
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of several statutes as give an equal distribution of the bankrupt’s estate to all his creditors.

Master of the Rolls. This is a case of consequence, as it affects trade in general, and as it tends to frustrate the statutes made for the equal distribution of bankrupts’ effects; but I still think the assignment made by Norcourt to Small the plaintiff is good, and that he is entitled to an account of this wine trade against the defendant Oudley.

As to the matter of bankruptcy, that is a term not known to our common law, but introduced by statutes; the 3d of Hen. VIII. c. 4. which is the first, is very imperfect, the next of the 13th of Eliz. c. 11. is more large, and that statute has been since enlarged by several subsequent ones: Now these statutes do ascertain what acts make a bankruptcy, and there can be no such thing as an equitable bankruptcy, it must be a legal one.

There may be just reason for a sinking trader to give preference to one creditor before another; to one that has been a faithful friend, and for a just debt, for money lent to him in extremity, when the rest of his debts might be due from him as a dealer in trade, wherein his creditors may have been gainer; whereas the other may not only be a just debt, but all that such a creditor has in the world to subsist upon; in this case, and so circumstanced, the trader honestly may, may, ought to give the preference; and in such case, it is not the time when the assignment was made by the trader that is material, provided it be before the bankruptcy, but the justness of the debt is very material.

The objection, that Small the assignee did not know of this assignment seems rather an advantage to him, for this shows, that there was no fraud nor importunity used by the assignee; and oftentimes, upon the account of mere importunity, a trader has, when in trouble, been prevailed upon to make such assignment.

And as to the creditor, the assignee’s coming into equity, I admit that every person who comes here, ought to come with an innocent and just cause; and the now plaintiff, for what appears, does so; however, what distinguishes the present case in his favour is, that the assignment being of a close in action, he could in the nature of the thing apply no where else for relief, or to have the benefit of the assignment, but in equity.

As to precedents, the same was done in the case of Cock and Goodfellow, where the assignment was made by Mrs. Cock, just before her bankruptcy, and in trust for her own children; and as to part, it was but a direction to the trustee to assign her stock in the Bank, &c. and Lord Macclesfield declared, that this was so far from being an act of fraud in Mrs. Cock, though it was for her own children, that it seemed to be just and commendable. So in the case of Jacob and Shepherd; the trader Shepherd was on the brink of bankruptcy, and the deed brought ready engrossed to him, which he executed a little before his bankruptcy, to give a preference to some of his creditors; indeed I doubted this, but on an appeal, the Lord Chancellor Macclesfield ordered a trial, to be informed when the trader became a bankrupt; and the execution of the deed being found to have been before the bankruptcy, the decree was in favour of the deed. The like happened in Sir Stephen Evans’s case, who having executed a deed immediately before his bankruptcy, and with a view to prefer some creditors, the same prevailed. So that according to these precedents, I must decree in favour of this deed, giving a preference to the plaintiff.

With respect to plain acts of bankruptcy, after what has been stated; no doubts can arise; but there are some delicate circumstances, to which it is highly necessary for all merchants and traders to pay strict attention, lest they should inadvertently commit an act of bankruptcy, which may subject them to temporary disgrace, and considerable expense before the commission can be superseded.
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Any keeping house for the purpose of delaying a creditor, even for a very short time, will be an act of bankruptcy.

Thus upon a rule to show cause why a new trial should not be granted, it appeared that at trial, the only question that arose was concerning the act of bankruptcy alleged to have been committed by Falch; as to which the facts were as follows: Falch being in bad circumstances, on the evening of 7th of January, 1786, expressed his concern to his clerk, and his fears that he should not be able to answer a bill which would become payable the next day; and desired him to come earlier than usual the next morning, and be in the way; in case that holder of the bill should enquire for him, to deny him. In fact, that bill-holder did call the next morning before nine o'clock, and presented a bill for payment, when the clerk gave him the answer as he was directed, that his master was not at home. Afterwards, however, in the course of the same day, Falch appeared in public, and having procured some money from a friend whom he met, he sent for the bill and paid it before five o'clock that day. The learned judge directed the jury to find their verdict for the plaintiff, in as much as the act of bankruptcy was complete, by the denial of a creditor with intent to delay him, notwithstanding the jury, which was a special one, suggested to him at the time, that by the practice of merchants in the City of London, the payer of the bill has the whole of the day on which it becomes due till five o'clock to pay it in. However, the judge repeating to them his opinion upon the point of law, they found their verdict accordingly.

The Court of King's Bench in delivering judgment against the rule for a new trial argued the point of law very amply, each of the judges assigning his reasons for supporting the direction of judge Buller, who tried the cause, to the jury; and the sum of the whole argument appears to have been comprised in the following observations of judge Ashurst. "I have always understood the general rule to be, that when a trader commits an unequivocal act of bankruptcy, nothing that passes afterwards can explain it away." The conversation with the clerk on the evening preceding the denial, and the denial consequent upon it, clearly proved an intention to delay the creditor; and Earl Mansfield's opinion was cited, who had directed the jury to find a verdict for the plaintiff in a case still more remarkable, with respect to the delicacy of mercantile credit, than the present. The circumstances were these: a bill having become due, and the acceptor being pressed for payment, desired the holder to call upon him the next morning at a friend's house in Bridge-street, and he would pay him; the holder went accordingly, and the acceptor, at his own request, was denied to him. Upon being asked by his friend, if he was aware that he had been committing an act of bankruptcy; he answered with surprise in the negative, and said that he did not mean to do so, and went afterwards and paid the bill. His Lordship said, that if the jury were satisfied that the denial had been with a view to delay the creditor at the time, it was an act of bankruptcy, and if so, it could not be purged by paying the bill afterwards.

It was observed also by the court, that the term of "purging an act of bankruptcy" is frequently perverted, and had often been complained of by Lord Mansfield, who, on several occasions, took the opportunity to declare, that it can only mean, that, if the act done be in itself equivocal, other circumstances may be called in to explain it; but, if the act be a clear unequivocal act of bankruptcy, it cannot be purged or explained away by subsequent circumstances. See the speeches of the judges, in a valuable treatise intitled, "the Bankrupt Laws, by William Cooke, Esq., second edition, 2 vols. 8vo. London, 1788."
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Of the Commission and Commissioners, and how they may examine the Bankrupt, his Wife, and others.

A commission of bankruptcy can issue only upon the petition and affidavit of a creditor or creditors, and not unless the single debt of such creditor, or of two or more, being partners, petitioning, amounts to 100L. or unless the debt of two creditors, so petitioning, shall amount to 150L. or unless the debt of three or more creditors, so petitioning, shall amount to 200L. and also upon such creditors, giving bond to the Lord Chancellor, Keeper, or Commissioners of the Great Seal, in the penalty of 200L. conditioned for proving their debts, as well before the commissioners, as on a trial at law, as also for proving the party bankrupt at the time of taking out the commission, and farther to proceed on such commission as by the statute directed.

One petitioned for a commission of bankrupt against Lee, and his debt (amounting to 100L.) appeared to consist of notes, made payable by the bankrupt to other persons who had indorsed them to the petitioner, and to have been bought in by him at ten shillings in the pound; upon which it was objected, that a creditor coming by his debt in this manner was not intitled to sue out a commission; but Lord Chancellor Maclesfield ruled, that though the petitioner had thus gained the notes, he was a creditor for the full sums of them; and may sue out a commission accordingly.

A commission of bankruptcy is not a matter discretionary, but to be granted de jure; and it has been adjudged that if all the petitioning creditors for a commission should agree to have it discharged or superseded, it may be granted; and in case other creditors, that were not petitioners, should pray a renewal of the commission, or a revocation of the supersedeas, it may be granted.

After a commission is issued forth, and dealt in by the commissioners, they may proceed though the bankrupt die.

The commission shall not abate by the death of the King; and commissions shall be renewed on the death of the commissioners, upon paying half fees.

The commissioners are appointed under the Great Seal, and ought to be men, as the Lord Coke says, of wisdom, honesty, and discretion; as they have power over the whole estate, freehold, copyhold, goods, debts, chattels, and effects of the bankrupt.

The commissioners may sell the bankrupt's land by deed inrolled; they may sell his goods without inrolment, but not land.

The commissioners may send for and examine such persons as have, or are suspected to have, any of the bankrupt's goods, wares, or debts in their custody, power, or use, and who are, or be suspected to be indebted to the bankrupt, and to examine them on their oaths, or otherwise, as they shall think fit, touching the premises; and if any refuse to be examined, or do not discover the whole truth, they shall forfeit double the value of the goods concealed, to be distributed by the commissioners, as the rest of the bankrupt's estate.

The commissioners have power to commit persons refusing to appear to be examined, or appearing, who refuse to be examined on interrogatories.

One Bracey was committed by the commissioners for refusing to be examined, and the warrant concluded, that he shall be committed until he conform to the authority of the commissioners; the words of the statute 1 Jac. 1. c. 15, are "until he submit to the commissioners, and be by them examined."

This was held to be a void commitment, and Bracey was discharged upon an Hab. Corp.

Witnesses to have their charges, to be taxed by the commissioners, and paid out of 1 Jac. 1. c. 15. s. 11.
the estate; and being guilty of perjury, or subornation of perjury, indictable and punishable according to the stat. 5 Eliz. against perjury.

The commissioners shall declare to the bankrupt how they have bestowed his lands and goods.

The commissioners empowered to examine the bankrupt's wife, touching the estate.

They may by their warrant appoint their officers to break open the bankrupt's house, shop, &c.

Commissioners may examine all persons, as well by word of mouth, as on interrogatories; relating to the trade, estate, and effects of the bankrupt, or any act or acts of bankruptcy committed, and may reduce into writing the answers on verbal examinations, which shall be signed by the examinant, and in case of a refusal to answer, or not fully answering all lawful questions, or refusing to sign the examination, not having a reasonable objection to the wording thereof, or otherwise to be allowed by the commissioners, they may commit till the party complies; but the question refused to be answered must be stated in the warrant of commitment.

If a warrant of commitment be insufficient in form, and a Hab. Corp. be brought; the court or judge before whom the Hab. Corp. is brought, shall make a new commitment to the same prison, unless it appears that the party had before complied.

Commissioners are incapable of acting till they have taken an oath that they will faithfully, impartially, and honestly behave in the execution of the commission, which oath they are to administer to each other, and keep a memorandum thereof by them, signed, among the proceedings.

The Oath is as follows:

I A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me, as a commissioner in a commission of bankrupt, against E. F. late of, &c. and that without favour or affection, prejudice, or malice.

So help me God.

No time is generally limited for the taking out the commission, though the sooner doubtless the better for the creditors; and the proviso in the stat. 21 Jac. I. c. 19. as to particular cases, mentions, that the commissioners must be sued within five years after the time when the party became a bankrupt.

A. took out a commission of bankruptcy against B. and kept it for six months without doing any thing therein; he then executed it, and the party was found a bankrupt: on a petition to supersede this commission, it was said by A. in excuse for keeping it so long by him unexecuted, that he was not at first certain his proof was sufficient to find B. a bankrupt; but it appeared afterwards there were good grounds for a commission, and that he was found to be a bankrupt accordingly.

In this case the Lord Chancellor said that it was very wrong in A. to keep the commission thus long in his pocket; and until he had sufficient proof of the bankruptcy he ought not to have taken out the commission, which, by having been kept so long private, might have been the means of drawing in multitudes of people to give credit to the bankrupt, and of furnishing him with opportunities of defrauding many; wherefore he superseded the commission; and it being objected that this would only bring a fresh expence upon the bankrupt's estate by the charge of another commission; his Lordship replied, he would take care that the former commission should not be at the charge of the bankrupt's estate.

A commission, at the complaint of 15 creditors, was issued on the statute of bank-
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rupts, against Alderman Backwell, who died shortly after; and these creditors having a judgment, and supposing thereon they might have better remedy than their proportion would amount to on the commission, they stuck to that, and the heir of the bankrupt paid their debts; and no other creditors appearing then to prosecute, the commission by their consent was superseded; after which, thirty other creditors sued for a discharge of the supersedeas, which, after being argued before Lord Chancellor Jeffries, was done, and his Lordship renewed the commission; for the reasons, that when a commission is granted, it is not for the benefit of the petitioners only; but expressly for the benefit of all the creditors.

If there is a joint commission against two partners, though one of them should die, the commission may still proceed; but if one of the joint partners be dead at the time of taking out the commission, it abates, and is absolutely void because they must be each found bankrupts. And where a joint commission is prosecuted all the partners must be included, for a joint commission against two of several partners cannot be sustained.

Therefore, in an action brought by Allan and others, as assignees of Marlar a bankrupt, together with Down surviving partner of Pell, against Hartley and Francis, upon a bill of exchange due from the defendants to the house of Marlar, Pell, and Down, an objection was taken at the trial to the mode of proving the assignee of Marlar intitled to join in the action with Pell, the solvent and surviving partner. To support their right they first produced a commission against Marlar, Stewart, and Boyd, as partners, but that failed them, because on the evidence it appeared that the commission as to Boyd was fraudulent, he not having committed any act of bankruptcy, but by contrivance. The plaintiffs next produced a commission against Marlar and Stewart only, to which it was objected that there was no such partnership, the firm being Marlar, Stewart, and Boyd. The plaintiffs then offered in evidence, a plea in an action brought three years before, upon the same bill against the present defendants, in which they had pleaded that Marlar was a bankrupt, and therefore the action not maintainable by Marlar, Pell, and Down. To this plea there had been a demurrer, but upon the argument, the parties consented that no judgment should be given, and the plaintiffs discontinued.

It was contended by the plaintiffs' counsel that the defendant having pleaded that Marlar became a bankrupt, and the demurrer having admitted that fact, it was evidence against the same defendants, being in truth their own allegation. Mr. Justice Buller, who tried the cause, non-suited the plaintiffs. The court was moved to set aside the non-suit; and after hearing the argument of counsel, Lord Mansfield said, the plaintiffs came as assignees, and to support their claim they set up two commissions. There is no doubt there may be a commission against one partner separately, without making the rest of the partners bankrupts. So there may be a commission against all the partners in a house, and under such commissions both the joint and separate estate will be assigned, and the different classes of creditors will have the shares allotted to each. But the objection to one of the present commissions is, that it was taken out against three partners, and only two are found to have committed acts of bankruptcy. Such a commission is void to all purposes, for it cannot be void as to one, and valid as to the rest, and no instance is cited to the contrary. The objection to the other is, that it is a commission against two of three partners. A commission may be joint or several, but this is neither; on the ground of the plea, it appears that no judgment was given, and no use made of the plea. There is no case to show that the pleadings of counsel are evidence of the facts alleged. An answer in Chancery is evidence, for there it is presumed a man speaks upon deliberation, what is true, and upon oath; but a bill is fictitious, it does not aver facts as true, but suggests them, and calls for answers to ascertain them. It may be withdrawn or amended, and decides nothing: "Let the rule for showing cause why the nonsuit should not be set aside, be discharged."
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A commission having issued against one Hughes, on a certain day at eleven o'clock in the morning, the commissioners met, and proceeded to declare him a bankrupt, and the declaration was signed by them between three and four o'clock in the afternoon, and the assignment of the bankrupt's goods executed by six, at which instant the commissioners had notice, that the bankrupt died that day at one in the afternoon, which was the first notice they had of his death: on a bill brought against an assignee under the commission, for an account of such goods of the bankrupt, as had come to his hands, the defendant pleaded the commission, and the proceedings thereon; and the Lord Chancellor Talbot held the plea to be good.

For the meeting of the commissioners in order to declare the party a bankrupt, and whatever is done in pursuance of the commission, shall be taken to be a dealing in it, if never so minute; and the rather, for that the statutes of bankrupts, being remedial laws, are to be beneficially construed in favour of the creditors; and therefore my Lord would not overthrow this commission, and all the just right of the creditors claiming under it.

A commission of bankruptcy was taken out against a person, and upon the bankrupt complaining, that one of the creditors had come in under the commission and proved his debt, yet he had arrested the said bankrupt, who in his petition prayed to be discharged: and here Lord Chancellor King observed, that it had been the construction of the Court of Equity upon the latter statute, which discharges the bankrupt of his debts, on his procuring a certificate, signed by four-fifths of his creditors and allowed by the Chancellor, that where a trader becomes a bankrupt, and any one of his creditors comes in on the commission, to prove his debt, though with design only to oppose the bankrupt's certificate, nevertheless this proceeding of the creditor is an election to take his remedy for his debt under the commission; and, if pending that, the creditor sues and arrests the bankrupt, it is taken to be an oppression: therefore he ordered the creditor at his own expense to discharge the bankrupt out of custody. But he said, if such creditor would wave having any benefit under the statute, stay a reasonable time; and there was an improbability of the bankrupt's being able to gain his certificate, signed by four-fifths, in number and value, of his creditors, or allowed by the court; in such case, if the creditor should apply to the court, declaring his consent to wave any right or share of the bankrupt's estate under the commission, and praying that he might sue the bankrupt; it would be reasonable and proper for the court to give leave to such a creditor to proceed at law against the bankrupt for his debt.

One Salkeld, a clothier in town, was indebted to one Hale, for cloths which Salkeld made over to a relation for a pretended debt; on which Hale brought an action against him, and having obtained judgment, took him in execution on a capias ad satisfaciendum, about two years after the act 5 Geo. I. c. 24. was made. The relation took out a statute against Salkeld, in order to serve him, and Hale was prevailed on to be an assignee, though the bankrupt's estate proved to be only a few shillings, and some desperate debts.

Salkeld thereupon petitioned that he might be discharged out of execution, since Hale, at whose suit he was taken, had come into the commission and proved his debt, and not only so, but was the assignee under it. That though Hale had proposed waving all benefit and advantage accruing from the commission, yet this was now too late, he having come in under it, proved his debt, and consented to be an assignee, which was a plain election to proceed this way, and such election being once made, could not be waved afterwards. But by Lord Chancellor Parker: this commission was plainly sued out fraudulently by the bankrupt's relation, to discharge the bankrupt out of custody; the proposal is fair on the creditor's side to wave any benefit under the commission, and therefore ought to be accepted; and the creditor cannot be said to elect to be satisfied.
out of an estate, when there is no estate, which more particularly distinguishes this case. I will not discharge this bankrupt to the prejudice of a creditor, where it appears, on the face of the thing, that the commission was sued out in favour of the bankrupt himself, by his relation, and not for the service and advantage of the creditors.

Of the Bankrupt's Surrender, Examination, Discovery, Allowance, and Certificate; and of entering the Proceedings, &c. of Record.

After the commissioners named in a commission of bankruptcy sued for, have, in consequence of proofs made to them, found any one to be a bankrupt; they make and sign the following declaration, viz.

"We whose names are hereunto subscribed, or underwritten, being the major part of the commissioners appointed for the execution of the commission of bankruptcy, awarded against C. D. &c. upon the oath and examination of divers witnesses, do conceive, or have found, that the said C. D. the —__ day of January last, or before the suing forth of the said commission, was and did become a bankrupt, within all or some of the statutes, made concern ing bankrupts; and accordingly we declare him to be a bankrupt, and to have been so from that time.

"G. H.
"I. H.
"L. M."

But the commissioners are generally cautious in declaring the bankruptcy from a certain time, but leave it to a trial at law, in case there be any question or doubt of it; and this is to secure themselves from actions that may be brought against them.

Also it is here observed, that the declaring of the commissioners, whether he be a bankrupt or not, doth not acquit or charge him, unless in truth it were so.

And after they have declared the party a bankrupt, they then make out the following warrant for seizing his effects:

"Whereas the King's Majesty's Commission under the Great Seal of Great Britain, grounded upon the several statutes made concerning bankrupts, bearing date at Westminster the same day with this our warrant [or according to the date] had been awarded against A. B. of, &c. dealer and chap man, directed to us who have hereunto set our hands and seals, together with F. C. Esq. and D. S. Gentlemen; and we being the major part of the commissioners named and authorised by virtue of the said commission, having begun to put the said commission in execution, upon due examination of witnesses, or other good proofs upon oath before us taken, have found that he the said A. B. did for several years last past trade and deal as a chap man, and by such his dealings became indebted to C. D. of, &c. hatter, in the sum of one hundred and eighty pounds; and being so indebted as aforesaid, he the said A. B. became bankrupt to all intents and purposes, within the true intent and meaning of the several statutes made against bankrupts, some or one of them, before the date and suing forth of the said commission; these are therefore, by virtue of the said commission, and the several statutes therein mentioned, to will and require, authorise and impower, you, and every of you, to whom this our warrant is directed, forthwith to enter into and upon the house and houses of him the said A. B. and also into all other place or places, belonging to him the said A. B. where any of his goods are, or are suspected to be, and there seize all the ready money, jewels, plate, household stuff, goods, merchandize, books of account, and all other things whatsoever belonging to him the said A. B. and such things
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as you shall so seize you shall cause to be inventoried and appraised, by honest men of skill and judgment, and the same you shall return to us with all convenient speed, and what you shall so seize you shall safely detain and keep in your possession until we shall give you order for the disposal thereof; and in case of resistance, or of not having the key or keys, of any door or lock belonging to any place or places of him the said A. B. where any of his goods are, or are suspected to be, you shall break open, or cause the same to be broken open, for the better execution of this our warrant. Given under our hands and seals this 24th day of January, in the year of our Lord 1791.

“J. H.
J. W.
A. H.”

“To G. H. and Messenger, and
also to J. K. his Assistant.

“To all Mayors, Bailiffs, Constables, Headboroughs, and all other his Majesty’s loving subjects, whom we require to be aiding and assisting in the execution of this our warrant, as occasion shall require.”

And likewise send a summons to the bankrupt, which is also his warrant of protection from arrests during the forty-two days allowed for his examination, or the further time granted for finishing it, being forty-nine days, the form of which is as follows:

“Whereas a Commission of Bankrupt on the 24th day of January, 1791, issued under the Great Seal of Great Britain, against you A. B. of, &c. dealer and chapman; and whereas the major part of the commissioners in the said commission named and authorised, have declared you to be a bankrupt; we the said commissioners do hereby summon and require you the said A. B. personally to be and appear before the commissioners in the said commission named, or the major part of them, on the instant, at nine in the morning, and on the next, at three in the afternoon, at Guildhall, London, then and there to be examined, and to make a full and true discovery and disclosure of all your estate and effects, according to the direction of the acts of Parliament now in force concerning bankrupts; and particularly the act passed in the fifth year of his late Majesty’s reign, intitled, An Act to prevent the committing of Frauds by Bankrupts; and herein fail not at your peril. Given under our hands the day of 1791.

“J. H.
J. W.
A. H.”

“To A. B. the Bankrupt.

As soon as the warrant of seizure is executed, and the bankrupt has received his summons from the commissioners, he ought in prudence to surrender himself at their first meeting, as well to show his willingness of complying with the statute as to secure himself from arrests and imprisonment, though his appearing at the said time is not absolutely required.

And after such surrender, the bankrupt shall, at all reasonable times, before the expiration of the forty-two days, or such further time as shall be allowed him to finish his examination, be at liberty to inspect his books, papers, writings, and accounts, in the presence of his assignee or assignees, or any person appointed by them, and shall have liberty to bring with him such persons as he shall think fit, not exceeding two at a time, to make out such extracts and copies from thence as he shall think fit, the better to enable him to make a full and true discovery of his estate and effects; and in order thereto the said bankrupt shall be free from all arrests, restraint, or imprisonment of any of his creditors in coming to surrender, and from the actual surrender of such bankrupt
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for and during the said forty-two days, or such further time as shall be allowed him for finishing his examination.

Provided the bankrupt was not in custody at the time of such surrender, and in case he shall be arrested for debt, or on any escape warrant in coming to surrender himself, or after his surrender within the time afore-mentioned, that then upon producing such summons, under the hands of the commissioners or assignees, to the officer who shall arrest him, and making it appear to such officer, that the summons was signed by the commissioners or assignees, and giving the officer a copy thereof, he shall be immediately discharged; and in case any officer shall detain such bankrupt, after he shall have shown such summons to him, and made it appear it was signed as aforesaid, in his custody, such officer shall forfeit and pay to the bankrupt for his own use, the sum of five pounds for every day the officer shall detain him, to be recovered by action of debt in any of his Majesty's Courts of Record at Westminster, in the name of the bankrupt, with full costs of suit.

A commission of bankrupt issued against Philips de Fries in the month of July, 1732, and he was declared a bankrupt, and required to surrender himself to the commissioners; and when the messenger executed the warrant of seizure, the bankrupt, without resistance, delivered up his keys and effects to him, and promised to submit to the commissioners, and comply with the directions of the act.

The summons was not served upon him till the first day mentioned for his surrender in the Gazette, and three days after executing the warrant of seizure, and about an hour after the service of the summons, and before he surrendered himself, he was arrested, and thereupon he petitioned the Lord Chancellor, amongst other things, to be discharged; and the petition came to be heard before he had surrendered himself; and upon the hearing, Lord Chancellor King so far considered what he had done, and which was all that he could then do, as a compliance with the act, that he held he ought to be discharged, but dissuaded the bankrupt from suing the officer for the penalty; and thereupon an order was made accordingly by consent.

Every such bankrupt, after assignees shall be appointed, is to deliver upon oath or affirmation, before one of the Masters of Chancery, or Justice of Peace, unto such assignees, all his books of accounts and writings, not seized by the messenger of the commission, or not before delivered up to the commissioners, and then in his power, and discover such as are in the power of any other person, that any ways concern his estate; and every such bankrupt, not in prison, shall after such surrender be at liberty, and is required to attend such assignees upon notice in writing, in order to assist in making out the accounts of the estate.

If the person against whom the commission is taken out, is in prison or custody, the commissioners grant their warrant to the warden of the Fleet, or marshal of the King's Bench, or to any person who has the bankrupt's body in custody on mesne process, to bring him to be examined before them.

But if the bankrupt is in execution, and cannot be brought before the commissioners, then the acting commissioners shall from time to time attend the bankrupt in prison or custody, and take his discovery as in other cases.

It is undoubtedly the obligation of every person, who is so unfortunate as to have a commission of bankruptcy taken out against him, to behave in every respect with the greatest integrity, and to do all things in his power to serve his creditors, as well by his assistance in settling his accounts, which he should carefully place in the clearest and truest light, as by his diligent attendance on the assignees, and putting them in the best method of securing and recovering his effects; for the loss of his creditors should not be augmented through his neglect, as a man has it always in his power to be honest, though he cannot command fortune, or very often prevent misfortune; however, as ho-
nestly is not a constant attendant on all bankrupts, the law has furnished the commissioners with a sufficient power to oblige them to submit to an examination, and to make them be just in it. For

If the bankrupt shall refuse to be examined, or not give a full and satisfactory answer to every interrogatory ministered to him by the commissioners, it shall be lawful for them to commit the said offender to some strait or close imprisonment, there to remain until he shall better conform himself. And,

If the bankrupt shall not, within forty-two days after notice for his surrendering in writing, left at the usual place of his abode, or on personal notice if the bankrupt be in prison, and notice given in the London Gazette, that such a commission is issued, and of the time and place of meeting of the commissioners, surrender himself to them, and sign such surrender, and submit to be examined from time to time upon oath, by and before such commissioners, and in all things conform to the several statutes already made and now in force concerning bankrupts, and also upon such his examination, fully and truly disclose and discover all his effects and estate, real and personal, how and in what manner, and to whom and upon what consideration, and at what time or times he hath disposed of, assigned or transferred any of his goods, wares, merchandizes, monies, or other estate and effects, and all books, papers, and writings relating thereto, of which he was possessed, or in, or to which he was any ways interested or intitled, or which any person or persons had or hath, or have had in trust for him, or for his use, at any time before or after the issuing of the said commission, or whereby such person, or his family, hath, or may have, or expect any profit, possibility of profit, benefit, or advantage whatsoever, except only such part of his estate and effects as shall have been really and bond fide before sold or disposed of in the way of his trade and dealings, and except such sums of money as shall have been laid out in the ordinary expences of his family; and also upon such examination, deliver up to the said commissioners all such part of his goods, wares, merchandizes, money, estate, and effects, and all books, papers, and writings relating thereto, as at the time of such examination shall be in his possession, custody, or power, his necessary wearing apparel, and that of his wife and children only excepted, then he, said bankrupt, in case of any default and wilful omission, in not surrendering and submitting to be examined as aforesaid, or in case he shall remove, conceal, or embezzle any part of such his estate, real or personal, to the value of twenty pounds, or any books of accounts, papers, or writings, relating thereto, with an intent to defraud his creditors, and being thereof lawfully convicted by indictment or information, shall be deemed and adjudged to be guilty of felony, and shall suffer as a felon, without benefit of clergy, or the benefit of any statute made in relation to felons; and in such case, such felon's goods and estate shall go and be divided among the creditors, seeking relief under commission.

Though it is lawful for the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, to enlarge the time for such person's surrendering himself, and discovering his effects, as the said Lord Chancellor, &c. shall think fit, not exceeding fifty days, to be computed from the end of the said forty-two days; so as such order for enlarging the time be made by the Lord Chancellor, &c. six days, at least, before the time on which such person was to surrender himself, or make such discovery as aforesaid:

When the bankrupt has past his last examination, and his certificate is signed by four-fifths of his creditors in number and value, who have proved their debts, and have each owing to them 20l. or upwards, the Commissioners then certify to the Lord Chancellor, that the bankrupt hath in all things conformed to the several statutes made and now in force concerning bankrupts, and the said bankrupt having made oath that the signing his certificate was obtained fairly and without fraud, and due notice having been given of his said conformity in the London Gazette, and no objection made by any of the cred-
OF BANKRUPTCY.

May 10, 1791.

"Whereas the usual notice hath been given in the London Gazette of Tuesday the day of and none of the creditors of the above-named A. B. have shewn any cause to the contrary, I do allow and confirm this certificate."

"Thurlow, C."

When such certificate is allowed, the bankrupt is discharged of his debts, and is not liable to be sued or arrested for any one entered into before his failure, although he should be taken in execution or detained in prison in consequence of a judgment obtained before his certificate was allowed and confirmed; and it shall be lawful for any one or more of the judges of the court wherein judgment has so been obtained, or the bankrupt’s producing his certificate allowed and confirmed, to order any sheriff, bailiff, or officer, goaler or keeper of any prison, who hath or shall have such bankrupt in his custody, by virtue of any such executions, to discharge him without payment of any fee or reward.

A bankrupt having his certificate allowed, and having slain his time of pleading at law to a debt precedent to the bankruptcy, is not to be relieved in equity.

A bankrupt after his certificate was allowed, was sued for a debt due before his bankruptcy; the court on the circumstances of the case did relieve, though it will not relieve on a matter purely of mispleading.

A certificate discharges not only the person of the bankrupt but also his estate subsequently accrued.

The preamble to this act states, That many bankrupts are confined in prison, notwithstanding they have delivered up their effects. And, that bankrupts, for fear of being arrested and thrown under long imprisonment, abscond and secrete themselves from their homes, or go abroad into foreign parts, to the great distress of their families, and the detriment of the kingdom: for remedy whereof it is enacted,

That bankrupt who was in custody on or before the 25th of March, 1772, for any debt due before commission issued, and who conforms to the bankrupt laws, and never was committed for contumacy, or non-compliance with these laws; any judge of the court whence the process issued against the said bankrupt, on his petition may summon plaintiff to appear to shew cause, why he should not be discharged from his imprisonment; bankrupt first making oath that debt did accrue before issuing commission, and plaintiff not appearing, or not proving that bankrupt concealed any of his effects, or did not conform himself to the laws against a bankrupt, the judge shall by warrant or other instrument, discharge him from imprisonment for any debt due before commission issued; and he shall not be liable to be arrested for any debt due or contracted before such commission issued. And, if arrested, shall be discharged in like manner as aforesaid from every such arrest.

Bankrupts included in stat. 12 Geo. III. c. 47. s. 3. having not as yet returned home, or not being able to act in their occupations, from some certain circumstances of their case, such persons, though they have not gained a total discharge from their creditors, or their debts under their commissions, may apply by petition or motion to the Court of Chancery, setting forth such grievance and circumstance they may lie under relative to such commission, which petition, &c. the court is to refer to a master; and, upon report of hearing thereof, shall direct the commissioners to certify the proceedings under the commission, and court shall make such order thereupon for the relief of such bankrupts, as shall seem proper.
OF BANKRUPTCY.

Bankrupts on or before the 22d Jan. 1776, who have duly conformed, surrendered, and submitted, and who have not been guilty of contumacy, nor discharged under their commissions, may petition and move the Court of Chancery, upon this grievance of the case: which matter the court may refer to a master, and, upon report, the Chancery may direct the commissioners to certify proceedings, and order their discharge or relief.

Bankrupts who have not obtained their certificates, and discharge from their debts under the bankrupt acts, or being imprisoned before the 28th Jan. 1778, and against whom commissions have been awarded, who have duly conformed, and not been committed by commissioners for contumacy, and are in prison for debt, or secrete themselves for fear of their creditors, and shall be sued, may apply to the judge of the court where process issued, to summon plaintiffs, to shew cause why bankrupts should not be discharged, on making oath that the debt accrued previous to the commission; and on satisfying the judge, that they fully disclosed and delivered up their estate and effects, and upon also making it appear to him, that they had duly conformed, and that the commissions were not fraudulently obtained, hereupon, the plaintiffs not proving any concealment, the judge may discharge bankrupts, on their entering common appearances; and if they be afterwards arrested, such judge may order them, upon summons, to be discharged, which sheriffs and their officers are to do on notice; but bankrupts in all other respects remain subject to the law.

Bankrupts before 28 Jan. 1778, who have conformed, and not been committed for contumacy, and yet not discharged, for want of their certificate, may, within twelve calendar months from the date of the commission, petition or move the Court of Chancery, on the true circumstances of the case; which court may order the commissioners to certify conformity, or non-conformity; whereupon Court of Chancery is to direct an advertisement in the Gazette for allowance of certificate (though same be not signed by four-fifths in number and value of creditors) and if no sufficient cause be shewn within the time limited by the advertisement, the same is to be allowed and the bankrupt ordered relief and discharge.

The statute 46 Geo. III. c. 135. and 49 Geo. III. c. 121. are the two last acts relating to bankrupts. The first is intituled, "An Act to amend the Laws relating to Bankrupts?" the preamble is as follows: 'Whereas great inconveniences and injustice have been occasioned by reason of the fair and honest dealings and transactions of and with traders being defeated by secret Acts of Bankruptcy in cases not already provided for, or not sufficiently provided for by law: for remedy thereof, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases of commissions of bankrupt hereafter to be issued, all conveyances by, all payments by and to, and all contracts and other dealings and transactions by and with, any bankrupt bona fide made or entered into more than two calendar months before the date of such commission, shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be good and effectual to all intents and purposes whatsoever, in like manner as if no such prior act of bankruptcy had been committed, provided the person or persons so dealing with such bankrupt had not at the time of such conveyance, payment, contract, dealing or transaction, any notice of any prior act of bankruptcy by such bankrupt committed, or that he was insolvent, or had stopped payment.

II. And be it further enacted, That in all cases of commissions of bankrupt hereafter to be issued, all and every person and persons with whom the bankrupt shall have really and bona fide contracted any debt or debts before the date and suiting forth of such commission, which, if contracted before any act of bankruptcy committed, might have been
proved under such commission, shall, notwithstanding any prior act of bankruptcy may have been committed by the bankrupt, be admitted to prove such debt or debts, and to stand and be a creditor under such commission to all intents and purposes whatever, in like manner as if no such prior act of bankruptcy had been committed by such bankrupt, provided such creditor or creditors had not, at the time of such debt or debts being contracted, any notice of any prior act of bankruptcy by such bankrupt committed.

III. And be it further enacted, That in all cases in which, under commissions of bankrupt hereafter to be issued, it shall appear that there has been mutual credit given by the bankrupt and any other person, or mutual debts between the bankrupt and any other person, one debt or demand may be set off against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit was given to, or the debt was contracted by such bankrupt, in like manner as if no such prior act of bankruptcy had been committed, provided such credit was given to the bankrupt two calendar months before the date and suing forth of such commission, and provided the person claiming the benefit of such set-off had not at the time of giving such credit any notice of any prior act of bankruptcy by such bankrupt committed, or that he was insolvent or had stopped payment: Provided always, that the issuing of a commission of bankrupt against such bankrupt, although such commission shall afterwards be superseded, or the striking of a docket for the purpose of issuing a commission against such bankrupt, whether any commission shall have actually issued thereupon or not, shall be deemed notice of a prior act of bankruptcy for the purposes of this act, if it shall appear that an act of bankruptcy had been actually committed at the time of issuing such commission or striking such docket.*

IV. And be it further enacted, That all persons against whom any commission of bankrupt shall hereafter issue, and who shall be duly found bankrupts under the same, shall upon obtaining his, her, or their certificate, be discharged of and from all debts by this act made provable under such commission, and shall have the benefit of the several statutes now in force against bankrupts, in like manner, to all intents and purposes, as if such secret acts of bankruptcy had not been committed prior to the contracting of such debts.

V. And be it further enacted, That no commission of bankrupt that shall be hereafter issued, shall be avoided or defeated by reason of any act of bankruptcy having been committed, by the person or any of the persons against whom such commission shall have issued, prior to the contracting the debt of the creditor or any of the creditors upon whose petition such commission shall have issued, if such petitioning creditor had not any notice of such act of bankruptcy at the time when the debt to him was contracted but that such commission of bankrupt and all the proceedings under the same shall be valid and effectual to all intents and purposes, notwithstanding that such prior act or acts of bankruptcy shall have been committed by such bankrupt.

The statute 49 Geo. III. c. 121. is intituled, "An Act to alter and amend the Laws relating to Bankrupts," and the preamble is as follows: 'Whereas by an Act of Parliament passed in the forty-sixth year of the reign of his present Majesty, intituled, An Act to amend the Laws relating to Bankrupts, it is amongst other things provided, That the striking of a docket for the purpose of issuing a commission, whether any commission shall have actually issued thereupon or not, shall be deemed notice of a prior act of bankruptcy, for the purposes of the said act, if it should appear that an act of bankruptcy had been actually committed at the time of striking such docket: And whereas the aforesaid provision in the said act hath not been

* This provision repealed 49 Geo. III. c. 121. s. 1.—as to striking a docket.
attended with the good effects which were expected therefrom; be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, of this present Parliament assembled, and by the authority of the same, that the said act, so far as the same is herein-before recited, shall be and the same is hereby repealed.

II. And be it further enacted by the authority aforesaid, That in all cases of commissi- sions of bankrupt hereafter to be issued, all executions and attachments against the lands and tenements, or goods and chattels of the bankrupt, bona fide executed or levied more than two calendar months before the date and issuing of such commission, shall be valid and effectual, notwithstanding any prior act of bankruptcy committed by such bankrupt, in like manner as if no such prior act of bankruptcy had been committed, provided the person, at whose suit such execution or attachment shall have issued, had not at the time of executing or levying the same any notice of any prior act of bankruptcy by such bankrupt committed, or that he was insolvent or had stopped payment: Provided always that the issuing of a commission of bankrupt, although such commission shall afterwards be superseded, shall be deemed such notice if it should appear that an act of bankruptcy had been actually committed at the time of issuing such commission.

III. And whereas by an act of Parliament made in the fifth year of the reign of his late Majesty King George the Second, intituled, An Act to prevent the committing of Frauds by Bankrupts, it is amongst other things enacted, That before the creditors of any bankrupt shall proceed to the choice of assignees of the bankrupt's estates, the major part in value of the said bankrupt's creditors then present shall, if they think fit, direct in what manner, how, and with whom, and where the monies arising by said to be received from time to time out of the bankrupt's estate shall be paid in and remain, until the same shall be divided amongst all the creditors as by that act is directed; to which rule and direction every such assignee and assignees afterwards to be chosen are to conform, as often as one hundred pounds shall be got in and received from such bankrupt's estate, and are thereby indemnified for what they do in pursuance of such direction of the said creditors aforesaid: And whereas the creditors of bankrupts do not in all cases avail themselves of the said power given them by the said recited act: And whereas the aforesaid direction of the said act has been in many instances disobeyed by the assignees of the estates of bankrupts, who have, notwithstanding such direction, kept in their hands, or employed for their own benefit, large sums of money, part of the bankrupt's estates; be it enacted by the authority aforesaid, That from and after the passing of this act, if in any case the major part of the creditors of any bankrupt shall not before they shall proceed to the choice of assignees of the bankrupt's estate, direct in what manner, how, and with whom, and where the monies arising from the bankrupt's estate shall be paid in and remain, in pursuance of the power given to them by the said recited act, it shall be lawful for the commissioners or the major part of them, and they are hereby required immediately after the commissioners shall have proceeded to the choice of assignees, and at the same meeting, to direct in what manner, how, and with whom, and where the monies arising by and to be received from time to time out of the bankrupt's estate, shall be paid in and remain until the same shall be divided amongst the creditors as by the said recited act is directed; to which rule and direction the assignee or assignees of the bankrupt's estate shall conform, as often as one hundred pounds shall be got in and received from such bankrupt's estate, and shall be and are hereby indemnified for what they shall do in pursuance of such direction of the said commissioners as aforesaid: provided that it shall not be lawful for the commissioners to direct such monies to be paid into the hands of the said commissioners or any of them, or of the solicitor to the commissioners, or into any banking-
house or other house of trade or business in which the commissioners or any of them, or the solicitor to the commission, are or is interested or concerned as a partner or partners, or otherwise.

IV. And be it further enacted by the authority aforesaid, That from and after the passing of this act, in all cases in which any assignee or assignees of any bankrupt's estate shall wilfully retain in his or their hands, or otherwise employ for his or their own benefit, any sum or sums of money, part of the estates of such bankrupts, contrary to the aforesaid direction of the said recited act passed in the fifth year of the reign of King George the Second, or of the aforesaid direction in this act contained, he or they shall be charged in his or their accounts with the estates of such bankrupts, with such sum or sums of money as shall be equal to the amount of interest computed at the rate of twenty pounds per centum per annum on all such sums of money so retained or employed by him or them, for the time or times during which he or they shall have so retained or employed the same; contrary to the said direction of the said acts or either of them; and the commissioners of bankrupts are hereby required to charge such assignee or assignees in their accounts with such sum or sums of money accordingly.

V. And, for the purpose of ascertaining in what manner the money which shall from time to time come to the hands of such assignee or assignees has been employed, the commissioners shall in no case declare a dividend upon admission only of a certain sum in the hands of the assignees, but shall require such assignee or assignees to deliver, upon oath a true statement in writing of all the sums of money received by such assignee or assignees, and when received by him or them respectively, and on what accounts and how employed, and shall examine such statement and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignee or assignees respectively, and shall inquire for what reason any sum appearing to be in the hands of such assignee or assignees ought to be retained, and thereupon shall declare a dividend on the remaining sum, specifying in their order the sum so allowed to be retained, and the grounds on which they may conceive it proper that the same should be retained and not divided amongst the creditors.

VI. Provided always, and be it further enacted by the authority aforesaid, That from and after the first day of January one thousand eight hundred and ten, in case any commission of bankrupt shall issue against any person who is or shall be an assignee of the estate and effects of any bankrupt, and who shall, at the time of such commission issuing against him, be indebted to the estate of the bankrupt of whose estate and effects he was an assignee, to the amount of one hundred pounds or upwards, in respect of money come to his hands as such assignee, and wilfully retained or employed by him for his own benefit, the certificate of conformity which may be obtained by such assignee so becoming bankrupt as aforesaid, shall only have the effect of freeing the person of such bankrupt from arrest and imprisonment, but the future estate and effects of every such person shall remain liable for so much of his debt to the estate of the bankrupt of whose estate and effects he was an assignee, as shall not be paid by dividends under the said commission, together with lawful interest for the whole debt, in like manner as if he had not obtained his certificate; the tools of trade, the necessary household goods and furniture, and necessary wearing apparel of such bankrupt and his wife and children, only excepted.

VII. Provided always, and be it enacted, That it shall be lawful for the commissioners, upon the application of the assignees, or any five or more of the creditors who have proved their debts under the commission, on notice given to the assignees of such intended application, when and as often as it shall appear to the said commissioners expedient and beneficial to the estate and effects of any bankrupt, that the money so paid in to any person or persons as aforesaid, for the purpose of being divided amongst the
creditors, or any money retained to answer any claim which may have been duly entered upon the proceedings under the said bankruptcy, or any dividends ordered to be retained by the assignees, should be laid out at interest, to order and direct that the whole or any part of such money shall be invested in the purchase of Exchequer bills for the benefit of such creditors and claimants, and to direct where and with whom such Exchequer bills shall be kept for safe custody, and to cause such Exchequer bills to be sold when it shall appear to them necessary and proper, and to direct the proceeds thereof to be again laid out in the purchase of Exchequer bills, or to be applied for the benefit of the creditors and claimants, according to their several interests, as to the said commissioners shall seem meet, subject nevertheless to the authority and control of the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal.

VIII. And be it further enacted by the authority aforesaid, That in all cases of commissions of bankrupt already issued, under which no dividend has yet been made, or under which the creditors, who have not proved, can receive a dividend equally in proportion to their respective debts without disturbing any dividend already made, and in all cases of commissions of bankrupts hereafter to be issued, where at the time of issuing the commission any person shall be surety for or be liable for any debt of the bankrupt, it shall be lawful for such surety or person liable, if he shall have paid the debt, or any part thereof, in discharge of the whole debt, although he may have paid the same after the commission shall have issued, and the creditor shall have proved his debt under the commission, to stand in the place of the creditor as to the dividends upon such proof, and when the creditor shall not have proved under the commission, it shall be lawful for such surety, or person liable, to prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and to receive a dividend or dividends proportionately with the other creditors taking the benefit of such commission, notwithstanding such person may have become surety or liable for the debt of the bankrupt after an act of bankruptcy had been committed by such bankrupt, provided that such person had not at the time when he became such surety, or when he so became liable for the debt of such bankrupt, notice of any act of bankruptcy by such bankrupt committed, or that he was insolvent, or had stopped payment; provided always, that the issuing a commission of bankrupt, although such commission shall afterwards be superseded, shall be deemed such notice; and every person against whom any such commission of bankrupt has been or shall be awarded, and who has obtained or shall obtain his certificate, shall be discharged of all demands at the suit of every such person having so paid, or being hereby enabled to prove as aforesaid, or to stand in the place of such creditor as aforesaid, with regard to his debt in respect of such suretyship or liability, in like manner to all intents and purposes as if such person had been a creditor before the bankruptcy of the bankrupt for the whole of the debt in respect of which he was surety or was so liable as aforesaid.

IX. And be it further enacted by the authority aforesaid, that all and every person and persons who have given credit, or shall at any time hereafter give credit to any person or persons who is or are or shall become bankrupts, upon good and valuable consideration bona fide for any money whatsoever, which is or shall not be due or payable at or before the time of such person's becoming bankrupt, shall be admitted to prove such their debts in like manner as if the same were payable presently or not at a future day, and shall be entitled to and shall have and receive proportional dividends of such bankrupt's estate equally with the other creditors of such bankrupt, deducting only thereout a rebate of interest for what they shall so receive at the rate of five pounds, per centum per annum, under commissions which have issued or shall issue in England, and at the rate of six pounds per centum per annum under commissions which have
issued or shall issue in Ireland, to be computed from the actual payment thereof to the time such debts would become payable, according to the terms upon which the same were contracted.

X. And be it further enacted by the authority aforesaid, that from and after the passing of this act, in any action now brought or hereafter to be brought by or against any assignee of any bankrupt, the commission of bankrupt, and the proceedings of the commissioners under the same, shall be evidence to be received of the petitioning creditor's debt, and of the trading and bankruptcy of such bankrupt, unless the other party in such action shall, if defendant, at or before the time of his pleading to such action, and if plaintiff, before issue joined in such action, give notice in writing to such assignee that he intends to dispute such matters or any of them; and where such notice shall have been given, if such assignee shall at the trial prove the matter so disputed, or the other party shall at the trial admit the same, the judge before whom the cause shall be tried shall, if he shall see fit, grant a certificate that such proof or admission was made upon such trial, and such assignee shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice; and such costs shall in case the assignee shall obtain a verdict be added to his costs, and if the other party shall obtain a verdict shall be set off or deducted from the costs which such other party would otherwise be entitled to receive from such assignee.

XI. And be it further enacted by the authority aforesaid, that from and after the passing of this act, in all suits in equity now instituted or hereafter to be instituted by or against any assignee of any bankrupt, the commission of bankrupt, and the proceedings of the commissioners under the same, shall be evidence to be received of the petitioning creditor's debt, and of the trading and bankruptcy of such bankrupt, as against all the other parties in such suit, unless such parties some or one of them shall, within ten days after rejoinder in the cause, give notice in writing to the assignee that they or he intend to dispute the said trading, petitioning creditor's debt, or act of bankruptcy, or some or one of such matters, and where such notice shall have been given; if the assignee shall prove the matter so disputed to the satisfaction of the court, the costs occasioned by such notice, to be taxed by the proper officer, shall, if the court see fit, be paid by the party or parties giving such notice to the assignee, and the service of such notice may be proved by affidavit upon the hearing of the cause.

XII. And be it further enacted by the authority aforesaid, that from and after the passing of this act, no action shall be brought by any creditor or creditors who have proved or shall prove any debt under any commission of bankrupt, against the assignee or assignees of the estate of such bankrupt, for the amount of any dividend declared by the commissioners under such commission; but in all cases in which the assignee or assignees of any bankrupt shall refuse or omit to pay any dividend declared under any commission of bankrupt, it shall be lawful for the creditor or creditors entitled to the same, to petition the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, for payment thereof; and it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, on hearing such petition, not only to order the payment of such dividend, but also in all cases in which it shall appear to him or them that the justice of the case shall require it, to order payment of interest for the time that such dividend shall have been withheld, and of the costs of the application.

XIII. "And whereas great inconveniences have arisen from the necessity which now exists of the attendance of commissioners of bankrupt in prison to take the examinations of bankrupts charged in execution;" Be it therefore enacted by the authority aforesaid, that every bankrupt being in custody at the time of his or her last examination, although charged in execution shall, be brought before the commissioners to be examined by
them, in the same manner as is now practised with respect to bankrupts in custody on mesne process, and the gaoler or keeper of the prison in which such bankrupt is or shall be confined, shall be fully indemnified by the warrant of the commissioners for bringing up such bankrupt for such purpose.

XIV. And be it further enacted by the authority aforesaid, that from and after the passing of this act, it shall not be lawful for any creditor, who has or shall have brought any action, or instituted any suit against any bankrupt, in respect of any demand which arose prior to the bankruptcy of such bankrupt, or which might have been proved as a debt under the commission of bankruptcy issued against such bankrupt, to prove a debt under such commission for any purpose whatever, or to have the claim of a debt entered upon the proceedings under such commission, without relinquishing such action or suit, and all benefit from the same; and that the proving or so claiming a debt under a commission of bankruptcy by any creditor, shall be deemed an election by such creditor, to take the benefit of such commission with respect to the debt so proved or claimed by him: provided always, that such creditor shall not be liable to the payment to the bankrupt or his assignees, of the costs of such action or suit which shall be so relinquished by him: and provided also, that where any such creditor shall have brought any action or suit against such bankrupt jointly with any other person or persons, his relinquishing such action or suit against such bankrupt or bankrupts shall not in any manner affect such action or suit against such other person or persons.

XV. Provided also, and be it further enacted, that this act shall not extend to that part of the united kingdom of Great Britain and Ireland which is called Scotland.

XVI. And be it further enacted by the authority aforesaid, that all and every person or persons who have effected or shall effect any policy or policies of insurance upon ships, goods, wares, merchandise or other effects, with any person, as a subscriber or underwriter, who is or are or shall become bankrupt, shall be admitted to prove any loss to which such bankrupt is or shall be liable in respect of his subscription to such policy or policies, notwithstanding the person or persons effecting such policy or policies is not or are not the person or persons beneficially interested in such ships, goods, wares, merchandise or other effects, provided the person really interested is not in that part of the united kingdom in which the commission of bankruptcy shall have issued in the proceedings under which such loss is to be proved.

XVII. And be it further enacted, by the authority aforesaid, that it shall be competent to any annuity creditor of any person against whom a commission of bankrupt shall issue after the passing of this act, whether the same shall be secured by bond or covenant, or bond and covenant, or by whatever assurance or assurances the same shall be secured, and whether there shall or shall not be or have been any arrears of such annuity at or before the time of the bankruptcy, to prove under such commission as a creditor for the value of such annuity; which value the commissioners shall have power and are hereby required to ascertain, and the certificate of every bankrupt under whose commission such proof shall be or might have been made, shall be a discharge of such bankrupt against all demands whatever in respect of such annuity, and the arrears and future payments thereof in the same manner as such certificate would discharge the bankrupt with respect to any other debt proved or which might have been proved under the commission.

XVIII. And be it further enacted, that in all cases of commissions of bankrupt hereafter issued, and in which the bankrupts have not obtained their certificates, and in all cases in which commissions of bankrupt shall hereafter be sued forth, the signature and consent of three parts (instead of four parts) in five in number & value of the signatures and consents of three parts in five in number and value of the creditors of the bankrupt or bankrupts, who shall be creditors for not less than twenty pounds respectively, and who shall have duly proved their debts under the commission, or some other person by
them duly authorised thereunto, to the allowance and certificate and discharge of the bankrupt or bankrupts, shall be, to all intents and purposes, as available for the benefit of the bankrupt or bankrupts as before the passing of this act the signature and consent of four parts in five in number and value of such persons would have been available; and such signature and consent of three parts in five in number and value of such persons shall be sufficient to authorise all acts to be done by the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal, and the commissioners in such commissions of bankrupt, and all others, for the benefit of the bankrupt or bankrupts, which under any prior act or acts of Parliament would have been authorised by the signature and consent of four parts in five in number and value of such persons.

XIX. And be it further enacted, that in all cases, in which a commission of bankrupt shall be sued forth against any person after the passing of this act, and such person shall be entitled to any lease or agreement for a lease, and the assignees shall accept the same and the benefit therefrom, as part of the bankrupt's estate and effects, the bankrupt shall not be, or be deemed to be, liable to pay the rent accruing due after such acceptance of the same as aforesaid, and after such acceptance the bankrupt shall not be liable to be in any manner sued in respect or by reason of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained: provided, that in all such cases as aforesaid, it shall be lawful for the lessor or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the assignees shall decline, upon their being required so to do, to determine whether they will or will not so accept such lease or agreement for a lease, to apply by petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, praying that they may either so accept the same, or deliver up the lease or agreement for the lease, and the possession of the premises demised or intended to be demised, who shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and which shall be binding on all parties.

A creditor petitions against the allowance of a bankrupt's certificate, upon which the bankrupt gives him a bond for payment of his whole debt, in consideration of withdrawing his petition, and in consequence of his so doing the bankrupt obtains his certificate; but refusing afterwards to comply with his bond, the creditor put it in suit against the bankrupt, who pleaded the act of Parliament, and that the bond was obtained in order to procure his discharge; but he could not be relieved in equity against the bond.

The court will not discharge the bankrupt upon common bail, when the validity of the certificate is intended to be disputed. Stacey v. Frederici. 2 Bos. and Pul. 390. Robson v. Calze. Doug. 216. Neither will they when it appears that the certificate was obtained by fraud. Vincent v. Brady. 2 Hen. Bla. 1. Nor if the debt is on a bill of exchange where the bankrupt described himself as of a place to which he never belonged, and when the plaintiff never heard of the commission until the writ was issued. Fowley v. Jones. 2 Bla. Rep. 725.

A joint commission was taken out against the defendant and partner, and their certificate was allowed; and the defendant was now sued by the plaintiff for a debt due on his separate account, and arrested; to which the plaintiff pleaded, that the cause of action arose before that of bankruptcy, and therefore moved that he should be discharged out of custody, upon filing common bail, which was allowed; it being held, that the statute of the 5th of Geo. II. which says, that in case any such bankrupt shall afterwards be arrested, prosecuted, or implored for any debt due before such time as he became bankrupt, such bankrupt shall be discharged upon common bail, is in general words, that the bankrupt shall be discharged on common bail, from all debts owing by
him before the bankruptcy, and makes no distinction between a joint and separate
commission.

Three commissions of bankrupt issued at the same time, one against A. separately, one against B. separately, and a joint one against A. and B. as partners
in company; and the certificates on the two separate commissions were confirmed
by the Lord Chancellor, and delivered to the bankrupts, and four fifths in number and
value of the company creditors signed a certificate for the bankrupt's discharge on the
joint commission:

But at the time the joint certificate was to have been confirmed, one of the joint cre-
ditors applied by petition to the Lord Chancellor; suggesting that A. had lost more
than five pounds at gaming in one day, within the year before the commission issued,
and therefore was not entitled to be discharged; and the Lord Macclesfield not only
refused to confirm the joint certificate, but ordered the former separate certificate of A.
to be recalled and disallowed, and allowed the joint certificate as to B. only.

And being a matter of great consequence to A. who as soon as his certificate was al-
lowed, had engaged very considerably in trade, he ordered his case to be stated, and
took the opinion of the most eminent counsel thereon; and the questions arising from
this case, were,

1st. Whether it was in the power of the Lord Chancellor, after a certificate was duly
allowed and delivered to the bankrupt, and enjoyed by him for several months, to re-
call the same ex officio, and deprive the party of the benefit of the discharge.

If the bankrupt has lost five pounds at one time, and the fact shall be proved before
the allowance of the certificate, I think the certificate ought not to be allowed by the
commissioners of bankruptcy, or by the great seal; but if the bankrupt hath conformed
in all things, and his certificate hath been allowed, without any objections made upon
the account of gaming by the creditors, I conceive there is not a power given to the
great seal to recall the certificate. S. Cowper, 14 June, 1725.

2dly. Whether a separate certificate discharged the partner from joint debts; and the
answer of a great and learned person, was this,

I was clearly of opinion at first, that the bankrupt's separate certificate, so long as it
continued in force, discharged the bankrupt, not only from such debts as were owing
from the bankrupt on the separate account, but likewise such as were owing on the part-
nership account; so I continue in the same opinion. I also concur in opinion with Mr.
Cowper, that the Lord Chancellor cannot legally recall the certificate after it is once
confirmed, upon the account of a fact which was never proved, or ever objected, be-
fore the allowance of the certificate.

The opinion of another most eminent person to these questions, was as follows:

1st. As to the Chancellor's power of recalling the certificate, he says thus—this is a
question of considerable difficulty; but I am rather of opinion that such a confirmation
cannot be revoked, so as to prevent the bankrupt's discharge; because, by the statutes,
conforming to the acts, and a certificate confirmed, is made an actual discharge of the
bankrupt's debts due at the time of his bankruptcy; and a revocation, after the debts
are once extinguished, seems to come too late.

And as to the second question, whether a separate commission discharged joint debts?
his answer was this:

As the statute extends expressly to all debts, I am of opinion that partnership debts,
being debts of A. the certificate is equally a discharge to those debts as well as others.
There was another question which arose on this, and being equally interesting with
the preceding ones, I have chosen to give the whole at large, for the satisfaction and
information of my readers, and it was this, viz.
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The said A. before his bankruptcy being a merchant in London, and in the way of his trade, at the time he became a bankrupt, was indebted to several persons in Virginia, and other plantations: and the question was, whether his certificate, when confirmed here, would discharge him against such debts, in case he went into those parts?

And the opinion of the late Lord Talbot, when he was a counsellor, was as follows: The effects of A. in the plantations are liable to the commission here, and the right to them is vested in the assignees; and it seems reasonable that this certificate should be equally extensive as to his discharge: however as the laws of England, made since Virginia and the other plantations were settled, do not extend to them unless they are expressly named, and as the laws relating to certificates do not expressly extend to the plantations, I am of opinion, that a certificate confirmed here will be no discharge to A. if a suit is commenced against him in Virginia, or the other plantations.

C. Talbot, Dec. 24, 1723.

And there was also the opinion of another great man to this purpose: I am of opinion, that the act of parliament will not extend to any of the plantations, unless they had been particularly mentioned; they being governed by particular laws and constitutions of their own making.

In the year 1732, a commission of bankruptcy issued against Richard Jackson, tea merchant, and an assignment was made of his estate to Thomas Wright and James Huey, in trust for his creditors.

Upon his examination he made a discovery of his estate and effects, and four parts in five of his creditors signed his certificate; but the commissioners did not think proper to sign it.

Afterwards he set up the trade of a distiller, and in consequence of such trading, he became indebted to several persons, and particularly to one Thomas Sorrel in 100l. and upwards.

On the 31st of June, 1739, Sorrel sued out another commission of bankruptcy against him, and he submitted to such second commission, and obtained his certificate, which was allowed by the Lord Chancellor on the 5th of June, 1740.

He then returned to his first trade, of a tea merchant, and contracted debts to the amount of several hundred pounds.

In May, 1740, Wright and Huey, the assignees in the first commission preferred a petition, in the names of themselves and all the rest of the creditors under the said first commission, in order to set aside the second commission and his certificate, which was advertised in the Gazette to be allowed, unless cause was shown to the contrary.

And pending this petition, viz. 24 May, 1740, a notice was published in the London Gazette, for a meeting of the creditors under the first commission, who afterwards met those under the second commission; and these latter agreed to give the former a sum of money to withdraw their petition, which they accepted, and withdrew their petition accordingly; and the bankrupt having had his certificate confirmed, continued his business as before.

But two of his creditors under the first commission, on the 17th of December, 1743, preferred a petition to the Lord Chancellor, setting forth the matters before mentioned, and that Jackson had not made a fair discovery of his estate, and had prevailed on the assignees under the first commission not to attend their petition, by means whereof the said bankrupt, to their great surprise, had obtained his certificate.

That they were advised, that the second commission was obtained fraudulently, and that the issuing of the same under those circumstances was irregular, and that the said certificate was obtained in order to prevent the creditors under the first commission from...
recovering their debts, though they were assured the bankrupt was then able to pay them.

They therefore prayed that the commission might be superseded, and that all proceedings under the same, with the bankrupt’s certificate, might be set aside.

But his Lordship ordering the parties to attend, and that the proceedings under both commissions should be produced; and the petition coming on before his Lordship, after being learnedly argued by the Gentlemen at the bar on both sides, he, was pleased for the following reasons, among others, to dismiss the petition:

1st. Because the parties had acquiesced in the allowance of the certificate under the second commission, from the 5th of June, 1740, being the time of Jackson’s obtaining such certificate, to the 17th of December, 1743, and had never made any complaint of the same.

2dly. That there had been a meeting between the assignees and several of the creditors, under the first and second commission; and that the petition, which was intended to be presented to the court for staying the bankrupt’s certificate under the second commission, was by the consent of the assignees and creditors under the first commission, who were present and had public notice in the Gazette to meet the assignees and creditors under the second, and circular letters sent them for that purpose; and that they had agreed, that such petition should be withdrawn, in consideration of a sum of money paid by the creditors under the second commission, to the creditors under the first commission; and that this was in the nature of an acquiescence and consent from the creditors of the first commission, that Jackson should have his certificate under the second commission.

3dly. That it did not appear to him, but that the petitioners were well acquainted with the steps that were taken by the assignees and creditors in the first commission, in regard that they had not denied the same by their affidavit, but had only swore that they did not know, remember, or believe, that they ever consented to the withdrawing of the petition, preferred by the assignees as aforesaid, to set aside the certificate under the second commission; and that if the assignees had done amiss, the creditors had a remedy against them.

4thly. That Jackson had, under the sanction of the court, carried on a considerable trade, and that it would be contrary to the justice of a court of equity, to prejudice innocent persons, who might have been induced to give future credit, believing him to be a free person, on having such certificate; and the consequence would be, that all his dealings from that time must be opened and unravelled.

When a bankrupt has in all things conformed himself to the acts made concerning bankruptcy, he shall be allowed by the assignees 5l. per cent. out of the nett produce of all the estate that shall be recovered in and received; provided the said nett produce, after such allowance, shall be sufficient to pay the creditors ten shillings in the pound, and so as the said 5l. per cent. shall not amount in the whole to above 200l. and in case the nett produce, after deducting the following allowance, shall be sufficient to pay the creditors twelve shillings and sixpence in the pound, the bankrupt in this case shall be allowed 7l. 1os. per cent. so as that such allowance shall not amount in the whole to above 250l. And in case the nett produce, after the following allowance is deducted, shall be enough to pay the creditors fifteen shillings in the pound, the bankrupt shall be allowed 10l. per cent. provided it does not amount in the whole to above 300l. But if the said bankrupt’s estate is not sufficient to pay the creditors ten shillings in the pound nett, as aforesaid, then, and in such case, the bankrupt shall only be allowed so much as the assignees and commissioners shall think fit, not exceeding 5l. per cent.

The commissioners shall, upon lawful request made to them by the bankrupt, not only make a true declaration to him of the employing and bestowing all his lands, fene-
ments, hereditaments, offices, fees, goods, wares, money, chattels, and debts paid and satisfied to his creditors; but also make payment of the overplus of the same, if any such shall be, to the said bankrupt, his executors, administrators, or assigns; and the bankrupt, after full satisfaction of his creditors, shall have full power and authority to recover and receive the residue and remainder of the debts to him owing.

Lord Hardwicke directed, that a bankrupt who had paid 14s. 6d. in the pound, who had his certificate, and a release from his creditors of all further demands, shall stand in the place of the assignees to get in the remainder of the debts, on giving a proper indemnity to the assignees, that they might not be called to an account for such money so received. Tr. Atk. Rep. 145. Pl. 84.

And though the bankrupt shall have obtained his certificate, and the same has been duly confirmed, it does not put an end to his duty of attendance, as he is obliged to give it upon every reasonable notice in writing delivered to him, or left at his usual place of abode, by the assignees, thereby requiring him to attend them, in order to make up, adjust, or settle any account or accounts between such bankrupt, and any debtor to, or creditor of him, or to attend any Court or Courts of Record, in order to be examined touching the same; or for such other business as the assignees shall judge necessary, for getting in the bankrupt’s estate and effects; and for which attendance the bankrupt shall be allowed the sum of two shillings and sixpence per diem by the assignees, to be paid out of the estate; and in case such bankrupt shall neglect or refuse to attend, or on such attendance shall refuse to assist in such discovery, without good cause to be shewn to the Commissioners for such his neglect or refusal, to be by them allowed as sufficient, such assignees making due proof thereof upon oath, before the said commissioners, they the said Commissioners are hereby empowered and required, to issue a warrant directed to such person or persons as they shall think proper, for apprehending such bankrupt and him committing to the county jail, there to remain in close custody without bail or mainprize, until he shall duly conform to the satisfaction of the said Commissioners, and be by them, or the special order of the Lord Chancellor, or otherwise by due course of law discharged; and the jailer is hereby required to keep such person in close custody within the walls of the prison, until he be duly discharged as aforesaid.

In case any commission of bankruptcy shall issue against any person, who after the Ditto, s. 8.
24th of June, 1792, shall have been discharged by virtue of this act, or shall have compounded with his creditors, or delivered to them his effects, and been released by them, or being discharged by any Act for Relief of Insolvent Debtors, then the body only of such person conforming shall be free from arrest and imprisonment; but the future estate of such person shall remain liable to his creditors; the tools of trade, necessary household goods, and necessary wearing apparel of such bankrupt, and of his wife, and children, excepted, unless the estate of such person shall produce clear fifteen shillings in the pound.

Nothing in this act shall give any advantage to any bankrupt, who shall upon marriage Ditto, s. 12.
of any of his children have given above the value of 100l. unless he shall prove by his books, or otherwise, upon his oath or affirmation before the commissioners, that he had remaining other estates sufficient to pay every person to whom he was indebted their full debts; or who shall have lost in one day the value of 5l. or in the whole the value of 100l. within twelve months next preceding his becoming bankrupt, at cards, dice, tables, tennis, bowls, billiards, shovel-board, or cockfighting, horse-races, dog-matches, or foot-races, or other game, or by bearing a share in the stakes, or betting; or that within one year before he became bankrupt, shall have lost 100l. by contracts for stocks, or shares of any public funds, where such contract was not to be performed within one week from the making, or where the stock was not actually transferred.
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Upon certificate under the hands and seals of the commissioners, that such commission is issued, and such person proved before them to become bankrupt, it shall be lawful for any of the Justices of any of his Majesty's Courts of King's Bench, or Common Pleas, or Barons of the Exchequer, &c. and they are required upon application made, to grant their warrants for apprehending such person, and him to commit to the common jail of the county, where he shall be apprehended, there to remain until he be removed by order of the commissioners; and the jailer to whose custody such person shall be committed, is required to give notice to one of the commissioners, of such person being in his custody; and the commissioners are impowered to seize the effects of such bankrupt, the necessary wearing-apparel of such bankrupt, or of his wife or children, excepted, and his books of writings, which shall be then in the custody of such bankrupt, or of any other person in prison.

If any person so apprehended shall, within the time allowed, submit to be examined, and conform as if he had surrendered, such person shall have the benefit of this act, as if he had voluntarily come in.

Upon petition of any person, the Lord Chancellor may order such commissions, depositions, proceedings, and certificates to be entered of record; and in case of the death of the witnesses, proving such bankruptcy, or in case the said commissions or other things shall be lost, a copy of the record of such commissions or things signed and attested as herein is mentioned, may be given in evidence to prove such commissions, and bankruptcy, or other things; and all certificates, which have been allowed, or to be allowed, and entered of record, or a true copy of every certificate signed and attested, as herein is mentioned, shall and may be given in evidence in any Courts of Record, and without further proof taken to be a bar and discharge against any action for any debt-contracted before the issuing of such commission, unless any creditor of the person that hath such certificate shall prove such certificate was fraudulently obtained; and the Lord Chancellor shall appoint a place near the inns of the court, where the matters aforesaid shall be entered of record, where all persons shall be at liberty to search; and the Lord Chancellor shall by writing appoint a proper person, who shall, by himself, or deputy to be approved by the Lord Chancellor by writing, enter of record such commissions, and other things, and have the custody of the entries thereof; and also appoint such fee for his labour therein, as the Lord Chancellor shall think reasonable, not exceeding what is usually paid in like cases; and the person so to be appointed, and his deputy, shall continue to enter of record all the matters aforesaid, and to have the custody of the same, so long as they shall behave themselves well; and shall not be removed but by order in writing, under the hand of the Lord Chancellor, on good causes therein specified.

Contingent debts not proveable under the commission are not discharged by the certificate.

It does not discharge bankrupt from bond of indemnity, where the breach was after the bankruptcy.

Bankrupt's certificate will not discharge him from a debt which he owes as executor.

Nor, according to Lord Mansfield, from a judgment de bonis testatoris si, &c. and de bonis propriis for the costs, obtained between the commission and certificate, on a false plea of no assets, in an action on testator's bond.

Bankrupts not obtaining their certificates, are excepted from the act for the benefit of insolvent debtors, unless they are relieved by conformity, &c. according to 12 and 14 Geo. 3.
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Of the Assignment, and Bargain and Sale of the Bankrupt's Estate. Of the Involvement, and what shall pass thereby, or be such an Interest as the Commissioners may assign.

The commissioners may sell by bargain and sale, all the lands, tenements, hereditaments, as well copy as freehold, which the bankrupt had in his own right, before he became bankrupt, and also all such lands, tenements, and hereditaments, as he shall have purchased or obtained by money, or other recompence, jointly with his wife or children, to the only use of such offender, and all such use, interest, right, or title as he shall have in the same, which he may part withall. This must be by deed indented and inrolled; and bargainee may not enter till composit, with the Lord and admittance.

The commissioners may likewise assign all the bankrupt's fees, annuities, offices, goods, chattels, wares, merchantizes, and debts.

If a bankrupt after his bankruptcy purchase any lands, tenements, or hereditaments, free or copy; offices, fees, goods, or chattels; or in case any of them shall descend, revert, or by any means come to any bankrupt before his debts are paid, such future acquisitions are made subject to the commission, and may be assigned.

The father, on the marriage of his son, covenants, during his own life, to pay him fifteen pounds per annum. The son becomes a bankrupt; and the assignee files a bill against the father, to have the benefit of the agreement, and to compel payment of the fifteen pounds per annum. It was held that the assignee is not entitled to have a performance of an agreement made with the bankrupt.

A legacy given to a bankrupt before his bankruptcy was assigned.

If a bankrupt convey to his children, or other persons, any of his real or personal estate, except the same shall be purchased, or conveyed, or transferred to his children in consequence of marriage, or some valuable consideration, the commission shall overrule.

Commissioners may assign all debts, due, or to be due to the bankrupt, which shall fully vest the property in the assignee, and he may sue in his own name.

The commissioners by bargain and sale, indented and inrolled in one of the Courts of Record at Westminster, may grant any lands or hereditaments, of the bankrupt hath an estate in tail, in possession, reversion, or remainder, except whereof the gift of the crown, the reversion or remainder shall be in the King, and the commissioners may redeem mortgages upon lands or goods.

A man devised his lands in mortgage to be sold, and the surplus to be paid his daughter, who married a man who soon after became bankrupt and died; upon a bill brought by the assignees against the wife, to have the land sold and the surplus paid to them, the court dismissed the bill.

As to the sale of lands in a bankrupt's own possession at the time of his failing, the case of Allen, in the Chancery, 1 Jac. 1. is a very remarkable one; and was as follows: Edwards, a citizen of York, who had served the office of Sheriff there, being indebted to Allen, Habersley, and others of London, for wares sold, became a bankrupt; upon which Allen and Habersley, and some other creditors of London, by a petition to the Lord Chancellor, procured a commission of bankruptcy against the said Edwards, to certain commissioners therein named; who, by deed of bargain and sale inrolled, sold all the bankrupt's lands to Allen and Habersley for 400l. the land being then worth 2400l. but was sold so cheap on account of many incumbrances on it, made long before Edwards was a bankrupt, or became indebted to Allen, or any of the Londoners who sued out the commission.

After this sale, the commissioners, Allen and the other petitioning creditors, upon
full consideration had of the bankrupt's estate, which stood encumbered with a mortgage, statute, and leases, made an agreement with the bankrupt and his friends to this effect; viz. That the creditors would take ten shillings in the pound for their due debts, and Smith and Wood were the bankrupt's securities for payment of the same; and it was agreed, that Allen and Habersley should convey the bankrupt's land to them for their security, which agreement was certified by the commissioners: and they did also certify, that Allen, after this agreement refused to comply therewith, and sought the advantage of law, to the great loss and hindrance of the rest of the creditors, and to the undoing of Edwards, his wife, and children.

In execution of this agreement, twelve pounds ten shillings was paid to one of the creditors, and books were drawn and ingrossed by one of the commissioners ready for perfecting the assurance; notwithstanding all which, Allen refusing the agreement with Habersley, preferred a bill against Edwards and others, complaining, that the mortgage, statute, and leases were all fraudulent, and the money being paid was kept on foot by practice, to prejudice the creditors, and the sale made by the commissioners: whereupon Edwards, Smith, and Wood, preferred a cross bill against Allen and Habersley, for the performance of the agreement of ten shillings in the pound, and to convey the land to Smith and Wood according to the agreement.

At the hearing of the cause upon Allen's bill, the Lord Chancellor, finding it confessed, that of the mortgage money there was but thirty pounds unpaid, ordered that Allen, paying the thirty pounds, should have the same conveyed to him and Habersley & al. and the statute to be discharged, which was done accordingly, and a decree made, that Allen and Habersley, and their heirs, should enjoy the lands according to the sale of the commissioners, free from the incumbrances and charges of the statute, and the person who had it was left to the law; but upon another motion, his Lordship had stayed the liberate, after extent upon that statute; and so it rested.

Allen having gotten the incumbrances thus cleared by the Court of Chancery, sought to hold the lands for the 400l. only, which were worth 2400l. although he had covenanted with the commissioners in the bargain and sale, that if the lands were sold for more than 400l. within three years, he would pay the overplus towards the satisfaction of the creditors; and all incumbrances being discharged within the three years, as aforesaid, yet he would hold the land for 400l. and pay no more for it.

In another term, Allen gets a commission out of Chancery, to the sheriffs of York there, to put him in possession of the land, upon the first decree in chancery made for him; and Allen, with the under sheriff, cast Edwards's children all out of doors in frost and snow, that they were inforced to succour themselves in a mash fat, and when some of the tenants of the land would have taken them in, and relieved them, Allen threatened to turn them out of their tenements if they did so; and did turn one of the tenants out of his house, who entertained them but one night. Also Allen took divers cattle and goods that were Edwards's father's, and not the bankrupt's; and the old man suing for them in the King's Bench Court, Allen procured an injunction out of Chancery, and said all the suits as long as the old man lived, who shortly died; and Edwards and his wife at London, following the suit to be relieved against Allen, died both together of the plague, leaving seven poor children behind them.

The Lord Chancellor, being informed of this extremity by petition and affidavit, gave direction that the bill which Edwards, Smith, and Wood preferred upon the agreement of ten shillings in the pound, should be revived in behalf of the poor children; and his Lordship assigned Wood their guardian to prosecute, and Francis Moore be assigned to be of their counsel in forma pauperis.

This cause coming to hearing, and the agreement appearing confessed by Allen's answer, and proved by the certificate of the commissioners, and divers witnesses; the co-
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vetous and unconscionable dealing of Allen likewise appearing plainly, by the covenant which they took of Allen, the Lord Chancellor decreed Allen should pay the overplus of the value of the lands above 400l. if they should be sold for more; and the uncharitable and unchristian usage of Allen towards the poor children of Edwards, being all infants not able to help themselves, considered, did decree, that Allen and the rest should be satisfied with ten shillings in the pound for their debts, according to the agreement certified by the commissioners; but no abatement to be made of the 400l. paid for the land, nor of the 30l. paid for the mortgage; and withall, that Allen should have reasonable allowance for costs of suit; and for this purpose his Lordship made a reference to Sir John Tindal, a master in chancery, to cast up the estate of the bankrupt and the debts, and to certify what overplus he found for the relief of the poor children.

Sir John Tindal often heard the cause, and the allegations of Allen and his counsel, and in the end made a certificate of the estate real and personal of the bankrupt, and of the debts, and made all allowances as by the order was directed, and gave to Allen for costs of suit two hundred marks, and to Habersley a hundred marks, and seventy pounds to all the creditors that sued out the commission; and for the residue, did propose it as his opinion, that Allen should keep the land, and pay the overplus of the value thereof above the 400l. or part with the land to Smith & al. who would pay Allen and the other creditors according to the report, and yield the overplus to the children, amounting to 600l. or thereabouts.

On reading the master's report, the Lord Chancellor gave time to Allen to make his election, whether he would keep the land and pay the money, or part with the land and receive the money; and as Allen made no election, but insisted upon the advantage, to have the land for 400l. worth 2400l. and would render nothing to the creditors, nor to the poor children:

The Lord Chancellor did now decree, that Allen should receive the money mentioned in the report, which was much more than in equity was any ways due unto him, and convey the lands according to the report; and for not performing this decree, Allen was committed to prison. This cause began the 1 Jac. and ended 11 Jac. I.

It is laid down as a rule, that where the owner of lands, &c. by his own act may not control a gift or a charge; there, if he becomes a bankrupt, the gift or charge may not be defeated: so that if a man bargain and sell lands, and before inrolment becomes a bankrupt; and the deed afterwards is inrolled; in that case, the land may not be sold by the commissioners of bankrupts, but the bargainee shall hold the land discharged from the commissioners. And where a person gives lands, upon a precedent condition, to be performed by the donee, and becomes a bankrupt, after which the condition is performed, this defeats the power of the commission.

Although the commissioners in the afore-mentioned case cannot sell the land, where the party before inrolment becomes a bankrupt, according to the rule laid down by Jones, yet it is said, if he makes a feoffment of lands, and a letter of attorney to give livery and then becomes bankrupt before the seisin is delivered, these lands may be sold by the commissioners. The reason of the difference is, in the first case the bargainee is in by the bargain and sale; by relation from the execution thereof, and not by the inrolment; and the bankrupt could not by his own act defeat this; but no estate in the other case passeth at all till the livery be executed; and then in this last case, his letter of attorney is revocable, and his becoming a bankrupt before the estate is executed, is quasi a countermand or revocation in law.

In ejectment, upon a special verdict, the question was, whether the vendee or bargainee of the commissioners upon the statute of bankrupts, of lands by deed indented, may by his lessee maintain an ejectment before the inrolment of the deed, although it be inrolled after the action brought; here it was said by the court, that there is a great
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difference between this case and the case of a bargain and sale by the statute 27 Hen. 8. c. 10. of uses; for the estate there passeth by the contract, and the use is executed by the statute: then comes the statute of inrolments, cap. 16. of the same year, which enacts, "That no estate shall pass without inrolment of the deed indented, and that within six months," the words of the act being, "unless it be by deed indented and inrolled," and therefore the contract is with the party that had the estate, and the deed is appointed to be inrolled within a certain time.

But here the commissioners have not any estate, only a power which ought to be executed by the means prescribed by the statute, with the circumstances thereby directed; that is, not only by the deed indented, but inrolled also: and if they do not pursue the act according to their power, there is no execution or effect to pass the estate; and it would be very dangerous to make any other construction, as no time is limited by the said act for the inrolment; for if it were inrolled any time after seven, or twenty years, or a longer time, it shall relate as well to the making of the deed, as any shorter time; and judgment was given for the defendant.

The case being argued by Saunders, as reported in Ventris, he pleaded, that in the case of inrolment of a bargain and sale, the deed itself passeth the use, and the statute of inrolment obstructs the operation of it till inrolment; but when that is done, it passeth by the deed: that here needs no relation to avoid the mischief of mean assignments from the bankrupt, because he is restrained from the time of his first act of bankruptcy; and on the other side, the mischiefs would be very great, if there should be a relation from the inrolment, in regard the statute limits no time, for the doing of it, so that it may be inrolled many years after; and if this should relate to punish mesne trespasses the inconvenience would be very great, for such trespasses are, until the inrolment, exposed to the actions of the bankrupt.

That generally in cases of common law, there is no relation, as in the case of feoffment and livery, but stronger in case of a grant of a reversion, where the attornment is but the assent of the tenant; yet it shall not relate to the grant: it would be hard if relation should be admitted to make a man liable to trespass; and it has been much doubted, whether a bargainee before an actual entry can maintain action of trespass.

Per curiam, where executors sell by authority given by will, the vendee is in the per from the divisor, but here in the post, and by the statute; and it must be very inconvenient to admit of relation, because no time is fixed for the inrolment.

The judges in this case afterwards gave their opinions, that sale by commissioners of bankrupts, if of lands, ought to be by deed inrolled, and is void if otherwise; and that this depends upon the different penning of the statute from that of inrolment; they likewise held, that here shall be no relation.

A sale of intailed lands by the commissioners shall be good against the bankrupt and his issue, and bar persons in remainder or reversion, as much as if himself had suffered a common recovery. A case has been put on this clause of the statute of lands are settled on A. and B. his wife, before marriage, for their lives; and after their deceases, to the use of the first son of their bodies lawfully begotten, and to the heirs male of such first son; and for want of such issue, to the use of the second son, &c. in tail male, and so to the tenth son; A. becomes a bankrupt before he hath a son; whether the commissioners may sell these lands, and make a good estate to the purchaser; they may; for though A. is here not tenant in tail, but a bare tenant for life, the words of the statute being, that the "bargain and sale shall be good against other person or persons whatsoever, whom the bankrupt might cut off common recovery, or otherwise from any remainder, reversion, rent, profit, sibility;" it seems this bargain and sale shall be good; for A. the father, by his bare feoffment, might destroy the contingent estate; as it is in.
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1 Rep. 67. But was the settlement made so, as to support the contingent remainder, as is usually done, so that the father could by no means debar it by any act he could do, then it would make a greater question; and yet if the commissioners could not sell in such case, as settlements are generally made now, the act in this point might be easily eluded: however this is to be understood in voluntary settlements.

In consideration of marriage, a man makes a conveyance to the use of himself and his wife; afterwards he becomes a bankrupt, on which a commission is taken out, and the lands are sold by the commissioners; the sale has been adjudged good. It is observed in this case, that within half a year after the settlement, the party became bankrupt; so as there seems to be a fraud in the conveyance; but it is not expressed in the pleading, as it might have been; and this is not in dispute upon a special verdict, but comes in question on a point of pleading, which is to be strongly taken against him that pleads it; and he does not express any valuable consideration, as he might have done; as consideration of a portion, or performance of articles made on marriage, or that the wife had joined in selling some part of the land.

A settlement was made by the husband, for a jointure of his wife, reciting, that the wife had joined with the husband to sell part of her former jointure, in which he and she were tenants for life, the remainder in tail to the first and tenth son, remainder to his heirs: by Hale C. J. at a trial at bar, this is not fraudulent, though he alone, having no issue, might bar this contingent remainder.

And a man may settle lands on his son, before he be a bankrupt; and if it be not by fraud and to deceive creditors, it shall be good, and the fraud must be found by the jury. The statute saith, "The sale of the commissioners shall be good against such offenders," and he is no offender till he is a bankrupt.

If a man purchases lands after the time of his trading, and his being in debt, and doth purchase it in the name of his wife or children fraudulently, this will be liable to sale by the commissioners: though it is otherwise, if it be purchased before he comes to be a merchant. Also any sale of lands or goods by a bankrupt before he comes to be in debt, or before his trading, is without question good; and so are all the acts he doth, before he comes to appear to be a bankrupt.

In case a bankrupt hath lands in right of his wife, they may be sold during the coverture; and if she be a feme sole merchant in London, she becoming bankrupt, the whole shall be sold; and it shall be counted the husband's folly to suffer her to trade, and her trading shall be looked upon as his; so that she and her estate in trade shall be affected by his bankruptcy. But the dower of a bankrupt's wife shall never be sold, unless she marries one that is a bankrupt.

It is clearly held, that if two persons are jointly seised of lands, and one becomes a bankrupt, his moiety may be sold by the commissioners: even though he be dead, and the survivorship shall not take place.

And where two women are joint tenants of a lease for years, and one takes a husband who becomes a bankrupt; the commissioners may sell the interest of a moiety: and yet this has been questioned; for chattels real are given to the husband, if he survive; but if he die before the wife, she shall have them. If two joint tenants are disseised, it is likewise a question, whether the commissioners shall sell on the bankruptcy of one of them; for before entry he could not grant his moiety, though he might release it.

As to lands descended or devised to the bankrupt after his bankruptcy, the commissioners may sell the same: as they may all offices of inheritance, such as warden of the fleet, keeper of a forest, &c. but no judicial office, or office of trust which is

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annexed to the person, and may not be executed by a deputy; for if such officer absent, he forfeits his office, and then the King's grant is over.

As for lands mortgaged, or estates on condition, by 21 Jac. I. c. 19. if a merchant makes a feoffment on condition, that upon paying a certain sum he may re-enter, and then becomes a bankrupt, the commissioners may tender the money at the day, and make sale of the land. But where lands are mortgaged to a bankrupt, as of a feoffment in fee, in consideration of a sum of money, to be paid to him and his heirs, provided that if the feoffer do not pay such a sum on such a day, then the feoffer is to make it an estate absolute: the feoffee becomes a bankrupt, and the money is not paid on the day; the commissioners cannot by this act force the feoffer to make an absolute fee, though chancery will compel him.

By the statute, the commissioners are enabled to perform the condition, &c. of a mortgage; but if the mortgage is forfeited, it has been formerly a quere whether the commissioners might dispose of the equity of redemption: but serjeant Newdigate said it had been ruled in Chancery, that commissioners may assign an equity of redemption.

Where the equity of redemption of lands mortgaged was conveyed over to a third person by a bankrupt, after his bankruptcy, though before the assignment of his estate by the commissioners; Lord Chancellor Talbot held that nothing passed by this conveyance: for creditors after bankruptcy are in nature of purchasers, and have a prior equity to any other persons.

And as the statutes concerning bankruptcy are found on supposed frauds of the bankrupts; and consequently intended to put them under disabilities to prejudice their creditors; so his Lordship decreed, that the mortgagee should re-convey to the plaintiff, the assignee, upon payment of the principal and interest.

In general, no person shall be allowed to come into equity for a redemption, but he that has no legal estate of the mortgager; and where there are proper persons as assignees to get in the estate of a bankrupt, a court of equity will not suffer the creditors to bring in a bill in order to redeem or recover that estate, unless the assignees under a commission make default or collude with a debtor, when a creditor may bring his bill, in order to take care of the estate, and charge the assignee with such collusion.

If a bankrupt, before his bankruptcy, sells his goods to other persons, and yet keeps and disposes of the same as if they were his own, such goods shall be sold by the commissioners; and accordingly it hath been always so adjudged: and if a man, with an intent to support the credit of a bankrupt, suffers him to have his goods in his custody, and to dispose of them, the property of these goods shall be accounted to be in the bankrupt, and not in the true owner; for the owner shall lose his right, as a punishment for his false dealing herein, and of the mischiefs that may grow by such devices to evade the laws; and the law cannot take notice of such private things done between the parties, but will judge of them as they appear to be. The statute is held to extend to the goods of other persons which are permitted to remain in the possession of the bankrupt, and whereof he may take upon himself the sale, alteration, or disposition, as owner. See Mace v. Cadell, Cwpr. 232.

If one becomes a bankrupt after an extent and before the liberate, and the commissioners sell the goods to the creditors; it has been adjudged they cannot be sold. Though the words of the statute are, That the commissioners have power to sell the goods which were his at the time that he became a bankrupt; notwithstanding he becomes a bankrupt before the liberate; and although the property remains in the consor until the delivery by that writ; yet the extent has bound the goods so, that when the libe-
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rate comes it defeats this, and divests the property of the goods out of the consor, as to any mean act or incumbrance, from the time of the extent.

In this case, all the court resolved, and severally delivered their opinions, that those goods extended before the party became a bankrupt, and delivered by the liberate after he was a bankrupt, could not be sold by the commissioners; because they being excepted, are quasi in custodiâ legis, so as the consors have not any power to give, sell, or dispose of them; and they are as goods gaged or distrained, which cannot be forfeited by outlawry, or taken in execution, from the person that has them in gage, or by way of distress, without payment of the money, for the goods are bound by the test of the writ of extent or execution sued.

They also held, when the writ of liberate is sued out, it has relation to the writ of extent, and they are as but one extent; and the goods are so bound by the extent and appraisement, that the consor hath no more property in them but secundum quid, that is, if the consue refuse to accept them; for it is a conditional writ to deliver the goods to the consue, if he will accept thereof, and when he accepts them, they are bound ab initio. And they all conceived, that the statute being with an exception, when execution or an extent is served or executed; that this is to be accounted the execution of an extent, when the goods are appraised, and the writ returned; but so long as they remain in the hands of the consor; they may be sold; but when they are delivered by the liberate, and the extent is returned served, the goods are not subject to any other execution, nor the power of the commissioners, to meddle with them.

An execution was sued by a person, the money levied, and in the Sheriff's hands, and the man became a bankrupt: By the court; the money recovered in the hands of the Sheriff is not assignable by the commissioners to the creditors, for it is in custodia legis.

But it is nevertheless held, that the assignees of the commissioners may bring a scire facias against the defendant, in case the money lie in his hands, in order to try the bankruptcy, and so gain the money recovered by the bankrupt.

One Thompson had a judgment against Watkins for 600l. and the 19th of June sued out a fieri facias thereupon, which the 30th of June was delivered to the Sheriff in the morning, and Watkins having notice thereof, in the night of the same day departed from his house, and thereby became a bankrupt; the 1st of October the Sheriff levied 400l. of the goods of Watkins, and paid it to Thompson, and the commissioners assigned it in the hands of Thompson to the plaintiff, as the goods of Watkins in his hands, for which an action on the case was brought, and a special verdict on it found; and being learnedly argued on both sides, a judgment was finally given for the defendant.

In an action of trespass brought by the assignees of commissioners of bankruptcy, for taking of their goods; on not guilty pleaded, the jury found a special verdict, the substance of which was as follows, viz. One Toplady, a vintner, on the 28th of April became a bankrupt, against whom a judgment was formerly obtained; the judgment creditor sued out a fieri facias, and the Sheriffs of London by virtue thereof, on the 29th of April seized the goods of the said Toplady; and after the seizure, but before any venditioni expones came, an extent, which is a prerogative writ issued out of the Exchequer, against two persons who were indebted to the King, and by inquisition, this Toplady was found to be in debt to them, whereupon part of the goods mentioned in the plaintiff's declaration were seized by the sheriff, and sold, and the money paid, &c.

But before the said sale, or any execution of the Exchequer process, a commission of bankruptcy was had against Toplady, and the commissioners assigned the goods to the plaintiff.

The question here was, whether this extent did not come too late? or whether the fieri facias was well executed, so that the assignees of the bankrupt's estate could not
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have a title to those goods, which were taken before in execution, and so in custody of the law? The Court adjudged, that the extent, though a prerogative writ, and likewise the assignment by the commissioners of bankrupt, came too late, by the execution being well executed, the goods were made liable to the judgment creditor.

A person that is a bankrupt, becomes _felo de se_; it has been a question, whether the commissioners may assign the goods to be sold for the creditors, or if the King shall have them? And it was resolved for the creditors: For though it is adjudged in Lady Hale's case, in Plowden, that when two titles come together, viz. the King's and that of a subject, the King's title shall be preferred; yet the king by the acts of parliament has given away his title to the creditors: And nevertheless this may admit of a dispute, the judges never construing a statute to give away the King's right, but wherein he is mentioned. In a question whether the creditors by a commission shall have the goods of a person outlawed; It is conceived the King shall have them by outlawry, &c. where he has a title at common law.

In the Chancery, it has been decreed, that money overpaid on an usurious contract, as where a sum is lent to a person in necessitous circumstances, at six or eight per cent. who afterwards becomes a bankrupt, shall be accounted for and refunded, notwithstanding the agreement of the oppressed party to allow such payment, and the securities therefore to be delivered up. But in the case of money lost at gaming and paid, the court will refuse relief, where it cannot be recovered at law; for there the plaintiff in equity is _particeps criminis._

_Of uncertain and contingent Estates, and which do or do not centre in the Bankrupt._

These are several, which I shall mention in order, beginning with the bankrupt's wife; and, first, concerning her dower.

Dower is a portion which a widow hath of the lands or houses of her husband after his decease; and by the common law it is a third part of the lands which the husband died seized of, either in fee simple or fee tail, which she is to enjoy during life.

By the custom of Kent called gavelkind, the widow is entitled to the half part of the husband's estate, either in fee simple or fee tail, _quamdiu remanet sola et casta_, so long as she remains single and continent; but if she marries, or is guilty of incontinency, then she forfeits such estate.

Lord Coke says, that all kinds of dower were instituted for the wife's subsistence during her life; which right of dower is not only a legal but a moral right, as it was held by Sir John Trevor, Master of the Rolls, in the case of Lady and Lord Dudley.

Secondly, the relation of husband and wife, as it is the nearest, so it is the earliest; and therefore the wife is the proper object of the care and kindness of her husband. The husband is bound, by the laws of God and man, to provide for her during his life; and after his death the moral obligation is not at an end, but he ought to take care of her provision during her own life. This is the more reasonable, as during the coverture, the wife can acquire no property of her own. If before the marriage she had a real estate, this by the coverture ceases to be her's, and the right thereto, whilst she is married, vests in the husband; her personal estate becomes his absolutely, or at least is subject to his control; so that unless she has a real estate of her own, which is the case but of few; she may, by his death, be destitute of the necessaries of life, unless provided for out of his estate by a jointure or dower. As to the husband's personal estate, unless restrained by special custom, which very rarely takes place, he may give it all away from her; so that his real estate, if he had any, is the only plank she can lay hold of to prevent her sinking under her distress. Thus is the wife said to have a moral right to her dower.
The husband, on the contrary, has no right to a tenancy by the courtesy, but from positive institutions or provision of the laws: his right does not arise from the relation of husband and wife, for then every husband would have it, which is not so; nor doth he want it, if it be not his own fault, or at least his misfortune. During the coverture, he is master not only of his own, but of his wife's estate: and by his industry and provident care, may acquire property sufficient, without any part of her estate, to maintain himself after her death: so that the husband's tenancy by the courtesy hath no moral foundation, and is therefore properly stilled tenancy by the courtesy of England; that is, an estate by favour of the law of England.

Dower also is a legal right created by law, which settles the quality of the estate out of which the wife's dower arises, and likewise ascertains the quantum thereof. The common law says, the third part is rationabilis dos; and a special custom, which is lex loci, enlarges or abridges the common law of dower, and gives the whole, half, or less than a third.

The common law likewise ascertains dower, with respect to the nature and quality of the husband's estate.

It says, the wife's dower must come out of such an estate as would descend to the issue of the husband by that wife; and gives dower of the husband's seisin, though not actual, or reduced into possession; it annexes privileges to dower as not to be liable to distress for the husband's debts to the King, much less for any due to the subject; with several other privileges. Again, the law fixes the age when a woman is dowerable; and, by the way, fixes it at such a time, as, by the course of nature, at least in this part of the word, it seems impossible she should have issue, or be pregnant, viz. at nine years old. But it is not so favourable to a tenancy by the courtesy, which it allows only in the case of a seisin in deed; it annexes no privileges thereto. And though the husband may be tenant by the courtesy of a common sans number, of which the wife is not dowerable, yet that is because of its indivisibility; in which case if dower was allowed, it would be injurious to other persons, and the lands be doubly charged. Thus the law, where it can justly do it, prefers the title of dower to that of courtesy.

Dower is also an equitable right, and such a one as is a foundation for relief in a Court of Equity. It arises from a contract made upon a valuable consideration, marriage being in its nature a civil, and in its celebration a sacred contract; and the obligation is a consideration moving from each of the contracting parties to the other; from this obligation arises an equity to the wife in several cases, without any previous agreement, as to make good a defective execution of a power, a defective conveyance, or supply the defect of a surrender of a copyhold estate; in all which the court relieves a wife, and makes a provision for her, where it is not unreasonable, or injurious with respect to others. Indeed in the case of the husband, marriage, as it is a legal consideration, so it is an equitable one; but then it is not carried so far in his favour, as in her's; and in the cases before-mentioned, the court would not supply a defective title for the husband; at least it has not been done.

A bill was brought by a widow, to be endowed of an equity of redemption, though the mortgage was made in fee before the marriage, upon her paying a third of the mortgage money, or keeping down a third of the interest. And his Honour the Master of the Rolls, after citing several authorities, declared, that the plaintiff, being the widow of the person intitled to the equity of redemption of the mortgage in question, which was a mortgage in fee, hath a right of redemption; and accordingly decreed her the arrears of her dower from the death of her husband, she allowing the interest of the third of the mortgage money, unsatisfied at that time, and the dower to be set out if the parties differed.

A woman is not intitled to dower where the husband purchases an estate with a Case in Chancery.
trustee; but if the trustee die in the life-time of the husband, the joint tenancy between
the husband and the trustee will survive to the husband, and then the wife will be intitled
to dower.

The defendant for 4400l. purchased of Lord Bodmyn the reversion after the death
of Lord Warwick, of lands of near 1000l. per ann. and for protection of the estate,
and to prevent the plaintiff's dower, the defendant upon his purchase took an assign-
ment of a term for years, which was vested in trustees to secure the payment of
certain annuities, and afterwards in trust to attend the inheritance, and likewise took
an assignment of an ancient statute that had been kept on foot for the protection of the
estate.

The plaintiff had recovered dower at law, but was prevented from taking out execution
by reason of the term and statute.

To be relieved against which, and to be let into the possession of her thirds, was the
end of the plaintiff's bill.

The defendant insisted he was a purchaser, and that he ought to have the benefit of
this term for the protection of his purchase.

But the plaintiff's bill was dismissed, and upon an appeal to the House of Lords, the
decree of dismissal was affirmed.

If a partnership property be bona fide lent to a partner who invests it in the pur-
chase of real estate, the wife shall be intitled to her dower out of them. Smith v. Smith.

The wife of a bankrupt, of a person non compos mentis, or of an outlawed or
excommunicated person, or of a person committing felony, is not barred of her
dower.

And in case of the bill for taking away the estates of the South Sea Directors in the
year 1720, all the wives of their husbands were intitled to their dower, and received
satisfaction for the same.

But the wife of a person guilty of high-treason, or of an alien jew, is not dowable:
and if the wife herself commits high-treason, or felony, or if she elope from her husband,
and lives with the adulterer willingly, without being reconciled to her husband, she shall
lose and forfeit her dower; but if the husband be reconciled, and she live with him again
she shall be endowed.

If a wife levies a fine with her husband, and they join in the sale of an estate to a pur-
chaser, she is barred of her dower.

By the statute of the 27 Hen. VIII. c. 10. s. 6. it is enacted, that where persons
have purchased, or have estate made of lands and hereditaments, &c. to them and
their wives, and to the heirs of the husband, or to the husband and to the wife, and to
the heirs of their two bodies begotten, or to the heirs of one of their bodies to be begot-
ten, or to the husband and to the wife for term of their lives, or for term of life of the
wife, for jointure of the wife; every woman having such jointure shall not claim any
dower of the residue of the lands that were her husband's.

And then it provides, that if any such woman should be lawfully evicted from her
jointure, or any part thereof, such woman shall be endowed of as much of the residue of
her husband's tenements, as the lands so evicted shall amount unto.

Provided also, that if any wife shall have lands, assured after marriage in jointure,
except the assurance be made by act of Parliament, she may at her liberty, after the
death of her husband, refuse the lands, to her assured in jointure, and demand her
dower according to the common law.
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Wife's Title to her Free-Bench.

Free-bench, is that estate in copyhold lands which the wife hath on the death of her husband for her dower, according to the custom of the manor; and in several manors there are various customs with respect to such estate; and in some places the wife hath the whole of the lands, in others the half, and in others the third: and I shall cite the following case:

This was an action of trespass, and upon a special verdict it was found, that the land was copyhold of inheritance of the manor of Cheltenham in Gloucestershire, whereof Arthur Bleeke, late husband of the defendant, was seised in fee.

And in this manor there was a custom, that if a copyholder, seized in fee of a copyhold tenement, died, leaving a wife at the time of his death surviving him, that she should hold the said copyhold land during her life, and for twelve years after.

And by virtue of the statute of 13 Eliz. he was found bankrupt; and by indenture dated the 5th of April 10 Car. and inrolled within the six months, they sold the copyhold lands to the plaintiff Alexander Parker and to William Sotherne and their heirs, for 600l. paid for the use of the bankrupt's creditors.

And the jury by virtue of a private act of parliament, made 1 Car. found, that by the custom of that manor, the wife of the copyholder should have dower, and may have a jointure assigned for her life; and that a copyholder of inheritance may grant for his life, and twelve years after.

And that all women then living, and late the wives of any of the copyholders of the said manor, dying tenants, should and may enjoy the customary lands of their now, or late husbands, and be tenants for their lives, and twelve years after, as if that act had never been made.

And that all the customs and usages heretofore used and allowed within the said manor concerning the enjoying any customary lands, &c. by any widow of any customary tenant, or any after-taken husband of such widow, or the heir or heirs of such wife, hereafter taking husband, or concerning the descending of any such lands to any other person or in any other form than is before expressed, shall be void; and that all other lawful usages and customs, heretofore used within the said manor, which were not repugnant and contrary to the true meaning of that act, should be and remain good and effectual to be ratified by that act.

And the jury found, that at a court baron of the said manor, held the 1st of April, 12 Car. it was found by the homage, that Edith survived her husband, and ought to enjoy the said tenements for her life, and for twelve years after; and that upon a presentment the 1st of April, 12 Car. and before the admission of Alexander Parker and William Sotherne, the said Edith was admitted tenant of the tenements aforesaid, according to the custom of the manor, and by virtue of such admission she entered.

And this was very well argued at the bar of Glyn for the plaintiff, and Moreton for the defendant, where two points were insisted on.

1st. Whether by the bargain and sale made by the commissioners, by virtue of the statute of bankrupts, the estate of the copyholder was vested in the bargainee before admittance; for then the said Arthur Bleeke did not die tenant, and so it is not within the custom, that his wife should have widow's estate.

2dly. Admitting he died tenant, and the widow had such an estate vested in her, whether the vendees, by the bargain and sale to them before made, shall not afterwards divest the estate of the feme by relation, and then the plaintiff hath a good title.

And it was argued that the bargain and sale binds the copyholder, and bars his estate; and that he is no copyholder after the bargain and sale enrolled; and the bargainee by the statute is only barred to take the profits until admittance, which is for the Lord's.
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benefit, in respect to the fine due to him thereupon. 2dly, It was held, when the bargaineer is admitted by the Lord, it shall vest in the bargainee, and shall have relation to the bargain and sale, and shall divest the estate which the feme claimed by the custom, as in the case of 7 Edw. VI. Brook, title Inrolments. Where one joint tenant bargains and sells, and before the inrolment the other dies, and afterwards the deed is inrolled within the six months, yet the moiety only passed. And it is like the case where one bargains and sells by indenture, and takes a wife and dies, and afterwards the deed is inrolled within six months, the feme shall not have her dower; and so the case 22 Eliz. where a mortgagee dies, his heir being in ward to the King, the condition is afterwards performed, the wardship shall be divested. Jones and Bramston doubted of the point, until they saw the record finds the act to be particularly, that she ought to be the wife of a tenant, and it is not intended, that, after the sale of a copyhold he should die tenant, and he did not die tenant, because the bargain and sale took his estate from him, and ousted him of the copyhold. Wherefore they agreed judgment should be entered for the plaintiff.

Having exhibited these cases concerning the wife's dower, and free-bench, I shall now mention some concerning Separates Settlements before marriage, and provisions of parents after.

Separate Settlements

Are frequently made before marriage; and the fittest and securest manner of making them is as follows:

The intended wife names trustees of her own; and that part of her fortune or estate, which she or her friends think fit to settle for such separate use, is, with the privy and consent of the intended husband, and who ought always to be made a party to the deed, conveyed or assigned to such trustees for her sole and separate use and benefit, and to and for such uses, intents, and purposes, as the said intended wife, by deed or deeds in writing, or by her last will, shall direct or appoint: And there is a particular agreement that such separate estate shall not be subject in any respect to the debts, control, or engagements of the husband; but that the trustees are to pay and apply such separate estate, or the rents or interest thereof, into her own proper hands, or to permit her, or her assigns, to receive the same for her own separate use, exclusive of her husband, as she shall appoint.

And by this deed the intended husband usually covenants with the trustees, that they shall quietly enjoy such separate estate or money; and he consents to the settlement; and he agrees that any deed or will that she may make, according to that deed, shall have its full effect; and that he will not obstruct the execution of the same.

These separate provisions are also frequently made by deed or will, by parents to their daughters that are married, as a provision for their support and maintenance, in case any misfortunes or losses may happen to their husbands; and if they are secured in this manner, they are effectual against any of the husband's creditors, or any incumbrance or act of bankruptcy.

And the reason why settlements should be made in this manner will appear from the following cases.

A widow makes a deed of settlement of her estate, and marries a second husband, who was not privy to that settlement; and it appearing to the court, that it was in confidence of her having such an estate that the husband married her, the court set aside the deed as fraudulent.

So where the intended wife the day before her marriage entered into a recognizance to her brother, it was decreed to be delivered up.

So where a conveyance was made by the wife before her marriage to trustees in trust, that they should permit her to receive the rents and profits of the estate, and act in
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every thing as she, whether sole or covert, should appoint; the Lady being crazed in her understanding, endeavoured to run away from her husband, and stirred up her creditors to sue him; and the conveyance appearing to be without the husband's privity, the Lord Chancellor held it to be in derogation of the rights of marriage; and decreed the possession of the estate to the husband, and a conveyance from the trustees to the six clerks, that it might be subject to the order of the court.

A woman, on agreement before marriage with her husband, being to have a power to act as a feme sole; and the husband dying, and she marrying again, the second hus-

band, not being privy to the settlement on the first marriage, it was decreed, that the second husband should not be bound by the settlement made on the former marriage. A case cited to be decreeed.

But when a widow, before her marriage with a second husband, assigned over the greatest part of her estate to trustees, in trust for children by her former husband; and though it was insisted, that this was without the privity of her husband, and done with a design to cheat him, yet the court thought that a widow may thus provide for her children, before she put herself under the power of an husband; and it being proved that 800l. was thus settled, and that the husband had suppressed the deed, he was decreed to pay the whole money, without directing any account.

William Davison having devised a legacy of 600l. to his son, payable at twenty-one, for which he had obtained a decree, and 637l. reported due; before he received the money he became a bankrupt, and the commissioners assigned the legacy and benefit of the decree.

The bill was brought by the assignees to have the benefit of the decree; to which the defendants, the executors, demurred, insisting that a legacy was not within the compass of provision of any of the acts made against bankrupts, to be assigned to the creditors. But the demurrer was overruled; and said that the act of Parliament ought to be taken in the most beneficial sense for the advantage of the creditors.

Wills in Favour of a Bankrupt's Wife, &c.

J. S. married his daughter to one Bennett, a tradesman in London, who was extra-
vagant and in debt; the father makes his will, and devises the premises in question, being lands in fee, to his daughter, the wife of Bennett, for her separate use, exclusive of her husband, to hold to her and her heirs; and that her husband should not be tenant by the courtesy, nor have these lands for his life in case he survived his wife, but they should, upon the wife's death, go to her heirs.

Soon after this the testator dies, and Bennett becoming a bankrupt, the commis-

sioners assign the lands to the defendant Davis, in trust for the creditors; and upon Davis's bringing his ejectment, the bankrupt's wife, by her next friend, prefers her bill against Davis, the assignee and husband, to compel them to assign over his estate to her separate use.

It was objected on behalf of the defendant, that he being a creditor, and having the law on his side, it would be hard to take that benefit from him; and that, though the testator might intend these lands for the separate use of his daughter, yet that this in-
tention was not executed according to law, as the premises were not devised to trustees for the separate use of the wife, and according to law the husband, during the coverture, was entitled to his wife's estate in her right; and it was farther urged, that the case of a devise of a legacy or of a term to the wife for her separate use might be good, because these remained in the executor until assent, and equity would not compel the executor to assent, whereby the intention of the testator should be disappointed, but
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would continue the executor a trustee for the feme covert. Whereas in the present case, the devise being of lands in fee to the wife, who by the will only had an immediate title thereto, the husband must consequently be entitled to the profits in her right.

That there was no trust, the testator never having intended to trust the husband, and the wife could not be a trustee for herself; besides, the husband could not be a trustee for the wife, they both being but one person.

On the other hand, the plaintiff’s counsel would have read parole evidence, to prove that the testator did not intend these lands should be liable to the husband’s debts; but the court would not permit such evidence to be read, it being in the case of a devise of land, which by the statute must be all of it in writing.

As to the chief point, the Master of the Rolls took it to be a clear case, that it was a trust in the husband, and that there was no difference where the trust was created by an act of the party, and where by the act of law.

If I should devise that my lands should be charged with debts or legacies, my heir, taking such lands by descent, would be but a trustee; and no remedy for these debts and legacies but in equity: so in the principal case, there being an apparent intention that the wife should enjoy these lands to her separate use: by that means, the husband, who would otherwise be entitled to take the profits in his right during the coverture, is now declared and made a trustee for his wife; and admitting the husband to be a trustee, then the argument of the creditors having the law on their side, was immaterial; as if the bankrupt had been a trustee for I. S. his bankruptcy should not in equity affect the trust estate; and that though the husband, the bankrupt, might be tenant by the courtesy, yet he should be but a trustee for the heirs of the wife. Also when the testator had a power to devise the premises to trustees, for the separate use of the wife, this court, in compliance with his declared intention, will supply the want of them, and make the husband trustee. And the defendant, the assignee, who claiming under the husband can have no better right than the husband, must join in a conveyance for the separate use of the wife, which was decreed accordingly.

The defendant’s testator by his will devised 800l. to be paid within six months after his death to one Mr. Define, in trust, that he should lay it out and invest it in a purchase for the benefit of the wife of I. S. and to settle it so, as after the death of his wife it might come to her children, and the interest in the mean time to be paid to such persons as ought to receive the profits. I. S. becomes a bankrupt, and the plaintiff, as assignee under the statute, would have the interest of this money decreed to him, during the joint lives of Baron and Feme.

_Per curiam:_ This not being any trust created by the husband, or any thing out of his estate, but given by a relation of the wife’s, and intended for her maintenance, it is not liable to the creditors of the husband, and the plaintiff hath no title thereto as assignee of the commission of bankruptcy; and therefore decreed it should be paid to Define the trustee, to be laid out in land, and settled according to the will.

The case of Drake and the Mayor of Exeter was cited, where there was a lease for twenty-one years, with a covenant for renewal at the end of the term; the lessee became bankrupt; adjudged, the assignee under the statute should have no benefit of that covenant.

Walter Wallinger by his will left to his niece Elizabeth Tayleur, an infant, 1000l. payable after the death of the testator’s wife, and at his said niece’s age of twenty-one years, if she should so long live.

The niece married I. S. without the knowledge or consent of her father; I. S. being at that time much in debt by judgment and otherwise; and gained the young gentlewoman’s consent by the influence of a maid servant, whom he had bribed to his interest. The niece was about eighteen years of age.
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Soon after the marriage, I. S. became a bankrupt, and the commissioners of bankruptcy assigned over all the estate and effects of the bankrupt to the plaintiffs, in trust for the creditors, who brought their bill for this legacy; the testator's widow being dead, and the niece being about twenty-one years old, and consequently the legacy due; and the bankrupt had two children by his wife then living.

This cause coming on before Baron Price, in the absence of the Lord Chancellor, the Baron, in regard to the creditors, did decree the legacy and interest to be paid to the plaintiffs.

But upon an appeal from that decree to the Lord Chancellor, his Lordship declared, that forasmuch as the plaintiffs, the assignees of the commission, claimed under the bankrupt, they ought not to be in a better case than the bankrupt himself; and since, if he had brought a bill for his legacy, the court would not have allowed it him, without obliging him at the same time to make some provision for the wife and children; so for the same reason, when these claiming under the bankrupt, and who must be exactly in the same case as he himself would have been in, come for equity, they ought to do equity, which would be to provide for the wife and children of the bankrupt, from whom they derived their claim. But with regard to the interest of the money, as the bankrupt commonly was allowed to receive that, so the assignees ought to receive the same during the bankrupt's life; also if the bankrupt's wife should die without issue, then the bankrupt would have been allowed to receive the whole money, and therefore in such case the assignees should be allowed to receive it also.

However his Lordship said, that as a judge had been of a contrary opinion, he would take time to consider of it.

And on the cause coming on again, the case of Taylor and Wheeler was cited; and it was moreover observed to the court, that the bankrupt had in this case gained his certificate and was discharged, and that the assignment made to the complainants being before the legacy was vested, if they could not now supply the assignment, by making a new one, the consequence was that the legacy was vested in the bankrupt.

But the Lord Chancellor replied, that this not appearing in the pleadings, he would take no notice of it; nevertheless at another day, the fact being made to appear by a petition with the certificate of the commissioners, and the allowance of the Lord Chancellor Harcourt annexed, the court said it was clear, the commissioners could not assign this possibility of right which the bankrupt had to the portion, and consequently the assignees being plaintiffs in the bills, and entitling themselves under this assignment, and this assignment being void, with respect to such possibility,* therefore the bill must be dismissed, but without costs, because the plaintiffs were creditors.

Afterwards, in Trinity Term 1718, the wife of I. S. by her next friend, having brought a bill, setting forth her having been seduced into this marriage, and the husband's bankruptcy, together with the certificate for his discharge, prayed that the money

* But the reason given above, viz. because the bankrupt, the husband, could not have come to his wife's portion without the assistance of a court of equity, which would not have decreed it to him, but on his making some provision for his wife, seems to have been the best foundation for this decree; since a possibility or contingent interest is certainly assignable by the commissioners. Thus in the case of Higden V. Williamson, first heard at the Rolls, Mich. 1731, and afterwards affirmed by Lord Chancellor King, in Mich. 1732. The case in effect was, an estate was devised to be sold, and the monies arising from such sale to be divided among such of the children of A. as should be living at his death: A. had several children, one of whom, viz. B. became a bankrupt, and the commissioners assigned over his estate; after which B. got his certificate allowed; and then A. died; declared that his share of this money, which on A's death belonged to B. should be paid to the commissioners; for that not only the latter statutes relating to bankruptcy mentioned the word possibility, but also because the 13 Eliz. cap. 7. sect. 2. empowers the commissioners to assign all that the bankrupt might depart with; and here B. in the lifetime of A. might have released this contingent interest. Besides, the 21 Jac. 1. cap. 19, enacts, that the statutes relating to bankrupts shall be construed in the most beneficial manner for creditors.
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might be put out to her separate use for her life, and afterwards for her children; to which the husband putting in his answer, and declaring himself sensible of his having injured his wife, in manner as above, submitted to what was desired by the bill, only prayed the arrears of interest.

On the other hand, the assignees opposed the bill, insisting, that the commissioners might still make a new assignment of this which was now and not before vested.

But by Lord Chancellor Parker, the commissioners have executed their power, and the debts which the husband, the bankrupt, owed to the creditors before the bankruptcy, are now extinct by act of Parliament; and this portion is as a new-acquired estate by the husband in right of his wife; wherefore since the husband agreed to this prayer of his wife’s bill, which is but a reasonable reparation for the wrong he had done her, decree the husband the arrears of interest, deducting the costs, and let the legacy be laid out in a purchase; and in the mean time let the wife have the interest for her separate use, &c. by which means the whole legacy was saved to the wife, and to her separate use.

Of Marriage Bonds, and Articles before Marriage.

Marriage bonds are frequently given before the espousals, by persons who are engaged in trade or business, and where it would be inconvenient to lay out the portion in land, because the woman’s fortune is supposed to be added to the husband’s, and to be invested in the stock in trade, in order to be there managed by the husband for the mutual support of themselves and their children.

And these bonds must be given to two trustees, to be named and appointed by the intended wife, or one of them by her, and the other by the man, and according to the portion or fortune, which the woman brings her husband, the husband becomes bound, to pay at his decease, to the trustees, or the survivor of them, or the executors or administrators of such survivor, the sum agreed between them in trust, and for the sole use and benefit of the wife, in case she shall survive him; or part for the wife, and part for the children, as the parties shall agree between themselves; and in case the wife shall not survive the husband, and there shall be no children, then the bond is usually declared to be void.

The reason of giving this bond to trustees is in order to support the demand against the estate of the husband; and it is effectual against his real as well as personal estate, but it must not be made to the intended wife in her name, before marriage, because upon the marriage, the husband and wife are become one person in law; and whatever securities might be given to her before marriage, unless they were supported by trustees, would, on such marriage, revert back again, and be merged in the husband’s fortune, and be unsafe for the wife.

A marriage bond is of no greater effect or force than any other bond debt; but as the wife is frequently executrix to her husband, and the law usually throws the right of administration upon her, whenever she is either executrix or administratrix, she as well as any other executor or administrator has a right to pay her bond debt first, and preferable to all other bond debts, or debts of an equal or inferior degree.

But if the husband becomes a bankrupt in her life-time, this has been adjudged to be such a contingent or uncertain debt, that her trustees cannot come in as creditors to prove such debt under such commission, which the following cases will illustrate:

A husband who was a trader, in consideration of a marriage, and of a portion, gave a bond to his wife’s trustees, to leave the wife, if she survived him, 1000l. The obligor became a bankrupt; and it was objected, that in Lord Cowper’s time it had been ordered, in case of bond given on so valuable a consideration, that the money computed upon the distribution to be the share of the obligee in this bond, shall be put out at in-
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interest, and the creditors have such interest during the life of the husband, the bankrupt; and if the husband should die, leaving the wife, the money to be paid to the wife; but, if the wife should die in the life-time of her husband, then the money to be paid to the creditors.

On the other hand, Lord Macclesfield was said to have doubted of this, wherefore this case coming again in question before the then Lord Chancellor King, his Lordship ordered the precedents made in Lord Cowper’s time to be left with him.

And his Lordship was of another opinion, conceiving, that no part of the bankrupt’s estate should wait, or be deferred from being distributed; the act ordering that the bankrupt’s estate should be distributed within months; especially that the distribution should not wait, as in the present case, for a debt which was neither debitum in presenti, and never might be debitum in futuro, in regard the wife might die in the life-time of her husband; besides the husband, after his certificate allowed, might go to his trade again, and become a solvent person able to pay off his bond: the court resolved, that the contingent creditor should not come in for a distribution, neither should the money be reserved in favour of such contingency.

But his Lordship declared, that though the debt was contingent when the obligor became a bankrupt, yet if the contingency happen before the distribution made, then such contingent creditor should come in for his debt; so if such contingency happened before the second dividend made, the creditor should come in for his proportion thereof, though after the first dividend.

The obligor on a bottomree bond became bankrupt before the return of the ship, and the ship did not return before the distribution made; whereupon it was held that the obligee should have no benefit of the distribution upon the commission. And,

Whereas it was objected, that this bond would be barred, after the bankrupt’s certificate allowed, which could not be unless it was then done;

Per Curiam: This cannot be, if the obligor is careful in declaring upon his bond; indeed if the party declares upon the bond only, he shall be barred; otherwise, if he sets forth as well the condition as the bond in the declaration; for then it must appear, that the cause of action did not accrue at the time of the obligor’s becoming a bankrupt.

But the above case is since altered, and the obligee in any bottomree bond shall be admitted to claim, and after the loss or contingency shall have happened, to prove his debt or demands in respect of such bond, in like manner as if the loss had happened before the time of the issuing of the commission of bankruptcy against the obligor, and shall be entitled unto, and have and receive a proportionable part, share, and dividend of the bankrupt’s estate, in proportion to the other creditors of such bankrupt, and in like manner as if such loss and contingency had happened before such commission issued.

And this act makes it the same with the obligors and obligees on a policy of insurance.

One Blanchard, a cabinet maker, married the sister of Calliford, who had 500l. portion secured by land. Blanchard, on his marriage, gives a bond to leave his intended wife, if she survived him, 500l. or a third of his estate, at her election.

Blanchard became a bankrupt; bill by the assignees to have the 500l. raised by a sale; and decreed accordingly: but with this, that the wife should come in as a creditor upon the 500l. bond; and what shall be paid in respect thereof, to be put out at interest, and received by the creditors, during the life of the husband, and if the wife survived then the money to be paid to her.

I. S. indebted by bond to the wife of A. became a bankrupt; the husband comes in and claims the debt, pays the contribution money, but dies before any dividend was made; the wife survives, but dies also before any distribution.
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Lord Chancellor directed the distribution to be made to the executors of the wife, and not to those of the husband; repaying to the husband's executors what he had advanced for contribution.

The husband's paying the contribution money did not alter the property of the debt, but it remained a chose in action, and survived to the wife.

The plaintiff brought an action of debt against the defendant for 800l. wherein the plaintiff declared, that William Donalson in his life-time, viz. the 6th of May, 1704, by his bond then dated, obliged himself, his heirs, &c. to the plaintiff Tuly, and one Philip Rusby, whom the plaintiff survived, in the said sum of 800l. &c. with condition, that if the heirs, &c. of the said William should pay to the said plaintiff Tuly and Philip, or the survivor of them, or the executors, &c. of the survivor of them, 400l. within two months after the death of the said William, in case one Martha Latimer should marry the said William, and should happen to survive him; in trust for the benefit and behoof of the said Martha, her executors, &c. then the obligation should be void, &c. and the plaintiff in fact says, that after the making the said bond, the said Martha married the said William Donalson, and that after the said marriage, the said Philip Rusby died, and the plaintiff survived him; and that the said William made his will, and appointed the defendants his executors; and afterwards, the said will not being revoked, died; and the said Martha survived him, and is yet alive: and that after the death of the said William Donalson, the defendant Frances proved the said will in due form of law; that the said Frances and Christopher, or either of them, did not pay to the plaintiff the said 400l. within two months after the death of the said William, according to the said condition, whereby the bond became forfeited; and the action arose to the plaintiff, to demand of the said defendants the said 800l. but the defendants the said 800l. though often requested, have not yet paid, &c.

The defendants, after praying oyer of the bond and condition, which was granted, plead in bar, that the said William Donalson, after making the bond, for seven years, and after that time, exercised the trade of a biscuit baker, and got his living thereby, and became indebted to sundries in the sum of 200l. and more, and became a bankrupt, and was declared such by the commissioners, and had his certificate allowed.

This case was learnedly argued both for the plaintiff and defendant, and the cause coming on in Michaelmas term 1728, "Judgment was given by the whole court upon the merits, that the plaintiff's debt was not barred by the matter comprised in the plea, because it was not within the 7 Geo. I. c. 31."

In the Matter of James King, a Bankrupt, on the Part of Ann King, his Wife.

The said Ann King, by her petition in January 1742, set forth, that on the 16th of Feb. 1731, by articles tripartite made before her marriage with James King, between James King the elder, and the bankrupt, of the first part; James Sutton, and the said Ann King, by the name of Ann Sutton, his daughter, of the second part; and Robert Sutton and John Complin, of the third part; reciting the intended marriage, it was, amongst other things, covenanted and agreed, that the same James Sutton should, within three months after the marriage, pay the said James King the younger, 1000l. as her marriage portion; and if James and Ann should have issue living at the death of James Sutton, that then his heirs, &c. should pay to the said James King the younger, the further sum of 1000l. if he should be then living; but if King should die before the last 1000l. became payable to him, then the same should in like manner be paid to the said Robert Sutton and John Complin, &c. in trust, to place out the same at interest, on such securities as the trustees, with the said Ann King, should approve of, and should pay the interest to be made thereof to her, during her life; and after her decease, for
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the maintenance and education of the children of the said James and Ann King, till they should attain twenty-one, and then to be paid to them in such parts and proportions as the said James and Ann King should appoint; and for default of such appointment, to be divided equally between them.

And in case they had no issue, then to such person or persons as the said James King the younger should by deed or will give or appoint the same unto; and in default thereof, the same was to be paid to the executors or administrators of the said James King.

And by the same articles, James King the younger covenanted, that if he received the said 1000l. payable after James Sutton's death according to such covenant, that then the heirs, &c. of the said James King the younger, would, within three months after his decease, pay to the said Robert Complin and John Sutton, &c. 1000l. to be by them employed in such manner and form, and for such uses, intents, and purposes as were before expressed and limited, touching the 1000l. payable after the death of James Sutton.

The articles were executed by all parties, and the marriage soon after took effect.

In January 1739, James Sutton, the father, died; and James and Ann King having issue a daughter named Ann, who was then living, James King became entitled to the 1000l. after James Sutton's death, and the executors of Sutton accordingly paid him the same; and he gave them a discharge for it.

In January 1741, Robert Sutton, one of the trustees, died; and a commission of bankruptcy issued against James King, and he was duly found a bankrupt, and his estate was assigned to Edward Grace, Thomas Garaway, and Timothy Denham.

That she apprehended that John Complin, the surviving trustee, ought to be allowed the 1000l. so paid to her husband James King, by Sutton's executors, in the nature of a debt under the commission, by virtue of the covenant in the articles, and that a proportionable part of King's estate, in proportion to what was to be paid to his other creditors, might be paid to the trustees, to be disposed in such manner as might answer the intention of the said articles.

That she had applied to Complin, and had requested him to prove the said debt of 1000l. before the commissioners, and to be admitted a creditor for the same; but that he pretended, though his name was mentioned as a trustee in the articles, yet that he had never executed them; and refused to act in the trust, whereby she and her daughter were in danger of being totally deprived of the benefit of the 1000l. intended as a provision for her by the said articles.

She therefore prayed his Lordship, that she might be at liberty to name a new trustee in Complin's room; and that such new trustee might be admitted a creditor under the said commission for the said 1000l. and might be paid a dividend in proportion with the rest of James King's creditors, and that the money to be received by such new trustee, by virtue of such dividend, might be placed out at interest, in such manner as that she might receive the interest thereof during her life, in case she survived her husband; and that the principal monies to be received for such dividend might go and be paid to such child or children of her by James King, as should happen to be living at the death of the survivor of them, in case there should be any such issue; and in such manner as was directed by the articles; or that his Lordship would make such other order, as to him would seem meet.

And on the 21st Jan. 1742, this petition came on to be heard before his Lordship, and was learnedly argued by counsel on both sides: and the cases of ex parte Cazalet, Holland and Calliford, Tully and Sparks, were cited; and on the first hearing, his Lordship gave the gentlemen who were counsel for the said Ann King further time to speak to it, and in the mean time to search for precedents; and upon this petition coming on.
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again before his Lordship, and no other precedents to the point appearing, his Lordship was pleased to be of opinion, that he could not relieve the petitioner Ann King, and therefore he ordered such petition to be dismissed.

Debts due to, and from the Wife, when single.

Miles brought debt against husband and wife, upon a bond entered into by the woman when single. The defendants jointly plead in the bar, that the plaintiff ought not to have his action, &c. and say, that after the intermarriage, Williams the husband became a bankrupt, and a commission issued against him, and he submitted, and in all things conformed himself to the statute of the 4 Anne, and to all other statutes relating to bankrupts; and therefore the aforesaid John and Eleanor, by virtue of the aforesaid statute, say, that the action aforesaid arose to the said Miles, before the said John Williams became bankrupt; and that they were ready to verify, and therefore they demanded judgment, if the said Miles ought to maintain his action. The plaintiff demurred, and shewed for cause, that the debt arising upon the bond made by the wife solely, was not discharged by the statute mentioned in the defendant's plea; and also that the plea ought to have concluded to the country. The defendants joined in demurrer. And after several arguments in this case, Parker, Chief Justice, having stated the record at large, delivered the resolution of the court.

The two great questions which have been made in this case are these:

1. Whether this, being a bond given by the wife dum sola, be such a debt as shall be discharged by the bankruptcy of the husband, by virtue of the statute of 4 Anne, cap. 17. mentioned in the plea?

2. Whether the defendants have well concluded their plea or not; it being to the judgment of the court, and not the country?

As to the first we are all of opinion that it is a debt within the act.

The words of the clause upon which it depends, are, That the bankrupt shall be discharged from all debts by him due and owing, at the time he became bankrupt; and then in case he be sued for any such debt, the act directs, that he shall, and may plead in general, that the cause of action did accrue before he became a bankrupt.

Upon these words the immediate question is, whether this was a debt due, and owing by the husband, at the time he became bankrupt?

It was said, and, I think, admitted at the bar, that a debt due by the wife, and one due to the wife, dum sola, must fall under the same consideration.

This is very reasonable, and therefore I have considered how far a debt due to the wife would be within this act, to be assigned by the commissioners of bankruptcy. And in order to understand this, it is necessary to go back to the former acts.

And those of 13 Eliz. cap. 7. and 1 Jac. I. cap. 15. give the commissioners power over the bankrupt's body, lands, &c. and to assign all debts due, or to be due, to and for the benefit of the bankrupt, and the same to be recovered in the name of the assignees.

Now I take the intention of these laws to have been, that the bankrupt having been guilty of a fraud should not be trusted any more with the management of his estate, &c. So that upon this intention, all those effects and debts, which he could take in, or turn into money, the assignees were designed to have in as full a manner, either by action or otherwise, and that in their own names.

The best rule of construing acts of Parliament, is by the common law, and by the course which that observed in like cases of its own, before the act.

Thus it is in the statute de dominis, which enacts, that tenant in tail non habeat potestatem alienandi tenementa, to prevent their coming to the issue; and that a fine levied by him, ipso jure fit nullus. Now,
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The effects of this statute being a disability to alien to the prejudice of others, therefore the law ranks the person incapacitated thereby, "with bishops, and other ecclesiastical persons, and with husbands," who were by the common law disabled to alien to the prejudice of their successors and wives.

And, therefore, though the words be, "that the tenant in tail shall not have power to alien, and that his fine shall be void," yet it has been construed, "that a fine by tenant in tail is not merely void, but makes a discontinuance," thereby putting the issue to his formedon; and that other alienations either put the issue to his action, or allow of his entry, just as the law stood before in relation to bishops, &c.

At common law it is a general rule, "that no body can have an action but a creditor," or, if he be dead, "his representative:" but there are two cases wherein this rule fails, viz. in the case of forfeiture, and of an assignment to the King. For though a chose in action cannot be assigned to a common person, yet it may to the King. And in both these cases, the King, or his grantee or assignee, may sue for these duties in their own name, 21 Hen. VII. 19. though generally the grantee sued in the King's name; but that was only in order to take advantage of the King's prerogative.

Now let us see, how far the wife's debts were liable in these cases.

In the case of forfeiture, as by outlawry, &c. the debts of the wife were always extended and seized.

The case of assignment of debts to the King, in Hob. 2. 263. is an authority in point; and notwithstanding the 7 Jac. I. cap. 15. which makes assignment of debts void, other than such as grew due originally to the King's debtor bona fide. For the purpose of that law was, that no debtor of the King should procure another man's debt to be assigned, which was the common practice. But this, says the book, is his own debt, though not to his own use, which he may himself release and discharge, and by the same reason may assign. This proves two things.

First, That the husband might assign these debts by the common law.

Secondly, That he was not restrained from doing it, by the statute, because they were the husband's own debts.

This reason concludes to the case at bar.

First, As it is the husband's own debt within the words of the act.

Secondly, That as the husband might assign it, ergo, so might the commissioners.

Besides, it is to no manner of purpose, and can serve no good end, to say, that such debts are not assignable: for if they should be left in the husband, as soon as he recovers them, the commissioners must have the money, and apply it to the use of the creditors.

But in order to confine the sense of the words, "debts due and owing to him," it has been objected,

First, That the statute does not extend to debts due to a bankrupt, as executor.

Resp. This is true; but it is for this particular reason, because they are appropriated to pay the debts of the testator: and if they were assigned, it would be a wrong, viz. a devastavit.

Secondly, It has been objected, that the statute does not extend to debts due to the bankrupt jointly with another.

Resp. The case cited for that purpose from 1 Lev. xvii. is not determined; such debt might be assigned to the King by any one of the creditors; and so it is adjudged, Mich. 19 Hen. VI. And it would be forfeited by the outlawry of one.

However, that case is not before us. Thus far is plain, that a debt due from him and another would be within this act of 4 Anne, for it is so declared by the declaratory act of 10 Anne, which provides at the same time, that the discharge of the bankrupt shall not extend to discharge the other joint debtor.

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But this of a husband and wife is a different case; for it is his debt, as he is one with her.

But it is contended, that the bankruptcy ought not to give the husband a better right to his wife's debt, and bar her of her contingency by survivorship.

Resp. It does not give him a better right; for his release for a consideration to himself alone would have barred her of the contingency; and this is a consideration in law, and amounts to the same thing.

Besides, that is answered by the fiction of law whereby the statute of 1 Jac. cap. 15, and this statute has made it as a debt, and new security to the assignees. Suppose a bond was made to A. in trust for B. who becomes a bankrupt, the assignees may bring the action in their own name, though B. must have brought it in the name of his trustee.

Objected. The husband must join with his wife in this action, but the assignees cannot do it.

This is answered as before, and by the cases of forfeiture and assignment to the King. But to put another case:

Suppose a bill of exchange be made to the wife, dum sola, the husband may assign it, and the assignee shall bring the action in his own name.

This reasoning holds stronger, in the case of debts due from the wife: for,

First, Certainly it is the husband's debt, and the action must be brought in the debet and detinet. It is admitted to be the husband's debt after judgment; and it was hard to say, that a judgment of law charges a man with a debt, who was not chargeable with it, when that judgment was given against him.

Secondly, If the intent of that act be considered, and the question asked, Cui bono? it will appear still stronger. The persons concerned in this matter, are,

First, The bankrupt; secondly, the creditors; thirdly, the wife.

As to the bankrupt, if an action be brought against him on such bond, what execution can the plaintiff have? If he takes a fieri facias, or elegit, as soon as he finds goods or lands, the commissioners ought to seize them; this would be wholly ineffectual; and if he takes a capias, it will only serve to lay the bankrupt up in prison, when all his estate wherewith he should make satisfaction, and deliver himself, is taken out of his power. And that is the reason of his being discharged, viz. because his ability to pay is entirely taken from him.

And this distinguishes it from the case of an executor, and shows that he ought not to be discharged as to the testator's debts, for he retains his ability to pay them, by keeping the effects which he has as executor; and the commissioners cannot meddle with them, because they are appropriated.

It was insisted at the bar, that he ought to be discharged from all his debts, because he is not only obliged to part with all his estate, liable to pay those debts, but all whatsoever wherewith he might pay his debts; as for the purpose, "Copyhold lands, which are liable to no execution."

Secondly, As to the creditor:

It cannot be for his benefit that this debt should not be within the act; for the bankrupt's whole estate will be otherwise disposed of, and his action against the bankrupt can be worth nothing; but if this debt be within the act, then may he come in for his dividend.

The consequence of the contrary opinion is, "that you take from him every thing wherewith his debts may be paid, and at the same time will not let him in for a share."

Thirdly, As to the wife:

It will be a discharge to her, at least a temporary one; viz. during the husband's life.
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But though it be not necessary to give any opinion upon that, yet I think it will amount to a perfect release, and the wife will be discharged for ever.

But no harm can arise from this, for the creditor is supposed to have had his dividend, and the debt is paid in consideration of law.

A case may possibly be put, where a woman being in debt may make over all her effects in trust, and then marry a bankrupt, and by that discharge all her debts, and yet preserve her estate; but that would be a fraudulent conveyance, as against creditors, _quod ad as much of the estate as would satisfy their debts, and for that they might have remedy._

It was objected, that this discharge is a personal privilege, and not communicable to the wife.

Resp. _It is a necessary consequence that it must extend to her, because every thing in the husband's power is assignable, and all her estate is in his power._ "If the hus-

band be possessed in a term for years in the right of his wife, it may be sold on a _fi. _ _

yet it is not actually transferred to the husband by intermarriage._"

For these reasons, "We are all of opinion, that this is the husband's debt, within the meaning of the statute."

As to the second question, viz. whether the plea be good or not? We are likewise all of opinion, that it is ill, "not to conclude to the country."

A liberty of pleading generally is given to the bankrupt, and so he may avoid the hazard of pleading specially; but then he must take upon him the proof of his conformity to the statute in every particular: or if he thinks fit to plead the matter specially, then he must set forth every point; and by it he has every advantage against the plaintiff; that he must reply to one particular only, upon which issue must be taken. Here the defendant has pleaded the matter specially, but not set forth the whole; and therefore it is ill for that reason; for by the express words of the act, this is to be pleaded, so as that the whole merits may be tried.

There are several cases at common law, where a man shall conclude his plea to the country, though there be no affirmative and negative, to prevent the inconvenience that would arise by going on to a replication, as in 33 H. VI. 21. "to a fine, _quod partes finis nihil habuerunt; et de hoc ponit se supra patriam._"

_So in dower, "ne unques seises de Dower, et de hoc," &c._

And the reason of this is, for that it would be inconvenient to go on to a replication, because to reply generally would leave it too large and comprehensive, and to reply any particular kind of estate, would be too narrow, and consequently immaterial.

This statute has found a new general issue in this case; and this was the foundation of judgment in Bird and Lacy's case, Mich. 6 Anne, C. B. Rot. 321. that a plea upon this act was well concluded to the country; and if so, it cannot conclude to the court.

It may be observed on the statute of sewers, 23 Hen. III. cap. 5. that by these words of that act, a general replication is expressly given, to avoid the forcing the plaintiff to a single point; and so the mischief which would be in this case is prevented; thus it must have been in this act, if it had not been the intention of it to make the plea a general issue.

For this fault in the plea, which is shown for cause of demurrer, and which would put a difficulty upon the plaintiff, not intended by the statute, judgment must be given for the plaintiff.

_A feme sole_ is a mortgagee in fee for _soil_; and marries a tradesman, who becoming a bankrupt, a commission of bankruptcy is taken out against him, and the commissioners assign over all his estate, real and personal; afterwards the husband dies, and the writings relating to this mortgage being in the assignees' hands, the widow of the bankrupt...
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brings a bill in equity against the assignees, for these writings, and to have the benefit of the mortgage.

This cause came on to be heard, and, for its difficulty, was ordered to be spoke to again, when his Honour delivered his opinion solemnly for the plaintiff, the wife.

But afterwards, being dissatisfied with that opinion, he ordered the decree to be stayed, and to be attended again by counsel.

Whereupon his Honour gave his opinion, that if there had been any articles before the marriage, purporting, that this mortgage money should continue in the wife, as her provision, or should be assigned in trust for her, there would have been a specific lien upon the mortgage, and have preserved it from the bankruptcy.

Also it might have been a matter of different consideration, if the assignees had been plaintiffs in equity, and desired the aid thereof, to strip an unfortunate widow of all that she had in the world; towards the doing of which, equity would hardly have lent any assistance; because the assignees claiming under the bankrupt husband, could be in no better plight than the husband would have been; and if the husband had in equity sued for the money, or else prayed that the mortgage might be foreclosed, equity, probably, would not have compelled the mortgagee to have paid the money to the husband, without his making some provision for his wife, by an application to the court against the husband, and the mortgagee might have prevented the payment of the money to the husband, unless some provision were made for her.

But in the present case, the widow was plaintiff against the assignees, so that she, and not the creditors, sought the aid of equity.

And here being in the mortgage deed, a covenant to pay the mortgage money to the wife, this debt, or chose in action, was well assigned by the commissioners to the assignees, and vested in them, like the case of Miles and Williams, last cited, where a bond made to the wife, dum sola, was adjudged to be liable to the husband's bankruptcy, and assignable by the commissioners.

Wherefore if the right of the debt was vested in the assignees, as plainly it was, though the legal estate of the inheritance of the lands in mortgage continued in the wife, yet this was not material; it being no more than a trust for the assignees, like the common case where there is a mortgage in fee, and the mortgagee dies; here the mortgage money belonging to the executors, though the heir takes the legal estate by descent, yet he is but a trustee for the executor, for the trust of the mortgage must follow the property of the debt, else the mortgagee would be in a very hard case, liable to be sued by the assignees of the commissioners upon the covenant; and also in an ejectment by the wife of the mortgagee; whereas the latter suit would be enjoined in equity.

Then it was insisted, that here were articles entered into before the marriage of the bankrupt and his wife, by which the husband covenanted to settle the wife, in the manner of Date, or to leave her 1000l. within three months after his death.

But in this agreement it appeared, that the husband had his election all his life time, and that if the wife had brought her bill in equity against the husband, she could not have compelled him to do the one or other; neither could she, upon such bill, or otherwise, have compelled him to give any farther or better security for the payment of this 1000l. because she had that security which she at first agreed to take, and the court could not better it against her own agreement.

But upon another point, viz. as to 200l. part of the wife's portion, on a note given by the husband at his marriage, signifying his consent that the wife should have this 200l. the court held the same was specifically bound thereby; so that with respect to this only, the plaintiff was relieved, and the bill, as to the rest, dismissed.
OF BANKRUPTCY.

Of the Rights which are vested in the Bankrupt's Children by Virtue of Marriage-Settlement, and Trustees for supporting contingent Remainders.

If a man before marriage with his wife makes a settlement, or enters into articles with trustees to make such settlement upon his wife, and conveys, or agrees to convey, such estate to trustees, to the use of himself or his assigns, for the term of his life, without impeachment of waste; and, after the determination of that estate to the use and behoof of A. B. and C. D. and their heirs during the life of the husband, upon trust, to preserve the contingent uses and estate therein after limited, from being barred, destroyed, or prevented; and for that purpose to make entries and bring actions as occasion shall require; but, nevertheless, to permit and suffer the husband and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises to his and their own uses; and from and after the decease of the husband, to the use of the wife for life; and afterwards to the use of the first and other sons of their bodies according to priority, and their heirs male; and for default of such issue, to the daughters and their heirs equally; with proper provisions for raising portions for daughters and younger children, as is usual in marriage settlements; though the remainder in fee is limited to the bankrupt, for want of issue male or female; yet if such person becomes a bankrupt, and has a wife and children, or children and no wife, though this is an entailed estate, yet it is not such an estate as he can lawfully or equitably bar by a fine or common recovery, and consequently he will be only tenant for life, and his wife will enjoy the jointure, and his children his estate after his death; and the creditors cannot defeat such an estate.

But if he dies without children, and becomes a bankrupt, and there are no remainders over, but the remainder in fee is in him; Query, Whether a Court of Equity would not, after confirming his wife's jointure, direct and enable the trustees, in conjunction with him, to bar the estate tail, for the benefit of his creditors: but there have been instances where trustees have joined with the husband, and defeated the legal estate by a recovery; but acts of this kind have been always looked upon as the highest breaches of trust; and if a purchaser was to buy the estate, or a mortgagee to lend any money upon it, with notice of the trust, he would be unsafe in so doing. And as this is a matter of great consequence to families, I shall for that reason cite the following cases.

It was declared by the Lord Keeper Harcourt, that where there were trustees appointed by will to preserve contingent remainders, and they, before the birth of a son, joined in a conveyance to destroy the remainders, this was a plain breach of trust, and any person taking under such conveyance, if voluntarily, or having notice, should be liable to the same trusts.

And though it was objected, that this had been only obiter said in equity, and that there never was any precedent of a decree in such a case:

Lord Keeper said, it was so very plain and reasonable, that if there was no precedent in this case, he would make one.

But this was the principal case, which was; that there was a son born before the conveyance by the trustees, and the estate being in mortgage, the son came into equity, after the death of tenant for life, to redeem.

Agreeably to what was thus declared by Lord Harcourt, it has been since expressly decreed by Lord Chancellor King, assisted by Lord Raymond and Chief Baron Reynolds, in the case of Mansell v. Mansell, December 1792, hereafter mentioned; which was the case of a voluntary settlement, and where the court unanimously delivered it as their opinion, that nothing in common justice, sense, and reason, could be a plainer breach of trust, than that those who were appointed trustees, to the intent to preserve
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the estate to the first son, and for that purpose only, should directly contrary to their trust, join in the destruction of the settlement.

But where there is tenant for life, remainder to the first son, &c. and no trustees to preserve contingent remainders, in such case, if tenant for life by fine or seofment destroys the remainders, there being no trustee, there can be, consequently, no breach of trust; and this being the law, Chancery will not interpose.

But then as this was a hardship at law, to prevent which the method of appointing trustees was invented, so it is reasonable that the trustees, when they let in this hardship by violating the trust reposed in them, should themselves be liable for the same; but if the conveyance be voluntary, or if there be notice of the trust, such trust shall follow the land.

One after marriage makes a voluntary settlement of his lands to himself for life, remainder to trustees to support contingent remainders, remainder to his first, &c. son in tail successively, remainder to himself in fee; and contracting debts, he after makes a conveyance of his estate to other trustees, for payment of these debts.

The creditors bring a bill, and, int al. insist, that the trustees for preserving contingent remainders should join in the sale to destroy the contingent remainders: and this came on by consent before Sir Joseph Jekyll, who took time to consider of it, alleging, that though in the case of Thomas Tippin, where trustees had joined in cutting off remainders created by a voluntary settlement, the court, on a bill brought by a remote relation, had refused to punish them, as distinguishing between a voluntary settlement, and one made on a valuable consideration; yet he had not known a precedent where the court ever decreed the trustees to join in destroying the contingent remainders; this being the reverse of the purpose for which they were at first instituted.

But this cause coming on in August 1717, and a precedent being shown where such a decree was pronounced, his Honour decreed, that the trustees should join to destroy the contingent remainders, and be indemnified, it being at the suit of the creditors, and for raising of money for payment of debts.

Note, Sir Thomas Tippin's case was, where, upon a marriage, settlement was made by a third person to the use of the husband for ninety years, remainder to trustees, during the life of the husband, to support contingent remainders; remainder to the wife for life, remainder to the first, &c. son of the marriage, remainder to the heirs of the body of the husband, remainder to the right heirs of the husband. There was no issue of the marriage, and the remainder in fee being contingent, in regard the limitation to the husband was for years only, and the estate not moving from the husband (for if it had, the remainder limited to the right heirs of the husband, would have been the old reversion) the trustees joined to destroy this contingent remainder.

And on this case being cited, it was said by the Master of the Rolls, that if a son had been afterwards born, it would have been a breach of trust; but this remainder to the right heirs of the husband, being a remote limitation, and not within the consideration of the settlement, and voluntary, equity would not punish it as a breach of trust.

This cause came on, upon an appeal to my Lord Chancellor King, from the decree of the Master of the Rolls.

Edward Vaughan seized in fee in 1683, devised lands to his sister Dorothy, afterwards the plaintiff's mother, for life, remainder to trustees to preserve contingent remainders, remainder to the use of her first, and other sons in tail male, remainder to the use of his cousin Edward Mansell in fee, and charges the estate with a debt of 1200l. and dies.

The plaintiff's mother intermarried with Sir Edward Mansell, and in 1685, they, with the remainder-man in fee, joined in a feoffment, with a covenant to levy a fine to
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trustees to the use of the plaintiff's father in fee; and this is expressed to be to the intent that the fee simple might be vested in him, for the raising of money for the payment of the debts of Edward Vaughan the testator, whose inheritance it was, by demising, selling, or mortgaging the estate, or any part thereof, and for other good causes and considerations; a fine is levied accordingly at the grand sessions in Caermarthenshire, where the lands lay. About a year after, the trustees to preserve contingent remainders, reciting the will, feoffment, and fine, convey the whole estate by lease and release to the plaintiff's father in fee, Dorothy being then with child, and then the plaintiff is born; after, the father makes the plaintiff tenant for life, &c. and then dies.

The plaintiff brought his bill to have the benefit of Mr. Vaughan's will, and insisted on the breach of trust; and that the parties who claim under the fine of feoffment, being parties to the breach of trust, ought not to take advantage of it.

The defendant in his answer insisted on the fine and feoffment.

The Master of the Rolls decreed for the plaintiff for so much as was not alienated bond fide; and this decree was confirmed in Mich. vacation, 6 Geo. II. by Lord Chancellor King, assisted by Lord Chief Justice Raymond, and Lord Chief Baron Reynolds, as before-mentioned.

A man had devised lands, which were in mortgage to be sold, and the surplus of the money to be paid to his daughter; the daughter married a man who soon after became a bankrupt, and the commissioners assigned this interest of the wife's. The husband died, and the assignees brought this bill against the wife and trustees, to have the land sold, and the surplus of the money paid to them. But the court would not assist in stripping the wife, who was wholly unprovided for, of this interest, but dismissed the bill.

Of Possibilities.

By this statute it is enacted, that the bankrupt is to discover to the commissioners 5 Geo. 2. upon oath, such estate and effects as he may have any profit, or possibility of profit, benefit, or advantage whatsoever by.

And a possibility is defined to be such an uncertain thing as may or may not happen; but it must be such a right, according to the case of Higden and Williamson, as a person may lawfully depart withal, and which, by some deed or writing, he may have a possibility one time or other to enjoy.

But if a bankrupt has relations, who may possibly provide or not provide for him, as they shall think fit; this uncertain possibility is no part of the bankrupt's estate: and if he obtains his certificate, will not pass to his creditors; because he had it not in his power to part with his relation's fortune, nor could he tell what his will or intention might be, or whether he would give him any thing or no.

William Davidson having devised a legacy of 600l. to his son, payable at twenty-one, for which he had obtained a decree, and 637l. reported due; before he received the money he became a bankrupt, and the commissioners assigned the legacy and benefit of the decree.

The bill was brought by the assignees to have the benefit of the decree; to which the defendants, the executors, demurred; insisting that a legacy was not within the compass or provision of any of the acts made against bankrupts, to be assigned to the creditors.

But the demurrer was over-ruled; and said, that the act of Parliament ought to be taken in the most beneficial sense for the advantage of the creditors.
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Of Interests which have been determined not to center in the Bankrupt.

The defendant, upon marriage of his son, settles lands upon himself for life, remainder to his son for life, &c. and covenants, during his own life, to pay his son 15l. per annum. The son becomes a bankrupt; the plaintiff, as an assignee, brings the bill against the defendant, the father, to have the benefit of this agreement, and to compel payment of the 15l. per annum.

Per curiam: An assignee, under a statute of bankrupt, is not entitled to have the performance of an agreement made with the bankrupt; and that it was so adjudged in the case of Drake and the Mayor of Exeter. And therefore dismissed the bill.

Coates, possessed of a lease for years, contracted with the committee of the company for a new lease, and paid part of the fine; and, by Coates's consent, a new lease was made to Mosse by the company, and to him executed. Coates was at the time of treaty a bankrupt. The question was, whether the commissioners could assign the lease to the prejudice of Mosse, and Drake's case was cited.

The Lord Keeper ordered that the plea and demurrer be ousted, and the benefit thereof saved till the hearing; he doubted of the lease: There were other matters for the benefit of Mosse also, in the plea.

Of the Creditors, who are such; and wherein of proving their Debts, and how Notice of their Meeting is to be given; and of Debts due to the Crown.

Every one to whom the bankrupt is indebted, either on bonds and notes, or by book-debts or simple contracts, by recognizances, statute staple, or judgments, specialities with penalties, attachments, and securities where no execution is sued out, is a creditor, and has a right to a share in the bankrupt's estate.

Creditors on bonds or notes, by book-debts or simple contracts, are equally entitled to a dividend under a commission of bankruptcy, with creditors by judgment, statute, &c. and creditors that have debts due to them payable at a future day, may petition, or join in petitioning, for a commission.

But creditors upon contingent or uncertain debts, or upon bottomree bonds, could not come in as creditors, or prove their debts, till such contingency happened, before passing the subsequent act, viz.

And as merchants and other traders frequently lend money on bottomree, or at respondentia, and cause their vessels with their cargoes to be insured; and where commissions of bankruptcy have issued against the obligor, or the assurer, &c. before the loss of the ship or goods has happened, it hath been made a question whether the obligee, or the assured, should be let in to prove their debts, or be admitted to have any benefit under such commission, which may be a discouragement to trade: for remedy whereof, it is enacted, that from the 29th of October, 1746, the obligee in any bottomree or respondentia bond, and the assured in any policy of insurance made bona fide upon a valuable consideration, shall be admitted to claim; and after the loss or contingency, to prove the debt thereon, in like manner as if the same had happened before the issuing of the commission of bankruptcy; and shall receive a proportionable dividend with the other creditors of the bankrupt's estate; and after the said 29th of October, every bankrupt shall be discharged from the debt on such bond and policy of insurances as aforesaid, and shall have the benefit of all the statutes against bankrupts, in like manner as if such loss or contingency had happened, and the money payable thereon had become payable before the time of the issuing of such commission.
Creditors may come in within four months after issuing the commission, and until a dividend be made, and shall be at liberty to prove their debts under the commission, without paying any contribution or sum of money whatsoever, for or on account of such debt.

Creditors, upon what securities soever they be, come in equal, unless such as have obtained actual execution, or taken pledges for their just debts before the bankruptcy. A creditor, though he hath security, may come in and prove his debt, because possibly his security may prove deficient; and every creditor is to swear, whether he has a security, or not; and if he has a security, and insists upon proving his debt, he must deliver up the security for the benefit of the creditors at large, under the commission, unless it be a joint security for the bankrupt and another person; for then he may come in for his whole debt under the commission, without being compelled to deliver up such joint security, as he is intitled to get in what he can from the co-security.

Where a creditor proves a debt under the commission, and also proceeds at law for the recovery thereof, and detains the bankrupt in custody on the action; his only relief is to petition the Chancellor, that the creditor or plaintiff may make his election, either to abide by the commission, or to proceed in his action; whereupon he will be ordered to make such election within a limited time, usually about a week; and whichever remedy the creditor chooses, he will be at liberty to assent to, or dissent from the certificate: but if the election be to proceed by law, the creditor must waive all dividends under the commission. See Greene's Spirit of the Bankrupt Laws.

If a man trade with a bankrupt between the act of bankruptcy and the commission sued out, whether by delivery of goods, or payment of money, without notice of the act of bankruptcy, the bankrupt keeping open trade, such person shall come in as a creditor for such goods or money.

Special Cases of Debts that may be proved under the Commission.

Annuity. Lord Hardwicke referred it to the commissioners to settle the value of an annuitant's life, and that she be admitted a creditor for such valuation, and the arrears of the annuity, and not for the whole purchase money.

Apprentice. The commissioners may allow a gross sum out of the estate for binding him to another master, but the court alone can order him to be admitted a creditor; accordingly, Lord Chancellors, King, Talbot, and Hardwicke, ordered an apprentice, whose master became a bankrupt, to be admitted as a creditor under the commission, on account of the apprentice-fee received by the master, only for the remaining sum thereof, after deducting for the time he lived with the bankrupt.

Bail. If A. is bail for B. either to bring his body, or to pay the condemnation money, and B. becomes bankrupt, he may come in as a creditor.

If the bail be liable, that is, if he has justified himself as such, before his principal becomes bankrupt, though he be not fixed till after, yet it seems he is well entitled to make his claim forthwith, and to prove, as soon as he has paid the condemnation money.

Children. A child living with and maintained by a parent, who receives the earnings of the former, may be admitted a creditor under her father's commission, but with caution:

Thus upon a petition on the part of Miss Macklin to be let in as a creditor on the estate of her father a bankrupt, for the money he had received from the managers of the theatres on her account, offering an allowance thereout for living with, and being maintained by him, during the time of her acting upon the stage. It was alleged on her part, that the court is so far from giving the father all the earnings of the child, as not...
to suffer a father to be eased of the maintenance of a child, who has a fortune, but will let the whole interest accumulate, and the father maintain the child, unless unable to do so.

The Lord Chancellor said, he was under some difficulty for the sake of the precedents; for if it is true, that this question is the same as it would have been between the daughter and the father, if he had not been a bankrupt, and could answer to an action for himself: whether after all this transaction the daughter could in an action have recovered against the father all this money, as money had and received to her use? He said, it might be dangerous in London to lay it down as a general rule, that if a father having several children, who earn money which he receives, becomes bankrupt, every child can come and claim his debt for that money so had and received while they lived together, and were part of his family. A father frequently sends out his son to work as a journeyman, and his earnings are taken to be his father's. Here, said his Lordship, the father, mother, and daughter were all actors and lived together; the father received the whole. It is extraordinary to say, that after a length of time, this shall be all called back, because of an act of bankruptcy. He reserved it therefore to the commissioners to inquire, how much the father received to the child's use, unless as to so much as was a covenant with the daughter herself.

**Relations.** Debts of near relations to the bankrupt, especially securities, as bonds, bills, &c. are generally looked upon with a jealous eye by the other creditors, therefore great care should be taken by the commissioners to be satisfied of the validity of the demand. And such creditors should take every precaution to establish the validity by proper vouchers, if called upon. Green's Spirit of Bankrupt Laws.

**Servants.** The commissioners generally recommend to the assignees to pay the whole of the wages of menial servants; but where the wages of clerks, and other superior servants are very large, and the arrears long, they should prove their debts, and come in as common creditors. Ibid.

One seized of lands in fee, owes a debt by statute, and afterwards becomes a bankrupt, and the creditor by statute extends the lands; then a commission of bankruptcy is sued out; and whether the lands should be liable to the statute creditor, was the question.

This was referred by Lord Chancellor to the Judges of the Common Pleas, who held that a creditor by the statute, and a statute not sued, and executed before the bankruptcy should come in only pro rata, though there were lands in fee bound by the statute.

In February 1716, the defendant Fletcher, being seized in fee of some lands in Bedfordshire, borrowed 1500l. of the plaintiff Orlebar, one of the Masters in Chancery. On a judgment afterwards, viz. August 20, 1717, the defendant Fletcher articled with the other defendant, the Duke of Kent, to sell the premises to the Duke in consideration of 5000l. to be paid down, and 650l. to be paid at Christmas then next; the Duke to be let into possession at Michaelmas; subsequent to which transactions, the defendant Fletcher becoming a bankrupt, the plaintiff Mr. Orlebar, brought his bill against the Duke of Kent, Fletcher the bankrupt, and the assignees under the commission, praying that the 650l. remaining in the Duke's hands might be paid to the plaintiff towards satisfaction of his judgment.

In the principal case the court said that the Duke could not be deemed a purchaser until he had paid the 650l. which remaining in the Duke's hands, was part of the personal estate of the bankrupt, and must be liable to his creditors.

Wherefore, per curiam, let the assignees convey the premises in fee to the Duke of Kent, in the same manner as the bankrupt had articled to do, they standing in his place; and in consideration of this, let his Grace pay the 650l. to the assignees, for the benefit
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of the creditors; and as to the plaintiff Mr. Orlebar, the judgment creditor, he must come in for a proportion only with the rest of them.

A. draws a bill payable to B. on C. in Holland for 100l. C. accepts it; afterwards A. and C. become bankrupts, and B. receives 40l. of the bill out of C.'s effects, after which he would come in as a creditor for the whole 100l. out of A.'s effects. B. permitted to come in as a creditor for 60l. and the Master directed to see whether the other 40l. was paid out of A.'s effects in C.'s hands, or out of C.'s own effects; if the latter, then C. is a creditor for this 40l. also, but if out of A.'s effects, then the 40l. of the 100l. is paid off.

A. gives a promissory note for 200l. payable to B. or order; B. endorses it to C. who indorses it to D. A. B. and C. become bankrupts, and D. receives five shillings in the pound, on a dividend made by the assignees against A.; D. shall come in as creditor for 150l. only out of B.'s effects, and if D. paid contribution money for more than 150l. it shall be returned.

Francis Venaker, Esq. son and heir, and also executor of Nicholas Venaker, his father, plaintiff, sued the commissioners and assignees of a statute of bankruptcy against one Shelbury, to be let in to pay his contribution money, and to have a proportionable benefit of the bankrupt's estate with the rest of the creditors.

The case was, that Shelbury, who was a scrivener, and agent for the plaintiff's father, had got several thousand pounds of the father's money in his hands, for which he had only Shelbury's single bonds, on some of which he got judgment and execution on Shelbury's goods, which were appraised, and part thereof came to the father's possession in his life-time, or to his bailiff after his death, and were sold by them. That a commission of bankruptcy was sued out against the said Shelbury by the defendants, who pretended that Shelbury had committed an act of bankruptcy before the father had obtained any judgment against him.

That Leeson and Nash had brought several actions against the now plaintiff and his trustees, in three of which actions they were non-suited; that in another action he had obtained a verdict for 920l. since which the plaintiff, before any assignment of the bankrupt's estate, hath offered to pay his contribution money, being a creditor for above 6000l. The commissioners insist that they found Shelbury a bankrupt before the father's judgment, and the assignees say that they have recovered against the plaintiff 53l. damages, in an action of Trover, for Shelbury's goods in his hands, &c. But now the counsel for the plaintiff offering that he should stand in his father's stead, and be accountable for all that the father had received of the bankrupt's estate, and that he should pay a reasonable proportion of contribution money, so that he may be let into the statute, which offers the court decreed should be accepted, and he admitted a creditor accordingly.

The plaintiffs lived in Gloucestershire, where also one Blithe lived, who owed them money, and having committed some acts of bankruptcy, he afterwards came to an account with the plaintiffs, and sold them several parcels of goods in satisfaction of their debts.

The defendants lived in London, to whom also the said Blithe was indebted; and they having employed a person to discover his estate in the country, and how it had been disposed of, and to procure the same to be distributed equally amongst all his creditors; it was at last agreed amongst them, that the plaintiff should have the disposal of the goods to them already made by the said Blithe, and that they should have an equal distribution with the defendants, in proportion to their respective debts; and for that purpose, that a commission of bankruptcy should be taken out at London, and executed there, and all the said debts put in hotchpot.

Accordingly a commission was executed at London, but without giving notice thereof.
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to the plaintiffs, or any commissioners sent into the country, to join with the others therein, in order to a perfect discovery of the said Blithe's estate, as agreed on.

And afterwards the defendants prevailed with the commissioners in London, within a month after the execution of the commission, to make an assignment and dividend of the said bankrupt's estate, contrary to the said agreement: intending thereby to exclude the plaintiffs; and now refuse to let them come in for their shares, though they have offered to pay their contribution money, and porportion of the shares of commission; but have brought actions of Trover for the goods so sold and delivered by the said Blithe.

To be relieved against which actions, the plaintiffs have brought this bill; and that the said agreement might be performed, and the dividend made amongst the defendants be set aside, and that the plaintiffs may be let in to have an equal distribution with them.

All which matters appearing to the court, though the defendants denied the said agreements, yet such relief was decreed, as the plaintiffs had prayed.

An action was brought by the plaintiff, an assignee under the commission of bankruptcy, against the commissioners of land-tax. In this case, one Farlow was a collector of the land-tax, and had collected a great deal of money for the public use, and on July 7, 1751, absconded and became a bankrupt; and on the 16th of the same month and year, the commissioners brought their warrant, and seized his goods, &c. after a commission was taken out, and the assignees appointed. This case was tried before Lord Raymond, and verdict given for the plaintiff, subject to the opinion of this court.

Serjeant D. The only question in this case is, whether the act of bankruptcy so took away the property of the goods before assignment, as to make them cease to be his?

C. J. If an extent be issued out, nay, only one tested, before the goods, &c. are assigned, that extent will be good.

D. That is a prerogative case, but this is in the case of a private person. In C. B. in London, 3 Geo. II. Andrews and Sir Matthew Decker's case was tried at nisi prius, before Chief Justice Eyre, and the action was brought against Sir Matthew for a false return to a fieri facias, viz. nulla bona. It appeared on evidence, that goods of the defendant were in the house at the time of the return, but that the party whose goods were to be taken, became a bankrupt before the writ was delivered to the defendant, and that a commission was issued against him, but his goods were not assigned over by the commissioners. Here the commission was held to be sufficient proof of his being a bankrupt.

Serjeant E. This case concerns the Crown, and therefore the property is not altered till assignment, and an extent in aid executed before the assignment is good; so in 3 Keb. 14. The Crown is not bound by statutes relating to bankrupts; so Sir William Jones 203. An extent and a warrant from the commissioners of the Land Tax, alters only the manner of collecting the money of the Crown. By the statute of 3 Geo. 2. fol. 25. if any collector refuses to pay the money which he has collected, any commissioner may commit him, and seize his estate; and this is a new law, and shall control all the former resolutions. 3 Lev. 69. 191, S. C.

D. This case does not concern the Crown; for by the statute 3 Geo. II. fol. 18. it appears that the seizure of the collector's estate is for the benefit of the parish, which is answerable for the money at all events; therefore the parish is to return to the commissioners substantial men to be collectors and assessors, and the money, collected comes not to the Crown till it is paid into the hands of the Receiver.

C. J. In this case are two questions; the first is, whether, if this be the case of a private person, what effect an act of bankruptcy has on the goods, in that case, before an assignment? In the case of a private person, there is no actual vesting the bank-
rupt's estate before assignment, because the commissioners have only a power of dispos-
sal; but after assignment they vest to many purposes by relation from the time of the
bankruptcy, as to avoid the acts done by the bankrupt himself; and therefore I think,
if a judgment be given against one before a bankruptcy, and the execution be com-
pletely executed by sale of the goods and payment of the money over before the assign-
ment, that the execution will be good. But here, in a case of a private person, the
execution would not be completed, for the goods were not disposed of by the officer
before the assignment; and then I think this commission will over-reach it. So the
question is, whether this is a prerogative case? And it seems to me that it is; for though
the money when levied is to be applied to the public use, yet it is always considered as
money of the Crown; therefore it is always recovered by the prerogative power; and I
think it hard to imagine that the summary remedy given to the commissioners by the
statute of 3 Geo. II. should put the Crown in a worse case than it was before; and if
an extent in this case had been sued out, the goods would have been bound even from
the test of it; and there could be no relation.

The question here is, whether this warrant can have the same effect as an extent
would have had? As to the parish being liable, that makes it not less the money of the
Crown than before, for that is only giving the Crown a double security for the money.
And in the case of Box and Norton, it was held that an extent and execution, after as-
signed, would be good. The other Judges said little to it. See Salkeld 111. con-
trary to Andrews's case cited by Darnall, and per curiam. It was ordered to stand
over.

A sells land to B. who afterwards becomes a bankrupt, part of the purchase money
not being paid. A. shall not be bound to come in as a creditor under the statute, but
the land shall stand charged with the money unpaid, though no agreement for that
purpose.

If there be an act of bankruptcy committed, and a creditor obtains a judgment sub-
sequent to it, the judgment is hereby avoided.

A. and B. were sureties for C. for the payment of some money, and had counter-

bonds to save them harmless; the money was not paid at the day, and the sureties paid
it, and afterwards C. became bankrupt; the question was, whether they were creditors
within the statute, and it was resolved that they were; and so it has been determined in
several subsequent cases.

No commission of bankruptcy can remove or carry away any goods belonging to a
bankrupt, till the rent due to a landlord is paid, although there be several years in
arrears, provided the landlord seizes for rent before the goods are removed; but if the
landlord does not seize before the commission takes the goods off the premises, he must
then come in as a creditor with the rest of the bankrupt's creditors.

Also if there are not sufficient goods upon the premises to pay the landlord's rent, he
can only take what goods there are, and after they are appraised and sold, as the law in
cases of distress for rent directs, then the landlord may come in as a creditor for the
rent remaining due, with the rest of the creditors.

All debts due to the Crown are preferable, and to be paid before any others, except
where an estate or interest is incumbered, conveyed, or consigned, prior to such debts
due to the Crown; and in the case of a landlord, where a year's rent is to be retained
before an extent can take place.

And in the case of a commission of bankruptcy, if an extent is taken out the same
day and executed with the commission, the extent shall take place, and carry away the
effects before the commission; and according to the case of Brassey and Dawson, here-
after mentioned, an extent shall take place before the test of the writ, though not exc-
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cuted till some days after a commission of bankruptcy; and notwithstanding an immediate assignment has been made of the estate and effects.

But if an assignment is made before the execution, or the test of the extent, such assignment takes place before the Crown, and the Crown can then only come in as a creditor, pari passu, with the rest of the bankrupt's creditors; which the following cases will make appear.

Mr. Solicitor prayed the King's process might take place against the assignee of commissioners, the defendant being a bankrupt; which by the court cannot be, unless seizure be made and returned by inquest before the assignment; also this being not an immediate debt, but in aid of receivers, who were jointly bound with Monk, the court refused to deliver money, till an inquest be returned of this particular debt, though Clayton himself was sheriff, and would return none; and an adjournatur till notice to the King's attorney.

* Mr. Attorney Finch prayed, that money of the plaintiff's, being a bankrupt and an immediate debtor to the King by returns of money from the Commissioners of the Excise, which in truth was from one Thistlewait, a collector, might not be delivered out of the court to the assignees of the commissioners. On Norwich's case, 4 Car. I. in the Exchequer, that the King in such case shall be first satisfied; contrary, where his debt is but in aid of another. But it was not allowed, but the money ruled to be delivered to the assignees, and that the King may, by scire facias against them, recover it.

Debts payable upon a contingency, which may possibly never happen, cannot be proved.

One having only a cause of action, cannot come in and prove it as a debt.

Creditor, during bankruptcy, having a verdict with damages and costs, in assault and battery, before bankruptcy, but not judgment till after certificate, cannot, in the opinion of the court of C. B. come in under the commission; such demand not being a proveable debt, because not due at time of bankruptcy.

Resolved, that the acceptor of a bill of exchange, drawn on him by bankrupts, who promised to indemnify him, before their bankruptcy, could not, on his being sued and charged in execution, come in as a creditor under the commission; because no debt was due or owing from the bankrupts to the acceptor, until he was charged in execution; and his body being in prison upon judgment and execution for a certain sum, was held by the Court of Common Pleas to be the same thing as if the acceptor had paid the debt and costs due on the bill; and then, and not before, the bankrupts became indebted to the acceptor, which was after the bankruptcy.

If A. has a bond of indemnity from B. and the condition be broken, and afterwards B. becomes bankrupt before A. has been sued or damned, though A. had a good cause of action against B. before the act of bankruptcy; yet as A. had not been damned by paying any certain sum of money, by reason of B.'s breach of the condition, A. cannot possibly swear to any debt due and owing from B. at the time of the act of bankruptcy.

Lessor cannot prove a penalty incurred by his lessee for ploughing up meadow ground, as a debt under a commission of bankruptcy.

Obligee cannot prove penalty in an obligation forfeited for breach of covenant by obligor, before he became bankrupt, as a debt under the commission.

Assignor cannot prove damages arising from a breach of a collateral, independent,
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express covenant by the assignee of a lease to indemnify the assignor, as a debt under
the commission.

One guilty of usury cannot come in to prove his debt as a bona fide creditor under
the commission, for the whole debt is void.

The commissioners shall forthwith, after they have declared the person a bankrupt,
cause notice thereof to be given in the Gazette, and shall appoint time and place for
the creditors to meet, which meeting for the city of London, and all places within the
bills of mortality, shall be at Guildhall, in order to choose assignees; at which meeting
the commissioners shall admit the proof of any creditor's debt that shall live remote from
the place of such meeting, by affidavit or solemn affirmation, and permit any person
duly authorized by letter of attorney (oath or affirmation being made of the execution
thereof, either by an affidavit sworn, or affirmation made before a Master in Chancery,
ordinary or extraordinary, or before the commissioners vivâ voce; and in case of the
creditor's residing in foreign parts, such affidavits or affirmations to be made before a
magistrate where the party shall be residing, and shall, together with such creditor's
letters of attorney, be attested by a notary public) to vote in the choice of assignees,
in the place of such creditor.

An Oath of a Creditor for proving his Debt before the Commissioners.

"You shall swear that C. D. late of, &c. at the time of his becoming a bankrupt,
was justly and bona fide indebted to you in the sum of, &c. and that you have not since,
that time been any ways paid or satisfied for the same, or any part thereof."

Note. Every man is to subscribe his debt, and the commissioners are to inquire whe-
ther the debts were contracted during the trade.

Where Copartners are Bankrupts, having joint and separate Estates and Creditors.

Of two partners, brewers, the one becomes bankrupt, and the whole debt was as-
signed over; but it was resolved that the assignee should only recover a moiety, because
only one moiety past by assignment.

If there are accounts between two merchants, and one of them becomes bankrupt,
the course is not to make the other, who perhaps, upon stating the accounts, is found
indebted to the bankrupt, to pay the whole that was originally intrusted to him, and to
put him, for the recovery of what the bankrupt owes him, into the same condition with
the rest of the creditors, but to make him pay that only which appears due to the bank-
rupt on the foot of the account, " otherwise it will be for accounts betwixt them, after
the time of the other's becoming bankrupt," if any such were.

If there be several joint partners, and a person has dealings generally with one of them,
in matters concerning their joint trade, whereby a debt becomes due to the said person,
" it shall charge them jointly, and the survivors of them." But if in case the person
had rather deal with one of them upon his own separate account, he must make his
agreement specially; in which case the debt shall be only his and his executors, and
shall not survive.

If one or more of the joint traders become bankrupt, his or their proportions only
are assignable by the commissioners, to be held in common with the rest who were not
bankrupts.

If there be an act of bankruptcy committed, and a creditor obtains judgment,
subsequent to it, then a commission is taken out; now the judgment is thereby
avoided.
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But by the stat. 49 Geo. III. c. 121, s. 2, an execution bona fide levied more than two months before the date of the commission, though after an act of bankruptcy, is good.

If there be several joint traders, payment to one of them is payment to all. So if they all, except him to whom the payment was made, were bankrupts, the payment is only unavoidable as to his proportion. And if there be four partners, whereof three are bankrupts, and their shares assigned, and a payment is made to him that was no bankrupt, it is a payment to all the assignees, for now they are all partners.

A. and B. became partners in some iron-mills, and some time after A. alleged that B. had not brought in his proportion of the stock, and had wasted the joint stock, for which he brought a bill against him to be relieved, and the matter by consent was referred, and the referee awarded that B. should, in consideration of the above allegations being proved, deliver to A. what remained of the joint-stock, and the lease of the iron-mills to be by him enjoyed to his own use, and general releases to be given; which award, after exceptions taken to it, was afterwards confirmed and decreed by the Court. B. was afterwards found a bankrupt, and the plaintiff, being a creditor to him by bond, had an assignment made to him by the commissioners, and brought a bill to have an account of B.'s estate that came to the hands of A. and alleged, if any such award was made, it was after such time as B. became a bankrupt; but there appearing no fraud in the obtaining of the award, and the same being in an adversary cause, and the award afterwards excepted to, &c. although B. might be then a bankrupt, yet not being known so to be at the time of the award, the court decreed such award ought to stand. Quere, If the decree upon a rehearing was not reversed?

A. B. and C. were partners in trade, and C. embezzles the joint-stock, contracts private debts, and becomes a bankrupt; the commissioners assign the goods in partnership, and A. the plaintiff, brought a bill for an account, and to have the goods sold to the best advantage, and insisted that out of the produce of them, the debts owing by the joint-trade ought first to be paid; and that out of C.'s share, satisfaction must be made for what he had wasted, and that the assignees could be in no better a case than the bankrupt, and were entitled only to what this third part would amount unto, clear, after debts paid, and deductions for his embezzlement. And the court seemed to be of that opinion; but sent it to a Master to take the account, and state the case.

A. and B. being joint traders, a commission of bankruptcy issued against them; their separate creditors applied by petition, that they might be let in for their debts upon the respective separate estates of the bankrupts under that joint commission, as the separate estates were of small value, and would not bear the charge of taking out two new commissions against them respectively.

The Lord Chancellor ordered them to be let in to prove their separate debts, upon the joint commission, they paying contribution to the charge of it; and directed, that the joint partnership estate was first to be applied to pay the partnership debts; and as separate creditors are not to be let in upon the joint estate, until all the joint debts are first paid; so likewise the creditors to the partnership shall not come in for any deficiency of the joint estate, upon the separate estate, until the separate debts are first paid.

Two joint traders becoming bankrupts, there is first a joint commission taken out, and the commissioners assign the real or personal estate of them both, or either of them; and afterwards separate commissions are taken out against them, and an assign-
missioners upon the joint commission, passes as well the separate as the joint estate of the two bankrupt partners; therefore the assignees on the separate commissions can make nothing of their action at law, and he would not suffer them to spend the estate in vexatious suits there; but if they would join in a bill in equity for an account of the separate estates, he would not hinder them.

If a partner sign the partnership signature to bills which, so signed he pledges or discounts for money borrowed by him for his separate use without its being brought into the partnership account, and upon a commission being issued against the firm, these bills are proved against the joint estate, it has been held upon petition that the joint creditors are not entitled to prove the amount of dividends paid upon the bills. Ex parte Cust. Cooke, 534, and see Wright v. Hunter, 1 East. 20.

It is settled, and is a resolution of convenience, that the joint creditors shall be first paid out of the partnership or joint estate, and the separate creditors out of the separate estate of each partner; and if any surplus of the joint estate, besides what will pay the joint creditors, it shall be applied to pay the separate creditors; and if a surplus of the separate estate, beyond what will satisfy the separate creditors, it shall go to supply any deficiency that may remain as to the joint creditors; but, for the ease of both parties, let it be referred to a commissioner in each commission, to take an account of the whole partnership effects, and the separate estate and effects of each of the partners; and if the commissioners find any thing difficult, they are to state it specially; and with regard to the surplus of the partnership effects, beyond what will pay the partnership debts, and the surplus of the separate effects, if any, above what will pay the separate debts, each side to apply to the court for such surplusses.

If there are two joint traders, and one of them becomes a bankrupt, the commissioners cannot meddle with the interest of the other, for it is not affected by the bankruptcy of his companion.

The defendant A. being indebted to the plaintiffs, became bound to them in several bonds; and the said A. and the defendant B. were for several years co-partners, by whose articles of co-partnership, A. was entitled to two-thirds of the whole stock, and B. to one-third: The said A. and B. became bankrupts, and a commission was awarded against them; the commissioners of the said bankrupts assigned all their estate to the defendant C. and others, refusing to let the plaintiffs, creditors of the bankrupts, come in, and intend to divide the estate among the joint creditors of both the bankrupts, by reason whereof the plaintiff's debts will be utterly lost.

The defendant insists, that it was agreed by indentures of co-partnership, that all such debts as should be owing on the joint account, should be paid out of the joint stock, and at the end of the partnership, each co-partner take and receive to his own use his share of the joint stock; and that the joint stock or trade should not be charged with the private or particular debts of either of the partners, but that each should pay their private debts out of their particular estates not included in the joint stock; that if both of the said parties should be living at the end of the first three years, of the six years, that the said B. should come in joint partner accordingly; and during the said joint trade, the co-partners became jointly indebted to the other defendants, C. &c. in 6000l. and that A. became indebted to the plaintiffs as aforesaid, without the consent of B. and the money due upon the said bonds was not brought into the account of the joint stock; and the said A. was only a surety, and received none of the money; and the defendant insisted that the joint creditors ought first to be paid out of the estate in partnership, and that the commissioners have no power to grant the joint estate to pay the plaintiffs, they being separate creditors of A. and if a surplus of the joint estate, after the joint creditors paid, then the plaintiffs can have but a joint moiety of such surplus towards their satisfaction, the said B.'s moiety not being liable to pay the said A. his separate
debts; and the debts then claiming were the proper debts of the said A. and yet, after all the joint debts are paid, there will be an overplus, so that thereby the said B. will be discharged, and have money paid unto him; but if the plaintiff and other separate creditors of A. be admitted to the joint estate, there will not be sufficient to pay the joint creditors, so that thereby not only B.'s estate will be applied to pay A.'s debts, but will be liable to the joint creditors. But there can be no division of the joint estate, whereby to charge any part thereof with the private debts of either party; and till the joint debts are paid, and till division made of the surplus, both parties are alike interested in every part of the said joint stock; that the commissioners have no power by the commission to administer an oath to the plaintiffs for proof of their debts, they claiming debts from the said A. only, and the commission is against A. and B. jointly, and not severally; and therefore cannot admit the plaintiffs' creditors.

The court declared, that the estate belonging to the joint trade, as also the debts due from the same, ought to be divided into moieties, and that each moiety of the estate ought to be charged, in the first place, with a moiety of the said joint debts; and if there be enough to pay all the debts belonging to the joint trade, with an overplus, then such overplus ought to be applied to pay the particular debts of each partner; but if sufficient shall not appear to pay all the joint debts, and if either of the said partners shall pay more than a moiety of the said joint debts, then such partner is to come in before the said commissioners, and be admitted as a creditor for what he shall so pay over and above the moiety; and was decreed accordingly.

Four booksellers entered into partnership for carrying on a joint trade, and being then all in Holland, according to the custom of the country, appeared before a notary, and executed articles of co-partnership, declaring jointly and separately, that each had advanced 24,600 guilders, total 98,400 guilders, which sum was to pay all the debts they had then contracted, as mentioned in an inventory; but no debts should be paid not mentioned in the said inventory, nor any debts which either of the co-partners might contract on his own private account; that a sum agreed on between them should be allowed for maintenance; and that all loss and gains should be equally shared and borne, with other usual covenants.

The co-partnership was carried on from November 1725 to May 1728, when one of the partners, for a sum agreed on to be paid him, quitted and released his claim to the other three, between whom the articles were continued and carried on, on the first conditions, and one of them was intrusted with the goods in shop and warehouse.

But he became profuse, and embezzled the co-partnership stock, and applied the same to his own use, and suffered the partnership debts to be unpaid; and having contracted private debts on his own account, became a bankrupt, and a separate commission was taken out against him.

The messenger took possession of the partnership goods, and the commissioners executed an assignment to the defendants, who in consequence thereof took possession of the partnership goods and books, and received several of the partnership debts, and were getting in the rest, with an intention to apply them to the payment of the separate creditors, whereas the goods are co-partnership goods, and ought to be applied to the co-partnership debts; and to make the plaintiffs satisfaction for what the bankrupt had embezzled for his own separate use, and the residue to be divided into equal parts, two-thirds to the plaintiff, and one-third to the bankrupt, to which he is entitled, and is to be part of his separate estate, this was the prayer of the plaintiff's bill, as that the defendants may be restrained from selling any part without the plaintiff's concurrence.

The assignees admit the bill, and the articles, that they have taken possession and sold some of the stock without consent of the plaintiffs, and have set forth an account
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in the schedule to their answer, of the stock, and submit to apply the estate as the court shall direct; and his Lordship was pleased to decree as follows:

1. That it should be referred to Mr. Lightbourn to take an account of the partnership debts received by the plaintiffs in Holland.

2. To take an account of the partnership estate in England, received by the assignees, or any for their use.

3. To take an account of the partnership debts owing by the bankrupt and the plaintiffs.

4. To cause an advertisement for the joint creditors of the bankrupt and plaintiffs to come in and prove their debts.

5. To take an account of what embezzlements the bankrupt has made of the co-partnership estate; and in taking accounts, plaintiffs and defendants to be examined on oath, to produce all books, &c. and to have all just allowances.

6. That what the master shall certify the co-partnership debts shall amount to, shall, in the first place, be paid by the plaintiffs and defendants to the joint creditors, in proportion to their debts, as far as the co-partnership estate in their hands will extend.

7. That if it shall appear any of the partnership estate remains in the plaintiffs and defendant's hands after the partnership debts are paid, then the master to divide the same into three parts.

8. And the plaintiffs are to take two-thirds; and out of the bankrupt's one-third part, they are to take what it shall appear he has embezzled of the partnership estate.

9. And if there shall be any residue of the bankrupt's third part, after the partnership debts, and the bankrupt's embezzlements are satisfied, then the same is to be paid to, or retained by, the assignees, for the benefit of the bankrupt's separate creditors.

10. The master may state any thing specially; and all parties are to be paid their costs of this suit out of the co-partnership estate, to be taxed by the master.

On the 11th of September, 1742, a joint commission issued against Peter Powell and Peter Powell the younger, of Exeter, and the commissioners executed an assignment of the estate and effects to the assignees that were chosen, and they, by virtue of the said assignment, possessed themselves of all the joint and separate estate of the bankrupts.

And the said bankrupts, having several separate creditors, they the said creditors, in a petition to the Lord Chancellor, set forth their said several separate debts, and that they had applied to the commissioners to be admitted creditors, which they refused, as this was a joint commission, and they therefore prayed, that they might come in and prove their debts under the said joint commission, and that the commissioners might take joint and separate accounts of the joint and separate estates; and that what should be found on such accounts to belong to the separate estates, might be applied by the assignees towards satisfaction of the respective separate creditors; and that the petitioners might be paid their costs of the application by the assignees.

Upon which petition, his Lordship ordered as follows:

1. Let the commissioners give notice in the London Gazette, appointing a time and place, when and where the separate creditors of each of the bankrupts are to be at liberty to prove those debts under the joint commission.

2. Let the commissioners take separate accounts of the joint and respective separate estate of the bankrupts, come to the assignee's hands, or of any others by their order, or for their use, distinguishing the joint and separate estate of Peter Powell, as also the joint and separate estate of Peter Powell the younger, from each other.

3. That what on such account shall belong to the bankrupt's joint estate, shall be employed by the assignees towards satisfaction of the joint creditors; and in case there
shall be any surplus of the joint estate, after all the joint creditors shall be paid their whole demands, then the moiety of the surplus is to be carried to the account of the separate estate, and to be applied to satisfy the separate creditors respectively.

4. And if there is any surplus of the separate estates, after all the separate creditors shall be paid their whole demands, then such surplus of the separate estates, or either of them, is to be carried to the account of the joint estate, and to be applied towards satisfaction of the joint creditors; and let the respective separate estates bear a proportionable part of the charge of suing out the commission, and executing it, to be appointed by the commissioners; and let the costs of this application be paid the petitioners by the assignees out of the bankrupt’s separate estate; and let it be referred to Mr. Bennett to tax the costs, if the parties cannot agree.

On this day a separate commission of bankruptcy was taken out against William Crispe, by William Perritt, plasterer. Crispe was a partner with Edward Burnaby, Esq. and Captain Barbett, in the undertaking of building Ranelagh Amphitheatre; and this debt which amounted to 426l. or thereabouts, was part of a sum of money due to Perritt, for plasterer’s work done in and about the said amphitheatre.

Crispe petitioned the Lord Chancellor to supersede the commission, insisting that this was a joint debt, and that he did not owe Perritt any thing on his separate account; and on the 18th of February 1742, this petition was heard before his Lordship, and on hearing counsel on both sides, and it not then appearing to his Lordship whether Crispe was, or was not, a bankrupt, his Lordship did order the commissioners to execute a provisional assignment, and did direct an issue to be tried in an action of trover before Lord Chief Justice Willes in London, wherein the said William Crispe was to be plaintiff, and such assignee defendant, and in which the point of bankruptcy would come in question.

And on the 19th of June, 1743, the cause was tried at the sittings in London, and by a special jury, between the said William Crispe, plaintiff, and William Perritt, who was chose provisional assignee, defendant.

And the issuing the commission, the joint debt of Perritt, the assignment, and an act of bankruptcy committed by Crispe, were proved: and after his Lordship had clearly and fully summed up the evidence to the jury, it appearing to them to be a joint debt, they were pleased to give a verdict for the plaintiff Crispe, with 10l. damages, and 40s. costs, and did not find him bankrupt for this debt. But a point of law arising, the last clause made in the 10th year of Queen Anne was read, which declares, that the discharge of any bankrupt by force of any acts relating to bankrupts, from the debts owing by him, at the time he became bankrupt, shall not be construed, nor was intended or meant, to release or discharge any other person or persons, who was or were partner or partners with the said bankrupt in trade, at the time he became bankrupt, or then stood jointly bound with him for the said debts, from which he was discharged; but that notwithstanding such discharge, such partners or joint obligors with such bankrupts, shall be and stand chargeable with, and liable to pay such debts, and to perform such contracts, as if the said bankrupt had never been discharged for the same.

And the case was drawn up, and approved of by the Lord Chief Justice for the opinion of the Court of Common Pleas.

Where the question was whether a separate commission can be taken out for a joint debt, which was learnedly spoke to on both sides, but the court came to no opinion.

And it came again to be argued before the Lord Chief Justice Willes on the same question; when after hearing the reasons offered pro and con, by the learned counsel, the court gave judgment, and the Lord Chief Justice delivered his opinion, and his Lordship, Mr. Justice Abney, and Mr. Justice Burnet, were all of opinion, from the
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cases which had been cited, and the reasons and precedents that had been laid before them, that the commission was regularly issued, and that a joint creditor had a right to take out a separate commission, and therefore made the following rule:

William Crispe against William Perritt: ordered, that the verdict found for the plain-
tiff be void, and that a verdict be entered for the defendant.

And on the 11th of May, 1744, Perritt preferred his petition to the Lord Chancellor, setting forth the several steps and proceedings, and the determination of the court in this case, and Crispe having, pursuant to his Lordship's order of the 18th of Feb. 1742, deposited 100l. in the bank, in the name of the Accountant-General, to be placed to the credit of this matter, and in order to stay all proceedings under the commission, he therefore prayed his Lordship to discharge his order of the 18th of Feb. 1742, and that the commissioners might be at liberty to proceed in the execution of the commission, and that the 100l. paid into the bank by Crispe, might be paid to him towards the costs which he had been put to, on account of suing out the commission, and proceedings at law.

And on the 24th of May, 1744, such petition was heard before his Lordship, and his Lordship, after hearing counsel on both sides, ordered that the major part of the commissioners named in the said commission should be at liberty to proceed in the execution thereof, and that the 100l. paid into the bank of England should be paid to Perritt, as part of the bankrupt's estate and effects.

And on the 26th of May, 1744, Crispe was declared a bankrupt in the Gazette.

How far the Commissioners shall over-reach the Acts of a Bankrupt, from the Time of: the Act of Bankruptcy committed.

1st. As to the bankrupt's receiving debts due to him from his debtors.
2dly. As to his selling his goods bonâ fide.
3dly. As to his selling and mortgaging his lands.
4thly. As to his mortgaging or pledging his goods.
5thly. As to his paying debts.

And, first, A bankrupt may receive his debts after the act of bankruptcy, from such debtors as do not know him to be a bankrupt, and the payment will be good.

2dly. All persons buying goods of a bankrupt, not knowing him to be so, and paying for them bonâ fide, shall be received in the equity of the proviso, 1 Jac. I. c. 15.

And contracts, where there is quid pro quo, the bankruptcy shall not overreach.

And the reason is, that if it was otherwise, it would be a great prejudice to trade, inso-
much that it could not be carried on with safety, and the law would be a snare for the innocent and fair contractor, who cannot possibly have any notice of the act of bank-
ruptcy; as the following abstract clearly determines.

The preamble observes, that many persons within the description of, and liable to the statutes concerning bankrupts, frequently commit secret acts of bankruptcy unknown to their creditors, and other persons with whom they have dealings; and after committing thereof, continue to appear publicly, and carry on business, by buying and selling goods, drawing, accepting, and negotiating bills of exchange, and paying and receiving money on account thereof in the usual way of trade, and in the same open manner as if they were solvent and not become bankrupt: and as the permitting such secret acts of bankruptcy to defeat payments really made in the cases and circumstances above-mentioned, where the persons receiving the same had no notice of, or were privy to their having committed any act of bankruptcy, will be a discouragement to trade, and a prejudice to credit in general: It is therefore enacted, that after the 29th
of October 1746, no real creditor of a bankrupt, in respect to goods sold to, or bills of exchange really drawn, negotiated, or accepted by such bankrupt in course of dealing, shall be liable to refund to the assignees of the bankrupt’s estate, any money, which before the suing forth of such commission was really in the course of trade received by him of such bankrupt, before he had knowledge or notice of his becoming a bankrupt, or being in insolvent circumstances.

3dly. If a man sells or mortgages his lands, the bankruptcy will over-reach it, although the purchaser had no notice of the bankruptcy, if the commission issued within five years after the act of bankruptcy, because this is a mischief which does not immediately concern trade, and he who buys lands, does it at his peril, subject to all such incumbrances as lands are liable to.

4thly. If a man mortgages or pledges his goods after an act of bankruptcy, the commission will over-reach it, because the mortgage or pawning goods does not immediately concern trade as buying and selling does, and he who takes a pawn does it at his peril.

5thly. If a bankrupt pays debts after the bankruptcy, the assignee may recover the money again, if it were otherwise, it would be in the power of the bankrupt to prefer such creditors as he should think fit, which is contrary to the design of the statutes concerning bankrupts, which is to put all creditors upon a footing.

A remarkable Case tried under a second Commission of Bankruptcy.

On this day a commission of bankruptcy issued against William Kell of London, merchant, who was found a bankrupt, and submitted to the statutes, and finished his last examination, but never obtained his certificate under such commission.

Afterwards he set up the trade of a distiller near Maidenhead in Berkshire; and becoming acquainted with one Ashley, they entered into co-partnership, on the 1st of August, 1741, to carry on the trade of distilling and rectifying melasses spirits, for five years, or thereabouts, and during this co-partnership, Ashley took off all, or most of the spirits which Kell distilled.

Afterwards some disputes arising between them, and Kell being debtor to Ashley on a separate account, exclusive of the copartnership, Ashley, on the 2d of July, 1742, took out a second commission against Kell, and was chose sole assignee of his estate and effects; but Kell having in all respects submitted to the statutes relating to bankrupts, Ashley and the rest of Kell’s creditors signed his certificate under this second commission, which was duly confirmed and enrolled; and Ashley sold back to Kell several parcels of his household goods, and part of his stock in trade, as a distiller; for part of which goods Kell paid Ashley in money, and for the remainder, amounting in value to 100l. or thereabouts, Kell gave Ashley a bond for 100l. dated the 28th of October, 1742, payable in six months with interest, at five per cent. and Ashley promised to deal with Kell afterwards.

Then Kell again set up the trade of a distiller on his own account, and Ashley dealt with him, and paid him for two parcels of spirits, after the rate of 4s. per gallon to the amount of 88l. 16s.

On the 4th and 28th days of April, 1743, Kell sent Ashley two other parcels of spirits, at the same price, amounting to 184l. 4s. and Kell’s bond of 100l. being then due to Ashley; and Kell being unwilling that his bond should be out against him, he desired Ashley to pay himself out of the goods, for the bond and interest due to him, and only give him the balance for the spirits.

But instead of so doing, Ashley in Easter Term, 1743, brings an action against Kell for the 100l. and interest due on the bond, and holds Kell to bail; and at the same time
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by the messenger under the commission, seizes the spirits, amounting to 182l. 4s. as assignee under the second commission, and he insisted to retain the same, in trust for himself and the other creditors of Kell, under the second commission, by virtue of the ninth clause of 5 Geo. II. Ashley proceeded in his action, and Kell by way of set-off to the debt pleaded, that before the bringing of this action, Ashley was indebted to him in a much larger sum, viz. in 184l. 4s. for goods sold and delivered, out of which sum Kell was willing to allow the principal and interest due to Ashley on his bond; and upon this issue was joined.

Pending this action Kell filed a bill in Chancery against Ashley, and prayed that Ashley might discover, whether he had not agreed to purchase such goods of him, and if such goods did not come to his possession; and to be relieved in several other matters complained of in such bill, and that Ashley might be enjoined from proceeding in such action.

To this bill Ashley put in his answer, in which he denied the spirits were ever sold to him, or that he ever promised to pay for them, and he insisted upon his right of retaining them as assignee under the second commission by virtue of the above-mentioned clause; Kell's effects under the second commission not amounting to pay fifteen shillings in the pound; but whether such goods were, or were not, rightly seized, he was advised was a matter ought to be tried at law, where Kell, if at all, had his remedy; and the court did not think proper to grant an injunction, but sent the parties to law, and then Ashley proceeded in the cause.

And on the 30th of November, 1743, it was tried before the Lord Chief Justice Lee, at Guildhall.

And upon the argument of this case, it was insisted by the counsel for Ashley, that these goods were not the property of Kell, and therefore that he could not sell them; but that they came to Ashley, as assignee under the second commission.

That Ashley had the spirits; but not as a buyer, and that by the afore-mentioned clause Kell's future effects were liable, he not having paid fifteen shillings in the pound; and consequently that the goods belonged to the assignee, either under the first, or second commission.

But by Kell's counsel, it was insisted that Kell was never discharged by the act of 5 Geo. II. after 24th June, 1732, except by the last commission, and therefore possibly could not be within the intent of that act, having but once had the benefit of it.

That supposing Kell's future effects had been liable to his creditors by the aforesaid clause, that Ashley could not in any manner seize them as assignee under the second commission; and if he had a right, he must have proceeded in a legal way, and have brought his action against Kell; and then Kell would have pleaded his certificate in discharge of his person, and let Ashley have taken judgment against his goods, as in the case of an insolvent debtor; but that this was by no means Kell's case, he not being within the meaning of the clause of the act, as having but once had relief.

And his Lordship, after having with great judgment stated the case, and summed up the evidence, to the jury, was clearly of the same opinion with the gentlemen who were counsel for Kell, that his case was not within the intent and meaning of that clause, and that the taking of the goods by Ashley, as assignee, was illegal; and the jury, concurring in his Lordship's finding the plea of the defendant Kell to be true, as was alleged, gave a verdict for him.

But he, the defendant, Ashley leaving the place, said to his counsel, and Hilary Taylor, counsel for Hillary Taylor, move, if he thought fit, in arrest of judgment; and Ashley not moving in arrest of the postea to be delivered to the defendant, the costs at 10l. and took out execution; as said attorney.
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And after Ashley had paid Kell's costs, in Easter Term following, Ashley moved in arrest of judgment, and a rule was made for Kell's attorney to attend with the postea. And the same arguments were made use of before the Court of King's Bench, by the counsel on both sides, as were at the trial of the cause; but the whole court were also of opinion that the verdict was right, and entirely concurred with the L. C. J. Lee in his judgment, and therefore they discharged the plaintiff's rule.

And in Trinity Term, 1744, Kell brought an action in the Court of Common Pleas against Ashley, for the balance of the sum of 184l. 4s. due for the spirits.

And on the 23d of June, 1744, this cause was tried at Guildhall, before the L. C. J. Willes, where the same arguments were made use of by the counsel both for plaintiff and defendant, as were insisted on before the L. C. J. Lee, at the first trial, and before the Court of King's Bench, on the special argument of this case; but the L. C. J. Willes, upon stating it, and fully summing up the evidence to the jury, was clearly of the same opinion with the L. C. J. Lee, and the Court of King's Bench, and was pleased to make this observation, viz. That by the very clause in the act of Parliament, the effects of a bankrupt that had received the benefit of the act, according to that clause, remained liable to his creditors, as before the making of the act; but that it could never be supposed that they were liable to be seized in a summary way, without a legal trial, by an assignee, because nothing was vested in the assignee but what the bankrupt had before he was a bankrupt, and Kell had not received the benefit of the act.

And the jury being of the same opinion, they therefore gave a verdict in this action for the plaintiff Kell, for 54l. 18s. besides costs of suit; being what was proved to be the value of the spirits, after some allowances were made for waste and leakage, and after the bond of 100l. and interest was paid by Kell to Ashley.

Of Factors and Executors becoming Bankrupts, having Effects of other Persons in their Hands.

If a bankrupt is a factor, although he has the possession of the goods of his principal, and the power of immediately selling them and taking the money; yet that is not a possession within the meaning of the statute of 21 Jac. I. c. 19. s. 11. nor will the case be altered, if the factor acts upon a del credere commission.

The Bonnels were considerable merchants in London, and had two bales of silk consigned to them by Altenory and Alteory from Leghorn; but before the ship sailed, advice arrived there, that the Bonnels had failed; and thereupon Altenory and Alteory altered the consignment of the silk, and made it to the defendant.

On which the plaintiffs, being assignees under the statute against the Bonnels, brought their bill for a discovery and relief.

Upon the first hearing, the court ordered all letters, &c. to be produced, and that the parties proceed to a trial in trover, to see whether the first consignment, notwithstanding the altering thereof, and new consignment made before the ship sailed, vested the property of those silks in the Bonnels; and upon the trial and verdict being given for the plaintiffs, the cause now came on upon the equity reserved.

The court declared, the plaintiffs ought not to have had so much as a discovery, much less any relief in this court, in regard that the silks were the goods of two Florentines, and not of the Bonnels, nor the produce of their effects; and therefore, they having paid no money for the goods, if the Italians could by any means get their goods again into their hands, or prevent their coming into the hands of the bankrupts, it was but lawful for them so to do, and very allowable in equity.

And it was decreed, that if any thing was due from the Italians to the Bonnels, that should be paid the plaintiffs; but they should not have the value of the silks, by virtue
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of the consignment or verdict, and put the Italians to come in as creditors under the statute of bankrupts.

An action was tried at Guildhall, before Mr. Justice Buller, in which it appeared the plaintiffs were merchants in London, and in June, 1783, had a quantity of wheat consigned to them from Ostend; the sale of which they intrusted to one Farrer, as their factor.

The factors in the corn trade, like those in the linen trade, receive a del credere commission, besides their factorage, and never communicate the names of the purchasers to the owners, except in case of the factor's failure. Farrer, on the 9th of June, 1783, sold 211 quarters of the plaintiff's wheat to the defendant Milward. On the 16th of June, Farrer being about to stop payment, gave up the wheat under his care to the plaintiffs, and sent them the names of the buyers. On the 20th of June, Farrer stopt payment; and, a short time afterwards, his creditors executed a deed of composition. On the 21st of June, the plaintiff delivered the defendant Milward a bill of parcels of the wheat sold to him by Farrer, as their factor; and desired him to accept a bill, at a month, for the amount, which he refused, insisting that he had a right to set off a debt due to him from Farrer, against the price of the wheat.

Mr. Justice Buller, in his charge to the jury, declared the doctrine laid down by Lord Chief Justice Lee, in Scrimshire v. Alderton, to be law; and the plaintiff recovered a verdict.

Again, one Murray, of Belfast in Ireland, in 1782, consigned a quantity of linens to Bate and Henkell, of London, to be disposed of by them, as his factors, upon a del credere commission. Bate and Henkell sold the linens for 192l. 14s. and, before they received the money became bankrupts. The assignees afterwards received the money of the purchaser, which Murray demanded of the assignees, who refused to pay it, insisting that he should come in as a creditor under the commission. Murray presented a petition to the Lord Chancellor, praying that the assignees might be ordered to pay him the money the linens sold for, after deducting the commissions and charges, and a small sum due from Murray to the bankrupts, on another account.

His Lordship, after hearing the point of law argued, was clearly of opinion, that the purchaser not having paid for the linens previous to the bankruptcy, Murray, the consignor, was intitled to receive the price of the linens; and accordingly ordered the assignees to pay him the money.

A. made a bill of sale of some leases and personal estate to B. and C. in trust to pay A.'s debts; B. at first acted in the trust, but afterwards C. took the whole into his possession, and acted alone, and became a bankrupt.

And A. brought a bill against C. and others, to bring C. and his assignees to an account, touching the personal estate of A. so assigned, in trust for the payment of his debt as aforesaid.

And his Lordship, declaring that he thought the 21 Jac. I. s. 10. to govern this case, dismissed the plaintiff's bill with costs.

But further argument being granted on the case, his Lordship held that it was not within the above-mentioned clause and statute, in regard this assignment was with an honest intent, viz. for the payment of the debts of the assignor.

And therefore he ordered the assignees of C. to account for all the estate of A. which the court declared should not be liable to the bankruptcy of C.

The plaintiffs brought an action against the defendants for money had and received to the plaintiffs' use; and the case was as follows:

The plaintiffs being concerned as partners in a large quantity of tar, consigned it to Richard Scott, who was their factor, and brother to one of the plaintiffs, between
which two brothers there had been mutual dealings, and accounts which were at that time unsettled.

The ship arrived in the Thames, with the goods from Carolina, on the 22d of May, 1739, of which the factor had before received a bill of lading; and on the 28th of March following, he sold the said tar to Mess. Cornelius and Jeremiah Owen, who agreed to pay for it in promissory notes, payable in four months after the delivery of the said goods, and that a debt of 31l. at that time owing to the buyers from the factor, upon his own private account, should be deducted out of the purchase money.

On the 1st of April, 1740, the owners paid the factor in part, by giving him one promissory note of 66l. 13s. 4d. and another of 102l. 6s. 8d. which, with the 31l. due to them from the factor, amounted to 299l.

On the 3d. of April following, the factor, Richard Scott, committed an act of bankruptcy, and on the 4th a commission issued against him, on the petition of one of the defendants, and the three defendants were chosen assignees, to whom the bankrupt delivered up the said two notes, received from the buyers in part of payment for the tar, and the said assignees afterwards received the money for them.

The defendants, as assignees, likewise confirmed the sale of the tar to the said Owens, and settled the account with them, and received the balance, being 37l. 4s. and there being a bounty allowed by act of Parliament, at so much per ton, payable to the importer of this tar, the defendants, as assignees, did also receive that bounty, amounting to the sum of 299l. 8s.

The assignees insisted that they, as such, were entitled to all this money, and that the plaintiffs must come in as creditors under the commission; and the plaintiffs insisted, that the bankrupt, being their factor, could be only considered as a bare trustee, and therefore that the notes delivered up to them by the bankrupt, though payable to him or order, were the notes of the plaintiffs, and that the defendants receiving the money for those notes, and also the remaining part of the money for the tar, and the bounty due to the importer of that tar, they received those monies for the use of the plaintiffs.

This cause was tried by a special jury, and the damages were computed at 358l. 10s. and a verdict was given for the plaintiffs, subject to the opinion of the court upon this question:

Whether the plaintiffs were entitled to such sum of 358l. 10s. given by the verdict, or to any, or what part thereof?

And the principal cases which were cited by the plaintiffs, were those of: Copeman and Gallant, herein before-mentioned; the case of L'Apostree v. Le Plaistier, which was tried before Lord Holt, where an action of trover was brought against an assignee in a commission against one Levi, to whom the plaintiff had delivered some diamonds to sell; and this being a question depending upon the clause of 1 Jac. c. 19. s. 10 and 11, it was made a case for the Court of King's Bench; and it appearing that the real property of the diamonds belonged to the plaintiff, and that the bankrupt had only a bare authority to sell them for his use, therefore the court were of opinion they were not liable to his bankruptcy.

The case of Burdett and Willett was also cited, where, in the Court of Chancery, it was decreed, that the factor was only in the nature of a trustee for his principal; and that delivering goods to him did not alter the property of the real owner; and upon the argument of this case, the court took time to consider of it, and some time afterwards gave their judgment for the plaintiffs, viz. That the plaintiffs should be at liberty to enter up that judgment for the debt and costs, deducting thereout the 31l. due from the factor to the owens.
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In like manner, if bills of exchange or goods are sent to a merchant for a particular purpose, and the merchant breaks, having the bills of exchange or the goods in his possession, they do not pass by the assignment.

Neither does the statute extend to the case of an executor or administrator becoming bankrupt; for the property they may possess as such, cannot be assigned by the commissioners.

Motion for a prohibition to the Ecclesiastical Court from granting administration to A. where B. was named executor by the testator, for that B. was a bankrupt.

Holt C. J. The ordinary is not to grant administration, where an executor is named, and bankruptcy is no material disability; he acts en autre droit, and the testator had intrusted him; but in case of non sane memoria, there is no absolute necessity to grant administration.——A prohibition granted.

If an executor becomes bankrupt, a legatee is to be creditor.

Neither does assignment pass property which may be stopped in transitu.

If a merchant consigns goods to a trader, and before their arrival the consignee becomes a bankrupt; if the merchant can prevent the goods getting into the bankrupt's hands, the commissioners' assignment will not affect them.

If goods are delivered to a carrier or hoyman, or the master of a vessel, to be delivered to A. and the goods are lost by the carrier, the consignee can only bring the action; which shews the property. But, though such goods are actually delivered to a carrier to be delivered to A. and while the carrier is upon the road, and before actual delivery to A. by the carrier, the consignor hears that A. his consignee, is likely to become a bankrupt, or is actually one, and countermands the delivery, and gets them back into his own possession again, no action of trover would lie for the assignees of A. because the goods, while they were in transitu, might be so countermanded.

The commissioners cannot assign the benefit of an agreement made with a bankrupt.

Where the defendant, on marriage of his son, settles land on himself for life, remainder to his son for life, &c. and covenants, during his own life, to pay his son 15l. per annum; the son becomes a bankrupt; the plaintiff, as assignee, brings a bill against the father, to have the benefit of this agreement, and to compel payment of the 15l. per annum. Per cur. An assignee under a statute of bankruptcy is not entitled to have the performance of an agreement made with the bankrupt; and said that it was so adjudged in the case of Drake v. the Mayor of Exeter; where the court held, that, if a lessor covenants with his lessee and his assigns to renew his lease, and the lessee becomes a bankrupt, and the commissioners assign this covenant, the assignees cannot have any relief against the lessor.

Commissioners cannot assign future earnings arising from the labour of the bankrupt.

Chippendale brought an action of assumpsit for work and labour as an attorney. The defendant pleaded that the plaintiff was a bankrupt, and averred that the commission was still in force.

The plaintiff replied, that the work and labour was done after the commissioners' assignment, and for the necessary support of himself and family. Rejoinder, that the plaintiff had not obtained his certificate: and thereupon a demurrer.

Lord Mansfield said, the only question is, whether the assignees of a bankrupt are entitled to the profits arising from his personal labour?

Mr. Justice Buller observed, that the case in Atkins did not support the doctrine laid down at the bar; for Lord Hardwicke there says, "All his future personal estate is affected by the assignment;" by which he evidently meant, that, if the assignees claim it, the bankrupt must deliver it up; and so far the assignment affects it: but no other person can have the same plea. It is certain, Lord Hardwicke meant to go no further than the case in Strange, which is decisive of his meaning; therefore he was of opinion
with the plaintiff, for whom judgment on the demurrer was accordingly pronounced. See the case referred to by Judge Buller, 2 Strange 1207, Ashley v. Kell.

Of chusing Assignees, and of their Power and Duty.

When any commission of bankruptcy is issued out, the commissioners therein named, or the major part of them, shall forthwith, after they have declared the person bankrupt, cause notice to be given in the London Gazette, and shall appoint a time and place for the creditors to meet; which for the city of London, and all places within the bills of mortality, shall be at Guildhall, in order to chuse an assignee, or assignees, of the bankrupt's estate and effects; at which meeting the proof of any creditor's debt, that shall live remote from the place of the said meeting, shall be admitted by affidavit, or if quakers, by affirmation, or if from abroad, by letters of attorney; and all creditors who shall so prove their debts at this meeting, and whose debts amount to 10l. or upwards, shall be qualified to vote in the choice of assignees; and he, or they, that shall be so chosen by the major part in value of the creditors then proving their debts, shall have an assignment from the commissioners, or the major part of them, of the bankrupt's estate and effects.

The commissioners have power immediately to appoint one or more assignees, if they see cause, for the better securing and preserving the bankrupt's estate; which assignee, or assignees, may be removed or displaced at the meeting of the creditors for the choice of assignees, if the major part of them then met, and duly qualified, shall think fit; and such assignee, or assignees, as shall be removed or displaced, shall, within ten days after notice given in writing by the assignee or assignees chosen by the creditors of the said choice, make an assignment and delivery to the said assignee or assignees of all the bankrupt's estate and effects which shall have come to their hands and possession, on penalty of 200l. each, to be distributed among the creditors, in the same manner as the bankrupt's estate shall be. And the Lord Chancellor has power, on the petition of any creditor, to remove such assignees as shall have been chosen by the commissioners, to vacate the assignment, and to cause a new one to be made.

Assignees have power to order the bankrupt's attendance on them as often as they think convenient for the benefit of the estate, and may have some skilful accountants to settle his books of accounts, and employ some faithful person to collect and get in the debts; but for this last they ought to have security.

Assignees may bring actions at law without the consent of the creditors; though, if the suit in law is a matter of consequence, or which may produce a suit in equity, they shall summon all the creditors to a meeting, by notice in the London Gazette, and lay before them the true state of the case, and take the consent of the major part in value of the said creditors in writing, to the bringing such suits, and that a sufficient sum remain in the assignees' hands to defray the charges; and in case they apprehend that they shall not have sufficient, they may take an agreement under the creditors' hands to indemnify them, and oblige themselves every one to pay his share, in proportion to their respective debts; for assignees are not obliged to bring any suit in law or equity, though the creditors vote that they should, unless they are indemnified, where there is any appearance of a hazard.

And the assignees may, with the consent of the major part in value of the creditors who shall have duly proved their debts, and be present at any meeting of the said creditors, pursuant to notice to be for that purpose given in the London Gazette, submit any difference or dispute between the assignees and any person or persons whatsoever, relating to the bankrupt's effects, to arbitration; the arbitrators to be chosen by the assignees, and the major part in value of such creditors, and the party or parties with
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whom they have the difference, and to perform the award of such arbitrators, or otherwise to compound and agree the matters in dispute, in such manner as the assignees, with such consent as aforesaid, shall think fit; and the same shall be binding to all the creditors.

The assignees, by and with the consent of the major part of the creditors in value, who shall be present at a meeting to be had for that purpose, of which notice shall be given in the London Gazette, may make composition with any person or persons, debtors or accountants to the bankrupts, where the same shall appear necessary and reasonable, and to take such reasonable part as can upon such composition be gotten in full discharge of such debts and accounts.

Assignees should be careful in examining the nature of the bankrupt's debts, to prevent the statute of limitation from taking place. Where it shall appear to the major part of the commissioners, that there has been mutual credit given by the bankrupt and any other person, or mutual debts between the bankrupt and any other, at any time before he became bankrupt, the major part of the commissioners, or the assignees of the estate, may state the account between them, and one debt may be set against another, and what shall appear to be due on either side, on the balance of such account, and on setting such debts one against another, and no more, shall be claimed or paid on either side respectively.

Before the creditors shall proceed to the choice of assignees, the major part of the creditors present shall, if they think fit, direct how, and with whom the monies to be received out of the bankrupt's estate shall remain, until the same be divided; to which rule such assignees shall conform as often as 100l. shall be got in.

Assignees are obliged, at some time after the expiration of four months, and within twelve months from the time of the commission's issuing, to cause at least twenty-one days public notice to be given in the London Gazette, of the time and place they and the commissioners intend to meet, to make a dividend or distribution of the bankrupt's effects; at which time the creditors who have not before proved their debts, shall then be at liberty to prove them; which meeting, for London and all places within the bills of mortality, shall be at the Guildhall; and at such meeting the assignees shall produce to the commissioners and creditors then present, just and fair accounts of all their receipts and payments touching the bankrupt's estate and effects, and the particulars of all that shall remain outstanding, and shall, if the major part of the creditors then present require it, be examined upon oath before the commissioners, touching the truth of such accounts. And the assignees shall be allowed to retain all such sums as they shall have paid or expended in suing out and prosecuting such commission, and all other just allowances on account of their being assignees; and the major part of the commissioners shall order such part of the nett produce of the bankrupt's estate, as by such accounts, or otherwise, shall appear to be in the hands of the assignees, as they shall think fit to be divided forthwith among such of the creditors who have duly proved their debts under the commission, in proportion to their several and respective debts; and they shall make such their order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver unto each of the assignees a duplicate of such their order, likewise under their hands; which order of distribution shall contain an account of the time and place of making such order, and the sum total or quantum of all the debts proved under the said commission; and the sum total of the money remaining in the hands of the assignees to be divided, and how much in particular in the pound is then ordered to be paid to every creditor under the commission; and the said assignees, in pursuance of such order, and without any deed or deeds of distribution to be made for that purpose, shall forthwith make such dividend and distribution accordingly, and shall take.
receipts in a book to be kept for that purpose for each creditor, for the part or share of such dividend or distribution, which they shall make and pay to each creditor respectively; and such order and receipt shall be a full and effectual discharge to such assignees.

And the assignees are further obliged within eighteen months after issuing of the commission, to make a second dividend of the bankrupt's estate and effects, in case the whole was not divided on the first dividend, and shall cause notice to be inserted in the London Gazette of the time and place the commissioners intend to meet to make a second dividend, and for the creditors who shall not before have proved their debts, to come and prove them; and at such meeting the assignees shall produce upon oath their accounts of the bankrupt's estate and effects; and what upon the balance thereof shall appear to be in their hands, shall by the like order of the major part of the commissioners be forthwith divided among such of the bankrupt's creditors, as shall have made due proof of their debts, in proportion to their several and respective debts; which second dividend shall be final, unless any suit at law or in equity shall be depending, or any part of the estate standing out that cannot have been disposed of, or that the major part of the creditors shall not have agreed to be sold or disposed of in manner aforesaid; or unless some other or future estate or effects of the said bankrupt shall afterwards come to, or vest in the said assignees; in which case the assignees shall, as soon as may be, convert such future or other estate or effects into money in manner aforesaid, and shall within two months next after the same shall be converted into money, by the like order of the commissioners, divide the same amongst the creditors who shall have made due proof of their debts.

It is the duty of the assignees to make a dividend as early as possible after the time given by the statute for creditors to come in, and prove their debts. And if they neglect making a dividend and keep the money in their own hands, they will be liable to pay interest for it.

This question as to interest arose in a case where a commission issued in 1766, against Beale and others, copartners; and Townshend, Russel and another were chosen assignees. Beale and his partners having carried on the negotiation of bills of accommodation to a very large amount, with several persons who were also bankrupts, the assignees of Beale deferred proceeding under the commission, in order that the several holders of the bills might prove their debts and receive dividends under the other commissions, before they made any claim on the estate of Beale. In fact, no dividend was ever made. The clerk of the commission was dead and all the papers were lost. Townshend had received a considerable part of the bankrupt's effects. Russel had also received some small part, but he died in 1773.

In 1782, the creditors renewed the commission, and this bill was brought by the creditors against Townshend and the executors of Russel, for a discovery of the several facts, and for an account of the money received by them.

It appeared by Townshend's answer, that he kept the money he received as assignee, in common with his own at his banker's; but he swore that he generally had there more than the amount of such receipts; and the only question in the case was, whether Townshend and the executors of Russel should be charged with interest for the money kept in their respective hands.

Lord Loughborough, the seals in commission, "As to Russel's executors, they cannot be looked upon in the light of assignees, and as executors, are not required to pay till called upon; and though the plaintiffs might charge Russel's estate in respect of the money retained in his hands in his life-time, yet, as the sum is comparatively small, it is scarcely an object. But with regard to Townshend, I was surprised to hear it argued that the assignees were not to make a dividend, or to take an active part in settling the
bankrout's affairs, unless called upon by the creditors. And as to the idea of discouraging honest men from taking upon themselves the office of assignees, no honest man can ever have any difficulty. The effect of giving in to such doctrine would be, that it would be canvassed for as an office, and no honest man would ever be appointed. There is nothing so likely to make the bankrupt laws reprobated, or to bring about their annihilation. This is the grossest case that imagination can make. The assignees' only excuse is, that they could not make a dividend, because they had been so very negligent. They never called upon the clerk of the commission, and he is now dead, and all the papers are lost. And the expenses of a suit are brought upon the estate by their neglect. Now what ground is there for not charging them with interest? The money being mixed by Townshend with his own, it is just as clear that a profit has accrued, as if it had been specially placed out. Townshend was employed in trade, and knew how to make the most of money. Money is part of a merchant's stock in trade: a circulating capital on which profit arises. The sum in the banker's hands was fluctuating, and he must have been an unthrifty merchant if he did not make great profit of the money by discounting notes, &c. Since the year 1768, the sum of 1936l. has been so employed by him. If the court should suffer him to do this, when the very nature of the trust reposed in him required that he should not keep it in his hands, when will there be a sufficient ground to charge assignees? Townshend must therefore pay the interest at 5 per cent. and pay all the costs of this suit, and also all the subsequent costs arising from the inquiry in the Master's office, which has been occasioned by his neglect.

Let this case serve as a precedent and a warning to tardy assignees, who but too frequently deserve the severest censures; and even punishment, for delaying dividends to the great injury of the poorer classes of creditors under commissions of bankruptcy.

If creditors want to inspect the assignees' accounts, and are refused by them, the court, on petition, will oblige the assignees to shew their accounts according to the directions of the statutes.

If an assignee is guilty of a breach of trust, by misapplying the creditor's money or keeping the money in his hands, when he ought to have divided it, the court, on petition and proof being made, will order an account to be taken before the commissioners, and a dividend to be made; and if any manifest delay or neglect appears in them, will oblige them, as we have seen, to pay interest and costs.

If assignees attempt to sell estates at an under value, or enter into any clandestine agreement either with the bankrupt or any other person, the court, by application, will by order restrain them from selling such estates or interests, or remove them.

If assignees have had suits in law or equity, on application to the court the court will order the commissioners to settle the accounts, allowing them all reasonable costs and charges, and direct the assignees to make a dividend of the residue.

The court on a petition will order the commissioners to enquire into the real consideration of debts and notes, and of usurious contracts; and will order the assignees to be restrained from making any dividend, till the commissioners shall have made their certificate to the court; and if there appears to have been more than legal interest received, or any unfair transaction, with regard to the obtaining or swelling such debt, the court, on bringing a bill, will, by decree, reduce such unconscientious demand to the sum which is really due.

If an assignee dies, the trust devolves to the surviving assignee, or to such new assignee as the court shall appoint to the surviving assignee, if the creditors shall petition for the same; and the executor or administrator of the deceased assignee must pay the money in his hands to the surviving assignee, and such additional assignee, if appointed; or account before a Master in Chancery for assets come to his or her hands, because the commissioners cannot take an account of assets.
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But if the bankrupt's real estate is conveyed to assignees, and one, of them dies, this is a joint-tenancy, and goes to the survivor; and he may alone sell such an estate to the purchaser; but if both die before any conveyance is made, then the heir at law of the survivor must convey to such new assignees as the court shall appoint, or join with such new assignees in conveyance to a purchaser.

If money is overpaid in pursuance of an usurious contract, the assignees have a right to demand and recover it, notwithstanding the agreement of the oppressed party to allow such payments. The two Cottons became bankrupts, and their assignees brought a bill against Dashwood, as executor of Sir Samuel Dashwood, who had in his life-time lent several sums to the bankrupts upon bonds bearing 6 per cent. interest, and had taken advantage of their necessitous circumstances, and compelled them to pay 10 per cent. to which they submitted, and entered into other agreements for that purpose, and continued paying at the said rate of 10 per cent. from the year 1710 to 1724; it was decreed at the Rolls, that the defendant should account; and that for what had been really lent, legal interest should be computed and allowed; and what had been paid, over and above legal interest, should be deducted out of the principal at the time paid, and the plaintiffs to pay what should be due on account; and if the testator had received more than was due with legal interest, that was to be refunded by the defendant, and the bonds to be delivered up.

A bankrupt before he became such, having made a mortgage of his estate, the assignees of the statute bring an ejectment for the recovery of the lands comprised in the mortgage; the mortgagee refuses to enter, but suffers the bankrupt to take the profits, and to fence against the assignees with this mortgage. Ld. Keeper ordered, the mortgagee should be charged with the profits from the time of the ejectment delivered.

An Assignee dying in Debt by Bond.

The assignees under a commission taken out against I. S. petitioned that I. N. the daughter and administratrix of L.D. who was the surviving assignee under the commission, should account before the commissioners, for the bankrupt's effects come to her hands; and an affidavit was made, that I. N. had confessed she believed that her intestate, the assignee, kept the bankrupt's money in a separate bag, with a note in it, showing it to be such; and also that the assignee left lands of inheritance, descended to I. N. the heir, which would be assets by descent, to answer the covenant entered into by the assignee for himself and heirs, with the commissioners, duly to account for the bankrupt's effects.

But against the petition it was argued, that this matter was not fit to be ended in a summary way, but by a bill to determine it; for that I. N. the heir and administratrix of the assignee, had made an affidavit, that she never confessed the assignee, her father, kept the bankrupt's money in a separate bag or place, nor did she believe the fact to be so; that the assignee, the father, died indebted by specialty otherwise several thousand pounds beyond all his assets: that she has paid some bonds, and actions were depending upon others; that it was in her election to prefer which of the specialties she pleased, and the commissioners were not proper to determine in a summary way, whether the payments already made by the administratrix, or which she should make, were, or would be, good and legal; or if they should make such determination, this could be no way binding to the other creditors; therefore the order now desired, that the daughter and administratrix of the assignee should account with the commissioners, would be of no use; since the creditors might bring their action, or bill in equity against the daughter and administratrix of the assignee; for which reason Ld. Chancellor ordered the petition of the new assignees to be dismissed, and directed them to bring their bill.
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Though assignees are generally chosen from among the creditors, and those commonly to whom the bankrupt is most indebted, yet they may be made, notwithstanding they are no creditors, nor any ways concerned in the commission, provided the major part in value of the creditors appoint them.

And assignees may bring actions for debts due to the bankrupt in their own names, &c. for they shall have the same remedy as the bankrupt himself might have had against his debtors. But if the commission of bankruptcy be not taken out within six years, the time directed by law for suing of debts, then the defendant in an action may plead the Statute of Limitations: In case the commission be taken out within six years, and the assignment made within that time, the statute preserves the debt by the assignment, it being to relieve creditors against fraud.

It is a constant practice to make an assignment of the debts and estate of the bankrupt to assignees in trust for themselves, if creditors, and the other creditors; it has been held, that where a commission of bankrupt is taken out, the bankrupt's goods do not thereupon belong to the commissioners, for until an assignment thereof is made, the property is not transferred out of the bankrupt; but it is said, the assignee is in by relation from the time of the bankruptcy, so as to avoid all mesne acts, but not so as to be actually invested with the property.

Of Removing Assignees.

If an assignment of a bankrupt's estate already made by the commissioners, or hereafter to be made, pursuant to the choice of creditors, should be found necessary to be vacated, and a new assignment made of the debts and effects unreceived, and not disposed of by the then assignees, to other persons, to be chosen by the creditors as aforesaid, it is lawful for the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, upon the petition of any creditor, to make such order therein as he or they shall think just and reasonable; and in case a new assignment shall be ordered to be made, then such debts, effects, and estate of the bankrupt shall be thereby effectually and legally vested in such new assignee or assignees, and it shall be lawful for him or them to sue for the same in their names, and to discharge any action or suit, or give any acquaintance for such debts, as effectually to all intents and purposes as the assignees in the former assignments might have done; and the commissioners shall cause public notice to be given in the two London Gazettes that shall immediately follow the removal of such assignees; and the appointment of such others as aforesaid, that such assignees are removed, and such others appointed in their stead, and that such persons as are indebted to the bankrupt's estate do not pay any debts to the assignees removed; and if an issue is directed to be tried in the time of the old assignees, the court, on petition, will order the same issue to be tried by the new ones.

If an assignee himself become bankrupt, that will be a sufficient ground for his removal. Or if the commissioners act improperly in the choice of assignees.

And where an assignee is removed on account of his own bankruptcy, Lord Hardwicke was of opinion, that he and his assignees must join with the commissioners in executing an assignment to the new assignees.

If there is any injustice committed by assignees, and that they, with the bankrupt's consent, will admit of sham debts being proved, the court will remove such assignees, and order the consideration of such debts to be inquired into, and all parties to be examined upon interrogatories, and appoint new assignees, and direct the commissioners to see what is really due from the bankrupt's estate to his creditors; and after the assign-
nees are chosen, will order costs of the parties so unjustly acting to be taxed by a master, and be paid by them.

If assignees live at a great distance from the bankrupt's estate or effects, whereby such estate or effects may be incumbered with heavy charges, or occasion a neglect in getting in such effects; upon the application of the majority of the creditors who have proved their debt under the commission, and proving the same by affidavit, the court will discharge such assignees, and direct a new assignment to be made to such other assignees as the creditors shall appoint, and direct that the old assignees shall join in such new assignment.

If it appears that there are accounts between the bankrupt and the assignees, and although there may be notes or bonds subsisting, so as to entitle them to prove their debts, yet if upon the balance of such accounts, the assignees appear to be debtors to the bankrupt's estate, the court will for such reason remove them.

If there appears partiality or unfairness in the choice of assignees, the court, on petition, will remove them.

If it appears that assignees have prevented creditors from proving their debts, to make number and value for the bankrupt's certificate, and for that purpose have contested such debts, and have refused to admit them; the court will for such unfairness remove the assignees, and admit such creditors to prove such debts as shall appear to be justly due to them.

Penalties on Persons concealing Effects, and pretended Creditors swearing falsely; and Allowances made to the discoverers of Bankrupts' Effects.

By this statute it is enacted, for the better discovery of a bankrupt's estate, that all and every person who shall, after the time allowed to such bankrupt, voluntarily make a discovery of any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed 5 per cent. and such further reward as the assignees, and the major part of the creditors in value, present at any meeting of the creditors, shall think fit.

And every person who shall have accepted of any trust, or trusts, and shall wilfully conceal or protect any estate, real or personal, of any person or persons becoming bankrupt, from his creditors, and shall not, within forty-two days next after such commission shall issue forth, and notice thereof be given in the London Gazette, discover and disclose such trust and estate, in writing, to one or more of the commissioners or assignees of such bankrupt's estate, and likewise submit himself to be examined by the commissioners, in and by the said commission authorized, if thereunto required, and truly discover the same, shall forfeit the sum of one hundred pounds of lawful money of Great Britain, and double the value of the estate, either real or personal, so concealed, to and for the use and benefit of the said creditors.

And whereas many abuses have been committed by pretended creditors of bankrupts, be it enacted, by the authority aforesaid, That if any person, at any time hereafter, shall, before the acting commissioners in any commission of bankrupt, or by affidavit or affirmation exhibited to them, swear or depose that any sum of money is due to him or her from any bankrupt, which sum of money is not really due or owing, or shall swear or affirm that more is due than is really due or owing, knowing the same to be not due or owing, and that such oath or affirmation is false and untrue, and being thereof convicted by indictment or information, such persons shall suffer the pains and penalties inflicted by the several statutes made and now in force against wilful perjury, and shall moreover be liable to pay double the sum so sworn or affirmed to be due or owing as aforesaid, to be recovered and levied as other penalties and forfeitures are upon penal
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After the conviction, to be levied and recovered; and such double sum shall be equally divided among all the creditors seeking relief under the said commission.

Where any person shall fraudulently swear, or being a quaker affirm, before the major part of the commissioners in a commission of bankruptcy, or by affidavit or affirmation exhibited to them, that a sum of money is due to him from any bankrupt which shall in fact be not really and truly owing, and shall, in respect of such fictitious debt, sign the certificate of such bankrupt’s discharge, in every such case, unless such bankrupt shall, before the major part of the commissioners have signed such certificate, by writing signed by him, and delivered to one or more of the commissioners, or of the assignees of his estate and effects, disclose the fraud, and object to the reality of such debt, such certificate shall be null and void, and the bankrupt shall not be entitled to his discharge, or to any of the benefits or allowances given to bankrupts by the act of 5 Geo. II.

Where any creditor of a bankrupt resides in foreign parts, the letter of attorney of such creditor, attested by a notary public in the usual form, shall be a sufficient evidence of the power by which any person thereby authorized shall sign the bankrupt’s certificate.

Of superseding Commissions.

The reasons for superseding commissions are many and various; as,

1st. If there is not a debt due to the petitioning creditor; in which case the court will order the commissioners to inquire into the nature of the debt, and to certify the same to the court; and if there is not a sufficient foundation for the debt, the court will supersede it.

2dly. If the party insists he is no trader, the court usually directs such facts to be tried; and if on such trial it appears to the court that he is not a trader, the court will for such reasons supersede the commission.

3dly. If the party against whom the commission is issued, appears to be an infant, the court, on full proof of such infancy, will supersede the commission.

4thly. If, after the issuing a commission, the party makes a satisfaction, or gives a sufficient security for performing it to all his creditors, and they in consequence give him a release, these motives, on petition to the court, will induce it to supersede the commission.

5thly. If a bankrupt conveys all his real estate to trustees for the benefit of his creditors, and they accept of this conveyance, the court, in this case, will order the creditors to deliver up their securities to the bankrupt, and that the bankrupt shall deliver up all the title deeds, and join in the conveyances; and that the trustees shall proceed in the trust, and that the bankrupt shall pay the charges of the commission, deducting the money out of the assignees’ hands.

6thly. If a bankrupt makes a private agreement with his creditor, and prevails on him to take out a commission, in consideration of being paid his whole debt, or at least more than the rest of his creditors, the court, on proof made thereof, will order the commission to be superseded, and award a new one; and the person receiving such goods, or satisfaction, shall lose his whole debt and the money received, and pay the same to such persons as the commissioners shall appoint, in trust for the bankrupt’s creditors, in proportion.

7thly. If a person has not a mind to be a bankrupt, and is conscious that he is no trader, nor has committed any act of bankruptcy, or does not owe any debt sufficient whereon to ground a commission, he may, if he supposes a commission is going to be taken out against him, enter a caveat in the secretary’s office against it; or if it has is-
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sued, he may petition the court that no such commission may be executed against him, or that it may be superseded; and, upon hearing the merits of such a petition, the court in some cases determines the point, and in other cases directs an issue at law to try the same.

8thly. If a commission taken out in an adverse manner is superseded, and the party on the trial is not found bankrupt, the court, according to the nature of the case, frequently will order costs to the party against whom the commission is taken out, or may, if they think proper, assign over the bond given to the Lord Chancellor.

Costs of Commissions, how to be settled and paid.

The creditors who shall petition for a commission of bankrupt, shall be obliged, at their own costs, to prosecute the same, until assignees shall be chosen; and the commissioners shall, at the meeting appointed for the choice of assignees, ascertain such costs, and by writing shall order the assignees to reimburse such petitioning creditors out of the first effects of the bankrupt that shall be got in; and every creditor shall be at liberty to prove his debt without paying contribution.

Ditto, s.42. There shall not be paid out of the estate of the bankrupt any monies for expenses in eating or drinking of the commissioners, or of any other persons, at the times of the meeting of the commissioners or creditors; and no schedule shall be annexed to any deed of assignment of the personal estate of such bankrupt; and if any commissioner shall order such expense to be made, or eat or drink at the charge of the creditors, or out of the estate of such bankrupt, or receive above 20s. each commissioner for each meeting, every such commissioner shall be disabled to act in any commission of bankrupts.

Ditto, s.48. All bills of fees or disbursements demanded by any solicitor, employed under any commission of bankrupt, shall be settled by one of the Masters of Chancery; and the Master who shall settle such bill shall have for his care in settling the same, as also for his certificate thereof, 20s.

Concerning the Duty of, and Remedy against Gaolers, where Bankrupts or witnesses are committed, and suffered to escape.

In case the commissioners appointed in any commission of bankruptcy, should, in virtue of their power, commit the bankrupt or any person or persons to prison, for not conforming to the acts relating to bankrupts; and if the gaoler or keeper of the prison to which such bankrupt, person, or persons shall be so committed, wilfully suffer such bankrupt, person, or persons, to escape from such prison, or to go without the walls or doors thereof, until he or they shall be duly discharged, such gaoler or keeper shall, for such his offence, being duly convicted by indictment or information, forfeit five hundred pounds, of lawful money of Great Britain, for the use of the creditors of such bankrupt.

And the gaoler or keeper of such prison as aforesaid, shall, upon request of any person, being a creditor of such bankrupt, and having proved his debt under the commission, and producing a certificate thereof under the hands of the commissioners, which they are hereby required to give gratis, forthwith produce and shew such person or persons so committed as aforesaid to any such creditor requesting the same; and in case such gaoler or keeper of such prison shall refuse to shew, or shall not forthwith produce such person or persons so committed as aforesaid, and being in his actual custody at the time of such request, to such creditor of the bankrupt requesting to see such person or persons committed as aforesaid, such gaoler or keeper of such prison shall forfeit for such his wilful refusal or neglect, the sum of 100l. of lawful money of Great Britain, for
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the use of the creditors of such bankrupt, to be recovered by action of debt in any of his Majesty's Courts of Record at Westminster, in the name of the creditor requesting such sight of such prisoner.

And for every other such offence shall forfeit the sum of 200l. for the use of the bank-

rupt's creditors as aforesaid.

Concerning Privilege of Parliament.

By stat. 4 Geo. III. c. 36., the stat. 5 Geo. II. c. 30. concerning bankrupts is further continued to September 29, 1771, and from whence to the end of the then next session of Parliament. And with respect to persons intitled to the Privilege of Parliament not paying their debts, the following act was made, intitled, 'An Act for preventing inconveniences arising in cases of merchants, and such other persons as are within the description of the statutes relating to bankrupts, being intitled to Privilege of Parliament, and becoming insolvent.'

Stat. 4 Geo. III. c. 33. s. 1. Whereas merchants, brokers, factors, scriveners, and traders, within the description of the statutes relating to bankrupts, having Privilege of Parliament, are not compellable to pay their just debts, or to become bankrupts, by reason of freedom of their persons from arrest upon civil process; and some doubts have also arisen, whether in cases of bankruptcy, a commission can be sued out during the continuance of such privilege; to remedy which inconveniences, and to support the honour and dignity of Parliament, and good faith and credit in commercial dealings, which require, that in such cases, the laws should have their due course, and that no such merchants, bankers, brokers, factors, scriveners, or traders, in case of actual insolvency, should, by any privilege whatever, be exempted from doing equal justice to all their creditors; be it enacted, &c. that from and after the 1st day of May, 1764, it shall be lawful for any single creditor, or two or more creditors, being partners, whose debt or debts shall amount to 100l. or upwards, and for any two creditors whose debt shall amount to 150l. or upwards, or any three or more creditors whose debts shall amount to 200l. or upwards, of any person or persons deemed a merchant, banker, broker, factor, scrivener, or trader or traders, within the description of the act of Parliament relating to bankrupts, having Privilege of Parliament, at any time, upon affidavit being made and filed on record in any of his Majesty's Courts at Westminster by such creditor or creditors, that such debt or debts is or are justly due to him or them respectively, and that every such debtor, as he or they verily believe, is a merchant, banker, broker, factor, scrivener, or trader, within the description of the statutes relating to bankrupts, to sue out of the same court summonses, or any original bill and summonses, against such merchant, banker, broker, factor, scrivener, or trader, and serve him with a copy thereof; and if such merchant, banker, broker, factor, scrivener, or trader, shall not, within two months after personal service of such summonses, affidavit of the debt or debts having been duly made and filed as aforesaid, pay, secure, or compound for, such debt or debts, to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two such sufficient sureties, as any of the judges of that court out of which such summonses shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, he shall be accounted and adjudged a bankrupt from the time of the service of such summonses; and any creditor or creditors may sue out a commission against any such person, and proceed thereon in like manner as against other bankrupts.

Sect. 2. Provided always, and it is hereby declared, that this act shall not extend, or be deemed or construed to extend, to any such debt or debts as aforesaid contracted be-
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fore the 8th day of March, 1764; any thing herein before contained to the contrary thereof in any wise notwithstanding.

Sect. 3. And be it further enacted, by the authority aforesaid, that if any merchant, banker, broker, factor, scrivener, or trader, shall, after the last day of this session of Parliament, commit any act of bankruptcy, that then, and in such case, any creditor or creditors as aforesaid may sue out a commission of bankruptcy against any such merchant, banker, broker, factor, scrivener, or trader; and the commissioners in such commission, and other persons, may proceed thereon in like manner as against other bankrupts; any Privilege of Parliament to the contrary notwithstanding.

Sect. 4. Provided nevertheless, and be it enacted, that nothing in this act shall subject any person intitled to privilege, to be arrested, or imprisoned during the time of such privilege, except in cases made felony by the acts relating to bankrupts, or any of them.

Having now made every necessary remark on the laws and practice for and against an English bankrupt, I shall add, how those under such unhappy circumstances are treated in France and Holland; as it may unfortunately happen for my reader, that the course of his dealings may lead him into some unlucky engagements with such insolvent persons; and it will then be natural for him to be desirous of knowing how far the laws of the country will protect the debtor from the creditor's suit, and what steps these latter ought to take for the securing or recovery of their property: in order therefore to give my reader this satisfaction, I shall observe to him, that in France a considerable distinction is made between a bankruptcy and a failure; the former being understood to be voluntarily and fraudulent, whilst the other is supposed to be by constraint and necessity, caused always by some unforeseen and unavoidable accident; but as Savary has made a very just and nice distinction between the signification of these two terms, I shall give my reader the sense of his observations thereon. He says, the public seldom makes the difference it ought on these occasions, but confounds the distinctions, which are in their nature very apparent, and are made such in all the King's ordinances relative to those affairs. The trader who has failed, or stopped by reason of his incapacity punctually to comply with his notes of hand, bills due, or immediately to return the money he had received for those come back protested, and is obliged to this demur by some unforeseen accident, or loss in trade, and reduced to the necessity of asking time of his creditors for the payment of the whole, or what he can, of his debts, is not to be placed on a footing with the bankrupt, who by fraud and treachery has secured to himself a provision for futurity, at the expense of his creditors, to whom he gives up the trifling remains of his ransacked fortune in payment of his clearance; and though this man's villainy continues undiscovered, he always remains infamous in the eyes of the public; whilst the other, who complies as far as he is able, is restored to credit, though he continues incapable of enjoying any public post till the whole of his debts are paid with interest.

Although a merchant be never so skilful and assiduous in his business, though he keeps his affairs under the best regulation, and has set out in the world with a handsome fortune; though he has observed all possible application, and made prudence his guide in the management of his trade; and though he has omitted no circumstance that might naturally attract and secure success, yet if all is not accompanied by good luck, he is not sure to prosper in his enterprize and undertakings; for fortune very frequently determines all contrary to expectation, as she is whimsical, and often favours the silly and ignorant, whilst the best and most capable men are experiencing her frowns: this is what no one as yet has been able to account for; and experience demonstrates, that
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misfortunes are daily happening to merchants, whose probity, expertness, prudence, and capacity, render them worthy of compassion, and undeserving this reverse of fortune, that exposes them to misery and contempt. Though, seeing men, who follow the most approved maxims in their business, do not always meet a correspondent success, but on the contrary are exposed to mishaps and losses, or supposing them considerable gainers by their trade, and they have more than sufficient to discharge their debts, yet their effects may undesignedly be so dispersed, that they may be incapacitated to answer an immediate demand made by some inexorable creditors, who will give no quarter, or listen to the calls of benevolence and humanity; I say, seeing men of integrity are exposed to these unjust resentments of uncompassionate creditors, the French laws have provided a means, by granting letters of respite, or arrêts of Parliament, to protect them from these unrelenting tempers; which I am now about mentioning.

Letters of Respite are granted by the King, and Arrêts of general protection by the Parliament, and sometimes by the King's council, both tending to defend an honest debtor from the prosecutions of his creditors, during the term for which they are granted; and to allow him time to liquidate his effects, in order to pay his debts, or to agree with those to whom he is indebted; and that he may obtain the said protection, he must strictly observe and submit to the King [Lewis XIV.]*'s ordinances of August 1669, and March 1673; and to his Majesty's declarations of the 23d of December 1699, and that of September 1664, which enjoin the following particulars.

1st. Letters of Respite are never granted but on important considerations, to begin with proofs and authentic accounts, which ought to be explained in the said letters, and affixed under the counter seal; with a state of his effects, which the grantee must certify to be a true one, as well of his movables and immovable, as of debts, under pain of suffering the penalties mentioned in the aforesaid ordinances; and he must take care to be very exact herein, because if he is found fraudulent in any one particular he will forfeit the protection of the said letters, although they have been granted peremptorily with all his creditors, and he will not only be unable to procure others, but he shall not even after this be admitted to the benefit of ceding or giving up his effects to his creditors, which is only denied to one convicted of fraud and deceit.

2d. This state, so drawn up and certified, ought to be deposited at the registry or rolls of the consular jurisdiction, if there is one at the place of his, the debtor's, residence, if not, at the town-house; of which deposit he must take a certificate, to be fixed to the petition he presents to the King, council, or Parliament, for obtaining the Letters of Respite or Protection; and immediately after the sealing and expedition of the letters, the grantee ought to deliver into the office, as well of the judge to whom they are addressed, as that of the nearest consular jurisdiction, a duplicate of that state, whose truth has been so certified, of whose deposit he ought to procure certificates from the different registers, and give a copy to each of his creditors, as well of the state as of the certificates, at the time of notifying the letters, which are only valid in regard of those to whom a copy has been given, and therefore he remains exposed to the prosecutions of them who have been forgotten or neglected in the delivery of the said copies.

3dly. If he who obtains letters is a merchant, banker, or shopkeeper, he is obliged, besides the formalities before recited, and under the said penalties, to deliver into the Judge's office to whom the letters are addressed, his books and accounts, of which he must take a certificate from the register, and also give a copy of it to each of his creditors, when the letters are notified to them; but previous to this deposit, he ought to show them to his creditors, that they may examine them if they please, and see whether the state of his affairs delivered into the office be a true one, and in all respects conformable to his said books and accounts; but he is not obliged to make this offer till.
the letters are notified, as it is only from the moment of their notification, that his failure is esteemed, known, or published, and that if he presented his books before having obtained and published the protecting letters, his creditors, knowing thereby the bad state of his circumstances, might value themselves on that discovery, to make him prisoner, even whilst he was soliciting the arrêt, which by this means would be rendered unserviceable, as the violence offered him in the arrêt could not be repaired by it, for want of its having a retroactive effect.

4thly. To enjoy the benefit of the time granted by the letters, the debtor ought to notify them to his creditors, and others concerned in his failure, who live in the same place with him, in eight days from their date, but to those residing at a distance, to be counted from the eighth, at one day for every five leagues; and, as was before observed, they only protect from the suits of those to whom they are intimated; not that the omission to notify them to some of the creditors within the said eight days renders them null and void, but because that in regard to the creditors neglected or forgotten, they are ineffectual till after their notification; though the vigilance which the other creditors have used to preserve the effects of their common debtor is nevertheless equally serviceable to those who are ignorant of the letters, and to those who have acted either by opposition, or otherwise endeavoured to preserve their dues and make their reasons valid.

The design of the arrêt's being notified in eight days from its date, is to afford the creditors an opportunity of deducing and offering their reasons against it, if they have any; and that they may be admitted to make proof of the cheat, fraud, and knavery of their debtor, if they suppose, and are capable of proving it; and it is not otherwise either reasonable or just, that he who has obtained the letters should remain master of the time for notifying them, as he might greatly abuse that liberty, either by absconding the best of his effects, or making new purchases, and then retiring with them into some foreign part where his creditors cannot reach him; and this he may easily do, if iniquitous enough to attempt it; as his creditors not knowing that he was possessed of his protection, and consequently not suspecting the bad state of his affairs, would naturally take no precaution to prevent either his fraud or flight.

5thly. A merchant, after obtaining these letters, is not at liberty to pay any one creditor in preference to another; nor no longer master, but a depositary or trustee, of his effects, which ought to be divided equally among them, and they participate of the bad fortune of their common debtor, without procuring an indirect and particular advantage to any one of them; as this preference is not only unjust and odious, but, if discovered, renders the letters unprofitable to him that has obtained them, by their becoming null, for his having acted so contradictory to the intent and purpose of them.

And besides this penalty so justly ordained against the treachery of a debtor, who, either through inclination or fear, so unequally treats his creditors, to whom he owes an unbiased justice, and a part of his remaining effects proportionable to their credits, the neglected or forgotten creditors, and who have been only paid a part, whilst others have received their whole debts, have a right, if they have sufficient proofs, to demand a drawback of as much as will be sufficient to put them all on a level, according to the common contract which has been regulated and agreed between them and their debtor; for as the ordinance disposes, that those creditors who shall have received any effects within a small space before a bankruptcy, shall be obliged to restore them to the stock; there is a much stronger reason for their doing so who have received them after a failure is become known and public.

6thly. The letters always order the judge to whom they are directed, that in proceeding to their accomplishment, the creditors being called, he give to the grantee
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such time as he shall deem reasonable for the payment of his debts; which however must not exceed five years, except with the consent of two-thirds of the hypothecated creditors; and in the mean time the letters grant him six months delay to solicit their accomplishment, during which term the attempting his person, or moveable furniture serving his use, is prohibited.

7thly. He cannot be excluded from obtaining the arret under the pretext of renunciations, which he has or might make in past acts and contracts.

8thly. Those who have obtained letters of respite, &c. cannot value on them when they are accused of bankruptcy, when they are actual prisoners, or that the seal is put on their effects.

9thly. Second letters of respite, or arrets, are never granted, at least without new and considerable causes, whereof he ought to make a beginning with testimonies and proofs, as has been said before.

10thly. There are many cases in which letters of respite, &c. are not to be obtained, viz. for pensions, alimements, medicines, house-hire, crops of corn, servant's wages, hire of workmen and journeymen, balances of guardians' accounts, necessary and voluntary deposits, couenage, reparations, damages and interests adjudged in criminal matters, management of public money, bills of exchange, merchandizes seized at marts, in fairs, markets, and public ports, fresh water fish, dry and salted, securities judicial and extra-judicial, and of joint bondsmen, funeral charges, arrears of ground-rent, obligations of long leases, merchandizes and effects bought of the East India Company, or things sold of use to it.

11thly. It must be remarked, that from the moment the aforesaid letters are obtained and notified, the grantee forfeits his honour, and is thereby not only rendered incapable of aspiring to any post, or public employ, but is disseized of them all from that period, if he is then in possession; and can only be restored to his lost credit and reputation by letters of rehabilitation, granted by the King, which places them in the same condition with regard to honour, and capacity of enjoying public employment, that they were in at the time of their misfortunes; but these have never been obtained, as has been before observed, till their whole debts are paid, with interest; and under these circumstances they are sometimes, though rarely, granted to bankrupts also.

What I have said concerning those trading people, who have obtained letters of respite, or general protection, will suffice to show how far, and on what conditions they are valid; and I should now proceed to inform my reader how those bankruptcies and failures are treated in France, who have not been able, either through surprise or neglect, to obtain the said letters: but as the wife's fortune or jointure is equally regarded under any of these circumstances, I shall mention the proceedings thereabout, prior to the others, as the knowledge of that circumstance makes a necessary part of this subject.

It is the usage and custom of some places in that kingdom, for women on their marriage with men in trade, to become partners with their husbands for one-third or half the fortunes they bring; except it is otherwise agreed in the marriage articles, and the wife thereby expressly renounces the said use or custom; and such renunciations are registered, and published, by fixing it in writing to the public view, at the place of the consular jurisdiction, if there be any there, if not, at the town-house, under the penalty of its being null, as it is valid only from the day of its registry and publication; and that my reader may judge of the motives of the King's ordinance enjoining this circumstance, he may please to observe that in consequence of the copartnership, the woman, on the husband's failure, is obliged to come in as a creditor in common with the others in this manner, viz. supposing she brought a fortune of 4000 livres, the half is put into the joint stock, and the other moiety secured to her own use, by marriage articles, but

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remaining in the husband's hands, and he failing, her 2000 livres stock sinks with his, and she comes in as a common creditor, for the other 2000 livres. On the contrary, a woman renouncing the copartnership in the manner above recited, and bringing 4000 livres dowry, generally has in lieu of the expected profits from trade, a sum, suppose 10,000 livres, joined to her fortune, and settled on her by marriage contract; and in case the husband afterwards becomes a bankrupt, she is entitled to an equal share of his effects, with all his other creditors, proportionable to the said sum, so that she is greatly benefited by her renunciation, in case the husband proves unfortunate; but as the publication of this circumstance was not formerly made obligatory, many people, knowing the custom of the place, were drawn in to trust a man who had married a rich woman, with much more than they would have done, had they been acquainted with her renunciation; as they conjectured she had greatly augmented his stock, and consequently that their credit was well founded, and a compliance from the debtor would be both punctual and sure; when, in reality, the matrimonial agreement was quite the reverse, and a change of circumstances open to them the fallacy of their expectations, by exposing the little foundations they had to support the reason of what were only ideal and ill-grounded; and to avoid a continuance of such deceptions, the King published the afore-mentioned arrêt in March 1673, so that not one now can be imposed on in this matter except through indolence, or wrong information, but may take such steps in their dealings with traders under either of the aforesaid circumstances, as they shall deem prudent, and not run any unwarrantable lengths in their credit, through a mistaken notion of a larger fund for payment than there truly is; and thus much I thought proper to mention on this subject before I treated on the French laws concerning bankruptcy and failures, where protecting letters have not been obtained, which I shall now go through with as much brevity as the nature of the thing will admit of.

It has been remarked, in a preceding part of this chapter, that from the moment letters of respite, &c. are obtained and notified, the grantee is deemed to have failed; and those, whose unexpected misfortunes have too suddenly reached them to leave room for procuring such a safeguard, and obliged them to abscond, their doing, and the consequent sealing up of their effects, by order from the Judge, who has been petitioned so to do by some creditor, is esteemed a declaration of their stopping, or failing; and as there is a distinction made in all the King's ordinances, before remarked, between the man who has by a chain of unhappy events been reduced to these distresses, and he who has brought them on himself through debauchery or design, I shall mention the laws in force, in regard both to the one and the other, and begin with those concerning the innocently unfortunate first, in whose favour an ordinance was made at Paris, the 12th of March, 1678, in the following words, viz.

By Order of the King.

Monsieur the Provost of Paris, or Monsieur the Lieutenant Civil, upon what has been presented to us, by the King's Attorney, that it has for some months past been perceived, by the requests that have been presented us, that many merchants, bankers, and other traders, have been obliged to retire from this city, and to abandon their effects and families, and have determined to know the true causes of their retreat, and examine whether it might be presumed, that the knavery and design of committing fraudulent bankr uptcies had made them take that resolution, it has been found, that it has been more through ill luck than knavery; and that many foreign bankers and merchants, who have failed and broke, have carried away, and diverted large sums, which were owing to the bankers and merchants of this and other cities of the realm, which has reduced and put them in a condition, not to have ready money sufficient to
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acquit the bills of exchange, daily falling due, although they have more, or as much in effects, as in debts: and as it is just, severely to punish fraudulent bankruptcies, according to the rigour of the ordinances, it is not less so to hinder that merchants and bankers who have trusted their money with strangers, under the good faith or credit of trade, should not be treated in the same manner as if they had committed a cheat; and that their precipitated absence to avoid a prison, and the consequent charges hindering their return to trade, and re-establishment of their credit, require that some provision be made in it. And we, having regard to the request of the King's Attorney, do ordain, that all merchants, traders, bankers, and others, concerned in commerce, who, without fraud, find themselves in a condition unable to discharge their debts, whether for bills of exchange or otherwise, by reason of the losses they have met with, may appear before us by petition, to which they shall tack duplicates of two accounts, which they shall sign and affirm to be true; the one of the value of their effects, and the other of their debts; in virtue of the ordinance which shall be put at the bottom of the petition, they shall summon all their creditors the following day to appear before us, to agree among themselves, or two merchants, or other persons they know, who shall examine the accounts, and make a summary inventory, and value and appraise their effects, in an amicable manner; and to agree together on the terms and times of payments, and remisses if any are made, and sell the said effects in a friendly way, if possible; and after having heard the merchants which shall have been named, proceed to the confirmation of the contract, which shall have been passed, in all things appertaining to it, the whole without expence or application of the seal, though without prejudice to the creditors, who shall become accusers of a fraudulent bankruptcy, and to the King's Attorney to prosecute extraordinarily, and demand the sealing of the effects of those who shall have absented themselves, or become bankrupts, embezzled, hid, and concealed their effects in prejudice to their creditors, upon which petition let justice be done. And the present ordinance shall be read, published, and affixed, where need shall be, &c.

And in consequence of this ordinance, a merchant who finds himself in the unhappy situation it treats of, and, to avoid the violence which some of his creditors may offer him, has absconded, if prudently advised, will by some friend solicit a safe conduct from them for fifteen days, or a month, that he may appear and render an account of his actions; and after having obtained it from the greatest part, if there is any one who refuses to sign it, he ought, before discovering himself, to petition the Judge and Consuls, or other Royal Judges, or even the Parliament; and it would be still better, in order to evitate all tricks and shifts, to solicit the confirmation with those who have signed, and a permission to summon the refusers for to decree and ordain, that it shall be allowed by them, and in the mean time they shall be prohibited attempting his person or effects; upon which petition a sentence or arrêt will be given, granting his demands; the which being carried to the Registry, it ought to be noted to the dissenting creditors as soon as possible.

If all the creditors are not resident in the same place with him, but several of them in other towns of the realm, he must write them to come, or send their procuration to some one of their friends to attend the assemblies of the creditors who are present, that they may have no reason to complain of him. The second thing this unfortunate trader ought to do on his return home, if he has the seal put on his goods and effects, is to request the taking it off in an amicable manner; but if this is refused, it must be ordained by the authority of justice. And the third thing is, that from the moment he receives his books again, he must make out a general state of all his effects, as well what he owes as what is due to him, to deliver to his creditors, when they assemble to
examine his affairs; and this is in conformity with the second article of the eleventh title of the ordinance in 1673.

Having drawn out his accounts in the most exact manner, he must put the following certificate at the bottom of them, viz.

I, the underwritten, do certify to all whom it may concern, that the state here above of all my effects, as well debtor as creditor, contains the truth; and that I have not omitted any thing, or made use of any persons, or names in it, that are not my true and lawful creditors; in faith of which I have signed the present, the 29th of May, 1750.

And it is not sufficient that he has drawn out this state, but he must also strike a balance for the greater ease of his creditors, that they may see with a cast of an eye the truth of his affairs, and what they have to expect; and he must likewise put underneath the said state, an account of all the losses that have happened to him, whether by shipping, bankruptcies, or otherwise, the interests that he has paid, and his house expences, that he may justify his conduct to his creditors, in case he has not effects sufficient to pay them their whole due, that they may have nothing to reproach him with.

When he is ready to render this account to his creditors, of his conduct and their estate, he must convoke an assembly of them, by summons sent in writing to each of them, and being all met, his behaviour to them ought to be free from affectation, either of too great dejection or arrogance, but with such concern and humility as a just reflection of his circumstances will naturally excite; and although some of them should so far degenerate from reason and good manners as to be abusive and slanderous in their treatment of him, it ought not to exasperate him to make correspondent returns; but command his passion, by reflecting that it is not every one has philosophy enough to bear losses with temper and equality of mind; and it is probable what they suffer by him, though he could not help it, may reduce them to the same condition with himself; therefore allowances ought to be made, and no injurious language returned from the unhappy sufferer, though such a shock is certainly not the least of his misfortunes; however, he ought to submit without murmuring; and, together with the state of his affairs, he ought to deliver the creditors his books, that they compare the one with the other; but in case no one will take them under his care, the insolvent may then deliver them into the Registry, as was before ordered to be done, by those who had procured letters of respite, &c.

At the first meeting of the creditors there is seldom much done, the greatest part of the time being generally employed in complaints and injuries against the failed; and, at most, directors or assignees are chosen to take care of the common interest of the creditors, to see and examine the books and papers of the debtor, and to fix the days of meeting to consult about the affair.

It is to be remarked, that while this is transacting, each creditor in particular endeavours, as much as he can, to get himself paid the full of his debt; the engagement in which he stands with his debtor, renders him ingenious and fertile in inventions to incline him to consent to his demand; one by threatening to prosecute him as a fraudulent bankrupt, and asserting that it will not be difficult to bring proof of his knavery; another menaces him with his determination of hindering his composition by his influence and interest; whilst a third flatters and caresses him, laments his misfortunes, and affecting a generosity, offers him his purse, protests never to forsake him, that he may depend on his using all his industry and power to facilitate his accommodation, that it is unreasonable he should be despoiled of all his effects, and heartily pities both him and
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his family; in fine, he makes use of every soft and coaxing expression which he thinks may influence his debtor, and incline him to distinguish this flatterer from the rest of his creditors, by satisfying him at their expense. But if unable to prevail, and the lamb's skin has been of no service to him, he quickly puts on the lion's, and there are no sorts of threats or injuries he leaves unused to the unhappy debtor, who, combatted by hopes and fears, sometimes falls into the snares laid for him, and quits those just rules of putting all his creditors on the same footing, and by so doing, completes his own ruin; for the fawnings and menaces of creditors can in no shape operate to the prejudice of an honest bankrupt, who has punctually rendered an exact account of his conduct and affairs as the law directs.

But having hitherto only mentioned the duty of the debtor, I shall proceed to hint the obligation of the creditors; and the first step they ought to take when assembled about their common affairs, is to elect some among them for assignees by the plurality of votes, who are men of probity and capacity, to see and examine the state of their debtor's affairs, and to make their report about them; and that they may proceed with the greater order and regularity, if the failure is very considerable, it is advisable that they chuse a notary to receive the acts of the creditors' deliberations, and for this it is necessary to assign the place, and days of their meeting, that no one may pretend ignorance; and for the security of those elected, the act of their nomination ought to be approved and confirmed by the consular jurisdiction, if there is one, or in the royal, or in the parliaments if there is any in the town or city where the failure has happened.

The power which the creditors ordinarily gave to the assignees, is

1st. To proceed in taking off the seal, if it has been put on.

2d. To describe and inventory all the debtor's effects, as well active as passive, which shall be found belonging to him; and also his books, letters, and other papers and instructions which can serve to the eclaircissement of his affairs.

3dly, To see and examine the state which he shall have given in, in his books and accounts, and whether they have been regularly kept according to the ordinance.

4thly, To sell the merchandize and household goods of the bankrupt, and pay the money into the hands of the notary that shall have been chosen, or to any other that the creditors shall direct.

5thly, To recover all the debts, and to undertake all the necessary proceedings towards it.

6thly, To examine the transactions, contracts of composition, bonds, promissory notes, bills of exchange, and other proofs of those who pretend themselves creditors of the failed: from all which things to make a good and faithful report to the general assembly of creditors, which shall meet for that intent.

And the assignees of a failure ought to observe the following maxims:

1st. They ought never to abuse the authority given them by the creditors, in favouring the bankrupt to their prejudice, from a motive of private interest, as this would be wanting in that honesty which ought religiously to be observed by those who are charged with the management of joint affairs.

2dly, As it often happens that the creditors of a bankrupt are not all inhabitants of the town of his residence, but of several others in the kingdom, who desire their friends to assist at the assemblies, only to see what passes, without a power of engaging them in the resolutions of the creditors: this maxim ought to be observed; never to admit any one to their meetings who are not bearers of special powers, for consent; and agreeing to all that shall be deliberated and done by plurality of votes; though this plurality is not to be counted by the number of persons, but the import of their debts; or in other words, not by number but value, and the creditors to whom three-fourths of the whole is owing, shall decide this and every other controverted affair.
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3dly, The assignees having got their power authorised in the accustomed manner, ought in the first place to take with the commissary a copy of all the opponents to what is sealed of the failure, and to make them assign a certain day and hour in his house, for to come and see, and consent to the taking it off; and whereas in these meetings, each opponent has his attorney, so that sometimes there may be thirty of them, it ought to be settled and ordained, that the ancientest shall plead for all the opponents, in order to evitate the great expenses that would otherwise occur, from each opponent's having one to plead for him.

4thly, If, on inventorying, any creditor claims the merchandize that he should have sold to the debtor he must give a description of it, as well in respect to the quality, as of the quantity and colours, whether both ends are uncut, and the lead untouched whereon is imprinted the mark and tickett on which is wrote the name of the reclaimant, and which gives him a right to the pretended return; this being the custom always practised and observed on such occasions, in order to prevent unhappy contests, which might ruin both the debtor and creditor in expenses.

5thly, The inventory and description of the merchandizes, household goods, and papers appertaining to the failed being made, the assignees ought diligently to see and examine the books and entries of the bankrupt, in order to find out whether the state which he has given in be conformable to them, before they proceed to the sale; and they should make a calculation as near as possible of the value of his effects, which they should report to the creditors at the next assembly, that it may there be discussed, whether it will be most for their interest to put the effects into the debtor's hands, under proper clauses and conditions, or to dispose of them entirely, and part their produce among them.

6thly, But before they proceed to the said deliberation, the debtor ought to justify his conduct to them, and clearly prove how his losses have arisen; as it would be imprudent to trust a man with the management of their affairs, by returning him his goods, of whose integrity they should have the least suspicion.

7thly, After having examined the conduct of the debtor, they ought also strictly to scrutinize the pretensions of every creditor, to see that their demands are just, as on these occasions tricks and cheats are too frequent.

8thly, In examining the books and papers, the assignees should carefully remark, whether the bankrupt has not made any illegal sales or cessions of his effects; which becomes so, if they are not transacted at least ten days before the failure is publicly known, and all agreements or conveyances whatsoever, made or done within these limits, become null and void by all the King's ordinances; although all the acts and obligations of them are past before a notary public, and the effects shall return again to the stock, and be divided with it among his creditors.

9thly, After the assignees have exactly performed all things before-mentioned, and made the necessary remarks upon the vouchers and evidences concerning the debt of each creditor, they ought to draw out an exact balance of all the effects, in order to give the creditors an insight into the debtor's affairs, and thereby make them capable of judging how to act most for their mutual benefit, and to determine whether it would be most advantageous for them to return him all, and wait a reasonable time for the recovery of their entire dues, or to adjust the payment with a certain loss, or to sell all and divide the produce.

And the presenting the said balance to the assembly, which the assignees shall convoké for that purpose, ought to be done by the most capable among them, explaining it; and he ought to be so circumspect in his be no offence by exclaiming against either the bankrupt real or imaginary offences, as this is contrary to t
manner; for these complaints should only be made to the supposed offenders by themselves, and not in a general assembly, it being scandalous and may move the passions of some, who may not have all the honesty and civility that could be wished, to be influenced by the outcry and unreasonable violence, to turn the meeting into a crowd and rout, and frustrate the design of their assembling, by dispersing them with noise without coming to any resolution.

If it is judged necessary by a majority of the creditors to appoint some one to recover debts that may appear to be in danger, it is lawful for them to do it provisionally, notwithstanding any opposition or appeal by the fewer number; and it is equally conformable to the King's ordinances, to pay off any mortgage or rent-charge, as these carry interest, with the ready money that shall be found in cash, although the minority should be against it; and this minority is always to be understood not to exceed one-fourth part of the creditors in value, so that when three-fourths of them consent to anything, the opposition of the one-fourth is not to be regarded.

What has been said hitherto, only regards the person who breaks through adventitious losses and misfortunes, and who consequently merits the charitable attention of his creditors; and I proceed to speak of the treatment that the fraudulent French bankrupt has to expect from the laws of his country, and every one unhappily concerned with him.

The bankrupt, who becomes so with the premeditated intention to cheat, and unjustly rise up with the effects of those who have trusted him, deserves not only the aversion of all his creditors, but of the public, and merits an exemplary punishment; a fraudulent bankrupt being worse and more infamous than a highway robber, as travellers generally go provided to defend themselves from these latter, though it is not so easily to guard against an attack from the malicious designs of ill-intentioned men.

The fraudulent bankrupts are those who embezzle and convey away their effects to feigned creditors, that by their means they may bring their real ones to greater concessions, and benefit themselves by the sums thus iniquitously obtained; those who put their effects under cover of fictitious names, by false sales of their estates or goods, and by pretended cessions, or conveyances of them; in fine, those who destroy or hide their books, records, papers, or documents, to hinder an account of their effects from coming to the knowledge of their creditors, must also be reputed and counted among the number of fraudulent bankrupts.

There is nothing so pernicious or dangerous to the state and public, as fraudulent bankrupts; for which reason, a punishment sufficiently severe, and adequate to the crime, is hardly yet discovered; notwithstanding there are many ordinances subsisting, which decree exemplary chastisements to those who maliciously, and in fraud of their creditors, become bankrupts, though till the time of Henry IV. this crime was not punishable with death; but the frequency of it in that Prince's reign, induced him to change the more lenitive laws of his predecessors, into the severe one now mentioned.

Of Bankruptcy in Holland.

Experience daily demonstrates that it is in places of the greatest commerce that failures and bankruptcies discovered, as it is clear a miracle if all of them were merchanting. But God has so disposed the affairs of this world, that we often see one merchant, and lay a foundation for riches and prosperity, would be the

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ruinous and destructive to the estates and fortunes of others. But not to dwell on these reflections, I shall mention the distinction made here between two sorts of bankruptcies, failures, or breakings, which are three synonimous words, and though they frequently express the same thing, the one however is more soft, and less heavy or burthensome than the other; for the name of a bankrupt is opprobrious and odious to all honest men, and is only applied to those who become so to enrich themselves at their creditors’ expence, or those who give room to suspect the honesty of their intentions, when they stop lightly, or for trivial causes; instead of its being only said that such a one has been unfortunate, or had the misfortune to break, when it is seen that he is reduced by insupportable losses, which every honest man is exposed to, by a great number of unforeseen accidents; but if he designs always to continue his integrity, and not wound his conscience in detaining for himself his remanent effects, which are justly his creditors’, he will make no difficulty to deliver them up his books, to communicate to them the true state of his affairs, and to commit himself to their mercy and discretion.

So that in my opinion the chamber of the desolate funds, called in Dutch, de Kamer van de desolate Boedels, which we have in this city, Amsterdam, was not established for this last sort of persons, but with the sole view to prevent the knavery of those who in breaking would detain to themselves the greatest part of the effects they possess, and frustrate their creditors’ endeavours to secure them; for when an honest man has the misfortune to fail, he makes no difficulty of declaring it to his creditors, and frankly to communicate the state of his circumstances and effects; and if his creditors find that the losses and disasters which he alleges to have been the occasion of his stopping are true, and that his integrity stands unimpeached, they frequently agree on terms settled among themselves, leaving him something wherewith to endeavour his re-establishment; but if it happens that any of the creditors refuse to sign this agreement, he is obliged to declare his affairs at the chamber afore-mentioned, which, after the formalities in the following ordinance, will oblige the refusants to subscribe the agreement, if it has been settled between the insolvent and two-thirds of the creditors for three quarters of the debt, or three quarters of the creditors for two-thirds of the debt, as will be seen in the subsequent ordinance.

Instructions and Orders for the Commissioners of the desolated or ruined Estates.

The states of Holland and West Frise make known, that it has been remonstrated to us by the burgo-masters and regents of the city of Amsterdam, that they thought proper, some years ago, to establish in the said city a chamber for the desolate estates, under certain regulations, as was then convenient; that they, the remonstrants, having seen such abundant fruits and goods effects, that they were in the design, not only to continue it, but were desirous also to provide for it by a more particular and ample ordinance, drawn up on a plan which the commissioners of the said chamber have made, and which they have found to be advantageous and necessary, by the experience they have had, according to the terms of the copy which has been delivered us, and hereafter inserted; that to the end so good a work might have a greater force and virtue, the remonstrants have prayed, that we would be pleased to give our approbation and grant, in the best and most ample form, containing the said instructions and order as follow:

I. In the first place, there shall be yearly appointed, on the 4th of February, by the Lord Justices, five fit persons, for the direction of the chamber, of which two shall be taken from among the old Echivens, which I think may be translated Aldermen, and the others to be expert in trade.
II. Of these commissioners there shall be at least two continued for three successive years, but not for any longer time; and touching the election and continuation of others, it shall be done as is customary in the other banks and chambers directed by commissioners.

III. The said commissioners shall assemble daily to attend all the affairs which may happen in relation to the insolvent funds or estates.

IV. When there are any insolvent estates in the said city, or its jurisdiction, either by death, or failure of some person, and that it shall have come to the knowledge of the said commissioners, they shall immediately go with their secretary, who shall be ordered thereto, and in their presence, or others appointed thereto, exactly inventory all the effects, and put them in good and safe custody, to the creditors' greater advantage, and as they judge they ought to be; they shall also secure, without delay, the books and papers appertaining to the said estates.

V. The effects being so inventoried and secured, with the books and papers, they shall give order, that two or more persons be appointed trustees of the said funds, who by letters or express, if it is necessary, shall endeavour to secure all the estates, effects, and debts, belonging to the said funds, whether within or without the jurisdiction of that city, or of this country.

VI. This being done, there shall be let pass at least six weeks, or more, at the discretion of the commissioners, without proceeding to the sale of any of the effects; but the same time shall be left to the insolvent person, or to the relations of the deceased, to the end that in the said space, they may find some method to settle with the creditors; nevertheless the said trustees shall be using their endeavours during that time to recover whatsoever is due to the insolvent, and to procure and promote the creditor's advantage.

VII. And to the end that in such compositions every thing be done in order, all merchants or others who have already failed, or become insolvent, or that shall hereafter fail or become insolvent, and their heirs, may convok[e] or summon all their creditors before the chamber of the desolate funds, by citation of bills fixed up, or by letters of advice to those who live without the district of this city; and that in presence of the said commissioners, or the greatest part of them, they may, after a sincere opening and declaration of the state and condition of their stock, as also a true state of their debts and dues, undertake and draw up a commission or agreement, for the payment of what they owe, totally, or in part, in ready money, or in such a time, giving security, as they are able, and that the parties shall think reasonable.

VIII. And the minority of the creditors shall be obliged to follow and conform themselves to the majority; the which shall be three quarters of the creditors for two thirds of the debt, or two thirds of the creditors for three quarters of the debt.

IX. But those who have securities or pledges, shall not be admitted to the agreement; but only those who have been securities, who alone shall have a personal action for their indemnity, and the same right, and of the same nature with personal creditors.

X. All those who pretend to be creditors of an insolvent estate, shall also be obliged to justify their debts before the commissioners of the desolate funds, who in case of dispute shall determine it, whether the failed has agreed or not.

XI. No agreement begun between the failed, or any one on his part, and the creditors shall be made nor concluded, but with the said commissioners' consent.

XII. The agreement between the insolvents, or their heirs, on the one part, and their creditors on the other, being made under sufficient security, and signed by the creditors, or the greatest part of them; the parties agreed, and their effects, shall be discharged from the said chamber, and restored to their former liberty, to trade, receive, and pay, in the same manner as before their failure, after paying the said com.
missioners all the expences occasioned on account of their said affairs, at their discretion; so that in the mean time they shall not satisfy any one of their creditors to the prejudice of the others, under penalty of forfeiting the said agreement.

XIII. And the failed and his securitis shall be obliged to furnish and put into the said commissioners' hands, as soon as the agreement shall have been passed as aforesaid, on the day and on the terms therein contained, for the security and advantage of the creditors, the sums they shall have promised, pro rata, of what they owe, to the end that the said creditors may receive their sums from the said commissioners when they shall come to sign the agreement.

XIV. Nevertheless, if it is found that the insolvent or his heirs have acted knavishly and fraudulently, in, or after making the composition, either by having hid his books, letters, or papers, removed their effects, merchandizes, or debts, conveying them away to defraud their creditors; or that they have underhand agreed with some one of the creditors on other conditions: such shall not only have their agreement set aside, but shall be corrected and punished according as the case requires.

XV. And those who shall pretend to be, and make themselves pass for creditors, without being so, by an understanding with the insolvents, or from their own motive, against their knowledge, or that demand a greater sum than their due, in order to wrong the creditors, and benefit the insolvent, they shall be punished as cheats, and besides be condemned to pay, as their own debt, all the creditors.

XVI. The aforesaid time of six weeks, or more, at the commissioners' discretion, being past, without their having been able to mediate an agreement, the trustees shall proceed directly to the sale of the effects, as well moveable as immovable, as also the stocks and credits, provided that the immovable are not sold without the consent of the Echevins, and between the 1st of November, and the 2d of February, dans les douze nuits. But the merchandizes, furniture, and other effects, may be sold publicly, and at auction, at the discretion of the said commissioners, without prejudice to the rights of the secretaries and keeper. But in case there should be among the effects some merchandizes, which it should be thought proper to keep for some time unsold, either upon account of an apparent rise or price, or for some other reason alleged by the trustees to the commissioners, then the sale of the said merchandize may be retarded for some time, but not otherwise.

XVII. All this being performed, the commissioners shall appoint a day for their sitting on the acts of preference and concurrence, by which day all the known creditors inhabiting this city shall be summoned by the usual citation, those abroad by letters of advice, and the unknown by bills fixed up; with a convenient interval of time, to the end that on the said day they may come to give in their names and their acts of pretension, whether they be for a preference or concurrence.

XVIII. The fixed day being come, the commissioners shall first proceed to examine the debt, and the preference of every one of the creditors present, who shall endeavour to agree on this subject: if this cannot be done, the creditors, who cannot agree together, shall each be ordered to deliver into the commissioners' hands, in the space of fourteen days, according to the state of affairs, a distinct demand, with the necessary pieces and documents properly inventoried, on penalty, that if, in the aforesaid time, any one shall be found that has not furnished the said demand, he shall be held and regarded as desisting from his pretension, and right shall only be made on the demand, and on the evidences delivered by the other pretenders: those also, who in the said fourteen days have furnished their instruments and proofs, may demand, in other fourteen days after, a copy of the pretensions and deeds of every one of those who have produced them, to the end that in other fourteen days following, they may write to debate and contradict, without allowing any longer time for it; but after the said time of
twice fourteen days, the thing shall be held to be in a condition to be judged, and the commissioners shall decree upon the instruments which shall be till then delivered.

XIX. The preference being regulated and determined, those who think themselves aggrieved thereby, may appeal in ten days after the publication, or after they have had knowledge of it, to the Eschevins, in conformity with the thirteenth article of the eighteenth chapter of the ordinance, and the instruments shall remain in the secretary's hands until the said time is past, or till the appeal is renounced; so that the impetrant, or petitioner, must, after having received appointment from the auditor, dispose so, that they be put, all perfect and concluded, in ten days after the demand, into the Eschevins' hand, to be adjudged ex iisdem actis a bene vel male, under penalty of a nonsuit, or dropping the appeal; and the sentence of the Eschevins shall be provisionally executed, without diminution, and without prejudice of more ample pleadings.

XX. The commissioners shall afterwards proceed to a repartition, without attending that all the money be fallen due or come in; but those who are to be preferred to others shall be admitted, in order to receive their debt, on giving an acquittance and security, or else on receiving it from the hands of the commissioners, according to the state of the affairs of the effects; and the remaining money shall be distributed and paid to the other creditors pro rata, under a parallel security, which shall be given in the secretary's office. Nevertheless the creditors, who in right, as shall be found in the sequel, ought to be first, as also those who have not been able to learn the settling of the preference and concurrence soon enough, may demand a fresh day to appear in, to the end that they may be heard, at their expence, on the preference and concurrence.

XXI. If a tenant of any house he inhabits happens to fail between the month of May and the first of December, in this case the proprietor, or he that let the house, shall retake it for the years the lease has yet to run, and so discharge the estate; so that he shall only have the right of preference upon the effects which shall be found in kind in the house, for the hire of the current and preceding year, and for no longer; and for what might be due to him before that time, he shall equally concur with the other creditors.

XXII. But the failure happening between the first of December and the month of May following, the rent shall remain for account of the desolate funds for a year, commencing from the month of May, except the proprietor shall think proper to retake upon him the said house for the said year.

XXIII. And as the advantage of the creditors consists in having the affairs of an estate soon finished, and that honest men may have their own the sooner possible, the creditors that would prove their debts, or that would reclain some effects from the estate as their property, shall henceforth proceed in the first instance before the said commissioners in the following forms against the trustees, who in this case shall be defendants, and who on the contrary shall proceed as plaintiffs against those who shall be found to be debtors, or responsible to the estate.

XXIV. The creditors who would prove their debts, and all others reclaiming any effects of the estate, as their own, shall be obliged to enter their action against the trustees in the time, or at latest before the sitting for the preference and concurrence, and before the sale and removal of the said effects; and to this end they shall appoint the trustees three days before by sending them their demands with the citation, as also a copy of all the instruments and papers of which they intend to make use; and in case the plaintiffs do not appear on the day appointed, they shall be nonsuited, and the instance discharged with condemnation of charges, which the plaintiffs shall pay before they can make a new instance.

XXV. But if any one has arrested the effects, which he maintains to be his, he shall
be obliged to cite the trustee within the third day of the arrest, and to establish his action under penalty of a nonsuit.

XXVI. The trustees being cited or appointed as before, and not appearing, there shall be default against them; and on having a second citation, and not appearing, the commissioners shall judge upon the demands and papers of the party appearing alone, and those summoned shall be condemned to the expence of the process, propter contumaciam.

XXVII. The parties summoned appearing, the cause must be pleaded and determined forthwith, without giving or taking a day to reply, except some strong reasons induce the commissioners to permit it.

XXVIII. If the trustees summon any one in the manner aforesaid, and afterwards they do not appear themselves, they shall be nonsuited; with the same advantages as the person summoned as is before mentioned; and in this case the trustees shall be obliged to pay the expence out of their own pockets.

XXIX. But the parties summoned not appearing, the first default shall be granted, with a second citation for the week following, and on non-appearance the second time, the citation being duly made, a second default shall be granted, with a provisional assignment, and a third citation to see to change the assignment into a definitive condemnation, or to establish a right in some other manner.

XXX. But if the parties summoned appear, they may conclude and finish their cause in pleading, or take a day in the following week, on which day the cause coming again to be considered, it must of necessity be then determined and concluded, if the commissioners have not reason to order otherwise.

XXXI. The trustees having arrested any person or effects, shall be obliged, at the instance of the arrested or interested person, to bring the prosecution in three days before the commissioners, to make their demand and join issue; upon which, the person arrested or interested must answer, or that he takes a day to do it, without derogating from the provisional determination, under security, if the thing is found to be so disposed; but the person arrested or interested, not making any prosecution, the arrest shall be brought back and prosecuted the next Vierschar, according to custom.

XXXII. The cause being prepared and pleaded, the commissioners shall dispose of the provision, or principal, according to the state wherein it is found, and if either the one or the other party will appeal, the cause shall be carried and prosecuted before the Eschevins, on the Rolle Privilegié, Privileged List or Catalogue, who shall determine it, and the execution shall be done by provision, without prejudice of more particular pleadings.

XXXIII. The creditors of any insolvent funds, being discontented with the proceedings and bad management of the trustees, may make their complaints to the said commissioners, who shall cite the trustees, hear them, and settle affairs; proceeding according to the exigency of the case.

XXXIV. The persons whom the said commissioners shall establish trustees of the insolvent estates, shall be obliged to give them sufficient security for all their administration, at the discretion of the said commissioners, that they may have recourse against the securities, in case of any misdemeanor of the trustees, unless these latter were elected from among the creditors.

XXXV. The trustees, or assignees from among the creditors, having received any money belonging to the estate, must not keep it with them, but shall immediately deliver it to the said commissioners.

XXXVI. And those who shall be called or advertised, shall be obliged to appear not only at the end of their administration, but at all times, before the said commissioners,
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to give in their accounts and proofs; and being called for this purpose, they shall be
obliged to appear on the first order, on pain of three guilders mulct if they have a
second summons, and of six guilders at the third; and if notwithstanding they fail to
appear, and do not give in any account, they shall be called a fourth time on penalty of
imprisonment, after that the said commissioners have communicated it to the Eschevins.

XXXVII. And at the end of the trustees' administration, when the commissioners shall
discharge them from their trusteeship, they shall grant them what they think pro-
per for their trouble.

XXXVIII. Any one of this city or its jurisdiction, being desirous to make a cession
of his effects, the said commissioners shall provisionally put them in security, under the
care of the persons whom they shall establish for that purpose, as soon as the letters of
cession shall have been delivered to the creditors, and they shall have inquired about
the validity of the cession, to the end that they may give advice to the Eschevins.

XXXIX. And to prevent as much as is possible, all the abuses and bad practices
which are daily perpetrated by many persons, in the petition and solicitation of the let-
ters of the burgo-masters of this city, to the Noble, High, and Mighty Lords the States
of Holland, to obtain the safety of the body, and the continuation of it; the said com-
missoners shall make an exact information of the state and condition of the premises,
to let the burgo-masters know it, and to serve them for information and advice.

XL. Any one being summoned, he shall be obliged to appear before the commis-
ioners, and in default shall pay six stivers mulct for the first time, twelve stivers for
the second, and twenty-four stivers for the third; after which the said commissioners
shall acquaint the Eschevins with it, and send to fetch the persons by one of their
substitutes.

The remainder of this ordonnance relates only to the government of the clerks and
trustees belonging to the said chamber, and is immaterial to this discourse. The laws
concerning bankrupts being but few, and generally ill observed in other countries, I
shall not enlarge on this subject.

THE END OF THE FIRST VOLUME.