

in amplifying their jurisdiction. At first they disclaimed all cognisance of things done without the bodies of the counties of the realm, and even over collateral matters done out of the realm, which came incidentally in question upon issues regularly before the Courts. They afterwards held cognisance of contracts originating within the realm, to be executed abroad; of contracts made abroad to be executed within the realm, and finally, after much hesitation and doubt, by the use of a fiction, often absurd and never traversable, over all personal causes arising on the high seas or in foreign realms, without any regard to the place of their transaction or consummation."

Sir Leoline Jenkins, the distinguished Admiralty judge in the reign of Charles II., in his celebrated argument before the House of Lords on the Admiralty jurisdiction, pointed out the inconvenience to the public arising from the evasion of the Admiralty jurisdiction in his time—1. As to foreign contracts, or those made abroad. 2. As to mariners' wages, freight and charter parties. 3. As to building and victualling of ships, and as to material men, who furnish materials or supply work for the ship. 4. As to disputes between part owners.

Lord Tentorden, in his work on shipping adverts to the "flame of jealousy" formerly prevailing in Westminster-hall against all the courts at Doctors' Commons. These jealousies, however, have now long since subsided. The successive judges of the Admiralty Court (especially Lord Stowell), so far from evincing any desire improperly to assume jurisdiction which it has not, state it as an invariable maxim that the Court is, *ex mero motu*, bound to reject what does not belong to its jurisdiction; though, in cases free from doubt, it is also bound to exercise, and not abdicate, that jurisdiction with which it has been invested, and which it ought usefully and beneficially to employ on behalf of its suitors.

In the case of the *Apollo* (1 Hagg. R. 312), Lord Stowell said that a great portion of the powers enumerated in the Commission of the judge of the Court, are inoperative, and that the active jurisdiction of the Court stands in need of continued exercise and usage.

At the commencement of the present reign, the jurisdiction of the Court (except in prize cases) had been circumscribed within very narrow limits. In many cases great inconvenience and injury resulted from the inability of the Court to administer complete justice in cases properly before it, and from its want of jurisdiction in other cases where it would alone afford a proper remedy. Much, however, has been done to remove these defects by the statutes which I am about to notice.

The most important of them is the 3 & 4 Vic., ch. 65, entitled, "An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England." As to the improvements in the practice, the provisions of the statute will come under review at a subsequent period: but as to the jurisdiction, I may here observe that it is extended by the statute in several important particulars—viz., over claims of *mortgages*, whenever a vessel shall be arrested or the proceeds brought into the registry—on questions of *title*, as to which it was previously held that the Court had no jurisdiction—in cases of *salvage, damage, and towage*, or for *necessaries supplied to any foreign vessel*, "whether such ship or vessel may have been in the body of a county or upon the high seas at the time when the services were rendered, or damage received, or necessities furnished, in respect of which such claim is made;" whereas previously the Court had no jurisdiction in any case of *salvage, damage, or towage*, happening within the body of a county; nor had it jurisdiction to entertain any claim for necessities, even to a foreign vessel; it being held that there was no distinction whether the necessities were supplied to a British or a foreign vessel. This extension of jurisdiction as to necessities supplied to foreign vessels was most expedient and has been found to be of great advantage. Without the power of arresting the ship which can only be done by the

Admiralty process, there is, practically, no means of enforcing claims against foreign vessels.

Other statutes of this reign, and the rules of Court made thereunder will be more appropriately noticed in the observations which I shall afterwards make on the *present* jurisdiction and practice of the Court.

Here, perhaps, I might remark, that criminal offences at sea constituted formerly an important breach of the jurisdiction; but by recent statutes (the last of which is the 7 & 8 Vic. ch. 2.) that jurisdiction is now vested in the Central Criminal Court, and in the justices of assize.

It will be convenient here to notice the distinction between the ordinary or civil jurisdiction of the Court called the "Instance Court," and the prize jurisdiction, called the "Prize Court." The two jurisdictions are quite distinct, although exercised by the same judge. They are somewhat analogous to the plea and revenue side of the Court of Exchequer. The Instance Court takes cognisance of certain maritime contracts and injuries, concurrently with our other Courts; the Prize Court has jurisdiction over prizes taken in time of war, and this jurisdiction it exercises free from the controlling power of the Common Law Courts, questions of prize being exclusively cognisable in this court.

The jurisdiction, both of the Instance and Prize Court, but especially the latter, is (to use the language of a recent writer)\* "exercised according to the rules and practice of the Roman Civil Law, which from its universality, and as forming the foundation of the system of jurisprudence established in most of the great nations of Europe, is best adapted to the proceedings of a Court administering the law of nations."

Thus, being founded upon the same model, there is an affinity between the maritime tribunals of Europe and America, which is most fitting and useful in dealing with subjects which have no special locality.

I propose now to consider the present jurisdiction and practice both of the Instance and Prize Courts. With reference to the Instance Court, I shall particularly endeavour to point out, in those cases in which it has concurrent jurisdiction with the common law or equity courts, the special advantages if any, of proceeding in this court.

The present jurisdiction of the Instance Court comes first in order before us.

It would make my observations on this subject more intelligible, if you had some previous acquaintance with the procedure of the Court; but it may answer my present purpose if I remark that the one distinguishing feature of the Admiralty procedure is the power to arrest the ship, as the first step in the suit; the suit is, therefore, a suit *in rem*—the ship, as it were, "being brought into court" and adjudicated on. This remedy *in rem* against the ship is founded on the practice of the civil law, which gives an *actio in rem* to recover or obtain the thing itself, the actual specific possession of it; whereas, with us, things personal are looked upon by the law as of a nature so transitory and perishable, that it is for the most impossible either to ascertain their identity, or to deliver them in their original condition; and, therefore, the law contents itself with restoring, not the thing itself, but a pecuniary equivalent in damages (3 Black Com. 146).

I propose to consider the present jurisdiction of the Instance Court under the following heads—viz., causes of

1. Wages.
2. Possession and Restraint.
3. Mortgages.
4. Bottomry.
5. Necessaries.
6. Salvage and Towage.
7. Damage.

(To be continued.)