

THE LATE DR. LUSHINGTON.

judgments, however, in the prize cases which arose during the Russian war attracted much attention by their luminous and elaborate expositions of the principles of law which guide the decisions of those courts both in England, America, and on the Continent. On this subject, however, a very common misapprehension has arisen among the Profession. It is commonly understood, and indeed was stated in the *Times* only the other day that the learned Judge's opinion as to the principles on which such cases should be decided was very different from that entertained by Lord Stowell, and that he considered that neutrals should be treated more leniently than they had been by that great judge, and should not be so indiscriminately condemned as they had been in the beginning of the century. This statement is not quite accurate. It was not Dr. Lushington's opinion that caused a change in the treatment of neutrals, but the opinion of the Privy Council, presided over by the Right Hon. Pemberton Leigh, afterwards Lord Kingsdown. A perusal of Dr. Lushington's judgments in *The Franciska* (Spinks' Prize Cas. 111), and *The Ostsee* (*Ib.* 174), will show that Dr. Lushington held the strongest opinion that he ought to follow the principles laid down by Lord Stowell in every particular, and it was only when these cases went up to the Court of Appeal that the stringent rules hitherto applied were relaxed. This is clearly shown by a judgment of Dr. Lushington in *The Leucade* (Spinks' Prize Cas. 217), where he takes some pains to show that the law laid down in the two former cases by the Privy Council is not as he considered it to be, as based upon Lord Stowell's opinions; whilst at the same time he gives a most unqualified submission to the decisions of the appellate tribunal. He pointed out that very few of Lord Stowell's judgments had ever been reviewed on appeal, and that it was for the appellants court, and not for the court of first instance to lay down finally the principles which should guide his decisions. The appellate court, on the other hand, did not hold itself bound by Lord Stowell, and allowed themselves to be governed by a more liberal feeling towards neutrals. This is the real secret of the difference between the decisions of the Court of Admiralty in its earlier and later stage. There never

was any real doubt as to the proper construction of Lord Stowell's opinions.

Another case of great public interest decided by Dr. Lushington was that of the *Banda and Kirwee* booty. This came before him under the first Admiralty Court Act, and it was the first case in which the principle was laid down that bodies of troops which, although they did not take part in the actual capture, yet contributed to it by being part of, and acting as supporters to, the same army corps, were entitled to participate in its fruits. Among ecclesiastical matters may be mentioned his judgments in *Westerton v. Liddell*, delivered in the Consistory Court before he was appointed Dean of Arches, and the celebrated "Essays and Reviews" case decided by him as Dean of Arches.

Dr. Lushington is an extraordinary instance of a man whose powers both of mind and body must have gone through the greatest possible amount of labour throughout a life extending far beyond the ordinary limits, and yet who retained his faculties undisturbed to the very last. It is but the other day that he sat as Master of the Faculties, the only office he retained, and heard and decided a question in a way which many a younger man might envy. England has lost an able and faithful servant, and the judicial Bench one of its most brilliant ornaments.

—*The Law Times*.

THE decentralization of the English bar, likely to follow the adoption of the second report of the judicature commission, is exciting much alarm among both barristers and solicitors. This report advocated extending the authority and jurisdiction of the county courts, and thus localizing legal business. Mr. Justice Blackburn, dissenting from the report of the commission, said: "I attach much importance to the keeping up the great Central bar of England. The only real practical check on the judges is the habitual respect which they all pay to what is called the opinion of the profession, and the same powerful body forms, as I think, a real and principal check on the abuse of patronage by the government."

—*Albany Law Journal*.