

## THE LATE DR. LUSHINGTON.

ous prohibitions of the Common Law Courts, but very soon afterwards this condition of things was materially altered. The only matters within the jurisdiction of the Instance Court at that time were causes of tort committed on the high seas, causes of salvage, causes of possession, causes of hypothecation or bottomry, and seamen's wages. By the Admiralty Court Act of 1840 (3 & 4 Vict. c. 65) the court acquired jurisdiction over claims of mortgages when a ship or its proceeds were under arrest of the court; over questions of title arising as to any ship or the proceeds in the registry in any cause; over appeals as to distribution of salvage; over causes of damage, whether arising on the high seas or in the body of a county; over causes of towage; and over causes of necessities supplied to foreign ships. By this Act there was introduced for the first time the practice of taking evidence *viva voce* before the court or a commissioner. The Act practically placed the court on a level with the Superior Courts at Westminster, giving the Judge all the privileges of the Judges of those courts. The Judge was also empowered to make rules of Court, and it is to this power, afterwards exercised as it was by Dr. Lushington, that we are indebted for the present practice and procedure of the court, which hits the happy medium between the lengthy forms of the Chancery Court and the too short and too technical procedure of the courts of common law, and will probably form the basis of any new system of pleading which may be introduced by the proposed reforms. It must not be supposed, however, that this change in the procedure took place without opposition. It is a fact worthy of remark, that a Judge, who at the time of this change was already at the advanced age of seventy-two years and had been accustomed for thirty-six years to an old-established system, should have carried, in the face of the most determined opposition, extensive reforms in his court. In Nov. 1853 the present learned Registrar of the Admiralty Court, Mr. Rothery, was appointed, and very soon after that date were introduced the changes mentioned. They began in July 1854 by rules of court providing for the sitting of the court on any day it might appoint, and not only during its regular session, so that it became a court sitting from day

to day throughout the legal year. A reform more worthy of remark is a rule of 11th Dec. 1854, providing for the collecting of the court fees by means of stamps. This was the first introduction of stamps into the practice of our courts. The reform which created the chief opposition was an order of court of July 1855, approved by the Privy Council in December of that year. This introduced the present system of preliminary acts in collision cases; practically abolished the long and expensive procedure by plea and proof by providing that no witnesses should be examined until the pleadings in a cause should be concluded; allowed the presence of proctors at the examination of the witnesses by the registrar or commissioner, which had not up to that time been permitted; gave power to have the evidence taken down by a shorthand writer; and provided for the printing of all evidence before the hearing of a cause. This order created so much opposition that thirty-two different firms of proctors presented a memorial to the Judge, praying that it might not be enforced. It was enforced, and as a natural sequence, there followed in 1859, the present rules of court, which created still stronger opposition among the proctors, who appealed to the Queen in Council. The question was referred to the Privy Council, and the Proctors were heard on their own behalf, and the Registrar in support of the order, before one of the largest boards that ever sat. The Privy Council affirmed the order, and this was the corner stone of the present practice. The power of the court was still further extended by the Admiralty Court Act 1854 (17 & 18 Vict. c. 78), and it was under this Act that some of the amended rules mentioned were made. In 1859 the court was thrown open to the Profession generally, and in 1861 the jurisdiction was finally extended by 24 Vict. c. 10. That such changes could have been effected whilst any other Judge was in office may be well doubted, and Dr. Lushington is fairly entitled to the credit of having raised the position of his court.

In construing the statutes conferring the new jurisdiction upon the Court of Admiralty, and in elucidating the law as administered in that court as an instance court, Dr. Lushington did good service to the public and the Profession. His