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THE TWENTY-FIFTH SECTION
OF
RULES AND REGULATIONS
TOUCHING THE
PRACTICE TO BE OBSERVED IN SUITS AND PROCEEDINGS
IN THE SEVERAL
COURTS OF VICE-ADMIRALTY
ABROAD,
SUBSTITUTED IN LIEU OF SECTION 25 IN THE FORMER RULES
AND REGULATIONS,
AND
ESTABLISHED BY THE QUEEN'S ORDER IN COUNCIL.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1860.

WHEREAS by an Act passed in the Second Year of the Reign of His late Majesty King William IV., intituled *An Act to regulate the Practice and the Fees in the Vice-Admiralty Courts abroad and to obviate Doubts as to their Jurisdiction*, Her Majesty is empowered to make such Rules and Regulations, and to establish such Fees, and to alter them from time to time, as may be found expedient for the said Vice-Admiralty Courts; and whereas by an Order in Council, bearing date the 27th day of June 1832, Rules, Regulations, and Tables of Fees were made and established for the several Vice-Admiralty Courts then existing; and whereas by an Order in Council, bearing date the 25th day of June 1851, the 25th Section of the said Rules and Regulations which relates to Prosecutions for a Breach of the Laws for the Abolition of the Slave Trade was expunged, and in lieu thereof other Rules and Regulations were established, We, therefore, send you herewith a copy of the aforesaid Order in Council of the 25th day of June 1851, and the Rules and Regulations relative to Prosecutions for a breach of the Laws for the Abolition of the Slave Trade thereby established; and We hereby desire and direct you, so far as the same affect or concern your Court, to act in accordance with and to be guided by such Order in Council, Rules, and Regulations in all matters to which they relate.

(Signed) F. T. BARING.
 J. W. D. DUNDAS.
 M. F. F. BERKELEY.
 H. STEWART.
 ALEX^r MILNE.
 W. COWPER.

*To the Vice-Admiral, the Judge, and
 the respective Officers and Practi-
 tioners of the Vice-Admiralty Court
 of*

By Command of their Lordships,
 (Signed) J. PARKER.

At the Court at Buckingham Palace, the 25th day of June 1851;

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a humble Memorial of the Right Honourable the Lords Commissioners of the Admiralty, dated the 23d of this instant June, in the words following, viz. :—

“ Whereas by His late Majesty's Order in Council of the 27th June 1832 certain Rules and Regulations concerning the Practice and certain Tables of Fees were established for the several Courts of Vice-Admiralty then existing: And whereas the Lords Commissioners of the Admiralty for the time being did, on the 24th day of December 1840, by due authority constitute a Vice-Admiralty Court at Saint Helena, and subsequently to the said Rules and Regulations and Tables of Fees being so established for the Vice-Admiralty Courts then existing: And whereas it is desirable to establish Rules, Regulations, and a Table of Fees for the said Vice-Admiralty Court at Saint Helena: We do therefore most humbly submit to Your Majesty, that Your Majesty will be most graciously pleased by Your Order in Council to establish for the said Vice-Admiralty Court at Saint Helena the aforesaid Rules and Regulations heretofore established for the several Vice-Admiralty Courts, so far as the same can or may be adopted, with the exception of that part thereof which relates to the ‘ Prosecutions for a Breach of the Laws for the Abolition of the Slave Trade,’ and that the same be expunged from the said Rules and Regulations, and that in lieu thereof the Rules and Regulations for Prosecutions for any Breach of the Laws for the Abolition of the Slave Trade, and the Tables of Fees hereto annexed, marked Nos. 1 and 2, which have been prepared by persons of competent authority, and approved by Your Majesty's Advocate General and the Advocate of the Admiralty, and sanctioned by the Judge of the High Court of Admiralty of England, be established by Your Majesty's Order in Council as the Rules and Regulations for the said Vice-Admiralty Court of Saint Helena, and the only Fees to be taken or received by the Officers and Practitioners of the said Vice-Admiralty Court; and in order that the proceedings in all Your Majesty's Vice-Admiralty Courts may be assimilated, that these amended Rules and Regulations for the Breach of the Laws for the Abolition of the Slave Trade be established in all other Courts of Vice-Admiralty.”

Her Majesty, having taken the said Memorial and the Rules and Regulations and Tables of Fees therein referred to into consideration, was pleased, by and with the advice of Her Privy

Council, to approve as well of what is proposed in the said Memorial as of the said Rules and Regulations and Tables of Fees which are hereunto annexed; and the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C. C. GREVILLE.

The 25th Section of the RULES and REGULATIONS in Prosecutions for a Breach of the Laws for the Abolition of the Slave Trade, and proceedings under various Acts of Parliament for the condemnation of Slaves and Vessels not British engaged in that Trade, substituted in lieu of Section 25 in the former Rules and Regulations established for Vice-Admiralty Courts.

By the Act of 5 Geo. IV. cap. 113., being the Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade, all Ships, Vessels, or Slaves belonging to British Subjects, and acting in violation of the Municipal Law of the United Kingdom of Great Britain and Ireland, may be seized by any Officer of Her Majesty's Customs, or by the Commanders or Officers of any of Her Majesty's Ships or Vessels of War, or any Officer bearing Her Majesty's Commission in Her Majesty's Navy or Army; and it is the duty of the Captor to send the Vessel, with the Slaves, if any on board, for the purpose of adjudication, to the nearest and most convenient Port to any Colony or Settlement where there is a Vice-Admiralty Court.

Upon the arrival in port of the vessel and slaves seized, and also in case of a seizure of Slaves on shore, an immediate representation of the seizure is to be made to the Registrar of the Court of Vice-Admiralty, and the seizer is to make an affidavit* detailing all the circumstances connected therewith, and stating especially by what breach of the Law the forfeiture of the Slaves or Property has been incurred; and in the case of the seizure of a Vessel, there are to be annexed to the Affidavit, and verified therein, all original Papers that may have been delivered up to the seizer; or if the Ship's papers shall have been concealed, thrown overboard, or otherwise destroyed, that fact is to be stated in the Affidavit.

The Affidavit† being duly sworn and exhibited before the Judge or Surrogate, he is to decree a monition‡ to issue returnable seven days after service, citing by name the owners or persons implicated, if known, and all others in general, to appear and show cause why the forfeiture should not be decreed and the penalties pronounced for.

Where the owners or persons implicated are not known, the monition must only cite all persons in general. If the monition contain the names of the owners or others from whom penalties are sought to be recovered, it should, if practicable, be personally served on the parties in the manner of other instruments requiring personal service. In all cases the monition must be served on the Exchange or the Court House or other public place of resort for merchants. If the monition issue against all persons in general, and not against any individual in particular, it need only be served in the manner last mentioned.

If when the monition has been served no appearance be given, the Judge, upon the return of the monition, is immediately, or on the next regularly adjourned Court day, if satisfied by the evidence produced, to proceed to pronounce by Interlocutory Decree§ for the forfeiture of the Vessel and Slaves (if any), and for the penalties due by law.

* See Forms, Nos. 178 to 180.
† See Minutes, Nos. 181 to 183.

‡ See Monitions, Nos. 184 to 187.
§ See Interlocutory Decrees, Nos. 188 and 189.

If it shall appear to the Judge, by Affidavit, that personal service cannot be effected on the parties, if any, named in the monition by reason that they have purposely absented themselves to avoid service, the Judge is to pronounce his decree ; but if he has reason to believe that the parties are bonâ fide ignorant thereof, he should reserve his judgment so far as relates to the penalties sued for.

In the case of a monition citing all persons in general, and not describing any person by name, no penalties against individuals can be pronounced for ; but if the persons by whom the offence has been committed shall afterwards be discovered, a subsequent monition may issue in the same suit against him or them for recovery of the penalties.

In order to move for the Interlocutory Decree, a case, together with a copy of the Affidavit, must be placed in the hands of counsel as in other cases.

At any time before the Interlocutory Decree a claim may be given on behalf of the owners, and the claimant may apply to the Judge to direct the seizer to proceed by plea and proof, and should the Judge in his discretion think proper so to direct, the claimant will then pray that the captor be assigned to give in his Information or Libel, to which the claimant may give in a responsive Plea or Allegation.

To the claim must be annexed an Affidavit containing the names, additions, and residence of the owners, and a detail of all the circumstances on which the claimant means to rely as the ground of his defence.

The same course in all respects is to be pursued in giving in the claim as before directed in Derelict Cases.*

When a claim is given and no Libel directed, the Court may proceed to adjudge the case on the ship's papers, if any, and the facts and circumstances stated in the Affidavit of the seizer exhibited on praying the monition, and in the Claim and Affidavit in support thereof.†

Should the Judge consider the case not sufficiently proved by such evidence to enable him to proceed to sentence, he may require further proof by Affidavits to be brought in on both or either side, or he may direct a Libel to be filed‡ by the seizer and witnesses to be examined thereon, to which Libel the Claimant's Proctor may give a responsive Plea or Allegation, and in like manner examine witnesses. The proceedings will then be the same as directed in cases contested by Plea and Proof.

In order to avoid the injury which owners of ships may sustain by the delay of the seizer to proceed, any claimant or owner may apply to the Court§ for a monition against the seizer returnable in three days after service, requiring him immediately to proceed to the adjudication.||

By the 2d and 3d of Victoria, c. 73., and the 5th and 6th of Victoria, c. 114., (which repeals the said Act so far as regards Portuguese vessels,) vessels engaged in the slave trade, not being justly entitled to claim the protection of the flag of any state or nation, may be seized by any person or persons in Her Majesty's service under any order or authority of the Lord High Admiral or of the Commissioners for executing the office of Lord High Admiral of Great Britain, or of any one of Her Majesty's Secretaries of State ; and by the 8th and 9th of Victoria, c. 122., any person or persons in Her Majesty's service, and being duly authorized under any order or authority from the Admiralty, or from one of Her Majesty's Secretaries of State, for that purpose, may seize any ship or vessel engaged in the slave trade belonging to the subjects of the Emperor of Brazil. And

* See Forms of Claim and Affidavit, Nos. 190 and 191.

† See Interlocutory Decrees, Nos. 192 to 194.

‡ See Form, No. 195.

§ See Minute, No. 201.

|| See Monition, No. 202.

by the 4th section of the said Act jurisdiction is given to the High Court of Admiralty of England, as also to the several Vice-Admiralty Courts, to adjudicate and determine upon such seizures respectively.

In these cases also the same steps are to be taken by the seizers as directed in seizures under the Act of the 5th of George the 4th, c. 113., and the same course is to be pursued relative to the legal proceedings in order to obtain a forfeiture of the vessel and slaves, if any.

No foreign vessel whatever, although engaged in the slave trade, can legally be detained at sea by any of Her Majesty's ships of war without the Commander thereof being duly authorized in conformity with the said Acts of Parliament.

Many foreign States have entered into treaties with Great Britain conceding to Her Majesty's ships of war the right to search vessels belonging to their subjects, and engaged in the slave trade, in violation of any such treaty or convention; such foreign slave vessels, however, can only be seized by such of Her Majesty's ships of war as are provided with special instructions and authority, and if they are not so specially authorized they cannot legally seize and detain them, nor can the search of any such foreign slave vessel be made by any officer holding a rank inferior to that of lieutenant in the navy of Great Britain, unless when by those treaties with foreign powers the search and seizure are authorized in case of death or other causes to be made by an officer of inferior rank to that of lieutenant.

With respect to seizures of this description, that is of foreign slave vessels under treaty or convention, the Vice-Admiralty Courts, except as hereafter stated, have no jurisdiction whatever, and the only tribunals which can legally adjudicate thereon are the Mixed Commission Courts established in pursuance of treaty, or in those instances where Mixed Commission Courts are not established, they can only be adjudicated according to the laws in force of the foreign country to which such captured ship might belong, conformably to the stipulations of the treaty entered into with each foreign State.

It is material also to observe that vessels which belong to the subjects of some foreign States, found carrying on the illicit traffic, are placed under very different circumstances to those of the subjects of other foreign States, the same being dependent entirely upon the stipulations in the treaties or conventions entered into with Great Britain, whereby the right of search and seizure has been conceded.

In some of these treaties or conventions it is stipulated that Mixed British and Foreign Commission Courts should be established to adjudicate upon the seizure of vessels belonging to their subjects.

Secondly.—In others of them vessels so employed can only be adjudicated according to the laws in force of the foreign country to which the captured ship may belong, conformably to the stipulations of the treaty entered into with such foreign State.

Thirdly.—There are some foreign States which have not only conceded the right of search and seizure, but have consented to the vessels captured being adjudicated in the High Court of Admiralty of England, or in any Vice-Admiralty Court in Her Majesty's Dominions nearest to the place where the capture may be made.

The foreign vessels which range under this last category are those belonging to the subjects of the Imaum of Muscat, with respect to which jurisdiction is given to the High Court of Admiralty of England and to all Vice-Admiralty Courts in Her Majesty's Dominions, including those

Courts of Vice-Admiralty within the territories under the government of the East India Company as set forth in the Act of the 11th and 12th of Victoria, c. 128.

A similar authority and jurisdiction is given to the High Court of Admiralty and all Vice-Admiralty Courts, including those within the territories under the government of the East India Company, to adjudicate upon all seizures of this kind belonging to the following Persian Chiefs or their subjects, by the 12th and 13th of Victoria, c. 84., viz. :

Sultan bin Sagger, Sheik of Ras-el-Khyma and Shargah in the Persian Gulf, the Chief of the Joasmee Arabs.

Sheik Multoom, Chief of Debaye.

Sheik Abdool Azeey, Chief of Eguiom.

Sheik Abdollah bin Rashid, Chief of Amulgarine.

Sheik Saeed bin Tahnoonj, Chief of Aboothabee.

Sheik Mahomed bin Khuleefa, Chief of Bahrein.

(Signed)

WM. ROTHERY.

H. B. SWABEY.

Perused and approved by

(Signed)

JOHN DODSON.

JOSEPH PHILLIMORE.

Approved

(Signed)

STEPHEN LUSHINGTON.