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A SUMMARY

OF THE

Laws of Commerce and Navigation.

A
SUMMARY
OF THE
*LAW*S OF COMMERCE
AND
NAVIGATION,

Adapted to the present

STATE, GOVERNMENT, AND TRADE

OF THE

Island of Newfoundland.

BY

THE REV. LEWIS AMEDEUS ANSPACH.

RECOMMENDED FOR PUBLICATION

BY VICE ADMIRAL J. HOLLOWAY,

Governor and Commander-in-Chief of Newfoundland, and its
Dependantscies.

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1809.

CONTENTS.

PART I.

LAWS OF CONTRACTS.

CHAP. I.

Of Contracts in general.

	<i>PAGE</i>
§ 1. <i>Contracts—Promises,—where verbal</i>	
<i>Promises void</i>	17
§ 2. <i>Necessary Qualities of Contracts</i>	18
§ 3. <i>Deeds, Bonds</i>	20

CHAP. II.

Of Contracts of Sale and Exchange.

§ 1. <i>General Rules</i>	22
§ 2. <i>Sales of Lands, of Ships</i>	23

CHAP. III.

Of Contracts of Bailments.

§ 1. <i>General Rules</i>	28
§ 2. <i>Different kinds of Bailments, Common Carriers</i>	<i>ib.</i>

CHAP. IV.

Of Contracts of Debt.

§ 1. <i>Different kinds of Debts</i>	33
§ 2. <i>Bills of Exchange and Promissory Notes</i>	<i>ib.</i>

CHAP. V.

Of Marine Contracts.

§ 1. <i>Bottomry and Respondentia</i>	45
§ 2. <i>Marine Insurance</i>	46

CHAP. VI.

Of Policies of Marine Insurance.

§ 1. <i>Definition and essential Qualities of a Policy</i>	48
§ 2. <i>Of Underwriters</i>	49
§ 3. <i>Of the Subject Matter of Marine Insurance</i>	<i>ib.</i>
§ 4. <i>Of the Time when the Risque begins and ends</i>	52
§ 5. <i>Of the Return of the Premium</i>	55

CHAP. VII.

Of the Perils and Losses against which Ships
and Goods are commonly insured.

§ 1. <i>Risques insured against</i>	57
§ 2. <i>Losses—partial—total ; Abandonment, Adjustment</i>	62

CHAP. VIII.

Of the Circumstances and Acts which may va-
cate a Policy.

§ 1. <i>Fraud</i>	66
§ 2. <i>Ship unfit, changed, altered, or not properly navigated, or sailing with- out Convoy</i>	67
§ 3. <i>Deviation</i>	68
§ 4. <i>Non-compliance with Warranties</i>	70

CHAP. IX.

Of Contracts of Affreightment.

§ 1. <i>Freight, Charter-parties, Demurrage</i>	73
§ 2. <i>General Ships, Bills of Lading</i>	75
§ 3. <i>How such Contracts may be dissolved</i>	76
§ 4. <i>Duties of the Freighter</i>	78
§ 5. <i>Payment of Freight, Entire, Rate- able, Primage, Average</i>	ib.

PART II.

LAWS OF NAVIGATION.



CHAP. I.

General Rules for the Government and Protection of the Naval Trade.

- § 1. *Duties and Powers of Officers of the Customs*..... 85
- § 2. *Principal Causes of Forfeitures of Ships and Cargoes*..... 87
- § 3. *Injuries to Shipping, Harbours, &c.* 88

CHAP. II.

Of Ships' Registers.

1. *What Vessels shall be registered*..... 93
- § 2. *What is to be done previous to Registry*..... 94
- § 3. *General Rules* 95
- § 4. *What Vessels shall be deemed British-built, and British-owned*..... 96

CHAP. III.

Of Owners and Masters of Vessels.

§ 1. <i>Part-owners disagreeing,—How far liable</i>	98
§ 2. <i>Duties of Masters of Vessels</i>	103
(1.) <i>On leaving Port</i>	105
(2.) <i>During the Voyage</i>	106
(3.) <i>On coming into Port</i>	108
(4.) <i>On arrival in Port</i>	<i>ib.</i>

CHAP. IV.

Of Masters, Mariners, and Apprentices.

§ 1. <i>Of the Hiring of Seamen</i>	111
§ 2. <i>Master's Authority over the Seamen</i> .	112
§ 3. <i>Of the Discharging of Seamen</i>	114
§ 4. <i>Of Seamen's Wages, Earning, Loss, Forfeitures, Time, of Payment, Dead Men's Wages</i>	119
§ 5. <i>Of Hospital-money and Penalties</i>	<i>ib.</i>
§ 6. <i>Of Apprentices to the Sea-service</i>	<i>ib.</i>
§ 7. <i>Provision for shipwrecked Mariners, &c.</i>	120

CHAP. V.

General Regulations relating to the Plantation
Trade.

- § 1. *Laws relating to Customs, &c.* 121
- § 2. *Who may trade in and to the Plantations—in what Shipping* 122
- § 3. *Rules relating to Imports into, and Exports out of, the Plantations....* 123
- § 4. *Of Plantation-bonds.....* 124
- § 5. *Masters' duties on arrival at the Plantations* 126
- § 6. *Duties of Governors and Naval Officers* 127
- § 7. *Of Seizures in the Plantations* *ib.*

CHAP. VI.

Of the Laws relating to the Newfoundland
Trade and Fisheries.

- § 1. *Who shall trade to, and fish at Newfoundland* 129
- § 2. *Rules relating to Imports.....* 130
- § 3. *Of carrying Passengers to America.* 131
- § 4. *Regulations concerning Rooms, Stages, &c.* 132

- § 5. *Regulations concerning the Police* 134
- § 6. *Regulations relating to Masters and Servants*..... 135
- § 7. *Of the different Courts of Justice in Newfoundland; Supreme, Surrogates, Probate, Insolvency, Vice-admiralty, Court of Session* 137

Introduction.



THE Compiler of the following sheets considers it as a duty he owes both to the public and to himself, to state the most material facts of the history of this work, in order to clear himself from the charge of presumption, in undertaking and publishing a work of this nature and extent, and so apparently remote from his professional line.

A sense of duty, on his being appointed a Magistrate of the Island of Newfoundland in 1803, to make himself as well acquainted as he could, with those laws in particular, which were to regulate his conduct and decisions in the discharge of that office, had directed his thoughts towards compiling, in

his *leisure hours*, out of Burn's Justice, and Mr. Reeves' Book on the Laws of Newfoundland; a small work for the assistance of himself and others of his Brother-Magistrates in this Island, who might stand in need of it. He communicated his ideas on this subject to the highest legal authority in Newfoundland, who not only approved his intention, but also suggested to him that the usefulness of that compilation would be still more extensive, if he included in it "every Court *exercet* in this Island;" and for this purpose, very kindly offered him the assistance of his library and advice. Actuated by a strong wish to render himself as useful as he had opportunity to the merchants, and other inhabitants of this valuable appendage to the British Crown, the compiler undertook the proposed task, not however without feeling a considerable degree of diffidence. He collected his materials, which, as it may na-

turally he supposed, multiplied rapidly as he proceeded. What might at first have been considered as a laborious task, became, as the subject expanded before him, a pleasure, which he took care not to embitter by the consciousness of neglecting the more important duties of his vocation as a Clergyman. His *leisure* hours improved and assisted by early habits of application and industry, and the advice of his much honoured friend, to whose inspection he regularly submitted every spring: the result of his labours during the preceding winter produced at last a work, which, after successively undergoing a variety of shapes, is now

“ A Systematical Review of the Laws of
 “ Commerce and Navigation, adapted to
 “ the present State, Government, and Trade
 “ of the Island of Newfoundland, with an
 “ Appendix, containing an abstract of the
 “ Laws of the United States relating to
 “ General Commerce,” compiled from the

best authorities, such as Jacob's Law Dictionary by Tomlins; Marshall's Laws of Insurance, Bailey's Bills of Exchange, Robinson's Court of admiralty Reports, Term-Reports, Abbot's and Reeves' law of Shipping, Collection of Sea-Laws, Graydon's laws of the United States, several periodical publications, &c. &c., containing the most important modern cases, from which the principles of law are deduced. He begs leave to observe that Abbot's and Marshall's valuable publications came to his hands only last year, when the work was finished. Had he been able to get them at the beginning, they would have saved him a great deal of trouble and labour, as he found himself obliged to consult Parker's Law of Shipping and Insurance, the Dominion of the Seas, or Collection of Sea Laws, and many other books, to obtain the information with which those two works would have supplied him, with very little trouble. He

had, however, the satisfaction to find, on a comparison, that his plan, under the respective heads of which they treat, agreed in most parts so perfectly with theirs, as to appear to have been almost entirely taken from those books, which, however, he begs leave to affirm *is not the case*. He however gratefully acknowledges that he derived considerable assistance from both of them, in satisfying his mind of the soundness of the principles which he laid down from other writers, furnishing him with many important cases, and thus considerably improving his work. It consists of two parts.

The *first* treats of the laws of *Contracts*, including, among other articles, Deeds, Bonds, Sale and Exchange, Sale of Ships, Contracts of Bailments, Common Carriers, Contracts of Debt, Bills of Exchange, Bankruptcy, Marine Contracts, Bottomry and Respondentia, Marine Insurance, Freight, and Charter-parties.

The *second* part treats of the Laws of Navigation, Customs, Seizures; Causes of forfeiture of Vessels or Cargoes; Offences against Shipping; Ships' Registers; respective duties, rights, and responsibility of Owners and Masters of vessels; special duties of Masters, on leaving port, during the voyage, coming into port, and on arrival in port; respective duties of Masters, Mariners, and Apprentices; Articles, Master's Authority, discharge of Seamen; Payment, loss, and forfeiture of wages; Hospital Duty; regulations relating to the Plantation Trade; Trade with the United States; Imports, Exports, Bonds and Certificates; Master's duty on arrival at the Plantations; Rules relating to Seizures there.—Laws of Newfoundland, general regulations concerning the Trade and Fishery; Imports, Exports, regulations concerning Rooms, Stages, &c., concerning the Police, Masters and Servants, and Courts of Newfoundland.

This work was approved, as was also an abridgment which the Compiler was advised to make of it, containing the essence and spirit of the large work above-mentioned. This abridgment he is now encouraged to lay before the public, by the wishes of the principal mercantile houses in St. John's, and in the district of Conception-Bay, whose liberal encouragement and friendship he takes this opportunity publicly to acknowledge with heart-felt gratitude.

HARBOUR GRACE,
District of Conception-Bay, Newfoundland,
DEC. 27, 1808.

SUMMARY

OF THE

Laws of Commerce and Navigation.

PART I.

LAWS OF CONTRACTS.

CHAP. I.

Of Contracts in General.

§ 1. **A** CONTRACT or Agreement is a transaction in which each party comes under an obligation to the other, and each, reciprocally, acquires a right to what is promised by the other. Contracts are either *express*, where the terms of the agreement are openly uttered and avowed, at the time of making the agreement; or *implied*, or such as reason and justice dictate, and which therefore the law presumes that every man undertakes to perform.

A *Promise* is in the nature of a verbal covenant. If therefore it be to do any explicit act, it is an express contract, as much as any covenant; and the breach of it is an equal injury. But in the following cases, no verbal

promise shall be sufficient to ground an action upon, but at the least some note or memorandum of it shall be made in writing, and signed by the party to be charged therewith: viz.

(1.) Where an executor or administrator promises to answer damages out of his own estate:

(2.) Where a man undertakes to answer for the debt, default or miscarriage of another: and even here, if the consideration be not expressed, the promise, though in writing, shall be void: (3.) Where any agreement is made upon consideration of marriage:

(4.) Where any contract or sale is made of lands, tenements, or hereditaments, or any interest therein: (5.) Where there is any agreement that is not to be performed within the year. But all contracts and agreements which, though not in writing, are in their own nature free from all danger of introducing fraud or perjury, are out of the purview of this statute.

Parole evidence of a *parole communication* between the parties to a written agreement, is not to be admitted to add a term not inserted in the specific agreement which they have executed; nor can the consideration be supplied by *parole*, where the writing is wholly silent on that head.

§ 2. In order to be valid, all contracts and promises must be made—

(1.) By persons *able* to contract and be contracted with, for the purposes intended by such contracts. All deeds executed, and acts done, by a married woman during her coverture, are void; because her will is subject to that of her husband. Before the age of twenty one, no person can bind himself, except it be for common necessities suitable to their qualities. Otherwise, if an agreement with an infant be without semblance of benefit to him, it will in all cases be void. But a contract made by an infant, by the advice and consent of his friends, has been decided to be good. If an infant bind himself by *bond in a penalty* for the payment of even common necessities, he may afterwards avoid the bond. But if, after full age, he ratifies any contract made while under age, he is bound.

(2.) They must be *good*. Every contract or agreement ought to have a *quid pro quo*. The word *agreement* is not satisfied unless the *consideration* between both the parties appears. This consideration may be either a good, or a valuable one. A *good* consideration is such as that of blood, or of natural love and affection. A *valuable* consideration is such as money, marriage, work done, and the like. Contracts made upon a good consideration only, are frequently set aside,

when they tend in their consequences to defraud creditors or other third persons of their just right. But a contract for any valuable consideration can never be impeached at law.

(3.) They must be *lawful*. All contracts against a positive law, morality, public decorum, or that are entered into with a view to evade the law, are void; and neither party can recover from the other money paid upon such a contract, if it was known by both parties to be illegal when made.

(4.) They must be *possible*. Therefore a promise to be non-suited, where there is no action, or to spare a piece of ground, when there is none such, is void.

(5.) They must be *certain*. Therefore a promise to deliver goods, or a promise to pay money, *in a short time*, is void for uncertainty as to time.

§ 3. A *Deed* is a writing sealed and delivered by the parties. It is the most solemn and authentic act that a man can possibly perform with relation to the disposal of his property. In order to be valid, a deed must be written or printed, read, signed, sealed, and delivered by the parties, and attested by witnesses.

An obligation or *Bond*, is a deed whereby the obliger obliges himself, his heirs, execu-

tors, and administrators, to pay a certain sum of money to another at a day appointed. There is generally a condition added, that if the obliger does some particular act, the obligation shall be void, or else remain in full force. If the condition be not performed, the bond becomes forfeited, or absolute at law. But the party can recover no more than his principal, interest and expences, if the bond was for payment of money ; or the damages sustained upon non-performance of covenants, and the like.

In treaties for an agreement, a wilful and industrious concealment of a material fact by one of the parties in order to profit by the ignorance of the other, or any kind of compulsion by violence, threats and the like, whether by one of the parties or by a third person, will avoid a bond or deed. But the violence which may give room for the rescission of a contract, ought to be an *unjust* violence : legal means, such as the imprisonment of a debtor, can never pass for a violence of this sort. 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 that *it was paid on the day*, it shall be intended paid.

CHAP. II.

Of Contracts of Sale and Exchange.

§ 1. SALE or EXCHANGE is a transmutation of property from one man to another, in consideration of some price or recompence in value. No contract for the sale of goods to the value of ten pounds or more, shall be valid, unless the buyer actually receives part of the goods sold by way of earnest on his part, or unless he gives part of the price to the seller, by way of *earnest* to bind the bargain; or unless some note in writing be made and signed by the party who is to be charged with the contract, or his agent. And no contract for the sale of goods, under the value of ten pounds, shall be valid, unless the goods are to be delivered within one year, or unless the contract be made in writing, and signed by the party who is to be charged therewith.

As soon as the bargain is struck, the property of the goods is fully transferred to the buyer, and that of the price to the seller. If the seller warrants the goods to be sound, (the warranty being upon the sale, and not after it) he shall make compensation to the buyer, if they are not so. But no general warranty will extend to those defects that are obvious

to one's senses. If no express agreement is made for the price, the law concludes that the parties intentionally agreed that the real value of the goods should be paid. "If he does not pay you, I will," is a collateral undertaking, void unless in writing; but if one says, "Let him have the goods, I will be your paymaster," he shall be intended to be the real buyer.

All sales in fairs and markets on market-days are binding not only between the parties, but also on all those who have any right or property in the goods. But goods being stolen, and sold out of market *overt*, the property is not altered, and the owner may take them wherever he finds them. If a man buys his own goods in a fair or market, he shall not be bound to tender the price, unless the property has been previously altered by a former sale. But if the original vender who sold without having a property in the goods, comes again into the possession of them, the original owner may then take them. And if a person sells goods as his own, and they prove not to be his property, the buyer may have an action, and shall recover the value.

§ 2. To make the transfer of property in *lands* and tenements by sale, valid, it must be

by a written deed indented, under seal, and enrolled within six months after the date of the deed, in one of the King's courts of Record in the county where the lands lie; and there must be good consideration given.

With respect to the sale of Ships, it is a rule that no sale of a vessel, or any part thereof, shall vest the property in the buyer, if the seller has neither property in them, nor authority to dispose of them. A part-owner cannot dispose of the share of another. If a ship be sold, "with the tackle, apparel, furniture, and other instruments thereto belonging," the ship's *boat* is not conveyed by these words, but must be expressly mentioned.

When a ship is in the country of its owner, and a *delivery* of actual possession is possible, such delivery is necessary to convey the property to the buyer, in case of the sale of the *whole* ship. For if the buyer suffer the seller to remain in possession, and act as owner, and the seller in the mean time becomes bankrupt, the property will be considered as remaining in him, to be disposed of for the benefit of his creditors. This rule also extends to *mortgages* of ships. Till the mortgagee takes possession, the mortgager is owner to all the world, and he is to reap the profits, and also to answer all such repairs or other expences as

are not a charge upon the ship itself, *in specie*. But after the mortgagee has taken possession, he then becomes entitled to the benefits, and liable to the burthens, as if he were real owner of it. In case of a sale, or agreement for sale, of a *part* only, it is sufficient if the seller, having delivered the muniments of his title, cease from the time to act as part-owner.

When a ship is abroad, a perfect transfer of the property may be made by assignment of the grand bill of sale, and delivery of that and the other documents relating to the ship, which will enable the buyer to take actual possession, as soon as circumstances will permit. But the buyer or mortgagee should not delay to take possession of the ship, upon its return to the country of its owner.

Whenever any alteration of property in a ship takes place, in whole or in part, between any of his majesty's subjects, no transfer of this kind shall be valid, unless made by bill of sale, or instrument in writing, containing the certificate of registry in words at length. When the alteration takes place in the port to which the ship belongs, such sale shall be acknowledged by indorsement on the register before two witnesses, together with the names, residence, and occupation of the purchasers. And they or their agents shall deliver a copy

of such indorsement to the person authorized to make registry, who shall indorse an entry thereof on the affidavit or oath upon which the original register was obtained. But in any case where part of the property of any ship is transferred, if the owners, whose property therein remains unaltered, wish to have a certificate of registry *de novo*, instead of the indorsement on the old register, it may be done, provided all the laws in force concerning registry be complied with.

When an alteration takes place during the absence of the ship from the port to which she belongs, the transfer shall be made by a bill of sale, containing in words at length a recital of the certificate of registry, and a copy thereof shall be delivered, and an entry indorsed as in the preceding case. And within *ten* days after the return of the ship to the port to which she belongs, the indorsement shall be made on the register. If the owner, at the time of such transfer, resides in foreign parts, such indorsement may be made within six months after such transfer; in which case, within ten days after the arrival of the owner, or his agent, in this kingdom, (if the ship be in any port thereof; and if not, within ten days after such ship's arrival) the indorsement shall be made, and the other re-

gulation above mentioned shall be complied with.

Upon every transfer of property to *another port*, the ship shall be registered *de novo*, and the former certificate cancelled.

No transfer of any share of a British ship, British owned, may be made to a foreigner, without the consent in writing of the owners of three-fourths in value at least, first had and indorsed on the certificate of registry before two witnesses.

No sale of any ship, or part thereof, is valid, until the requisites of the statutes are fully complied with by the parties of the contract; and if between the execution of the bill of sale, and such complete compliance, the interest of a third person takes effect, as in the case of the bankruptcy of the seller, the transfer will be wholly void, even though the price has been paid.

It will be prudent to recite in a second, and in every subsequent bill of sale, the indorsements made in pursuance of every previous transfer.

CHAP. III.

Of Contracts of Bailments.

§ 1. Bailment is a delivery of goods in trust, upon a contract that the trust shall be faithfully executed on the part of the bailee, and that the goods shall be re-delivered as soon as the time or use for which they were bailed, shall have elapsed, or be performed.

A Bailee may be liable to an action for misbehaving in the trust reposed in him; either through ordinary, gross, or slight neglect. *Ordinary* neglect is the want of that care which every man of common prudence, and capable of governing a family, takes of his own concerns. *Gross* neglect is the omission of that care which every man of common sense, how inattentive soever, takes of his own property; or in other words, a violation of good faith. *Slight* neglect is the omission of that diligence which every circumspect and thoughtful person uses, in securing his own goods.

§ 2. There are six sorts of bailments :

(1.) *Deposit*, or a bare bailment to keep for the use of the bailor, without recompence.

Here the bailee is chargeable only for *gross* neglect.

(2.) *Lending for use*, or a bailment of a thing for a certain time, to be used by the borrower for a certain time without paying for it: here the bailee is responsible for *slight* neglect.

(3.) *Letting to hire*, or *first*, a delivery of a thing to be used by the hirer for a compensation in money;—this makes him liable for *ordinary* neglect: or *secondly*, a letting out of work and *labour* to be done, or care to be taken or attention bestowed by the bailee, on the goods bailed, for a reward;—here the bailee is liable for *ordinary* neglect.

(4.) *Pledging*, or a delivery of goods by a debtor to a creditor, to be kept till the debt be discharged: this makes the *pawnee* liable for *ordinary* neglect.

(5.) A *mandate*, or a delivery of goods *without reward*, to be carried from one place to another, or to have some act performed about them: here the bailee is liable for *gross* neglect.

(6.) *Carriage of goods for hire*, makes the bailees answerable for *ordinary* neglect. All persons carrying goods for hire, whether by land or by water, come under the denomination of common carriers. A common carrier,

who, being offered his hire, and having convenience, refuses to carry goods, is liable to an action. A common carrier is liable to make good all losses of goods entrusted to him to carry, even though not guilty of any neglect, except only such losses as arise, *first*, from the act of God, such as lightnings, storms, tempests, and the like, which could not happen on any human intervention: *secondly*, from the act of the king's enemies; and *thirdly*, from default of the party sending them. As it is a term essential to this contract, ingrafted in it by implication of law, that the vessel itself is tight, staunch, sea-worthy, sufficient and fit for the purpose for which it is employed, the common carrier is responsible for the whole of any loss or damage which may happen in consequence of the vessel being leaky, and not sea-worthy at the time of loading. The law charges the common carrier against all events, but "acts of God and of the king's enemies." So that a common carrier is an insurer against all perils or losses not within the exception. The expression, *act of God*, denotes natural accidents, such as lightning, earthquake, and tempest; and not accidents arising from the fault or negligence of man. And therefore the master and owners, like other common carriers, are sometimes answerable, although

no actual blame may be imputable to them : for in considering whether they, or other carriers, are chargeable for any particular loss, the question is not, whether the loss happened by reason of the negligence of the persons employed in the conveyance of the goods, but whether it was occasioned by any of those causes which, either according to the general rules of law, or the particular contract of the parties, afford an excuse for the non-performance of the contract.

To make the carrier answerable,

(1.) The goods must be lost while in his possession, or sole care.

(2.) He is liable only so far as he is paid.

(3.) If a box be delivered generally to a carrier, and he accepts it, he is answerable. But if he asks, or accepts it conditionally, he is bound no further than he undertakes : but it is his business to make a special acceptance.

(4.) A delivery to the carrier's servant, is a delivery to himself, and shall charge him : but they must be such goods as it is *his custom* to carry.

(5.) Where goods are lost which have been put on board a vessel, the action may be brought against the master, or against the

owner: if there is more than one, it must be against all the part-owners.

(6.) As the carrier is bound to deliver the goods to the consignee, or send notice to him, according to the direction, he continues liable till this is done.

As the bailee is answerable to the bailer, he shall of course have a general action against a stranger, as if he were the real owner of the goods.

§ 3. When money is lent on a contract, to receive not only the principal, but also a compensation for the use, ~~this~~ is called *interest*, which is in no case to exceed five *per cent.* for one year. Otherwise such contract shall be void, and the lenders shall forfeit *treble* the amount of the principal. And the borrower may be a witness after he has paid the money.

CHAP. IV.

Of Contracts of Debt.

§ 1. A contract of Debt is that by which a right to a certain sum of money is mutually acquired and lost. Debts are divided into

(1.) Debts of *record*, or sums of money which appear to be due by the evidence of a court of Record.

(2.) Debts by *specialty*, or special contracts, whereby a sum of money becomes, or is acknowledged to be due, by deed, or instrument under seal.

(3.) Debts by *simple contract*, where the contract upon which the obligation arises, is ascertained by mere moral evidence, or by notes unsealed. This class comprehends a vast variety of obligations, the most important and general of which are debts by bills of exchange, and promissory notes.

§ 2. A Bill of Exchange may be defined to be "a written order or request," and a Promissory Note, "a written promise for the payment of money, absolutely, and at all events." The person who makes the bill is called the *Drawer*; the person to whom it is addressed,

the *Drawee*; and the person in whose favour it is made, the *Payee*. The Payee may, by writing his name upon the back of it, or by verbally authorizing another person to do it for him, assign over his whole property in it to another person, and he to another, and so on. And every person thus passing a bill, and writing his name on the back of it, is called an *Indorser*: the person to whom it is thus assigned over, is called an *Indorsée*, and any one who happens for the time to be in possession of the bill, is called the *Holder* of it. Promissory notes, or notes of hand, may be assigned over and indorsed in like manner as bills of exchange; and when indorsed, they are exactly similar to bills of exchange. Any order or promise which, from the time of making it, cannot be performed without the payment of money is a bill or note. But in order to be good, a bill or note must, *first*, be for the payment of money only: *secondly*, it must carry with it a personal and certain credit given to the drawer or maker: *thirdly*, it must be payable absolutely and at all events. An indorsement written on a blank note or check, in the form of a bill or note, will bind the indorser for the sum and time of payment which the person to whom he entrusts the note or check so indorsed, shall insert in it.

Any person capable of binding himself by a contract, may draw, indorse, or accept a bill of exchange or promissory note, and shall be considered as a merchant for that purpose. If a bill or note be made or indorsed to a woman when single, and she afterwards marry, the right to indorse it over belongs to her husband; in cases of bankruptcy, to the assignees; and in case of the death of the person who has the right to transfer a bill or note, to his executors and administrators.

In order to obtain payment, the holder of the bill is, as soon as it comes to his hands, within hours of business, according to the known custom of the place, to go to the drawee, and offer his bill for *acceptance*, which, so as to charge the drawer with costs, must be in writing under, or on the back of the bill: it may also be by collateral writing. But any words which shew the party's agreement to the bill, will amount to an acceptance, as to the principal. An agreement to accept on certain conditions, is discharged if the conditions are not complied with: otherwise it is not, if they are. Acceptance of a bill drawn upon two partners, by one of them, will bind both, if it concerns the joint trade. Acceptance by a servant for his master is good, if the servant expresses such acceptance to be *for his mas-*

ter : otherwise he is liable himself. And as soon as the bill is accepted, the acceptor becomes liable to pay it. But a presentment for acceptance is not necessary, except upon bills payable within a limited time after sight. No delay warranted by the common course of business, or occasioned by keeping the bill in circulation at a distance from the place where it is payable, is improper: but a delay by locking it up for any length of time, is.

If the Drawee delays or refuses to accept the bill, or has become insolvent, or has absconded, the holder must *protest* it for "non-acceptance," which protest must be made in writing, under a copy of such bill, by some notary public, or where there is none, by a substantial inhabitant, in the presence of two witnesses. To such of the parties as reside in the place where the presentment was made, *notice* must be given at the farthest by the expiration of the day following the failure of the attempt to procure an acceptance; to those who reside elsewhere, by the next post, or where there is no post, by the ordinary mode of conveyance, by the first regular ship bound for the place to which it is to be sent: and it is no objection, that, if sent by a ship bound elsewhere, it would by accident have arrived sooner, though the holder wrote letters by that

ship to the place to which the notice was to be sent. It is advisable for each party, immediately upon the receipt of notice, to give a fresh one to such of those persons who are liable over to him, against whom he must prove notice. The Indorsee of a bill of exchange may bring an action against the drawer and indorser, on its being returned for *non-acceptance*, without waiting till the time it would become due. And in the case of a bill protested for non-acceptance, it is the usage of the country in *Newfoundland*, that the defendant give security for the payment.

The *time* when a presentment for payment must be made, depends upon the time when the bill or note is payable. When payable within a limited time after a certain event, or at sight, it is not in fact payable until two days, if the third is a Sunday, or great holiday, and if not, until three days after the expiration of that time. These are called *days of grace*. Upon the last day of grace, and within a reasonable time before the expiration of that day, a bill or note must be presented for payment. Upon a bill payable within a limited time *after sight*, the time must be computed from its presentment for acceptance: but the day of sight is not to be reckoned one of the number mentioned in the bill. The

bankruptcy, or known insolvency of the drawee or maker, is no excuse for a neglect to make a presentment, or to give notice.

Upon a non-acceptance, or non-payment, the holder of a bill or note may *sue* all the persons liable to him on account of such non-acceptance or non-payment, either at the same time or successively. All the antecedent parties are liable to the holder on account of non-acceptance or non-payment. But though he may recover judgments in all the actions, he can only once recover the sum payable by the bill or note, and the costs. An action may be brought upon a non-acceptance before the expiration of the time limited for payment.

In an action upon a bill or note, the plaintiff is in general entitled to recover the money payable thereby, with interest from the time when the bill or note would have been regularly payable, down to the time when he will be entitled to final judgment, and all incidental expences occasioned by non-acceptance or non-payment. Upon a foreign bill, the re-exchange forms a part of the expence of the return; and let the bill be returned through ever so many hands, the drawer is liable for the re-exchange upon each return, even though the dishonour of the bill should be expressly ordered by the country on which it is drawn.

If any accident happens by the negligence of the holder of a bill of exchange, in prejudice of the drawer, he has lost his remedy against him. When a bill is *defaced*, the drawer and all the other parties are discharged; and the holder of a bill, by mutilating it, makes it his own.

Forging bills of exchange, or notes for money, indorsements, or the number or principal sum of any accountable receipt, is felony without benefit of clergy. Any forgery committed on bills of exchange said to be drawn in countries not belonging to his Majesty, in any foreign language, with an intent to defraud any foreign prince, state or country, or any company of persons, is felony. And whatever will make a man accessory before the fact in felony, will make him a principal in forgery. The innocent holder of a forged bill of exchange, for which he has given valuable consideration, shall recover against the acceptor who accepted it, not knowing of the forgery.

Stealing bills of exchange, notes, &c. is felony in the same degree as if the offender had robbed the owner of so much money. If a bill of exchange, indorsed in blank, be stolen and negociated, an innocent Indorsee for valuable consideration, shall recover upon it against the drawer.

If the holder of a bill, by any accident, *loses* it, he must cause information to be made by a notary public before witnesses, that the bill is lost or mislaid, requiring that payment be not made of the same to any person without his privity. But a bill which has been lost and advertized in the newspapers, is nevertheless recoverable by a person who has bonâ fide discounted it, though from the person who came improperly by it.

§ 3. The Laws of Bankruptcy are calculated for the benefit of the trades, and founded on principles of humanity, as well as of justice. It may be sufficient here to observe, that by the appointment of the assignees, the property of every part of the bankrupt's estate is as fully vested in them, as it was in the bankrupt himself; and they may pursue any legal method of recovering it by their own authority: but, they cannot compound any debts owing to the bankrupt, nor refer any matters to arbitration, without the consent of the major part of the creditors in value. They must keep books of account of all sums and effects received, which every creditor who has proved his debt, may inspect at seasonable times. They are not answerable for losses occasioned by their own *necessary* acts: but, if an

assignee trusts a person with the payment of money, who fails, and the money is lost, such assignee shall be answerable over to the creditors, unless he was authorized by them to appoint such agent. The bankrupt is to deliver up to the assignees on oath, to be administered by a magistrate, all his books of accounts, papers, and writings then in his possession; and also to discover those which are in the possession of others, to make a full discovery of all his effects and property, and to attend the assignees whenever called upon, by notice in writing, in order to assist them in making out the account of his estate. If he has made an ingenuous discovery, and has acted in all points to the satisfaction of his creditors, they, or four parts in five of them, in number and value, may grant him a certificate of the same, under their hands and seals, by virtue of which he becomes entitled to a certain allowance out of his effects, according to the proportion of his debts, that his effects will pay: and is moreover discharged for ever from all debts owing by him at the time he became a bankrupt. But a bankrupt cannot claim such certificate, allowance, nor discharge, if he has given with any of his children above £100. for a marriage portion, unless he had at that time sufficient left to pay his debts;

nor if he has lost at any one time £5, or in the whole £100, within a twelvemonth, by any manner of gaming, or wagering whatever; nor, if he neglects to discover any fictitious debt that may be offered to be proved against the estate.

Where a bond conditioned for the repayment of a sum of money, by a principal and a surety, has not been forfeited till after the bankruptcy of the surety, the debt cannot be proved under his commission, and he may be sued upon it notwithstanding his certificate: as for example, if A. at the instance of B. accepts a bill payable to his order, not having any effects of B. in his hands, and B. becomes a bankrupt before the bill becomes due, and A. pays it when due to an indorsee. But if A. draws a bill of exchange on his correspondent abroad, which is afterwards protested for non-acceptance, and he fails before the return of the bill, the debt being contracted when the bill was drawn, may be proved, and is discharged by the certificate. Securities payable at a future day, for goods delivered to such as become bankrupts before the time of payment, may also be proved, and paid in proportion with the other debts, deducting interest from the time of payment, till the time they would have become due. The difference

between the price of goods contracted for, and the actual produce from a re-sale thereof, in consequence of the bankrupt's having declined to fulfil his engagement, may be proved under the commission. A. had purchased of B. a quantity of starch which lay at a certain place, at £6 *per cwt.* by bill at two months, fourteen days after delivery, the weight was to be ascertained afterwards. B. ordered his warehouse-keeper to weigh and deliver all his starch to A., who in consequence thereof, obtains the delivery of a part, and before the whole is weighed and delivered, becomes bankrupt. B. refused to deliver the rest: the assignees of A. brought an action against him, and the court held that B. may refuse to deliver the residue which is unweighed; that the delivery of part is not a constructive delivery of the whole, where any thing remains to be done, as weighing, to ascertain the price. While any thing remains to be done to the commodity, the *complete* right of *property* does not attach. Otherwise it is when the payment of the price is the only act necessary to be done to entitle the party to the delivery of the goods: the weighing and delivery of a part is, in this case, a virtual delivery of the whole, although the price is not paid. K. B. 1805. T. 45, G. 3.

All goods in the possession of a bankrupt, by which he gains a general credit, are liable to his creditors, that is to say, all such goods which the bankrupt has *in his own right* only: for though in possession, if empowered to dispose of goods *in trust*, they are not liable to the bankruptcy. Until an act of bankruptcy, the right of disposing of his goods remains by law with the trader, unless he exercise it by way of a voluntary and fraudulent preference of a particular creditor, in contemplation of bankruptcy, in which case, all payments and conveyances so made, are null and void: *Lord Ellenborough, 1804.* And from the time that the first act of bankruptcy was committed, all transactions of the bankrupt are null and void, either with regard to the alienation of his property, or the receipt of his debts from such as are *privy* to his bankruptcy.

CHAP V.

Of Marine Contracts.

Marine Contracts are of things belonging to the sea, and extend to ships, goods, and merchandize. Under this head are included principally, 1. Bottomry and Respondentia. 2. Marine Insurance. 3. Charter-parties.

§ 1. *Bottomry* is in the nature of a mortgage of a ship, when the owner takes up money to enable him to carry on his voyage, and pledges the *keel* or bottom of the ship as a security for the repayment. If the ship is lost, even though the cargo should be saved, the lender loses also his whole money; but if she returns in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. And the ship and tackle, if brought home, are answerable, as well as the person of the borrower, for the money lent.

Respondentia is when the loan is not upon the vessel, but upon the *goods* laden on board of her. In this case, the borrower personally, and not the ship, is bound to answer the contract: and the lender must be paid his principal and interest, though the ship perish, provided the goods are safe.

The risks which the lender undertakes to run, are, for the most part, specified in the condition of the bond, viz. fire, enemies, men of war, or any other casualties that shall unavoidably happen: such accidents as occasion a *total* loss, and did not arise from the defects of the thing on which the loan was made, or from the misconduct of the borrower, or of the master. The time when the risk begins depends upon the nature of the contract. In case of the voyage not taking place, the obliger shall receive only his principal with usual interest.

§ 2. A policy of *Marine Insurance* is a contract by which the insurer undertakes, on the payment of a premium or sum equivalent to the hazard run, to indemnify the insured, against those perils to which the ships or goods insured are exposed in the course of the voyage. But all insurances, *interest, or no interest*, or without any further proof of interest than the policy itself, or by way of *gaming or wagering*, or without *benefit of salvage* to the insurer, are totally null and void by law. Insurances made upon privateers fitted out by his Majesty's subjects, solely to cruise against his enemies, or upon goods or effects from any ports in Europe or America, belonging to Spain or Portugal: or on any foreign property

and foreign ships, are excepted. No *re-assurance* may be made, unless the insurer be insolvent or die; in either of which cases such insurer, his executors or assigns may make re-assurance to the amount of the sum assured, and it must be expressed in the policy to be a re-assurance: and this prohibition extends to every case of a re-assurance in his Majesty's dominions. Another kind of illegal insurance is called *double insurance*, where the same person is to receive double satisfaction for the same loss, by reason of his having made two insurances upon the same thing. In such a case, the insured may upon the first action recover the whole sum insured from one set of the under-writers; and these shall stand in his place, for a contribution to be paid to them by the other set of insurers. For it is a fixed rule, that "a person insured more than once, shall receive only one satisfaction.

CHAP. VI.

Of Policies of Marine Insurance.

§ 1. Policy is an instrument signed by the insurer only, containing the terms of the agreement between the insurer and the insured. When the property insured is valued in the policy, the policy is called *valued*: otherwise, it is called *open*. A policy must necessarily have the following qualities: (1.) It must be duly stamped. (2.) It must specify the names of the persons insured, whether principal owners, consignors, &c. of the property so to be insured. (3.) The names of the underwriters, and the sums insured. (4.) The name of the ship, unless it is "upon any ship or ships." (5.) The nature of the property insured, whether ships, goods, &c. (6.) The place where the ship takes in her cargo, those at which she may touch and stay during her voyage, and that to which she is bound. (7.) The time when the risque shall begin and end. (8.) The various perils against which the insurance is made. (9.) the premium; and lastly, the exact date of the execution of the policy.

§ 2. No corporation, or persons acting in any society or partnership, except the Royal Exchange Assurance Office, and the London Assurance Office, may underwrite any policy of insurance on ships, goods, or merchandize, at sea, or going to sea; on pain of such contracts being void, and all sums underwritten therein, being forfeited. But any person, or number of persons, may underwrite policies of insurance, provided it be done, not *jointly*, or in a private firm, or partnership, but severally, in the nature of a private contract by each individual concerned in the insurance, signing the policy: each individual being liable only for the sum he has undertaken, and there being no joint responsibility.

§ 3. The most frequent objects of marine insurance are ships, and vessels; goods, and merchandize; freight, and bottomry bonds.

On a policy to insure a *ship and furniture*, this includes the provisions for the crew: but when the *ship* alone is insured, this does not extend to extraordinary wages paid to the seamen; or the provisions consumed, even in consequence of the ship having been unexpectedly detained in any port by some accident, a storm, or the like. In an insurance on a Greenland ship, “on the ship, tackle, and fur-

niture," this does not extend to lines and tackle used in the fishery, unless they are expressly mentioned.

The wages of seamen can in no case be insured. Seamen may, indeed, themselves, insure such goods as they purchase with the wages they receive abroad; but as for those wages, or any things or goods, which they are to receive in lieu of wages, at the end of the voyage, they cannot insure them. The captain may also insure goods which he has on board, or his share in the ship, if he is a part-owner: upon this principle also, the governor of a fort, in a foreign settlement, may, in time of war, insure the fort against capture by an enemy. The captain of a ship, who has, in time of war, taken an enemy's ship, may insure his prize, even before condemnation.

With respect to insurances upon *goods*, it may in general be laid down as a rule, that no insurance can be made on any species of goods and merchandize, intended to be imported or exported, contrary to the laws of this kingdom; or those of its dependances, or the law of nations. Such insurances are void, even where the insurer is apprised of the nature of the trade, and subject both parties to a penalty of £500. over and above other penalties. Either of the parties concerned in such insurance, who

shall inform against the other, shall be discharged of the penalties to which he had thus made himself liable; and shall have to his own use one half of the penalty, and the premium paid for such insurance. But this does not extend to make illegal or void insurances upon goods, the exportation, or importation of which, are forbidden by the laws of other nations: for the law of England pays no regard to the revenue-laws of other countries. But where a ship is seized for navigating contrary to the laws of another country, or for not paying customs, the underwriter shall not be answerable. An insurance upon goods, comprehends only such goods and merchandize as are merchantable, and part of the cargo; and not goods lashed on deck, the captain's clothes, or the ship's provisions, unless expressly mentioned in the policy.

A reasonable expectation of profit, accompanied by possession of the subject-matter of the insurance, is an insurable interest.

The freight or hire of the ship may be legally insured: but to enable the owner to recover for a loss, on policy on freight, it must appear that before the loss, the ship had actually begun to earn freight. It must be proved also that the owner of the ship is actually so, by his name being in the register: for freight

can be due only to the legal owner of the ship; and he only can insure it.

Bottomry and Respondentia may also be insured: but then they must be particularly expressed; and in this case, the lender alone has a right to be insured for the amount of the sum lent; and the borrower has an insurable interest in the ship or goods, to the amount of the surplus value above the sum lent.

§ 4. The time when the risk begins and ends, is determined in the common forms of policies, in the following manner: viz. “beginning the adventure upon the said ship, &c. from, and immediately following and so shall continue and endure, until the said ship, with her said tackle, &c. shall be arrived at and there hath moored at anchor twenty-four hours, in good safety.” When the insurance is upon goods only, then it runs: “beginning the adventure upon the said goods and merchandize, from, and immediately following the loading thereof, on board the said ship, and so shall continue, and endure, until the said ship, with the said goods and merchandize, whatsoever, shall be arrived at and the same, there safely landed.” If the insurance be *upon ship and goods*, “beginning the adventure upon the said goods and merchan-

dizes from, and immediately following the loading thereof, on board the said ship, or vessel, at and upon the said ship, or vessel, from, and immediately following and so shall continue, and endure, during her abode there, upon the said ship, &c. and further, until the said ship, or vessel, with all her ordnance, tackle, apparel, &c. and goods, and merchandizes whatsoever, shall be arrived at and upon the said ship or vessel, &c. until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandizes, until the same be there safely discharged and landed."

Thus it appears that the risk upon *the ship* ends after she is arrived at the intended port, and there has moored at anchor 24 hours in *good safety*, which means the *opportunity of unloading* and discharging. For a loss by seizure after the 24 hours, the insurers are not liable even though it should be the consequence of an act of barratry of the master during the voyage. But if after she has moored, an order to perform quarantine comes, or an embargo be laid, before the expiration of the 24 hours, and a loss happens in consequence of this order, embargo, or other accident, the insurers are liable. If a ship be insured "*from A to B,*" and before she breaks ground,

an accident happens to her, the insurers are not liable: otherwise it is if she is insured "*at and from A. to B.*" Where she is "*warranted to depart with convoy,*" she is considered as under insurance to the place of general rendezvous. "*At and from A. to Jamaica,*" means the first arrival of the ship at *any port* of Jamaica. But the outward risk on the goods continues till they are safely landed. What is an unnecessary or unreasonable delay in the landing of goods, is to be determined according to the usage of the trade. If goods are sent on shore by the ship's boat, the insurer is liable for their safety: otherwise, it is, if they are delivered from the ship, into a boat or vessel, by order of the owner of them.

Sometimes privateers on a cruise, ships engaged in the coasting trade, or in short voyages, are insured for a limited period of time: and in such case, the risk begins and ends with the term, wherever the ship may then happen to be; and though during that term she receives her death's wound, yet, if she survives the term, the insurer is not liable.

In general, the risk on the rigging, tackle, furniture, and provisions of the ship insured, continues no longer than they are attached to, or remain on board the ship. But, where it is necessary to put these articles on shore, during

a repair, and this is the usual practice in such cases, the risk continues on them while on shore; and if they are lost or damaged by any of the perils mentioned in the policy, the insurer is liable.

In an insurance upon freight, the risk does not begin till the goods are put on board. If the ship is prevented from sailing by an accident which has happened before any goods were shipped, the insured is not liable: but if part be shipped, and the rest ready to be shipped, the insured, upon a *valued* policy, may recover for the whole freight. So if the ship be lost on her voyage to the port where she is to take in her cargo, the insurer is liable for the whole freight.

§ 5. If no risk is run, no premium is due, and it shall be returned, if already paid. Where the voyage is divisible into several distinct risks, and which are, in effect, several distinct voyages, the premium may be apportioned according to the several risks; and in case one or more of these risks should not have been commenced, the proportion of the premium applicable to those parts, shall be returned. But upon an insurance *at and from* a place, an usage should be proved to warrant a division of the risk. Where the policy is void on ac-

count of fraud committed by the insurer, he shall return the premium: but he shall not, if it is void on account of actual fraud committed by the insured or his agent. If the contract be void on account of a non-compliance with any warranty, express, or implied, as the risk never commenced, there shall be a return, if there be no fraud imputable to the insured.

Where it is agreed that part of the premium shall be returned upon the performance of some stipulation, as for ex. "to return 8 *per cent.* if the ship sails with convoy and arrives," this shall be returned, though the insurer be obliged to pay a partial loss on the goods. The words "and arrives," mean only that the *ship*, not the goods, shall arrive.

Where the insured thinks proper to put a stop to the adventure, or the contract is void for some radical defect, unknown to the insurer at the time of signing the policy, the insurer is allowed to retain one half *per cent.* out of the premium.

CHAP. VII.

Of the Perils and Losses against which Ships and Goods are commonly insured.

§ 1. The Perils and Losses against which underwriters commonly insure ships and goods, as specified in the usual form of policies, are :

1. The perils of the sea ; that is, all accidents happening to a ship, without the intervention of human agency, and which human prudence could not foresee, or avoid, nor human strength resist ; such as may be occasioned by the violence of the waves, by storms, thunder, or lightning, stranding of the ship, driving against rocks, and the like. Damages occasioned by one ship *running foul* of another, whether the effect of mere accident, or of the negligence or misconduct of the master or mariners of the ship insured, (in which case it amounts to barratry) are losses within the policy.

A loss occasioned by *fire* which is merely accidental, or when a ship is burnt by order of the state where she happens to be, to prevent infection ; or where a ship is attacked by an enemy, and the master finding it impossible to defend her, leaves her, and sets her on fire, to

prevent her falling into the enemy's hands, is also a loss within the policy. So are those that happen by *pirates*, rovers, and thieves.

2. Men of war, enemies, arrests, restraints, and detentions of all kings, princes, and people, of what nation or condition soever. This includes *captures* by an enemy, *detention* by any prince or government, whether enemy or not. Whether such detention arises from an embargo, or from a seizure for the purpose of serving the power, seizing, in an expedition, or of being searched for an enemy's property, or otherwise, the insurers are liable: but not, if it arises from the insured navigating against the laws of countries, or from non-payment of customs, unless this was done by the master, *without the privity* of the insured, in which case it amounts to barratry. The detention meant in this part of the policy, is by a nation, a government, the ruling or supreme power of the country. If a ship is forcibly seized by a tumultuous rabble, this is a loss by *pirates*. But if a mob board a ship and run her on shore, whereby goods are lost, this is a loss by *stranding*. And if a British ship be arrested or seized by the authority of the British government, from state-necessity, this is a detention for which the insurer is liable. But "capture and detention of princes" shall not extend

to secure the property of an *enemy*, or to cover any loss on a *contraband* adventure.

3. **Barratry of the master and mariners.** This is an act of fraud, or gross neglect, committed by the master or mariners of a ship, to their own advantage, to the prejudice of the owners, and contrary to the instructions, or without the knowledge and consent of the owners. The underwriters are liable for all losses happening in consequence of barratry, whether such loss happens in the very act of barratry, or at any time after, during the insured voyage: but not, if it happens after the conclusion of the insured voyage, even though it be the undoubted consequence of the act of barratry.

4. **Jettisons, and all charges incurred for the preservation and recovery of the property insured.** In case of imminent danger, where it appears that the sacrifice is indispensably necessary for the preservation of the ship and cargo, the captain may, upon as much deliberation and consultation with his officers, as the occasion will admit of, throw overboard so much of the cargo as he shall see to be necessary for the common good and safety: he may also cut his masts as well as the mooring cables, leaving behind the cables and anchors, to save the ship and her lading. And whatever

the master of a ship in distress does for the preservation of the ship and cargo, *voluntarily* and *deliberately*, by jettison or otherwise, and whatever damage happens in consequence of it, as goods being damaged by wet, &c. from the jettison of those thrown overboard, and all losses sustained, and expences incurred for that purpose, are brought into a *general average*, in which all who are concerned in the ship, freight and cargo, are to bear a proportionable part of the loss thus incurred, which is to be made good to the respective owners by the underwriter, as far as his proportion of the insurance extends. If the jettison does not save the ship, there shall be no contribution of the goods which may happen to be saved. But if the ship, being saved by the jettison, and continuing her voyage, is afterwards lost, the goods preserved, if there are any, shall contribute towards the loss occasioned by such jettison. If goods put into lighters to enable the ships to get up a river be lost, the rest shall contribute if she arrives safe: but if the ship be lost, the goods in the lighters shall not contribute. The insurer is also liable to make good all expences incurred by the insured for the preservation and recovery of the property insured; as, for example; any damage sustained in defending the ship, against pirates, or ene-

mies, and expences attending the care of the wounded, all charges incurred in consequence of an extraordinary quarantine, &c. all these charges may be brought into a general average, and must be reimbursed by the underwriters in proportion to the sum insured. They are also liable to pay to the insured the expences of *salvage*, or an allowance made for saving either ship, or goods, or both,—from any of the dangers insured against, in cases of wreck and recapture. In cases of wreck, the salvage is not fixed; but in case of disagreement, it is to be settled by three neighbouring justices, and paid by the master to the persons concerned in the preservation of the ships or cargo, within forty days after the service performed. The salvage to be allowed in cases of re-capture is fixed by statute; to one eighth, if by a king's ship; one sixth if by a privateer or other vessel; and if by both, it is left to the discretion of the court of admiralty.

5. All other perils, losses or misfortunes, that shall come to the hurt or damage of the said goods, &c. and ship, or any part thereof. But it is generally provided at the bottom of the policy: 1. That corn, fish, salt, flour, and seed, are warranted free from *all average*. 2. That sugar, tobacco, hemp, flax, hides, and skins, are warranted free from average, under

five pounds "*per cent*:" and 3. that all other goods, and also the ship and freight are warranted free from average, under three pounds *per cent*. unless, in any of these three cases, the averages be *general*, or the ship be stranded. These words are an exception, not a condition.

§ 2. The losses happening in consequence of the perils, &c. thus insured against, may be either partial or total.

A *partial* loss means a damage which the ship or goods, may have received in the course of the voyage, so that the whole or the greater part of it, has notwithstanding arrived in port. The insurer is liable to all losses arising from the ship being stranded, and in all cases where there is a general average. But all other partial losses under the respective rates abovementioned, are excluded.

A *total* loss is not only when the property insured is irrecoverably gone, but also when it is in such a condition, in consequence of some of the perils insured against, as to be of little or no value to the assured, or that the voyage is intirely lost. In these cases the insured may *abandon*, and call upon the underwriters for the whole amount of his insurance. A ship not heard of within a reasonable time, is presumed to have *foundered* at sea. In cases of

capture by enemies, or even of arrest, detention, or embargo by a prince not an enemy, the assured may abandon as soon as he hears of it, and while the capture, or total loss occasioned thereby continues. In many cases where the salvage is very high, as one half, for example; the expences very great, the object of the voyage defeated, the assured may abandon; but he must give notice of it to the underwriters within a reasonable time, as soon as he hears of the loss; otherwise he cannot recover afterwards as for a total loss. It is to be observed that by the exception in the policy there cannot be a *total* loss of corn, fish, salt, fruit, flour, or seed, but by the absolute destruction of such articles. So long as the thing exists, however damaged, it cannot be said to be lost.

After abandonment, the insurer stands exactly in the place of the assured, and shall have all the advantages of the salvage. If after the loss is paid, compensation be made to the owner, this shall go to the insurer. If the ship, after abandonment, arrive safe, the insurer shall have all the profit of the voyage; and the assured is entitled to nothing except for so much as he was insured: but if after payment for a *total* loss, it afterwards turns out to be only a *partial* loss, the insurer shall

not recover back the money so paid to the assured.

An abandonment once properly made, upon a sufficient ground, and accepted by the insurers, is binding upon both parties, nor can it be revoked but by mutual consent. But if it appears to have been made upon a partial, and not a total loss, or upon information that proves false or unfounded, it will be void.

In case of shipwreck, or other misfortune, the effects that are saved continue, till abandonment, the property of the owner, whose right to abandon cannot be prejudiced by any act of the captain, until he has been informed of what has happened. It is the peculiar duty of the captain, who has an implied authority, not only from the insured, but also from all others interested in the ship and cargo, to do whatever he thinks most conducive to the general interest of all concerned; and they are all bound by his acts; the insured, if he neglects to abandon when he has it in his power so to do; and the insurers, if, after notice of abandonment, they suffer the captain to continue in the management. The sailors likewise are bound to save and preserve the goods to the best of their power; and while they are so employed, they are entitled to wages, so far at least as what is saved will allow: but if

they refuse to assist in this, they shall have neither wages nor reward.

When the loss is admitted to be *total*, and the policy is a *valued* one, the assured shall receive the whole sum insured, subject to such deductions as may have been agreed by the policy to be made in case of loss. And a proof that the goods valued were on board is sufficient. But upon an *open* policy, he must also prove the value of them, which value, not exceeding the sum insured, is the sum which the insurers are bound to pay.

In the case of a *partial* loss, the like inquiry is to be made into the amount of the loss, whether the policy be valued or open. A partial loss upon either ship or goods, is that proportion of the prime cost, which is equal to the diminution in value, occasioned by the damages. An insurer is never to be involved in the rise or fall of the market; and no speculation of the assured can increase or diminish the amount of the loss.

When the quantity of damage sustained, and the amount which the underwriter is liable to pay, are settled, it is usual for the underwriter to endorse on the policy: "Adjusted this loss at —*per cent.*" And after an adjustment has been signed by the underwriter, the assured, in case of refusal of payment, has no occasion to go into a proof of his loss, or any of the cir-

cumstances respecting it; unless fraud were used in obtaining the adjustment, or there had been some misconception of the law or fact upon which it was made.

CHAP. VIII.

Of the various Circumstances and Acts which may vacate a Policy:



A policy of marine insurance is made void, 1. By fraud, or the least shadow of it; whether it be the act of the party or of his agent. It is sufficient that the contract be founded on *deception*, or that the conditions of it be not strictly complied with, to make it void. Both parties should know exactly and disclose to each other, every material circumstance relating to their agreement: and any false allegation, any undue concealment, (even though not the effect of intention, but of negligence or mistake only) of such circumstances as may naturally be supposed likely to influence the determination of either party; or a misrepresentation, will, in this case, operate as frauds, and vacate the policy. 2. By an implied warranty every ship insured must be "tight, staunch, strong and sea worthy," at least at the time of sailing: she must be furnished

with every thing necessary for the purpose of safe navigation: she must have a captain of *competent* skill, a sufficient crew, and a pilot on board, wherever it is customary to employ one. These are implied conditions without which the policy cannot stand. The policy will also be vacated, if the condition of the ship be altered; or the ship itself changed, without the consent of the underwriters; or if the property insured be removed to another ship, during the course of the voyage, without such consent, or without *unavoidable necessity*. But the ship may not only be changed from necessity, but the proceeds of goods saved from shipwreck may be invested in new goods, and the risk will continue on these in a new ship: and in this case, the insurers shall pay every expence whatever, which is the necessary consequence of changing the ship, so that the assured may at the conclusion of the voyage, be exactly in the same situation as if no such change had taken place.

A ship insured must be navigated not only according to the law of nations, but also according to the particular treaties between the country to which she belongs, and other countries. But a policy underwritten by an insurer, with full knowledge that it is meant to protect a smuggling trade with a foreign country,

is a fair contract as between the parties: for no country pays attention to the revenue-laws of another. Otherwise, the ship insured being seized and condemned by process of law, there is no remedy upon the policy.

Sailing during war without convoy, or wilfully deserting, or separating from convoy, makes all policies of insurance upon ship, goods, and freight, null and void, so far as those concerned therein, have been instrumental in, or privy to the same. And all persons concerned in making, or procuring to be made, any insurance, for any ship, &c. to sail without convoy, shall forfeit £200. This, however, does not extend to any vessel not required to be registered, or for which a licence shall be granted to sail without convoy; or proceeding with due diligence to join convoy, bond having been given; or in the service of the East India, or Hudson's Bay Companies; or coasting in England or Ireland; or any ship, &c. employed in the Newfoundland fishery, (except from St. John's) being wholly laden with the produce of Newfoundland; or the coast of Labrador.

3. The least *deviation*, or *voluntary* departure from the usual and regular track of the voyage insured, will vacate any policy upon ships, goods, and freight; or either of them,

the very moment such deviation begins, whether it happened with or without the privity and consent of the assured: and the underwriters are discharged from any loss that may happen *subsequent* to the deviation, but not from losses which may have happened before. But a mere *intention* to deviate will not avoid the policy, unless, it is made evident by the ship's papers. To put into an intermediate port not within the terms of the policy, or the common usage of the voyage insured,—or to stay in a port within the terms of the policy, &c. an unusual time, is a deviation. A liberty “to touch and stay at—” does not extend to the breaking bulk; and, if several places are named, the ship shall go to those places in the order in which they are named. “At and from A, to B, with liberty to call at any one port in C; means any port lying in the fair and usual course of the voyage.”

But a ship may deviate from the regular course of the voyage insured, without vacating the policy.

1. To join convoy at the usual place of rendezvous.

2. To avoid an enemy, or a storm, or having received material damage in her voyage, which cannot be repaired at sea, to refit at the nearest place.

3. When the master is forced by the crew to go out of the course, it is neither deviation nor barratry. And in all cases where an insured ship quits the course described in the policy from necessity, she must pursue the new voyage of necessity in the direct course, and in the shortest time; otherwise the policy will be discharged.

4. A warranty must be most *strictly* and *literally* performed. To constitute a warranty it is necessary that the condition or contingency that such a thing shall be done, or shall happen, be inserted in the policy, or written on the margin, or at the foot of it. But if a policy refers to certain printed proposals, these will be considered as part of the policy. And unless a warranty be literally performed, the policy will be void, *ipso facto*. In a warranty "lost or not lost, warranted well this ninth day of December, 1784," it was held that it was sufficiently complied with, if the ship were well at any time that day; though the policy was underwritten between the hours of one and three in the afternoon of that day; it was proved that the ship was well at six o'clock in the morning, and was lost at eight o'clock in the same morning. When the warranty is *neutral property*, it is sufficient if it was so when the risk commenced: but, if such a war-

ranty is false, the policy is void, and the assured shall not recover, even though the loss should not happen in consequence of the property not being neutral.

On a warranty "to sail *on* or *before* a certain day." If a ship once breaks ground, and is fairly under sail on the day, with intent to proceed on her voyage, the warranty is complied with, though she should be obliged to put back instantly, by a storm, an embargo, or an enemy, before she gets out of the harbour. But if a ship warranted "to sail on a certain day," does not sail on that day, though she should be delayed for the best and wisest reasons, or if warranted "to sail *after* a certain day," she sails before that day, the policy is void.

"Warranted to depart with convoy" means, 1. that the ship will leave the port and sail with convoy, without any default in the master. 2. That she shall depart with convoy from the place where convoy is *usually* had: and from the port where she is, to such usual place of rendezvous, she is protected by the policy. 3. That she shall keep with convoy during the whole voyage. But if, without any the least default or neglect of the master, the ship, by stress of weather, loses convoy and is taken, the policy is safe. Nor can this species of war-

ranty, in any case, be construed in opposition to the general usage of trade, or the regulations or orders made by government. But if a ship, separated from the convoy, neglects to use every endeavours to join it again as soon as she is able, the policy will be void.

Sailing instructions from the commander of the convoy, must be obtained to fulfil the warranty of sailing with convoy. But if the master, by tempestuous weather, or other unavoidable circumstances, is absolutely prevented from obtaining them, after having honestly done every thing in his power for that purpose, it is a sailing with convoy within the terms of the warranty, provided he takes the earliest opportunity to obtain them.

The convoy meant by this warranty is a naval force under the command of a person appointed by government for the protection of merchant-ships and others, during the whole voyage, or such part of it as is known to require such protection. Sailing with any other force, than the convoy regularly appointed, will not *satisfy* the warranty.

CHAP. IX.

Of Contracts of Affreightment.

§ 1. The word *Freight*, properly, means the money payable for the hire of a ship; or the carriage of goods by sea. Ships are freighted either by the ton, or by the great: and with respect to time, at so much *per* month; or at a certain sum for the whole voyage. And this may be done by virtue of two distinct species of contract: the first of which, is the contract by which an entire ship, or at least the principal part of it, is let for a determined voyage to one or more places: this is usually done by a written instrument, signed and sealed, and called a *charter-party*, and which is executed between the owners and merchant, if the ship is let at the place of the owners' residence; or, otherwise, between the master, in behalf of himself and owners, or himself and the merchant; or between them all. The common law always construes charter-parties, as near as may be, according to the intention of the parties. If the master of a ship enters into a charter-party "for himself and owners," he may release the freighters, without advising with the owners. But if the owners let out to freight such a

ship "whereof A. B. is master," and he only covenants at the bottom, and subscribes his name, his release will not bind or affect the owners of the ship, even though he seals and delivers the deed: their release on the other hand shall include the master. The merchant who has so hired a ship, may lade it either with his own goods, or if he has not sufficient, may take in goods of other persons; or he may wholly underlet the ship to another. The charter-party usually expresses the burthen of the ship, and like every other deed, takes its effect and operation from the day on which it is *sealed and delivered*, and not from its date, if different from that of the delivery. As by a short delay the season or object of a voyage may be lost; if either party is not ready by the time appointed for the loading of the ship, the other may seek another ship or cargo, and bring an action for the damages he has sustained. But in charter-parties there is commonly an allowance promised to the captain, in case he should be detained, by default of the freighter, which is to be paid daily as it becomes due; and at the expiration of the time limited, the master, having duly made his protests, is at liberty to proceed. In a clause of demurrage it is better to mention *working or running* days expressly. The payment of de-

murrage stipulated to be made while a ship is waiting for *convoy*, ceases as soon as the *convoy* is ready to depart; demurrage while waiting for a *cargo*, ceases when the ship is fully laden, and the necessary clearances obtained, although the ship may in either case happen to be detained by adverse winds; and if she has once set sail and departed, but is afterwards driven back into port, the claim of demurrage is not thereby revived. A charter-party is the evidence of the contract for the conveyance of the goods. When goods are put on board in pursuance of a charter-party, the master is to sign for *them* bills of lading which become the evidence of the shipping of those goods.

§ 2. The second species of contract by virtue of which a trading ship is employed, is that by which a master or owners of a ship destined to a particular voyage, engage separately with a number of persons unconnected with each other, to convey their respective goods to the place of the ship's destination: a ship employed in this manner is commonly called a *general* ship. This contract, though made usually with the master, and not with the owners, still binds both him and them separately. Notice is commonly given when a ship is intended to be thus employed, by printed papers and cards; and

whatever stipulation is mentioned in such advertisements, become part of the contract with the merchant who lades goods in pursuance thereof, though it be not mentioned in the bills of lading.

When goods are sent on board the ship, the master, or person on board acting for him, usually gives a receipt for them, and the master afterwards signs and delivers to the merchant two, and sometimes more, parts of a bill of lading, which operate as charter-parties, and as receipts of the goods at the same time ; and from the time of signing the bill of lading, the master becomes responsible for the goods. The bills of lading adopted by the ship-owners of London, about twelve years ago, express that the goods shall be delivered in the like order and condition, at the place agreed upon, " the act of God, the king's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, save risk of boats, so far as ships are liable thereto, excepted." The common form says, only " the dangers of the seas excepted."

§ 3. Contracts made for the carriage of goods in merchantships may be dissolved, 1. by the mutual consent of the parties, in which

case, the *deed* should be delivered up and cancelled. 2. By the breaking out of war, or hostilities, or prohibition of commerce between the state to which the ship or cargo belongs, and that to which they are destined: but not if the war happens between the state to which they belong, and *any other* nation. In case of a prohibition from the state to which they belong, to export certain goods which compose, or, are to compose the cargo, the merchant is discharged; but he is not if having hired a ship to go to a foreign port to take in a lading there, the government of that country prohibits the exportation of those articles. But, if upon the ship's arrival there, the master is informed that the merchant is unable to furnish the lading, no demurrage shall be allowed on any account. Nor are such contracts dissolved by an embargo, imposed by the state where the ship happens to be. But, in the case of an embargo imposed by the country of which the merchant is a subject, *in the nature of reprisals and partial hostility* against the country to which the ship belongs, the merchant is discharged, and may put an end to the contract if the object of the voyage is likely to be defeated by the delay.

When any goods are put on board without any agreement for the freight, the master shall have freight according to custom.

§ 4. The merchant must lade no prohibited or uncustomed goods, by which the ship may be subjected to detention or forfeiture. If he declines to lade her according to agreement, or at any time withdraws his goods from the ship before the expiration of the voyage, or having hired a ship to go to a distant port, and engaged to furnish a cargo homeward, fails to do so, whereby the ship is forced to return empty, the compensation, in case of disagreement, shall be ascertained by a jury.

§ 5. In all cases, the cargo is answerable for the freight, and the master may keep the goods till it is paid: but, if once he parts with the possession of them, he cannot retake them. The contract for the conveyance of merchandize, is, in its nature, an entire contract; and, unless it be completely performed by the delivery of the goods at the place of destination, the merchant is subject to no payment whatever. If this is effected, the master shall have his freight, notwithstanding any interruption of the regular course of the voyage, happening without the fault of the owner, as in the case of capture and recapture: but in such a case there will be a deduction for salvage. If freight is contracted for the *lading*, of living animals, cattle, or slaves, and some die during the voyage, without any fault or neglect of the per-

sons belonging to the ship, freight shall be paid as well for the dead as for the living: it is the same where there is no express agreement whether freight is to be paid for the *lading*, or for the *transporting* them. But if the contract be for the *transporting* them, or so much *for every* head, or passenger, then no freight is due for those that die on the voyage. If a woman be delivered during the voyage, no freight is due for the infant.

When the stipulated payment is a gross sum for the whole voyage, for an entire ship, or entire part of it, the gross sum will be payable, although the merchant has not fully laden the ship. If it is at so much for *every ton*, for the whole voyage, payment shall be according to the number of tons which the ship is proved capable of containing, unless the merchant has agreed to pay so much for every ton of goods which *he shall lade* on board, and has not covenanted to furnish a complete lading: in this case it shall be only according to the quantity of the goods actually shipped. If the merchant engage to pay a certain sum for *every month*, or week or other portion of the voyage, the risk of the duration falls upon him; and if no time be fixed for the commencement of the computation, it will begin from the day, on which the ship breaks ground, and commences

the voyage, and will continue during the whole course of the voyage, and during all unavoidable delays not occasioned by capture, or by such circumstances as give rise to general average. In all mercantile contracts a month is to be understood of a *calendar*, not a lunar month. When a ship is freighted for so many tons or *thereabouts*, this is commonly understood to be within five tons.

In case of a jettison, the ship afterwards reaching the place of her destination, the value of the goods thrown overboard is to be answered to the merchant by way of general average, and the value of the freight thereof, allowed to the owner. If the master be compelled, for victuals or repairs, to sell part of the cargo, the owners must pay to the merchant the price which the goods would have fetched at the place of destination, and shall be paid the full freight, as if they had been conveyed thither. If in time of war, a neutral vessel carrying goods belonging to the subjects of one of the belligerent powers, be taken by those of the other, in which case the *goods* are lawful prize, but the *ship* is to be restored, the captor pays the whole freight; unless the goods are contraband according to the law of nations, or the ship be employed in bringing the produce of the colony of a belligerent power to the mo-

ther-country, or in the coasting trade in the same country, or in carrying the goods, even of neutrals, directly from the mother-country to its colony, or from one hostile nation to the colony of another hostile nation in alliance with it, if these trades were not, in time of peace, open to the neutral nation, whose ship is so employed. But if a ship be employed in carrying the goods of an enemy from a port of one nation hostile to the captors, to a port of another nation equally hostile, freight shall be allowed to the owners of such ship, if neutral.

If goods have been so damaged during the course of the voyage. as to be of no value to the merchant, or to fall short, in value, of the amount of the freight, the whole freight shall still be paid; if such deterioration proceeded merely from an intrinsic principle of decay naturally inherent in the commodity itself, and if the goods were brought in specie to the place of destination; if they were not, the merchant may *abandon all*, and then he shall be excused freight. But if it proceeded from the fault of the master or mariners, the merchant is entitled to a compensation, and of course he is not liable for the freight, except by way of deduction from the amount of the compensation. In a total loss literally so called no

freight is due: in case of a loss, total in its nature, with salvage, the merchant may either take the part saved, or abandon.

A *part* only of the stipulated sum for freight may be claimed: 1. When the ship has performed the whole voyage, but as brought a part only of the merchant's goods in safety to the place of destination. In the case of a general ship, or of a ship chartered for freight to be paid according to the quantity of the goods, freight is due for so much as shall be delivered. Otherwise, the determination must depend upon the nature of the contract. 2. When the ship has by reason of any disaster not performed the whole voyage, but the master has delivered the goods to the merchant, at a place short of the port of destination, freight shall be paid according to the proportion of the voyage performed. If a freighted ship becomes accidentally disabled on its voyage without the fault of the master, the master has his option of two things; either to refit it, if it can be done within convenient time, or to hire another ship, to carry the goods to the port of delivery. If the merchant disagrees to this, and will not let him do so, the master will be entitled to the *whole* freight of the *full* voyage. Where the whole is an

entire voyage, as from A. with a cargo to B. and back again to A. with another cargo ; the ship arrives in safety at B. but is lost in her return to A. no freight is due, though the contract be at so much *per month*. But, if the outward and homeward voyages are distinct, a proportionable freight will be due for the time employed in the outward voyage. This is to be determined by the express terms of the charter-party, which should be framed in such a manner as to express the real meaning of the contracting parties without ambiguity.

The general rule in the construction of this, as well as other mercantile instruments, is, that the construction should be liberal, (though not inconsistent with their plain and obvious meaning,) agreeable to the real intention of the parties ; and conformable to the usage of trade in general ; and of the particular trade to which the contract relates.

In bills of lading, the master undertakes to deliver the goods upon the payment of freight, with *primage* and *average* accustomed. *Primage* is a small payment to the master for his care and trouble, which he is to receive to his own use, unless he has otherwise agreed with the owners. *Average*, denotes here, several petty charges, which are to be borne partly


by the ship, and partly by the cargo ; such as the expence of towing, beaconage, &c. Primage and average depend entirely upon usage ; and are often commuted for a specific sum ; or a certain per centage on the freight.

PART II.

LAWS OF NAVIGATION.

CHAP. I.

General Rules for the Government and Protection of the Naval Trade.



§ 1. **ALL** persons employed in or about the customs, are, at their admission, to be sworn before two justices, for the faithful execution of their office, and that they will not take, or receive, any reward or gratuity, directly or indirectly, for any thing belonging to their office, other than such salaries and fees allowed by law; which oath is to be certified to the next sessions, and kept among the records. Customers, collectors, or comptrollers, concealing customs duly entered and paid, shall forfeit treble value of the merchandize so customed, and shall also make fine and ransom to the king. Officers of the revenue making collusive seizures, agreeing not to seize any ships or goods, taking any bribe, or conniving at any false entry, shall forfeit £500, and be incapable of serving his Majesty; and

the person offering such bribe, whether received or not, shall forfeit £500.

Masters of vessels are to bring to at the usual places, and to receive the revenue-officers on board, for the purposes of the cargo being examined. Such officers shall, at all times, have free access to the cabin, and every other part or place in any ship or vessel. They may require to be opened any place in the cabin, or elsewhere, in the vessel, or any boxes, chests, &c. which may happen to be locked, or in any manner fastened; and on refusal, they may open the same in the best manner they can. Persons obstructing officers of the customs, in entering or searching ships, &c. shall forfeit £100. If such officer is wounded, or beaten on board in the execution of his duty, the offender shall be transported. Shooting at any vessel or boat belonging to the navy or customs, or any such officer in the execution of his duty, or dangerously wounding him, makes the offender a felon without benefit of clergy. Persons opposing, or assaulting any such officer on his duty, shall be punished by transportation for 7 years; or hard labour on the river Thames, not exceeding 3 years: and they shall not be bailed in less than £200, and two sureties in £100 each. In case any ship, &c. liable to seizure or examination by law,

shall not bring to, on being required so to do, or on being chased by any cutter, or other vessel belonging to the navy, customs, or excise, having the proper pendant and ensign hoisted, and signal made by firing a gun, the commander may shoot into them; and if any person is wounded or killed thereby, and he be on that account brought before a justice, he shall be admitted to bail. Commissioned officers of the navy and army, may, as well as the officers of the customs and revenue, seize any goods, ships, &c. subject to forfeiture, by any act in force, for any offence against the revenue. Such seizure shall be deposited in the custody of the proper officer of the customs, at the nearest custom-house; or of the proper officer of excise, according to the nature of the offence. The certificate of the court, upon the record, that there was *a probable cause of seizure*, will discharge the persons who made the seizure from all damages and costs of suit though a verdict is given for the claimer.

§ 2. The principal causes of forfeiture of ships and cargoes, are the following: viz.

1. Goods uncustomed, or prohibited, being unshipped with intention to be landed, or being discharged out of a ship into another, upon a

sale, are forfeited with the ships, vessels, carriages, boats, &c. Persons concerned, whether principal offenders or aiders, or receivers, forfeit treble the value of such goods; half to him who shall seize or sue for the same. If goods are brought to a merchant to a port, and there part of the cargo be sold, but not put on land, they must still pay the customs.

2. All ships or vessels belonging to any of his Majesty's subjects, and armed for resistance, (that is, having on board more than two carriage-guns of the calibre not exceeding four pounds; and small arms not exceeding two musquets for every ten men,) which shall be found within certain limits of the British dominions in Europe, shall be forfeited; together with all their guns, tackle, &c. and cargo, if any. But this shall not extend, 1. To any ship or vessel on a voyage from any part of America, or the East or West Indies, Africa, or the Mediterranean; 2. nor to any ship, &c. in the service of the customs; 3. nor to any vessel duly licensed by the Admiralty, on account of her built; or such arms as the licence shall specify, which licence is to be produced to the collector of any port at which she shall arrive: 4. nor to any vessel having on board any arms or ammunition which have been regularly entered and cleared at any custom-

house in any of his Majesty's dominions, and are regularly stowed in the hold; or put on board for the defence of such vessels by licence from the Admiralty, on account of such arms or ammunition.

4. A British subject cannot, without the king's licence trade with the enemy, on pain of forfeiting the goods. And the neutral bottom gives, in no case, any sort of protection to a cargo otherwise liable to confiscation. A neutral vessel was laden with goods purchased in an enemy's country, on account of British merchants, and bound to a British port: the cargo was condemned, and the master was allowed his freight and expences. A British ship, ostensibly transferred to a Dane, was taken trading with the enemy, and condemned with her cargo. (in 1799.) Every ship, &c. fitted out with a design to trade with, supply, or correspond with any pirate, and all goods put on board the same for that purpose, shall be forfeited.

5. If any goods or merchandize shall be imported, or exported; or carried coastwise in any vessel not navigated according to law, viz. by a master; and *in time of peace*, three fourths, at least; and *in time of war*, one fourth, at least, of the mariners; being natural born, or naturalized subjects of his Ma-

jury, at all times; sudden death, and hazard, and casualty of war and seas excepted; in case of any ship or vessel which, by law, is required to be registered as a British ship or vessel; such ship or vessel, with all her guns, furniture, &c.; and all the goods on board the same, shall be forfeited.

6. Any ship or vessel required by law to be registered, which shall depart from the port to proceed to sea, for any purpose whatever, without having obtained a certificate of registry, shall be subject to forfeiture, with all her guns, furniture, &c. This article shall be explained more fully in the following chapter.

§ 3. If any owner, or master of any ship, &c. or any mariner belonging to the same, shall wilfully cast away, or otherwise destroy such ship, &c.; or in any manner counsel, direct or procure the same to be done, and the same be accordingly done, with intent thereby, wilfully and maliciously to prejudice any underwriter, or any merchant that shall load goods thereon, or any owner of such ship, he shall suffer as a felon without benefit of clergy. The same punishment is inflicted on those who shall plunder or destroy goods, of ships in distress, wrecked, or stranded, or cast on

shore; or shall beat or wound persons endeavouring to save their lives from such ships; or shall put out any false lights, with intent to bring any vessel into danger; or who shall make or assist in making any hole in any part of a ship in distress, steal any pump from the same, or wilfully do any thing tending to the immediate destruction of such ship or vessel:— and also on those who shall steal any goods of the value of 40s. in any ship, barge, or other vessel, or craft, upon any navigable river, or in any port of entry and discharge, or any creek belonging thereto, from or off any wharf or key adjacent to such river or port.

If there shall be cast out of any vessel being within any haven, road, channel, or navigable river, any *ballast* or rubbish, but only on the land *where the tide never comes*, the master or person acting as such shall be adjudged the offender, and forfeit not exceeding £5, nor less than 50s. half to the person who shall sue.

Where any vessel has been sunk, stranded, or run ashore in any harbour, channel, or navigable river, or been brought in and permitted to remain there in a shattered condition, and there is no person to take care of the same; or else the owner or master begins to take down or carry away any of the rigging or tackle; any one justice shall on information thereof, sum-

mon the owner or person having the command of her, or issue his warrant against him; and, if such person does not within five days give satisfactory security to clear the harbour of such vessel or wreck and every part thereof, and to pay all necessary charges, then the justice, (having immediately on receiving the information, and on conviction, issued his warrant for seizing and removing such vessel, and also the rigging and tackle thereof;) shall cause the hulk and tackle to be sold, and with the produce, shall pay the charges of clearing the place where the vessel shall lie, &c.

Where a ship or its cargo is injured by another ship, by mere misfortune and without fault in the persons belonging to either ship, the owners of the ship or cargo injured must bear their own loss. Such a misfortune is considered as a peril of the sea: otherwise, an action will lie against the master of either ship to whom negligence or misconduct is imputable, for the loss he has occasioned. If a vessel is injured by striking against the anchor of another, which anchor lay under water, and without a buoy, the owners thereof are responsible for the injury: for every anchor ought to have a buoy fastened to it.

CHAP. II.

Of Ships' Registers.

§ 1. All ships and vessels having a deck or being of the burthen of fifteen tons, or upwards, belonging to any of his Majesty's subjects in any part of his dominions, must be registered, and furnished with a certificate of such registry from the collector and comptroller of the customs of the port to which she belongs, if in Great Britain, Ireland, or the Isle of Man; or from the governor, commander in chief, or principal officers of the customs, if in Guernsey, Jersey, or the plantations. This is not to extend to render a register necessary for any vessel not exceeding thirty tons burthen, and not having a whole or fixed deck, and being employed solely in the Newfoundland fishery, or on the banks or shores of Quebec, Nova Scotia, or New Brunswick, adjacent to the gulph of St. Lawrence, and to the north of cape Canso, or in the islands within the same, or in trading coastwise within the said limits. Vessels built in the plantations on account of owners residing in his Majesty's European dominions, and which ought to be registered, are to be registered there, by the gover-

nor and others duly authorized, the husband or principal agents of such vessels taking the oaths required: such certificates shall be of full force until such time as the vessels shall arrive at some port in his Majesty's European dominions, where they must be registered *de novo*, upon the oaths of the respective owners, as in the case of ships built at home.

§ 2. Previous to registry being made, 1. Oath must be made and subscribed by the owners, of the name and description of the vessel, the name of the master, and of every part-owner, with other particulars tending to prove them to be subjects of his Majesty, and that no *foreigner*, directly or indirectly, has any interest in the ship. 2. A certificate under the hand of the builder must be produced, of the denomination, time and place of building, tonnage, &c. of such ship. 3. A survey and admeasurement must be made by one or more persons appointed by those authorized to make registry, according to the modes prescribed by the statutes: And lastly, a bond must be given, in a penalty varying in proportion to the burthen of the ship, as a security that the certificate shall be used solely for the service of the ship for which it is granted; and, in case of the loss, capture or destruction of the ship, or

of the transfer of any part of it to a *foreigner*, be delivered up to the persons authorized by law to receive it, as well as the *Mediterranean pass*, if any was granted for that ship.

§ 3. Where the *master* of the ship is *changed*, such change must be endorsed on the certificate by the person authorized to make registry at the port where such change takes place, and the new master must give a fresh bond. If any registered *ship* is afterwards *altered* in form or burthen, she must be registered anew, as soon as she arrives at any port where she may be registered. The *name* by which a ship has been registered, must never be changed, and must be painted, with the name of the port to which she belongs, in a conspicuous manner on the stern of the ship; and, also with the name of the master, on the stern of every boat belonging to her.

Such certificate must, under the penalty of £100, be produced, upon demand, to the principal officers of every port in his Majesty's dominions; and to the British consul, or chief British officer in any foreign port. If it happens to be lost or mislaid, a new register and certificate shall be granted on certain conditions expressed in the statutes. And on complaint on oath by the owner or any of the own-

ers of the ship, or by the major part of the other owners, if the master is a part-owner, that the master maliciously detains and refuses to deliver up such certificate, one justice may, by warrant, cause such master to be brought before him; and on conviction such master shall forfeit £100; or be committed to prison not less than six months, nor more than twelve. If the certificate cannot be found in virtue of a search warrant; upon a certificate from such justice, a new registry shall be made. Counterfeiting, erasing, or falsifying certificates of registry, or making use of any certificate so counterfeited, &c. subjects the offender to a penalty of £500: and, any false *oath* to any matter required by these acts to be verified, is punishable as wilful and corrupt perjury.

§ 4. No vessel shall be deemed *British-built*, but such as are wholly of the built of some part of his Majesty's dominions at the time of building the same; except ships belonging to the East India Company, which, whether built or purchased by them, are to be considered as *British-built* ships. Ships repaired in foreign ports; shall lose that privilege, if such repairs exceed fifteen shillings for every ton, unless in cases of extraordinary damage, and invincible necessity, which is to be proved by the certifi-

cate of the chief British officer, or two known British merchants at such foreign port, ships condemned as *prizes* may be registered, the owner producing a certificate from the judge of the court, of the condemnation, and other documents, as specified in the statutes, one of which is, in cases of prizes being ships of war, a certificate from the Navy Board, and the Ordnance, of the tender of pre-emption, and refusal by them respectively of such ship and her guns. When such prize-vessels have been registered in the colonies, an account, on oath, of the *sum* for which such vessel was sold, must also be produced.

No certificate of registry can be granted unless the owner or owners among other things, make oath that no foreigner has directly or indirectly, any share or interest in such ship or vessel. No subject of his Majesty, whose usual residence is in any foreign country, can, during the time of his residence there, be considered as a *British-owner*, unless he be a member of some British factory, or agent for, or partner in any house, actually carrying on trade in the united kingdom.

CHAP. III.

Of Owners and Masters of Vessels.

§ 1. The several part-owners of a ship have each a distinct interest in the whole; and upon the death of any one, his share goes to his own personal representatives. Sometimes the part-owners, by common consent, delegate the management of their common concern to one of them, who is called the *husband* of the ship; in which case nothing is left for the law but to enforce the compact and agreement of the parties. But where the enjoyment of the property has not been settled by the parties, and they happen to disagree as to the employment of a ship, the opinion of the majority in value shall be followed, they giving security in a sum equal to the value of the shares of those who disapprove of the adventure, either to bring back and restore to them the ship within a limited time, or to pay them the value of their shares. When this is done, the dissentient part-owners bear no portion of the expences of the out-fits, and are not entitled to a share in the profits of the undertaking; but the ship sails wholly at the charge and risk, and for the profit of the others. This security

may be taken upon a warrant obtained by the minority, who, at all events, ought expressly to notify their dissent to the others, and if possible, to the merchants also who freight the ship, in order not to be liable to contribute to a loss. This power of the majority may be exercised in like manner by the one part only, in case of equality in the partnership.

As to the repairs of a ship, and other necessaries for the employment of it, one part-owner may, in general, by ordering these things, render his companions liable to be sued for the price of them. But he cannot charge the others with any part of the premium, by ordering an insurance of the ship without authority from the rest, unless they afterwards consent to the insurance. And if the person who gives credit for the repairs, &c., of the ship, does not at the time know that there are other part-owners, he may sue him alone, from whom he received the orders.

The interests of part-owners in a ship, and in the profits and loss of an adventure undertaken by their mutual consent, is not affected by the bankruptcy of one of them taking place after the commencement of the voyage, although he has not paid his full share of the out-fit. In such a case, the other part-owners who, in that character, paid the expence of the out-fit,

or made themselves responsible for it, have a right to deduct his share of the out-fit, from the portion of the profits to be paid to his assignees.

As to the interest of part-owners with regard to strangers, the several part-owners of a ship make, in law, but *one* owner; and in case of any injury done to their ship by the wrong or negligence of a stranger, they ought regularly to join in one action at law for the recovery of damages. In the case of the death of any part-owner after an injury received, the right of action survives in general to the surviving part-owners, for the benefit of his personal representatives according to the value of his share. In the case of an action for the freight of goods conveyed in a general ship, all the part-owners ought to join. On the other hand, if an action is to be brought against the part-owners, upon any contract relating to the ship, it ought regularly to be brought against all jointly.

As by their appointment of the master to a place of trust and confidence, the owners hold him forth to the public as a person worthy of trust and confidence; and as he appears to all the world as their confidential servant or agent, in matters relating to the usual employment of the ship, as well as in matters relating to the

means of employing the ship, it is a rule of law that the owners are bound to the performance of every lawful contract made by him relative to the usual employment of the ship; and are liable for all supplies reasonably fit and proper for the occasion, furnished by the master's order, as well as for any money advanced to him for the purchase of them which at the time was actually wanting for that purpose. They are liable for expences incurred by the master for the use of the ship; for provisions bought by him, even if he had received money to pay for them; for repairs done to the ship, or money borrowed for the service of the ship. The master's authority is to provide *necessaries*: but if a person trusts him for a thing not necessary, he trusts him for that which it is not within the scope of his authority to provide; and consequently has no right to call upon his principal for payment. The owners are also liable for all losses and damages that may happen to the goods delivered to the master to be conveyed in their ship, through the default of the master or mariners, or by any accident whatsoever, those mentioned in the bills of lading excepted. And if no bill of lading with such exceptions, be signed, they are bound as fully as other carriers, according to the rules laid down in the 3rd Chapter of the first Part

of this Summary, §. 2. *art* 6. They are liable for any loss or damage happening through the negligence, wilfulness, or ignorance of the master or mariners; for goods robbed, let the force be ever so resistible. But they are not liable for goods not entered, nor for any loss or damage to goods put on board, by means of any fire happening to or on board of their ship; nor for any loss by robbery or embezzlement of any gold, silver, watches, jewels, or precious stones put on board their ship, unless they were particularly informed by the shipper, at the time of shipping, of the true nature and value of such goods. But if they are duly informed of these circumstances, they are liable for such goods, even where the ship was let to another person for a voyage, at a certain sum, if such owners had covenanted for the condition of the ship, and the behaviour of the master. The other has, in this case, “the *use* of the ship, but no *ownership*.” And in case of any loss or damage by embezzlement, secreting or making away by the master or mariners, of any gold, silver, or any goods or merchandize put on board; or for any act, matter or thing, damage or forfeitures done, occasioned, or incurred by the master or mariners, *without the privity* of the owners, the owners shall not be liable further than the value of the ship with all her ap-

purtenances, and the full amount of the freight due for that voyage. It is to be observed that in favour of commerce, the law will not *compel* the merchant to seek after the owners and sue them, although it gives him the power to do so; but leaves him a two-fold remedy against the owners or against the master.

§. 2. As to the duties of masters of vessels on *leaving port*, they must procure and keep on board all the papers and documents required for the manifestation and protection of the ship and cargo by the law of the countries from and to which the ship is bound, by the laws of nations in general, and treaties between particular states. They must be careful not to take on board any contraband goods: if they suffer any wool, woollfells, mortlings, shortlings, yarn made of wool, wool-flocks, fuller's earth, fuling clay, or tobacco pipe clay, to be put on board their ship, to be carried to parts beyond the seas, they are, besides other penalties and forfeitures, liable to three months' imprisonment for the first offence, and six for the second: and this extends also to the exportation of rams, sheep, or lambs alive, except wether-sheep for the use of the ship only, by licence of the port-officer of the customs. Tallow, tools or utensils, or machines, &c. used in the cotton, linen,

silk or woollen manufactures, cannot be exported under severe penalties: nor can they admit on board, in a voyage to parts beyond the seas, more than one person, whether adult or child, for every two tons of the vacant part of the ship, including the crew, under the penalty of £50 for every person exceeding such proportion. If the ship is bound to North-America, she must be stored with at least twelve weeks' provisions, and good water, sufficient to afford an allowance *per day*, during the voyage, of not less than half a pound of meat; one pound and a half of bread, biscuit, or oatmeal; half a pint of molasses, and one gallon of water to each person on board, whether adult or child. But these regulations do not extend to passengers going to, or coming from Newfoundland, Labrador or the Banks, to be employed in the trade and fishery of those places, or who have been so employed.

No goods may be laden on board, outwards, to any place whatever, without *entering* at the custom-house the name of the ship and other particulars; nor, if for exportation to parts beyond the seas, until a *cocquet* be delivered to the comptrolling searchers of the customs; and before he sails, the master must also produce to the custom-house an account under his hand, of the names of every merchant who has

put goods on board, with the marks, numbers, &c. of all such goods. Having obtained the necessary clearances, and permission to sail, from the custom-house, he must commence his voyage without delay, as soon as the weather is favourable, but on no account during tempestuous weather, and carefully comply with all warranties, such as in time of war to sailing with convoy, obtaining sailing instructions. Sailing without convoy, or wilfully separating from it without order or leave from the commander of such convoy, makes the master liable to a penalty of from £50 to £1500. Nor can any ship be cleared outwards from any part of the United Kingdom, to foreign parts, before the master has given bond in the penalty of the value of his ship or vessel, to comply with the directions of the Act; nor until it shall appear that the ship is provided with the necessary flags, vanes, &c. But no British ship or vessel not belonging to the Navy, Revenue, Customs or Excise, shall carry or hoist any such pendant as belongs only to ships or vessels in the said service, on pain of the master forfeiting £500.

Having commenced the voyage, the master must proceed to the place of destination without delay or deviation. If he finds himself in danger of being boarded by an enemy, when

under convoy, he shall make signals to the rest of the fleet, by firing of guns or otherwise: and if boarded, he shall destroy all instructions relating to the convoy, under the penalty of £200. If the ship be driven into a port out of the course of the voyage by tempest, or the master sail thither to avoid enemies or pirates, or for a supply of water or provisions, when warranted to do so by common and established usage, he must wait no longer than necessity requires, but sail again without delay; and for that purpose, supply his ship with the requisite necessaries or repairs, as expeditiously as he can. In cases where stormy weather renders it necessary for the preservation of the ship, to make the sacrifice, when she is in danger of perishing from the violent agitation of the wind, or from the quantity of water that may have forced a way into it, or is on a rock or a shallow upon which she may have been driven; or when a pirate or enemy is ready to overtake her, the master may, upon as much deliberation and consultation with his officers, as the occasion will admit of, throw overboard as much of the cargo, as he shall see to be necessary for the common good and safety. And the captain, as soon as possible after his arrival at any port, must make his protests, draw up an account of the jettison, and verify

the same by the oath of himself and of some of the crew. If by reason of the damage done to the ship in the course of the voyage, or through want of necessary materials, she cannot be repaired at all, or not without great loss of time, the master is *at liberty* to procure another ship to transport the cargo to the place of destination. But if his own ship can be repaired, he is not bound to send the cargo by another, but may detain it till the repairs are made, and even hypothecate it for the expense of them; but if of a perishable nature, he ought either to tranship or sell it, as will be most beneficial to the merchant. And in any case of extremity, (but not for his own debt,) he may pawn his ship, or lading, or sell as much of his cargo as will answer his occasions. But he cannot, without a special procuration from the owners, sell the ship, nor the ship's cordage; nor the ship's provisions, except with the consent of his officers, to ships at sea in distress, if he has enough left for his own voyage. If on the high seas, the ship be in imminent danger of sinking, and another ship apparently of sufficient ability be passing by, he may remove the cargo into such ship; nor shall he be answerable though such ship perish with the cargo, and his own happen to outlive the storm.

§ 3. As to the duties of the master, on coming near or into port, he must produce his manifest, and deliver one copy thereof when within four leagues of the coast, and another within the limits of the ports, on demand, to the officers of the customs. If he breaks bulk before arrival at the proper place of discharge, and leave given by the proper officer of the customs to unlade, he shall forfeit £200, except in case of unavoidable necessity, of which he must give notice, and make proof upon oath at the first port where he shall arrive. And he is liable to the like forfeiture, if any marks or seals made by the custom-house officers on certain packages, be altered, defaced or broken by him, or with his privity or consent. He must also bring to at the usual places, and receive and land the proper officers of the revenue, under the penalty of £100, except in cases of unavoidable necessity. And when the ship is arrived at the place of her destination, the master is first to see that the ship be well moored and anchored, taking care not to fasten to the King's moorings, nor so moor as to be liable to injure the King's ships. Within twenty-four hours after his arrival, he must, under the penalty of £100, and before breaking bulk, report, and answer upon oath such lawful questions as shall be ministered by the

officer of the customs, and make a just and true entry upon oath, of the burden, contents, and lading of the ship, &c. and whoever makes the report, whether master or mate, is for that purpose considered as master and liable to the same penalties, for not making a just report. And the words, *to the best of his knowledge*, means that knowledge which from his situation, and undertaking *to swear to the truth of it*, it might reasonably be expected he *ought* to have. He must, under the like penalty, even in ballast, if called upon by the proper officer, make report, and answer questions as aforesaid. And at the time of reporting, he must also deliver his manifest. If either the report or the manifest, shall not agree with the cargo, the master shall forfeit £200, except in some cases where there is no fraud nor collusion. And no ship shall be permitted to break bulk, or make entry in any port of his Majesty's dominions, until all the letters and packets (except letters of masters and owners of ships, or of any part of the cargo, and delivered to the master for carriage without reward;) shall be delivered to the proper post-office; on pain of masters and mariners refusing or neglecting to deliver such letters, forfeiting £20 for every such neglect. If part of the cargo only is to be landed at the port, this shall be certified on the back

of the manifest by the collector and comptroller.

Goods brought from beyond the seas, must be landed at lawful hours, viz. between sun-rising and sun-setting from the 1st of March to the 30th of September, and between seven in the morning and four in the afternoon at other times; and upon the lawful places, on pain of forfeiture of such goods, or their value, and £100 by the master; and in the presence of the proper officer, except precious stones, jewels, bullion, and fresh fish British taken, imported in British-built ships, &c.

Having complied with the foregoing regulations, the master must without delay, or at the appointed time fixed by the charter-party, deliver the cargo to the merchant or his consignees, upon production of the bills of lading, and payment of the freight and other charges due in respect of it, viz. in ordinary cases, primage and the usual petty average. And in case of any loss during the voyage, he must also, having regularly made his protests, adjust the average, if not settled before, and see it paid before the cargo is landed. In the case of a general ship, the master takes security from the merchants before he delivers the goods, for payment of their shares of this contribution, when the average shall be adjusted.

§ 4. As to the master's remedy for his wages, he can only sue the owners personally in a Court of Common Law: but as he generally receives the freight and earnings of the ship, and may pay himself out of the money in his hand, he has not often occasion for such a remedy. It is not lawful to arrest or imprison the master, pilot, or mariners of a ship in an action of debt, when they are ready to sail, except it be for debts contracted for the voyage. But the creditor may seize and sell any thing he finds in the ship, belonging to his debtor.

CHAP. IV.

Of Masters, Mariners, and Apprentices.

§ 1. No seaman or mariner is to be carried to sea, unless there is an agreement in writing, and signed by the parties, and which in case of dispute, is to be produced by the master, or owner of the ship; and no mariner can recover any wages or reward not specified in the articles: and these regulations respecting seamen, extend to every officer of the ship, except the master; nor do they render a verbal agreement for wages absolutely void, but impose a penalty on the master if there is no

written agreement. Masters knowingly entertaining or entering on board any seaman who has deserted from the royal navy, forfeits £50 if of privateers, or trading vessels; and £20, if of any fishing ship or boat. And masters of British merchant ships, knowingly hiring any mariner who has deserted from any such other ship or vessels, forfeits £100, one third to the prosecutor, to be levied by distress, or else three months' imprisonment. But this shall not extend to cases where the mariner produces a *certificate* of discharge from his last master, attested by one or more witnesses.

Every master must keep a *muster-roll* of his crew, a duplicate of which he is to give, before his departure, to the collector of the hospital money at the port to which he belongs, and another at his return, under the penalty of £20.

§. 2. As to the master's authority for government of his crew, by the common law, it is their duty to obey his commands in all lawful matters relating to the navigation of the ship, and the preservation of good order. In case of disobedience or disorderly conduct, he may lawfully correct them in a seasonable manner, his authority, in this respect, being analogous to that of a parent over his child, or

of a master over his apprentice, or scholar. But he ought to be very careful in the exercise of it; and in cases requiring his immediate interposition, he should take the advice of those next below him in authority: for he may on his return be called to an account, for the use he has made of that power. In cases of murder, or any great crime, he ought to secure the person of the criminal, and cause him to be brought before the proper tribunal of his country. Justices of the peace may receive informations of felonies committed upon the sea, and commit the offenders for trial. If a mariner shall have laid violent hands on his commander, to hinder him from fighting in defence of the ship and goods committed to his trust, he shall suffer death. To confine his master, or to make, or endeavour to make a revolt in the ship, is likewise felony and death. But on the other hand, when an English ship has been defended against pirates or enemies, by fight, and brought to her designed port, a certain sum raised upon the owners of the ship and goods, so defended, is to be distributed among the master, officers, and mariners of such ship, having special regard to the widows and children of such as have been slain, and such as have been wounded. When any person employed on board any ship or ves-

sel, shall, in doing his duty on shore or on board, be hurt or maimed, he is to be properly relieved, until sufficiently recovered to be sent to the place to which the ship belongs,

§. 3. As to the discharging seamen, neglect of duty, habitual drunkenness, disobedience of orders, will justify a master in discharging a seaman during the voyage. But on discharging a seaman, the master must, under the penalty of £20, within three days next after application made to him by the mariner, give him a certificate of discharge attested by one or more witnesses. And if any master shall force any man on shore, being abroad, or willfully leave him in his Majesty's plantations, or elsewhere, or refuse to bring home again all such of the men he carried out with him, as are in a condition to return, when he shall be ready to proceed on his homeward-bound voyage, he shall on conviction suffer three months' imprisonment.

§. 4. The payment of *wages* is generally dependent upon the payment of freight: and if the ship has earned its freight, the seamen who have served on board the ship, have in like manner earned their wages. And if a ship sails to several places, wages are payable to

the time of the delivery of the last cargo. If by the terms of charter-party, freight is not to be paid for the outward-bound cargo, unless the ship brings back her homeward-bound cargo in safety, such a special agreement shall not affect the seamen, unless they also make a similar agreement. If after the hiring of seamen, the owners of the ship give up the intended voyage, they shall pay the seamen for the time during which they have been employed on board; and also make good any special damage which they may sustain in breaking off the contract. The same rule of a proportion of the wages, holds in case of a prohibition of trade to the place to which the ship is bound, before the voyage begins. A seaman is entitled to his whole wages, even when unable to do his duty, if his inability proceeds from any hurt received in the performance of his duty, or from natural sickness happening to him in the course of the voyage. And if a master discharges a seaman during a voyage, the seaman shall have his full wages up to the prosperous determination of the voyage, deducting, if the case requires it, such sum as he may in the mean time have earned in another vessel. In the ordinary case of an embargo, a seaman hired by the month, and remaining with the vessel, has a right to his wages during

the embargo; if the ship performs her voyage, and has earned her freight, and those engaged for the voyage, shall be paid according to their agreement. If a ship is seized for debt, or otherwise forfeited without any fault of the mariners, they shall receive their wages.

If by any disaster happening in the course of the voyage, such as the loss or capture of the ship, the owners lose their freight, the seamen also *lose* their wages. And if a ship sail to one place in order to take in a cargo there, to be conveyed to another place, and having received the cargo, is taken before its arrival at the port of delivery, nothing is due for navigating the ship to the first place, because no freight is thereby gained.

Wages may not only be lost, but also *forfeited*. Wages are the father of damage; and as the master is answerable for any loss or damage which may happen to the cargo from his own negligence or embezzlement of his mariners, so he may reimburse himself out of the wages of those mariners, by whose fault it happened. He may also, in case of illegal importation of candles, soap or starch, by his mariners, without his privity, stop their wages until the information is tried, and keep in his hands so much of the wages of the mariners guilty of, or privy to the offence, as shall answer to the penalty inflicted on himself. So in the case of

the illegal importation, by the mate or seamen, of spirits, tea or coffee, the offenders forfeit all their wages; and also 10 shillings for every gallon of spirits, or pound of tea or coffee, or three months' imprisonment. Mariners refusing to defend the ship when commanded to do so by the master, or uttering any words to discourage others, shall lose all their wages due to them, together with such goods as they may have in the ship, and be kept to hard labour not exceeding six months. Wages are also entirely forfeited by refusing or neglecting to proceed on the voyage after articles signed, or by desertion from the ship at any time before the completion of the voyage and delivery of the cargo, or before the expiration of their time of service. A seaman who absents himself from the ship without leave, forfeits to the use of Greenwich-hospital two days' pay for each day's absence: and if he leaves the ship before he shall have a discharge in writing from the master, he forfeits one month's pay to the said hospital. But a seaman who enters, or is impressed into the royal navy, is entitled to a proportion of his wages up to the time of such entering or impressing, if the ship arrives safe: nor if he belonged to a privateer, shall he lose his share of a prize taken, while he was in the privateer.

No master or owner shall pay or cause to be advanced to any seaman any money or effects on account of wages, exceeding one half of the wages then due, until such ship shall return to that part of his Majesty's dominions, to which they belong, and from whence they were fitted out, on pain of forfeiting *double* the money so advanced, to any person who shall first inform of the same. The rest must, if demanded, be paid within thirty days after the ship has been entered at the custom-house, except there is a covenant to the contrary, or at the time of the seamen shall be discharged, which ever shall first happen, under the penalty of 20 shillings over and above the wages to the seaman, whose wages shall remain unpaid. Mates and mariners may sue in the admiralty for their wages jointly, and the ship itself is answerable.

All sums of money which may be due to a mariner who died on board during the voyage, must, within three months after the ship's arrival in Great Britain, be paid to the receiver of the hospital-money, to the use of the heirs, executors, or administrators of the said mariner; otherwise, the master shall forfeit £50, and double the amount of the wages, &c. so due.

§ 5. A duty of six-pence *per* month for the support of the Greenwich-hospital, is to be paid by every master, seaman and mariner, and other person employed in any merchant ship, or other private ship or vessel belonging to any of his Majesty's subjects, except apprentices under eighteen years of age: the master is to deduct it out of their wages, shares or profits, and to pay the same to the officer appointed for that purpose, under the penalty of £20; and, this is to be done only at the port to which the vessel belongs, and before she is cleared inwards. The master is also to deduct out of the seamen's wages the penalties belonging to Greenwich-hospital, to enter them in a book, and to pay them to the receiver of the hospital-money, within three months, on pain of forfeiting treble the amount.

§ 6. Apprentices bound out, or assigned over to the sea-service, are till the age of eighteen years, exempt from the payment of the hospital-duty, and for the space of three years from the date of their indentures, from serving in his Majesty's navy; also, apprentices who have voluntarily bound themselves to the sea-service, not having before used the sea, are exempted from being impressed for three years, but, not if they are eighteen years of age, and have

been in any sea-service, before they bound themselves apprentices. Masters on clearing out of any port, must give an account in writing to the collector, of the number and names of the apprentices they have on board, and the same is to be inserted in the cocquet, without fee, and a register kept in every port. Two justices may determine differences between masters and apprentices.

§ 7. British governors, ministers and consuls in foreign parts, or where none such are resident, two or more British merchants, are required to provide for seafaring men and boys, subjects of Great Britain, who by shipwreck, capture, or other unavoidable accident, shall be in foreign parts, and subsist them at six-pence *per* day each, and to send them home as soon as conveniently may be, in the first of his Majesty's ships that arrives at or near that place: or in case no such ship shall be found, then to put them on board the first merchant ship bound for Great Britain, of which the master is bound to receive not exceeding *four* persons for every hundred tons of his ship's burthen, and he shall be allowed six-pence a day for each of them, by the commissioners of the Navy.

CHAP. V.

General Regulations relating to the Plantation Trade.

§ 1. All the laws which have hitherto been the subject of the second Part of this Summary are applicable to the colonies and plantations, in all cases where there is no exception expressly made by act of parliament. The plantation trade is subject to the same rules with respect to customs, visitations, searches, and forfeitures, to the entering, lading, and discharging of cargoes as they are in England: the officers of the customs have the same powers for visiting and searching of ships, for seizing, securing, or bringing on shore any goods prohibited to be imported into, or exported out of, any of the plantations, or for which any duties are payable; and also to enter houses or warehouses, to search for and seize any such goods; they have the same privileges and protection, and are liable to the same penalties and forfeitures, as the officers of the customs in England. The regulations respecting the hospital and forfeitures mentioned in the preceding Chapter extend to the British colonies and plantations in America; and the same is to be

paid, under the like penalties to the officer duly authorized to receive the same.

§ 2. No alien, or person not born within the King's allegiance, or naturalized, or made a free denizen, may act as a merchant or factor in any of the British plantations: but, aliens residing in any place which shall be in his Majesty's possession by surrender or otherwise, and having taken the oath of fidelity or allegiance to his Majesty, may act as merchants or factors in such places, so long as the same shall remain under the protection of the British Crown. Also foreigners resident in England or Wales, may freely trade into and from Greenland, Newfoundland, and any other of the British plantations, in British vessels.

No goods or merchandizes whatever may be imported into, or exported out of any of the British colonies or plantations, in any ship or bottom but what shall be British-built, owned and navigated according to law: and the master shall, before loading or unloading at the plantations, make oath before the governor, or collector of the plantation where he arrives, of the name and burthen of the ship, &c. If the certificate of registry happens to be lost or mislaid while in the plantations, the governor, and collector of the customs may, on the master mak-

ing oath and giving security, give him a certificate, by virtue of which such ship shall have liberty to trade for that voyage only, after which a new register must be obtained. There are however certain descriptions of goods which are allowed to be imported into, and exported from some of the British colonies, from colonies belonging to *foreign European States*, in foreign vessels: also vessels belonging to the United States of America may load and export salt out of the Turk's Islands, on paying 2s. 6d. per ton burthen of every such vessel.

All foreign ships found at anchor, or hovering within two leagues of the shore of any plantation, except in case of unavoidable necessity, are forfeited with the goods on board.

§ 3. No goods of the produce of Europe may be imported into any plantation but such as have been shipped in the United Kingdom in British-built ships, navigated according to law, on pain of forfeiture of ships and goods; and a cocquet must be produced to that effect. But British ships may carry *salt* from any parts of Europe for the Newfoundland fisheries; *wines* from the Madeiras or the Azores, for the British colonies; also food or victuals, craft, clothing, or other goods for the use of the fishery, being the produce of the United King-

dom, or Guernsey, or Jersey, may be shipped from Guernsey or Jersey to any plantation where the *fishery* is carried on.

No goods may be imported from the States into British North-America. But in cases of public emergency the governors of the respective places may for a limited time grant licences for the importation of certain goods. Pitch, tar, and turpentine of the States may be imported thence into Nova Scotia and New Brunswick in British ships. The trade to and from the British West India Islands, with the States, and foreign West India Islands, is regulated by different statutes. Rum of foreign produce is prohibited to be imported into any British plantation. Persons exporting to any British plantation in the West Indies or America any copper coin not being the legal copper coin of the kingdom, or any counterfeit gold or silver coin whatever, shall forfeit £200, and double the value of such coin.

The exports from the B. plantations are likewise regulated by several statutes, which, in the limits assigned to this abridgment, cannot be enumerated.

§ 4. For every vessel sailing from the United Kingdom for any B. plantation, bond must be given, in a penalty proportioned to the burthen

of the vessel, that all goods prohibited to be exported to any foreign part shall, in case such ship loads at any B. plantations any such goods, be by the said ship brought to some part of the United Kingdom, the danger of the sea excepted. The same bond is to be given, for all ships coming from any other place to the plantations, to the governor, before any such goods are loaded on board such ships; and if they come from the United Kingdom, a certificate must be produced of such bond having been given. All such bonds (except bonds given for ships which lade *sugars*) are to be with condition that within eighteen months from the date, the danger of the seas excepted, a certificate shall be produced from the collector and comptroller of the port where the goods are delivered, that they have been there duly landed and discharged; otherwise such bonds, or copies thereof attested by the governor or commander in chief, to whom such bonds were given, shall be in force and allowed of in any court of the United Kingdom. Where there is reason to suspect that the certificate of bond having been given at home, or of plantation-goods having been discharged according to the terms of such bonds is false; then in the first case, the governor or officers of the customs may require a new bond, and in the second

case, the security given in the plantation is not to be cancelled, until further information be obtained from the Commissioners of the Customs in England.

§. 5. On arrival at the plantations, the master must, before lading or unlading any goods, inform the governor or naval officer of it; he must also enter his ship, and report the goods on board, and produce a certificate of bond having been given; and also, if from Europe, a cocquet or clearance from the collector of the customs, certifying that such goods were shipped in some port of the United Kingdom, except where the cargo consists of salt for Newfoundland, or wines from the Madeiras or Azores. Nor may any goods whatever be shipped in any British colony in America, to be carried to any other British colony, without a *sufferance* from the collector at the port where shipped: the master before sailing, must also take out a *cocquet* for the goods, which is to be delivered to the collector at the port where the ship arrives, before any part of the goods are unladen or landed. Before clearing out, the master must produce his manifest to the chief officer of the customs. Counterfeiting, or falsifying any cocquet, certificate, return, or permit for any vessels or

goods, or knowingly making use thereof, makes the offender liable to a penalty of £500.

§ 6. All governors or commanders in chief of his Majesty's colonies and plantations, before their entrance into their government, are to take a solemn oath to do their utmost that the Acts of Parliament relating to the said colonies and plantations, be punctually and *bonâ fide* observed. If they neglect to take the said oaths, or are willingly and knowingly negligent in doing their duty accordingly, they shall be incapable of any such government, and forfeit £1000. Naval officers are to give sufficient security to the Commissioners of the Customs, for the faithful performance of their duty.

§ 7. The laws respecting seizures in the plantations, are exactly the same as in the United Kingdom; and all goods seized for any offence against the revenue or the trade, may be prosecuted in the plantations, in any Court of Record, or of Vice Admiralty, where the offence was committed, at the election of the prosecutor. If any disputes arise whether the duties have been paid, or the goods legally imported, &c. the proof thereof shall lie upon

the owner or claimer, and not on the officer who made the seizure. All ships and goods seized and condemned in the plantations, in pursuance of any law relating to the plantation-trade, shall be sold by public auction, by the collector and comptroller, and shall be applied, one third of the net produce to the governor, one third to the collector, and one third to the prosecutor. If the produce is not sufficient to defray the charges of condemnation and sale, or if a verdict be given for the claimant, the charges may be paid out of any branch of the customs arising in any British American colony. No claim shall be admitted to any ship, or goods seized and prosecuted there, unless sufficient security be given. The judge's certificate that there was a *probable cause of seizure*, will in all cases, discharge the seizers from all actions, costs and damages.

CHAP. VI.

*Of the Laws relating to the Newfoundland Trade
and Fishery.*

§ 1. All his Majesty's subjects, residing in any of his dominions, are entitled to use and enjoy the free trade and fishery, to and at Newfoundland, and the seas and islands adjacent, and to do every thing which may be useful or advantageous to their fishing trade, without any disturbance or hindrance from any person whatever. But the privilege of *landing* and *drying* fish on the *shores* of Newfoundland, is limited to such of his Majesty's subjects as come from his *European* dominions only. No alien not residing in England, may bait or fish there. The people of the American States may fish on the banks of Newfoundland, and on such parts of the coast as British seamen shall use, but they may not *dry* or *cure* the same on that Island. They may also fish in the gulph of Saint Lawrence, on the coasts, bays and creeks of all other of his Majesty's dominions: they may dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labra-

dor, so long as the same shall remain unsettled. Persons at Newfoundland, trading with foreigners, shall forfeit treble the value of the articles so sold, or bartered, or shall be treated as deserters. The customs are under the direction of the commissioners of the customs.

§ 2. Provisions and all necessaries for the fishery, being the product and manufacture of the British European dominions, may be imported into Newfoundland from any part thereof. Also craft and clothing, being of that description, may be shipped from Guernsey or Jersey to Newfoundland, for the use of the fishery; the master producing a certificate from the principal officers of the customs in the port where he shall have fitted out, to that effect. Salt from any part of Europe, also wines from the Madeiras, and Azores, or western Islands, being the growth of the said islands respectively, may be imported in British vessels navigated according to law. Rum or other spirits, imported from any British colony or plantation on the continent of America, pays one shilling duty per gallon. No women may be allowed to land in any part of the island, unless security be given for their good behaviour, and that they shall not become chargeable. And every master bringing passengers to be

employed in the fishery, is to give each of them, before he suffers them to land, a certificate, printed blanks of which are furnished gratis at the custom-house. British ships found standing into, or coming out from Saint Pierre, or Miguelon, or hovering, or at anchor within two leagues of the coast thereof, or discovered to have shipped any goods there, or to have been there for that purpose, are forfeited: and commanders of men of war may stop and detain vessels suspected to be going to or coming from the said islands.

Vessels fitted and cleared out as *fishing ships* according to the laws made and in force, and being actually employed in the fishery, or boats or other craft employed in carrying on coast-wise, to be landed and put on board any ships, fish, oil, salt provisions, or other necessaries for the use of the fishery, are not liable to any restraint as to days or hours of working, nor to make any entry, except a report to be made by the master on his first arrival there, and also at his clearing out from thence. But if the ship has on board at her last clearing out, any goods, except fish, or oil made of fish, she shall be liable to the same securities, restrictions, and regulations in all respects as if this act had not been made.

§ 3. No master may carry any fishérmén,

sailors, artificers and others employed in carrying on the fishery from Newfoundland to any part of the continent of America, as passengers, without permission from the governor. British seamen, or fishermen employed in the fishery, who shall desert or agree to desert from Newfoundland to go to a foreign state, shall be committed, and on conviction imprisoned, not exceeding three months, or else sent back to the country to which they belong, if they came from his Majesty's European dominions: and, if not, they shall be imprisoned not exceeding twelve months.

§ 4. Persons who since 1685 have taken or detained any stage, cook room, beech or other places for taking bait or fishing, or for the drying, curing, or husbanding of fish, are to relinquish the same to the public use of the fishing ships arriving there: and no fisherman or inhabitant, or any other person, may take up or possess any such stages, &c. before the arrival of the fishing ships from British Europe, nor until they are provided with stages, &c. By-boat keepers are not to meddle with any house, stage, &c. belonging to fishing ships. Every master of a *by-boat* shall carry at least two *fresh* men; and every master of a *fishing* ship shall carry at least one fresh man in every five

of their ship's company; and they are to produce a certificate of the same from the collector of the port from whence the ship sailed.

The first fishing ship entering a harbour or creek, is to be *Admiral* of that harbour, during the fishing season; the second *Vice-Admiral*, and the third, *Rear-Admiral*. No master of a fishing ship is to take more beech or flakes than he actually wants, except the *Admiral*, who is allowed to take an overplus for the use of one boat more than he wants. Persons possessed of several places must make their election of one, and give their resolution to any after-comer, within forty-eight hours after demand. And in case of any difference, the admirals are to apportion the place. Any part of the island not used for the fishery before the year 1775, shall be deemed *ships' room*.

Stages are to be repaired with timber fetched out of the wood, and not by the breaking down of stages of any other person. No fence, building, or other erection not actually necessary for the fishery is to be erected without leave from the governor: and the sheriff and his deputies are strictly enjoined to enforce this regulation. Persons building for the use of the fishery, or coming into the possession of any such place or erection, are, in order to prevent disputes, to give notice thereof to the

surrogate of the district, that the same may be recorded. And in cases of disputed claim to fishing rooms, beeches, stages, or other erections for carrying on the fishery and trade, the register directed to be made by a proclamation of the 21st day of August, 1806, shall be the only evidence admitted, after the expiration of one year from the date of the entry. In all other cases, none but the governor shall decide disputes concerning rooms, &c. A fishing room deserted, or not used for the fishery, for one entire season, may be occupied by the first comer, for the use of the fishery.

§ 5. The Lord's-day is to be observed strictly and decently by all inhabitants, and no liquors are to be sold on that day. No liquor is to be retailed in less quantities than two gallons, without a licence. The magistrates are earnestly enjoined to enforce with the utmost rigour the laws made against blasphemy, adultery, fornication, swearing, drunkenness, profanation of the Lord's day, polygamy, and immorality; and constables are to present persons guilty of such offences. No ballast is to be thrown into any harbour, but must be carried on the land where the tide never comes. Seans are not to be annoyed, nor nets or bait stolen. No person whatever may burn, destroy or steal

any boat, cask, salt, net, nor other utensils for fishing or making of oil, or other goods or merchandize left in any part of Newfoundland: nor shall any person, at his departure from the island, or at any other time, destroy, deface, or in any manner damage any stage, or cook-room, or flakes, or any other thing whatever, but shall leave the same, without doing, or causing to be done, any wilful damage to any of them. Marks of boats or trainfats are not to be defaced without consent of the owner, nor such boats or trainfats to be removed, except in cases of necessity, upon giving notice thereof to the Admiral of the harbour. Standing trees are not to be rinded, nor the woods fired. The native savages of Newfoundland are under the protection of the law, as much as any other of his Majesty's subjects.

§ 6. The inhabitants are to employ two fresh men, as the by-boat keepers. Masters of vessels entertaining or hiring any deserters from the royal navy, are liable to a penalty of £50. Masters of fishing vessels guilty of the like offence, forfeit £20. And any person harbouring, entertaining, or piloting deserters from the navy or army, forfeit £10 for every such deserter, and an equal number of their best

men, whether servants or others, will be impressed into his Majesty's navy.

No servant to be employed in the fishery, is to be hired without a written agreement or shipping paper, which in case of any dispute, is to be produced by the master; and no servant is to be shipped, unless he produces a passenger's certificate, or a discharge from his last master. If any such servant, being legally engaged, shall wilfully absent himself without his master's leave, or wilfully neglect or refuse to work for the space of one day, he shall for every day forfeit not exceeding five days' pay to his master: and five days' absence without leave shall be deemed a desertion; in which case all wages then due are forfeited to the master, except the passage money; and such deserter may be apprehended by warrant, and imprisoned until trial; and on conviction, he shall be publicly whipped, and sent back to the country to which he belongs.

Servants in the fishery, are to be paid no more than half the wages which may be due to them at the time of such payment, and the rest must be paid immediately at the expiration of the covenanted time of service in good bills of exchange, except only the passage money. All fish and oil is liable to the payment of

wages, which ought to be paid before all other debts.

§ 7, The courts of justice established in Newfoundland, are (1.) The supreme court, having criminal and civil jurisdictions, of all crimes and complaints arising in Newfoundland, and on the islands and seas to which vessels repair from that island, for carrying on the fishery, and on the banks. (2.) The surrogate courts, which have a civil jurisdiction only, to the same extent as the supreme court.

In any cause exceeding 40s, if the defendant requires it, a jury may be summoned in either court; and for want of a sufficient number of jurors, the governor may appoint two accessors to the chief justice, and each surrogate may likewise appoint two persons to be his accessors. Upon any judgment given in a surrogate court for any sum exceeding £40, an appeal lies to the supreme court; and upon any judgment in the supreme court, for any sum exceeding £100, the party cast may appeal to his Majesty in council, notice and security being given in both cases, to the respective judges, within two days after such judgment has been given.

Whenever any person, in consequence of debts contracted within the island of Newfoundland, or on the banks, or the islands and seas adjacent, happens to be insolvent, the court shall immediately take order for discovering, collecting, and selling the effects and debts of such person, and distributing the produce among his creditors; and in such case, the servants' wages shall first be paid 20 shillings in the pound, for the then current season; in the next place all creditors for supplies furnished in the then current season, shall be paid 20 shillings in the pound: and, all other creditors shall be paid rateably as far as the effects will go. If such insolvent person has made a true disclosure of all his effects whatsoever, and has conformed himself to the order and direction of the court, it shall, with the consent of one half in number and value of his creditors, be certified by the said court, and such certificate shall, when pleaded, be a bar to all suits for debts contracted in Newfoundland, prior to the failure.

The chief justice may settle forms of process in the different courts of Newfoundland, and appoint the fees to be taken therein, and the sheriff's fees. He or any person appointed by him, may grant letters of administration, and

the probate of wills, without which authority, the effects of deceased persons shall not be administered.

No other court shall hold plea of any suit or complaint of a civil nature.

3. The court of Vice-Admiralty, may hold plea of maritime causes, and causes of the revenue; but, it may not take cognizance of the wages of seamen and fishermen. Upon any judgment given in this court, appeal may be made to the proper Admiralty court in England: and, in cases of prize vessels, in time of war, the appeal lies to certain commissioners of appeal in England: but in both cases, immediate notice of such intention must be given to the court, and security entered into, to the satisfaction of the judge, to prosecute the appeal.

4. The court of sessions may hear and determine all disputes concerning the wages of seamen and fishermen, all offences committed by the employers of such servants against any act relating to Newfoundland, and all penalties imposed by the said acts may be recovered before that court, if not above £10. All fines levied before any court, and fees received in the surrogate courts, are to be accounted for in the supreme court.

If any action shall be brought against any person for any thing done in pursuance of this act, and a verdict shall pass for the defendant, he shall recover treble costs. And no suit or complaint shall be commenced on any cause of action, at the distance of more than six years from the time when such cause of action arose.

FINIS.