

195

THE  
EIGHTEENTH REPORT

OF THE  
COMMISSIONERS

Appointed to inquire into the Duties, Salaries and  
Emoluments, of the OFFICERS, CLERKS, and MINISTERS  
of JUSTICE, in all Temporal and Ecclesiastical Courts  
in *Ireland*.

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HIGH COURT OF ADMIRALTY.

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*Ordered, by The House of Commons, to be Printed,*  
*9 February 1829.*

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THE EIGHTEENTH REPORT

OF THE COMMISSIONERS

COMMISSIONERS

appointed to inquire into the Affairs of the  
Commissioners of the Customs, Excise and Stamps  
of Great Britain, and to report thereon to the  
House of Commons.

in Review

HIGH COURT OF ADMIRALTY

Ordered by The House of Commons, in the  
Year 1839

EIGHTEENTH REPORT

COMMISSIONERS

THE REGISTRAR.

THE MARSHAL.

|            |           |        |
|------------|-----------|--------|
| THE REPORT | - - - - - | p. 1.  |
| APPENDIX   | - - - - - | p. 55. |

199

THE  
**EIGHTEENTH REPORT**  
 OF THE  
**COMMISSIONERS**

Appointed to inquire into the Duties, Salaries and Emoluments,  
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HIGH COURT OF ADMIRALTY.

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TO THE KING'S MOST EXCELLENT MAJESTY, IN HIS HIGH  
 COURT OF CHANCERY.

**Y**OUR MAJESTY having been graciously pleased to comply with the prayer of  
 an Address of the House of Commons, dated 20th May last, "that the  
 " Commissioners of Judicial Inquiry should examine into the state of the Admiralty  
 " Court of *Ireland*, and into the extent and nature of the Duties, as well as the  
 " manner in which such Duties have been performed, and the amount of Charge  
 " attending on the prosecution of Suits in the said Court, by payment of Fees to  
 " the Officers thereof, or otherwise, and into the Security given for the custody of  
 " Money deposited in the hands of the Officers of the said Admiralty Court: Also  
 " that they should particularly examine whether any and what branches of the  
 " Causes entertained in the said Court are cognizable by any other legal Tribunal,  
 " and at what comparative expense such Causes may be by such other Tribunal  
 " adjudicated;" We, the undersigned Commissioners, in obedience to the direc-  
 tion of Your Majesty's Government in *Ireland*, given in pursuance of the said  
 Address, have laid aside examination into the Court of Prerogative, in which we  
 had been previously engaged, and on one branch of which we had already presented  
 a Report, and proceeded to investigate particularly the several subjects to which  
 our attention was thus specially directed. The result of this inquiry we now  
 humbly submit to Your Majesty.

High Court of  
 Admiralty.

The absence of the Judge, who for a length of time has resided in France, has  
 been productive of much difficulty and embarrassment, and has considerably im-  
 peded our progress. Very important facts connected with the judicial department  
 of the Court, and with the conduct of Sir Jonah Barrington, having been disclosed  
 to us, we felt it our duty to require his attendance, stating to him that such evidence  
 had been given. With this requisition his answer alleged his inability from age and  
 infirmity to comply; but suggested that interrogatories should be transmitted to  
 him, and that his depositions, verified before the authorities in France, should be  
 received by us. This demand not being acceded to, a protracted correspondence  
 took place; in the course of which, at the request of Sir Jonah, we transmitted to  
 him an extract from the evidence relating to his conduct, as it appeared on our  
 minutes. This led to further requisitions on his part, with which it was impossible  
 we could comply, and which might better have been made through his agents here

Appendix,  
 N<sup>o</sup> 2.

High Court of  
Admiralty.

to the offices where the documents called for by him are deposited; and having given Sir Jonah repeated warnings that we could not delay our Report, and afforded him every opportunity in our power to disprove or explain the evidence affecting him, we are at length obliged to close our Report without having received from him any other than a general and sweeping denial of all the facts deposed to against him. We shall enter more fully upon this subject when treating of the manner in which the duties of the Judge have been performed.

Appendix,  
N<sup>o</sup> 5, Q. 9.

The High Courts of Admiralty of England and of Ireland are distinct, independent, concurrent, and co-extensive jurisdictions. All marine contracts entered into, or trespasses committed on the high seas, or at any foreign port, are equally cognizable by either jurisdiction. The presence of the vessel, or of the person (the object of suit) in an English or an Irish port, determines the claim of conusance of the respective courts. The High Court of Admiralty of Ireland, though it cannot lay claim to equal antiquity with that of England, is unquestionably of very remote origin; and, though distinct and independent, it has uniformly observed the same rules and principles in its adjudications, and has been mainly governed by the reported decisions of eminent Judges who have presided in the English court. And the Irish Parliament, in any legislative regulations which were enacted for the alteration or improvement of this jurisdiction, observed a principle of assimilation, by adopting those provisions which had previously been enacted by the Parliament of England. For instance, the English statute 27 Hen. VIII. c. 4, having enacted that all piracies and murders done upon the seas, or in any haven, river or creek, where the Admiral or Admirals have, or pretend to have, jurisdiction, should be inquired, tried, heard and determined in such shires and places as should be limited by the King's Commission, directed to the Admiral, his lieutenant or deputy, and to three or four other persons in like form and condition, as if such offences had been done on the land; such offences to be heard and determined according to the course of the laws of the land used for felonies done and committed within the realm. The provisions of this statute were adopted, in precisely the same words, by the Irish Statute 11, 12, 13 Jac. I. c. 2, which Statute was amended by Statute 23 & 24 Geo. III. c. 14, (Irish) enacting that the Commission for trying offences should be directed to the Judge of the High Court of Admiralty in Ireland, and to three others, any two of such Commissioners to form a competent tribunal for trial of those offences. Again, by the English statute 8 Eliz. c. 5, it was declared that, for the avoiding of long and tedious suits, and also of great charges and expenses in prosecuting civil and marine causes, and to the intent that, as well strangers, as others of the subjects of the realm that should have causes of suit in those matters, might have such expedition in the same as their nature and qualities require, all and every such judgment and sentence definitive as should be given or pronounced, in any civil and marine cause, upon appeal lawfully made to the Queen in her Court of Chancery, by Commissioners or Delegates, to be nominated and appointed by her Majesty, should be final, and no further appeal should be had from such delegates.

The appellat jurisdiction thus declared by the English Parliament was adopted in that of Ireland, though not in the same words, by Statute 23 & 24 Geo. III. c. 14, already referred to, by which it was enacted, that any person aggrieved by any sentence, order or adjudication of the High Court of Admiralty of Ireland, might appeal to the King, or Lord Lieutenant, in the High Court of Chancery of Ireland; and that, upon every such appeal, the Chancellor should grant a Commission of Delegacy to some discreet and well learned persons, under the Great Seal of Ireland, which Commissioners or Delegates should have full power and authority to hear, and finally determine, all causes and grievances contained in such appeals.

Thus the High Court of Admiralty of Ireland, either by ancient usage, or by the adoption by the Parliament of Ireland of the same legislative enactments, possessed similar inherent powers, or underwent similar modifications of jurisdiction, with that of England, to the period when the two kingdoms became legislatively united in the 40th year of his late Majesty. The jurisdiction in prize cases has never (we believe) been extended to the Court of Admiralty of Ireland. Claims have been set up, and attempts made, with a view of assuming the cognizance of prize causes; but no legitimate exercise of such a jurisdiction as possessed by the Irish Court of Admiralty can be satisfactorily shown.

N<sup>o</sup> 5, Q. 7. 81.  
N<sup>o</sup> 7, Q. 8.

By

By the 8th article of the Act of Union between Great Britain and Ireland, it is expressly enacted, that from and after the Union there shall remain in Ireland an Instance Court of Admiralty, for the determination of causes civil and maritime only; and that the appeal from the sentences of the said Court shall be to His Majesty's Delegates in his Court of Chancery in that part of the United Kingdom. This Act having thus established the High Court of Admiralty in Ireland as an Instance Court only, with an appeal from its decisions to a Court of Delegates, we shall proceed to state briefly the nature of its proceedings, and the description of cases which, in the exercise of its jurisdiction, become the subjects of its adjudication.

High Court of Admiralty.  
40 Geo. 3, c. 38, (Ir.)

The subjects of suit in the Court of Admiralty are two-fold; first, the King's Droits of Admiralty; secondly, the demands, as well of the King's subjects as of foreign merchants, &c. founded on contracts, express or implied, relating to marine concerns, either on sea, in foreign ports, or within the United Kingdom.

Appendix,  
N° 5, Q. 23.  
N° 7, Q. 5. 12, 13.

The King's Droits of Admiralty, for which suits may be instituted, consist of derelicts; being vessels forsaken and found at sea, without any person on board; goods found floating in the sea below high-water mark; deodands, &c.

The cases in which causes at the suit of foreigners, or the King's subjects, are entertained in the Court of Admiralty, arise on hypothecations of vessels or cargoes, for mariners wages, for material men, collision of vessels, trespasses committed at sea, or in havens, ports or creeks, questions of possession, or for security between joint owners, and what are termed petitory causes.

N° 5, Q. 17.

Suits on each and every of the subjects above enumerated may and have occasionally been instituted in the Irish Court of Admiralty; but the Court is principally occupied with business arising out of causes at suit of the King and of salvors, on seizures of derelict ships and cargoes as Droits of Admiralty, and in suits for the recovery of mariners wages.

For the superintendence and management of the business of the Court of Admiralty in Ireland, there are only three officers, viz. the Judge, the Registrar, and the Marshal. The duties of these officers require their services and attendance in all causes of whatever description.

With a view of rendering this Report more intelligible, we deem it necessary to state, as concisely as the nature of the subject will admit, a general outline of the proceedings in a droit cause, and also in a suit for seamen's wages, as they are conducted according to the modern practice of the Court. When the King's Proctor has received information of any derelict property having been brought on shore, he generally applies to the Court, on affidavit of the circumstances, and obtains a fiat; on the authority of which the Registrar issues a warrant directed to the Marshal of the Court, for its arrest and detention. This process, (a copy of which is affixed to the mast, if the derelict be a ship,) contains a citation requiring "all persons in general, who have or pretend to have, any right, title or interest" in the ship or goods thus seized, to appear on a given day in support of their respective claims and interests. The parties availing themselves of this notification are generally such persons as have volunteered their services in bringing the derelict into port, (who are entitled to a certain remuneration out of the proceeds of the sale of the property,) and the owners of the derelict; the latter of whom are not divested of their property, by the seizure, on the part of the Crown for the Droits of the Admiralty, till a year and a day have elapsed from the day of seizure, without claim on their part. On the return of the warrant, pleadings, termed libels, are filed by the King's Proctor, the proctors of the salvors, and of the owners, (should they come forward,) stating their respective claims. The suits by the two latter are termed interventional.

N° 5, Q. 33. 35. 37.  
N° 7, Q. 16, 17.

In causes of this description, a commission for the examination of witnesses issues, directed to the Registrar; and the subjects of such examination are contained in the allegations of the pleadings. Pending this examination, an order is in general pronounced, that a commission for the appraisement and sale of the derelict do issue. This, like the warrant, is generally addressed to the Marshal, in whose custody and possession the derelict has remained from the time of seizure. By virtue of this commission, the Marshal appoints appraisers for valuation of the

High Court of Admiralty.

Appendix,  
N° 5, Q. 62, 64.

N° 5, Q. 53.

N° 5, Q. 80.

s. 2.

Appendix,  
N° 7, Q. 12, 13, 14.

property, and an auctioneer for the sale of it. The several fees of the Marshal, accruing to him on the services he performs in relation to the seizure, custody, preservation, appraisement and sale of the derelict property, together with the sums disbursed by him, (which in some cases are considerable,) being deducted out of the proceeds of the sale, he brings in the balance to the Registrar of the Court, and at the same time hands him his bill of fees and disbursements, together with his vouchers, to justify the sum retained by him. The proceeds thus deposited with the Registrar of the Court are intrusted to his special care and keeping; and for the custody and paying over the same to the parties, and their respective proctors, he is allowed to deduct a per centage. On the return of the commission for the examination of witnesses and publication of the depositions the cause is brought to a hearing, and by the final decree, a certain proportion of the fund in the hands of the Registrar, after deducting his poundage, is decreed to the salvors, and the remaining part to the owners; generally subject to the costs of the Crown and salvors. These several costs are taxed by the Registrar, allowed by the Judge, and then discharged by the Registrar out of the fund in his hands. Should no owner come forward to claim the derelict, it is decreed a Droit of Admiralty; and the proceeds, after deducting the salvage, costs and poundage, are paid by the Registrar to the King's Proctor. However, it scarcely ever happens that an owner does not appear, and establish his claim to the balance of the proceeds.

Before discussing the subject of suits for the recovery of the King's Droits of Admiralty, it may be proper to remove a very prevalent misconception, that the Statutes made in Ireland on the subject of salvage have created a jurisdiction in magistrates in droit cases concurrent with that of the Court of Admiralty. This notion we apprehend to be altogether devoid of foundation, and to have arisen from a very careless and superficial view of the subject. The first Statute on this subject, and on which a number of other Acts and clauses of Acts are super-structed, is the 4th Geo. I. c. 4, which enacts, that the sheriffs and justices of peace of every county, or county of a city or town, and also all mayors, bailiffs and other head officers of corporations and port towns near adjoining to the sea, and all constables, headboroughs, tything-men, and officers of the customs, in all and every such places, *upon application made to them, or any of them, by or on behalf of any commander, chief officers, owners, or freighters of any ship or vessel of any of his Majesty's subjects, or others being in danger of being stranded or run on shore, or being stranded or run on shore,* are thereby empowered and required to command the constables of the several places nearest the sea coasts *where any such vessel SHALL BE IN DANGER AS AFORESAID,* to summon and call together as many men as shall be thought necessary, to the assistance, and for the preservation of such ship or vessel *so in distress* as aforesaid, and their cargoes. The Act then provides, that all persons who shall act, or be employed in the preserving such ship or vessel *in distress,* or the cargoes, shall, within thirty days after such service performed, be paid a reasonable reward for the same by the commander, master, or other superior officer, mariners, or owners of such ship, vessel, or goods so saved as aforesaid; and, in default thereof, such ship, vessel, or goods shall remain in the custody of such officer of the customs or his deputy, until such time as all charges shall be paid. The Act then provides, that if the commander or owner shall disagree with the officer of the customs, touching the monies deserved by any of the persons so employed, it shall be lawful to refer the adjustment of the remuneration to two or more neighbouring magistrates; such adjustment to be binding on all parties. From the provisions of the Act thus stated, it is clear that the case which the Legislature has there contemplated is altogether distinct from the case of a Derelict or Droit of Admiralty; and that the Statute gives no jurisdiction on the same subject matter on which the Court of Admiralty has a right to adjudicate. The latter is a case of *entire abandonment by the master and mariners.* The former, a case of *distress where the master and mariners are on board, and in full possession of the ship and cargo, and only stand in need of assistance to rescue the vessel from shipwreck.* Mr. Foster, the King's Advocate, has described these derelicts, and the proceedings in the Court of Admiralty on the part of the Crown, the salvors and owners. He states that they are, generally, vessels employed in the American timber trade; that they often become water-logged and wholly unmanageable through the effects of bad weather, and are deserted by their crews; but the buoyancy of their cargo prevents their sinking. Vessels so circumstanced have

‡ been

been sometimes (but improperly) termed wreck *at sea*. It has never been doubted that such are distinctly perquisites of the Admiralty, and that suits concerning them belong exclusively to the Admiralty jurisdiction.

High Court of Admiralty.

Suits for wages are commenced in nearly the same manner as those we have already described. A warrant is extracted by the seaman's proctor, which in a suit of this description never issues, unless the mariner has previously sworn an affidavit, stating his cause of action, and that the wages, as demanded, are fairly and justly due to him; but upon filing such affidavit it issues as a matter of course, without fiat of the Judge. The warrant is directed to the Marshal, and he is therein required to arrest, or cause to be arrested, the vessel sought to be affected by the seaman's demand; and also to "cite at the premises" the master or owner, to appear on a given day to defend the suit. All, or any number of the seamen composing the crew of a vessel, may join in a suit, although the sums demanded by them respectively be different; or one may sue, and another intervene, by which means separate suits may be carried on simultaneously. It often happens, in causes of this description, that an interventional suit is instituted by persons termed material men, having executed repairs, or furnished materials for the ship. The owners of the vessel having entered an appearance, or bailed the vessel, libels are filed on the part of the promovents and intervenients. The impugnant then makes his defence, which is done, either by a negative contest, which amounts to general denial, or by a special defensive matter, alleging some cause disentitling the promovent to relief. In case an appearance for the impugnant is not entered, upon the return of the warrant, certain rules are entered, termed defaults, the fourth of which is taken by the Court as a negative contest, and the promovent obtains liberty to file a libel, and prove his case, as if an appearance had been entered; and so the cause proceeds to an hearing *ex parte*.

Appendix,  
N° 5, Q. 67.  
N° 7, Q. 23.

Suits for seamens wages are carried on *summarissimè*; by which term is meant a much more prompt and expeditious procedure than in ordinary cases, wherein the proceedings are said to be summary merely. The greater expedition in a seaman's suit arises from the examination of witnesses being generally conducted *viva voce* in open court; this, however, is not invariably the case, as even in seamens suits, commissions for examination of witnesses sometimes issue; but in general the examination of witnesses takes place in open court, in presence of the Judge, and the depositions are taken down in writing by the Registrar. In these suits the mariners, whether suing conjointly or not, are admitted mutually as witnesses to prove each other's demands; and in practice there is this peculiarity attending them, that their proctors are not required to advance any of the official fees; consequently, should the suit prove unsuccessful, the Judge and the other officers are under the necessity of remitting their fees altogether, with the exception of the Marshal, who claims a lien for his fees and disbursements against the impugnant vessel. When the defendant obtains a decree of dismissal, a release issues, directed to the Marshal, who, on receipt of it, discharges the property under detention; should, however, the promovent's case be established in proof, a decree is pronounced for payment of the wages proved due, or on default of payment, that a commission do issue for the appraisalment and sale of the vessel under arrest; and the remaining proceedings are similar to those already detailed in suits respecting derelicts. It rarely happens, however, that suits for seamens wages are carried to the full length of a sale of the arrested property. The ship-owner, or master of the vessel, in most cases, comes to a settlement at an early stage of the proceedings, or at latest after the decree. These outlines of proceedings in the Court of Admiralty will, we trust, render intelligible the details of practice in the following Report.

The right of appointment to the office of Judge of the Admiralty in Ireland, has been exercised by the Crown since the transfer of the office of Lord High Admiral to the Lords Commissioners of the Admiralty. By statute 23 & 24 Geo. III. c. 14, it was enacted that His Majesty, his heirs and successors should and might from time to time nominate, constitute and appoint one fit and discreet person to be Judge of the High Court of Admiralty, to have and to hold the said office so long as he should behave himself well therein; and that the person so to be nominated and appointed should have full power and authority to hear and determine all, and all manner of civil, maritime and other causes to the jurisdiction of the said Court

High Court of Admiralty.

belonging, or which of right belong thereto, according to the laws and statutes of the realm; provided that it should be lawful to and for His Majesty, his heirs and successors to remove such Judge upon the address of both Houses of Parliament.

Appendix,  
N<sup>o</sup> 1.

By letters patent under the Great Seal of Ireland, bearing date the 23d May 1797, reciting the said statute, Doctor Barrington, now Sir Jonah Barrington, was appointed to the office of Judge of said Court, with power to hear and determine all causes, civil and maritime, as well of mere office as mixed or promoted at the instance of any party as the case might require; "and likewise with power to him " the said Jonah Barrington to depute and surrogate in his place one or more " deputy or deputies as often as he should think fit, and such substitute or substitutes at pleasure to revoke, and to exercise, expedite and execute all and singular " the premises or any of them by the said deputy," to have and hold, occupy, exercise and enjoy freely and quietly, by himself or *his sufficient deputy* or *deputies*, *surrogate* or *surrogates* by him to be substituted as aforesaid, the said office so long as he should behave himself well therein; saving and reserving to His Majesty, his heirs and successors, the right of appointing all officers and ministers whatever, to said Court appertaining or belonging.

4th Report, Pa. 29.

Appendix,  
N<sup>o</sup> 3, 4.  
N<sup>o</sup> 5, Q. 82.

Sir Jonah Barrington performed the several duties as Judge of the Court, from the date of his appointment until in or about the month of September 1810, when he departed from Ireland; having, on the 15th of that month, appointed Ninian Mahaffy, esq. his deputy or surrogate, and has never since presided or discharged the judicial duties of the Court in person. Mr. Mahaffy was afterwards joined, in subsequent commissions of surrogacy, with Doctors Duignan, Vavasor, Ridgeway and Jameson; but discharged the duties almost exclusively, to the time of his resignation of the office, shortly previous to his death; when, by another commission of surrogacy, bearing date 6th September 1823, Sir Jonah Barrington appointed Sir Henry Meredyth, baronet; who, after being sworn, took his seat in court, where he continues to discharge the several judicial duties.

The right of the Crown to confer on the Judge of this Court a power of delegating his authority to a deputy may be much questioned. The statute gives the Crown no such right, either by express words or necessary implication. The patent, by empowering the grantee thus to delegate his official duties, has virtually transferred to him the right of appointment; the practical evil resulting from it is, that the acting Judge is performing the duties almost without remuneration, whilst the appointee of the Crown has been for more than eighteen years enjoying a sinecure salary.

The emoluments of the office of Judge of the Admiralty consist principally of salary, and partly of fees of very trifling annual amount. The salary previously to the appointment of the present Judge was 500*l.* a year, but in the year 1807 it was augmented to 1,000*l.* per annum. The salary in the event of retirement or superannuation is 400*l.* per annum.

4th Report, Pa. 29.

Appendix,  
N<sup>o</sup> 4.

N<sup>o</sup> 5, Q. 71, 72.

N<sup>o</sup> 13, Q. 42, 163.

The fees of the Judge, on an average of three years ending 31st December 1814, during which Doctor Mahaffy presided, amounted to 12*l.* 13*s.* 4*d.* per annum. By the return of Sir Henry Meredyth, it appears their average amount for a like period, ending 31st December 1827, was 41*l.* 19*s.* 4*d.* late currency. These fees were allotted to the respective surrogates, and constituted their only remuneration for discharging the entire judicial functions; they are received by the Registrar as they occur, with the exception of the fee on taxation of costs, and are paid over to the surrogate in a bulk sum yearly.

N<sup>o</sup> 4.

The duties, as enumerated in Sir Henry Meredyth's return, are "to take cognizance of all and every cause and causes of any nature whatever, whether of office, or promoted at the instance of any party or parties, or by law or custom belonging to the Court of Admiralty, or to the jurisdiction thereof; and to hear, discuss and determine, and give judgment in the same." The general duties of the judge are co-extensive with the jurisdiction of the Court; the subjects of which, as described in detail in the patent, are extremely multifarious, and will be best understood by a reference to that document. But there are particular branches of duty which, under the modern practice of the Court, it becomes important that we should notice: one of these is the examination of all bills of costs between party and party. The duty of taxation originally belonged exclusively

N<sup>o</sup> 1.

sively to the Judge; but modern practice has divided it. The Registrar, under an order of reference, actual or constructive, first examines and reports on the bills, and the Judge afterwards confirms his taxation, if unobjected to; but upon objections being made, he investigates the items, and if he finds the allowances or disallowances made by the Registrar too large, it is his duty to moderate them; but if he approves of the taxation, he sanctions it by the word "allowed," with his signature subscribed. The Marshal's bill of fees and disbursements ought also to be submitted to him, and similarly moderated or allowed.

High Court of Admiralty.

Appendix, N° 13, Q. 158, 159.

N° 13, Q. 158 to 163. 173. 175. N° 5, Q. 53.

N° 13, Q. 510. 566.

Another duty of the Judge is the examination of witnesses *in scriptis*; but in modern practice this duty is delegated to the Registrar, and the Judge only administers the oath to the witness, who, after examination, is attended by the Registrar to the Judge, to be what is termed "repeated;" as will be more fully explained when treating of this subject as a branch of the duty of the Registrar.

Another duty of the Judge which it is necessary here to notice, is the pronouncing of decrees and orders for the payment of sums of money out of the registry. This duty consists in an examination, in open court, into the claim of the party applying for payment; and when satisfied of its propriety, in pronouncing an order or decree that the Registrar shall pay over the amount, as ascertained to be due to such applicant.

The Judge also appoints the day for the sitting and adjourning of the Court, and the hours of sitting, which Sir Henry Meredyth states have been varied to meet the convenience of the public and the profession, and with a view to the dispatch of business. The sitting of the Court commences sometimes at one, sometimes at two, and sometimes at three o'clock; but more generally at two o'clock. Before the appointment of Sir Henry Meredyth the hour of rising was in general about half-past three, but Sir Henry has sat much later. The expense to the suitors is much increased by frequent adjournments; this would be avoided by the Court's holding its sittings for the same number of hours during which other courts are in the habit of transacting business; and we recommend that the hours of sittings in each day be so regulated in future. There are three regular Court-days in each week during its sittings, besides by-days, which are days appointed by the Court for transacting any particular business which may happen to be peremptory.

N° 4.

N° 13, Q. 274. 338. 339.

N° 8.

N° 13, Q. 511.

Among the many evils attendant upon the delegation of the judicial functions to a deputy, without remuneration for his time and trouble, that of the late and uncertain hours of sitting, and the adjournments of causes from day to day, which might be determined by more protracted sittings in a much shorter period, stand prominent. We believe the present surrogate has endeavoured to devote, to the discharge of business and the general advantage of the public, as much time as his many professional avocations would allow; but it cannot be expected that a gentleman who has extensive practice as an advocate in the Ecclesiastical Courts, in addition to the common law and equity business in which he is daily engaged, could devote sufficient time and attention to the business of an office, which, instead of producing profit, must necessarily detract considerably from the emoluments arising from an uninterrupted attendance on his professional practice. This evil, in our opinion, can never be removed, until it shall be made compulsory on the Judge to discharge his duties in person, and until his remuneration shall offer a sufficient inducement to a talented and experienced advocate, to devote his entire time to the duties of his office. We therefore beg leave to recommend that in future the person holding the situation of Judge of the Admiralty, shall be required to relinquish professional practice, and that the power of deputation be limited to cases of the temporary indisposition of the Judge, or his necessary and unavoidable absence on business, under the permission of the Lord Chancellor, previously obtained, upon a representation in writing of the necessity for the Judge's absence; in which case a part of the salary of the Judge shall be allocated to the deputy, proportioned to the period during which such deputy shall have continued to perform the judicial duties.

N° 7. Q. 24.

We shall now proceed to a statement of the evidence, already alluded to as affecting the character of Sir Jonah Barrington, which is of such a nature as to require some detail; but we shall observe as much brevity as the nature and

High Court of  
Admiralty.

importance of the subject, and a due attention to precision and perspicuity will permit. And here we cannot avoid expressing regret that, notwithstanding our anxious endeavour to afford Sir Jonah the fullest opportunity for disproof or explanation of the circumstances disclosed, by furnishing him with a statement extracted from our Minutes, containing the entire of the evidence affecting him, accompanied by an offer on our part, more than once repeated, to examine any persons named by him to any topics he might suggest, by whose testimony the transactions referred to might be elucidated, he has not availed himself of our proposal, but has contented himself with general denials of the entire, and assertions of the perjury of the witness who had given the evidence before us; and has, by continued procrastination as to transmitting a statement in reply, obliged us to send in our Report, although in this respect founded on *ex parte* evidence. We shall therefore, in performing the unpleasant duty which devolves upon us, abstain from all comment, beyond what shall appear essential to rendering the statement intelligible; confining ourselves strictly to the facts which appear in our evidence; making, however, this one preliminary observation, that these facts do not, in this case, depend upon the credibility of the witness, or the accuracy of his recollection, but are supported by the production of letters, orders, and other documents in the handwriting, or authenticated by the signature of Sir Jonah Barrington himself. They principally relate to two derelict cases, the Nancy and the Redstrand; the proceeds in which were deposited in the Registry in the years 1805 and 1810, and the examination of the accounts of which first brought us acquainted with the circumstances which we now proceed to detail. We shall state each separately, according to their dates.

Appendix,  
N<sup>o</sup> 13, Q. 448 to  
454.

In the month of December 1805 the ship Nancy, and its cargo, were sold by the Marshal under a commission of appraisement and sale, and the proceeds, amounting to 995 *l.* 13 *s.* 4 *d.* were paid into the Registry. On the 21st of that month Sir Jonah Barrington, by an order in his own handwriting, which was produced to us, directed the Registrar to hand over to Mr. Patrick Hamilton, at that time the King's Proctor, "one-half of these proceeds, to be vested by him forthwith in Government securities for the use of His Majesty, or the claimants, according as might, on a final hearing, appear right; and to retain the other half in his hands, to answer such interlocutory orders as might be made for the expenses, and the salvor's claims in the cause; the Registrar deducting his fees." This order was obeyed; and the Registrar has produced to us Mr. Hamilton's receipt for 482 *l.* 8 *s.* 8 *d.* which, with 14 *l.* 18 *s.*, the Registrar's fees, made 497 *l.* 6 *s.* 8 *d.* On the 3d of the ensuing January, the Judge, by an order under his signature, directed a payment of 200 *l.* to Mr. Richard Newton Bennet, on account of the salvors. This order was also obeyed, as appears by Mr. Bennet's receipt produced. On the 8th of the month of May following, Sir Jonah, by an order in his own handwriting, produced to us, directed the Registrar "forthwith to lodge in the bank of Messrs. Latouche & Co. in his name, and subject to his order, the sum of 200 *l.* out of the proceeds in this cause, in order that it might be invested in Government or other productive securities for the concerned." When the Registrar proceeded to the bank of Messrs. Latouche, for the purpose of complying with this order, the cashier refused to take the lodgment, alleging, as his reason, that Sir Jonah had not any account there. But a draft of his on that bank for 100 *l.* having subsequently been presented, the Registrar was sent for, who accordingly attended at the bank and took it up, and afterwards paid the other 100 *l.* In this state matters appear to have remained for a considerable time, until, probably, the parties interested becoming importunate, it was necessary to give account of the fund; for on the 2d of September 1807, the Judge wrote to the Registrar a letter, which was produced to us, in the words following:—"Dear Sir, In the case of the Nancy I request you will make the report I perused and approved of, stating your having in the Registry two debentures to the credit of the cause, pursuant to the order of the 8th May 1806. I have, upon your making such order, to account with and pay you over a sum of 190 *l.* being the value, or about it, of such debentures; and I promise, upon demand by you, to give you my bond, payable forthwith, for said sum, or any other security you may deem proper or necessary for the securing you therein. 2d September 1807. *Jonah Barrington.*" This report the Registrar declined making; and the next document which we have found is a written order made by the Judge, dated 17th December 1807, directing Mr. Patrick Hamilton to pay back to the Registrar the

482 *l.* 8 *s.* 8 *d.*

High Court of Admiralty.

482 *l.* 8 *s.* 8 *d.* paid to him under the order of the 21st December 1805, with the interest thereof from the time of payment. This order was duly served upon Mr. Hamilton, the day on which it was made, and an affidavit thereof produced to the Court; and on the 23d day of December the Judge made an order in his own handwriting, which has been exhibited to us, in the following words:—"The King *v.* The Nancy. On reading the order of the 17th instant, and an affidavit of service thereof, and a certificate that the sum of 482 *l.* 8 *s.* 8 *d.* therein mentioned, has not been yet paid in, it is ordered by the Judge, that the Registrar do forthwith, out of proceeds in this cause remaining in his hands, and also out of any other proceeds or lodgments in his hands as Registrar, in any cause wherein His Majesty is promovent, pay over to John Hawkins, the owner's proctor in this cause, the sum of 630 *l.*, according to the decree in this cause; and said Hawkins's receipt for such sum to be a full acquittance and discharge to said Registrar for such sum as he shall pay accordingly, out of whatever fund the same shall be paid as aforesaid, until the said sum of 482 *l.* 8 *s.* 8 *d.* shall be paid in, according to the said order of the 17th instant; and it is further ordered, that the decree in this cause may be finally made up. Dated the 22d December 1807. *J. Barrington, Judge.*" This order was obeyed, and the Registrar has in his possession Mr. Hawkins's receipt for the 630 *l.* so ordered to be paid. Thus, including the sum of 14 *l.* 18 *s.* the Registrar's poundage on the second moiety of the proceeds, there is a balance actually due to him in that cause of 546 *l.* 11 *s.* 4 *d.* Mr. Hamilton never having paid back the sum of 482 *l.* 8 *s.* 8 *d.* This will appear more clearly from the following statement of the account:

|  | £.    | s.  | d.   |
|--|-------|-----|------|
| 1805, 21st December:   |       |     |      |
| Cash paid Mr. Patrick Hamilton, order of this date - - - - -           | 482   | 8   | 8    |
| Registrar's poundage thereon - - - - -                                 | 14    | 18  | -    |
| 1806, 3d January:  |       |     |      |
| Cash paid Richard Newton Bennet, esquire, order of this date - - - - - | 200   | -   | -    |
| 1806, 8th May:   |       |     |      |
| Cash paid to the Judge's order of this date - - - - -                  | 200   | -   | -    |
| 1807, 22d December:  |       |     |      |
| Cash paid Mr. Hawkins, order of this date - - - - -                    | 630   | -   | -    |
| Registrar's poundage on second moiety - - - - -                        | 14    | 18  | -    |
| Total - - - - -  | 1,542 | 4   | 8    |
| Gross Amount of Proceeds paid into Registry - - - - -                  | 995   | 13  | 4    |
|  | £.    | 546 | 11 4 |

On considering the order of 23d December, two questions present themselves which demand investigation, viz. first, why the Court, having before it evidence of the disobedience, by one of its own practitioners, of its order of the 17th, although duly served, should not award an attachment, or other process, to enforce the repayment thereby directed; and secondly, why it should order the Registrar to make good the deficiency in one cause, by the appropriation of the funds of another, or several other causes. The evidence of Mr. Pineau furnishes answers to both; as he states that Sir Jonah Barrington admitted to him having received the money from Mr. Hamilton, and that he was actually then himself accountable for it; and of this the Registrar was so satisfied, that from that time he neither applied, nor thought of applying, to Mr. Hamilton for the repayment of it, although he positively states he paid the entire overplus, beyond what was in his hands to the credit of the cause, out of his own private funds, as he never applied any part of the proceeds of any other cause towards making up the money, although directed to do so by the express terms of the order.

From this statement of the evidence it appears, that in this cause alone Sir Jonah Barrington appropriated to his own use out of the proceeds, 482 *l.* 8 *s.* 8 *d.*, and 200 *l.*, making together 682 *l.* 8 *s.* 8 *d.*, and never repaid any part of either; and that the Registrar is a loser in that cause, to the amount of 546 *l.* 11 *s.* 4 *d.*, including his poundage.

The case of the Redstrand Derelict, which occurred in 1810, is less complicated. On the 12th January, in that year, the sum of 200 *l.* was paid by the Marshal into the Registry, on account of the proceeds in this cause; and, on the same day, Sir Jonah Barrington, by an order in his own handwriting, which has been produced to us, directed the Registrar to lodge that sum to his (the Judge's) credit in the bank

Appendix,  
N<sup>o</sup> 13, Q. 455 to  
461. 601.

High Court of  
Admiralty.

of Sir William Gleadowe Newcomen, which he accordingly did. Subsequently, a petition having been presented to the Court by Mr. Henry Pyne Masters, one of the salvagers, Sir Jonah wrote an order at foot of it, bearing date the 29th day of May 1810, directing the Registrar to pay to the petitioner a sum of 40*l.*; and at same time he wrote a note to Mr. Masters, requesting that he would not present the order for two months; at the close of which period Sir Jonah left Ireland, and never since returned. Mr. Masters, after a considerable time, (upwards of four years,) finding that he could not get his money, prepared a memorial, addressed to the Lord Lieutenant, stating the circumstances, and complaining of the conduct of the Judge; and going to the Registrar, he demanded payment of his money, otherwise he would immediately present the memorial which he held in his hand. The Registrar, anxious, as he states, to screen the Judge, on the 8th day of July 1814, paid Mr. Masters the money out of his own pocket, and has produced to us his receipt, and a letter of acknowledgment from Mr. Masters for his good conduct in the transaction. Under somewhat similar circumstances the Registrar paid a further sum of 9*l.* 12*s.* 9*d.* to Mr. John Wycherly, another salvor, who came to Dublin to endeavour to get his money; so that, including his own fees in the cause, amounting to 15*l.*, and his poundage on the net proceeds, amounting to 7*l.* 10*s.*, the Registrar states there is actually due to him in this cause 72*l.* 2*s.* 9*d.* And further, that as the sum of 200*l.* was never repaid by the Judge, the loss of the balance between that sum and the sum of 72*l.* 2*s.* 9*d.* fell upon the unpaid salvagers.

Appendix,  
N<sup>o</sup> 13, Q. 602. 604.

Such are the statements with respect to Sir Jonah Barrington, which were made to us upon oath, by an officer of the Court of Admiralty, and confirmed by the production of the documents referred to. Shortly after we had learned from Sir Jonah that he considered himself unable to attempt a journey to Ireland, we transmitted to him the extract from our Minutes already alluded to, containing every thing at that time deposed to by which his character might be affected. Subsequently we have received sundry communications from him, which, with the several letters we have addressed to him in reply, will be found in the Appendix, and to which, and the evidence relating to this subject, as referred to in the margin, we beg to direct particular attention. In one of Sir Jonah's letters to us, dated 2d August 1828, after an acknowledgment of the receipt of the extract from our Minutes forwarded to him, will be found the following paragraph:—

“ Be assured, not one hour shall be unnecessarily lost in transmitting to you my entire refusal; and I am too impatient to do away any impression that such evidence must have excited, that I cannot avoid anticipating that refusal generally, by declaring solemnly, ‘So help me God,’ before whom age and infirmity must soon send me, that the whole and entire of that evidence, so far as it tends to inculpate me, is totally, utterly, and unequivocally false and unfounded.” This, and passages of a similar tendency in subsequent letters, are however the only contradiction or explanation of the foregoing facts given by Sir Jonah; and undoubtedly, although unsworn, so distinct and unqualified a contradiction would have had much weight with us, had the alleged facts been supported by the parol testimony only of the officer. But when we find the handwriting of Sir Jonah himself supporting the statement of the witness, we cannot avoid giving credit to his evidence, and must lament that the Judge did not adopt measures for reviving his recollection, previously to committing himself to a general assertion of the falsehood of the entire evidence of Mr. Pineau, so far as related to him, which is all that on this subject his numerous and very long letters have afforded us. It is true that, in several of his letters, he promises to send us a full and complete vindication of himself, with much valuable information; to enable him to complete which he calls upon us to furnish him with copies of documents, some of which we had never seen, and not one of which was in our possession: for these, after stating our inability to comply with his request, we referred him to the proper office, where his agent could at any time have procured them, or such of them as were necessary; but although more than once apprized that our Report was drawing to a close, no statement or vindication has been furnished to us; and finding it useless to continue a protracted correspondence, we have suffered his last letter, which reached us at the period at which we had previously announced to him our expectations of having our Report completed, to remain unanswered, as, had we done otherwise, our Report must necessarily have been much delayed awaiting

his

N<sup>o</sup> 2.

his answer, the contents of which might have caused a further postponement. We again, however, resumed the examination of the Registrar on the subject; and although aware that we had been in communication with Sir Jonah, who might, if he had sworn falsely, have suggested means of contradicting him, he has persisted in his former evidence, and has furnished other documents tending to confirm his testimony, which he had subsequently found. To this further evidence, and these additional documents, we would also particularly refer, as the several efforts made by Mr. Pineau to obtain payment of his demand in the Redstrand case will be found there detailed, and his reasons for omitting for so many years to make any application with respect to the larger amount due to him in the case of the Nancy, a circumstance to which Sir Jonah Barrington, in his letters to us, did not fail to direct our particular attention.

High Court of Admiralty.

Appendix, N<sup>o</sup> 13, Q. 589 to 614.

In the Judge's letters he has also endeavoured to lessen Mr. Pineau's credit with us, by impeaching the Return made by him to Parliament; and has, in his letter of the 20th November last, particularly alluded to the cases of the North and South Bophin Derelicts, in the year 1822, and comments on the singularity of three sums, for totally different purposes, being made the same in amount, viz. 126*l.* 18*s.* 1*d.* each. We have examined that Return as printed, and also an attested copy of the original, and find but two sums of that amount, which Mr. Pineau has fully explained in his evidence, by showing that the salvors in that case were decreed one half of the net proceeds, after payment of the Registrar's and Marshal's fees, and the Crown's costs; this moiety amounted to 126*l.* 18*s.* 1*d.* the salvor's costs were to be paid out of the remaining moiety, and were taxed to an amount exceeding it, viz. 143*l.* 5*s.* 8*d.* The fund therefore being insufficient to pay them in full, the entire remaining moiety was appropriated to that purpose.

Id. Q. 648 to 652.

In the regulations for the safe custody of the suitor's money, which will be found subjoined to another branch of this Report, we have recommended a system which, in our opinion, would prevent the possibility of any improper application of the funds brought within the jurisdiction of the Court. We do not feel it necessary to suggest any regulations for the government of the Judge; and with respect to his fees, they may, we consider, be continued at the rates at present taken.

#### THE REGISTRAR.

THE Duties of this Officer, as stated in a Return made to the Board, are as follow: "To attend Court-days three in the week, and By-days often the other three days in the week, particularly in term time; and to be constantly in the way to sign warrants to arrest, and releases to liberate vessels detained." The Registrar is also the officer to whom is intrusted the custody of all monies produced by sales of vessels, cargoes, or property under commissions of appraisement and sale directed to be issued by the Court, either by decree or by interlocutory order. The execution of these commissions is, in general, confided to the Marshal, to whom, in most instances, they are directed, and their execution is certified by him to the Registrar, to whom he pays over the proceeds, having previously deducted his own fees and expenses. The amount so paid over is supposed to remain in the hands of the Registrar, until directed by the Court to be paid, either in the entire or partially, according to their respective rights, to the persons entitled.

N<sup>o</sup> 8.

The office is at present held by Mr. Daniel Pineau, under letters patent, bearing date the 3d day of January 1805, whereby it was granted to him to hold during Your Majesty's pleasure, with power of appointing a deputy for performance of the duties. Mr. Pineau has not at present any deputy, but discharges his duty in person. The remuneration of this officer arises solely from fees claimed and received on different heads of service set forth in his return; and in a table or list of fees stated by him to have been arranged in the year 1823, and subsequently furnished to this Board. This table was framed by the Registrar, with the co-operation of the proctors, at a meeting held for the purpose, from old bills of costs, taxed by his predecessors; from the ancient usage of the Court as stated by the principal practitioners; from the practice of ecclesiastical courts, especially the Prerogative; and from a list of fees which had been given to the Registrar by a former practitioner of much experience, then deceased. These fees appear, on an

N<sup>o</sup> 9.

N<sup>o</sup> 13, Q. 13. 19. Id. Q. 3 to 6, and Supp<sup>l</sup> Ans<sup>r</sup> to Q. 6, after Q. 55. N<sup>o</sup> 12.

N<sup>o</sup> 8.

High Court of  
Admiralty.The Registrar.  
Appendix,  
N° 13, Q. 33.Id. Q. 227 to 231.  
512, 513.

average of three years, ending 1814, to have produced 216*l.* 13*s.* 4*d.* yearly, subject to a deduction of 76*l.* 13*s.* 4*d.* per annum; and, on a similar average for the three years ending December 1827, the produce of the fees appears to have been 311*l.* 2*s.* 2*d.* subject to a like annual deduction.

The records of the Registry are deposited at the private residence of Mr. Pineau, where the official business is transacted. This appears very objectionable, but as no public office has been provided for this officer, it may be considered as hitherto unavoidable, although attended with considerable inconvenience to the practitioners, owing to the distance of the place where the records are kept from the Court, and the want of that regular attendance at stated hours, which duties of the nature and importance performed in this office would require from the person intrusted with their execution. For the discharge of these duties, the Registrar has the assistance of two permanent clerks, the one at a salary of 52*l.*, late currency, per annum, and the other at a salary of 10*s.* per week in money; the officer making up the difference between that and 1*l.* or one guinea a week in cash occasionally given, and other advantages under him; and as Mr. Pineau is a practising solicitor and attorney, the same clerks are employed in the discharge of both official and professional business, in the copying of public records and private documents.

In the year 1716, a return was made by the then deputy-registrar, in obedience to an order of the House of Lords of this country, of the several services for the performance of which fees were claimed, with the amount of fee on each respectively; annexed to which was an affidavit of the deputy-registrar, stating that same was copied from an old table of fees, which had been in his possession for thirty or forty years preceding, and which he believed to be the ancient and accustomed fees. Of this return we have procured a copy, and the services on which fees were then claimed, and those at present, with the respective rates of fees on each, are exhibited in the following

N° 10.

COMPARATIVE TABLE.

| N <sup>o</sup> . | SERVICES.   | FEEES<br>claimed in<br>1716. | FEEES<br>claimed in 1828.   |
|------------------|---|------------------------------|---|
|                  |   | £. s. d.                     | Late Currency.  |
| 1.               | For making the warrant to arrest any ship, person or goods, <i>ad instant. part.</i> upon an action above 5 <i>l.</i> - - - - - | - 1 -                        | For each warrant,<br>3 <i>s.</i> 9½ <i>d.</i>   |
| 2.               | For making the warrant upon any action under 5 <i>l.</i> - - - - -  | - 1 4                        |   |
| 3.               | For every act in court - - - - -  | - - 8                        | For each act, 1 <i>s.</i>   |
| 4.               | For every act to him out of court - - - - -   | - 1 -                        |   |
| 5.               | For making every commission to examine witnesses, or for personal answer - - - - -  | - 3 4                        | Commission of any kind, 13 <i>s.</i> 4 <i>d.</i>  |
| 6.               | For making every decree in court - - - - -  | - 2 2                        |   |
| 7.               | For recording every recognizance or bond taken before the Judge - - - - -   | - 1 6                        | For every decree, 10 <i>s.</i><br>- every dismiss, 3 <i>s.</i> 4 <i>d.</i><br>Drawing stipulation,<br>19 <i>s.</i> 4 <i>d.</i> including attendance.  |
| 8.               | For release of any ship, goods or person, arrested by warrant upon any action above 5 <i>l.</i> - - - - -                       | - 1 8                        |   |
| 9.               | For the same upon any action not above 5 <i>l.</i> - - - - -  | - - 10                       | For every release, 3 <i>s.</i> 4 <i>d.</i>  |
| 10.              | For releasing any person on suspicion of piracy - - - - -   | - 4 2                        |   |
| 11.              | For every precept to Crown, any murdered or drowned person - - - - -  | - 3 4                        | No claim.   |
| 12.              | For every sentence and decree carrying <i>vim sententia</i> - - - - -   | - 6 8                        | For precept, 3 <i>s.</i> 4 <i>d.</i>  |
| 13.              | For every <i>primum decretum</i> - - - - -  | - 3 4                        |   |
| 14.              | For examination of every witness - - - - -  | - 1 8                        | No claim, save as in N° 6.<br>No claim.<br>If in Dublin, for production of witness, 5 <i>s.</i> 4 <i>d.</i> ; examination, 6 <i>s.</i> 8 <i>d.</i> ; for cross examination, 6 <i>s.</i> If in the country, 3 <i>l.</i> 8 <i>s.</i> 3 <i>d.</i> per diem.* |

\* Appendix, N° 13,  
Q. 574.

(continued)

| N <sup>o</sup>   | SERVICES.  | FEES claimed in 1716. |    |    | FEES claimed in 1828.   | High Court of Admiralty.<br>The Registrar.   |
|--|--|-----------------------|----|----|---|--|
|  |  | £.                    | s. | d. |   |  |
| 15.  | For examination of every party principal -   | -                     | -  | 6  | } No claim, save as in N <sup>o</sup> 14.                                   |  |
| 16.  | For copy of every libel, declaration, allegation and matter articulate under ten articles -                            | -                     | 2  | 6  |   | } For attested copy of every pleading, deposition or exhibit, for every 90 words, 9d., and 1d. to clerk. |
| 17.  | For every one of twenty articles - - -   | -                     | 3  | 4  | } For copy, order or decree, 5s. 5d., if long same as in N <sup>o</sup> 16. |  |
| 18.  | For copy of every act of Court - - -   | -                     | 1  | -  |   | } Same as in N <sup>o</sup> 16.  |
| 19.  | For copy of every examination of witness or party principal - - - -  | -                     | 1  | -  | } No claim.   |  |
| 20.  | For copy of every <i>primum decret.</i> - - -  | -                     | 3  | 4  |   | } No claim.  |
| 21.  | For every appraisement taken of ships or goods - - -   | -                     | 4  | 6  | } No claim, save as in N <sup>o</sup> 16.                                   |  |
| 22.  | For copy of every appraisement - - -   | -                     | 1  | -  |   | } No claim.  |
| 23.  | For making every testimonial upon any sentence, libel, act or the like - - -   | -                     | 15 | 4  | } Act and exhibiting interrogatory, 2s. 6d.                                 |  |
| 24.  | For every interrogatory - - - -  | -                     | -  | 2  |   | } For each £. not exceeding 100l., 1s.; for every £. after, 6d.  |
| 25.  | For paying and retaining any money deposited in court, per £. - - - -  | -                     | -  | 2  | } No claim, save as in N <sup>o</sup> 5.                                    |  |
| 26.  | For making every commission to deliver any ship or goods cast away, to the owners thereof, if they be of any value - - | 1                     | 6  | 8  |   |  |
| <p>All deodands, fines, forfeitures, <i>per sententi.</i> bloodsheds and casualties under 20 l. according to the custom of the High Court of Admiralty, are to be divided into four parts, one moiety to the Judge, the other equally between the Registrar and Marshal.</p> |  |                       |    |    |   |  |
| 27.  | Apostles or transmiss for every 90 words, including 1d. to clerk - - - -   | no claim              | -  | -  | £. - - 10   |  |
| 28.  | Appearance on each - - - -   | -                     | -  | -  | - 3 -   |  |
| 29.  | Attachment - - - -   | -                     | -  | -  | - 13 4  |  |
| 30.  | Attending any where in town out of court - - - -   | -                     | -  | -  | - 11 4½   |  |
| 31.  | - in the Registry, per hour - - - -  | -                     | -  | -  | - 6 8   |  |
| 32.  | Appeal for every <i>viva voce</i> , and entered <i>apud acta</i> - - - -   | -                     | -  | -  | - 1 -   |  |
| 33.  | { Costs taxing, if under 20l. - - - -  | -                     | -  | -  | - 6 8   |  |
|  |  |                       |    |    | - 3 4   |  |
| 34.  | Citations to witnesses - - - -   | -                     | -  | -  | - 3 4   |  |
| 35.  | Citation of any other kind - - - -   | -                     | -  | -  | - 6 8   |  |
| 36.  | Certificate, for each - - - -  | -                     | -  | -  | - 5 5   |  |
| 37.  | Defaults, on each - - - -  | -                     | -  | -  | - 3 4   |  |
| 38.  | Exhibits, each - - - -   | -                     | -  | -  | - 1 6   |  |
| 39.  | Monition - - - -   | -                     | -  | -  | - 6 8   |  |
| 40.  | Records, attending with - - - -  | -                     | -  | -  | - 6 8   |  |
| 41.  | Reports, for each, save on costs - - - -   | -                     | -  | -  | - 11 4½   |  |
| 42.  | If long, per sheet, including 1d. to clerk - - - -   | -                     | -  | -  | - 1 5   |  |
| 43.  | Search, for every 10 years - - - -   | -                     | -  | -  | - 3 4   |  |
| 44.  | Summons, for each - - - -  | -                     | -  | -  | - 2 8½  |  |

From a perusal of the services set forth in the foregoing table, as well as the previous enumeration, it will be seen that the duties of this office are very comprehensive, and may be classed under four distinct heads, viz. those of Registrar, Examiner, Accountant-General, and Taxing Officer. We shall consider each head separately, animadverting upon such items as appear unnecessarily or uselessly multiplied, or to which an unauthorized or unreasonable rate of fee is annexed; making, however, one preliminary observation, that for the due performance of these

Appendix,  
N° 13, Q. 507, 508.

these duties, or the safe custody of the suitors money, no security whatever is given by the officer, nor is he even bound by the obligation of any oath of office.

The duties of this officer, as Registrar, may then be stated to be,—to attend the sittings of the Court; to take down the evidence of all witnesses examined in open court; to take down all orders and decrees pronounced by the Judge, and enter on the rule book all pleadings and documents exhibited; to furnish attested copies of pleadings, proofs, affidavits, orders and decrees; to issue writs, citations and warrants, and to make reports on orders of reference. To the performance of this class of duties most of the fees in the foregoing table are annexed, N° 33 being attached to the taxation of costs, N° 25 to the receipt of money as accountant general, N° 14 to the examination of witnesses, and the entire of the remaining items may be considered as falling exclusively within the scope of the duties performed by this officer in his distinct capacity as Registrar. Of those services for which, in 1716, claim was made for fees, some have altogether ceased in practice, whilst a much more considerable number have been, since that period, introduced, for the performance of which fees are demanded and received; and in almost every instance the amount of remuneration to the officer, on services which existed in 1716, has been very considerably increased; so much so, that, on a cursory perusal of the two returns, it would appear doubtful whether they could have been made for the same department.

N° 13, Q. 288.

The service which, in other courts, is termed "Filing," and which consists in placing a document on the file, and entering in a book its description and the date of its receipt in the office, is in this court denominated "Exhibiting." In the Table of 1716 no fee whatever appears claimed for this service, with the exception of Interrogatories; for each of which, given into court, a fee of 2 *d.* is stated for the Registrar, but at present a fee of 1 *s.* 6 *d.* is demanded for every document exhibited. We have not learned at what time this fee was introduced, but it appears to have been received for a considerable period; and if confined to documents actually deposited in the office, to remain there as of record, and not constructively exhibited and withdrawn, we do not consider it as an unreasonable fee. In addition to this fee of 1 *s.* 6 *d.* for exhibiting, the practice has been to charge another fee upon each document, as for an Act.

Id. Q. 289 to 291.

Id. Q. 514 to 516.

In the year 1716, the fee to the Registrar for every act in court was 8 *d.*, and for every act out of court 1 *s.* It appears quite obvious that this service meant every judicial act of the Court or the Judge; such as the pronouncing an order, whether in court or in chamber, (a separate fee being provided for a decree); but the construction at present given to it is, that the Registrar is entitled to a fee, in addition to every other charge, for every document filed, every rule entered, and every order and decree pronounced, as and for an act; although it is admitted by the officer that most of those acts so charged are constructive; as the documents filed or exhibited are merely produced to, or lodged with, the officer, who enters them in the rule book as having been exhibited, and marks upon the back the word "Exhibited," with the date, and his initials. These documents are then supposed to have been produced severally to the Court, and, as such, are entered in the rule book, and the production or receipt of them is considered an act of Court, for each of which a fee is taken for the Registrar, uniformly at the rate of 1 *s.* We shall recommend the discontinuance of this fee in future upon all services where it is merely constructive, and that it shall be confined entirely to orders entered or pronounced, under which restrictions, we are of opinion, the fee of 1 *s.* may be sanctioned.

N° 13, Q. 232 to  
245. 284.

Id. Q. 399.

N° 21, Q. 288. 290.

The documents, thus filed or exhibited, are again productive of emolument to the Registrar, when copies of them are required to be furnished: for this service the fee demanded is stated by the officer to be sometimes 10 *d.* but more frequently 9 *d.* per sheet of ninety words. It is observable, however, that Mr. Pineau, who in answer to several questions pleaded a great defect of memory, and was unable to state his most ordinary fees without reference to the table arranged by him in 1823, has in that table returned 10 *d.* as the uniform rate per sheet, and the evidence of a very experienced proctor confirms this return. This charge per office sheet is composed of 8 *d.* per sheet as the officer's fee, with two charges of 1 *d.* each per sheet, successively added, as for the clerk. The first fee of 1 *d.* for the clerk the officer appropriated to himself, paying his clerks for their services; and

having

having thus raised his own charge to 9*d.* per sheet, an additional clerk's fee of 1*d.* was subsequently demanded, on the plea, as the present officer has stated, of not knowing accurately whether a clerk's fee was included in the 9*d.* The only service, however, for which a clerk's fee is charged, is for attested copies; and the charge per sheet is the same, both for officer and clerk, upon copies of pleadings, affidavits and depositions. The Table of 1716 contains the following entries of fees, claimed at that period by the Registrar for copies: "For the copy of every libel, declaration, allegation and matter articulate, under ten articles, 2*s.* 6*d.*; for every one of twenty articles, 3*s.* 4*d.*; for the copy of every examination of witnesses or party principal, 1*s.*" These rates, and this mode of charge, have been altogether discontinued, and in their stead a sheet fee of 8*d.* has been substituted, without any authority that we can discover; superadded to which are the two distinct clerks fees of 1*d.* each per sheet, making the fee at present taken for attested copies of pleadings, depositions and affidavits, 10*d.* per sheet of ninety words. We are of opinion that a sheet fee for such copies, although hitherto unauthorized, might reasonably be established; but the arbitrary increase of the officer's emoluments, under the appellation of clerks fees, should be discontinued.

Appendix,  
N<sup>o</sup> 13, Q. 283, 284.

In this office, it is quite optional with parties, whether they will take out attested copies of pleadings or affidavits; and if they do not think proper to do so, they are not called upon to pay for them; and a party is even permitted to exhibit a pleading in answer to one previously exhibited against him, without being required to take out a copy of the previous pleading.

N<sup>o</sup> 13, Q. 518 to 521.

A practice has, however, been introduced with respect to copies of depositions, within the last five or six years, of copying the libels, to support the allegations of which such depositions have been taken, along with the depositions; and thus compelling a party demanding a copy of depositions, to take out and pay for a copy of a pleading which he has either filed himself, or has previously procured a copy of, and cannot require. This practice has been complained of by the proctors, and previously to its introduction no inconvenience was felt which suggested its necessity. Mr. Pineau has stated that he introduced it upon his own authority, and that he was influenced in doing so by considering it a necessary and beneficial change, and not by any view to increase his own emolument; but he has failed to show, and we are at a loss to discover, what benefits have resulted from it, or what other effect it has produced than the accumulation of cost to the suitor and emolument to the officer: we recommend its discontinuance in future.

Id. Q. 496 to 506.

Id. Q. 522 to 524.

Rules or orders are in this Court, as in most others, of a two-fold nature. First, those actually pronounced by the Court or the Judge upon the application of the party, which are taken down by the Registrar; and secondly, those which are entered by the officer, as of course, upon the requisition of the party, although supposed to be pronounced by the Court. Amongst this latter class have been considered rules entered on consent signed by the proctors in causes, which are frequently so framed as to have the effect of decrees, and very frequently are for the payment of money. These consents on being brought to the office are converted into orders, and entered in the rule-book by the Registrar, on his own responsibility, as if pronounced by the Judge, and thus acquire the validity and force of an order of the Court. Rules entered in this manner are, however, distinguishable from those actually pronounced by the Court, by being headed with the words, "In the Registry."

N<sup>o</sup> 13, Q. 445 to 447.

That consents of litigating parties, properly signed and authenticated, should be capable of being made rules of Court is doubtless beneficial to the suitors, and frequently affords facilities to the attainment of justice; but that the unrestricted discretion vested, or considered to be vested, in the Registrar, to make every consent a rule of Court may be mischievous is apparent, and strongly illustrated in the following instance. In the causes of "Anderson and others" against "The ship Mavinhe," and "Roche & Co. and O'Keeffe intervenients" against "same," a sum of 777*l.* 1*s.* 2*d.* was, on the 5th March 1805, deposited in cash and bills with the Registrar to the credit of the causes. On the same day Mr. Pineau, having deducted 19*l.* 8*s.* 6*d.* for his own poundage and fees, paid out the remainder to Mr. John Hawkins, proctor for the promovents, and for Messrs. Roche and Co. intervenients. This payment was made under the sanction of an order of the Court, founded upon a consent, which was signed by John Hawkins, proctor for Anderson and

Id. Q. 447.

Appendix,  
N<sup>o</sup> 13, Q. 436, 437-  
469.

others, and also for Roche & Co., and by Mr. Wm. Richardson, proctor for the vessel, and intervenient O'Keeffe. Upon our investigation, it was ascertained that no appearance had been entered for the impugnant; consequently no proctor was authorized to consent for the vessel or the owners; and that the whole transaction was the act of Mr. Hawkins, to whom Mr. Wm. Richardson had given permission to use his name in that cause. Thus in this instance a large sum of money was paid to Mr. Hawkins upon his own consent, and the Registrar being aware that no appearance had been entered for the impugnant, and believing the entire to be the act of one single proctor, yet did not hesitate to make the consent a rule of Court, and to act upon that rule by payment of the money. The lapse of time, and death of parties concerned, has prevented our being able to discover whether any injustice had resulted from this transaction; but it must obviously occur that such an irregular administration of funds brought into Court, may conduce to fraud and misapplication of the suitors property. The Registrar attempts to justify or palliate his conduct on this occasion, by stating that it took place about six weeks after he was sworn into office; but it will appear that at that time he was sufficiently acquainted with the business to attend carefully to his own interests, for he defeated an attempt made in that very cause by Mr. Hawkins to manage the fund without coming into Court in the ordinary way; the success of which would have deprived the Registrar both of his poundage and of the fees upon the entry of the rules. We recommend that consents for the payment of money out of Court shall not be made rules without the sanction of the Court.

Id. Q. 474.

Upon the entry of rules, whether obtained in court, or of course in the office, with the exception of those termed defaults, there is not any fee claimed by the Registrar, save that for the "act." On the entry of defaults, in addition to the fee of 1s. for an act, a further fee of 3s. 4d. is demanded. No claim is made for this fee in the Table of 1716, and we are of opinion that both the service and its fee may in future be advantageously dispensed with. Upon the return of a warrant, it has been the practice to enter a rule, termed, "Warrant returned—appearance expected;" this rule gives the impugnant time until the next Court-day to appear, without being considered in contempt. If he does not then appear upon being called he is decreed contumacious, and in pain of his contumacy, the first default is entered, which gives him time until the next court-day, if in a summary cause, but only until the next day if in a seaman's suit or *summarissimè* cause. Four of these defaults are entered, to the last of which is added "liberty to libel." Also the non-appearance of the impugnant is taken as a negative contest, by virtue of which the promovent may proceed, and prove his cause. These rules are all entered as of course in the office, and upon each the Judge has a fee of 6s. 8d., the Registrar 3s. 4d., and 1s. for the act; the Proctor and Marshal 3s. 4d. each. It appears to us that these several rules, which are attended with considerable expense, might be omitted; and that, in all cases, the impugnant should be considered contumacious, and the promovent be at liberty to file and prove his libel, on a given day after the return-day of the warrant, due proof being made of its service. And with a view to expedition and economy in seamens suits for wages, in case of the non-appearance of the impugnant upon the day appointed, we think the necessity for a libel might be altogether dispensed with, and judgment at once entered by default for the amount claimed; care being taken that the affidavit of the seaman, made previously to the issuing of the warrant, shall be sufficiently full, specific and precise, and shall set forth all credits; and in such case it might be prudent to annex to the copy of the warrant to be served a copy of the affidavit upon which it was grounded; which affidavit, in case of the impugnant's appearance, might also serve instead of a libel, and its several allegations be admitted to proof. There are various other rules of course entered in the progress of the different descriptions of suits, many of which might be dispensed with. The Court would be best able to decide in what instances they are requisite; but wherever two or more rules of the same description are entered with a view to afford time, we recommend the substitution of one affording sufficient time.

The rule books of this Court appear to have been kept in a very slovenly manner prior to the appointment of Mr. Pineau as Registrar; he has with considerable trouble collected, arranged and had them bound; and with a view to their better preservation, as well as to facilitate the searches of parties interested in them, he has at considerable expense caused them to be transcribed in a fair and legible

legible hand into books kept in his office, corresponding as to dates with the volumes into which the originals have been bound. The earliest to be found in the office commences in 1747. We have inspected both, and consider the officer entitled to much credit, for the great improvement he has introduced in this respect.

For the copies of orders the fee charged is in general 5s. 5d., but should it exceed seven office sheets in length, the Registrar conceives himself entitled to demand 9d. per sheet of 90 words. The Table of 1716 contains a claim for the copy of every act of Court 1s. We conceive it might be reasonable to allow a fee of 4s. 4d. for the copy of every rule which shall be called for, but not to be charged unless furnished at the desire of the party.

The fee claimed by the Registrar upon every decree is 10s.; and for a copy, the charge is made at the same rate as for the copy of an order. For a dismiss, the fee is but 3s. 4d. No distinction appears to be made in the amount of fee between decrees to account, which may be considered as decretal orders of reference, decrees of appraisement and sale, of unlivery and of restitution, and final decrees. In the Table of 1716, the claim made by the Registrar for this service is, "For the fee of every sentence and decree carrying *vim sententiæ*, 6s. 8d.; for the fee of every *primum decretum*, 3s. 4d.; for making every decree in Court, 2s. 2d.; for the copy of every sentence, 5s.; for the copy of every *primum decret.*, 3s. 4d. It appears to us that the necessity for an order of reference to the Registrar, or decree to account, would very seldom arise in this Court, as the instances must be few in which the Court would not have sufficient information before it, to enable it to pronounce an absolute final decree in the first instance. The fees claimed in the Table of 1716 appear adequate to this service. It has been customary in this office to charge for an attested copy of the decree, although such copy was neither made nor required, and in fact would be wholly useless and unnecessary, having no other effect but that of increasing the emolument of the officer; who, while he admits this to be the case, attempts to justify his demand, by representing the acting under a decree, before copy is taken out, to be an irregularity in practice. The party should be left to his own discretion as to the necessity for taking out a copy of his decree; and if not taken out it should not be charged for. Decrees to account on orders of reference, give rise to three heads of service and emolument to this officer, viz. summonses, attendances, and reports, none of which are to be found in the Table of 1716; and it appears to us that, except perhaps in a very few instances, they, as well as the orders under which they have their origin, might be dispensed with. The officer states, that if the parties attend before him he will proceed on the reference without any summons; but that on the requisition of either party he will issue a summons, upon which, if attendance be given, he will proceed; but if not, he issues another summons; and if upon a third summons no attendance is given, he will then proceed *ex parte*, being satisfied with the allegation of the party as to the service of the summons. The fee for each summons is 2s. 8½d., besides his attendance fee of 6s. 8d. Reports are made either under special orders of reference or without them. In case the sum is not exactly stated in the decree, and where any calculation becomes necessary, such as for wages or kettle-money, from a certain day to a certain day, at a given rate, there is usually a report made, although the decree contains no order of reference. This practice has not always prevailed; but at what particular period introduced we have not discovered. Mr. Pineau has stated that, from his earliest official experience, orders of reference have been made, and reports thereon; but he has admitted that, in his opinion, no prejudice to the suitors would result from dispensing altogether with these reports, and allowing the proctor, at his peril, to make his calculation of the sum due to his client under the decree; but that, on the contrary, a considerable saving, both in time and money, would follow from such a change. In this opinion we fully concur, and recommend the change accordingly, except only in cases where the Court shall specially refer some matter to the Registrar, with an order to report thereon. The charge made for a Report is in general 11s. 4½d.; but if appearing to exceed the number of sheets, which, at 1s. 4d. per, for the officer, and 1d. for the clerk, would amount to that sum, then the sheet fee, at that rate, is adopted. For this fee the officer in general draws the report; although sometimes, when hurried, he leaves it for the proctor: this, however, is entirely for his own accommodation, as the proctor is not allowed any fee for the draft, his emoluments being confined to the fee for its engrossment. We do not consider the fee of 11s. 4½d. unreasonable.

High Court of Admiralty.

The Registrar.

Appendix,  
N° 13, Q. 525 to 531, and Supp<sup>l</sup> Ans<sup>r</sup> after Q. 597.

N° 13, Q. 532, 533-546, 547-598.

Id. Q. 343 to 354.

N° 13, Q. 534 to 540.

Id. Q. 380 to 383-392 to 397.

N° 21, Q. 271 to 277.

N° 13, Q. 543, and Supp<sup>l</sup> Ans<sup>r</sup> after 597.

High Court of Admiralty.

The Registrar.

Appendix,  
N° 13, Q. 544.

Id. Q. 384 to 391.

for the preparation of a report, where directed under a special order, provided the Registrar's duty be extended to engrossing his report; and that in this, as in every other case, the clerk's fee be discontinued. We also think the Registrar should in all cases proceed upon the first summons, on due proof being made of the service, at least twenty-four hours before the time therein appointed. Upon each summons the Registrar charges a fee of 6 s. 8 d. for his attendance, if in the Registry; and if any where else in Dublin, out of Court, 11 s. 4 d.  $\frac{1}{2}$ . These fees do not appear unreasonable, though without sanction from the Table of 1716. A practice has been introduced by the present officer with respect to the preparation of reports, which has tended to increase expense without producing any corresponding benefit; namely, requiring a charge to be filed in his office, containing the amount as calculated to be due under the decree. This practice is not general, and should be discontinued in all cases. The fees for summonses and attendances are likewise incidental to the taxation of costs; in treating upon which they will again be referred to.

Id. Q. 548 to 554.

Before we close the consideration of this subject, it may be proper to notice another description of attendance, inserted in the Table of 1823, but for which there is no precedent in that of 1716; viz. "attending with Records." This service means the Registrar's attendance in Court, with the pleadings and documents of record in his office in each cause, on the several days when any motion is made in such cause, or when it is at hearing. For each of these days the Registrar charges 7 s. 8 d., being composed of 1 s. for the Act, and 6 s. 8 d. for attending with the records. It appears to us that this charge is altogether unwarrantable; as it is manifestly the duty of the Registrar to attend the sittings of the Court, and have the proper official documents ready when required. If the attendance were before the Judge in chamber, some reason might exist for the charge; but for attending with the records in Court, we can see no grounds for claiming any fee, and therefore recommend that, for the future, none shall be allowed.

N° 13, Q. 555 to 557.

Searches are occasionally made in this office for documents remaining of record in it, and are charged for at the rate of 3 s. 4 d. for every ten years for which the search is continued. This fee appears reasonable, but we would restrict its receipt to cases in which copies of the documents searched for are not taken out. The fee for granting certificates (a service connected with searches) at present received, is

Id. Q. 558 to 561.

5 s. 5 d. which we would reduce to 2 s. 6 d.; and though neither searches nor certificates are to be found in the list of 1716, we consider them as services of unquestionable necessity, unobjectionable at the rate of fee, and under the restrictions we have here specified.

The issuing of the different descriptions of process of the Court, is a duty belonging to the Registrar. Those for which claims appear in the Table of 1823, are warrants, citations, commissions, monitions, attachments and precepts. The charges made for the issuing of process vary according to the particular description required. Some, for which fees are now taken, do not appear in the Table of 1716; others are to be found there, but with a much lower rate of fee. In a table annexed to this Report, we shall suggest such fees as appear reasonable for each description of process.

N° 5, Q. 29 to 32.

The mode of examination of witnesses in the Court of Admiralty, in all suits except those termed *summarissimè* is to have the depositions taken in writing by the Registrar in his chamber. In *summarissimè* proceedings, witnesses may be examined in open court; where the evidence is taken down by the Registrar, and afterwards transcribed into the rule-book, or if there is a necessity for it in consequence of the witness being resident in a foreign country, or being otherwise incapable of attending in person to give evidence, the Court has authority to issue a commission for examination of witnesses in writing. Depositions *in scriptis* are taken either in support of the allegations contained in the libel or pleading which they are intended to prove, or upon interrogatories filed by the opposite party.

N° 13, Q. 566 to 570.

By the established practice of the Court, the duty of examining witnesses in all summary suits (originally a duty of the Judge) has been intrusted to the Registrar; who, when required so to do, goes to whatever part of the country the witnesses reside in, in cases where it is not deemed expedient to bring them to Dublin. It will

will easily be conceived how much the suitor may be aggrieved by delay under this system; as, except in vacations, the Registrar cannot have any opportunity for taking evidence at a distance from Dublin; and even then his absence might be attended with much inconvenience. It will be recollected that this officer, upon whose fidelity and accuracy, in taking depositions, so much depends, is by the civil law required to take evidence secretly, unrestrained by the presence of the parties interested, without having taken any oath faithfully to perform his duty, or being bound by any obligation whatsoever, save his own responsibility. The impartiality of the officer, under such circumstances, might well become matter of suspicion; but more especially in suits for seamen's wages, in which, should a commission issue, which occasionally happens, his own emoluments, and those of the judge and proctor, depend entirely upon the success of the promovent; since, in the event of his failure, not one of them would be paid. The Registrar has not, by virtue of his office, any inherent authority to perform this very important duty, but acts under a commission for that purpose, issued from the Court, in each separate cause, in all cases where the evidence is taken in the country. Where the witness is examined in Dublin, no commission issues, but the witness is sworn by the Judge to answer truly; and when his deposition, taken by the Registrar as examiner, is signed by him, he is again brought before the Judge, to be what is termed "repeated;" that is, to acknowledge his deposition and state it to be correct, and that the signatures to the different sheets are his handwriting. In cases in which the Registrar examines under a commission, he is thereby authorized to administer the oath to the witnesses, without the necessity of taking them before the Judge to be either sworn or repeated.

High Court of Admiralty.

Appendix,  
N<sup>o</sup> 13, Q. 573.Id. Q. 78 to 82.  
N<sup>o</sup> 21, Q. 179.N<sup>o</sup> 13, Q. 571, 572.

Id. Q. 568.

For the performance of the duties of examiner, the Registrar at present claims a fee of 5s. 4d. on production of every witness, and 6s. 8d. for his examination; and a fee of 6s. for the cross-examination of every witness; and for the examination of witnesses in the country, per diem, 3l. 8s. 3d., the days to be calculated from the officer's leaving town, until his return, both days inclusive, without any control as to the time spent in travelling, or the number of hours each day occupied in the examination of witnesses. It is however but justice to Mr. Pineau to state, that the fee formerly charged was four guineas per day, and that the reduction to three was made by him. In the Table of 1716, the claim made by the Registrar for the examination of every witness, appears to be 1s. 8d., and for examination of every party principal 6d., and no distinction is made as to whether the examination was in Dublin or in the country. We have not been able to learn when the fees, at present taken, were introduced, or upon what authority; but so far as relates to the examination, or cross-examination, of witnesses in Dublin, we do not consider them unreasonable. And with respect to the duty of examining witnesses in the country, we recommend that it shall not in future be intrusted to the Registrar, but to a commissioner, to be approved of by the Court in each case, to whom the Registrar shall hand over the pleadings and interrogatories to which the witnesses are to be examined, he being first sworn to the due, faithful, and impartial execution of the commission, and to the preservation and return of the pleadings and interrogatories intrusted to him. We are of opinion that competent persons would be found to undertake the execution of these commissions for a fee of two guineas a day, for each day occupied by the business of the commission, including the days necessarily spent in travelling; the time consumed to be verified by affidavit, stating that the commissioner was engaged not less than five hours each day, save the last, on which a lesser number of hours may suffice, and during that time had used due diligence to complete the examination of the witnesses produced; and that he has faithfully returned to the office of the Registrar, in a sealed cover, all the pleadings and interrogatories intrusted to him, together with the depositions taken by him, in performance of the duty committed to him. We also recommend that no fees be charged by the Registrar, for, or by reason of any examinations taken by commission, save only on the furnishing of copies of the evidence; and that no party be compelled to take a copy of depositions, except such as are taken at his own instance, in support of his own pleading, or upon interrogatories lodged by him. We recommend also, that, in summary as well as *summarissimè* proceedings, the witnesses shall in all cases be examined *virâ voce* in open court; unless upon a special case made to the Court, grounded upon affidavit, showing the necessity for it, permission shall be granted

Id. Q. 574 to 587.

High Court of  
Admiralty.

The Registrar.

to examine by commission; in which case, as the articles of the pleading have previously given full knowledge to the adverse party of the evidence to be given, we recommend that the examination shall be public, and conducted in the presence of the parties, their advocates or proctors; the evidence to be taken down by the examiner, but the questions on the cross-examination to be propounded by the party, his advocate or proctor, if he shall think proper; in which case the lodgment of interrogatories may be dispensed with, or he may, at his option, lodge interrogatories, and have the examination carried on by the examiner. All questions relative to the admissibility of evidence, or legality of questions, to be reserved for the Court, whether objection made at the time or not. And in case any question be objected to, the examiner to take down such question, together with a note of the objection; but except where questions are objected to, they need not be required to be taken down; and in all cases the witnesses to read over their evidence, and be at liberty to amend it, previously to signing it. And we further venture to recommend that the rule of the civil law, so far as it requires the deposition of two witnesses to each material fact, may be dispensed with, at the discretion of the Judge.

As accountant-general the duties of the Registrar are to receive and preserve the monies produced by sales under orders of the Court, and to dispose thereof as directed by the Court. In this branch of his duties the officer does not appear to have been governed by any settled principle, and has not observed even the ordinary precautions which might be expected from any person intrusted with the care of money. There never has been any ledger or book of account kept in his office; nor does there appear any trace of such having been kept prior to his appointment. He states that he generally keeps an account of each particular cause on sheets of paper, and memorandums, which he afterwards transcribes on other sheets of paper, and subsequently collects together, and sews up in a book. We have had this collection laid before us. It consists of sheets of paper loosely stitched together, purporting to contain the accounts of the proceeds in different causes; the earliest commencing in the year 1805; but without any arrangement, and omitting a great number, which, the officer states, have not yet been collected or made out. On inspection of these accounts they were found to be, in general, without dates; and the payments appearing therein are not stated to have been made under any particular order; and the entire presents a mass of irregularity and confusion utterly inconsistent with the attention required by official responsibility. In one case the officer was himself unable to state the balance, and was actually unacquainted with the state of the account until he obtained, (as he informed us,) the aid of an accountant to draw it out afresh from the memorandums and vouchers in his possession. The very first sheet appearing in this collection may serve to illustrate the inaccurate and slovenly manner in which the accounts of the suitor's money have been kept in this department. It is in the words following:—

Appendix,  
N° 13, Q. 407 to  
414.

N° 13, Q. 471.

Id. Q. 588.

Id. Q. 434 to 438.

Anderson and others, against The Ship Mavinhe; and Roche & Co., and O'Keeffe,  
Intervenients, against same.

| Daniel Pineau, Registrar, D <sup>r</sup> .                                  | Per Contra, C <sup>r</sup> .   |
|---|--|
| 1805, March 5th, Amount of net proceeds<br>in Cash and Bills - - £. 777 1 2 | 1805, March 5th. By amount of Registrar's<br>Poundage and Fees - £. 19 8 6 |
|   | By Bills received, (by consent,) 660 18 11½                                |
|   | By Cash as received - - 96 13 8½   |
| £. 777 1 2  | £. 777 1 2   |

This account has been already alluded to in considering the subject of orders on consent. The Registrar states, that it would be understood by any person in the Court of Admiralty, as showing that the promonent and intervenients got the money. We confess our inability to collect from it any other facts than that the Registrar received 777 *l.* 1 *s.* 2 *d.*, and took credit for 19 *l.* 18 *s.* 6 *d.* for himself; but what was done with the remainder, and whether paid, or still remaining in the Registry, we should never have been able to discover without the evidence of the officer, who informed us, as already stated, that it had been paid to Mr. Hawkins,  
under

under an order of the Court obtained upon a consent, in effect, signed only by himself.

High Court of Admiralty.

The Registrar.

To comment on the various irregularities, contained in these very unsatisfactory accounts, would be a useless waste of time; but we cannot omit mentioning, that so unintelligible is the system to the officer himself, that he has evinced his inability to furnish to this Board an accurate return of the money now in his hands to the credit of causes in the Court. Having been required by us to make this return, he, in five days after, produced a document, which he stated, upon his oath, to be a true, full and perfect return to the best of his knowledge, calculation and belief. In this document there are four several causes in which he admits the return to be uncertain; and, by a note at the end, he states that there may be one or two more sums of an old date in his hands, concerning which he could not give a decisive answer in less than fourteen or fifteen days. He was thereupon again required to make an exact and accurate return of the several sums of money then in his hands, to the credit of any causes in the Court of Admiralty, setting forth the dates of their payment into Court respectively, and distinguishing the several causes, to the credit of which they stand; and to make this return so certain and accurate, that it might be positively sworn to on its being handed in. This requisition was obeyed by the production of an amended return, which, notwithstanding his having been allowed upwards of six weeks to make, is, nevertheless, vague and unsatisfactory; evincing, in every item, the total absence of system or regularity; and when compared with the first return made to a similar requisition, exhibiting a striking illustration of the consequent uncertainty as to the funds in his hands. For although both returns were verified by the officer, "to the best of his knowledge, calculation and belief," yet they materially differ; the former containing balances as in his hands, which, by the latter, appear paid. Both Returns will be found in the Appendix. It may here be proper to notice an inaccuracy, amongst several others, appearing in the Return made to Parliament by the Registrar, bearing date the 3d March last, pursuant to an order of the House of Commons of the 12th of February. This return we have inspected, and finding there a statement purporting to be an account of the proceeds of the brig Charlotte, a case to which our attention had been previously much directed. It appeared that a sum of 96 *l.* 0 *s.* 1 *d.* was there stated to be paid to a proctor, for material men; although, from the evidence of the Registrar, taken at a period subsequently to the making of that return, we had ascertained that sum to be then in his hands. It has since been paid under a decree pronounced in favour of the material men.

Appendix,  
N° 13, Q. 294, 295.

Id. Q. 432, 433.

N° 13, Q. 658.  
N° 20, Q. 136 to 140.

Pa. 26, 27.

Id. Q. 66. 199.

N° 15.

But our animadversions upon the system of the office in this department are called for in other respects than the mode of keeping the accounts. We find this officer usurping to himself the discretion of paying out the funds intrusted to him entirely upon his own responsibility, without any order from the Court. In some instances, and by no means unfrequently, he advances money to the proctors in the cause, on account of their clients demands, or their own costs; in others, he pays sums on account of the claims of salvagers, although those claims are at the time *sub judice*, and undecided upon; and in all cases he allows the Marshal to retain the amount of his own bill of fees and expenses out of the proceeds, without at the time exercising any control over that bill, leaving it to the proctors to investigate the items charged at the time of paying out the fund, or whenever they are disposed to have a taxation thereof.

Id. Q. 66. 479, 480.  
Final Observation of 2d Return of Money in Court, N° 15.

N° 13, Q. 103 to 107.  
N° 21, Q. 66, 67.

Much discredit has been attached to the jurisdiction of the Court of Admiralty, from an impression, which has been very generally adopted by the public, that orders for the payment of money out of the funds brought into Court are not promptly obeyed; and especially, that salvors experience difficulty in obtaining the sums decreed to them. To such an extent has this opinion prevailed, and so prejudicial has it been to the administration of justice within this jurisdiction, that on the western coast of Ireland, our evidence warrants us in saying that the process of the Court would be resisted by the people, who would sooner burn any property which might be cast upon their shore, and risk their lives, than suffer it to be sold by order of the Court. That this impression is well founded, so far as regards the salvors, there can be no doubt, as it appears that they do experience considerable delay, and perhaps are frequently altogether, or in part, defrauded of the sums awarded to them; but we have not found that any part of this injustice is to be

N° 24, Q. 18.  
N° 25, Q. 54.

High Court of Admiralty.

The Registrar.

attributed to the dilatoriness of the Registrar in making payments, of which no just cause of complaint exists; but, on the contrary, we consider the practice of his advancing money, without waiting for the order of the Court, to which we have already alluded, has contributed to produce this result. The following instance will, we think, exemplify this conclusion.

Appendix,  
N<sup>o</sup> 25. Q. 3 to 6.

Early in the year 1825, a vessel laden with timber, which was afterwards found to be the *Hannah*, of St. Johns, New Brunswick, was brought in upon the north-west point of the island of Arran, at the entrance of the bay of Galway; having been previously deserted by her crew. The King's Proctor issued a warrant for the seizure of this vessel, as a *droit* of the Admiralty. Claims were put in on the part of the owners and of salvors; and it being considered expedient, pending the cause, to have the property sold, a commission of appraisement and sale was issued; under the authority of which, in the month of April 1825, the Marshal proceeded to the island, and sold the vessel and cargo. Much resistance was offered by the islanders to this sale; and one gentleman, highly respected by the islanders, who attended for the purpose of bidding at the auction, was warned not to buy; for that he would not be suffered to remove the property from the island, and would hazard his life if he attempted it. The reason assigned by the people for this riot, and determination to resist the officers, was, that they had not been paid what was due to them for the trouble they had in saving a vessel, which, about a year previously, had been brought in derelict upon their coast; although, as they alleged, a considerable payment had been promised to them. And so obstinate was their resistance and disposition to riot, that, in order to appease them and induce them to allow the sale to be proceeded with, Mr. Pineau, the Registrar, with the concurrence of the King's Proctor (who were both then on the island), was obliged to enter into a written undertaking to deposit with Mr. O'Flaherty, a gentleman residing on the island, and who was the principal claiming salvager, on behalf of himself and the islanders, the sum of 600 *l.*, to be distributed amongst the islanders, if no decree should be had in one month. The sale was then allowed to proceed, and that sum was immediately afterwards deposited with Mr. O'Flaherty, by Mr. Pineau, who previously received it from the Marshal. The cause was not brought to a hearing for nearly a year afterwards; and the sum awarded to the salvors, amounted to 656 *l.* 6 *s.* 2 *d.* The additional 56 *l.* 6 *s.* 2 *d.* was paid to Mr. O'Flaherty on the 28th April 1827, and yet in the month of May 1828, no part of this sum had been distributed amongst the numerous poor persons, who were decreed entitled to it.

N<sup>o</sup> 24, Q. 17.Id. *Ibid.*N<sup>o</sup> 25, Q. 34.

Id. Q. 18.

Id. Q. 35. 55. 60.

Id. Q. 38 to 40.  
N<sup>o</sup> 24, Q. 16, 17.N<sup>o</sup> 25, Q. 1, 2, *et passim.*

Id. Q. 21. 28.

Id. Q. 21 to 24.

Id. Q. 78, 79.

In this transaction the interests of the owners were confided to Mr. James Morris, a merchant, residing in the town of Galway; who attended at the sale, and exerted himself to procure evidence as to the identity of the vessel. This gentleman has complained much of the conduct of the officers of the Court, in the exercise of their several functions; and especially of the King's Proctor and the Registrar; and has made his complaints the subject of a petition to Parliament. But, upon his examination before us, he has admitted, that at the time of his interference, no pleading on behalf of the owners had been filed in the Court; and that the officers had no knowledge of him, or of his being authorized on their part to interfere. The ground of his accusation appears to be chiefly that they did not attend to his remonstrances to have the sale postponed, and that they received him haughtily, and declined holding communication with him. But as far as this individual was concerned, we consider that he had disintitiled himself to any courtesy from the officers, and that they were fully justified in declining all communication with him, from the circumstance of his having previously written a letter to another proctor of the Court, stating the wreck of the vessel, and his being in possession of conclusive evidence of the property, and soliciting to have some agreement made by which he would be compensated for abandoning the interests of his employers, declaring his intention of claiming immediately on the part of the owners, in case a fair bargain could not be made for him. This letter having been exhibited to Mr. Morris, he admitted that the conduct of the officers, towards him, might have been occasioned by its having been communicated to them.

To guard against a recurrence of the practice which has been commented on, as producing so much injustice to poor salvors, by postponing or withholding payment of

of their just rights; would be very desirable. This might be effected by providing, that within ten days after a decree pronounced in favour of salvors, a list of their names, and of the respective sums decreed them, shall be published in the market town next adjoining the part of the coast where such salvors reside, and by making arrangements for their payment in such market town, or other public place, where the service has been performed at a given time, to be specified in such notice. And we recommend the discontinuance of paying the proctor for the salvors, or one or more principal salvors for the remainder, except under such restrictions and regulations as may ensure the prompt and full discharge of the claims of all.

High Court of Admiralty.

The Registrar.

In the exercise of his functions as accountant-general, the Registrar may occasionally have the custody of money belonging to the Crown, as Droits of the Admiralty. Mr. Pineau states that the only instance in which he recollects a sum decreed to the Crown on account of droits, was that of a whale brought into the island of Innisturk, in which one half of the balance, after payment of official fees and the King's Proctor's costs, was decreed to the Crown, subject to the costs incurred by the salvagers. This moiety amounted to 59*l.* 12*s.*, and the salvagers costs to 19*l.*; consequently, the net sum to which the Crown was entitled in this case was 40*l.* 12*s.* The manner in which this sum was disposed of appears extraordinary, and illustrates the total want of principle or regulation in this department. Instead of being paid into the Exchequer, which might have been expected, or remaining in the hands of the Registrar, to the credit of the Crown, as in the opinion of the King's Proctor it ought, it appears that the Registrar, upon his own authority, without any order of Court, paid 3*l.* 5*s.*, part of this droit, to Mr. Francis Kenny, inspector of fisheries, as a compensation for his trouble in going into the island to pay the salvagers, to whom sums had been decreed; and he paid 14*l.* 7*s.*, also part of this droit, to the Marshal, for an endeavour to execute a warrant in another derelict case, in the county of Galway. This latter payment the Registrar alleges to have been made under an order of Court, in the cause in which the unsuccessful attempt to have the warrant executed was made; but he does not recollect the name of the cause, and has not produced the order; and it appears to us very extraordinary, that an order should be made in a cause, in which there were not any funds in court for payment of money already decreed to be the property of the Crown in another cause. The balance of 23*l.* remaining after these payments, the Registrar placed to the credit of the King's Proctor in his account for business done in the office; and this sum the King's Proctor has retained to his own use, as a set-off against alleged demands for costs against the Crown.

Appendix,  
N<sup>o</sup> 13, Q. 478 to 491.N<sup>o</sup> 23, Q. 12. 14.

For the custody and preservation of the money brought into the Registry the officer claims and retains a poundage of 1*s.* per pound for the first 100*l.*, and 6*d.* per pound for every pound after the first 100*l.* In the Table of 1716 the poundage claimed by the Registrar is stated to be 2*d.* the pound for paying and retaining any money deposited in Court. At what time the increase took place we have not been able to learn, but it was before the appointment of Mr. Pineau. Another increase of this officer's emolument, arising from money deposited in court, has resulted from a change introduced about the year 1814 or 1815. Before that period it was the practice to calculate the Registrar's poundage only upon the net amount lodged by the Marshal; but since then the Registrar gives to the Marshal a receipt for the amount of the gross proceeds of the sale, and takes his receipt for the amount of his fees and disbursements, as if paid by the Registrar, after the entire amount had been deposited with him. Mr. Pineau alleges that this practice was first introduced in consequence of an order of the Court, made by Dr. Mahaffy, at that time Surrogate Judge, which directed that the Marshal should, in the first instance, lodge the gross proceeds in court, and await its order for his fees and disbursements: that, in practice, this order was not attended to; but that the accommodation afforded by him to the Marshal of allowing him to retain his fees and expenses, and accepting the balance, in violation of that order, was kept secret from the Court. Thus it appears, supposing such an order to have been made, that the two principal officers of the Court disobey it, and thus render the increase of the Registrar's poundage the only practical effect resulting from it. Mr. Pineau, it is true, is of opinion that it had another effect; viz. that of making the Marshal more moderate in his bills of fees and disbursements, but he has failed to show by what

N<sup>o</sup> 13, Q. 95 to 103. 107.

High Court of  
Admiralty.

Appendix,  
N° 13, Suppl<sup>l</sup> Anst<sup>r</sup>  
after Q. 120.

N° 18, Q. 65.

operation of that order so beneficial a result has ensued. It appears to us, however, very doubtful whether that order was ever made. The practice of the Court requires all its orders to be entered in the rule-book; yet, after search made by the Registrar, this alleged order could not be found; but he states that, according to his information and belief, Dr. Mahaffy gave verbal directions to the effect to the deputy marshal. However the fact may be as to the order being made or not, certain it is that the Registrar has, by the contrivance of giving his receipt for the gross proceeds, and taking the Marshal's for the amount of his fees and disbursements, increased his own emoluments. In a subsequent part of this Report, when treating of the office of Marshal, we shall suggest such regulations for that officer's conduct in this respect as may appear requisite. With respect to the Registrar, we recommend that his poundage shall be calculated only on the amount of the net proceeds, and at the rate of two and a half per cent, which we consider will amply remunerate him for the trouble of keeping the suitors accounts; as we strongly urge the propriety of all proceeds being in future lodged in the Bank of Ireland, to be drawn out by the Registrar, under orders of the Court, and each draft to be countersigned by the Judge. In the regulations subjoined to this branch of our Report for the future conduct of the office of Registrar, will be suggested, in detail, the system which we recommend to be adopted with respect to money brought into the Court of Admiralty.

N° 5, Q. 65.

Taxation of costs has been already stated, in a former branch of this Report, to be a part of the duty of the Judge; which, in practice, is intrusted to the Registrar, who taxes, under a supposed order of reference from the Judge, to whom he reports the deductions he has made, and the sum which he considers should be allowed. If no objection be made to this taxation and report, by either party, it is confirmed by the Judge, without any investigation of the items, on the bill being produced to him. This confirmation is effected by his writing the word "allowed" at foot, and by his signature. Should any objection be made, he hears both parties, enters into an examination of the items objected to, and decides upon them. This is sometimes done *visà voce*, at the time of confirmation; but where he considers there may be an appeal from his decision, the party dissatisfied, is obliged to put his objections in writing in the form of exceptions, which are filed in the Registry, and afterwards argued. This practice appears to us expensive and dilatory; and mainly tending to prevent suitors from having the benefit of the Judge's opinion upon any charge, which they may consider unjustifiable or exorbitant. In this manner are taxed costs, as well between proctor and client, as between party and party; and also the Marshal's bills of his fees and expenses. The orders of reference, under which so extensive and important an authority is considered to be vested in the Registrar, are altogether fictitious; not being either pronounced by the Judge, nor even entered as of course in the office. In costs which are intended to be taxed, there are items of charge inserted, as if the bill was actually brought into court, an order of reference to the Registrar to report thereon pronounced, and a copy of that order taken out; but these services are merely constructive, and are never performed, although charged for and allowed. From the bills of costs which we have inspected, and from the evidence of the officer, will appear strongly the necessity for committing the taxation of costs to some person not interested in any of the items contained in the bills. In this Court, the Registrar who taxes has a direct interest in a considerable number of the charges; and the Judge who confirms is also interested, although in a minor degree. But though in every case a fee is charged and allowed for the Judge confirming, this ceremony is frequently dispensed with, and the fee is retained by the person to whom the costs are payable. If, however, the costs are to be paid out of a fund in Court, the Registrar states that he would insist upon their being first confirmed by the Judge; but, as he does not adhere to this rule with respect to the Marshal's bills, we consider it very doubtful whether it may not occasionally be neglected in the case of costs. We have not, in the course of our experience, met with any department which more imperatively called for a distinct tribunal for the investigation and control of charges both official and professional.

N° 13, Q. 155 to  
165.

Id. Q. 175.

N° 5, Q. 53.

N° 13, Q. 73 to 76.

Id. Q. 166.

Id. Q. 173 to 176.

Id. Q. 155, 156.

The rate of charge for the taxation is regulated according to the amount of the bill, viz. 6s. 8d. for the first 20*l.* and 3s. 4d. for every 20*l.* after; and whatever the fee charged may be, it is always inserted in the bill; and the officer states positively that he never accepted of any gratuity for the taxation, other than the

sum

sum so specified. In case a summons becomes necessary, he is paid for it 2s. 8½d. He receives for "act, and exhibiting costs for the Registrar to report thereon," 2s. 6d.; "act order to report thereon," 1s.; "attested copy order," 5s. 5d.; and "act costs confirmed," 1s. These, it will be recollected are all charges for constructive services, and the taxation fees, constitute his entire emolument from the taxation of costs.

High Court of  
Admiralty.  
The Registrar.  
Appendix,  
Nº 13, Q. 158.

The items in a proctor's bill of costs are made up of an enumeration of services, a number of which are fictitious; and of those which are actually performed, several are altogether unnecessary. These charges are in general defended on the ground of ancient usage; but some of them are of modern introduction, and a great number uselessly multiplied. The charge most frequently to be found in bills of costs is that denominated "act," which has been already considered in reference to the fee taken by the Registrar upon it. The proctor has also a fee upon this service, much exceeding that taken by the Registrar, viz. 3s. 4d.; and if the act be the production of a document in court, or filing it in the office, the Registrar has an additional fee of 1s. 6d. for exhibiting, and the proctor of 2s. 6d. for subscribing, with the single exception of a proxy, for which the proctor does not receive a subscribing fee; and should the document exhibited be a pleading, the proctor's fee for subscribing is 4s. 6d. It is therefore clear that both proctor and Registrar have a concurrent interest in the multiplication of these charges in bills of costs; and accordingly we find them invariably allowed, although admitted by the Registrar to be for services in the most part constructive.

Id. Q. 289 to 293.

The costs allowed for a warrant deserve comment. It appears that Sir Jonah Barrington, during the time he presided as Judge, made an order that for the future the sum of two guineas should be allowed as the costs of a warrant. To what extent it was intended that sum should supersede the charge previously made, or of what items that bulk amount is composed, we cannot ascertain; the officer being unable to inform us, and the proctors differing on the subject. The consequence of this uncertainty is such as might have been expected; for in practice the fee of two guineas is considered as payment for the warrant, in cases in which it is issued as a matter of course on the requisition of the proctor; but in all others, the several extra services are separately charged for and allowed. In suits by seamen for recovery of their wages, and on bottomry bonds registered, it is the practice of the proctor, upon filing an affidavit of the debt, to issue a warrant upon his own responsibility against the impugnant, and in such cases the fee of two guineas only is allowed for the warrant: but in "possessory cases, and in cases "to obtain security by the part owner of a vessel, against the other owners, who "may be sailing away the ship; in cases of personal damage or injury sustained "at sea, in consequence of assault or maltreatment; in cases of salvage, and to "get security to a certain amount in cases of collision; or in suits by material "men;" or in any other cases cognizable in this Court, the practice is to apply to the Judge, either in chamber or in Court, for a fiat, stating the circumstances set forth in the affidavit; who in his discretion grants it or not. In such cases the following charges would be allowed, in addition to the two guineas:

Id. Q. 53.

Id. Q. 52.

Id. Q. 296 to 303.

|  |   | s. | d. |
|--|---|----|----|
| Attending to make the application                  | - | 6  | 8  |
| Drawing brief for the motion, at 3s. 4d. per sheet | - | -  | -  |
| Fair copy, at 2s. per sheet                        | - | -  | -  |
| Act on fiat  | - | 1  | -  |
| Proctor's fee thereon                              | - | 3  | 4  |
| Paid the Judge on fiat                             | - | 6  | 8  |
| Attested copy order                                | - | 5  | 5  |

and if the charge for the affidavit to ground the application should exceed the sum of 10s. the overplus would also be allowed. We recommend that the bulk charge of two guineas shall in future be discontinued, and that the several services necessarily performed shall be distinctly enumerated and charged for; the official charges to be regulated by the tables annexed to this Report, containing the fees recommended to be in future established; and the professional charges, by the discretion of the taxing officers, who can best judge of their reasonableness, and the propriety of the services for which they are charged, according to the practice of the Court.

Id. Q. 304.

High Court of Admiralty.

The Registrar.

Appendix,  
N<sup>o</sup> 13, Q. 277.Id. Q. 252 to 259.  
325 to 339.

Id. Q. 259. 329.

The practice which has prevailed of adjourning the hearing of causes from day to day, has induced a very heavy additional expense, which would have been avoided by the Court continuing its sittings for the same number of hours as other courts, and requiring all parties to be fully prepared on the day appointed for the hearing, to proceed with the cause. Amongst the principal items of this increased expense may be considered additional briefs, after each day's hearing, of the proceedings had on that day; to enable the proctor to make which, he is obliged to take out from the Registrar, and pay him for copies of these proceedings. It is thus evident that both Proctor and Registrar are mutually interested in promoting adjournments. In his allowance for briefs, Mr. Pineau appears to have been careful to see that each brief charged for was made out, and contained the proper quantity of words; but he permits documents to be copied into the brief, which he considers unnecessary, and he allows for the preparation of the draft brief at a rate which he considers too high. He states that he has made ineffectual exertions to discontinue the present allowance of 3*s.* 4*d.* per sheet of brief for the draft, and to allow 2*d.* per office sheet, of which there are usually five in each sheet of brief, according to the practice of the Court of Chancery, but was prevented by the resistance of the proctors from taxing in that way. Had this alteration been effected, the diminution of charge to the suitor would have been 2*s.* 6*d.* per sheet of brief upon this constructive service; for, in point of fact, a draft brief is never made out. It does not appear that the officer's exertions were very strenuous to introduce this lesser charge, for he never persisted in his deduction, leaving the proctor to an appeal to the Judge; but yielded to the remonstrance of the proctors, who insisted that the rate he wished to introduce had never been the rule of the Court; and he continues to allow at the rate of 3*s.* 4*d.* per sheet for the draft. The number of briefs which, on taxation, would be allowed for in a suit, if made out and given to counsel, are three; but, in general, there are but two charged for, and sometimes but one. The officer does not hold himself at liberty to exercise any discretion as to the amount of fee paid to counsel, but allows whatever is charged, whether the taxation be between party and party, or between proctor and client. It frequently happens that causes and applications are heard in the Court of Admiralty, in which an advocate is not employed. In such cases one copy of the brief would be allowed, provided it was made; Mr. Pineau feeling himself bound to allow for it when made out, so that, in point of fact, in cases where counsel is not employed, the allowance for a brief depends altogether upon the discretion of the proctor, whether he chooses to make it out or not. It is but justice to the officer to state, that, upon being interrogated, he promptly gave his opinion that the practice should be altered; and particularly, that the additional brief, after each day's hearing, of the proceedings had on that day, ought to be dispensed with, being, as he considers it, a bad practice in every respect. We concur in this opinion, and think that the taxing officer should minutely inspect the briefs, not only with a view to see that they contained a sufficient quantity, but to ascertain that only the proper and necessary documents had been briefed; and that in cases in which counsel had not been employed, a brief should not be allowed for, unless at the rate of 2*d.* for every office sheet, for a fair copy of the documents necessary to enable the proctor to bring forward the case.

Id. Q. 273 to 276.

Another item of expense, which is much increased by the practice of adjourning causes, is the fee to the proctor for attending the hearing. The rate allowed for this service is 1*l.* for every day the cause has been at hearing, and two guineas for the last day; or, if but one day, then two guineas for that day. This, in the officer's opinion, is the regular fee, which he does not consider he has any authority to reduce or deduct from; but, notwithstanding, he has latterly deviated from it occasionally, by allowing only one guinea for the last day, as often as he could induce the proctor to consent to such reduction. And he states, that "if the cause was called on for hearing, and then postponed after being just mentioned, he would allow only 6*s.* 8*d.*; if some little business was done, but not much, his allowance would be 13*s.* 4*d.*" A practitioner of very considerable experience has stated, that, in his opinion, the fee per day, for each day except the last, is 13*s.* 4*d.* And on inspection of several bills which had been taxed, we found the allowance was in general at that rate; and where 1*l.* was charged, a reduction of 6*s.* 8*d.* has been made. But Mr. Pineau persists in stating that he considers the regular allowance to be 1*l.* for a fair day's attendance, although he has frequently

taken

N<sup>o</sup> 21, Q. 302 to  
314.

taken upon him to reduce it to 13s. 4d., according to the business done. He admits, however, that he never knew any exact rule for direction on the subject. We consider 1*l.* per day and two guineas for the last day as a very high rate of charge for attending hearings, and more especially where the hour of sitting of the Court is described to be sometimes one, sometimes two, sometimes three o'clock, but more generally two o'clock, and the hour of rising, before the appointment of the present surrogate, was in general half-past three: Sir Henry Meredyth sits much later.

Appendix,  
N<sup>o</sup> 13, Q. 492 to 495.

Id. Q. 274.

The fees allowed to the proctor upon issuing a citation, monition, commission or other process of the Court, are numerous and deserving of notice, being for services wholly constructive. The first is a charge of 3s. 4d. for a fiat; this was most probably the proctor's fee upon a fiat granted by the Judge; but it is now in all cases charged and allowed, although in general the only service performed for it is leaving a memorandum at the office, sometimes in writing, sometimes verbal, requiring the process to be made out. The proctor is also allowed a fee of 3s. 4d. for extracting every process, and a further fee of 3s. 4d. as proctor's fee thereon; for neither of which does he perform any service; and also a fee of 2s. 6d. for subscribing, for which the only service he performs is suffering his name to be written at the foot of it. In the case of a commission of appraisement and sale the proctor's fee is 6s. 8d., which the Registrar states to be the fee mentioned in the Table of 1823 for the proctor upon all process, though in practice 3s. 4d. is the general allowance, except for commissions of appraisement and sale. These several processes being all made out in the office, upon the requisition of the proctor, we conceive he would be sufficiently remunerated by the allowance of 3s. 4d. for his responsibility in subscribing; and that the remaining fees, at present taken, should be discontinued. The necessity for the issuing of the process should also be shown before any allowance should be made for it.

Id. Q. 260 to 263.  
296.

Id. Q. 265 to 267.

Id. Q. 356 to 358.

Id. Q. 270, 271.

We conceive it has been sufficiently shown that the system of taxation pursued by the Registrar is not only inadequate to control the cost of litigation in the Court of Admiralty, but has tended much to increase the expense of proceedings, and to bring the jurisdiction of that Court into disrepute. There is, however, one more circumstance to which we feel it necessary to allude before closing the consideration of the subject, viz. the multiplication of all the fees, both official and professional, by means of what are termed interventional suits.

According to the practice of this Court, when a suit has been commenced, and the warrant been returned, and after an appearance has been either entered for the impugnant, or by a decree of contumacy, the non-appearance has been taken as a negative contest, and the promovent's libel has been filed, it is competent for any persons, having concurrent and non-conflicting demands against the impugnant, to enter a rule, as of course, in the Registry, for liberty to intervene; by virtue of which the claim of the party so intervening may be heard and decided, whilst the impugnant is amenable, without the delay and expense of issuing a new warrant. The good policy, and indeed necessity, of such a practice in a court so constituted as the Court of Admiralty, and exercising a jurisdiction of the description belonging to it, is apparent; but however advantageous the power of proceeding in one cause to decide upon several distinct claims, without originating separate suits, may be, it has been made a source of the most grievous oppression; and, according to the estimate of the Registrar, which we consider in this respect very much under the reality, has, in seamen's suits, in which it most frequently occurs, increased the costs payable by the impugnant one fifth, or twenty per cent. And the officer is further of opinion, that if the costs of interventional suits were taxed in the manner in which we consider they ought to be, viz. as branches of the one suit, there would not be more than one interventional suit in twenty causes, whereas at present there is seldom a seaman's suit in which there are not one or more intervenients.

Id. Q. 430.

Id. Q. 280, 281.

Intervention may take place in most of the causes which are heard and determined in this Court; but they are more frequent in causes, originally instituted by the Crown, claiming droits, and in suits by seamen for recovery of their wages. In the former case, the intervenients are generally persons claiming compensation for salvage, or advancing a claim of ownership of the derelict property. In the latter they are most commonly other seamen of the same crew. As the practice at

Id. Q. 218 to 222.

High Court of  
Admiralty.

The Registrar.

present is, when the rule for liberty to intervene has been entered, the party intervening files a distinct libel, enters distinct rules, and in every respect proceeds as in a distinct cause, proving his case separately, and obtaining a separate decree; and it frequently happens that these two or more suits proceed, *pari passu*, through all their stages, and are heard and decided at the same sitting. And as it commonly occurs that the same proctor is concerned for the promovent and one or more intervenients, and as separate and distinct fees are allowed in each cause to the proctor, and also to the Judge and officer, the principal effect of this practice is to put the impugnant to much additional expense, nearly in proportion to the number of suits.

Appendix,  
N<sup>o</sup> 13, Q. 281.

Id. Q. 218.

N<sup>o</sup> 21. Q. 259 to  
263.

From these circumstances, and the fact of there being few suits by seamen in which there are not one or more intervenients, it appeared that there must be some contrivance to multiply suits for the sake of costs. For instance, that a proctor, when applied to by a number of seamen of the same crew to take proceedings for recovery of their wages, might institute a suit in the name of one or more as promovents, and intervene separately for others. The Registrar, when interrogated on this subject, has stated the fact to be, that they have instituted a suit for one or more seamen as promovent, and intervened subsequently for others; and he believes that interventional suits have been instituted for the purpose of increasing costs. This has been strongly denied by the proctors, whom we have examined; but notwithstanding we agree with the Registrar, who is of opinion, that if all interventional suits were incorporated with the original cause, and the costs taxed as if they were branches of one suit, their number would be very much diminished.

N<sup>o</sup> 13, Q. 219.

Id. Q. 246.

Id. Q. 247. 278,  
-79.

The Registrar states, that about twenty years ago he objected to allow several items of costs in an intervenient's suit, both official and professional, conceiving that the intervenient's cause was so incorporated in that of the promovents that they became one and the same suit, and that the costs should be taxed accordingly. But the proctor, conceiving himself aggrieved by such a mode of taxation, made application to Sir Jonah Barrington, the Judge, who decided that the suits were separate and distinct, and that the costs of an intervenient should be taxed as of a separate cause. This direction the Registrar considered as decisive of the mode in which he should tax in all future intervenient causes; and he accordingly conformed to it very much, as he states, against his own opinion. We felt it our duty to inquire more minutely into the circumstances under which this order was made; and on investigation they have been found very different indeed from what the previous statement of the Registrar led us to expect. They are as follows:—In the causes of Old Rawarts and others, against The Joanna Maria; Neils Jansen Fogh, against same; and John Mathieson, intervenient, against same; the Court, on the 24th December 1805, dismissed the several suits with costs. The defendant's proctor shortly after presented a bill of costs in each cause for taxation. The Registrar disallowed altogether the costs in the third cause, as having been incurred by an intervenient, which should have been incorporated in the original suit, as if all one cause, making an additional party; and he added to the second bill such costs as he considered reasonably incurred on account of the intervention. This taxation being objected to, the Judge gave directions to the effect already mentioned, which were obeyed, and which the Registrar considered as decisive of the mode in which he should in future tax the costs of intervenients; entirely overlooking the fact of these having been costs decreed due to an impugnant, brought into Court in three distinct causes, in each of which he had successfully resisted the demand made against him, and was consequently fully entitled to have his costs taxed to him in each suit. But the case is very different with regard to intervenients who might either have joined in the original suit, or, if obliged to intervene, should only be allowed to do so in the cause already instituted, and be entitled to the costs of adding a sufficient pleading to incorporate their case with the promovent's libel, and of proving the necessary facts; but should not be allowed separate costs of rules and decrees, which should be entered and pronounced only in the one cause. Thus it appears that the Registrar has been for twenty-three years acting under a false construction of an order, which, it may reasonably be presumed, would have been long since controverted, and the distinction pointed out, or the opinion of the Court taken on it, had it not been the interest of both proctors and officer that the existing system should continue. The Registrar however states, that he has no doubt Sir Jonah Barrington intended the order as a general one, to be understood and acted upon

upon in the manner he has done. We recommend that, in future, the costs of intervenients shall be taxed as a part of the original cause, and only allowed to the extent necessary to bring forward the claim sought to be intervened for in the one suit; and that no rules for liberty to intervene shall, in future, be entered as of course in the office; but shall be applied for to the Court, and only taken down when ordered; and that no intervenient be permitted to exhibit a separate libel without leave obtained from the Court, upon application showing the necessity for it.

High Court of  
Admiralty.

The Registrar.

We do not believe that any remedy would be more effectual for the regulation and control of charges, both official and professional, in this Court, than that which we have felt it our duty to suggest in all our previous Reports; namely, confiding the taxation of costs to a distinct tribunal, composed of persons who have no interest whatever in any of the items submitted to them. The advantages of such a system have been so frequently dwelt upon and explained, that it does not appear requisite again to repeat them: the necessity for its adoption has appeared in this department even stronger than in any other which we have hitherto investigated.

We now proceed to submit such regulations as appear necessary to be established, for the due discharge of the official duty of Registrar, divested of the examination of witnesses and the taxation of costs; after which will be found subjoined a Table of Fees, which we think should in future be taken in the Registrar's Office, whether for the use of the officer or in aid of a fee fund. Should it be deemed expedient that the officer's remuneration should be by salary, we consider that the rate of allowance recommended in our Fourth Report should be adopted; and that 27*l.* 18*s.* 6*d.*\* per annum, would be sufficient compensation for the performance of the duties which we recommend shall be executed by the officer in person, under the regulations suggested by us, with an allowance of 92*l.* 6*s.* 2*d.* † for a permanent clerk. In suggesting these respective salaries, we have presumed that a suitable public office will be provided, if not, we think an additional annual allowance of 50*l.* should be made to the Registrar, for providing one.

## REGULATIONS.

1. That of the several fees heretofore demanded, taken or accepted in this office, such only shall be continued, and be deemed lawful, as are comprised in the Table subjoined to this Report; and that the receipt of any other fee, gratuity, or emolument for the services therein specified by any person belonging to, or employed in this office, shall subject such person to a pecuniary penalty for each offence, and further disqualify him from ever acting in the office, or in the court to which it belongs.

2. That all fees so established, shall be considered as fees of the principal alone, and constitute the fund for payment of all persons employed under him; and for the disbursements and expenses of the office.

3. That a fair and legible table of the established fees shall be constantly exposed in some conspicuous part of the office, and that on proof made on summary application to the Court, that such exposure has been neglected for two successive days, the principal shall be liable to a pecuniary penalty on account of such neglect.

4. That all process and commissions issued from the Court of Admiralty, with the exception of commissions for examination of witnesses, shall in future be directed for execution to the Marshal alone.

5. That it be the duty of the Registrar to keep a book, to be denominated the process book, in which shall be entered an account of every process and commission so issued, setting forth the parties names, the nature of the process or commission, the day on which it bears teste, the day on which issued, and the day on which it is returnable; and that it be the duty of the Registrar to see that such process or commission is returned in proper time, or if not, to call the attention of the Court thereto.

\* £. 300 late Irish currency.

† £. 100 late Irish currency.

High Court of  
Admiralty.

The Registrar.

6. That no suitor or other person shall be required to take out, or pay for any copy of his own pleadings or proceedings, or be compelled to take out, or be charged with any fee for copies of any record, order, decree, or document in this office, unless where some ulterior proceeding is to be founded thereon, or the same shall be necessary under any rule of Court; but that he shall be at perfect liberty to judge whether or not it be necessary to provide himself therewith; but that it shall be lawful for the officer to require a person exhibiting any pleading in answer to a former pleading, to pay for and take out a copy of such former pleading.

7. That no party shall be compelled to take out or pay for any office copy of depositions, except such are taken at his own instance, and that in such case he shall not be compelled to pay for or take out copies of his own pleadings or interrogatories upon which such depositions have been taken.

8. That no person having occasion for a copy of a book, or any part of a book of depositions taken upon pleadings or interrogatories exhibited by any other person, shall be required to take out copies of any other depositions than such as he may deem requisite for his purpose; provided however that the Registrar shall not be compelled to furnish the copy of any fraction of a deposition.

9. That all parties or persons requiring copies of the deposition of any witness examined upon interrogatories not exhibited by themselves, shall be compelled to take out a copy of the interrogatories on which such depositions have been founded; but, with respect to the copies of all other interrogatories, be left at liberty either to take them out or not; but that if such depositions have been taken upon, or in support of the allegations contained in any pleading not filed by the party requiring such copy, such party shall be compelled to take out a copy of the entire of such pleading, unless he shall have previously paid for, and obtained an office copy thereof, in which case he shall be entitled to obtain a copy of the depositions required by him, without taking a second copy of the pleading upon which they had been taken.

10. That on every copy made in this office, the officer or his clerk shall mark the number of office sheets contained therein, and sign his initials after such marking, for the correctness of which the officer shall be responsible, and that the proctor shall be bound to ascertain that such marking is correct; and in case of overcharge, the party or person overcharged may recover a certain penalty against the officer or proctor at his election, and that no fee be demandable for any copy issued from this office, unless the charge be distinctly endorsed thereon, specifying the manner in which it is made up.

11. That the office-sheet shall in future contain ninety words, and that in no one copy shall more than one fraction of a sheet be charged for as an entire sheet.

12. That no document shall be considered as exhibited, so as to entitle the officer to a fee thereon, unless such document be actually deposited with the officer, to remain in his custody, and that such document shall not afterwards be removed from the officer's custody without the special order of the Court.

13. That the fee heretofore taken for an act shall in future be discontinued, except only in cases of orders entered or pronounced, and that in every such case the officer may demand, and receive it from the party obtaining such order, previously to taking down or entering same in the rule-book.

14. That consents for the payment, to any person, of money in Court, or in the hands of the Marshal, shall not in any instance be entered as orders without the special direction of the Court, obtained upon application made for that purpose.

15. That in all cases where it may be necessary to summon any party before the officer upon reference, or otherwise, the party issuing the summons shall be at liberty to attend at the time appointed by the first summons, and the officer, if requested, be bound to proceed *ex parte*, in case of no attendance by the opposite party, and proof made that such summons had been served at least twenty-four hours previously to the time of attendance specified therein.

16. That

High Court of  
Admiralty.  
The Registrar.

16. That reports by the Registrar shall not in any case be made except upon special orders of reference, and that in such cases the parties shall not be required to file charges or discharges; but that in case any calculation becomes necessary under a decree in which an order of reference is not made, it shall be made by the proctor at his peril.

17. That the present practice of lodging suitors money with the Registrar be discontinued, and that all such monies be lodged in the Bank of Ireland, with the privity of the Registrar, in like manner as lodgments under orders of the Court of Chancery are made with the privity of the Accountant General of that Court.

18. That when any money shall be ordered by the Court to be paid out of the fund in court to the credit of any cause, the Registrar shall draw upon the Bank of Ireland for such sum in favour of the person to whom such payment shall be ordered, and shall annex to such draft a signed copy or extract of such order, which copy or extract, together with the draft, shall be respectively counter-signed by the Judge.

19. That the Registrar shall keep regular accounts of all sums of money brought into court in ledgers to be kept in his office, and to remain in the Registry, in which accounts shall be entered on the debtor side, the dates of all payments into court, by whom made, and on what account; and on the credit side, the dates of all payments out of court, to whom made, and the date of order under which they were so made, and that any person shall be entitled to a copy of any such account, or a certificate of the sum or balance in court to the credit of any cause, upon paying therefor a reasonable fee.

20. That within ten days after a decree in favour of salvors shall have been pronounced, the Registrar shall cause a list of their names and of the respective sums awarded to them to be published by printed handbills, suitably posted in the market towns next adjoining the part of the coast where such salvors reside, with a notification that same will be paid on, and for a month after, a specified day, and that arrangements be made, with the sanction of the Court, for the payment of such salvors in such market town, through the medium of some banker, merchant, or gentleman resident, to whom a reasonable per centage, not exceeding 5 *l.*, may be allowed for making such payments, to be deducted from the sums decreed for salvage.

21. That it shall be the duty of the person making such payments to transmit to the Registrar's Office, within six weeks after the day specified for the payment of the salvage, a Schedule or List of the several payments made, with the receipts of the several parties verified as to the payments, and the respective signatures by affidavit. That such schedule be in the subjoined form, and that the receipts of the salvors be exempt from stamp-duty; and that in case any sums shall at the time of making such return be unclaimed and remain unpaid, the same shall be transmitted, along with such return, to the Registrar, to remain in his custody until claimed.

| Name of Salvor. | Sum awarded. | Deduction for Payment. | Date of Payment. | Signature of Party receiving. | Witness of Identity and Payment. |
|-----------------|--------------|------------------------|------------------|-------------------------------|----------------------------------|
|                 |              |                        |                  |                               |                                  |

High Court of  
Admiralty.

The Registrar.

22. That rules for liberty to intervene shall not in future be entered as of course in the office, but shall only be taken down when ordered by the Court, upon application for that purpose; and that no intervenient be hereafter permitted to exhibit a separate libel without having previously obtained leave from the Court, upon special application made showing the necessity for it.

23. That no person employed in this department as an officer or clerk shall in any manner practise as a proctor in the Court of Admiralty.

24. That when any suitor or proctor shall think himself aggrieved by any practice, demand, delay or omission of the Registrar, or any person employed in his office, he shall be at liberty to submit the same to the Court in a summary way, by petition and affidavit, to be answered by the person complained of, and such application shall be disposed of on the next court-day, in open court, the costs of such application to be paid by the petitioner or respondent, at the discretion of the Court.

A LIST of all Fees recommended to be established as the lawful Fees for the Duties to be discharged in the Office of Registrar in the High Court of Admiralty.

|  | British Currency. |    |    |
|--|-------------------|----|----|
|  | £.                | s. | d. |
| Act for each order actually pronounced, or entered in the Rule Book -  | -                 | 1  | -  |
| Copy attested of any order - - - - -   | -                 | 4  | -  |
| Account of receipts and payments to the credit of any cause, for every copy of - - - - -   | -                 | 6  | 2  |
| Apostles or transmiss for every office sheet containing ninety words -   | -                 | -  | 7½ |
| Appearance for each defendant - - - - -  | -                 | 2  | 6  |
| Attachment - - - - -   | -                 | 12 | 4  |
| Copy attested of any pleading, depositions, or other documents remaining in the Registry, per office sheet of ninety words - - - - -   | -                 | -  | 7½ |
| Bail or stipulation, including drawing, attending, taking and recording -  | -                 | 12 | 4  |
| Commission of any kind - - - - -   | -                 | 12 | 4  |
| Citation to witnesses, in each of which four names may be inserted -   | -                 | 3  | 1  |
| Citation of any other kind - - - - -   | -                 | 6  | 2  |
| Certificate of money in bank to the credit of any cause for which no search-fee is to be charged - - - - -   | -                 | 2  | 4  |
| Certificate of any other kind, in addition to the fee for a search - -   | -                 | 2  | 4  |
| For each default, including the act - - - - -  | -                 | 3  | 1  |
| For every final decree or dismiss - - - - -  | -                 | 6  | 2  |
| All other decrees to be charged for as orders.   |                   |    |    |
| For every copy of a decree or dismiss - - - - -  | -                 | 4  | 7½ |
| For each document exhibited and deposited in the Registry to remain there - - - - -  | -                 | 1  | 4½ |
| For every monition - - - - -   | -                 | 6  | 2  |
| For every precept - - - - -  | -                 | 3  | 1  |
| Poundage upon the net amount actually lodged by the Marshal or other person to the credit of any cause, per pound - - - - -  | -                 | -  | 6  |
| For every release - - - - -  | -                 | 3  | 1  |
| For drawing and engrossing every report under an order of reference -  | -                 | 10 | 6  |
| Search for one year back, no charge; for every ten years, or fractional part of ten years previously - - - - -   | -                 | 3  | 1  |
| Summons, for each - - - - -  | -                 | 2  | 6  |
| For attending upon each summons, if the business shall be actually proceeded on, for each hour - - - - -   | -                 | 6  | 2  |
| Warrant, for each - - - - -  | -                 | 3  | 6  |
| For the production of every witness examined <i>vivá voce</i> in court - -   | -                 | 5  | -  |
| For his cross-examination in court - - - - -   | -                 | 5  | -  |
| For the production and examination of every witness <i>in scriptis</i> - -   | -                 | 11 | 1  |
| For his cross-examination - - - - -  | -                 | 5  | 6  |
| For attending with records at the Judge, or Surrogate's-house or elsewhere, except in court, at the request of any party, for the purpose of having an application made in chamber - - - - - | -                 | 10 | 6  |
| No charge to be made for attending with records in court.  |                   |    |    |

THE

THE MARSHAL.

High Court of Admiralty.

Appendix,  
N<sup>o</sup> 17.  
N<sup>o</sup> 18, Q. 2, 3.

THIS officer is appointed during pleasure, by letters patent from the Crown, under the Great Seal of Ireland, with a power of appointing a deputy or deputies as often as he shall think fit, and to remove such deputies at his will and pleasure. He takes an oath on admission to the office for the due performance of the several duties of it, but is not required to enter into any security either for their execution, or for duly accounting for the monies that from time to time come into his hands, though from the nature of his office considerable sums are continually received by him.

N<sup>o</sup> 16.

The present Marshal, Mr. Robert Simpson, was appointed by patent dated the 15th day of July 1815; and by deed of deputation, dated 17th day of July 1817, he appointed Mr. Peyton Gamble Meares, his deputy. Each of these gentlemen took an oath of office immediately after their respective appointments, but neither of them have entered into security.

N<sup>o</sup> 19.  
N<sup>o</sup> 20, Q. 3.

In order to ascertain the duties of the Marshal, and the fees and emoluments annexed to their performance, we have had recourse to the returns of the present Marshal and his deputy; to the list of fees of 1716 and 1823, already alluded to in the branch of this Report which treats of the Registrar; and have examined the Surrogate, the Registrar, the Principal, Mr. Simpson, his deputy Mr. Meares, and Mr. Henry Richardson, a proctor of the Court of Admiralty, who was deputy to Mr. Lefanu, the immediate predecessor of the present Marshal.

The Table of 1823 appears, by the evidence of Mr. Pineau, the present Registrar, to have been formed by himself, and the practitioners of the Court; and he particularizes the several sources from which he and they derived their information on the subject of the several services, and their appropriate fees. It is remarkable that neither the Marshal nor his deputy were consulted upon this table, which professes to declare the fees to which he is entitled; although, at the time of its formation, much controversy appears to have existed relative to the Marshal's fees. The Registrar has accounted for this, by stating that the Marshal's fees were so defined as to render them incapable of being mistaken, and that therefore there was no occasion to consult him. This allegation, however, has appeared in the course of our inquiry unfounded; for the claims of the Marshal are, in several instances, utterly at variance with that part of the table which applies to him. This table not only conflicts with the claims of the Marshal, but with the original constitution of the Court, and with a former table framed by Mr. Pineau in the year 1807, when he first came into office, from such information as he then collected as to the fees allowed in taxation by his predecessors. By the table of 1823 the constitution of the office of Marshal is considerably altered, and a new officer, unknown in the Court of Admiralty of England, and we believe never before heard of in that of Ireland, is created, under the title of Apparitor. This table has never received the sanction of the Court; and the Registrar has not felt himself bound to adhere to it as to some of his own fees, although, in other respects, satisfied as to its correctness.

N<sup>o</sup> 13, Q. 3, 6. 17.  
562. 563. 565. 566.  
N<sup>o</sup> 20, Q. 115 to 119.

N<sup>o</sup> 11.

N<sup>o</sup> 13, Q. 574 to 577.

The duties of the Marshal are altogether ministerial or executive. They are as follows: "To attend the Court during its sittings, and enforce regularity and obedience to its orders; to execute warrants, attachments, monitions, inhibitions and citations, commissions for unlivery, appraisement and sale, jointly or severally, and make due returns thereon, and to discharge all vessels or goods attached by authority of the Court, and afterwards released by the same authority, or on executing bail." Of these duties the principal are the execution of warrants for the seizing of ships or goods, and the consequent custody and care of them till regularly discharged, and the unlivery, appraisement and sale of ships or goods, under commissions for those several purposes.

A suit in the Court of Admiralty, whether on a proceeding *in rem*, or *in personam*, is commenced by a warrant for arrest, either of the thing sought to be rendered responsible for the demand, or of the person who is to be subjected to it, issued upon an affidavit, stating the nature and particulars of the demand. When

Appendix,  
N<sup>o</sup> 5, Q. 35.  
N<sup>o</sup> 13, Q. 51. 297,  
298.

N<sup>o</sup> 21, Q. 82, 83,  
84. 226.  
N<sup>o</sup> 18, Q. 11. 17.

N<sup>o</sup> 20, Q. 12, 13.  
26.  
N<sup>o</sup> 21, Q. 229.

N<sup>o</sup> 18, Q. 22.

N<sup>o</sup> 20, Q. 26. 29.  
30. and Supp<sup>t</sup> Ans<sup>r</sup>  
after Q. 47.  
N<sup>o</sup> 21, Q. 99. 228.

N<sup>o</sup> 5, Q. 47. 49.  
N<sup>o</sup> 21, Q. 233.  
N<sup>o</sup> 20, Q. 27. 28.

N<sup>o</sup> 5, Q. 50.

N<sup>o</sup> 5, Q. 47. 52. 59.  
N<sup>o</sup> 18, Q. 50.  
N<sup>o</sup> 20, Q. 125.

N<sup>o</sup> 17.  
N<sup>o</sup> 18, Q. 20. 23.  
24, 25.

the arrest is effected, the property or the person may be discharged, in case sureties or bail are substituted. The warrant for attaching a ship, or goods, sometimes issues without the fiat of the Judge, and occasionally on a fiat. It is uniformly addressed to the Marshal or his deputy, whomsoever, and directs them jointly and severally to *arrest, or cause to be arrested, the vessel, &c.* and when arrested, to keep the same under safe and secure custody until further order. It also contains in the body of it a citation to all persons claiming interest in the thing sought to be arrested, to be and appear in the Court, on a day therein appointed. The execution of this process, which appears, from the manner in which it is directed, to be intrusted to the Marshal, or his deputy, has in practice been performed, either by this officer in person, by his general deputy, or by a special bailiff authorized by the Marshal, or his deputy, by indorsement on the warrant. The special deputation has been sometimes made to a bailiff nominated by the Marshal, but generally to the nominee of the promovent or his proctor, till latterly, when an alteration in this respect has taken place, and the Marshal, either with a view to asserting his exclusive right, or in consequence of the refusal by the proctors to give an indemnity, has altogether declined granting deputations to any person but his own nominee, where he does not execute the duty in person. The right of the Marshal to withhold a deputation, unless upon receiving an indemnity, cannot be disputed; the warrant is directed to him; he is responsible for the due execution of it, and the safe keeping of the ship or goods thereby attached; and if required by the party to delegate his authority, he has a right to demand security against every risk which may be incurred by reason of such delegation; and it appears to have been the practice to give the Marshal such indemnity when required. Upon this subject there exists some difference of opinion, as Mr. Richardson has stated the practice to be otherwise. Several instances, however, have been adduced, in which Mr. Richardson, when Deputy Marshal, obtained indemnities, and was paid for preparing them, and attending their execution. The present Marshal, therefore, has claimed a discretion, as to granting a specialty to the proctor's nominee, not only where no indemnity is offered, but even where it is. This claim has produced much controversy between the practitioners of the Court and the Marshal; and the former, with a view to setting aside the Marshal's claim altogether, have insisted on their right to issue what are termed "*Universis* Warrants." which till lately, we believe, have never been resorted to in Ireland. These warrants are addressed "to all and singular persons," (omitting the Marshal,) and are in use in the English Court of Admiralty, in most cases in which the ship sought to be attached lies at an outport; but even in such a case the proctor has an option of extracting a warrant addressed to the Marshal, and which is required to be done in all cases of vessels or goods lying within the port or district of London. The dispute upon the subject of warrants amongst other points of practice in controversy between the practitioners and the Marshal, having been brought before the Court, the present Surrogate, Sir Henry Meredyth, directed the Registrar to inquire into the practice of the English Court of Admiralty, which in this respect was ascertained to be as already stated. The Court has subsequently ordered that *Universis* warrants should not in future be extracted without the special order of the Court. Sir Henry Meredyth does not, however, consider the question as to the right of the Marshal to have the execution of all warrants as decided, but expresses an opinion favourable to the introduction of *Universis* warrants. In this we cannot concur, as we consider that the execution of the process of the Court should not be taken out of the hands of a responsible officer, to whom it has always been intrusted, and placed at the disposal of persons who might, through design, or for want of experience, misuse its authority, and who are not under the immediate control of the Court, unless obvious advantages, and important savings of expense to the suitors, could be shown as likely to result from the change. Should the business of the Court be hereafter very much increased, it may perhaps be deemed expedient to allow the suitors the option of extracting *Universis* warrants for execution at the outports. But at present there does not appear any necessity for this alteration in the practice, which would tend to diminish the emoluments of the officer, already very trifling in amount. We therefore recommend that all warrants shall be directed to the Marshal.

The present Marshal claims a fee of three guineas per diem for such time as he, or his general deputy, is absent from Dublin for the purpose of executing warrants at an outport; with 1 s. 6 d. a day for the care of the vessel arrested whilst in his custody. The former are termed day-fees, and the latter custody-fees.

For

For securing the advantage of a cheap and efficacious process in cases in which the rights of the Crown, and the claims of salvors, as well as those of merchants and mariners, are involved, it is highly important that the fees of the Marshal should be kept within reasonable bounds; but whilst, on the one hand, this consideration ought to have its due and proper influence in regulating the proceedings of the Court, the fair and legitimate claims of the officer to a reasonable and adequate remuneration for the performance of duties, to which are attached a serious responsibility, and on the due discharge of which the rights and interests of suitors so mainly depend, ought not to be lost sight of.

High Court of Admiralty.

The Marshal.

The claim of the Marshal to day-fees appears to be unauthorized either by the list of 1716, or long-established usage, having originated with Mr. Henry Richardson whilst Deputy Marshal, who admits that he introduced them without the authority of any former precedent, and that they were allowed, although unsanctioned by any table of fees or ancient usage. On their first introduction they were charged at the rate of two guineas a day, and afterwards increased to three, but never in any instance demanded where the funds were not considerable. Mr. Richardson is of opinion that the Marshal is not entitled to any fee for execution of a warrant, save 6s. 8d. for a deputation. If this opinion were correct, it would follow, that for executing a warrant in person the Marshal is not entitled to *any fee whatever*, as in such case no deputation is given. On examining into the charges made by the Marshal in his bills, we find them varying from one guinea to 25*l.* for the execution of warrants. These, however, are merely disbursements introduced by the proctor in the cause, who had procured the execution of the warrant by a bailiff nominated by himself, to whom, at his desire, the Marshal had granted a deputation. In point of fact, the duty of the officer in executing warrants has been almost entirely discharged by the proctors, or their nominees, until lately, when the officer has taken upon himself, exclusively, the performance of the duty, and refused to grant deputations. So uniform had been the practice previously, of leaving the execution of warrants to the proctors, that it appears to have been almost forgotten that the officer had any concern in it, further than granting a deputation to the proctor's nominee, and receiving the fee thereon. This may account for the opinion entertained by Mr. Richardson, that there is no appropriate fee to the Marshal when he executes the warrant in person, whether the arrest takes place at an outport, or in the port of Dublin. The present Marshal, by his return, claims the following fees; viz.

Appendix,  
N<sup>o</sup> 21, Q. 191 to 202. 238, 239.  
N<sup>o</sup> 18, Q. 48.

N<sup>o</sup> 21, Q. 113 to 115. 226.

Id. Q. 85. 87, 88.  
N<sup>o</sup> 20, Q. 120.

N<sup>o</sup> 21, Q. 82. 104.  
N<sup>o</sup> 18, Q. 11.

N<sup>o</sup> 21, Q. 113. 115.

|  |    |    |                 |                    |
|--|----|----|-----------------|--------------------|
| For executing a warrant in the River Liffey, so far as the east end of Sir | £. | s. | d.              |                    |
| John Rogerson's Quay - - - - -   | -  | 5  | 5               | N <sup>o</sup> 17. |
| For executing same between Sir John Rogerson's Quay and the lighthouse     | -  | 11 | 4 $\frac{1}{2}$ |                    |

These fees have been considered as disbursements to a bailiff for effecting the arrest, and not as fees to the officer. The list of 1716, which, however, Mr. Richardson had never seen or heard of, contains a specific fee of 3s. 10d. to the Marshal for the execution of a warrant, without any distinction whether to be executed in the port of Dublin, or at an outport. We are of opinion that there ought to be a fixed fee for the execution of a warrant, suited to the nature of the service, and the value of money at the present time; and that the remuneration of the officer should not be left uncertain and undefined.

N<sup>o</sup> 13, Q. 168.  
N<sup>o</sup> 21, Q. 86. 87.  
125. 147 to 153.

The fee claimed by the Marshal for executing a special deputation is 11s. 6d.; to which, as to most of his other fees, he founds his claim on the precedent of his predecessor's charges. This fee, though allowed to its full extent, to Mr. Richardson, and even to Mr. Simpson for some time after he came into office, the Registrar has subsequently reduced to 6s. 8d. The reduction appears to have taken place in consequence of the formation of the new Table of 1823. In the Table of 1807, which Mr. Pineau had framed without the participation of the proctors, the fee on this service is thus stated, "Warrant, deputation, caption-fee, and first day, 11s. 6d." the deputation-fee being 6s. 8d., the caption 3s. 4d., and the custody-fee for the day on which the warrant was executed, 1s. 6d. The caption-fee seems justified by the old list of 1716, which recognizes the same service in the words, "To the Marshal for executing the warrant." Another disallowance to the present Marshal of a fee received by his predecessor is for preparing an indemnity. This fee was taken upon the occasion of giving a deputation to the person nominated

N<sup>o</sup> 18, Q. 8. 10.

Appendix,  
N<sup>o</sup> 20, Q. 29. 30.  
and Supp<sup>l</sup> Ans<sup>r</sup>  
after Q. 47.  
N<sup>o</sup> 21, Q. 228.

by the proctor; and varied in amount from 5s. to 11s. 4½d. Mr. Richardson in his evidence speaks of indemnities as not existing in practice; but several instances have appeared, in which he required and received payment for them to the amount already mentioned.

We are of opinion, that on a correct view of the nature of the process these two latter fees, viz. on granting a deputation and preparing an indemnity must appear not justified on principle, and consequently that they should be altogether abolished. From the direction of the warrant, the Marshal may at his own discretion execute it, either in person, or by granting a deputation; but in whichever way the arrest of the property is effected, the Marshal is the person responsible to the Court for the legal seizure and subsequent care of it whilst under detainer. Such being the nature of the Marshals duty connected with this process, it matters not whether the arrest is effected by his own hand, or by that of a person deputed by him, nor whether the person deputed be selected by himself or by the proctor; the Marshal is in either case, virtually the seizing and responsible officer and custodee of the thing seized and detained. Thus all difficulties vanish as to fees on deputations and indemnities; for as the officer always, either actually or virtually, executes the process, he alone can properly claim and be allowed the remuneration; and if the duty be performed by deputy, he ought to pay such deputy out of the fees to which he himself is entitled on that service, without putting the parties to any additional charge on that account. The list of 1716 does not contain any fee for or connected with deputations; but does contain a fee, as already stated, to the Marshal, "for executing a warrant." According to the same principle, we find that the Commissioners of Law Inquiry in England, in the table of fees annexed to their Report on the Court of Admiralty among the fees of the Marshal, have introduced the following items, viz. "arresting a vessel, goods, or person on the river Thames, or elsewhere between London Bridge and Gravesend, 1*l.* 1*s.*; if at or below Gravesend, 2*l.* 2*s.*;" if at any of the outports, besides his travelling expenses, 2*l.* 2*s.* This statement will we trust, sufficiently evince how erroneous has been the opinion, that the Marshal, where he executes a warrant in his own person, is to have a fee for a service he does not perform (viz. giving a deputation), and no remuneration for the trouble and expense he is put to in effecting the caption. The fees claimed by the Marshal in his return, as payable for the execution of warrants in the port of Dublin, are analagous to those of the same officer in England, on a similar service within the port of London, and in our opinion ought to be recognized as a legitimate fee payable to the Marshal himself, whether the duty be performed in person or by deputy. The principle applies equally to the case of an outport; and whatever fee shall be deemed suitable for this latter service, it should be payable to the Marshal. It only remains that we should consider the amount of fees proper to be allowed for the execution of warrants in the port of Dublin, and at an outport. For our guidance in this, we have not been able to derive any aid from the bills which have been laid before us; as they have been almost universally in cases in which the duty has been performed under deputations given to persons nominated by the proctors, and are therefore to be considered as disbursements made by the proctors, and brought to charge by their bills of costs, though sometimes introduced into the Marshal's bill of fees as disbursements. The principle by which the Registrar has been governed in allowing them on taxation, has been that of a *quantum meruit* to the bailiff executing the warrant under the deputation; and from the practice of considering this bailiff at one time as the servant of the proctor, and at another as acting under the Marshal, so much confusion has arisen, that the remuneration to the bailiff has been sometimes doubly charged, viz. by the proctor and by the Marshal, and allowed on taxation to both. This charge has varied in general from one guinea to two guineas, but has sometimes been allowed to the extent of 5*l.*, in others to 10*l.*, and in one case, viz. that of the Cork Derelict, in which Mr. Whiteway, one of the proctors, was selected by the King's Proctor, and the Registrar to take a deputation from the Marshal, an allowance was made of 25*l.* for his trouble and expense in executing the warrant.

In the absence of any precedent to guide us in establishing fixed fees for this service, save the List of 1716, we have resorted to the schedule of the Marshal's fees, annexed to the report of the English Commissioners already alluded to; and, on a full consideration of the subject, have no hesitation in adopting the same principle. We therefore recommend that the Marshal shall be entitled to a fee of

11*s.* 4½*d.*

‡

11 s. 4½ d., on the execution of all warrants within the port of Dublin, and for the like service, at any of the out-ports, a fee of two guineas; and that if he shall perform the last-mentioned service, at any out-port in person, he shall, in addition to the fee of two guineas, be entitled to such sum as he shall appear to have actually and necessarily expended in travelling to and returning from such out-port; such expenses to be ascertained at the discretion of the taxing officer, and verified by affidavit, if required; and that such fee of two guineas shall constitute the whole payment for the execution of the warrant by the seizure and detention of the ship and cargo. And in case it shall be made appear by affidavit, to be sworn in open Court, that the Marshal could not procure a fit person to execute such warrant at or near the port or place where the ship or goods were lying at the time of delivering to him such warrant, we think an allowance of 6 d. per mile should be made for travelling expenses of the person deputed by him. We further recommend, that in all cases of derelict ships or goods, or in which the King's droits, and the rights of salvors are involved, it shall be mandatory on the Marshal, if so directed by the Court, upon application showing the expediency of it, to execute the warrant in person; in which case his fee shall be four guineas. We further recommend that no fee whatever be allowed for signing a deputation, or preparing an indemnity.

High Court of Admiralty.  
The Marshal.

In addition to his other fees, on the execution of a warrant, the Marshal has been in the habit of receiving a fee of 6 s. 8 d. for what is termed a Back Warrant, which is an authority from the Marshal to the Bailiff, who has charge of the ship, to detain her. This has been stated to be necessary, in order to supply the place of the original deputation indorsed on back of the process which must be returned and filed in the Registry; but as a copy of the original warrant is under an order of the Court invariably posted on the mast of the vessel, to the knowledge of the master and seamen on board, and as the deputation might be given distinct from the warrant, the additional caution appears scarcely necessary. The fee for a back-warrant was always received by Mr. Richardson, and for some time by Mr. Simpson, but has latterly been disallowed.

Appendix,  
N° 18, Q. 8.

N° 21, Q. 117 to 121. 230.

N° 13, Q. 143.

It frequently happens that warrants against the person of masters or owners are issued in proceedings for seamen's wages; in such cases the Marshal charges one guinea for the arrest, if the warrant be executed by himself. If he grants a deputation his fee is 6 s. 8 d. We see no sufficient reason for allowing a different rate of fee for the execution of warrants *in personam*, from that allowed in case the proceeding were *in rem*; and therefore recommend that the fee for this service, when performed in Dublin, shall be 11 s. 4½ d.; and when at an out-port two guineas, with the same allowance for travelling expenses; and under the same restrictions and regulations as if the proceeding were *in rem*.

N° 20, Q. 68. 69.  
N° 21, Q. 253 to 253.

The Marshal in his return claims custody-fees on vessels under each warrant, from the day of arrest till the discharge given, and his fees paid, at the rate per day of

|  |           |
|--|-----------|
| - - - - -  | 1 s. 6 d. |
| Like fee per day on cargo, even though arrested at the same time |           |
| with vessel - - - - -  | 1 s. 6 d. |
| Storage on sails or vessels, materials per day - - - - -         | 1 s. 6 d. |

N° 17.  
N° 18, Q. 23 to 26.  
N° 20, Q. 54 to 67.

Mr. Richardson considers these fees as having been originally a disbursement for payment of a ship-keeper, and thence he concludes that unless a ship-keeper is actually placed on board, the Marshal is not entitled to them. It appears, however, to have been his own invariable practice, whilst he was Deputy Marshal, to charge them; and, in addition, to retain the amount actually paid to a ship-keeper as a disbursement. The present Marshal upon his appointment, and for some time after, continued to make these charges under the precedent of Mr. Richardson his predecessor; but the Registrar has latterly disallowed the additional charge as a disbursement, conceiving that the fixed custody-fee was meant to cover all expenses, attendant on the safe keeping of the vessel. In this opinion we concur with the Registrar; but, as it must often happen that a ship-keeper will be indispensably necessary for the due care and preservation of the property, we think that a reasonable augmentation of this fee ought to be made, to enable the Marshal to procure such assistance. We therefore recommend that the custody-fee be increased to 2 s. 6 d. per diem. The present Marshal, on the precedent of his predecessor has charged separate fees for the custody of the ship and of the

N° 21, Q. 127. 130.

N° 20, Q. 54, 55-

Appendix,  
N<sup>o</sup> 20, Q. 63 to 65.

cargo, where arrested under one and the same warrant, and also separate fees on ship and cargo on each warrant, where two or more have been executed against the same vessel. We recommend that such multiplication of fees shall not, in either case, be allowed in future.

Id.

In cases in which the suit is settled between the parties, or where the impugnant enters into bail, or where the promovent's libel is dismissed by decree of the Court, a release of the vessel or goods is required for the purpose of liberating them from detention. In the list of fees of 1716 there is a fee to the Judge, to the Registrar, and also to the Marshal on this service. The release, like the other process of the Court, is directed to the Marshal and to his deputy whomsoever. It recites the decree, and directs the Marshal to release the vessel, and supersede the warrant, *on being paid his fees and expenses*. We find upon this process the same erroneous notions prevailing which characterize so much of the procedure of this Court. The tables of 1716, 1807, and 1823, all mention the release; the former stating the fee to be 2 s. 8  $\frac{1}{2}$  d., and the two latter 3 s. 4 d. Mr. Richardson was in the habit of charging 5 s. for the release, which is the fee at present in England, and which we consider reasonable, and recommend.

N<sup>o</sup> 20, Q. 32 to 44.

N<sup>o</sup> 18, Q. 8, 9.  
N<sup>o</sup> 21, Q. 122 to  
126. 234 to 237.

In the Table of 1823 an additional fee of 3 s. 4 d. is introduced for a *discharge*. This means a document signed by the Marshal, ordering the bailiff, acting under his deputation, (where such has been granted,) to liberate the vessel. There is no pretence for this charge, except that the Table of 1823 has adopted it. Mr. Richardson uniformly charged and was allowed this fee; but he states it as his opinion that it ought not to be charged. We recommend its discontinuance for the future.

N<sup>o</sup> 20, Q. 34.  
N<sup>o</sup> 21, Q. 137. 140.  
to 142. 157 to 166.  
168.

A question of some difficulty presents itself at this stage of the proceedings in a suit in the Admiralty Court affecting a ship or goods arrested by a warrant, and detained in the custody of the Marshal; where the impugnant, after appearing, is regularly dismissed by decree or order of the Court. In this case the Marshal claims a lien on the vessel or goods, for his bill of fees and disbursements, up to the time of the release inclusive; and as his only means of securing the payment refuses to execute the release until satisfied by the party seeking the re-delivery. This claim appears to have been latterly resisted in many instances. Mr. Richardson is of opinion that the Marshal's demand for his fees and disbursements, up to the issuing of the release, ought properly to be a charge against the promovent, and that the impugnant is entitled to the re-delivery of the vessel without paying any fees; and, in two cases in which the point was brought before the Court the Judge decided against the Marshal's claim. In one of them the bill of fees amounted to upwards of 70 l., and the Marshal never recovered any part of that sum, the promovent being insolvent, and the Marshal fearing to encounter the risk of a motion to the Court on the subject. Should this decision of the Court be considered as establishing a precedent to regulate all future cases of the same description, the profits of the office would be seriously affected by it. If the fees of the Judge and Registrar are to be chargeable against the vessel in case of a dismiss and release under it, so by parity of reasoning, ought the fees and disbursements of the Marshal. The terms of the release, according to its ancient forms, go expressly to establish this claim of the Marshal, for it only requires him to liberate the vessel on being paid his fees and expenses. We consider the case of a proceeding in the Admiralty so far analogous to a suit in a court of common law, as that in the former as well as in the latter, the successful party may, in the first instance, be subjected to official charges, and afterwards left to his remedy against the party by whose unjust litigation such charges have been necessarily incurred. Supposing this a correct view of the subject, the Marshal ought not to be compellable to release the vessel till his fees, like those of the Registrar and Judge, should be paid, but more especially ought he to have his disbursements, which, in some cases, may be very considerable. Besides, if there is no injustice in leaving a successful defendant in a court of common law to his remedy against the plaintiff for recovery of the officer's charges, *a fortiori*, there is none in the Court of Admiralty where the impugnant can compel the promovent to give security, amongst other things, to pay impugnant's charges, if he (the promovent) should be defeated.

Clark, Pa. 9. 13. 33.

One circumstance connected with this controverted claim of the Marshal we feel it necessary to allude to, viz. that since this question has been agitated, the form of the release has been altered, by omitting the words which had always previously

viously been inserted in it as a condition of its execution; viz. *on being paid his fees and expenses*. This alteration has been made without the sanction of the Court, and has the appearance of having been done with a view of depriving the officer of an apparently strong ground whereon to rest his claims.

Appendix,  
N<sup>o</sup> 13, Q. 660 to  
662.

The right of requiring from the promovent security for costs on an appearance being entered by the impugnant to the warrant, although admitted to be conformable to the course of the Court of Admiralty in Ireland, equally with that of England, appears to have been wholly disused in practice in the former Court. In England, even in a suit for mariners wages, the promovent is compellable to enter into such security, a most salutary precaution, which we strongly recommend for adoption in general practice in Ireland; as by thus giving to masters and owners of vessels their remedy over, against a substantial surety, bound together with the promovent in a bond for securing the impugnant's costs, many vexatious and unfounded suits for seamen's wages would be prevented, and consequently, much of the complaints that are continually made by ship-owners and merchants against the jurisdiction of the Court of Admiralty would be silenced in future, and no hardship experienced by them from being obliged, in the first instance, to discharge the just fees of the Marshal, together with such reasonable expenses as he had been put to. If the seaman appeared to have a just cause of action, his proctor would, in general, become his surety: if otherwise, he would dissuade him from embarking in the suit. On the whole, we recommend that the right of the Marshal to retain the vessel, notwithstanding a release, till paid his legal charges, be recognized; and that the impugnant be left to his remedy over, against the promovent or his surety, for his disbursements.

It may here be proper to notice a written communication received by us, in which it was stated, that in the year 1826, the officers of the Admiralty, or some persons employed by them, had seized a derelict vessel, brought into the harbour of Cork, without any legal authority, the arrest being alleged to have taken place seven days antecedent to the *teste* of the warrant, as appears from the discharge given by the Marshal, founded on the release, a copy of which was transmitted to us, in which it was recited that the warrant bore *teste* on the 7th April, whilst the arrest was stated to have taken place on the 1st of that month. Upon examination, however, it appeared that the warrant actually bore date the 27th of March, and was returnable on the 7th of April; and that the circumstance of the Marshal having, when reciting the warrant in his discharge, inserted the date of the return, by mistake, instead of the date of the *teste*, gave an apparent colour to the imputation. But no irregularity of the nature alleged took place. We have examined generally as to such a practice, and the evidence negatives its existence altogether.

N<sup>o</sup> 20, Q. 70. 86 to  
92. 122.

N<sup>o</sup> 13, Q. 659.  
N<sup>o</sup> 21, Q. 105, 106.

Another charge has been brought against the officers, of a somewhat similar description, which, though having much colour of foundation, has been refuted. It was stated that the Registrar and the King's Proctor had given a general commission to a person residing near the coast to seize all derelicts that were found within the bounds of his commission; and that, under this commission much property had been taken possession of, although never accounted for. It appeared, however, that although a person had been employed by them to communicate information in such cases, his commission did not extend farther. We consider the King's Proctor, in taking this precaution, had only pursued his duty; but think the Registrar was not called upon to join in it, and that it was an act of much imprudence in him to do so; and more especially, if, as has been alleged, and he cannot distinctly contradict the assertion, he was induced to affix the seal of the Court to it.

N<sup>o</sup> 25, Q. 67 to 70.

N<sup>o</sup> 13, Q. 653 to  
657.

We now proceed to consider the subject of commissions for the appraisement and sale of ships and goods. According to the modern practice of the Admiralty Court in Ireland in a proceeding *in rem*, where four defaults have been incurred, and no appearance is entered on behalf of the vessel or goods arrested under the warrant, a rule is entered; which gives the non-appearance the effect of a negative contest, and entitles the promovent to exhibit and prove his libel, upon which the Court pronounces its final decree, viz. that a commission do issue for the sale of the property under arrest, unless payment in a specified time. The *primum decretum*, though formerly in use, as appears from the circumstance of its forming

Id. Q. 533.

Brown, 402 (in an item of charge in the list of 1716, is in modern practice utterly unknown. In a contested suit, the final decree is the same as in a case of contumacy. To the execution of all commissions of appraisement and sale the Marshal claims an exclusive right, as incident to his office. In asserting this claim, however, he has experienced opposition from the Proctors of the Court, who, admitting his exclusive right to the execution of commissions in the Port of Dublin, have insisted on their right to extract them, (in the case of ships or goods lying at the out-ports) directed to other persons, either conjointly with or altogether omitting the Marshal. This controversy seems to have originated partly in a wish on the part of the proctors to have the execution of all process at the out-ports virtually brought under their own superintendence, as the Marshal has latterly declined granting deputations upon commissions of this nature; and partly to avoid the Marshal's charge of day-fees, at the rate of three guineas per diem, for the time he is absent from Dublin in the execution of the commissions, in like manner as we have already described with respect to the execution of warrants. Formerly, deputations were sometimes granted to the proctors nominees; and, in such cases, the person deputed received the day-fees; and the Marshal, without rendering any service whatever, pocketed the poundage and other remaining fees. We are of opinion, that a delegation of the Marshal's authority, in cases of commissions of appraisement and sale, ought not to be allowed. But the Marshal alleges that whenever he refused them he was so harrassed by objections made to his charges, and by references to the Court, by which he incurred much expense, that he found it expedient occasionally to yield to the proctors, and give deputations. In cases of appraisement and sale in the Port of Dublin, the Marshal makes no claim of day-fees, but all his other charges are the same as if it had taken place at the out-ports. These subjects of dispute have been submitted by the Marshal, by petition to the Court for its decision, and different references have been made to the Registrar, who has reported specially upon them. But the question has only received a partial and provisional decision; and is to be considered as still *sub judice*. The present Surrogate, Sir Henry Meredyth, states that more embarrassment has arisen out of the controversy between the respective officers on these points, in causes which have come before him, than upon any other subject of claim of right; and, that finding it necessary to make every possible inquiry on the subject, he made an order of reference, in October 1824, to the Registrar, to inquire and report upon the origin, nature, and duties of the office of Marshal; and also respecting the process and commissions of the Court, which were directed to other persons in addition to or in exclusion of the Marshal. Sir Henry further states that in the progress of this Inquiry he ascertained that no such exclusive right, as claimed by the Marshal here is claimed by the same officer in the Court of Admiralty in England; but that on the contrary, commissions of appraisement and sale, for execution at the out-ports, are in general, if not always, directed to commissioners named by the parties, or on their default, by the Court; and that this practice is confirmed by the law of the Court, as given by text-writers, and by the *formula* to be found in the printed books of precedents; and he recommends, as expedient, the adoption in the Irish Court of the English practice. The information obtained by Sir Henry, as to the English practice, resulted from a correspondence between the Registrar of the Irish Court and Doctor Swaby, the Deputy Registrar of the English Court; commenced by Mr. Pineau in obedience to a direction given him by Sir Henry Meredyth, "To inquire whether the Marshal is sent to all parts of England to execute commissions of appraisement and sale, or other process of the Court; and if so, how paid, and by whom, and whether by an agreement, by a per-centage or per diem." Dr. Swaby in his answer to Mr. Pineau, states that when a vessel is decreed to be sold, if within a reasonable distance of the Court, a decree issues, directed to the Marshal. If at any considerable distance a commission issues directed to Commissioners, one named by each of the parties in the cause, whereby the travelling expenses are avoided. That the Marshal generally executes all process in the neighbourhood of London, or on the River Thames, and any reasonable expenses he may incur in travelling a short distance are allowed him, either by agreement with the parties, or if they cannot agree, by taxation by the Court.

N<sup>o</sup> 20, Q. 126.

The Deputy Marshal addressed a letter on the same subject to John Deacon, esquire, the Deputy Marshal in England, in answer to which Mr. Deacon replied, that

that although his principal's patent constitutes him Marshal of the High Court of Admiralty of England, with all the fees, salaries, rights, profits and emoluments belonging and appertaining, due and accustomed to be taken and received, yet as it has not been the custom for his predecessors to execute decrees of sale of vessels, &c. at the out-ports, he does not claim such privilege, nor does it appear there is any ancient fee for the same. The practice there is to appoint two commissioners residing at the port where the vessel lies, who are allowed one guinea per diem each for the time they are actually employed. He, however, adds his opinion, "that if it has been the custom for the Marshal in Ireland to perform this service, he is entitled so to do, subject to such regulations as may be considered proper by the Court."

High Court of Admiralty.

The Marshal.

It will be perceived that this letter alleges the Irish Marshal's right to the execution of commissions of appraisement and sale at the out-ports, *provided such has been the custom*, which it appears to have been almost universally, although instances have occasionally occurred in which one or more commissioners names have been added to that of the Marshal in the commission; and in those cases the appointment of additional commissioners is stated not to have been attended with any sort of advantage, except to the commissioners, who derived considerable emolument from it.

Appendix,  
N<sup>o</sup> 13, Q. 93. 94.  
N<sup>o</sup> 21, Q. 33 to 37.

Two instances have been stated in evidence, in which persons neither experienced nor competent to the discharge of the duty were joined with the Marshal in a commission of appraisement and sale. Both occurred during the time Sir Jonah Barrington presided in person; and in each, without any desire expressed by the parties in the suit for that purpose. The commission in each was directed to a brother-in-law of the Judge, conjointly with the Marshal, whereby an additional expense, in one cause of 80*l.*, and in the other of 200*l.*, was uselessly incurred.

The ancient printed form of commissions for appraisement and sale, appears to be directed, like the other process of the Court, "To the Marshal or his Deputy whomsoever." We therefore conceive that they (as well as the other process) having, according to the usage of the Court of Admiralty in Ireland, been committed to the Marshal, it would not be consonant to the principles of justice to deprive him of their execution without compensation; and in this opinion Sir Henry Meredyth concurs; neither have we been able to discover any solid grounds for this deprivation. The very limited business of the Irish Court, compared with that of England, sufficiently accounts for the difference of practice in the two countries. The English Marshal's duties are in general confined to the port and district of London; in which alone, it is apprehended, there is a greater extent of business than in the whole of Ireland, for the entire business of which a single officer may be sufficient. We have already expressed our opinion as to the superior advantage of having the duties performed by a responsible officer, who is amenable to the Court at all times, and naturally disposed to respect and defer to its authority. Besides, were the most important and most lucrative functions of the officer withdrawn from him and committed to strangers, the defalcation in the emoluments of the office would render it unworthy the acceptance of any person of character or respectability. We therefore recommend that the Marshal shall remain on the same footing on which he has always stood in Ireland; and that all the process of the Court shall be directed to him for execution; subject, however, to such regulations as to his duties, and the fees payable for their performance, as it may be advisable to establish.

N<sup>o</sup> 5, N<sup>o</sup> 51, 52.N<sup>o</sup> 18, Q. 44.

The claim of the Marshal of three guineas per diem, for the time occupied in travelling, and in the execution of a commission of appraisement and sale at an out-port, having been disputed, was brought before the Court, in the case of the Arran derelict, upon exceptions taken by the Marshal to a taxation by the Registrar, on which those fees were disallowed. Sir Henry Meredyth directed the Registrar to report "Whether the charge of three guineas is sustained by the ancient law of the Court, usage or analogy, and in what instances has that charge been allowed in costs duly reported and confirmed by the Judge or Surrogate." The Report of the Registrar, which will be found in the Appendix, states on the authority of an affidavit made by the proctors, that the Marshal is not entitled to the fee of three guineas per day when absent on duty, and that such fee would be "exorbitant and unreasonable." One of the proctors, who made the affidavit alluded to in this report, was Mr. Henry Richardson; who, however, on his examination,

N<sup>o</sup> 20, Q. 127, 128.

High Court of Admiralty.

The Marshal.

Appendix,  
N° 21, Q. 191 to  
208. 252.

N° 17.

N° 20, Q. 119.

N° 5, Q. 54.

mination, admits having frequently made the charge, and been allowed it; but re-asserts his opinion of its illegality; not considering the Marshal entitled to any payment for the performance of his duties on such a commission, save his poundage; in analogy to a sheriff, who is only entitled to his poundage, though he may be required to travel to a distant part of his county for the purpose of executing a writ. Mr. Richardson states that the day-fees had no existence prior to the time of his appointment as Deputy Marshal, and admits that he introduced the charge. Since he ceased to act as Marshal he has never objected to the charge, when made by the present Marshal, from the circumstance of his having himself introduced it when in office. When the fund was scanty, however, he has stated that he did not claim it. Had the present Marshal observed such a distinction, it is probable no objection would have been raised; as, in several instances in which the proceeds were ample, the day-fees, to the full extent, have been allowed; and both the Marshal and his deputy have stated that a principle has been held out to them, that, whenever the funds are small, they should be satisfied to accept their fees in such a ratio as will admit of the Registrar and Proctors concerned deriving a proportionate benefit; whilst in cases in which they are ample he should be liberally allowed. To this he has refused to accede; insisting on his fees being taxed in every case, *on one fixed principle*, to the full extent of his rights. He has, however, felt himself so much annoyed by the opposition he has met with, that had he not looked forward to some legislative interference to settle the Court, and to define the duties and fees of the Marshal, he states he would long since have resigned the office.

Sir Henry Meredyth has made an order, directing the Registrar to allow the Marshal at the rate of two guineas per diem, until the question shall be settled by some legislative provision for regulating the general practice of the Court.

The subject, therefore, being still unsettled, it becomes our duty to consider it, and suggest such regulation as may prevent future controversy. We consider the expenses of the Marshal, in travelling to and from an out-port, as a disbursement; and that his remuneration is derivable solely from his poundage. A sale in the port of Dublin may occupy as much time, and occasion as much attendance and trouble, as a sale at an out-port; and at the former his remuneration is restricted to poundage only. It follows that, in the case of the out-port, he ought not to be entitled to any larger additional payment than will fully reimburse his actual expenditure, necessarily incurred by his journies and maintenance whilst travelling to, remaining at, and returning from such out-port. By referring to the practice in England, in cases where the Marshal has to travel to any place within the port of London, we have a precedent to guide us. It appears that, in such a case, the officer's actual expenses in travelling are reimbursed according to agreement with the parties in the cause; or if no agreement, then by reference to the taxing officer. The same principle is recognized in the letter of Mr. Deacon; for he states that his travelling expenses are considered as a disbursement. We have already suggested that the Marshal should be so reimbursed, in the case of a warrant executed by him in person at an out-port; and we now recommend a similar course in the case of a commission.

N° 17.

N° 18, Q. 57.

Id. Q. 33 to 36, and  
52 to 56.

Id. Q. 58.

N° 20, Q. 102, 103.

N° 21, Q. 209 to  
216. 221. 247.

With respect to the other charges of the Marshal, they are precisely the same on commissions to the out-ports and to the port of Dublin: they consist partly of fees, and partly of disbursements. As to the former, for preparing advertisement and drawing terms of sale, 6s. 8d.; taking inventory of the ship's materials and furniture, and of all the goods on board, one guinea; drawing valuation or certificate of appraisement, 13s. 4d.; for executing deed of sale, two guineas; and lastly, a poundage of 1s. per pound on the first 100l. and 6d. on every pound after the first 100l. of the proceeds of sale. With respect to his disbursements, he generally charges, for payment of an appraiser, a bulk sum of two guineas; for charge of advertising sale, ; for the auctioneer, either a bulk sum or a per centage of 10s. per cent; for a measurer, in cases of sales of timber, as by agreement; and sometimes for a guard to protect the property under seizure; together with other occasional expenses of a miscellaneous nature, arising out of the special circumstances of particular cases: these the present Marshal claims on the precedent of their having been all allowed to his predecessor; but several of them have been latterly resisted and disallowed. The first Table we have found in which the Marshal's poundage is recognised, is that of 1807: the list of 1716 is silent

on

on the subject, although a per centage is therein given to the Registrar of 2*d.* in the pound, "for retaining and paying any money lodged in court." The Marshal's poundage must therefore have originated since the forming of that table: how the remuneration for the particular service may previously have been measured, we have no means of ascertaining. This per centage appears here unusually large, when the rate in England is taken into consideration for the same service: there, according to an ancient presentment, which has received the sanction, not only of the Court, but of the Commissioners of Inquiry, the Marshal is entitled only to 1*l.* per cent on the first 200*l.* and 10*s.* on every other 100*l.* The reason assigned for the increased rate here is, that in England a separate allowance is made for a broker of 1*l.* per cent on the sale, and 10*s.* per cent on the appraisement. This argument, however, cannot have much weight, when it is recollected, that in addition to his poundage, the Marshal claims and is allowed the appraiser's and auctioneer's charges as disbursements, with several others before particularly mentioned; thus having a clear poundage greater than that of the English Marshal, with several fees besides.

High Court of Admiralty.  
The Marshal.

Appendix,  
N<sup>o</sup> 20, Q. 129.

It is only fair, however, in drawing this comparison, to notice a circumstance mentioned in the Report of the English Commissioners, viz. that the Marshal of the English Court had participated in the broker's per centage, having received two thirds of the 1*l.* per cent allowed the broker on the sale, and one third of the 10*s.* per cent allowed him as appraiser. It was suggested to us that the same practice obtained in Ireland, but its existence has been negatived by Mr. Richardson as to his own time of official service, and also by Mr. Simpson and his deputy. Upon the whole of this branch of the subject, we are of opinion that the present rate of poundage may be continued; but that all the extra fees claimed by the Marshal as connected with the sale should be disallowed in future, and that the auctioneer shall be paid by the Marshal out of his poundage; but the fee of two guineas to the appraisers we recommend to be still chargeable as a disbursement, inasmuch as the allowance of poundage is strictly confined to the commission of sale, the appraisement being a distinct service: on the same principle we recommend allowing the fee of one guinea to the Marshal for taking the inventory, and for the certificate of appraisement.

N<sup>o</sup> 13, Q. 130 to 139.  
N<sup>o</sup> 20, Q. 100. 101.  
N<sup>o</sup> 21, Q. 212. 216.

In general, the present Marshal has had the sanction of the precedent of his immediate predecessor for the charges made by him; but some instances of over charge on the part of the deputy have been stated, in which that pretext cannot be adduced. We have had much difficulty in attaining any accurate knowledge of the circumstances of these cases, owing to the contradictory evidence given by the Deputy Marshal, arising, as he alleges, from defect of memory. But we believe the following are the material facts, so far as concerns this attempted over charge of the Deputy Marshal. In three cases, which occurred at the same time and place, Mr. Meares set up the derelict property, consisting of ships and timber, to be sold by auction; and one of the terms of sale was that the purchaser should pay 5*l.* per cent, on the entire amount of his purchase, over and above the sum bid by him. This per centage was ostensibly charged for the remuneration of Mr. John Denis Browne; a gentleman resident in the neighbourhood, who assisted at the auction, and by whom it was proposed, on an assurance that it would not injure the sales; as the custom of the country was to do so under the name of auctioneers fees. But it was subsequently agreed, between that gentleman and the Deputy Marshal, that one half was to be paid to the officer, and the other half retained by Mr. Browne, who conducted the sales and received the purchase money. The proctor for the owners, who was present at the sale, acquiesced in the charge of a per centage for Mr. Browne; perceiving that there was a combination among the country people not to allow the sale to proceed; in consequence of which the property might have been altogether lost, or sold at an under value; and that Mr. Browne, by his influence, could break up this combination and induce the people to allow the sale to proceed. But when he learned that a portion of this per centage was allocated to the Marshal, he applied to the Court to compel the officer to refund that two-and-a-half per cent, and obtained an order for that purpose. Mr. Simpson has declared his entire ignorance of such charges having taken place until the application to the Court was made, and has denied their having had his sanction. The result of the application was, that the payment to Mr. Browne was allowed by the Court, but the remaining two-and-a-half per cent. was ordered to be paid in.

N<sup>o</sup> 13, Q. 122 to 129.  
N<sup>o</sup> 20, Q. 74 to 85.  
93 to 99, and Supp<sup>l</sup>  
Ans<sup>r</sup> after Q. 135.  
N<sup>o</sup> 21, Q. 68, 69 to 72. 225.

N<sup>o</sup> 18, Q. 82 to 89.

Appendix,  
N° 18, Q. 58 to 64.  
N° 21, Q. 221, 222,  
247.

N° 20, Q. 130.

A practice which originated in the time of the predecessor of the present Marshal has had the effect of increasing the expense and delay attendant upon sales, without producing any advantage sufficient to compensate for either. The previous course had been for the Marshal to give possession to the purchaser, and execute a bill of sale immediately after the sale was closed. Mr. Richardson considered this a bad practice, and required the purchaser, in analogy to the practice in the superior courts, to enter a rule to confirm the sale, unless cause in four days, during which period it is competent to any person to come in and bid in the Registry an increased sum for the property. In consequence of this the purchaser is obliged to employ a proctor to enter two rules; and this proctor takes upon himself the preparation of the deed of sale, for which he receives a fee of two guineas, and a further fee of two guineas is given to the Marshal upon the execution of the deed. The additional costs imposed on the purchaser by this alleged improvement in the practice in general varies from 6*l.* to 10*l.*, but may extend to a still greater amount, in consequence of the sale being several times opened. The fee of two guineas on executing the deed of sale was unknown previously to the introduction of the new practice; but it is now regularly received by the Marshal. In the Court of Admiralty in England the original simple practice is preserved: the sale is conducted by the Marshal, and a fee of 1*l.* only for delivering possession and preparing and executing a bill of sale is received from the purchaser on the sale of a ship and goods; and we believe no fee whatever in the case of goods merely. We recommend that the Irish practice in this respect shall be assimilated to that of the English Court.

N° 21, Q. 5 to 10.  
13, 14, 41 to 44.  
Id. Q. 27 to 30, 57.

It has been already shown, in that part of our Report which treats of the office of Registrar, that the Marshal, in the first instance, deducts the amount of his bill of fees and disbursements from the proceeds of each sale, after which he deposits the balance with the Registrar, in whose care the money should remain until drawn out by order of the Court, made on the application of the parties in the cause. The disbursements chargeable in this bill are confined to such expenses as are necessarily incurred in the execution of the process of the Court. During the period Mr. Richardson was in office this practice appears to have been frequently deviated from, by his making payments to the proctors, both on account of their clients demands and their own costs, and frequently to a large amount. The payments, though made without order, appear to have received the sanction of the Registrar, who, upon the lodgment of the balance in the Registry, accepted the receipts of the proctors for the sums so paid as cash; and although they never were in his care or custody, he charged his poundage upon them as if they had been regularly lodged in the Registry. In one instance Mr. Richardson paid away the whole proceeds (about 200*l.*) on the spot immediately after the sale. The Commission was never returned, nor any account of proceeds ever rendered to the Registrar or the Court. But as, in this case, the payments were made with the consent of the owners it is in some measure to be distinguished from those instances in which he made such payments on his own authority without consent of any party, although, even in such cases, he does not appear to have been actuated by corrupt motives. Neither the present Marshal nor his deputy have adopted this practice; they have, however, occasionally, by express direction of the Registrar, made payments to the proctors, which the Registrar has allowed them credit for on paying in the proceeds. They have also at the time of sale paid considerable sums for the use of salvors, either to the Registrar for distribution, or to some person by his direction. In those instances, which were cases of derelicts, it is alleged the sales would not have been permitted by the country people to proceed without a previous understanding that such payments would be made.

N° 18, Q. 77 to 81.

N° 13, Q. 122 to 129.  
N° 20, Q. 74 to 85, 93 to 99, and Supp'l Ans' after Q. 135.  
N° 21, Q. 68, 69, to 72, 225.

These payments have been made without any authority from the Court, although the Marshal considers the Judge must have been apprized of them by the Registrar. In two cases, already alluded to, the present deputy was induced to make a deposit of a large sum in the hands of a country gentleman, by allowing him to conduct the sales and receive the purchase money, as security to the salvors, who forcibly resisted the sale until such deposit was promised to be made. The proctor of the owners was present, and consented to this arrangement; conceiving it the best which, under the circumstances, could be effected; and the King's Proctor, who arrived soon after the commencement of the sale, was immediately made aware of the terms on which it was allowed to proceed. But although he had made no objection at the time, he afterwards resisted the Marshal's claim of credit

credit for the money so deposited, and on reference to the Court, the Marshal was compelled to pay in the entire amount, and left to his remedy against the person with whom it had been deposited. It appears to us that, however hard this order may have been upon an officer, acting, *bona fide*, according to what he considered for the benefit of all the parties in the cause, and arising out of a compulsory necessity, the Court could not have made any different decision, inasmuch as the Marshal is not warranted, under any consent of parties or their proctors, to make payment out of the proceeds, beyond the necessary disbursements attending the sale, and the retaining of his own fees: and we consider that, in all cases, the safest course is to adhere rigidly to the simple fundamental constitution of Courts of Justice, and confine each officer strictly within the bounds of his peculiar functions. The overlooking deviations from strict rules, induces confusion and clashing of functions, and facilitates fraud and extortion, by tending to prevent its detection. We therefore recommend that the Marshal shall not, under any circumstances, however urgent, be allowed credit for any money (other than his ordinary and necessary disbursements) out of the proceeds of any sale, unless he shall produce an order of the Court, directing him to make such payment.

High Court of Admiralty.

The Marshal.

Commissions of appraisement, unconnected with commissions of sale, and commissions of unlivery of goods, distinct from commissions of appraisement or sale of ship and cargo, are very rarely issued; they, however, sometimes occur. In the case of commissions of unlivery and appraisement of goods, the Marshal claims a similar per centage, as in cases of appraisement and sale. This charge was expressly repudiated by Lord Stowell, in the case of the *Rendsberg*: but an allowance was directed by the Court, of three per guineas per diem, whilst attending the unlivery of the cargo. In the list of 1716, the fee for every appraisement taken of ships and goods is 2 s. 4 d. This fee, at the present day, would manifestly be inadequate to repay the officer for his time and trouble. We do not think it would be unreasonable that, in cases of unlivery and appraisement solely, unaccompanied by a commission of sale, the Marshal, besides the sum paid to the appraisers, by way of disbursement, should receive a fee of one guinea, for making an inventory, drawing out the appraisement, and swearing the appraisers, together with a fee of one guinea per diem for the days during which he necessarily attends on the unlivery; and should the service be performed at an out-port, his travelling expenses to be added.

Appendix,  
N° 18, Q. 37 to 42.

6 Robinson, 169,  
170, 171.

Complaints have been occasionally made of a want of punctuality in the Marshal in postponing the return of commissions and other process directed to him, whilst on the other hand the Marshal complains of the obstacles interposed to the just allowance of his fees and disbursements. To obviate both, we recommend that, in future, upon the court-day next after the return-day of every description of process, the Marshal or his clerk shall read aloud, in open court, at the sitting, and with precedence to all other business, the return made by him to such process, and forthwith hand same to the Registrar to be deposited in the Registry; and that it shall be competent to any person to object to such return, *viva voce*, and examine the Marshal on oath, as to the truth and propriety of it. And in case of commissions of appraisement and sale, that the Marshal shall at the same time hand to the Registrar his bill of fees and disbursements signed by him, which if unobjected to by the space of two days, shall be considered as admitted, and thereupon the Registrar shall give to the Marshal a certificate of the amount to be lodged, which sum the Marshal shall forthwith lodge in the Bank of Ireland to the credit of the cause, and shall deposit the bank receipt in the Registry, taking in lieu of it the Registrar's certificate of such lodgment being made. And in case the Marshal's bill of fees and disbursements shall be objected to, the party objecting shall give notice to the Marshal, with a summons to attend to have same taxed.

Appendix,  
N° 7, Q. 18, 19.  
N° 18, Q. 68.

In considering the fees claimed or taken by the Marshal, we have only adverted to such as were either disputed or related to some particular branches of his duties which appeared indispensably necessary to be stated at some length. There are three others of a trifling amount, connected with services which in modern practice, so far as concerns the Marshal, are merely constructive, viz. for every default 3 s. 4 d., for every final decree 6 s. 8 d. and, for every dismiss 3 s. 4 d. We do not, however, feel disposed to recommend the abolition of these, considering that

N° 17.

High Court of Admiralty.

The Marshal.

the fair emoluments of the office, even with their aid, are inadequate to its duties if properly discharged. These fees have the sanction of ancient usage, and one of them (the decree) that of the Table of 1716. They will, therefore, be found in the Table of Fees recommended to be in future allowed for this officer.

Appendix,  
N<sup>o</sup> 18, Q. 29.

From the very limited income produced by the office of Marshal, and the great importance and responsibility of the duties, we are clearly of opinion that their performance should not be intrusted to a deputy, but be executed in person. The total annual receipts of the office, on an average of three years, ending December 1827, amounted to 249*l.* 19*s.* 11*d.*, the expenses to 88*l.* 4*s.* 5*d.*, leaving the net average receipts 161*l.* 15*s.* 6*d.*, two thirds of which belonged to the officer, and the remaining one third, amounting to but 53*l.* 18*s.* 6*d.*, constituted the entire emolument derivable from the office to the deputy. And in making this calculation, he states, that he charged himself with sums as received, which are still due to him by the proctors of the Court, some of which may never be received. Under these circumstances, considering the trifling amount of the Marshal's yearly emolument, which will probably be still further diminished by the reductions recommended in the amount of some of his fees, we adhere to the opinion expressed in our Fourth Report, viz. that as the rates which it would be necessary to propose in order to create a sufficient income for the Marshal, if unassisted by salary would press too severely on the owners of vessels in particular instances, we suggest the expediency of assigning a moderate salary to the Marshal in addition to his fees. But as the duties are of a twofold nature, some of them requiring a personal attendance in court, whilst others render necessary an occasional absence from Dublin, we would allow him to employ a clerk, who should attend the Court during its sittings, in case of the necessary absence of the officer in the discharge of his more active duties; this clerk to be paid by a salary, in like manner as we have already recommended for the clerk of the Registrar.

We shall now proceed to propose such Regulations as we deem proper for the future conduct of this officer, subjoined to which will be found a Table of Fees, such as we recommend to be taken by him on the several services connected with his office.

## REGULATIONS.

1. That the several Regulations, Nos. 1, 2, 3, and 23 in the former part of this Report provided for the office of Registrar, be applicable to that of Marshal.
2. That in all cases in which an arrest shall have been effected under a warrant, whether *in personam* or *in rem*, it shall be lawful for the Marshal to retain the custody, notwithstanding any release delivered to him, until he shall have been paid his fees and disbursements.
3. That the sales made by the Marshal, under process of the Court, shall be final and conclusive; and that no further biddings shall be taken in the Registry, or elsewhere, unless under the special direction of the Court; and that upon the purchaser being declared, it be the exclusive duty of the Marshal to prepare and execute a bill of sale and deliver to him the possession.
4. That credit shall not be allowed to the Marshal for any payment made by him out of proceeds, other than his ordinary fees and expenses, unless he shall produce an order of the Court directing such payment.
5. That the Marshal or his clerk shall, upon the court-day next after the return-day of every process which shall be delivered to him, at the sitting of the Court, read aloud in open court the return made by him to such process, and forthwith hand such process and return to the Registrar to be deposited in the Registry; at which time he may be examined upon oath by any person, as to the truth and propriety of such return; and that in case the Marshal shall omit to make such return in the manner aforesaid, he shall, upon proof thereof on summary application to the Court, be liable to a pecuniary penalty.

6. That

6. That in cases of commissions of appraisement and sale, it be the duty of the Marshal, at the time of making his return, to hand in to the Registrar his bill of fees and disbursements signed by him, which, if unobjected to by the space of two days, shall be considered as admitted; and thereupon the Registrar shall give to the Marshal a certificate of the amount to be lodged, which sum the Marshal shall forthwith lodge in the Bank of Ireland, to the credit of the cause, and shall deposit the bank receipt in the Registry, taking in lieu of it the Registrar's certificate of such lodgment being made; and in case the Marshal's bill of fees and disbursements shall be objected to, the party objecting shall give notice to the Marshal, with a summons to attend to have same taxed.

High Court of Admiralty.  
The Marshal.

A LIST of all Fees recommended to be established as the lawful Fees, for the Duties to be discharged in the Office of Marshal in the High Court of Admiralty.

|  | British Currency. |    |    |
|--|-------------------|----|----|
|  | £.                | s. | d. |
| For the execution of any warrant within the port or city of Dublin - -   | -                 | 10 | 6  |
| For the same at an out-port or elsewhere - - - - -   | 2                 | 2  | -  |
| Over and above actual expenses incurred in travelling by the Marshal, if executed by him in person.  |                   |    |    |
| For the same at an out-port, if directed by the Court to be executed by the Marshal in person, over and above actual expenses incurred in travelling           | 4                 | 4  | 0  |
| For the custody of each vessel and cargo, or other property seized under warrant, per day, from the day of arrest until released and fees paid -               | -                 | 2  | 6  |
| No additional custody fee to be charged, where two or more warrants issue against the same property, and no separate fees for the custody of vessel and cargo. |                   |    |    |
| For every release - - - - -  | -                 | 4  | 7½ |
| For the execution of a commission of appraisement and sale, per centage  |                   |    |    |
| On the first 100 <i>l.</i> of all proceeds of sales - - - - -  | 5                 | -  | -  |
| On the residue, at the rate per 100 <i>l.</i> of - - - - -   | 2                 | 10 | -  |
| Over and above actual expenses incurred in travelling, but no additional charge to be made for an auctioneer.  |                   |    |    |
| For an appraiser, under a commission of appraisement - - - - -   | 2                 | 2  | 0  |
| For taking an inventory and drawing a certificate of appraisement -  | 1                 | 1  | -  |
| For delivering possession of a vessel sold, and preparing and executing a bill of sale - - - - -   | 1                 | -  | -  |
| For executing a commission of unlivery and appraisement unaccompanied by a sale, per diem - - - - -  | 1                 | 1  | -  |
| Over and above actual expenses incurred in travelling, if executed at an out-port  |                   |    |    |
| For every default - - - - -  | -                 | 3  | 1  |
| For every decree final - - - - -   | -                 | 6  | 2  |
| For every dismiss - - - - -  | -                 | 3  | 1  |
| For a return on a monition, citation or precept - - - - -  | -                 | 6  | 2  |
| For the arrest of any person under an attachment - - - - -   | 1                 | 1  | -  |

HAVING thus submitted to Your Majesty the result of our Inquiry into the state of the Admiralty Court of Ireland, the extent and nature of the Duties, as well as the manner in which they have been performed, and adverted to the Charges attending the prosecution of suits arising from Fees to its Officers, or otherwise, and suggested such arrangements for the future regulation of the Court and its Officers, as appear to us desirable, and which if adopted will, in our humble opinion, contribute to the regularity of the proceedings and the diminution of expense to the suitors, and will also tend to ensure the safety and due distribution of the proceeds of sales under process of the Court; it now only remains for us to consider, "whether any and what branches of the causes entertained in this Court are cognizable by any other tribunal, and at what comparative expense."

With respect to suits concerning the Droits of Admiralty, we have no difficulty in stating that such suits, or any branch of them, are not cognizable by any other tribunal save the Court of Admiralty. We have, in the introductory part of this Report, adverted to an erroneous opinion prevalent in Ireland, that the Salvage Acts embrace the same objects which come within the cognizance of the Admiralty in droit causes. A reference to our Statement on that subject, and to the statutes there

High Court of Admiralty.

The Marshal.

there cited, will remove all doubt on this point. A suit in the Admiralty was originally an inquisition of office for ascertaining and securing to the Lord High Admiral such part of his revenue as consisted of droits, and belonged exclusively to his High Court of Admiralty, and is analagous to an inquisition of office concerning the droits of the Crown, which, being part of the King's casual revenue, is confined to the Court of Exchequer. These perquisites of the Admiral arose on the sea, and were not at any time the subject of common law jurisdiction. It follows that with respect to the Droits of the Admiralty, no existing court, deriving its authority either from the common or statute law, can entertain a suit concerning them.

Appendix,  
N° 5, Q. 80.

Brown's Admiralty  
Law, Pa. 78, 79.

Abbott, 398.  
Haggarth, 156.

The erroneous opinion to which we have alluded has probably been occasioned by confounding the jurisdiction in droit suits with that which the Court of Admiralty possesses in *pure salvage cases*. This subject of jurisdiction is expressly mentioned in the resolutions of the Privy Council in 1632, under the words "saving of ships." The principle upon which the Court of Admiralty has always entertained pure salvage causes, (in which, be it observed, the Crown is no party, and has no interest,) is the lien to which persons are entitled who volunteer their services in rescuing and preserving vessels in distress at sea, whether near the coast or at a considerable distance from it; and the accommodations they afford by furnishing cables, masts, anchors and other necessaries for that purpose. Persons thus succouring vessels in perilous circumstances are termed salvors. They look to the ship as their security for remuneration, and supply labour and materials on her credit; and when their claims are adjusted in the Court of Admiralty, the owners become entitled to a decree of restitution on payment of the sums awarded to such salvors. In these salvage cases the statuteable jurisdiction is concurrent with that of the Admiralty, *within the limits to which the Salvage Acts have extended it*. The delay and expense necessarily incident to a high tribunal, sitting at a distance from the subject of contest, induced the Legislature to endeavour to introduce a more expeditious and less expensive mode of adjustment. How far this has been satisfactorily effected, admits of some question. The statuteable tribunal certainly possesses great advantages. Like the Court of Admiralty the proceedings are *in rem*. They are, in the first instance, entertained by officers of the Customs, the persons most conversant in matters of this description, and possessing the greatest facilities of acquiring accurate and authentic intelligence of these occurrences. They are attended, at least in the first instance, with infinitely less expense, and, if not litigated, far greater expedition. On the other hand, if the claims should be much contested, which we understand, when the value is considerable, is often the case, the parties have to encounter successively three distinct tribunals, which may be productive both of considerable expense and delay; and the jurisdiction may, and we believe frequently has been, objected to on account of the adjustment of the claims of salvors being referrible to the magistrates residing in the neighbourhood of the coast where the occurrence takes place, who, being often the landlords of the claimants, have a direct interest in their remuneration as the means of enabling their tenants to discharge arrears of rent; and may, therefore, be suspected of favour and partiality, and it has more than once occurred that some of the salvors have resorted to the statuteable tribunal, and others have commenced process in the Court of Admiralty, thereby occasioning a clashing of jurisdictions and much discontent, from the difference in the sums awarded by the different tribunals. We think it would be an improvement, to the extent to which the statutes have carried it, to vest this jurisdiction exclusively in the officers of the Customs, in the first instance, with an appeal to the Court of Admiralty.

Appendix,  
N° 21, Q. 187 to  
190.

N° 5, Q. 80.

With respect to suits in which the King's rights are not involved, we have, in the introductory part of this Report, endeavoured to explain their nature and the subjects which they embrace. The struggles which have been made between the Court of Admiralty and the common law courts, relative to the extent of their respective jurisdictions, exhibit a series of claims so conflicting, and decisions so contradictory and irreconcilable with principle, as to render it a task of great difficulty to define the precise boundary that divides them.

The claims of the Admiralty Court, on this subject, are clearly stated and explained, and most ably maintained in the celebrated argument of Sir Leoline Jenkins, before the House of Lords, on a bill to ascertain the jurisdiction of the Admiralty.

Admiralty. The grounds and principles upon which those claims have been opposed are to be collected by a reference to the numerous decisions of the courts of common law, in cases of prohibition, in which proceedings in the Court of Admiralty have been brought into question. Much of the opposition which the Admiralty Court has encountered may be attributed to Lord Coke, who "seems to have entertained not only a jealousy of, but an enmity against the jurisdiction." If called upon to state what, in our opinion, ought to be the subject of Admiralty jurisdiction, we should be much disposed to subscribe to the positions advanced, and the principles laid down by the eminent civilian already alluded to; but dealing with the actual and practical state of the question only, we have felt it our duty to confine our preliminary statement strictly to the subjects there enumerated.

Appendix,  
1 Jenk. Pa. 77-

Per Buller (Justice)  
Smart v. Wolfe,  
3 Durnf. & East,  
348.

With respect to the causes entertained in the Admiralty Court, which are cognizable by the courts of common law, a concurrent jurisdiction may be stated, as claimed by the latter generally in all cases of marine contracts under a fiction, which assumes, as the ground of jurisdiction, that the contract, although actually made at sea, had occurred on land, and requires the venue to be laid accordingly. Amongst the few remaining causes entertained in the Court of Admiralty, which the courts of common law have not prohibited, suits for mariners wages are entitled to particular attention. These have been tolerated by different judges on very different principles. The rigid construction given to the Statute 15 Rich. II. c. 2, (Eng.) relative to suits on other contracts of a maritime nature, under which the common law courts interdicted the Admiralty jurisdiction, would, on principle, have demanded a similar rule in suits for seamen's wages. But the latter case is mentioned as an indulgence, and judges have been astute to discover ingenious reasons for this deviation from a recognized principle. In fact, the interests of trade so imperatively demanded that mariners should be permitted, for recovery of their wages, to resort to a tribunal affording superior advantages and facilities, that the courts were driven, in these causes, to a relaxation of their usual rigour. Those advantages consist, first, in the power of arresting, detaining, and eventually selling the ship, against which the mariners possess a clear lien; secondly, in the right of joining every individual of the ship's company, with the exception of the master, in the same suit; thirdly, in the right which, in this Court, the mariners possess of giving evidence mutually for each other; fourthly, in the facility which this Court affords for the commencement of proceedings by the arrest of the ship, when compared with the difficulty, and frequently, the impossibility of rendering the several owners amenable in a court of common law; and above all other considerations, so far as the interests of trade are concerned, in affording a much more compendious procedure than that of the courts of common law, thereby enabling the masters of vessels to put to sea in perhaps a few days after the arrest of their vessel. The comparative expense of the respective jurisdictions, although, from the varying nature of the proceedings which may be necessary in a suit, in either court, arising from the circumstances and the disposition to litigation of the parties, very difficult to estimate, is decidedly in favour of the Admiralty, notwithstanding the want of regulation of the fees and the loose mode of taxation of costs hitherto prevailing. Should the new table of fees and the several regulations which we have suggested, be adopted, this advantage in favour of the Court of Admiralty will be further felt, and the consolidation of interventional suits, so far as may appear practicable, will still more diminish the expense and add to the expedition of suits. As to the claims of mariners however, the courts of common law unquestionably hold a concurrent jurisdiction, but we have not heard of any instance of a resort to those tribunals in Ireland. Such a suit could not at the soonest be concluded in less than two terms, and during its pendency the master might procure other hands to navigate the vessel, and by sailing away, deprive the mariners, though in possession of a judgment, of the subject matter on which an execution might operate.

3 Blackst. Comm.  
Pa. 107.

Clay v. Snelgrove,  
Salk. 33; 1 Ld.  
Raymond, 576.  
See 1 Dougl. 101.  
(*in notis*); Howe v.  
Napier, 4 Burr.  
1944.

But whilst the facilities and advantages, which a resort to the Admiralty jurisdiction affords to mariners are insisted on, it must be admitted that ship-owners complain of the manner in which suits are conducted, and of the decisions of the Court in causes of this description. The fact appearing in evidence, that seamen are never called upon by the officers of the Court for prompt payment, unquestionably

Nº 13, Q. 51. 54  
77 to 79.

High Court of  
Admiralty.

The Marshal.

tionably affords facilities and encouragement to experimental or vexatious litigation; and from the poverty of the promovents, the ship-owners are frequently deterred from embarking in a defence, which, though attended with eventual success, would subject them to a certain loss, often exceeding the amount in difference, from having no solvent person to resort to for the sums necessarily expended in resisting an unjust demand. With a view of remedying this evil, which has arisen from the disuse of the original practice of the Court, enabling the impugnant to insist upon the promovent's entering into a caution, or stipulation, for paying the costs between party and party, we have recommended the revival of that practice; and that, as in England, the impugnant may require one sufficient surety in such stipulation—a recommendation, from the adoption of which *we* anticipate great advantage to the persons whose property is sought to be affected by such suits. If, in measuring the sufficiency of the proposed security, proper caution be observed by the Court, and the other regulations which we have submitted be duly attended to, we trust all just cause of complaint by the shipping interest will be removed. We feel it our duty, however, whilst on this part of the subject, to state that no successful appeal on the part of an impugnant can be shown in any suit for mariners wages, lately decided in the Court of Admiralty.

In suits by foreign merchants, founded on express hypothecations made in foreign countries, the advantages to the mercantile world, as well as to the shipping interests, of having a tribunal to resort to, which administers justice on the principles of the civil law, are quite evident. The circumstances of the law of the Court being generally understood, and in use in every maritime state, for adjusting disputes between merchants of whatever country; and that a foreign merchant, advancing money or supplying victuals, materials or repairs on the credit of the ship, can arrest that vessel for the debt thus incurred, must tend materially to the security of shipping and of merchandize, and thereby operate powerfully in favour of trade in general. To this may be added the power the Court of Admiralty possesses of issuing commissions for examination of witnesses, into foreign countries. These advantages are not possessed by the Courts of Common Law; and it may be very reasonably doubted whether foreign merchants would, in any instance, furnish the assistance to British vessels which we have described; if, after having experienced a want of punctuality in repayment, they had only a common law court to resort to, where a system of jurisprudence, to which they are strangers, is administered; and where, instead of proceeding against the ship, they would be obliged, either to sue the master (a fugacious character) or the owners, who might be numerous and scattered over various parts of the world, and consequently not amenable to the process of a Court of Common Law.

Cap. 58.

In addition to the modes of suing for the recovery of seamen's wages, already described, a Statute of the Imperial Parliament, passed in the 59th year of his late Majesty, has given authority to Justices of the Peace, on the complaint of persons, who have served as mariners on board any vessel trading from any place in England to parts beyond the seas or to any other place in Great Britain, and where the sum in question does not exceed 20 *l.*, to summon the master or owner and to order payment, and to cause the amount to be levied by distress and sale of the goods of the defendant, or of the vessel or of its tackle or furniture. The Act gives a power of appeal to the Court of Admiralty, under restrictions therein-mentioned, and casts the burden of producing the written contract on the master or owners, reserving, at the same time, all pre-existing remedies. The operation of this statute is confined to England, and we believe the remedy provided by it has not been much resorted to, and that little benefit would result from its adoption in Ireland as at present framed: for, as under its provisions, the vessel cannot be seized in the first instance, should the master be sued, and should he by a protracted defence, cause a delay in the proceedings, and afterwards send notice of appeal against the order made by the Magistrates, for doing which he has allowed him, by the Act, forty-eight hours from the time of making the order, he may gain sufficient time to sail away, and prevent the execution of any order obtained under that statute. It is therefore obvious, that if a more summary tribunal for the recovery of a seaman's wages is intended to be appointed, in order to render it so effectual as to induce the mariner to resort to it for redress, the Magistrate should

should be armed with an authority, in the first instance, to detain the vessel on which the seaman's lien specifically attaches. This detainer might be effected through the Collector or other chief officer of the Customs, at the port at which the vessel lies at the time of complaint made; and, as the period occupied in the trial cannot be very much protracted, the duty imposed on the officer could not be very burthensome, as in case of appeal the vessel might be liberated on a sufficient recognizance being executed.

High Court of  
Admiralty.

The Marshal.

Having already, in a former part of this Report, adverted to the English Statute of 28 Hen. VIII. c. 4, for transferring the criminal jurisdiction, theretofore exercised by the Court of Admiralty, according to the principles of the civil law, to a tribunal to be appointed by commission; consisting of the Admiral, his Lieutenant or Deputy and three or four other persons, who were thereby empowered to decide in all cases of piracy, treason, murder and felony, arising on the seas, according to the rules of the common law; and having also referred to the Irish Act of 11, 12, 13 James I. c. 2, whereby the several provisions of the said Act of 28 Hen. VIII. are extended to Ireland; and also to the section of the Irish Statute 23, 24 Geo. III. c. 14, which directs that all commissions to be issued in virtue of said Act of 11, 12, 13 James I. shall be addressed to the Judge of the High Court of Admiralty, and to three or four other persons, to be named by the Lord Chancellor of Ireland: we beg to observe here, that the Act of 28 Hen. VIII. only extending to cases of piracy, treason, murder and felony, the English Parliament thought fit, by Statute 39 Geo. III. c. 37, to empower the Commissioners acting, by virtue of the Act of Henry VIII., to try, hear and determine all minor offences and misdemeanors arising at sea, in the same manner as pointed out by said last-mentioned Act; but this enlargement of the criminal jurisdiction has never been extended to Ireland; an omission which has been attended with much inconvenience. We therefore recommend an extension of similar powers to the Irish Court; and also the adoption, for Ireland, of the provisions of the English Statute 32 Geo. III. c. , by which the times and places of holding the criminal Sessions under the former Acts are regulated.

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All which we submit to Your Majesty's most gracious consideration.

Dated the 17th day of }  
January, 1829. }

BERTRAM MITFORD, (L. S.)  
W<sup>M</sup> WYNNE, (L. S.)  
PETER LOW, (L. S.)

A true Copy,

*Godfrey Fetherston,*  
H. Secretary to the Commissioners.

High Court of  
Admiralty.

The Marshal.

My dear Sir,

January 17th, 1829.

THE peculiar circumstances attending the Report on the Court of Admiralty, caused by the absence of the Judge, from whom so much of explanation was necessary, make me desirous that the cause for not being a subscribing party to that Report shall appear annexed to it.

A long confinement, and much consequent illness, caused by a fever, prevented me from being present at so much of the examination of witnesses, that I did not think myself warranted to interfere in a Report, which other Members of the Board had previously undertaken the duty of preparing. But that I may not appear to shrink from any share of the responsibility, attached to that very invidious duty, which in this case belongs to me, I beg to add, that the course of proceeding to supply the defect of the personal appearance of the Judge was adopted (and under the expressed sanction of the Government) before my illness and absence, and had my entire concurrence.

I remain, dear Sir,

Yours very faithfully,

(signed) *Dan<sup>d</sup> W. Webber.*

Godfrey Fetherston, Esq.

Sec. to Commission of Law Inquiry,

&c. &c. &c.

APPENDIX

TO THE

EIGHTEENTH REPORT.

## LIST OF APPENDIX.

| No.   | Page. |
|---|-------|
| 1.—Copy Patent appointing Sir Jonah Barrington Judge of the High Court of Admiralty                     | 55    |
| 2.—Correspondence between the Commissioners of Judicial Inquiry and Sir Jonah Barrington                | 57    |
| 3.—Copy Commission appointing Sir Henry Meredyth, bart. LL. D. Surrogate Judge                          | 77    |
| 4.—General Return of said Sir Henry Meredyth  | ib.   |
| 5.—Examination of said Sir Henry Meredyth   | 79    |
| 6.—General Return of John Leslie Foster, esq. King's Advocate General                                   | 94    |
| 7.—Examination of said John Leslie Foster   | 95    |
| 8.—General Return of Daniel Pineau, esq. Registrar of the High Court of Admiralty                       | 98    |
| 9.—Copy Patent appointing said Daniel Pineau  | 100   |
| 10.—Copy List of Fees due and accustomed in the year 1716 in the Admiralty Court                        | ib.   |
| 11.—Copy Table of Fees Admiralty Court 1807   | 102   |
| 12.—Copy Admiralty List of Fees drawn up in the year 1823   | 103   |
| 13.—Examination of Daniel Pineau, esq. Registrar of the High Court of Admiralty                         | 105   |
| 14.—Return of sums of Money in the Registrar's hands, to the credit of Causes in the Court of Admiralty | 161   |
| 15.—Ditto - - - - Ditto - - - - amended   | 162   |
| 16.—Copy Patent appointing Robert Simpson, esq. Marshal of the High Court of Admiralty                  | 165   |
| 17.—General Return of said Robert Simpson   | ib.   |
| 18.—Examination of said Robert Simpson  | 168   |
| 19.—General Return of Peyton Gamble Meares, esq. Deputy Marshal   | 177   |
| 20.—Examination of said Peyton Gamble Meares  | 179   |
| 21.—Examination of Henry Richardson, esq. Proctor   | 192   |
| 22.—General Return of William Richardson, esq. King's Proctor   | 211   |
| 23.—Examination of said William Richardson  | 214   |
| 24.—Examination of John Moore, esq.   | 215   |
| 25.—Examination of James Moore, esq.  | 217   |

A P P E N D I X.

Appendix, No. 1.

Copy PATENT appointing SIR JONAH BARRINGTON, Judge of the High Court of Admiralty in Ireland.

GEORGE the Third, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, and so forth. To all unto whom these presents shall come, greeting. Whereas by an Act passed in a session of our Parliament, holden in our kingdom of Ireland, in the 23d and 24th years of our reign, intituled, "An Act for regulating the High Court of Admiralty in this Kingdom," it is amongst other things enacted, that His Majesty, His heirs and successors, shall and may from time to time nominate, constitute and appoint, under the Great Seal of that kingdom, one fit and discreet person to be Judge of the High Court of Admiralty of that kingdom; to have and to hold said office so long as he shall behave himself well therein; and that the person so to be nominated, constituted and appointed shall have full power and authority to hear and determine all and all manner of civil, maritime and other cases to the jurisdiction of said court belonging, or which of right ought to belong thereto, according to the laws and statutes of that Realm. And whereas the said office or place of Judge of our High Court of Admiralty in our said kingdom of Ireland is now vacant, and in our disposal, by the death of Warden Flood, esq., deceased, and we being well assured of the loyalty, integrity and ability of our trusty and well-beloved Jonah Barrington, esq., Know ye therefore, that we of our special grace, certain knowledge, and mere motion, and by and with the advice and consent of our right trusty and right well-beloved cousin and counsellor John Jefferies Earl Camden, our Lieutenant-General and General Governor of our said kingdom of Ireland, and according to the tenour and effect of our letters under our privy signet and royal sign-manual, bearing date at our court of St. James's the 26th day of April 1797, in the 37th year of our reign, and now enrolled in the Rolls of our High Court of Chancery in our said kingdom of Ireland, have constituted and appointed, and by these presents we do constitute and appoint our said trusty and well-beloved Jonah Barrington, esq., to be Judge of our High Court of Admiralty of Ireland, with all and singular the powers, authorities and jurisdictions thereunto belonging, and hereinafter specified, together with the fees and profits to the said office of right belonging, without any account to be given or made to us, our heirs or successors thereupon. And we do likewise by these presents, commit and grant unto the said Jonah Barrington, our power and authority to take cognizance of, hear and determine on, and examine all causes, civil and maritime, also all contracts, complaints, offences or suspected offences, crimes, debts, pleas, exchanges, accounts, policies of insurance, lading of ships, and all other matters and contracts which relate to freight due for hire of ships, transportations, money or bottomry; also to hear and determine suits, transgressions, inquiries, extortions, demands, and matters civil and maritime between merchants, or between owners and proprietors of ships and other vessels whatsoever employed or used within the maritime jurisdiction of our Court of Admiralty of Ireland, or between any other person whatsoever, had, made, begun or contracted for, any thing, matter, cause or business, or inquiry whatsoever, done or to be done, as well in upon or by the sea or public streams, or fresh waters, ports, rivers, creeks and places overflown whatsoever, within the ebbing and flowing of the sea and high-water mark, or upon any of the shores or banks to them or either of them adjacent, from any of the first bridges towards the sea through Ireland; together with all and singular their incidents emergencies and dependencies wheresoever, or howsoever such causes, complaints, contracts and premises, or any of them may, happen to arise, be contracted, had or done; and also complaints of all and singular contracts, conventions, causes civil and maritime, contracted or to be performed beyond the seas, and within Ireland to be fulfilled or performed, howsoever happening; and also the cognizance of all and singular the matters which anywise concern and doth belong to the jurisdiction of the High Court of Admiralty aforesaid; and generally to take cognizance of and proceed in all and singular other causes, suits, crimes, offences or suspected offences, excesses, injuries, complaints, transgressions, forestallings and maritime business whatsoever, howsoever done, committed or perpetrated through the kingdom and places aforesaid, within the maritime jurisdiction of our said Court of Admiralty of Ireland, upon the sea, water, or banks or shores thereof; and also with power and authority to take all manner of recognizance for agreements or debts whatsoever, and to put the same in execution, and to cause and command them to be executed; and also to arrest, and cause and command to be arrested,

High Court of Admiralty.

N<sup>o</sup> 1.

Copy Patent appointing Sir J. Barrington Judge of the High Court of Admiralty.

High Court of  
Admiralty.

N<sup>o</sup> 1.

Copy Patent  
appointing Sir J.  
Barrington Judge  
of the High Court  
of Admiralty.

according to the civil laws and the ancient customs of our Court of Admiralty, all ships, persons, things, goods, wares and merchandises, for the premises, and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with or found through the kingdom or dominion aforesaid, within the liberties and franchises, or without; and likewise for all other agreements, causes, contempts or offences whatsoever, howsoever contracting or arising, so that the goods and persons of the debtors and offenders may be found within the aforesaid jurisdiction of our Court of Admiralty of Ireland; and to hear, discuss and determine the same, and their emergencies, dependencies, annexed and connexed causes and businesses whatsoever, according to the laws and customs aforesaid; and by all lawful ways and means, according to the laws and customs aforesaid; and by all lawful ways and means according to his best knowledge and ability, to compel all manner of persons in that behalf, as the case shall require, to appear and answer in our said High Court of Admiralty of Ireland, with power of using any temporal coercion, and inflicting any other penalty and mulct, according to the laws and customs aforesaid; and to do and minister justice, and to proceed summarily without the strict formalities of law, considering the truth of the fact and equity of the case, with all possible dispatch; and also to inquire, by the oaths of honest and lawful men, both within the liberties and franchises, and without, of all and singular such things which by right, statutes, ordinances and customs, actually were or ought to be inquired after, and to mulct, correct, punish, chastise and reform, and imprison and cause and command to be imprisoned in any of our gaols, being within our kingdom and dominion aforesaid, the parties guilty and the contemners of the law and jurisdiction aforesaid; violators, usurpers, delinquents and contumacious absentees, masters of ships, mariners, rowers, fishermen, shipwrights and other workmen and artificers whomsoever, exercising any kind of maritime affairs, as well concerning the laws civil and maritime, and the ordinances and customs aforesaid, and their demerits, according to the statutes of our Kingdom of Ireland; and to deliver and absolutely discharge, and cause and command to be forthwith discharged, whatsoever persons imprisoned who are to be delivered; and to preserve and cause to be preserved the public streams, and the ports, rivers, fresh waters and creeks, whatsoever, within the maritime jurisdiction of our Court of Admiralty aforesaid, in what place soever they may be within the kingdom aforesaid, as well for the preservation of our Royal Navy, as of the vessels of our kingdom and dominion aforesaid, as of whatsoever fishes increasing in the rivers and places aforesaid wheresoever within our kingdom and dominion aforesaid; and also to keep and cause to be executed and kept the statutes and ordinances whatsoever in that behalf made and provided, and to exercise, expedite and execute all and singular other things in the premises, and every of them, as by right and according to the laws, statutes and ordinances aforesaid ought to be done. And moreover, to reform nets too straight, and other unlawful engines and instruments whatsoever for the catching of fishes wheresoever, by public streams, ports, rivers, fresh waters or creeks whatsoever, within the maritime jurisdiction of our Court of Admiralty aforesaid, used or increased by sea or water; and to punish and correct the exercises and occupiers thereof, according to the statutes and ordinances of our said Kingdom of Ireland made and provided against the same. And further, to take cognizance of and proceed to the aforesaid causes, businesses, suits and complaints, contempts, offences, crimes and extortions, civil and maritime, and in all and singular other the premises, together with all and singular the emergencies, incidents, annexed and connexed causes and businesses whatsoever, to give, promulge and interpose all manner of sentences and decrees in that behalf whatsoever, and to put the same into execution, with cognizance and full jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which in any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyage, or the maritime jurisdiction of our Court of Admiralty aforesaid, upon the sea or in the ports, public streams, rivers, fresh waters, creeks, and places overflown as aforesaid, wheresoever done or to be done; with power also to proceed in the same according to the laws civil and maritime, and the customs of our Court of Admiralty, anciently used, as well of mere office, mixt or promoted, as at the instance of any party, as the case shall require and seem most expedient; and likewise to take cognizance of and decide of wrecks of the sea, great or small, and of the death, drowning and view of the dead bodies of all persons whatsoever; in the sea or public rivers, ports, fresh waters or creeks whatsoever, within the ebbing and flowing of the sea and high-water mark, through our kingdom and dominion aforesaid, and the jurisdiction of our Court of Admiralty of Ireland; together with the custody and conservation of all the statutes of force in our said kingdom which relate to our said High Court of Admiralty, and the execution of which to our Court of right doth belong; and likewise with power to him the said Jonah Barrington, to depute and surrogate in his place one or more deputy or deputies, as often as he shall think fit, and such substitute and substitutes at pleasure to revoke; and to exercise, expedite and execute all and singular the premises, or any of them, by the aforesaid deputy. To have, hold, occupy, exercise and enjoy, freely and quietly by himself, or his sufficient deputy or deputies, surrogate or surrogates, by him to be substituted as aforesaid, the said office of Judge of our High Court of Admiralty of Ireland, so long as he shall behave himself well therein, with all the rights, powers, authorities, jurisdictions, salaries, profits and emoluments to the said office belonging and appertaining, in as full and ample a manner as the said Warden Flood, or any other person heretofore hath, or of right ought to have held and enjoyed the same, saving and reserving to ourselves, our heirs, and successors, the right of constituting and appointing all officers and ministers whatsoever, to our said Court of Admiralty of Ireland appertaining and belong-  
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ing. Provided always, that these our letters patent be enrolled in the Rolls of our High Court of Chancery, in our said Kingdom of Ireland, within the space of six months next ensuing the date of these presents. In witness whereof, We have caused these our letters to be made patent: Witness our aforesaid Lieutenant General and General Governor of our said Kingdom of Ireland, at Dublin, the 23d day of May, in the 37th year of our reign.

High Court of Admiralty.

Appendix, No. 2.

Copy CORRESPONDENCE between the Commissioners of Judicial Inquiry and Sir Jonah Barrington, LL.D., Judge of the High Court of Admiralty in Ireland.

N<sup>o</sup> 2.  
Correspondence between the Commissioners of Judicial Inquiry and Sir J. Barrington.

Dublin, 27th May 1828.

Office of Inquiry, 15, Dominick-street.

Sir,

I AM directed by the Commissioners appointed to make examination of the Duties, Salaries and Emoluments of the several Officers, Clerks, and Ministers of Justice of and within the several Courts, temporal and ecclesiastical, in Ireland, to state to you that they are at present engaged in an investigation into the Court of Admiralty in Ireland, and are desirous of obtaining some information from you upon the subject; they therefore request you will be kind enough to let them know whether you will be able to come over for the purpose of being examined, and if so, at what time they may expect your attendance.

I am further directed to apprise you, that in the course of the evidence already taken by them with respect to the Court of Admiralty, several circumstances have transpired which make it personally desirable for you to have explained or contradicted, and which the Commissioners wish to afford you this opportunity of doing; but as they are very much pressed in point of time they cannot postpone making up their Report much longer, and request your answer at your earliest convenience.

I have the honour to be, Sir,

Your most obedient and very humble Servant,

To Sir Jonah Barrington, &c. &c. &c.  
Boulogne, France.

(signed) G. Fetherston,  
H. Sec. to Comm<sup>rs</sup>.

Sir,

Boulogne-sur-Mer, Sunday, 8th June.

YESTERDAY I had the honour of receiving your letter, signifying "that the Commissioners of Inquiry were at present occupied as to the High Court of Admiralty," &c. &c. &c.

Received 14 June.

Your letter arrived here *during* my absence at Calais, and was transmitted to me to Paris, thence back here, and only arrived on Friday.

I beg to observe, that I can by no means be certain of the *punctual* delivery of any thing beyond an *ordinary* letter, by the *common* post; and request that any future communications to me (on public business) may be sent through the Irish and foreign offices, to the care of the *consul* either of *Boulogne* or *Calais*, who will punctually deliver the same.

You will please to signify to the Commissioners my entire satisfaction at the terms of the inquiry as ordered by Parliament, and my desire, if possible, of being personally examined on those subjects. My health has been *so* bad here that a physician's certificate of my inability to travel in the course of the last three weeks was transmitted to Mr. Lamb. As I came down here for the purpose of going to England, he now requests me to correspond with his successor, who is not yet appointed.

On Friday next it is my intention to transmit to the Commissioners, through the Irish office, London, a reply to your letter, and some *important* documents on the subject of their inquiry.

I should suggest to the Commissioners, that the *latter* part of the inquiry (as ordered) requires *MUCH* and minute inquiry and *GRAVE* consideration upon so *NOVEL* and *OPERATIVE* a subject. Mr. Lamb sent me the *returns* of the court causes, &c. which certainly somewhat surprised me; but which, as I have never been *consulted*, so I shall not obtrude any observations upon.

Secretary to the Commissioners of Inquiry,  
Dominick-street, Dublin.

Sir, I have the honour to be your very humble Servant,  
Jonah Barrington.

Sir,

Kildare-street, 20th June 1828.

I SEND you a statement I have received from Sir Jonah Barrington, which from the affidavits annexed to it I infer he intended should be laid before the Commissioners of Inquiry.

To Godfrey Fetherston, esq.  
Sec. &c. &c. &c.

I am, Sir, your very humble Servant,  
J. C. Lyons.