ANNO TERTIO & QUARTO

VICTORIÆ REGINÆ.

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C A P. LXV.

An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of *England*. [7th *August* 1840.]

WHEREAS the Jurisdiction of the High Court of Admiralty of *England* may be in certain respects advantageously extended, and the Practice thereof improved: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for the Dean of the Arches for the Time being to be assistant to and to exercise all the Power, Authority, and Jurisdiction, and to have all the Privileges and Protections of the Judge of the said High Court of Admiralty, with respect to all Suits and Proceedings in the said Court, and that all such Suits and Proceedings, and all Things relating thereto, brought or taking place before the Dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the same Time sitting or transacting the Business of the same Court, and also during any Vacancy of the Office of Judge of the said Court, shall be of the same Force and Effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such Suits and Proceedings shall be entered and

Dean of Arches to sit for Judge of Court of Admiralty in certain Cases.

registered as having been brought and as having taken place before the Dean of the Arches sitting for the Judge of the High Court of Admiralty.

Advocates, Surrogates, and Proctors of Court of Arches to be admitted in Court of Admiralty.

II. And be it declared and enacted, That all Persons who now are or at any Time hereafter may be entitled to practise as Advocates in the Court of Arches are and shall be entitled to practise as Advocates in the said High Court of Admiralty; and that all Persons who now are or hereafter may be entitled to act as Surrogates or Proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the Case may be, as Surrogates and Proctors in the said High Court of Admiralty, according to the Rules and Practice now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the Admission and practising of Advocates, Surrogates, and Proctors in the said Court respectively.

Whenever a Vessel shall be arrested, or Proceeds brought into Registry, the Court to have Jurisdiction over Claims of Mortgagees.

III. And be it enacted, That after the passing of this Act, whenever any Ship or Vessel shall be under Arrest by Process issuing from the said High Court of Admiralty, or the Proceeds of any Ship or Vessel having been so arrested shall have been brought into and be in the Registry of the said Court, in either such Case the said Court shall have full Jurisdiction to take cognizance of all Claims and Causes of Action of any Person in respect of any Mortgage of such Ship or Vessel, and to decide any Suit instituted by any such Person in respect of any such Claims or Causes of Action respectively.

Court to decide Questions of Title in all Causes of Possession, Salvage, &c.

IV. And be it enacted, That the said Court of Admiralty shall have Jurisdiction to decide all Questions as to the Title to or Ownership of any Ship or Vessel, or the Proceeds thereof remaining in the Registry, arising in any Cause of Possession, Salvage, Damage, Wages, or Bottomry, which shall be instituted in the said Court after the passing of this Act.

Appeals may be made to the Court of Admiralty on Distribution.

V. And be it enacted, That whenever any Award shall have been made by any Justices of the Peace, or by any Person nominated by them, or within the Jurisdiction of the Cinque Ports by any Commissioners, respecting the Amount of Salvage to be paid, or respecting any Claims and Demands for Services or Compensation, which such Justices and Commissioners within their several Jurisdictions are empowered to decide under the Provisions of Two Acts passed in the Second Year of the Reign of King *George* the Fourth, for remedying certain Defects relative to the Adjustment of Salvage, or whenever any Sum shall have been voluntarily paid on any such Account of Salvage, Services, or Compensation, it shall be lawful for any Person interested in the Distribution of the Amount awarded or paid to require Distribution to be forthwith made thereof, and the Person or Persons by whom such Amount shall be awarded, or in the Case of voluntary Payment the Person by whom the same shall have been received, shall forthwith proceed to the Distribution thereof among the several Persons entitled thereunto, to be certified in the Case of an Award under the Hand of

the Person or Persons by whom such Amount shall be awarded, and an Account of every such Distribution shall be annexed to the Award; and if any Person interested in the Distribution shall think himself aggrieved on account of its not being made according to the Award, or otherwise, it shall be lawful for him, within Fourteen Days after the making of the Award, or Payment of the Money, but not afterwards, to take out a Monition from the said High Court of Admiralty, requiring any Person being in Possession of any Part of the Amount awarded or voluntarily paid to bring in the same, to abide the Judgment of the Court concerning the Distribution thereof; and in the Case of an Award the Person or Persons by whom the Award shall have been made shall, upon Monition, send without Delay to the said High Court of Admiralty a Copy of the Proceedings before him and them, and of the Award, on unstamped Paper, certified under his or their Hand; and the same shall be admitted by the Court as Evidence, and the Amount awarded or voluntarily paid shall be distributed according to the Judgment of the Court.

The Court, in certain Cases, may adjudicate on Claims for Services, and Necessaries, although not on the High Seas.

VI. And be it enacted, That the High Court of Admiralty shall have Jurisdiction to decide all Claims and Demands whatsoever in the Nature of Salvage for Services rendered to or Damage received by any Ship or Sea-going Vessel, or in the Nature of Towage, or for Necessaries supplied to any Foreign Ship or Sea-going Vessel, and to enforce the Payment thereof, whether such Ship or Vessel may have been within the Body of a County, or upon the High Seas, at the Time when the Services were rendered or Damage received, or Necessaries furnished, in respect of which such Claim is made.

Evidence may be taken vivâ voce in open Court.

VII. And be it enacted, That in any Suit depending in the said High Court of Admiralty the Court (if it shall think fit) may summon before it and examine or cause to be examined Witnesses by Word of Mouth, and either before or after Examination by Deposition, or before a Commissioner, as herein-after mentioned; and Notes of such Evidence shall be taken down in Writing by the Judge or Registrar, or by such other Person or Persons, and in such Manner, as the Judge of the said Court shall direct.

Evidence may be taken vivâ voce before a Commissioner.

VIII. And be it enacted, That the said Court may, if it shall think fit, in any such Suit issue One or more Special Commissions to some Person, being an Advocate of the said High Court of Admiralty of not less than Seven Years standing, or a Barrister at Law of not less than Seven Years standing, to take Evidence by Word of Mouth, upon Oath, which every such Commissioner is hereby empowered to administer, at such Time or Times, Place or Places, and as to such Fact or Facts, and in such Manner, Order, and Course, and under such Limitations and Restrictions, and to transmit the same to the Registry of the said Court, in such Form and Manner as in and by the Commission shall be directed; and that such Commissioner shall be attended, and the Witnesses shall be examined, cross-examined, and re-examined by the Parties, their Counsel, Proctors, or Agents, if such Parties, or either of them, shall think fit so to do; and such Commission shall, if need be, make a Special Report to the Court touching such Examination, and the Conduct or Absence of any Witness

Witness or other Person thereon or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such Proceedings, and make such Order or Orders, upon such Report, as Justice may require, and as may be instituted or made in any Case of Contempt of the said Court.

Attendance of Witnesses and Production of Papers may be compelled by Subpœna.

IX. And be it enacted, That it shall be lawful in any Suit depending in the said Court of Admiralty for the Judge of the said Court, or for any such Commissioner appointed in pursuance of this Act, to require the Attendance of any Witnesses, and the Production of any Deeds, Evidences, Books, or Writings, by Writ, to be issued by such Judge or Commissioner in such and the same Form, or as nearly as may be, as that in which a Writ of Subpœna ad testificandum, or of Subpœna duces tecum, is now issued by Her Majesty's Court of Queen's Bench at *Westminster*; and that every Person disobeying any such Writ so to be issued by the said Judge or Commissioner shall be considered as in Contempt of the said High Court of Admiralty, and may be punished for such Contempt in the said Court.

Provisions of 3 & 4 W. 4. c. 42. extended to Court of Admiralty.

X. And be it enacted, That all the Provisions of an Act passed in the Fourth Year of the Reign of His late Majesty, intituled *An Act for the further Amendment of the Law, and better Administration of Justice*, with respect to the Admissibility of the Evidence of Witnesses interested on account of the Verdict or Judgment, shall extend to the Admissibility of Evidence in any Suit pending in the said Court of Admiralty, and the Entry directed by the said Act to be made on the Record of Judgment shall be made upon the Document containing the final Sentence of the said Court, and shall have the like Effect as the Entry on such Record.

Power to direct Issues.

XI. And be it enacted, That in any contested Suit depending in the said Court of Admiralty the said Court shall have Power, if it shall think fit so to do, to direct a Trial by Jury of any Issue or Issues on any Question or Questions of Fact arising in any such Suit, and that the Substance and Form of such Issue or Issues shall be specified by the Judge of the said Court at the Time of directing the same; and if the Parties differ in drawing such Issue or Issues, it shall be referred to the Judge of the said Court to settle the same; and such Trial shall be had before some Judge of Her Majesty's Superior Courts of Common Law at *Westminster*, at the Sittings at Nisi Prius in *London* or *Middlesex*, or before some Judge of Assize at Nisi Prius, as to the said Court shall seem fit.

Costs of Issues and Commissions to be in the Discretion of the Court.

XII. And be it enacted, That the Costs of such Issues, or of such Commission as aforesaid, as the Judge of the said High Court of Admiralty shall under this Act direct, shall be paid by such Party or Parties, Person or Persons, and be taxed by the Registrar of the said High Court of Admiralty, in such Manner as the said Judge shall direct, and that Payment of such Costs shall be enforced in the same Manner as Costs between Party and Party may be enforced in other Proceedings in the said Court.

XIII. And

Power to direct new Trials.

XIII. And be it enacted, That the said Court of Admiralty, upon Application to be made within Three Calendar Months after the Trial of any such Issue by any Party concerned, may grant and direct One or more new Trials of any such Issue, and may order such new Trial to take place in the Manner herein-before directed with regard to the first Trial of such Issue, and may by Order of the same Court direct such Costs to be paid as to the said Court shall seem fit upon any Application for a new Trial, or upon any new Trial, or second or other new Trial, and may direct by whom and to whom and at what Times and in what Manner such Costs shall be paid.

Granting or refusing new Trial, Matter of Appeal.

XIV. And be it enacted, That the granting or refusing to grant an Issue, or a new Trial of any such Issue, may be Matter of Appeal to Her Majesty in Council.

Bills of Exceptions to be allowed on Trials of Issues.

XV. And be it enacted, That at the Trial of any Issue directed by the said High Court of Admiralty, either Party shall have all the like Powers, Rights, and Remedies with respect to Bills of Exceptions as Parties impleaded before Justices may have, by virtue of the Statute made in that Behalf in the Thirteenth Year of the Reign of King *Edward* the First, with respect to Exceptions alleged by them before such Justices, or by any other Statute made in the like Behalf; and every such Bill of Exceptions, sealed with the Seal of the Judge or Judges to whom such Exceptions shall have been made, shall be annexed to the Record of the Trial of the said Issue.

Record of the Issue to be transmitted to the Court of Admiralty.

XVI. And be it enacted, That the Record of the said Issue, and of the Verdict therein, shall be transmitted by the Associate or other proper Officer to the Registrar of the said Court of Admiralty; and the Verdict of the Jury upon any such Issue (unless the same shall be set aside) shall be conclusive upon the said Court, and upon all such Persons; and in all further Proceedings in the Cause in which such Fact is found the said Court shall assume such Fact to be as found by the Jury.

Provisions of 2 & 3 W. 4. c. 92. as to Appeals to apply to Suits in Court of Admiralty under this Act.

XVII. And be it enacted, That every Person who, if this Act had not been passed, might have appealed and made Suit to Her Majesty in Council against any Proceeding, Decree, or Sentence of the said High Court of Admiralty under or by virtue of an Act passed in the Third Year of the Reign of His late Majesty, intituled *An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council*, may in like Manner appeal and make Suits to Her Majesty in Council against the Proceedings, Decrees, and Sentences of the said Court in all Suits instituted and Proceedings had in the same by virtue of the Provisions of this Act, and that all the Provisions of the said last-mentioned Act shall apply to all Appeals and Suits against the Proceedings, Decrees, and Sentences of the said Court in Suits instituted and Proceedings had by virtue of the Provisions of this Act; and such Appeals and Suits shall be proceeded in in the Manner and Form provided by an Act passed in the Fourth Year of the Reign of His late Majesty, intituled *An Act for the better Administration*

3 & 4 W. 4. c. 41. to apply in same Manner.

tration of Justice in His Majesty's Privy Council; and all the Provisions of the said last-mentioned Act relating to Appeals and Suits from the High Court of Admiralty shall be applied to Appeals and Suits from the said Court in Suits instituted and Proceedings had by virtue of the Provisions of this Act: Provided always, that in any such Appeal the Notes of Evidence taken as herein-before provided by or under the Direction of the Judge of the said High Court of Admiralty shall be certified by the said Judge to Her Majesty in Council, and shall be admitted to prove the oral Evidence given in the said Court of Admiralty, and that no Evidence shall be admitted on such Appeal to contradict the Notes of Evidence so taken and certified as aforesaid, but this Proviso shall not enure to prevent the Judicial Committee of the Privy Council from directing Witnesses to be examined and re-examined upon such Facts as to the Committee shall seem fit, in the Manner directed by the last-recited Act.

Certified Notes of Evidence taken may be admitted on Appeal.

Power for Judge of Admiralty to make Rules of Court.

XVIII. And be it enacted, That it shall be lawful for the Judge of the said High Court of Admiralty from Time to Time to make such Rules, Orders, and Regulations respecting the Practice and Mode of Proceeding of the said Court, and the Conduct and Duties of the Officers and Practitioners therein, as to him shall seem fit, and from Time to Time to repeal or alter such Rules, Orders, or Regulations: Provided always, that no such Rules, Orders, or Regulations shall be of any Force or Effect until the same shall have been approved by Her Majesty in Council.

Protection of the Judge of the Court of Admiralty.

XIX. And be it declared and enacted, That no Action shall lie against the Judge of the said High Court of Admiralty for Error in Judgment, and that the said Judge shall be entitled to and have all Privileges and Protections in the Exercise of his Jurisdiction as Judge of the said Court which by Law appertain to the Judges of Her Majesty's Superior Courts of Common Law in the Exercise of their several Jurisdictions.

Gaolers to receive Prisoners committed by the Court of Admiralty or by Admiralty Coroners.

XX. And be it enacted, That the Keeper for the Time being of every Common Gaol or Prison shall be bound to receive and take into his Custody all Persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any Coroner appointed by the Judge of the said Court of Admiralty, upon any Inquest taken within or upon the High Seas adjacent to the County or other Jurisdiction to which such Gaol or Prison belongs; and every Keeper of any Gaol or Prison who shall refuse to receive into his Custody any Person so committed, or wilfully or carelessly suffer such Person to escape and go at large without lawful Warrant, shall be liable to the like Penalties and Consequences as if such Person had been committed to his Custody by any other lawful Authority.

Prisoners in Contempt may be discharged.

XXI. And be it enacted, That it shall be lawful for the Judge of the said High Court of Admiralty to order the Discharge of any Person who shall be in Custody for Contempt of the said Court, for any Cause other than for Nonpayment of Money, on such Conditions

as to the Judge shall seem just: Provided always, that the Order for such Discharge shall not be deemed to have purged the original Contempt in case the Conditions on which such Order shall be made be not fulfilled.

Jurisdiction to try Questions concerning Booty of War.

XXII. And be it enacted, That the said High Court of Admiralty shall have Jurisdiction to decide all Matters and Questions concerning Booty of War, or the Distribution thereof, which it shall please Her Majesty, Her Heirs and Successors, by the Advice of Her and Their Privy Council, to refer to the Judgment of the said Court; and in all Matters so referred the Court shall proceed as in Cases of Prize of War, and the Judgment of the Court therein shall be binding upon all Parties concerned.

Jurisdiction of Courts of Law and Equity not taken away.

XXIII. Provided always, and be it enacted, That nothing herein contained shall be deemed to preclude any of Her Majesty's Courts of Law or Equity now having Jurisdiction over the several Subject Matters and Causes of Action herein-before mentioned from continuing to exercise such Jurisdiction as fully as if this Act had not been passed.

Act may be amended this Session.

XXIV. And be it enacted, That this Act may be repealed or amended by any Act to be passed in this Session of Parliament.

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