

THE GROTIUS SOCIETY PUBLICATIONS

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A TREATISE
ON THE
LAW OF PRIZE

BY

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PREFACE.

THE present edition has been revised and, in part, rewritten in the light of recent legal and judicial developments. By the use of a slightly smaller type and economy in spacing, it has been found possible to add several new sections without increasing the size of the volume.

It is too early yet to appreciate the effect of the changed conditions of modern war and of the increased participation of aircraft in naval warfare on the judgments of the belligerent Prize Courts during the present hostilities. But it is significant that the British Prize Act, 1939, extends the application of prize law to aircraft and to goods carried therein in the same manner as it applies to ships and their cargoes.

War restrictions have reluctantly obliged me to omit from this edition the valuable "Introductory Chapter" contributed to the first edition by my revered master and friend, the late Professor A. Pearce Higgins. I hope, however, to be able to include the greater part of its contents in our joint work on the *International Law of the Sea* which is now in preparation.

C. JOHN COLOMBOS.

2 ESSEX COURT,
TEMPLE, LONDON,
November 1940.

LIST OF ABBREVIATIONS.

*This list does not include the well-known abbreviations of the reports
of British and American cases*

- | | |
|-------------------|---|
| A. J. I. L. . . . | American Journal of International Law (Washington, D.C., 1907-). |
| Annuaire . . . | Annuaire de l'Institut de droit international (Paris, 1875-). |
| B. & C. P. C. . . | British and Colonial Prize Cases, Vol. I, edited by J. M. Trehern; Vols. II and III edited by A. Wallace Grant (London, 1915-1922). |
| B. Y. I. L. . . . | British Year Book of International Law (London, 1920-). |
| Cheng . . . | Judgments of the High Prize Court of the Republic of China, published by F. T. Cheng (Peking, 1919). |
| Garner . . . | Prize Law during the World War, by J. W. Garner (New York, 1927). |
| G. A. I. . . . | Grotius, Annuaire International (The Hague, 1913-). |
| G. U. . . . | Gazetta Ufficiale, Rome. |
| H. P. C. . . . | The Hague Peace Conferences, by A. Pearce Higgins (Cambridge, 1909). |
| Hague Air Rules . | Rules contained in the General Report of the "Commission of Jurists to consider and report upon the revision of the rules of warfare," The Hague, 1922-23; Miscellaneous, No. 14 (1924) [Cd. 2201]. |
| Harvard Research | Rights and Duties of neutral States in naval and aerial war. Draft Convention, with comment, prepared by the Research in International Law of the Harvard Law School (Concord, N.H., 1939). |
| J. A. P. . . . | Jurisprudence allemande en matière de prises maritimes, edited by P. Fauchille et Ch. de Visscher (Paris, 1922-1924). |
| J. C. L. . . . | Journal of Comparative Legislation and International Law (London, 1896-). |
| J. O. . . . | Journal Officiel, Paris. |
| Ll. L. R. . . . | Lloyd's List Law Reports (London, 1919-). |
| Ll. P. C. . . . | Lloyd's Reports of Prize Cases, Vol. I, edited by J. B. Aspinall: Vols. II to X edited by E. L. de Hart (London, 1915-1924). 2nd Series, edited by H. P. Henley (1940-). |
| Lond. Decl. Docs. | Correspondence and documents respecting the International Naval Conference held in London, December 1908-February 1909, Miscellaneous No. 4 (1909) [Cd. 4554]. |
| Lond. Decl. Proc. | Proceedings of the International Naval Conference held in London, Miscellaneous No. 5 (1909) [Cd. 4555]. |
| M. B. . . . | Moniteur belge, Brussels. |
| N. V. B. . . . | Normalverordnungsblatt für die K. u. k. Kriegsmarine, Vienna. |

- Off. Tr. Notes . Transcript from the notes of the official shorthand writer in prize proceedings (London, 1914-).
- P. C. R. . . Prize Court Rules, 1939 (S. R. & O.) (1939), No 1466/L. 23).
- Recueil . . Recueil des Cours, Académie de Droit International de La Haye.
- Rep. Fry Libr. . Reports of prize decisions in the Fry Library, London School of Economics and Political Science.
- R. D. I. . . Revue de droit international et de législation comparée (Brussels, 1869-).
- R. G. D. I.. . Revue générale de droit international public (Paris, 1894-).
- R. & J. P. C. . Russian and Japanese Prize Cases, in 2 volumes, edited by Sir Cecil J. B. Hurst and F. E. Bray (London, 1912-1913).
- S. R. & O. . . Statutory Rules and Orders.
- Verzijl . . . Le droit des prises de la grande guerre, by J. H. W. Verzijl (Leyden, 1924).

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A TREATISE ON THE LAW OF PRIZE

CHAPTER I

PRIZE COURTS AND THE LAW THEY ADMINISTER

§ 1. **The Prize Court in England.**—Prize jurisdiction has, from very ancient times, been exercised in England, on strictly judicial lines, by the Court of Admiralty. Such jurisdiction has existed since at least the fourteenth century, a record being preserved of the condemnation in 1357 as good and valid prize of certain goods belonging to Portuguese subjects.¹

Two separate jurisdictions are assigned to the Admiralty Court which, according to the old terminology, are respectively described as the “instance” jurisdiction and the “prize” jurisdiction. Both jurisdictions are, in time of war, administered concurrently. The “instance” jurisdiction is that exercised in ordinary circumstances in matters maritime. The “prize” jurisdiction applies to naval captures effected *jure belli*.

Statutory recognition in prize matters was for the first time conferred on the Admiralty Court by the Naval Prize Act, 1864,² although the Court enjoyed undisputed jurisdiction in such matters since Sir Edward Coke’s fall in 1616. The jurisdiction recognised by the Act of 1864 has not been affected by the passing of the Supreme Court of Judicature Act, 1891,³ which provides that the High

¹ Rymer’s *Foedera*, Vol. 6, p. 14, *bona judicialiter repetita*. Cf. Judgment of 1589, Admiralty Court, *Libels* 57, No. 82.

² 27 & 28 Vict. c. 25.

³ 54 & 55 Vict. c. 53.

Court in England shall be a Prize Court and shall have all jurisdiction on the high seas and throughout His Majesty's Dominions as under the Naval Prize Act, 1864, or otherwise, the High Court of Admiralty possessed when acting as a Prize Court. All such causes and matters are assigned to the Probate, Divorce and Admiralty Division of the High Court.¹

By the Prize Act, 1939,² prize law is now made applicable to aircraft and to goods carried therein in the same manner as it applies to ships and their cargoes. The new legislation reflects the important part which aircraft is destined to exercise in modern warfare and the necessity to assimilate, as far as possible, prize law to the complicated problems raised by its use.³

Section 4 of the Act is also of great importance as it extends considerably the territorial application of prize legislation so as to cover not only the United Kingdom, but also all British Dominions (with the exception of Canada and the Union of South Africa) every British Colony and Protectorate, all mandated territories (other than territories administered by the Union of South Africa) and every other country or territory in which His Majesty enjoys prize jurisdiction.

§ 2. **Appeals.**—Previously to 1628, appeals from the Admiralty Court lay to the King in Chancery, and were in practice heard by Commissioners specially delegated for each case. In 1628, a standing commission was issued to Richard Lord Weston, High Treasurer of England, and six other members of the King's Council, conferring the hearing of prize appeals to a select body of Councillors,⁴

¹ Judicature Act, 1891, s. 4, sub-s. 2.

² 2 & 3 Geo. 6, c. 65 (s. 1).

³ By Article 55 of "The Hague Air Rules," the "capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings in order that any neutral claim may be duly heard and determined." Articles 52 to 60 of the Rules relate to the procedure governing the capture of aircraft and their adjudication in prize. See also Article 112 of the "Harvard Research" which applies rules of prize law to aircraft analogous to those relating to vessels.

⁴ Rymer's *Foedera*, Vol. 19, p. 7.

known as "Lords Commissioners of Appeal in Prize Causes." Three of the Judges of the Courts of Westminster were added, although not Privy Councillors, to the Commission in 1784. Doubts were, however, entertained as to the legality of such an addition, and a statute was accordingly passed confirming the same,¹ subject to the proviso that no sentence given by the Commissioners was to be deemed valid unless a majority present were Privy Councillors. The organisation of the Appellate Tribunal as a strictly legal Court was realised by the Acts of 1832² and 1833,³ and it has remained so since then. By the Naval Prize Act, 1864, appeals from any order or decree of a Prize Court now lie to the Judicial Committee of the Privy Council as of right in case of a final decree, and in other cases, with the leave of the Court making the order or decree.⁴

§ 3. Colonial Prize Courts.—The Colonial Courts of Admiralty (in prize) are governed by the Naval Prize Act, 1864, and the Colonial Courts of Admiralty Act, 1890.⁵ They constitute, together with the Vice-Admiralty Courts, the Prize Courts of first instance, their jurisdiction being derived from a special Commission of His Majesty.⁶

The rules as to appeals to the Judicial Committee of the Privy Council are in the same terms as for the High Court in England.⁷

¹ 22 Geo. 2, c. 3.

² 2 & 3 Will. 4, c. 92.

³ 3 & 4 Will. 4, c. 41.

⁴ And Judicature Act, 1891, s. 4, sub-s. 3.

⁵ 53 & 54 Vict. c. 27.

⁶ Prize Court Act, 1894 (57 & 58 Vict. c. 39). Pursuant to section 12 of the Colonial Courts of Admiralty Act, 1890, and sections 2 and 3 of the Prize Act, 1939 (2 & 3 Geo. 6, c. 65), Prize Courts were established by Order in Council, at the beginning of the present war, at North Borneo, Palestine and Zanzibar (S. R. & O., 1939, Nos. 1136 to 1138).

By the Prize Court Act, 1915 (5 & 6 Geo. 5, c. 57, s. 1 (1)), it is provided that where proceedings are pending in any Prize Court against any ship or cargo, the Court may, at any stage of the proceedings, on application of the Crown, transfer the proceedings to some other Prize Court. See *The Bangor*, [1916] P. 181.

⁷ Naval Prize Act, 1864, and Colonial Courts of Admiralty Act, 1890.