

# Download File PDF The Development Of Admiralty Jurisdiction And Practice Sinc 1800

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## 2. Historical Development of the English Admiralty Jurisdiction and Action in Rem.

Dr. F.L. Wiswall in his book, *"The Development of Admiralty Jurisdiction and Practice Since 1800"*, wrote that:

"The jurisdiction of the High Court of Admiralty, resting as it now does, upon a basis firmly established by our (English) statute law, and independent of that authority which it has derived from ancient custom, renders any inquiry respecting its origin a subject more fit for the research of the antiquarian than for that of a lawyer."<sup>20</sup>

However, it must be noted that in a work such as this, which centres on "arrest of ships at common law", such an inquiry is inevitable. This is based on two reasons. First, a right of ship arrest at common law is a right that flows from an action *in rem*. In other words, the action *in rem* creates the foundation for the right to arrest a ship.<sup>21</sup> In addition, the action *in rem* itself, once considered to be the life boat of admiralty jurisdiction, as it were, has evolved through the long and tortuous history of admiralty law to become the core of admiralty jurisdiction.<sup>22</sup> Secondly, it is important to note also, that England, through its ancient admiralty law, has provided the basis for the arrest *in rem* in other common law countries, particularly common wealth countries such as Canada, Australia, Nigeria and so forth.<sup>23</sup> From the foregoing, it becomes highly compelling and even inevitable (for a better treatment and understanding of the subject of this paper) to trace the historical evolution and development of the Admiralty jurisdiction and action *in rem* in England. To do other wise will tantamount to building a house without a foundation; this is obviously not the intention in this work. On the contrary, the immutable words of Lord Denning MR are apposite,

<sup>20</sup> Wiswall, F. L., *The Development of Admiralty Jurisdiction and Practice Since 1800* (Cambridge University Press, 1970) at pp. 1-2.

<sup>21</sup> Jackson, note 4 at 257.

<sup>22</sup> Glover, F., "Ship Arrest and the Application of the Doctrine of Attachment in Australia: A Jurisdictional Comparative Analysis in the Wake of the 1952 Arrest Convention", (2008) A. & S. Z.Mar.L.J. at 99.

<sup>23</sup> Teby, note 4 at pp. 1916-1917.

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