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Treatise on Naval Courts Martial

Originally published in 1792, this work was revised (incorporating new material) and corrected for the 1805 edition, reissued here. As a ship's purser and occasional Judge Advocate, Delafons had considerable experience of advising in naval courts martial, including first-hand involvement for the defence in the trial of Peter Heywood, a midshipman on board H.M.S. *Bounty* during the mutiny of 1789. He intended this work to be a textbook for conducting judicial proceedings in the Royal Navy, and it is also now a fundamental text for historians and researchers in both the legal and naval history of a period of British maritime supremacy. Delafons covers the subjects of jurisdiction, evidence, sentencing, and the roles of individuals within the trial. He also makes a comparison between the law of the Navy and its practical applications and that of the civil courts, and examines the development of the Naval Code itself.

Cambridge University Press

978-1-108-04476-9 - Treatise on Naval Courts Martial

John Delafons

Frontmatter

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TREATISE
ON
NAVAL COURTS MARTIAL.

BY
JOHN DELAFONS,

ONE OF THE SENIOR PURSERS IN HIS MAJESTY'S NAVY.

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INTRODUCTION.

IF practical acquaintance with a subject is to be pleaded in extenuation of him who undertakes publicly to discuss it, the following pages may with some confidence be submitted to the attention of those for whose information they were primarily designed. Forty-five years, the greater portion of which have been passed in the service of the British Navy, and in situations where the Author was not unfrequently called upon to discharge the arduous duties of a Deputy Judge Advocate, must have been occupied with little credit to himself, and as little benefit to others, if he had not become generally conversant with the nature and objects of those judicial institutions, which regulate our maritime proceedings,

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and which so essentially contribute to the security, the independence, and the prosperity of the country.

Not that he imagines himself to have here presented to the world an unexceptionable or immaculate performance, where sagacity shall detect no errors, and where ability can supply no deficiencies. One main view in his labours, has been an ardent wish to furnish those officers who embrace the naval profession at an early stage of human life, perhaps before the judgment is sufficiently matured to investigate the principles of common jurisprudence, with the knowledge requisite to qualify them to act with discrimination as well as justice, in the responsible characters which, as judges and jurors, they may be called upon to sustain, shortly after their arrival to legal years of discretion. Even the activity of a military life, when early entered upon, must in many instances interfere so much with any pursuits not inseparably attached to actual service, as to prevent the timely acquisition, however desirable, of the information which the pre-

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sent work seems calculated to convey. Keeping this object constantly in mind, the Author has wholly attended to simplicity and conciseness, in detailing the result of his experience and his enquiries. To be understood, and to be useful, is the praise which he has studied to acquire.

Much has been urged on the severity of martial laws, of which proofs will probably occur in the perusal of this Treatise. Undoubtedly, men who are amenable to military jurisdiction, submit to many privations, perhaps hardships; but these privations and hardships are indispensably necessary to the welfare of the country, in whose defence they are engaged. Whenever discipline shall become relaxed; whenever officers shall no longer be competent to assert the powers with which they are invested, for the maintenance of subordination and diligence; then, and not till then, will the British Navy, which has hitherto enforced respect and awe on surrounding nations, instead of proudly constituting the bulwark and glory of these kingdoms, become baneful at home, and despicable abroad;—the scourge

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of their own country, and the derision of their enemies. These laws, however, certainly entitle the subjects of their power to all the consideration and protection that a liberal and opulent people can extend, to make their situation comfortable to themselves, and beneficial to the state. If an empire holding the dominion of the sea, thereby enjoys a kind of universal monarchy, too much cannot be effected for the support and encouragement of those individuals by whose exertions (under GOD!) such a sovereignty is preserved and exerted.

Not contenting himself with a bare recapitulation of forms, usages, or precedents, the Author has endeavoured, in the course of this Treatise, to develop the principles upon which our Naval Code appears to have been constituted; to trace institutions to their causes, and pursue them in their consequences: anxious that the laws and regulations, which he has laboured to elucidate, should at length be so far comprehended, as to admit of a more certain interpretation, and, of course, operate with greater propriety and effect. He would therefore hope, that this

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department of his work will be found in possess no mean claim to the regard even of the experienced and intelligent part of the British Navy ; to whom, as a book of reference at least, the volume may be a desirable acquisition.

The grand object of the Legislature, when establishing laws for the regulation and discipline of the naval forces of this realm, was not to impart to any individual, however eminent, an extensive coercive authority, that had not the general welfare for its sole and legitimate basis.

Wheresoever, therefore, the defects in our maritime judicial ordinances seemed to the Author to demand the interposition of legislative wisdom, he has candidly stated the dictates of his own reflection on the subject. It is to this portion of the Treatise that he adverts with peculiar satisfaction. He cannot suppose that this freedom will be censured, as originating in any motives which ought not uniformly to govern the mind in its researches after truth ; nor will he imagine, that it can subject him to the dis-

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pleasure of the enlightened and impartial part of the officers in the navy. Should, indeed, the observations he has thus offered, eventually induce persons of rank and influence in the service, to second the amendments which he has ventured to suggest; and obtain such a revision of the existing Naval Code, as that no private opinion, from whatsoever quarter it may proceed, shall direct its application;—if these ends are answered, the proudest wish of the Author's heart will be honourably and amply gratified.

London,
February, 1805.