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## HISTORIC ORIGINS OF ADMIRALTY JURISDICTION IN ENGLAND

Lionel H. Laing\*

### I

THE antiquarian who delves into the origins of admiralty jurisdiction finds them shrouded in uncertainty. Coke in his commentary on Littleton<sup>1</sup> assigns to maritime jurisdiction a venerable antiquity reaching back to a "time out of minde." Blackstone,<sup>2</sup> relying on Sir Henry Spelman<sup>3</sup> and Lambard,<sup>4</sup> would date the beginnings of jurisdiction to the reign of King Edward III. But there are evidences from an earlier period which have been set out in records from which Prynne quotes<sup>5</sup> regarding an ordinance made at Ipswich in the reign of King Henry I<sup>6</sup> which contains "The manner of outlawing and banishing persons attained of Felony or Trespass in the Admirals' Court." An early evidence of the Admiral's jurisdiction in civil suits is the following ordinance of Edward I at Hastings:

"Item any contract made between merchant and merchant, or merchant or marriner beyond the sea, or within the flood

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<sup>1</sup> "And yet *altum mare* is out of the jurisdiction of the common law, and within the jurisdiction of the lord admirall, whose jurisdiction is verie antient, and long before the reign of *Edward* the third, as some have supposed, as may appeare by the laws of *Oleron* (so called, for that they were made by king *Richard* the first when he was there) that there had beene an admirall time out of minde, and by many other antient records in the reigns of *Henric* the third, *Edward* the first, and *Edward* the second, is most manifeste." COKE, ON LITTLETON, 6th ed., 260 (1664).

<sup>2</sup> 2 BLACKST. COMM., Sharswood ed., 67 (1860).

<sup>3</sup> HENRICO SPELMANO, GLOSSARIUM, Tho. Braddyl ed. (1687).

*Vide*: ADMIRALIUS, QUIS PRIMUS DICTUS EST ADMIRALIUS ANGLIAE: "Jurisdictionem vero aequae amplam habuisse censeo, ab Edw. 3 aetate. In Statuto enim, An 13. Ri 2 (quod ab cohibendas Admirallorum usurpationes editum est) prohibetur numero plurali, & *intromittant* rebus *supra terra*, *sed in Mari tantum contingentibus: prout tempore Edw. 3 consuetum fuit* Unde quidam colligunt, causarum nauticarum cognitionem; & Forum rei Marinae (quod hodie *Curiam Admiralitatus* vocant) Admirallo primum illuxisse, sub Edw. 3."

*Vide atque*: "Of the Admiral Jurisdiction," EDMUND, THE ENGLISH WORKS OF SIR HENRY SPELMAN KT., 2d ed., 217 ff. (1727).

<sup>4</sup> LAMBARD, ARCHEION, OR A DISCOURSE UPON THE HIGH COURTS OF JUSTICE IN ENGLAND, Ffere ed., 41 (1635).

<sup>5</sup> PRYNNE, BRIEF ANIMADVERSIONS ON THE FOURTH PART OF THE INSTITUTES, c. 2, p. 106 (1669).

<sup>6</sup> *Vide*, for confirmation, BLACK BOOK OF ADMIRALTY, Twiss ed., c. 17, p. 65 (1871).

marke, shal be tryed before the admirall and noe where else by the ordinance of the said King Edward and his lords."<sup>7</sup>

However, admiralty jurisdiction was exercised before admiralty courts were created. To be sure, from very early times some of the seaport towns had "marine" or "port" courts which administered, between merchant and merchant, a maritime law which had some of the characteristics of later admiralty courts.<sup>8</sup> Illustrative of this, but later in time, is the case of *Hameley v. Alveston*,<sup>9</sup> which contains some interesting particulars as to the practice and jurisdiction of such a port or maritime court—"curia marina." The sittings were held "*ad vidam quando aqua fluebat secundum legem et consuetudinem marinam.*" The trial was according to maritime law before "*propositus et burgenses*" (mayor and burgesses) assisted by a jury of mariners and merchants, and evidence was given by witnesses on oath—"jurati et examinati secundum usum et consuetudinem ville predictè, et secundum legem maritimam." These were the very courts, existing by right of franchise, which found in the jurisdiction of the admiralty court, subsequently created, a source of conflict resulting in the passing of the statutes, 13 Ric. 2, c. 5 and 15 Ric. 2, c. 3.

It would serve no useful purpose to attempt here, were it possible, to fix with certainty the date of the establishment of the admiralty court. The records indicate<sup>10</sup> that when maritime causes arose there was a forum in which to try them. This would vary according to how early the suit arose. Many matters which afterwards would have been

<sup>7</sup> *Id.*, c. 21, p. 69. Cf. ZOUCH, THE JURISDICTION OF THE ADMIRALTY OF ENGLAND ASSERTED, Assent 7, p. 108 (1663).

<sup>8</sup> E.g. FROM THE DOMUS DAY OF GIPPESWICHE (i.e., The Domsday of the Ipswich Court) in the 2 BLACK BOOK OF ADMIRALTY, Twiss ed., 23 (1871) as follows:

" . . . and the plees yoven to the lawe maryne, that is to wite for straunge marynerys passaunt and for hem that abydene not but her tyde, shuldene ben pleted from tyde to tyde; and it is to wetyne that in this iij. manners of plees, as betwixen pypoudrus and in tyme of feyre and in lawe maryn, as it is afore seyd, shulde bene iij. essoynes of lyeng seek allowed to that oon partye and vn to the other, zif they wulle assent or axene it."

Cf. I PALMER, MANSHIP'S HISTORY OF GREAT YARMOUTH 257-8 (1853). "Long before the reign of King Edward III, (as appears by the burgh rolls) the bailiffs of Yarmouth had been accustomed to hold a Pourt-Court, in which all maritime causes or matters arising upon the high seas, were heard and determined; and all wreck of the sea found within the precincts of the burgh, was deemed and taken as town property."

<sup>9</sup> *Coram Rege*, 7 Ric. 2, rot. 51, cited in I SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Selden Soc., vol. 6, p. xlix (1894).

<sup>10</sup> *Vide*: I SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Selden Soc., vol. 6, introduction (1894).

dealt with in admiralty court were in early times tried in the chancery and common law courts. Writs to sheriffs and others and commissions of *oyer and terminer* are common. It has been pointed out above, how, before there was an admiralty court, the admiral exercised jurisdiction, and how certain franchisal towns claimed exemption from such jurisdiction. These various means would indicate how maritime causes were determined until admiralty courts were established and indeed some of these forms persisted even after such courts were created as if in challenge to the new courts.

## II

The process of the common law courts when resorted to by foreigners appears to have failed entirely to give redress. Arbitration and other treaties were tried without satisfaction. Finally, in 1337, Edward III found himself obliged to pay out of his own pocket for spoils committed upon Flemish, Genoese and Venetian merchants by his own subjects. This was no international gesture, for it was dictated by necessity, since the English monarch, engaged in a struggle with France, wished to retain the aid of his allies. It thus became urgent to suppress piracy, which was the plague of the Channel.

From every port of the English and French coast, ships set out to attack merchantmen of all nations alike. When reprisals failed to yield compensation, merchantmen turned to privateering. Trials before special commissions proved scarcely more successful than those at common law.

Therefore, when Edward III was forced to make the above-mentioned indemnification, it was more than ever apparent to him that jurisdiction over maritime affairs should be strengthened. At the same time—1340—there occurred the Battle of Sluys, the successful outcome of which gave undoubted substance to the long asserted claim of Edward and his predecessors to be Sovereign of the Narrow Seas.

In *Coke's Fourth Institute* there is a copy of a record<sup>11</sup> addressed to his commissioners of the "Kingdoms of England and France" for the hearing of damage suits by sea and by land in time of peace and war. The commission,<sup>12</sup> probably dating to 1339, was set up to continue

<sup>11</sup> ". . . a vous Seigneurs Auditors Deputes per les Rois de Engleterre & de France a redresser les damages faits as gents de leur Roialmes & des auters terres subgits a leur seignuries per mer & per terre en temps de pees & de trewes." 4 COKE, INSTITUTES, c. 22, p. 142 (1644).

<sup>12</sup> ". . . ad finem quod resumatur et continuatur ad subditorum prosecutionem forma procedendi quondam ordinata & inchoata per [E.L., avus E. 3] avu domini nostri regis et ejus consilium ad retinendum & conservandum antiquam superioritatem maris

the jurisdiction first asserted by his grandfather and to preserve for admiralty jurisdiction such laws, statutes and customs. Such jurisdiction was to extend to all peoples of any nation traveling through the English sea. Against all assertions to the contrary it was to cover all crimes committed there as well as the satisfaction of injuries in passage according to the Laws of Oleron (*La Ley Olyronn*) as had been revised by King Richard when he returned from the Holy Land.

The issue of this commission is unknown but it has been conjectured that the report of the "Justiciarii" and "Clerici" resulted in the erection of a court of admiralty.<sup>13</sup>

The victory at Sluys placed Edward in a position to make effective his assertion of supremacy on the sea. It seems that during most of the succeeding twenty years cases of piracy were tried before the King in Council or the Admiral and Council, although some property suits were brought at common law and even conviction of criminal charges of piracy were given at common law, resulting in the hanging of the guilty parties.<sup>14</sup> But criminal cases such as the latter do not appear to have been so tried after 1343.

The trend away from the common law jurisdiction is evidenced by the statute, 27 Edw. 3, stat. 2, c. 13, by which it was provided that foreign merchants who have been spoiled of their goods at sea shall have restitution of them without having to sue at common law—

"Item, We will and grant, That if any Merchant, Privy or Stranger, be robbed of his goods upon the Sea, and the goods so robbed come into any Parts within our Realm and Lands, and he will sue for to recover this said Goods, he shall be received to prove the said Goods to be his own [by his Marks, or by his Chart or Cocket], or by good and lawful Merchants, Privy or Strangers; and by such Proofs the same Goods shall be delivered to the Merchants, without making other Suit at the Common Law..."<sup>15</sup>

Angliae, et mos officii Admiralitatis in eodem quoad corrigendum, interpretandum, declarandum et conservandum leges et statuta per ejus antecessores Anglia Reges dudum ordinata ad conservandum pacem et justitiam inter omnes gentes nationis cujuscumque per mare Angliae transuentes, & ad cognoscendum super omnibus in contrarium attemptatis in eodem, & ad puniendum delinquentes et damna passis satisfaciendum. Quae quidem leges et statuta per dominum Richardum quondam regem Angliae in reditu suo à terra sancta correctae fuerunt, interpretata et in insula Oleron publicata et nominata in Gallica lingua *La Ley Olyronn*." *Item in alio Rotulo de Articulis super quibus Justitiarum domini Regis sunt consulendi de Anno regni regis. E. 3. 12, id., 144.*

<sup>13</sup> I SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Selden Soc., vol. 6, p. xxv (1894).

<sup>14</sup> Coram Rege Trin., 16 Edw. 3, rot 25. Cited in I SELECT PLEAS IN THE COURT OF ADMIRALTY, id. xxxviii.

<sup>15</sup> I Statutes of the Realm (1810) p. 338.

A significant date in the history of admiralty jurisdiction is 1357, in which year there occurs the first reference to proceedings in case of spoil before the admiral. In reply to a claim made by the King of Portugal on behalf of one of his subjects, Edward III contended that the spoil was good prize.<sup>16</sup>

That such a maritime tribunal was erected is evidenced in the appointment of John Pavely as captain of the fleet with power to hold complaints<sup>17</sup> and to rebuke, punish and imprison all criminals. He was to maintain full justice in all and singular cases with authority to do all things necessary to accomplish good government as of right and according to maritime law.

### III

It should be observed that admiralty jurisdiction is not a creation of statute but of prerogative. Like the Chancery, King's Bench, etc., admiralty in theory is a branch of the Royal prerogative although during its history it has been both limited and extended by statute. In the reign of Richard II when admiralty had encroached upon other jurisdictions and had usurped that which did not belong to it, there was enacted the first of several statutes<sup>18</sup> defining the maritime law to the usages of the time of Edward III.<sup>19</sup> But the whirligig of time was to record a reversal of this policy as if in these modern times an ancient wrong should be righted. For in 1840, as the result of a movement for the revival of the former jurisdiction, admiralty received accretion of jurisdiction by grant of statute in the Admiralty Court Act of that year,<sup>20</sup> followed by those of subsequent years.<sup>21</sup>

One of the earliest records of such prerogative legislation are the

<sup>16</sup> ". . . rectè concluditur quod Admirallus noster praedictus contra dictos Mercatores vestros, Bona ipsa, coram eo, ut praemittitur, repentes, & Depraedationem hujusmodi, factam per Gallicos, judicialiter confessantes, non inconsultè set [sed] provide, ac rationabiliter diffinivit." 6 FOEDERA, CONVENTIONES, LITERAE ET CONJUSCUNQUE GENERIS ACTA PUBLICA, INTER REGES ANGLIAE, Thoma. Rymer ed., 29 April 1357, at p. 15 (1727). (Note the discrepancy with the chronological index which lists it as of April 22).

<sup>17</sup> ". . . querelas omnium & singulorum Armatae praedictae audiendi, & Delinquentes incarcerandi, castigandi, & puniendi & plenam Justitiam ac omnia alia & singula, quae ad hujusmodi Capitaneum & Ductorem pertinent, & pro bono Regimine Hominum praedictorum necessaria fuerint, faciendi, prout de Jure & secundum Legem Maritimam fuerit faciendum. . . ." 6 FOEDERA, id., 26 Mar. 1360 (1727).

<sup>18</sup> 13 Ric. 2, c. 5. *Vide infra*, 15 Ric. 2, c. 3.

<sup>19</sup> PRYNNE, BRIEF ANIMADVERSIONS ON THE FOURTH PART OF THE INSTITUTES 83 (1669).

<sup>20</sup> 3 & 4 Vict., c. 65.

<sup>21</sup> Particularly, 9 & 10 Vict., c. 99; 17 & 18 Vict., c. 104; 24 Vict., c. 10; 31 & 32 Vict., c. 71.

laws or rules or judgments of Oleron. It is commonly asserted, although probably without sufficient historical justification,<sup>22</sup> that these laws are the product of Richard I. That monarch, on his return from the Holy Land in the latter part of the twelfth century, is said to have remained for some time on the Island of Oleron, then part of his possessions, and while there to have pronounced these judgments. One authority<sup>23</sup> ascribes the origin of these rules to Richard's mother, Queen Eleonora, Duchess of Guienne, who on a journey to the Holy Land had observed the high reputation which the *Consolato del Mare* had acquired throughout the Levant. Upon her return, she therefore ordered a compilation to be made of the maritime sentences and judgments of the West. These were collected under the title of the *Role d'Oleron*<sup>24</sup> and, according to this view, were adopted by Richard I and added to by him.

These judgments, like rescripts of the Roman Emperors, were declarations founded upon well recognized customs of the sea, "whereof the memory of man runneth not to the contrary." But it was not alone from this source that the maritime law of England was derived. In the *Laws of Rhodes*, the *Waterrecht of Wisbuy*, the *Hanseatic Ordinances* (*Recessus civitatum Hanseaticorum*) as well as the *Consolato del Mare* and other collections, there was at hand a considerable amount of generally recognized custom by which seamen were wont to govern themselves. As time passed there also grew up in England a body of precedents preserved in that ancient volume, *The Black Book of the Admiralty*. This old register contains the admiralty laws, decisions, ordinances, proceedings, and acts of the King, the admiral, and the courts of admiralty of England from the earliest times. Of its origin little is known with certainty but possibly, as is generally believed, it was originally compiled in the reign of Edward III, and during the reigns of succeeding monarchs the book grew to the proportions now preserved to posterity.

With these sources to draw from, and with undisputed sovereignty and power to enforce judgments, the time was propitious for Edward to erect an admiralty court. It is also of some importance that the King appointed Sir John de Beauchamp, in 1360, admiral of all fleets, instead of following the usual practice of appointing three separate

<sup>22</sup> *Vide*, for a discussion contrary to the English view, I PARDESSUS, COLLECTION De Lois Maritimes Anterieures Au XVIII E. Siecle, c. 8 (1828).

<sup>23</sup> I AZUNI, THE MARITIME LAW OF EUROPE, trans. Wm. Johnson, c. 4, p. 377 (1806).

<sup>24</sup> Named from an island off the coast of France near Rochelle.

admirals for the fleets of the North, South and West. This system of unified control was also followed in the case of Beauchamp's successor, Sir Robert Herle, and others. Of particular significance in the patents by which they secured maritime jurisdiction was the power to appoint a deputy. This provision, occurring for the first time, was intended, as is generally supposed, to provide for the appointment of a judge of the newly erected court.

The grant of jurisdiction in these patents included full power "of hearing plaints of those things which touch the office of admiral and having cognizance in maritime causes, and of doing justice and correcting excesses, of chastising delinquents according to their demerits and of imprisoning and delivering out of prison and of doing all other things which pertain to the office of the admiral as of right and according to maritime law; and of substituting and deputizing others to do the premises as often as he is not able to do so."<sup>25</sup>

#### IV

It was not surprising that the erection of a new court should prove unpopular and arouse jealousies. This was due to the extent and nature of the jurisdiction asserted. High water marked the limit of the jurisdiction of the common law, and so to the admiral came those causes occurring within the ebb and flow of the tide and below the first bridges on tidal rivers and creeks. Ordinances of Edward I were cited to support this assertion.<sup>26</sup> However, the prime objection to the new court was its connection with the civil law. Its laws contained many elements of the civil law, and, from the first, the admiralty courts came under the patronage of civilian lawyers. While this court proved popular with foreigners, it was disliked by the Englishman since under civil law no jury was required. It was not long before this grievance became felt, for in 1371 a petition was presented to Parliament which undoubt-

<sup>25</sup> Cf. Calendar of the Patent Rolls, 35 Edw. 3, Part I, p. 531. "Dantes ei plenam tenore praesentium potestatem audiendi querelas omnium et singulorum de hiis quae officium Admiralli tangunt et cognoscendi in causis maritimis et justitiam faciendi et excessus corrigendi ac delinquentes juxta eorum demerita castigandi puniendi et incarcerandi et incarceratos qui deliberandi fuerint deliberandi et omnia alia quae ad officium Admiralli pertinent faciendi prout de jure et secundum legem marittimam sunt facienda." Rot. Pat., 35 Edw. 3, Part I, m. 32 [quoted in 1 SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Seldon Soc., vol. 6, p. xlii (1894)].

<sup>26</sup> 1 BLACK BOOK OF ADMIRALTY, Twiss ed., 69 (1871). *Vide*, 1 SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Seldon Soc., vol. 6, p. xlv ff. (1894), for records of the cases referred to in the admiral's court.

edly had reference to trials in the admiral's court without presentment of jury.<sup>27</sup>

Other foes of the admiralty courts were the borough courts,<sup>28</sup> whose grant of jurisdiction antedated that of the admiral, so that it was inevitable that conflict and accusation of encroachment should arise. Finally, when great irregularities occurred in the court of John Holland, Earl of Huntingdon, Admiral of the West, Parliament was constrained to pass the well known statutes of 13 Ric. 2, c. 5, and 15 Ric. 2, c. 3.<sup>29</sup> In the former statute it is recited:

"Item, forasmuch as a great and common clamour and complaint hath been oftentimes made before this time, and yet is, for that the admirals and their deputies hold their sessions within divers places of this realm, as well within franchise as without, accroaching to them greater authority than belongeth to their office, in prejudice to our lord the King, and the common law of the realm, and in diminishing of divers franchises, and in destruction and impoverishing of the common people; it is accorded and assented, That the admirals and their deputies shall not meddle from henceforth of any thing done within the realm, but only of a thing done upon the sea, as it has been used in the time of the noble prince King Edward, grandfather of our lord the King that now is."<sup>30</sup>

Two years later there was again "great and grievous complaint" against the encroachment of the admirals and their deputies, "to the great oppression and impoverishment of all the commons of the land, and hindrance and loss of the King's profits, and of many other lords, cities, and boroughs through the realm." Therefore more specifically:

". . . it is declared, ordained, and established, That of all manner of contracts, pleas and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and

<sup>27</sup> "Item priont les Comunes qe come en les Estatuz [Edw. III c. 3] faitz en darrein Parlement fuist ordene, Qe nul home soïl mys a respoudre sanz presentement devant Justic', ou chose de Record ou due Proces p[ar] Brief original, solonc l'anucienes Leys de la Terre; nientmains plusieurs gentz depuis les ditz Estatuz faitz en diverses Places du Roi ont este mys & constreintz p[ar] diverses maneres de respoudre a singlers persones autrement qe p[ar] cours de Comune Ley, contre la fourme del ditz Estatuz." 2 Rot. Parl., 45 Edw. 3, No. 41, p. 308.

<sup>28</sup> *Vide, supra.*

<sup>29</sup> Cf. *Sampson v. Curteys*, I SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Selden Soc., vol. 6, p. 1 (trans. p. 149) (1894), and *Gernsey v. Henton*, id., p. 17 (trans. p. 165). Marsden, id. pp. 1 and li, believes one or both of these cases to be amongst the immediate causes of the restrictions placed upon the admiral's jurisdiction.

<sup>30</sup> 13 Ric. 2, c. 5.

also of wreck of the sea, the admiral's court shall have no power of cognizance, power, nor jurisdiction; but all such manner of contracts, pleas and quarrels, and all other things rising within the bodies of the counties, as well as by land as by water, as afore, and also wreck of the sea, shall be tried, determined, discussed, and remedied by the laws of the land, and not before nor by the admiral nor his lieutenants in any wise. Nevertheless, of the death of a man, and of a maihem done in great ships, being and hovering in the main stream of great rivers, only beneath the *bridges* of the same rivers nigh to the sea, and in none other places of the same rivers, the admiral shall have cognizance, and also to arrest ships in the great flotes for the great voyages of the King and of the realm; saving always to the King all manner of forfeitures and profits thereof coming; and he shall have also jurisdiction upon the said flotes, during the said voyages only, saving always to the lords, cities, and boroughs their liberties and franchises."<sup>81</sup>

But apparently to enact was not sufficient unless a penalty was added thereto. Since the admiral ignored the provisions of these acts, a further enactment was made in 1400, during the reign of Henry IV, by which the admiral and those who sued in his court were admonished that:

"Our said Lord the King will and granteth, That the said statute [13 Ric. II, stat. 1, c. 5] be firmly holden and kept, and be put in due execution. And moreover, the same our lord the King, by the advise and assent of the lords spiritual and temporal, and at the prayer of the said commons, hath ordained and stablished, That as touching a pain to be set upon the admiral, or his lieutenant, that the statute and the common law be holden against them; and that he that feeleth himself grieved against the form of the said statute shall have his action by writ grounded upon the case against him that doth so pursue in the admiral's court; and recover his double damages against the pursuant; and the same pursuant shall incur the pain of ten pounds to the King for the pursuit so made, if he be attainted."<sup>82</sup>

It was not to be expected that the admiralty court would immediately find its place in the juridical system. Institutions are the products of slow growth which must be shaped to time and circumstances. There was a place for an admiralty court in England, but its effective functioning needed particular conditioning. The Fifteenth Century

<sup>81</sup> In 15 Ric. 2, c. 3.

<sup>82</sup> 2 Hen. 4, c. 11.

could scarcely be called a propitious time for such development. It was a century of conflict and unrest. Besides the preoccupation with the French wars, there was constant dissension at home between the Houses of York and Lancaster, which weakened administrative control. It will be readily seen that in admiralty, as doubtless in other jurisdictions, there was necessarily no decrease in the volume of the business which should come before the court. It may only be inferred that, because of the laxity of control, many causes never came to be heard.<sup>33</sup> Contemporary documents furnish little information as to the business of the admiral's court during this period.

However, it should be noted that from the records of this period there is found the earliest extant patent of a judge of the court. William Lacey, in 1482, was empowered in general terms to take cognizance and to proceed and to issue orders in disputes and causes of all and singular persons in those matters which pertain to the High Court of Admiralty.<sup>34</sup>

Piracy, which had never been entirely checked, broke out anew, and in spite of various expedients the condition was not remedied. Particularly unpopular were the *Conservators of the Truce and Safe Conducts*,<sup>35</sup> for reprisals were regarded as a respectable means of recoupment.<sup>36</sup> The stringent nature of the legislation under which these conservators operated<sup>37</sup> is gleaned from the enactment that all breakers of truces and safe conduct, and those who abetted, received, or maintained them, should be judged guilty of treason. At a time when there was an absence of efficient patrol of the sea, it was extremely irksome to be deprived of the privilege of reprisal which remained the only means of protection. The depredations of the "*Roveres sur le Mere*"

<sup>33</sup> "Its story [i.e., piracy] in the middle fifteenth century throws a lurid light on the ill sea-keeping, the lack of order, the prevalence of personal influence, the maintenance of evil-doers, and the abuse of the forms of law, which were amongst the worst features of the last years of the Lancastrian rule." KINGSFORD, PREJUDICE & PROMISE IN XVTH CENTURY ENGLAND 106 (1925).

<sup>34</sup> "ad cognoscendum procedendum et statuendum de et super querelis causis et negotiis omnium et singulorum de hiis quae ad curiam principalem Admirallitatis nostrae pertinent." Rot. Pat., 22 Edw. 4, Part 1, m. 2 [quoted in 1 SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Selden Soc., vol. 6, p. 1v (1894)] (But cf. Cal. Pat. Rolls, 23 Edw. 4, m. 2 at p. 346).

<sup>35</sup> Appointed under statute of 2 Hen. 5, c. 6.

<sup>36</sup> "Thus much of the maritime warfare in the Channel might be described rather as a system of mutual reprisals than as piracy in the modern sense. However excusable the issue of Letters of Marque may have been, it probably did as much to foster piracy amongst English seamen as to check its practice by foreigners." KINGSFORD, PREJUDICE & PROMISE IN XVTH CENTURY ENGLAND 78 (1925).

<sup>37</sup> The conservators had no power over life and death, capital crimes being reserved to the admiral or his judge.

were pointed out in petitions presented to Parliament in 1429<sup>38</sup> and again in 1431.<sup>39</sup> Finally, when it was represented that the rigorous nature of the penalties, while emboldening the foreigner, discouraged the English merchant who feared to build new ships,<sup>40</sup> Parliament consented to suspend the act for seven years,<sup>41</sup> and later followed by further extending it for twenty years. However, that was hardly the remedy, for English pirates then took license to prey upon native as well as foreign merchants. So by a new enactment<sup>42</sup> the old statute was confirmed and amended.

In 1453 the Chancellor with one of the Chief Justices was given power to deal with cases of spoil committed by an Englishman on a foreigner, and to deal with receivers of spoiled goods and to make restitution.<sup>43</sup> This practice of taking suit in chancery was a favorite remedy because it obviated the calling of witnesses, since the court collected evidence by a commission of inquiry. However, this procedure had disadvantages, since it was obviously slow in operation when the filing of statements and counterstatements was practically unchecked. Then there was the disadvantage of executing judgment, especially where the offender could divest himself of property by collusive sales before judgment was given. In admiralty, although there was a difficulty in enforcing judgments when the power of the admiral was at a low ebb, nevertheless the suitor had a double chance, for he could bring suit against the person or the *res*. By proceeding against the ship there was some surety for recovery. Chancery and admiralty, then, came to be supplementary means for securing redress in maritime causes. While this took care of civil causes arising out of piracy, it would appear that in criminal cases of piracy an unsatisfactory condition prevailed, as is revealed in the following preamble to a statute which fortified the admiral's power:

"Where traytors, pirates, thieves, robbers, murderers and confederates upon the sea, many times escaped unpunished, because the trial of their offences hath heretofore been ordered, judged and determined before the admiral, or his lieutenant or commissioner, after the course of the civil laws, (2) the nature whereof is, that before any judgment of death can be given against

<sup>38</sup> 4 Rot. Parl., 8 Hen. 6, p. 350.

<sup>39</sup> 4 id., 9 Hen. 6, p. 376.

<sup>40</sup> *Vide*: KINGSFORD, PREJUDICE & PROMISE IN XVTH CENTURY ENGLAND 80 (1925).

<sup>41</sup> Under Statute 14 Hen. 6, c. 8.

<sup>42</sup> 29 Hen. 6, c. 2.

<sup>43</sup> Under Statute 31 Hen. 6, c. 4; confirmed by 14 Edw. 4, c. 4.

the offenders, either they must plainly confess their offences (which they will never do without torture or pains) or else their offences be so plainly and directly proved by witness indifferent, such as saw their offences committed, which cannot be gotten but by chance at few times, because such offenders commit their offences upon the sea, and at many times murder and kill such persons being in the ship or boat where they commit their offences, which should be witness against them in that behalf; and also such as should bear witness be commonly mariners and shipmen, which, because of their often voyages and passages in the seas, depart without long tarrying and protraction of time, to the great costs and charges as well of the King's highness, as such as would pursue such offenders."<sup>44</sup>

## V

The restoration of efficient government under the Tudors, and the conclusion of treaties with France by Henry VIII, along with the extension of commerce in the sixteenth century, greatly increased in importance the position of admiralty in the state. This continuous activity is reflected in the admiralty records which commence as a regular series from the year 1524.

Under Henry VII, and particularly under Henry VIII, an earnest attempt was made to enforce the King's writ. It became easier to deal with piracy since there was a sanction to the decrees of admiralty courts in the strong navy, secured partly by purchase, partly by capture, and partly by building.<sup>45</sup> On the diplomatic side successive treaties were entered into with France.<sup>46</sup>

At the same time the work of reorganization of the Admiralty went forward. Henry appointed his young son, the Duke of Richmond, to be Lord High Admiral for life, with powers "*Aliquibus Statutis, Actibus, Ordinationibus sive Restrictionibus, in contrarium factis, editis, ordinatis, sive provisus, non obstantibus. . .*"<sup>47</sup>

This *non obstante* clause, which is also found in subsequent patents granting even greater powers, would indicate that Henry VIII intended to confer wider jurisdiction than that limited by the statutes of Richard II.<sup>48</sup>

Although previous appointees had come under this limitation,<sup>49</sup>

<sup>44</sup> 28 Hen. 8, c. 15; *cf.*, 27 Hen. 8, c. 4; 39 Geo. 3, c. 37.

<sup>45</sup> I CLOWES, THE ROYAL NAVY 404, 405 (1897).

<sup>46</sup> *E.g. Vide:* 13 FOEDERA, March 23, 1509/10, p. 270 ff. (1727).

<sup>47</sup> 14 FOEDERA, July 16, 1525, p. 42 (1728).

<sup>48</sup> 13 Ric. 2, c. 5; 15 Ric. 2, c. 3.

<sup>49</sup> First introduced in the commission of John, Marquis of Dorset and repeated

the jurisdiction granted to the youthful Duke of Richmond was wide, conferring upon him full power and authority for the hearing and concluding of disputes and all contracts between ship owners and merchants and all others whomsoever they be. Jurisdiction extended to anyone across the sea, "through the sea" and in England in all that pertained to the office of admiral.<sup>50</sup>

Finally, in *Kirby v. Robinson*,<sup>51</sup> it was decided that this *non obstante* clause did not have the effect of repealing or overriding the statutes of Richard II.

While these changes were taking place along the administrative side of admiralty, attention was also paid to the work of the court. In 1536 the statute<sup>52</sup> dealing with criminal jurisdiction of the admiralty was passed, and subsequently there was enacted a statute giving the admiral jurisdiction to try summarily matters of freight and damage to cargo;<sup>53</sup> This legislation indicates the growing importance of the court, which fact is substantiated by the increase in business transacted during the first decade or more after the commencement of the records.

Of the procedure followed much is to be learned, but it is interesting to note that there was apparently some form of appeal permitted. This fact is gleaned from a statute<sup>54</sup> which in providing for appeals in ecclesiastical cases, which hitherto had gone to Rome, Parliament provided,

" . . . that upon every such appeal, a commission shall be di-

in subsequent patents. E.g., Letters Patent to Thomas Beaufort to be Admiral of England, Ireland and Aquitaine for life. (*Vide*: I BLACK BOOK OF ADMIRALTY, Twiss ed., Appx., p. 373 ff., and id. p. 375, note 2 (1871).

<sup>50</sup> "Plenam Potestatem & Auctoritatem Audiendi & Terminandi Querelas omnium Contractuum inter Dominos Proprietarios Navium ac Mercatores, seu alios quoscumque, cum eisdem Dominis ac Navium caeterorumque Vasorum Proprietariis, pro aliquo per Mare & ultra Mare expediendo Contractuum, omnium & fingulorum Contractuum ultra Mare perficiendorum, vel ultra Mare contractuum & in Anglia, & caeterorum omnium qua ad Officium Admiralli tangunt." 14 FOEDERA, July 16, 1525, p. 42 (1728).

<sup>51</sup> 7 Jac. C.B. cited in I SELECT PLEAS IN THE COURT OF ADMIRALTY, Marsden ed., Publications of the Selden Soc., p. lix (1894).

<sup>52</sup> 28 Hen. 8, c. 15.

<sup>53</sup> 32 Hen. 8, c. 14. Section X recites: ". . . shall and may have his remedy by way of complaint before the Lord Admirall of Englaund for the tyme being his Lieutenant or Deputie against the said owner or owners maistre or maistres gouvonour or gouvounours or his or their factour or factours, whiche Lorde Admirall for the tyme being his Lieutenant or Deputie shall and may summarily and without dilay take suche ordre and direction therein as shall be thought to his or their discretions most convenient and according to right and justice in that bihalf." [Note: The full recital is not contained in the Statutes at Large but may be found in 3 Statutes of the Realm (1817) 760 ff.].

<sup>54</sup> 25 Hen. 8, c. 19.

rected under the great seal to such persons as shall be named by the King's highness, his heirs or successors, like as in the case of appeal from the admiral's court, to hear and definitively determine such appeals, and the causes concerning the same."<sup>55</sup>

If one wishes to find the type and original of admiralty courts, he would probably look to those of the Cinque Ports. These boroughs were originally three, viz., Dover, Sandwich, and Romney, to which William the Conqueror added Hastings and Hythe, at which time they received the Norman appellation of *Cinq Ports*. Before the time of King John, Winchelsea and Rye were added, but although there were then seven, the original title was retained.<sup>56</sup>

The privileged position which these boroughs enjoyed, was in return for supplying the King with ships during certain periods of the year. This was an important service, for before the Royal Navy was created, these seaport towns were a major factor in the defense of the realm, and even after the King had his own navy, he continued to rely upon them to help make up the contingent of ships required. Thus they assisted the King "in his necessities," for which they were amply rewarded in the grant of wide franchises of exemptions from taxation and conferment of jurisdiction.<sup>57</sup>

The ample grant of power to the youthful Duke of Richmond presaged a revived interest in admiralty which is reflected in the increased business of the courts. The obvious impossibility of the admiral giving personal attention to the needs of the various parts of the realm made necessary the appointment of a new type of official, to whom could be delegated his powers. Thus there arose the class of vice-admirals of the coast, a term which was generally adopted after 1536, although such officers had exercised functions and formulated the bounds of their activity before that date. During the time of the Duke of Richmond they were known as the "Severall Comyssaries of the Counties Adioying upon the See Side."

The procedure of appointing the vice-admiral was by Letters Patent of the Sovereign.<sup>58</sup> The practice came to be that the candidate for the office, having previously requested the Commissioners of the Lord Admiral to permit him to hold the place, the said commissioners, if

<sup>55</sup> In section iv.

<sup>56</sup> 4 COKE, INSTITUTES, c. 42, p. 222 (1644).

<sup>57</sup> An enumeration of ten privileges that they enjoyed is given in 3 OLDFIELD, AN ENTIRE AND COMPLETE HISTORY, POLITICAL AND PERSONAL OF THE BOROUGHES OF GREAT BRITAIN; TOGETHER WITH THE CINQUE PORTS (1792).

<sup>58</sup> *Vide*: BAKER, THE OFFICE OF THE VICE ADMIRAL OF THE COAST (1884). Page 50 et seq. has a copy of such a patent.

they saw fit, directed their warrant to the judge of the High Court of Admiralty requesting him to cause Letters Patent to issue.<sup>59</sup>

The first of such patents issued in 1536, was that of William Gonson who was appointed vice-admiral for Norfolk and Suffolk. Strange to say, the proceedings of his court are among the few such records preserved in the Public Record Office,<sup>60</sup> although the Letters Patent specifically provided that the Vice-Admiral was to furnish to the High Court of Admiralty "a fair and true copy" of the processes, presentments, verdicts and returns ("ameracements, mulcts, penalties, forfeitures," etc.) of his court. The registrar was to keep the record, which was to be in three books—one for warrants and original actions, one for decrees, releases, acts and constitutions, and the third for processes, verdicts of inquests, and records of admiralty casualties. Provision was made

"That every Vice-Admiral being not learned nor expert in knowledge for the due exercising of that office, shall provide and appoint one discreet and learned man in the Civil Laws, dwelling or resorting within the Circuit of his office; or for want of a Civilian, one learned in the Common Laws of the Realm dwelling within the same Circuit that may be conveniently gotten to be his deputy, as well as to keep Sessions and Courts as also to proceed in matters of Justice from time to time at the orders of the Law and of the said office required."<sup>61</sup>

In his Letters Patent the vice-admiral was enabled to hold courts of two types, "Common Courts" and "Courts of Enquiry:" The Common Courts were held "from tyde to tyde"—that is, daily as occasion required. Theirs was Justice Commutative, or remedy between man and man, in which cognizance was taken in all causes, civil and maritime, in which the complaint arose in the vice-admiralty jurisdiction. In particular it concerned causes between merchants, between ship-owners and merchants, between other persons "concerning any matter done or to be done upon the Sea or public streams, ports and places overflowed within the ebbing and flowing of the Sea and High water

<sup>59</sup> *Id.*, 64 for a copy of such a warrant.

<sup>60</sup> CRUMP, *COLONIAL ADMIRALTY JURISDICTION IN THE SEVENTEENTH CENTURY* 14 (1931).

<sup>61</sup> This passage is cited in BAKER, *THE OFFICE OF THE VICE ADMIRAL OF THE COAST* 95 (1884), without further identification than the statement that it was ordered by "The Committee of the Lords and Commons in 1635." It might be pointed out here that at that date Charles I was ruling without a parliament. Nevertheless the above quotation probably accurately states the fact; *cf.*, CRUMP, *COLONIAL ADMIRALTY JURISDICTION IN THE SEVENTEENTH CENTURY* 13 (1931).

mark, and upon the adjacent shores from all first bridges toward the sea, . . .”<sup>62</sup> It also provided for the hearing and determining of contracts, civil and maritime, to be performed beyond the sea or contracted there to be completed within the realm, and generally speaking for maritime business arising within the maritime jurisdiction of the admiralty.

The “courts of Enquiry” were in the nature of general assemblies held twice a year, probably at Michaelmas and after Easter, the meeting often taking place on the sands.<sup>63</sup> A jury of twelve, fifteen or more men was appointed to make presentments.<sup>64</sup> In general, the matters dealt with enquiry into crimes and nuisances and their reforms, and such matters as affected the peace and safety of the Commonwealth.<sup>65</sup> However, there was no jurisdiction over pirates except to stay them for trial by the commissioners. A most important function of the vice-admiral was that of acting as collector of all monies due to the King and the admiral. Besides the fines and fees taken in court, there accrued to him returns from flotsam and jetsam as well as from royal fish.<sup>66</sup>

Of the officials of the vice-admiralty court, a word remains to be said. While the vice-admiral could appoint his own deputy and other officers for carrying out the work of his district, yet there is specifically withdrawn from him the power of appointing the Judge, register, and marshall of the court.<sup>67</sup> These officers were constituted in the same manner as the Vice-Admiral himself, namely, by Letters Patent.<sup>68</sup> Thus it was in the course of several centuries that the admiralty jurisdiction was created, took root, and flourished. Later, open hostility arose between the admiralty and common law courts.

<sup>62</sup> BAKER, *THE OFFICE OF THE VICE ADMIRAL OF THE COAST* 77 (1884).

<sup>63</sup> For an interesting account of such a court held as lately as 1885 see Baker, “The Water Court of Saltash,” 20 *L. MAG. AND REV.* (4th ser.) 195 ff. (1895).

<sup>64</sup> The influence of the procedure of the Cinq Ports upon the vice-admiralty courts may be noted in a comparison of this provision for presentment by juries. It may be observed, further, that when the rules for vice-admirals were drawn up in 1635 they were simulated to the practice of the Cinq Ports.

<sup>65</sup> *Vide*: BAKER, *THE OFFICE OF THE VICE ADMIRAL OF THE COAST* 79 (1884), for list of matters, and p. 100 for a copy of a presentment.

<sup>66</sup> *Vide*: CRUMP, *COLONIAL ADMIRALTY JURISDICTION IN THE SEVENTEENTH CENTURY* 15 ff. (1931), for accounts of this work of the vice-admirals, and p. 18 ff. for the financial aspects.

<sup>67</sup> *Vide*: The Patent of Hans Stanley given in BAKER, *THE OFFICE OF THE VICE ADMIRAL OF THE COAST* 50 ff. (1884), and especially p. 61 for this exception.

<sup>68</sup> *Vide*: “Literae Patentis to William Dawes, Esqre.” given in part in a footnote in BAKER, *id.* at 69.

## VI

Mr. Justice Story, in the learned decision rendered in *De Lovio v. Boit*,<sup>69</sup> with scholarly zeal has produced an elaborate essay, which traverses the ground upon which argument for the plenitude of admiralty jurisdiction rested. It remains necessary, therefore, only to indicate the historical setting for the quarrel, which in itself forms a dramatic chapter in legal history.

There had been some justice in the earlier complaint, that the admiralty courts usurped to themselves an area of jurisdiction wider in extent than they were entitled to by their commissions. Hence, the necessity for the statutes, 13 Richard 2, c. 5. and 15 Richard 2, c. 3. and its immediate successors, defining and limiting the extent of admiralty jurisdiction. But as Mr. Justice Story has pointed out<sup>70</sup> it was in the unwarranted construction placed on these statutes that the admiralty jurisdiction suffered. Whereas in the Fourteenth Century the complaint of encroachment had been made by the common law courts against the admiralty, in the Sixteenth Century the charge is reversed. Queen Elizabeth, being appealed to, writes to the Mayor and Sheriffs of London saying that she hears that they have arrogated to themselves.

“ . . . to heare and determine all manner of causes and suites arising of contracts and other things happening as well upon as beyond the seas by attachments or otherwise, the knowledge whereof doth properly and specially belong and appertaine unto our Court of Admiraltie, fayning the same contrary to the truth, to have been done within some parishe or woarde of that our citie of London: like as wee think it very strange that by such untrue surmises the prerogative and jurisdiction of our said Court of Admiralty should be usurped by you and our said Admirall and his Lieutenant defrauded of that which is due unto them; soe wee thought it meete straightly to charge and command you to forbear to intermeddly with any matter, cause or suite proceeding of any contract or other thing happening upon or beyond the seas, or in any other place within the jurisdiction of the Admiralty.”<sup>71</sup>

Thus it became customary for the courts at Westminster to send

<sup>69</sup> (C.C. Mass. 1815) 2 Gall. 398. Cf. *atque* Judge Lowell in *The Underwriter*, (D.C. Mass. 1902) 119 F. 713 at 714-716.

<sup>70</sup> *Ibid.* *Vide atque*: ZOUCH, *THE JURISDICTION OF THE ADMIRALTY OF ENGLAND ASSERTED*, passim (1663).

<sup>71</sup> MARSDEN, *REPORT OF CASES DETERMINED BY THE HIGH COURT OF ADMIRALTY 232-33* (1885).

down prohibitions denying to the admiralty jurisdiction in certain cases. Although there were many fields that were fought on, the principal one was concerned with those earlier statutes, which enacted that the courts should have no authority to try causes arising within the bodies of counties, but only those arising upon the high seas. This, the superior courts now interpreted to mean that the admiralty court was expressly denied the power of determining any cause of action which arose in any foreign country, although long settled practice had been to regard such causes as properly within admiralty jurisdiction. The only way the common law courts were able to get jurisdiction was, as Prynne says:

- "By a new strange poetical fiction, (against this principle in Law, '*Fictio non habet locum in factis*') or false, contrary, impossible, fraudulent, illegal suggestion, prejudicial to Merchants and Marriners, especially Foreigners, as well as to the Admiralty."<sup>72</sup>

This "new-coyned untraversable fiction" was accomplished by

"... transporting whole Kingdoms, Countries, Cities, Rivers, Ports, Creeks, Shores in foreign parts into Cheapside in London, or Islington in Middlesex, (which no Miracle or Omnipotency itself can do, because a direct contradiction, repugnant to nature, experience, Scripture, and Gods own constitution, who hath inviolably and immutably severed them by distinct bounds, and large distances from each other) they pretend and resolve, that the Contract, Bargain, and thing done beyond the Sea, is now become triable only at the Common Law, not in the Admiralty, by the Law of Merchants, Oleron, or the Civil Law; and restrain the Plaintiffs and Admiralty, by Prohibitions to proceed and further in them."<sup>73</sup>

Finally, this useless conflict led to further appeals to the Queen, and in 1575 an agreement was entered into between the judges of admiralty and the common law judges on the subject of prohibitions. This alleged agreement,<sup>74</sup> as it is oftentimes called, and to which the Queen does not appear to have been a party, is not so much a declaration of law or a decision upon principles as the grant of requests or consent or promise to agreements. However, it had the effect of keep-

<sup>72</sup> PRYNNE, BRIEF ANIMADVERSIONS ON THE FOURTH PART OF THE INSTITUTES 95 (1669).

<sup>73</sup> Ibid.

<sup>74</sup> The text of this agreement is set out in id., 98.

ing the peace between the two jurisdictions until it was rudely broken by Lord Coke.

In 1611, Dr. Dunne, then Judge in Admiralty appealed once more to the Crown, and King James ordered that he arrange his grievances in specific articles<sup>75</sup> to which the common law judges made answer. In reply to the seventh article concerning the agreement of 1575, the answer is:

“The supposed agreement mentioned in this article, hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a paper not subscribed with the hand of any judge) we answer, that for so much thereof as differeth from these answers, it is against the laws and statutes of this Realm; and therefore the Judges of the King’s Bench never assented thereunto, as it is pretended, neither doth the phrase thereof agree with the tearms of the laws of the Realm.”<sup>76</sup>

As to what authority Coke had for the categorical denial of authenticity of this document, the records do not state, but the reply seems to have had the effect of silencing his opponents for the time being. At least the irresolute James does not appear to have done anything in the matter, so that the common law judges granted “more Prohibitions . . . than ever before.”<sup>77</sup>

Finally, another appeal was made to the Crown and in 1632 a new agreement was drawn up. Profiting by past experience the Admiralty was careful to see that there would be no questioning of its validity in future. The following is Prynne’s account:

“. . . the matters in difference between the *Admiralty* and *Judges* were several times heard and debated at large; and at last these ensuing Articles were drawn up, read, agreed and resolved at the Council Board by the King himself, and no lesse than 23 of his Council (two of them the *Lord Keeper Coventry* and *Lord Privy Seal Mountague*, eminent Lawyers) yea, ratified by Subscriptions of all the Judges, being twelve in Number, very eminent learned lawyers, and of the grand lawyer, Mr. William Noy, then King’s Attorney, as well as of *Sir Henry Martyn*, then *Judge* of the *Admiralty*, entered into the *Council Table*

<sup>75</sup> These articles with answers are given in 4 COKE, INSTITUTES, c. 22, p. 134 (1644).

<sup>76</sup> Id. at 136.

<sup>77</sup> PRYNNE, BRIEF ANIMADVERSIONS ON THE FOURTH PART OF THE INSTITUTES 100 (1669).

*Register of Causes*, and the Original thereof kept by his Majesties command in the *Council Chest . . .*”<sup>78</sup>

Lord Coke was not present<sup>79</sup> at the conclusion of this agreement,<sup>80</sup> but his all pervading influence lived on, later to render somewhat nugatory the agreement to which the admiralty lawyers took such care to have executed according to all necessary formalities.

However, for the time being it was in effect, until the troublous times which saw the overthrow of royal authority and the establishment of the Protectorate. In 1648, during the republican regime, parliament was prevailed upon by the friends of trade and commerce to take sides with the admiralty and give them the benefits of a more enlarged jurisdiction. As a result, in that year an ordinance<sup>81</sup> to such effect was given, and to Dr. Godolphin, the learned authority<sup>82</sup> on admiralty, was entrusted the administration of such matters up to the time of the Restoration.

But at the Restoration neither the arguments and learning of Dr. Godolphin, nor the petitions of the merchants, could prevail against the force of the common law advocates. In spite of the agreement of 1632 to the contrary, the zeal, ability, and diligence with which Lord Coke had attacked the admiralty jurisdiction was to have its effect in the espousal of the common law by followers whose respect for so great a figure should lead them to a subservient repetition of arguments probably false. The civilians, tired of the struggle, succumbed to a disadvantageous peace and henceforth journeyed circumspectly within a narrower jurisdiction, until in the nineteenth century a more rational view was to prevail. In these later times<sup>83</sup> jurisdiction is not confined to “locality” but consideration is also given to “subject matter.”

<sup>78</sup> He retired from public life in 1629 and died in 1633, the year after the agreement was concluded.

<sup>79</sup> PRYNNE, BRIEF ANIMADVERSIONS ON THE FOURTH PART OF THE INSTITUTES 100 (1669).

<sup>80</sup> The text of this agreement is set out in PRYNNE, *id.* 100-101.

<sup>81</sup> The text of this ordinance is set out in SCOBELL, A COLLECTION OF ACTS AND ORDINANCES, c. 112, p. 147 (April 12, 1648) (1658). Or for more ready reference in 1 ACTS AND ORDINANCES OF THE INTERREGNUM 1642-1660, collected and edited by Firth & Rait, p. 1120 (1911).

<sup>82</sup> Author of A VIEW OF THE ADMIRAL JURISDICTION, 2d ed. (1685).

<sup>83</sup> By 3 and 4 Vict., c. 65.