Admiralty Law
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ADMIRALTY LAW.

I have been asked by the Editors of the REVIEW to write an article on Admiralty Law. I am glad to comply because I have sometimes feared that the subject has not been given sufficient attention by our schools of law.

I do not know this to be the fact, but in conference with the graduates of several of our leading schools I am informed that in some, at least, the subject is given scant attention, and, in others, it is touched only in a prefunctory and artificial way. If this be true to-day it should not be true in the future, and especially should it not be true of those schools which are located near the busy seaports of our country which are great centers of admiralty jurisdiction.

I note in a school pamphlet of "Announcement" for 1907-1908 the following: "Second year, Admiralty, two hours, first half year." How thoroughly the subject can be treated in this time I am not advised. I do not assume for a moment to criticise the accomplished specialists who direct the curriculum of our leading law schools, but my contention is simply this: that the student intending to practice his profession at a seaport or lakeport, or at a city located on one of the great rivers which carries a vast inland commerce, should, if he desires, be able so to perfect himself in maritime law that he may on graduation be qualified for practice in the admiralty courts. Many reasons should induce him to seek preferment in this direction. The members of the admiralty bar are a select body of lawyers. I suppose there are unworthy men among them, but, after an experience of twenty-five years in the hearing of admiralty causes in the first instance and on appeal, I can say that I have never known an instance where I had reason to believe that the proctor or advocate was attempting to mislead the court or deceive his client. The sea lawyer seems unconsciously to absorb many of the characteristics of the bluff, fearless, honest, outspoken men who "occupy their business in great waters." Unlike the practitioner in our courts of common law the admiralty lawyer is not hampered by a code containing 3441 directions as to the manner in which he must proceed. He seeks results, and he generally gets them. He is not lost in a labyrinth of technicalities from which he can only emerge by a ruinous expenditure of his own time and his client's money. Rare indeed is a cause in

admiralty where the amount involved is wasted in fribbling motions and appeals over puerile points of practice. If the admiralty lawyer has a good cause of action or a good defence he can bring it speedily before the court and have it decided, while yet the code lawyer is struggling with demurrers, motions to strike out, motions to make more definite and certain and motions for bills of particulars. The admiralty judges have as little respect for these attempts to befog the main issue and postpone the hearing on the merits as Napoleon had for the war rules of the great Frederick which had been the code of tactics of Europe for half a century.

When the captains of the old régime found their armies defeated, as the result of some brilliant stratagem never practiced before, they endeavored to console themselves by the assertion, "There is nothing like this in the code, it is not war." They soon learned that though it was not in the code, it accomplished results and spelled success.

Thus do the admiralty judges cut through technicalities with a ruthless hand in their endeavor to get at the truth. If the proper parties to enable the court to reach a correct determination have not been summoned, they are brought in by subsequent process. If the pleadings are not drawn to permit such a result, they are forthwith amended.

It is almost pathetic, at times, to note the surprise and consternation which overwhelms the code practitioner who occasionally drifts into the admiralty courts armed with a battery of "points" which might serve for many a long delay in the state courts. As these are met and brushed aside and he finds himself being drawn with relentless precision toward the fatal moment when he must stand weaponless and bare before his adversary, the truth suddenly dawns upon him that the lawyer who has no case on the merits will do well to avoid the courts of admiralty.

I once heard a lawyer, who had emerged from a somewhat disappointing session of this kind, exclaim, in a tone of lament not, however, unmixed with admiration, "It took that judge just fifteen minutes to do what could not have been done in the state court in six months."

If a student intends to be a specialist—and in the large cities all branches of the law are becoming specialized—there are many reasons which should attract him to the law of the sea. The high character of the admiralty bar, the special training of the judges, the wide range of interesting subjects with which the law deals,

the certainty of the judgment being paid which results from the proceedings, in a vast majority of instances, being *in rem*, and the freedom from the delays, disagreements, compromises and miscarriages incident to jury trials, all combine to make this a peculiarly alluring field of endeavor.

The law of the sea, like the law of the land, is founded upon broad general doctrines common to all jurisprudence. All law should be, and generally is, founded on common sense. Commercial law, whether it relates to maritime or inland transactions, whether it be enforced in the admiralty or the courts of common law, broadly speaking, is based upon the same reason and is designed to accomplish the same results. The counselor, therefore, who is competent to deal with the ordinary questions which arise in the course of a general practice, who is familiar with the principles of equity and the common law and who is gifted with that rare mental faculty which enables him to analyze and apply them successfully to the case in hand, need not hesitate to enter the precincts of the admiralty. He will find that the rules of right are well-nigh universal; that if his client could succeed, upon a given state of facts, in a court of common law, he will have no difficulty in reaching the same result in a court of admiralty.

There is a prevalent idea that the study of maritime law is only necessary for those who intend to make this branch a specialty, and for those who intend to engage in general practice the time so spent is not spent wisely. This is a grave mistake. The distinctive features of the law and practice in admiralty can readily be acquired and retained and are absolutely essential to the ordinary practitioner. I have known instances where lawyers, whose practice had been exclusively in the state courts, who never filed a libel or asserted a maritime privilege, have removed to seaport towns, and because of their aptitude and ability have entered the lists against the admiralty specialist with success. The legal athlete is at home everywhere. It is as immaterial to him in what forum he struggles as it is to an experienced marksman whether he stands upon the rampart of a fort or the gun-deck of a ship of war.

The admiralty jurisdiction now extends to almost every part of the country. The jurisdiction of the state and United States courts is so often concurrent and the line of demarkation between them so shadowy and uncertain that cases are continually arising in which a lawyer ought not to attempt to advise his client without fully understanding the law of each. Cases are not infrequent

where a lawyer has advised his client to his ruin and lost his own reputation as a safe counselor, simply because he was ignorant of a maritime lien which could be summarily enforced by a proceeding *in rem.*

The case of *Belden* v. *Chase*[1] will serve as an example. The cause of controversy was a collision between the steamer *Vanderbilt* and the pleasure yacht *Yosemite* on the Hudson River. The *Vanderbilt* was sunk. The cause was tried three times before the Supreme Court of New York and a jury. It went three times to the General Term and twice to the Court of Appeals. At the last trial the jury rendered a verdict of $27,668 against the owners of the yacht. The judgment entered on this verdict was affirmed by the General Term and the Court of Appeals. A writ of error was then granted by the Supreme Court of the United States and the judgment was reversed upon the ground that the state courts had erred in construing the Act of Congress as to the lights the yacht should carry and also upon the ground that the *Vanderbilt* was clearly at fault. Had this suit been brought originally in admiralty, it is more than probable that the owners of the *Vanderbilt* would have recovered half the damages, or $13,834, and that this sum would have been paid within a year. As it was, after thirteen years of litigation the plaintiff found himself with a judgment of several thousand dollars and costs against him. Of course, I mean no reflection upon the able counselors who conducted the case for the plaintiff. It is probably true that seven out of every ten of the up-state lawyers would have commenced the suit in the state court, but that was a quarter of a century ago, when students read law in offices where an admiralty suit was almost unknown. It should not be so now when a law school education is within the reach of a great majority of students. It is difficult to imagine a locality to-day where a lawyer may not be called upon to apply the principles of the Limited Liability Act,[2] the Harter Act,[3] the rules adopted by Congress for preventing collisions at sea and on inland waters,[4] and the state statutes giving a lien for supplies furnished vessels in their home ports, which lien, following the rule laid down in *The Lottawanna,*[5] is only enforceable in the admiralty courts.

I recall an instance where an attorney attempted to enforce

[1] (1893) 150 U. S. 674. [2] 9 U. S. Stat. L. 635. [3] 27 U. S. Stat. L. 445.
[4] U. S. Compiled Stats., Vol. 3, pages 2863-2900.
[5] (1874) 21 Wallace 558.

this lien for supplies in the state courts and, when he finally was made aware of the fact that he was in the wrong jurisdiction, it was too late for him to enforce the lien in admiralty.

The principles of the law of the sea are very old. It has been administered from the earliest times. Its origin is lost in tradition, but compared with the law governing other relations it is one of the exact sciences. The reason is plain. It has been untouched by the bungling hand of the legislative tinker. It has been administered by comparatively few judges, who have been jurists of exceptional ability. Their written judgments have been few, but these were distinguished by wealth of erudition and cogency of reasoning.

The law in its main features is to-day what it was when Venice ruled the Levant, and the commerce of the East passing down the Baltic made the merchants of Wisbuy the princes of the northern seas.

The result is that in this domain the law is clear, well settled and easily understood. We escape the discordant clash, the conflicting jargon, the despairing uncertainty which are encountered in other branches of the law. After contemplating the vast amount of machine-made law with which the state court practitioner is annually inundated—laws enacted to meet some passing exigency or to quiet the unreasoning demand of political clamor, laws which, if they escape being declared unconstitutional, are sure to be construed by courts or amended by the Legislature until all semblance of the originals is lost—the student returns to the comparatively immutable law of the sea with something of the feeling with which the explorer, lost amid the terrors and dangers of an African jungle, returns to his camp on the broad meadow beside the cool and refreshing spring. The admiralty lawyer relies on compass and stars to reveal the way through the wilderness of law, while the code practitioner is too often compelled to waste precious time in searching for bewildering trails blazed by others upon the trees.

As before observed, the broad doctrines of the law are applicable to all relations. There are, however, many modifications in the law of the sea, made necessary by the changed conditions. The sea is the common meeting place of all nations; the highway of all. Over its limitless and trackless plains passes the commerce of every clime. The dug-out of the savage is as free there as the steel Cunarder, her sharp bow cutting the waves with the speed of a locomotive. With every ship, with every flag, goes the sovereignty

of the nation whose emblem it is. Vessels of endless size and shape, carrying the merchandise of a hundred climes, manned by sailors speaking different tongues, mingle and compete for the rewards of commerce in this strange federation of the sea.

It is manifest that for such relations and conditions, international in character, there must be international laws applicable to all classes. From the earliest times such laws have existed. As commerce increased it became necessary for the safety and interests of all that there should be a common code of conduct which should be universally respected and for the infraction of which all should suffer. In the earliest days the affairs of the sea were administered by a high naval officer called an Admiral, hence the term "Admiralty," which relates to the class of cases which originally came under the cognizance of the admiral. His was an iron and autocratic rule, simple in its character, swift in its judgment. This was the beginning of the Admiralty Law which, like all law, had its origin in force. The Admiralty law partakes of the nature of the civil law for the reason that the countries which first adopted a code of maritime regulations were under the rule of the Roman law. Being thus firmly established, the necessity for universality has induced England and America, though not without a struggle and against the protest of the admirers of the common law, to adopt a system which to-day is thoroughly accepted by the most uncompromising worshippers of democratic institutions and traditions.

The most ancient code of maritime law was that of the Rhodians. These laws were promulgated shortly after the reign of King Solomon, about 900 B. C. Their authority was acknowledged by Greece and Rome, and all the countries bordering upon the Mediterranean.

The laws of Oleron are conceded to be the foundations of all European maritime codes. Their precise origin is lost in remote antiquity and the best tribute to their worth is found in the fact that England and France have long contended for the honor of originating them. Oleron—where these laws were enacted in the reign of St. Louis—is an island of France which lies beside the mouth of the river Charente, in ancient Guienne. They formed the basis of the celebrated Ordinance of Louis XIV, and are admitted in England and America as authority as well in courts of common law as in those of admiralty. Besides commercial regu-

lations these laws contain the rules which have existed to this day defining the rights of belligerent and neutral vessels.

Next in importance may be cited the laws of Wisbuy. Wisbuy was the ancient capital of Gothland, an island of the Baltic sea, situated about 130 miles south of Stockholm. Its foundation is unknown, but it first emerged from obscurity during the 11th century. It rapidly grew in importance as a commercial mart. No city in Europe was so thronged with merchants and so celebrated for its commerce. All nations were represented there. As trade increased it rose in splendor and opulence. Magnificent buildings, stately temples, wide thoroughfares adorned by splendid works of art evidenced the wealth and liberality of its merchant princes. To-day nothing but ruins attest its ancient splendor. The magistrates of the city had jurisdiction, or rather the arbitrament, of all causes or suits relating to sea affairs. Their ordinances were submitted to in all such cases and passed for just at all the ports of Europe, from Muscovy to the Mediterranean.

These laws, which some contend are more ancient than the laws of Oleron, are quoted to-day in the admiralty courts of this country, and the maritime codes of many countries of Europe have been based upon them.

Another celebrated code of sea laws was established by the Hanse, or "League" towns about the middle of the thirteenth century, 1241. The object of the Hanseatic League was primarily to facilitate trade, to secure immunity from the dangers which then beset all forms of transportation, and, finally, to secure a monopoly of the commerce of the Baltic.

The principal cities of the league were Lubec, Brunswick, Dantzic, Cologne, and Hamburg in Germany; but it subsequently extended its influence to London, and Novogorod in Russia, and through the principal cities of Germany; constituting a rich and powerful maritime confederacy. The Hanse towns flourished for 200 years, controlling the bulk of the world's commerce, but, like all monopolies, the League became tyrannical and opposed itself hopelessly to the march of progress.

Though to a great extent a re-enactment of what had existed before, the laws of the Hanse Towns are still quoted with respect in the admiralty tribunals of the world.

These three codes, the laws of Oleron, the laws of Wisbuy and the laws of the Hanse Towns, are the most important of the ancient codes.

These antique laws contain rules applicable to all maritime situations and conditions. They are the three arches upon which rests the modern admiralty structure.[6]

The jurisdiction of the United States courts is clearly such as is given by the Constitution and laws of Congress. They are courts of limited jurisdiction. The Constitution, Article III, Section 2, provides that the Federal government shall have power over "All cases of admiralty and maritime jurisdiction." This is the sole allusion to the subject in the Constitution. It is the only grant, the sole foundation upon which the admiralty jurisdiction rests. The evident intention of the framers of the Constitution was to remove this great branch of law, international and general in character, from the conflicting legislation and adjudications of the courts of the several states. The language of the Constitution now seems plain enough, but the contention which arose regarding it has continued through a century and is hardly yet set at rest. The view which is gradually but surely being adopted by the Supreme Court is that the framers of the Constitution intended to give a broad control of all matters of admiralty and maritime jurisdiction to the United States courts, the words being interpreted as they are understood in their commercial sense among enlightened maritime nations, the word "ALL" being construed to mean *all*, and not a part.

Some important questions growing out of the diversity of opinion as to the interpretation of the Constitution are still open, but at present the discussion is practically set at rest, the jurisdiction of our courts having been extended until it covers all matters to which, by any fair construction, the words admiralty and maritime can apply.

The most fruitful source of litigation in admiralty may be treated under the head of collision. When we remember that even on the ocean the tracks of the innumerable vessels which cross and recross are confined to narrow lanes, and on smaller bodies of water to still more circumscribed limits, that storm, fog and darkness often make it impossible for the bewildered sailor to see his course, and roaring tempests and atmospheric conditions make it impossible to hear impending danger and warning signals, the wonder is not that collisions are so frequent, but that they occur

[6] A translation of these laws will be found in the appendix to Peters' Admiralty Decisions, Vol. I. A translation of the Marine ordinance of France will be found in Vol. II, *Id.*

so seldom. Let one who is sceptical as to the marvelous skill displayed in the management of ships stand on the Battery and look out over one of the most magnificent harbors in the world. He will gaze with amazement at the myriad vessels as they meet, pass and cross each other with the same freedom that individuals meet and pass upon a crowded plaza. Yonder is a stately ocean steamer, or, perhaps, a ponderous war ship moving slowly down the river. Over toward the Staten Island shore a fleet of ships is riding at anchor. Down the East River speeds a pleasure yacht with a cloud of canvas spread. From Brooklyn and New Jersey, up and down both rivers in every direction, come and go those huge, ungainly turtles, the ferryboats, while twisting in and out steam-tugs in countless numbers; some alone, others with barges lashed to their sides, are screeching, puffing and bustling about. Let him add to this an endless variety of scows, dredges, lighters, sloops, schooners, floating elevators and the other ungainly monstrosities of commerce, and he will form a slight idea of the ever-changing nautical panorama of the waters which encircle Manhattan Island.

Let him realize, further, that this scene is being repeated at night as well as by day, in fog and storm as well as in clear weather, in the harbor of every seaport on the globe, and he will be prepared to admit the skill and nerve of those who direct the movements of this multitude of floating objects with a judgment so clear and a precision so unerring. And yet it is safe to assume that one-half the time of the admiralty courts in this country is devoted to collision causes.

Congress has provided a number of regulations, international in character, for the guidance of sailing vessels and steamships. These regulations must be understood, in their main provisions at least, by every lawyer who undertakes to advise his clients in a collision case, whether the collision occurs on the ocean, the great lakes or navigable rivers. Where there is a failure to observe these, and also the rules of good seamanship which custom has ordained, negligence is established, unless the circumstances are exceptional.

It is a curious circumstance that the ordinary sailor, even though he has reached the position of master, is sceptical as to the propriety of following any rule made by landsmen. The practical sailor assumes that he is better qualified than the lawmaker to say

what shall be done in a given case of danger. This antipathy was well illustrated by the remark of an ancient mariner in a case arising in the Southern District of New York a few years ago. When asked his reason for failing to observe one of the international rules he replied, "As I understand it those laws were made by them that don't understand it."

These steering and sailing rules have now been extended by Congress to the great lakes and to all inland waters and, notwithstanding the stubbornness of some navigators in refusing to recognize them, they undoubtedly represent the best judgment of the most competent navigators of the world.

No more interesting litigation can arise than a hotly contested collision case. To the well-equipped advocate no keener enjoyment can be imagined than the intellectual struggle which such a contest affords, involving, as it may, not only an accurate knowledge of the law, but also of the science of navigation. For the time being his "home is on the deep," surrounded by a new race of vikings, talking a strange *patois,* but as ready as of old to stand by the ship in word and deed so long as a spar remains above the surface. I think it may be said with truth that when the crews of two colliding ships clash on the witness stand there is more false swearing and less perjury than in any other form of litigation. They do not intend to mislead, they simply cannot see any fault in their own navigation. No matter how gross may be their carelessness it is always "the other fellow" who is to blame.

And it is a curious psychological fact that when passengers are aboard they appear to be controlled by the same obsession.

But collision cases are by no means the only interesting ones disposed of in the admiralty courts. The range of subjects is broad and embraces salvage, bottomry, respondentia, materialmen, general average, afreightment, charter-party, bill of lading, towage, pilotage, maritime loans, wharfage, demurrage, insurance, common carriers, prize, seizure, survey and sale and petitory actions.

It would extend this paper beyond all reasonable limits if I were to refer at any length to the numerous causes involving a consideration of these subjects which are being constantly considered by the courts.

Where can be found cases presenting questions of greater interest than the following, which will serve as an illustration of the many hundred which, in recent years, have been tried in the

Southern District of New York: *The St. Paul*,[7] *The Germanic*,[8] *La Bourgogne*,[9] *The Mauch Chunk*,[10] and *The City of Lowell*.[11]

The personnel of the admiralty bar is rapidly changing. Within the last two years the Nestor of the bar has been compelled by ill health to retire from active practice, several of its leaders have died, others have been promoted to the bench, and we are admonished by advancing age that a number of the old veterans are now on the firing line and may drop from the ranks at any moment. Younger men must fill the places thus left vacant and, if they are to keep the blazing torch alight, they must, while in the law schools, lay broad and deep the foundations of their knowledge.

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[7] (1897) 82 Fed. Rep. 104.
[8] (1903) 124 Fed. Rep. 1; (1905) 196 U. S. 589.
[9] (1905) 139 Fed. Rep. 433.
[10] (1907) 154 Fed. Rep. 182.
[11] (1907) 152 Fed. Rep. 593.