HORNBOOK SERIES

ROBINSON
ON
ADMIRALTY

HANDBOOK

OF

ADMIRALTY LAW

IN

THE UNITED STATES

By GUSTAVUS H. ROBINSON
PROFESSOR OF LAW, CORNELL LAW SCHOOL

HORNBOOK SERIES

ST. PAUL, MINN.
WEST PUBLISHING CO.
1939

The Hornbook Series

of

Treatises on all the Principal Subjects of the Law

Admiralty — Gustavus H. Robinson.
Agency — Tiffany, 2nd Ed. by Richard R. Powell.
Bailments and Carriers — Armistead M. Dobie.
Bankruptcy — 2nd Ed., Henry C. Black.
Banks and Banking — Francis B. Tiffany.
Bills and Notes — William E. Britton.
Code Pleading — Charles E. Clark.
Common Law Pleading — Shipman, 3rd Ed. by Henry W. Ballantine.
Conflict of Laws —2nd Ed., Herbert F. Goodrich.
Constitutional Law — Henry Rottschaefer.
Construction and Interpretation of Laws — 2nd Ed., Henry C. Black.
Contracts — Clark, 4th Ed. by A. H. Throckmorton.
Corporations — Robert S. Stevens.
Criminal Law — Justin Miller.
Criminal Procedure — Clark, 2nd Ed. by William E. Mikell.
Damages — Charles T. McCormick.
Domestic Relations — Joseph W. Madden.
Elementary Law — Smith, 2nd Ed. by Archie H. McGray.
Equity — Henry L. McClintock.
Equity Pleading and Practice — Walter C. Clephane.
Evidence — 4th Ed., John J. McKelvey.
Executors and Administrators — Simon G. Croswell.
Federal Jurisdiction and Procedure — Armistead M. Dobie.
Insurance — 2nd Ed., William R. Vance.
International Law — 3rd Ed., George G. Wilson.
Judicial Precedents — Henry C. Black.
Legal History — Max Radin.
Municipal Corporations — Roger W. Cooley.
Partnership — Judson A. Crane.
Real Property — William L. Burdick.
Real Property — William E. Burby.
Roman Law — Max Radin.
Sales — Lawrence Vold.
Suretyship and Guaranty — Herschel W. Arant.
Torts — William L. Prosser.
Trusts — 2nd Ed., George G. Bogert.
Wills — Thomas E. Atkinson.

Published and for sale by

WEST PUBLISHING CO. **ST. PAUL, MINN.**

TO CHARLES C. BURLINGHAM,
MY FORMER CHIEF.

PREFACE

I have sought to present an outline sketch of the major topics of a subject which has not had the frequent treatment accorded to other branches of the law. Space limitations of this series prevent the elaboration of details; but the literature has been so far set forth as to make the details accessible. Admiralty articles have not bulked large in the law reviews nor have admiralty notes, but special effort has been made to gather both and to indicate them at appropriate places.

Throughout the book the fact has constantly been kept in mind that there is a great mass of statutory law in the maritime field. No longer may the case law be relied on to picture it adequately. No one will actually handle a case without scanning the full statute; but for the purpose of this work it has seemed sufficient to brief the pertinent parts of the statutes as they are encountered in the discussion. They are, of course, cited in the notes.

Admiralty pleading has been given at p. 24 a mere mention. Admiralty practice and procedure is covered, incidentally, in some considerable degree; but the adjective law has been left to Benedict's Admiralty now being new editioned by A. W. Knauth. Marine insurance is omitted because W. R. Vance's "Insurance" in this series covers it.

To Eldon James of Harvard Law School; Geo. R. Farnum of Boston; Judge VanVechten Veeder, and Arnold W. Knauth of New York; Howard Yocum of Philadelphia; W. H. White, Jr., of University of Virginia; J. H. Bruns of New Orleans; and J. H. McHose of Los Angeles, I give thanks for helpful criticism of parts of the manuscript.

G. H. Robinson.

ITHACA, N. Y.
Feb. 1, 1939.

TABLE OF CONTENTS

CHAPTER 1

THE HISTORY AND THE ELEMENTS OF ADMIRALTY LAW

Section | Page

1. Admiralty is a world wide and ancient branch of the law..... 1
2. The United States has "received" the admiralty law; modifying it to our national needs. The Constitution grants the subject to the federal government..... 7

CHAPTER 2

THE CONSTITUTIONAL GRANT TO THE FEDERAL GOVERNMENT OF "ALL CASES OF ADMIRALTY AND MARITIME JURISDICTION"

3. "Admiralty and jurisdiction", in the judicial sense, extends, in the discretion of our courts, to litigation involving even foreigners on foreign causes of action..... 14
4. "Admiralty and maritime" jurisdiction, in the judicial sense, is shared by the United States courts with those of the states..... 22
5. "Admiralty and maritime jurisdiction", in the substantive sense, is a matter of the conflict of laws; for domestic occurrences it is a federal subject..... 27
6. The maritime character of a cause of action is determined by its relation to "vessels" operating on "admiralty waters"..... 31
7. The "admiralty waters" of the United States..... 34
8. The "vessels" which are the subject of admiralty jurisdiction..... 42

CHAPTER 3

TORTS IN ADMIRALTY

9. An admiralty tort, on the property side, is a negligent injury to a maritime object on navigable waters..... 55
10. For personal injury jurisdiction the injury must occur on navigable waters. There is a long standing dispute as to whether the injured person's presence must have a maritime purpose..... 70
11. The tort must be consummated on the waters; the place of wrong must be on them..... 76
12. Whether the injury is maritime or not is highly important if both parties are at fault; for in admiralty mutual fault merely divides damages..... 90

CHAPTER 4

WORKMEN'S COMPENSATION

13. State Workmen's Compensation Acts were excluded from operation in favor of maritime workers injured on navigable waters, because uniformity in admiralty is a constitutional requirement... 93
14. State Compensation Acts may apply to maritime injury if the matter is "maritime but local"..... 101
15. The Federal Workmen's Compensation Act of 1927 for Longshoremen and Harbor Workers..... 109

CHAPTER 5

WRONGFUL DEATH

Section Page

16. No wrongful death action under the general admiralty law; but admiralty courts enforce causes of action arising under appropriate statutes. Venue in death cases..... 134
17. In single ship disasters the death statute is that of the "flag"; for disaster in territorial waters the flag law yields to the local death act 144
18. Death on shore following maritime injury..... 156

CHAPTER 6

THE ADMIRALTY CONTRACT

19. A contract is maritime according to its nature; locality is no part of the test of its character..... 162
20. Contracts for operation and maintenance of a ship, as a going concern in commission, are maritime..... 172
21. Mixed contracts, partly maritime and non-maritime in character... 186
22. There is no specific performance for maritime contracts under general admiralty law..... 192
23. Quasi contract in admiralty..... 197

CHAPTER 7

CONTRACTS FOR ARBITRATION

24. The admiralty courts and arbitration prior to the present Federal Arbitration Act..... 201
25. The Federal Arbitration Act of 1925..... 204
26. Arbitration abroad and the Federal Act..... 216
27. The effect of the Federal Arbitration Act on state acts in so far as maritime transactions are concerned..... 231

CHAPTER 8

THE LAW GOVERNING ABOARD SHIPS, AT SEA, AND IN HARBOR; SOVEREIGN IMMUNITY

28. The law governing a ship at sea and in territorial waters..... 234
29. An American ship on the high seas is governed both by federal and by state law..... 240
30. A sovereign and his property are immune from suit both in personam and in rem..... 244
31. The immunity is clearest in respect to naval vessels..... 248
32. A foreign sovereign must claim the immunity; it is not granted automatically 258
33. The United States accepts liability for its public vessels and admits suits against itself in its own courts of admiralty..... 265
34. For its merchant vessels the United States also accepts liability but it grants immunity for foreign merchant government ships..... 269

CHAPTER 9

THE SEAMAN

Section		Page
35.	Seamen defined; all persons employed on a vessel	279
36.	Maintenance and cure by employer after injury or sickness; a non-indemnity right	291
37.	Indemnity rights in respect to injury due to unseaworthiness or defective appliances	301
38.	Indemnity rights in respect to bad food and housing	307
39.	The Seamen's Act of 1920, and its modifications of the general admiralty law	309
40.	The workmen included in the Seamen's Act of 1920	318
41.	The Seamen's Act of 1920 extends to American-owned ships under foreign registry	330
42.	The Seamen's Act does not fully cover injury, even if "in the course of employment", if injury is on land	332
43.	The "election" provisions of the Seamen's Act of 1920	335
44.	Venue in suits under the Seamen's Act of 1920	340
45.	Strikes and labor troubles; the mutiny statute	344
46.	The Mediation Statute of 1938	352

CHAPTER 10

JURISDICTION IN REM; THE MARITIME LIEN

47.	The jurisdiction in rem is founded on the maritime lien	357
48.	The maritime lien arises by operation of law, and is independent of possession	363
49.	The maritime lien arises out of maritime transactions ex contractu and ex delicto	368
50.	The Federal Maritime Lien Act of 1920; general scope	373
51.	Service must be to a "vessel"	380
52.	Service must be "furnished" to the ship, not her owner merely	385
53.	Only authorized persons may bind the vessel by liens	390
54.	Maritime liens may be waived	394
55.	Maritime liens may be lost by laches	397
56.	Maritime liens between ship and cargo; their peculiarities on the ship's side	399
57.	Tort liens are usually granted in personal injury cases and except for wilful acts of servants	404
58.	Liens are granted in collision cases	409
59.	The admiralty court is the forum for the enforcement or foreclosure of maritime liens	412
60.	The maritime lien and common law security devices	419
61.	Among maritime liens themselves there is a complex scheme of priorities	422
62.	Conflict of laws and priorities	434
63.	Mortgage of the ship under general admiralty law, and under the Ship Mortgage Act of 1920	440
64.	The "preferred" ship mortgage preferences under the Act of 1920	451
65.	The preferred ship mortgage in receiverships and in bankruptcy reorganizations	456
66.	Conflict of laws and the ship mortgage	465

CHAPTER 11

THE COMMON CARRIER BY WATER

Section		Page
67.	The water carrier's duties to the public it serves	466
68.	The public regulatory agency for enforcing the duties of water carriers; chiefly the Maritime Commission of the United States	478
69.	The cargo carrier's liability for goods received begins with bailment; at common law it was an "insurer's" liability	489
70.	The insurer's liability lessened by the Harter Act and the Carriage of Goods by Sea Act	495
71.	The respective scopes of the Harter Act, and the Carriage of Goods by Sea Act	503
72.	Distinctions between unseaworthiness and management of the vessel, and between latter and care and custody of goods, under these acts	515
73.	General average contribution and the exemptions of the Harter and Carriage of Goods by Sea Acts	527
74.	The "insurer's" liability as affected by the Fire Act	529
75.	"Deviation" and its effect on contracts and statutory exemptions	532
76.	Valuation agreements controlling amounts of damage	538
77.	Conflict of laws with reference to limitations of the carrier's liabilities	545
78.	Passenger carriage; liabilities of the water carrier	549
79.	Baggage, its definition and the carrier's liability for it	562
80.	Regulations upon the carrier, looking to safety at sea	568
81.	The carrier's rights against the shippers of dangerous goods, and under negotiable bills of lading generally	575
82.	The carrier's right to freight; prepaid freight; risks of voyage in reference to freight	584

CHAPTER 12

WATER CARRIAGE UNDER CHARTER

83.	Distinctions between common carriage by water and charter carriage; forms of charter	593
84.	The owner's duty to supply seaworthy vessel	600
85.	The charterer's duty to redeliver the ship and pay the charter hire	607
86.	Liabilities to third persons as between owner, ship, and charterer	611
87.	Charter provisions concerning the ship and her use; capacity, speed, overlap, offhire clauses, etc	617
88.	Liens on the ship and on cargo; cesser clause	634
89.	Dispatch and demurrage clauses	642
90.	Frustration of charter parties	652

CHAPTER 13

TOWAGE

91.	Towage, independent contract, not agency	664
92.	The relation of tug to tow's cargo	673
93.	Liabilities of tug and tow and latter's cargo to third persons	679
94.	Division of tow's damages when tug's and third person's fault injures it	683

CHAPTER 14

PILOTAGE

Section Page
95. State and federal fields in pilotage regulation..... 688
96. Liabilities and rights between pilot and vessel piloted..... 694
97. Liabilities of owner and of vessel to third persons for pilot's faults 701

CHAPTER 15

SALVAGE

98. The elements of salvage..... 709
99. Contract salvage..... 730
100. The amount of the award and its division among the salvors..... 739
101. Salvage following collision..... 752
102. Salvage of and by government ships..... 758

CHAPTER 16

GENERAL AVERAGE

103. General Average is a contribution by property saved to property sacrificed 764
104. The effect of the Harter Act and Carriage of Goods by Sea Act: the Jason clause..... 779
105. Interests which contribute in general average..... 783
106. Law governing general average: York Antwerp Rules..... 785

CHAPTER 17

COLLISION

107. Liability for collision is based on fault: the technique for ascertaining fault is based on rules for navigation..... 793
108. The navigation rules promulgated by the United States..... 798
109. Lights: head on, crossing, and overtaking vessels: the look-out.... 805
110. Obscured weather: fog: "moderate" speed..... 816
111. The substantive law in collision in territorial waters..... 822
112. Substantive law in high seas collision..... 828
113. Criminal liabilities in high seas collision..... 840
114. Measure of damages in collision cases for vessels..... 843
115. Division of damages in collision cases..... 853
116. The cargo, and the passenger, in collision cases..... 864

CHAPTER 18

LIMITATION OF LIABILITY

117. The background and theory of limitation..... 875
118. The limitation action as a consolidation of claims..... 880
119. Venue: Limitation at the place where the "vessel may be"..... 895
120. Persons who may petition for limitation..... 897
121. Classes of liability against which limitation may be asked..... 908
122. Conditions upon limitation: surrenders of values by owner..... 924
123. Conditions of surrender in respect to death and injury claims since enactments of 1935–6..... 938
124. Conditions upon limitation: owner must not be "in privity"..... 941

Table of Cases Cited..... 951

Index 981

HANDBOOK
OF
ADMIRALTY LAW

CHAPTER 1

THE HISTORY AND THE ELEMENTS OF ADMIRALTY LAW

Section
1. Admiralty a world wide and ancient branch of the law.
2. The United States has "received" the admiralty law; modifying it to our national needs. The Constitution grants the subject to the federal government.

A WORLD SUBJECT OF ANCIENT LINEAGE

1. Admiralty is a world wide and ancient branch of the law. The "admiralty classics", comprising sea law, from many nations, are the historic background of the subject and the evidence of its international character.

Admiralty law is a body of concepts, international in character like "international law" itself, or the "law merchant", which, like them, has its special history, both in and outside of our Anglo-American "law". In this general and international sense, admiralty law has its roots in a more remote past than other branches of our law. It has also its own classic expositions, its ancient codes and usages; and no discussion of the immediate topic of present day admiralty law in America can be entered upon without considering this ancient and international background.[1]

[1] Variances in admiralty law exist notwithstanding this common background. These variances, ships meet as they go their rounds and it may happen that if the same maritime facts are litigated in various forums the juristic results will be widely different in the several forums. Con-

The writings which embody this common tradition of the law of the seas, the admiralty classics, so called, are guide posts in man's efforts to subject the wide waters to his uses. Set down by different peoples, they record the rise and fall and succession of sea empire. If the enterprising Phoenicians of the eastern end of the Mediterranean left a code it has not come down to us. But that of another eastern Mediterranean seafaring people, the Rhodians, is constantly referred to as the earliest, dated at about 900 B.C. It is often stated to have become the basis of the sea law of Greece, and of Rome, when those ancient lands entered upon maritime ventures.[2] An authoritative admiralty lawyer has denied, however, that there was a Rhodian code, or that it was ever adopted into the Roman law.[3] He, like Justice Story,[4] asserts that in both particulars the legend is based on a spurious work dated no earlier than about 1500 A.D.; and insists that the maritime law of Rome is to be credited to the Roman jurisconsults. At any rate the Roman law or civil law influence on the admiralty is large, particularly in the procedure and in the absence of the lay element, the jury, at trial.[5]

sequently there has been an earnest attempt at uniform legislation on a world scale. This is set forth briefly by Mr. Louis Franck in, 1926, 42 Law Quarterly Rev. 25, under the heading "A new law for the seas. An instance of International Legislation." He was at the time President of the international body, the Comitè Maritime International, which was "formed to manage the general work and concentrate its results". Many of our new admiralty statutes are traceable to this source.

The general history of the maritime legal system from the most ancient times to day is recited by J. H. Wigmore, A Panorama of the World's Legal Systems, vol. 3, p. 875 et seq.

2 See an article Admiralty Law by Judge A. C. Coxe, long in the United States District and Circuit Courts of New York, in, 1908, 8 Col.L.Rev. 172, 177.

See Walter Ashburner, The Rhodian Sea Law, Oxford, 1909, for a profound study. He finds the Rhodian sea law a Byzantine document put together privately, he thinks, between 600 and 800 A. D.

3 R. D. Benedict, The Historical Position of the Rhodian Law, 1909, 18 Yale L.J. 223.

4 Story's Literature of the Maritime Law, 1818, is at page 93 of his Miscellaneous Writings, edited by W. W. Story, Boston, 1854. Justice Story's discussion of the general subject of admiralty law in De Lovio v. Boit, C.C.Mass. 1815, Fed.Cas.No. 3776, 2 Gall. 398, 399, indicates Story's deep learning in the subject.

5 In Lectures on Legal Topics, Vol. 5, New York 1920–21, MacMillan R. H. Hupper, Pleadings and Procedure in Admiralty, says, p. 474: "The trial in the District Court is simple. Few rules of evidence are insisted on and few technical objections are raised. An admiralty case properly tried brings out very few objections. You have no jury in the Admiralty Court.

ROBINSON ADM.

Another "code" included among the admiralty classics is that of Oleron, which has greatly affected both the modern European and Anglo-American admiralty. Oleron is an island off ancient Guienne, now and for centuries in France, but the laws were promulgated by Eleanor, Henry the Second's queen, mother of Richard the Lion of England, who was Duchess of Guienne. Richard introduced the code to England.[6] In 1896 this code still had standing in England. In that year an English judge remarked in the course of his opinion:[7] "If * * * we examine the sources of the English law, as, for instance the laws of Oleron, Wisbuy, and others * * *" The "others" included what he called that "most valuable and remarkable code known as the Ordinance of Louis XIV of August, 1681."

Of this French work, an American admiralty judge [8] said that the laws of Oleron "formed the bases of the celebrated ordinance of Louis XIV, and are admitted in England and America as authority." He continued:

"Next in importance may be cited the laws of Wisbuy. Wisbuy was the ancient capital of Gothland, an island in the Baltic Sea. * * * 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 today in the admiralty courts of this country, and the maritime codes of many countries of Europe have been based on them.

"Another celebrated code of sea laws was established by the Hanse, or 'League' towns. * * * Though to a great extent

You have a judge who is supposed to know something and he assumes to disregard any matters brought out that really do not affect the case. You do not need exceptions in order to preserve your rights on appeal. You do that by your assignment of errors. Much of the testimony is taken in advance of the trial. In cases involving ships your witnesses are likely to leave port, and they go all over the world; you take their testimony wherever and whenever you can get them, generally on consent or by notice, and the depositions are read in evidence."

On "What law of evidence governs in admiralty", see a note, 1929, 17 Calif.L.Rev. 147–152.

[6] An English text of the code is to be found in Sayre's Cases on Admiralty, 1929, p. 1; in Peter's Admiralty, Appendix III, and in 30 Fed. Cas. p. 1171.

[7] Lord Esher in The Gas Float Whitton, 1896, Prob.Div. 42, 47.

[8] Coxe, Circuit Judge.

a reenactment 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. * * * They are the three arches upon which rests the modern admiralty structure."[9]

Mention should also be made of the Consolat del Mar which was put into print at Barcelona in 1494 by an editor who, "moved by the sight of many corrupt readings" determined, "upon consultation with shipmasters and merchants" to collate various prior versions of what were the accepted customs among the shipmen of the Mediterranean. In England, as one author puts it, beside " 'the received' law of the sea, embodied in the old codes", there were (other) writings upon admiralty law which were accessible for professional use prior to the first English book.[10] But although the records of the Admiralty Court in England run back to 1530, it was not until 1590 that William Welwod published his Sea Law of Scotland, the first British work.

Since this "weake piece of labour", as Welwod himself called it, other British books have become classics. Selden's Mare Clausum of 1635, Godolphin's View of the Admiralty Jurisdiction, second edition 1685, give the development of the admiralty law in England. Volumes 6, 1892, and 11, 1897, of the Selden Society Publications with introductions by R. G. Marsden,[11] are valuable to the student of the history of the subject. A birdseye view of English admiralty history is that of T. L. Mears.[12] Of late there has been considerable activity in working at the history and sources of the admiralty both in this country and in England. The labors of the late Judge C. M. Hough, himself a great maritime lawyer, and others, have presented the maritime activities of the admiralty judges of our American colonies.[13]

9 See, 1908, 8 Col.L.Rev. at p. 172, and again at p. 178: Translations of the various codes are to be found in Appendix to Peter's Admiralty Decisions, Vol. I and also Vol. II.

10 W. Senior, Early Writers on Maritime Law, 1921, 37 L.Q.Rev. 323.

11 Author of Collision at Sea, a standard work.

12 Printed as an introductory chapter of the third edition of Roscoe, Admiralty Jurisdiction and Practice, London, 1903; the same material is to be found in 2 Select Essays in Anglo American Legal History, 312–364, 1908.

13 See infra, note 21.

Yet this body of international maritime "law", however much there is unity in its tradition, is scarcely to be conceived of as a system which a court is under mandate to follow. For our own tribunals, Mr. Justice Holmes puts the matter in a somewhat belligerent fashion: "In deciding this question we must realize that however ancient may be the traditions of the maritime law, however diverse the sources from which it has been drawn, it derives its whole power in this country from its having been accepted and adopted by the United States", and, obeying the urge to phrase making, he added: "There is no mystic overlaw to which even the United States must bow."[14] An eminent practitioner reminds the judge that "There is, however, a very plain and definite law, to which even the United States must bow if it is to succeed in maritime affairs, and that is the general maritime law, or common law of the sea and the established practices and requirements of business."[15] An earlier judge of our Supreme Court put the problem more sympathetically to the obvious advantage of conformity with the rest of the world:

"Undoubtedly no single nation can change the law of the sea. That law is of universal obligation and no statute of one or two nations, can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power but because it has been generally accepted as a rule of conduct. Whatever may have been its origin whether in the usages of navigation, or in the ordinances of maritime states, or in both it has become the law of the sea only by the concurrent sanction of those nations who may be said to constitute the commercial world."[16] The subject is thus reminiscent of the ancient question: "How far is 'international law' law?"[17] and

[14] Majority opinion in The Western Maid, 1922, 257 U.S. 419, 432, 42 S.Ct. 159, 66 L.Ed. 299.

[15] G. L. Canfield, note, 1922, 20 Mich.L.Rev. 535.

[16] Justice Strong in The Scotia, 1872, 14 Wall. 170, 187, 188, 20 L.Ed. 822. See also in the same vein: Norwich & N. Y. Transp. Co. v. Wright, 1872, 13 Wall. 104, 20 L.Ed. 585; The Lottawanna, 1874, 21 Wall. 558, 572, 578, 22 L.Ed. 654; The Scotland, 1881, 105 U.S. 24, 26 L.Ed. 1001; and The Manhansset, D.C.Va.1884, 18 F. 918, 920–923.

[17] Bradley, J., in The Lottawanna, 1874, 88 U.S. 558, 572, 21 Wall. 558, 572, 22 L.Ed. 654: "But it is hardly necessary to argue that the maritime law is only so far operative as law in any country as it is adopted by the laws and usages of that country. In this respect it is like international law or the laws of war, which have the effect of law in no country any further than they are accepted and received as such; or, like the

of the query which is raised in any case where a forum is asked to vindicate "rights" based on occurrences which take place beyond the confines of the territorial boundaries of the court's sovereign. In this latter question the court relies on "comity".[18] Why any nation accepts the common customs of the sea rests on no less or greater basis. They exist as law in the courts of any nation only as that nation has adopted them.

Among the British colonies in North America, there had been admiralty courts in the seaport cities since 1696. In 1768 new Vice Admiralty courts were set up at Halifax, Boston, Philadelphia, and Charleston.[19] Commissions to these various colonial judges bestowed wide authority to deal with both specified and

case of the civil law, which forms the basis of most European laws, but which has the force of law in each state only so far as it is adopted therein, and with such modifications as are deemed expedient. The adoption of the common law by the several States of this Union also presents an analogous case. It is the basis of all the State laws; but is modified as each sees fit. Perhaps the maritime law is more uniformly followed by commercial nations than the civil and common laws are by those who use them. But, like those laws, however fixed, definite, and beneficial the theoretical code of maritime law may be, it can have only so far the effect of law in any country as it is permitted to have. But the actual maritime law can hardly be said to have a fixed and definite form as to all the subjects which may be embraced within its scope. Whilst it is true that the great mass of maritime law is the same in all commercial countries, yet, in each country, peculiarities exist either as to some of the rules, or in the mode of enforcing them. Especially is this the case on the outside boundaries of the law, where it comes in contact with, or shades off into the local or municipal law of the particular country and affects only its own merchants or people in their relations to each other. Whereas, in matters affecting the stranger or foreigner, the commonly received law of the whole commercial world is more assiduously observed—as, in justice, it should be. No one doubts that every nation may adopt its own maritime code. France may adopt one; England another; the United States a third; still, the convenience of the commercial world, bound together, as it is, by mutual relations of trade and intercourse, demands, that, in all essential things wherein those relations bring them in contact, there should be a uniform law founded on natural reason and justice. Hence the adoption by all commercial nations (our own included) of the general maritime law as the basis and groundwork of all their maritime regulations. But no nation regards itself as precluded from making occasional modifications suited to its locality and the genius of its own people and institutions, especially in matters that are of merely local and municipal consequence and do not affect other nations."

[18] H. Barry, Comity, 1926, 12 Va. L.Rev. 353; Goodrich, Conflict of Laws, 1938, p. 8; 1 Beale, Treatise on the Conflict of Laws, 1935, p. 53.

[19] H. Putnam, How the Federal Courts Were Given Admiralty Jurisdiction, 1925, 10 Cornell L.Q. 460, 461.