

**THE MARITIME
CODES OF SPAIN
AND PORTUGAL**

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The Maritime Codes of Spain and Portugal by F. W. Raikes

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F. W. RAIKES

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CODES OF SPAIN
AND PORTUGAL**

ED. KENNEDY,
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THE
MARITIME CODES
OF
SPAIN AND PORTUGAL

TRANSLATED AND ANNOTATED

BY
F. W. RAIKES, LL.D., Q.C.

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INTRODUCTION.

IN the course of practice extending over a quarter of a century, mainly in the High Court of Admiralty and its successor, the Admiralty Section of the Probate, Divorce and Admiralty Division, I have frequently come in contact with an urgent necessity for some knowledge of the Maritime Law of Foreign Countries. Pursuing the study in the intervals of a busy life, I thought it might be that others, both those practising the Law and also Shipowners, Merchants, and Underwriters brought in contact with the practical effect of those Laws, might desire to see them in a more accessible form than they could be generally obtained in. I therefore proceeded to publish such translations as I made, or, in some cases, edited, in the *Nautical Magazine* and *Law Magazine and Review*, and now am trying the experiment of publishing in a separate form. The present volume gives the Maritime Law of the Iberian Peninsula. Having regard to the immense trade between England and the Peninsula, in ore, fruit and wine, not to mention other matters, and the large passenger traffic carried in British vessels between the Peninsula and South America, and the number of British vessels which call for coals and other purposes at Vigo, Teneriffe, Lisbon, Las Palmas, and St. Vincent, it would seem an appropriate commencement. If this little volume receives sufficient support the series will be continued.

I had the kind permission of the late Lord Hannen to dedicate the series to him. I now, alas, can only dedicate it to his memory, a memory which will survive, so long as the practice and study of the Law remains, as that of a great judge, and, as long as any of those who had the inestimable privilege of practising before him survive, as that of the most patient instructor and kindest friend.

F. W. RAIKES.

ABBREVIATIONS.

- B. Belgian Code of Commerce, Book II. (1875).
- E. Egyptian Code of Maritime Commerce.
- F. French Code of Commerce.
- G. German General Mercantile Law Code.
- H. Commercial Code of Holland.
- I. Commercial Code of Italy.
- I. (M.M.C.). Mercantile Marine Code of Italy.
- P. Commercial Code of Portugal.
- R. Commercial Code of Russia.
- S. Commercial Code of Spain.
- Sc. Maritime Law Code of Scandinavia, practically identical for Denmark, Sweden, and Norway.

In each of the above cases the number following the initial letter is the number of the article in the Code referred to.

When a number is in brackets it refers to a law of the date mentioned.

Arn. Arnould on Marine Insurance, 6th ed.

Lowndes. Law of General Average, Lowndes, 4th ed.

M. & P. Maude & Pollock, Merchant Shipping, 2nd ed.

M.S.A. Merchant Shipping Act, 1894.

Macl. Maelschlan on Merchant Shipping, 2nd ed.

News. Digest of the Law of Shipping and Marine Insurance.

J.D.I.P. Journal du Droit International Privé.

R.I.D.M. Revue Internationale du Droit Maritime.

The references to English and American Law Reports are those generally accepted.

I.—SPAIN.

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SPAIN.

THE Code of Commerce of Spain, of which the Maritime Law forms Book III., came into operation by Royal Decree of the late King Alfonso XII., on 1st January, 1886. It is intended to supply defects found to exist in the old Code, which dated from 1st January, 1830, but claimed to be founded, so far as its Maritime part was concerned, on the most ancient of European Sea Laws, the *Consulado del Mar*, which is asserted by its warmest admirers to be nearly coeval with the Conquest of England by William I., and to have been the parent of all the Maritime Codes of the Middle Ages. There is in fact considerable doubt whether it originated in Barcelona, as the Spaniards contend, or in the Maritime States of Italy. It cannot be doubted, however, that the Code of Spanish Laws known as the "Siete Partidas" was in force in Spain in the middle of the thirteenth century, and that the fifth Part of it, containing the Maritime Laws, bears so strong a family likeness to the Rules of Oléron, the basis of English Maritime Law, that if these are not derived from it, both have probably a common parent in the *Consulado*. Perhaps the most notable points about the present Code are the following: It clears up the doubt existing, in England at all events, under the former Code, as to whether an owner is liable, up to value of his ship, for damage done by the ship when he is not on board (see *The M. Moxham*, P.D. 43, 107), or whether such damage, being an "exceso" or an act outside the duty of the captain, fell upon the actual wrong-doer. It is now clear from Tit. IV., § 3, and especially Arts. 826, 837 of that section, that the ship-owner is liable. The whole chapter on Collisions is new, and contains a special provision for the case of "both to blame," Art. 827, and also for that of "inscrutable fault," Art. 826,