

**A FEW NOTES ON ADMIRALTY
JURISDICTION IN THE COLONY
AND IN THE PROVINCE OF THE
MASSACHUSETTS BAY**

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A Few Notes on Admiralty Jurisdiction in the Colony and in the Province of the Massachusetts Bay by John Noble

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110th Mr. A. Lawrence Lowell
with regards to
John Noble -

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A FEW NOTES ON ADMIRALTY JURISDICTION IN THE COLONY AND IN THE PROVINCE OF THE MASSACHUSETTS BAY.

A YOUNG colony naturally has little occasion for any full code of Admiralty laws or any distinctive Admiralty Courts. It has little concern about those matters which fall properly within such jurisdiction, for it can dispose of them with a fair amount of justice and convenience in its local courts. Until more complex internal conditions and outside relations grow up, it finds this the easiest and most satisfactory way. It was evidently so in Massachusetts. Not until 1650 is there any legislation, even remotely connected with such affairs, apparent in the Massachusetts Colony Records, and the Court records are silent in the early years. Up to 1644 neither in the Massachusetts Colony Records nor in the records in the so-called Barlow Copy is there more than a single entry that savors of Admiralty jurisdiction. At a Court held 2 June, 1635, controversies which arose between certain parties as to their rights in the ship *Thunder* were sent to a board of arbitrators for determination.¹ The latter fact in itself, however, proves nothing, for to a large degree the Court records are missing, and where they exist they are conspicuously incomplete, as I have shown elsewhere,² and contain little beyond the record of cases of a criminal or of municipal or otherwise public character. Civil cases between individuals seem not to have been recorded at all in the earliest years, and the later records, which are shown to have existed, have been lost from a time beyond the memory of living man. No full records of the Court of Assistants appear till 1673, and of the other Courts at about the same time. Much can be supplied, however, from certified copies found in

¹ Massachusetts Colony Records, i. 154; Records of the Court of Assistants, ii. 54.

² Preface to Records of the Court of Assistants, vol. i. p. xi.

later cases among the Court files and in the writings of contemporaries, especially of Winthrop.¹

The Colony Charter of Charles, without the reservation of the Province Charter of William and Mary, gives full power to hold Courts, to "establishe all manner of wholesome and reasonable orders, lawes, Statutes, and Ordinañces, direccions, and instruccion, not contrarie to the lawes of this our realme of England," and for "the directing, ruleing, and disposing of all other matters and thinges" for the religious, peaceable and civil government of the Colony, with "full and absolute power and authoritie" to all the higher officers of the Colony, "according to the Orders, lawes, ordinañces, instruccion and direccions aforesaid, not being repugnant to the lawes and Statutes of our realme of England."

Acting under this authority, and with its usual sturdy independence and its application of good common sense and Anglo-Saxon notions of justice, the Colony probably got safely through all those cases that smelled of the sea, either in the Court of Assistants or in the General Court, without much difficulty, for many years.

As showing how little distinction was made by the courts between admiralty and common law proceedings in cases before then, Washburn² refers to the case of *Madame La Tour* in 1644, giving some account of it taken from Winthrop.³ But some twenty years after the first settlement in Boston, questions apparently began to arise, and the necessity of some formal code began to show itself. And here appears the first attempt at legislation — which was apparently attended with only indifferent success :

Att a Courte of Eleccion, held at Boston, the 22th 3 M^o, 1650.

Whereas this commonwealth is much defective for want of lawes for Marityne affayres, and forasmuch as there are already many good lawes made & published by o' owne land & the French nation, & other kingdomes & common wealths, this court doth therefore order, that the sajd lawes, printed & published in a booke called *Lex Mercatoria*, shalbe pused & duly considered, & such of them as are approved by

¹ Records of the Court of Assistants, vol. ii. part iii., now in preparation, attempts to fill these gaps, as far as possible. See Preface, vol. i. p. xii.

² Sketches of the Judicial History of Massachusetts, p. 68.

³ History of New England (1853), ii. 192, 196, 198-201. Some later reference to the case is to be found in the Massachusetts Colony Records, iii. 49.

this Court shalbe declared & published, to be in force within this jurisdiction after such a time as this Court shall appoynt; and it is further ordered that M^r Bellingham, M^r Nowell, M^r Willoby, Capt. Hawthorne, the Audito^r Generall,¹ & M^r John Allen, shalbe a committee to ripen the worke, & to make returne of that which they shall conclud vpon unto the Generall Court, and the time of their meetings to be the first third day of the sixth moth next—

p Cur.²

This Committee appears to have been somewhat slack in the duty assigned to it, and —

Att the Second Session of the Generall Court, held at Boston the 14th October, 1651, [it appearing that] s^d committee haue not yett mett according as was then concluded, . . . it is ordered by the Court, that the accomplishing of that worke shalbe referred to M^r Nowell & the Audito^r generall . . . to make returne thereof to the next Generall Court.³

The second Committee apparently accomplished as little. At any rate, it does not appear how much benefit was derived from the labors imposed, how far they were discharged, or what was the practical outcome.

But whether with or without a code there is no evidence of any change in the jurisdiction, and at all events it is evident that they dealt with piracies and other happenings upon the high seas as if they had occurred on the main land. Exigencies would arise from time to time when the want of controlling laws would be felt.

Incompetency and greed are peculiar to no time or people, and even Puritan Commonwealths are not exempt. Somewhat later it seems to have become necessary to protect the interests of merchants and the lives of mariners from such shortcomings of human nature, and, though perhaps not strictly a matter of admiralty jurisdiction, resort is had to legislation.

At the Session of the General Court in October, 1667, it appearing that "divers unskillful persons, pretending to be shipwrights, doe build shippes & other vessells . . . which are very

¹ Capt. Nathaniel Duncan of Dorchester and later of Boston was the only incumbent of this office, which was created in 1645 and abolished in 1657.

² Massachusetts Colony Records, iii. 193; iv. (i.) 10, but in the latter less full and without the preamble.

³ Massachusetts Colony Records, iii. 252; iv. (i.) 69.

defective, both for matter & forme, to the great prejudice of merchants & onors, & the danger of mens lives at sea,"¹ a Committee is appointed to draw up laws to remedy the evil.

For many years after the unsuccessful movement in 1650, the Colony ran on without any distinctive maritime code. The Body of Liberties, Liberty 67, had laid it down as among the rights of the freemen, "to choose yearly at the Court of Election" "all the General Officers of this Jurisdiction," among them the "Generall of our warres" and "our Admirall at Sea" — subject to discharge as therein provided. But the growth of the Colony at last brought about some legislation, and —

Att y^r Second Sessions of the Generall Court, held at Boston, 14th of October, 1668.

Whereas, through the blessing of God vpon this jurisdiction, the navigation & maritime affaires thereof is grown to be a considerable interest, the well management whereof is of great concernment to the publick weale; for the better ordering the same for the future, & that there may be knowne lawes & rules for all sorts of persons employed therein, according to their severall Stations and Capacities, & that there may be one rule for the guidance of all Courts in their proceedings in distribution of justice,

a law is enacted containing twenty-seven sections and covering differences between owners, conduct of masters and mariners, penalties to be imposed on them for breaches of duty, questions of wages, provisioning of vessels, conduct of voyages, loss of goods, collisions, and other kindred matters.²

There would seem to have been some sort of an Admiralty Court or a Court exercising such jurisdiction in Massachusetts a dozen years earlier, by the mention made in the Danforth Papers of "our Court of Admiralty here," in 1666.³ It seems most likely that it

¹ Massachusetts Colony Records, iv. (ii.) 345.

² Massachusetts Colony Records, iv. (ii.) 388; Colonial Laws, 1660 (Whitmore's edition), p. 251.

³ 2 Massachusetts Historical Collections, viii. 101.

Somewhat illustrating this is a case tried in the County Court in April, 1663, with an air of piracy about it, in spite of the result the jury arrived at:

John Woodmansey vs. { Monsieur Labourne and
 { Monsieur Laremit

for forceible seazing and taking away in a way of Piracy the vessell called the Progress, whereof William Russell was master, being upon lawfull imploiment and laden with

was no distinct Court, but simply an exercise, as occasion required, of Admiralty powers in the local Courts of the Colony, probably the Court of Assistants, or under the Governor as Vice-Admiral, as the colonists were always equal to the situation at hand, and had no hesitation in finding good legal ground for meeting necessary emergencies.

In 1673 appears the first formal legislation as to the trial of "all cases of admiralty."

Att a Special Generall Court, called by order of the Council, and assembled together in Boston, 10th December, 1673. [At an adjournment thereof on the 6th of the following January,] It is ordered by this Court & the authority thereof, that henceforth all cases of admiralty shall be heard and determined by the Court of Assistants, and to be issued by the bench w^out a jury, unless the Court shall see cause to the contrary, provided alwayes this act shall not be interpreted to obstruct the just plea of any marriner or merchant impleading any person in any other Court vpon any matter or cause that depends upon contract, covenant, or other matter of conion equity in maritime affayres, to be issued according to the knowne lawes of this colony.¹

Numerous cases under this jurisdiction are to be found in the Records of the Court of Assistants, Volume I., lately issued, which show the variety of causes that came before it and their character. Among them are some interesting trials for piracy occurring not

fish upon the confines of Nova Scotia or thereabouts which said vessell together with the fish, the one third part of both belongeth to the said Woodmansey, &c. &c.

They were placed in prison in the care of the keeper by John Pease, constable. Copy of County Court Record at Boston 28 April 1663, states that "nothing appearing against Laremitt, the action proceeded," etc. Jury brought in verdict for the plaintiff £280-8-0 damage and costs of Court £0-44-8. "The jury affirmed they medled not w^h that of Piracie."¹

Still earlier will be found cases where the Court of Assistants took jurisdiction, pure cases of Admiralty, and where, when in doubt, they referred the matter to the High Court of Admiralty in England.

Many cases of this sort will appear in the Records of the Court of Assistants, volume ii., now in course of preparation and to be issued in the near future.

¹ Massachusetts Colony Records, iv. (ii.) 575; Colonial Laws, 1672-1686 (Whitmore's edition), p. 213.

¹ Suffolk Court Files, no. 514. See also no. 817,826 for a full history of the case. In the last group there are thirty-three papers.