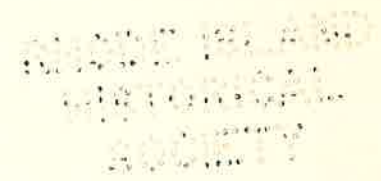


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RHODE ISLAND'S FIRST COURT OF ADMIRALTY

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RHODE ISLAND'S
FIRST COURT OF ADMIRALTY

MARGUERITE APPLETON

RHODE Island's first Court of Admiralty, which functioned intermittently from 1653 until abolished by an Order in Council in 1704, was the natural result of the period in which England was engaged in almost incessant warfare. We find the first mention of such a court in the colony during Cromwell's War with the Dutch.

Although there was no provision in the Rhode Island Patent of 1643 for a Court of Admiralty, the arrival of a letter in 1653, brought by William Dyre, from the Council of State, gave the necessary authority to issue privateering commissions.

"... and the better to defend the colony against the Dutch, power is hereby given to you to raise forts and also to take and seize Dutch ships and vessels at sea or as shall come in to any of your harbors or within your power, taking care that such accounts be given to the state as is usual in the like cases. And to that end you are to appoint one or more persons to attend to the care of the business."

Thus, while the power to erect a Court of Admiralty was not specifically granted, a reasonable interpretation of the letter would seem to have authorized such a court as a corollary to privateering.

Accordingly, on May 17, 1653, the General Assembly at Newport voted to make William Dyre, Joseph Sanford, President of the Assembly, and Nicholas Easton, moderator, a committee of three to "take care that the state's part of all the prizes be secured and account given." On the following day it was voted that

"... for the tryall of prizes brought in according to law the General Officers with three juriers of each town shall be authorized to try it. The President and two Assistants shall have authority to appoint the time, but if any fail at the time appointed, either officers or juriers, the juriers shall be made up in the town of Newport when they shall be tried. In case of any of the officers fail, then those that appear shall proceed according to the law of Alleroone."¹

At the same session the Assembly chose eight men as a committee of war, and granted commissions to Captain John Underhill, William Dyre, and Edward Hull as privateers.

This action came at the time when Providence and Newport were separated on account of the controversy over William Coddington's commission as Governor. The energy of the Newport Assembly in giving out privateering commissions angered Providence and Warwick. The mainland settlements feared that these commissions, which bore the name of the whole Colony, might sooner or later involve Rhode Island in quarrels with her New England neighbors. Therefore, a vigorous protest was made to Newport, to the effect that her action was "like for aught we know to set all New England on fire, for the event of war is various and uncertain." To make sure that Providence would not be injured by such rashness, the Assembly meeting there declared that in case of trouble they would petition England for aid, and announced that no one who recognised the commissions illegally issued in the name of the Providence Plantations would be allowed to accept any position in their government until he had "given satisfaction to the respective towns of Providence and Warwick." Apparently Newport took no notice of this remonstrance; in any case, the Court of Admiralty began to function almost immediately.

Although this tribunal was called a Court of Admiralty and was ordered to proceed according to the "laws of Oleron," in reality it was simply the General Court of trials hearing prize

¹ *Records of the Colony of Rhode Island and Providence Plantations* (Providence, R. I., 1856), I (1636-1663), 266. The "Laws of Oleron" are meant.

cases. It had the same machinery — consisting of the President of the Assembly, the Assistants, the Recorder, Treasurer, Attorney, and Sergeant, and three jurors from each town. Because such an elaborate organization — and particularly the employment of a jury — was unusual in a Court of Admiralty, and also because Rhode Island did not have a thoroughly-developed court system, it is clear that it was merely the highest civil court in the Colony asserting admiralty jurisdiction when necessary.²

We know that the court tried a few cases, one of which, that of the *Swallow*, frigate, can be reconstructed with a fair degree of accuracy.³ About the middle of April, 1653, Captain Edward Hull of the *Swallow*, learning of the state of war, captured (in the Connecticut River) a vessel sailed by a Captain Sebada. One month later, on May 18, Captain Hull received his privateering commission from the Newport Assembly. During the interval his capture was probably hidden in one of the many inlets of Narragansett Bay. After he had waited a reasonable length of time, he produced his prize for adjudication, and notwithstanding the discrepancy between the date of the commission and the date of seizure, it was condemned as a lawful prize. Some weeks later the owners sold the vessel to Christopher Almy for £56: 10s. In the mean time, Sebada had brought suit against Hull in the Court of Admiralty sitting in Portsmouth, Rhode Island, on the ground that his vessel had been taken before the captor had received his commission, and the Newport decision was reversed. Our knowledge of this case is derived in part from frequent mention in the *Rhode Island Colonial Records* of a quarrel between Christopher Almy, who had lost money through the decision of the Portsmouth tribunal, and Nicholas Easton, who refused to surrender the Colony's

² The Courts of Admiralty established by the Crown were composed of one or more judges, a marshal, and a registrar. The United States has always followed this precedent; a jury is never made use of when the federal courts sit on admiralty cases.

³ *Records and Files of the Quarterly Courts of Essex County, Massachusetts* (Salem, Mass., 1911), I, 314-318.

share of the prize money. The General Court of the Providence Plantations finally ordered Easton to relinquish "the state's part of the prizes taken in the time of the difference of the colony with the Dutch."

At least one other case was presented to this local Court of Admiralty. Captain Thomas Baxter was granted a privateering commission in the summer of 1653 in the name of the Providence Plantations. He captured the *Desire*, owned by Samuel Mayo of Barnstable, Massachusetts, on the pretext that she was trading with the Dutch. What the towns of Providence and Warwick had feared, actually happened. The United Colonies of New England quickly protested the capture of the *Desire*, and demanded justice for Mayo. They dispatched a representative to Rhode Island with instructions to find out the source of this authority to issue privateering commissions, and "what security," the colonists had "to take prizes that are brought thither and tried, and who are the judges." Unfortunately, we have no further record of the occurrence.

The war with the Dutch came to an end in 1654, and for forty years there is no further mention of such a court in Rhode Island. Although twice within the next two decades England was at war with her great commercial rival, Holland, the American colonies do not appear to have taken the offensive. During the period of peace from 1672 until 1694 no occasion called for such a court.

The Charter which Rhode Island secured from Charles II contained no clause dealing with a maritime tribunal. In spite of this, the members of the Assembly firmly believed that under the new Charter they had the right to set up one — if necessary. Governor Sanford wrote to the Lords of Trade in 1660: "concerning the court of admiralty, we answer that we have made provision to act according to the laws of England as near as the constitution of our place will bear."

Although King William's War broke out in 1689, a Court of Admiralty was not established in Rhode Island for five years. In January, 1694, Captain Hore of the *Dublin*, sailing under a commission from the Governor of Jamaica, came into Rhode

Island waters with the *Saint Paul*, and prayed for her condemnation. After deliberation the Governor and Council decided that the state of war permitted the creation of such a court notwithstanding the silence of the Charter in this respect. A law was then passed which authorized them to act as a Court of Admiralty, and the *Saint Paul* was promptly adjudged a lawful prize.

This tribunal differed from the earlier one in that it was not the colonial civil court hearing prize cases. It was a special court with special powers. Although its machinery, consisting of the Governor, the Deputy-Governor, and the Assistants, was borrowed from the civil courts, a jury was no longer employed. Its function was the "condemning of prizes and other seafaring activities as occasion shall require."

The procedure in prize cases was exceedingly simple, as the trial of the right of seizure of the *Golden Bell* shows. The *Servillian*, Captain Theodorus Lovering, who had a privateering commission from Governor Beeston of Jamaica, had captured the *Golden Bell* of two hundred tons and twelve guns and had taken her into Newport Harbor. The Governor, Deputy-Governor, and Assistants examined the depositions of the crew of the *Servillian*, which had been drawn up under oath, to the effect that the vessel belonged to subjects of the French King, and that she had been seized near Newfoundland. The court then declared that the *Golden Bell* was the lawful prize of Captain Lovering, and he was permitted to dispose of her to suit himself after paying the required fees and costs.⁴

A curious case came up in April, 1696. The same Captain Lovering sighted a small boat off the coast of Cuba and gave chase. After a few hours she was boarded without resistance, and it was then found that "there was No person on borde, Nor No other Creator [creature] but one or two hens. Her lading or what she had on borde was only some Garlick, and fifteen jars of Muntego, and some sapadele." There was no

⁴ Rhode Island Land Evidence, II, no. 49: MSS. in the Rhode Island Historical Society.

difficulty in securing the condemnation of this derelict with her strange cargo.

Shortly before the close of King William's War, England took steps to set up Courts of Admiralty under the control of the Crown in the charter colonies. When the new Board of Trade was organized, in 1696, illegal trading and piracy were openly practised along the Atlantic seaboard. The dividing line between privateering and piracy was indeed difficult to maintain. Though the attempt was made to prevent privateering from degenerating into piracy by limiting the duration of commissions to definite periods, it was almost impossible to compel privateersmen to abandon their profitable and adventuresome business after peace had been concluded. The result was that the colonists were constantly being charged with piracy as well as violations of the Acts of Trade, while the Home Government was put to no little trouble to stamp out pernicious practices on the high seas. Edward Randolph, Surveyor-General of the Customs in America, sent a memorial and a report to the Board of Trade in 1696 in which he stated his conviction that the lax enforcement of the Navigation Acts was due to the impossibility of obtaining an impartial jury in the ordinary civil courts. Therefore he strongly advocated Courts of Admiralty to try cases of illicit trade, all the officials of which should be royal appointees independent of colonial influence. His suggestion was accepted, and, after some delay in making up a suitable list of officials, commissions were issued from the Admiralty in England to colonists of the charter communities to serve in the maritime courts.

Commissions for Peleg Sanford as judge and Nathaniel Codrington as registrar of admiralty arrived in Rhode Island in 1697. The action of the home government was greeted with manifest hostility. Governor Clarke refused to swear in Sanford, assuming that the power to establish courts of justice was exclusively secured to the Colony by Charter and by precedent. Clarke persuaded Sanford to give him his commission, showed it to the Assembly, and urged that body to submit to no outside control.

The next year the Board of Trade, alarmed by the many reports of acts of piracy on the part of Rhode Island seamen, decided to make an investigation of conditions in the Colony. In reply to the notice of the pending inquiry, the Assembly at once sent an obsequious letter to the home government explaining away the alleged misdemeanors on the favorite plea of ignorance, and picturing Rhode Island as the victim of calumny. In a speech to the Assembly, Governor Clarke expressed sentiments of rather a different character. He urged his colleagues to resist the action of the Board of Trade, which he thought constituted an attack on their chartered rights.

"... I doe conclude" [he asserted] "it lys befor this Honoured Assembly to make what preparations can be for the maintaining and indicating our just rights and privileges according to our Charter, and I will assure you there shall be nothing wanting on my part to the best of my skill and ability to maintain the same, and hope it will be all your Minds and resolutions so to doe, and I am of that opinion we had better like men spend the one half of our Estates to maintain our privileges than . . . that we with our children should be brought into bondage and slavery as I may say (for I conclude it will be but very little better) for if we did but feel or was sencible of one halfe of some other Governments suffer I doe believe we should be more vigorous to prevent what is likely to come Upon us."⁵

Unfortunately this spirited speech — undoubtedly meant for domestic consumption only — nevertheless reached the Board of Trade and served to heighten the unsavory reputation of Rhode Island with that body. And in 1701 Joseph Dudley was commissioned Governor of Massachusetts Bay, and at the same time Vice-Admiral for all New England.

The War of the Spanish Succession had already broken out in Europe; in North America its inception was reflected in noticeable war-like activity against the French. As before, Rhode Island's chief interest lay in privateering. Governor Cranston was convinced that he could issue privateering commissions,

⁵ C. O. 5: 1259-D34, Transcript from the Public Record Office.

and that the Governor and Council, as in King William's War, could function as a maritime court. It was not long before Dudley seriously questioned both Cranston's authority and that of the local Court of Admiralty.

William Wanton, of Newport, received a privateering commission from Governor Cranston in 1701 and took command of the brigantine, *Greyhound*. He returned after a few weeks' cruise with three French ships of considerable size and value. The right of their seizure was being tried in the Rhode Island Court of Admiralty when Dudley interfered. He attempted to stop the proceedings because Wanton had not obtained his commission from him,⁶ and asserted that the *Greyhound* had "the face of a pirate rather than His Majesty's ship." At length, however, the prizes were condemned by the deputy-judge, Thomas Newton. Dudley, greatly annoyed, wrote to the Board of Trade that "Rhode Island absolutely will not submit to take commissions for the privateer they have set out," and that when he went there to publish his commission as Vice-Admiral, "the Governor and Council of that Island used indecent expressions saying they were ensnared and injured, nor would not give (nor have they given since) due obedience to the said commission."

His reiterated complaints of Rhode Island — it was seldom that his letters did not contain some criticism of the Colony — now produced decisive action on the part of the Home Government. The Board of Trade could not overlook the fact that the Court of Admiralty was maintained in spite of the royal decree of 1696. Queen Anne, in 1703, commanded Rhode Island to obey Governor Dudley, because the Charter did not grant admiralty jurisdiction. When this failed to achieve the desired result, the Attorney-General was consulted on the point of law involved. He reported that the Colony had not greatly transgressed, for the court in question was clearly only a temporary institution. The Board of Trade was not satisfied, and in 1704

⁶ Dudley seems to have been in error about this, for it had long been the custom for colonial governors to be empowered at the outbreak of war to grant privateering commissions.

succeeded in having the local court abolished by an Order in Council declaring that the Act under which it had functioned was null and void. A royal Court of Admiralty was then formally established. The *Boston News-Letter* of May 1, 1704, printed the following announcement: "Rhode Island, April 27. The Honourable Nathaniel Byfield, Esquire, his commission for judge of the admiralty was published and admitted of here on the 25th, currant."

The process of substituting a Court of Admiralty under the control of the Crown for the local tribunal, was not accomplished without friction. This was the period when the corporate and proprietary colonies were fighting the attempts of the Home Government to vacate the charters, and the Rhode Islanders interpreted the Order in Council as only one more attack on their cherished Charter. Moreover, Governor Dudley was disliked in Rhode Island, and it is not likely that his interference in the case of the *Greyhound* had been forgotten.

Although legally the local court had now ceased to exist, the Governor still considered that he had not been prohibited from granting commissions to privateersmen. In November, 1704, he issued a commission to Captain Halsey of the *Charles*, who returned from the West Indies in the spring of the following year with a valuable Spanish prize. This was being litigated before the Court of Vice-Admiralty when a serious quarrel arose over Halsey's commission. The cargo had already been landed and stored when Judge Byfield discovered that the Captain's commission had been given to him many months after the Order in Council had been received in Rhode Island. Assuming, therefore, that it was invalidated, the judge refused to proceed with the trial until he could consult with the judge of the Court of Admiralty in New York. His dictum stirred up a hornets' nest of indignation in Newport. The vessel was lying in the harbor, her miscellaneous cargo was in danger of being looted, and Captain Halsey was impatient to obtain his clearance papers. Governor Cranston, stoutly supported by the Assembly, insisted that he had been well within his rights in granting privateering commissions, and that he was determined to

exercise this power of vice-admiralty as long as the Charter remained in force. In the mean time the owners of the *Charles* had petitioned Dudley to order the condemnation of the vessel. When at last the trial was re-opened, "eighteen lusty fellows" pushed into the court room and presented the registrar with a document which proved to be a justification of Governor Cranston's action. The judge refused to have it read, and the court was adjourned amid the hoots and jeers of the rough intruders. The prize was finally condemned by Judge Byfield according to Dudley's instruction, and Captain Halsey, securing a new privateering commission from Governor Cranston, sailed away on his belated voyage.

After the resentment over this incident had died down, the royal Court of Admiralty was allowed to carry on its duties with comparative smoothness, although the exact powers of the Governor in maritime matters continued to be a troublesome question. For the rest of the colonial period, Rhode Island remained under the jurisdiction of the Court of Admiralty in Boston.

* * *

The early history of Rhode Island's Court of Admiralty illustrates two interesting features of the political life of that colony: her autonomy and her independence. Her governmental machinery, never imposed from without, was developed gradually from within, and to meet practical needs. One of these obvious needs in a community whose chief interest and means of livelihood lay on the sea, was for a court having power to condemn prizes in time of war. Such a court was first created by expanding the jurisdiction of the civil tribunal.

Secondly, as a consequence of her corporate character, the Colony was more independent than other American communities. Linked but loosely to the Home Government, she was unwilling (or unable) to appreciate the value of centralized control even in matters clearly of imperial concern. Hence, the Rhode Islanders (forgetting how recently they had sought imperial protection in the shape of the Patent and the Charter against their neighbors, Massachusetts and Connecticut) in-

terpreted the establishment of a royal Court of Admiralty as an infringement of Charter rights. They resented this reasonable administrative measure and resisted its application, accepting most unwillingly the supervision and control of the Mother Country.