

fed established principle, that it was necessarily confined to those two species of vessels only. If this was considered as a *previously existing limitation* it would be conclusive, that no authority to commission vessels subsisted any where but in the Admiralty. If it was introduced as a *new restriction*, it may I think reasonably be doubted, whether it would not annul any power of that kind which had been previously granted; for by this order the Prince Regent not only makes the declaration of War, but he specifies the only vessels by which it shall be carried on. It is from this order alone that both are deduced, without this order, *no vessel could exercise hostilities*, with the order, *none* can exercise them but those two kinds of vessels; Independent of the order *no vessels have authority*, by virtue of the order, only those two classes of vessels are authorized.

But an examination of the Governor's Commissions themselves, will I think reduce these presumptions to a certainty, and shew clearly that no such power is vested. [See appendix A.]

No doubt can be entertained but that his Majesty may by commission under Seal, depute to any of his subjects, the rights and the exercise of almost any branch of his royal prerogative. But questions may arise upon any of his Majesty's commissions, as to what power he has granted. And there is one established rule of law to direct the enquiry; that no part of the Royal Prerogative, especially of the higher branches of it, can be transferred without the most express words to that effect;

The first commission which I shall examine is that of the Vice Admiral as apparently most connected with the case, and it may be necessary, for illustrating the subject to enquire a little into the nature and history of the office itself, as derived from that of the Lord High Admiral; since it appears not to have been well understood.

It is clear from those learned antiquarians, who have extended their researches into the usages and laws of former times, and particularly Mr. Selden,* that the office of lord high admiral originally comprized *civil* rather than *military* duties, and that the peculiar object of it was not so much the command over the fleet, *quā hostibus per mare resistitur*, but for guarding the sea, against pirates and other lawless persons, and the protection of commerce, *de ipso mari tuendo*, having the same power at sea as other magistrates had upon land. Their usual stile was that of *custodes maris*, and they were said in the old language of parliament to be appointed "for the keeping and sure defence of the seas against all persons, for the Entercourse of merchandise safely to come and pass out of the same." They were intrusted with *la gard de la pees de la mer, or la saugard de la mere*. For this purpose they had a general jurisdiction in all affairs, civil and criminal, upon the seas, as incident to jurisdiction, they were intitled to various droits, rights and perquisites. This was the ori-

*Selden, *Mare Clausum*, &c.