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for what is more ordinary, than for sheriffs and bailies of regality to decern for payment of fines in processes at their procurator fiscal's instance, albeit these fines belong to themselves? And this holds in the contravention of all penal statutes. And here there is a *jus quæsitum* to the Court of Admiralty, by the defender's obliging himself to give bond and caution to the clerk, for payment of the price of the wines bought by him under the foresaid penalty; and he having failed to perform, the Admiral is only Judge competent to cognosce how far the penalty is incurred.

THE LORDS repelled the reason of avocation, and remitted the cause.

Fol. Dic. v. 1. p. 502. Forbes, p. 11.

1705. June 28.

SIR ANDREW KENNEDY, Conservator, *against* WILLIAM GORDON, Merchant.

No 224.

An action raised before the Admiral, at the instance of the conservator of Campvere, against a factor abroad, for money expended in negotiating his affairs in Holland, advocated *in jure* as not being maritime.

SIR ANDREW KENNEDY having pursued William Gordon before the Judge of Admiralty for sums of money which he alleged were spent by him, his son, and servants, at the Hague, and other places in Holland, in defending William Gordon in a plea betwixt him and his wife, a Dutch woman; a bill of avocation was expedé, and coming in to be discussed before the Lords, this reason was *propounded*, That the cause was not maritime, and therefore not competent to be judged by the Admiral.

Answered for the pursuer, He being a foreign Minister, and the defender a factor abroad, where the money pursued was expended at his desire and order, and so a foreign debt; the Admiral was most competent to decide therein. For it was found in the case of Van Rixel and his factor against Black, That a foreign bill of exchange fell properly within the Admiral's cognisance.

Replied for the defender, No cause can be called maritime, except what relates to vendition or freighting of ships, differences betwixt masters and seamen, masters and owners, masters and freighters, bills of bottomry, and the like, in the terms of the act 16th Parliament 1681. Therefore, to pretend that a foreign debt is a maritime cause, is a jest. As for the cited decision, it has certainly concerned a bill of bottomry, and not a bill of exchange.

Duplied for the pursuer, That he (who is in effect general factor for the Royal Boroughs, and the preservation of trade) had, in discharge of his commission from Gordon, been put to several necessary voyages at sea, in order to exempt him from the Dutch jurisdiction, when he was at the point of being run down by the eviction and seizure of all his effects, bills, compt-books, &c. And therefore an action for refunding expenses and repairing damages by such an employment relating to trade, is precisely in the terms of the act of Parliament.

THE LORDS found the case not maritime, and therefore advocated the cause *in jure*. No 224.

Fol. Dic. v. 1. p. 502. Forbes, p. 18.

* * * Fountainhall reports this case.

SIR ANDREW KENNEDY pursues William Gordon, merchant in Campvere, before the High Court of Admiralty, for his expenses and damages in managing his business against his wife at the Hague, and other affairs, being employed to secure him against these pursuits, as being under his jurisdiction as Conservator. Of this process, Gordon procures an advocacy; which being called and debated, Mr Gordon contended the affair was nowise maritime, and so the Admiral was incompetent. *Answered* for Sir Andrew, That he was precisely in the terms of the act 16th Parliament 1681, anent the Admiral's jurisdiction; for it had occasioned him to make several voyages by sea, from one province of the Netherlands to another; likeas the subject matter was also maritime, being to preserve a factor's goods sent from Scotland from Dutch arrests. *Replied*, This cause has no relation to sea-affairs, being neither for freight, seamen's wages, bills of bottomry, or the like; and therefore the Admiral was nowise competent judge thereto. THE LORDS found the case not maritime, and therefore advocated the cause.

Fountainhall, v. 2. p. 279.

1706. July 19.

ANDERSON *against* TURNBULL.

No 225.

AGAINST an arrestment founded upon an inland bill, it being *objected*, that it was laid on in virtue of a precept by the Judge Admiral, who is no way competent in civil debts which are not maritime; it was *answered*, that nothing is more ordinary than, to pursue for bills of exchange before the Admiral, and to annul such arrestments would endanger the rights and properties of the lieges. The LORDS sustained the arrestment.

Fol. Dic. v. 1. p. 503. Fountainhall. Forbes.

* * * This case is No 57. p. 1460., *voce* BILL of EXCHANGE.

1707. March 28. GRAHAM *against* ALEXANDER PIPER of Newgrange.

MR CHIESLY having employed Alexander Piper, as factor, to sell a cargo of Spanish wine and fruits in Scotland, which were to be bought and shipped by Chiesly and Mr Graham; the said Graham convened Mr Piper before the Admiralty Court for exhibiting of bonds taken by him from the merchants he

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The Admiral incompetent to judge in an action for exhibition of bonds grant-