

1755. January 9.

JOHN ROWAND SENIOR, Merchant in Glasgow, *against* JOHN FREEMAN and Company, Merchants in Bristol.

IN November 1753, John Rowand wrote to John Freeman and Company, in these words: ' Inclosed you have invoice of sundry goods; which please ship ' on my account and Company, addressed to Rowand, Wells, and Rowand, ' merchants in Charlestown, South Carolina.' The goods were accordingly shipped; and Freeman and Company brought a process against John Rowand, before the High Court of Admiralty, for payment of the price.

John Rowand pleaded compensation upon the price of certain goods which he had sent to the pursuers: They contended he could not propone any defence till he found caution *judicio sisti et judicatum solvi*: The Judge-Admiral ordained him to find such caution; which he having failed to do, decreted went against him for the sums libelled.

John Rowand applied to the Court of Session for a suspension of this decret; and *pleaded*, That the extraordinary powers of the Judge-Admiral, whereby he obliged parties to find caution *judicio sisti et judicatum solvi*, could only be exercised in *maritime* causes, where the Admiral has an exclusive jurisdiction in the first instance; but where he has only a cumulative jurisdiction, as in mercantile causes, he cannot exercise any such extraordinary powers: For it would be unreasonable, that the pursuer, by chusing to bring his action before that court, should put the defender to greater hardships, than if the action had been commenced before the Judge-Ordinary or Court of Session. And he *contended*, That this cause was not maritime, but only mercantile; seeing the essence of the bargain or contract did not consist in any thing to be done at sea or on ship-board, but consisted in the delivery of goods, for the price of which the suspender might have been pursued before the Judge-Ordinary or the Court of Session.

Answered for John Freeman and Company: That the Judge-Admiral may, in all causes which come before him, oblige parties to find caution *judicio sisti et judicatum solvi*; for he is entitled to observe the particular forms and privileges of his own Court in all causes. And,

adly, The present case is properly maritime; for the bargain behoved to be implemented by delivery of the goods *on ship-board*, before the suspender was liable to pay the price; and whatever is contracted to be performed at sea, or within the limits of the shore, can be judged of in the first instance by the Admiral alone.

Observed on the Bench: That it is the practice of the Admiral-court to grant orders, of course, in all cases, to find caution *judicio sisti et judicatum solvi*: But, upon the defender's representing to the Judge, that the cause is not maritime, such order is in use to be recalled.

No 10.

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No 10.

2dly, That this cause was not maritime ; for though the goods were to be sent by sea to Carolina, yet the bargain had no connection with the sea, no more than if the goods had been to be sent to the suspender at Glasgow ; in which case the sending them by land or water would have made no difference on the nature of the action, which the chargers would have had against the suspender.

‘ THE LORDS passed the bill without caution.’ See JURISDICTION, Admiral.

For the Suspender, *Lockhart.*

For the Chargers, *Ferguson et Johnston.*

Fol. Dic. v. 3. p. 113. Fac. Col. No 123. p. 182.

1755. *March 7.*

JOHN HERRIES, Merchant in Rotterdam, *against* ROBERT and JOHN LIDDERDALES, Merchants in London, and THOMAS CARLISLE, Writer in Dumfries, their Factor.

No 11.

A Scotsman, whose residence is abroad, apprehended in this country for a debt, is only bound to find caution *judicio sisti*, and not *judicatum solvi*, unless in maritime causes.

JOHN HERRIES, merchant in Rotterdam, a native of Scotland, became debtor to Robert and John Lidderdales, merchants in London, for upwards of L. 1000 Sterling. In a letter addressed to them the 10th September 1754, he acknowledges he was their debtor, but says not for how much ; begs a little delay until effects which he had in Scotland should come to hand ; and adds, ‘ That if these effects did not soon come to hand, he would go to Scotland for a few weeks to look after his affairs there, but promised to acquaint them before he set out, and with whom he left his procuration.’

Some time after the date of this letter, without giving any further notice to Messers Lidderdales, John Herries came to Scotland, and resided during most of the winter at Edinburgh, attending a suit he had depending before the Court of Exchequer, concerning the seizure of a ship and cargo belonging to him ; in which suit he prevailed. In February 1755, he went to Dumfries to see some relations in that place, and Messers Lidderdales getting notice that he was there, they employed Thomas Carlisle to recover payment of the debt due to them.

Thomas Carlisle, in name of Robert and John Lidderdales, applied by petition to the Sheriff-substitute, setting forth, ‘ That John Herries was debtor to them in L. 1461 Sterling ; that he had left Holland without acquainting them, and was lurking in this country where he had no settled residence ; that they had reason to suspect he was but in indifferent circumstances, and intended to conceal himself from them in order to avoid payment of the debt ; and therefore praying a warrant to apprehend and incarcerate him until he should pay the sum, or find caution *judicio sisti et judicatum solvi.*

The Sheriff granted warrant for bringing John Herries before him ; and upon his appearing and acknowledging that he was owing a debt to the petitioners, and that he could not then either pay it, or give security, the Sheriff ordained,