

1760. November 20. LAMBERT *against* BALLANTYNE.

No 234.

A SHIP being seized, action was brought before the Judge-Admiral, on the ground that the seizure maker was no officer of the customs, and concluding for the value of the ship, and very high damages and expenses. The crew going abroad, the Judge-Admiral, on a petition, allowed their depositions to be taken to lie *in retentis*. A bill of advocation was presented, on the ground that the seizure was triable only before the Exchequer, and the Admiral had no jurisdiction. THE LORDS refused the bill, and found that the Admiral had committed no iniquity on such previous step.

The like was found, on the same day, Kyd *against* Liddell, where the question was singly on the competency of the Admiral. See APPENDIX.

*Fol. Dic. v. 3. p. 352.*

1761. February 10.

ALEXANDER STEPHEN Merchant in Leith, *against* The OFFICERS of the CUSTOMS at Stromness.

No 235.

THE ship Erskine of Alloa, John Nicoll master, loaded with rum in great and small casks, belonging to Alexander Stephen merchant in Leith, arrived in the harbour of Stromness upon the 3d of August 1759; and some days thereafter, Andrew Ross collector of the customs, and some of the other officers at that port, suspecting that she was upon a smuggling voyage, laid hold of the ship, carried her sails on shore, unloaded part of the cargo, and made a seizure of 14 small casks of rum, containing 42 gallons each, and then allowed the ship to proceed on her voyage with the rest of the cargo, after having detained her from the 8th of August to the 15th of September.

Action of damages pursued before the High Court of Admiralty, against officers of the customs, for seizing and detaining a ship, found to be a maritime cause, and advocation of it refused.

The 14 small casks being returned for seizure, an information was filed in the Court of Exchequer, in name of the seizure-maker; and Alexander Stephen having appeared and claimed the property, the cause went to issue.

In the mean time Stephen brought an action of damages before the High Court of Admiralty for the seizure of the small casks, and for reparation of the loss sustained by the detention of the vessel for so long a time, and damage done to the large casks in loading and reloading the cargo. The Judge-Admiral stopt procedure in the cause until the merits of the seizure depending in the Court of Exchequer should be first tried. Accordingly, the trial came on in July thereafter, and the jury returned a verdict for the defender; but the Court, in respect of the circumstances of the case, 'certified upon the record, 'That it appeared to them there was a probable cause for the seizure.' And the action of damages being then insisted in, the Judge-Admiral pronounced

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decree, assoilzieing the defenders from all the conclusions of the pursuer's libel.

The pursuer offered a bill of advocation to the Court of Session, founded upon the alleged iniquity of the Judge-Admiral's interlocutor, which advocation was objected to by the defendants as incompetent, in respect that the cause was strictly maritime; and therefore, by act 16th, Parl. 1681, could not be brought by advocation to the Court of Session.

*Pleaded* for the pursuer; This action might have been originally brought before the Court of Session, and therefore may be removed to it from the Court of Admiralty by advocation. The privative jurisdiction which the statute 1681 gives to the Judge-Admiral, respects those cases only, which, from the nature of the action, can only be pursued in the first instance before that Court. The abuses committed in the present case were of a mixed nature, committed partly on the sea, partly on the land; for, though the offence was begun by laying hold of the vessel in the harbour of Stromness; yet, as the sails and other appurtenances of the ship were carried to land, and there detained, the crime becomes of a complicated nature, and a cumulative jurisdiction thereby arises to the Court of Session, or Judge Ordinary, as well as to the Admiral, to take cognizance of this complicated offence. Besides, though a crime or delict committed upon the high seas may be only competent before the Admiral, yet where it happens in a port within the limits of Scotland, the action of damages thence arising is not, strictly speaking, a maritime cause, but may competently be brought before any Judge Ordinary. Causes maritime are those which have a necessary connection with navigation, such as questions concerning charter-parties, mutiny on board a ship, &c.; but the illegal seizure and detention of a ship or cargo when in port, is by no means of that kind.

*Pleaded* for the defenders: ' By act 1681, the High Court of Admiralty is declared to have the sole privilege and jurisdiction in all maritime and seafaring causes, foreign and domestic, civil or criminal, within this realm; and the act prohibits and discharges all other judges to meddle with a decision of any of the said causes in the first instance, and expressly prohibits and discharges all advocations in the foresaid causes from the said Court of Admiralty to the Lords of Session, or any other judges whatever.' In the present case the action of damages is founded solely upon the illegal seizure and detention of the ship and cargo. The detention of the sails on shore created no damage, because they could be of no use to the owner while the ship itself was detained; and therefore, as the seizure and detention in this case was not only made but continued upon the sea and in the harbour of Stromness, it is impossible to doubt that the action of damages thence arising is a simply maritime cause, subject to the privative jurisdiction of the Admiral in the first instance; and the only jurisdiction competent to the Court of Session is that of reviewing the Admiral's decree by suspension or reduction.

' THE LORDS found the advocaion not competent ; and therefore refused the bill.' No 235.

Act. Lockhart. Alt. Advocatus. Clerk to the Bills.  
*J. C.* *Fol. Dic. v. 3. p. 351.* *Fac. Col. No 19. p. 34.*

1765. February 8. CAMPBELL against MONTGOMERY.

No 236.

IN a question respecting the legality of a seizure made at sea, an objection was made, that the cause being maritime, was exclusively cognizable by the Court of Admiralty.—THE LORDS repelled the objection.

*Fol. Dic. v. 3. p. 352. Fac. Col.*

\*\*\* This case is No 89. p. 7359.

1768. July 16. HAIG, DAES and Company against CAMPBELL.

No 237.

THE Admiral-depute of Alloa having pronounced decree for the price of some Norway logs, the defender advocated the cause on the ground, that inferior Courts of Admiralty have no jurisdiction in causes purely mercantile.

Inferior Admirals not competent to causes purely mercantile.

*Answered* for the pursuer ; The act 1592, c. 160. was only intended for repressing extraordinary and oppressive clauses in grants of Admiralty. The act 1681, c. 16. though it has been denominated the great charter of the Court of Admiralty, is not the measure of its jurisdiction. It relates only to the private jurisdiction enjoyed by that Court in maritime causes. The connection of maritime and mercantile causes had naturally led the High Court of Admiralty to judge in both, long before that statute. That jurisdiction has been uniformly exercised, as far back as the practice can be traced, and it has been supported by several decisions.

If the jurisdiction of the High Court of Admiralty extends to mercantile causes, that of inferior Admirals, derived from the same authority, though limited in territory, must be equally extensive in kind. And the decision 27th June 1759, Miller *contra* Sawyers, No 233. p. 7514. proceeded on the ground, that the defender did not live within the territory of the Admiral-depute, as fixed by his commission.

*Replied,* The jurisdiction of the High Court of Admiralty, derived from statute, relates to maritime causes only. Its jurisdiction in mercantile causes took its rise from custom, and cannot be carried farther than that custom has gone, or extended to inferior Admirals, who have not been in the practice of exercising it, as appears from the decision, Miller *contra* Sawyers, which shows, that,