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in 1759, it seemed a novelty to the Court, for an inferior Admiral to judge in causes not maritime.

For illustrating the point, the defender referred to Balfour; p. 629. c. 83. and 634. c. 100.—See APPENDIX.

‘ THE LORDS found, That the Admiral-depute had no jurisdiction in this case, and therefore sustained the declinature, assolizied the defender, and found the pursuers liable in expenses.’

Reporter. *Auchinleck.*Act. *Crosbie.*Alt. *Armstrong.*

G. F.

Fac. Col. No 73. p. 317.

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An arrestment was objected to as used in Edinburgh by virtue of a precept of the Admiral-depute of Leith, the objectors insisting, that he had no jurisdiction in Edinburgh. The jurisdiction was sustained, it being proved, that the Admiral-depute was in the custom of exercising his jurisdiction over the inhabitants of Edinburgh.

1772. March 5. JAMES CRAIG against ROBERT & JOHN JAMIESON.

In a competition between these parties, as creditors to Alexander Skinner, baker in Leith, an exception being taken to the validity of an arrestment used by Jamiesons, in the hands of some persons residing in Edinburgh, upon a depending action which they had brought against Skinner, before the Admiral-depute of Leith, and, by virtue of his precept; and Craig, the objector, claiming the sum *in medio*, which was due upon an open account, in virtue of an indorsation from the common debtor, posterior to the arrestment, the LORDS “ before answer, ordered a condescendence to be given in of the Admiral-depute of Leith’s jurisdiction, and exercise thereof, particularly over the inhabitants of the town of Edinburgh, and of the use of his judging in mercantile causes, not strictly maritime.”

A condescendence was accordingly given in, stating in the entry, that no power or jurisdiction conferred on the city of Edinburgh, has been more universally understood and acknowledged than this; that the admiralty jurisdiction of the Lord Provost and Magistrates of Edinburgh, which has been always exercised by their depute, called the Admiral, or Admiral-depute of Leith, and by two resident Bailies in Leith, called Admirals-substitute, extends over every place subject to the jurisdiction of the Lord Provost, as Sheriff of Edinburgh, and the liberties thereof.

And, as to the city of Edinburgh in particular, it being an incontrovertible maxim in law, that no judge can act *extra territorium*; whence it must necessarily follow, that the jurisdiction of every court must extend over that territory where it is authorised to judge; so, it is an admitted fact, that the Lord Provost, Magistrates, and Town Council of the city of Edinburgh, and their deputies, have, in their character of Admirals, a power to sit and judge, not only within the town of Leith, and shore thereof, but also within the city of Edinburgh itself, as appears by a charter from James VI. dated at Whitehall, 3d April 1616, and specially confirmed by another, granted by Charles I. In pursuance of which powers, it appears from the diet-books of the Admiralty.

court of Leith, that such courts have been actually held in Edinburgh, where the proceedings went on in the same manner as in Leith. Thus, it is instructed, by an extract from the Admiral-depute's diet-books, that, on the 2d September 1707, the Court was adjourned, and ordained to meet at the High Council-house of Edinburgh, the day following: "And the Judge ordains procurators, parties, and others concerned, to attend there accordingly." In consequence of this adjournment, the Court did actually sit, and proceed to business, in the High Council-house of Edinburgh, 3d September 1707. Another instance of this Court being held in the High Council-house of Edinburgh, occurs on 7th September 1720, where business went on in the ordinary course. Many more instances might have been shewn, had not many of the books and records of this Court been destroyed in the year 1745, by the rebels, who kept their guard in the tolbooth-hall of Leith, where that Court commonly meets; and, it is well known, that, on that occasion, they destroyed and carried off multitudes of books and papers, by which considerable chasms occur in the records of the Admiralty-court in Leith.

2do, With regard to the Admiral-depute's use or exercise of this jurisdiction over the inhabitants of Edinburgh, the pursuers, notwithstanding excesses committed by the rebels, have found as many instances as will fully satisfy the Court. By an excerpt from the diet-book of the Admiralty Court of Leith, duly authenticated by the Clerk of Court, it appears, that, from November 26th 1667, to March 23d 1669, (that is, in a space of little more than fifteen months, at a time when the commerce of this country could occasion but few disputes of this sort,) six different actions were brought before that Court against persons residing in Edinburgh, and one in the same period against an inhabitant of Canongate. The pursuers have also produced authenticated excerpts from the register of the Admiral-depute's decrees, from March 5th 1670, to December 14th 1675, during which period there were no less than sixteen decrees extracted against different persons residing in Edinburgh, and three against inhabitants of North Leith, which, in all cases not cognoscible by an Admiralty Court, is subject to the jurisdiction of the bailies of Canongate. From this excerpt, it appears, that an arrestment had been used by virtue of the Admiral-depute's precept, in the hands of James Warrouch merchant in Edinburgh, and a forthcoming raised thereon. But a ship-master, then at Leith, who was likewise called in the forthcoming as an arrestee, having appeared and acknowledged his being possessed of goods belonging to the principal debtor, the decree of forthcoming was therefore extracted against him only. In the register, from which this excerpt is taken, there appears a decree against Janet Hart, relict of the deceased James Gibson, sometime master of the ship Phoenix, and William Wilson, husband of the said Janet, decerning Wilson and his spouse, and George Scott, burgess of Edinburgh, their cautioner, *de judicio sisti et judicatum solvi*, to pay the pursuer L. 69 : 18 : 2 Sterling, as the value of certain shares of a ship. In that pro-

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cess, the first defence for Wilson and his spouse, was, that the water-bailie, or Admiral-depute, was not a judge competent to said defenders, because they lived *extra territorium*, viz. in Edinburgh, which was repelled, and decree pronounced upon peremptory defences, By the embezzlement of papers in 1745, and the confusion of those left by the rebels, the pursuers cannot, without almost infinite labour, condescend with certainty, upon any more decrees or judicial proceedings against inhabitants of Edinburgh preceding the year 1747; but, from a list of decrees certified by the clerk, commencing November 24th 1747, and ending May 30th 1771, there appears, during that period, a continued series of judicial proceedings before the admiral of Leith against sundry persons residing in the city of Edinburgh, Canongate, and other suburbs, upon which no fewer than forty decrees were extracted. And it is well known, that, at an average, the proportion of decrees extracted before inferior courts, to depending actions, on which no extracts are required, is hardly as one to ten; so that, if the diet-books of the earlier periods were extant, and the several processes inspected, both for those and later times, the instances of the exercise of this jurisdiction would be vastly increased; insomuch that, upon the whole, it is believed few inferior courts in this kingdom could show such an uninterrupted exercise of jurisdiction over the several parts of their territories. Of this list of decrees, twenty-eight were against persons residing in Edinburgh, and the rest against different inhabitants of North Leith, Portsborough, back of the Canongate, Canongate itself, Calton, Watergate, Cross-causeway, and Pleasance:

3^{to}, As for the next part of the interlocutor respecting the Admiral-depute's use of judging in mercantile causes, not strictly maritime, the outrages committed by the rebels render it impossible to produce near so many instances of that practice preceding the year 1745, as could have been otherwise got. However, in the above mentioned extract from the diet book, commencing in the 1667, three actions are mentioned, which do not appear to be maritime, and must have, therefore, been mercantile; for all the causes purely maritime are there distinguished from the others by the epithet "water-claims;" and, in the extract from the register of decrees, are found a decree of forthcoming in March 1670; a decree for payment of a bill of exchange in March 1671; another for the contents of an inland bill, or precept, in October following; and a third for timber sold in August 1672, none of which can be properly called maritime, but were mercantile cases. Of the list of extracted decrees commencing in 1747, twenty are for mercantile debts; and all these mercantile causes here condescended on are against persons in Edinburgh, North Leith, Canongate, &c.; for the pursuers thought it unnecessary to trouble the Court with enumerating the many instances of mercantile actions against the inhabitants of Leith itself, that daily occur before that Court. At the same time, they apprehend, that such instances tend to establish the ju-

jurisdiction of the Court in such cases, as much as those against citizens of Edinburgh, &c.; for, if the Court is satisfied, that the Admiral of Leith has a jurisdiction over the inhabitants of Edinburgh, as well as those of Leith, then it must follow, that every sort of action that is cognizable by him against the inhabitants of the one town, is competent against those of the other.

Upon advising this condescendence, with answers thereto, and former papers,

“THE LORDS find possession proved in this case sufficiently to support this diligence, and find the arrestment preferable to the indorsation.”

Reporter, *Stonefield.* Act. *Al. Wight.* Alt. *B. W. M'Leod.* Clerk, *Campbell.*
Fol. Dic. v. 3. p. 353. Fac. Coll. No. 13. p. 32.

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1776. June 14. BEUGO & BRYCE against M'LEIRY.

THE LORDS found a Judge Admiral-depute had no jurisdiction in a cause purely mercantile, as an action of damages for non-implemēt of a bargain for the purchase of a cargo of hides. See APPENDIX.

Fol. Dic. v. 3. p. 353.

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1778. February 11.

GRIZEL BARTHOLOMEW and Others against PETER CHALMERS.

HENRY STEEL, master of a vessel, having died on a voyage to Grenada, Chalmers, the mate, came to have the command, and intromitted with the whole effects of Steel on board the ship. Bartholomew, and other representatives of Steel, pursued Chalmers before the Admiral, to account for his intromissions with these effects.

The Admiral ordained the defender to find caution *judicio sisti et judicatum solvi.*

Chalmers brought this cause into Court by advocacy.

The pursuers insisted, That the cause was strictly maritime, because the *locus quasi contractus* was on shipboard, the intromission being made there.

Answered for the defender, It is established law, that the privative jurisdiction of the Admiral is not founded either on the *locus contractus* or *quasi contractus*, but solely on the cause being of a maritime nature, which this action is not, Campbell against Montgomery, 8th February 1765, No 89. p. 7359.

The Court found “this cause not to be maritime, therefore advocated.”

For Chalmers, *Robertson.* Alt. *Claud Boswell.*

Fol. Dic. v. 3. p. 352. Fac. Col. No 12. p. 25.

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