

1805. *February 1.*CONNERY and SON, *against* LORD DUNDAS, and Others.

No. 14.

The Vice-Admiral of Orkney and Shetland has no power to interfere with the management of goods saved from vessels stranded on his coast, the owners themselves having given sufficient authority for taking charge of them.

A PETITION and complaint was presented in the name of Richard Connery and Son, merchants in Dublin, and Patrick Fotheringham, writer in Kirkwall, their attorney, against the Right Honourable Thomas, Lord Dundas, Vice-Admiral of Orkney and Shetland, James Watson, Depute-Admiral, and James Sinclair, Procurator-fiscal of the Vice Admiralty-Court, on account of an interdict granted by the Vice-Admiral-Depute, to prevent the sale of the cargo of a vessel, the property of the complainers.

This vessel, which was named the Brigantine Favourite of Christiansand, was laden with a cargo of deals, belonging to the complainers; and, in the course of her voyage from Drontheim to Dublin, was forced on shore, by stress of weather, on the island of Papa Stronsay. The vessel was considerably damaged, but no lives were lost, and the whole cargo was preserved. The master gave authority to the complainer Mr. Fotheringham, to act as agent, and to adopt such measures as might appear for the interest of the owners. This was afterward confirmed by a letter from Messrs. Connery and Sons, who authorised Fotheringham to sell the cargo, if the vessel should be unfit to prosecute her voyage. The vessel was accordingly inspected by tradesmen, who reported, that she was unfit to proceed; and the cargo was advertised to be sold, by public roup, at Papa Stronsay. Before the day of sale, the Procurator-fiscal intimated to Mr. Fotheringham, that he considered it as his duty to investigate the powers which he had for selling this cargo, "without application being first made to the Admiral, who is the sole and exclusive judge in all wrecks and maritime matters that happen within his jurisdiction." To this requisition, it was replied by Fotheringham, that the vessel, in this case, was not wrecked, but merely stranded; and he shewed the letters, in which he was authorised by the owners to take charge of their property.

The Procurator-fiscal, however, presented a petition to the Admiral-depute, in which he set forth, that this interference was an infringement upon the privileges of the Vice-Admiral of the bounds, who alone was entitled to order such sales, and praying for an interdict to prevent the sale. The Vice-Admiral granted the interdict; but Fotheringham protested, that the Vice-Admiral-depute had no authority to grant any such interdict. The sale took place on the day appointed, and part of the cargo was sold; but on account of the interdict of the Admiral, the purchaser refused to pay the price.

Upon this, the petition and complaint was presented, setting forth these facts, by which the complainers suffered a loss, both in consequence of the interdict having deterred purchasers from coming forward at the sale, and also of the purchaser of the part of the cargo which was sold having refused to pay the price, contending, that the Admiral's power was limited to wrecks, and that he

had no right to interfere with stranded vessels, or prevent the owners of the cargo from disposing of it as they thought proper; 12th Anne, § 2. Cap. 18; 4th Geo. I. Cap. 12; 26th Geo. II. Cap. 19; 17th February 1725, Monteir, No. 4. p. 16796; 19th February 1751, Lord Panmure, No. 6. p. 16798; Erskine, B. 21. Tit. 1. § 18; and concluding, "That the said Lord Dundas, James Watson, and James Sinclair, are liable, conjunctly and severally, in damages to the complainers, to the extent of £500."

No. 14.

It was answered upon the part of the Admiral, That he had a power with regard to stranded vessels, to take charge of the vessel and cargo for behoof of all concerned; that stranded ships were inserted in the commission granted by the Crown to the Admiral, and that the usage of Orkney hitherto has been invariable with regard to this jurisdiction. It was further contended, that it was highly expedient this trust should be reposed in the Admiral, who was a responsible person, instead of agents, who offered their services with a view to their own emolument, and had no regard for the interest of the proprietors of the cargo.

The Court, upon advising the petition and complaint, with answers, replies and duplies, were clearly of opinion, that the proceedings of the Vice-Admiral-depute, and his Procurator-fiscal, were illegal and unwarrantable. They therefore found them liable in damages and expenses, and remitted to the Lord Ordinary to proceed accordingly.

Lord Ordinary, Glenelg. Act. Clerk, Gillic. Agents, J. Macvicar. Alt. Solicitor-General, Blair, Robertson, Bruce. Agent, G. James, W. S. Clerk, Mackenzie. J. Fac. Coll. No. 196. p. 439.

1805, February 27. GRAHAM, Petitioner.

THOMAS OLIVER, merchant in Hawick, having refused payment of his accepted bill to John Graham, brewer there, a protest (2d Jan. 1805) was taken, and recorded in the Bailie-court books of Hawick. An extract of this protest, having a decree interponed by the Magistrates of that Burgh, together with their precept subjoined in common form, having been presented to the Clerk of the Bills, for letters of horning, a doubt occurred, how far such was competent.

The point was reported by the Lord Ordinary on the Bills.

Hawick is a Burgh of Barony, independent of the superior. Its privileges are enjoyed, in consequence of a charter of erection, by James Douglas of Drumlanrig, dated 11th October 1537, proceeding on the narrative, that the old charters and evidents had been lost and destroyed by the inroads of the English and thieves, in the bypast times of enmity and war, by which it appeared, that

No. 15.

Horning competent on the extracted decrees of the Magistrates of Burghs of Barony, if they have been made independent of their superior, prior to the jurisdiction act.