

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

No 226.
The Admiral incompetent to judge in an action for exhibition of bonds grant-

No 226.

ed to a factor
in Scotland
for the price
of goods sent
to him from
abroad to be
sold here, as
not being a
maritime
cause.

had sold the wines and fruits to, or otherwise to pay a great sum to the pursuer as a partner in these goods.

THE LORDS advocated the cause from the Admiral, as not being maritime; because an exhibition of writs, granted for the price of goods sent from abroad to a factor in Scotland, to be sold there, is no more a sea-faring cause, than the sending letters about business by a Council post, could drag the party employed before the Council. Because, the nature of a contract is to be judged from the place in which it is to receive execution, without respect to the manner of sending the commission for that effect, or to the condition of the bearer of the commission; and 'tis as absurd for the Admiral to judge in this affair, as to set up a privative claim to cognosce all factor accounts.

Fol. Dic. v. I. p. 503. Forbes, p. 164.

1738. July 21.

No 227.

PROCURATOR-FISCAL of the High Court of Admiralty *against* MACKENZIE.

THE Judge-Admiral is not so much confined even as other Judges may be, to try crimes by an inquest, being not only Justiciary *super mare*, but also a Magistrate of Police, and as such in use to try trespasses upon the sea *de plano*; on which ground chiefly, the reason of suspension of a decree of the Judge-Admiral, that he had proceeded to the trial of an atrocious crime without a jury, was repelled.

Kilkerran, (JURISDICTION.) No 1. p. 299.

* * * C. Home reports this case :

THE question betwixt these parties was, Whether the Admiral could judge without a jury, on a libel brought at the Fiscal's instance only, against Mackenzie of Corrie, charging him with plundering and pillaging boats on the high seas, exacting foreland dues, &c. contrary to the statute 1705; concluding for a fine of L. 100 Sterling; and that he should be declared incapable to exercise the office of bailiary in time coming.

For the Procurator-Fiscal, it was *contended*; That, neither by law nor custom, an assize was requisite or competent, the matter libelled not being capital, or what was punishable; and, as the Judge-Admiral has a sovereign jurisdiction, both civil and criminal, in matters done upon, or concerning affairs at sea, he has likewise a mixed jurisdiction in matters betwixt the two, which are of the nature of trespass and damage; and, as Bailies of regality, Sheriffs, &c. can judge in trespasses or spuilzies, *per modum querelæ*, without an assize, in the same manner may the Judge-Admiral.