

1776. March 8. PATRICK SHANK *against* WILLIAM and THOMAS FORSYTH.

JURISDICTION.

The freighter of a ship having put prohibited goods on board of her, in consequence of which she was seized and condemned; *Found*, That an action of damages on this account, at the instance of the owners, was a maritime cause.

THE defenders freighted a vessel belonging to the pursuer, for a voyage to Gottenburgh. The avowed object of the voyage was to bring home a cargo of iron and wood; but it appeared that a quantity of tea and spirits were taken on board and smuggled into Scotland. In consequence of this, the vessel, soon after her return, was seized and condemned in Exchequer. The pursuer, alleging that the defenders, by engaging in the smuggling adventure, had occasioned this loss to him, brought an action of damages against them in the Admiralty Court, concluding for £256:10s., the value of the ship, which he alleged had been forfeited in consequence of their tortious act, and for a further sum of damages sustained by the loss of her employment. In this process, the Admiral "found that the defenders are not chargeable with any part of the said loss and damages." Of this judgment the pursuer complained, by bill of advocacy.

PLEADED by the defender,—The advocacy is incompetent, the cause being maritime. The action is founded on a supposed adventure, in carrying prohibited goods over sea, in a ship freighted from the pursuer. The cause, therefore, is chiefly maritime. *Stevens against The Officers of the Customs*, 10th February 1761.

ANSWERED,—It is only to causes strictly maritime that the Act 1681 applies; but the present is not a case of that kind. It is an action of damages, founded upon a wrong done by the defenders. The obligation to pay damages is an ordinary civil debt; and it makes no difference upon its nature, that the wrong out of which it arises has been done upon the high seas. *Rowen against Darling*, 21st February 1694,—*Crosbie against Corbet*, 25th February 1741. According to the defenders' doctrine, an action of damages for beating a man at sea, or defaming him by words uttered on shipboard, would be maritime.

The following opinions were delivered:—

COVINGTON. It is difficult to ascertain the precise limits of the Admiral's jurisdiction. A contract of marriage executed at sea would not give the Admiral a privative jurisdiction as to it. It may be said that *here* there is not action for performing a maritime contract, but rather an action on account of a tortious act. The purchasing of the unlawful goods was on land; and the completing of the tortious act, by bringing them to shore, was also on land. At the same time, this is a mixed case; for this was a breach of the contract, which was to land lawful goods. But I think that, upon the whole, the matter is maritime, and must be tried in the first instance by the Admiral.

KAIMES. This case is both mercantile and maritime. We cannot separate what is mercantile from what is maritime.

GARDENSTON. I think that this is a maritime cause, or contract of freightment to take in goods of a certain species. In place of that, the freighter takes in goods of another species, which is prohibited; and by that means the ship is forfeited. This is a breach of the contract.

MONBODDO. A contract of freight is a maritime cause; and, consequently, the breach of that contract is maritime.

HAILES. The only doubt is here, that the breach of the contract did not happen till the goods were landed; so that the offence for which the ship was condemned, did not take place at sea. It was for landing goods, not for hovering, that the ship was condemned.

On the 8th March 1776, "The Lords found the case maritime, and refused the bill of advocacy."

*Act. G. Wallace. Alt. Hay Campbell.  
Reporter, Covington.*

1775. December 19, and 1776 June 13. JOHN BEUGO and JAMES BRYCE *against* DAVID MACLEIRY.

#### JURISDICTION.

Whether a Judge-admiral-depute has jurisdiction in causes merely mercantile?

[*Fac. Coll. VII. 218; Dict., App. I., Jurisdiction, No. 2.*]

GARDENSTON. I think that the Admiral-deputes have no jurisdiction in mercantile causes. The Judge-admiral is always a man of character and abilities. We have not the same security as to the Admiral-deputes. There may be no inconveniency in leaving such a jurisdiction with the Judge-admiral, but there may with the Admiral-deputes. The jurisdiction of the High-admiral is limited, by Act of Parliament, to maritime causes. This jurisdiction has been extended, by usage, to a cumulative jurisdiction in mercantile causes, and, I doubt not, for the benefit of the public; and this has been established by many decisions. But there is no decision in favour of the Admiral-deputes. The contrary was expressly found in the case of *Daes against Campbell*. The special plea of usage in that particular district of Clyde is out of all sight. A jurisdiction belonging to a class of judges must be equal in all its parts: it must belong to all or none. I can have no notion of a prorogation unless there were a radical jurisdiction. Parties must not be hurt by the carelessness or ignorance of their procurators in inferior Courts. My only doubt is how far this may be considered as a cause purely mercantile. It looks like a commission for bringing goods from a foreign country.

HAILES. The general question occurred in the case of *Daes and Campbell*, as to the Admiral-depute on the Forth at Alloa, but it was not determined any further than that the Court refused to sustain the jurisdiction of that Admiral-depute, who had not formerly assumed a jurisdiction in mercantile causes. The