

several respects from this. For, *first*, with respect to the cruives, every single act of contravention was a damage to the superior heritors; whereas the heather on the hill of Molundy may be kindled, and has been kindled, thousands of times, without any danger to the pursuer. *2dly*, In that case, the damage to the superior heritors, though certain, was incapable of estimation, as it was impossible to say what part of the fish, intercepted by the legal cruives, would have been taken by any of the superior heritors. And, *lastly*, in that case, there was a continued practice of delinquency, for several years, proved against the defenders.

“ THE LORDS assoilzied, and found expenses due.”

Act. Advocatus, Solicitor, *Lockhart, Henry Dundas.* Alt. *Burnet, Maclaurin.*
J. M. Fol. Dic. v. 3. p. 342. Fac. Col. No 2. p. 3.

1765. February 8.

COLIN CAMPBELL, Commander of a Revenue Sloop, against JOHN MONTGOMERY, &c.

IN the month of August 1761, Martin Campbell, mate to Colin Campbell, seized two vessels belonging to Newry in Ireland, loaded with Irish meal; the one lying at anchor in the harbour of Tobormory; and the other in the sound of Mull, near to the coast of Morvern. Having brought these vessels to Fort-William, he presented a petition to the Sheriff of the county, praying that the meal and vessels might be condemned, in terms of the statutes 3d Cha. II. anno 1672, Cap. 3, and of Queen Ann, chap. 9. 1703.

A proof being granted to both parties by the Sheriff, relating to the nature of the seizure, he was pleased to assoilzie the defenders, and to ordain the ship and cargo to be restored.

Before the proof was concluded, or a sentence of absolvitor obtained from the Sheriff, the season became too far advanced for the proprietors of the cargo to prosecute their intended voyage for North Faro in Norway, whither they were bound. The damage sustained by this delay made them bring a process before the Court of Session, containing certain indemnatory conclusions for the reparation of the loss they had suffered by this illegal seizure.

The cause being called, parties were ordered to produce the whole procedure before the Sheriff. Which interlocutor having been obtempered, and Captain Campbell failing to compare, decret in absence was pronounced against him.

Being charged upon this decret, Campbell *pleaded* a declinator to the jurisdiction of the Court, founded upon the act of Parliament 1681, chap. 16. by which it is provided, that the High Admiral should have the sole jurisdiction in all maritime and sea-faring causes, of whatever kind: That in this case, as in

No 88.

No 89.
 An unlawful seizure made at sea by an officer of the revenue, is nor the subject of a private jurisdiction to the Admiral, but may be tried before the Court of Session.

No 89.

most others, the place of committing the crime fixes the jurisdiction; and here, the unlawful act being done at sea limits the cognizance of it to the High Admiral alone.

On the part of the chargers it was *pleaded*, That neither the *locus delicti* nor the *locus contractus* determined the jurisdiction; but that the nature of the cause alone could, properly speaking, render it strictly maritime; that the exclusive jurisdiction of the Admiral, agreeable to the opinion of all our lawyers, was confined to questions concerning charter-parties, freights, salvages, bottomry, and policies of insurance; that what rendered a cause properly seafaring, was its relation to foreign trade; such as the importation or exportation of foreign commodities; and that murder, rape, incest, or any other crime, did not come within the jurisdiction of the Admiral, though committed at sea.

“THE LORDS repelled the objections to the jurisdiction of the Court.”

Act. Burnet.

Alt. Advocatus.

A. C.

Fol. Dic. v. 3. p. 344. Fac. Col. No 4. p. 7.

No 90.

1765. February 15.

WILKIE against WALLACE.

An action against a person for scandal is competent before the Court of Session in the first instance.

A process was brought before the Court of Session by Robert Wilkie, merchant in Aberbrothock, and lately one of the bailies there, against Provost John Wallace, merchant in the same town, libelling. That the defender in May 1762. did fabricate, publish, and propogate a false and scandalous libel against the pursuer; and concluding, that the defender “should be decerned and ordained to make such palinode as the Lords of Session should decree to be just; further, to pay to the pursuer L. 400 Sterling in name of damages and assythment, and to be otherwise censured and punished as the said Lords shall think reasonable.”

As this was merely a verbal injury, which may be by writing as well as by speaking, the defender insisted that the commissary-court was the only proper court for actions of this nature at the first instance; and therefore he declined the Court of Session. I was clear for sustaining this declinator; for though damages for repairing a patrimonial loss come under the jurisdiction of the Court of Session, yet here there is no patrimonial loss specified, and the damages libelled are only for an assythment or *in solatium*, which with regard to verbal injuries come under the cognizance of the commissary-court, which is declared law by all writers. And there is a good foundation for the distinction; for a verbal injury is a crime only against Christianity and good manners, and therefore is justly confined to the ecclesiastical court. It carried, however, to repel the declinator. The only reason given was, That in several late cases of the same kind, action had been sustained in this Court at the first instance; and that it was now too late to retreat.

Fol. Dic. v. 3. p. 345. Sel. Dec. No 230. p. 305.