

No 241. 1778. July 28. CHALMERS against NAPIER.

An action for liberation of an indented apprentice to serve at sea is not a maritime cause so as to be cognoscible exclusively by the Judge Admiral; the Court of Session has a cumulative jurisdiction.

Fol. Dic. v. 3. p. 353. Fac. Col.

* * * This case is No 11. p. 594. *voce* APPRENTICE.

No 242.

By an act of Parliament, vessels belonging to certain colonies of America, were declared to be lawful prizes, and the High Court of Admiralty in England was vested with the power of taking cognizance of all such seizures. A vessel being brought into a Scots port, it was found, that the High Court of Admiralty in Scotland was the proper Court for judging whether this vessel was a lawful prize. But this decision was reversed upon appeal.

1778. December 18. JOHN MONRO against JOHN JACKSON and Others.

By the statute 16th Geo. III. commonly called the Restraining Act, it was enacted, that all vessels belonging to the inhabitants of certain colonies in America, (and, among others, South Carolina,) trading to or from these colonies, with their cargoes, should become forfeited to his Majesty. Subsequent to the act, letters-patent were issued under the great seal, directed to the Board of Admiralty, authorising and enjoining them "to require our High Court of Admiralty in England, and the Lieutenant and Judge of the said Court, and his surrogate or surrogates, as also the several courts of Admiralty within our dominions; and they are hereby authorised and required to take cognizance of, and judicially to proceed upon all, and all manner of seizures, re-captures, prizes, and reprisals, of all ships and goods already seized and taken, or which shall hereafter be seized and taken, and to hear and determine the same, according to the course of admiralty, and to adjudge and condemn all such ships." The Lords of Admiralty afterwards issued a commission to the Judge of the High Court of Admiralty in England, in the terms of the letters-patent.

In April 1777, the ship *George*, bound from South Carolina to Bourdeaux, was brought into the Frith of Clyde, having been seized by the crew in the course of her intended passage to France. In May following, his Majesty's procurator-general, in his office of Admiralty, took the usual steps for bringing the ship and cargo to trial in the High Court of Admiralty in England; and, after various proceedings, the Judge decreed the ship to be restored to a merchant company, by whom she was claimed; and condemned the cargo as prize and droits to his Majesty. A commission was, of consequence, issued from the English Court, to apprise and sell the cargo; but, before the complete execution of this commission, the Judge of the High Court of Admiralty in Scotland, upon application from the procurator-fiscal, granted warrant to arrest the said ship and cargo, and prohibited all persons from disposing of them until further orders of Court. Soon after, an action was brought into that Court, by the procurator-fiscal, against the master of the ship, on the re-

straining act, for declaring the ship and cargo forfeited to his Majesty. Appearance was made in this action for the Procurator-general of the English Admiralty Court, and the Receiver-general of the rights and perquisites of admiralty there, who contended, that the action could not proceed, as the final judgments of the High Court of Admiralty in England were pronounced, both as to ship and cargo, before any step was taken in it. This plea, in bar of the action, necessarily brought on the question, Whether the High Admiralty Court in England was competent to try the ship and cargo? upon which the validity of the plea depended. The Judge-Admiral found, "That the procedure had in the High Court of Admiralty in England, and all the after procedure had in consequence thereof, relative to the ship or brigantine, the May or George, and her cargo, libelled, is void and null, and can be of no avail nor effect in law, as to the said ship and her cargo libelled; and therefore found, that the said John Monro, Esq. pursuer, may proceed in the present action, and that in the same way and manner, and to the same effect, as if no such procedure had been had relative to the said ship and her cargo."

The defenders presented a bill of advocacy; and the Lord Ordinary having taken the cause to report on informations,

Pleaded for the defenders, It is needless, in this question, to go back into the constitution and history of the High Admiralty Courts in England or Scotland further than the Union. Before that time, the Court of Admiralty in England could have no jurisdiction in Scotland, as the two kingdoms were independent of one another.

The future jurisdiction of the Admiralty Court in Scotland was one of the subjects of discussion at the Union; and the manner in which it was settled is to be found in the 19th Article, and is in these words:

"That all Admiralty jurisdictions be under the Lord High Admiral, or the Commissioners for the Admiralty for the time being; and that the Court of Admiralty now established in Scotland be continued; and that all reviews, reductions, or suspensions, of the sentences, in maritime cases, competent to the jurisdiction of that Court, remain in the same manner after the Union as now, in Scotland, until the Parliament of Great Britain shall make such regulations and alterations as shall be judged expedient for the whole united kingdom; so as there be always continued in Scotland a Court of Admiralty, such as in England, for the determination of all maritime causes, relating to private rights in Scotland, competent to the jurisdiction of the Admiralty Court; subject nevertheless to such regulations and alterations as shall be thought proper to be made by the Parliament of Great Britain."

The supremacy of the High Admiral in England, over all other admiralty jurisdictions, being thus specially settled by the articles of Union, the High Court of Admiralty there has been considered as a British Court of Admiralty; competent to every question of prize where British subjects are concerned, into whatever port the vessel is brought. The Admiral Court in Scotland

No 242. is kept separate and distinct as to matters of private right only. But the trial of prizes is founded on the public authority of the state; and therefore is a matter of public law, in which the Court of Admiralty in Scotland can claim no jurisdiction privative of the High Court of Admiralty in England.

That Court, therefore, would be competent to the trial of a prize brought into a port in Scotland when taken in war with a foreign enemy. But, in this case, the ship and cargo were the property of the subjects of this country; and no Judge-Admiral had authority at common law to condemn these effects, their jurisdiction reaching only to the trial of prizes taken from a foreign enemy after proclamation of war. The express authority of statute was necessary to confer the powers which could entitle any Admiralty-court to condemn this ship and cargo; and therefore the question is, in what judges the jurisdiction is vested by the restraining act, the letters patent, and the commission from the Lords of Admiralty? But, in that statute, it seems to be understood, that the condemnation of prizes was to be either in the High Court of Admiralty in England, or in the courts of Vice-Admiralty. The forms of procedure established in the act apply only to those courts. No mention is any where made in the act of the Admiralty Court in Scotland; and, accordingly, no commission was issued to the Judge of that Court by the Lords of Admiralty; so that it does not seem to have been intended that such trials should at all come before it.

But the High Court of Admiralty in England is at least entitled to a cumulative jurisdiction with the Court in Scotland in the case of prizes brought into the ports of that country. The jurisdiction committed to the Judge of the former Court to try all prizes falling under the act, was meant to be universal over all Great Britain. The statute contains no exception nor limitation in point of place; and his commission from the Board of Admiralty is in like manner unlimited in this respect.

Answered for the pursuers, The High Admiral of Scotland had antiently extensive powers, both ministerial and judicial. The ministerial powers were exercised by himself; the judicial by his deputy, called the Judge of the High Court of Admiralty, who was vested with an important civil and criminal jurisdiction over all Scotland.

The jurisdiction of this Court was not encroached on at the Union. In no part of the articles is any thing to be found limiting the territorial jurisdictions of the courts formerly established in the respective kingdoms. These jurisdictions, therefore, in both countries, would have remained entire, though there had been no provision to that purpose; and, accordingly, in England, it was not thought necessary that any thing should be expressed with respect to their courts. But, from certain apprehensions entertained at the time, it was thought proper to provide some degree of security for the continuance of the jurisdiction of the courts of justice in Scotland. On this account, the provisions were made contained in the 19th article of Union, by which the Courts

of Session, Justiciary, and Admiralty, are continued in Scotland, with the same powers and jurisdictions which they had respectively before the Union. And it is also declared, that no "causes in Scotland be cognoscible by the Court of Chancery, Queen's Bench, Common Pleas, or any other court in Westminster-hall; and that the said courts, or any other of the like nature, after the Union, shall have no power to cognosce, review, or alter the acts and sentences of the judicatures within Scotland, or stop the execution of the same."

While the jurisdiction of the Court of Admiralty was thus secured to it, an alteration was so far made in the office of High Admiral, that, as before the Union, there were two High Admirals, there should, for the future, be only one for both countries, who was to be at the head of that department of the state called the Admiralty of Great Britain. This supremacy of the High Admiral is expressed by these words, in the 19th article, 'That all Admiralty jurisdictions be under the Lord High Admiral, or Commissioners for the Admiralty for the time being.' It is the powers of the High Admiral, in his ministerial department, which are here meant and intended. This passage has no reference to the Admiralty Court of Law, which is not subject to the controul of the High Admiral, nor the Commissioners coming in his place. The Judge of it, from his nomination, is vested with the whole jurisdiction belonging by law to that Court, and acting in his judicial capacity, is totally unconnected with the Board of Admiralty, and must distribute justice independent of any orders from that Board. The jurisdiction, therefore, of the Admiral Court of Law in Scotland for determining the rights of parties in all maritime cases remained with it, to the same extent after the Union as before, and was secured by the articles of that treaty against any encroachment of other Courts upon it, or any alteration but what should be enacted by express statute. One part of the ancient exclusive jurisdiction of this Court was, the right of trying, in the first instance, all prizes taken and brought into the ports of Scotland; Balf. Pr. tit. Sea Laws; Stair, B. 2. T. 2. And no reason can be given, why the Judge of an English Court should be entitled to encroach on this part of its jurisdiction more than any other. It is of no consequence in this question, that the forfeiture of prize is founded on public authority. A claim on ships and goods as lawful prize is, in the strictest sense, a question of private right, though it is a public law from which it arises. Accordingly no English Judge has, before this instance, ever attempted to condemn a prize lying in a port in Scotland.

There is no distinction as to the point of jurisdiction, whether the prize is taken from a foreign enemy, in virtue of a proclamation of war, or from subjects, in virtue of a statute, such as the present. An act of parliament may point out an offence, and declare a punishment, without restricting the trial of it to any particular Judge. Statutes of this kind are the most common; and the trial of cases falling under them, according to a fixed rule of law, is in that Court to whose jurisdiction cases of the like kind belong. The restraining act is a sta-

No 242.

tute of that nature. It has declared the offence, and what circumstances the ship and cargo must be in, to warrant the forfeiture ; but it has given no jurisdiction to certain Courts of Admiralty, exclusive of others, in judging the questions that may occur under it.

The Court of High Admiralty in Great Britain is not mentioned in this act as privative of others ; on the contrary, the act supposes, that every Court of Admiralty is competent to try these questions. In the clause, vesting the property of the prize in the captors, it is added, ‘ being first adjudged lawful prize ‘ in any of his Majesty’s Courts of Admiralty.’ Neither does the statute give any authority to the Judge of the High Admiral Court in England to condemn prizes in the ports of Scotland, or any where, to which his jurisdiction, in that question, does not reach at common law. It is evident, that all the Legislature had in view, was, that the same Judges who are competent to try questions of prize in a war with a foreign enemy, should likewise be competent in the present case. The particular place within which either High Admiral or Vice-Admiral Courts in England are to exercise their jurisdiction, is not specially mentioned in the act ; nor was there need of it, as every Judge, high or subordinate, must understand that he cannot exercise his jurisdiction in the territory of another. And it is no excuse for such encroachment, that the act is silent in this respect, and does not in terms prohibit it.

If the statute does not authorise the extending of the jurisdiction of the English Court to the ports of Scotland, no letters patent, nor warrants, proceeding from whatever other authority, can have that effect. But the letters patent, in this case, discover no intention of that kind. The Board of Admiralty is ordered to issue requisitions ‘ on the several Courts of Admiralty within the King’s ‘ dominions,’ as well as on the High Court in England ; and they contain an authority, independent of the commission from the Admiralty, to all of these Courts, to judge in cases falling under the act.

THE COURT were clearly of opinion, that the judgment of the High Court of Admiralty was well founded, and the bill was refused.

Lord Ordinary, *Stonefield.* Act. *Ilay Campbell.* Alt. *John Monro.* Clerk, *Tait.*
Fol. Dic. v. 3. p. 351. Fac. Col. No 40. p. 82.

* * * This decision was reversed on appeal. In the Appendix to the Faculty Collection, it is erroneously said, that it was affirmed.

Fol. Dic.