

picion of forgery in a policy, or in the subscription of any underwriter. Nay, the present question itself affords a similar instance, for it too respects the vitiation of a policy by the commission of a fraud ; at least, it must be ranked with those causes which may be tried in either court, such as what relates to average loss, regulated by the *Lex Rhodia*. In all cases not maritime, advocacy from the Admiralty Court is competent (as that of Bartholomew, No 240. p. 7521. ;) which will always be allowed, except where the pursuer alone, who himself has made choice of the Admiralty Court, seeks afterwards to advocate. But though the Court of Session had been otherwise incompetent, their jurisdiction has been prorogated by the parties litigants ; for, having been a radical one, though afterwards limited, it may be thus again extended by consent, Brown *contra* Burnet, No 29. p. 7314. ; Sheriff-clerks *contra* Commissary-clerks, No 27. p. 7310 ; in which last case, one like the present is given as an instance of prorogation.

No 244.

Some of the Judges thought the prorogation effectual to extend the powers of the Court, though the cause were strictly maritime, on account of its original jurisdiction, which was not taken away by act 1681. Others, who seemed to deny this prorogation, considered the cause as not maritime, observing, that the criterion of this matter is, whether execution is to fall within the limits of the Admiral's proper jurisdiction.

"THE LORDS sustained their jurisdiction in the first instance, and adhered to their former interlocutor."

Lord Ordinary, *Menboddo*.
and *Ilay Campbell*.

Act. *Crosbie, Scot.*
Clerk, *Campbell*.

Alt. *Solicitor-General Murray*.

S.

Fol. Dic. v. 3. p. 352. Fac. Col. No 113. p. 210.

1781. February. 20.

JOHN MONRO, Procurator-fiscal of the High Court of Admiralty, *against* MAGISTRATES OF EDINBURGH, and their ADMIRAL-DEPUTE.

CAPTAIN WATT of his Majesty's navy having brought into Leith-road an American ship which he captured, instituted an action for condemnation of the vessel, before the Admiral-depute of Leith. Mean time, an application for an interdict to stop procedure in this action was made to the High Court of Admiralty by the Procurator-fiscal, who alleged its exclusive jurisdiction in the condemnation of prize vessels. The Judge-admiral having granted the interdict, a bill of suspension, complaining of it, was presented to the Court of Session, by the Magistrates of Edinburgh and their Admiral-depute ; in consequence of which, this question of controverted jurisdiction was discussed in the following manner :

No 245.

Action for the condemnation of a prize not competent before the admiral depute of Leith.

No 245.

Pleaded for the suspenders ; By a charter under the Great Seal, in 1616, Ja. VI. conferred on the Magistrates of Edinburgh the jurisdiction which they claim, in these explicit and comprehensive terms : ‘ Igitur nos fecimus, constituimus, et ordinavimus, præpositum, balivos, et consules burgi de Edinburgh, eorumque deputatos, præsentés et futuros, eligend. iudices omnibus nautis magistris ac navigatoribus frequentantibus, vel qui ad dictam villam de Leith tempore affuturo frequentari contigerint, tam nostris subditis quam peregrinis de quacunque patria vel natione, in omnibus maritimis, lie, seyfaring aliisque actionibus et causis quibuscunque, prosequendis,’ &c. This grant was, in 1636, confirmed by a charter of Charles I. which was ratified by Parliament.

Under the authority of these royal charters, the Magistrates of Edinburgh have been ever since in the constant use of exercising, by one of their number, whom they appoint Admiral-depute of Leith, a jurisdiction in all maritime causes, without exception. No intervening act of the legislature hath abridged their power of judging in the first instance. The statute 1681, cap. 16. only subjects their sentences, in common with those of all the other inferior admirals, to the review of the High Court, of which, it appears, they had been formerly independent ; the Court of Session alone having been then competent to review them. And by the treaty of Union, it is provided that the several admiralty jurisdictions shall remain, in all time to come, free from any material alteration.

Now, it cannot be disputed, that an action relative to the condemnation of an enemy’s ship, is, in the most proper sense of the words, a maritime cause. Indeed, were it otherwise, what would be the Judge-admiral’s own title to claim jurisdiction in the present question ?

With respect to the evidence of the actual practice in this case, it happened unfortunately, that, in 1745, the rebels destroyed all the records of Court. But, in 1762, an action* was brought before the Admiral-depute for condemnation of the Duc de Broglio, a French privateer ; and there, too, the Judge of the High Court interfered, by issuing a sist of proceedings. The Court of Session, however, unanimously passed a bill of suspension of that sist. The Admiral-depute pronounced sentence of condemnation, and it was carried into execution.

Answered for the Procurator-fiscal ; The office of High Admiral was long distinguished for the amplitude of its powers, both civil and military. The judicial department of the former is now exercised by the Judge of the High Court of Admiralty, of whose jurisdiction the nature and extent appear from act of Parl. 1592, cap. 160 ; 1609, cap. 15 ; and from 1681, cap. 16, which last statute ‘ declares, the High Court of Admiralty to be a sovereign judicature, and that the High Admiral, as he is his Majesty’s lieutenant and justice-general on the seas, so he hath the sole privilege and jurisdiction in all maritime and seafaring causes, foreign and domestic, within the realm ; and prohibits and discharges all other judges to meddle with the decision of any of the said causes in the first instance, except the great Admiral and his deputies alienarily,’

* Not reported.

That the power of judging in the condemnation of prizes always belonged to the High Admiral and his deputies, is therefore unquestionable; that they held it exclusively, is not less certain. During the two Dutch wars which subsisted in the reign of Charles II., many prizes were brought into the port of Leith, all of which were tried for condemnation in the High Court. Accordingly, in the written instructions sent by government for regulating the important public questions that might thence have arisen, no court or courts of admiralty are mentioned, save the High Court alone. These instructions were contained in letters addressed sometimes to the Privy Council, and sometimes to the Court of Session, among whose acts of sederunt the letters are still extant, particularly one, dated 18th December 1680, which makes mention of another of 29th June 1673. And Lord Stair, who sat in the Court of Session in that very period, when a variety of questions occurred, which he himself has collected, respecting the condemnation of prizes, declares 'the Lord Admiral to be the sole judge, in the first instance, of all prizes taken at sea;' (Instit. 2. 2. 5.); which privilege, secured by the 19th article of the treaty of Union, remains inviolable; Lord Bankton, (4. 12. 2.)

On the other hand, with regard to the Admiralty of Leith, it appears that the Magistrates of Edinburgh anciently possessed, in that district, no more than a right of water-bailiary, for making effectual their port-dues or customs; which, however, before the regular establishment of admiralty courts, might have been sometimes extended to the decision of civil questions occurring among mariners. Conformable to this original limitation of their power, is their Golden Charter, as it is stiled, granted to them by King James VI. in 1603, which serves to explain the subsequent one in 1616, founded on by the suspenders, as indeed this is also illustrated by that in 1636, which contains an express reservation of all the liberties, privileges and jurisdictions competent to the High Admiral. It, therefore, was never meant to confer upon them the jurisdiction which they claim; nor do they stand on any better footing than the deputy-admirals of particular districts.

Neither, indeed, were it reasonable that a power, of such political magnitude; should be exercised by any other than a court of the most public establishment, and whose dignity may bear proportion to the important consequences of decisions connected with the national safety; consequences that would but ill suit with the comparative meanness of local admiralties, from which this territorial jurisdiction is not to be distinguished.

The circumstance relative to the condemnation of the Duc de Broglio French privateer in 1762, was occasioned by the indisposition of the gentleman then procurator-fiscal of the High Court, having prevented him from giving the requisite attention to that business.

THE LORDS 'found, That the Admiral-depute of Leith had no jurisdiction in the cause, and refused the bill.'

Lord Ordinary, *Braxfield.* Act. *Blair.* Alt. *M'Leod.*

S. *Fol. Dic. v. 3. p. 352.* *Fac. Col. No 38. p. 68.*

1783. August 8. WILLIAM CLARK *against* JOHN ROBERTSON, and Others.

No 246.

Action, on a policy of insurance, not competent before the Court of Session, in the first instance.

An action founded on a policy of insurance, was brought before the Court of Session, in the first instance, by Clark, the insured, against Robertson, and certain other persons, underwriters.

A doubt concerning the competency of the jurisdiction, having occurred, both parties declared their readiness to prorogate it; and referred to the case of Ritchie *contra* Wilson and Company, determined July 5. 1780, No 244. p. 7527.

The Lord Ordinary reported the point to the Court; and, in consequence of the opinion delivered by their Lordships,

“ FOUND, that the case was maritime, and therefore that it could not, in the first instance, proceed before this Court; and therefore dismissed the action.”

Lord Ordinary, *Kennet.* Act. *Morthland.* Alt. *Solicitor-General, Campbell.*

S. *Fol. Dic. v. 3. p. 352. Fac. Col. No 119. p. 187.*

1784. June 23. JAMES GORDON *against* WILLIAM BOGLE.

No 247.

Found in conformity with A. against B., No 231. p. 7513, that the Court of Admiralty is competent to grant decree for a debt due by an inland bill.

JAMES GORDON pursued William Bogle before the Judge of the High Court of Admiralty, for payment of a bill of exchange, accepted, among others, by John Bogle, to whom the defender had succeeded as heir.

The admiral-precept, or warrant for citation, according to the usual form in that judicatory, made no mention of any particular debt; and before the action had been called in Court, when, for the first time, the libel was filled up, and the bill specified as the foundation of the claim, six years had elapsed from the term of payment.

The Judge-Admiral found the defender liable; who removed the cause, by a bill of advocacy, into the Court of Session, and

Pleaded; The present claim, however vouched by a document, originally introduced, and most commonly used among merchants, was the result, not of a mercantile transaction, but of a cautionary interposition by the debtors, who were landed gentlemen, in favour of a person of the same rank. The implied contract, too, arising from the defender's behaviour as heir, from which an endeavour is made to subject him to this debt, has not the most distant relation to trade. To the cognizance of matters such as these, the High Court of Admiralty was altogether incompetent, the concurrent jurisdiction assumed by it in causes not maritime, being strictly limited to those of a mercantile nature; Dictionary, *voce* JURISDICTION.

Nor were the proceedings in that Court, though competent to the trial of this claim, a proper interruption of the sexennial limitation of bills of exchange. The negative prescription is not founded merely on a supposed dereliction by