

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