

1803. *June 15.* WALKER and Others *against* CAMPBELL.

A QUANTITY of furniture and liquor, the property of the Earl of Lauderdale, was shipped at London for Dunbar, on board the *Fortitude*, which was bound for the port of Leith. Upon her arrival at Leith, as there was no vessel then lying at that port going to Dunbar, Robert Harrow the master sent the goods to the wharf of John Walker, maritime agent, to remain under his care till an opportunity occurred of transporting them to the place of their destination. They were soon after taken from the wharf, and put on board the *Fame of Leith*, Alexander Grant master, who acknowledged in the bill of lading that the articles were shipped in good order, and undertook that he would deliver them 'in like good order, and well conditioned,' at the port of Dunbar.

Upon delivery of the cargo, however,* it was discovered that some of the furniture had been broken, and that part of the liquor had been taken away. The Earl brought an action before the Judge-Admiral against Grant for payment of the deficient and damaged articles. His defence was, that the loss had been occasioned before the articles were put on board the *Fame*.

The Judge-Admiral allowed a proof; and, in the mean time, the Earl brought an action against Harrow the master, and Thomson the owner, of the *Fortitude*, and likewise against Walker, the maritime agent at Leith, for payment of the damage he had sustained. Some time afterwards, Thomson brought a counter action against the Earl for the freight from London to Leith. These actions were all brought before the Judge-Admiral.

After a good deal of procedure, the Judge-Admiral pronounced an interlocutor, by which he conjoined the actions, found Grant, Harrow and Walker, conjunctly and severally, liable to the Earl for the damage, reserving to them their claims of relief against each other, and allowed the Earl to retain the freight until he obtained payment of the damages.

Separate bills of advocation against this interlocutor were presented by Walker, Thomson and Harrow, which, upon the footing that the case was entirely of a maritime nature, were refused to be marked at the Admiralty Office, but were afterwards passed of consent of the Earl.

The bill of advocation presented by Walker came first to be discussed, and the Lord Ordinary, in common form, granted warrant for transmitting the inferior court process. This warrant was extracted, and presented to the clerk of the Admiralty, who offered to deliver up that process, with certified copies of the interlocutors pronounced by the Judge-Admiral after the conjunction of the actions; but would not deliver up the proof in the original action against Grant, which he contended was strictly maritime. The clerk of the Admiralty gave in a representation to the Lord Ordinary, praying his Lordship to recal the warrant to transmit, and to allow him to be heard by counsel on the matter at issue.

No 250.
In what circumstances
advocation is
competent
from the
Court of Ad-
miralty.

The Lord Ordinary appointed this point of jurisdiction to be stated in memorials; and, in the mean time, the process of advocacy at the instance of Thomson and Harrow having been brought into Court, his Lordship conjoined the processes, and reported the cause.

It was *contended* by the clerk of the Admiralty, That the whole of these actions were strictly maritime, and, of course, could only be determined in the first instance by the Court of Admiralty. There could be no doubt with respect to the action brought against Grant, and that brought against Thomson and Harrow; and even the proces against Walker must be considered as maritime, because his duty was not to retain the articles on shore, but to see them safely taken out of one vessel, and put on board another. Besides, the goods were *in transitu*, from one seaport to another; and it is not the momentary situation of goods on shipboard or on shore that regulates the nature of any question that may occur respecting them, but their proper destination, and the purpose for which they were put under the care of any person; Ersk. b. 1. t. 3. § 33; Steven against Officers of Customs at Stromness, No 235. p. 7515. But even supposing that the question between the Earl of Lauderdale and Walker were not strictly maritime, it is merely subordinate to the other questions, in which different parties are concerned, who must abide by the jurisdiction of the Court of Admiralty. If a party has a claim against another which can only be tried in the Court of Admiralty, that Court cannot lose its jurisdiction, because the same pursuer has a claim against another party which may likewise be tried in the court of Session. And although the Judge-Admiral may have thought fit to conjoin these processes, that can never alter their nature, or do away the effect of an act of Parliament, by depriving the Admiral of that exclusive jurisdiction which is bestowed on him by statute.

It was *answered* by the advocators, That it is neither the mere profession of the parties, nor the circumstance of the sea being the *locus contractus*, that can constitute a case to be strictly maritime, so as to confer upon the Judge-Admiral a privative jurisdiction; Ersk. b. 1. t. 3. § 35; Kames' Law Tracts, Tr. 7. p. 230; Campbell against Montgomery, No 236. p. 7517; Bartholomew against Chalmers, No 240. p. 7521; Chalmers against Napier, July 28. 1778, No 241. p. 7522; the processes brought at the Earl of Lauderdale's instance before the Court of Admiralty are purely mercantile, and in all cases of that description advocacy is competent. Of course, a warrant to transmit the processes before the inferior court must be granted.

THE COURT found, that the process against Walker was not maritime, and might therefore be advocated, but that the other processes were strictly maritime. Warrant was accordingly granted to transmit the former, but refused with regard to the latter processes.

Lord Ordinary, *Hermann*. For Advocators, *Boswell*. Agent, *Robert Boswell, W. S.*
For Clerk of Admiralty, *Gillies*, Agent, *Alexander Kidd*. Clerk, *Colquhoun*.

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Fac. Col. No 110. p. 242.

* ** In the case December 1769, Earl of Eglinton against Campbell, Mungo Campbell being indicted before the Court of Justiciary for murder committed on the sea-shore, objected, that the Court of Justiciary had no jurisdiction for the alleged crime, being committed within the flood mark, the trial of it belonged exclusively to the Court of Admiralty. But all the Judges except one were of opinion, that the Court had a jurisdiction in this case.

No 250.

M'Laurin's Criminal Cases, p. 508.

DIVISION VII.

Baron Court.

S E C T. I.

Jurisdiction in civilibus.

1570. November 24. ALLASTER KID against THOMAS HALIBURTON.

No 251.

ANE Baron, in his awin court, may liquidate the prices of his fermis, aucht and to him be his tenentis, and may poind and apprise the tenentis gudis or geir thairfoir, gif he refusis or delayis to mak payment of the samin.

Fol. Dic. v. I. p. 503. Balfour, (BARON COURT.) No II. p. 41.

1632. November 29. L. HADDO against JOHNSTON.

L. HADDO having convened Johnston his own tenant in his own court, before his own Bailie, to hear it be tried, that he had done wrong the time when he was tenant of his lands of ———, in riving out the greens and swairds of the said lands, and thereby had damnified the said pursuer his master in great sums of money libelled; and whereupon decret was given in his own Baron-court against the tenant, for the sum of 600 merks; letters conform being

No 252.
The Lords turned a baron's decree into a libel, though given against his