

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.

*** This case is reported in the Faculty Collection.

No 90.

THE magistrates of Aberbrothock intended to set one of their mills to Wallace and company, who had established a manufactory of Osnaburghs in that place. This scheme was opposed by Bailie Wilkie, a member of Council; and Wallace, in a memorial that he presented to the council, having made use of some expressions injurious to Wilkie's character, and accusing him of selfish and sinister intentions, Wilkie sued them for scandal before the Court of Session.

Against this action, Wallace offered a declinator to the jurisdiction; as actions for scandal were competent, in the first instance, before no other judges but those of the commissary-court.

"THE LORDS repelled this declinator, and judged the cause themselves."

A.C. *Lockhart.*

Alt. *Rae.*

A. C.

Fac. Col. No 5. p. 8.

1765. July 19. WILLIAM REID, Merchant in Edinburgh, Supplicant.

Mr REID, on the 15th of July, preferred a petition, setting forth, that, some time ago, he had erected at Woodhall, in the parish of Collington, a mill of a particular construction, and his own invention, which manufactures tobacco into snuff with more expedition and less expense than ordinary mills do; for which reason, he had always been extremely anxious to keep the mechanism of this mill a secret.

That, on Friday the 5th of April last, some mill-wrights and smiths in Collington, along with some excise-officers, and a constable, forcibly entered into the pursuer's mill, on pretence of searching for smuggled goods, but in reality, as he believes, to discover the machinery, the assistants to the officers of Excise being all tradesmen skilled in works of this kind, and employed at another snuff-mill near Collington, belonging to Mr Gillespie, tobaccoist in Edinburgh; and the petitioner never having given any reason for suspecting that he concealed smuggled goods in his mill-house.

That the tradesmen and officers above mentioned, after staying as long as they thought proper in the petitioner's mill-house without finding any smuggled goods, retired; and the petitioner raised a summons against them before this Court, concluding for damages and expenses, which summons had not yet been called, the days of compareance not being run till the 17th current.

That, on the 10th current, the petitioner was served with a writ from the Court of Exchequer, by which he is ordered to show cause against the first day of next term, (which is the 18th current,) why the action he had brought before this Court should not be removed into the Exchequer?

No 91.

An action brought before the Court of Session against an officer of the revenue, for a trespass, cannot be stayed and removed into the Exchequer by an injunction from that court.