

1781. *February 20.* MAGISTRATES of EDINBURGH *against* JOHN MONRO, Esq.

Jurisdiction of the High Admiral privative in questions relating to Prize Vessels.

[*Faculty Collection, VIII. 68; Dict. 7529.*]

ALVA. Thought that the Magistrates of Edinburgh have jurisdiction.

JUSTICE-CLERK. It would sound strange in the ears of our neighbours, and of all Europe, if it should be heard that the Magistrates of Edinburgh had a power of trying and condemning captures. The same sort of jurisdiction belongs to every petty burgh that belongs to them. The public, and foreign nations, have no security for the knowledge and abilities of such judges, and there is no practice sanctifying such jurisdiction: a single instance, in 1762, passed *per incuriam*. The word, vice-admiralty, in the statutes, relates to vice-admirals named by the Crown, from whom the appeal lies to the King's delegates.

GARDENSTON. I cannot think that any inferior admiral has jurisdiction in a case like this. The authority of Lord Stair is in point, and he lived at a time when many condemnations of prizes were issued.

KAIMES. In point of expediency, it would be proper to have two jurisdictions; but then the argument of the Justice-Clerk is forcible,—On the conduct of the Judge-admiral peace or war may depend.

KENNET. In the condemnation of ships captured, a nation, from necessity, judges in its own cause: great care, therefore, must be taken that a court, vested with the extraordinary power of so judging, should be of respect.

PRESIDENT. The trial of captures made on the high sea is a matter of a delicate nature. The Judge-admiral is named by a subject, but his commission is confirmed by the Crown. I would never incline to give the power of trying such causes to the Magistrates of royal burghs. The right given to the Magistrates of Edinburgh, is a right of judging between seaman and seaman. Had I a doubt, I should have been governed by practice, which, with hardly one exception, has been on the side of the Judge-admiral.

BRAXFIELD. Public expediency, practice, the opinion of lawyers, and even the words of the grant, all concur in giving the right to the Judge-admiral.

On the 20th February 1781, "The Lords found the suspension competent, but found that the Admiral of Leith has no jurisdiction to condemn ships captured."

*Act. B. W. M'Leod. Alt. B. Blair. Reporter, Braxfield.*

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