1798. *February* 14.

ARCHIBALD BALDERSTON and WILLIAM CAMPBELL *against* JOHN and CHARLES GALLOWAY.

No 248.
An advocation from the High Court of Admiralty, of an action for the recovery of freight from a port in England, to a port on the great canal in Scotland, found incompetent, although the defences neither arose from circumstances which occurred at sea, nor turned on any peculiarity of maritime law.

ARCHIBALD BALDERSTON agreed to bring a cargo of wheat belonging to John and Charles Galloway, by water, from Alemouth in Northumberland, to Port Dundas, near Glasgow. When he arrived at Grangemouth, he put thirty bolls of the wheat on board a lighter, in order to enable his ship to proceed through the great canal to Port Dundas.

Balderston having afterwards brought an action before the High Court of Admiralty, for payment of L. 13 of freight, which he alleged remained due to him, the Messrs Galloways, in defence, stated that this sum had been retained on account of his having failed to deliver ten bolls of the cargo. Balderston, on the other hand, averred that the defenders had either received the whole cargo, or that the deficient ten bolls had been abstracted by one of the carters employed by them in transporting the wheat to Glasgow.

A proof was led, and the Judge-Admiral "found the defenders liable for the principal sum libelled, with interest from the date of the delivery of the cargo of wheat in question, with expenses."

The defenders having presented a bill of advocation against this judgment, the pursuer, and Mr Campbell, clerk of the Court of Admiralty, disputed its competency. And

*Pleaded;* The statute 1681, c. 16. contains a special prohibition of advocations from the Admiralty Court, which is uniformly adhered to in causes strictly maritime, 8th August 1783, Clark against Robertson, No 244. p. 7532.; and the present action, as being for recovery of freight, falls under that description; Macdowall, b. 4. t. 12. § 4.; Erskine, b. 1. t. 3. § 33.; 11th January 1745, Cormack against Tait, No 229. p. 7512.

*Answered;* Advocations are incompetent only in cases where the Admiral's jurisdiction is privative, and these the practice both of our civil (25th February 1741, Crosbie against Corbet, No 228. p. 7512; 5th February 1783, Kinnear against Peter, No 105. p. 7392; 11th February 1778, Bartholomew against Chalmers No 240. p. 7521; 28th July 1778, Chalmers against Napier, No 241. p. 7522), and criminal courts (Maclaurin, July 1751, King's Advocate against Gray; December 1769, Earl of Eglinton against Campbell, see Note p. 7539), has confined within very narrow bounds. It is even doubtful whether it extends to any action where the execution of the sentence falls not within the sea mark, 5th July 1780, Ritchie against Wilson, No 244. p. 7527. But the contract which gave rise to the present question, was not only entered into on land, but was to receive execution there, and its merits depend not on any thing which happened at sea, nor on any peculiarity of maritime law.

THE LORD ORDINARY on the bills took the point to report upon memorials.

No 248.

Some of the Judges thought the bill of advocation competent. The sea voyage (it was observed) was completed when the vessel arrived at Grangemouth, so much so, that it was necessary to unload her in part before she could proceed to Port Dundas. But the question at issue relates entirely to a matter which occurred afterwards, in which the Admiral has no privative jurisdiction, as it does not extend over canals for inland navigation.

A majority were, however, of opinion that the character of an action depended wholly on the libel, and could not be altered by the nature of the defences; and that as an action for recovery of freight was purely maritime, the bill should be refused as incompetent.

The Lords remitted to the Lord Ordinary to refuse the bill.

Lord Ordinary, *Eskgrove.* Act. *Hay.* Alt. *Hutchison*
*R. D.* *Fac. Col. No 64. p. 146.*

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1798. *June* 15.

George Kincaid *against* Alexander Glen and Co., and William Glen.

No 249.
A maritime cause cannot be removed by suspension from the High Court of Admiralty to the Court of Session, until a final decree has been pronounced.

George Kincaid brought an action for freight before the High Court of Admiralty, against Alexander Glen and Company, and William Glen.

The Judge-Admiral pronounced an interlocutor, deciding certain branches of the cause, and allowing a proof as to the remaining points.

The defenders, conceiving that a proof at large should have been allowed, brought a reduction of this interlocutor, and at the same time complained of it by a bill of suspension.

The pursuer *contended*, That the cause not being exhausted by the interlocutor of the Judge-Admiral, these proceedings were irregular, being in reality of the nature of an advocation from the Court of Admiralty, which was specially prohibited in maritime causes by 1681, c. 16.

The Lord Ordinary "refused the bill, as incompetent."

In a reclaiming petition, the defenders

*Pleaded;* The statute 1681 allows suspensions and reductions, not merely of decrees, but of "acts" of the Court of Admiralty. These last clearly comprehend every interlocutory order; and indeed it would be multiplying litigation very unnecessarily, to continue a cause before a judge, who has made a radical mistake at the entrance of it.

The Lords refused the petition, without answers.

Lord Ordinary, *Meadowbank.* For the Petitioners, *George Fergusson.* Clerk, *Menzies.*
*R. D.* *Fac. Col. No 83. p. 190.*