

1694. February 21.

ROWAN *against* DARLING.

No 221.

The Court of Session allowed a cause not strictly maritime, to be advocated from the Admiral, and refused to remit it.

A SKIPPER in Port-Glasgow being pursued by some Merchants before the Admiral of the West Seas, for contravening his charter-party, and malversing in his trust, in selling the cargo of herrings at Stockholm to one Patullo, a broken factor; and which cause having been advocated, the parties, at calling, declared they advocated the cause of consent, and were willing to debate *in causa* before the Lords; which the High Admiral and his Procurator-fiscal opposed, alleging the cause being a maritime affair, it behoved to be remitted, conform to the act 16th Parliament 1681; and that the Lords could no more meddle with it, *in prima instantia*, than they could with confirmation of testaments, or a process of divorce. *Answered*, *Jurisdictio potest consensu partium prorogari*, and that Judges, though never so incompetent, *forum sortiebantur*, if the parties subjected themselves to their jurisdiction. THE LORDS considered not only the parties consent, (which they thought was not sufficient alone to advocate the cause from the Admiral Court, and table it before them,) but also that this was not purely a maritime affair, but such as was *fori communis*, wherein, as the Admiral was competent, so he was not privative Judge, (as he is in adjudging the prize ships taken by capers, &c.) and in which the Lords had a cumulative jurisdiction with him; and that such a case might, *in prima instantia*, have been brought before the Lords, even as charges on charter parties for freights, caplagen, &c. usually are; and, by a division of seven against six, sustained their own jurisdiction, refusing to remit it back to the Admiral.

Fol. Dic. v. 1. p. 503. Fountainhall, v. 1. p. 612.

1699. January 24.

Captain CAIRNS, &c. *against* ISAAC JACKSON, &c.

No 222.

Afterwards it was found, in such a case, that the jurisdiction of the Admiral being prorogated by bringing the cause before him, it could not be advocated.

WHITELAW reported a bill of advocation from the Admiral, at the instance of Captain Cairns, and Patrick Don, his factor, against Isaac Jackson, merchant in London, and Robert Innes, his factor, in an action of forthcoming on bills of exchange. The reason of advocation was, manifest iniquity committed by the Judge Admiral, in sundry particulars. *Answered*, By the act 16th Parliament 1681, the Admiral Court is declared sovereign, and all advocations discharged from it *in prima instantia*, and no remedy left but suspension and reduction. *Replied*, That holds in cases maritime and competent to that judicatory, so that advocations upon incompetency may yet pass; and every day we have advocations where the Admiral sustains himself to cases nowadays maritime; and this action is such. *Replied*, You can never obtrude that, because you elected this judicatory yourself, and provoked to judgment, by ci-