

No. 5.

ANDREW M'DOUALL, of Logan, Esq., Appellant.—
Lushington—Keay.

ALEXANDER M'DOWALL, Respondent.—*Jenner—Abercrombie.*

Wreck—Reparation—Expenses—Interest.—Circumstances under which (affirming the judgment of the Court of Session) a party dispossessing a salvor was found liable in damages and reparation to the owner of the vessel, and interest allowed on the expense of extracting the Judge-Admiral's decree.

March 8. 1825.

2D DIVISION.
Lord Pitmilley.

By a crown-charter erecting M'Douall of Logan's land into the barony of Logan, the privilege and liberty of 'wrak, wair, et waith' was granted.

Notice having been given to Logan that a brig was seen in distress, (which was afterwards found to be the Lord Nelson), off the mill of Logan, or Balgowan point, a headland forming part of his estate, he dispatched his two principal servants to gather a crew to assist the ship, and as an authority issued this warrant:—'Whereas I am informed there is a dismasted ship floating off the point of Balgowan, I therefore grant warrant to Alexander M'William and John Scott, both my servants, to go and take charge of the said ship, and carry her into the nearest place of safety, or to Chapelrossan Bay, for behoof of the owners or insurers, and to employ what men they may see necessary to assist them, and to discharge any that may disobey these orders, or act improperly, and report the same. This I do on the 18th of November 1810, as Admiral and Justice of the Peace.'

Logan's men took possession of the vessel, under the circumstances detailed in the interlocutor to be immediately quoted, run her ashore in Chapelrossan Bay, where they dug an inlet or dock for her to lie in, from which, however, she was driven by a gale of wind, and cast on a beach of stone and shingle, and materially damaged.

It appeared, that previous to the approach of Logan's party, Alexander M'Dowall, residing in Drummore, having discovered the vessel, proceeded with a sloop called the Druid, and along with his crew boarded the vessel; that they carried her to a bay, and that M'Dowall left her there at anchor under the charge of four men, but who were afterwards ejected from possession by Logan's party. After much correspondence to effect an amicable arrangement, Alexander M'Dowall on his own behalf, and as agent of the owners, Captain Lewis and others, with concurrence of the Procurator-fiscal, raised an action in the Admiralty Court against Logan, concluding that he ought to be ordained to make payment to the pursuer, Alexander

March 8. 1825.

M'Dowall, for himself, and as agent of Captain Lewis and the other owners of the brig and her cargo, of the sum of L.4261, as the price, worth, or value of the vessel, and of her cargo, or of such sum as should be ascertained to be equal to the value of the ship and cargo when Logan and his party seized her; and L.300 as a solatium in name of damages for the loss of time, trouble, and expense, to which the pursuer and Lewis had been exposed in consequence of Logan's illegal and improper conduct, and salvage and expense of process; or, at all events, ought to be ordained to restore and redeliver to the pursuer and Captain Lewis, the vessel, with her whole materials and appurtenances, and the cargo, in the state she then was, and L.2000, or such sum as might be ascertained to be the difference between the real worth and value of the brig when first seized on by Logan and his party, and the present diminished value, and damages, salvage, and expense; and, lastly, that the said defender ought and should be farther publicly punished by imprisonment or otherwise, or fine to the public prosecutor, in such way and manner, and to such extent, as may appear suitable to the whole circumstances of the case, in terrorem of others to commit the like offences in time coming.

A proof was allowed and led, on advising which, and memorials, the Judge-Admiral, on the 19th March 1812, found it proved, ' That on Saturday the 17th of November 1810, a brig ' was discovered by the pursuer, Alexander M'Dowall, in seemingly great distress in the Bay of Luce, who generously prevailed with the master of the sloop *Druid*, then lying in the ' harbour of *Drummore*, partly loaded with a cargo belonging ' to the pursuer, to go out at considerable risk, which the pursuer undertook to bear, both to the ship and cargo, to assist ' the vessel in distress: That the said vessel was discovered to ' be water-logged, and deserted by the crew; but that, owing to ' the sea running high, those in the *Druid* could not venture on ' board, and returned to *Drummore* on Saturday night: That ' the next morning, being Sunday the 18th, the said pursuer, ' with various assistants, went out to said distressed vessel, and ' got on board, when they discovered it was the brig *Lord Nelson*, having lost her main-mast and the fore-mast above the ' maintop, completely water-logged, and having none of the ' crew on board; and that they carried the ship to a part of the ' coast off the windmill of Logan, on the west side of the Bay of ' Luce, where they cast anchor; and the pursuer left the vessel ' with a guard of four men on board, to defend her against

March 8. 1825.

plunder, and to retain possession till he should return on Monday morning with assistants to carry the vessel into Drummore harbour, which, from all accounts, seems to be the only harbour, and the only place where there are warehouses, on the west side of Luce Bay: That immediately on getting ashore from the vessel, the pursuer reported her situation, and his having taken possession of her, to John M'Connel, officer of the customs, who, on that same night, reported the whole to the collector of the customs at Stranraer: That during the night of Sunday the 18th, the defender sent a party on board the Lord Nelson, then at anchor, who, by his orders, took possession of the said vessel from those left by the pursuer to guard her and retain possession for him: That on Monday the 19th, the pursuer returned to the ship, with a numerous party to assist him, furnished with instruments for warping the ship off the coast, and taking her to Drummore, when he found that those on board had lifted the anchor, and were allowing the ship to drift ashore among the rocks; but that there is no evidence of their having done so by order of the defender: That he endeavoured to prevent this, by warping her out from the shore with the view of getting her to Drummore, but was obstructed and commanded to desist from so doing by the defender and his people, whom he desired to take the ship to New England, or Chapelrossan Bay, both of which being open bays, without a harbour of any sort, and having stony shores, are not said by any witnesses in the cause to have been either of them a place of safety; and there does not appear in the proof the slightest ground for the defender doing so, from apprehension of the said pursuer embezzling any of the cargo; while, on the contrary, it is established that this conduct arose solely from the defender considering himself to be Admiral of the shore, and, as such, entitled to take the vessel under his own exclusive charge: That in consequence of this obstruction and commanding power of the defender, as calling himself Admiral of that part of the shore, and Justice of the Peace, the pursuer left the vessel to the defender, and, in name of all concerned, protested against him for all damages which might arise from such conduct: That during all Monday the weather was moderate, and if no obstruction had been made to the pursuer, there is every reason to believe that the vessel might have been carried with little expense to Drummore, where, although she might not have got into the harbour that night (owing to her having been water-logged), she might have been bored next

' morning, as she was afterwards, to let thē water out, and then March 8. 1825.
 ' with ease have got into the harbour, where shē would have
 ' been in safety, and where her cargo would have been unloaded
 ' and safely warehoused: That by the pursuer's conduct, the
 ' ship was left off the coast, at anchor, on the 19th, at night,
 ' where, owing to the weather having become blowy, she lay
 ' till Friday the 23d, when, on the weather becoming again
 ' moderate, she was carried into the open bay of Chapel-
 ' rossan, where, her inside water having been drawn off by
 ' holes bored in her bottom, she was drawn on the shore, and
 ' the cargo was begun to be unloaded on the 24th, and, in the
 ' course of that and the five following days, was carried into a
 ' field, where it lay many days exposed to the weather, and
 ' guarded by men night and day; and that the vessel, after being
 ' unloaded and put into a sort of dock cut for the purpose out of
 ' the shore, and moored there, was driven out of it by the wind
 ' and tide from her moorings, and suffered considerable damage
 ' by being dashed on the shore, which, in the place where she
 ' was lying, is composed of chingle and stones: That the statute
 ' 26. Geo. II. c. 19. does not apply to Scotland; and although
 ' the Act 12. Queen Anne, c. 13. did extend to Scotland,
 ' which it is not ascertained to do, yet that statute does not con-
 ' fer on Justices of Peace a right to command vessels in distress,
 ' nor apply at all to the present case; so that, as Justice of the
 ' Peace, the defender had no authority to assume possession of
 ' the ship: That as the pursuer had thus taken possession of the
 ' vessel in open seas, and reported to the custom-house his in-
 ' tention of preserving the vessel and cargo for behoof of all con-
 ' cerned, and as the vessel was afloat and had not touched the
 ' shore when the defender took possession, she was not a wrēck
 ' in terms of law, whereby his grant of wrecks in his charters
 ' (even although they were produced, which they are not) gave
 ' him no title, under any right of admiralty for his own interest,
 ' to interfere with the pursuer, who had previously assumed law-
 ' ful possession of the vessel in the open seas, for behoof of all
 ' concerned: That after taking possession, his whole conduct
 ' was injurious to the owners of both ship and cargo, by occasion-
 ' ing damage to both, besides great expense; and consequently,
 ' as a claim for salvage arises from the benefit done to the real
 ' owners to save their property, and indemnification for expenses,
 ' ex utilitate in negotiis gestis, the defender is not only not en-
 ' titled to salvage or expenses, but by his interference with those
 ' who, to a certain extent, had already saved the vessel, and

March 8. 1825. ' would have placed her and the cargo in safety, has subjected
 ' himself in damages to the owners on that account, and also for
 ' his detention of the vessel until the salvage and expenses should
 ' be paid, or security given for them: But assoilzied him from the
 ' claim for the value of the ship and cargo, in respect that both
 ' have been returned to the owners, and also from the conclusion
 ' for fine and personal punishment; but found him liable for
 ' damages and expenses, and allowed a condescendence thereof
 ' to be put into process.' Thereafter the Judge-Admiral, in ad-
 hering to this interlocutor, acquitted Logan ' entirely of having
 ' given any orders to his people to cut the cables of the Lord
 ' Nelson that the vessel might drift ashore on the rocks, and of
 ' his having left her at anchor from the 19th to the 23d of No-
 ' vember off the coast, when she might have been taken to a
 ' place of safety.' After further procedure, the Judge-Admiral,
 in D cember 1814, decerned against Logan for L.446. 14s. 9d.
 damages; L.384. 11s. 4d. expenses; and L.159. 9s. as the expense
 of extracting the decree and proof.

Both parties brought reductions in the Court of Session, and Logan also suspended. These three actions were conjoined; and the case having been discussed, the Lord Ordinary found
 ' Logan, the defender in the first reduction, liable to indemnify
 ' the pursuer for the additional loss and expenses which the
 ' owners sustained on account of the ship and cargo, in conse-
 ' quence of the defender having taken possession of the vessel,
 ' and having carried her to the Bay of Chapelrossan, and hav-
 ' ing detained her there, beyond the loss and expenses which
 ' would have been incurred by the pursuer on account of the
 ' ship and cargo, and of demurrage, had the defender not inter-
 ' fered; and had the pursuer, Alexander M'Dowall, been per-
 ' mitted to take the ship in her disabled state to a place of safety
 ' in the bay or harbour of Drummore, which, it appears from
 ' the proof, might have been accomplished on the 19th of
 ' November 1810: finds, that the difference between the amount
 ' of the loss and expenses which the pursuer would have sustain-
 ' ed had the defender not taken possession of the vessel, and the
 ' amount of the loss and expense occasioned to the pursuer after
 ' the defender's interference, must be ascertained by a careful
 ' examination of those parts of the proof which relate to this
 ' subject, and by such other steps as may still appear to be ne-
 ' cessary in order to determine this point, if farther steps for
 ' this purpose shall seem requisite; and, before farther answer,

‘appointed the parties to give in memorials on this point of the ‘cause.’ And thereafter his Lordship adhered. March 8. 1825.

Logan reclaimed, but the Court adhered.

The case then returned to the Lord Ordinary, when the result was a report by Mr Menzies, ‘ship-builder in Leith; and the Lord Ordinary pronounced judgments finding Logan liable to the pursuers, 1st, In the balance of L.456. 18s. 8d. with interest from the 18th February on L.265. 2s. 2d. being the balance of principal sum due at that date; 2d, In the expenses incurred in the Admiralty Court prior to the 12th March 1812, viz. L.384. 11s. 4d. and the expenses of extracting the Admiralty Court decree, amounting to L.185. 19s.; but found him not liable in any other expenses incurred in the Admiralty Court, nor in interest on any part of the above-mentioned expenses: found him liable in the pursuer’s expenses in the Court of Session, viz. L.355. 15s. 6d.; and in the suspension at the defender’s instance found the letters orderly proceeded; and in the reduction at his instance repelled the reasons of reduction; and reduced and decerned in terms of the pursuer’s reduction, in so far as supported by the interlocutor in the cause.

The pursuers represented to the Lord Ordinary, that they were entitled to interest on the sum paid for extracting the Admiral’s decree. The Lord Ordinary so far altered his interlocutor as to find the defender liable in interest on that sum; and the Court, on the 14th November 1821, adhered to that judgment. There were several other proceedings on the point of interim payments and expenses, which need not be detailed.*

Logan appealed from four interlocutors of the Judge-Admiral, and twenty-three interlocutors of the Court of Session.

Appellant.—The appellant claims no salvage or money expended by him; but he appears as defender to an action of damages against him, for carrying the vessel he had a right to take the custody of, into one port rather than another. This is the first instance in Scotland or England of an action against a bona fide salvor for injudicious conduct; for here there is no charge of wilful misconduct or of appropriation. The appellant took possession solely for behoof of the owners; and he did so under his right. His charters contain a clause of ‘wrack, wair, et waith;’ and the vessel was within the jurisdiction over which his charter extends:—

* See 1. Shaw and Ballantine, No. 235. and 278.

March 8. 1825.

Lord Gifford.—Not when the vessel was first discovered by the respondent.

Keay.—We maintain that she was within the headland of Luce, which is within his jurisdiction. By the law of Scotland the appellant held a right to take possession of wreck, whether on shore or at sea. He and his predecessors had acted under this right, and had held Admiralty Courts in the exertion of their rights, minutes of proceedings in which are in process. The right was acknowledged in the Judge-Admiral Court by a judgment in 1791, bearing, that Logan had ‘established a right to ‘the droits of Admiralty upon the shores of his land and barony ‘of Logan.’ It is not necessary that this grant should be in the dispositive clause of the charter. It is in the tenendas, and has been followed by possession; and that possession has been confirmed by a competent Court. Besides, the Crown does not dispute the appellant’s right, and a third party cannot. To whom does a wreck at sea belong in this situation, if she does not fall within the droits of Admiralty? Surely not to the first occupant.

Lord Gifford.—The respondent does not argue that he has any right of property, but merely that he was the first salvor, and was improperly disturbed by the appellant.

Keay.—But he adds, that the appellant was desirous of appropriating to himself the property; and maintains, that he, the respondent, without any grant, could exclude the appellant, who holds a grant of ‘wraik, wair, et waith,’ and has over and over again exercised it. The vessel was a derelict; for dereliction ensues upon the desertion of the real owner: she continues a derelict even in the custody of the salvors; and in whosoever’s hand she may be, the crown, and the crown’s donor, can take her. Observe what is the extent of a salvor’s right: If a merchantman is the salvor, the crown sends a person on board to take possession. Could the salvor say, ‘No; I shall keep ‘possession, and carry the vessel 100 miles off?’ Certainly not. Besides, the appellant was entitled to act as he did, in virtue of the statute of 12. Anne, c. 18. He being a Justice of Peace, he acted with perfect bona fides; and quomodo constat that, had the vessel been taken to Drummore Bay, the same or worse consequences might not have happened?

Interest ought not to have been allowed upon the expense of extract.

Respondent.—The appellant was not justified in dispossessing the respondent, who had taken possession, and held for the owners. The respondent claimed no right of property, but to

March 8. 1825.

bring the vessel into a place of safety; and this right he had a title to maintain. The appellant's charters give, at best, but a right to wreck; and here the vessel was riding out at sea, at anchor, with a competent crew on board. The appellant's right, such as it is, never extended farther than to wreck cast on shore; such a grant does not comprehend the powers and jurisdiction of Admiralty. But the right is not in the dispositive clause, where it ought to be. It cannot be considered as confirmed by the proceeding alluded to, and certainly is any thing but borne out by the minutes, which, if they substantiate any thing, shew that the appellant's ancestors claimed the right of property and enjoyment in the wreck; as they bear, that train oil and rum having been cast on shore, (17th January 1746), 'I sold the oil at Glasgow, and drank the rum at Logan, being decerned to be mine at my Admiralty Court;' a court which he had no title to erect. The appellant had not the shadow of pretext for interfering with the vessel at all, and much less for dispossessing the salvors. Bona fides will not save him, even if he could plead it. The party who thus without title intruded himself, must suffer rather than the owners. The vessel was beyond his jurisdiction; and even if she had been nearer, he, having exposed her to damage, must be liable. Neither was he called on to act in the character of Justice of Peace. The statute of Anne does not support his defence. The damages have been calculated most favourably for the appellant. As to the interest on the expense of extract, that expense had been incurred, and the amount paid; and interest on it followed as of course.

The House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed with L. 150 costs.'

My Lords,—In this appeal Andrew M'Douall, Esq. of Logan, is the appellant, and Alexander M'Dowall, for himself, and as agent and manager for the owners of the brig Lord Nelson and her cargo, is the respondent. This is an appeal against a great number of interlocutors of the Court of Session, finding the appellant liable for the injury which was sustained in the transaction, to which the case refers, by his acts.

My Lords,—It appears that on Saturday the 17th of November 1810, a vessel, which afterwards proved to be the Lord Nelson, was discovered by the respondent, Mr Alexander M'Dowall, in great distress, about five or six miles from any shore, at a still greater distance, as it is stated, from the estate of the appellant, and near to a reef of rocks called the Big Leaves, which is situated near the mouth of the

March 8. 1825. Bay of Luce. It appears that the respondent prevailed on Captain Hannay, the master of a sloop called the *Druid*, which was at that time lying in the harbour of Drummore, to go out to the assistance of this vessel, and take her in tow and bring her into the harbour of Drummore. It appears also that Captain Hannay was under some fear respecting his own vessel, but that at length he consented, and accordingly did go out; and that, on approaching the vessel in question, he discovered her to be water-logged, having suffered considerable damage in her masts and rigging. At that time he saw no person on board of her, and had every reason to think that her crew had either deserted her or had perished. It appears that Captain Hannay was at that time, from the state of the weather, unable either to board the *Lord Nelson*, or to take her in tow; he therefore returned to Drummore after having accurately observed her condition.

My Lords,—It appears that another attempt was made by the respondent himself in a row-boat, with five or six experienced sailors, to assist this vessel, but that also was ineffectual: however, on the following morning, the 18th of November, very early, the respondent, with some persons in his employ, went out, and they were at that time enabled to get on board this vessel, the *Lord Nelson*. They found her at that time without any crew on board. They endeavoured to bring her into the harbour of Drummore; but, from the state of the weather, were unable to accomplish this: they therefore felt it prudent to bring the vessel to an anchor, which they did at a distance of about two miles from the shore, off a place called the Windmill of Logan, or the Point of Balgowan, which is stated to be near the northern extremity of the appellant's property. The respondent having seen her safely at anchor, left her in the charge of certain persons, and came ashore.

My Lords,—I will here remark, that no doubt can be entertained of the bona fides of the conduct of this party; for it appears, that very soon after he came ashore he gave notice to the nearest custom-house officer of the stranding of this vessel; and there being no crew on board, and there being no means of ascertaining who were the owners, he the next day communicated the particulars by a letter to Lloyd's coffee-house.

My Lords,—It appears, that while the brig was riding at anchor off the point of Balgowan, late on the evening of Sunday the 18th, the appellant, Mr M'Douall, who is a gentleman resident at Logan, in that neighbourhood, hearing of the state of the vessel, issued what he is pleased to call a warrant, about the accuracy of the copy of which there has been some discussion in the Court below, in which he says, — 'Whereas I am informed there is a dismasted ship floating off the
' Point of Balgowan, I therefore grant warrant to Alexander M'Wil-
' liam and John Scott, both my servants, to go and take charge of the
' said ship, and carry her into the nearest place of safety, or to Chapel-
' rossan Bay, for behoof of the owners or insurers, and to employ

‘ what men they may see necessary to assist them, and to discharge
 ‘ any that may disobey these orders, or act improperly, and report the
 ‘ same. This I do on the 18th of November 1810, as Admiral and
 ‘ Justice of the Peace.’

March 8. 1825.

My Lords,—It appears, that under this authority the persons named in it, and others, went out and boarded this vessel, which was at the time in the possession of the persons left in charge of her by the respondent; and without detaining your Lordships by going through all the circumstances, the result, I think, may be fairly stated to be, that the appellant retained possession of the vessel, and the respondent was obliged to withdraw from her. The respondent had been desirous of getting her into the harbour of Drummore, which was the best place of security to which she could be carried; and, by the assistance of the Druid, he was in hopes of being able to effect that; but, on the appellant taking possession of her, he endeavoured to remove her into Chapelrossan Bay, or some bay in the neighbourhood, notwithstanding, in consequence of the Druid having gone out to her assistance, she might have been, as the respondent contends, safely brought into the harbour of Drummore. She appears at length to have drifted into the Bay of Chapelrossan, which is on the shore of the appellant's estate, which is stated to have been an open bay, and with a very bad bottom. She was dragged on shore; and shortly after there was another step taken, by which it is stated that she received a very considerable damage, a dock or canal being cut for her in the sand, and on which, on the approach of the high tide, she drifted and rolled.

My Lords,—It appears that, shortly afterwards, the agent for the owners of this vessel dispatched a letter to the respondent, authorizing him to act in their behalf, and to do all in his power for the preservation of the vessel and her cargo. This, it appears, he immediately communicated to the appellant; but he refused to give up the vessel to him, and ultimately proceedings were instituted in the Admiralty Court for the restitution of the ship and cargo, and for the damages sustained in consequence of the interference of the appellant. In consequence of those proceedings, the ship and cargo were delivered, upon security being given for the salvage which might be found due to him, and the respondent proceeded merely in the question for damages.

My Lords,—It is not necessary to detain your Lordships with a great variety of proceedings which subsequently took place, the result being, that ultimately it was found by the Court of Session that the appellant was liable in a considerable sum to the owner, for damages the vessel had sustained by what they alleged was a misconduct on the part of the appellant, in his improperly taking possession of the vessel, and conveying her into this place. His defences were several:—1st, He contended he had a right, in consequence of certain charters which he possessed, to take possession of this vessel as a derelict, which this vessel certainly was; that he was therefore fully justified in taking

March 8. 1825. possession of her from the respondent, Mr M'Dowall; 2dly, He contended, that if he had not that right, he was justified in interfering in his character as a Justice of the Peace; and, lastly, It was contended, that even if he failed in both those defences, he ought not to pay damages, because he acted bona fide.

My Lords,—With reference to these different defences, his titles are stated shortly. He founds chiefly on a charter granted by John M'Douall of Logan in 1594. By that, certain lands were erected into the barony of Logan; and which charter contained a general clause, granting to him the privilege and liberty of the forest, vert and venison, and so on; and then follow these words,—‘ wrack, wair, et waith.’ My Lords,—A considerable discussion took place below, and at your Lordships' Bar, on the construction these words ought to receive, and also upon the validity of this grant, supposing these acts were capable of a construction which the appellant contended for, in consequence of these words occurring in a clause of the charter called the tenendas clause; and not in the dispositive clause.

My Lords,—He also founded on what he called the record of the proceedings in the Admiralty Court, which was a book, or rather, indeed, detached pieces of paper, in which there were proceedings in this supposed Admiralty Court of Logan, and from which the defender contended, it appeared, that he had enjoyed the right of taking wreck on the shores of the barony of Logan; and there was one entry, particularly referred to, from which it appeared that rum and oil, which had been taken up on the shore of this barony, had been condemned for his use; and he shewed that he enjoyed this property, for that he sold the oil at Glasgow, and drank the rum at Logan. He also founded on a judgment in the year 1791 in the Admiralty Court, in which it was found, that the defender, John M'Douall, Esq. had established a right to the droits of Admiralty upon the shores of his lands and barony of Logan. Under all these circumstances, he contended, that notwithstanding this vessel had been, as must be admitted on all hands, legally taken possession of by the respondent, not as claiming the property, for neither he nor the appellant could establish any right, or sustain any claim to the property, against the right owner; but that, having legally taken possession of it for the benefit of the owner, he was entitled to the salvage for the trouble he had taken in taking possession and keeping possession of this vessel for the benefit of the owners. The appellant contended, that although the respondent had legally taken possession of this vessel five or six miles from the shore, and was taking care of it for the owner, he had a right to divest him of the ownership, and to retain the possession for the benefit of the owners, or for his own benefit if no owner appeared. My Lords, The Court of Session were of opinion, that this supposed grant, and the subsequent proceedings upon it, gave him no such right; and, upon the best consideration I have been able to give, it appears to me they have formed a perfectly.

March 8. 1825.

right judgment. My Lords, leaving out of consideration the question of the appellant's right to hold this Admiralty Court, this subject, when first she was discovered, was five or six miles from the shore, at the entrance of the Bay. It is very doubtful whether she was at that time opposite that part of the shore which this gentleman considers as included in his barony of Logan; but, my Lords, when he divested another of the possession, it was incumbent upon him to prove satisfactorily a title to divest him,—that he had a right to divest the person who was in possession for the benefit of the owners, and who was only intending to preserve the property for their benefit. But really it is ridiculous to talk of his Admiralty Court, when I tell your Lordships that his evidence consisted merely of loose memorandums, from which it appeared certainly that he had applied to his own use certain property found on the shores of Logan, and when I state that this vessel was not a wreck. It is true that, having no crew on board, she fell within the denomination of a derelict, to which the Crown would have been entitled if no owner had appeared, and which would have justified any person in taking possession of her for the benefit of the owners, or of the Crown.

But, my Lords, independently of the question, whether this gentleman was entitled to interfere in his character of Admiral, which, in the present situation of this cause, I think he has not brought any thing like the sort of evidence which he must, in order to support and justify the conduct which he pursued on this occasion, he endeavoured to shelter himself under his character of a Justice of the Peace. The statute under which he contended he had this right of interference, was the statute of Anne. It is quite evident in this case, that no proceedings had taken place under that statute to call for his interference as a Magistrate, and therefore his justification as a Magistrate entirely failed.

Then in his defence he urged at your Lordships' Bar, that though he had no right to interfere in his character of Admiral, or as a Magistrate, still he acted bona fide, and therefore it was extremely hard he should have to pay the damages which were given against him by the Court.

On that subject I will not detain your Lordships by going through the evidence in this case. It appears that this vessel was in the possession of the respondent, and his men, who were using all their efforts to carry this vessel into the harbour of Drummore; and who were very desirous to carry her into the harbour of Drummore, where she might have been in safety, and which appears to have been the best place in that neighbourhood for the reception of this vessel. This gentleman, however, chose to take her out of the respondent's hands. There were difficulties, I admit, in carrying her into that harbour; but it appears it might have been effected, had not the respondent been obliged to give up the possession of the vessel. He chose to carry her to Chapelrossan, where, as they have stated to

March 8. 1825. your Lordships, she ultimately received very considerable damage, for the amount of which this sum has been awarded against him. And, my Lords, I cannot help conceiving, (speaking for myself), that though this gentleman might be actuated by a desire to preserve this vessel for the benefit of the owners, he took this part also for the sake of the benefit of the salvage he might obtain. Under these circumstances, I think he is precluded from saying, he is not subject to the damage which has accrued in consequence of his acts. To the amount of those damages very little was said at your Lordships' Bar, and it is not my intention to trouble your Lordships with any observations upon their amount. They have been ascertained as nearly as they can be in a case of this sort. It is admitted, that this was a case probably of the first impression; for in this case the appellant is not claiming salvage, but only endeavouring to protect himself from the consequences of his liability for the loss which has accrued.

My Lords,—This case has been frequently under the consideration of the Court of Session; having been first under the consideration of the Judge-Admiral, who awarded against this gentleman damages and expenses. The Court of Session then pronounced seventeen or eighteen interlocutors against which this appeal has been brought. The result of the opinion I feel it to be my duty to express to your Lordships is, that those interlocutors were right, and that this gentleman had misconducted himself, so as to render himself liable in damages, and to the amount of damages awarded against him. Seeing no reason to find fault with the decision of the Court of Session, it does appear to me that, in affirming this judgment, your Lordships ought also to affirm it with costs. It appears to me, that all the grounds of his defence have entirely failed. The Court of Session have been of that opinion; and if your Lordships concur with me in the opinion that they were right in their conclusion, it does appear to me, that, under those circumstances, this gentleman ought to pay costs for bringing this case before your Lordships. I will therefore move your Lordships, that this interlocutor be affirmed with L. 150 costs.

Appellant's Authorities.—Ersk. Inst. 2. 1. 13.; M'Kenzie's Observ. on 1429, c. 124.; Laws of Oleron, § 29, 30.; Skene de Significatione, voce Wreck; Craig, 1. 16. 42.; Stair's Inst. 3. 3. 27.; Balfour, p. 623.; Bank. Inst. 1. 8. 209.; 4. 12, 18.; 12. Queen Anne, c. 18.; Com. of Customs, May 25. 1810, (F. C.); Robinson's Reports, Case of the Aquila.

Respondent's Authorities.—Aboyne v. Farquharson, Nov. 16. 1814, (F. C.); (House of Lords, April 22. 1818); Stair's Inst. 3. 3. 27.; Bankton, Inst. 1. 8. 6.; Connery v. Lord Dundas, Feb. 1. 1805, (App. 1. Jurisdiction, No. 14.); 1429, c. 124. with M'Kenzie's Observations; 12. Anne, c. 18. 1.; 26. Geo. II. c. 19.

SPOTTISWOODE and ROBERTSON—J. RICHARDSON,—Solicitors.