

**DECISIONS**  
OF THE  
**LORDS OF COUNCIL AND SESSION,**  
REPORTED BY  
**JOHN EDGAR, ADVOCATE.**

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1724. *January 29.* CARSTAIRS of Radairny *against* BROWN and FOTHRINGHAM of Powrie.

CARSTAIRS of Radairny having adjudged certain lands from Alexander Laing, in January, 1698, and recorded an abbreviate of his adjudication in March thereafter; Fothringham of Powrie, in October, 1698, executed a summons of reduction and improbation, wherein he called the said Laing, but not the adjudger; and having obtained a decret of certification in absence, he thereafter disposed the lands.

In a competition betwixt Radairny and a singular successor of Powrie, the Lords found, That though neither infestment nor a charge against the superior had followed on the adjudication, yet the decret of certification could not strike against it; in respect the adjudication was prior to the citation in the improbation.

*Act. —. Alt. Alex. Hay. Lord Cullen, Reporter. Mackenzie, Clerk.*

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1724. *February 26.* BUNTYNE and Others *against* BLAIR & COMPANY.

In the case betwixt these parties, marked the 23d January last, the pursuers having insisted for Demurrage at the port of Greenock, after the ship's arrival in

Scotland ; and when the fourteen weather ly-work-days, allowed by the charter-party were expired, and a protest taken at the mast, and likewise for expenses : the Judge-Admiral decerned for both. Which being also suspended, it was pled for the suspenders, *1mo*, That the protest was taken clandestinely at the mast, in place of being taken personally. *2do*, It was taken when the ly-days were not out, because several days had been so bad and rainy that there could be no unloading. *3tio*, That during several of the ly-days there was no access to unload the ship, by reason that there were four other ships at the key before her, and by the constant rule at the Custom-house, no tobacco ship can be discharged till the other ships that have the birth of her are cleared. *4to*, That the demurrage should be modified ; because the ship was at less expense in waiting at home, on account that the seamen's wages cease upon the ship's arrival. *5to*, That at least no expenses should be allowed, seeing this and the former case were doubtful.

It was ANSWERED for the chargers, That no protest was necessary to interpel, where the ly-days were fixed by the charter-party ; as was found, *13th January, 1665, Charteris contra Skipper* ; and the protest taken at the mast was sufficient to show that the Skipper's lying at Greenock was not upon his own concern, but upon the stipulated demurrage. *2do*, Though a proof was allowed by the Admiral, yet there was no legal evidence brought that there was such stormy bad weather as made the unloading of the ship impracticable, or that the Custom-house officers were so employed that they could not overtake the unloading of her ; on the contrary, it appeared from extracts out of the Custom-house books, that ships which came in later were first discharged ; and further, that during the stipulated ly-days there were only five in which the Custom-house officers were employed in business : so that there were sufficiency of days for livering the Cathcart within the time stipulated by the charter-party : for it appeared from the said extract, that her loading, consisting of 285 hogsheads of tobacco, was livered in two days, and might have been done in one. *3tio*, The demurrage stipulated was not of the nature of a penalty ; because the ship might have suffered by storm, or otherwise, more than the stipulated demurrage, and yet the owner would get no more. And by the maritime law the crew could not leave the ship till she was livered, without forfeiting their wages ; and they must have their entertainment while they attend. As to the expenses, they were taxed *causa cognita* ; and our law is anxious that, in maritime cases, parties lose not their expenses ; as appears from *Act 16, Parl. 1681*.

The Lords repelled the reasons of suspension, and found the letters orderly proceeded for the demurrage at Greenock, and decerned ; and likewise found the letters orderly proceeded for L40 Sterling of expenses modified by the Judge-Admiral, and decerned therefore ; and declared the said expenses should be in lieu of all expenses both before the Admiral Court and in discussing the suspension.

*Act.* Ja. Graham. *Alt.* Dun. Forbes. Dalrymple, or Murray, *Clerk.*