

No 228.

1741. February 25.

CROSBIE against CORBET.

A SUPERCARGO, who had been intrusted to employ the proceeds of the outward cargo in tobaccos, and to draw bills for a further sum, but had grossly failed in both parts of his duty, having neither sold the outward, nor purchased the inward cargo, to the great loss of his employers, being pursued in an action of damages, the LORD ORDINARY, before whom it came, did, *ex proprio motu*, 'Find the cause maritime, and remitted the same to the Judge-Admiral.' But the LORDS, upon a petition against this interlocutor, without appointing it to be seen, 'Found the cause to be of a mixed nature, which might be pursued either in this or the Admiral Court; and remitted to the ORDINARY to proceed accordingly.'

Fol. Dic. v. 3. p. 353. Kilkerran, (JURISDICTION.) No 2. p. 300.

No 229.

1745. January 17.

CORMACK against TAIT.

JOHN CORMACK shipmaster in Burntisland, having pursued Alexander Tait merchant in Edinburgh, for the freight of some goods brought from Holland upon his commission, and that before the Magistrates of Edinburgh, Tait suspended the decret as exorbitant.

THE LORDS observing this to be a maritime cause, remitted it to the Admiral Court.

Fol. Dic. v. 3. p. 351. D. Falc. v. 1. p. 45.

1750. November 7.

JAMES BUCHANAN against RICHARD HILL.

No 230.
The Admiral,
in causes mercantile, and not maritime, cannot exact caution *judicio sisti et iudicatum solvi*.

JAMES BUCHANAN merchant in London, pursued Richard Hill merchant in Virginia, who happened to be at Glasgow, before the Admiral-depute there, for L. 1700 Sterling, without alleging that the debt arose from a maritime cause; but having, in the course of the process, obtained him to be examined on the ground thereof, whereby it appeared to have arisen from foreign commerce, applied by petition that he should be ordained to find caution *judicio sisti et iudicatum solvi*; which was granted, and the defender, upon failure, imprisoned. He thereupon presented a bill of suspension and liberation; for that the act 16th Parliament 3. Cha II. which regulates the Admiral's Jurisdiction, declares only that this caution shall be exacted in causes maritime, to which he is sole judge; and with the decision of which all other judges are forbidden to meddle in the first instance.

THE LORDS were of opinion, that the Judge-Admiral, in causes mercantile, and not maritime, exclusive of any other jurisdiction, could not grant warrant for imprisonment until caution were found *judicio sisti et judicatum solvi*; and therefore past the bill.

No 230.

Reporter, *Shewalton.*Act. *Philp.*Alt. *Lockbart.**D. Falconer, v. 2. No 159. p. 183.*

* * * The like was decided, British Linen Company against Clarkson, No 14. p. 2054, *voce CAUTIO JUDICIO SISTI ET JUDICATUM SOLVI.*—See No 232. *infra.*

1752. *June 6.*A. *against B.*

THIS day the Lord Elchies, Ordinary on the bills; reported a bill of suspension of a decree of the Judge of the High Court of Admiralty, laid upon this ground, that the decree was *a non suo judice*, being for a balance due upon an inland bill.

No 231.
The Court of Admiralty competent to grant decree for a debt due by an inland bill.

THE LORDS 'remitted to the Ordinary to refuse the bill of suspension.'

In reasoning upon this case, it was observed, that no doubt had even been made of the Judge-Admiral's jurisdiction in the case of foreign bills, as in some sort concerning the sea; a reason, which, it is true, does not apply to inland bills: Yet, even as to these, the constant practice of the Court of Admiralty had been to judge in inland bills; as the Admiral, though he has no exclusive jurisdiction, but in matters properly maritime, has yet a cumulative jurisdiction in matters mercantile; and it was by some of the LORDS remembered, that judgments of the LORDS had proceeded in a competition of arresters before the Admiral, in the hands of the debtor in an inland bill, where the objection made to the jurisdiction was repelled.

Fol. Dic. v. 3. p. 353. Kilkerran, (JURISDICTION.) No 3. p. 300.

1755. *January 9.*ROWAND *against* FREEMAN.

THE Judge-Admiral cannot exact caution *judicio sisti et judicatum solvi*, in a mercantile cause, but only in such as are maritime.

Fol. Dic. v. 3. p. 352. Fac. Col.

No 232.

* * * This case is No 10. p. 2043., *voce CAUTIO JUDICIO SISTI ET JUDICATUM SOLVI.*