

1760. November 20. LAMBERT *against* BALLANTYNE.

No 234.

A SHIP being seized, action was brought before the Judge-Admiral, on the ground that the seizure maker was no officer of the customs, and concluding for the value of the ship, and very high damages and expenses. The crew going abroad, the Judge-Admiral, on a petition, allowed their depositions to be taken to lie *in retentis*. A bill of advocation was presented, on the ground that the seizure was triable only before the Exchequer, and the Admiral had no jurisdiction. THE LORDS refused the bill, and found that the Admiral had committed no iniquity on such previous step.

The like was found, on the same day, Kyd *against* Liddell, where the question was singly on the competency of the Admiral. See APPENDIX.

*Fol. Dic. v. 3. p. 352.*

1761. February 10.

ALEXANDER STEPHEN Merchant in Leith, *against* The OFFICERS of the CUSTOMS at Stromness.

No 235.

THE ship Erskine of Alloa, John Nicoll master, loaded with rum in great and small casks, belonging to Alexander Stephen merchant in Leith, arrived in the harbour of Stromness upon the 3d of August 1759; and some days thereafter, Andrew Ross collector of the customs, and some of the other officers at that port, suspecting that she was upon a smuggling voyage, laid hold of the ship, carried her sails on shore, unloaded part of the cargo, and made a seizure of 14 small casks of rum, containing 42 gallons each, and then allowed the ship to proceed on her voyage with the rest of the cargo, after having detained her from the 8th of August to the 15th of September.

Action of damages pursued before the High Court of Admiralty, against officers of the customs, for seizing and detaining a ship, found to be a maritime cause, and advocation of it refused.

The 14 small casks being returned for seizure, an information was filed in the Court of Exchequer, in name of the seizure-maker; and Alexander Stephen having appeared and claimed the property, the cause went to issue.

In the mean time Stephen brought an action of damages before the High Court of Admiralty for the seizure of the small casks, and for reparation of the loss sustained by the detention of the vessel for so long a time, and damage done to the large casks in loading and reloading the cargo. The Judge-Admiral stopt procedure in the cause until the merits of the seizure depending in the Court of Exchequer should be first tried. Accordingly, the trial came on in July thereafter, and the jury returned a verdict for the defender; but the Court, in respect of the circumstances of the case, 'certified upon the record, 'That it appeared to them there was a probable cause for the seizure.' And the action of damages being then insisted in, the Judge-Admiral pronounced