

the very same track which carried ships, as well from Honduras to London, as to Bristol. But the Lords, in considering this question, did not look upon this case as depending upon the point, whether or not there was any deviation from the voyage, for the truth was, there was no deviation; but it turned upon this, that one voyage had been insured, and another undertaken: so that the contract was void. And so the Lords found.

1779. *January 19.* MORISON *against* STEWART, &c.

IN insurance of ships, it is a principle, that every circumstance of the ship's situation, as to time of departure, or being amissing, ship's situation, &c. material to affect the risk, and known to the person who wishes to insure, ought to be made known to the insurer at the time the policy is entered into; and upon this not being done, it was that the Lords voided a policy between these parties, and gave expenses against the insured.

INTERDICTION

MAY be either voluntary or judicial; when judicial, may be either *ex officio*, or on an action *causa cognita*. Of the last, an instance occurred this day, 17th July 1776, Thomson *against* Thomson. The Lords, before pronouncing their interlocutor, called the defender into the robing-room, and asked him some questions; and afterwards interdicted him; and gave expenses.

JURISDICTION.

ADMIRAL-SUBSTITUTE OF LEITH.

1772. *March 5.* ROBERT and JOHN JAMESON *against* ALEXANDER SKINNER.

IN 1769, Robert and John Jameson, merchants in Leith, brought an action against Alexander Skinner, baker there, before the Admiral-substitute of Leith, for the price of wheat; and, upon the dependance, arrested in the hands of sundry persons residing in Edinburgh. The pursuers obtained decree against

Skinner, and, having raised a furthcoming before the Court of Session, a competition followed betwixt them and Craig, another creditor. Objected to the decree of the Admiral, and arrestments on the dependance,—Void and null:—*1st*, His jurisdiction is confined by his commission from the Town of Edinburgh, who derived their authority, by a grant from James the Sixth, to the town and port of Leith, whereas the arrestees live in Edinburgh; *2dly*, His commission is limited to maritime causes only. The answer to these objections was, immemorial custom. This led into an inquiry concerning the practice.

As to the first point, they condescended on several instances before the 1747, of decreets, in maritime causes, pronounced by the Admiral of Leith over the inhabitants of Edinburgh; but more after.

As to the second, they condescended on six instances of mercantile causes decided by the Admiral of Leith over inhabitants of Edinburgh, from 1667 to 1676, and on twenty from 1747 to 1771, thirteen of which, indeed, were in absence.

The Lords, 5th March 1772, “ Found the proof of the exercise of the jurisdiction sufficient to support the arrestments used by Messrs Jamesons; and therefore preferred them.”

1763. July 27. DAVID DUNLOP *against* — ALISON.

IN an action for damages on account of verbal injury, besides the decisions, *Auchenleck* against *Gordon*, 4th March 1755, sustaining such processes competent before the Court of Session, and even before Justices of the Peace; another instance occurred of a mixed nature, both real and verbal:—David Dunlop, merchant in Irvine, brought an action of injury and damages before the Lords, against Alison, late bailie of Irvine; and the offence charged was, That, when Dunlop was resting at a neighbour's door, Alison came up, and, calling him scoundrel and villain, asked him if it was he who hooted at him,—and this being denied by Dunlop, who averred that he was neither looking at him nor speaking of him, Alison repeated the expression of scoundrel, and clenching his fist before a multitude of spectators, struck Dunlop in the face. There could have been no doubt of the competency of the action, had it been founded on the real injury; but, being of a mixed nature, as comprehending both a real and verbal injury, which last was supposed competent only before the Commissaries in the first instance,—the competency of the jurisdiction was denied. But the plea was overruled, and the Lords sustained their jurisdiction even in the first instance.

Same, July 1764, *Robert Wilkie*, late bailie of *Aberbrothick*, against *John Wallace*, merchant there. This was a verbal injury.