

## WALLACE v. HILL AND SCHENIMAN.

[8th October, 1828.]

## HILL v. WALLACE.

[23d January, 1829.]

1. *Defamation*,—Action brought by one Passenger, a Foreigner, against the other, also a Foreigner, for Defamation at this place.
2. *Assault*,—Action brought by one Passenger against the other, for Assault at Sea.
3. *Justification*,—of Assault in respect of Verbal Provocation.
4. Arrest "*Judicio Sisti*,"—between two Passengers, Foreigners, for Acts done at Sea.

1. The *Duke of Bedford*, arrived in Table Bay, on her voyage from India to England. Much quarrelling had taken place among the passengers, who were divided into two parties, one, headed by the owner of the vessel, and the other, by the Captain. It was proved, that on a certain evening, in consequence of the plaintiff, Capt. Wallace, interfering, on the part of the owner, the defendant, Lieut. Hill, used the expression, "there is a pair of you." Wallace asked, if he applied that expression to him. Hill said, he did. Wallace then said "I know you." Hill said, "you do not know me." Wallace said, "I know you are a sneak." Hill said, "you are neither an officer nor a gentleman." Wallace then came from the poop, to the capstan, and struck Hill, a violent blow with his hand (whether open or shut did not clearly appear). Wallace was stronger than Hill, who was a little man, and weak from illness. On landing here, Hill challenged Wallace, who refused to meet him. Hill, and his second, Dr. Scheniman, posted Wallace, as a "*coward*." Wallace brought an action against them for defamation, on account of this, when the Supreme Court, (Menzies, J., absent,) gave judgment for the plaintiff, against them, for £100 damages, with costs.

Wallace  
v.  
Hill and  
Scheniman.

8th Oct. 1828.

2. Hill, then brought an action against Wallace, for the above-mentioned assault, and proved the above facts.

Hill  
v.  
Wallace.

3. Wallace led no evidence, but pleaded justification, in respect of the verbal provocation, given him by Hill, by using the expressions above set forth.

The Court, (all the Judges present,) gave judgment for the plaintiff, for £120 damages, with costs.

23d January,  
1829.

4. In this case, the plaintiff had commenced his proceedings, by causing the defendant to be arrested, (*judicio sisti et*

Hill  
v.  
Wallace.

*judicatum solvi*,) on a writ, issued in terms of the 8th Rule of Court. No objection was made by the defendant, and consequently, no decision given, as to the validity of this arrest, or to the jurisdiction of this Court, in a case, where the cause of action, had occurred at sea in a ship, in which both plaintiff and defendant, were passengers, and in which they were both proceeding to England, their proper *forum*.

Consequently, this case, cannot be considered as any precedent, in either of those points. (*Vide* Hornblow v. Fotheringham, 16th January, 1829, *post*. p. 352.)

### ORPHAN CHAMBER v. EBDEN.

[14th January, 1829.]

1. *Wages*,—for work done, what not sufficient proof to support an *Action*.
2. *Oath of Reference*,—when it is not competent to the Plaintiff to refer only a part of the case to the Defendant's Oath.

Orphan  
Chamber  
v.  
Ebden.

1. This action, was brought by the plaintiffs, as administering the estate, of the deceased R. Bell, and his widow, to recover payment from the defendant, of four months' wages, for work alleged to have been done by Bell, for the firm of Ebden & Watt, of which company, the defendant is the surviving partner.

The defendant pleaded, that he owed nothing, to Bell or his estate.

The plaintiffs, produced no evidence, in support of this claim, except a correspondence, between them and the defendant, before the action was commenced, in which the defendant had stated, "that Bell had been over-paid, for any services, which he rendered to Ebden & Watt," and contended, that these words, amounted to an admission, that the debt claimed, was once due, and consequently, that made it necessary for the defendant, to prove, that this debt had been discharged.

The Court held, that these words, had not the effect, contended for by the plaintiffs.

2. The plaintiffs then proposed, to refer to the defendant's oath, whether Bell, had not been in the service of Ebden & Watt, for a certain number of months, at a certain rate, but without referring, whether anything was now due, by Ebden & Watt, on that account, to Bell's estate.