

1669. *January 8.* GILBERTSON *against* BINNY and his Owners.

IN the reduction of the decret of the Admiral adjudging the ship called the King of Polland to be lawful prize, pursued at the instance of Gerrard Gilbertson against Captain Binny, the LORDS found, That the ship, belonging to Dantzic, being loaded with clapboard, and being sailed with six seamen, where three were born Hollanders, and their commission bearing clapboard to be contraband, were sufficient grounds to make her prize; notwithstanding it was *alleged*, That the loading did not consist of such clapboard as could be made use of for building of ships, it being prepared for making of steps to wine puncheons and for cooper-work, not being but about three foot of length, which were going from Dantzic to Bourdeaux for that use, it being an ordinary commodity sent there yearly, as merchandize; as likewise, it being *alleged*, That albeit the said three sailors were originally Hollanders, yet for several years they had remained in Flanders and Bruges, and were burgesses, and were taken on to be sailors in Flanders by the merchants in Dantzick, who were not bound to enquire where they were born. This was done *me reclamante*, it being deponed as said is.

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Question,
whether the
goods were
contraband?

1669. *June 29.*—IN the reduction before narrated of the decret of Admiralty, declaring the ship called the King of Poland lawful prize, there being several testificates produced, from England, Holland, and Flanders, for proving that knapple was not such clapboard as was contraband, and the opinion of lawyers, which were positive, as to England, and others, from Dunkirk and the Custom Office at Amsterdam, were positive as to Flanders and Holland; the LORDS, notwithstanding, did find, as before, That the ship was prize, in respect that the testificates were improbate, and not taken by virtue of a commission extracted, and the case stated. But the first decision was most hard, as hath been seen.

Gosford, MS. No 80. p. 28. No 151. p. 59.

* * * Stair reports this case :

CAPTAIN BINNY having taken Gilbertson at sea, obtained him to be declared prized, upon this ground, That he carried clapboard, which is expressly mentioned as contraband in the commission of the Admiral of Scotland given to the skipper, and was the same stile with the commission recorded in the books of Admiralty, given in the time of war, in the year 1628. The strangers raised reduction of the Admiral's decree, on this reason, That clapboard being a general name, comprehending many kinds of boards, that clapboard could be only understood contraband which had not a promiscuous use in peace and war, but was *instrumentum bellicum*, carried by the King's allies to his

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enemies, to be sold to them, for assisting of the war; which this loading could not be, because it consisted all of knapple, cut all at three foot and an half length, the proper use whereof is for barrels, and is no ways *instrumentum bellicum*.

THE LORDS having given commission to some of their number, to visit the knapple, and to examine sea-wrights, whereupon they did examine a number, whether this timber in question was useful for war or shipping; and most deponed, that it was not, and some deponed, that it might be made use of to be pins or tubs; but that it was not ordinarily made use of for shipping, but common oak, which was far cheaper.

THE LORDS did also, before answer, ordain either party to adduce such testificates and evidences as they could from the Admiralties of neighbouring nations, what was the custom of nations, whether upon such timber as this the ships of neutrals or allies were made prize.

The strangers produced several testificates, one from the Custom-House of Amsterdam, bearing, that such timber was not accounted contraband in Holland, and one from the Spanish Admiralty at Ostend, bearing, that they knew not that, by their custom, and the custom of other Admiralties, such timber was contraband; one from a deputy who served in the French Admiralty at Dunkirk, declaring that, in that Admiralty, such timber was not accounted contraband; one from the King's attorney, and another lawyer, who served in the Court of Admiralty of England, bearing, that, during the war, none had been declared prize upon that account. The privateer produced no testificates; but *alleged*, That there ought no respect to be had to the testificates produced, it being easy to impetrate such, and there should a commission have been directed by the Lords to the several chief Admiralties of the neighbouring nations, to express what was their custom in this point.

Notwithstanding, the LORDS found the ship prize, as carrying this clapboard, being contained in the Admiral's commission; a great part of the most able of the Lords being of the contrary judgment.

Stair, v. 1. p. 626.

1669. June 15.

EVART LOYSON *against* Laird of LUDQUHARN and Captain WILSON.

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In prize ships competent and omitted as a particular custom of Scotland, was not sustained against strangers.

CAPTAIN WILSON, a privateer, whereof Ludquharn was owner, having taken Evert Loyson and his ship, obtained the same to be adjudged prize by the Admiral, as carrying flax and hards, which were contraband; which decreet the Strangers suspend, and raised reduction upon these reasons, that this ship and goods belonged to one Clepan in Bruges, the King of Spain's subject, and was declared prize upon no other ground but because she carried tow and hards, which are not contraband, but are necessary in some quantity in every ship for