

* * * Gosford reports this case :

No 14.

CAPTAIN WOOD, as master of a privateer, having taken a ship called the Raphael, whereof Boy-Nielson was master, and which belonged to the subjects of the king of Denmark, but was loaded with timber to be brought to England, for John Dyson, merchant at London; the said ship was adjudged lawful prize by the Admiral, upon these two grounds, That she had no valid pass from the Duke of York, upon sufficient caution found to the customers for returning with their loading to London; and that the skipper had confessed, that the fourth part of the loading belonged to him and his sailors. There was a reduction raised of the decret, upon these reasons, that conform to a proclamation remitted by the King, upon the burning of London, giving liberty to all his subjects to import east-land commodities, the merchant had found caution, and obtained the Duke of York's pass, for which they produced certificates under the seal of the Admiralty, and the secretaries' hand, and officers of the custom-house, with a letter from the King, ordering the ship to be released, as having such a pass. THE LORDS did notwithstanding sustain the adjudication for the fourth part of the loading the vessel and whole furniture, as belonging to the King's enemies, for which the proclamation gave no warrant; but for the other three parts of the loading, they superseded to give answer, until a commission direct for searching the records at London, if the Duke of York's pass was truly granted to the master of the ship, for that same voyage, should be reported.

Gosford, MS. No 169. p. 67.

No 15.

A ship adjudged, because the pass was fictitious.

1671. June 29. JOACHIM BURNMASTER *against* Captain DISHINGTON.

CAPTAIN DISHINGTON having obtained a decret before the Admiral, adjudging a ship taken by him at sea the time of the late war with Holland, whereof Joachim Burnmaster was master, the said Joachim raised reduction on the said Admiral's decret, on these reasons, that his ship and whole goods did belong to the subjects of Sweden, his Majesty's allies, and who had a particular treaty with the King, bearing expressly, that no person should be seized who had a Swedish pass, in the terms particularly expressed in the treaty; which pass the pursuer had, and produced when he was taken, and yet he was declared prize, upon pretence, that three of his company were Hollanders, albeit the treaty bears expressly, that where such a pass is found *ulterius nihil exigatur, et in bona aut homines nullo modo inquiratur*; and upon pretence that the oaths of the master and company were contrary to the pass, and other goods, viz. 15 hogsheads of wine, and a quantity of wine and brandy-wine, and paper, and that the ship in question was not then bought by the Swedes, nor did not go to or from the parts mentioned in the pass, albeit none of these said

points be material, nor did infer that the ship, or loading, or any part thereof, did belong to the King's enemies, but did belong to the Swedes, his allies and confederates; so that albeit they had no pass, or an unformal pass, their goods could not be taken from them, there being no article in the treaty, declaring, that the not having a full and formal pass, should make such ships prize, but only, that the having thereof should keep them from all question or enquiry. The defender *alleged*, Absolvitor; because the decreet of adjudication was justly and warrantably given, for contrivances the time of the war being most ordinary, the Dutch did frequently palliate their trading under the pretence of the King's allies; and in this case, it is evident, that the time of the pass, this ship was in Holland, of a Dutch build, belonging to an Hollander residing there, and no pretence of buying the same by a Swede for a long time after, as appears by the vendition produced, which does not bear that the ship was sold to any Swede, or for their use, but to a Swedish factor in Holland, without mentioning to whose use, and so is justly suspected to have been for another Dutchman's use, especially being found navigable, with three Dutchmen in the company; and no Swede hath ever yet declared upon his oath, that this ship and goods belonged to them; for by a certificate of the Swedish chamber of commerce produced, that two Swedes did declare, that they intended to buy a ship in Holland, called the Blue Lilly, and yet the pass of the same date bears, that they swore that the Blue Lilly belongs to themselves and no other, and by the vendition the name of the ship was not the Blue Lilly, so that all hath been but a contrivance, and that there is nothing produced that necessarily evinces that the ship and goods belonged to the Swedes only; and seeing the pass is so palpably false in all the substantial points required by the treaty, and by the oath of the pursuer himself, he cannot clothe himself with the treaty which he hath so grossly transgressed, nor hath he adduced sufficient proof, that the ship and goods belonged to the Swedes. And whereas it is *alleged*, That the being sailed with Hollanders is no ground of seizure by the treaty, the same is opposed, which in the next article to that *alleged* upon for not enquiring in the men and goods, bears, that seizure shall not be made where such a pass is *nisi gravis suspitio subsit*, and there could be no better ground of suspicion, than that the master, when he was taken, acknowledged the contents of the pass not to be true, or conform to the treaty, and that a considerable part of the company were Dutchmen; and as for any letters produced, they are impetrated since the war, upon misinformation.

THE LORDS adhered to the decreet of adjudication, and assoilzied from the reduction, and found the verity of the pass cancelled by the testimonies of the skipper and company, and the certificate; and that most of the material requisites in the pass were wanting, and so sufficient evidence, that the whole ship and loading did truly belong to the Swedes.