

No 17.

ters found aboard, and because the pass mentioned not the port to which she was directed. It was *answered* for the Strangers, *imo* That they produced a certificate, bearing, the ship was bound for Ostend, and that any such letters, not being by the skipper or owners, but other parties that might be mistaken, could not prove against them. *2do*, Though the ship had been direct for Amsterdam with grain, yet, by the law of nations, grain is not contraband, except when it is carried to a city besieged. *3tio*, By the treaty at Breda extended to Dantzick, by the King's special concession, it is expressly provided, That victual shall only be accounted contraband when carried to a place besieged. It was *replied* for the Captain, That the Strangers could not crave the benefit of the treaty at Breda, *imo*, because that treaty was become evacuate and void by a war, and being void as to the principal parties treaters, and accessory parties taking the benefit thereof, could not further found upon that which was not. *2do*, The King by express instructions, by advice of his council, given to the judges of the admiralty of England, appoints the carrying of corns to Holland, or any place in their jurisdiction, to be ground of confiscation; which shows evidently, that the King did not look upon the treaty at Breda as in force, which treaty hath not only the foresaid article, but doth bear expressly, that contraband goods, or enemies goods, shall only confiscate the goods themselves, and not the ship or loading, contrary to the custom of nations, that those who so partake with the enemy should not be prize, which is neither observed in England nor Holland. It was *duplied* for the Strangers, That the LORDS ought not to proceed by the King's private instructions, but by his public treaties confirmed by oath, and that the breach of one party could not infringe the treaty as to other allies, especially seeing the treaty relates to any future war that should happen; and after this war the King upon that treaty dismissed all the Holland ships, it being provided, that all ships in the harbours of either party, for six months after the treaty broke up, should be dismissed.

THE LORDS did allow probation to either party, for instructing the true port to which the ship was directed, and resolved to communicate this point to the King, by the Lord Secretary, to know his Majesty's pleasure, and the custom of the Admiralty of England therein.

*Stair, v. 2. p. 154.*

1673. *January 23.*

The OWNERS of the Ship called The CROWN OF DANTZICK *against* Captain LYON.

CAPTAIN LYON having taken a ship called the Crown of Dantzick, obtained adjudication of her as a prize. The strangers raiseth reduction; whereupon, the LORDS having heard the cause, they found, That the evidences adduced for

No 18.

A prize was  
tained, be-  
cause the pass  
did not men-  
tion to what  
part.

the Captain did sufficiently prove that the ship and goods were not free, but belonged to the King's enemies, in so far as the pass did not mention the port to which she was direct; and a tole-brief found in her exprest the port to be Bream, and the skipper's oath acknowledged that the port was Amsterdam, which was concealed in all the documents; and the skipper's oath did redargue the truth of the pass, which bore the skipper to be a burgess of Dantzic, and exprest the names of the owners; but the skipper, by his oath, did acknowledge that he was a Hollander, residing in Holland, except when he was on his voyages, and that the owners were other persons than those who were in the pass, and that he knew no other owners beside them; and so knew not but the King's enemies might be part owners; and that the steersman was by nation a Hollander, and one of the seamen; and that their port was Amsterdam, where the skipper was to receive his freight from the merchants to whom he was to deliver his goods; and that she neither had charter-party nor cocquet.

No 18.

Which the LORDS found so pregnant evidences, that they would not admit of contrary probation; but they did forbear to determine whether the skipper's being a Hollander, residenting there, was a sufficient cause alone, or whether the carrying victual, as contraband, to Holland, was a sufficient cause of adjudication, having by their former interloeuor, in the case of the Sun, (*supra*) resolved to inquire further as to these points.

*Stair, v. 2. p. 160.*

1673. February 11.

Earl of KINCARDINE *against* The MASTER of the Ship called the ST ANDREW.

THE St Andrew being brought up as a prize by a frigate of the King's, she was gifted by the King to the Earl of Kincardine; and being tried by the Admiral, was absolved. Kincardine raised reduction of the absolvitor; which being this day disputed, and the whole documents taken aboard the ship and the whole testimonies of the company being considered by the Lords, and the parties heard thereupon, the sum whereof amounted to this, that the ship, belonging to Lubec, had a pass to Lisbon *in anno* 1670; that, from thence she made a voyage to America, and returned to Lisbon; and she loosed from Lisbon the 12th day of April, N. S. 1672; and, both by letters aboard and the oaths of the company, it did appear, that the rumour of the war did come to Lisbon before they loosed, which was broke up by Captain Holm's engagement of the Smirna fleet, in the beginning of March, and the declaration, showing the causes some few days after: The letters also bore, that the Hollanders behaved to manage their trade, and go about by the north passage; and that this ship went that passage, to shun privateers, appears by the testimonies; the ship was

No 19.

Although the goods were confiscated, as belonging to enemies, the ship was freed, being neutral, and having received the goods *bona fide*, before the war was known of.