

found, that the King's letter bore the pass to be conform to the Swedish treaty, yet that the ship was warrantably brought up, in respect of the ground of suspicion aforesaid, and that she was warrantably adjudged upon the grounds aforesaid for any thing was then said. The Lords did also find, that the reason now insisted on, though it was mentioned in the former decret, and a letter of the King's, for verifying thereof, then produced, yet, that it was not insisted on as relevant, and proved by the King's letter, but the debate was upon other grounds, and no particular interlocutor as to this point, and therefore that it was not excluded, as proponed and repelled, albeit, in decreets amongst natives, interlocutors, though they do not specially mention all that is proponed, but those things which are insisted on, and most material, yet, in the second instance, all that was proponed, is understood to be repelled as not noticed as relevant by the Lords, which is not so to be extended against strangers.

Stair, v. 2. p. 178. § 608.

No 23.

1673. February 26.

The MASTER of the Ship called the RUSTOCK *against* Captain BROWN.

CAPTAIN BROWN having obtained the ship called the Rustock to be adjudged prize, the strangers raise reduction, on this reason mainly, That albeit this ship had made use of a Swedish pass, dated *in anno* 1670, to prevent their hazard, if they were met with by the Dutch, and that the oaths in process contradict the pass, and shew both ship and loading to belong to Londoners, his Majesty's subjects, which, as to strangers, might have been a ground of adjudication, yet not as to the King's subjects, who may, and must trade under cover of Swedish, or other free passes, or otherwise can drive no trade considerable; and, by a tract of many documents produced, it appears that the ship and goods belonged to Londoners, especially an act of naturalization of the ship *in anno* 1670, being by the King's warrant bought by Londoners from the Swedes, and the documents, upon oath, of several voyages made by the same ship from London, as belonging to the said Londoners, together with the oaths of the owners and merchants, taken after the capture.

THE LORDS found, That there was just ground for bringing up and trying of his ship, and that notwithstanding of the contrariety of the documents, admitted probation for the King's subjects, that the ship and whole loading belonged to them, by documents and witnesses above exception, but not by the oaths of the parties, taken since the capture, or to be taken.

Stair, v. 2. p. 179.

No 24.
Contrariety of
documents.