

for the use of shipping, to be prize, because the port to which the ship was directed was not instructed by the documents, and so was presumed to be intended for Holland; but in respect the Swedes have the benefit of the treaty of Breda, the LORDS superceded to give answer to this point, whether if the ship were proved to belong to the Swedes, it should be free by the said treaty, though it carried contraband.

No 28.

Stair, v. 2. p. 182.

1673. February 28. The MASTER of the ELSINBURGH against DOUGLAS.

The ship called the Elsinburgh was found prize, because she had no pass for the present voyage, but a pretended extract of a pass from the city of Elsinburgh, without the seal of the city affixed; and because, by a letter found aboard from an uncle of the skipper's, residenter in Amsterdam, it did appear, that he had given the skipper order to buy a ship, and procure for her a Swedish pass. The skipper acknowledged also, by his oath, that he was a born Hollander, and that he left his wife lying-in at Amsterdam, and that sometimes she had been before with him in Sweden, and sometimes in Amsterdam, which was not found to instruct his residence in Sweden, albeit he produced a burgess-brief, and he acknowledged himself to be a part owner of the ship.

No 29.

Prize sustained, because the ship wanted a pass, and the skipper acknowledged himself a Dutchman, and part owner.

July 18.—CAPTAIN DOUGLAS having taken a Swedish ship called the Castle of Elsinburgh, she was adjudged prize by the Admiral. The strangers raise reduction, which being disputed, the LORDS found the ship prize upon these grounds, that she had no pass for their voyage conform to the *formula*, or upon oath, but certificates from Elsinburgh, which were found false by the oath of the skipper, who acknowledged that himself was a partner of the ship, and he and another not named were partners of the loading; and because he having acknowledged that he was a Hollander by nation, but that he had been a burgess of Elsinburgh since 1667, and nothing was produced to instruct that he had changed his domicile, his wife remaining at Amsterdam; for albeit he produced a certificate from the city of Elsinburgh, after the capture, bearing, that he was a sworn burgess there, and that he paid all stents that were put upon him, yet it did not bear that any were put upon him. A letter was also found aboard, containing a contrivance for buying another ship, and causing the master, being a Hollander, to become a burgess in Sweden, and then to take a Swedish pass, which is a great evidence that the skipper, when the letter was written, had done the like for himself; so that the LORDS found, that the being a burgess of Elsinburgh, which he might be of many other towns, did not alter his domicile, or make him cease to be an enemy; and therefore a part of the ship belonging to him an enemy, made the whole prize; neither

No 29. would the LORDS admit a contrary probation, that the ship and goods belonged to freemen; and that the skipper was not only a burgess, but an inhabitant of Elsinburgh.

Stair, v. 2. p. 182. & 216.

1673. February 28.

The MASTER of the WHITE DOVE *against* Captain ALEXANDER.

No 30.
A prize not sustained, altho' it was proved by one witness, that papers were thrown overboard.

THE ship called the White Dove being taken by Captain Alexander, and adjudged upon these grounds, that faith was not made by the owners of the ship and loading, but by a third person, which is not conform to the Swedish *formula*; and albeit the pass design London for the port, yet the ship being loaded with masts, which is contraband, the true port was Amsterdam; for the skipper, by his oath, acknowledged, that if he were brought up at Amsterdam, that he should address himself to such a person. But the main point insisted on, was, that it was proved by the timber-man, and a boy of 13 years of age, the skipper's son, that papers were thrown overboard the time of the capture. As to this point, the skipper deponed, Negative; the timber-man deponed, that he threw certain papers overboard, and that the skipper said, if these were found, they would make the ship prize; the boy deponed, that he delivered the papers to the timber-man, but did not depone whether he saw the timber-man throw them overboard or not. It was *alleged*, The boy was within age, and threatened, and that the timber-man was bribed, having gotten assurance of his wages and cloathes, and of any thing in the ship belonging to himself, for which the captain's ticket was produced, which he alleged was no bribe, being due, seeing seamen get always their wages when ship and loading are prize; and that the throwing of papers overboard was an unquestionable ground of prize. There was also found aboard, and produced, a contract of insurance by the insurers at Hamburgh, insuring the ship and loading to be safely arrived at London, and certain letters to merchants at London. There was also sent from London a recommendation from the King, under the hand of Arlington, secretary, of a petition of those who furnished his Majesty's navy with masts, bearing, that this loading was upon their invitation, and the letters did bear, that they should have the first offer.

THE LORDS found, That the only ground of importance was, the throwing of papers overboard; but that the probation of that not being fully clear, they did, before answer thereto, allow the strangers to adduce witnesses, that the ship and goods did truly belong to Swedes, and that the port really designed was London; and that the contract of insurance was a real deed, without simulation or backbond, and that to be proved by the oath of the insurers, and ordained the boy to be re-examined, whether the timber-man threw the papers overboard which he gave him.