

No 39. the owners, giving warrant to Pelts, as a factor, to direct the trading of the ship.

THE LORDS found that the having a Holland's Master was not a sufficient ground of confiscation, either by the Swedish treaty, or by the law and custom of nations, and found that the carrying of contraband to enemies, was a ground of confiscation, whether the ship was taken having the contraband aboard, or were taken in the return of that same voyage, and belonging to that same owner; and found the explanation of the article, by the King's letter, sufficient to qualify the same: They also found that the evidences that the ship belonged to Hollanders were sufficient to allow the seizure, but were not so pregnant as to exclude a contrary probation of the property of the ship, and therefore allowed a joint probation to either party thereanent.

Stair, v. 2. p. 213.

1673. July 17. The MASTER of the GOLDEN FALCON *against* BUCHANAN.

No 40.

A vessel found prize, because the King's enemies were part owners, although the society was contracted before the war.

CAPTAIN BUCHANAN having taken the ship called the Golden Falcon, she was adjudged prize by the Admiral. The Strangers raise reduction. The captain insisted on these grounds, *1mo*, That it was proven by the skipper's oath, that two sixteenth parts, and a half sixteenth part of the ship belonging to merchants in Amsterdam, whereby the whole ship and loading became confiscated; *2do*, It is also proven by his oath, that when the captain pursued to take the ship, one of the company, with other two persons, fled out in a cock-boat with a chest to land, which is an evident presumption, that in or with the chest there were concealed documents carried away, which is much more than the burning or throwing papers overboard; and it must be presumed that there have been enemies' goods in the boat or chest, otherwise these persons would not have fled; *3tio*, The ship was insured in Holland, and so the risk lay upon the King's enemies. It was *answered* for the Strangers, to the *first*, That there was a communion of this ship betwixt the Danes and some merchants in Amsterdam before the war, and that the ship loosed from Bergen in February 1672, towards Amsterdam, and loosed thence in July 1672, and was taken in the return, so that the skipper had no power or warrant from his owners in Norway to dissolve the society; and though a part of a ship belonging to enemies, by a society contracted after the war, could confiscate the whole ship, yet the society being contracted before, there is no obligation, nor was there any opportunity, to dissolve it; and as to the insurance, it doth not change the property, and state it in the insurer, but is only a personal obligation upon him to make up the hazard, upon which pretext the King cannot justly confiscate the property of his allies, because they have taken warrandice of his enemies; and that the allies remain proprietors is clear, that in case of stress of weather they might throw out the loading.

PRIZE.

11523

THE LORDS found the ship and loading prize, because a part of the ship belonged to the King's enemies, albeit before the war, seeing there was opportunity to dissolve the society, by selling or rousing of the ship, the time she was at Amsterdam, where the Holland partners lived. They found also the second ground sufficient by itself, that three persons went out of the ship in a boat with a chest therein, and went to land in the time they were pursued by the privateer; but the LORDS had no need, and were not clear, to determine the ship prize upon the insurance.

No 40.

Stair, v. 2. p. 215.

1673. July 22.

Captain ——— against the MASTER of the FORTUNE of TRAILSOUND.

THE Fortune of Trailsound being craved to be adjudged upon these grounds; *1mo*, That the documents, as to the ship, were contradicted by the skipper's oath, who declared other owners, and likewise the loading of iron, pitch, and tar, by the documents, was asserted to belong to the Tar-Company, and by the skipper's oath, to Samuel Sutton, an Englishman, residenter in Sweden; *2do*, That there were papers thrown overboard the time of the capture; *3tio*, That the ship was insured in Amsterdam;—the LORDS having granted commission to either party to instruct the property of the ship and goods, the report was this day advised, whereby the property of the ship was sufficiently proved by the oaths of sixteen partners, and several other witnesses; but for the loading, the probation was by the oath of Samuel Sutton, who deponed, that he had bargained with the Tar-Company on these terms, that if the loading came safe to England or Scotland, it should belong to him; but if it were taken by the Hollanders, it should belong to the Tar-Company; and deponed, that the loading was truly direct for London, and produced a contract with the Tar-Company for a thousand last of pitch and tar, to be carried to England yearly. There were also letters aboard for consigning the loading to a merchant in London;

No 41.
A ship found free, and the loading prize.

Whereupon the LORDS found, That the property of the ship was sufficiently proved to belong to the Swedes, and therefore declared the same free, notwithstanding of the contrariety of the pass and the oath, seeing by both, the parties were freemen, and notwithstanding of casting of papers overboard, which was instructed but by one passenger, and by some witnesses who heard an extrajudicial confession of the skipper, which the LORDS found was not sufficient against a positive probation. And as to the loading, the LORDS found, that the property was not sufficiently proved to be in Sutton, and the port to be London; but that it was a contrivance for concealing of the carrying of contraband to the enemy's ports, the property being made pendant and ambiguous, that in case of meeting with the Hollanders, the skipper might have a pretence to swear, that