

bear burden; nor could the privateer be put to prove, that they did bear burden in Embden, it being an enemy's country, to which there was no safe access.

No 42.

Stair, v. 2. p. 219.

1673. July 26.

HAMILTON *against* The MASTER of the Ship called the ——— of STATIN.

CAPTAIN HAMILTON having taken a ship called the ——— of Statin, she was assoilzied by the Admiral. The Captain gave in a bill of suspension. THE LORDS ordained the cause to be discussed upon the bill for the stranger's dispatch. The reasons insisted on for the Captain were, that this ship was bought in Holland, as the skipper acknowledgeth, and that she was taken as she came from Holland, before she broke ground in any other dominion, which, by the custom of nations, is a sufficient ground of prize, and is so found by the Admiralties of France and the Spanish Netherlands, even albeit the ship have aboard a writ to show the seal, because simulate trade cannot be shunned if such seals within the waters of the enemy can protect their ships, but here there is nothing to instruct the seal. It was *answered*, That there was neither reason nor custom for such a pretence to hinder neuters to buy ships from enemies more than any other goods, seeing thereby they do not partake of the war, or assist the enemy; nor is there any law requiring writ for the alienation of ships, which always may, and ordinarily do pass by verbal bargains and possessions, and whereof the possession presumes a property, but this ship is not only in the possession of a Swede, but he hath, by his oath, declared, that he truly bought her, and paid for her without simulation.

THE LORDS found this reason alleged for the privateer not relevant, and adhered to the Admiral's decret.

Stair, v. 2. p. 221.

No 43.

Property of a ship presumed by possession, without written evidence; by which she was saved from condemnation.

1673. November 14. The MASTER of the LIVE-DAY *against* MIDDLETON.

CAPTAIN MIDDLETON having seized upon a Hamburg ship called the Live-day, the Admiral did liberate the ship, but confiscated the loading, on this ground, that there were double and false documents aboard as to the loading, viz. a cocquet or bill of loading, bearing the goods to belong to two merchants in Hamburg, and yet by other documents produced, they were claimed as being shipped by Englishmen residents in Hamburg, to be consigned to two English merchants in Hull, so that there were both double documents and for-

No 44.

Ship not adjudged altho' there were fictitious documents, the proof appearing favourable.

No 44. ged documents made use of; for by a certificate of Sir William Swan's, resident for the King in Hamburg, it is declared, that the Hamburgers' names were made use of without their knowledge, which behoved to be by forging their names: And by frequent decisions, conform to the King's instructions, the making use of double or false documents, or having no documents, is ground of confiscation. It was *answered*, That now, in the time of war, his Majesty's subjects cannot carry on trade without making use of simulate and colourable documents; so that, albeit the want of documents, or double or false documents, be a sufficient presumptive probation that the ship and goods do not belong to neutrals or allies, who need not have any colour, being free to pass by either party in the war, and so it is presumed to belong to enemies, yet the presumption is not so strong, but that it admits of a contrary probation in favour of the King's subjects, who can trade no other way, though no other can plead the benefit; or otherwise the privateers may watch his Majesty's ports, and seize all his subjects' ships that come in, which never want such colourable documents but when they have conveys, which is very seldom. And to clear the property of this loading, there is produced a certificate from Sir William Swan, bearing him to have examined upon oath the English merchants at Hamburg, that the goods were shipped for the proper use of the merchants in Hull, and if need be, the same was offered further to be positively proved.

THE LORDS found the allegiance relevant for liberating the loading, that it did belong to his Majesty's subjects, residents in his kingdom, and that the same was sufficient to exclude the making use of colourable documents, but did not rest upon the resident's certificate, but granted commission to the Magistrates of Hamburg and Hull, that by them the testimonies might be taken in presence of the other party or their procurators.

Stair, v. 2. p. 229.

1673. December 17.

STUART against The OWNER of the Ship called the SEAL-FISH.

No 45.
The Court of
Session may
review the
Admiral's
judgment by
advocation.

CAPTAIN STUART having brought up a Danish ship called the Seal-Fish, insisted before the Admiral to have her adjudged prize upon these grounds, that the skipper acknowledgeth himself by his oath to be a sixteenth part owner, and is a born Hollander; and albeit he pretends to be a burges of Bergen, and that by his first oath he deponed he lived the last year there, yet being re-examined, he acknowledgeth that he had not been in Bergen these three years, and that he was made burges of Bergen, not in Bergen but at Copenhagen, and that *in anno* 1672 he resided in Holland with his wife, having only a hired chamber; that he removed that year from Holland, and brought his wife and plenishing