

No 5.

is but a casualty given and taken with the common use of the river ; but in regard the matter was remitted by the Parliament, who might, if they found great inconveniency, make a law for remeid thereof, (before answer) the LORDS granted commission to try the condition of the loch, and how it run before this draining, and how it would run after the same, and how long the draining would continue, and what alteration was in the fishing of Tweed thereby, and what appearance that the same was caused by the draining of this loch.

*Fol. Dic. v. 2. p. 273. Stair, v. 1. p. 49.*

1673. July 26.

HAMILTON *against* the MASTER of the Ship called the \_\_\_\_\_ of STATIN.

No 6.

Property of a  
ship presumed  
ed by posses-  
sion without  
a written  
vendition.

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 was 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.*

1681. December 15.

DEANS *against* ABERCROMBY.

No 7.

No reparation found due to the proprietor of an inferior tenement, for damage occasioned by the falling of stones and rubbish in heightening the walls of a superior tenement, the damage arising from the nature and situation of the inferior tenement.

*Fol. Dic. v. 2. p. 273. Falconer.*

\* \* \* This case is No 58. p. 10122. *voce* PERICULUM.