

No 2. fenders, perceiving that there was no greater number of the said pirates than they that were prisoners, they gave it the hazard, and overthrew the said pirates left in the said ship, and cut the cable, pulled up sail, and brought the said ship away; and, therefore, because the said ship was spuilzied from the owner thereof, now pursuer, by the said pirates, and clean tint from the owner, and the said defenders had hazarded their lives in bringing away the said ship, they were not obliged to render again the ship to the pursuer; which allegiance of the defenders was repelled. Also, it was *alleged* by the said defenders, that because the said pirates being in the said ship, spuilzied the defenders of their ship, and other merchant goods, and that they should not render the said ship again, unless the pursuer would recompence them of their goods, and their ship spuilzied by the said pirates, being in the ship now pursued; which allegiance was, in like manner, repelled by the LORDS. *3dly*, It was *alleged* by the defenders, That at least they should have their whole expenses that they had made upon the said ship, from the time that they took her from the said pirates till they had brought her from the haven of Leith, and upon the beating and reformation of her sinsyne. It was ordained by the LORDS, that they should give in the manner of their expenses, and quantity thereof, that the LORDS might be advised thereof, and thereafter they should have an answer.

*Fol. Dic. v. 2. p. 177. Maitland, MS. p. 166.*

1666. December 22. PAUL HENRISON *against* LAIRD LUDQUHARN.

No 3.

What constitutes a vessel neutral.

PAUL HENRISON, indweller in the island of Helgilland, being at the mouth of the Elbe, fraughted to Scotland by Hamburgers, was taken by a privateer, and declared prize at Peterhead by the Laird of Ludquharn, Admical-Depute there, whereupon he addressed himself to the Admiral Court at Leith, and obtained decret for restoring of his ship upon compearance: Ludquharn gives in a bill of suspension of this decret, and to dispatch the stranger, because it was ordained to be heard upon the bill: Ludquharn *alleged* that the Admiral's decret was unjust, because he offered him to prove, by merchants in Edinburgh, that Helgilland is a part of the dominion of Denmark; and albeit it be in the present possession of the Duke of Holstein, yet he holds it of the crown of Denmark, and as to that, he is subject to the King of Denmark; and therefore the inhabitants of that island are in the state of enmity with the king, and so lawful prize. It was *answered*, That the stranger hath produced a pass of Sir William Swan, the King's agent at Hamburg, bearing that he had taken trial, and found the ship to be free; and, it being notour and acknowledged, that this stranger is a subject of the Duke of Holstein, who is a Prince of the Empire, and in amity with his Majesty, as is declared by a letter of the King to the Lord Commissioner, it must extend to all his present subjects, who are not obliged to dispute how he holds these islands,

or when he got the right thereof; and his pass bears him to be a natural subject of the Duke of Holstein, and not of the King of Denmark. It was *answered*, That the right of this island was only in impignoration, and only in possession of the Duke of Holstein within these ten years.

THE LORDS adhered to the Admiral's decret, and repelled the reasons of the bill.

1667. *January 4.*—THE debate betwixt Paul Henrison and Ludquharn, was this day heard again, and it was *alleged*, That the King's proclamation declared war against the King of Denmark and his subjects, *ita est* the owners of the ship are subjects to the King of Denmark, because it is notour that this isle is a part of the kingdom of Denmark, and till of late was in the same condition as any other of his territories; and albeit the Duke of Holstein have now an interest by possession, or infeodation, that alters not their subjection to the crown of Denmark, but the same is still presumed, unless they will positively prove that the same is altered, and the Duke of Holstein constituted sovereign therein, and they liberated from his jurisdiction, tolls, and imposts for war. It was *answered*, That this stranger was not obliged to dispute the right or investiture of the Duke of Holstein; but it was sufficient for him to say, that before this war they did own him as their prince; for simple acknowledgment of a superior, or investiture from him, do not make subjects, or comprehend them within the wars and quarrels of their superiors; yea, though there were a tribute or jurisdiction due to that superior, yet if the prince do enjoy the privileges of making war and peace, he is not a simple subject, but in so far a sovereign prince, as some of the princes of the empire hold of the Emperor, paying him tribute; and there lies an appeal to the Sovereign Imperial Court; yet, because they can make war and peace, they are not necessarily involved within the Emperor's quarrels. So the Duke of Holstein being a sovereign prince, and possessing this island, so as to make use of the subjects thereof in peace and war, therefore is not comprehended in the King of Denmark's quarrel, nor is he or his subjects in the sense of the proclamation.

THE LORDS adhered to their former interlocutor upon the 22d of December, when this case was debated, and repelled the allegiances proponed for Ludquharn, unless it were alleged that the inhabitants of this island do contribute with the King of Denmark in this war against the King. And they so alleging,

THE LORDS ordained the ship and goods to be valued, and delivered to the stranger, upon caution; or, otherwise, to be sequestrated in some merchant's hands, that the ship might be made use of for freight, and the goods sold, and not made unprofitable. And, according to the course of Admiralty, the LORDS ordained Ludquharn to find caution for cost, skaith and damage, by the delay of that allegiance.