

- No 26. THE LORDS having considered the 11th article of the Swedish treaty, *anno* 1661, found, That contraband became only prize itself, *si deprehendatur*, and therefore being taken in the return after contraband, could not be a cause of confiscation by that treaty, but had no occasion to determine whether corn carried to Holland by Swedes was contraband or not.

*Stair, v. 2. p. 180. & 220.*

1673. February 27.

No 27.

The MASTER of the Ship, called the PATRIARCH JACOB, *against* WILSON.

THE ship called the Patriarch Jacob, having a pass from Hamburgh, bearing, that the ship did belong to the citizens there, and being loadened with victual, the skipper, by his oath, acknowledges, that the loading belonged to Amsterdammers, which was therefore declared prize, as being enemy's goods, and the ship, as carrying the same; the strangers having raised reduction, did insist upon the treaty of Breda, whereby it is agreed, that where enemies' goods are found, they shall be prize, but not the ship; and that by the treaty, it is provided, that any ally that should, within six months after the treaty, claim the benefit thereof, should be admitted thereunto; and *alleged*, That Hamburgh had obtained the treaty communicated to them, but did not produce it.

THE LORDS allowed them a month to produce the communication of the treaty, and if it were produced, superceded to give answer, whether the ship was prize till the first of June.

*Stair, v. 2. p. 182.*

No 28.

Prize not sustained, because the pass bore not the port to which the ship was bound, it being proved, that the ship and cargo belonged to freemen.

1673. February 28. The MASTER of the ST PETER *against* STUART.

THE St Peter of Stoad having loosed from Bream, had a pass from the governor of Bream, and city of Stoad, and therewith went to Longsound in Norway, and took in a loading of joists, balks, and other timber, and loosed from Longsound, having a cocquet, bearing the loading, but not expressing the port, and being thereupon taken and adjudged,

THE LORDS found, That the loading being contraband, and no document to show the Port to which the ship was directed, and that the Swedish passes did not express that the ship was directed for Norway, to be carried to Ollenburghland, which the skipper pretended to be the port, that therefore the ship was warrantably seized, not having a pass for the particular voyage, expressing both the owners of the ship and loading; that therefore, the burden of probation lay upon the strangers, to instruct, that the ship and loading did truly belong to the Swedish subjects; but found the loading, as being contraband,