

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THE LORDS allowed them a month to produce the communication of the treaty, and if it were produced, superceded to give answer, whether the ship was prize till the first of June.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

for the use of shipping, to be prize, because the port to which the ship was directed was not instructed by the documents, and so was presumed to be intended for Holland; but in respect the Swedes have the benefit of the treaty of Breda, the LORDS superceded to give answer to this point, whether if the ship were proved to belong to the Swedes, it should be free by the said treaty, though it carried contraband.

No 28.

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

1673. February 28. The MASTER of the ELSINBURGH against DOUGLAS.

The ship called the Elsinburgh was found prize, because she had no pass for the present voyage, but a pretended extract of a pass from the city of Elsinburgh, without the seal of the city affixed; and because, by a letter found aboard from an uncle of the skipper's, residenter in Amsterdam, it did appear, that he had given the skipper order to buy a ship, and procure for her a Swedish pass. The skipper acknowledged also, by his oath, that he was a born Hollander, and that he left his wife lying-in at Amsterdam, and that sometimes she had been before with him in Sweden, and sometimes in Amsterdam, which was not found to instruct his residence in Sweden, albeit he produced a burgess-brief, and he acknowledged himself to be a part owner of the ship.

No 29.

Prize sustained, because the ship wanted a pass, and the skipper acknowledged himself a Dutchman, and part owner.

July 18.—CAPTAIN DOUGLAS having taken a Swedish ship called the Castle of Elsinburgh, she was adjudged prize by the Admiral. The strangers raise reduction, which being disputed, the LORDS found the ship prize upon these grounds, that she had no pass for their voyage conform to the *formula*, or upon oath, but certificates from Elsinburgh, which were found false by the oath of the skipper, who acknowledged that himself was a partner of the ship, and he and another not named were partners of the loading; and because he having acknowledged that he was a Hollander by nation, but that he had been a burgess of Elsinburgh since 1667, and nothing was produced to instruct that he had changed his domicile, his wife remaining at Amsterdam; for albeit he produced a certificate from the city of Elsinburgh, after the capture, bearing, that he was a sworn burgess there, and that he paid all stents that were put upon him, yet it did not bear that any were put upon him. A letter was also found aboard, containing a contrivance for buying another ship, and causing the master, being a Hollander, to become a burgess in Sweden, and then to take a Swedish pass, which is a great evidence that the skipper, when the letter was written, had done the like for himself; so that the LORDS found, that the being a burgess of Elsinburgh, which he might be of many other towns, did not alter his domicile, or make him cease to be an enemy; and therefore a part of the ship belonging to him an enemy, made the whole prize; neither