

nor doth the alteration of the port import any thing as to the falsehood of the pass, unless an un-free port were concealed; for this ship might freely have gone to Stockholm, Bream, or Amsterdam, having no contraband goods aboard, and the skipper's oath makes it clear that she was considerably out of the way to Bream, but through occasion of wind and weather, and that she was clear past Holland, and never anchored near to it. It was *replied* for the Captain, That the pass by the treaty requiring an oath, both for the ship and goods, did necessarily import it to be renewed for every new loading, otherwise the Dutch would certainly freight such ships at a great value, and so drive on their trade, if the first pass were sufficient, till the ship return to the first port; and this ship having had her first pass at Nantz, her return back to Nantz terminates that voyage, and she should and might easily have had a new pass sent from Stockholm over-land for this loading, as well as for the rest; she might also have had a written order for changing her port, and so having neglected these things, which she might so easily have done, there is great ground of suspicion, and at least should burden the Strangers to prove the property of the loading to belong to free men.

THE LORDS found that there was sufficient ground of suspicion to warrant the privateer to bring up this ship; but found that the grounds of suspicion, and the presumptions, were sufficiently taken off by the skipper's oath, and that the ship and goods belonged to free men; and that the Strangers needed not further instruct the property; but found it relevant to the privateer to prove by the oath of Touley at London, or the factor at Nantz, that the loading was not upon the account of free men, but upon the account of enemies, which they found relevant, so ordained the ship and goods to be valued and delivered to the Stranger upon caution, to make the same furthcoming if the privateer should prevail.

*Stair, v. 2. p. 188.*

1673. June 25.

CAPTAIN ——— against the MASTER of the Ship called St Mary.

THE Captain of the privateer called the St Katharine having taken the ship called the St Mary, the Admiral did absolve the ship and loading. The owners of the privateer pursued a reduction of the Admiral's decreet, and a declarator, that the ship was lawful prize, because the Admiral had unwarrantably repelled these grounds of confiscation; *imo*, That the pass for this voyage was false in the most substantial point of it, in so far as it bears, that the skipper made faith that the ship and loading belonged to the citizens of Copenhagen, and yet by his oath he acknowledgeth that he did not make faith when he got his pass; so that the pass is not only null and disconform to the Danish treaty,

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but it is false in that which is the King's only security against the trading of his enemies under the covert of the passes of his friends; and there can be no stronger evidence of a contrivance, than that the skipper would have omitted that which he knew to be his greatest security, he being obviously known to be by nation a Hollander, and thereby suspected, which could only be purged by the reality and sufficiency of his pass; *2do*, The said pass bears. the ship to belong to the skipper and other inhabitants of Copenhagen, and yet the skipper by his oath denyeth that he hath any share of the ship, which is another pregnant evidence of contrivance, by his oath, to take off the evidences that he is yet a residenter in Holland, whereby the ship would become prize, and in consequence the loading; whereas it appeareth by the oath of his son, and good-son, that his residence hath been still in the States' dominions, where his wife did constantly remain, in a house belonging to himself in property, and was only two months in Copenhagen four years ago; and by several other missives taken aboard, written from Holland, she intreats her husband to come home. It was *answered* for the Strangers, That the grounds of adjudication are not relevant; for albeit the skipper doth ingenuously acknowledge that he made no faith, yet that makes not his pass false, because a false pass is that which is forged, having a forged seal or subscription; but albeit some assertions in it be not true, it does not render it false; and many such defects having been passed over by the Lords; neither was it the skipper's fault, for if an oath had been demanded, he would have given it, and his oath given now before the Admiral supplies it sufficiently. *2do*, Albeit thereby he should lose the benefit of the treaty, by which he was to go free without all inquiry, yet he cannot but be in the condition of any neuter, who may trade without a pass upon oath, though they may be more readily brought up; and he produces two passes in the former voyages, showing that he was still skipper of this ship before the war; he doth also produce a certificate from the King's Envoy Extraordinary in Copenhagen, recommending him to pass free, which the Envoy would never have done if he had not had certain assurance that both ship and loading were free: And as to the second point, albeit the pass bears, the ship to belong to the skipper and others, the skipper hath deponed that it was a mistake, occasioned by the *formula* in the Danish treaty, bearing, that the ship belongs to such a man, skipper, and to his owners, which therefore useth to be put in the pass, though the skipper be not owner. And it appears by the depositions, that the skipper hath had a chamber in Copenhagen, and that his wife came there in February last, and that he bears burden there, and that his wife went to Holland to see her daughter; and suppose he were a Hollander, and had a share of the ship, it could but forfault his own share, and not the share of the other free men, nor yet the loading. It was *replied*, That the falsehood of a pass is not understood by the forgery, but when the substantial of it are not true as expressed; for albeit an error in a point, not material, which being expressed, would not confiscate, hath been passed over; yet

if the essentials be not true, such as the owners, the port, and the species of goods, the pass is thereby false, and is worse than the condition of a neuter having documents without oath, and is an evidence of a contrivance and colour to represent things necessary for free trading otherwise than they are; amongst all these, there is nothing of such importance as the oath, without which it is impossible to exclude unfree trade, and without which the King's allies cannot know whether ship and goods be free; and by the instructions given by the King in Council of England, to the Judge of the Admiralty there, it is expressed, that ships having no documents, or who make use in judgment of false or double documents, are good prize; and on the same ground the ship called the Calmer was found prize in February last, because her pass bore, that the partners of the Tar-Company were owners, albeit the skipper by his oath acknowledged, that Mr Sutton, an Englishman residing in Stockholm, was the owner, and was a free man, yet the falsehood of the pass was held as a probation of a contrivance, albeit the oath bore, that the goods were to be consigned to an Englishman at London; and it is much more material, that there was no oath given at all, nor doth the skipper's oath, given before the Admiral, verifying the pass, supply the same; for there is great odds between a party's oath, when he is free and unengaged, and when he hath small temptation not to be ingenuous; and the taking of a colourable pass bearing an oath, but without an oath, which might probably carry him through, and then deponing after he was taken, if this were passed over, there is no possible security to bar unfree trade; nor is there any use or effect of the treaties as to the King, nor can it be debated but this skipper hath used a colourable pass, and hath endeavoured thereby to deceive those commissioned by the King, and so hath committed an evident fraud and contrivance. And as to the second ground, it being proved by the skipper's own pass that the ship belongs to himself and others, his oath can never take off that probation, being given in his own favour, upon the examination of the Judge, without reference of the party of that point to his oath, which none could be so foolish as to do, having writ to prove it; and it is an empty pretence alleged from the *formula*, bearing, the ship to belong to such a skipper and others, which can be no warrant for the skipper to swear so, when it is not true: But the meaning of the copulative in this, as frequently in other cases, is not that the skipper must always be owner, but that the skipper, or any other free man, being owners, the pass should be taken according to the truth, which will be no defect in the *formula*. And for the evidences of the skipper's changing his domicile, they do not prove, but the contrary probation is far stronger, for at one time a party may have many domiciles, but his residence is estimated by his principal domicile, which is always understood where his wife and family are in his own house, unless there were evidences of their separation; for a skipper who is ordinarily at sea, may have a chamber in many towns where he uses to trade; and though he had a part of his stock, and bore contribution for it, yet his chief residence must be where

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his wife and family were; and though his wife went to Copenhagen in February last, it doth not appear that she remains there, or that she transported her furniture and servants, but only had one daughter with her, which seems to be but for a visit, as it is proved she went and stayed two months at Copenhagen four years since, but went back to Holland and stayed there ever till February last; and though it be a principle, that an unfree ship confiscates the loading, so that a part of the ship being unfree, she cannot be said to be free, and being one body, cannot be condemned in part, and assoilzied in part; but whatsoever might be pretended, if an unfree man had a latent interest in the name of a free man, not known to the owners, who might have acted *bona fide*, which cannot be pretended in this case, where the skipper who is intrusted with the whole by the pass is acknowledged part owner.

THE LORDS did not decide all these points severally, but found there was a sufficient evidence of fraud and contrivance in this case, especially in the contradiction of the skipper's oath to the pass, in so material a requisite, as the giving of oath at the obtaining of passes being the King's greatest security, which they found not to be made up by the skipper's oath after the capture; and by the tenor of the pass, bearing the skipper to be part owner, which his oath without reference could not controul; and found by the evidences, that the skipper's chief domicile was yet in Holland, much more pregnant than that he had changed his domicile to Copenhagen; and therefore reduced the Admiral's decret absolvitor, and declared the ship prize.

*Stair, v. 2. p. 191.*

1673. *June 26.*

The MASTER of the Ship called the *Venus contra* CAPTAIN WILSON

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A prize was sustained as to the loading, by the skipper's oath, that it belonged to owners in Amsterdam, and as to the ship, because of double documents.

CAPTAIN WILSON having taken the ship called the *Venus*, she was declared prize by the Admiral. The Strangers raised reduction, which being debated, the LORDS found that the skipper, by his oath, acknowledged the loading to belong to a citizen in Amsterdam, and therefore declared the loading prize. The ship also was found prize upon this ground, that she had no pass for this voyage, but a pass for the year 1669, and another for the year 1670, bearing her to belong to Swedish owners, and to have the privilege of the Swedish abatement of the customs in the sound; but by a letter found aboard, written by citizens in Lubec, to the skipper, it was instructed, that the property of the ship belonged to Lubecers, who, though they were neuters, yet having false and double documents, viz. the pass and the letter, it was found sufficient to confiscate the ship.

A ship found prize on account of the

1673. *July 15.*—THE ship called the *Venus* being found prize, as is observed upon the twenty-sixth day of June last, the strangers desired to be further heard,