

and *alleged*, That supposing the letter found aboard could instruct the ship to belong to Lubec, and that the skippers' oath did acknowledge the loading to belong to the King's enemies, yet the loading could only be confiscate and not the ship, for neuters cannot be hindered by a war falling in between any princes or states to continue commerce, and if enemies' goods be found aboard, these goods may be confiscate; but the neuters, who freely might serve the enemies in any thing but in the war, and so might take their goods in fraught upon their own peril, yet could not thereby confiscate their ships. It was *answered*, That by the law and custom of nations, allies and neuters may continue their trade, so that they do not partake with enemies, which they may do, either by carrying arms, ammunition, and other contraband goods to them, or by covering or carrying on the enemies' proper trade by carrying of enemies' goods; and therefore enemies' goods have been found by the LORDS, not only to confiscate themselves, but the ships; and albeit, by the treaty of Breda, it be accorded, that neither enemies' goods, nor contraband goods, shall confiscate the ship, but themselves; yet the King, by his answer to the Lords, hath declared that treaty void, as to all parties, and that enemies' goods, and contraband goods, make themselves and the ship prize, neither had Lubec the benefit of that treaty; and whatever may be pretended, when enemies' goods are loaded, by their fraud, pretending the name of freemen, without the knowledge of the skipper or owners, yet here the owners gave warrant to the skipper to take in this fraught, as is instructed by their letter aboard.

THE LORDS found this ship prize, not only upon the falsehood of the pass, but found that enemies' goods did make the ships of neuters, having no privilege for that purpose by a treaty, to be prize.

Stair, v. 2. p. 194. & 212.

1673. July 9.

The OWNERS of the Privateer called the Catharine *against* the MASTER of the KING DAVID.

THIS day the LORDS advocated this cause from the Admiral, because he granted probation before answer, whereas there were present grounds of adjudication.

Stair, v. 2. p. 207.

1673. July 10. FRAZER *against* the MASTER of the FLYING HART.

CAPTAIN FRAZER having pursued an adjudication of the ship, called the Flying Hart, before the Admiral, he, before answer, gave commission to try the
66 B. 2.

No 35.
falsehood of
the pass, and
that enemies'
goods were
aboard.

No 36.

No 37.
False docu-
ments.

No 37. property ; the Captain gave in a bill of advocation on this ground, that there was sufficient evidences for a present adjudication of the ship and loading.

THE LORDS having advised both the reasons of advocation and the principal cause upon the bill, they did advocate the cause, and adjudged the ship and loading, because the ship was only instructed with a pass, dated in November 1666 ; and by the skipper's oath it is acknowledged, that this pass was not for this ship, but for another ship of the same name, which perished several years ago, and so is a false document ; and because the ship being loaded at Amsterdam, she had no bills of loading ; and the skipper and steersman deponed they knew not to whom the goods belonged, but that they had order from a merchant in Amsterdam to consign the goods in the pack-house of Stockholm, to be delivered to such persons as should bring such marks, which they found to be a clear contrivance to colour the Dutch trade.

Stair, v. 2. p. 207.

No 38.

1673. July 10. FRAZER *against* The MASTER of the YOUNG TOBIAS.

IN the bill of advocation mentioned in the above decision, the same reason was alleged as to the ship called the Young Tobias.

THE LORDS did advocate the cause, and adjudged upon this ground, that the skipper, by his oath, acknowledges that he is a sixteenth part owner of the ship, and that he was born in the States' dominions, and that his wife hath ever resided there, and was never in Sweden, albeit he produced her burgess-brief a year before, and deponed that he intended to take his wife to Sweden, seeing, by the King's instructions, a part of a ship belonging to an enemy, confiscates ship and loading, and that the skipper had not changed his domicile before the capture.

Stair, v. 2. p. 208.

No 39.

Found not sufficient cause of confiscation, that the master was a Dutchman, (enemy) not being owner of the vessel.

1673. July 16. CAPTAIN LYEL *against* the MASTER of the LEOPARD.

CAPTAIN LYEL having having taken the ship called the Leopard, she was adjudged prize by the Admiral. The Strangers raise reduction. The captain insisted upon these grounds to maintain the adjudication ; *imo*, This ship was sailed by a Holland's master, which alone is a sufficient ground of prize by the law and custom of nations, and especially against the Swedes, seeing by the Swedish treaty in the year 1661, it is provided, " That it shall be free to the English and Swedes to make use of a master of any nation, so that he become a sworn burgess, and inhabitant of one of their towns ;" from whence it is clear, that a Holland's master, not being a sworn burgess and inhabitant of Sweden, doth confiscate the ship and loading ; *2do*, This ship was taken in the return to