

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