

- No 41. the property did belong to the Tar-Company ; and in case of meeting with the English, to swear, that the same belonged to Sutton an Englishman, which is an unwarrantable contrivance, and not in the same condition as if Sutton had been absolute proprietor, but with condition, that the Tar-Company should bear the risk of capture by the Hollanders ; for, in that case, Sutton was the only proprietor, and the skipper could not depone, in case that the property belonged to another : Therefore, and in respect of the evidence of throwing papers overboard, which have been documents for the Tar-Company, making the port Holland, and that the ship was insured in Holland, the LORDS found, that the loading, as being contraband of its nature, was prize ; but that by the Swedish treaty it did not confiscate the ship, but only the contraband, which bears, *si deprehendantur prædæ cedit sine spe restitutionis* ; but in regard of a concession by the King to the Swedes in the former war, that contraband being the product of Sweden, might be carried by Swedes to enemies' ports, and that pitch and iron were not specially enumerated as contraband by the Swedish treaty, the LORDS put the privateer to instruct, that notwithstanding thereof, pitch and iron are found contraband by the Admiralty of England, and where the King is, and would give direction as to these concerns ; but here the insurance was not relevant alone, but an adminicle of the contrivance.

*Stair, v. 2. p. 218.*

1673. July 23.

Captain SEATON *against* The OWNERS of the KING DAVID.

No 42.  
Prize adjudg-  
ed on ac-  
count of false  
documents.

CAPTAIN SEATON having insisted for declaring the ship called the King David, prize, on these grounds, that the documents were false, and contradicted by the skipper ; and the skipper and steersman, by their oaths, did acknowledge they were Embdeners, and that the whole loading, and most of the ship, belonged to them ;

Whereupon the LORDS declared the ship and goods prize, albeit the skipper deponed, that he became a sworn burgess of Frederickstadt in Denmark, *in anno* 1671, and that his wife was with him five or six weeks that year, and that he had ever since a hired house there, and paid scot and lot, seeing he acknowledged that his wife remained still in Embden since ; and that the steersman deponed, that the skipper's wife dwelt in a house severally from her daughter, who is married in Embden ; neither was it found relevant, that the skipper offered to prove, that he dwelt in Frederickstadt, and paid scot and lot, seeing he did not transport his family, because the Hollanders might, upon that pretence, make themselves burgesses of any free place, and for some inconsiderable stock there bear burden, when truly they had not changed their domicile, or deserted the enemy, leaving their families there, where it is presumed they did

bear burden; nor could the privateer be put to prove, that they did bear burden in Embden, it being an enemy's country, to which there was no safe access.

No 42.

*Stair, v. 2. p. 219.*

1673. July 26.

HAMILTON *against* The MASTER of the Ship called the ——— of STATIN.

CAPTAIN HAMILTON having taken a ship called the ——— of Statin, she was assoilzied by the Admiral. The Captain gave in a bill of suspension. THE LORDS ordained the cause to be discussed upon the bill for the stranger's dispatch. The reasons insisted on for the Captain were, that this ship was bought in Holland, as the skipper acknowledgeth, and that she was taken as she came from Holland, before she broke ground in any other dominion, which, by the custom of nations, is a sufficient ground of prize, and is so found by the Admiralties of France and the Spanish Netherlands, even albeit the ship have aboard a writ to show the seal, because simulate trade cannot be shunned if such seals within the waters of the enemy can protect their ships, but here there is nothing to instruct the seal. It was *answered*, That there was neither reason nor custom for such a pretence to hinder neuters to buy ships from enemies more than any other goods, seeing thereby they do not partake of the war, or assist the enemy; nor is there any law requiring writ for the alienation of ships, which always may, and ordinarily do pass by verbal bargains and possessions, and whereof the possession presumes a property, but this ship is not only in the possession of a Swede, but he hath, by his oath, declared, that he truly bought her, and paid for her without simulation.

THE LORDS found this reason alleged for the privateer not relevant, and adhered to the Admiral's decret.

*Stair, v. 2. p. 221.*

1673. November 14. The MASTER of the LIVE-DAY *against* MIDDLETON.

CAPTAIN MIDDLETON having seized upon a Hamburgh ship called the Live-day, the Admiral did liberate the ship, but confiscated the loading, on this ground, that there were double and false documents aboard as to the loading, viz. a cocquet or bill of loading, bearing the goods to belong to two merchants in Hamburgh, and yet by other documents produced, they were claimed as being shipped by Englishmen residents in Hamburgh, to be consigned to two English merchants in Hull, so that there were both double documents and for-

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No 43.

Property of a ship presumed by possession, without written evidence; by which she was saved from condemnation.

No 44.

Ship not adjudged although there were fictitious documents, the proof appearing favourable.