

1673. July 30.

Captain OSWALD *against* The MASTER of the White Dove.

CAPTAIN OSWALD having pursued for obtaining the ship called the White Dove, declared prize, the strangers raised reduction. The Captain insisted mainly upon two grounds, viz. that there was no document to instruct the property of the loading, and that it was proved by the steersman, and another of the company, that when the Captain came aboard, there were torn papers scattered in the cabin, which were not there half an hour before, but the witnesses did not see who did tear them; and it being *answered*, That there were sufficient documents aboard, viz. a pass for the ship, and a certificate for the loading, both upon oath; and there was no sufficient probation of tearing of any of the ship's papers, but the seeing of such scattered papers in the cabin, and not seeing them before, might have been upon other occasions, and not been adverted by the witnesses to have been lying there before, and that one of the witnesses is a Scotsman who had taken on with the privateer since; but to take off any suspicion, the strangers offered to prove the property of the ship and loading. The Admiral granted commission for taking the oath of Hunkin the owner of the ship and loading, and the depositions of any witnesses that knew the ship had belonged to Hamburgh; which being reported, and the Judge of the Admiralty now being changed, and Mr Walter Pringle being Judge in the Admiralty, who before was for the strangers, he did remit the process to be advised by the LORDS, who having considered the skipper's oath, who deponed, that he had neither charter-party, cocket, nor bills of loading aboard, but only a boam-brief; and supposing that the certificate of the loading was impetrated after the capture, and that there was nothing to prove the property of the ship or loading, but the oath of Hunkin the owner;

They found that the same, with the skipper's oath, was not sufficient to elide the evidences, the want of documents and torn papers, which did infer, that it was a contrivance for the enemy's trade, and therefore found the ship and loading prize.

But thereafter it being *alleged*, That the certificate upon oath was aboard the time of the capture; and produced in the process before the Admiral, and several person's oaths being taken thereanent, who deponed, that it was produced before it could be returned from Hamburgh,

THE LORDS found, That the skipper being a Hollander, and torn papers found aboard, it was a sufficient ground for seizure; but that the probation for the property did elide the contrary probation, and therefore found the ship and loading free, and assolizied. See PRIZE.

No 626.

What is evidence of the property of a ship?