

receipt of bolls of good and sufficient victual; which they found obliged the said Thomas. Barns had receipts for all except 18 bolls: which they denying, it was sustained relevant to be proven by his servants who brought it in to them.

*Vol. I. Page 79.*

1680. *January 31.*

DAULING *against* MATHIE.

IN an action, Dauling against Mathie, a bond was ALLEGED to be wrong registrate in the bailie court-books of Edinburgh; whereas the parties dwell in the Pleasants, at the Cowgate-port, which lies within the regality of Broughton, and answers with the shire; and should either have been registrate in the sheriff-court books, or in the books of the Canongate.

*Vol. I. Page 79.*

1680 and 1681. PHILIP VAN PORTEN *against* ANDREW DICK and OTHERS.

1680. *January 31.*—IN the case betwixt Philip Van Porten, and Andrew Dick and Others, anent the ship taken by Captain Martine from the merchants of Hamburgh, the intromitters with the goods being pursued, the Lords found, *1mo*, That it ought to be proven the goods were piratically taken; and found the Admiral's decret not sufficient to prove it, but required the oaths of the seamen and other habile witnesses who were robbed. Now, they dwelt in Hamburgh, and might be dead. *2do*, That the cautioners for the privateer who took the said ship behoved to be discussed before the intromitters with the goods. *3tio*, Ordained the stranger to prove and adduce the laws and customs of the other nations in Europe, that the Lords may see what is the *jus gentium* in making intromitters *bona fide* with goods robbed at sea liable for restitution, and if it be *vitium reale*. For, in goods stolen by land, it is certainly an inherent vice, and they are recoverable, *rei vindicatione*, wheresoever they are found. *4to*, They reserved to themselves to consider if it should assoilye the intromitters, that the owners had once Captain Martine, the pirate, prisoner in Edinburgh, where he escaped in woman's apparel; and again prisoner at London, where they consented to his liberation. This was thought an odd and wimpled interlocutor. *Vide Zeigler. ad Grotium de Jure Belli, p. 548.*

The late author of *Jus Maritimum*, c. 4, Of Piracy, shows that the buyers of caped goods in England are not liable in restitution; but our countryman, Wellwod, in his *Sea-Laws*, c. 25, Of things taken on the Sea, shows a decision to the contrary; but it is in 1487, near 200 years old.

*Nota.*—Upon the 19th day of January 1681, the Lords having advised the probation taken at Hamburgh, with a complimenting letter from the magistrates to the Lords, thanking them for their justice; the Lords found the robbery to have been clearly done *in alto mari* by Captain Martine, and therefore decerned Captain Dick the intromitter with the robbed goods to restore *in quantum lucratus*. His oath being taken, he deponed he had paid so much to Martine, the robber. Several of the Lords voted that this ought not to be discounted nor allowed to him, because he was *in pessima fide* to buy such goods before