

P R I Z E.

1558. July 6. A DUTCHMAN against LINDSAY.

ANENT the action pursued by a Dutchman against Lindsay, dwelling in Leith, for restoring of a ship to the said Dutchman, alleged to be spuizied from him by certain pirates on the sea, and found and apprehended in the possession of the said Lindsay, in the haven of Leith, and desired by the said Dutchman to be restored to him again, it was *alleged* by the said Lindsay, that he ought not to restore the said ship to the said Dutchman, because he *bona fide* coft the said ship from a French man of war, who took the said ship from an Hollander, who was bringing victuals to the town of Berwick, in time of war, to furnish our old enemies of England, and also *prehabatur inter reges Gallorum*, and the Hollanders; and Flemings, and English, and so was just prize to the said Frenchman that sold her to the said Lindsay, which allegeance was admitted to the said Lindsay's probation.

Fol. Dic. v. 2. p. 177. Maitland, MS. p. 127.

1566. May 14. A FRENCHMAN against SCOTSMEN.

ANENT the action pursued by a Frenchman against certain Scotsmen, who had a ship in the haven of Leith, which ship the Frenchman, being in the said haven, *alleged* to pertain to him, and spuizied from him by certain pirates, desired the Scotsmen, defenders, to render to him the said ship. It was *alleged* by the defenders, that the pirates who took the said ship from the pursuer, came in the same ship upon the defenders, being in another ship of a Scots merchant, and spuizied them of all their goods, and took them prisoners, and put them in the said pirates ship, now claimed by the said pursuer; and they remained till it happened that the most part of the said pirates went upon land, and left a small number to keep the said ship, and the said prisoners the de-

No 1.

A ship bought from the captor, and brought into a harbour, found lawful prize, and the buyers not bound to restore her.

No 2.

A ship was captured by pirates, who were afterwards overcome by their prisoners. The ship found still to belong to the original owners.

No 2. fenders, perceiving that there was no greater number of the said pirates than they that were prisoners, they gave it the hazard, and overthrew the said pirates left in the said ship, and cut the cable, pulled up sail, and brought the said ship away; and, therefore, because the said ship was spuilzied from the owner thereof, now pursuer, by the said pirates, and clean tint from the owner, and the said defenders had hazarded their lives in bringing away the said ship, they were not obliged to render again the ship to the pursuer; which allegiance of the defenders was repelled. Also, it was *alleged* by the said defenders, that because the said pirates being in the said ship, spuilzied the defenders of their ship, and other merchant goods, and that they should not render the said ship again, unless the pursuer would recompence them of their goods, and their ship spuilzied by the said pirates, being in the ship now pursued; which allegiance was, in like manner, repelled by the LORDS. *3dly*, It was *alleged* by the defenders, That at least they should have their whole expenses that they had made upon the said ship, from the time that they took her from the said pirates till they had brought her from the haven of Leith, and upon the beating and reformation of her sinsyne. It was ordained by the LORDS, that they should give in the manner of their expenses, and quantity thereof, that the LORDS might be advised thereof, and thereafter they should have an answer.

Fol. Dic. v. 2. p. 177. Maitland, MS. p. 166.

1666. December 22. PAUL HENRISON *against* LAIRD LUDQUHARN.

No 3.

What constitutes a vessel neutral.

PAUL HENRISON, indweller in the island of Helgilland, being at the mouth of the Elbe, fraughted to Scotland by Hamburgers, was taken by a privateer, and declared prize at Peterhead by the Laird of Ludquharn, Admiral-Depute there, whereupon he addressed himself to the Admiral Court at Leith, and obtained decret for restoring of his ship upon compearance: Ludquharn gives in a bill of suspension of this decret, and to dispatch the stranger, because it was ordained to be heard upon the bill: Ludquharn *alleged* that the Admiral's decret was unjust, because he offered him to prove, by merchants in Edinburgh, that Helgilland is a part of the dominion of Denmark; and albeit it be in the present possession of the Duke of Holstein, yet he holds it of the crown of Denmark, and as to that, he is subject to the King of Denmark; and therefore the inhabitants of that island are in the state of enmity with the king, and so lawful prize. It was *answered*, That the stranger hath produced a pass of Sir William Swan, the King's agent at Hamburg, bearing that he had taken trial, and found the ship to be free; and, it being notour and acknowledged, that this stranger is a subject of the Duke of Holstein, who is a Prince of the Empire, and in amity with his Majesty, as is declared by a letter of the King to the Lord Commissioner, it must extend to all his present subjects, who are not obliged to dispute how he holds these islands,