

thing; because the sailors can be known of what nation they are, by their language, and it were unnecessary to cause the Swedes depone, upon oath, that they are Swedes; but cannot be so well known to whom the ship and goods belong, and therefore oath is to be made thereupon; and albeit a pass be found aboard, conform to the treaty, whereby it is provided, *ne quid ulterius inquiratur in navigium, bona aut homines nulla tenus inquiratur*, it immediately follows, *quod si gravis aliqua suspicio subsit*, that there may be seizure even where there is a pass, or if the pass were old or vitiated, or appear not to agree with the hand and seal of the places whence it is directed, seizure might be made; and therefore, in this case, the whole company being Hollanders, as is evident by their language, although there had been no suspicion of the truth of the pass, they might justly have been seized and confiscated, conform to the King's declaration; neither is it a good argument, that because the treaty gives leave to have the master of any nation, that therefore all the sailors may be of any nation: and therefore, if the company might have been of any nation, there needed no such expression for the master, *exceptio firmat regulam in non exceptis*; which is the more clear, that by the treaty betwixt the King and the King of Spain, there is a special privilege to the Flandrians, that they shall not be questioned, as being navigated by Hollanders, in respect of the identity of their language; which would never have been demanded, if, by the law of nations, Hollanders, the King's enemies, might have been made use of by any in amity with him.

THE LORDS found, That this Swedish ship, being navigated by the sailors all, or most part, being Hollanders, residents in or about Amsterdam when they entered this voyage, that the same was a sufficient ground of confiscation, in respect of the King's declaration of war, and that, by the Swedish treaty, there was no privilege granted to the Swedes as to this matter; and therefore assoilzied from the reduction, having found it sufficiently proved by the testimonies at Cromarty. And whereas it was alleged, that these testimonies were extorted, by holding swords and pistols to the company's breasts, both at sea, and after landing, to make them confess that they and goods belonged to Hollanders,

THE LORDS found the allegiance relevant, that, at land, and about the time of their testimony, the witnesses were so threatened; but would not sustain that they were so threatened at sea, when they were taken, unless it were alleged that, at sea, they were forced to swear, or depone upon oath, whereupon it might have been presumed that, by reason thereof, they would adhere to it when they came to land.

Stair, v. 1. p. 481. 483. 484. 534.

1667. November 22. Colonel SEATOUN *against* The LAIRD of BALWHILLY.

THE Laird of Balwhilly having seized upon a ship belonging to the Dutch, during the war, Colonel Seatoun, Governor of the Fort at Brassie-sound, med-

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dled with the ship and loading, *brevi manu*, for the use of the garrison; Balwhilly pursues a spuilzie before the Admiral: Colonel Seatoun gives in a bill of advocation on this reason, that Balwhilly having no commission, albeit he did seize upon the ship, yet it belongs to the King, and the Colonel had a warrant from the Lord Commissioner to intromit therewith, for the garrison's use; and therefore, in the cause concerning the King, his Majesty's Advocate and officers were not obliged to answer before the Admiral, nor could they attend there, and therefore the advocation ought to be past. It was *answered*, That the reason was *in causa*, and not relevant, for the advocate ought to have a depute before the Admiral, which is a supreme court; and process maritime, in the first instance, ought not to be sustained before the LORDS, and that whatever they pretended in the point of right, *Spoliatus est ante omnia restituendus*.

THE LORDS having heard the parties upon the bill, *in præsentia*, ordained the same to be past.

It was then desired, that as, before the Admiral, the Colonel behoved to find caution, not only *judicio sisti*, but also *judicatum solvi*, that he may be ordained to do the same before the Lords.

Which the LORDS refused, but granted the advocation in common form.

Stair, v. 1. p. 487.

No 6.

Does the declaration of the shipmaster preclude the owners from bringing contrary evidence?

1667. December 13. RANDOLPH DAVIDSON *against* RICHARDSON.

A SHIP being declared prize, because the loading of salt belonged to a Frenchman, the skipper and steersman having declared upon oath, that the loading was taken in at the Rotchel upon the account of the said person; the adjudication was quarrelled by a reduction, upon diverse reasons; and in special these, that the deposition of the skipper and steersman were forced and extorted from them; and it was offered to be proved that it did appear by diverse letters, certificates, and documents produced, that the loading did belong to the owners of the ship, who were citizens of Dantzic and Hamburgh, and were not the King's enemies.

THE LORDS, in this process, found, that the owners may be heard to reduce the sentence upon reasons omitted by the skipper. *2do*, It being debated amongst the Lords, whether the skipper's declaration should so prejudice and conclude the owners that they should not be heard thereafter to prove that the loading belonged to them, some thought it hard that the skipper's fraud or mistake should prejudice the owners; but because, in the case, there was no ground to presume that the skipper and steersman did intend to prejudice or wrong the owners, and the writs and certificates produced were all after the seizure; and the letters, which were of anterior dates, might have been made up, and were all from persons concerned; and there were no documents found in the ship that could clear that the loading did belong to the owners