

No 31. know the skipper to be a Hollander. In the case of the *Venus*, they found, That double documents being got aboard, which were contrary to one another, were a ground of adjudication.

*Gosford, p. 334.*

1673. June 13.

WINCHESTER *against* The OWNERS of the *St Andrew*.

No 32.

Prize not sustained, because of the contrariety of two passes, or suppressing of that which, if expressed, would not make the ship prize.

THE Admiral having assoilzied a Swedish ship called the *St Andrew*, as to the ship and whole loading, except twelve last of pitch, Captain Winchester who took her, raised reduction of the Admiral's decret, upon iniquity, he having proponed sufficient reasons of adjudication, viz. that the pass granted by the King of Sweden was false and vitiated, the name of the skipper being scored out, and this skipper interlined; and there being two passes produced, the one contradicted the other as to the return of the skipper; *2do*, The ship was taken with contraband, viz. monies, silver and copper, to the value of L. 50 Sterling, which by the Swedish treaty is enumerated as contraband, and with a quantity of iron and deal-boards which is also contraband, and with twelve last of pitch which is likewise contraband. It was *answered* for the Strangers, That the Admiral's decret was just, for they had produced a pass from the College of Commerce exactly conform to the Swedish treaty, albeit *ex superabundante* they had also produced the King of Sweden's own pass, in which the name of the skipper was altered; but they rested on the pass from the College of Commerce wherein the skipper's name stands clear *ab initio*; and for any contrariety, it is not in relation to any thing that is material that the expressing thereof could make the ship prize; and as for the money it is inconsiderable, only necessary for the ship's present use; and, though the Swedish treaty number money as contraband, yet, by a posterior explanatory article by the King, it is declared that money and victual are only contraband when they are carried in relief to a place besieged; and as for iron and deals, they are *promiscui usus* and are not contraband; and as to the pitch the Admiral did no wrong, for the King having, by a concession, in the former war, declared, that the Swedes carrying the native product of their own country should not be quarrelled as being contraband; and it being debated, whether that concession could only extend to that war, or if it did continue in this war; the Admiral did only appoint it to be instructed, that the Admiralty of England, where the King is present, did not condemn pitch carried by the Swedes from their own country to Holland; but hath neither condemned nor assoilzied the pitch till probation thereof be returned;

THE LORDS adhered to the Admiral's decret, and assoilzied from the reduction.

1673. July 18.—THE ship called the St Andrew being declared free by the decision observed the 13th day of June last, Captain Winchester raised reduction of the Lords' decret, upon this ground, That since the decret there were sufficient instructions sent by the King, which were the rules given to both the Admiralties of Scotland and England, by which contraband goods are not only declared to confiscate themselves, but the ship and loading; and there is also produced queries and answers by the King's advocate in the Admiralty of England, Sir Robert Wiseman, bearing the species of contraband, and pitch amongst the rest, which he affirms to be contraband, unless by a treaty it be otherwise provided; which queries are produced by the Strangers themselves; so that these being emergent reasons after the decret, are receivable by reduction. It was answered for the Strangers, That there is here no emergent reason that can alter the Lords' decret *in foro*, because these instructions, albeit they were solemn laws, cannot be drawn back to annul sentences before they were sent, for all laws do but reach to the future; *2do*, Wiseman's queries do only bear, "That pitch is contraband where there is no treaty to the contrary," albeit they had authority, as they have not; but the decret of the Lords did proceed upon the Swedish treaty, and no instructions which are general can be understood to derogate to the King's public treaties, which being public transactions and contracts, cannot be justly altered by the King without the consent or fault of his allies, as Sir Robert Wiseman in the same queries affirms; So that albeit the instructions had been here the time of the decret, the Lords behoved to have proceeded according to the Swedish treaty, this being a Swedish ship; in which treaty, there is an article declaring what is contraband without mention of pitch; and, albeit it be alleged that there is a general clause in that article, bearing, "and other instruments of war," the same was alleged before, and the Lords found, that by that article, the Admiral had done no wrong in assolzieing the ship and goods, and only stopped the pitch itself, which quadrates with the said article, bearing, "That the contraband therein mentioned, *si deprehendantur prædæ cedent*."

THE LORDS adhered to the decret, and found the instructions not to derogate to the treaty, and that the dispute both now and before was materially the same, and founded upon the Swedish treaty.

*Stair, v. 2. p. 187. & 216.*

1673. June 17. DONALDSON against The MASTER of the DEBORA.

CAPTAIN DONALDSON having brought up the ship called the Debora, she was assolzieed by the Admiral. The Captain gave in a bill of suspension, whereupon the LORDS heard the cause, wherein it was *alleged*, That the Admiral had done wrong in absolving this ship, there being sufficient ground to declare her

No 32.

No 33.  
What ground  
of suspicion  
warrants sei-  
zure?