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' decreet, upon this ground, That since the decreet 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 decreet, are receivable by reduction. It was *answered* for the Strangers, That there is here no emergent reason that can alter the Lords' decreet *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; 2*do*, 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 decreet 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 decreet, 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 assoilzieing 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.*

No 32.

The Lords adhered to the decreet, 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.

No 33.
What ground of suspicion warrants seizure?

Captain Donaldson having brought up the ship called the Debora, she was assoilzied 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 33. prize, in so far as the ship pretended to be Swedish ship, and that she had received a pass from the College of Commerce, in October 1672, bearing, That her owners in Stockholm had made faith that the ship being then at Nantz in France, did belong to them, and to no other, and that she was to be loaded with brandy for their use, and the use of no other. Yet, by the skipper's oath, it is acknowledged, that the ship having been formerly loaded with brandy, shortly after the pass, she was forced by stress of weather to go into Portsmouth in England, and by the order of the owners correspondent, Touley, at London, the brandy was disloaded and sold there, and the ship was sent back to Nantz, by Touley's order, to be loaded again with brandy for the use of the owners in Stockholm, mentioned in the pass, and the ship being taken near the coast of Holland, was brought up, and acknowledged that he had a private direction, that in case other ships did prevent him towards Stockholm, he should set into Bream: Whereupon it was *alleged*, 1*mo*, That the ship was without documents as to this voyage, and that the pass was only for the former loading of brandy, and not for this, and that the *formula* in the Swedish treaty bears, that the skipper and owners should make faith that the ship and loading belong to free men, expressing the quantity and quality thereof; and this pass mentions nothing of this present loading, but of the former loading, and therefore as to this voyage she is without document, which is an unquestionable ground of prize. 2*do*, The *formula* of the pass requires the port to be expressed, which in this pass is Stockholm; and the skipper by his oath acknowledges that he was ordered to Bream, and yet can show no order for it, and so the pass is false as to the port; it is also a relevant ground of confiscation, but the true concealed port hath been Holland, where the ship lingered for several days; and albeit a pilot-boat came out to her, yet being loaded with brandy, which is prohibited in Holland, she would not enter in, in the day-time, but resolved to steal in privately; and she was taken thirty leagues off their course to Bream; and yet the Admiral did simply absolve her, without necessity of proving the property of ship and goods, which was the least could be done on such grounds. It was *answered*, That the Admiral did justly absolve, without further probation, because here there was no just ground of suspicion; for there is nothing in the Swedish treaty, that passes must be renewed at every several port, which would exceedingly clog trading; for suppose this ship had received her pass at Stockholm, to carry a loading to Nantz, and from that to London, and from that to Holland, and thence homeward, it is not to be imagined that new passes behoved to be obtained in all these cases; and this ship having received a pass while she was at Nantz, it must suffice her till she return to Stockholm; but especially in this case, where the skipper's oath bears, That the first loading of brandy was designed for Stockholm, but by stress of weather being forced into Portsmouth, was sold there; so that the ship went back upon the same design to Nantz to bring the like loading of brandy that is expressed in the pass; and it is impossible to foresee such accidents, and to provide passes for them;

nor doth the alteration of the port import any thing as to the falsehood of the pass, unless an unfree port were concealed; for this ship might freely have gone to Stockholm, Bream, or Amsterdam, having no contraband goods aboard, and the skipper's oath makes it clear that she was considerably out of the way to Bream, but through occasion of wind and weather, and that she was clear past Holland, and never anchored near to it. It was *replied* for the Captain, That the pass by the treaty requiring an oath, both for the ship and goods, did necessarily import it to be renewed for every new loading, otherwise the Dutch would certainly freight such ships at a great value, and so drive on their trade, if the first pass were sufficient, till the ship return to the first port; and this ship having had her first pass at Nantz, her return back to Nantz terminates that voyage, and she should and might easily have had a new pass sent from Stockholm over-land for this loading, as well as for the rest; she might also have had a written order for changing her port, and so having neglected these things, which she might so easily have done, there is great ground of suspicion, and at least should burden the Strangers to prove the property of the loading to belong to free men. No 33.

THE LORDS found that there was sufficient ground of suspicion to warrant the privateer to bring up this ship; but found that the grounds of suspicion, and the presumptions, were sufficiently taken off by the skipper's oath, and that the ship and goods belonged to free men; and that the Strangers needed not further instruct the property; but found it relevant to the privateer to prove by the oath of Touley at London, or the factor at Nantz, that the loading was not upon the account of free men, but upon the account of enemies, which they found relevant, so ordained the ship and goods to be valued and delivered to the Stranger upon caution, to make the same furthcoming if the privateer should prevail.

Stair, *v.* 2. *p.* 188.

1673. *June* 25.

CAPTAIN ——— *against* the MASTER of the Ship called St Mary.

No 34.
What evidence sufficient to warrant seizure?

THE Captain of the privateer called the St Katharine having taken the ship called the St Mary, the Admiral did absolve the ship and loading. The owners of the privateer pursued a reduction of the Admiral's decreet, and a declarator, that the ship was lawful prize, because the Admiral had unwarrantably repelled these grounds of confiscation; *imo*, That the pass for this voyage was false in the most substantial point of it, in so far as it bears, that the skipper made faith that the ship and loading belonged to the citizens of Copenhagen, and yet by his oath he acknowledgeth that he did not make faith when he got his pass; so that the pass is not only null and disconform to the Danish treaty,