

PRIZE.

11523

THE LORDS found the ship and loading prize, because a part of the ship belonged to the King's enemies, albeit before the war, seeing there was opportunity to dissolve the society, by selling or rousing of the ship, the time she was at Amsterdam, where the Holland partners lived. They found also the second ground sufficient by itself, that three persons went out of the ship in a boat with a chest therein, and went to land in the time they were pursued by the privateer; but the LORDS had no need, and were not clear, to determine the ship prize upon the insurance.

No 40.

Stair, v. 2. p. 215.

1673. July 22.

Captain ——— against the MASTER of the FORTUNE of TRAILSOUND.

THE Fortune of Trailsound being craved to be adjudged upon these grounds; *1mo*, That the documents, as to the ship, were contradicted by the skipper's oath, who declared other owners, and likewise the loading of iron, pitch, and tar, by the documents, was asserted to belong to the Tar-Company, and by the skipper's oath, to Samuel Sutton, an Englishman, residenter in Sweden; *2do*, That there were papers thrown overboard the time of the capture; *3tio*, That the ship was insured in Amsterdam;—the LORDS having granted commission to either party to instruct the property of the ship and goods, the report was this day advised, whereby the property of the ship was sufficiently proved by the oaths of sixteen partners, and several other witnesses; but for the loading, the probation was by the oath of Samuel Sutton, who deponed, that he had bargained with the Tar-Company on these terms, that if the loading came safe to England or Scotland, it should belong to him; but if it were taken by the Hollanders, it should belong to the Tar-Company; and deponed, that the loading was truly direct for London, and produced a contract with the Tar-Company for a thousand last of pitch and tar, to be carried to England yearly. There were also letters aboard for consigning the loading to a merchant in London;

No 41.
A ship found free, and the loading prize.

Whereupon the LORDS found, That the property of the ship was sufficiently proved to belong to the Swedes, and therefore declared the same free, notwithstanding of the contrariety of the pass and the oath, seeing by both, the parties were freemen, and notwithstanding of casting of papers overboard, which was instructed but by one passenger, and by some witnesses who heard an extrajudicial confession of the skipper, which the LORDS found was not sufficient against a positive probation. And as to the loading, the LORDS found, that the property was not sufficiently proved to be in Sutton, and the port to be London; but that it was a contrivance for concealing of the carrying of contraband to the enemy's ports, the property being made pendant and ambiguous, that in case of meeting with the Hollanders, the skipper might have a pretence to swear, that

- No 41. the property did belong to the Tar-Company ; and in case of meeting with the English, to swear, that the same belonged to Sutton an Englishman, which is an unwarrantable contrivance, and not in the same condition as if Sutton had been absolute proprietor, but with condition, that the Tar-Company should bear the risk of capture by the Hollanders ; for, in that case, Sutton was the only proprietor, and the skipper could not depone, in case that the property belonged to another : Therefore, and in respect of the evidence of throwing papers overboard, which have been documents for the Tar-Company, making the port Holland, and that the ship was insured in Holland, the LORDS found, that the loading, as being contraband of its nature, was prize ; but that by the Swedish treaty it did not confiscate the ship, but only the contraband, which bears, *si deprehendantur prædæ cedit sine spe restitutionis* ; but in regard of a concession by the King to the Swedes in the former war, that contraband being the product of Sweden, might be carried by Swedes to enemies' ports, and that pitch and iron were not specially enumerated as contraband by the Swedish treaty, the LORDS put the privateer to instruct, that notwithstanding thereof, pitch and iron are found contraband by the Admiralty of England, and where the King is, and would give direction as to these concerns ; but here the insurance was not relevant alone, but an adminicle of the contrivance.

Stair, v. 2. p. 218.

1673. July 23.

Captain SEATON *against* The OWNERS of the KING DAVID.

No 42.
Prize adjudg-
ed on ac-
count of false
documents.

CAPTAIN SEATON having insisted for declaring the ship called the King David, prize, on these grounds, that the documents were false, and contradicted by the skipper ; and the skipper and steersman, by their oaths, did acknowledge they were Embdeners, and that the whole loading, and most of the ship, belonged to them ;

Whereupon the LORDS declared the ship and goods prize, albeit the skipper deponed, that he became a sworn burgess of Frederickstadt in Denmark, *in anno* 1671, and that his wife was with him five or six weeks that year, and that he had ever since a hired house there, and paid scot and lot, seeing he acknowledged that his wife remained still in Embden since ; and that the steersman deponed, that the skipper's wife dwelt in a house severally from her daughter, who is married in Embden ; neither was it found relevant, that the skipper offered to prove, that he dwelt in Frederickstadt, and paid scot and lot, seeing he did not transport his family, because the Hollanders might, upon that pretence, make themselves burgesses of any free place, and for some inconsiderable stock there bear burden, when truly they had not changed their domicile, or deserted the enemy, leaving their families there, where it is presumed they did