

bear burden; nor could the privateer be put to prove, that they did bear burden in Embden, it being an enemy's country, to which there was no safe access.

No 42.

*Stair, v. 2. p. 219.*

1673. July 26.

HAMILTON *against* The MASTER of the Ship called the ——— of STATIN.

CAPTAIN HAMILTON having taken a ship called the ——— of Statin, she was assoilzied by the Admiral. The Captain gave in a bill of suspension. THE LORDS ordained the cause to be discussed upon the bill for the stranger's dispatch. The reasons insisted on for the Captain were, that this ship was bought in Holland, as the skipper acknowledgeth, and that she was taken as she came from Holland, before she broke ground in any other dominion, which, by the custom of nations, is a sufficient ground of prize, and is so found by the Admiralties of France and the Spanish Netherlands, even albeit the ship have aboard a writ to show the seal, because simulate trade cannot be shunned if such seals within the waters of the enemy can protect their ships, but here there is nothing to instruct the seal. It was *answered*, That there was neither reason nor custom for such a pretence to hinder neuters to buy ships from enemies more than any other goods, seeing thereby they do not partake of the war, or assist the enemy; nor is there any law requiring writ for the alienation of ships, which always may, and ordinarily do pass by verbal bargains and possessions, and whereof the possession presumes a property, but this ship is not only in the possession of a Swede, but he hath, by his oath, declared, that he truly bought her, and paid for her without simulation.

THE LORDS found this reason alleged for the privateer not relevant, and adhered to the Admiral's decret.

*Stair, v. 2. p. 221.*

No 43.

Property of a ship presumed by possession, without written evidence; by which she was saved from condemnation.

1673. November 14. The MASTER of the LIVE-DAY *against* MIDDLETON.

CAPTAIN MIDDLETON having seized upon a Hamburgh ship called the Live-day, the Admiral did liberate the ship, but confiscated the loading, on this ground, that there were double and false documents aboard as to the loading, viz. a cocquet or bill of loading, bearing the goods to belong to two merchants in Hamburgh, and yet by other documents produced, they were claimed as being shipped by Englishmen residents in Hamburgh, to be consigned to two English merchants in Hull, so that there were both double documents and for-

No 44.

Ship not adjudged altho' there were fictitious documents, the proof appearing favourable.