

1673. February 21.

The OWNERS of the Ship called the PRINCE of EAST-FREESLAND *against* Captain BINNING.

CAPTAIN BINNING having obtained adjudication of the ship called the Prince of East-Freesland, the strangers raise reduction. The grounds of adjudication insisted on were, that the ship was bought in Amsterdam, since the war, and was taken, light, coming from Amsterdam to East-Freesland; and albeit she had aboard a pass from the Princess of East-Freesland, bearing, that Albert Janson was master and owner of the ship, yet the said Albert, by his oath, acknowledgeth, that he was only owner of a fourth part, and did not so much as mention the rest of the owners, so that his oath cancels the faith of the pass, and makes it a false document; and as to three quarters of the ship, she is without any document; and, by the common law of nations, false documents, or no documents, make prize. *2do*, The pass (albeit in the time of war) doth not proceed upon oath. *3tio*, The master, by his oath, acknowledgeth that he had married a wife at Amsterdam, where he bought the ship, and staid with her twenty days before this voyage, and doth make no mention of any other residence he had; and acknowledgeth, that he hath been skipper, or steersman, to ships making their returns to Amsterdam, for several years past. *4to*, The ship being bought in Holland during the war, and taken before she touched ground in Freesland, she is reputed, as to the property, to belong to the Hollanders, till she touch ground in another dominion. It was *answered* for the stranger, That the Princess of Freesland being neuter, without a treaty, was not obliged to any form of pass; but whatever pass was sufficient before the war, the same was sufficient after; and so required no oath nor formality. *2do*, Albeit there be no document for three quarters of the ship, and that the skipper's oath mentions not his owners, nor his residence, yet that is because he was not interrogated as to these points; but offereth now presently to depone for clearing who were his owners, and that they were free men, and that his residence was in Freesland.

THE LORDS found, That albeit there was no special *formula* of a pass required, there being no treaty, yet that, in the time of war, it is a just ground of seizure, if there were not a pass upon oath; and that the defect thereof put the burthen of probation upon the stranger; and found, that the skipper's contradiction of the pass, or wanting a document to clear the whole property, did not exclude a contrary probation that the ship wholly belonged to Freesland; but would not now examine the skipper, after he had consulted, and might have been prompted to say what might free his ship; but found, that he behoved to prove that the property of the ship belonged to Freeslanders, and that his residence was not in Holland; but found not that alleageance relevant, that the ship being taken

No 22.

Where there is no treaty, and no *formula* of a pass appointed, yet the want of a pass upon oath throws the *onus probandi* upon the strangers.

No 22. before she touched ground out of Holland dominions, where she was bought, but that a true delivery there, was sufficient.

1673. *February 25.*—IN a reduction of the adjudication of the ship called the Prince of East-Freesland, the LORDS admitted a contrary probation for the strangers, that the ship, being taken light, did truly belong to the subjects of East-Freesland, which is a free principality; but would grant no commission to that place, being close by Holland; but ordained witnesses, above exception, to be adduced here, provided they brought certificates, under the seal of the Magistrates where they reside, that they were persons of means and fame, nor near related to the reducers.

*Stair, v. 2. p. 177. 179.*

1673. *February 25.*

The OWNERS of the Ship called the CALMAR *against* Captain SMEITON.

No 23.

A ship declared free, in consequence of the King's warrant, although contrary to decree condemnatory.

THE ship called the Calmar being brought up by Captain Smeiton, and declared prize, there was a reduction raised by the owners as to the ship, and, at the instance of William Strange, at London, and Sutton, an Englishman, residing at Stockholm, as to the loading; wherein there was a litigious debate, and a multitude of presumptions adduced for either party; whereupon the LORDS adhered to the decret of adjudication; especially upon the falsehood of the documents, which, being Swedish passes, did bear the loading to belong to one of the Tar Company at Stockholm, whereas the skipper, by his oath, deponed that they belonged to Samuel Sutton, an Englishman, residing there, and was direct for London, to be consigned to William Strange; whose oath was obtained, after the capture, bearing, that the loading did belong to Sutton; another Englishman, at London, did depone, that a parcel of brass wire did belong to him; but nothing having been shown that Sutton, though by nation an Englishman, did but remain at Stockholm as factor for the English, and did not trade there himself;

THE LORDS found, That this was but a contrivance for a Dutch trade, with whom Sutton did only trade; and in respect that the wire was not in the pass, conform to the treaty, they would not admit a contrary probation to free it, as if it belonged to a resider at London; but, thereafter, commission was granted to prove the property of the wire to belong to an Englishman residing at London.

1678. *February 6.*—CAPTAIN SMEITON having seized the ship called the Calmar, in August 1672, she was found prize by the Admiral. The strangers having raised reduction of the Admiral's decret, on these reasons, that by the Swedish treaty, it is agreed upon the *formula* of the Swedish pass, which being