No 29. would the LORDS admit a contrary probation, that the ship and goods belonged to freemen; and that the skipper was not only a burgess, but an inhabitant of Elsinburgh.

Stair, v. 2. p. 182. & 216.

1673. *February* 28.

The MASTER of the WHITE DOVE *against* Captain ALEXANDER.

No 30.
A prize not sustained, altho' it was proved by one witness, that papers were thrown overboard.

THE ship called the White Dove being taken by Captain Alexander, and adjudged upon these grounds, that faith was not made by the owners of the ship and loading, but by a third person, which is not conform to the Swedish *formula*; and albeit the pass design London for the port, yet the ship being loaded with masts, which is contraband, the true port was Amsterdam; for the skipper, by his oath, acknowledged, that if he were brought up at Amsterdam, that he should address himself to such a person. But the main point insisted on, was, that it was proved by the timber-man, and a boy of 13 years of age, the skipper's son, that papers were thrown overboard the time of the capture. As to this point, the skipper deponed, Negative; the timber-man deponed, that he threw certain papers overboard, and that the skipper said, if these were found, they would make the ship prize; the boy deponed, that he delivered the papers to the timber-man, but did not depone whether he saw the timber-man throw them overboard or not. It was *alleged*, The boy was within age, and threatened, and that the timber-man was bribed, having gotten assurance of his wages and cloathes, and of any thing in the ship belonging to himself, for which the captain's ticket was produced, which he alleged was no bribe, being due, seeing seamen get always their wages when ship and loading are prize; and that the throwing of papers overboard was an unquestionable ground of prize. There was also found aboard, and produced, a contract of insurance by the insurers at Hamburgh, insuring the ship and loading to be safely arrived at London, and certain letters to merchants at London. There was also sent from London a recommendation from the King, under the hand of Arlington, secretary, of a petition of those who furnished his Majesty's navy with masts, bearing, that this loading was upon their invitation, and the letters did bear, that they should have the first offer.

THE LORDS found, That the only ground of importance was, the throwing of papers overboard; but that the probation of that not being fully clear, they did, before answer thereto, allow the strangers to adduce witnesses, that the ship and goods did truly belong to Swedes, and that the port really designed was London; and that the contract of insurance was a real deed, without simulation or backbond, and that to be proved by the oath of the insurers, and ordained the boy to be re-examined, whether the timber-man threw the papers overboard which he gave him.

No 30.

July 15.—In the reduction of the adjudication of the ship called the White Dove, being disputed the last session, the Lords granted a joint probation for clearing the property of the ship and loading, which was iron and masts, and what was the true port to which the ship was direct, whether to London, or Amsterdam, and whether the policy of insurance, whereby the loading was insured, as belonging to Swedish owners, was real or simulate. The strangers did return a report, in which, both by the oaths of the parties, and very many witnesses taken in Sweden and at London, the property of the ship and loading was proved to belong to the Swedes, contained in the documents, and that the true port was London, and that the policy of insurance was without simulation.

Whereupon the Lords declared the ship and loading free, albeit the casting of papers overboard was acknowledged by the testimony of the boatsman and a boy, the skipper's son, whose testimonies were not found to prove sufficiently, the boy being pupil, and the boatsman, at his first examination, having deponed nothing as to his casting papers overboard, and that before his second examination, the privateer had given him his clothes and wages, and albeit it did appear, that the ship, when she came in to Sweden, had up Dutch flags.

Stair, *v.* 2. *p.* 183. & 213.

1673. *June* 12. Gillies *against* The Owners of the Bounder.

No 31.
A prize adjudged by the Lords on advocation, because the pass bore faith to have been made, and the skipper acknowledged the contrary on oath, and because papers had been thrown overboard.

Captain Gillies having brought up a ship called the Bounder, and pursued adjudication of her before the Admiral, upon these grounds, that her pass was false; for, albeit it did bear that the skipper made faith that the ship belonged to a subject of Sweden, and that the intended port was Hamburgh; yet the skipper by his oath acknowledges that he did not make faith, but yet depones that the owner expressed was the true owner, and a Swede; and albeit the pass bore Hamburgh to be the intended port, yet their not going thither, but to Amsterdam, was through contrariety of winds; and yet the steersman and boatsman deponed that the wind was fair for Hamburgh when they went to Amsterdam, which hath been of purpose concealed, because a great part of the loading was pitch and tar, which is contraband; so that the pass being false in these two material points prescribed by the treaty and *formula*, and the skipper's oath being the only mean to secure the King against enemies trading under other names, the same alone is a clear ground of confiscation, and is so expressed by his Majesty's instructions to the Admiral of England; 2*do*, It is proved by the testimony of the steersmrn, that at the seizure he threw papers overboard, which by the same instructions is a sufficient cause of prize; and, albeit the skipper depones that he knew nothing of papers thrown overboard, the steersman is sufficient, he being entrusted with the loading, and not as a common seaman or passenger; and as the skipper's oath, who is trusted with

General rules as to cases of prize p. 11911.