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his wife and family were; and though his wife went to Copenhagen in February last, it doth not appear that she remains there, or that she transported her furniture and servants, but only had one daughter with her, which seems to be but for a visit, as it is proved she went and stayed two months at Copenhagen four years since, but went back to Holland and stayed there ever till February last; and though it be a principle, that an unfree ship confiscates the loading, so that a part of the ship being unfree, she cannot be said to be free, and being one body, cannot be condemned in part, and assoilzied in part; but whatsoever might be pretended, if an unfree man had a latent interest in the name of a free man, not known to the owners, who might have acted *bona fide*, which cannot be pretended in this case, where the skipper who is intrusted with the whole by the pass is acknowledged part owner.

THE LORDS did not decide all these points severally, but found there was a sufficient evidence of fraud and contrivance in this case, especially in the contradiction of the skipper's oath to the pass, in so material a requisite, as the giving of oath at the obtaining of passes being the King's greatest security, which they found not to be made up by the skipper's oath after the capture; and by the tenor of the pass, bearing the skipper to be part owner, which his oath without reference could not controul; and found by the evidences, that the skipper's chief domicile was yet in Holland, much more pregnant than that he had changed his domicile to Copenhagen; and therefore reduced the Admiral's decret absolvitor, and declared the ship prize.

Stair, v. 2. p. 191.

1673. *June 26.*

The MASTER of the Ship called the *Venus contra* CAPTAIN WILSON

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A prize was sustained as to the loading, by the skipper's oath, that it belonged to owners in Amsterdam, and as to the ship, because of double documents.

CAPTAIN WILSON having taken the ship called the *Venus*, she was declared prize by the Admiral. The Strangers raised reduction, which being debated, the LORDS found that the skipper, by his oath, acknowledged the loading to belong to a citizen in Amsterdam, and therefore declared the loading prize. The ship also was found prize upon this ground, that she had no pass for this voyage, but a pass for the year 1669, and another for the year 1670, bearing her to belong to Swedish owners, and to have the privilege of the Swedish abatement of the customs in the sound; but by a letter found aboard, written by citizens in Lubec, to the skipper, it was instructed, that the property of the ship belonged to Lubecers, who, though they were neuters, yet having false and double documents, viz. the pass and the letter, it was found sufficient to confiscate the ship.

A ship found prize on account of the

1673. *July 15.*—THE ship called the *Venus* being found prize, as is observed upon the twenty-sixth day of June last, the strangers desired to be further heard,

and *alleged*, That supposing the letter found aboard could instruct the ship to belong to Lubec, and that the skippers' oath did acknowledge the loading to belong to the King's enemies, yet the loading could only be confiscate and not the ship, for neuters cannot be hindered by a war falling in between any princes or states to continue commerce, and if enemies' goods be found aboard, these goods may be confiscate; but the neuters, who freely might serve the enemies in any thing but in the war, and so might take their goods in fraught upon their own peril, yet could not thereby confiscate their ships. It was *answered*, That by the law and custom of nations, allies and neuters may continue their trade, so that they do not partake with enemies, which they may do, either by carrying arms, ammunition, and other contraband goods to them, or by covering or carrying on the enemies' proper trade by carrying of enemies' goods; and therefore enemies' goods have been found by the LORDS, not only to confiscate themselves, but the ships; and albeit, by the treaty of Breda, it be accorded, that neither enemies' goods, nor contraband goods, shall confiscate the ship, but themselves; yet the King, by his answer to the Lords, hath declared that treaty void, as to all parties, and that enemies' goods, and contraband goods, make themselves and the ship prize, neither had Lubec the benefit of that treaty; and whatever may be pretended, when enemies' goods are loaded, by their fraud, pretending the name of freemen, without the knowledge of the skipper or owners, yet here the owners gave warrant to the skipper to take in this fraught, as is instructed by their letter aboard.

THE LORDS found this ship prize, not only upon the falsehood of the pass, but found that enemies' goods did make the ships of neuters, having no privilege for that purpose by a treaty, to be prize.

Stair, v. 2. p. 194. & 212.

1673. July 9.

The OWNERS of the Privateer called the Catharine *against* the MASTER of the KING DAVID.

THIS day the LORDS advocated this cause from the Admiral, because he granted probation before answer, whereas there were present grounds of adjudication.

Stair, v. 2. p. 207.

1673. July 10. FRAZER *against* the MASTER of the FLYING HART.

CAPTAIN FRAZER having pursued an adjudication of the ship, called the Flying Hart, before the Admiral, he, before answer, gave commission to try the
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falsehood of
the pass, and
that enemies'
goods were
aboard.

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False docu-
ments.