

taking, within his dominions..a ship belonging to a subject of the French King, then at war with Britain, yet he can have no title, now that peace is restored, and a definitive treaty has been ratified, without any mention being therein made of this prize, or the property thereof, to insist, that the ship and cargo, or the value thereof, should be delivered up to him.

Replied, The condemnation of the ship and cargo was illegal, because the capture was made in a harbour belonging to the King of Denmark; and unless the proprietors can justify that capture, they can in no event recover any part of the value; and although his Danish Majesty had received satisfaction in so far as regarded Captain Stewart personally, he was still entitled to have the ship and cargo restored, as having been illegally seized within his jurisdiction.

2do, The King of Denmark not being a party to the definitive treaty of peace concluded with France in 1763, his right of restitution could not in any degree be affected by that treaty. If Captain Stewart's seizure of the ship in a Danish port, in 1761, was illegal and unwarrantable, it cannot be justified by the treaty of peace made two years after.

"THE LORDS reduced both the decrees of the Judge-Admiral, and preferred Baron Count de Bothmar, as minister of the King of Denmark, to the sums in the hands of the raisers of the multiplepointing."

A. W.

Fol. Dic. v. 4. p. 145. Fac. Col. No 139. p. 312.

This case was appealed:

** The House of Lords Ordered and Adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed.

1781. *January 30.*

VOLKERT HENDRICKS *against* WILLIAM CUNNINGHAM and others.

THE ship Catharina, of Holland, Volkert Hendricks master, having been loaded at St Domingo with the produce of that island, was, in her voyage to Texel, seized by the Bellona, a private ship of war, belonging to William Cunningham and others, and carried into Clyde.

An action having been brought by the captors before the High Court of Admiralty in Scotland, for having the ship and cargo condemned as lawful prize, a judicial acknowledgement was emitted by Mr Hendricks, that the cargo was the produce of St Domingo; and on that account sentence of condemnation was passed. This action was removed into the Court of Session; which sustained the Admiral's judgment.

Lord Ordinary, *Braxfield.*

For Hendricks, *Maclaurin, Morthland.*

Alt. *Lord Advocate.*

C.

Fol. Dic. v. 4. p. 145. Fac. Col. No. 85. p. 141.

No 52.

No 53.

A neutral ship, carrying the produce of an island at war with Britain, considered as the ship of the enemy. Reversed on appeal.

No 53.

*** It may be proper to notice here, that these judgments were brought by appeal, under review of the House of Lords, by whom they were reversed; the principle on which they proceeded, although adhered to in the war which ended in 1763, having been departed from in that terminated in 1782. The learned Lord who moved for the reversal, at the same time expressed his opinion, that the High Court of Admiralty in Scotland had no jurisdiction in the condemnation of prizes. The interlocutor of the House of Lords is in the following terms :

20. *May 1782.*—After hearing Counsel, as well yesterday as this day, upon the amended petition and appeal of Volkert Hendricks, master of the ship Catharina, of Amsterdam, and the owners of the said ship and cargo, complaining of two interlocutors of the Judge of the Court of Admiralty of Scotland, and also of two interlocutors of the Lords of Session there, and praying that the same might be reversed, varied, or altered, or that the appellants might have such other relief in the premisses as to this House, in their Lordships great wisdom, should seem meet; as also, upon the answer of William Cunningham, and other owners of the Bellona private ship of war, and James Maclean, the commander, put in to the said appeal; and due consideration had of what was offered on either side in this cause; and the appellants having waved any objection to the regularity of the proceedings, or to the competence of the jurisdiction;

ORDERED and ADJUDGED, That the said several interlocutors complained of in the said appeal, be, and the same are hereby reversed.

1781. *December 14.*

WILLEM t'HART, Master, and MESSRS CLASS JAAN en ZONEN, Owners of the Ship Noord Holland, *against* Captain DAVID COLLINS, of his Majesty's armed Ship Alfred, and others.

No 54.

Bona fides, and ignorance of hostilities, if grounds for liberating from capture?

ON the breaking out of the present war with Holland, his Majesty issued a proclamation, containing an order for general reprisals against all ships and goods belonging to the States-General, or to their subjects; with the exception of such ships as were then in any of his Majesty's ports.

Before the date of this proclamation, and when hostilities between the powers had not yet commenced, a Dutch vessel, freighted under charter-party, by certain merchants in Glasgow, to carry a cargo of flour from Leith to St Eustatia, had proceeded on her voyage to the former port. The vessel, however, did not, until several days posterior to the proclamation, arrive in the Frith of Forth, where she was seized as a prize.