

1673. *February 26.*The OWNERS of the Ship called the MARGARET *against* SEATON.

## No 25.

Connivance  
between con-  
fident per-  
sons.

THE Ship called the Margaret was found prize, upon these grounds, That she loosed from Amsterdam to France, and from thence returned, with salt, direct to Sweden, and had no pass for either voyage; and though she was bought from Hollanders, yet there was nothing aboard to instruct the alienation; but, now, there is produced an instrument of sale, dated the 14th day of March last, bearing the ship to have been bought by Henry Coal, merchant in Amsterdam, for the use of Margaret Coal his sister, residenter in Sweden; and nothing appearing under Margaret's hand that she gave commission to buy the ship, but that the same was bought by the said Henry, and out-rigged by him; and there was only produced a certificate, from a town in Sweden, before the voyage, that the said Margaret had declared the ship to belong to her, but without an oath; and two certificates, impetrate since the capture, bearing, that she and other owners deponed that the goods belonged to them; which the LORDS regarded not, the matter being carried on betwixt the brother, resident in Holland, and the sister, in Sweden; neither would the Lords admit of a probation to instruct the goods to belong to Swedes, not only because of the pregnancy of the evidences, but also that the ship being bought at Amsterdam, since the war, the probation behoved to be there, with which, being enemies, there can be no commission or communication.

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

1673. *February 27.*The OWNERS of the Ship called the K. DAVID, *against* DONALDSON:

## No 26.

Found that  
a ship taken  
in return, af-  
ter carrying  
contraband,  
was not prize.

CAPTAIN DONALDSON having taken and adjudged the ship called the K. David, the master raises reduction; the grounds of adjudication insisted on were, that this ship having loosed from Trallsound in May, after the war was known, had not aboard a sufficient pass, not only defective of the formula required by the Swedish treaty, but in the necessary requisites of a pass during war, viz. The oath of the skipper or owners, which is most necessary in the time of war; but here there was only a certificate from the town of Trallsound, without the oath, relating mainly to give the ship freedom at the Sound as a Swedish ship. *2do*, The ship was loaden with malt and other victual for Amsterdam, which she did disload there, and was taken as she came out. And, by the Swedish treaty, *in anno* 1661, and 1664, albeit pitch and tar being excepted from contraband, being the chief product of that country, yet victual is expressly enumerated amongst contraband in these treaties; and the LORDS found, in the last war, that contraband makes prize, not only when it is actually found

aboard, but when the ship is seized in the return of the same voyage, wherein she carried contraband to the enemy; and which is upon surer ground than when she is seized before she go to the enemy's port, when she can but have a design to partake with the enemy, which is far less then having actually assisted them with victual for the war. And albeit the law of nations, for the common good, hath not continued that fault of participation with the enemy longer than the return of that voyage; yet there is pregnant reason, that that delinquency against amity should make the ship and goods prize, when so recently found in the return. It was *answered* for the strangers, That the want of a pass, conform to the treaty, was no cause of confiscation, but only of search. And to the second, it was answered, *imo*, That contraband is no cause of prize, but where it is actually found aboard. *2do*, That after the Swedish treaty in 1664, the Swedes are comprehended in the treaty of Breda, *in anno* 1667, by which it is declared, That victual shall be no contraband, except when it is carried to cities besieged, and that it only confiscates itself when taken. It was *replied*, That the treaty of Breda was only betwixt the King, the French, Dutch, and Danes, who have three distinct treaties at that time; in all which, the Swedes, as mediators of the peace, are comprehended, to have the benefit of the treaty, and so are all other allies who should claim the benefit within six months after the treaty; so that the treaty being broken, and become void as to the King and Dutch, the principal parties, it cannot stand as to the Swedes, or other accessories. Upon which account, the LORDS have, by their letter to the Lord Secretary, desired to know the King's mind, whether he looks upon that treaty as effectual to the Hans-towns, who took the benefit of it.

THE LORDS found, That the ship not having a pass upon oath, it was a just cause of seizure, but would not thereupon declare her prize, if the strangers could prove the property of ship and goods did belong to Swedes by documents and witnesses above exception; but superceded to give answer whether the Swedes had the benefit of the treaty at Breda, till the conclusion of the cause, that a return might be had from the King.

*July 24.*

THE ship called the King David, determined the 27th of February last, wherein commission was granted for clearing of the property of the ship and goods, which the strangers having proved to belong to freemen, and the LORDS having superceded to give answer, whether victual carried to Holland by the Swedes was contraband, and if the ship taken in the return of that voyage having carried in contraband was thereby prize; the captain did represent by bill, that by instructions lately come from the King, it was now cleared, that victual carried to Holland by the Swedes is contraband; and it hath been already decided by the LORDS, in the case of Parkman against Allan, No 7. p. 11865, determined in the former war, that a ship taken in her return after she carried in contraband to the enemies was thereby prize.

- No 26. THE LORDS having considered the 11th article of the Swedish treaty, *anno* 1661, found, That contraband became only prize itself, *si deprehendatur*, and therefore being taken in the return after contraband, could not be a cause of confiscation by that treaty, but had no occasion to determine whether corn carried to Holland by Swedes was contraband or not.

*Stair, v. 2. p. 180. & 220.*

1673. February 27.

No 27.

The MASTER of the Ship, called the PATRIARCH JACOB, *against* WILSON.

THE ship called the Patriarch Jacob, having a pass from Hamburgh, bearing, that the ship did belong to the citizens there, and being loadened with victual, the skipper, by his oath, acknowledges, that the loading belonged to Amsterdammers, which was therefore declared prize, as being enemy's goods, and the ship, as carrying the same; the strangers having raised reduction, did insist upon the treaty of Breda, whereby it is agreed, that where enemies' goods are found, they shall be prize, but not the ship; and that by the treaty, it is provided, that any ally that should, within six months after the treaty, claim the benefit thereof, should be admitted thereunto; and *alleged*, That Hamburgh had obtained the treaty communicated to them, but did not produce it.

THE LORDS allowed them a month to produce the communication of the treaty, and if it were produced, superceded to give answer, whether the ship was prize till the first of June.

*Stair, v. 2. p. 182.*

No 28.

Prize not sustained, because the pass bore not the port to which the ship was bound, it being proved, that the ship and cargo belonged to freemen.

1673. February 28. The MASTER of the ST PETER *against* STUART.

THE St Peter of Stoad having loosed from Bream, had a pass from the governor of Bream, and city of Stoad, and therewith went to Longsound in Norway, and took in a loading of joists, balks, and other timber, and loosed from Longsound, having a cocquet, bearing the loading, but not expressing the port, and being thereupon taken and adjudged,

THE LORDS found, That the loading being contraband, and no document to show the Port to which the ship was directed, and that the Swedish passes did not express that the ship was directed for Norway, to be carried to Ollenburghland, which the skipper pretended to be the port, that therefore the ship was warrantably seized, not having a pass for the particular voyage, expressing both the owners of the ship and loading; that therefore, the burden of probation lay upon the strangers, to instruct, that the ship and loading did truly belong to the Swedish subjects; but found the loading, as being contraband,