

No 20. that this ship had made sail for London before. It was *replied*, That this letter might well be a contrivance, in case either of the ships had been taken at sea.

THE LORDS found, That there was sufficient presumptive probation to infer a contrivance; yet such as admitted a contrary positive probation, that the ship and whole loading belonged to free persons; and ordained commission to be granted, to both Denmark and England, for that purpose, and also to examine witnesses for the privateer, to prove that any part of the ship or goods belonged to Hollanders.

The Captain did further insist, on this ground, That seeing, by the freight-brief, it did appear that the ship was truly bound for Holland, that her loading being double deals or planks, fit for the building of ships, the same is contraband, and makes the ship and goods prize; and that such deals are contraband in the Hollanders' account and esteem, is cleared by their placard, declaring all materials for shipping, none excepted, to be contraband. It was *answered*, That no fir deals, of whatsoever kind, were materials for shipping, but have a common use for any other work; and that, by the custom of England, they were never found contraband.

THE LORDS found, That seeing the freight-brief and evidences made it appear that the voyage was truly for Holland, that if it should be proved, by the custom of England or Holland, that such deals are contraband, that the same should be just ground of confiscation.

*Stair, v. 2. p. 173.*

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1673. *February 21.*

The OWNERS of the Ship called the WHITE-HORSE, and the MARGARET,  
*against* Captain SMEITOUN.

No 21.

Two Danish ships being brought up by Captain Smeitoun, and declared prize by the Admiral, they raised reduction; and the debate was upon the pass not being conform to the Danish treaty, and upon other evidences, that it was a contrivance to palliate enemies goods.

THE LORDS found, That the passes not being conform to the Danish treaty, did put the burden of probation upon the strangers that the ship and loading belonged to the Danish subjects express in the documents produced, and that the approbation be by writ, or witnesses above exception, to be taken by the Lords commission; but found not the evidences sufficient to exclude the said probation.

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