

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.

The legality of this capture came to be tried before the High Court of Admiralty; and the Judge-Admiral pronounced a sentence, "declaring the ship no lawful prize." His judgment having been brought under the review of the Court of Session, by bill of suspension, it was

Pleaded for the Dutch master and owners; The contract of affreightment, in the circumstances which existed when it was formed, was in every respect lawful and right. The two nations were then at peace with each other; nor was the approaching rupture foreseen. In the same circumstances, the Dutch owners, *bona fide*, and in the just expectation of reciprocal performance on the part of the freighters, so far fulfilled their engagements, as to send their vessel to the port of Leith. Their whole conduct in this matter was just and proper. Had they acted in a different manner, they would have been guilty of a moral wrong. Those on board, too, having come to the knowledge of the war, which had intervened between the sailing of the vessel, and her capture, by the latter event alone, acted a part equally unexceptionable.

As those foreigners, therefore, fulfilled their lawful engagements, the law of this kingdom would have exacted from the freighters the just and complete performance also of theirs. That were the least thing due to the good faith subsisting among nations. Is it to be conceived, then, that the same law will authorise an advantage to be taken of a situation into which this good faith alone, and confidence in the people of this country, have brought those strangers, to the effect of bereaving them of their property, by a seizure of the vessel in question? The law of nations reprobates such an idea; Burlamaqui, part 4. chap. 13. § 4. 8.; Vattel, b. 2. chap. 18. Nor can an interpretation, so adverse to its maxims, be put on a proclamation which declares itself to proceed upon principles "consonant to good faith."

In conformity to this declaration, the present case will fall properly under the exception of vessels already in our ports. These are excepted, because *bona fide* placed under the command of British subjects; and this vessel, previously to the date of the proclamation, was delivered into the custody of British subjects, or at least into that of persons maintaining possession of her on their account.

Answered; The words of the royal proclamation being clear and express, Judges are not at liberty to interpret it in such a manner as to violate its plain import. Nor is it unjust, that the exception in the statute does not extend to the case in question. It is not denied, that the faith of contracts is to be preserved; but the acts of individuals are to give place to the necessities of the state. These may justly render performance impossible by private parties; and it is with a tacit or explicit reference to such events that all civil engagements are formed. The obligation upon the freighters has come to an end; and the state has seized a lawful prize in war.

THE LORDS seemed to be moved by the *bona fides* of the Dutch owners, and by the confidence which they had placed in our merchants who freighted the

No 54.

vessel. They therefore refused the bill of suspension, affirming the judgment of the Admiral, which was the following: "Having considered his Majesty's order in Council, of date the 20th December 1780, that general reprisals be granted against the ships, goods, and subjects of the States-General of the United Provinces; and his Majesty's other order in council, of the 22d of December last, relative to ships and cargoes belonging to the subjects of the States-General; as also, his Majesty's other order in council, of date the 16th February last, 1781, also relative to the ships and cargoes belonging to the subjects of the States-General; and having considered the whole circumstances of this case; finds, That, in the present case, there are just and equitable grounds for finding, that the ship libelled, called the Noord Holland of Amsterdam, and her cargo, are not lawful prize; and that the said ship and her cargo ought to be restored to the said William Hart, defender, for his own behoof, and that of the owners of the said ship and cargo; and therefore finds and declares, That the said ship and her cargo are not lawful prize; and ordains the said ship and her whole pertinents, as they stand at present, as also the whole of her cargo, &c. remaining, as it stands at present, to be forthwith restored and delivered up to the said William Hart, defender, for his own behoof, and that of the owners of the said ship and cargo."

Reporter, *Lord Gardenston.*For the Dutch Owners, *Morbland.*For the Captors, *Solicitor-General Murray, Ilay Campbell, Rolland.*

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*Fol. Dic. v. 4. p. 145. Fac. Col. No 14. p. 27.*1801. November 19. YELTON and others *against* SMITH and others.

No 55.
Recapture by
a non-com-
missioned
ship, vests an
insurable in-
terest.

IN the month of June 1797, the ship *Diana*, when on a voyage from the Forth to the Baltic, (without any letters of marque), recaptured the *Lady Bruce*, of Newcastle, which had been taken by a French privateer. Immediately on receiving intelligence of this event, the owners of the *Diana* insured L. 400 on the supposed salvage; and soon after, they were informed, that the *Lady Bruce* had been again captured by a Dutch schooner, upon the 18th of June.

An action was brought before the Judge-Admiral, at the instance of the owners, against the underwriters, for the sums insured; and after some procedure, the Admiral found the insurance to be good, and the underwriters to be liable.

This decision was brought before the Court by suspension; and the underwriters

Pleaded; The right of making war is exclusively inherent in the sovereign, and cannot be exercised by the subject, without some commission of warfare; *Vattel*, b. 3. c. 15. The *Diana* had not been furnished with letters of marque,