

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.*

S.

*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,

and therefore had no title to make captures; 33d Geo III. c. 66. The owners of the *Diana*, accordingly, had never any legal interest in the ship which they recaptured; and any assurance effected upon such interest, is of the nature of a wager-policy, and liable to be cancelled, by 19th Geo. II. c. 37.

Answered; 1st, Letters of marque are not necessary to entitle a vessel to make a recapture in time of war. The right of making recaptures is, by the express words of the statute, extended to all vessels "under his Majesty's protection and obedience." Salvage arises, at common law, upon the recapture of a vessel; and being a real claim upon the part of the owners, is likewise an insurable interest. 2dly, The underwriters, in this case, were fully informed of the nature of the risk they were requested to insure, and received an equivalent premium.

THE LORD ORDINARY, 12th November 1800, "having considered the mutual memorials for the parties in this cause, in respect the ship *Diana*, of Kincardine, was not possessed of letters of marque at the time of retaking the *Lady Bruce*, of Newcastle, finds, That the owners of the ship *Diana* had no claim of salvage under the 33d of his present Majesty; and, therefore, suspends the letters *simpliciter*."

But the cause having been brought before the Court, the LORDS altered the interlocutor of the Lord Ordinary, and returned to the judgment of the Court of Admiralty.

Observed from the Bench; As the *Diana* was not furnished with a letter of marque, the recapture made by her might not have been effectual in a competition with the King or his officers; but the insurers are not entitled to state any such plea. There was still a claim of salvage arising at common law from the recapture, which, as circumstances then stood, was an insurable interest; and therefore the insurance ought to be made effectual. *Robinson's Admiralty Cases*, vol. 2. p. 280.

Lord Ordinary, *Armadale*.

Act. *Turnbull*.

Agent, *Ad. Rolland, W. S.*

Alt. Lord Advocate *Hope, Reddie*.

Agent, *John Peat*.

Clerk, *Pingle*.

J.

Fac. Col. No 3. p. 7.

Dues of the Admiralty Court in questions of Prize; *see* CONSUETUDE.

Claim of the Ransomer; *see* CAPTIVE.

See APPENDIX.