2°/ For clearing the Time when Seizure or Adjudication upon the Account of Counterband goods is compleat, observe That Neuters or Allies ought not to forfeit any thing for carrying Counterband Goods till a War be proclaimed, and a compleat Time elapse that they may have come to the Knowledge thereof. Therefore a Lubeck Ship with some Goods directed to the Danish ports after Indiction of War betwixt Britain & Denmark, was found not prize: In Respect those Strangers had loosed from Lubeck within five days of our Kings Manifesto declaring the War which could not have reach'd their Eares, and no Acts of Hostility or declaring of prizes betwixt the British and Danes in neighbouring places before the Manifesto, nor Knowledge, indeed, that Knowledge were instructed by their own oaths, or it were proved, that the war was notoriously known at Lubeck before they loosed from thence, 23 July 1667 Jurgan contra Logan. A Ship of Hamburgh taken, carrying Counterband Goods to the Danes after Acts of Hostility betwixt our King and them, was not declared prize: Because Seizure was made before publishing the War, 25 February, 1668 Merchants of Hamburgh contra Deffington. The Dutch in their proclamation of War against Britain prohibited all their Friends and Allies either to carry Counterband Goods to any part of our Kings dominions, or to be found therewith upon his Coasts, or directing from their voyage, holding that for a sufficient Evidence of their intending to go to such parts, not to be rest argued by forrein documents exprossing free ports: It being so easy to procure false colourable documents. It were indeed impossible to hinder Neuters to supply the Enemy with Counterband Goods, if Ships loaded with them steering to the Enemies ports might not be taken in their voyage before they arrive thereat, and the offence hath had its full Effect. But our Law allows only such to be seiz'd and adjudged prize, where either it appears from documents aboard, that they were directed to the Enemies port, or it's presumed from want of some documents expressing the port 28 February, 1673 Master of the St peter contra Stuart. Stair Inst. Lib. 2 Tit. 2 §14.15. It was argued but not decided (23 July, 1667 Jurgan contra Logan) whether Ships could be seiz'd in their Return from exporting Counterband Goods, not found in them at the Time of the Seizure at Sea, without Evidence given of their having been loaded with such Goods in that voyage: The Reasons for the negative were 1°/ Because the Ship might have been sold and brought home by another, and it could not appear, that the homeward loading was made out of the outward freight. 2°/ If a Ship might be made prize in Return, for Counterband Goods thereon exported, without instructing such Export that voyage at the Time of the Seizure, commerce would be altogether obstructed, by bringing every Ship upon such a presence to be tried by the Admiral whether they had counterband Goods in their outward voyage. But it was afterwards found, That where Counterband Goods were carried to the Enemies ports, not only is the product thereof a just prize, as surrogatum quod fapit naturam surrogati; but even the Ship her self taken in her Return from the same place, if still belonging to the same owners, tho' nothing have been Ballast be in her when taken, 16 July 1673 Lyell contra Master of the Leopard. unless she had belong'd to Sweden, whose Ships by the Swedish Treaty could only be confiscated for Counterband actually seiz'd. Because of a Ship with Counterband Goods may be seiz'd in her voyage before she unload in the Enemies port, much more justly, may one coming from thence after unloading there be made prize after the offence is compleat: But such a Ship escaping a seizure in her immediate Return, cannot be taken in another voyage upon presence of Counterband carried to the Enemy in a former voyage: For preventing the obstruction of Commerce by perpetual Quarrels. Stair ibid. §14.

Another Ground of confiscating as prize Ship and Goods of Neuters is their concurring with the Enemy by carrying on their Trade. Thus an Enemies having Right even to the part of a Ship, is a Ground to confiscate the whole Ship and Loading 28 February & 18 July 1673, Master of the Castle of Elsinbrough contra Captain Douglas 25 June 1673

Neuters ships when seizable.

Captain

Neuters captain of the St Catharine contra Master of the St Mary. 10 July 1673 Fraser contra Master of the young Tobias, Stair Inst. Lib. 2. Tit. 2 §17. Not only doth an unfree Ship confiscate the Loading as accessory thereto; but also free Ships are made prizes for Enemies Goods found therein, the owners of the Ships having no privilege by Treaty to carry Goods of the Enemy. 15 July 1673 Wilson contra Master of the bonik. But a Ship belonging to Neuters freighted with Enemies Goods having loosed before it certainly appeared that the War was broke out, was found free, and the Goods only made prize, 11 February, 1673 Elizabeth Kincarding contra Mr of the St Andrew. A Ship and Cargo was adjudged prize, because a part of the Ship belong'd to the Enemy, tho' by a Society contracted before the War, in Respect they had Time and opportunity to have dissolved the partnership before the capture 17 July 1673 Master of the Golden Falcon contra Buchanan. In France they make free Ships and the whole Loading prize, if but a part of the Goods belong to the Enemy, whether the owners of the Ship and free Goods knew or knew not that any part of the Cargo belonged to the Enemy, punishing thereby the Innocent with the Guilty. But in Britain such as can shew that they were in Bonafide or indubitable Ignorance of the Enemies Interest in Ship or Goods are saved from suffering what belongs to them, Molloy de Jure Marit. Lib. 1. Capit. 12, Stair Inst. Lib. 2. Tit. 2 §16 & 25. 13 July 1669 Assured contra Boy Nielson. 13 December 1673 Clerk contra Smalson. The Dutch in their second War made Certain full upon cunning Contrivances to colour their Trade, by procuring passes from the Admiralties or other Allies or Neuters, finding Friends to fix their Residence in Emden or Denmark in order to capacitate them to be Masters or Sleersmen of the Ships of their Neuters, and remitting Money to the merchants or factors in Neutral or confederate Countries for buying Ships and Goods in their own Names to their use and upon the Risk of Hollanders. yea the Names of our Kings Subjects were borrowed, and passes from the Admiralty of England procured to the Dutch Trade, not that thro' pity to the sufferings of Innocent Allemanis and Hatred to the Tobacco-bags of privateers. So that it was often no easy matter to discover the evident Grounds of adjudging prizes. The Evidence of such Grounds of confiscation is either direct and positive, or presumptive. Direct Evidence is by the oath of Skipper and owners mentioned in the pass which clears the property of the Ship and Loading. The Skipper's oath alone probes the same not only against himself, but also against the owners, 13 July 1669 Assured contra Boy Nielson. And where the Loading is given in Trust to the Sleersman (as is frequently done) the property may be proved by his oath, that is, the property of Ship and Goods may be confiscated upon the judicial oaths of Master or Sleersman, not upon their Extrajudicial Confessions omitted at Sea or Land, Stair ibid. §12. Some Instances of apes, simplice proof of the Interest do, and sometimes do not admit a contrary probative proof. If a Ship not loaded with Counterband Goods want a pass or be instructed with an insufficient pass, as one that is not upon oath of the Skipper and owners, or makes no mention of the port to which she is directed, or does not express it clearly, that is not a sufficient Ground to adjudge her prize as belonging to the Enemy, but a presumptive Ground to seize and bring up the Ship with the Cargo, and Burden those claiming the same to prove the property or their port, otherwise than by oath of the Skipper and owners 21 January 1673 Anderson contra Douglas. Junct. 19 February 1673 owners of the Palm Tree and patience contra Atchison 27 February 1673 owners of the King David contra Donaldson. But a Ship loaded with Counterband might for want of some document to show the port to which she is directed have been confiscated with her Cargo, unless secured by the Swedish Treaty allowing of Counterband to the Swedes if the Mouth of their own Country 28 February 1673 Master of the St peter contra Stuart. passes for Ships in Time of war should be renewed every voyage; seeing they cannot otherwise express the Kinds & Quantities of the Cargo, Stair Inst. Lib. 2 Tit. 2 §21. But a Swedish Ship having a pass to take a Loading of Brandy at Nantz in France, being after her loosing from Nantz forced into England by Stress of weather, where she sold that Loading and sent back to Nantz where she was loaded again with Brandy for the use of the owners mentioned in the foresaid pass, was not adjudged prize for want of a new pass for the New Loading, but secured by her first pass till she return'd to her port in Sweden 17 June 1673 Donaldson contra Mr of the Debora. 2°/ False or double documents used for concealing the property of Ship or Loading, is another presumption.