tack. If they who resided in the country, or passed through it, heard of this extraordinary right, how is it possible to say that the heritor himself knew nothing of the matter?

JUSTICE-CLERK. An ish to a tack is not necessary: so it was determined in the case of *Holmains*. It will be good against the granter and his heirs. Tacks to perpetuity, and for 1000 years, are equiparate. So long a homologation upon the part of the singular successor puts this pursuer in the same state as if he were the heir of the original granter. The law does not require so exact a correspondence between the two parts of the contract *locati conducti*. A master may have the power of resuming his land; and yet the tenant may be bound to hold it, and so *vice versa*. There is no danger to singular successors, for they may challenge *tempestive*, instead of acquiescing for a century.

KENNET. I should be sorry that tacks without an ish, or of an immoderate endurance, should be good against singular successors: but we are relieved of this difficulty by the plea of homologation, which I think is good.

PITFOUR. Such a tack is good against heirs, not against singular successors. In the case of *Belladrum*, the House of Lords did not mean to determine the contrary. This lease was not *collatum in tempus indebitum*. The prorogation was running in 1681: this is my idea, which has been now fully supported and confirmed by a disquisition of one of my brethren. In 1681 the singular successor might have insisted to void the lease: *now* he is bound both by homologation and prescription.

On the 19th February 1771, the Lords sustained the defences, and assoilyied.

8th March 1771, adhered.

Act. J. Scott. *Alt.* A. Wight.

Reporter, Pitfour.

Diss. Monboddo. [This judgment agreeable to the opinion of Coalston, who was absent.]

Affirmed on appeal.

1771. *February* 20. ANDREW ROSS and OTHERS *against* JOHN GLASFORD and COMPANY.

CHARTER PARTY—MUTUAL CONTRACT.

A vessel on a trading voyage being captured, the sailors entitled to wages *pro rata itineris*.

[*Faculty Collection*, *V.* 239; *Dictionary*, 9177.]

AUCHINLECK. It is not agreeable to equity to deprive a workman of his wages. *Here*, properly speaking, there were three different voyages to Newfoundland, Lisbon, and Glasgow. Shall the accident of a loss on the *third* voyage deprive them of their wages on the other two? Suppose the ship had been

fully loaded to Newfoundland as well as to Lisbon, and that it had returned to Clyde from Lisbon with two hogsheads of wine, would a capture, in such circumstances, have deprived the crew of all claim for wages?

PITFOUR. I have, for near 40 years past, held the decision in the case of *Lutwicke* to be sterling, and agreeable to the principles of the contract *locati conducti*. This case is still stronger; for *there* only one voyage cut off in the middle, *here* two or three voyages. I do not know the distinction between *law* and *equity*, especially in mercantile law. Our neighbours in England have distinctions between law and equity. I shall not inquire how far they are gainers by that. A debt due by former voyages cannot be annulled in consequence of the after loss of the ship. A statute to the contrary would convince me; for then I would say, let the fault lie on the statute, not on me.

KAIMES. Equity is out of the question here, for the owners were losers. I consider all this as one voyage.

GARDENSTON. Were the merchants of Glasgow to prevail, no sailor in his right wits would ever serve them in the time of war. Here are three distinct voyages;—there is a profit at first, why should the sailors be the only losers?

HAILES. The maxim that *freight is the mother of wages* applies to this case. There was a freight between Newfoundland and Lisbon: nay, more, there were considerable profits, though the defenders conceal them by a fallacious account, laying the *whole* charge of outfitting upon that *single* voyage. The judgments of Lord Chief-Justice Holt are very strong. Some of the witnesses mention express bargains with sailors, which shows that this question will not be a precedent, one way or other; and it is remarkable that the most eminent merchants in Glasgow give their opinion *in thesi* for the sailors: so that there is, at most, a local custom unsupported by general usage or precedents.

JUSTICE-CLERK. Here we have, on the side of the sailors, the opinion of many respectable marchants,—the opinion of writers on public law,—the judgment of all Courts, inferior and supreme: if any erroneous practice has crept into the Clyde, it is high time to correct it.

PRESIDENT. I was afraid of myself. I suspected that I might be prejudiced, both from my consideration for seafaring men, and from the accuracy of the petition: no practice would ever move me against what is obviously equitable. The merchants differ. I will lean to the *humanior sententia*. The case of *Lutwicke* was wrong judged here; but the House of Lords put this Court right. Altering this interloctor will do infinite service to the trade of Glasgow. I observe that there have sometimes been special bargains: this proves the rule of law to be as I apprehend it.

On the 20th February 1771, "The Lords found wages due for the voyage to Newfoundland and Lisbon, with interest *nomine damni*, and expenses;" altering Lord Kaimes's interlocutor.

Act. W. Craig. *Alt.* A. Wight.

[Coalston, who was absent, much approved of this interlocutor. He told me, that it was a cause where no one but a lawyer could go wrong; and he observed, that Lord Kaimes, at first, was in the right, but, by reason of law notions, went wrong by degrees till his interlocutor became indefensible.]