

No 3. in the ship, Alexander Home can have no claim on that head, since no wages were allowed him when aboard.

Neither has he any claim of recompense, as if the pursuer were *locupletior factus* by his escape. It is doubted, how far the escape of a ransomer could operate a release of the ransom-money; and in this case, the claim was extinguished in a different way, by the second capture made by the Spaniards, the allies of France, whereby the ransom-contract was annulled.

Answered.: In the case of captures, the ransomer is not restricted to the wages of a sailor; the practice is, that he makes a bargain with his Captain; and it is, but reasonable, that he should have an allowance for the confinement which he suffers, besides his maintenance during the detention, and the expences of his journey home.

Whatever claim the pursuer may have had against the Spaniards, he must have paid the ransom to the French privateer in the first place, had the defender remained in their hands. He was bound to obtain the ransomer's liberation, which could not be effected without payment, and could not be sacrificed on pretence of any such claim. Indeed that claim could scarce have been made effectual, unless the defender had escaped; so that the pursuer was *lucratus* in every view of the case.

'THE LORDS repelled the reasons of reduction, and found the pursuer liable in the expences of process.'

Act. Blair.

Alt. Sinclair.

G. Ferguson.

Fol. Dic. v. 3: p. III. Fac. Col. No 88: p: 339.

1784. February 25.

POOR JAMES DARG *against* JOHN GORDON and Company.

JOHN GORDON and Company employed John Barclay to navigate a vessel belonging to them from Peterhead to Sunderland, with instructions in the event of a capture, 'to make the best bargain he could to ransom, from L. 50 to L. 80 Sterling, but not above.'

John Barclay being taken by a French privateer, agreed to ransom the vessel at 150 guineas; and James Darg, a boy then on board, making what is called a trial-voyage, and entitled to no wages, consented to go as hostage.

Upon the vessel's being brought back to Peterhead, she was appretiated upon oath, and sold by the owners, by public auction, for L. 71 Sterling. They then insisted that the master had exceeded his powers, by agreeing to ransom beyond the value of the ship; and at length, prevailed on the proprietors of the privateer to dismiss the hostage, upon receipt of 100 guineas.

In this manner the hostage, instead of five weeks, which was the time fixed for his redemption by the ransom-contract, was confined at Dunkirk for one

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However invalid or exceptionable a ransom-contract may be, the owners of the ship are still obliged to procure the immediate ransom of the hostage, and to indemnify him for the loss he has sustained by his detention.

year and four months. Upon his return to Scotland, he brought an action against the owners, for wages during the period of his confinement, and for a certain sum of money in name of *solatium*.

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THE LORD ORDINARY found the pursuer entitled to a reasonable consideration for his loss of time during the first five weeks of his confinement, within which time he ought to have been redeemed; but that in respect his confinement for that period was by his own consent, he was entitled to no damages for that period; that his after detention in prison being chargeable upon the owners, they were liable to him in damages on that account, and likewise in a *solatium*, on account of his being so long confined in prison by their fault, during which time he might have earned wages, and, what was more valuable to him, the knowledge of his trade: Also, that the sums modified on the above grounds, were not to be compensated on account of the maintenance, cloaths, and medicines, furnished to him while in prison, nor on account of the money expended in supporting him in his journey from Dunkirk to Peterhead.

In reclaiming against this judgment, the defenders argument was intended to show, that the owners were not obliged to redeem in terms of a ransom bill, where the redemption money exceeded the value of the ship; in support of which proposition, they quoted Magens, v. 2. p. 231.; Postlethwaite, p. 136.

THE LORDS had no regard to the principles urged for the defenders, which, however available in a question between the owners and captors, could not impair the claim of indemnification competent to the ransomer. It was likewise observed, that the owners had precluded themselves from every plea of that sort, by neglecting to make a formal abandon of the vessel the moment they were acquainted with the capture.

THE LORDS adhered.

Lord Ordinary, *Justice-Clerk.*
Clerk, Home.

Act. Cay, and Lawyers for the Poor.

Alt. Abercromby.

Fol. Dic. v. 3. p. 112. Fac. Col. No 149. p. 233.

1785. July 2.

POOR ALEXANDER LAMONT *against* JOHNSTON, ARMSTRONG, and Company.

A SHIP and cargo, the property of Johnston, Armstrong, and Company, having been captured by a French privateer, was ransomed by the master, who delivered Alexander Lamont, the mate, as hostage.

This agreement, the sums stipulated in it considerably exceeding the value of the prize, was instantly disclaimed by the owners. And a sale having afterwards taken place, under the authority of the Judge-Admiral, the proceeds were given up to the captors, who then released Alexander Lamont the hostage, after he had been confined for two years and four months.

No 5.

Found in conformity with the above, that a recompence is due to the hostage, although the ransom-contract has not taken effect.