

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*.

No 4.

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.

No 5.

An action having been instituted by him for wages during his detention, and the expences of his journey homewards, the owners

*Pleaded* in defence : The ransom-contract having been for sums beyond the value of the prize, was altogether unwarrantable and void. It was immediately rejected by the owners, and departed from as untenible by the captors themselves ; circumstances in which this case materially differs from that of *Darg contra Gordon*, 15th February 1784, No 4. p. 2026. The situation of all parties in this manner became the same as if such an agreement had never taken place. The pursuer's detention, therefore, was not in the quality of ransom, but as a prisoner of war ; and as the defenders were neither the authors of his confinement, nor benefited by it, they cannot be subjected to consequences inseparable from the pursuer's profession.

It is further an established rule, in order to secure the attention and fidelity of mariners, that no wages are due to them where no freight is earned. Hence the lieutenant of a privateer, having been sent away as prize-master of a ship that had been taken, and which he carried home in safety, was, on account of the subsequent capture of the privateer itself, denied every recompence for his services ; *Donglas's Reports*. For the same reason, the master and crew of the ship in question never thought of demanding wages. Yet the pursuer's claim cannot be better founded than theirs ; for though, by the intervention of the ransom-contract, the latter attained their liberty sooner than they otherwise would have done, the condition of the former is in no respect worse than if such a stipulation had never existed.

*Answered* : In every lawful matter relating to the safety of a ship, its crew are bound, implicitly, to obey the person put over them by the owners. As to ransoming, particularly, they have no title to dispute the master's authority, or to examine its extent. In a question, therefore, with them, it would be of no importance that he had made a bargain which the owners were not obliged to fulfil. For though, in such a case, the obligation to pay to the captors the stipulated sums might be ineffectual, the necessity of procuring the release of the hostage would still remain the same. Had the present ransom been illegal and void, it would have been incumbent on the defenders, by a proper application to those courts to which the captors were subject in questions of prize, to have effected his immediate dismissal ; and the loss which proceeded from the neglect of a measure so obviously requisite, must have fallen on those who were the cause of it, not on the innocent sufferer.

Nor is the other branch of the defenders' argument better founded. The recompence due to the pursuer, it is true, is naturally proportioned to the hire he might have earned in his professional capacity ; but the right from which it is derived is in its nature altogether separate and distinct. The latter, as accessory to the freight, could not be demanded until the voyage had been successfully performed ; whereas the former did not and could not exist till the voyage and every interest depending on it, had been finally determined. Here then

the present case is quite dissimilar to the one quoted on the other side. The adventure in which the privateer was engaged, did not terminate by the capture of a single prize; and the pursuer, as he would have shared in her success, was therefore justly held to partake of the calamities to which she was afterwards exposed.

The interlocutor of the LORD ORDINARY, to which the Court unanimously adhered, after advising a petition for the defenders, with answers for the pursuer, was in these terms:

' In respect it is not averred that the owners of the vessel prohibited the master from ransoming, finds, That he had power to ransom, and of consequence to give an hostage in security of the bargain of ransoming: And in respect it is admitted that he did ransom the vessel, and gave Lamont the mate as ransom, finds, That while Lamont continued in that character, under custody of the enemy, he must be held as remaining in the employment of the owners, and therefore entitled to wages: Also finds, That Lamont is also entitled to the expences incurred by him in the course of his voyage and journey from the French prison, until his arrival at Greenock, the ordinary place of his residence.'

Lord Ordinary, *Hailes.*

Act. *B. W. Macleod, and Lawyers for the Peer.*

Alt. *Rolland, A. Abercromby.*

Clerk, *Menzies.*

*Craigie.*

*Fol. Dic. v. 3. p. 113. Fac. Col. No 219. p. 345.*

*See PRIZE.*

*See APPENDIX.*