

principles of humanity and justice, which dictate, that a master of a ship, who contracts with sailors exposed to so many hazards, should be bound, *ex bono et æquo*, to refund any extraordinary damage sustained by them in his service. But whatever may be the rule in general, the defender ought in this particular case to be liable to the pursuer *in solidum*; because he pitched upon the pursuer as the person to be detained; whereas that ought to have been determined by lot. It is true that the defender had no right to pitch upon him; but seeing he did so, and acted as master after the connection betwixt him and the crew was dissolved, he must be liable to the pursuer for the damages sustained by him through his captivity.

The Lords found it proved, That the pursuer was pitched upon by the defender to remain as hostage with the French privateer; and, in respect the defender and the rest of the crew did obtain their liberty upon the detention of the pursuer, found the pursuer entitled to the damage sustained by him besides his maintenance, and modified the damage to L. 1 : 15s. per month during the time he was detained; and reserved action to the defender for his relief against all concerned.

Act. Ro. Dick.      Alt. Ro. Bruce et Garden.      Clerk, Kirkpatrick.  
Bruce.                      Fol. Dic. v. 3. p. III.      Fac. Col. No 80. p. 118.

1769. February 16.

LOCH against HOME.

ALEXANDER HOME, a boy of 13 years of age, was put aboard a ship belonging to David Loch, destined for Carolina, and to touch at Madeira and Havannah. As this was his first voyage, he had no wages; on the contrary, he was to pay board for his maintenance.

The ship being taken by a French privateer, was ransomed at L. 700, and Alexander Home given as a ransomer. But though, in the ransom-contract, the ship had liberty to touch at Charlestown and Havannah, she was again taken, in that course, by a Spanish guarda-costa, and carried into a Spanish port.

Alexander Home having made his escape on the coast of America, and returned to Scotland, brought an action against David Loch, on the ground, that the ransom-contract was voided by his escape, which therefore was *in rem versum* of Mr Loch; and concluding for L. 50, as his wages, from the date of the capture, till the day of his return to Scotland, with L. 200 as a *solatium* for the trouble and confinement he had suffered.

The Judge-Admiral decerned for L. 40 in full of all his claims; and David Loch brought a reduction of the decree.

*Pleaded* for the pursuer of the reduction: Though, in ordinary cases, wages are due to a ransomer, because he would have earned them, had he remained

No 2.

No 3.

A boy, who received no wages, was given as ransom of a captured ship. He made his escape, by which his master saved the ransom. He was found entitled to a sum as *solatium* for his trouble and confinement.

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.

No 4.  
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.

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