

No. 3: Kelly, the Court held, that the enlistment was a sufficient premonition to the master of his intention to leave him. So far as regarded him, accordingly, the bill was passed, but refused as to Devayne.

Lord Ordinary, <i>Cullen</i> .	Act. <i>H. Erskine, Forbes.</i>	Agent, <i>Coll Macdonald, W. S.</i>
Alt. Solicitor-General <i>Blair, Cathcart, Forsyth.</i>		Agent, <i>Wm. Callender.</i>
Clerk, <i>Colquhoun.</i>		

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Fac. Coll. No. 202. p. 449.

1806. May 28. THOMPSON *against* MILLIE.

No. 4.

Wages are due to a seaman during the period of the vessel's detention by an embargo in a foreign port.

ROBERT THOMPSON was hired to perform a voyage to Russia and back again, on board the *Resolution*, belonging to David Millie, manufacturer in Pathhead, at a certain rate *per* month. The ship having finished the voyage out, was lying in the harbour of Petersburg, when the Emperor Paul, taking umbrage at an alleged delay of Great Britain in the execution of a treaty, published a proclamation, (7th November 1800) which declares, that "his Imperial Majesty being determined to defend his rights, has been pleased to command, that an embargo shall be laid on all English ships in the ports of his empire, till the above-mentioned convention shall be fulfilled."

The sailors were marched into the interior of the country, under a Russian guard, and there detained prisoners. Commissioners were appointed for disposing of the British effects which had been sequestered, and for receiving the balances of all accounts.

A hostile confederacy was formed between Russia, Sweden, and Denmark, which was dissolved by the battle of Copenhagen, on 2d April 1801, and the death of the Emperor Paul. In the month of May, the British seamen were marched back to the coast, and, along with their vessel and cargoes, were liberated; but no indemnification was made by the Russian Government, either to the proprietors of the ships, for the loss they had sustained on account of the detention of their ships and cargoes, nor to the sailors, on account of their captivity.

Millie refused to pay the wages for the time during which the vessel had been detained, as during that time Thompson had not been on board the ship, nor employed in his service.

Thompson, therefore, brought an action against him before the Judge-Admiral, concluding for "the sum of £31. 13s. 4d. of wages, for the pursuer's service on board the said ship *Resolution*, from the 8th of November 1800 to the 30th May 1801."

The Judge-Admiral (8th June 1804) decerned against the defender.

The case having been brought before the Court, the Lord Ordinary (6th June 1805) repelled the reasons of suspension and reduction, and Millie reclaimed, and.

Pleaded: It is admitted, that if the seizure of the ship by the Russians be considered as a capture, that there can then be no claim for wages to the mariners during the period of detention. Now, this truly was a hostile seizure, both from the treatment which the seamen received, and by the measures which were adopted in regard to the ship and cargo. All connection between the sailors and the ships on board of which they sailed was dissolved. They were no longer in the service of their owners; they were actually prisoners. There was a complete interruption of the service, and consequently of the contract. An embargo is, where an order is given to prevent ships from sailing from particular ports, or to any particular country for a certain definite space of time. The ship in that case remains the property of the owners in every respect, and the sailors remain in their service. But the proceedings in this instance were totally different; and the measures adopted by the British Government as reprisals, on account of the Russian embargo, have been held to partake so much of the nature of hostility, as to discharge the contract of charter-party between the subjects of these powers and of Great Britain; Robertson's Reports, vol. 4. p. 77; and to put an end to the lien which the master has over the cargo for his freight; Robinson's Reports, vol. 4. p. 241; Touting in Pull. and Bos. Rep. vol. 3. p. 298. It cannot therefore subsist between the ship-owner and the mariners.

Answered: When a vessel is captured or totally lost before reaching the port of its destination, the sailor loses all right to his wages; but wherever freight is earned, wages are due, without taking into account the accidents or impediments which may have shortened or protracted the voyage; whether it has been from contrary winds, from being becalmed, from being detained by frost, or by the embargo of a foreign Prince. In this case, there never was any thing more than an embargo; the ship never was condemned, nor the property confiscated. There was nothing but the act of detention; every thing that followed, was subservient to that act, and intended for no other purpose than to make it effectual. After subsisting for a few months, the embargo was regularly taken off; the property was restored, without having been for a moment divested; and the vessel proceeded upon its voyage, without any new contract, either express or implied, and earned the stipulated freight, upon safely landing the cargo in this country. A case in point has been decided in the English Courts; *Beal v. Thomson*, in Pull. and Bos. Rep. vol. 3. p. 422.

The Court adhered; considering, that although the proceedings of the Russian Court were attended with greater acts of hostility than usual, yet, upon the whole, they bore more the appearance of an embargo than a capture; and,

No. 4. consequently, that they did not void the contract, by which the sailors were entitled to earn their wages during the period of the voyage.

Lord Ordinary, *Craig.* Act. *Jeffrey.* Agent, *R. Playfair.* Alt. *J. Murray.*
Agent, *D. Wemyss, W. S.* Clerk, *Pringle.*

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Fac. Coll. No. 250. p. 560.

1808. June 1.

ARCHIBALD CONSTABLE and Co. against The Trustees of Professor JOHN ROBISON

No. 5.

An author agreed with a Bookseller for the publication of a work of Science, the price according to a certain rate per sheet, payable by instalments, as the work was published. After the publication of one volume, constituting in itself a complete part, the progress of the work was interrupted by the death of the Author. His representatives are entitled to the price of the finished portion, according to the stipulated rate.

PROFESSOR JOHN ROBISON, having resolved to publish the substance of his Lectures on the Elements of Mechanical Philosophy, had certain communings with Mr. Constable on the subject.

Mr. Constable then addressed the following letter to Mr. Robison. 7th November 1803. "I agree to purchase the copy-right of your work, to be entitled the Elements of Mechanical Philosophy, at the rate of ten guineas per printed sheet; and the whole work to consist of about 500 pages in octavo; and as you propose publishing in four parts, you will of course allow me the usual credit given to the trade in similar transactions. Your answer in course of to morrow will much oblige me. I am," &c. and on the 15th December a letter in these terms: "In addition to my note to you of the 7th current, I now beg leave to propose to you, that if your work shall be published in parts, you shall be entitled to payment at the rate of ten guineas per sheet, at nine months after the publication of each part: or, if you prefer it, the whole to be paid at six and nine months after the publication shall be finally completed."

In advancing with the composition of the work, the views of the author extended beyond his own original intention, or that of the booksellers; and he wrote the following letter. "18th July 1804. I have not been unmindful of my engagements with you; and have been pushing on my syllabus as much as in my power. I have however only been able to complete the article as Astronomy; and if I had my choice altogether unembarrassed, I should write it all over again before sending it to the press, because I think it too full. I fear that what I have now to give you will run to 350 pages; this, with 264 already printed, will make too large a volume. At the same time, I am not altogether resolved what to do. Astronomy is the part of the whole course, which it would be the greatest saving of time to my lecturing, if my students had a full instruction in their hands. None of the English elementary books that I know enable the students to understand the Newtonian Philosophy. This is my favourite object; and I shall give no more than