

1778. February 10.

WILLIAM MORRISON and Others, *against* JAMES HAMILTON, and Others.

No 53.

Mariners were by agreement not to receive wages, till the ships' return to port. The ship was wrecked, but the wages were found due.

IN May 1773, James Hamilton, and others, mariners, engaged with Morrison and Company, to navigate their ship *Rae-galley* in a voyage from Greenock to the Lewis; from thence to Philadelphia; thence to the bay of Honduras; and from thence to return to Greenock.

Articles of agreement were signed by the mariners, among which were the two following: 'No officer or seaman in the said ship shall demand, or be entitled to his wages, or any part thereof, until the arrival of said ship at the above-mentioned port of discharge in Greenock.' And, 'No wages to be paid till the vessel arrives in Greenock.'

The ship proceeded on the voyage, unloading and shipping cargoes at all the different ports, until her arrival at the bay of Honduras, where the vessel took in her fourth cargo; but, soon after sailing, was totally wrecked. The mariners having returned to this country, brought an action against their employers, Morrison and Company, for payment of their wages, from the time of their leaving Greenock, until the ship was wrecked.

The Judge-Admiral found, 'That the pursuers are entitled to their wages to the time of their finally unloading the said ship the *Rae-galley* in the bay of Honduras.'

The merchants having brought the cause into Court by suspension, the Lord Ordinary found the letters orderly proceeded. Against which judgment they reclaimed.

In this case, the same point occurred which was determined in the similar case of Ross against Glassford in the 1771*, that the mariners, at common law, in such a voyage, are entitled to their wages until the delivery of the last cargo before the ship is wrecked. This was again disputed by the merchants, on the same principles and authorities as then argued.

Pleaded separatim for the suspenders; The mariners are, at any rate, barred by the terms of the agreement, which they subscribed before sailing, from any claim for wages, which is thereby made to depend on the vessel's returning to Greenock.

Answered for the chargers; The only meaning of these articles was to prevent the mariners from demanding their wages at every port they arrived at, which, at common law, they were entitled to do. They are only suspensive of the term of payment, and proceed upon the hypothesis, that the ship was to return. The last article, in which it is said, 'no wages to be paid,' &c. explains and qualifies the first. These articles, therefore, ought not to be interpreted into a forfeiture of the wages which the mariners had earned, and would have had right to at common law.—But, although they could bear no other in-

* See APPENDIX.

terpretation, such a contract would be voided as unjust, and taking undue advantage of the mariners.

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The COURT were of opinion, that the written articles founded on do not apply to this case, where the ship is wrecked, and cannot return: That the claim of the mariners must be judged of by the common rules of law, by which they are entitled to wages until the unloading the vessel in the bay of Honduras.

The COURT adhered to the Lord Ordinary's interlocutor, which found in the same terms with that of the Admiral.

Act. *Ad. Rolland.*

Alt. *J. Campbell, Cha. Hay.*

Eol. Dic. v. 3. p. 160. Fac. Col. No 10. p. 22.

Contract when conditional, when mutual; *see* MUTUAL CONTRACT.

For the meaning of conditional clauses; *see* CLAUSE.

Bonds of provision, donations *mortis causa*, legacies, &c. whether they imply the condition of survivance; *see* IMPLIED CONDITION.

Where the question is, Whether the clause imports a proper substitution or a conditional substitution? *see* SUBSTITUTE and CONDITIONAL INSTITUTE.

See Robertson against M'Kenzie, C. Home, p. 90, *voce* OBLIGATION.

See OBLIGATION.—*Pactum Illicitum*.—FACULTY.—PROVISION TO HEIRS AND CHILDREN. *See* APPENDIX.