

PROCEEDINGS

ON THE

TRIAL

BETWEEN

Mr. JOHN CARTER

The Chief Mate,

AND

PHILIP SKELTON

Captain of the Ship Albion;

FOR LEAVING THE PLAINTIFF ON SHORE
IN THE ISLAND OF CELEBES
IN THE INDIAN OCEAN.


TAKEN IN SHORT HAND

By ALEXANDER FRASER.

London:

Printed by W. BARNES, No. 3, Kent Street, Borough;

AND PUBLISHED BY EFFINGHAM WILSON, CORNHILL,
CORNER OF THE ROYAL EXCHANGE.


Price 2s.

K

540

T 75

no. 20(21)

Trials

11992-LAW08

CARTER v. SKELTON.



Mr. MARRYAT opened the pleadings.—he stated that the plaintiff in this case was in 1812, the first mate of the ship Albion, belonging to Messrs. Wallis, Cooke, and Hammond, of London, Merchants, and the defendant was the captain of the said ship, bound on a voyage to the South Seas, in the whale fishery, that this action was brought to recover damages sustained by the plaintiff, by means of the defendant setting him on shore and leaving him on the island of Celebes, in the Indian ocean, whereby the said plaintiff was put to great difficulty in reaching England, and was deprived of his share of one twenty-eighth part of the profit of the said voyage, as agreed for in the articles entered into between himself and the owners of the said vessel, which share would have amounted to upwards of £600. The declaration concluded with stating the whole amount of damage sustained by the plaintiff by this conduct of the captain at £1000. To this the defendant had pleaded the general issue, not guilty of the premises whereupon issue was joined.

Mr. ATTORNEY GENERAL. May it please your lordship. Gentlemen of the jury, the injury of which the present plaintiff complains, appears in every point of view to be of a most serious and important nature, whether we consider it as it respects the sufferings of the individual and his pecuniary rights, or as it respects the interest of those excellent men who are engaged in our navigation and commerce. In either of these points of view, I am persuaded, you will think this case well merits your utmost attention, and that it will appear to be a cause of that importance which I have stated. What I have further to state must necessarily be very short, having a plain and intelligible story to tell, and if I take a correct view of it I think it will be unnecessary for me to make an inflamed statement of it to you. We come here to obtain a civil recompense for an injury sus-

tained by the plaintiff, and you, as British jurors, know well how to appreciate the amount of that injury. The plaintiff having engaged to act as the mate of the ship Albion, with the defendant, Captain Skelton, (having sailed with him once before) to sail to the Southern Ocean upon the whale fishery. I shall in the first place state to you the nature of that engagement; it was not that the mariners were to be paid at so much per month, as in other cases, but in order to encourage them in undergoing such dangers as are incident to these sort of voyages, and to interest them in the concern, they act upon shares. The plaintiff's share of the neat profits of this adventure was to be one twenty-eighth part. They sailed upon the voyage in question on the twenty-first of May, 1812, and down to a certain day it is not alledged by the defendant that the plaintiff had conducted himself otherwise than most excellently and meritoriously. They arrived at a port called Laverstoke, in the Southern Ocean, on the twenty-first of October following, and sailed from thence on the fourth of November, and soon afterwards were employed in catching whales. On the first of December, the boat in which the plaintiff was employed, was struck by a whale, which stove in her planks, she consequently filled with water, so that the lives of those within her were endangered; the crew were immersed in water for four hours, when another boat came to their relief; the crew were then removed into that boat, and the stoven boat taken in tow, and at length they returned in security to the ship; it was very dark, and the boat having two boat's crews and double tackle on board, and their being upon the starboard side of the vessel several dead whales lashed, and that side being the windward side, the plaintiff took the boat to the larboard side, and part of the crew boarded from that side. These whales had been taken and killed, and were laying there till such time as they had an opportunity of taking their fins and other parts that were useful in making a profit of by converting them into oil and blubber. There were four whales lying on the starboard side waiting for such opportunity; the people in the boat which was stoven had been extremely harrassed all that day, and it appeared to them that the side where these whales were lying was that which one would not choose to make with a boat in order to get up into the vessel; the plaintiff accordingly went upon the larboard side, when the defendant called to him to go to the side where the whales were lying, but in disobedience of that order, Carter, the plaintiff, with part of the crew boarded from the larboard side; this gave offence to the captain, and he remonstrated with the plaintiff on his disobeying the order, although it appeared that the plaintiff had acted for the best; and it will be said that he conducted himself in a very disrespectful manner towards the captain, who flew into a violent passion, and prevented the rest

of the boat's crew from boarding on the same side, and compelled them to go to the windward. This circumstance occasioned the conduct of the captain of which we complain. It afterwards appeared that the defendant had hailed the boat, and directed them to board from the starboard side. This order the plaintiff, from the boisterous state of the weather, was prevented hearing, and even if he had heard it, much difficulty and danger would have attended the compliance, from the cause before mentioned. Suppose all this were true to a certain extent, yet the person next in authority to the captain, might surely under such circumstances, have been permitted to exercise his judgment, as to whether he should go to the starboard or to the larboard; we might be disposed to say that that side which was the least lumbered or encumbered was the one most proper to go to; some men might for the sake of shewing their authority, make an ill selection of the side of the ship, upon which an inferior officer should come. Having got on board, the plaintiff was immediately assaulted by the defendant, and assailed with the most improper language. The plaintiff upon this occasion admits that he was not more than man, and that some intemperate expressions escaped him, but not such as were of great importance. What was the conduct of the captain? He seized the plaintiff by the collar, and treated him with great personal violence, and ordered him off duty, saying, "he would do the business of the ship without the assistance of the plaintiff, and directed him to retire to his cabin." Mr. Carter remained in this state until the seventh of December, when the ship arrived at Kenia, in the island of Celebes, a Dutch settlement, where it appears the captain landed and preferred a charge against the plaintiff before the Dutch resident, from whom he procured a letter to the plaintiff, which induced him to go on shore, and then took an opportunity of sailing without him, leaving him in the most distressed and miserable situation; that island is not one of an entirely deserted description, nor was it without a habitation, but it was deserted to all his hopes and expectations; it put an end to all his most sanguine prospects, and removed him at a great distance from his native country, interdicted as it were from passing over that ditch which lay between him and his home, interdicted to embark on board that ship in which he had embarked already all his means of prosperity; having, however, at last got to Amboyne, he found his way to this country, and he this day appeals to your justice to give him a suitable compensation for these injuries. Let us see what the condition of such a man as this plaintiff is; he is one who is entitled to share in the profits of this adventure, and his share was one twenty-eighth of about £16000. the neat profits of the adventure, which would amount to £680. odd. Such was the situation of this person arriving in this country. Is it not a most perilous

situation in which such persons are placed, if the captain and part owner (for the defendant is himself in both those characters) upon any alledged intemperate expressions under circumstances like these, at a time when they are worn down by fatigue and accidents, and expecting instant death, is to treat them with impunity in the injurious manner I have mentioned? Mr. Carter upon seeing these whales lying alongside ready to be taken in at leisure, finds an opportunity of regaining the vessel on the larboard side, and saving himself and his men from further peril; is it not then somewhat excusable, if by any frailty of human nature he should resist by language, at least the violent opposition he met with from the defendant? Is such a person for an imaginary indignity to be put on shore by his captain in such an island? it was little better than if he had given him his bread and pitcher of water, and placed him upon a solitary and deserted bit of land, he could not well have been in a worse situation than he was placed in this miserable residence which had been given him by the captain; for that of which he has been most infamously deprived, it is impossible that you will not grant relief; what he asks at your hands is a compensation for the injury he has sustained, and the sufferings which the defendant's conduct has inflicted upon him. The case will not close I know upon my evidence; I am aware that my learned friend (Mr. Park) has examined two persons upon interrogatories; I wish most sincerely (but it is a wish which perhaps I should not express as it cannot be accomplished, I have often before expressed it, but I never so strongly expressed it as I am disposed to do in this cause) that in our courts of common law we might never again see a deposition upon interrogatories, but that we might have in the witnesses box those on whose testimonies you are to give judgment; I say this as to depositions generally, but I say it to day as to this cause, with a certainty of carrying every one with me. A counsel for a plaintiff, when a witness is in the box, has a right to ask questions upon the technical name of the *voire dire*, in order to see whether he be a competent witness for the defendant, and upon this occasion I may venture to say that if I had these two witnesses here, not one of them could open his mouth, except upon questions put as to the *voire dire*, and it would be found that they could not be competent witnesses. My learned friend appears surprised at hearing me state this, but perhaps he has not read the depositions of these persons from beginning to end; I attribute no neglect to him even if that should be the case, knowing as I do, what loads of papers I have often come into court with myself, without having been able to read every line in them, for we often get the general circumstances from the opportunities we have of conversing with others who know them more minutely than we can otherwise do; indeed I never acquit myself so ably as when I merely converse with

my learned friends of the profession, who give me all the information which they know; but in this case I have read these depositions, and I make these observations now, as I am desirous that instead of applying the antidote to the poison, we take care that when the poison is poured into our minds, to be cautious how we receive it. As to the *voire dire* of these depositions I know not how it is to be put, but I know that his lordship will say these persons ought not to have been examined. There are two gentlemen, Michael Underwood and Samuel Grew, who are to come here before you to day upon paper, in order to give you an account of this transaction in the Southern Ocean; I should say if they were in court, you Mr. Underwood was on board the ship Albion, and the defendant made a bargain with you and with Grew, that he would give you a hundred pounds each, if you would do the work, which he, the defendant, was to have had performed by the plaintiff; (here is the harpoon, and I should give them length of line, and so by degrees bring in the answer) Mr. Underwood would say that he did make such a bargain, and where is the harm that he who had lost a man had got two to do the duty of that man for a hundred pounds each? There might be none, but I should further ask him have you been paid that sum? His lordship might say to me, have you not been wasting time in putting these first questions, for where is the harm? Suppose the captain had taken in two new hands at the island of Celebes, where is the imputation to be cast upon for that? There would be no imputation on him or upon the witnesses, for such a bargain having been entered into, but it does not stop there; it stands upon the depositions that they have not been paid that money so bargained for, and that they are not to be paid for their work on board the ship; but I would make it appear upon *your quarter deck*, that they are not to be paid their hundred pounds unless this action be to be defeated by their testimony, and the defendant obtain a verdict. If I put such a question upon the *voire dire* to them, and if they said we expect to be paid the hundred pounds, but the payment is postponed until this trial is over, in order to see whether our deposition is to secure us the payment, for it depends upon that event, then let them speak if they please as loud as Boreas in his greatest rage, and let them state that all was still and calm in the conduct of the captain, and that nothing was to interrupt the plaintiff from hearing his captain in the boat, and not only that, he abused the captain, but offered every indignity to him; let them state that in their judgment this ship was not secure so long as this man remained on board, so that there was a necessity for leaving him at the island of Celebes; what would be the value of all this, when you will find that a hundred pounds is offered them for their services, but that it was not to be paid as not being *earned*, until the captain knew what

effect their testimony is to have upon your minds. That I may not be supposed to be mistaken, I'll read you the words of the depositions of these persons, they say "that the said defendant in the course of the voyage after the plaintiff had ceased to perform his duty on board the said ship as chief mate, promised and agreed to give to these deponents (Michael Underwood and Samuel Grew) one hundred pounds each, over and beyond the share they were respectively entitled to by the ship's articles, if in addition to their other duties they would severally fulfil the duties, and supply the places become vacant by the absence of the chief mate, they being thereby required to perform the duties, not before allotted to them, after the plaintiff had ceased to fulfil those duties. That they performed those duties till the ship's arrival in England. That the owners by whom the said sum of one hundred pounds each was to have been paid, refused to pay them the same on the ship's arrival in England, and until the cause between the said defendant and the said plaintiff had been tried." From this it would appear that the defendant has intimated that unless he be successful in resisting this demand of justice, this deponent Michael Underwood, need not expect to receive his one hundred pounds; here would have been a pretty kettle of fish (as we are talking of fisheries) which these people would have made of themselves if they had exposed themselves to a *viva voce* examination. If my learned friend were to read in this place such depositions as these until there were a scarcity of stamps upon which they could be written, and be at a loss to know what effect they would have upon your minds, upon finding one of them expressed in the manner I have stated, and the other, namely, the deposition of Samuel Grew, stating, "that defendant has intimated to deponent that unless he, the defendant, shall be successful, he the deponent, cannot expect the remuneration of one hundred pounds, or a less sum than the one hundred pounds," and again, "that deponent does not expect that he shall receive the said one hundred pounds, or any part thereof." If what? The expression is worth one thousand pounds, in sounding damages; we of the profession, and you men of education, in speaking of the termination of a cause, would say, the plaintiff was nonsuited; the defendant had a verdict; the plaintiff was unsuccessful; or the cause was decided in defendant's favor. I believe I have exhausted almost all the expressions that might in our usual forms be used, but that is not the language of a partizan; you have every one of you at your tongues end the phrase which is used here, *we have been beat* one would say; now we will see what this deponent says; he tells you that he "does not expect that he shall receive the said one hundred pounds, or any part thereof, if defendant be *beat* in this action, he deponent having no means of enforcing the payment thereof.

Mr. PARK. I suppose my learned friend means to read these depositions, as he comments thus upon them.

ATTORNEY GENERAL. If I do not hear them read, then my observations may be somewhat out of time, and I shall have an apology to make to you for having wasted your time, and also a like apology to my learned friend, but that will be but a slight one, for if I waste his time I also waste my own. There are many instances where it is said you are doing an injustice not to bring on a trial even upon depositions, and in this instance I cannot tell the reason why, but I'll venture to say, when my learned friend came into court this morning, he did intend to read these depositions, but now I have no doubt he has altered his mind; when I talked of examinations upon the *voire dire*; I know that my learned friend is too good a judge to let his tatterdemallions come here upon affidavits and depositions, or upon parchment, and far less to give *viva voce* evidence under such circumstances. I should, I think, have a little mistaken my duty to my client if I had thought it proper that such depositions should be brought forward when such observations were likely to be made upon them, and you would think that I had not done my duty if I had allowed you to hear it all read over, if you had afterwards found that you had been hearing all that these two incompetent witnesses had to state on such an occasion. If, however, my learned friend should read them, I will only ask you to wait until you hear the end of it; but if this be all he has to bring before you, I rather suspect that these will be the last words I shall have occasion to address to you upon the subject. Upon the whole then, gentlemen, do you not think that this is a cause of the last importance for the plaintiff who now sues for justice? The conduct of the defendant cannot be justified upon pretence of the necessity for that strict subordination which prevails on board a king's ship, for *even there* where the strictest subordination is absolutely necessary, no man would have been justified in doing more than putting the individual, who he thought had disobeyed him, off duty for a day or two; but here we find that merely on account of some expressions which this sea captain imagined to be contumelious, he inflicts upon him this harsh treatment; he is left behind upon an inhospitable island, and cut off from all his prospects of profit which he was entitled to from this arduous and perilous voyage, and subjected to additional miseries after all the previous hardships he had suffered. It is for these losses, miseries, and hardships that he comes here this day to seek redress at your hands. In administering that justice which is sought at your hands by this individual, you will not fail to consider that the example made here of such tyrannical and overbearing treatment will afford a great additional security to a valuable class of His Majesty's subjects, who

are engaged in the navigation, commerce, and naval service of the country, by protecting them against such aggressions in future, and warning those in power and authority over them against an overbearing oppression. With these observations I shall now proceed to call my witnesses to prove the statement of facts which I have made, and I am convinced that you will not give less damages than what the full measure of justice requires.

ARTICLES OF AGREEMENT.

PETER WALLIS, DAVID COOK, and JOHN HAMMOND, all of *Trump Street*, in the city of *London*, merchants and managing owners, PHILIP SKELTON, the master, and the officers, seamen, and mariners of the ship *ALBION* of *London*, now bound from the port of *London*, on a voyage to the *Southern Ocean*, for Oil, Fins, and Skins, usually called the *Southern Whale Fishery*, and to return therewith to the said port of *London*, where the said intended voyage is to end, as follows :

THAT in consideration of the part *share in proportion* against each persons name hereunder written of the net and clear proceeds of the cargo of oil, fins, and skins, which may be procured and brought in the said ship or vessel to *London*, they, the said master, officers, seamen, and mariners, do hereby severally and respectively promise, declare, and agree to and with the said owners to perform the above-mentioned voyage; and that they shall and will do *their duty*, and *strictly obey the orders and commands of their superior officers*, and *conduct themselves at all times and upon all occasions, and in all such ports or places as the said ship or vessel may touch or call at in the course of her said voyage, with sobriety, and as good and faithful seamen and mariners ought to do, as well on board the said ship or vessel as in her boats and on the shore, and shall and will exert themselves, and use and exercise their best endeavours to procure for the said ship or vessel a full cargo of oil, fins, and skins, with the greatest expedition, and to conduct her therewith in safety to the said port of London.*

THAT no officer or seaman shall or will absent himself from the said ship or vessel, or from the duties of the said ship or vessel, without first obtaining a *ticket of liberty* from the commanding officer for some certain time to be therein expressed,

and which on no pretence shall be exceeded by the seamen or mariner, to whom the same shall be given or granted as aforesaid.

THAT the said master, officers, seamen, and mariners respectively *shall and will stand by the said ship or vessel* in all ports and places, seas, and dangers, *and at all times shall and will use and exert their utmost skill and ability* for the preservation of the said ship or vessel, and her boats, tackle, apparel, furniture, stores, and cargo, until she shall *have arrived back at the said port of London*, and her said cargo shall be there discharged.

THAT no one of the said officers, seamen, or mariners shall neglect or refuse to do his duty by day or night, nor shall go out of the said ship or vessel under any pretence whatsoever, until the voyage is ended, and the ship discharged of her cargo, without first obtaining such ticket of liberty as is above-mentioned.

THAT each and every lawful command which the owners, master, or commanding officer of the said ship or vessel shall think necessary to issue for the effectual government of the said ship or vessel, and for suppressing immorality, and vice of all kinds, shall be strictly complied with.

THAT no master, officer, seaman, or mariner, shall demand or be entitled to his share of the net proceeds of the said cargo of oil, fins, and skins, until the arrival of the said ship or vessel at London, and her said cargo of oil, fins, and skins, shall be there delivered and sold, and the money for the same received by the owner, nor unless he shall have well and truly performed the above-mentioned voyage, according to the true intent and meaning of these articles.

THAT in ascertaining the net proceeds of the said cargo of oil, fins, and skins, there shall be charged a fair price for the casks, which shall contain the oil, on board the said ship, and also £2. 10s. per cwt. commission or agency, for the owners, upon the gross amount of the cargo, and also all other usual customary and incidental charges and expences whatsoever.

THAT such of the said master, officers, seamen, and mariners, who shall not return in the said ship or vessel with her cargo to London, or who shall desert from the said ship or vessel, or who shall enter on board any of His Majesty's ships or vessels of war without the consent, in writing, of the master or commanding officer of the ship or vessel, or who shall break or neglect or refuse to perform these articles or any of the en-

gagements or agreements herein contained in any respect, or who shall plunder or embezzle, or wilfully destroy or make away with any thing on board of or belonging to the said ship or vessel, or belonging to the owners, master, officers, or crew thereof, or any or either of them, shall hereby forfeit the whole of his said part share or proportion of the said cargo of oil, fins, and skins, and all his claim thereto, and all benefit and advantage accruing or to accrue to him therefrom, and also his chest, clothes, bedding, and effects, which he shall have on board the said ship or vessel, and all benefit from the said voyage, any law, custom, or usage to the contrary thereof in any wise notwithstanding.

THAT the said owners shall and may sell and dispose of the said cargo of oil, fins, and skins, at any time or times he shall think fit, either before or after the arrival of the said ship or vessel at the said port of London.

THAT the said owners shall and may deduct from each persons share of the net proceeds of the said cargo of oil, fins, and skins, such sum or sums of money as he may owe or be indebted to the said owner, or the master, or commanding officer of the said ship or vessel, for advance money, clothes, or other necessaries, hired men, medicines, or on any other account.

THAT whatever apparel, furniture, and stores, each of them the said master, officers, seamen, or mariners, shall receive into his charge belonging to the said ship or vessel or her boats, shall be duly accounted for by him whenever required by the said owners, or the master of the said ship or vessel, or other commanding officer; and in case any thing shall be lost or damaged through the carelessness or insufficiency of any of them, it shall be made good by him or them by whose means it may have happened, and deducted out of his or their share or shares of the net proceeds of the said cargo of oil, fins, and skins.

THAT no one of them shall or will on the said ship or vessel's return home, and whilst in the river Thames, and her cargo is delivering, on any pretence whatsoever go on shore to sleep, but shall do their duty by day in discharging her cargo, and keep such watch by night as the owner, master, or other commanding officer shall think necessary for the preservation of the said ship and cargo.

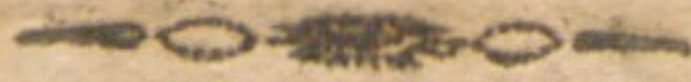
THAT in case the said ship or vessel shall obtain or take or assist in obtaining or taking any prize or prizes of any nature or kind whatsoever, the same shall be brought into account and shared as oil under these articles, save and except that the owners shall be entitled to and have for his own use £5. per

cent. commission or agency on the net proceeds of such prize or prizes, and that each of the apprentices shall be entitled to one third of a foremast man's share of prize money.

THAT in case any dispute shall arise between the owners, master, officers, or any of the crew, respecting the voyage, or the settlement of their accounts, the same shall be settled by two arbitrators (one to be chosen by each disputing party) or their umpire, whose award, order, or determination shall be conclusive and binding, and the submission hereby made shall and may be made a rule of any of His Majesty's courts at Westminster.

THAT neither the master, or any officer, seaman, or mariner who shall execute these articles shall have claim or demand on or under any pretence whatsoever any monthly wages or other wages, pay, or recompence whatsoever, for performing the said intended voyage, or any service on board the said ship or vessel, or her boats, or on shore, save and except his share of the net proceeds to accrue to him under these articles.

And lastly.—THAT neither the master, or any officer, seaman, or mariner who shall or may execute these articles, shall do or omit any act or thing during the said intended voyage whereby the owners of the said ship or vessel, or his executors or administrators shall or may sustain any loss, injury, or damage.—In witness whereof the said parties have hereunto voluntarily and without compulsion set their hands and seals the day, month, and year set opposite to their respective names.



EVIDENCE FOR THE PLAINTIFF.

RICHARD DAVIS sworn (*examined by Mr. Marryatt*)

Q. Did you go on the voyage in this vessel, the Albion?

A. Yes.

Q. Did you sail soon after entering into your articles, in the month of May, 1812? A. Yes, we sailed from Gravesend the same day.

Q. Were you on the 2nd of December last in the Indian Ocean? A. Yes Sir.

Q. Had you before that time killed many fish? A. No, not a great many, that being the early part of the voyage.

Q. Was it in the month of December following that you had reached the Indian Ocean? A. Yes.

Q. Where were you on the 2nd of December? A. Near the Island Celebes.

Q. Was Carter, the first mate, out with the boat that day? A. Yes.

Q. Do you know whether any thing happened to his boat? A. Yes, it was stoved.

Q. By what? A. By the stroke of a whale.

Q. Was he, by the assistance of another boat, and his company brought back to the ship? A. Yes.

Q. How many hours afterwards? A. I cannot exactly say, but it was a considerable time.

Q. Upon his return on board were there any fish on either side of the ship? A. Yes, there were, on the weather side.

Q. How many dead fish? A. There were three or four, I am not sure, but I rather think there were three.

Q. Did the boat's crew go to the weather side or to the lee side, that is the larboard side? A. To the lee quarter.

Q. They got out of the stove boat into the other? A. Yes, and they got up on the lee quarter.

Q. What happened then on the larboard side; was any thing done or said by the captain? A. Yes, but I have reason to believe that Carter did not hear it, as the captain called to him a second time to come on board on the starboard side of the vessel, when Mr. Carter said that the boat should go round as soon as the people got out of it.

Q. You say that Carter did not answer the first time, but you think he did not hear, and then the captain called a second time, and Carter said that as soon as the people got out of the boat he should go round to the side mentioned; was the boat heavily laden with people, having two crews on board? A. Yes.

Q. After some of the people had got out of the boat, then some of the others with the boat went round to the other side? A. Yes.

Q. Did Carter come in the first instance upon the side where the fish were or not? He came on the side where there were no fish.

Q. On what side was he required to go? A. On the side where the fish were.

Q. The larboard and the lee were the same in this instance. A. Yes.

Q. Did Carter and the boat's crew get out on the side where there were no fish? A. Yes.

Q. Did the remainder of the boat's crew with the two boats afterwards go round to the side where the fish were?

A. There were a number of hands left in the boat to take her round to the weather side or the fish side.

Q. Was she so taken round and the boats taken in afterwards on the fish side? A. Yes sir.

Q. (*By Ellenborough, C. J.*) Was it material on which side the people got on board from the boats? A. I only judge from my own opinion, that the lee side is generally the most desirable and convenient for the people to get out of the boat; it is generally the side that the boat would go to; that is the general custom.

Q. (*By Mr. Marryatt*) Was there any inconvenience to the ship, or only to the persons getting out of the boat upon that other side of the ship? A. There was no inconvenience to the people in the ship on whichever side they got on board of her, the inconvenience would be to the persons getting out of the boat into the ship, the lee side being most convenient.

Q. On Carter coming on board did Captain Skelton say or do any thing to him? A. He was very angry and words ensued; he was angry that the boat did not go to the windward; Mr. Carter told him that as soon as the people got out it should go.

Q. What did the captain say to Carter? A. The captain was very angry respecting that, and abusive language took place.

Q. (*By Ellenborough, C. J.*) On what side did it begin? A. The captain began to abuse him for not obeying his orders in going round to the windward.

Q. (*By Mr. Marryatt*) Did the captain do any thing to the plaintiff? A. After some time the captain took him by the collar, and Carter pushed him away, and he said don't go to heave me overboard as you have done the steward.

Q. You were the steward in this voyage so that it did not refer to you? A. I was the steward but it did not refer to me.

Q. What passed after that? A. The captain told him to go below, and that he should not do any more duty on board the vessel.

Q. What further passed? A. Nothing further passed; Carter went below and remained in his cabin till we got into port.

Q. What was the next port or land you made? A. The Island of Celebes.

Q. How soon afterwards did you make that island? A. In the course of three or four days afterwards.

Q. Did the captain go on shore there? A. Yes sir.

Q. Whilst he was on shore did any letter come on board to the mate? A. Yes, there was a boat which we supposed came from the governor with two soldiers in her, with a letter to Carter.

Q. What settlement is it? (No Answer)

Mr. Park. I understand it is one of those places taken during the war from the Dutch, and a Dutch governor was there at the time, and an English officer was over it; Neys was the name of the governor.

Q. Was it a boat belonging to the island or to your ship?

A. It was a boat belonging to the island.

Q. Did the mate in consequence thereof go on shore?

A. The second mate who was then in command of the ship told him he had got a letter from the governor desiring him to go on shore; the second mate took the letter from the boat, he being then in command of the ship; he told him, Carter, he had got a letter, and he took the letter.

Q. Did Carter go on shore in consequence thereof. A. Carter said to the second mate, "Underwood you have now the charge of the vessel and if you tell me to go on shore I'll go."

Q. What said Underwood? A. He hesitated a little, and at last said he had better go, as it was the captain's desire.

Mr. Marryatt. It was the desire of the governor, at the instigation of the captain.

Here the letter alluded to was produced and read as follows--

"To Mr. John Carter, Chief Officer of the Albion Whaler.

"SIR, In consequence of a public representation made unto me, by the Captain of the ship Albion, Philip Skelton, I have to request that you will with as little delay as possible wait upon me. H. NEYS, Resident.

"Kenia, 9th of December, 1812."

Q. Underwood told him that as it was the captain's wish he had better go? A. Yes sir.

Q. Did he accordingly go on shore? A. Yes sir, he cleaned himself and went on shore accordingly.

Q. Did he take his clothes on shore with him? A. He took only what he had on.

Q. How soon after that did the captain come on board? A. Four or five hours after that.

Q. Did he on his coming on board, or at any subsequent time, give orders as to Carter's things or clothes? A. Yes, he desired them to be sent on shore.

Q. Was that on his coming on board? A. About two hours afterwards.

Q. What was the reason assigned? A. The reason assigned was because he was not to come on board the vessel again.

Q. Was one of the ship's boats sent on shore with his clothes? A. Yes it was.

Q. Were any orders given by the captain to the boat's crew that took them? A. I cannot say as to that; I was not on deck at the time.

Q. And you were not present when they went off to hear any particular orders given? A. No.

Q. During your stay off the island of Celebes, were your boat's crew on shore at different times? A. Yes, Sir.

Q. How long did the ship stay off the island of Celebes? A. Four or five days, I cannot exactly say.

Q. Was it on the first day of your arrival that he went on shore? A. Yes.

Q. Were you present when the boat's crew went on shore three or four days afterwards. A. Yes.

Q. Did you hear the captain give any orders as to Carter? A. No.

Q. About how many times was the boat sent on shore? A. Three or four times, but I cannot say exactly.

Q. You did not then hear the captain give any orders as to Carter? A. Only to the mate.

Q. What orders? A. Not to let Carter come on board.

Q. When was that given? A. The day after Mr. Carter went on shore.

Q. Did Carter attempt to come on board? A. I never saw him afterwards.

Q. Unless the ship's boat had taken him, had he any other means of coming at all? A. No means at all.

(*Ellenborough, C. J.*) The governor sent the boat, so that it was physically possible.

Q. (*By Mr. Marryatt*) Did the ship at length sail without him? A. Yes, sir.

Q. And you saw him no more, and therefore you cannot tell how long he staid? A. I never saw him there, but I have seen him here since.

Q. The ship sailed without him? A. Yes, sir.

Q. When did your ship come home? A. In the latter part of July, 1814.

Q. What share had you? A. The 130th share.

Q. How much money has been paid to you for that 130th share? A. Somewhere about £130.

(*Cross examined by Mr. PARK*)

Q. Had you sailed on a voyage before then, when Carter was the mate also? A. No, sir.

Q. But you knew from Carter that he had been the mate of this ship before? A. Yes, sir.

Q. Were you the person who assisted in packing up his clothes when they were sent on shore? A. Yes, sir.

Q. You know that the log book is an essential thing for getting the bounty on whale fisheries, at the Custom-house? A. Yes, sir.

Q. Did you see the log book in Carter's custody? A. I saw it in the mate's custody.

Q. You dont know that Carter had it, and the captain could not get it again? A. No, sir.

Q. You live with him in London? A. I live with him because I have no other place to live in.

Q. Have you not heard from him that he had got the log book, and refused to deliver it up? A. No, sir.

Q. All your ship's crew had been out that day, some in one boat and some in another, upon the day the bad language was spoken? A. Yes, sir.

Q. The captain was out working in one boat, and one mate in one boat, another in another? A. Yes, sir.

Q. And all were fatigued and tired? A. No doubt sir.

Q. Was the stoved boat in tow of the other? A. Yes she was.

Q. The captain before he got at all to the larboard head called out to him to go to the starboard or fish side? A. Yes.

Q. Are there not always tacklings on that side to haul a boat up if stoved? A. They shift them round for convenience according to circumstances.

Q. But I ask you whether upon that night the tackling which was to haul up the stove boat was not on the starboard side? A. I believe it was ordered before the boat did come, but I cannot exactly say whether it was then up or not.

Q. Was not the tackling fixed to the main yard on the starboard side? A. I don't know that it was.

Q. When the mate came on board you heard no abusive language from him to his superior officer? A. After Captain Skelton began, there were high words between them both.

Q. Did Captain Skelton find fault with him for not going to the fish side? A. Yes, sir.

Q. You heard all that passed did you? A. Yes, sir.

Q. Did you ever hear such language from the mate of a ship to a captain as this? "You are a rogue and a scoundrel, and I am the master of this place." A. I heard the captain ask Carter who is the captain of this ship, and Carter said you are the captain, but I am the mate, don't go to use me ill.

Q. Upon your oath before that had taken place, had not Carter called him a rogue and a scoundrel, and that he could hang him if he would? A. No, sir.

Q. What did the other say? A. The one damned and the other damned, and they were damning their eyes for some time.

Q. Perhaps the plaintiff said to the captain he was a rogue and a damned scoundrel? A. I don't recollect any thing of that being mentioned.

Q. Will you swear upon your oath, that you never heard such words as I have mentioned of a rogue and scoundrel, and that he could hang him if he would, upon which Skelton said who is Master here Mr. Carter? A. Nothing of the kind passed.

Q. Has the mate told you that, at Kenia, the captain of another vessel offered to bring Carter home to England, and he refused? A. I never heard a word of the kind.

Q. Have you heard Carter say that Skelton offered to leave money in the governor's hands to carry him to Amboyna and thence to England? A. Not from the mate.

Q. From any one in his presence? A. No.

Q. Have you not heard the mate say that this Resident offered to reconcile him to the captain, and that the captain offered to agree to it if he would make an apology, but he refused and insulted him more? A. No.

Q. How much did you say you had received as your share? A. About a hundred and thirty pounds.

Q. Does that include the ten pounds which the owners of the ship made you a present of before you left Gravesend? A. No, sir, that was extra.

(*Re-examined by Mr. MARRYATT*)

Q. You have been with Carter since Tuesday week
A. Yes, sir.

Q. Did you come in consequence of his subpoenaing you?
A. Yes, sir.

Q. Where from? A. From the Isle of Wight.

Q. (*By Ellenborough, C. J.*) What sort of island is this Celebes, is it a large island? A. It is very large.

Q. Are there people residing there? A. Yes, but I cannot say how many.

Q. Do you know of any ships touching there, so that a person may have the opportunity of coming to Europe?
A. Very few ships, except those belonging to the company.

JOHN BARR sworn (*examined by Attorney General.*)

Q. Was you one of the persons engaged in this adventure in the Albion? A. Yes sir.

Q. Do you remember the day when the boat in which Mr. Carter was was stoved by the stroke of a fish? A. I cannot say the day?

Q. Do you remember such a circumstance? A. Yes.

Q. Was you out in the very boat? A. No sir.

Q. The boat that took him up brought him and the rest of the crew in tow? A. Yes.

Q. What side of the ship was the boat making for? A. The larboard side.

Q. Was that the side where the fish were? A. No, the fish were on the starboard side.

Q. There were four dead whales? A. Three or four to the best of my knowledge.

Q. What was the most convenient side to come to with a stove boat? A. Upon the larboard side, that is where the fish were not.

Q. And the boat was making for that side? A. Yes.

Q. What passed when they were making for that side of the vessel? A. I cannot say what passed, but the captain called out for them to go to the starboard side.

Q. Did you call to him to make him hear? A. No sir.

Q. If he had hailed with a speaking trumpet could you have heard the captain? A. Yes I could, I understood that he had hailed him to go to the starboard side.

Q. But although you were in a favourable situation to have heard him, you did not hear him hail at all? A. No I did not.

Q. When your boats are taking in, upon any damage happening to them, how do you take them in? Do you take them in by a hook at each end and take them up with a tackle? A. Yes sir.

Q. But if stoved you take the boat up at one end? A. Yes, by the tackle at the main yard.

Q. Is there any additional trouble on the one side more than the other? A. No, it was just the same.

Q. What would have been the most convenient mode for taking up a stoved boat, would it have been where there were fish or where there were none? A. The larboard side.

Q. Whether it were to be taken at one end or in the middle? A. After it is stoved the boat is full of water.

Q. But when you have got hold of it does it signify upon what side you haul it up? A. No sir.

Q. How far would three or four fish extend off from the side of the ship? A. Nearly the breadth of this court, the one whale alongside the other; large whales would.

Q. Does that apply to those which were lying there? A. About half the distance of this place.

Q. Then your boat could not come nearer the ship's side than the whales would admit? A. No, unless they got between the ship and the whales.

Q. It was done by scrambling over the whales or the ship, but perpendicularly? A. Yes sir.

Q. When they came on board how did the captain behave to the mate Mr. Carter? A. When I heard that Mr. Carter had come on board I went aft.

Q. Did he come on board aft? A. Yes, on the larboard quarter.

Q. What passed? A. I then heard the captain begin to abuse him.

Q. What did he say first that you heard? A. I cannot recollect exactly; I understood that he said, Mr. Carter, I will have none of your airs, and Mr. Carter said that he did not wish to give him any airs, but if he valued whales more than men's lives, it was time to leave off whaling.

Q. Had you seen people in the boat after the whale struck

it by which it was stove? A. No, I did not see them until they came on board.

Q. What did the captain say to them? A. There was a great deal of abuse passed between them, such as damn you and damn you.

Q. Do you know who began that? A. I cannot say exactly.

Q. But you are sure both of them used that language. A. Yes sir.

Q. What happened then? A. He collared Mr. Carter on deck, and called upon the people on deck to assist in putting him in irons.

Q. Well sir? A. Mr. Carter shoved himself from his hold, and got away from him, and asked him what he (Carter) should do, and he told him "nothing"; he did not wish him to do any more duty in the ship; the one said that he should do no more duty in the ship; the other said he might rule him by fair means, but he should not by foul; he went then down to his cabin.

Q. Was he ordered to his cabin? A. Yes sir, he was ordered by the captain, who told him he should do no more duty.

Q. Did he go to his cabin immediately? A. Immediately.

Q. How soon after that did any boat come from the shore to your ship, I mean the boat that carried Mr. Carter on shore?

A. I was not on board at the time Mr. Carter was sent for to go on shore, I was on shore watering.

Q. Is there something like a town on the beach? A. No, there are only huts.

Q. How far did you go up the country? A. To the best of my knowledge, I walked up nearly a mile.

Q. What sort of place is it so far as you saw it? A. I thought it was a place that afforded very little refreshment, but plenty of wood and water.

Q. I suppose it was thinly scattered with huts? A. Thinly scattered.

Q. What sort of land was it, was it mountainous or flat? A. It was mountainous.

Q. You had the curiosity to look round you I suppose, did you see any city or town or any thing of that kind? A. nothing but huts scattered here and there.

Q. Did it appear to be a place very thinly inhabited, or were there much people? A. It was very thinly inhabited.

Q. You had never been there before? A. No sir.

Q. Were there any other ships off the island? A. None that I saw.

Q. Is it a place much resorted to, to your knowledge? A. No, I don't think it is.

Q. Did you ever hear of any body going there? A. No sir.

Q. You was on board when Carter went? A. No sir, I was in the boat that took the things on shore about four or five hours afterwards.

Q. By whose orders? A. By Captain Skelton's.

Q. Do you know whether Carter kept his chest locked or otherwise? A. I cannot say, his chest appeared to be locked, and his trunks tied up with cords.

Q. Did you see Carter when you carried his things on shore? A. Yes sir.

Q. What orders did you receive from the captain then? A. That Mr. Carter was not to be admitted on board from the shore; at the same time that we took Mr. Carter's things on shore, the surgeon went on shore.

Q. What orders had the surgeon? A. I cannot say what transaction it was about; he remained behind, but I do not know for why.

Q. Were there orders to leave the surgeon behind, and by no means to suffer Carter to come back? A. Yes sir.

Q. Did the boat go on shore more than once before you took your departure, after Carter was taken on shore? A. Three or four times.

Q. Did you hear the orders given as to each time? A. No, only once, when I was ordered to go on shore with the things.

Q. And then you was ordered not to suffer him to go on board? how long after Carter was sent on shore did you take your final departure? A. Nearly a week.

Q. And at last you sailed away leaving him behind? A. Yes.

Q. How much have you received as the profits of the adventure? A. I cannot say what the net produce of my share of the adventure comes to, as I drew money from Mr. and I was in the captain's cabin.

(Cross examined by Mr. PULLER.)

Q. This language was upon the day when the boat was stoved? A. It was upon that day.

Q. How many days had you sailed before you arrived at Kenia? A. Seven or eight days.

Q. Upon the day on which the business took place had you been upon very good whaling ground? A. I cannot say; we had three boats out, the captain in one boat, Carter, the first mate, in another boat, and Underwood, the second mate, in another boat.

Q. Upon that day all the three boats were employed in the pursuit of whales during the whole day? A. Yes sir.

Q. Which of the three came on board first? A. The captain.

Q. Was it towards dusk when he came on board? A.

No, it wanted nearly two hours of dusk when he came on board.

Q. You remained on board? A. I was on board at the time.

Y. Did you on board see the accident which happened to Mr. Carter's boat? A. I had not seen it.

Q. The captain went aloft and saw it? A. There was a man on board who saw it.

Q. Soon after the captain came on board, was preparation made for fixing the tackling on the starboard side to take in the stoved boat? A. About two hours afterwards.

Q. He made preparation to take in the stoved boat on the starboard side? A. Yes Sir.

Q. That boat was in fact at last taken up on the starboard side? A. Yes Sir.

Q. And when Carter came to the larboard side it was at last taken up the starboard side? A. Yes sir, but he had two boat's crews.

Q. Underwood's boat was gone to the assistance of Carter's boat, and before they came up the tackling was prepared to take them up on the starboard side? A. Yes sir.

Q. There was no difficulty from these whales, because boats came inside of those whales, and the tackling was fixed on the starboard side? A. There is no difficulty if one boat's crew had been in the boat, but there being two boat's crews, and besides containing the different implements of whaling at the time, it was overloaded.

Q. What difficulty was there of getting between the whales and being taken up by the tackling? A. The larboard side was the most convenient.

Q. Could they conveniently, and with safety, have pulled in the boats notwithstanding the whales? A. With one boat's crew, but with two boat's crews, and two tubs of line, it was not, in my judgment, to be done with safety.

Q. How many besides Carter had come on board on the larboard side? A. Five or six, the remainder were pulled up on the other side, after some things were handed up.

Q. You had then got on the ground where you expected to get whales? A. Yes sir.

Q. On the next morning did you not immediately leave that and go to Kenia, a place of seven or eight days sail from that place? A. Yes.

Q. What ship accompanied you? A. No ship at all.

Q. How soon did you see the Echo, Captain Whittens. A. In three days.

Q. Did the Echo, Captain Whittens, lye with you at Kenia? A. Yes, she went in with us at the same time.

Q. Did she remain there until you came away, or did she come away before you? A. We came away before her.

Q. Did you ever after the day on which the boat was

stoved, and until you arrived at Kenia, and left that place again to go out after whales at all? A. Not once.

Q. Your fishing was stopped and put an end to? A. Yes sir.

Q. Your vessel at that time was but very little loaded? A. But very little indeed; as nearly as I can recollect we had one hundred and twenty barrels of oil.

Q. (*by Ellenborough, C. J.*) What did you do with the three fish, did you leave them behind you? A. We took all that was good out of them.

Q. (*by Mr. Puller*) At the time that this language passed between Carter and Skelton, how many of the crew were upon deck witnesses of it? A. I cannot exactly say.

Q. Was Mr. Underwood or Mr. Grew present? A. I do not think at the beginning of the discourse that Mr. Grew or Mr. Underwood were there; they were shoving the boat round.

Q. Excluding those two were the rest of the crew on deck? A. Five or six, but whom they were I cannot say positively.

Q. Underwood, I take it for granted, was on deck afterwards? A. Yes sir, very shortly afterwards; he was on deck before the piece of business was settled.

Q. Was he on deck when Carter thought proper to say "if you Captain Skelton, value fish more than men's lives, it was time to give over whaling?" A. No I do not think he was.

Q. Who were there? A. There were five or six.

Q. Carter is a much stronger man than Captain Skelton? A. I can only speak of him by his looks, he appears to be a stronger man.

Q. Have you any doubt that he is stronger? A. I can't say.

Q. Do you believe him to be so? A. Yes, sir.

Q. Do you believe him to be stronger than you. A. Yes.

Q. I believe I am not wrong when I say he was the strongest man of any in your ship? A. No I don't think he was.

Q. Who was stronger? A. The carpenter.

Q. Of how many did the crew consist? A. Of twenty-eight.

(*Ellenborough, C. J.*) Is that so material, that you should question about the strength of one man? There cannot be any strength of Sampson there—there can be no danger from any particular man being disobedient.

Q. Do you remember Underwood, when these parties were on deck, going up to assist the captain? A. Yes, sir.

Q. Did he assist him or was he deterred by what Carter said to him? A. He did not assist him.

Q. What did Carter say to him? A. He said he had better have nothing to do with the piece of business.

Q. Underwood, the second mate, seeing these two together went up to assist the captain? A. Yes, sir, I saw that.

Q. How were they then together? A. The Captain had Mr. Carter by the collar.

Q. (*By Ellenborough, C. J.*) Did Carter strike the captain? A. No, not in throwing him off.

Q. He never struck him? A. No.

Q. He got from him by withdrawing himself off? A. Yes, sir.

Q. (*By Mr. Puller*) Carter I believe was a very good seaman, and a very useful man on board the ship? A. So far as I know he was so.

Q. When he behaved well? A. I never saw him behave ill.

Q. (*By Attorney General*) As to this tackle, pray what is this tackle which is carried out to the starboard side, I mean what does it consist of? A. It consists of a single or double block, to which tackle is fixed to pull up the boats with.

(*Ellenborough, C. J.*) In strictness his orders ought to have been obeyed even, although the other side might have been the better mode.

Q. (*By Attorney General*) How long would it have taken for any couple of hands to have shifted that block from one side to the other? A. Five minutes.

Q. (*By Mr. Park*) There are bulwarks and railing on the larboard side, are there not? A. Yes, there are bulwarks.

Q. Would not that be an incumbrance rather than a benefit to you? A. Yes, sir.

Attorney General. That is my case.

Ellenborough, C. J. Have you any evidence as to what was the value of the plaintiff's share of the proceeds of this adventure?

Attorney General. Yes, my lord, I'll call a witness upon that point.

JOHN HAMMOND sworn (*examined by Mr Marryatt.*)

Q. What were the nett proceeds of this cargo of oil, by the Albion? A. £16,108. 13s. 5d.

Q. (*By Mr. Park*) What was owing to Carter at the time, if he had come home, as his share? A. £568. 8d. would have been his share, after deducting some trivial expences.

Attorney General. That is my case.

Mr. PARK. May it please your lordship; gentlemen of the jury; in this place I am sure you have all had so many years experience of the temperate manner in which my learned friend the Attorney General opens cases of this sort, and the abstinence from irritation which he observes, that it was quite unnecessary for him to tell you that he was a cool matter-of-fact.

man, and therefore that he had a plain story to tell you; I think that after he was occupied forty minutes in stating that story, I may venture to say that he treated the question in as cool and dispassionate language as ever he treated any case of the sort. He has called witnesses who have proved just what I expected, for I did not expect that his witnesses would be those upon whose cross-examination I could prove my case. My learned friend told you that he knew I would at least call one witness, but that it would be by deposition, and he endeavoured to preclude that evidence, although he did not know whether I would produce it or not; he has accordingly made some very learned observations upon it, but he has descanted more upon the deposition which I shall not read, than to the one which I mean to read. I have a deposition which shews that the second mate was to receive a hundred pounds for doing the duty of the plaintiff, and it was surely a matter of course that he should receive a larger remuneration than that of second mate for his additional services; but as to that sum, there was no agreement nor stipulation that he was to receive it upon your quarter deck, rather than the quarter deck of the ship; this sum, although the owners of the ship say they wont pay it at all, yet he is determined to recover it. My learned friend has chosen to comment upon a deposition, as to which a jury setting here can know nothing more about than they can be supposed to do about what the Great Mogul is doing at this moment; he has chosen to comment for nearly half an hour about a deposition, of which neither you nor his lordship ought to take any notice, it not being to be produced, but at any rate it is unfair thus to load a witness under such circumstances, or to load the captain with being answerable for what somebody else had done. Mr. Underwood, the second mate, in answer to that interrogatory, in which the question as to this £100. is put, expressly says, "That nothing has been said by the owners
 " respecting the evidence to be given by this deponent and the
 " said Samuel Grew thereon, that the said defendant has not
 " intimated that unless he the defendant shall be successful,
 " this deponent shall not be entitled to the remuneration of the
 " £100. or a less sum than the £100.; that no stipulation or
 " agreement to that effect has been made between deponent
 " and said defendant; that this deponent expects that he shall
 " receive the whole of his wages for which he shipped, together
 " with the said £100. whether the said defendant shall be beat
 " in this action or otherwise." From this it appears that his receiving the £100. was not to depend upon that evidence which he should give; this case does not depend upon that evidence in the least, but it depends upon the uniform and consistent evidence which I shall lay before you. I have learned all my knowledge upon these circumstances in this place. I know what Englishmen feel as to the necessity of subordination on

board ship, and what has been said concerning it by learned authors; but says my learned friend, is it not a tremendous situation for the plaintiff to be placed in, when exposed to such injuries as he has received from this man, and put into such great jeopardy? I say that it was a tremendous situation for the captain, who is the defendant in this case, to be placed in. If you be to hold in this place that subordination to duty is to be kept up on board ship, I say that even suppose a captain had formed a wrong judgement, as to whether the starboard or the larboard side was the most proper for a stoven boat to be brought up on, yet if he be to have his judgment counteracted and controlled by the intemperate language of a mate or any one on board (although a mate may say and recommend that the doing this or that in another mode would be better); there is an end of the commerce and navigation of Britain. Independently of that, where a captain is in such a distant part of the world, if a mate be permitted to use such language, it would be impossible for any man to sail under such circumstances; and I have heard my learned friend, on former occasions, in adverting to subjects of this sort admit the necessity of keeping up the most strict degree of subordination. What motive, I would ask you, could this gentleman, Captain Skelton, have had for such a conduct as that which has been stated? What motive could he have had to dismiss this man from on board his ship under such circumstances? Had he any malice against him? Was there any previous disagreement between them? On the contrary we find that he had employed him upon a voyage before this, and had him then as his mate; he never had a word with him till that day, and it has been shewn you that this Mr. Carter was acknowledged by all to be an able and useful seaman. I observe my learned friend taking a note of what I am stating to you upon this subject, and I suppose it is because he has stated that the captain himself was a part owner of this ship, and derived a certain advantage from placing the plaintiff in this situation, as the plaintiff himself had also a share of the nett proceeds of this adventure; these were stated to be £16,000 odd, and because the captain had a share, is it to be believed that any captain in such a situation would be so foolish as to risk the whole of that concern, and the prosecution of the fishing adventure (for they had only then got a hundred and twenty barrels of oil or blubber) for the paltry consideration of receiving a greater share of these profits, by the distribution of the plaintiff's share, amounting to £568. amongst those concerned with him? This captain never indulged himself in any one act of tyranny against this man, there is no evidence that ever he did, and, if so, you must of course think that he had some reasonable and well grounded motive for discharging as he did this individual from his ship. The last witness but one has proved a most important fact; perhaps it did not strike you

at first, but it tended to shew that there was nothing in the captain's mind but an absolute apprehension as to the safety of the whole concern, at the time he found it necessary to act as he has done. We on shore should perhaps, under other circumstances, treat the language that was used by the plaintiff in this case as the idle words of an idle man, but on board ship it is totally different; the using such language is the consequence of insubordination, and gives rise to mutiny; for supposing a captain overlooks such an offence, it is astonishing how that disposition to mutiny flies like wild-fire from one end of the ship to the other. A witness says he never saw any improper conduct on the part of the plaintiff, but merely heard the language which has been stated; is it to be alledged that language such as that which was used, on such an occasion, does not signify any thing? Although it appears that they had got but a small portion of the adventure at that time on board; although they were then upon the whaling station; and although every day would have been in that station most usefully employed in procuring their cargo; they never ventured to fish for more, but employed seven or eight days in going to and remaining at Kenia, and for this reason, namely, because the captain could not venture afterwards to go out of his ship, he being afraid that this man in his absence would do some injury. This man it is said was left in an island almost deserted, affording no real comfort, and with only a few huts, and that he was to work his way from thence home as he best could; it so happens however that that statement can be completely answered, and that this plaintiff, even when there, still refused to submit himself to his lawful employer, and that he was offered a passage home by Mr. Skelton, upon condition of his submission to his orders, which offer he contemptuously refused; he was then offered money, but that was also refused contemptuously; still the captain offered to receive him on board if he would make an apology, which he refused to do. I state it boldly that, under such circumstances, it was impossible that this man could be received on board again with any degree of safety to the concern, without making an ample apology, but he, on the contrary, would make no apology whatever. I asked the question of a witness, whether the person who packed his clothes and other things had not seen the log book; I don't know whether it be within your knowledge or not, but I understand that before people can get the bounty, payable upon the whale fishery, the *log book* is a necessary and indispensable piece of evidence to be produced at the Custom House. It is stated to me, that this man, Carter, had the log book in his possession, that he took it away with him from the ship, and that when it was asked of him as being of the greatest importance, "No," said he, "The captain shall not have the *log book*;" and even to this day the plaintiff has in his possession

that *log book*. Would not such a conduct justify you also here for approving of such conduct as that of the captain, when placed in such a situation; he was in a situation in which it was of the highest importance that his orders should be attended to. The man, Davis, has been examined, but he would not speak to the language which, I stated in my question to him, had been used by the plaintiff; there is this peculiarity in the case as made out by him, for he hears all at once the captain ask "Who is master here?" to which the plaintiff answered "You are." Is that to be believed? Is it at all likely that if there had been no previous language between the parties, that Mr. Skelton would have put that question? "You are," says he; that is apparently a civil answer, but I'll prove that it was directly the reverse. The plaintiff had let out a great deal of language, which I insist was not the sort of language that ought to have been used by an inferior officer to a superior. The first thing that the witness, Barr, hears was, "Don't give yourself such airs." Suppose that the captain, right or wrong, orders these people to come on the starboard side (and you have heard nothing to ascribe any doubt that it was the most convenient side) he had actually got his tackle fixed to that part of the vessel, where the boat might be got up with the greatest ease, and in order that the men might not come on board on the larboard side, he hailed Carter, and acquainted him of that circumstance; and besides there were rails and other incumbrances upon the other side. Was the mate bound to obey or not to obey this lawful authority? If he were bound to obey, what right had he then to use such language as he appears to have used upon that occasion? The captain hails this man after these preparations, in order to prevent him going to the larboard side, and to make him go to the starboard side, and when, notwithstanding this order, the plaintiff comes to the larboard side, he addresses his captain in a manner which occasioned the captain to say, "I desire you not to give yourself such airs;" to this Carter replies, "I don't mean to do so, but if you mean to value whales more than men's lives, it is high time to leave off whaling? Is that a proper sort of language to proceed from a mate to a captain of a ship, or would any superior in any situation permit it to be held by his inferior, without objecting to it? Then when the captain says to Carter, "Go down below for you shall do no more duty on board as to managing this ship;" Carter answers by saying, "You may rule me by fair means but you shall never rule me by foul;" that surely is equally improper language from an inferior to a superior officer. Then it appears that Underwood went up to assist the captain, and why? Because it appears that the captain was in jeopardy, and that this man was taking a liberty which he had no right to take; and what was Carter's language upon that occasion? "Underwood, you had better have nothing

to do with this affair ;” and upon that, Underwood does not assist the captain. Does any one of the crew afterwards offer to assist the captain? No, they hear all this abusive language, and never assist him; and then Carter says to the captain, “don’t go to shove me overboard as you did the steward,” by which he insinuates, not only to the captain, but to all his crew, that he (the captain) had actually committed murder. If such language as this from an inferior to a superior officer on board a ship is to be tolerated by a jury in Guildhall, then I say there is an end of our commerce; it is impossible to sail to any part of the world if a captain is to suffer such language as this to be held to him by any of his crew, for if so permitted, it is evident that mutiny would spread from one end of the ship to the other, and it would even spread amongst all our ships. This gentleman, the defendant, then gets rid of this man entirely; for until such time as he does *that*, he could not venture to pursue that course which he had been pursuing, for the benefit of his owners and his own, but have only brought home a part of the cargo from that place which he ought to have brought. Now, as to the nature of the defendants evidence; my learned friend has endeavoured to do much in order to forestall me, and to detract from the merits of those whose evidence I shall call, by intimating that they are witnesses who are interested in the cause; now, gentlemen, Mr. Underwood, is no ways further interested than that he being a young man not thought competent to be put into the situation which the plaintiff held, is to have a certain specified remuneration for assisting in doing a greater degree of duty. This, therefore, only affords another argument, to shew why the captain would not be inclined (if it could have been possible to have avoided it) to quarrel with this man, Carter, if he could have kept him with any degree of safety. I shall prove that my client made overtures to the mate of another ship, but that the captain of that ship would not agree to part with him, or that they themselves could not agree upon terms. I have the captain of that vessel now in court, and he will tell you the fact as it really is. Captain Skelton feeling that he could not succeed in that negociation, made the best bargain he could with those two persons, Underwood and Grew, on board his own ship. I am afraid to name to you the number of witnesses whom I could call; those I shall call will tell you this story; that being upon the whaling station on the 2nd of December, in three boats, namely, the captain commanding in one, the second mate in another, and a third in which was the plaintiff, Carter, which last boat one of the whales struck and stove in the planks; upon which Underwood offered assistance, but which Carter said was unnecessary; soon afterwards this mate hoists or waves his signal of distress, upon which the second mate, Underwood, made up to him again, and took that boat, in which Carter was and his crew, in tow to the ship; in

the interim the captain arrives, and as was his duty, he looks out and discovers, or some of his men discovers what had happened, and it was immediately reported that there was a boat stoven; the captain immediately ordered tackle to be run up to the yard arm upon the starboard side of the vessel, in order to hoist up that stoven boat, thinking that upon that side it could be got up with perfect ease, while it could not be so done upon the other side. He sends out his own boat to give assistance on that occasion in which was Underwood, and I will prove to you that upon the orders being communicated to Carter, this was his language, "you may go to hell and your master too, and tell him that I say so." This is what the plaintiff himself says in the beginning of the transaction. Well, when they came along side, Carter, in contradiction of those orders so communicated, chuses to go to the larboard side, for reasons best known to himself, but at all events, in disobedience to the captain's commands. I have heard in other cases many captains say here that strict obedience to orders was absolutely necessary, even although their judgments might happen to be wrong. I will prove this, not by depositions, but by living witnesses in this place, who shall be subjected to his lordship's examination and your's; and I'll prove also that the captain remonstrated with Carter upon the subject, upon which this fellow said "you are a damned scoundrel and a villain, you know I can hang you if I wish it." I stated to you that the captain was *astonished* at this, and a great portion of the crew *heard* this language; upon which the captain said "Who is master here?" to which Carter said "you are, but I am mate, sir;" speaking this not in a cool tone but in a violent manner, upon which the captain said to him "I must put you in irons," and went up to him, imprudently perhaps, and collared him, at the same time calling to his crew to assist him. Upon this, Underwood went up to the captain, and to *him* Carter says "you had better not meddle with this matter," and at this time he wrenched himself from the captain's hold; the captain felt for his personal safety, and then ordered him to go down below. If this be so, surely there was danger on board the ship of mutiny, for not one of the crew would venture to help their captain. If they had protected him perhaps there would have been no further words nor apprehensions, but they all stood aloof, upon which the captain said "If this conduct of your's continues I must send down for my pistols." Carter then stated "I have pistols and can use them too." With a forbearance which does honor to Captain Skelton, he disengages himself from, and says to Carter, "go down to your cabin, you shall not do any more duty on board this ship." I dont state a fable to you, gentlemen, for so far from the captain doing any rigorous act, he merely ordered Carter below; and when he came to Kenia, in the island of Celebes, he saw Capt. Whittens, and consults with him as to what was best to be done; he tells

him his situation, and he tells Carter before, that he was going to see what the Dutch resident would do in the business, and upon this Carter states "I am glad of it, the sooner I leave the ship the better." The captain accordingly goes to the Dutch resident at Kenia, and soon afterwards this letter, which we have already heard, was written, not in violent but in the most inoffensive terms, thus:

"To Mr. John Carter, chief officer of the Albion whaler.

Sir, In consequence of a public representation made unto me by the captain of the ship Albion, Philip Skelton, I have to request that you will, with as little delay as possible, wait upon me. (Signed) H. NEYS, Resident.

Kenia, December 9, 1812."

Carter accordingly waits upon the resident, and I'll prove to you what sort of story was told by the defendant in the presence of the plaintiff, and that he did not deny one fact; the captain then said "I dare not take this man on board again, but if you Captain Whittens, will take him as a passenger in your vessel, I'll pay his passage;" that Captain Whittens positively offered to take him, on which the plaintiff said "no;" then Captain Skelton says, "I'll tell you what I'll do then, I'll leave money enough in the hands of Mr. Neys, to support you in the island, and until such time as you can get to Amboyna, and to pay for your passage thence to Europe." "No," says Carter, "I wont take it." Then all his cloaths are sent for upon finding that he would do nothing. The resident then says, "let me be the mediator to make it up between you, I hope Captain Skelton will take you back," "with the greatest pleasure," says Captain Skelton, "I'll do it if after such language having been used on board, in the hearing of the present crew, he make a suitable apology;" his answer is, "I will not." What is a superior officer to do under these circumstances? If he be not in a condition to dismiss officers when so situated, the service must perish. He has not put this person on shore without a cause, neither has he put him on an island which was deserted. He offers to take him on board again, if he, Carter, would say that he was sorry for the words he had used, and that he would not use such any more. The articles which were put in by my learned friend, prove my case; these articles were entered into for this reason, that where such a large bonus as £568. is to be given to this man, and various proportions to the others, it is necessary that there should be a strict obedience to the commands of their superior officers by the persons so entering into the employment, and that they should conduct themselves with sobriety, as mariners should do on board a ship; if so, is this seamanlike conduct from a mate to his commanding officer? Is this any thing like obedience? The third article of agreement goes on to say "that they will stand by and obey all commands to the utmost of their skill and ability, for the pre-

servation of the ship." What is more necessary for that purpose than to preserve good order and decorum on board of her? What is there so ready to destroy a vessel, or what could he have done more marked to shew a non-observance of that article, which he is bound to observe? I shall not detain you any longer with observations, but merely to call evidence.

EVIDENCE FOR THE DEFENDANT.

W. B. FREAMES sworn (*examined by Mr. Scarlett*)

Q. You were an apprentice on board this ship, the Albion?

A. Yes, sir.

Q. Your apprenticeship is out? A. Yes.

Q. Do you remember the dispute between the master and mate? I don't exactly remember the day of the month it happened.

Attorney General. I object to the examination of this witness; I take it for granted that this young man is to have a 280th part of the whole net proceeds of this adventure, which were to be divided amongst all who were entitled to take, and that amount will be so much less by what is recovered by this action. I find opposite to his name he is to have a share, amounting to a 280th part of the proceeds of the fins and oil brought by this adventure, the whole of which is £16,000. to be divided into a certain number of shares, so that if my client takes away one 28th share he diminishes that amount.

Ellenborough, C. J. He is neither to have more nor less in any event.

Attorney General. I'll not persist in the objection, but I may perhaps have to file an information for it in name of the Attorney General.

Q. (*By Mr. Scarlett*) You have not agreed for a share?

A. No I have not, I am paid by wages.

Q. Were you in Mr. Carter's boat at the time it was stove? A. Yes, sir.

Q. You were one of his crew? A. Yes, sir.

Q. Had you taken any whales? A. Yes, we had killed one whale and harpooned another.

Q. It was that second whale that stove your boat? A. Yes, sir.

Q. Did she escape with the line and harpoon? A. Yes, but we got the line.

Q. Do you know whether the Captain and Underwood were also out upon that day? A. Yes, sir.

E

Q. Was Underwood near enough to see the accident at first? A. Yes, sir.

Q. Do you remember of his applying to Carter to know if he wanted assistance at first? A. Yes he came and asked Carter if he wanted assistance.

Q. What did Carter say? A. He said he did not want any assistance at that time.

Q. Do you remember him giving any orders as to the whale which was lost? A. Underwood asked if he should go and fasten it.

Q. And what did he say? A. That he might go and try to save what line he could.

Q. Did Underwood go to pursue it? A. Yes, sir.

Q. Did you find afterwards that the danger was greater than was supposed? A. Yes, sir.

Ellenborough, C. J. There is no fault imputable to Carter in this circumstance which took place at that time.

Mr. Park. There was a prompt attention to him by Underwood and the Captain, it is only to shew that.

Q. Did you afterwards set up signals both to the ship and Underwood? A. Yes, sir.

Q. At what distance from the ship were you? A. About four or five miles.

Q. Underwood saw your signals? A. Yes, sir, I suppose he did, he was not far from us.

Q. And he afterwards came and took your boat in tow, and your people got into his? A. Yes, sir.

Q. And then made way towards the ship? A. Yes.

Q. Was it growing dark? A. Yes, it was nearly dusk when Underwood picked us up.

Q. Did you put out any light? A. Yes, when we got out into the other.

Q. These were night lights; were lights put out also from the ship? A. Yes, sir.

Q. That you might know where she was? A. Yes, sir.

Q. When you were within a mile or two of the ship did the captain's boat come out to you? A. Yes, sir.

Q. Who was the steerer of the captain's boat? A. Stephen James.

Q. He was the captain's boat steerer? Yes, sir.

Q. When he came near to you did he say any thing to Carter? A. Yes, he asked Carter if he wanted any assistance.

Q. What did he say? A. He said he did not want any assistance either from him or his master, and that he might go and tell him so.

Q. Did Stephen James then tell him any thing as from the master? A. Yes, that he was to go to the starboard side, and that there was tackling there to take in the boat.

Q. What did he say to that? A. I don't recollect any

answer he made.

Q. Have you been more than one voyage? A. That was my first voyage.

Q. Is the stoving of a boat frequent? A. It happens pretty often.

Q. Do you know, when a boat is stoved, whether the proper side to take her in is the weather side or the lee side?

A. We generally take them in on the starboard side.

Q. Do you know the reason of that? A. Yes, sir, it is evident, as there are bulwarks on the larboard side and the boat's debits.

Q. What is that? A. A piece of wood hanging over the side like a crane, with a tackle to it to hoist the boat up.

Q. After Carter had heard that he was to come on the starboard side, what side did he come to? A. We were on the larboard quarter, and he put up in that direction to the ship.

Q. What distance was he when the captain gave this order? A. Within a mile.

Q. Was the ship lying to? A. I cannot tell.

Q. How were her sails? I did not take notice.

Q. Did you hear Carter give any directions to you as to what side they should go upon? A. He gave directions to pull away and get hold of the ship.

Q. Did Carter pull up till he got on deck? A. Yes, sir.

Q. Before that did you hail, or did the captain hail Carter? A. Yes, he hailed.

Q. What did you hear the captain say to Carter? A. He told him to come up on the starboard side, as there was a tackle to take in the boat.

Q. Notwithstanding that, he pulled up on the larboard side? A. Yes, sir.

Q. Did he get up directly? A. Yes.

Q. What was the first thing you heard between the captain and Carter? A. I cannot tell exactly.

Q. As nearly as you can? A. I heard the Captain ask him why he did not come on board on the starboard side as he had ordered him.

Q. What did he say to him? A. He told him he was glad to get hold of the ship any way, for he had been long enough in the water.

Q. (*By Ellenborough, C. J.*) Had he been wet? A. Yes, my lord.

Q. (*By Attorney General*) How many hours had he been in the water? A. Near two hours, or an hour and a half.

Q. (*By Mr. Scarlett*) Did the captain say any thing about what he had done in the ship when he first discovered that his boat was stoved? A. No, sir.

Q. Tell us all you recollect about it; what language did

you hear from one to the other? A. I recollect things being said, but I can't say what was first or afterwards.

Q. As nearly as you can? A. There was a great deal of abuse on both sides.

Q. (*By Ellenborough, C. J.*) What sort of words passed between them? A. I don't recollect.

Q. You don't recollect who began to use angry words, the one to the other? A. No.

Q. (*By Mr. Scarlett*) What words did you hear? A. I heard Carter tell the captain, he was a damned villain, and that he could hang him, and he could prove it.

Q. Did he say for what? A. No, he did not say for what, but only that he could hang him, and he could prove it.

Q. Did you hear the captain say any thing? A. The captain told him that when he took him on board the ship first he had not a coat to his back.

Q. Were the crew then all present upon deck? A. Not all present, but there was some on the other side getting the things out of the boat.

Q. Were there several upon deck, and within hearing of this? A. Yes, I should suppose they were within hearing of it.

Q. How near were you standing? A. As far as I am from you.

Q. Did you see the captain do any thing? A. I saw him collar him.

Q. What did Carter do upon the captain's collaring him? A. He put his hand to him and pushed him away, and the captain called for assistance of the ship's company.

Q. What sort of man is Carter in his person? A. A strong man, a very powerful man.

Q. A very strong man? A. Yes.

Q. When the captain called the ship's company to assist him did any of them go? A. The second mate, Mr. Underwood, went up.

Q. The rest did not go? A. No, sir.

Q. What did Carter say to Underwood, when he went to assist the captain? A. I did not hear.

Q. Did Underwood do any thing to assist him? A. I cannot say.

Q. You cannot tell what passed? A. No, sir.

Q. It was dark? A. Yes.

Q. What happened then? A. I heard the captain call for his pistols.

Q. What did Carter then say? A. Carter then said that he had pistols as well as the captain.

Q. In what manner did he say that; was it as an angry man? A. Yes, he seemed in a passion at the time.

Q. What further passed when he said he had pistols too? A. I don't recollect exactly what passed immediately after, but

I know the captain told him he should do no more duty in the ship.

Q. Did you hear any order given him to go below?

A. Yes.

Q. What did Carter do on hearing that order? A. Carter asked him first what he wanted him to do.

Q. Well? A. The captain answered "*nothing*," and then Carter asked him two or three times over, and he still answered "*nothing*."

Q. Do you mean that he had asked him *that* after he had ordered him to go below? A. Yes.

Q. He said "*nothing*?" A. Yes.

Q. Did he go below? A. I cannot say, after that I went forward.

Q. (*by Ellenborough, C. J.*) Did you see him upon deck afterwards? A. That was the last thing I heard him say.

Q. Did you see him any time afterwards upon deck? A. The same evening.

Q. How long afterwards? A. It might be an hour and a half after that.

Q. Did he keep below the rest of the time he was on board? A. He was sometimes on deck and sometimes below.

Q. Did he go upon the quarter deck? A. Yes.

Q. Do you recollect any thing being said at the time of the altercation, or soon afterwards, about his being put on shore? A. Yes, sir.

Q. What did the captain say? A. The captain said he wished he was in harbour, as he would put him on shore or something to that purpose.

Q. What did Carter say to that? A. Carter said he wished he was.

Q. Any thing more? A. Not that I recollect.

Q. Did you fall in with any other ship? Did you fall in with the ship Echo, Captain Whittens? A. Yes.

Q. After the time this thing happened, and until you got to Kenia, did you see any whales? A. Yes.

Q. Did the captain go out of the ship in order to get away? A. No, sir.

Q. He kept on board the ship? A. Yes.

Q. Did the Echo accompany you to Kenia? A. It did.

Q. Did the chief mate, Mr. Carter, do any duty afterwards? A. No, sir, I never saw him do any.

Q. Did you go on shore at Kenia? A. Just upon the beach.

Q. Carter was left there? A. Yes.

Q. Do you know of your own knowledge of the captain's applying to get another chief mate from the Echo? A. I don't know it of my own knowledge.

Q. Did Underwood afterwards act as chief mate for the

remainder of the voyage home? A. Yes.

Q. Did Underwood understand navigation? A. He understood it a little; he understood a very little of it.

Q. Carter was a good seaman and understood his duty? A. Yes.

Q. Did the captain afterwards instruct Underwood in navigation? A. Yes.

(Cross-examined by Attorney General.)

Q. It was after the captain had called for the ship's company to help him to put Carter in irons, that the captain called for pistols? A. I cannot be sure of that.

Q. I think we have heard it so, and the captain said, "that he, Carter, had not a coat to his back when he first took him on board his ship," the captain then called for his pistols, and the plaintiff said "I have pistols too," is that so? A. Yes, sir.

Q. Your apprenticeship is out? A. No, but the owners gave me my time up.

Q. How much of the time was to come? A. Half of it was to come.

Q. They tell me that a lad's first half of his time is not the most valuable to the master, but it is when he gets to be a fine stout lad like himself, that he becomes more valuable. A. Yes, but I have been at sea before that; the owners sold the ship, and gave all the apprentices their time up.

Q. Mr. Skelton was an owner? A. Yes, sir.

Q. Have you seen Mr. Skelton lately? A. Yes, sometimes two or three times a week.

Q. Is not this Mr. Skelton? (pointing to a person who sat near him)? A. Yes, sir; I have not spoken to him for months together.

Q. Has he left the sea altogether? A. I don't know whether he has or not, I know nothing more than from hear say.

Q. Have you heard it or not? A. I have heard it so reported that he has left the sea.

Q. Has he made his fortune? A. I don't know for that.

Q. When did he tell you that he had left the sea? A. He never told me.

Q. You heard him say (when they were damning each other, and when you were within hearing) to the first mate, that he had not a coat to his back when he first came on board? A. Yes, I did so.

Q. Where there as many to hear what Carter said to the captain as the captain to him? A. I should suppose so.

Q. Upon your oath, upon Carter's saying that he was glad enough to make the vessel any how, as he had been long enough in the water, did not the captain damn him? A. He might, but I did not hear him.

Q. He said, we have been "four hours in the water," was it not so? A. I don't know.

Q. How many hours was it after the whale had stoved the boat? A. Three or four hours.

Q. Did not the boat fill with water immediately? A. not immediately.

Q. How soon? A. About a quarter of an hour or less.

Q. So you had three or four hours of being in the water? A. About two hours.

Q. You were pretty well drenched, were you not? A. Yes.

Q. If one were to choose between them, which of the two damned the most lustily? A. I don't know.

Q. You thought your master pretty well versed in that language, was he not? A. He was pretty well skilled in it.

Q. Pray was the surgeon sent on shore at any time? A. Yes, he was sent in a boat.

Q. After Carter had been sent on shore? A. Yes.

Q. How long did the surgeon remain on shore? No answer.

Mr. PARK objected to the surgeon's case being gone into. (*Ellenborough, C. J.*) If you connect the surgeon with him, that may make it evidence.

Q. Did the surgeon return the same day he was carried on shore? A. No, I never saw him afterwards.

Q. Having learnt that the surgeon went on shore in the boat with the plaintiff's chest; upon your oath, did not the captain at the time the surgeon went on shore, give express orders that Carter should not be brought back again, nor touch that boat? A. I don't know, I did not go on board.

Q. Was you upon deck when the boat with the surgeon was dispatched to the shore, and the trunk put into it? A. Yes, sir.

Q. Then I ask you, upon your oath, whether you did not hear the captain say expressly, that Carter should by no means be permitted to come back to the ship? A. No, I did not.

Q. You were upon deck at the time? A. Yes.

Q. And when the boat went off? A. Yes.

Q. And when the trunk and chest were put in? A. Yes.

Q. Do you mean now to swear, that you did not hear the captain give any orders that Carter should not be permitted to come on board again? A. No, sir.

Q. Never, at any time? A. No, sir; he did not give any orders to me.

Q. I don't ask you that; you have been asked about the ship called the Echo; the Echo went with you whilst your cargo was landing; did the Echo catch any fish? A. No.

Q. And you did not catch any fish yourself? A. No, sir.

Q. Is it necessary that every man should go to catch the fish? A. No, sir.

Q. They catch them with two boats crews? A. Sometimes; I never recollected two but once or twice.

Q. You had some whales lying alongside the ship, what side was it? A. The starboard side.

Q. The side you were ordered to? A. Yes, sir.

Q. Did you hear any observation made by the captain about those whales, when he abused Carter for not going to that side? A. I heard the mate tell him, he, the captain, valued ten barrels of whale oil more than six men's lives; that was about the time when they were hauling the stoved boat up.

Q. Were you in great peril; Were six of you in that boat? A. Yes.

Q. And when Underwood went away, you were in considerable danger? A. We were in fear of being left in the boat all night, if not picked up before dark.

Q. If you got back to your ship you were then no longer in any danger? A. No, sir.

Q. Did the water gain upon you after the boat was stoved? A. It could not gain after it was sunk.

Q. Was it suddenly under water? A. Yes, sir.

Q. And then you were up to the middle in water? A. We were up to the shoulders.

Q. For five hours and a half? A. No, sir.

Q. How long were you in that state? A. For two hours and a half.

Q. You told us that for the first quarter of an hour you did not make much water? A. Immediately, sir, we began to make water.

Q. Then after you began to make water, how long was it before you got to the ship's side? How many hours was it before you reached the ship that you began to make water? A. Four or five hours.

Q. How soon did the water so gain upon you as to sink your boat in the water? A. About a quarter of an hour afterwards.

Q. Then when I supposed you were up to the waists in the water, you told me you were up the shoulders? A. Yes, sir.

Q. Then if you were four or five hours before you reached the ship, how much of the time had you passed in the water? A. About two hours.

Q. You mean till Underwood picked you up? A. Yes, sir.

Q. What became of the captain after he had called for his pistols, and ordered Carter to his cabin? A. I don't know; I went down to get myself dryed, and to have my supper.

Q. You saw no more of them that night? A. No, sir.

(*Re-examined by Mr. Scarlett.*)

Q. You said you were no longer in danger when picked up by Underwood? A. No, sir, we were not.

Q. The danger was, that you might not be seen and picked up before it was dark? A. Yes.

Q. But when once seen, and the boat came to you, there was no danger? A. None, unless from bad weather.

Q. When Underwood went to get the line, *that* was by Carter's desire, was it? A. It was by Carter's assent.

Q. What sort of weather was it? No answer.

(*Ellenborough, C. J.*) I cannot see the use of going into all these circumstances, either upon the one side or the other.

(*Mr. Park*) We must follow up their cross examination.

(*Ellenborough, C. J.*) I don't know that there is occasion to follow it up.

(*Attorney General*) But it remains to be seen who pursued it first.

Q. (*By Ellenborough, C. J.*) Did Carter, during that voyage, do his duty assiduously and usefully? A. Yes.

Q. Did he in respect to the boat and the men behave as well as he could in every part of his duty? A. Yes.

Q. (*By Mr. Scarlett*) You have been asked whether you heard the captain give orders that Carter should not be received on board again; at the time the boat went, where was the captain? A. He was on board.

JOHN EMMOTT sworn (*examined by Mr. Puller.*)

Q. Was you on this day boat steerer to Underwood's boat? A. I was.

Q. Do you remember taking the stoved boat in tow, and then making to the ship? A. I do.

Q. After you had taken that in tow, did you meet the captain's boat coming out to you? A. Yes, I did.

Q. Who was in that boat; I mean the captain's boat? A. Stephen James.

Q. Underwood had the command of your boat; he was the superior officer? A. Yes.

Q. And then when you took Carter in, Carter had the command? A. Yes.

Q. Did Stephen James, who came out with the captain's boat, give any orders, or tell you any thing? A. Yes.

Q. What did he tell you? A. That we were to come on board on the starboard side.

(*Ellenborough, C. J.*) Is not that already proved by the one side and the other?

Mr. Park. Not that he had the order before hand.

Ellenborough, C. J. But he did not obey those orders, *that* is most distinctly proved.

Q. (*by Mr. Puller*) When Stephen James came up with that boat, did you hear him offer assistance? A. Yes.

Q. What was Carter's answer? A. I cannot exactly say.

Q. Suppose you spoke as if you were Carter? A. I think he said "go on board and be damned, tell your master that I say so."

Q. He pulled up on the larboard side? A. Yes.

Q. Did Skelton, the Captain, speak to him as to coming up on that side? A. Yes.

Q. What did he say? A. He said, Mr. Carter, why don't you come up on the starboard side?

Q. What answer did Carter give? A. He said "pull away men, pull away men."

Q. When Carter only said "pull away men, pull away men," did Skelton make any observation on the manner in which he answered him? A. I believe he said, Mr. Carter, you need not answer me so saucily.

Q. Did you observe that night how the ship was lying with her sails? A. Yes, she was lying to, with her head yards aback.

Q. After he had gone on board, were the boats, I mean Underwood's boat and the stoved boat, taken round and hoisted on the starboard side? A. Carter got on board on the larboard side, and after they had got on board, Mr. Carter's boat was taken round on the starboard side, and hoisted up, but Underwood's boat was taken up on the larboard side.

Q. When you went on board, had Carter held out lights for the ship? A. Before we went on board, lights were held out.

Q. What is the object of that? A. To let the people see where the boats are.

Q. So that they prepare for your coming? A. Yes, they do.

Q. Was there any difficulty or inconvenience in taking up the boat on the larboard side? A. None at all.

Q. I know not whether you have been long upon these voyages? A. Yes, sir.

Q. Is that the custom to take in stoved boats on the windward side? A. Yes, if it be badly stoven.

Q. Is there not danger in taking the men on the larboard side? A. There is danger of course, if there be any breeze of wind.

Q. (*By Ellenborough, C. J.*) Was there any breeze of wind upon this occasion? A. Yes, there was; there is a danger of the boat getting under the vessel and being overturned.

Cross examined by Mr Marryatt.

Q. The boat was very deep in the water? A. Yes; a whaling boat is generally sufficiently deep with its own crew

and fishing materials; and on this occasion we had double quantity.

Q. Was the boat, when it approached the ship, on the larboard quarter? A. Yes.

Q. How many of the boats company had got out there, before they went to the whale side to take in the stoved boat?

A. The whole of the crew of both boats, except myself and two men.

Q. Where they all handed in on the same side? A. Yes, all that belonged to the stoved boat were handed in on that side.

Q. And after that you and another went round with the stoved boat to the other side? A. Yes.

Q. And the stoved boat only was taken in on that side? A. Yes.

Q. Was the other boat taken in at all? A. Yes, she was taken in at her station, on the larboard quarter.

Q. That was an entire boat? A. Yes.

Q. Where did you get into the ship? A. Upon the larboard quarter.

Q. Then you having gone round to the starboard quarter, did not get in on that side, but went round to the larboard side to get in? A. Yes, sir.

Q. What was the reason of that? A. As the boat belonged to that side.

Q. Your boat was hoisted up to the place where Carter's boat formerly stood? A. Yes, sir.

Q. (*by Ellenborough, C. J.*) The men were got in on the larboard side, and consulted the captain, and received his orders as to the stoved boat afterwards? A. I did not hear what passed.

Q. (*by Mr. Puller*) If the boat were not very deep in the water, the danger would not be so great; but in those cases where it is very deep, is not the danger much greater; and in such cases, what was the side most easily accessible? A. The starboard side.

Q. (*By Ellenborough, C. J.*) Were they longer in getting in on the larboard side than on the starboard side? A. The starboard side is the easiest.

Q. If you had been for getting on board, and you had thought of nothing but of getting on board for your own safety, what side would you have chosen to have got on board at? A. The starboard side.

Q. (*by Mr. Puller*) Was there any danger to the people? A. There was no danger at all.

Q. When he received the orders from Stephen James, might he have taken either side? A. Yes, he might.

Q. Was he not nearly a mile off the ship? A. He was nearly three quarters of a mile from the ship.

STEPHEN JAMES sworn (examined by Mr. Park.)

Q. What were you on board? A. I was captain's boat steerer.

Q. And third mate? A. No.

Q. Is that vessel, the Albion, since sold? A. Yes, sir.

Q. You was sent out to the stoved boat? A. I was sent out to the stoved boat.

Q. There were two lights in Underwood's boat, to make them on board the ship know that there was a stoved boat in company? A. Yes.

Q. At the time you arrived with the stoved boat, could you have come either to the one side or to the other? A. Just as soon to the one side as to the other.

Q. What orders did you give to Carter? A. To come to the starboard side with the stoved boat.

Q. Have you ever been in those seas before? A. I have.

Q. You have known of stoved boats before? A. Yes, sir.

Q. Is a stoved boat generally taken in on the starboard or the larboard side of the vessel? A. Upon the starboard.

Q. Why is it so, is it easier? A. Because there is a gangway which is not on the larboard side.

Q. When the men had to get out of the boats, they could have got into the vessel at either side, but their commodities were easier taken in at the gangway? A. Yes.

Q. How many men had you in your boat? A. Five besides myself.

Q. When you told Carter to come in on the starboard side, what did he say? A. He said "he neither wanted my assistance nor my master's, and that he might go to hell, and I might tell my master so."

Q. How many men were in the boats to hear this? A. The whole crew of both.

Q. How long was this before you got up to the ship? A. Ten minutes or a quarter of an hour.

Q. At that time could he easily have got up on the side to which the captain ordered him; was there any danger so as to occasion him going to the one side in preference to the other? A. I saw no danger.

Q. When you got to the ship, did Carter also get to the ship? A. Yes, sir.

Q. Did you hear what passed between him and the captain? A. No, sir.

Q. Was it pretty dark when you got on board? A. Yes, sir.

Q. Did you see Carter walking the deck that night or next day? A. Yes, I saw him that night and next day too, walking the quarter deck.

Q. And so continuing till you got to Kenia? A. Yes, sir.

(Cross-examined by Attorney General.)

Q. Were you one of those who had an offer of a hundred pounds, providing they would give evidence as to this ship, if the captain succeeded? A. No, sir.

Q. Were you an apprentice? A. No, sir; I was boat steerer.

Q. What did you hear first said by the captain when you got on board? A. I heard nothing; I was on the other side, and heard a noise, but did not hear what it was.

Q. No swearing, and no talking of pistols in your hearing? A. I did not hear any thing of that.

Q. How long were you in getting on board after Carter had got on board? A. About twenty minutes, or half an hour.

Q. Was Carter still on deck? A. Yes, sir.

Q. But you never heard you master saying a word, nor what the noise was about? A. He was grumbling about something, but I did not know what it was about.

(Re-examined by Mr. Park.)

Q. On what side did you get up? A. On the starboard side.

Q. Was there any difficulty in that? A. None, sir.

PASCOE GAFFER sworn (examined by Mr. Scarlett).

Q. Where you on board this ship, the Albion? A. Yes, sir.

Q. What were you? A. I helped to keep the ship.

Q. Were you the person who discovered the signals of Carter's boat? A. There were no signals before the captain came on board.

Q. Were you the first person who discovered the signal of Carter's boat? A. After the captain came on board, the captain and myself discovered the signal.

Q. Did the captain lay the ship too for the purpose of the boats coming up? A. Yes, and I lent a hand to do it.

Q. Were you within hearing when Carter came on board? A. Yes.

Q. How near did you stand to him? A. I was standing on the main deck.

Q. What was the first thing you heard passed between Carter and the captain? A. The first thing I heard was the captain calling out to Carter to come on the starboard side, and I heard Carter say "pull away," to the boat's crew.

Q. And then he came to the larboard side? A. Yes.

Q. When he had mounted upon deck, what did you hear pass? A. The captain was very angry with him for coming on the larboard side.

Q. What did he say to him? A. The captain told him he ought to have obeyed his orders, to go on the starboard side.

Q. What did Carter say to him? A. He said "you wanted to drown me and all the boat's crew."

Q. What did the captain say to him then? A. Carter said to the captain "you are a damned rascal, and you wanted to drown me and all the boat's crew."

Q. I asked you what did the captain say? A. The captain told him to go below into his cabin.

Q. What did Carter then say? A. He said he would not go below.

Q. Well, what then? A. The captain then collared him.

Q. When Carter said he would not go below, the captain collared him? A. Yes, sir.

Q. Did Carter collar the captain? A. Yes, sir.

Q. (by *Ellenborough, C. J.*) And shook him? A. Yes.

Q. Be on your guard; do you say you saw Carter collar the captain? A. Yes, my lord, and shook him.

Q. (by *Mr. Scarlett.*) Carter is a very stout man? A. Yes, sir.

Q. How near was you standing to him? A. I was upon the main deck where they were.

Q. Was it dark then? A. Yes.

Q. After Carter shook him, what then passed? A. The captain called aft for the crew to come and pull him below.

Q. Was that when Carter had hold of him? A. Yes, sir.

(By *Ellenborough, C. J.*) Whereabouts did he take hold of him? A. By the breast.

Q. How long did he keep hold of him? A. I cannot say exactly.

Q. How nearly can you say? A. Two or three minutes.

Q. (By *Mr. Scarlett*) Was it when Carter had hold of him that the captain called out for assistance? A. Yes, sir.

Q. Did any of the crew come to assist him? A. None but the second mate Underwood went nigh to him.

Q. And what did Carter say to Underwood? A. He said "Don't you lay hold of me, or else I'll make you remember 'it.'"

Q. What did the Captain say then? A. The captain then called for his pistols.

Q. What did Carter say? A. He said he had pistols too.

Q. What then? A. Then he let him go, and ordered the boat's crew to come along the other side.

Q. Who let him go? A. The captain let Carter go, and told him to go below, but he would not.

Q. Did he remain on deck afterwards? A. Yes.

Q. Did you see him on deck that evening? A. Yes.

Q. (By *Ellenborough, C. J.*) Did he go below at all? A. I cannot say whether he did or not, as we were not on deck all the time he stayed.

Q. (*By Mr. Scarlett*) Don't you recollect that he went below and came up again? A. O! yes, for ten minutes or a quarter of an hour, he went below, and then came up again.

Q. Did he remain long after he came from below? A. I cannot say how long.

Q. Did you see him on deck the next day? A. Yes.

Q. Did he continue to go upon deck as any other of the men did or might do till you got to Kenia? A. Yes.

Q. (*By Ellenborough, C. J.*) Did he behave ill when on deck? A. He never said a word to any body.

Q. (*By Mr. Scarlett*) Do you remember any thing passing between the captain and Carter as to a boy? A. Yes, the captain called a boy for a witness.

Q. What did he say? A. He said "I want a witness on account of all this bad usage."

Q. Upon his doing that, do you recollect Carter doing or saying any thing? A. Yes, he got hold of the least boy in the ship, and shoved him towards him, and said take this boy as a witness.

Q. Was that before the captain collared him or afterwards? A. It was afterwards.

(*Cross examined by Attorney General.*)

Q. You say the captain wanted a witness of all this bad language? A. Yes.

Q. He had you for a witness and he needed not to have wanted any other; did you hear any bad language from the captain to Mr. Carter? A. No, I did not hear any bad language from the captain; perhaps he might have stated a wrong word or two, but I heard twice as much which Mr. Carter gave to the captain.

Q. Then there was a little from the captain to Carter? A. There was a little.

Q. I wish you to recollect a little of it if you can? You are sure that Carter took the captain by the breast and shook him very severely; nobody could fail of seeing that if they were there? A. No, sir.

Q. Did the captain say, when he called a witness, "Now I wish you to see how this man shakes me or has shaken me." Did he say this to the whole crew? A. I did not hear him.

Q. It was after he shook him for two or three minutes? A. Yes.

Q. And Carter is stouter than the Captain? A. Yes.

Q. Was you not afraid your captain would be very much hurt by this shaking for two or three minutes? A. I did not know whether he hurt him or not.

Q. But the captain said I want witnesses of this bad language? A. Yes, sir.

Q. Pray, just to be a little more certain, did you hear the

captain say to Carter, "Why, sir, you should not give yourself such airs, as you had not a coat to your back when I first knew you?" A. No.

Q. Did you hear any thing of that kind said by any body?
A. No, sir.

Q. Upon your oath did you not hear the captain say so?
A. No, sir.

Q. That could not pass without your hearing of it? A. I cannot say the thing that I did not hear.

Q. Was you near enough to hear that? You said you were as near to them as to that wall or to me now? A. Not quite so near.

Q. They talked very low when they were damning one another? A. Sometimes they talked very low, and sometimes they did not.

Q. How many days after this was it before the captain got the shore boat to come and carry this gentleman on shore?
A. About four or five days.

Q. And how soon after he had sent him on shore did you send his trunk and chest? A. It was about two hours after that.

Q. Upon your oath, did you hear the captain give orders to the boat's crew not to allow Carter to come on board again upon any account whatever? A. No, sir.

Q. Was that when the surgeon went? A. Yes, sir.

Q. Was you on deck when they went off? A. Yes, sir.

Q. You all expected Mr. Carter back again did you?
A. Yes, sir, we all expected him to come back; we expected him to make it up, and that he would come back.

Q. Did the captain say so? A. No, but we thought so.

Q. Did you not ask the captain, when you were going off, whether you were to leave this chief mate amongst the Malays? Did you not say to him we hope you won't do so, and have you not made it up together? A. We asked no such thing.

Q. You came off and left him? A. Yes.

HANS P. HENSON sworn (examined by Mr. Puller.)

Q. Where were you in the ship when Carter came on board that evening? A. I was upon the deck of the ship.

Q. How soon did you see him after he first came on board?
A. In a few minutes,

Q. It was dusk was it? A. Yes.

Q. Before he came on board he had been hailed? A. Yes, sir.

Q. He said he wanted to get on board? A. Yes.

Q. What did the captain say? He told him not to be so sulky about it, but to come on board.

Q. What was it the captain said he should not be so sulky about? A. The captain said, as his boat was stoved that he

should come on board on the starboard side; the captain said don't be so sulky, as he, Carter, had spoken a little roughly.

Q. On the captain saying that to Carter, what did Carter say to the captain? A. They damned one another I believe.

Q. Did he call the captain any names? A. I don't recollect the names, but he said, damn your eyes who are you, or something like that.

Q. (*By Ellenborough, C. J.*) Who began paying that compliment to the other's eyes? A. I believe Mr. Carter began.

Q. But have you any confident recollection by which you can say, upon oath, that he said so to him before the captain said any thing to him? A. Yes, when the captain asked the reason why he did not come on board on the starboard side, he said I wanted to get on board the ship any how.

Q. (*By Mr. Puller*) Did he speak that in a civil or rough manner? A. In a rough manner.

Q. Was it after that that the captain remonstrated with him as to being sulky? A. Yes.

Q. You said that you believe that Carter began using the bad language to the captain, and not the captain to Carter? A. Carter was the first beginner I believe.

Q. If you can, tell us any of the words he used, I wish you would? A. He called him a damned rascal or scoundrel, or something like that.

Q. What did the captain say to that? A. I don't recollect every word he said.

Q. Did he do any thing to him? Did the captain do any thing to Carter? A. The captain shook Mr. Carter.

Q. Was that after he had used those words? A. Yes.

Q. Did the captain call for any body? A. Yes, he called for assistance.

Q. When the captain shook Carter, what did Carter do? A. I cannot exactly say.

Q. It was near enough to hear, and you heard the words passing between them? A. The captain called for assistance, and Carter said "here is one of your assistants," pointing to one of the little boys.

Q. Did any body go to his assistance? A. Yes, Mr. Underwood.

Q. When he went up, what did Carter say to Mr. Underwood? A. I could not exactly know; I believe Carter said to Underwood that he should not make himself too busy.

Q. Was it light enough for you to see how, in point of fact, he addressed himself to Underwood? A. No, sir.

Q. When none of the crew came to his assistance, did the captain call for any thing? A. No, I don't know.

Q. Did he give Carter any orders to do any thing? A. He told him to go below.

Q. Did he go below? A. I cannot say so.

Q. Did you see him upon deck afterwards? A. No, I don't think I did.

Q. Was he from time to time on deck till you went to Kenia? A. Yes.

Ellenborough, C. J. It shows there was no danger from Carter's being on board.

Mr. Park. We are acting erroneously, if your lordship judges as you seem to do.

Q. (*by Mr. Puller.*) Did you see Carter do any thing at any time to the defendant? A. Nothing of any harm.

Q. Was there any talk of taking him any where? A. Yes, the captain said he would take him into the first English port he came to.

Q. What did Carter say to that? A. He said he did not care how soon; he might do so as soon as he pleased.

Q. After this quarrel, you went to Kenia? A. Yes.

Q. (*By Ellenborough, C. J.*) Did you hear any such words fall from Carter when he first came on board, as that he was glad to get hold of the ship in any way, as he had been long enough in the water. A. Yes.

CAPTAIN WHITTENS sworn (*examined by Mr. Park.*)

Q. You were commander of the ship Echo? A. Yes.

Q. In December, 1812? A. Yes.

Q. Were you in company with the ship Albion? A. Yes, I fell into company with her.

Q. You were a whaler also? A. Yes.

Q. In consequence of what Captain Skelton told you (but I don't ask you what it was) did you go with him to Kenia, in the island of Celebes? A. Yes, I was making the best of my way to that port when I met him.

Q. Did you go to the house of Governor Neys? A. Yes, I went there with him.

Q. We have seen a letter which the governor wrote to the mate; was that written after the captain told his story? A. Yes.

Q. He stated something to the governor, in consequence of which the letter was sent? A. Yes; he first sent a verbal message to the governor, and then a letter, and then the governor wrote to Carter.

Q. At that time, and in your presence? A. Yes, I heard the letter read in my presence.

Q. Carter came in consequence thereof? A. Yes, he did.

Q. Were you present when he came before this gentleman, Mr. Neys? A. Yes.

Q. In the presence of this gentleman and Carter, did Captain Skelton repeat his complaint, and say what it was? A. He did.

Q. Did Captain Skelton, in the presence of Carter, make any application to you to take him on board? A. After Carter was on shore, Captain Skelton asked me if I would give him a passage in my ship, which I said I would, and offered it to him.

Q. What did Carter say to that offer? A. He refused it.

Q. How did he refuse it? A. I only know that he refused it.

Q. What did he say, as nearly as you can recollect? A. He said he should make Captain Skelton pay for his passage home.

Q. When he said that, did you hear Captain Skelton make any offer, to enable him to go any other way? A. I heard him offer money to the resident, in order to procure him a passage to Amboyna, or to Europe, or wherever he chose to go, or to pay his expences during the time he was there.

Q. That was also refused? A. The governor said it was not necessary, for that he might dine or mess with him every day while he remained there.

Q. Do you recollect the governor saying, or interfering, any thing at all about Captain Skelton and Mr. Carter being reconciled? A. Yes, I do; I was the person that put the question to him, that I wished to see whether he would make it up with Captain Skelton, with whom, I and the governor had prevailed upon to make it up with him.

Q. What did Captain Skelton say? A. Captain Skelton said that if he would ask his pardon before the ship's company, before whom he had degraded him, he would consent to do so.

Q. What said Carter to that? A. He said he would not; he would do no such thing, but that as he had thought proper to put him on shore, there he would remain.

Q. Was there any thing said about doing duty again on board the ship? A. There was.

Q. What was it? A. The captain said that if he returned on board the ship and did his duty as a man, he would hear nothing more about the matter.

Q. (*By Ellenborough, C. J.*) Did the captain give up the condition he had stipulated at first as to the apology? A. No, my lord.

Q. (*By Mr. Park.*) What said Carter to the proposed condition, as to the apology? A. He said he would not ask his pardon.

Q. Had you an officer on board your ship called Ford? A. Yes.

Q. He was your second officer? A. Yes.

Q. Did Skelton make any offer to get that person on board his ship in the room of Carter? A. Yes, he asked me if I would let him go.

Attorney General. I object to this, as not being proper evidence.

Mr. Park. This has been said to have been done from improper motives, and I know that he endeavoured to get another to supply his place.

Attorney General. My objection is to any thing done by Skelton behind my client's back, being brought forward as evidence.

Ellenborough, C. J. It was already proved that Underwood was not a man of equal skill, and therefore it might put him to inconvenience, so that it appears he was endeavouring to get another.

Q. Do you recollect any thing being said about the log book before the governor, and in the presence of Mr. Carter?

A. Yes.

Q. What was said about the log book? A. Captain Skelton asked him if he knew any thing about the log book, and if he had got it in his chest.

Q. What said he to that? A. He said he knew nothing about the log book, and if he had, it was his own property, and he should keep it.

Q. Did Captain Skelton mention to Carter his reason for wishing this? A. He said that the log book was the ship's property, and he stood in need of it.

Q. He did not deliver it? A. He said he knew nothing of it.

(*Cross-examined by Attorney General.*)

Q. Do you not know that when this person was seduced on shore he went without book or trunk, or any thing, when he was sent from on board, as has been described, by means of this defendant? A. I knew that he had nothing but what he stood up in.

Q. (*By Ellenborough, C. J.*) Did you see his things come on shore afterwards? A. Yes, to the governor's house.

Q. How soon did you come to England? A. I arrived on the 10th of August, 1813.

Q. (*By Mr. Park, through Ellenborough, C. J.*) Are you acquainted with the mode of bringing up stoved boats? A. Yes,

Q. What is the proper side to bring them up on? A. The starboard side, that being to the windward.

Q. But suppose there were three whales lying along that side of the vessel? A. There would be no objection in the the least.

Q. Supposing the men had been in the stoved boat for several hours in the water, do you suppose they would stand upon much ceremony upon what side they should come up on? A. No, my lord, but there is no more difficulty in getting in on the starboard side than upon the larboard side.

Q. Then do you think they had no motive in taking the larboard side in preference to the starboard side, but the pleasure of disobeying the captain's orders? A. I cannot conceive that there could be any motive for taking the one in preference to the other.

CAPTAIN BRISTALL sworn (examined by Mr. Puller)

Q. How long have you been engaged in the whale fishery?
A. Twenty-five years.

Q. Have you heard all the evidence that has been given, as to this business? A. Yes; I was in those seas when it took place.

Q. In your judgment, what is the proper side to take on board a stoven boat? A. The windward, the starboard.

Q. Is that a general rule? A. It is general; there is no other rule.

Q. Is there any danger in taking it in on the larboard side?
A. It is not so convenient, as the bulwark lays in the way. In fact, during the twenty-five years I have been in the South Seas, I never saw a stoven boat taken in to the leeward, but always to the windward; when it is otherwise, you run a chance of losing the boat, but you avoid the sacrifice by taking it up on the starboard side. A stoven boat is a very rare thing here, and people cannot be accustomed to them in London, but it is a common thing in the South Seas. A stoven boat will carry a crew just as well as another. I conceive, myself, that there was no danger.

Q. Is it a general rule; was there any thing that you have heard to have prevented them from going on board on the starboard side? A. None at all.

(Cross examined by Attorney General.)

Q. The defendant's counsel appear to have taken you for their client, you have been so eager all this day? (No answer, as Mr. Park complained of this)

CAPTAIN BLIGH sworn (examined by Mr. Park.)

Q. How many years have you been in the whale fishery trade? A. About thirty.

Q. Is the starboard side of a vessel the proper side to take in stoven boats? A. Yes, the weather side is always the side for taking in stoven boats.

Q. You have always known it to be so during your experience? A. Yes.

Q. It is a common thing to happen by the stroke of a fish?
A. It is very common.

Q. There is no danger in a stoven boat so long as the people remain in her, so as to keep her from upsetting?
A. There is no danger.

Q. Is it not a common thing for the men to be many hours under water in that situation? A. I have been several hours myself in that situation.

Q. I am glad it has made no difference as to your health and appearance; would they not have been on board as soon by going to the one side as on the other? A. Sooner by going to the windward; the boat that is towing the stoven boat must come up first, and therefore there is danger in going upon the larboard side that the stoven boat would come under the vessel which would knock her to pieces.

(Cross examined by Attorney General.)

Q. You think a stoven boat rather an agreeable thing, do you; I suppose you persuade yourself that it is an excellent cold bath, and you seem to thrive with it from your healthy appearance? A. I have bathed sometimes for the benefit of my health; I might go in a stoven boat and sit there for hours for amusement,

Ellenborough, C. J. These gambols in the Pacific Ocean are not any sort of amusement here.

CAPT. WILLIAM STEVENS sworn (examined by Mr. Puller)

Q. How many years have you been engaged in the whale fishery? A. About twenty-five years in the southern fishery, and six or seven in the northern fishery.

Q. Upon what side would you take on board a stoven boat? A. Upon the windward side; the reason is evident, for if you take a stoven boat alongside of a ship upon the lee side she would go right down with the crew under the ship; I have seen instances of that myself, and have been in that situation myself.

(Here the deposition of Michael Underwood was put in and partly read.)

Mr. MAPLES sworn (examined by Attorney General)

Q. You produce this deposition? A. Yes.

Q. Have you examined any other persons upon interrogatories? A. Yes.

Q. How many? A. One other.

Q. What was his name? A. Samuel Grew; you have his deposition.

Mr. Park. I have no objection to reading it if my learned friend wave his objection as to the interest. That is my case.

ATTORNEY GENERAL. May it please your lordship. Gentlemen of the jury; my learned friend has read to you only one of his depositions, but I wish it to be understood that he owns

he holds possession of two; and I beg you also to understand that I was no reading something affirmatively, which has or could be negatived; or that I was informing you that a man was stating one thing, when he in fact, was stating another; so much for depositions. I shall now proceed to make some observations upon this case, which as I have stated in my opening, I thought was one in all its aspects, not only of vast interest to the individual, but also great importance to the interests of commerce and the navigation of the country, and to every man who puts his foot on board of any ship to go from hence upon a foreign voyage; if I thought so originally, when I was first stating the facts to you, I think it is much more so now, and I think there has been a most disgraceful experiment to lead you into a very fatal error, tending much against the interest of every one concerned in the administration of justice. You'll observe that the relative situation of the parties is, that the defendant is the master of the ship, the Albion, engaged in a whaling adventure to the South Seas, and having known the plaintiff in former years in which he had employed him, he again places him in the predicament of being next in command to himself, thereby placing him as a person on whom all this important adventure might be entrusted (yielding no less than a nett profit of £16,100) for in case of any accident happening to the defendant, the care of all this property and of all the lives of the persons on board were to devolve to him. These two parties are engaged for a considerable number of months together, during which it stands undenied, as part of the defendant's case, that this person not only conducted himself without giving offence, but also that he was a most experienced and very valuable officer, so that the loss of him might be conceived to be a much greater loss than that of a stoven boat, although after being up to the chin in water for hours, and he himself being interested in this adventure, he having a right to a 28th part of these profits; he goes out in search of whales, and a thing occurs which I understand is very common upon those occasions, namely, a fish struck the boat in which this man, the plaintiff was, and disabled it so that in the space of a quarter of an hour the persons in that boat were up to the shoulders in water, and so they remained for a considerable time, till it suited the convenience of the captain to send another boat to their assistance, and such is the character of the plaintiff that, when the person so sent came to assist him, he says, "No, we don't want your assistance, but go further in your boat and try to save the line and the harpoon, it will be time enough for us to get assistance after these articles are saved." Feeling as much as those *grinning philosophers* who are now in the offing (alluding to some of the witnesses who had been called for the defendant, and who were still in court) I confess I could not, upon such an occasion, have stooped low enough, nor have pulled off my hat low enough, had I been in

a similar predicament with this plaintiff to this captain—this *lord of the Southern Ocean*. It seems, however, that when Mr. Carter was sitting in this stoven boat up to the shoulders in water, he was perfectly fearless of danger, for he remains there with his partners in danger till Underwood the second mate could return to him; they remained in the apprehension subsequently that they must be cut off from all assistance, by the influx of water and the approach of darkness, and they were at last attached to a towing boat, instead of being left to their fate. It happened that upon the starboard side of the vessel there were three or four whales, and notwithstanding that, yet we find these *philosophers* stating (as we may suppose such *philosophers* would be likely to state, they being generally shallow enough, and conceited in proportion as they are shallow) that that was the most convenient side for this person, Carter, to house himself and his people, after encountering the dangers from which they had escaped; he however chuses the larboard side, as being the most easy and convenient to save their lives, and then the stoven boat is got up with the tackle on the other side. The instant that the plaintiff comes upon deck, according to some of the witnesses, the salutation he gets from this man, Skelton is, “Don’t give yourself any airs Mr. Carter,” and according to others, “How dare you disobey my orders,” and again according to others this Mr. Skelton is heard damning him pretty heartily for this supposed disobedience of orders; according to all of them Carter’s answer to this insulting language was merely, “I was glad to get on board as soon as I could, as I have been long enough in the water;” he is thus speaking of his own personal feelings, and the means which he saw were the most ready and convenient for getting on board, leaving a certain proportion of that double crew who had not been up to the shoulders in water for several hours together, as he and his crew had been, that is leaving Underwood’s crew and Stephen James’s crew, who were amply sufficient to take the stoven boat at any particular place which this *magnanimous* captain desired. It appears, Mr. Carter was then desired by Skelton “*Not to be sulky;*” upon which (and this is a strong circumstance in favor of Carter) this is the observation that escapes him, “If you Mr. Skelton think that a barrel of whale oil, or a dead whale, is to be put into competition with the lives of six men, it is high time to leave off whaling.” Now I pray you, gentlemen, can you name an officer in the British navy to whom, if that expression had been used, it would have given offence under such circumstances? Who is there amongst them who would descend to call the man next in authority and command to themselves, and in the hearing of those who are to be commanded, “Damned rascal and scoundrel?” If we judge from this and also from appearances (pointing at the defendant who sat under him) there can be no doubt that this master,

Skelton, is well skilled in the language of Billingsgate, and that he would not spare his abuse upon this gentleman, whether there were cause for calling it forth or not; well, but the captain is not satisfied with mere abuse, but upon this he collars the plaintiff, and according to the evidence of some of the witnesses, the plaintiff, being a stouter man than himself, shook him off, and then this mighty captain lustily calls out for his crew to give him assistance; Mr. Underwood, upon that comes up, and Carter says to him, "Don't you interfere," and it will blow over; *that* is the construction he seems to have put upon it, and Underwood upon this leaves them as they were; I have no doubt that Underwood would have said so here, if we had had him. The captain being still intent upon further insults, next lustily calls out for his pistols; what was he going to do? Was he going to act like another Paul Jones, and to blow the brains out of the person next him in authority, or of any one who he thought was inclined to disobey his mighty orders? Or was he to teach all men the propriety of not raising their voice against men of power? or did he mean to fight a duel, and thereby to display his courage upon the main deck of this South Sea whaler? I rather think he meant to do nothing but to bully the man whom he wrongfully imagined had insulted him, and to make him no longer of any use on board. God forbid that Englishmen should feel so calm and indolent on such an occasion, when so insulted by another with pistols, as not to answer as Mr. Carter did upon this occasion, he answered, "Let it be recollected that if pistols are to be had recourse to, I in my turn have my pistols and can use them too." After this empty display of courage, this *bold* captain ordered Mr. Carter to his cabin, to which he retires, and spent some time in drying his clothes, which had been so completely drenched in this salutary bath, which these *gentlemen philosophers*, these *sovereigns of the Southern Ocean* who have been witnesses here to day, trusting no doubt to their own internal blubber (two of the witnesses were very fat men) say is so wholesome to their constitutions. They then discontinue fishing, and after several days they arrive off this island of Celebes, in the Indian Ocean. What is the course which this overbearing captain then pursues? What monstrous absurdity and impudence is displayed in this defence! He desists from fishing, although he had no less than twenty-seven hands on board, and for why? Because forsooth he is afraid of leaving this man, the plaintiff, on board, for, if he does, he thinks he will run away with the ship, and then there would be an end of all the interest he has in the concern; he dare not go a fishing, in case he leave this tremendous mutineer on board, without he himself being there to keep him in awe, and in case he should prove to be a robber and a pirate, or in case he might run away with the boat in the Southern Ocean, and have suffered his crew to escape, so that they might have been

left short handed. When they get to this Dutch island, with a Dutch resident, my worthy friend the defendant goes behind the back of the plaintiff and tells his own story, and more than *that*, he writes his own letter, which I should have liked to have seen, and he procures this Dutch resident or this governor, or by what ever title he may be called, to do what? To put his powers of magistracy into execution; to execute an inquiry, and to summon the officers of the *Echo* and the remaining officers of the *Albion*, and to collect as numerous a court of justice as he could? Is that the course he pursues? No, this Captain Skelton and Captain Whittens find their way to the governor, and tell their own story, and write their own letter; what is the story they make? Captain Skelton is afraid of a double-barrelled pistol if he keep this mutineer on board another night. Is there any thing like a regular complaint entered, is there any christian-like complaint made? Is there any of that procedure which belongs to every British subject in every part of the globe? Thank God that in every case of complaint regularly made against a British subject, there is a meeting of the accuser and the accused face to face, so that the latter may know the accusation made, and may be able to give an answer to it; but no, no such thing happens here. This complaisant governor or Dutch resident writes from his court an invitation to Mr. Carter, in a manner equally polite as if he had been begging the pleasure of his company to dinner; he writes to him, that he, as governor, in consequence of the representation of Captain Skelton, begs to see Mr. Carter on shore as early as possible. Is Mr. Carter informed in that invitation, or polite summons, that the object of this letter is to kidnap him, and that he who is concerned to the extent of one twenty-eighth part of £16000. the proceeds of this voyage, is to be induced to leave this ship, and then left in that island to find his way home as well as he can? No, but the letter of invitation comes from the resident to him by soldiers, we are to suppose, for the purpose of adding greater state to the invitation. Carter, upon this, consults the second mate, who was then in command, as to what he is to do upon it; Mr. Underwood, who fishes in these troubled waters, does not at first connive in these proceedings, and is at a loss to give an answer, but afterwards says, that as it is the captain's positive orders he, Carter, had better go on shore. As the plaintiff conceived he might do that with perfect impunity, he does not put his trunk or any thing else into the boat with him, but he appears at the bar of this tribunal, constituted in a manner in which, thank God, no British tribunal is constituted; a tribunal constituted by a *Dutch governor* sitting as president, assisted with his *two learned assessors*, Captain Whittens who recommended the measure, and Captain Skelton *who is accuser, witness, and executioner* of the sentence which is to be pronounced. Such is the tribunal before whom this gentleman is

brought, and which is to pass judgment of banishment against him for a season from his native land, to the extinction of his best hopes and expectations, and to the destruction of his character as a nautical man for all time to come; and how do they proceed? Precisely as such a tribunal may be supposed to proceed; a perfect contrast, thank God, to all that belongs to the judicature which is established and practiced in this happy country; for, was there any body called who could give any account of the manner in which this man, Carter, was insulted, and in which his authority was rendered of no avail, by the scandalous and outrageous conduct of him who was denominated his superior officer on board? Be that as it may. However, we find at length that Captain Whittens is to become the mediator; when I desire to have a mediator, I should be inclined to have one who was not a partizan and an adviser of these irregular proceedings, a partizan of the man between whom and me he is to mediate; oh! but the governor or resident is to become one too, and to effect the object of Captain Skelton as it were by a hidden power. What is the course then which they pursue? Precisely that which you might expect from him, of whom my learned friend was desired to state as a proof of his moderation and kindness, namely, that when I complain of this gentleman he had endeavoured to load him with blessings, but this man could not see what was really for his good; there was a mist before his eyes, and he fancied that those who wished him good were meditating mischief; just so would I have thought had I been in his place. This man who is treated as a scoundrel, and called so on board of ship, is told that he shall be permitted to go back and pass a number of months, requisite to get to Europe, on board that same ship; but is he told so without any condition being imposed? No, on the contrary, is not the most degrading and insulting condition suggested, and one which is the least of all others to be endured by any man who has the least drop of true English blood in his veins? He is told "If you go back on board the ship, and in the presence of myself and my crew, beg my pardon for the manner in which you have insulted me in their presence, I'll forgive you all, and you'll hear no more of it." Does it appear from this that the captain thought that it was not safe nor secure to have this man on board? Yes, he pretended he did so at one time, but now he was perfectly willing to take all that responsibility and risk of insecurity upon himself, if the mate would get down upon his knees and make himself an idolator, and beg pardon of that power whose insolence had rendered him in his own judgment irresistible. There is nobody but can see that the language of the mate was the language of a man who complained a little of what he was suffering, and of what he considered as irregular, but this *magnificent captain* thought proper first to provoke him with insults, and then to call for witnesses as to

any thing he might afterwards say. The language of the mate was no such thing as insulting. No, says Carter, in answer to this proposal, "I shall not beg pardon of you, from whom I am entitled to receive something that might cure my wounded spirit, and remedy the injuries which you inflicted upon me, from the moment you insulted me when coming along side of the ship in the stoven boat; were I to make an apology to you, under such circumstances, I am sure there is not a cabin boy nor a scullion who would not despise me for doing so." Then says Captain Skelton, "If you do not like to go with me upon such a condition, I will get you a passage on board of Captain Whitten's ship;" "No," replies the plaintiff, "that I shall not agree to either, for when you come back to England you'll take this as a means of condemnation against myself—you'll state this to the world as an acknowledgment of my guilt, and I shall not be paid for the months of labour and fatigue, dangers and anxieties which I have suffered, no; no;—no submission on my part, I claim my rights; if I am to be returned upon the main deck of that vessel in which I am concerned I must not be degraded at all." Now, gentlemen, you see what a kind man Captain Whittens is; he is so kind as not only to afford assistance to his *Dutch excellency* in helping to form his tribunal, but also is so humane as to endeavour to mediate between these parties. Then follows another proposition on the part of Captain Skelton, "if," says he, "you wont do *that*, I'll then propose this, I'll lodge a sum of money in the hands of his *Dutch excellency* to support you here, or to convey you to Amboyna, so as to afford you the best means of procuring a conveyance home." The answer is, "no, no, this is all *cajollary*, in order to take me in; this is to insult me and also to deprive of my rights, for if you leave me here by this your sentence of exile, you think you'll be entitled to my 28th share of this property which you are carrying to England; don't give me *this* as a *boon* when you are warding off the punishment of your injustice, when some day or other you'll be called to account for the injustice you have already done me." Remember, gentlemen, Mr. Carter said, "I'll make Captain Skelton pay me my expences;" and remember also what he said when Captain Skelton proposed to leave him at the first British settlement he came to; he answered him by saying, "that is what I wish." Talk of English justice and I ask no more, but when you find this captain bringing Mr. Carter to his *Dutch excellency*, he (the plaintiff) then saw his object, but says he, "I'll make you pay for your injustice in these proceedings, and for every other injury which you have inflicted upon me." It is the great consolation of every British subject at a distance from home, when he finds himself oppressed by any of his countrymen, that he keeps in his mind's eye the chance he has of having recourse to this sanctuary of justice;

he knows that the longest day of oppression and injustice must have it's end; he knows that if he only survive the injuries inflicted, and shall come here to tell his tale, the powerful and the weak must meet here upon equal terms, the oppressor has no advantage over the oppressed, but that you hold the scales equally balanced, in order to distribute justice to every man as he deserves. Now, gentlemen, what is this case which is here brought before you, for I will not fatigue you with further observations? It is a case, in which, without any foundation in fact for any charge against this man; without any apprehension of danger likely to accrue from him to anybody; without any possibility of being encumbered by permitting this gentleman to remain on board his ship; the defendant adopts these means which have been described, in order to entrap and kidnap the plaintiff from on board the Albion to this island in the Indian Ocean. The plaintiff, you'll observe, is part owner of this cargo along with the defendant and others, and so far from being allowed to accompany his property in the Albion, he has been put to great difficulties even in finding his way from this island, which is thinly peopled, and low in point of supplies; he had to proceed to Amboyna to get on board a vessel to bring him here; these expences will be items in his demand. There is only one other point upon which I shall touch. My learned friend says, what motive could Captain Skelton have for all this? I answer his question by retorting; I cannot tell what can operate as an inducement to a *purse proud domineering man* for so exercising his authority. Those who have authority will do well to keep themselves even handed, for nobody can refuse to obey a just authority when it is exercised with leniency, and when those whose duty it is to obey are treated with kindness; there is no danger to be apprehended from British seamen when they are treated with kindness, and their obedience insured by circumspection and care. What motive had this man? is the question which my learned friend puts; I answer that the probable motive which he might have was, the keeping in his own pockets, and perhaps too of his co-owners, the profit likely to arise to this man, who is stated to have conducted himself in the most exemplary manner; but when we talk of motives, I may retort and ask what motive had my client? Had he not a large share in this concern amounting to between five and six hundred pounds? Had he not future prospects to keep in view? And is it not natural to suppose, that a man who had never offended at any period before in his situation, and who should be interested in getting a ship, would stoop to his superior officer as much as he could? But what was he to do in this respect, when he was told by this Captain Skelton, "Not to be sulky," and found himself treated with low, scurrilous, and irritating language? This is a case, gentlemen, which has occupied a considerable length of time already, and I'll not lengthen it with further observations;

the period has at length arrived in which my client has his consolation, by an appeal to English jurymen to render him that justice which his injuries require at your hands; and I have no doubt that you will render them amply, according to the circumstances of the case; more than *that* he does not ask.



ELLENBOROUGH, C. J. Gentlemen of the jury; this is an action brought by John Carter, who was lately chief mate of the *Albion*, a South Sea whaler, against Philip Skelton, who was lately captain and commander of that vessel, and the complaint which the plaintiff makes is, that he was, by this defendant, put out of the service of this ship as mate, and prevented completing his voyage in the said ship, wherein he would have earned one 28th part of the proceeds of the adventure by that ship, which, according to the evidence, would have amounted to £568. being his share of the nett proceeds, which are stated to have amounted to £16000. That is one part of his complaint; and he also complains that he has been prevented acquiring those wages which would have been due to him for this voyage, by perfecting this contract with the owners; he has likewise sustained a further injury, by being set on shore upon the island of Celebes, in the Indian Ocean, and obliged to find his way, with great inconvenience, and considerable additional expence, to Europe. That is the nature of the cause, and it is neither an unimportant one as between those two parties, nor is it unimportant as to the public. You are to watch over the rights, both of the superior and the inferior, so as to prevent insubordination, and to secure obedience upon the one side, and to afford the means of redress to the person who may be injured by any undue exercise of authority, and give him what may be thought an adequate recompence. The evidence in this case commenced with a statement of the duties devolving upon each of these parties, in the situations they held, relative to each other, by means of articles, which were entered into and which have been read; by these articles the plaintiff is to obey the orders and commands of his superior officer, and to conduct himself upon all times and occasions, and in all ports and places where the ship or vessel shall touch at, with sobriety, as a good and faithful seaman ought to do. By these articles, the mate is to conduct himself in obedience to the captain of the vessel; but even in the most strict obedience that can be required, there may be certain orders which may be improper, or relate to things impossible to be performed, or if they be not given so peremptorily as they ought to be under certain circumstances which may seem to justify a temporary departure from them. It is for you, however,

to say, whether by such a departure within the fair sense and meaning of the articles, which have been entered into, the plaintiff has incurred so great a penalty as to forfeit not only his share of the proceeds of this adventure, but also his wages. Now, in this case, the order given by the captain to tow up a stoven boat on the starboard side of the vessel, was not literally obeyed by the plaintiff, although it is said the man who had got the order announced it to him a quarter of an hour before he came up in his boat to the vessel. When the man came up to him to assist him with the stoved boat, and to communicate the captain's order, the plaintiff says, he does not want his assistance nor that of the captain, and got to the larboard side, instead of the starboard side as was intimated to be the captain's desire. That is literally a disobedience, but the question is, whether under the galling sufferings which the plaintiff had endured, (for I cannot hold them so light as not to notice them) this person having been actually up to the shoulders in water for upwards of two hours in a stoven boat; for certainly, I conceive, that no human person can hold that circumstance light, when estimating the sufferings of another, he, the plaintiff, must have apprehended that by taking that side of the vessel which was pointed out to him it would make him somewhat later in getting on board, for we are not to suppose that he could have a *voluntary appetite* for *disobedience*. His only object must have been to get on board earlier than he could have got by going to the starboard side, for one cannot assign any other motive for his conduct, and what makes it reasonable to suppose so, is the sort of language which has been stated by two witnesses, who confirmed the evidence of the boy in this particular, as to what passed between these parties upon that occasion, namely, that when the captain asked Carter why he did not come on board on the starboard side, he, Carter, answered "that he had been long enough in the water;" another witness was asked as to whether he heard the words which the other had said, and he stated that the captain, when Carter came on board in the dusk, said "dont be so sulky;" now that imports that something had passed that induced that demeanor before, and when he was asked did you hear any such words as these pass, namely, "that he was glad to get on board any way, as he "had been long enough in the water," he confirmed the former statement. At last we came to the point in question, and from what the captains (who have been examined to day) have said, we may suppose that it might have been more expedient for the stoven boat to have been got up upon the starboard rather than the larboard side, and that the captain gave the order for the best; but then again, this man having been employed all day in execution of the business of the ship, and having caught one fish, and having harpooned another, and having in the execution of that duty encountered the accident which has been

stated, he might naturally have expected a conduct and treatment a little more lenient from his captain than that of being questioned as he was, as to "*his being sulky.*" Upon the other speaking to him as he did, it does not appear from whom the next angry words proceeded, as the witnesses contradict each other, but the witness, Davis, stated "that there was no inconvenience to the people in the ship on which ever side they got on board of her; the inconvenience would be to the persons getting out of the boat into the ship, the lee side being the most convenient. On Carter coming on board, the captain was very angry, and words ensued, because the boat did not go round to the windward; after some time the captain took him by the collar, and Carter pushed him away, and he said, don't go to heave me overboard as you did the steward. The captain told him to go below, and that he should not do any more duty on board the vessel; nothing further passed; Carter went below, and remained in his cabin until we got into port." If the others be speaking the truth in stating that Carter, after this, still continued to come on deck, it marks strongly that there was no actual danger in his being on board; and if so, the captain could not be justified in regarding him as a dangerous person, for if he had had any reason for entertaining that idea he would have confined him to his cabin, and if there were not that reason, what pretence could he have for putting him upon the island of Celebes, and leaving him there? He might still have continued on board, as he was allowed to come on deck. After being irritated (as a powerful man might be supposed to be provoked to use his strength when shaken by the collar in an ignominious manner before all the ship's company) we find that he never raised his hand to strike the defendant, but he only used his strength against such treatment, so as to get rid of him who so held him; I think it appears that he, Carter, was a person capable of good order and sobriety, and that there was no danger likely to arise from his continuing on board, and that there was no just cause for the captain's apprehensions. I should think from the evidence, that the plaintiff, in general, had confined himself below, although he did sometimes come upon deck. A witness says, "the captain broke up his voyage, and ceased his fishing for a time, and came to the island of Celebes;" and how is the plaintiff treated there? The captain goes on shore, and soon afterwards there was a letter sent to the plaintiff from the Dutch resident of the island, to whom Captain Skelton had applied, and stated his case before the plaintiff had an opportunity of stating any thing, and had desired the resident to send this letter, which certainly is not one which contains any thing violent, but it was not conceived in terms so as to induce him to suppose he was to be made a prisoner, it merely desiring him to wait upon him, the resident, as soon as he could; it was to this effect, "to Mr.

“John Carter, chief officer of the Albion whaler. Sir, in consequence of a public representation made unto me by the captain of the ship Albion, Philip Skelton, I have to request that you will, with as little delay as possible, wait upon me.” This is signed H. Neys, resident, and is dated Kenia, 9th Dec. 1812. Carter accordingly waits upon him, but previously doubting whether he should go upon this sort of invitation, he refers to Underwood, the second mate, and says to him, as you are now in command, would you advise me to go, and he, after some hesitation, so advises him. There is a subsequent order that Carter should not be permitted to come on board again. Where was he sent? to an island very unfrequently visited by European ships, and therefore there was in general very little opportunity afforded him of escaping from it. Then it appears that Captain Whittens was requested by the defendant to offer him a passage to England, and this Captain Whittens agreed to do, and his ship the Echo arrived on August 13th; this would have at least secured him a conveyance; now ought Mr. Carter to have accepted this offer or not? Put it, gentlemen, as your own case; in the first place it would have been a surrender of his command, and an yielding up of his own rights, and might have been subsequently accounted a satisfaction for those injuries he had sustained, as it might have been said, that he had received that benefit of a passage in satisfaction of his demands.

Mr. PARK. It is part of the special damage that he could not procure a passage to Europe,

ELLENBOROUGH, C. J. He could have had a passage no doubt upon that occasion, but then it would have been under circumstances of disadvantage; but can you say, that because a man under such circumstances could have had a passage, it would not have been tendering him that which would have been a compromise of those rights which he claims in this cause? He might indeed have abridged the period of his detention and delay of getting from that island, by accepting that offer of a passage, but still he could not procure such a passage as a man in common prudence and duty to himself would think of accepting, for he might say, “if I go on board that other ship, and take that passage which has been procured me by the man who did me the injury of which I complain, it may be construed into a compromise of the injuries which I have sustained.” It is for him to pause and think whether he would accept of that offer made him by the captain, or take his chance of his coming to England as he best could, looking to his adoption of some subsequent means of getting pecuniary recompence for the injuries done him. Then the captain offers to defray the expences of his getting to England by some other means, namely, by depositing a sum with the governor to procure a

passage from Celebes to Amboyna, and thence to England, and also to pay the expences of his maintenance; the Dutch governor says "you need not do *that*, as he may mess with me while "he stays here." That might be the means of enabling him to pay his immediate expences, but really feeling as a man oppressed he might be supposed to say to himself "shall I receive "meat and drink as a *boon* from this man? No, he has first "injured me, and then places me here as a charge upon the "Dutch governor; he has placed me in a state of nature to find "my way home as I best can; I shall not receive this as a *boon*." Now, gentlemen, I really don't know that he was bound to accept this offer of his bounty, or any partial compensation for that injury which was offered, if one thinks that he ought at all to receive any compensation for such injuries from the party who had so injured him; besides, we don't know whether he would have left an adequate sum to defray even his expences home; all that we know is, that he had placed him in a situation to get home as he best could; it was no recompence to him to be placed so as to have nothing to depend upon but this broken reed. If you be of this opinion I need not detail the whole of the evidence, as the witnesses on both sides do not differ much in the circumstances which they state; it appears from the evidence of all the witnesses who have been cross examined, that there was no great blame attaching to this person for the disobedience of the literal order communicated to him, under all the circumstances of the case, nor that the disobedience was such as could be deemed contumacious or mischievous to the service. Do not understand me to say that the person who receives an order from his superior is to be weighing in all cases the propriety of it; obedience is a duty which an inferior owes to a superior officer, and it would have been perhaps better, had the plaintiff, in this instance, obeyed; but if you think that he was actuated in that disobedience by motives of humanity, in endeavouring to save six lives, which were of more consequence surely than the boat itself, and all the whales they had got, and that he thought the object in view could be better accomplished by going upon the larboard side than by going on the starboard side, to a man whose life was in some degree of peril, although the other seemed to hold it light, you will be inclined to excuse a little degree of irritation; in such cases we are men, subject to human infirmities and weaknesses, and it might be that the plaintiff felt a deep sense of his suffering, both previously to his coming on board and when so addressed by the defendant, for, upon that occasion, language certainly proceeded from the captain, which was most unfit for a person in his situation; and if you consider that he not only attacked him in words, but laid his hands upon his mate, collared him, and called all hands on board to assist him, and yet this man, Carter, so far collects himself in that predica-

ment, in regard to prudence and reason, as never to raise his hand against him; you will think that as to the charge of personal violence, it rests upon the captain, unless you believe one of the defendant's witnesses, who talked of the plaintiff holding the captain by the collar, but there is not one witness who states that circumstance but himself; add to this, the captain afterwards talks of "*pistols*," and then the plaintiff says, "I have *pistols* too;" this may have been an improper reply, but much allowance is to be made for one situated as the plaintiff was under such galling circumstances. Upon the whole, if you think the plaintiff has been guilty of any essential disobedience, and such as would tend much to the injury of his employers, without any justification, he must be mulcted of those wages, and that sum which was stipulated by the articles which have been stated; but, if you think that it was in the moment of irritation, and under circumstances which may have produced that irritation, he ought not to have been landed at Celebes, and left to find his way to Amboyna, and thence home, or to have been precluded altogether from the means of returning to Europe, on board of that ship, and receiving his wages at the end of that voyage, then, at least, he ought to have those expences which he has been put to, in order to be reconveyed from that unfortunate habitation. These are the questions which are left for your consideration: if you think he has been guilty of a breach of the articles entered into, and *that* under circumstances which rendered his conduct inexcusable, then you will find for the defendant; but if you find that he conducted himself with sobriety, and as a faithful mariner, in the terms of that agreement, and that the disobedience on this occasion was such as, under the circumstances of the case, was owing to the irritation he received, first from his sufferings from the accident that had happened, and next by the language used to him by the defendant, and as such excusable, you will find the verdict for the *plaintiff*; but even although you do not think the disobedience inexcusable, still there is that ulterior consideration, whether it were excusable in the captain leaving him in that inhospitable and uncomfortable island, and in that case you will consider whether this conduct, on the part of the captain to the mate, is to deprive him of his wages, and whether the means which the captain subsequently offered to the mate to convey him to this country, were means which he ought to have accepted, but which he thought himself fairly justified in refusing, even although no other means offered at the time by which a passage could be procured. Gentlemen, you will please consider your verdict.

VERDICT FOR THE PLAINTIFF.

Damages £668. being £568. the full share of the profits of the voyage that he would have been entitled to had he returned with the ship, and £100. for his expences and sufferings.

FINIS.

London :

Printed by W. BARNES, Southwark Printing Office, Borough.