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December Term 1808

been instituted in this Court and a recovery had for the slaves wages for such voyage against Captain Conner by Martha Hay, and now the present action is brought to recover the value of the slave upon the ground that this slave has been converted by Captain Conner to his own use. The great question then upon which this Case depends is whether under the view of these Circumstances Captain Conner is guilty of a Conversion if he is the Plaintiff are entitled to a verdict if he is not the verdict ought to be for the Defendant. It remains to be considered how this slave came on board Captain Conners ship, by what authority he was shipped and in what Capacity he was received by Conner; - He was shipped by Martha Hay at and for the wages of twenty dollars per month for the voyage, he was received by Captain Conner at and for these wages to perform the voyage who was the Contract between? Captain Conner on the one part and Martha Hay on the other, the slave was no party to the Contract it is a mutual Contract binding both the parties - on the part of Martha Hay that the slave should perform the voyage on the part of Captain Conner that he would pay the wages, this I take to be the substance of the Contract; then had Martha Hay power to make this Contract? It results from the relation in which she stands to the Plaintiff that she had, she is their Guardian by nature; as Guardian by nature she has the Custody of the persons of her children and the Management of their personal property, and she is accountable to them for the profits; it follows then that she has a right and is bound to use the property in such a way as to make it most productive, but she cannot vest the right of property in any other person or change the species of property that belongs to her children from whom that right cannot be taken without their Consent, and they are not capable of giving that Consent until they arrive at the age of 21. I hold that the Contract is valid and binding on the parties each had a right and a legal capacity to make it; what legal obligations are imposed on Martha Hay by this Contract? I take it that she is bound and answerable that her slave shall conduct himself as other seamen do in similar situations on board a ship, on the other the Captain is bound by the Contract to conduct towards the slave in the same manner in every respect as to another seaman and if he deserts the ship Mr Hay is liable to all such losses as would result to a free man in who should under the same Circumstances desert his ship. I mention the Contract thus particularly and its legal operation to both the parties to show that this slave was shipped or hired by a person having proper authority, and that the Defendant did no wrong and was justified in receiving and employing him in the manner he did and so far was not guilty of a tort. Is there any thing in the Defendants conduct afterwards that can make him guilty of a tort, had he a right to send the slave back in another vessel, if he had a right