

and they are not capable of giving that consent until they arrive at the age of twenty-one. 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 she is bound and answerable that her slave shall conduct himself, as other seamen do in similar stations on board a ship; on the other hand, the defendant is bound by the contract to conduct towards the slave in the same manner, in every respect, as to other seamen, and if he deserts the ship, Mrs. Hay is liable to all such losses as would result to a free mariner who should, under the same circumstances, desert his ship. I mention the contract thus particularly, and its legal operation on both the parties, to show that this slave was shipped or [\*\*5] 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 defendant's 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 to send the other seamen back in another vessel, he had a right to send the slave back in the same way. The act of congress has thought it a reasonable way, and it is a good rule for us. Did he pay him the two months wages? It is right and proper he should not have paid them; if he had he would have been bound to pay them again to Mrs. Hay, with whom the contract was made. Perry was a slave, and could do no act, but such as Mrs. Hay authorized him to do. The defendant put the slave on board Captain Weems, bound for Baltimore, to be brought back; by the act of God the vessel was driven out of her course, and compelled to go to one of the Islands. This was no wrong by the defendant. But when there, Perry makes his escape. Is this the wrong of the defendant? We think not. Suppose Perry had ran from the ship, and drowned himself, would [\*\*6] the defendant be answerable? Would it be a conversion? No. Suppose he had, when compelled to go to this Island, committed an offence against the laws of the state, and was imprisoned, would the defendant be answerable? No. Suppose the slave had taken a knife and cut his own throat, would it be said that the defendant ought to have been standing always by to arrest the blow, and that he, having neglected to do this, is answerable? No. Upon the whole, we think that Martha Hay had a right to hire, and that there was no wrong in the defendant in receiving the slave on board as a seaman; that the defendant did all he was bound to do afterwards to ensure the return of the slave, and if he deserted, it was not the defendant's fault;

and therefore, it is the opinion of the court, that the defendant is not guilty of a conversion upon the facts so offered and admitted to be proved to the jury. The plaintiffs excepted; and the verdict and judgment being for the defendant, the plaintiffs appealed to this court.

**DISPOSITION:**

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

**HEADNOTES:**

Where a mother, as the *natural* guardian of her infant children, who were under the age of 14 years, hired a slave belonging to them, to a sea captain, to perform a voyage on wages, the slave to be returned, &c. and the vessel being sold at the port to which she sailed, by her owners, the slave was put by the captain on board of another vessel bound home, and furnished with provisions for the voyage, but never returned home In an action of *trover* by the children, prosecuting by their *prochein amy*, against the captain, for the value of the slave--*Held*, that the action was well brought.

**COUNSEL:**

Brice, for the Appellants, stated, that the principal questions were--1. Whether Mrs. Hay, the mother, was guardian by nature, if so, whether [\*\*7] as such she had any such power over the property of the children? And 2. Admitting she had such power, whether the defendant has not, by putting the slave in the custody of another person without the knowledge or consent of Mrs. Hay, or her children, exercised such an act of ownership over the slave as to amount to a conversion? As to the first question, he cited Fonbl. 247. Co. Litt. 119, b. (note B) Brown's Civil Law, 131; and the act of 1798, ch. 101.

Purviance, and S. Chase, Jr. for the Appellee.

**JUDGES:**

The cause was argued before CHASE, Ch. J. BUCHANAN, and NICHOLSON, J.

**OPINION:**

[\*350] THE COURT said, the action of *trover* was well brought, and reversed the judgment.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.