

## NEGOTIORUM GESTOR.

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1676. June 14. CORNELIUS NEILSON *against* ———.

CORNELIUS NEILSON, one of the present Bailies of Edinburgh, having had notice that a privateer had a ship taken by him lying at Stonehyve, freighted with deals and other timber, did bargain with him for a parcel of deals and trees, to the value of L. 200 Sterling; and the said person, with whom he had bargained, being found thereafter to be a pirate, being executed and hanged at London as a pirate, and the said ship being found, with the cargo of it, to be a free ship, belonging to his Majesty's allies, and unjustly taken by a pirate, yet the said Cornelius had the confidence to intent a pursuit against the owners and their factor, to hear and see it found and declared, that he had *utiliter*, in respect of their interest, made the said bargain, seeing otherways the pirate might and would have carried away the ship and cargo; or, otherways, not having men in company enough to navigate both his own and the said ship, he might or would have burnt and destroyed the same; and the owners ought to be liable to refund to him what he had given for the said parcel of deals, and some anchors and cables. And, in the dispute, the said Cornelius' procurators did not stand to hint and insinuate, that he was not without suspicion and jealousy that the said person was a pirate the time that he transacted with him, and that the said transaction was made upon a principle of generosity (as they called it) and humanity, in behalf, and for the advantage, of the owners.

It was *alleged* for the defenders; That the ship and goods being theirs, they have *rei vindicatio* of the same, and may claim and recover the ship and goods where ever they are; and that pirates are of all thieves the greatest; and *res furtiva non potest usucapi*, and is *extra commercium*. And, by the law, even where persons are *in bona fide*, and do buy stolen goods, and could not probably know whether they were stolen, yet the owners may claim the same, and will not be liable to refund the price; but, in this case, the pursuer cannot in the

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A person who had purchased timber from a pirate, pleaded against the owners of the vessel, that what he had done was *utiliter gestum* for them, and he claimed reimbursement from them of the price.  
Not decided.

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least pretend that he was *in bona fide*, seeing, by the law of all nations, when goods or ships are taken *via facti*, by privateers or others, they cannot break bulk, or dispose upon ship or cargo, or any part thereof, and, if they do, law looks upon them as pirates; and those who do buy, or get any of such goods from them, as *receptatores*. And seeing the pursuer doth acknowledge that he had suspicion that the seller was a pirate, he was *in pessima fide* to have any dealing with him; and he cannot pretend he was *negotiorum gestor*, seeing *negotiorum gestio* is only in the case where a friend, in absence of the party concerned, does him a good office *eo animo*, and upon no other account, but that his friend should suffer no prejudice; and, upon the matter *negotiorum gestor*, so circumstantiate, *contrahit*, or *quasi contrahit* with the person *cujus negotiorum gerit*, which cannot be said in this case, seeing the owners were altogether unknown to the pursuers, not only as to their persons, but as to their nation; and the pretences foresaid of humanity and generosity are not presumable, the pursuer being a merchant, and who is known to be under the character of a person apt enough to take the occasion of advantageous bargains; and, having bought the said goods at an easy rate, and great undervalue, and it being evident that he did intend only his own interest, and not that of the owners, in so far as he did not buy the hail ship and cargo *per aversionem*, but only the parcel foresaid; and it appears by a commission produced, that he transacted so with the pirate, that the ship was consigned in the hands of the persons therein-mentioned, to the effect he might have as many deals and timber, at the low rate he had agreed for, as would extend to the said sum of L. 200 Sterling, and the superplus should be counted for, not to the owners, but to the pirate; and, when the ship was brought ashore, he did not give notice to any Magistrates, that it should be seized upon, to be furthcoming to those who should have interest, there being ground of suspicion that the said person was a pirate; and as to the pretence and citations adduced, that *etiam malæ fidei possessores* have *necessarias impensas* allowed to them; that is only in the case of expenses upon ruinous houses, which otherways would perish, being debursed by a person that was in possession, and without which the house could not be preserved from ruin, and in other cases of the like nature; but not in the case of thieves, pirates, and resettlers, who cannot pretend to have repetition of the price paid by them, the same not being *impensæ*, but *pretium*.

Though some of the LORDS were of opinion, that there was no foundation for the said pursuit; and that there was rather ground to censure the pursuer as a *receptator*, that such practices should have no encouragement; yet, others being of opinion that the pursuer was favourable, having preserved the said parcel, and a benefit arising to the owners by his transaction, the LORDS recommended to the parties to settle.

Act. *Cunninghame, Dalrymple, et Falcoher.*

Alt. *Lockhart et M'Kenzie. In præsentia.*

*Dirleton, No 357. p. 171.*