

Caledonian Mercury

Thursday 26 May 1808

Extract of a letter from Mr John T. Curry, Commander of the Royal George yacht, in the service of the Revenue, to the Commissioners of Excise at Edinburgh, and transmitted to the Hon. W.W. Pole by the Secretary of that Board.

Being off Wick on Sunday the 1st. May instant, I received information from a fishing smack that a privateer was upon the coast, and could not then be far off, I made sail and stood out to sea, and soon found the information I had received to be perfectly correct, for I observed the enemy in-shore, in chase of several vessels, about 5pm South Ronaldsay then bearing NNW distant about five or six miles. I made all sail instantly, and gave chase, the wind being then SW The privateer, as soon as she perceived what I was, tacked, and stood away before the wind with a press of sail, and seemed at first to gain upon us; but it springing up a smart breeze we gradually approached him, when he began to fire his stern chasers, which did us no injury.

At length I had the pleasure of laying him alongside after a seven hour's chase, about one o'clock on the morning of the 2nd, when I gave her a whole broadside, wore round and gave her another, when she struck.

Upon boarding, I found her to be the Passe Partout, commanded by Jean Judae Vaudlieme, of Ostend, dogger-rigged (with a view to deceive) mounting 16 guns, four and eight-pounders, with 68 men, but only 44 on board. She had taken a brig from Dundee, in ballast, for America, and a sloop from Banff, also in ballast, the day before; and when I observed her, she had just, boarded a sloop off this place, and was in chase of several other vessels, which would have inevitably been captured had I not hove in sight. There are nine English prisoners on board the privateer, which I shall carry to Leith with me.

Royal George, Kirkwall Road, May 3

P.S. There are none of the crew of the privateer hurt. She is a fine vessel, sails fast, upwards of 100 tons, five months old, and very fit for the revenue service.

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Caledonian Mercury

Thursday 21 July 1808

Captain Curry, of the Royal George Excise cutter, whose successful exertions, in defence of his country, we have often had the pleasure to announce to our readers, has been presented, by Hon. Archibald McDonald, with an elegant piece of silver plate, for the kindness shown to him during a cruise to the Orkneys,

and in commemoration of the promptitude and vigour displayed by him in the capture of La Passpartout French privateer, of 14 guns, when upon that station.

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TS 25/4/56 ff 256-267 (12 pages)

Opinion of Law Officers relative to the prize jurisdiction of the High Court of Admiralty in Scotland



Seal of the High Court of Admiralty of Scotland

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Relative to the Prize Jurisdiction of the High Court of Admiralty in Scotland

The following is a copy of a Memorial presented to the Lords Commissioners of His Majesty's Treasury by the Commissioners of excise at Edinburgh.

May it please your Lordships

We beg leave to state to your Lordships that in the beginning of May last [*Lloyd's List 20th May 1808*] the Royal George yacht in Our service fell in with on the Coast of Scotland, and captured after a chase of some hours the French privateer Le Passe Partout, mounting fourteen carriage guns which was carried into Leith, and regularly condemned in the High Court of Admiralty in Scotland –

Upon examining the papers it was found that the Passe Partout has sailed from Ostend some time before with a crew of 68 persons in all. 44 of whom were on board when she was taken, besides 9 British prisoners taken out of different vessels captured by her in the course of her cruise.

The vessel having gone into condemnation was publicly sold, and the proceeds are now in the hands of the prize-agent appointed by us. The necessary documents have also been transmitted for obtaining Head Money allowed by Law, to the captors of Enemy's ships of war and privateers.

By the Acts passed since the commencement of the present war for the encouragement of Seamen, and by His Majesty's proclamation respecting the distribution of Prizes taken from the enemy. Your Lordships know that such prizes, when taken by vessels belonging to or in the service of the commissioners of Excise or Customs are declared to belong to His Majesty and are to be applied & disposed of in such manner as His Majesty under His Sign Manual shall order & direct In consequence of this provision no application can be made of the proceeds arising [257] From the above mentioned capture, or of the Head Money allowed on account of the same, until His Majesty's directions for that purpose are received.

As we considered it as of importance to the public service that proper encouragement should be given to the Officers and Men belonging to the Yachts in our service to exert themselves in capturing the Enemy's vessels found near the Coasts of this country, And as upon former occasions it has been the practice to allow the proceeds of such captures after adjudication to be distributed for the benefit of the Captors, we have taken the liberty to represent this case to your Lordships in hopes that your Lordships will be pleased in consideration of the great merit of the Officers and Seamen of the Royal George, in capturing a vessel so dangerous to the Trade of this country, to lay the same before His Majesty for the purpose of obtaining such directions under His Majesty's Sign Manual for the distribution of the proceeds of this vessel, and of the Head Money allowed in respect of it, as may be deemed most reasonable and beneficial to the public service.

We submit to your Lordships the propriety of making such a Representation And we have the honour to remain

My Lords

Your Lordships most obedient

And most faithful humble Servants

Fred: Fotheringham

J. Wharton

Jo. Stuart

Excise Office – Edinburgh

17th Nov. 1808

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The above Memorial having been referred to His Majesty's procurator General the following is a copy of his representation thereon.

To the Right Honourable The Lords Commissioners for executing the office of Lord High Treasurer of the United Kingdom of Great Britain and Ireland – May it please your Lordships

In Obedience to your Lordships Commands signified [258] To me by Geo. Harrison Esq. one of Your Lordships Secretaries I have perused the annexed Memorial of the Commissioners of Excise at Edinburgh.

And your Lordships having been pleased to refer the said Memorial to me to consider the same and report to Your Lordships a State of the Case together with my Opinion what is fit to be done therein I laid the same before His Majesty's Advocate General and attended and consulted with him on the subject and under his advice I do most humbly report to your Lordships – That as the prize act requires there should be a "legal adjudication" by the Court of Admiralty" duly authorized "and as no Court of Admiralty is "duly authorized" to take cognizance of Matters of Prize without a special warrant for that purpose it will be necessary in this case before any grant can be properly made or any Head money paid and before the vessel can be entitled to the privileges of a British ship that a Condemnation in the High Court of Admiralty should be obtained – for which purpose it – appears advisable to direct the Memorialist to procure the Depositions and Ships papers or authenticated Copies of them to be transmitted to the Registry of that Court and to give notice thereof to the King's proctor.

All which I do most humbly submit to your Lordships wisdom.

Doctor Commons

10th January 1809

(signed) Chas. Bishop

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The Commissioners of Excise in Scotland having received a copy of the above Report of His Majesty's Procurator General and having communicated the same to the proper Officer of the High Court of Admiralty in Scotland with whom the Depositions and papers or copies of them might be furnished & the said Officer having declined furnishing the same the commissioners presented a further Memorial to their Lordships which [259] After shortly stating the substance of the former Memorial and the application made to the proper Officer of the High Court of Admiralty in Scotland proceeds as follows.

That Officer after consulting with the Judge Admiral signified in return. That he found it necessary at present to decline furnishing the papers required as he

conceived that the Jurisdiction of the Scotch Court of Admiralty in cases of this nature was fully established in Law, and could therefore consent by any such delivery, to give a sanction to proceedings which would set aside that Jurisdiction altogether – He added, that, a full Memorial on the subject should be forthwith transmitted to the Lord Advocate, in hopes that his Lordship before leaving London would take an opportunity of making such Communications to the Lords of the Treasury, and the Officers of the High Court of Admiralty in London, as would satisfy them, that Condemnations of Prize Ships in the Scotch Court of Admiralty were in all respects as conclusive and effectual as Condemnations in the High Court of Admiralty in England which would supersede any necessity in the present Case for new proceedings to authorize such Grant of the proceeds as His Majesty might be pleased to make – A Memorial we understand was accordingly transmitted to the Lord Advocate, stating the Jurisdiction of the Scotch Court, - But it does not appear that hitherto any proceedings in consequence thereof have taken place; And the Officers of that Court still continue to decline to furnishing the papers required to enable the Captors to institute proceedings before the Court of Admiralty at London.

We pray leave respectfully to represent to your Lordships that while matters continue in this situation, the Officers & crew of the Royal George yacht, notwithstanding their great merit in the Capture of the before mentioned Privateer must be effectually precluded from receiving any reward for their exertions in this service if your Lordships shall still be of Opinion that the Opinion of the King's Proctor in regard to a new Condemnation of that vessel before any Grant of the proceeds can be made, must necessarily be followed out This inconvenience to the Captors, We would take the [260] Liberty to observe has not arisen from any neglect or irregularity on their part; Condemnations in the Scotch Court of Prizes taken from the Enemy have been so frequent both in the present and in former Wars, and the powers of that Court in regard to such Adjudications so fully allowed that it never was apprehended that it would have been now called in question. In all former Cases of Condemnation before the Scotch Court as condemned vessels have without objection been admitted in consequence of such adjudication to the Privilege of British ships and a case occurred during the last War, upon a Capture made by one of the Cruizers in our service, where after such a condemnation a distribution of the proceeds was made under the authority of His Majesty's Sign Manual among the Captors, without any objection being made to the Jurisdiction of the court – Even in the present case the Commissioners of the Navy have in virtue of the Condemnation of Le Passe Partout already had, issued the usual Bill for the Head Money due thereon; and the Vessel has duly received a Certificate of British Registry as a Prize Ship regularly condemned. No idea was therefore entertained of any objection ever arising to the validity of the Condemnation which had been obtained; had this been understood as established by Law, the proceedings would have been at once instituted & followed out in the High Court of Admiralty in London.

Under all these circumstances we pray your Lordships indulgence for bringing again under your Lordships view the situation of the Officers & Crew of the Vessel by whom the Capture of Le passé partout was made, in the hopes that upon consideration thereof your Lordships may be pleased to wave in the present instance the objection to the Jurisdiction of the High Court of Admiralty in Scotland especially as the validity of that objection is so strongly contested; and to lay the case before His Majesty as formerly required for the purpose of obtaining His Majesty's directions in regard to the distribution or application of the proceeds and Head Money in such manner as may be deemed most reasonable & beneficial to the public service –

[261]

We submit to the superior Consideration of your Lordships the propriety of such a Representation and we have the honour to remain.

My Lords

Your Lordships most obedient and

Most faithful humble Servants

Signed Fred: Fotheringham

Jas. Sedgwick

James Jackson

Excise Office

Edinburgh

28th June 1809

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This Memorial was likewise referred to His Majesty's Procurator General who made the following Report thereon.

To the Right Honourable the Lords Commissioners for executing the Office of Lord High Treasurer of the United Kingdom of Great Britain and Ireland.

May it please your Lordships

IN OBEDIENCE to your Lordships Commands signified to me by George Harrison Esqr. One of your Lordships Secretaries I have perused the annexed further Memorial of the Commissioners of Excise at Edinburgh.

AND your Lordships having been pleased to refer the said Memorial to me to consider the same and report to your Lordships a State of the Case together with my Opinion what is fit to be done therein I laid the same together with a

copy of my former Report to your Lordships of the 10th of January last relative to the said prize Le passé partout before His Majesty's Advocate General and attended & consulted with him on the subject and under his advice I do further most humbly report to your Lordships – That it would not be proper on this occasion to enter into the question of the Prize Jurisdiction of the High Court of Admiralty in Scotland or to advert to it farther than to refer to what is stated in the former Report as the result of much Consideration which has been had of this Subject on former occasions – It is a principle which has been applied to similar pretensions on the part of other Courts of Admiralty besides that of Scotland – And therefore the necessity of observing a strict uniformity in the manner of considering the principle which in this Country is held to be universally conclusive [262] must be apparent – the obligation on the Court of Scotland does not appear to be so strong to refuse any accommodation that may be necessary to prevent the Captors from sustaining inconvenience from the situation in which their proofs are placed owing to their want of Information on the subject. It is obvious that the danger of any consequences prejudicial to the just pretensions of the Court of Scotland might be easily obviated by the manner of granting that accommodation and it will be unnecessary to say in this report that no advantage could be taken of it – If any delicacy is felt however with regard to the transmission of the original papers on this account the same objection will not apply to permitting the Captors to take authenticated copies of the Depositions and of the Commission of War and very few papers that will be wanted to prove the Prize to have been an Enemy's Privateer – It would not necessarily fall within the consideration of the Court what use was intended to be made of them. It is one of the alternatives suggested by the advice of His Majesty's Advocate in the former Report that authenticated Copies might be sufficient. It is hoped therefore that no objection will be made to this expedient and in order to give the Petitioners an opportunity of relieving themselves from embarrassments which ought not to affect their interests, it may be proper to refer them to their farther endeavour to obtain authenticated copies of the papers that may be necessary under the advice of His Majesty's Advocate as intimated in the former Report of the 10th January last.

All of which I do most humbly submit to

Your Lordships wisdom

Signed Chas. Bishop

Doctors Commons

17th August 1810

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The following representation has been made by Mr Campbell of the Admiralty Office in Scotland to the Solicitor General for Scotland and by him transmitted to the Lords of the Treasury

[263]

Admiralty Office Edinburgh 5th April 1810

Dear Sir,

When I had the pleasure of seeing you in Ayrshire, I mentioned the hardship and injustice of an attempt made by the Marshall of the Admiralty Court in England to take away the Jurisdiction of the Admiralty Court here in the Condemnation of Prizes, brought into the ports in Scotland, which the Judge of that Court has uniformly exercised for a period of 140 years back – this attempt was made last summer by a Report made to the Lords of the Treasury by His Majesty's Advocate General to whom an application to their Lordships had been made by the Board of Customs and Excise here for a gift of the proceeds of two prizes taken by their vessels and condemned here, and that report to the Treasury bearing explicitly that our Court had no such Jurisdiction and that these Prizes must be condemned of new in the Admiralty Court of England, but in order to satisfy their Lordships that this Court has by Law and has uniformly exercised the power of condemning Prizes a full memorial to that effect and a List of Vessels condemned here from the year 1672 to the present time, was prepared by Mr Dickson my Deputy and Mr Kidd as procurator fiscal, copies of which he delivered to the Board of Customs & Excise, and of course all the prizes which have since been brought into ports in Scotland, have in consequence of this demur been condemned in England by which the clerks of the Admiralty Court here, have already sustained a loss of more than 200 guineas – I earnestly request the favour of you to use your best endeavours to have the matter settled without further delay at the Treasury and in order that you may be satisfied of the fact that the powers of the Admiralty Court here to condemn prizes was clearly established and reserved to it at the Union and had been acknowledged by the first Lawyers in England since (the late Lord Mansfield and Mr York and I believe the present Lord Melville also when he [264] was Lord Advocate) I have transmitted with this copy of the Memorial before mentioned and Mr Kidd informs me that he gave a copy of it to Mr Ferguson of Pitfour who promised to interest himself in the matter also – I further transmit to you the authenticated copy of the list of prizes before alluded to. I mean also to print the Memorial and send copies of it (as it is a national question) to all the Scots Members, but shall not do this till I hear from you, as perhaps the Lord Advocate and you as Mr Solicitor General of Scotland [Lord David Boyle –Ayrshire family] if you choose to take the trouble may yet get the matters settled without any further application.

I have the honour to be with the greatest respect

Dear Sir

Your much obliged servant

(signed) William Campbell

Mr Solicitor General

Boyle

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This representation having likewise been referred to His Majesty's Procurator General he has made the following Report thereon.

To the Right Honourable The Lords Commissioners for executing the Office of Lord High Treasurer of the United Kingdom of Great Britain and Ireland.

May it please your Lordships.

In obedience to your Lordships Commands signified to me by George Harrison Esq. one of your Lordships Secretaries' I have perused the annexed Letter of William Campbell 10 & 11th Solicitor General Boyle, dated Admiralty Office Edinburgh 5th of April 1810.

And your Lordships having been pleased to refer the said Letter and also the Copy of the Memorial and List of Prizes therein mentioned to me to consider the same and report to your Lordships & State of the Case together with my Opinion what is fit to be done therein I laid the same with Copies of my former Reports to your Lordships on this subject of the 10th of January and 17th August 1809 and 5th of April last before His Majesty's [265] Advocate General and attended and consulted with him in respect thereto and under his advice. I do further most humbly report to your Lordships – That the List of Prize Causes adjudged in Scotland cannot materially affect the view taken of this subject in former Reports since it could not but be known that such Cases had occurred – the practice to a certain extent maybe admitted but the correctness of that practice has at all times been disputed. On the Opinion of Lord Mansfield it may be proper to observe that that eminent person is reported to have thought differently on this subject at a later period of his life. And it would be sufficient to oppose to the Argument drawn from his Opinion in the way of authority to deliberate dictum of the learned Lord who delivered the Judgement of the House of Lords on a Prize case carried up on appeal from the Court of Sessions in 1783 declaring that the High Court of Admiralty of Scotland had no Jurisdiction in Prize Causes "Browne's Parliamentary Reports V 5 P 328 Edit. 1803 On principle it will scarcely be denied at this day that a special Commission from the Lord High Admiral or Lords Commissioner of the Admiralty in pursuance of His Majesty's Warrant is necessary to empower any Court of Admiralty to exercise a Prize Jurisdiction. The Question will be therefore whether the Court of Admiralty of Scotland can claim such a Commission under any right reserved to it by the Articles of Union. If such a reservation was in general terms only "as of all

Jurisdictions and Courts” it would not seem to have an appropriate reference to Prize Jurisdiction which do not act for the protection of private right or interests and could not reasonably be required to be continued for the emolument of the Courts themselves. But the 19th Article of the Union is explicit in limiting the reservation applicable to the Claims of the Court of Admiralty. It declares all Admiralty Jurisdiction to be under the Lord High Admiral or Commissioners of Admiralty and goes on to stipulate “That the Court of Admiralty now established in Scotland be continued and that all Reviews Reductions or Suspensions of the Sentences in Maritime Cases competent to the jurisdiction of that Court remain in the same manner after the Union [266] as now in Scotland until Parliament of Great Britain shall make such Regulations and Alterations as shall be judged expedient for the whole United Kingdom so as there be always continued in Scotland a Court of Admiralty such as in England for determination of all Cases as now in Scotland until the Parliament of Great Britain shall make such regulations and Alterations as shall be judged expedient for the whole United Kingdom so as there will always continue in Scotland a Court of Admiralty such as in England for determination of all cases relating to Private Rights in Scotland” The Bounds of the Jurisdiction that was intended to be continued specifically to the Court of Admiralty are here distinctly marked by the object of the Reservation the protection of Private Rights of Suitors and cannot properly be confounded with prize jurisdiction which is altogether a different nature being constituted for the administration of public Law of the Kingdom relative to the Rights of War between His Majesty as the Fountain of all Prize and Foreign States. It appears to His Majesty’s Advocate that it will not be necessary to enter now at length into the question of Right in this place. On all grounds of Expediency it cannot escape your Lordships attention that the Establishment of a Prize Jurisdiction in a distant part of the Kingdom holding no easy communication with Government and having a different form of process and course of Appeal from that now in use must be very inconvenient. In the present instance it seems advisable to adhere to the Measures which have been taken under former Reports.

All which I do most humbly subscribe to your Lordships Wisdom

(signed) Charles Bishop

Doctors Commons

12th October 1810

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The Lord Commissioners of His Majesty’s Treasury have been pleased to transmit the foregoing papers to their Lordships with directions to lay the same before the AH? Solicitor General For their opinion thereon.

After the Exercise of this Right by the Admiralty Court of Scotland for a Century and a half, and after all the doubt [267] and various Opinions entertained respecting it, and the necessity once conceived to be regulate this subject by

Parliamentary Enactments it can hardly be expected we should give a decisive Opinion on the point so long contested. We hope it will be sufficient for us to say that it appears to us advisable if it be practicable that the usage which has prevailed so long be suffered to remain undisturbed till regulated & settled by Act of Parliament, or by the solemn decision of the Highest Tribunal competent to entertain jurisdiction over it.

(signed) V. Gibbs

Thomas Plumer

Line Inn 22nd November 1810