

E. EARL and Others, Commissioners of the Board of Customs for Scotland, Appellants.—*Shepherd—Gifford—Maconochie.* No. 43.

DAVID VASS, Respondent.

*Public Officer.*—Held, ex parte, (reversing the judgment of the Court of Session,) that public officers are not entitled or compellable to produce written communications made to them officially relative to the character and conduct of a party applying for a public office, the productions being demanded with a view to an action of damages against the writer.

VASS, who was formerly a paymaster in the Berwickshire regiment of North British militia, raised an action before the Court of Session against the Earl of Home, the Colonel of the regiment, stating, that having been about to be appointed to the office of Comptroller of Customs at the port of Grangemouth in Scotland, the Earl had, in answer to a letter from the Collector of Customs at that port, insinuated that he had been obliged to leave the regiment, which insinuation had given rise to a correspondence with the Board of Custom and the Lords of the Treasury with the Earl, who had in the course of it made various malicious, false, and calumnious statements against him, in consequence of which he was deprived of the office of Comptroller; and therefore concluding for damages.\* The Lord Ordinary ordered Vass to give in a condescence of his averments, and answers to be lodged by the Earl of Home; on advising which, he ordained 'the pursuer to confess or deny, by a writing under his hand, the statements contained in the answers to the condescence;' and granted to him a diligence for recovery of the writings founded on by him in the condescence. That correspondence consisted chiefly of the letters which had been written by the Earl of Home to the Commissioners of Customs, and to the Lords of the Treasury, in consequence of a requisition by them to that effect. In virtue of this diligence, Vass summoned the Commissioners of Customs and their Secretary 'to bring with them, exhibit and produce the writings founded on by the pursuer in his condescence, or such of them as they have in their hands, custody or keeping, and to depone thereupon as in an exhibition.' The Commissioners gave in a minute, objecting that they were neither bound nor entitled to produce the papers called for, as they had come into their hands on behalf of the public, and in the course of an investigation as to the fitness of Vass to hold an official and

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2D DIVISION.  
Lords Craigie  
and Reston.

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\* The summons is fully recited in the opinion delivered by the Lord Chancellor. See postea, p. 231.

July 17. 1822. confidential situation. The Lord Ordinary, on considering this minute, with answers by Vass, repelled the objection, ‘ in respect  
 ‘ that the Commissioners are cited merely as havers of the com-  
 ‘ munications made to them by the Earl of Home, and of the  
 ‘ case, 8th March 1814, Leven v. the Board of Excise.’ To this interlocutor the Court adhered on the 20th of February 1818. \*

The Commissioners of Customs having appealed, and no Case being lodged on behalf of Vass, the House of Lords ‘ ordered  
 ‘ and adjudged that the interlocutors complained of be reversed.’

LORD CHANCELLOR.—My Lords, this is a case brought before your Lordships upon appeal by the Commissioners of the Board of Customs in Scotland, which gives rise to the question, whether the appellants can be compelled to produce in evidence in a Court of Law, in an action depending between third parties, and in which they have no interest, officially or otherwise, the documents coming to their hands in the discharge of their official duty, and remaining in their custody? This question, so stated, arose incidentally in the course of the proceedings.

My Lords, in the paper I have in my hand, it is taken for granted by those who insist that the Commissioners of Customs ought to produce these papers, that the Commissioners of the Customs might, if they were influenced by caprice, produce the papers; and therefore it is argued, if it is competent for them to produce them, they ought to be compellable to produce them. I apprehend, in all the cases in which it has been held, upon the principles of public policy, that you shall not be compellable to give evidence of, or produce such instruments,—that is, wherever it is held you are not, on grounds of public policy, to produce them,—you *cannot* produce them, and that it is the duty of the Judge to say, you *shall not* produce them. This question is not, whether they can be permitted to produce them, but whether they can be compelled to produce them.

I preface what I am going to state by saying, that I do not mean

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\* See Fac. Coll. 20th February 1818, No. 155, where it is stated, that ‘ three of  
 ‘ the Judges expressed an opinion that the Board were bound to produce the letters  
 ‘ called for, being from a third party to the Board, and their contents being conde-  
 ‘ scended on, although the case might have been otherwise with regard to official  
 ‘ communications between the Board and their own officers employed in making in-  
 ‘ quiries, or between the Board and the Treasury. Their Lordships did not see why  
 ‘ the Board should not be bound to produce their information, as the Lord Advo-  
 ‘ cate is. The remaining two Judges were of opinion, that the compelling the pro-  
 ‘ duction of such letters would deprive the Board of the power of procuring inform-  
 ‘ ation, and that it would be unjust to the opposite party, as all that could be ob-  
 ‘ tained was only a partial production of evidence, it being admitted that the Board  
 ‘ were not bound to disclose their deliberations and proceedings upon the informa-  
 ‘ tion obtained by them, so that it could not appear to what extent the informa-  
 ‘ tion had operated.’

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to enter into the question, how far the representations in the answers to the condescence are or are not true; but I take the answers to the condescence as stating a case which may be proved, for the express purpose of illustrating the mischief which would arise from the producing them on the grounds of public policy. In the first place, it will be necessary to read to your Lordships the summons. The summons states, 'That in the month of May last the pursuer was nominated, by the Lords of His Majesty's Treasury, Comptroller of the Customs at the port of Grangemouth in Scotland, and his nomination having been transmitted to the Honourable Board of Customs in Scotland, they caused their Secretary to write to John Muirhead, Collector of Customs at Grangemouth, requesting to know if the pursuer resided at or near that port, or if the said John Muirhead, Collector, knew where the pursuer was to be found: That the said John Muirhead, Collector, being in the knowledge that the pursuer had formerly held the office of paymaster to the Berwickshire militia, wrote a letter to the Right Honourable Alexander Earl of Home, requesting to be informed where the pursuer was to be found: That the said Alexander Earl of Home, in returning an answer to said letter,' (your Lordships observe that this is not a part of the correspondence with the Secretary of the Board, but a letter from Lord Home,) 'did not confine himself to an intimation of his ignorance of the pursuer's place of abode, but, on the contrary, made a gratuitous and uncalled for assertion, that he neither knew nor had heard any thing of the pursuer since he was obliged to leave his the said Alexander Earl of Home's regiment.' Then he says, '—evidently with the malicious purpose and intention of ruining the pursuer's character; and preventing him from obtaining the office to which he had been nominated: (That, I take it, is an assertion, that it is evident from the Earl of Home's answer that he had a malicious purpose and intention of ruining his character; but how it can be evident that he had a malicious purpose and intention of ruining his character, when he merely says he had heard nothing of him since he had left his regiment, without saying for what cause,—whether from illness or otherwise, stating it simply as a fact,—I cannot conceive:)' 'That this letter having been transmitted by the Collector to the Board of Customs, they instructed their Secretary to require the pursuer to produce certificates to them of the manner in which he had discharged the duties of his former office of paymaster to the Berwickshire regiment of militia: That the pursuer thereupon applied to the Earl of Home, and the other officers of the regiment, for such certificates: That the Earl of Home, and all the other officers who were required so to do, granted accordingly' certain certificates of his good behaviour as paymaster of the regiment.—(It was not on account of any misbehaviour as paymaster of that regiment that he quitted it; but we shall see by and by from the answer to the condescence why he was obliged to leave the regiment.)—'That although these certificates were produced to the Honourable Board of Customs, yet, in consequence of the imputation against the pursuer's character conveyed by the said Alexander

July 17. 1822. ‘ Earl of Home in the letter above mentioned,’—(that is, the letter which states that he neither knew nor had heard any thing of the pursuer since he was obliged to leave his regiment, which is supposed to show *evidently* a malicious purpose,)—‘ they informed the pursuer, by their Secretary, ‘ that they could not admit him to the office to which he had been nominated as aforesaid, until he procured from the Earl of Home, and produced to them, a satisfactory explanation of the expression in his the ‘ said Alexander Earl of Home’s letter to the Collector of Grangemouth, ‘ before mentioned : That the pursuer thereupon more than once applied ‘ to the Earl of Home for an explanation of the expression in the letter, ‘ which he refused to give.’ Your Lordships will see by and by why he refused to do it. ‘ The pursuer thereafter submitted his case in a memorial to the Honourable Board of Customs, in which he detailed the cause ‘ which led to his resignation as paymaster of the Berwickshire militia; ‘ and also stated a reason’—(not saying in his summons what that reason was)—‘ accounting for the silence or refusal of the Earl of Home to explain the expression used by him as above stated : That upon considering this memorial, and accompanying certificates of character from the ‘ officers of the regiment, the Honourable Board of Customs expressed an ‘ opinion, by their Secretary, that they could not interfere in the matter ‘ of the pursuer’s appointment, and suggested the propriety of the pursuer’s stating his case to the Lords of the Treasury.’ Your Lordships will see hereafter that the Earl of Home’s reason for not giving an explanation of that expression was, that, in the discharge of his duty as a military officer, he had been in communication with the Secretary at War, and it was in consequence of those confidential communications that the circumstances passed, which your Lordships will hear presently: That, upon considering the pursuer’s own memorial, and the accompanying certificates of the officers of the regiment, the Board of Customs expressed the opinion I have just mentioned. ‘ That the pursuer accordingly did ‘ state his case to the Lords of the Treasury in a memorial to the same ‘ purport as that laid before the Honourable Board of Customs, upon considering which, their Lordships, by their Secretary, expressed an opinion that they could not interfere with the Board of Customs in Scotland, and referred the pursuer to them for a decision on his case : That ‘ the pursuer did therefore again submit his case to the Board of Customs, ‘ by laying before them the memorial which had been submitted to the ‘ Lords of the Treasury, together with the certificates of character before ‘ mentioned, when the Board requested the pursuer to produce a certificate of character from Sir George Warrander, Bart. Lieutenant-Colonel ‘ of the Berwickshire militia, which was also laid before them : That the ‘ Board of Customs having seen the pursuer’s character so amply certified, ‘ were at a loss to discover the reason or meaning of the insinuation ‘ against him contained in the letter of the Earl of Home to the Collector ‘ at Grangemouth, before mentioned ; and therefore they sent the said ‘ memorial to the Lords of the Treasury, and relative certificates to the ‘ Earl of Home, for the purpose, as is *supposed*,’—(no ground is stated

for the supposition,)—‘ of obtaining from him an explanation of the ex- July 17. 1822.  
 ‘ pression already mentioned, who thereupon wrote and sent a letter to  
 ‘ the Board containing statements against the memorialist’s character,’—  
 (this is all conjecture ; he does not state one word or reason for these state-  
 ‘ ments,)—‘ which induced them to come to the resolution not to admit the  
 ‘ pursuer into the office of Comptroller of the Customs at Grangemouth,  
 ‘ and to report so to the Lords of the Treasury : That, in consequence of  
 ‘ the gratuitous assertion contained in the letter by the Earl of Home to  
 ‘ the Collector of Customs at Grangemouth, first above mentioned,’—(the  
 contents of which letter are by no means either libellous or scandalous,)—  
 ‘ of his refusal to give any true and satisfactory explanation of the same,  
 ‘ although frequently required so to do ;’ and in consequence of these ca-  
 ‘ lumnious statements, he says that all this was done with an intention to  
 ‘ deprive him of the office to which he had been nominated, and that he has  
 ‘ been prevented being admitted to the same.

There were short defences put in to this summons, and then the Court  
 of Session did (as well they might) call upon this party to condescend upon  
 what he had complained of, and accordingly the condescendence is in  
 these terms:—‘ That the pursuer, in the month of May 1815, received  
 ‘ the usual official notice, that he had been nominated by the Lords of  
 ‘ the Treasury to be Comptroller of the Customs at Grangemouth, in the  
 ‘ room of Mr. Thomas Learmonth resigned, and he was at the same time  
 ‘ informed that he must repair to Leith for instruction in the duties of  
 ‘ his office. All this is instructed by a letter from Messrs. Muirhead and  
 ‘ Burns, two of the officers of the Customs at Grangemouth, dated the  
 ‘ 10th of May 1815, produced in process. Mr. Muirhead, the Collector  
 ‘ of the Customs at that port, having written to Lord Home, (of whose  
 ‘ regiment the pursuer had formerly been paymaster,) inquiring where  
 ‘ the pursuer resided, the defender was pleased, in answer to this, to state  
 ‘ that the pursuer had been obliged to leave the regiment. This state-  
 ‘ ment was utterly untrue ; for, though the pursuer had voluntarily resigned  
 ‘ his situation of paymaster a few weeks before the regiment was disem-  
 ‘ bodied, yet in fact he continued to act in that capacity, and never left  
 ‘ the regiment at all while it remained embodied. The Collector having  
 ‘ transmitted Lord Home’s letter to the Board of Customs, the pursuer  
 ‘ was required to explain the cause of his being obliged to leave the regi-  
 ‘ ment. He applied to Lord Home for an explanation of this unguarded  
 ‘ expression, which his Lordship refused to give ; and, on the contrary, by  
 ‘ additional representations and misstatements, written and verbal, regard-  
 ‘ ing the pursuer, his Lordship succeeded in depriving him of his ap-  
 ‘ pointment. The pursuer will prove that the various statements and re-  
 ‘ presentations made by Lord Home to the Board of Customs, or to their  
 ‘ officers, were untrue ; and that it was in consequence of these statements  
 ‘ and misrepresentations that he lost his appointment. In consequence  
 ‘ of these statements and misrepresentations, a report was made by the  
 ‘ Board of Customs to the Lords of the Treasury, stating that the me-  
 ‘ morialist was an unfit and improper person for the appointment, and

July 17. 1822. ‘ in consequence the pursuer has not been installed into the office.’ Then he states the annual salary, and the amount of his loss.

My Lords, the defender made an answer to the condescendence ; and I will just repeat again, that I am not stating this with an assertion that it is true, or giving any intimation whether it is true or untrue ; but upon the supposition that it may be true,—and where the question is, whether a man is fit to be the servant of the public, and where that question is to be decided by inquiries, and where the persons do not forget their duty so much as to say, I will give you no answer, although it is fit you should know what the reason is ; and as they may be liable to all these actions ;—your Lordships will see the grounds upon which, as I apprehend, upon the face of this case, it is a matter of public policy, that you cannot enforce this summons as the Court of Session thought fit to enforce it ; and so involving the Board of Customs, the Treasury, and the Secretary at War, and the officers of the regiment, in this litigation,

With respect to the condescendence, the Earl of Home states he knows nothing of the facts stated relative to the pursuer’s appointment, but he presumes they are correct. As to the second article, he says, ‘ With regard to the answer the defender is said to have made to Mr. Muirhead’s inquiries where the pursuer resided, he calls upon the pursuer to produce it. The defender kept no copy of it, as it was a casual inquiry, which he answered without thinking much about the matter, and he cannot, at this distance of time, recollect the precise expression he used ; but he asserts he had no ill will to the pursuer, or intention of injuring him, and neither on that nor any other occasion could he have used expressions which were not strictly true. With regard to the assertion that the pursuer voluntarily quitted the regiment, it is matter of opinion, not of fact, when stated generally. The pursuer has not stated the facts. The defender now does so, and calls on the pursuer to confess or deny them. The following letters were transmitted to the defender, as Colonel of the regiment, by Mr. William Christison, formerly a Lieutenant of the regiment:—‘ Edinburgh, 22d July 1814.—My Lord, “ I beg leave to transmit to your Lordship a copy of a correspondence “ between Mr. David Vass, paymaster of the Berwickshire militia, and me. “ —Copy of Mr. Vass’ two last letters to me from Tynemouth Barracks.— “ Tynemouth Barracks, 25th of February 1814.—Sir, I have just now received yours of the 23d instant. Any charge you have against me state “ it, and I will settle it, whatever it may be ; but, you low blackguard rascal, settle your account with me, and I am your man in any shape whatever. I am your most obedient servant, (signed) David Vass, Paymaster “ Berwickshire Militia. Mr. W. M. Christison.’—‘ Tynemouth Barracks, “ 26th of February 1814.— Sir, I wrote you last night in very explicit “ terms ; but I must now, from your conduct, tell you again, that you are “ nothing more or less than a low rascal. If you have the smallest bit of “ flesh in your whole carcase, you may show it ; but if there is a bit, it “ must be a very small bit. In my opinion, there is not a bit of the kind “ in your whole body. I am, Sir, your most obedient servant, (signed)

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“ David Vass, Paymaster Berwickshire Militia.’ Then Mr. Christison’s two letters to Mr. David Vass are set forth :—‘ Edinburgh, 15th of July 1814.—Sir, I have always delayed answering your two last letters until I were certain you were in town. Now that I am so, I have only to say, that the language in these last two letters is not to be borne with, nor passed over in silence. I therefore must insist that you either fight me, or make an apology. I wait your answer in course. I am, Sir, your most obedient servant, (signed) William Christison. To Mr. David Vass.’—‘ Mr. David Vass’ answer, in course, written on my card : Settle your accounts, and am your humble servant, (signed) D. V.’—‘ Edinburgh, 16th July 1814.—Sir, Your conduct is just what might have been expected from a cowardly but blustering poltroon. Your answer to my card of last night is just what might have been expected from a dastardly coward. Because my account is not settled, you are to hedge yourself under that poor pitiful pretence. If you still refuse to give the satisfaction demanded, I will instantly send a copy of the correspondence to the Colonel, your agents, the Secretary at War, and to the head-quarters of the regiment. The gentleman who bears this waits your answer. I am, Sir, your most obedient servant, (signed) Wm. Christison.’ Mr. David Vass declined a meeting. Mr. Christison goes on, and represents the matter to the Colonel :—‘ Allow me to say, my Lord, that every gentleman, both civil and military, who have seen the correspondence, are of one opinion, and it is, that the expressions uttered by Mr. David Vass are such as could scarcely have been expected from the most abandoned worthless vagabond upon earth, and that he is a disgrace to the situation he holds, and to mankind besides, and that I have done just what I should have done. I meant to have sent a copy of the correspondence to the officers of the regiment, but my friends think it sufficient that your Lordship is made acquainted with the business. I have sent the same to the Secretary at War, Messrs. Greenwood and Cox, and a number of Mr. Vass’ friends and acquaintances, as this I have sent your Lordship; and I always remain, with due respect, my Lord, your Lordship’s most obedient humble servant, (signed) Wm. Christison. I also beg leave to subjoin a copy of the placard which I meant to have put up in different parts of the town, but was strenuously advised from doing it by my friends.’—‘ Mr. David Vass, Paymaster, Berwickshire Militia, is a dastardly ruffian and an infamous coward. (Signed) Wm. Christison.’ Well, my Lords, this having been sent to the Secretary at War, I have understood—your Lordships perhaps may know whether that is the custom of the Secretary at War or not—that the declining a challenge is sometimes thought sufficient to dismiss a man from the service. ‘ The Secretary at War transmitted Christison’s letters to the defender, and ordered him to inquire into the circumstances of the case : That the defender, after he had received the correspondence transmitted to him by Christison, stated the case to General Fuller, the Commanding Officer of the district, and General Fuller directed the defender to send for Mr. Vass, and ask him whether he acknowledged him-

July 17. 1822. ‘ self to be the author of these letters, and if he did, to put him under  
 ‘ arrest: That the defender sent for the pursuer, and informed him of the  
 ‘ orders he had received from General Fuller, and upon his admitting that  
 ‘ he had written the letters, Mr. Vass was put under arrest accordingly:  
 ‘ That the defender reported what he had done to General Fuller, who  
 ‘ said he would state the matter to his Royal Highness the Commander  
 ‘ in Chief, and request an order for summoning a Court-martial: That  
 ‘ while the pursuer was under arrest, the Adjutant informed the defender  
 ‘ that the pursuer wished to resign his commission, rather than stand a  
 ‘ Court-martial: That the defender, in answer to this message, said that  
 ‘ it was not in his power to accept of his resignation in the circumstances  
 ‘ in which the pursuer stood: That the defender applied to General Fuller,  
 ‘ at the pursuer’s request, communicated by Captain M’Laren, the Ad-  
 ‘ jutant, for permission to accept Mr. Vass’ resignation: That General  
 ‘ Fuller gave permission, and a letter was sent by Mr. Vass resigning his  
 ‘ commission: That, in consequence of that resignation, the pursuer was  
 ‘ immediately struck off the strength of the regiment, as having resigned,  
 ‘ on the 29th of July, and is returned as having resigned in the next re-  
 ‘ turns of the 10th of August; but having some accounts to make up, he  
 ‘ was continued in the place, and not permitted to resign till the regula-  
 ‘ tion upon the subject with respect to paymasters was carried into effect:  
 ‘ That the defender reported these proceedings to the Secretary at War,  
 ‘ as it was his duty to do, upon the 4th of August, and received in reply  
 ‘ the following letter:—‘ My Lord, I have the honour to acknowledge  
 ‘ the receipt of your Lordship’s letter of the 4th instant, relative to the  
 ‘ dispute between Paymaster Vass and Mr. Christison, and to acquaint  
 ‘ you that the steps which your Lordship has taken thereupon appear to  
 ‘ me extremely proper. I have the honour to be, &c. (signed) Palmer-  
 ‘ ston.” The pursuer, in answer, is called upon to confess or deny each  
 of these particulars, and then he goes on to state, ‘ That the defender, when  
 ‘ applied to by the Board of Customs, referred to the Secretary at War  
 ‘ for the circumstances that took place relative to Mr. Vass’ quitting the  
 ‘ regiment. The Board of Customs having been referred by him to the  
 ‘ Secretary at War, he apprehends they did apply to the Secretary at  
 ‘ War, and that the consequence was, he was not appointed.’

Your Lordships will see that this is a case in which it becomes necessary, in order, if any justice whatever can be done, that not only the correspondence which is in the hands of the Board of Customs, but also all that has passed with the Secretary at War—and not only all that has passed with the Secretary at War, but all that has passed with the officers of the regiment—and not only all that has passed with the officers of the regiment, but all that has passed with respect to the Treasury, must all be set out. The Board of Customs are to be called upon to produce the documents they have in their hands relative to this transaction, going through so many public officers, inquiring into the conduct of an individual under all the circumstances in which Mr. Vass stood. The question is, whether, upon the grounds stated, the Board of Customs, as



the servants of the Crown, having these papers in their hands, are at liberty to produce them? So I must put the question. If they were at liberty to produce them, they might be compellable to produce them. There are many cases that bear upon this, which it is not necessary to go through. In the case of an information in the Court of Exchequer, where a man gives information as to smuggled goods, they will not allow you to ask who gave the information. So, as to cases of high treason, they will not allow a party to tell who gave the information. They will not allow it; and in a late case which I have in my hand, this matter was very much discussed, as far as the War Office was concerned, and which came very near to this. It is the case of *Home v. Lord William Bentinck* in the Exchequer Chamber in 1820, which refers to another case in the King's Bench, in Lord Ellenborough's time. There the principle is laid down—not that the right is, as here discussed, to withhold a document, because it is the property of the individual who has it—but because it is against public policy that you should be compelled to produce instruments and papers, which if persons are compelled to produce, it must shut out the possibility of the public receiving any information as to a person's fitness to be appointed to an office. Upon these grounds it has been held, in this part of the country, we can enforce no such direction. I took the liberty to communicate with the Lord Chief Justice upon this case. I showed him the papers; and he stated, without the least hesitation, that he would not have permitted any such production as is here called for, upon the grounds I have stated. I do not find in the papers that they state any cases by way of precedent, except of the production being ordered in one instance, and refused in another. I allude to the late case of *Leven* against certain individuals, where they had ordered the production by the Commissioners of Excise for the pursuer, and refused to order it for the defender. I do not enter into the question whether, if they ordered it for the pursuer, they had any reason to distinguish between the cases. If your Lordships recollect that case, it was there one ground very much insisted upon in the argument, that the production ought not to have been called for; and it will likewise be in your Lordships' recollection, that the persons who had the honour of stating to your Lordships the grounds on which the judgment ought to be given in that case, were extremely studious to avoid saying any thing upon the question, whether in the one case the production had been properly compelled, or in the other properly refused, because there was, in your Lordships' opinion, quite enough to reverse the judgment without entering into that consideration. The case of *Leven* comes nearest to this. It was a case which the parties thought proper to appeal upon, but which did not make it necessary for your Lordships to decide upon that point. Upon the whole, it does appear to me it would be a very dangerous thing indeed, if this were permitted; and therefore it does seem to me that this judgment ought to be reversed.

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July 17. 1822. *Appellants' Authorities.*—James, Jan. 1. 1709, (3433); Young, Feb. 27. 1816, (F. C.); Buller's N. P. 284; 4. T. R. 140. 144; 2. Vesey jun. 189; Peake's L. of Ev. 93. 94. 95; 2. Raym. 927; 1. Strange, 646; 2. Strange, 717. 1005. 1203; 1. Wilson, 104. 239.

SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 32.*)

No. 44. STIRLING and ROBERTSON, Appellants.—*Fullerton—Pollock.*  
W. GODDARD, Respondent.—*Jardine—Ivory.*

*Insurance—Representation.*—A party having in April effected an insurance on a vessel from Hull to America and home again, on a representation that she was immediately to sail; and the vessel not having been then ready to sail, and not having sailed till June; and a war with America having been expected, and having been declared in July; and the vessel having been ~~in the mean-while~~ taken and destroyed in August by an American privateer—Held (affirming the judgment of the Court of Session) that the underwriters were not liable.

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1ST DIVISION.  
Lord Alloway.

STIRLING and ROBERTSON, merchants in London, were proprietors of the ship *Royal Bounty*, of which John Robertson of Austin-Friars was the registered owner. In the spring of 1812 she was under repair in the port of Hull, and on the 18th of March Dopkin and Company, the carpenters, wrote to Stirling and Robertson, that 'you may rest perfectly satisfied no time shall be lost in getting the *Royal Bounty* away, but there is a great deal to do at her yet. I fear it will require the whole of the next month to get her to sea;' and on the 24th of that month they informed them that 'we have very bad weather just now, which is much against getting the *Royal Bounty* finished; but you may rely no exertions of ours shall be wanting to get her away as fast as possible.' The object of these repairs was to fit the vessel for a voyage from Hull to Prince Edward's Island or Bay of Chaleurs in America, and home again. On the 13th of April Stirling and Robertson wrote to Mr. Duncan, insurance-broker at Leith, stating—'Please insure £6000 on the hull and materials of the *Royal Bounty*, Captain H. Gambles, as may be afterwards valued, from Hull to her port or ports of loading in Prince Edward's Island, during her stay there, and from thence to her port or ports of discharge in Great Britain; the premium not to exceed seven guineas per cent.; and if a return can be obtained for sailing north about, or with convoy, you will of course get it inserted. The *Royal Bounty* has undergone a thorough repair at Hull, which has rendered her a substantial vessel, and she is in every respect properly equipped for the voyage. It is our intention to give her ten guns; but this, of