

Ld. Advocate (Sir Jas. Montgomery Bt) to Ld. Harkestone

11827-8

Edin 13<sup>th</sup> Oct: 1827

My Dear Lord

I had yesterday a long consultation with the Lord President and Lord Justice Clerk upon the improvement of the Court of Session, and as each of us had been considering the subject for some time past, we were enabled to form the outline of a Plan which the President is to put into writing and transmit to your Lordship in a day or two. —

At present it is unnecessary to enter into any discussion of the merits of the Plan, or anticipate the objections that may be made to it, neither is it necessary to mention a variety of subordinate regulations that may be required.

I believe I told you, I had applied to Lord Meadowbank, to give me his ideas on the subject, as I knew he had formerly bestowed a great deal of attention on it. I had a meeting with him to day, when he showed me what he had written; it is not yet completed but when I get it from him, shall send you a copy of it, that you may be possessed of all the information on this important subject that it is in my power to procure. It does not very materially differ from the other.

If after considering these your Lordship wishes information on any particular part of the Plans, or on any part of the present practice of the Court, I shall be happy to furnish you with it.

Ld. Advocate (Sir Jas. Montgomery Bt) to Ld. Mansfield

11828

A Business of this kind is more easily discussed in conversation than by correspondence; I shall therefore postpone, making any observations on this subject till I have the honor of meeting you, unless you wish information on any particular point.

As I presume Government will wish the attendance of all their friends at the meeting of Parliament, I shall go up to Town at that time, when I will have an opportunity of waiting on your Lordship on this business.

I have the Honor &c

My Dear Lord

Your most ob. Servant

Jas. Montgomery

The Right Honble  
Lord Mansfield

Elizabeth R

April 28 1837

Madam

Dear Madam

Yours truly  
Elizabeth R

Ld. Advocate to Ld. Han. Resbury

11829\_30

My Dear Lord

Edinb 19<sup>th</sup> Oct. 1805

I now send you a general outline of alteration on the Court of Session, drawn up by the Lord President in the form of a letter which is signed by him the Justice Clerk and myself. — I have likewise transmitted a copy of Lord Meadowbank's Observations on the same subject, which I think will deserve your attention. — You will perceive that in both the diminution of the number of our Judges is objected to. — Every Person I have conversed with on that subject is of the same opinion

The present number is certainly too great to act together in one Court; but they are all required to carry on the business of what is termed  
the

the outer House; where Causes are prepared & judged of by a Single Judge in the first instance.

When it was in agitation about 20 years ago to diminish the number of the Court of Superior there was a general opposition to the measure in this Country. - Several Pamphlets were published on the occasion, and the Freeholders entered into Resolutions against the measure in some of the Counties. - I shall endeavour to get copies of all those, to show you the grounds on which the opposition was supported at that time.

I do not think that a business of so much importance can be adjusted by a correspondence; and therefore beg leave to suggest that the Lord President, the Chief Baron the Justice

Ld. Advocate to Ld. Hawkesbury

11830

Clerk and myself should meet your Lordship & the Lord Chancellor in London when it might be with much more facility and satisfaction to all Parties. - I know that Men Judges will go to London on that business with great pleasure, or will adopt any other Mode that your Lordship may think preferable for accomplishing so desirable an object.

I have the Honor to be

My Dear Lord

Your Lordship most st. & humble

Jas. Montgomery

The Right Honble

Lord Hawkesbury

&c &c &c





May  
Campbell,  
Chas  
Hope  
Sinfas  
Kent-  
Gowery  
Eue.

11831-2

In the Lord's Court  
Letter of the 19<sup>th</sup> Oct.

My Lord,

Within the last ten years the business of the Court of Session in Scotland has very much increased, owing to the great extension of commerce, and to a variety of other circumstances connected with the flourishing and improved state of the country.

The Judges of that Court (15 in number) sitting in a body in what is called the Inner house, and acting both as a Court of original jurisdiction in causes of a certain description and as a Court of review in other causes, are now unable to overtake the whole business which comes before them, so as to dispatch it within any reasonable time, & with sufficient deliberation; each Judge, excepting the Ordinar, sitting in the Outer house, being obliged to read, hear, & consider the arguments in every cause coming into the Inner house, whereby the arrears of business left undone is daily increasing.

The greatest part of the business originates in the Outer house, and is done in the first instance by individual Judges sitting there by rotation under the name of Ordinaries, but from them every cause may be brought by reclaiming petition or report (i.e. reference) into the Inner house to be ultimately decided by the whole court, so that every cause first or last, does, or may come under the views of all the Judges in a body, and by the present forms no fewer than 9 Judges in the Inner house can make a quorum. It generally happens that there are 12 or 13 present, and there must always be at least nine. This

occasions too, a good deal of unnecessary discussion & much waste of time.

The evil would be at once remedied if the quorum in the Innerhouse were reduced to 5, and the Court formed into two different bodies for the purpose of advising & determining causes in the Innerhouse distinctly & separately from each other, as they would be thereby enabled with great ease to overtake double the business which it is possible for them to do at present. It would be tantamount to a division of the College of Justice into two distinct courts of 8 Judges each; for the President who has nothing to do in the Outerhouse or at Circuits, could with little more trouble than he has at present, act as the head of both divisions, consisting of 7 ordinary Judges each, besides himself; or if it should be thought too laborious a duty for the President to act in both, one of the 5 Barons of Exchequer might be introduced into the Court of Session to make the whole number 16, divided into two classes of 8 each, in one of which the President would of course fill the chair, and in the other a vice President.

These two divisions of the Court would meet alternately, by weekly rotation, in the same court room, attended by the same clerks and officers of Court, and doing in equal parts the same business which is at present all done by the whole body, but with the twofold advantage, first of the Judges being better prepared in every cause, & 2<sup>dly</sup> of spending much less time in discussions while in court.

The Outerhouse business would go on exactly as it does at present, one of the Judges of that division which occupies the Innerhouse bench for the time, sitting as Ordinary in the Outerhouse, or perhaps two Ordinaries according to a late regulation, while the other 6 or 7 of them are employed in the Innerhouse doing the accustomed business of that department.

If there be any idea entertained that the

present total number of our Judges might be reduced, and the civil business of the country done as it is in Westminster hall by 2 or 3 distinct Courts consisting of 4 Judges each, we beg leave to represent that the whole system of the law of Scotland and of the jurisdiction & nature of its Courts is so materially different from that of England that we do not think they can ever be assimilated. Besides the 3 Courts of King's Bench, Common Pleas & Exchequer, consisting of 4 Judges each, we understand that the Court of Chancery, with the assistance of the Master of the Rolls and 10 or 11 Masters in Chancery, do a great deal of the business of England; that there are also Welsh Courts & other Courts of special jurisdiction.

In Scotland we have Sheriff Courts & other Courts of subordinate jurisdiction, but every cause originating in these may by very simple & easy forms be brought from them into the Court of Session, and in fact a great part of the duty of the Supreme Judges consists in reviewing the proceedings of other judicatories.

Without a complete change in the whole texture of our legal proceedings, and in the forms of our Courts, which was guarded against by the Articles of Union, and would be violently resisted by the people of Scotland, there would be an impossibility of carrying on the business of the Court of Session with fewer Judges than we have at present, especially now that the business of the country in general is so much increased, and that even the extended commerce of England & its Colonies, has from our intimate connection with them produced a great increase of transaction and of litigation in Scotland. An attempt was made in the year 1785 to diminish the number of Judges in Scotland, but it was opposed by all ranks of people in that country & given up, altho' at that period the state of business in the Court of Session could more easily have admitted of it than now, when the transactions of the country have been so greatly multiplied.

It requires the greatest exertion of all the individual Judges, sitting by turns in the Outerhouse, to do the business which must there be done by them as Ordinaries in the first instance, especially as it sometimes happens that one or two of them are disabled by age or infirmity from regular attendance, and it has never yet been the practice to pension off any of the Judges of the Court of Session. Provision must always be made not only for the attendance of a competent number of Judges as a Court of review in the Innerhouse, but also for the necessary preparation of causes in that department of the Court which is called the Outerhouse, which can not be done without the usual number officiating in rotation.

In short We are clearly of Opinion that there ought to be no diminution of the number of Judges in Scotland, and at any rate even if this should in the end be thought advisable, We think it our duty to suggest that the present vacancy ought not to be kept open, as this would infallibly produce a great alarm in the country, would divide the bar & the people in general into parties, and very much interfere with the deliberate consideration of so important a subject as that of making any change upon the Supreme Courts of Justice in Scotland.

That some change may be necessary We admit, upon the grounds already stated; but We are clear that this ought to be done without diminution of the Judges and with as little deviation as possible from known accustomed form, or from the genuine acknowledged principles of our legal constitution.

We have only to add that perhaps an intermediate Court of appeal might with advantage be established in Scotland, to pave the way for a more thorough elucidation of important causes which may ultimately go to the last resort, and to check

in some degree the progress of unimportant or very clear cases which ought not easily to find their way to the highest Court. We scarcely think ourselves competent to give any decisive Opinion upon the form of such a Court, or of what persons it ought to be composed. It naturally occurs that the heads of the 3 Courts, i. e. the President, Chief Baron and Justice Clerk, should be members of that Court of appeal. Perhaps also one ordinary Judge out of each of the 2 divisions of the Court.

These are points however which, together with the whole detail of the business, will require much deliberate consideration. So far we think is clear, that by putting it in the power of this intermediate Court of appeal to stop execution or not as they shall see cause, and to require recognizances for full costs, and not to admit of further appealing except from definitive judgments, the number of appeals to the House of Lords would probably be reduced to one fifth, or perhaps to one tenth of what it is at present, and such causes as might still go there would of course be better explained and more easily understood.

We have the Honour to be

My Lord,

With great respect

Your Lordship's most obedient &  
most humble Servants

Edinb: 15. Oct. }  
1805 ——— }

Jay Campbell

*J. M.*

Right Hon<sup>ble</sup>.

Lord Hawkesbury &c &c J. M. Montgomery



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By the system of Scottish Jurisprudence the Subjects have a right to Claim a Review of Judgements pronounced in matters of fact as well as in matters of Law; Hence all parole evidence taken by Authority of the Civil Courts, enters on the Record and the Law intends that the parole evidence whether taken by the Judges of the Court or by Commissioners empowered by them should amount as nearly as may be to a correct Narrative taken in short hand of an examination of Witnesses answering to Questions put to them ex improviso in a similar way to what takes place in examinations before a Jury. - The Law of Scotland also admits of evidence from the Judicial examination of the Parties litigating and from Oaths of Parties taken on a Reference by their Antagonists as to facts on which they are at Issue; And as the Forms are not in practice prescriptive as to closing the evidence, there is an Opportunity of bringing additional Proofs, both by Witnesses and in writing any time before a final Judgement is pronounced. In the same way before a final Judgement is pronounced there is an Opportunity for

for repeated the hearings of the Cause, and the Applications for this purpose contain full Arguments on its Merits, and are met with Answers equally full by the Opposite Party and all enter on Record.

It is obvious that this System renders the Office of a Scotch Judge extremely laborious and the proceedings tedious and expensive while it demands a very numerous Establishment of persons dedicated to the Profession of the Law in One Shape or Another. - It produces however ultimately a very thorough Consideration of the Case, affords the Sovereign Tribunals a Very effectual Review, and creates a powerfull Control securing the Diligence and impartiality of Judges. - Accordingly notwithstanding the Convulsions and various disorders which afflicted Scotland during the Seventeenth Century, this System had proved so satisfactory to the Nation that in 1707 the preservation of the Court of Session as well as of the Municipal Law itself was anxiously stipulated in the Treaty of Union and it is believed that the lapse of another Century distinguished by Domestic peace and the progress of Civilization has not diminished the National Attachment to it.

At the same time the defects inherent in it, are now beginning to be heavily felt. - The increasing Opulence and Prosperity of the Country Augments the

Number



Number of Law Suits, and the same Cause aided by the diffusion of knowledge lengthens the discussions which the Pleadings are Pamphlets to be perused by the Clients as well as considered by the Court. - Something of this kind took place in the Roman Empire after Law had become a Science and the Opinions of Judges in Matters of evidence as well as in Matters of Law were Subject to the successive Reviews of Superior Tribunals. It is also well known that for a long period preceeding the late fatal events, similar Inconveniences had weighed heavily in France, from whence the forms of Administration had been borrowed by James the Fifth in locating the Court of Session. - It had been found necessary there, to divide the Courts of Parliament so as to have almost the whole year converted into Term time. - Thus the Corps of Legistes became enormously Numerous and a heavy Tax on the Income of the Country, while at the same time the proceedings grew more and more ~~numerous~~ voluminous, and the Expense and delay of Justice constantly increased. And now the Court of Session though under the Presidency of a Gentleman of distinguished and unwearied Industry and Activity has proved unable to sustain the business of the Country and is nearly one full Year in Arrear - It is also believed that the same Causes have

Augmented

augmented the number of Appeals to the House of Lords and that in this Age of Commercial Speculation it has frequently been a matter of Calculation whether or not to incur the expence of an Appeal merely in Order to procure a stay of Execution. An effect however which does not appear to be warranted by the Operation of Appeals previous to the Union, and appears to run counter to the Intendment of the Grant of Rights at the Revolution. —

To find a Radical Cure for evils already great and which very obvious Causes unite with the experience of other Civilized Nations under similar Systems of Jurisprudence to show, must continue to increase with the prosperity of the Country, has afforded matter of much Reflection for some of the Members of the Court of Session. But the problem is of very difficult Solution. — They naturally turned their Eyes to that System of Administration of Justice which in the Sister Kingdom has enabled the same Number of Supreme Courts and Judges that were deemed necessary for the dispatch of business in the time of the first Edwards to bear without being overloaded, the burden of administering Justice to a Country now become the most opulent and Commercial, that an Age, the most Civilized which the world ever saw, has produced, Next when they reflect on the singular felicity, nice adjustments, and skilful practice by which the Trial by Jury in Civil Causes, while abandoned in the rest of Europe, as arbitrary incapable and quite unsuitable to a System of cultivated Jurisprudence, has been rendered the great Instrument of this wonder, they are convinced

that neither this Country nor its Courts are at present prepared for adopting successfully that Institution. In England the Trial by Jury satisfies the Country that Causes are well and fairly decided though neither the evidence nor the directions of the Judge appear on Record, though there be no opportunity for a renewed cool consideration of the Case and though no proper Appeal lies against the Verdict, and the only remedy is a new Trial by a different Jury deciding with similar Rapidity on evidence brought of new before it. In this way however the immense Labour and expense of recording parole evidence and putting in Writing the Arguments on the Import of it is saved to the Nation and a chief inducement to Appeals and re-hearings is cut off. But to create this satisfaction in the Country a System of Control is established over both Judge & Jury and what is of much more consequence a Spirit of temperance and forbearance is universally infused; Both Courts and Jurymen having been disciplined to their duty by the exertion for Centuries of Characters of most distinguished worth and Talents. - To render the Jury an effectual Control on the Judge, there is not only the Call of feeling to acquit himself with propriety, of his Honourable and important duty, and to obtain the Approbation of the intelligent and upright Men for whose Judgement

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he prepares the case; But there is also the high power entrusted  
to the discretion of Jurymen of assuming to themselves the right  
of Judging of the Law as well as of the fact, and there is  
besides the remedy of Redress from the Court to which the  
Judge belongs in case of Misdirections to the Jury - Again  
to render Juries docile and dutiful to the directions of the  
Judges the Powers of the Courts in granting New Trials and  
admitting or rejecting evidence, and still more their  
great Wisdom and long training to skilfull practice  
Combine with the habits of a decent and Steady People,  
which honors and Venerates its Constitution to prove  
effectual. But it is thought that for a long period in a  
Country new to the Institution, Juries would be apt to be  
Arbitrary, Unteachable and to be misled by Counsel,  
while Judges on the other hand would have less weight  
from want of early training to a function certainly  
not without difficulty, especially if exercised among  
Unpractised persons, and it is also feared that the  
legal Remedies of Bills of Exceptions and New Trials  
would become engines of immense litigation for a  
Generation to come.

Neither have certain imperfections in the trial  
by Jury escaped observation. The vast advantages  
for discovering Truth by means of Judicial Examinations

of Parties on questions put to them ex improviso have been much felt in Scotland, but this is a Form of proceeding which appears not to be suited to Jury Trials, and indeed seems hardly to be known in England, except when of consent Cases are sent by the Courts to Judicial Arbitrators with Extraordinary Powers; Besides when Proofs relate to facts which have occurred in Foreign Countries or when the evidence depends to uncommon dimensions, the patient Consideration of the Judges of the Law seems far more suited to the Trial than that of persons of Common Professions, though intelligent and Accomplish'd as the Members of special Juries usually are, and it is also thought that in general where facts depend on the Construction or import of Documents in writing, the Trial should remain with the Judges exclusively: and it is believed that this in fact takes place in England though pro forma a Jury may appear to try the Cause. ↵

From the above Views it has been thought that though the Institution of a Trial by Jury in Civil Causes might under certain Limitations be looked for: - would to as an Ultimate Remedy for those inconveni- -encies with which the present System is attended,

All

all that could with prudence be thought of in this way at present would be the affording an opportunity for the Introduction of it in some of those Cases where the Advantages attending it are peculiarly strong & obvious and thereby gradually accustoming the Country to bear the load of it cheerfully, and Discharge the Duties of it properly, while at the same time the Law, the Judges and the Lawyers were trained to the Right practice of it. ↪

In the meantime, something of importance it is conceived, may be done to obviate the evils complained of. ↪

It would be of much Consequence could the time passed in the Public deliberations of the Court be abridged; That for the private Study of the Pleasings and Arguments enlarged, and leisure and Opportunity afforded to the Judges to take in person Judicial examinations of Deputies and the Testimony of Material Witnesses - The Opportunity of rehearings too might be laid under Managers with great Advantage and some part of the labour which bears so heavily on the Court of Session might be required from the Court of Exchequer without either hardship or degradation, but on the contrary prove the Means of conferring on it

Additional

Additional weight and respectability with the Public.

At the same time whatever Arrangements may be adopted, care should be taken not to hurt or discourage the Scottish Bar, which on the contrary rather requires Support to maintain it in its former lustre. - In the present times the demand of Justice added to that of an increased Navy & Army, attract our Students, as well as enterprising Youth, from a profession which though honourable, ceases in return for the severest Labour, to hold out Emoluments at all proportionable to those which are promised to the successful in other lines of Life. - It holds out no Office, on the Revenue of which a Gentleman can subsist, except perhaps those of the Supreme Courts at Edinburgh, None of those of the British Foreign Establishments are within its Competency, and it has no Sinecures, nor Commissioners of Affairs, nor Principalities, nor Counties Palatine to look to, and in fine, the Peerage to which, before the Union, it naturally aspired, seems now to be far removed beyond its utmost reach; Yet the Scotch System of Administration of Justice, demands a learned, numerous and accomplished Bar, as much perhaps as any that ever existed - Hence it is thought that however they may be distributed the Number of Judges should not be diminished, and

as Scotland cannot furnish a Double Bench, the Measure of dividing the Judges as was done in France, and making them officiate alternately six Months and six Months, must on this as well as other accounts be rejected. ↪

After attending to these and many other Considerations it is with deference proposed that the Court of Session should be divided into Two Branches or Chambers, each of which should consist of a President and Seven Judges and as that Court at present consists only of Fifteen, the Chair wanting should be supplied from the Exchequer on the first Opportunity. —

That the Fourteen Justice Judges, which in this manner will be kept up should officiate by Rotation as at present in the Outer House, by which means there will be a Judge belonging to each Branch usually occupied there. And as another in each Court may also often be absent from Age or Indisposition, the number of Attending Judges in each Chamber may be reckoned at Six, which perhaps is as few as ought to be in Order to give due Weight to their Decisions as Jurymen trying facts, And for the same Reason the Quorum should not be under Five. —

That the Right of Review of the Judgments pronounced



pronounced in the Outer House shall belong to the Chamber  
in which the Judges that gave them forth respectively  
sit; But after an Interlocutor in Review has been obtained  
in such Chamber, it may receive a Petition ag<sup>t</sup>. such  
Interlocutor to the effect of ordering it to be Answered,  
or if such Petition is accompanied with consignment  
of the costs of Answers, it shall pro forma Obtain  
such Answers to be put in, Or if such consignment  
is not made it may reject such Petition; But it  
shall not of itself be <sup>competent</sup> to review its own  
Interlocutors except in a Sederunt where the Lord  
President of the Outer Branch and the Lord Chief  
Baron of Exchequer and a Justice Judge of that  
Court appointed to that function by the Crown  
(the Baron so appointed having been of the Bar  
of Scotland) shall be Members; And the Orders  
or Judgements of the Chamber thus enlarged  
whether affirming, Varying or Reversing the  
Interlocutor Reviewed, and whether pronounced on  
Advising such Petition singly or with Answers Or  
after further Argument or proceedings shall be  
final and Irrevocable in Scotland; But if the

Interlocutor be affirmed, the Costs Consigned shall be forfeited to the Respondent. ~

That it shall be competent to either Chamber before pronouncing its Interlocutor and with concurrence of at least two thirds of the Judges present to Order the cause to be argued before both Branches and when that takes place the Lord Chief Baron and Reviewing Baron shall have seats in the Court, and the Interlocutor pronounced by this Union of Chambers shall not be subject to Review in Scotland. ~

That the Lord President of the Court shall be the Ordinary President of the first Branch or Chamber and shall when present, whether in the enlarged Chamber of Review, or in the United Chamber likewise preside; ~~and if all three are absent~~ but if absent the Lord Chief Baron shall preside, and if both are absent the Lord President of the second Chamber shall preside, and if all three are absent, a President for the time shall be elected by the Judges present and officiating. ~

That hereafter the Court of Duchesne shall perform exclusively the Functions exercised at present by the Court of Session in Authorising and

regulating the Management of the Affairs of Duffels, Misons and Absentees and settling the accounts of that Management and shall also fulfill the Duty of Commissioners for Plantation of Misons and Valuation of Periods, and the Court of Session shall no longer be competent to that Function. ~

That the Court of Exchequer likewise shall henceforth have a Cumulative Jurisdiction with the Court of Session in the Trial of Complaints respecting the Elections of the Magistrates and Councillors of several Burghs and of Actions of Damages for Injuries not arising from breach of Covenant or ex Contractu, and may try the same either at Bar or before or after Term by a single Judge in the nature of proceedings at trial prices, and with similar Remedies, as these takes place in case of Irregularity of proceedings, Misdirection of the Judge, or Verdict Contrary to evidence. ~

That it shall also be competent to the Court of Session in either of its Branches, but only with the Concurrence of the Parties to Order any Cause not Involving the Validity or Construction of Heretable Rights, to be tried by a Jury summoned  
and

and Constituted according to the Forms practised in  
 Criminal proceedings in Scotland, but with liberty to return  
 a Verdict Viva Voce, to be entered on Record by the Clerk  
 of Court, and may direct the Lord Ordinary to the Cause,  
 assisted by any of their Lordships members to officiate at  
 the trial, and to hold the same either at Edinburgh  
 or else where and in the time of Session or Vacation  
 as most convenient. But the Verdicts so Obtained shall  
 not be liable to Reduction or Suspension, but merely  
 to such redress as is allowed in England for Irregularity  
 in the proceedings, Misdirection of the Judge or Verdict  
 given contrary to the Evidence. ↪

That henceforth the Service of an Appeal  
 against the Judgement of the Court of Session shall  
 not stay Execution thereof but only Operate the  
 same effect as a Writ of Error issuing against a  
 Judgement in Exchequer, but such Service may from  
 a good ground of Suspension of Execution according  
 to Circumstances and shall be granted or Refused by  
 the said Court as they shall deem Just. ↪

That the Court of Session, Lord Chief Baron  
 and Reviewing Baron shall have full power to  
 Arrange the Diets or sittings of the Different  
 Branches.

Branches whether sitting single or enlarged, and those of the Judges belonging to them in the Outer House, as also to regulate the Forms of the Appellate Jurisdiction belonging to it, from the proceedings of the Admiralty, Sheriff, Burch and Commissions Courts as fully and freely as it regulates its own form of Process in matters brought before it in the first instance, and to establish Forms of Process and Execution suited to the present Arrangements any Statute or Practice to the contrary notwithstanding. ↪

That a Commission shall be granted to Parliamentary Commissioners with ample powers to regulate the Functions of the Venue Clerks and other Officers and modify and distribute their Fees according to Justice and equity, so as to suit the present Arrangements and the present times. ↪

In illustration of the above Plan it is proper to remark that no notice is taken of the Criminal Court, because it is thought that in Order to give equal weight to both branches of the Session the Judges of the Justiciary should be intermixed in both, and that for the same reason it should remain in the Power of the Crown to appoint the Lord Justice Clerk President of the Second Branch or another person  
as

as Circumstances may render it expedient. ↪

Further in the Constitution of the Court of Rehearing it has been deemed of the greatest Consequence that its Judgements should have the utmost weight with the Bar and with the Country. On this Account it is thought that the Preservation of the Right of Review of the whole Judges of the Branch whose Interlocutor is reclaimed against would be of importance, were that right to be Confined to one or two of them, a Doubt would be apt to Arise that the Sentiments of the Other Judges who perhaps thought differently from them were not fully explained or enforced so as to be properly understood by the Assisting Judges from the Other Branch and the Exchequer and they enabled to see fully their force, And some degree of Indelicacy also might Occur even in the deliberations of the Chambers in pronouncing their first Interlocutors, if it was felt that One or two of the Judges Consulting were Afterwards to sit exclusively in Review of a Judgement going against their Opinion. It was therefore thought that either none of the Branch whose Interlocutor is reclaimed against or the whole of it should be competent to the rehearing, But then when the

Nature

Nature of Our proceedings was thought of. There seemed to be no doubt that the whole Branch could not with safety be excluded 1<sup>st</sup> Because the Arguments in Review would be greatly improved by means of the Public deliberation of the Judges whose ideas would thus be much ripened on the subject of discussion; 2<sup>dly</sup>. Because the Decisions of the Other Branch even aided by the Barons would not if adverse to that of the former have that pre-dominant and decisive weight that were to be wished in Order to exclude that ballancing of Opinions which gives so much inducement to Appeals. ↪

And for the same reasons the expedient of Confining the re-hearing to the two Presidents and the Chief Baron appeared ineligible - 1<sup>st</sup> If their Opinion was unanimous it might, if adverse to a great Majority of a Branch by probability Seven, and some of great eminence, prove short of, Outweighing them considerably with the Bar and the Public - 2<sup>dly</sup>. That Opinion might be Only the Opinion of two against One. - 3<sup>dly</sup>. The Measure would be Obnoxious to the Objections already hinted against Confining the Right of Review to Only One or a part of the Chamber whose Interlocutor is to be Reversed. ↪

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The great object in giving the utmost weight Consistent with Dignity and dispatch to the Reviewing Court is the discouraging of Appeals; - For this reason it is to be considered whether the Reversal or Affirmance of an Interlocutor under Review by the Chamber which pronounced it, enlightened, awe'd and Elevated by the Accession of the first abilities, and all the Dignity that the Courts of Law afford, does not promise to Operate a Stranger Conviction in the Parties, and in the Public, that the Case had received a full and deep Consideration, and dispose them to acquiesce in the result, than if the same Interlocutor had been pronounced singly by the Heads of the Court. And it is even thought that the Influence of the Opinions of the Heads of the Court will be much greater sitting in the Chamber of Review proposed than if sitting in a Court by themselves. It would not be enclosed were the Lord Chancellor sitting in his own Court, even Aided by the two Chief Justices, to exercise an Appellate Jurisdiction over the Court of Session. But when he sits in Parliament himself under Control of the Peers over whom he presides, and whose Opinions in Law he usually guides, he has an Accession of

Weight



Weight and Dignity that Creates Confidence in deliberations held under the Eye of such a Body and a Disposition to Submit to a Judgement that results from them. In short the Heads of the Court will generally guide the enlarged Chamber and at the same time that Chamber will add great weight to the Judgement pronounced. ↪

It will no doubt be remembered that by the Arrangement proposed the practice of Reviewing former Interlocutors till two consecutive Interlocutors in the same Term be pronounced is endeavoured to be reformed. But it is thought that though the Indulging Re: Hearings does in practice tend to improve the discussion of the Questions at Issue, it is by no means essential to a thorough Investigation of them, and is most pernicious in its influence on the Opinions entertained by the Public of the Wisdom of the Court and the Certainty of the Law and accordingly operates powerfully against due Confidence being placed in the Justice of its ultimate decisions. The people see Vacillation in Altering Interlocutors and do not understand that an Interlocutor sometimes Issues Chiefly in the View of Confining the Parties to a discussion by which it may be eventually Overturned, and it is thought to be Obvious that  
such

such Interlocutors are very unseemly expedients for such a purpose, and that a Public deliberation of the Court followed by an Order for a Hearing on Memorials, would if served with sufficient strictness of Form to ensure speedy Obedience Answer every good purpose such Interlocutors can ever Operate, and at the same time save from that Oblaques, to which, more it is believed from this Circumstance than from any Other, the Court has been exposed not only here, but else where, Among Men accustomed to a practice, far more suited to maintain the Dignity of Institutions, destined for patient investigation before deciding, and who never have thought of premature Decisions as an expedient for at last attaining a Mature One. —

It is therefore submitted that an enlarged Chamber for the purpose of a Solemn Review that might discourage Appeals to Parliament by rendering them in general unnecessary and persuade the Public that they are so is quite sufficient to provide for the Maturity of an Investigation already Carried on through the discussions of the Other House and by an Appeal or an Adjournment through One of the Chambers of.

of the Court. And it is thought to be very Obvious that if instead of the expedient of abridging and trammelling the Re-hearings the proposed Chambers were to proceed as at present through the Course of Re-hearings and Reclaiming Petitions till two Consecutive Interlocutors in the same Term are pronounced, the Addition of Another Chamber for Review would prove in the first place an Additional Evil, in as far as it extended the Race of Litigation instead of shortning it; And in the second place, though containing merely Heads of Chambers, would it is thought prove little able to Create a Confidence in its Opinions, Certainly not unlikely often to differ from the Interlocutors it reviewed, that would discourage recourse to Another Tribunal in the hope of Obtaining one Alteration more. - It is believed that in England the Circumstance that the Exchequer Chamber in trying Appeals, does not contain the Judges of the Court whose Judgement is appealed from, has not unfrequently, when a Reversal and a Dissenting Minority occurred, proved the Cause of an Appeal to Parliament in the hope of a second Reversal.

The diminution of the number of Judges has been objected to for the sake of the Bar; But there

is in fact a more Urgent reason for this Opinion. —  
 The Judges of the Court of Session (excepting the President)  
 exercise the Powers of the Court by themselves when  
 in the Outer House and in Judging in the first instance  
 and Reviewing their own Interlocutory, by means of  
 written Arguments they have a great deal of Labour  
 to Undergo which they cannot afford to increase by  
 having fewer to share it with. On this Account  
 it is proposed to transfer a Judge from the Exchequer  
 in Order to preserve the present Number of fourteen  
 Outer House Judges and it is thought that this can  
 be attended with no inconvenience since Four  
 Ordinary Judges perform the Duties of that Court  
 in England while there are at present five Allotted  
 for it in Scotland. ↪

It will farther be observed that by dividing  
 a Court which exercises the Functions of a Jury as well  
 as Judges of the Law, it is fit that the Chambers be  
 more simply supplied than where the Judgements  
 pronounced have the weight of the unanimous Opinion  
 of twelve Men delivered upon Oath as well as of  
 the Court that applies the Law to the Case. i

Benedo

Besides the Lords of Session have not hitherto, when worn out with age or infirmity, been enabled to retire on Pensions equal to their Salaries, but remain Titular Judges however superannuated or diseased. It is thought therefore that eight Judges are as few as can be allotted for each Chamber. ↪

Observations

by

Lord Macaulay

in support of

the Court of Exchequer

1865

Intelligence Dated  
Haye 20 Oct. 1805.  
p. 26 v. 4/100.

11846

La Haye le 20 Oct. 1805.

J'ai dîné hier chez l'ambassadeur de France; pendant le dîner il lui arriva un courrier de Mr. Talleyrand; j'ai vu les dépêches, en voici l'extrait fidèle. Le Roi de Prusse a manifesté ouvertement un mécontentement extrême de la violation de sa neutralité par le passage d'une colonne française dans le Marguisat d'Anspach; sa colère a cet égard est prouvée par le refus d'audience au Mr. Duroc & à Mr. De La Fayette Ministre de France à Berlin; ce dernier avait demandé ses papiers, mais <sup>il</sup> lui a été injuré de reciter harguille ce sont les expressions de la dépêche. Cependant ajoute Mr. de Talleyrand on croit avoir remarqué

remarque que ce grand mécontentement  
du Roi de Prusse a été manifesté avec  
une publicité affectée & on pense de  
là que ce pourrait bien être une  
mesure politique; la dépêche finit  
ainsi. Rien n'est encore dévoté;  
je présume que tout s'arrangera.

Il n'y a dans ce moment  
aucune nouvelle de l'Armée.

Je vous expédie tous les jours, huit  
papiers français par Rotterdam &  
Londres. —



11847

Intelligence Dated

at  
Haye 21 Oct. 1800<sup>3</sup>

evening,

Page 49<sup>o</sup> 4/11

La Haye le 21 Oct. au soir.

J'ai l'honneur de vous

informer de ce que je n'ai malheureusement

eu que de fâcheuses nouvelles à

vous donner encore. Un courrier arrivé

hier au soir vous a annoncé que

Ulm a été prise à la suite d'une

affaire très meurtrière ou les Autrichiens

ont eu 5000 hommes faits prisonniers.

Les Français ont aussi beaucoup souffert

d'interceptions officiers généraux

més ou blessés. Les Autrichiens se

sont bien battus. Les Russes n'arrivent

pas encore donné au départ du courrier.

M. de Schomberg a reçu également

par la nouvelle que tout est arrangé

avec la Prusse, cette grande colère n'était

que une comédie. Il n'arrive en

de

ni Nation, ni convertis - tout de  
prête en Allemagne. Les fonds fran-  
çais et Hollandois ont un peu  
cassé, mais le change sur Paris  
n'a jamais été aussi bas excepté  
pendant les assignats - il est à 100  
de perte pour la France.

Les billets de la banque à Paris  
(Bank Notes) perdent de 10 % &

l'on craint même que la banque  
ne suspende tout à fait ses payemens.

Je vous joins avec  
papier qui je vous envoie, la Gazette  
de Basel qu'on dit être très bonne.

11848 - 53

Euryalus, off Cape Trafalgar

22<sup>d</sup> October 1805

V. Adm. -  
Cuthbert  
Collingwood

Hon. <sup>to</sup> Marsden

The ever to be lamented death of  
Vice Admiral Lord Viscount Nelson, who  
in the late Conflict with the Enemy, fell in  
the hour of Victory, leaves to me the duty of  
informing my Lords Commissioners of the  
Admiralty, that on the 19<sup>th</sup> Inst; it was  
communicated to the Commander in Chief  
from the Ships watching the motions of the  
Enemy in Cadiz, that the Combined Fleet  
had put to Sea - as they sailed with  
light Winds Westward, his Lordship concluded  
their destination was the Mediterranean,  
and immediately made all sail for the  
straights Entrance with the British Squadron  
Consisting of Twenty seven Ships, three of  
them Sixty four, where his Lordship was  
informed by Capt. Blackwood whose vigilance  
in watching, and giving notice of the Enemy's  
movements

William Marsden Esq

movements has been highly meritorious) that they had not yet passed the Straights

on Monday the 25<sup>th</sup> Instant, at day light, when Cape Travalgas bore E.S. about 7 Leagues, the Enemy was discovered, six or seven Miles to the Eastward, the Wind about west, and very light, the Commander in Chief immediately made the signal for the Fleet to bear up in two Columns, as they are formed in orders of sailing; a mode of attack his Lordship had previously directed, to avoid the inconveniencs, and delay in forming a line of Battle, in the usual manner. The Enemy, line consisted of thirty three Ships (of which 18 were French, and 15 Spanish) commanded in Chief by Admiral Villeneuve, the Spaniards under the direction of Gravina, were, with their heads to the Northward and formed their line of Battle with great closeness and correctness; - but as  
the

The mode of attack was unusual, so the  
 structure of this line was new, - it formed  
 a crescent, convexing to seaward, so that  
 in leading down to this Centre, I had  
 both this Van, and Rear abaft the beam,  
 before the fire opened, every alternate ship  
 was about <sup>a</sup> cables length, to windward  
 of her second a-head and a-stern, forming  
 a kind of double line and appeared when  
 on this beam to leave a very little  
 interval between them, and this without  
 crowding this Ships. Admiral Villeneuve  
 was in the Bucentaure in the Centre  
 and the Prince of Asturias, bore Gravina's  
 Flag in the Rear, - but the French and  
 Spanish Ships were mixed without  
 any apparent regard to order of National  
 Squadrons.

as the mode of our attack had  
 been previously determined on and  
 communicated to the Flag Officers and  
 Captains

Captains, few signals were necessary  
and none were made, except to direct  
close order, as the lines bore down.

The Commander in Chief in the  
Victory led the Weather Column, and  
the Royal Sovereign, which bore my Flag  
the Lee

The action began at 12 O'clock, by the  
Leading ships of the Column breaking thro  
the Enemy line, the Commander in Chief  
about the 10<sup>th</sup> ship from the Van, the second  
in Command, about the 12<sup>th</sup> from the Rear  
leaving the Van of the Enemy unoccupied,

The succeeding ships breaking through  
in all parts astern of their Leaders, and  
engaging the Enemy at the Muzzles of  
their Guns; The Conflict was severe,  
The Enemy's ships were fought with a  
gallantry highly honourable to their Officers  
but the attack on them was irresistible  
and it pleased the Almighty disposer of  
all

all Events, to grant His Majesty's Arms,  
 a complete and Glorious Victory; about  
 3 P.M. many of the Enemy's Ships having  
 struck their Colours, this Line gave way;  
 Admiral Gravina with Ten Ships joining  
 this Frigates to Leeward, stood towards  
 Cadix; - the five headmost Ships in this  
 Van tacked, and standing to the Southward  
 to Windward of the British Line, were  
 engaged, and the sternmost of them  
 taken - the others went off, leaving to His  
 Majesty's Squadron, nineteen Ships of  
 the Line, of which two are first rates,  
 the Santissima Trinidad, and the Santa  
 annas) with three Flag Officers, Viz  
 Admiral Villeneuve, the Commander  
 in Chief, Don Ignatio Maria D'aliva  
 Vice Admiral and the Spanish Rear  
 Admiral Don Baltazar Hidalgo y Cisneros

After such a Victory it may  
 appear

appears unnecessary to enter into eulogiums  
on the particular parts taken by the  
several Commanders. The conclusion  
say more on the subject than I have  
language to express. - The Spirit which  
animated all was the same; - when  
all exert themselves zealously in their  
Country's Service, all deserve that their  
high merits should stand recorded,  
and never was high merit more  
conspicuous than in the Battle I have  
described. - The Achille (a French 74)  
after having surrendered, by some  
mismanagement of the Frenchmen took  
fire, and blew up, 200 of her men were  
saved by the Tenders.

A circumstance occurred during  
the action which so strongly marks the  
invincible Spirit of British Seamen  
when engaging the Enemies of their Country  
that I cannot resist the pleasure I have  
in



in making it known to their Lordships  
 — The *Semeraire* was boarded by accident,  
 or design, by a French Ship on one side  
 and a Spaniard on the other, the contest  
 was vigorous, but in the End, the combined  
 Ensigns were torn from the Poop, and  
 the British hoisted in their places.

Such a Battle could not be fought  
 without sustaining a great loss of men  
 I have not only to lament in common  
 with the British Navy, and the British  
 Nation, in the fall of the Commanders  
 in Chief, the loss of a Hero, whose name  
 will be immortal, and his memory  
 ever dear to his Country, — but my  
 heart is rent with the most poignant  
 grief for the death of a Friend, to whom  
 by many years intimacy and a perfect  
 knowledge of the virtues of his Mind  
 which inspired Ideas superior to the  
 common

common Law of Men, I was bound by  
the strongest ties of affection, a grief  
to which even the glorious occasion in  
which he fell, does not bring the consolation  
which perhaps it ought; his Lordship  
received a Musket ball in his left  
breast, about the middle of the action  
and sent an Officer immediately to me  
with his last farewell, - and soon after  
expired.

I have also to lament the loss  
of those excellent Officers, Captains, Duff  
of the Mars and Cooke of the Bellerophon.  
I have yet heard of none others.

I fear the Number that have  
fallen will be found very great, when  
the returns come to me; - but it having  
blown a gale of Wind ever since the  
action, I have not yet had it in my  
power to collect any reports from the Ships  
and

and when their Lordships consider that I have 23 inferior Ships, 18 of them hulks without a stick standing, and scarce a boat in the Fleet, I am sure they will have due consideration for the slowness with which all that kind of duty must necessarily be done, but as I feel the great importance of those reports to the Public, and to Individuals, they may trust that I will leave nothing undone to obtain them speedily.

The Royal Sovereign having lost her Mast, except the tattering Foremast, I called the Euryalus to me, while the action continued, which Ship lying within hail, made my signals, a Service Captain Blackwood performed with great attention;—after the action I shifted my Flag to her, that I might more easily communicate my Orders to, and collect the Ships, and towed the Royal Sovereign

Sovereign out to Seaward; The whole  
Fleet were now in a <sup>very</sup> perilous situation  
many dismasted; - all shattered, in  
13 Fathom Water, off the Shoals of  
Trafalgar, and when I made the Signal  
to prepare to Anchor, few of the Ships  
had an anchor to let go, their Cables  
being shot - but the same good  
Providence which aided us thro such  
a day, preserved us in the Night,  
by the Wind shifting a few points  
and drifting the Ships off the Land,  
except four of the captured dismasted  
Ships, which are now at Anchor  
off Trafalgar, and I hope will ride safe  
until those Gales are over.

Having thus detailed the proceeding  
of the Fleet on this occasion, I beg to  
congratulate their Lordships on a Victory  
which I hope will add a ray to the  
Glory

glory of His Majesty's Crown, and be  
attended with a public Benefit to our  
Country

I am  
for  
your most obedient  
humble servant

(Signed) Gilbert Collingwood

Copy

H. M. J. Euryalus  
off Cape Smythson  
22. Oct. 1805

W. Johnstone  
: wood :

Order  
to  
Capt  
&  
Com-  
mand-  
ers  
Etc.

In. V. Adm. Colling:  
wood's letter of  
22 Oct. 1805.

*Memo,*

It is my positive  
directions that such Ships as are  
in a state to take the disabled  
captured Ships in tow, do immediately  
do it, and use their utmost  
exertions to get them off the Land,  
but should any circumstances  
arise to prevent their doing it,  
the people are to be taken out, and  
the Vessels quitted, and destroyed.

*Admiral, 24 October 1805.*

*Cuthb. Collingwood*

*To the respective Captain  
and Commanders.*

11



Euc.

The order in which the Ships of the  
British Squadron attacked the  
combined Fleet, on the 21<sup>st</sup> October 1805

<u>Van</u>	<u>Rear</u>
Victory	Royal Sovereign
Temeraire	Mars
Neptune	Belleisle
Conqueror	Jornant
Leviathan	Bellerophon
Ajax	Colossus
Orion	Achille
Agamemnon	Polyphemus
Minotaur	Revenge
Spasbate	Swiftsure
Britannia	Defence
Africa	Thunderer
-----	Defiance
Euryalus	Prince
Sirius	Dreadnought
Phoebe	
Naiad	
Five Schooners &	
Entrepreneurs Cutters	

(Signed) Cuthbert Collingwood

In V. Adm. Colling:  
wood's Letter of  
22<sup>o</sup> Oct. 1805



Enc. General Order.

The ever to be lamented Death of  
 Lord Viscount Nelson, Duke of Bronte, the  
 Commander in Chief, who fell in the Arms  
 of Victory, covered with Glory, whose memory  
 will be ever dear to the British Navy,  
 and the British Nation, whose Zeal for  
 the Honour of his King, and for the interests  
 of his Country will be ever held up as a  
 shining example of a British Seaman,  
 leaves to me a Duty to return my  
 Thanks to the R<sup>o</sup> Honorable Rear  
 Admiral, the Captains, Officers &  
 Stamen, and Detachments of Royal  
 Marines serving on board, His  
 Majesty's Squadron now under my  
 Command, for their Conduct on that  
 Day. - But, where can I find  
 Language to express my sentiments  
 of the Valour, and Skill which  
 was displayed by the Officers, the  
 Stamen and Marines, in the  
 Battle with the Enemy, where  
 every

every Individual appeared an Hero,  
on whom the glory of his Country  
depended, the Attack was irresistible,  
and the issue of it, adds to the  
Page of Naval Annals, a brilliant  
instance of what Britons can do, when  
their King & Country needs their  
Service.

To the Rt Hon Rear Admiral The  
Earl of Northesk, to the Captains,  
Officers & Seamen, and to the Officers,  
Non Commissioned Officers and  
Privates of the Royal Marines, I  
beg to give my sincere and hearty  
Thanks for their highly meritorious  
conduct, both in the Action, and  
in their Zeal and Activity in  
bringing the captured Ships out  
from the perilous situation in  
which they were, after their  
surrender, among the Shoals of  
Trafalgar, in boisterous Weather

And

And, I desire that the respective  
 Captains, will be pleased to commu-  
 nicate to the Officers, Seamen and  
 Royal Marines this public testimony  
 of my high approbation of their  
 conduct, and my thanks for it.

Curialus 29<sup>th</sup> October 1785.

Bathurst Follenj wood

The Right Hon<sup>ble</sup>

Rear Admiral the Earl of Stothert,  
 and the respective Captains and  
 Commanders.

In L. Othman's Col.  
: Linguistics letter  
of 22. Oct. 1805.

copy

In V. etdm. Colling-  
wood's letter of  
22<sup>o</sup> Oct. 1805.

General Order

The Almighty God, whose Arm  
alone is strength, having of his great mercy  
been pleased to crown the Execution of His Majesty's  
Fleet with success, in giving them a complete  
Victory over their Enemies, on the 21<sup>o</sup> of this  
Month; and that all praise, and thanksgiving  
may be offered up to the Throne of Grace,  
for the great benefits to our Country, and to  
mankind.

I have thought proper, that  
a day should be appointed, of general  
humiliation before God, and thanksgiving  
for this his merciful goodness, imploring  
forgiveness of Sins, a continuation of his divine  
Mercy, and his constant aid to us, in the  
defence of our Country's liberties, and laws;

without

without which the utmost Efforts of Man  
are brought, and direct therefore that  
be appointed for this holy purpose.

Given on board the Euryalus  
off Cape Trafalgar 22<sup>nd</sup> Oct 1805

signed Luthl' Collingwood

To  
The respective Captains  
and Commanders

N.B.  
The Fleet having been dispersed by a Gale  
of Wind no day has been able to be appointed  
for the above purpose.



V. Ad.  
C.  
Colling-  
wood  
to  
Hm.  
Mars-  
den

11859-61

Account of the

Euryalus off Cadiz  
24<sup>th</sup> Octo 1805

Sir

In my letter of the 22<sup>nd</sup>, I detailed to you for the Information of my Lords Commissioners of the Admiralty, the Proceedings of His Majesty's Squadron, on the day of the Action, and that preceding it, since which I have had a continued Series of misfortunes, but they are of a kind, that Human prudence could not provide against, or my skill prevent.

On the 22<sup>nd</sup> in the morning, a strong southerly wind blew, with squally Weather, which however did not prevent the Activity of the Officers, and Seamen, of such Ships as were manageable from getting hold of many of the Prizes (13 or 14) and towing them off to the Westward, where I ordered them to rendezvous round the Royal Sovereign, in tow, by the Neptune, but

Wm Marsden Esq<sup>r</sup>

on

V.

(Copy)

11859\_61

Admiral Boscawen

Euryalus off Cadix

24<sup>th</sup> Octo 1705

Sir

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Wm Marsden Esq<sup>r</sup>

on

the 23<sup>rd</sup> the Gale increased, and the Sea  
ran so high, that many of them broke the  
tow Rope, and drifted far to Seeward; before  
they were got hold of again, and some of  
them taking advantage, in the dark, and  
boisterous night, got before the Wind and  
have perhaps, drifted upon the Shore & sunk.  
On the afternoon of that Day, the remnant  
of the combined Fleet ten Sail of Ships, who  
had not been much engaged, stood up to  
Seeward of my shattered and straggled Charge  
as if meaning to attack them, which obliged  
me to collect a force out of the least injured  
Ships, and form to Seeward for their defence  
all this retarded the progress of the Barks,  
and the bad weather continuing, deter-  
mined me to destroy all the Leewardmost  
that could be cleared of the Men, considering  
that keeping possession of the Ships, a matter  
of little consequence, compared with the Chance  
of their falling again into the Hands of the  
Enemy

Enemy, but even this was an arduous Task,  
 in the high Sea, which was running, I hope  
 however it has been accomplished to a  
 considerable extent - I entrusted it to skill-  
 ful Officers, who would spare no pains to exe-  
 cute what was possible, The Captains of the  
 Prince, and Neptune, cleared the Trinidad  
 and sunk her: Captains Pope, Broughton &  
 Malcolm (who joined the Fleet this moment  
 from Gibraltar) had the Charge of destroying  
 four others: - The Redoubtable sunk astern  
 of the Swiftsure, while in Tow. The Santa  
 Ana, I have no doubt is sunk, as her side  
 was almost entirely beat in: and such is  
 the shattered condition of the whole of them,  
 that unless the Weather moderates, I doubt  
 whether I shall be able to carry a Ship of  
 them into Port: - if I had anchored such  
 as had good cables they (having all their Crews  
 on board) would certainly have cut them  
 and run for Port in the Stormy Weather  
 and there were ten Sail of the Line, & five  
 frigates ready to come to their Assistance  
 in

in fine weather, so that I hope their Lordships  
will approve of what I, having only in consi-  
deration the Destruction of the Enemy's Fleet  
have thought a measure of absolute necessity.

I am under the most serious Apprehensions,  
for several of the Ships of my Squadron, the  
Melleisle is the only one totally dismasted  
but the Victory, Royal Sovereign, Temeraire,  
andonnant are in a very decrepid State.

I have taken Admiral Villeneuve  
into this Ship. Vice Admiral Don Alava is  
Dead; whenever the temper of the Weather  
will permit and I can spare a frigate for  
there were only 4 in the Action with the Fleet  
Euryalus, Sirius, Phoebe & Aurora the Mel-  
pomene joined the 22<sup>nd</sup> and the Eurydice (&  
Scout the 23<sup>rd</sup>) I shall collect the other Flag  
Officers, and send them to England, with  
their Flags (if they do not all go to the Bottom  
to be laid at His Majesty's Feet.

I cannot discover what the Destination of  
the Enemy was, but if the Porcentaure is  
above water, when the gale abates, I will

endeavour

endeavour to do it, There were 4000  
Troops embarked under the Command  
of General Bantamine, who was taken  
with Admiral Villeneuve, in the Queen-  
taure.

I am

Sir

Your most obedient  
humble servant

(Signed)

Cuthbert Collingwood

H. M. J. Burghley  
off. Cadby, 20. 4  
Oct. 1005

W. John. Cobling:

: wood.

11862

Copy

Whitehall 25<sup>th</sup> Oct. 1855.

My Dear Lord,

I find in this Box the Compendium relative to the proposed alteration in the Court of Session in Scotland; the Reports of the Lord President the Lord Justice Clerk & the Lord Advocate, & the paper of observations by Lord Meadowbank are well worthy of consideration. They all admit the necessity of some alteration in the system of administering Justice in Scotland, & they are so nearly agreed in all the main points on which the alteration should be founded, that I should hope there would be very little difficulty in bringing the business to a practical result, & to such a one as will give general satisfaction to the Scotch Bar, & Scotch Nation. I shall be very desirous of receiving your observations on these papers.

Richard Chancellor.

ld.  
Howkes  
bury  
to  
ld.  
Chan-  
cellor  
Enc. 6  
next.

11825  
11827-30

11831-3

11834-  
45



I very much agree with the  
Lord Advocate's proposal to come  
to Town with the Lord President  
Lord Justice Clerk for the  
purpose of personal communica-  
tion on this important subject,  
and I would propose if you  
see no objection to it, that they  
should be here about a week before  
the meeting of Parliament, pro-  
vided that time will not be  
inconvenient to them.

I am with great respects  
My Dear Lord,  
your very faithful  
humble servant  
Harcourt

Copy.

Lord Harcourt  
to the Lord Chancellor  
25. Oct. 1803.

Lord Liverpool

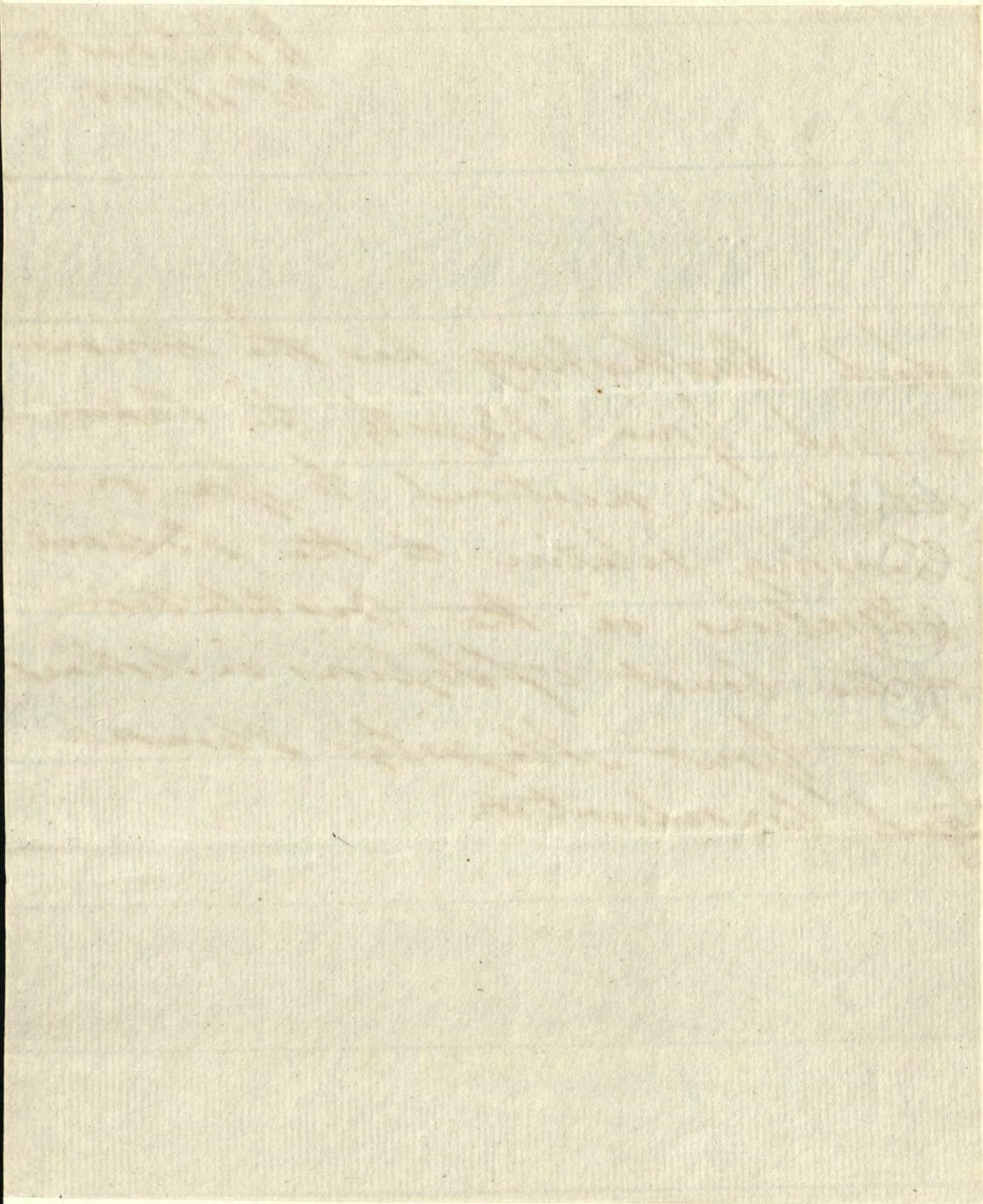
October 26<sup>th</sup> 1805

11863

Whitehall  
Oct<sup>r</sup> 26 1805

see 11862

Lord Liverpool has the Honour  
to send your Majesty the Papers  
which he mentioned to you on  
Thursday relative to the proposed  
Alterations in the Constitution  
of the Court of Sessions in Scotland  
for your Majesty's Perusal  
and Consideration



U

V. Adm.  
Cuthb.  
Colling-  
wood  
to  
Wm.  
Mars-  
den

11864

Copy

Corgalus, off Cadix  
26<sup>th</sup> Oct. 1805

Sir

My dispatches containing the  
account of the action of the 21<sup>st</sup> inst., and  
detailing the proceedings of the Fleet to the  
24<sup>th</sup> will be delivered to you by Lieutenant  
Lapentiere, commanding the Pickle Schooner,  
to be laid before the Lords Commis<sup>rs</sup> of the  
Admiralty, having no means of Speedier,  
or safer conveyance, with me at present  
Duplicates of the Dispatches, and the  
necessary reports shall follow the moment they  
can be obtained.

I am

Sir

Your most Obedient  
humble servant  
J. Lubbock Collingwood

Signed

Wm Marsden Esqr

H. M. S. Curvatus  
off Cadix, 26<sup>th</sup>  
October 1805.

N. Adm. Colling:  
wood.

Col. John McMahon to Wm. Cobbett.

11865

Charter Street, 20<sup>th</sup> Nov 1805

Sir,

I request you will have  
the goodness to give a place in  
your next Register to the enclosed.

I have the Honor to be,

Sir,

Your very obed<sup>t</sup> Serv<sup>t</sup>.

J. McMahon

Wm Cobbett Esq<sup>r</sup>

