

Thomas  
fish with  
out disallow  
of and allowed

1511/16

Answers for Robert Blutehuson  
Sailer in Stronness —

To the Petition & Complaint  
against him by Robert Grahamer  
of Redland one of His Majesty's  
Justices of the Peace for the County  
of Orkney Given in to the other  
Justice of the said County —

That as the Complainer is one of the  
Number of the Justices before whom this  
Complaint is lodged It behooves the Respon-  
dent to be the more full and explicit in his  
answers thereto especially as there is another  
Complaint on the same account depending  
before the Vice Admirals Court & against him  
in hopes that from the Justice of his Cause  
and that of both Courts in administering  
Justice one or both of these actions will be  
the sooner and more regularly dismissed  
and discussed —

The present Complaint is only a repe-  
tition of that before the Admirals Court  
charging the respondent with Contempt  
of the Complainers Authority or order as a  
Justice of Peace in Novemb last Prohibiting  
any person to fish with cocks or oysters with  
Rock or other Nets in the Harbour of  
Stronness before the first day of March  
then next under a penalty of £20 Scots  
which order is there said to have been  
issued in consequence and in terms of a  
Petition to the Complainer by some  
Persons in the said Village preferring  
the Road to the Sea fishing or pelence

2 That Vells were detrimental to the Community  
who as is said are equally entitled to fish  
in the Harbour where Providence had  
sent great abundance But that the  
Respondent fished great numbers with  
Vells which had encouraged many others  
to follow her examples and that it tone-  
ly beleeved as contrary to all Law & Authority

This with what <sup>is said to have</sup> passed between the  
Complainant and the Respondent on the  
attempt to interrupt and stop him in the  
course of his fishing in the whole of both  
Complaints only with this addition which  
is ~~not~~ false That the Respondent had  
provided himself with offensive weapons  
in his own defence

All this proceeds from the regard  
shewn to the Petition of the said unexper-  
ienced and incapable fishers who ignorant  
of their own and our interests would pre-  
tend to prescribe absurd laws & regulations  
to the Respondent to all able fishermen  
and to the Community or publick in genl

The word Detrimental in these  
bybills must mean something Criminal  
and he made to infer the pains and  
penalties of Law for such a Crime before  
any action can be sustained on them  
and the Law must be of force and effect  
before any contempt or Contravention of it  
can be committed As to the first of these  
propositions it must be only notional not  
real It is incumbent on the Complainant  
to show in what sense fishing with Vells  
is so detrimental as to become a real Crime  
against the Publick or even against individual

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The Publick in general have no law  
 to their effect and no individual is exclud-  
 ed from their method If appears to be  
 thought only local and peculiar as to  
 Stronnes But even the part of the Com-  
 munity are divided in opinion one  
 party cannot claim much less obtain  
 a privilege to interrupt or exclude the  
 other method, all have equal rights  
 where none can claim a special property  
 To allow or authorize one party as a way  
 would be to introduce a sort of Persecution  
 in stead of a legal Prosecution agt one another  
 as of as their opinions or interests varied  
 It is rather commendable and beneficial  
 than detrimēt as a Remedy to settle  
 the greater number of best as the greater  
 blessing is preferable to the lesser as plenty  
 is better than a scarcity and as  
 none can be lawfully excluded from reap-  
 ing a share of them by any method they  
 are pleased or are capable to obtain them  
 whoever would refrain such especially as  
 follow the best method would count  
 a great wrong and be guilty of an act  
 contrary to the freedom of printing to the  
 good of the Community and to all good  
 Law and Authority whatsoever

Therefore the Respondent enters further  
 into the merits of the cause the best  
 liberty to print that as one action before  
 one Court is sufficient for one and the same  
 offence whether real or pretended one of  
 these ought not to be pass upon or damaged  
 for tho these are different Complainers in

The Complainer is the principal party in  
both from the Nature of the Cause the order  
of the Complainers constitutes the whole  
offence that the Respondent is doubly  
charged with and there is only one penalty  
No different crime or offence is so much  
as alleged and no action can properly  
be at the instance of a Party different from  
the Complainer himself solely for a breach  
of his Authority and for a penalty inflicted  
by himself and incurred <sup>payable to him</sup> or to the Public  
as resulting from a Breach of his Authority  
So neither ought the Respondent to be  
made liable to different actions on that account

It is also incumbent upon the Com-  
plainer to show whether such an order  
as that by which proceedings on such an  
absurd Petition and the execution of it  
ever existed and whether it could have  
the effect of a Law or Public established  
act in such a case The Respondent will  
be allowed to say that this cannot be made  
appear to the satisfaction of his or any  
other Court so as to induce them to inflict  
any punishment upon him in consequence  
of it It is also evident that if any such  
order ever existed it was ill founded for  
the Petitioner to arrogate to himself a  
Justice of Peace a absolute Authority over  
the Public in his efforts merely on the  
absurd petition of a few ignorant and prejudiced  
persons prohibiting fishing in the sea  
but by a certain method under a certain  
penalty till a fixed day and Surely it must  
be very wrong in the Complainer to prosecute  
the Respondent so rigorously & oppressively

on pretence of Contempt of Authority was  
no such authority could ever duely have  
existed and when even the Justices  
themselves and the original Petitioners  
concurred in the whole story not only catch-  
ing fish with Doct nets but also with  
a Long seine or Trall net hauling many  
Parrells at once - But still there is plenty  
and all have reeled. How ridiculous  
and unjust then must it be the Complam-  
er to persist so oppositely against the  
Petitioner in different actions before differ-  
ent Courts on pretence that he is Zealous  
for the benefit and common good of the  
Community and would have allowed in  
them only gradually pull one by one  
by roads instead of the plenty by Net.

It is pretended that fishing only by the  
road would be more despising and unchristian  
as it would employ more hands for a longer  
time But in the mean time none is pretended  
to be stopped but the Doct's But what mortal  
can assure a certain day for fishing partly  
with roads or even with nets in many seasons  
and whether fish will be then to be had at all  
and in season and what provision is to be  
made for the Community in case of want  
in bad weather when fish cannot be got  
when they refuse the bait To refuse them in  
time of plenty and in season and when a  
favourable opportunity offers to catch them  
by any means would be ridiculous would  
create a scarcity where there was plenty offered  
would be hurtfull to the Community and  
even might be called a Contempt of the  
provid'd Bounty of Providence fully offered

Worshipful offered gratefully that these affairs  
I thought to be the serious concern of every  
one to maintain it so irreprehensibly  
freely especially, antient freedom and uninter-  
rupted custom has coustly into the unconfined  
Law without respects and non-suffered be allowed  
to suffer by any restraint upon it. Doubtless  
the Justice of Peace his authority is contained  
that Coustoms are upheld and abused —  
a — Story Paul the Respondents must  
upon and maintain the full freedom of  
fishing without interruption —

This also is a common saying with respect  
to fishing "Catch that catch can" This is  
the general rule and the general struggle  
or contest is who can catch most. Art and  
Industry succeeds best and ought to be most  
encouraged. There is no probability of success  
upon a better rule. To fish most is also  
fair fishing you can fish well if he interrupts  
or is interrupted by another. The majority  
with respect to fishing would free the  
roads while they could be got or were in  
season. Because they are as fifty or more  
more than a hundred to one to those  
that either trace or fish with nets. But  
there can be no good rule nor good reason  
for prohibiting the nets for perhaps and  
it is very probable one net will catch  
more than a hundred roads. To encourage  
roads and discourage nets would be to  
encourage all sorts in many to the same  
purpose that a few might answer better and  
at the same time that neither are hindered —  
it would both enlarge and extend the blessing  
of fishing while it abounded and who can  
say when it should cease. The interest of every  
individual in the republic is the benefit of the community

in general and when any doubt find it their  
interest to give they are free to employ them  
elves to better advantage any other way as  
Providence has ordained -

It may be presumed that the Complainant  
must be sensible of the insufficiency of his own  
authority so well founded in sea affairs to impose  
a penalty in the case of fishing when he is obliged  
to have recourse to the Admirals and to the  
Court to create that penalty in  
consequence of it that he has applied to the Judges  
will make no difference as they will know  
that the only as a Justice is no good at sea  
besides there is a actual prevention of the  
cause by the Admiralty Court and its power  
upon the whole that the alleged penalty  
was not of a legal or duly or lawfully  
imposed and these applications cannot now  
avail him in aid of his authority to make it  
good against the respondents ex post facto what  
the Respondent has done is warranted by the  
Law and freedom of fishing which is principally  
to be regarded so that the Petitioner ought not  
to be offended if his authority is unsupplied  
and if valid he ought without more ado to have  
executed the penalty himself but it is not so.

The Respondent is lately informed but  
whether true or not is a matter of indifference  
that the real penalty first issued was only  
£10 Scots in the name of the Complainant but in the  
fact the £10 in all but in all respects  
in fact that the Respondent has paid a certain  
and other ways punished according to law  
without restriction to any penalty whatsoever  
like attempting still some higher and unknown  
affliction ex post facto but the Respondent  
is entirely confident that he is guilty of no  
real crime or offence that in fact the point  
of law in this case that his whole conduct  
is rather laudable and according to law

and that the Complainers conduct is culpable  
The Respondent is indeed threatened to be  
utterly undone by multiplied and indefinite  
penalties and by underly two outrageous  
actions on alleged crimes that never  
existed but of the Defendant's own creating  
which besides the Respondent being  
debarred from opposing and attendance of  
two several actions so very oppressive and  
expensive is extremely heavy upon him  
but he humbly hopes from the justice of his  
Cause and that of the Court he will be justly  
discharged and be nullified to damages and  
Expenses

In respect whereof

Answeers for

Robert Robinson