

"do hereby authorize and direct you John Freeman, master of the ship called the Liverpool Packet, to apprehend, seize, and take, any ship, vessel or goods belonging to the U. States, or the subjects thereof, or inhabiting within the territories thereof." No distinction can be made between this instrument, and a letter of marque, as, to its powers, and the authority necessary to issue it. A commission to apprehend seize and take is an authority to commit reprisals, although the ultimate disposition of the property may depend upon future contingencies.

The question then became reduced to this, that the only ground upon which this can be maintained to be a commissioned vessel must be founded upon the powers granted by his Majesty to the Governor of this Province, to issue letters of marque and reprisals by the commissions, and instructions set forth in the Allegation.

I should be extremely unwilling to enter into any discussion respecting the powers and authorities of his Excellency the Lieutenant Governor; but they have been brought into question by the parties, and their Counsel, who may be considered, in some measure, as at issue upon them; and their examination is necessary to the decision of the present case. With the greatest reverence therefore for the high station itself, and the sincerest personal respect for the worthy and eminent person who occupies it, I must follow where my duty leads; with firm but cautious steps; with the reserve and decorum which becomes such subjects but with the freedom of truth, the strictest adherence to sound legal principles, and the accuracy required in a judicial enquiry.

To consider the general nature of these commissions;

It is the prerogative of the sovereign only to determine what part of the public, or private force of the state shall be employed in the operations of war. No subject can undertake any offensive expedition against the enemy either by land or sea, without a particular commission. Measures of self-defence not being comprehended under that description. Sea commissions are of two kinds, those which are given to vessels which are the property of the sovereign, and therefore are called King's ships, and those which are granted to persons who equip vessels at their own expence, and are reimbursed by a share, or the whole of their plunder, as may be conceded to them by his Majesty, from whose free grant alone they can be intitled to it. The latter, as to their constitution, are as much public vessels as the former, and their commissions can be derived only directly or indirectly from his Majesty.

The Royal Prerogative is usually exercised not promiscuously through the medium of any of his Majesty's ministers or officers, but through the known, established, and appointed channels. Naval military commissions, whether to King's ships, or private vessels, are issued through those officers, to whom it seems properly to appertain, that is, the Lord High Admiral, or the Lords Commissioners,