

Narrative of the Proceedings relative to Hexham Bridge

Epigraph on front page. Cicero: 'Nullae sunt occultiores insidiae quam eae, quae latent in simulatione officii aut in aliquo necessitudinis nomine'. ('There are no more cunningly concealed snares than those which hide in the pretensions of office or in the name of other necessity').

[352] Reason for the text, to correct public misapprehension of the recent proceedings relative to Hexham Bridge by giving a short narrative of what passed between the Magistrates and Mr Errington. [353] The Bridge was certified as completed according to the Agreement by three Magistrates in January 1781; in March 1782 it was almost wholly thrown down despite [354] (226) the opinion of Mr Smeaton and others interested in its safety that it was secure. Mr Smeaton then opined that it would be little short of madness to attempt to reinstate it. He laid no blame upon anyone for its failure.

At the Quarter Sessions held on about 12 April 1782 at Morpeth Mr Errington sought advice from the Magistrates about how he should, with prudence, proceed [355] but they could not see how to proceed otherwise than by reference to the Agreement. It was decided to seek the opinion of counsel, Mr Wallace, formerly Attorney-General, and the Magistrates directed Mr Heron to draw up a case for Mr Wallace's consideration. This was done and the Opinion laid before the Magistrates at their Sessions in Hexham in July. The advice was to make application to Parliament in order that Mr Errington be relieved from the obligations which were imposed by the Act by which the County had been empowered to build the bridge: if that relief was granted then the parties could make a compromise. [356] (227) The Magistrates declared themselves of one mind that there would be no opposition to that course of action. They were thereby agreeing to the principle that Mr Errington should not have to rebuild the bridge pursuant to the original agreement.

[357] A petition to Parliament was drawn up and copied to Mr Aynsley, the Chairman of the Magistrates, who did not respond. Mr Errington concluded that Mr Aynsley was content with it [358] (228) but then, at the hearing before the parliamentary Committee he was surprised to see a solicitor present who was instructed by the Magistrates to oppose what was sought. The Committee declared themselves satisfied that Mr Errington's case was made out and gave him to bring in a Bill to give effect to what he sought.

[359] In the meantime another Sessions was held at Hexham and this time the same Magistrates who had agreed with the application to Parliament now signed a Petition against him. What were their motives? [360] (229). There were people in Hexham who disagreed with what the Magistrates had earlier agreed to, fearing that the town would lose any bridge. It may be that the Magistrates were aware of their feelings and were intimidated. It might also be that the Magistrates had received the report of Mr Mylne, who after visiting the site over two days, boring the river bed with the assistance of [361] Colliery borers ignorant of that part of the River, and listening "to a few idle tales from a drunken labourer" wrote a verbose and pompous report to the effect that a bridge at Hexham was perfectly practicable. Mr Smeaton's opinion was ignored. "In this light was the artist of the Eddystone Light-house held forth to publick view by the builder of Black-Friars Bridge."

One other reason for the Magistrates' discontent may have been a feeling that he should have first sent his Bill to themselves before presenting it to Parliament, but this is specious because they opposed his petition (to the Committee) before his Bill was drawn up. [362] (230) In fact it would appear that a majority of the Magistrates had been against the petition to parliament from the start; or that at an early stage they decided to change tack.

Nevertheless when some Gentlemen advised him to withdraw his Bill, assuring him that the Magistrates would be open to reasonable compromise, Mr Errington [363] immediately did so, in spite of the contrary urging of friends. He decided to prepare an estimate of the cost of repair of the bridge and resolved to pay the whole amount; and as an assurance of good faith employed the County Surveyor and masons well [364] (231) known to the Magistrates to quantify what was required.

Objection was then made not to the principle underlying the estimate, but the rank of the persons making the valuation. The Bench said it wanted someone with greater expertise to estimate the sum required such as Mr Smeaton and to present the result at the next Sessions "otherwise an action on the bond would immediately be commenced." Mr Smeaton prepared an estimate in time, in the sum of £2,900 or so, and Mr Errington offered to pay it. Even so, [365] the justices declared they would not enter into any compromise and insisted on the letter of the bond. Mr Errington either had to build a bridge (to a design which no sane man would think could stand) or pay £9,000 which the Magistrates would use to build a better one. They then commenced proceedings for that latter sum.

[366] (232) In effect the Magistrates were requiring Mr Errington to pay an amount much larger than the one he received in order that they might make a further experiment upon a more extensive plan than the one he had worked to. [367] Their thinking seemed to be that Mr Errington had entered the bond with his eyes open. But that was not the case because there was nothing in the past to indicate the river could be capable of so much violence at this point in its course. The collapse was either caused by the violence of the river, or some weakness in the construction of the bridge [368] (233) but no-one had known that a torrent of "above 1000 feet in a minute" was possible.

[369] Judgment on the bond was obtained in the King's Bench, there being no possibility of a discussion of the merits. The only issue was whether Mr Errington had entered into the bond: "*Actum est, aut non actum est*". So Mr Errington filed proceedings in Chancery where the merits could come into play. Certain of the Magistrates put in an answer but such was their hurry to get their hands on the bond monies [370] (annoted 234) that they filed a writ of *Elegit* to enforce the judgment. "This was conducted with much secrecy and put in the hands of the Under-Sheriff, and executed forthwith." "By this proceeding, one half of Mr Errington's real estate, and all his personalty, goods, furniture of his houses, and moveables of every kind, were at the mercy of his persecutors." Fortunately the triumph arising from this illiberal act of oppression was short-lived: the Lord Chancellor granted an injunction to stop the proceedings until the cause could be heard in equity. He expressed the view, "with much warmth" that the most the County could expect was what a jury might award on a writ of *quantum damnifacum*.

[371] It was thought that the Magistrates might have taken the Chancellor's comments to heart. Mr Errington renewed his offer of settlement by paying the whole cost of repair [372] but his offer was again rejected, the reason given being that as trustees of the County's money the Magistrates could not do otherwise. Where they got this view of the law from is not known since the opinion of Mr

Wallace at the outset had been that compromise was possible in law. [373] Once again it is necessary to point out that to compel Mr Errington to rebuild would be to invite him to repeat something which was doomed to fail; the suggestion that there was bad workmanship involved in the original construction is too contemptible to entertain. The Magistrates themselves certified [374] (236) that the work was completed. Mr Smeaton did not take the easy course of blaming others but pointed to the poor foundation and irresistible violence of the current. [375] (237). He has not attempted to say what better mode of construction could be adopted, free from the difficulties which attended his design or that of Mr Gott.

In the Spring of 1788 the cause came on for hearing before Sir Lloyd Kenyon, Master of the Rolls. He too recommended compromise, which was obstinately refused by the Magistrates. [376] The case continued and judgment was deferred. (Paper damaged) Once again Mr Errington offered compromise only for it to be rejected. Even though the Lord Chancellor and Master of the Rolls had recommended it, "against that spirit of rancour and malevolence which has marked every step taken in this unfortunate transaction" even such authoritative advice could not prevail. [377] (paper damaged). When Mr Heron communicated Mr Errington's offer to the Bench the Chairman affected to misunderstand his clear words and [378] interpreted them to his fellow magistrates as requiring the Bench to accept such terms as Mr Errington should later propose, without them being set out. The issue of *quantum damnificatum* was therefore left to a Jury to decide at the following Assizes.

[379] The case was heard by Mr Justice Thompson and a jury the magistrates being represented by Mr Chambre who omitted no argument "that could tend to enhance the measure of damages, or effectually answer the most sanguine expectations of his employers." Mr Mylne gave evidence, deposing to the length shape and diameter of piles he had never seen and suggesting they were of British fir whereas only foreign timber was used. [380] (240) His principal object seemed to be to lower Mr Smeaton's reputation "but he should have remembered that that he had to do with a man as much his superior in professional skill as in every other light." The Magistrates' other witness was Mr Laybourn "a common working man, a bankrupt in credit, and a bankrupt [381] in pocket" who "reflected disgrace upon those who put him forward." He made various mistakes of detail in his evidence. A "most contemptible miscreant, produced and sworn as an evidence by the County of Northumberland."

Mr Errington relied on evidence from Mr Smeaton, John Donkin, Jonathan Pickernell, Mr Thompson, and Mr Johnson. [382] Mr Smeaton's evidence summarised. Mr Donkin (241) [383] Mr Pickernell, Messrs Thompson and Johnson gave evidence, the last two "men of character and established reputation in their profession, the former having undertaken and completed the re-building of Chollerford Bridge destroyed in 1771.." [384] (242) They estimated the sum required to re-build the bridge at a sum not exceeding £2,863 and offered to do the work for that amount. Sir John Scott, Solicitor-General addressed the Court for an hour most ably on Mr Errington's behalf. In particular he stressed that [385] the Magistrates could not recover more than what might be required to re-build. Mr Mylne had estimated that sum as £4,500 plus £1,500 for additional securities, but his evidence on this was discredited.

[386] (243) The judge summed up but gave the jury no particular guidance and they asked to withdraw to consider their verdict. The writer repeats the reasons why Mr Errington did not re build according to the original plan. [387] The Magistrates were attempting to force him to commit an act

of folly. Their “darling theme” was the full penalty of the bond. “...their rancour, their [388] exultation they were at no pains to conceal..” The jury’s verdict was for £4,000 over and above the materials which remained on the spot. They exceeded by £1000 Mr Smeaton’s estimate and the writer cannot discern the principle of justice upon which they proceeded.

[389] (244) Thus for five years the County pursued Mr Errington thereby delaying the construction of a bridge for Hexham, to gain £1,000 over what he had been prepared to pay, lavishly squandering publick money in a wanton prosecution. They failed to recover the penalty on the bond or obtain an order that Mr Errington should re build the bridge. [389] (245) “Will the publick think this an equivalent for the want of a bridge five years, and the waste of their money in a disgraceful and vexatious prosecution?”