

ployment or hard labour of the Prisoners, and shall further examine into the behaviour and conduct of the respective Officers, and the treatment, behaviour and condition of the Prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the Prison, and of all abuses within the same, and in matters of pressing necessity and within their powers as — (Commissioners), shall take cognizance of and proceed to regulate and redress the same.”—See 4 Geo. 4, c. 64, s. 16.

“And be it further enacted, That it shall be lawful for any one of the said — (Commissioners) at his own free will and pleasure, and without being appointed a Visitor, to enter into and examine any Prison under the superintendence of the — (Board of Commissioners) at such time or times, and as often as he shall see fit; and if he shall discover any abuse or abuses therein, he is hereby required to report them in writing to — (such Board) at their next meeting, and the said — (Board) are hereby required to adopt the most effectual measures for inquiring into and rectifying such abuse or abuses as soon as the nature of the case will allow.”—See 4 Geo. 4, c. 64, s. 17.

“And be it further enacted, That at every Meeting of the — (Board of Commissioners) the Visiting Justices shall make a report in writing of the state and condition of each Prison within their jurisdiction, of what repairs, additions or alterations shall have been made or may be required, and of any abuse or abuses which they may have observed, or of which they may have received information, in the management of the Prison, as well as of the general state of the Prisoners as to morals, discipline, employment and hard labour, and observance of Rules; and the — (Commissioners) assembled shall proceed to consider every such Report, and to act forthwith as they may see occasion.”—See 4 Geo. 4, c. 64, s. 17.

#### BASTARDY ACT, &C.

[No. 35.]

*Downing Street, 10th March, 1840.*

SIR,—I have the honor to acknowledge the receipt of your Despatch, No. 70, of the 30th September, and No. 74, of the 21st October last, transmitting two series of Acts passed by the Legislature of New Brunswick in the months of March and September last, respecting which I have to make the following observations:—

The Act No. 1243, (Cap. 42), amending the Law relating to Bastardy, is opposed to the principle on which the Bastardy clauses, in the British Poor Law Amendment Act, 4 & 5 Wm. 4, c. 76, was founded.

After repealing the third section of a former Act, the present Law proceeds to enact, (section 2) — ‘That all orders of affiliation to be made in pursuance of the Act 32 Geo. 3, shall be made by the Justices of the Peace in General Sessions,’ and (section 3) ‘That in case any person appearing before such Court of General Sessions, charged with being the reputed father of a bastard child, *likely to become chargeable to any Parish*, shall traverse or deny the charge, such Court, *on the oath of the mother of such child*, or such other testimony as may be offered to their satisfaction, may adjudge such person the reputed father.’

The 4th section enacts—‘That when the child, of which the woman may be pregnant, likely to be chargeable as aforesaid, may not be born at the time of any person appearing before such Court, charged with being the reputed father of such child, or in any case where the Court shall consider it necessary to put off the consideration of the charge or the making of an order of affiliation until the next Court of General Sessions, such Court shall be at liberty so to order and direct; and thereupon the person so charged, shall forthwith enter into recognizance, with one or more sufficient sureties, for his appearance at the next General Sessions, to answer the said charge, and further to be dealt with according to law; and on neglect or refusal to give such recognizance, he may be committed by such Court to the Common Gaol of the County.’

The 5th section enacts—‘That when the said Court adjudge such person the reputed father of such child, they shall thereupon make their order of affiliation, in which shall be specified the expenses already incurred, as well for the lying in expenses as for the apprehension and conviction of such reputed father, and also for the support of such child up to the time of making such order, and also such weekly sum as shall thereafter be paid by such reputed father for the future support of such child, while chargeable on any Parish.’

The 6th and subsequent sections contain provisions respecting the payment, to the Overseers of the Poor, of the sums directed by the Order—the punishment of the reputed father for neglect to pay—the entering into sufficient recognizances—the forfeiture of recognizances, and the proceedings thereupon,—together with some subordinate provisions for carrying the purposes of the Act into execution.

It appears from these enactments, that this Act would establish the system which existed in England before the passing of the Poor Law Amendment Act, namely, the making of orders of affiliation upon the simple oath of the woman, and before the child becomes chargeable, and the placing the putative father under recognizances before the birth of the child.

Before sanctioning a system, faulty in principle, and productive of great evils in practice, I should wish that the Provincial Legislature should have the opportunity of re-considering this Act, in connexion with the British New Poor Law Amendment Act, and still more with reference to the Report of the Poor Law Commissioners made in 1834, a copy of which I herewith enclose for your information.

If after considering the objections entertained to the old system, as ably stated in pages 165 to 178, the Legislature should still be of opinion that there are peculiar circumstances connected with the Province of New Brunswick, which render it inadvisable to adopt the new principle of the Bastardy clauses of the British Statute, Her Majesty’s Government will be ready to receive from you such a Report, and to give it the fullest consideration before advising Her Majesty on the final disposal of this Act.

I enclose three orders passed by Her Majesty in Council, on the 29th of January and 5th of March, leaving the Acts mentioned in the margin to their operation.\*

The rest of the Acts of these series are still under the consideration of Her Majesty’s Government.

I am, &c.

(Signed)

J. RUSSELL.

Lieutenant Governor Sir JOHN HARVEY, K. C. B. &c. &c. &c.

\* Acts passed in March and September 1839, except 2 Vic. c. 28, 29, 30, 35, 36, 37, and 3 Vic. c. 1 and 2.