

are found in the following words, viz.—“It is nevertheless our will and pleasure, that due care be taken in all laws, statutes and ordinances passed in our *Province* of *Nova Scotia*, that the same do not extend to our Islands of *Prince Edward* (formerly *St. John's*) and *Cape Breton*, under colour or pretence that our said Islands are included in this our Commission to you, and are parts of our Government of *Nova Scotia*.”

The Legislature of *Nova Scotia* forbidden to interfere with *Cape Breton*.

The same Instructions add further—“And it is our will and pleasure, and we do hereby declare and ordain, that all and singular the powers, authorities and directions in and by this our Commission given and granted to you, so far as the same extend and have relation to our Islands of *Prince Edward* and *Cape Breton* and their respective dependencies, shall be executed and enjoyed by you, or the Commander in Chief of our *Province* of *Nova Scotia*, at such times only as he or you shall be actually upon the spot in either of our said Islands, but that at all other times all and singular the said powers, authorities and directions shall be executed and enjoyed by such persons whom we shall respectively appoint to be our Lieutenant-Governors of our said Islands.”

The Governor in Chief forbidden to interfere with *Cape Breton* unless within the Island.

Immediately after receiving his commission, the Governor *DesBarres* proceeded to the Island of *Cape Breton*, and took upon himself the administration of the Government. He formed His Majesty's Council for the Island. A great Seal was sent to him. Courts of justice were established, by ordinance of 22nd Feb. 1785, and the laws of England relating to the administration of justice declared to be in force in the Island; and in 1805, the Island was divided into districts of separate jurisdiction, by an ordinance of 3rd June in that year, which recited that the laws of England had been extended to the Island by his Majesty, and provided that all subsequent Acts of Parliament relating to the administration of justice in the Courts of King's Bench and Quarter Sessions in England should extend to *Cape Breton*, as far as the same were in their nature applicable. Another law or ordinance, passed 22nd Feb. 1785, provided that no taxes or dues to the Crown should be demanded of the inhabitants of the Island, except only royalties and commercial duties levied by Act of Parliament. The Militia was established by a law or ordinance of 5th Dec. 1787, which in order to remove doubts whether the Militia could be embarked in boats to repel invasion, enacted that that might be done in case of emergency. Other laws and ordinances for the government of the Island were also enacted, as for the peculiar punishment of certain offences (3rd Feb. and 16th Feb. 1787, and 2nd July 1793), for the regulation of fisheries (16th Feb. 1787); for the regulation of the forests (16th Feb. 1787), of highways (16th Dec. 1787), of fees (20th March, 1802), qualification of jurors (14th Feb. 1803), the election of constables (8th August, 1790), of churchwardens and vestry (30th March, 1791), by which last-mentioned law the whole Island was constituted one parish, and the minister required to be of the Church of England, with some provision for liberty of dissent.

The Separate Institutions and Laws of *Cape Breton*.

Amongst other laws, or, as they are termed, ordinances, passed by the Lieutenant-Governor and Council, was one in the year 1801, for levying a tax of one shilling a gallon upon all spirituous liquors imported into the Island during two years. This ordinance, recited to be passed with His Majesty's consent and confirmed by the King in Council, was afterwards re-enacted, and at length became questioned as illegal, on the ground that in consequence of the Royal Proclamation of 1763, and of the Letters Patent and Instructions herein before mentioned of, 1784, no tax could be levied in such a Colony, except by consent of its representatives convened in an Assembly. And on that ground, after much discontent had been excited, the payment was at length resisted, and an action brought in 1816 to recover it for the Crown by R. Cassil, Esq., the King's collector, against Messrs. Kitchen and Leaver. The cause came on for trial in the Supreme Court of the Island, in November, 1816, before A. C. Dodd, Esq., the Chief Justice of the Island, when a verdict was given for the defendant, by direction of the Chief Justice, on the ground that the tax was illegal. To this verdict and the judgment thereupon given the Crown was advised to and did submit.

The Crown and its Legislative Council exceed the authority reserved by the Letters Patent of 1784. Resistance and Judgment given against the Crown in the Supreme Court of *Cape Breton*.