

upon the proclamation, that they could not carry any authenticity, unless the proclamation, which was the ground work of the defence, were fully substantiated.

In respect of the evidence adduced from the copy of Sir James Craig's commission, it was contended as by no means correct, being the extract of a mere copy. The instructions, which are positive, state in the fifteenth section, "that such is the situation and circumstances of Cape Breton, that at present, it will not admit of an house of assembly being called." It is therefore manifest that no such instructions, as the defendants wish to make out, were ever given.

The case quoted, was in some measure in point, Grenada was a conquered island, a proclamation issued, conferring upon it a constitution, and my Lord Mansfield's opinion is to be seen thereon; but prior to any decision, the proclamation was most fully proved in the most authentic manner, being the basis of the whole action.

The chief justice charged the jury, stating that the proclamation could not be given from the annual register as evidence, yet still, the message from his excellency Governor Wilmot, accompanied with the proof of members having been chosen for Breton county, was quite sufficient to show that such a proclamation as had been referred to was issued and that consequently, the prerogative over this island was given up.

Jury retired and delivered their verdict for the defendants.

Extract of a Letter from Mr. Chief Justice Dodd, to His Excellency Major General Ainslie, Lieutenant Governor of Cape Breton, dated 22d November 1816.

"Your excellency having been pleased through your private secretary, to require my reasons in writing, which influenced my opinions so decidedly in the charge to the jury in the colonial revenue cause tried before me,

"I readily furnish your excellency with the reason which influenced every part of my official conduct on the trial mentioned.

"The trial was brought to recover a sum of money, said to be due by the defendants, Ritchie and Leaver, for so much duty on spirits imported by them, and imposed by an ordinance made and passed by the president and council of this island. The ordinance imposing this duty, and the importation of the spirits, were admitted by the defendants, and here the attorney-general rested his case.

"The defence set up was, that the law which imposed this duty is illegal and unconstitutional, and has been made without lawful authority; to establish this defence, the counsel for the defendants insisted that His Majesty had given up His kingly prerogative to make laws in Cape Breton, to levy a tax on the inhabitants, by His proclamation of the 7th of October 1763, in which he annexed this island to the province of Nova Scotia. To establish this proclamation, a copy of it as inserted in a volume of the Annual Register was produced, but this I rejected as not of sufficient authority; the defendants then produced a transcript from the minute of the records of the house of assembly of Nova Scotia, authenticated in the usual way by the proper officer of that body; wherein Governor Wilmot is said to have recognized His Majesty's proclamation of the 7th October 1763, and says "that the King by that proclamation, annexed the island of Cape Breton to the province of Nova Scotia." This I admitted as evidence of such a proclamation, and on this I founded my decided opinion and reasons, that His Majesty had given up His kingly power to legislate in Cape Breton, without a house of assembly, or interference of the British Parliament, and such I stated to the jury; in this opinion I find myself clearly justified by many circumstances, and particularly by the Grenada case, which was decided on the same principles by the Lord Chief Justice Mansfield, whose opinions I read to the jury from a MSS. copy taken from his elaborate discussion of that important question.

"I lament that this action has been brought forward; it originated and took rise during my late absence in England, and although I have from the first commencement of this impost been a strenuous advocate for its continuance; yet there is a duty which I owe to my King, my country, my official situation, and to my conscience, which cannot be superseded, and which calls upon me most emphatically to declare that my opinion is with the verdict. I have in my possession an act of the governor, council, and assembly of Nova Scotia, passed in the 6th year of the present reign, establishing the annexation of Cape Breton to that province, and enforcing the collection of duties in this island."