

part of Nova Scotia, and subjected to its Legislature, the Crown had still the right, by an act of the Prerogative, to divide that Province, and erect any part of it into a separate Colony, or endow it with separate and distinct Legislature, which only an Act of Parliament could abrogate. Numerous examples may be cited of such an exercise of the Prerogative of the Crown as the petitioners now contend for; but not a single instance is believed to exist of such an act of the Prerogative as the Petitioners here impugn.

For authority or illustration on this question recourse may be had to examples derived either from the other North American Colonies, or from the West Indian Possessions, or from the sometime British Provinces now forming the United States of America. A review therefore of the Charters, Commissions and Acts of Parliament relating to the Government of all those may be useful, in order to show, that with two or three seeming exceptions, the nature of which is clearly distinguishable from the present case, there is nothing in history to justify the measure in question, but the whole current of usage and practice in Colonial and Constitutional Law has been such as now contended for by the Petitioners. Almost every Colony affords some instance more or less in point; and even where none is found, the absence of anything adverse is favourable to the present case.

As far as regards the present Northern Colonies in America, the annexation of Nova Scotia to the general Government of Canada in 1786, and the separation of Newfoundland from the Government of Nova Scotia in 1729, are already shown to have been effected by Letters Patent.

After some unsuccessful attempts at planting this Island, a part of it appears to have been granted in 1610, by King James the First, to a company or corporation consisting of the Earl of Northampton and others. In 1614, a Commission from the Admiralty is said to have been sent out, and a Court established there under it. In 1616, a Colony was planted by an assignee of a part of the grant of 1610. In 1621, another grant of a part of the Island was made by King James the First to Sir George Calvert, afterwards Lord Baltimore, who made another plantation of considerable magnitude. But this being afterwards abandoned by him, another Charter is said to have been granted to the Marquis of Hamilton and others, including part of Lord Baltimore's grant. And on the 20th February, 1633, another Charter for the regulation of the Fishery is said to have issued from the Star Chamber. In 1650, a Commission is said to have been given for the Island by the then Council of State. Still no regular or permanent government of the Island seems to have existed there, the policy of this country then and long after being to prevent the settlement of the Island and compel the inhabitants to leave it, and resort thither only in Summer for Fishery; and the provisions of the Charter of 1610 appear to have had a similar object. In 1690, the stat. 10 & 11 W. & M. c. 25, was passed, which seems to have abrogated the Charter of 1610, if it then continued to exist, throwing open the trade of the Island to all British subjects. This act recited, that no Court of Justice, except the Lord High Constable's and the Earl Marshal's, had theretofore existed for the trial of offences committed upon land in that Island, and made provision for their future trial in Courts of Oyer and Terminer in England, and for the settlement of private controversies in the Island. Both these provisions, however, were so inadequate to the need that the resident inhabitants formed voluntary associations for their government. In the war preceeding the Treaty of Utrecht, Placentia, St. John's, and most other places of importance in Newfoundland, had been occupied by the French, but by the Treaty in 1713, the whole Island, as well as Nova Scotia or Acadia, was ceded to England. And in 1719, Letters Patent were issued appointing Richard Phillips Governor of Placentia in Newfoundland and Governor of the Province of Nova Scotia or Acadia. Still no powers for the regular local administration of Justice seem to have been granted till 1720, when a Commission issued revoking so much of the Governor of Nova Scotia's Commission as related to Newfoundland, and appointing Henry Osborne Governor, with powers of government, and limited provision

Precedents.

The British North American Colonies. Nova Scotia.

Newfoundland