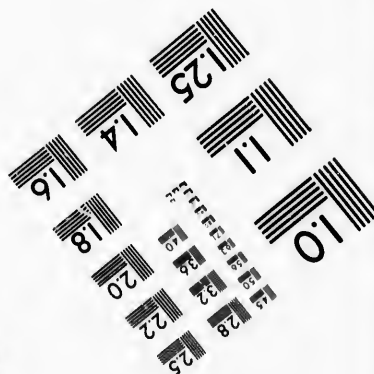
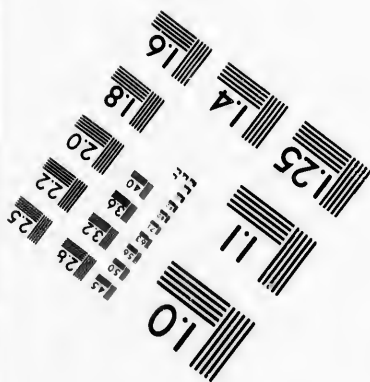
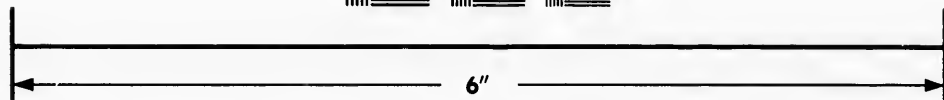
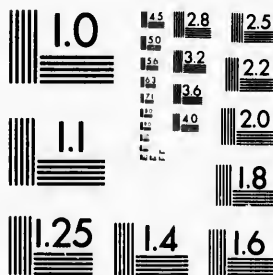


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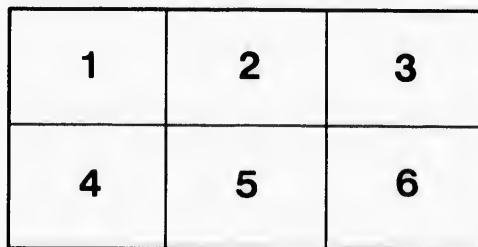
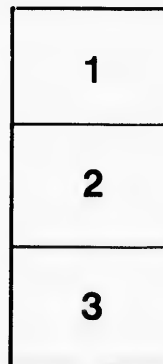
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SAINT JOHN TAXATION.

SAINT JOHN, N. B., June, 1878.

To the Rate-Payers of the City and County of Saint John.

A desire to give you full knowledge of an important public matter, and to save you from a heavy and unjust Tax, has led me to prepare the following pages, to which your attention is respectfully solicited :

On the hustings, on the 14th November, 1876, the writer had the honor to address the electors of the City of Saint John, with reference to matters pertinent to the occasion, and amongst other things, specially referred to the "Saint John Penitentiary" question, going very fully into the whole subject, and promised, if elected, to the then vacant seat, in the General Assembly of the Province, to take especial care that this Penitentiary question should receive at the hands of our Local Parliament that consideration which its importance so imperatively demanded.

In accordance with this promise, on Wednesday, the 21st February, 1877, the writer (Mr. Marshall) moved the following, viz:—

"Resolved, That a Committee be appointed to investigate the rights and relative claims of the Province of New Brunswick, or of any City and County or County within the said Province, with the Government of the Dominion of Canada, in connection with the Penitentiary located in the Parish of Simonds, in the City and County of Saint John, and known as the Saint John Penitentiary, with power to bring before them persons and papers, and all documents relative to the same."

and took occasion to say that the facts of the Penitentiary matter were so familiar to honorable gentleman that under ordinary circumstances it might not be deemed necessary to do more than ask for a vote and the appointment of a Committee, but the question was one which in the near future threatened to involve so serious a burden of taxation, not alone on the City and County of St. John, but on the other Counties of the Province, that he felt it his duty to go into it somewhat in detail, so that the position the Province holds may be clearly understood by the country at large.

He then proceeded to give a history of the St. John Penitentiary, showing that the tract of land connected with it was procured by the Justices of St. John in 1838, and a stone building, called the House of Correction—and which now forms part of the Penitentiary—was erected thereon in 1841, together with a Keeper's residence and other necessary Buildings. The Government of that day observing the benefits of the institution to the City and County of St. John, conceived the idea that it would be in the general in-

terests of the people of New Brunswick, were its benefits extended to the whole Province, and having opened negotiations with the object of carrying the idea to a practical issue, "An Act to establish a Provincial House of Correction," 4 Vic., cap. 44, was passed on the 26th March, 1841. This Act referred to several Acts establishing the St. John institution and authorizing the borrowing of money to meet the expenses thereof, etc., and after setting forth the advantages which it offered to the Province, provided that the Justices of the City and County should forthwith cause a full and correct Statement of the accounts relating to its erection and establishment, exhibiting the various sums taken on loan, with particulars connected therewith, and generally a complete statement of all the costs and charges to be made out, certified and forwarded to the Lieutenant Governor, who should, thereupon, with advice of his Council, appoint three Commissioners to examine the Statement, and, on their report being made, notify the Mayor of St. John. The Mayor, on receiving the notice, was to call a meeting of the Justices, who were required to hand over the whole property to Her Majesty, the Queen, the debt owing as per the Statement, to be paid with interest out of the Provincial Treasury, provided that no greater sum than £4,000 should be drawn from the Treasury for the purpose, and no greater sum than £500 in any one year. By the 14th Section of the Act the authorities of the City and County of St. John were empowered to take up and arrest by Warrant, Rogues, Stragglers, Vagabonds, Idle, Suspicious, or Disorderly persons, and to order them to be committed to the said House of Correction, there to be kept for any time not exceeding Forty Days; also to send prisoners confined in the Jail of the City and County to the same place, and have them kept there until the expiration of their term of imprisonment.

Although the adjustment of the accounts and delivery of title did not take place until March, 1844, the control and management of the Penitentiary passed over to the Province on the 1st April, 1842, for a money consideration, together with a solemn agreement that prisoners of the class referred to in the 14th Section of the Act should be, in perpetuity, a Provincial charge. Part of the terms of the transfer between the Justices and the Province, was the reservation, that short term prisoners—those sentenced for less than two years—would be cared for in that institution, in perpetuity and that it should become a Provincial and not a local prison. Subsequently, the name, "House of Correction" was changed to "The Provincial Penitentiary of New Brunswick."

Up to the time of Confederation, the rights and privileges thus reserved and secured to the City and County of St. John, were never questioned, but on the contrary they were recognized and maintained, not alone as regarded St. John, but as well with respect to the other Counties of the Province, as more fully appears in the Revised Statutes, 1854, Cap. 91.

At Confederation the Central Government undertook the establishment, maintenance and management of Penitentiaries, and it came in and took charge of the Provincial Penitentiary under the clearly defined terms of the British North America Act. He believed the Dominion Government intended at that time to carry out the solemn engagements of the Province in regard to the matter under discussion—they accepted the institution now known as the St. John Penitentiary, with the bond and mortgage upon it and all the advantages or disadvantages which the Province of New Brunswick had in the institution, and he verily believed that they intended to carry out the arrangement in good faith, else why enact in 1869 the law relating to Penitentiaries, the 96th Section of which provided that prisoners sentenced for terms not greater than two years, should be imprisoned in the Penitentiary for the Province where sentenced, provided it should not apply to "any prisoner sentenced in New Brunswick or Nova Scotia" for "less than two years." He believed the Government of Canada were induced to take the extraordinary step of—without mutual arrangement—unloading

this burden, which, of right, should be borne by Canada, and throwing it upon the Ratepayers now well laden with taxation in the different Counties of the Province, by the representations of visiting Inspectors sent here from the other Provinces. The small, thin edge of the wedge was, first, very quietly introduced in 1870 by 33 Vic., cap. 30, "An Act to amend the Penitentiary Act, 1868," Section 5, of which provides that prisoners sentenced to hard labor in New Brunswick or Nova Scotia for two years or less, shall not be received in the Penitentiaries of this Province after 1st May, 1873. This movement at Ottawa attracted the attention of the St. John Justices, who sent a Delegation on the subject to the Canadian capital, when a proposition was made to hand the Institution, with its grounds and equipments, over to that City and County, in consideration of the St. John Sessions relieving the Central Government of the liability which attached at the time of its transfer from the Provincial to the Federal Government. Meantime, the Act to extend the provisions of the Act last referred to passed, its operation being postponed to 1st May, 1876. When the delegates referred to returned from Ottawa, he (Mr. Marshall) was not satisfied with the proposition made by the Dominion Government, and deemed it his duty to declare that it would impose too great a burden upon the tax-payers of the Province and especially those of the City and County of St. John, on whose hands the institution would be a large "elephant." Subsequently, in 1875, Sheriff Harding and himself went to Ottawa, and while there, as delegates from the St. John Sessions, met Hon. Mr. Fournier, then Minister of Justice, who agreed to further extend the time of admitting short-term prisoners until the "Maritime Penitentiary" should be completed. The Minister, therefore, had 38 Vic. cap. 44, passed, which repealed the two Acts last referred to and extended the time of receiving short-term prisoners in the Penitentiary for this Province to 1st May, 1878.

He trusted he had made the matter sufficiently clear. The position which Canada took in it to-day was that by handing over the Institution to St. John, she could honorably retire from it, but such was not the case. Our rights under a contract involving dollars and cents are vested in the question, and if the policy of the Dominion Government demands a change, then a full and complete equivalent should be given.

That the subject in its full importance might be comprehended, he would show the relative proportions of long and short-term prisoners confined in the Provincial Penitentiary since Confederation:—

Year.	Total.	Long-term.	Short-term.
1867	131	27	104
1868	104	29	75
1869	83	32	51
1870	79	35	44
1871	74	30	54
1872	80	30	50
1873	104	31	73
1874	104	36	68
1875	108	54	54
1876	162	74	88

From the increase shown in these returns it is reasonable to argue that by the year 1878, the number of prisoners of the short-term class will be 100. It is well known that short-term prisoners are the most expensive to maintain. The average cost per head at the St. John Penitentiary for 1875 was \$177.83, and for 1876 it was \$247.03, so it is fair to estimate the future cost at an average of \$200 per head, which for 100 would give \$20,000 per year, which sum capitalised at 6 per cent, would mean \$334,000. He might, therefore, anticipate that so important a matter would receive at the hands of the House, as

well as those of our representatives in Parliament at Ottawa, the attention which its importance so imperatively demanded.

A little bird whispered to him that Canada would say St. John paid little for what it receives. The cost of erecting the House of Correction, as shown by the statement of 1842, was £13,501 19s. 3d. towards which Legislative grants were paid from 1838 to 1842 to the amount of £8,078 5s. 4d, leaving a balance of £5,433 13s. 11d due the Sessions of St. John. After some negotiations and disputing the Sessions accepted £1,866 3s. 8½d. In those times, however, neither Government nor Sessions' accounts were kept with the accuracy of the present day, and although it may appear that the matter was pretty well settled up, yet it was well known that St. John, from time to time, paid large sums in settlement of liabilities incurred on account of the institution, and ten years after the transfer was actually made the Sessions had to come to the Legislature and ask for authority to tax the ratepayers of St. John for a sum of \$8,600 to pay off the balance of indebtedness still remaining. The Penitentiaries of the Maritime Provinces and those of the inland Provinces were differently situated, the former having always received short as well as long-term prisoners, while the latter took only those sentenced for two years and upwards. At Confederation the Dominion, however, took over the Penitentiaries as they were, and there was no expectation or arrangement to justify Canada in seeking to apply the policy of the Inland Provinces to our Penitentiary, which it took over without reservation and with the obligations which this Province had assumed implied in the contract. We may not ask Canada to continue the maintenance and care of our short-term prisoners; but she undertook the task, and if she desires to rid herself of it, she should recognize the fact that she is throwing upon us prisoners who are of the non-productive class, and that the interest is a growing one, concerning which the Legislature should insist on the rights of the Province and of the City and County of St. John being provided for by a fair and honorable arrangement.

Mr. Elder seconded the resolution, which was then adopted, and Mr. Marshall, Mr. Stevenson, Mr. Elder, Mr. Covert and Mr. Leighton were appointed the said Committee. On the 15th March, 1877, the said Committee having exhaustively examined and inquired into the subject matter of the said resolution, made a full and complete report, from which the following extracts are made, viz:—

COMMITTEE ROOM, 15th March, 1877.

"The undersigned, appointed to report upon the following Resolution:—'That an humble Address be presented to His Honor the Lieutenant Governor, praying that His Honor may be pleased to cause to be laid before this House the following, namely: A certain Account or paper writing, bearing date on or about the 12th day of July, A. D. 1842, and addressed by the General Quarter Sessions of the City and County of Saint John, to the Government of New Brunswick, or to any Officer or Member thereof, showing the cost and expenditure on account of the Institution then known as the House of Correction of the City and County of Saint John, and afterwards as the Provincial Penitentiary, and at present as the Saint John Penitentiary, together with a certain letter from the late Honorable W. F. Odell, then Provincial Secretary of the Province of New Brunswick, directed to the then Mayor of the City of Saint John, and bearing date on or about the 15th day of February, A. D. 1844, and enclosing a Report of the Commissioners of Audit, appointed under an Act of the General Assembly, 4th Victoria, Chapter 41, intituled 'An Act to establish a Provincial House of Correction,' together with a Copy of the said Report; also, all Minutes or Memoranda of Council made some time in the month of March, 1844, or at any time during the said year, by which the said House of Correction or Provincial Penitentiary was then ceded to, or vested in Her Majesty the Queen; as well as a Copy of all other Correspondence held by or with the Government of the Province, and all Minutes, Memoranda and Orders of Council referring to the said Correspondence or the paper writing herebefore referred to, or in any way relating to the said House of Correction or Provincial Penitentiary; and Copies of all Correspondence, if any, between the Government of the Dominion of Canada and the Government of the Province of New Brunswick, relating thereto:—beg to say, that they have given the matter full consideration.

"Your Committee would submit the following papers, which together form a complete history of the Institution from its inception as a House of Correction for the City and County of Saint John, until and during the period when it was styled the Provincial Penitentiary, and up to the present time, when the said establishment is recognized as the Saint John Penitentiary of the Dominion of Canada for the Province of New Brunswick.

Copy of a Letter of His Worship the Mayor of the City of Saint John, as well as of a Letter addressed to His Worship by the Clerk of the Peace for the City and County of Saint John :-

MAYOR'S OFFICE, CITY OF SAINT JOHN,
Province of New Brunswick, Canada, Feb. 23d. 1877.

ROBERT MARSHALL, Esquire, M. P. P.

SIR,—I have the honor to enclose, as requested, Statements from Clerk of Peace in reference to Saint John Penitentiary.

Personally I am entirely unacquainted with this matter, and would suggest that the High Sheriff be requested to appear before the Committee.

I am yours truly,

A. CHIPMAN SMITH, Mayor.

OFFICE OF THE CLERK OF THE PEACE,
Saint John, N. B., February 22d. 1877.

SIR,—In reply to your request to be furnished with detailed information from this Office as to the settlement made between the City and County of Saint John and the Provincial Government of New Brunswick, upon the transfer by the former to the latter of the House of Correction, or Provincial Penitentiary, I beg to say that I have carefully examined the Minutes of Sessions from the year 1839 to the year 1856, and find as follows:—

1. The Sessions of the City and County of Saint John, having purchased a tract of land for the purpose in 1838, erected thereon a stone building as and for a House of Correction for the County.
2. In 1841, the Institution having been found to work well, it seemed to be thought desirable to extend its advantages to the Province, and for this purpose to transfer the Institution to the Provincial Government, which had already contributed largely to the cost of erection.
3. To effect this, the Act of 1841 (4 Vic. c. 49) was passed, by which it was provided that the Sessions should make up a Statement shewing the whole cost, the amounts received from the Government, and the balance due the City and County of Saint John.
4. In July 1842, the Sessions rendered their Account, as follows:—

Entire cost of establishing and erecting House of Correction,	£13,501 19 6
Contributed by Legislative Grants in 1838, '39, '40, '41, '42,	8,098 5 4
Balance due the Sessions,	£5,433 13 11

5. This balance seems to have been the subject of a long dispute, but in February 1844, the Commissioners of Audit, appointed under the Act of 1841, reported to the Government the balance found by them to be due as £4,866 7s. 8½d.

6. In March 1844, this adjustment was accepted by the Sessions, the Penitentiary and lands appertaining were vested in the Queen, the sum of £366 6s. 8½d. was paid at once to the Sessions, and in accordance with the Act of 1841 the sum of £1,000 was paid in eight years, by instalments of £500 per annum and, as would appear, *without interest*.

7. In the meantime Bonds or Debentures, which the County had issued at 6 per cent. interest, were running on, and could only be paid off year by year with the amount received from the Government; consequently, in 1852, when the Government Grant was paid in full and there was nothing more to be received from that quarter, the Sessions found themselves with a debt exceeding £2,000 still unprovided for.

8. The 15 Vic. Cap. 69 was then passed, the preamble of which recites all the circumstances, authorizing the Sessions to assess the deficiency upon the City and County of Saint John.

9. Under this Act £600, with expenses,—about 15 per cent. of assessing and collecting—were assessed each year in 1853, 1854, and 1855, and £400 in 1856, in all £2,200; to which, if there be added the difference between the amount claimed in 1844 by the Sessions, and the amounts paid by the Government between 1844 and 1852, viz. £567 6s. 5½d., would make the whole outlay of this City and County £2,767 6s. 5½d.

10. At this distance of time, however, and when *all* those who took part in the transaction between the County and the Government have passed away, it is impossible to say or ascertain how much more the County may have paid in the earlier stages of the work or what led to the valuable concession made by the Government which formed part of the compact, and secured to this City and County the right to send to the Penitentiary *all* offenders, no matter how light either their offence or its punishment.

I have the honor to be, Sir, your obedient servant,

H. W. FRITH, Clerk Peace.

His Worship the Mayor, Saint John.

Extracts from the respective Acts passed by the General Assembly of the Province of New Brunswick, together with Extracts from the Statutes of the Dominion of Canada relating to the Institution now known as the Saint John Penitentiary.

Extracts from "An Act to establish a Provincial House of Correction," being 4th Victoria, Chapter 44. * * * * * Passed 26th March, 1841.

CAP. LIX.—An Act to secure to the holders of certain outstanding Debentures of the City and County of Saint John payment of the principal money and interest due thereon. * * * * * Passed 7th April, 1852.

Extract from Act Revised Statutes, Chapter 91, 'Of the Provincial Penitentiary.'

Sec. 12. Any Justice of the City and County of Saint John may arrest, or cause to be arrested, any vagabond, suspicious or disorderly person within the said City and County, and commit them to the said Penitentiary for any term not exceeding forty days, with hard labor.

13. The Justices in any General or Special Sessions may cause all persons sentenced to imprisonment with hard labor, and all vagabonds and other suspicious or disorderly persons, at any time in confinement in the Gaol or Workhouse of the County under any conviction, to be removed therefrom and conveyed to the Penitentiary, and may make such orders for their conveyance, and the necessary expenses thereof, as to such Justices may seem meet; and the keeper shall forthwith receive such persons into his custody, and keep them at hard labor until their respective terms of imprisonment expire.

14. Whenever by any law authority is or may be given to imprison any person in any house of correction or gaol with hard labor, or in the Penitentiary, such imprisonment may be in the Penitentiary with hard labor.

The British North America Act of 1867, 30th & 31st Vic. Cap. 3.—"An Act for the Union of Canada, Nova Scotia and New Brunswick, and the government thereof, and for purposes connected therewith."

VI. DISTRIBUTION OF LEGISLATIVE POWERS.—*Powers of the Parliament.*—Sec. 91, subsection 28, reads as follows:—"The establishment, maintenance and management of Penitentiaries."

1869, 32nd & 33rd Vic. Cap. 29.—"An Act respecting procedure in Criminal Cases and other matters relating to Criminal Law."

96. Each of the Penitentiaries in Canada shall be maintained as a Prison for the confinement and reformation of persons, male and female, lawfully convicted of crime before the Courts of Criminal Jurisdiction of that Province for which it is appointed to be the Penitentiary, and sentenced to confinement for life, or for a term not less than two years; and whenever any offender is punishable by imprisonment, such imprisonment, if it be for life, or two years or any longer term, shall be in the Penitentiary; but this shall not prevent the reception and imprisonment in any Penitentiary of any prisoner sentenced for any period of time by any Military, Naval or Militia Court Martial, or by any Military or Naval authority under any Mutiny Act, or of any prisoner sentenced in New Brunswick or Nova Scotia to imprisonment with hard labor for less than two years.

"An Act to amend the Penitentiary Act of 1868."

30th Vic. Cap. 52.—"An Act to extend the Act passed in the thirty third year of Her Majesty's Reign, intitled 'An Act to amend the Penitentiary Act of 1868.'"

38th Vic. Cap. 44.—"An Act respecting Penitentiaries and the inspection thereof, and for other purposes."

Correspondence between the Honorable the Minister of Justice and Mr. Robert Marshall, M. P. P. for the City of Saint John, relative to the Saint John Penitentiary:—

SAINT JOHN, N. B., 6th December, 1876.

Hon. Mr. Blake, Minister of Justice, &c., &c., Ottawa.

DEAR SIR,—Kindly permit me to enclose herewith a paper having a report of my remarks about the Saint John Penitentiary on Nomination day, to which I would respectfully ask your attention.

Meantime I remain, dear Sir, faithfully yours.

ROBERT MARSHALL.

OTTAWA, 9th December, 1876.

DEAR SIR,—I have to acknowledge the receipt of your letter of the 6th inst., enclosing a report of your remarks about the Saint John Penitentiary.

As I understand the matter, it has been already disposed of by Parliament, but if I am in error I shall be glad to be corrected and to receive any further information you can give me.

EDWARD BLAKE.

ROBERT MARSHALL, Esquire, Saint John, N. B.

SAINT JOHN, N. B., 30th December, 1876.

Hon. EDWARD BLAKE, Minister of Justice, &c., &c., Ottawa.

DEAR SIR,—Your esteemed favor under date of 9th instant, came duly to

hand in answer to my note of the 6th idem, relating to the Saint John Penitentiary.

You say—"As I understand the matter, it has already been disposed of by Parliament; but if I am in error, I shall be glad to be corrected and to receive any further information that you can give me."

This quotation, I regret to say, more than confirms my worst fears, and fully justifies the somewhat strong remarks made by myself on the hustings, at the Saint John Court House on the 14th November last.

Permit me, in reply to your remarks, as briefly as possible, to explain the following, which I feel assured will, upon re-examination, be found substantially correct, and will convince you and the other Ministers of Canada that this Saint John Penitentiary matter, if already disposed of by Parliament, has been disposed of in a manner the exact opposite of equitable. That the tract of land situate in the Parish of Simonds, in the City and County of Saint John, upon which the prison known as the Saint John Penitentiary now stands, was in the year 1838 purchased by the Justices of the Peace for the said City and County of Saint John, for the purpose of erecting thereon a House of Correction of the City and County.

That between that period and the year 1841 a stone building, which forms part of the Saint John Penitentiary as it at present exists, together with a residence for the Keeper, and other subordinate buildings, were erected by the said Justices.

That in the year 1841 the Government and Legislature of New Brunswick feeling, as the Act says, the great benefit which would arise from extending the advantages of the Institution to the whole Province, caused an Act to be passed to authorize its sale and transfer to the Government.

That, consequently, under and by virtue of the Act of Assembly of New Brunswick, 4 Vic. Cap. 44, the said building so erected by the said Justices, with the tract of land and premises aforesaid, were surrendered to Her Majesty the Queen, and then became and were used and known as the Provincial House of Correction, and subsequently as the Penitentiary of New Brunswick.

That part of the terms of transfer made and agreed upon by and between the said Justices and the Province of New Brunswick, was the reservation to the said Justices of the right in perpetuity to commit to the said House of Correction all vagabonds, suspicious and disorderly persons, within the said City and County, and the further right in common with all the other Counties of the Province, to cause all persons sentenced to imprisonment with hard labor, and confined in the County Gaol, to be removed therefrom to the said House of Correction or Penitentiary, as by reference to the 14th and 15th Sections of the said recited Act, will more fully appear.

That up to the time of the Confederation of the Provinces, the rights thus reserved and secured to the said City and County were never questioned, but on the contrary were fully recognized and maintained in the year 1854 by the Government and Legislature of New Brunswick, as will appear by reference to the Revised Statutes of the Province passed in that year, Chapter 91, Sections 12, 13 and 14.

That under and by virtue of The British North America Act of 1867, and a subsequent Act of the Dominion Parliament, viz., 31 Vic. Cap. 75, the Institution and premises above mentioned passed over to the Dominion of Canada and that from that hour the Dominion held that property on exactly the same terms as the Province of New Brunswick held the same at the time of transfer.

That in 1869, by 32, 33 Vic. Cap. 29, it was enacted, that imprisonment for any term short of two years should be in a Common Gaol, or some prison or place other than the Penitentiary, but by Section 96 of the same Chapter, the Provinces of Nova Scotia and New Brunswick were exempted from the operation of this Statute.

That in 1870, by 33 Vic. Cap. 30, the exemption was repealed, subject to the provisions that such repeal should not take effect in the case of one year Convicts, prior to the 1st May 1873 and for two year Convicts, prior to 1st May 1874.

That in 1873, by 36 Vic. Cap. 52, the periods above named were further extended, that is to say, in the case of one year Convicts, to 1st May, 1875, and in the case of two year Convicts, to May 1876.

That James A. Harding, Esquire, and the writer had the honor of meeting the Honorable Mr. Fournier, the Minister of Justice, at Ottawa, in reference to this important matter, and at the time submitted a Memorial from the Sessions of the City and County of Saint John, from which document a large portion of the above has been taken.

That Parliament subsequently extended the time for short term Convicts, as will more fully appear by reference to the Act of Parliament, to which you refer in your communication of the 9th instant, up to the date when the new Penitentiary for the Maritime Provinces, now being constructed, shall have been completed and ready for occupation, located in Dorchester, in the County of Westmorland, in the Province of New Brunswick.

That it is a matter of Public Faith that the rights reserved to the said City and County should be specially regarded and maintained by Canada, as they doubtless would have been by New Brunswick had the Confederation of our Provinces not taken place.

That a reference to the statistics of the said Penitentiary, from its establishment, will shew that fully ninety per cent. of all the prisoners sent thereto are from the seaport City and County of Saint John, and that of these about ninety per cent. are under two year convicts, and hence that the surrender of the whole property with its equipments, as it now stands, will be no fair equivalent for the vested rights of the City and County of Saint John, as above described. * * *

I have the honor to remain, faithfully yours,

ROBERT MARSHALL.

OTTAWA, 6th January, 1877.

DEAR SIR,—I have to acknowledge the receipt of your letter of the 30th ultimo.

The statements you made are, I observe, substantially those which have been made in a Memorial formerly presented to the Government on behalf of the Justices.

I am engaged in considering the whole question.

Yours truly,

EDWARD BLAKE.

R. MARSHALL, Esq., M. P. P., Saint John, N. B.

Your Committee would also state that the papers furnished by direction of His Honor the Lieutenant Governor, agreeable to motion, have had careful attention. The following is a copy of said motion, to which is added a list of papers furnished:—

Schedule, 6th April, 1844.—Declaration of transfer of Penitentiary to Queen.

In briefly reviewing the facts in relation to and in connection with this Institution, your Committee would respectfully urge—

That in the year A. D. 1844, the City and County of Saint John arranged to transfer the said Establishment, then known as the House of Correction of the City and County of Saint John, to the Government of the Province of New Brunswick.

That, although the said Province assumed control of the said House of Correction in the year A. D. 1842, it did not secure full, complete and absolute control legally until the year A. D. 1844.

That one of the terms of transfer was, that in perpetuity short term prisoners, as well as convicts, were to be cared for at the sole expense of the said Province of New Brunswick, as far as the City and County of Saint John were concerned.

That this privilege, viz.—that short term prisoners, as well as convicts, were to be cared for in perpetuity by the said Province of New Brunswick, at the sole expense of said Province,—was subsequently extended to all parts of the Province without any reservation of any nature or kind soever.

That in the year A. D. 1852, the City and County of Saint John was obliged to ask the Legislature of New Brunswick for authority to assess and collect from the ratepayers of the said City and County of Saint John the sum of eight thousand dollars, being a balance still due for expenditure in connection with the said House of Correction above and beyond the amount received by former assessment upon the ratepayers of the said City and County, as well as above and beyond the amount received from the said Province of New Brunswick under the arrangement for the transfer of said Institution as aforesaid.

That up to the year A. D. 1868, the rights reserved to the said City and County of Saint John, as well as to the respective Counties throughout the Province, were never questioned, but were on the contrary fully recognized and maintained in the year A. D. 1854 by the Government and Legislature of New Brunswick, as will appear by reference to the Revised Statutes of the Province passed in that year.

That The British North America Act of 1867, Cap. 3, intituled "An Act for the Union of Canada, Nova Scotia and New Brunswick, and for the government thereof, and for purposes connected therewith," provided amongst other matters and things, that the establishment, maintenance and management of Penitentiaries, shall devolve exclusively upon the Parliament of Canada.

That in the year A. D. 1869, the Parliament of Canada enacted, that imprisonment for any term short of two years, should be in a Common Gaol, or Some Prison or place other than the Penitentiary; but the Province of New Brunswick was exempted from the operation of this Statute.

That the fifth annual report of the Directors of Penitentiaries of the Dominion of Canada for the year 1872, made the following recommendation, viz:—"If it be decided to continue the Penitentiary at Saint John, the Directors beg leave most earnestly to advise that the committal of vagrants and prisoners under short sentences, should be discontinued. This practice is subversive of discipline, and greatly impedes the reformation of the convicts, by their unavoidable intercourse with those who are so frequently convicted for petty offences." Your committee beg to submit, that the arguments of these Directors, although from their stand-point reasonable, do not offer any good reason why the Parliament of Canada, in contravention of existing rights, as hereinbefore fully stated, and without fair and reasonable indemnity, transfer the great burden and expense of caring for these short term prisoners, from the Central Government to the Local Government of the Province of New Brunswick.

That the legislation had in Canada in the year A. D. 1870, as well as in subsequent years, with a view to the transfer of short term prisoners from Dominion Penitentiaries to local places of imprisonment, is unfair to the tax-payers of the Province of New Brunswick, and at variance with the spirit and the letter of The British North America Act of 1867.

That a reference to the respective annual Reports of the Directors of Penitentiaries of the Dominion of Canada, for the several years since the Confederation of these Provinces, will exhibit the relative proportions of

long and short term prisoners confined in the Saint John Penitentiary, as follows:—

Year.	Total.	Long Term.	Short Term.
1867	131	27	104
1868	104	29	75
1869	83	32	51
1870	79	35	44
1871	74	30	54
1872	84	28	56
1873	104	31	73
1874	104	36	68
1875	108	54	54
1876	162	74	88

From the increase shown in these returns it is reasonable to argue that by the year 1878, the number of prisoners of the short term class will be at least one hundred. It is a well established fact that short-term prisoners are the most expensive to maintain. The average cost per head at the St. John Penitentiary for 1876 was \$177.83, and for 1875 it was \$247.03. As the above shows the average cost for long and short-term prisoners, and as short-term prisoners are admittedly more expensive than long-term prisoners or convicts, it would not be unreasonable to estimate the cost for short-term prisoners at an average of \$200 each, which for one hundred would give \$20,000, which sum capitalized at 6 per cent. would mean \$334,000; and if this great burden be thrown upon the Province, the expense would be relatively apportioned somewhat as follows:—Say, eighty per cent. upon the City and County of Saint John, and the remaining twenty per cent. distributed over other Counties throughout New Brunswick.

That inasmuch as The British North America Act devolves the burden of criminal legislation on Canada, thereby enabling the Parliament of Canada to determine what offences shall be punished by short terms of imprisonment, and what by longer terms, it would only appear reasonable that the Government of Canada should continue to admit into the new Penitentiary for the Maritime Provinces, now being constructed at Dorchester, such prisoners or convicts, whether for short term or longer term, as have since the year 1842 been admitted into the Institution now known as the Saint John Penitentiary.

That if, under color of legislation under which the rights of New Brunswick were not protected, the Governor General in Council decide to throw the burden of short term prisoners upon the respective Counties of New Brunswick, it will be the imperative duty of the Government of Canada to indemnify the Province, taking into consideration that the interest is a growing one, and that the expense will increase year by year.

That the importance of this matter, in the opinion of your Committee, demands the earnest consideration of His Honor the Lieutenant Governor in Council, to the end that the interests of the City and County of Saint John, as well as the interests of the other Counties of the Province, may be conserved.

Respectfully submitted.

ROBERT MARSHALL,
WILLIAM ELDER,
BENJ. R. STEVENSON."

Ordered, That the Report be accepted.

It appears only right, to state just here, that the General Quarter Sessions of the City and County of St. John, had during the years 1869 and 1870 given

this matter very careful consideration, which resulted in the appointment of a Committee to proceed to Ottawa to confer with the Government of the Dominion with regard to the matter. The report of this delegation is as follows:—

To the Mayor and Justices of the Peace in and for the City and County of Saint John in General Quarter Sessions, convened:—

The Committee appointed to proceed to Ottawa on matters connected with the Penitentiary, respectfully submit:—

That in compliance with a Resolution passed at a special Sessions held in January last, referring to the Penitentiary in this County, they proceeded to Ottawa and arrived there on the 3rd February last, and were called upon by the Hon.ble. S. L. Tilley, the representative of this City in the Dominion Parliament and one of the Justices of the City and County of Saint John, who anticipating their arrival, had made arrangements to secure an early interview with the Hon.ble. the Minister of Justice. On the next day, accompanied by the Hon. Mr. Tilley, your Committee had the honor to lay before the Minister of Justice in the fullest manner the claims and money interest which the City and County of Saint John had in the Penitentiary, supported by the Laws of the Province of New Brunswick, in existence prior to the Confederation of these Provinces, in reference to the same and to the rights therein conserved to us of sending criminals for minor offences there. Whereupon the Hon. the Minister of Justice admitted we had claims, and requested your Committee to confer with the representatives of the Province of Nova Scotia and New Brunswick having seats in the Dominion Council and urge them to concur in some scheme that would place both Provinces in a position to be finally treated by the Dominion. Your Committee succeeded in interviewing the respective representatives named, and were assured that a recommendation to the Dominion Council would be proposed to build a Penitentiary for the two Provinces, as suggested in the Report of the Inspector of Penitentiaries in 1868, and to treat with the Sessions of this City and County with reference to our Penitentiary. The result of the proceeding in Council was communicated to your Committee on the 13th February by the Hon. Mr. Tilley, who informed them that the Council had unanimously agreed to the same as recommended and that a memo would be forwarded to us through the Dominion Minister of Justice, which has not yet come to hand.

Your Committee having no authority or instruction to treat for the transfer of the buildings and property to this City and County, could take no further action in the matter.

Respectfully submitted,

(Signed)

W. H. A. KEANS, }
JAMES A. HARDING, } Committee.

St. John N. B., March 1871.

At a special meeting of the Saint John Magistrates, held in the Court House, in March 1871, the above report was received and oral explanations were made, from which the Justices informally learned that the Government of Canada recognized the vested rights of the City and County of St. John as well as of the other Counties of the Province in the Institution, and that it would not be unwilling to transfer, in the near future, the "St. John Penitentiary with its equipment" for a discharge of the Bond and Mortgage now held by the above named Counties. At first blush this offer appeared most reasonable; but upon full debate being had, the writer (Mr. Marshall) and other Magistrates present, in strong language, asserted that to accept this informal offer would be to take from Canada an "Institution" which would prove an "Elephant" on the hands of our rate payers. So there the matter ended at that time; the "Sessions" almost unanimously holding the view of the matter indicated by the foregoing statements.

Subsequently, say in October 1871, the Provincial Government through its "Better Terms Delegation," took ground very similar to that already taken by the Sessions in the premises, as will more fully appear by reference to the report of the Delegation, published in the Journals of the Province of New Brunswick.

In January, 1875, Sheriff Harding and the writer, were a Delegation to Ottawa, in reference to the matter, and on their return made the following report to the General Committee of the General Quarter Sessions; which had been appointed, with almost plenary powers with regard to the adjustment of this important matter, viz:—

St. John, N. B. 30th Jan., 1875.

Gentlemen—The Memorial of the Sessions of the City and County of Saint John to His Excellency the Governor General, and other papers relating to the Saint John Penitentiary under cover from the Clerk of the Peace, were received by us on the evening of the 22nd

instant, as we were preparing to leave Ottawa for Saint John, too late for us without great delay to follow the formal course, and we endeavored to pursue the next best.

Remaining over a day, we were kindly accorded an interview with the Minister of Justice and the Minister of Customs, for the forenoon of the 23rd. When we submitted the papers forwarded, and assisted by Mr. Justice Elder who was in Ottawa at the time, explained to them our rights and position as a City and County in that institution.

Whereupon the Minister of Justice informed us that the Dominion Government had under consideration the building of a Penitentiary for the Maritime Provinces and that he would recommend to the favorable consideration of his colleagues the extension of the time for our sending short-term criminals to the Penitentiary, sufficiently long to enable them to complete the proposed Maritime Penitentiary, and that at the end of such time the present institution be placed in such a position as will conserve to us our local rights and enable the same to be used as a Central Prison for this District. In all which the Minister of Customs concurred and the Minister of Marine and Fisheries being separately seen agreed.

Respectfully submitted,

(Signed)

JAMES A. HARDING.

ROBERT MARSHALL.

To the Committee of the Sessions of the City and County of John on matters relating to the Penitentiary.

At the close of the Session of 1877 it was understood that during recess the Government would give the report of the Committee on this "Penitentiary" matter the attention which its importance might be found to demand; and accordingly on the 26th February, 1878, His Honor the Honorable Samuel Leonard Tilley, C. B., Lieutenant Governor of the Province of New Brunswick, in his Speech at the opening of the Legislature made the following remarks:—

"I have caused renewed representations to be made to the Government at Ottawa concerning the claim of the Province to the sum of one hundred and fifty thousand dollars, in respect of the Eastern Extension Railway. This matter was brought under the consideration of the Dominion Government in the month of December, 1874 and no conclusion having been reached I deemed it advisable to send Members of my Government to Ottawa early in the present Session of Parliament, to endeavour to obtain through the co-operation of the Senators and Members of the House of Commons representing the Province, a settlement of this and other matters. I am glad to be able to say that, with few exceptions, the Members representing the Province cordially co-operated with the Members of my Government,

* * * * *

"Representations were also made on the subject of the Penitentiary Act, so far as it relates to this Province. On this subject I am of opinion that under the Act of Union the Government of Canada should at least in this Province provide for the imprisonment and punishment in the Penitentiary of all persons who may be sentenced to imprisonment with hard labour. The papers on these several subjects will be laid before you."

From these papers, which fully endorse the position indicated in this letter, I submit the following extracts, viz:—

OTTAWA, 11th February, 1878.

The Honorable R. W. SCOTT, Secretary of State, Ottawa.

SIR,—We have the honor, at the instance of the Government of New Brunswick, to draw attention to the existing legislation respecting Penitentiaries.

* * * * *

We also desire to point out that the Saint John Penitentiary, then known as the Saint John House of Correction, was taken by the Province as a Provincial Penitentiary in the year 1842, and that connected with the financial arrangements it was agreed on the part of the Province that all persons convicted of minor offences in the City and County of Saint John might be imprisoned in the Provincial Penitentiary.

The Dominion of Canada having succeeded to the ownership of the Penitentiary, it is urged by the Municipal authorities of Saint John with apparent conclusiveness, that the Dominion authorities should carry out the arrangement entered into between the City and County and the Province, and the observations already made as to the general subject are applicable to this special claim as well.

We would refer to the Report of the Assembly Committee as setting out the facts in this connection.

The whole matter is one of great importance to the people, not only of the City and County of Saint John, but of the entire Province.

In submitting this matter for consideration, we claim—

First—That the Act 33rd Victoria, Chapter 39, does not carry out the spirit and intention of the Act of the Union, and that under the terms "the establishment, maintenance and management of Penitentiaries," Canada is liable for the care of all prisoners punishable under the Criminal Laws of Canada, whether sentenced for two years or under, and that the Dominion Parliament cannot relieve itself from this burden by any legislation.

Second—That in the case of the Saint John Penitentiary, the Dominion Government is vested with the property of that Institution, subject to the right of the City and County of

Saint John to have all its short term prisoners cared for therein, as promised in the agreement between the Province and the City and County of Saint John.

Third.—That the Saint John Penitentiary be retained by the Dominion authorities for the short term prisoners, as at present, or that, saving the right as existing at the time of Union to send minor offenders to the Saint John Penitentiary, all persons convicted upon indictment be confined in the Saint John Penitentiary or the Dorchester Penitentiary, according as the Dominion may see fit.

Fourth.—That in any event such provision should be made as would prevent there being thrown upon the Province, or any of its Counties, a burden not contemplated by the Act of Union.

Respectfully asking for this matter the favorable consideration of the Privy Council.

We have the honor to be, Sir, your obedient servants,

R. YOUNG,
JNO. JAS. FRASER,
J. H. CRAWFORD.

On the 19th March 1878, the Penitentiary matter was again referred to and on motion of the Honorable Mr. Fraser, seconded by Mr. Marshall,

Resolved, That a Committee be appointed on the part of this House to join the Committee appointed by the Honorable the Legislative Council to take into consideration and report upon the Message of His Honor the Lieutenant Governor to this House, of the 12th of March instant, in reference to the subject of Eastern Extension, Provincial Penitentiary, and Tracadie Lazaretto.

Ordered, That the Honorable Mr. Fraser, the Honorable Mr. Crawford, Mr. Covert, Mr. Willis, and Mr. Marshall, do compose the said Committee;

And on the 28th idem the Honorable Mr. Fraser, from the Committee appointed on the 19th day of March instant to join the Committee of the Honorable the Legislative Council, to take into consideration and report upon the Message of His Honor the Lieutenant Governor to this House of the 12th of March instant, in reference to Eastern Extension, Provincial Penitentiary, and Tracadie Lazaretto, submitted their Report; which was read as followeth:—

Committee Room, 28th March, 1878.

"The Committee appointed on the part of this House to join the Committee appointed by the Honorable the Legislative Council, to take into consideration and report upon the Message of His Honor the Lieutenant Governor to this House of the 12th of March instant, in reference to the subject of Eastern Extension, Provincial Penitentiary, and Tracadie Lazaretto, beg to report—That the Committee had met and prepared a draft of an Address to be transmitted to His Excellency the Governor General, which draft Address the Committee beg to submit herewith.

Respectfully submitted,

JNO. JAS. FRASER,
EDWARD WILLIS,
ROBERT MARSHALL,
JOHN S. COVERT,
J. H. CRAWFORD."

This address is a complete reiteration and endorsement of the strong position taken by the Quarter Sessions of the City and County of St. John in 1869 and 1870, and subsequently by the said Sessions and the Provincial Government and other authorities; and the same has been unanimously adopted by both branches of our Provincial Legislature.

The following is the official report of the writer's remarks on this question, made on the 1st March last, during the discussion on His Honor's Address.

MR. MARSHALL said he felt that the Eastern Extension Claim was a righteous one, the payment of which the people of Canada would endorse. The St. John Penitentiary claim was, however, one which seemed to him even more important, for it involved a prospective expenditure every year which, if capitalized, would represent not \$300,000 but nearer \$400,000. He therefore cordially endorsed the ninth paragraph of the Address, which related to the Penitentiary, believing it to be but the echo of the spirit and meaning of the British North America Act, and of the under-

standing of the Quebec Conference on Confederation. The Penitentiary laws of the several Provinces were entirely different in some of their provisions, and at Confederation express provisions were made in the Act by which the rights of the Province were preserved intact so far as the care of its Penitentiary prisoners were concerned, and if it had not been for the idea of economy in the maintenance of Penitentiaries which suggested the Central Prison for the Maritime Provinces, the system of caring for the criminals of New Brunswick would have remained as it was prior to the Union. The Minister of Justice found that it was necessary to secure legislation to more clearly define the law relating to convicts in Ontario and Quebec, so that criminals sentenced for terms under two years might be incarcerated in central prisons, yet while making these strict provisions he carefully guarded the well understood arrangement with respect to Nova Scotia and New Brunswick, *i. e.* that prisoners sentenced with hard labor, without reference to the term of their imprisonment, should be cared for in the Penitentiaries at Dominion expense.

He quoted largely from the report of the Committee on St. John Penitentiary submitted last year, and said that when the Delegation of St. John Sessions appointed in January, 1871, visited Ottawa and presented the claims of the City and County of St. John, as well as the other Counties of the Province, that convicts sentenced with hard labor, should be cared for at the expense of the Dominion, the Government of the day unhesitatingly realized the reasonableness of their contentions, and stated to them that provided the said Delegation would at once procure from the Sessions plenary powers to negotiate and close the matter, the Government would, at once, make an Order in Council to the effect that when the contemplated Central Penitentiary for the Maritime Provinces about to be erected was completed, they would hand over to the Sessions of St. John and the other Counties of the Province, the institution known as the St. John Penitentiary with its extensive grounds and equipment, as a full indemnity for the liability of the Province of New Brunswick to the City and County of St. John at the time of Union, which in terms of the B. N. A. Act had been assumed by the Dominion of Canada. The Delegation telegraphed the offer to St. John and received an unfavorable reply, and on their return a general meeting of Sessions was called to receive their Report, when he (Mr. Marshall) while recognizing the able manner in which the Delegation had discharged their duties, claimed that to accept the offer in lieu of the bond and mortgage which the Province held would be to accept a huge elephant entailing an annual cost for maintenance and management exceeding \$20,000 a year, and that would be a growing charge. The proposition thus made was voted down almost unanimously. Subsequently he (Mr. Marshall) and Sheriff Harding visited Ottawa as a Delegation in connection with this same matter, when Mr. Fournier, then Minister of Justice, made the same offer as the above—an attempted injustice originated by the late Government and continued by the present one. The Blue Books valued the buildings at \$110,000 and including the land connected therewith at \$250 an acre, but it would not bring more than \$10,000 if sold to-day, for the establishment was antediluvian in all respects, and if the Province were obliged to care for its short term prisoners it would be the cheaper and better policy to erect entirely new buildings. He hoped every possible means would be taken to inform the people of the Province in reference to this important matter which involved much greater interests than were generally realized.

On the 6th January, 1877, the Hon. Edward Blake in a letter addressed to the undersigned, stated that "*he was engaged in considering the whole question.*" It was whispered at Ottawa, last winter, that Mr. Blake, now Ex-Minister of Justice, had made a voluminous and laboured report upon this question, inimical to the just claims of this Province, admitting, however, as he was

forced to do, that a claim did lie as regards the City of St. John, against the Institution, by virtue of its implied Bond and Mortgage: but arguing that this liability of the Province of New Brunswick, if it had been considered at the Quebec Conference would naturally have increased the debt of the Province, and that as this had not been done we cannot now open up the matter. A greater fallacy could not have been advanced, as it is well known that the relative value of the Penitentiary properties of each Province was not at all considered by the Delegates: but that the Central Government accepted the several Penitentiaries of Canada and they were, under the terms of Union, to be respectively administered and maintained at the expense of the Dominion. This contention is fortified by the following letter from one of the delegates of that day, the Right Hon. Sir John A. Macdonald:—

Toronto, 18th May, 1878.

Sir,—In answer to your favor of the 9th inst., I have to state that at the Quebec Conference the Penitentiaries in each Province were agreed to be handed over to the Dominion Government and to be maintained at the expense of the Dominion. No valuation of the properties was made at the time, so far as my recollection serves me.

I am, yours very obediently,

JOHN A. MACDONALD.

ROBERT MARSHALL, Esq., M. P. P., St. John, N. B.

I may further add that I have seen another of the Delegates who verbally said to me that my contention in this regard was correct.

Learning incidentally a few days ago, that it is the intention to remove the Convicts or Prisoners sentenced for over two years to the Dorchester Penitentiary this fall, I have felt constrained, although at considerable inconvenience, to collate this information, so that our tax-payers may each, for himself, have an opportunity to consider the matter in all its bearings.

This question is not a party or political matter, and should, I opine, be fairly considered and equitably adjusted on its merits alone. To offer the premises now known as the St. John Penitentiary over, either to the City and County of St. John, or to the Province, as an equivalent for our vested rights, would be to hand us over an Elephant which would cost the people of the Province at least **\$22,000.00** a year, and of this sum the now overburdened rate payers of St. John would be called upon, unjustly, to pay about **\$10,000.00** annually.

During the past year I have sent to the officers of Penitentiaries and Houses of Correction of the New England States, as well as to officers of the Penitentiaries and Houses of Correction of other States in that commonwealth, and have received many valuable reports, which I have carefully examined and the result has been to convince me that we have only very moderately stated our case, in the arguments which have been made, from time to time, with regard to this important and vexatious matter.

The maintenance and management of the St. John Penitentiary should still be a Dominion and neither a Provincial nor County charge, and I do hope that such a decided stand will be taken by parties on both sides of politics, and without reference at all to other public issues, that our just rights may be considered and protected.

I have the honor to be gentlemen,

Faithfully your obedient servant,

ROBERT MARSHALL.

