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QUEEN'S UNIVERSITY  
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OCT 03 1991

**JOURNAL**

AND

**PROCEEDINGS**

OF HER MAJESTY'S

**LEGISLATIVE COUNCIL**

OF THE

**Province of Nova-Scotia.**

**1844.**



## PROCLAMATION.

BY HIS EXCELLENCY THE RIGHT HONORABLE  
LUCIUS BENFINCK,

*Viscount Falkland,*

*Knight Grand Cross of the Guelphic Order, and Member  
of Her Majesty's Most Honorable Privy Council,  
Lieutenant-Governor and Commander in Chief in  
and over Her Majesty's Province of Nova-Scotia,  
and its Dependencies, &c. &c. &c.*

FALKLAND.

**WHEREAS** the General Assembly of this Province stands prorogued until  
**THURSDAY**, the 20th day of **JUNE**, instant :

I have thought fit further to prorogue the said General Assembly until **SATUR-  
DAY**, the 20th day of **July** next, *then to meet for the Dispatch of Business*—of which  
all persons concerned are to take notice and govern themselves accordingly.

**GIVEN** under my Hand and Seal at Arms at Halifax,  
this 18th day of June, in the seventh year of  
Her Majesty's Reign, and in the year of Our  
Lord 1844.

By His Excellency's Command,

**RUPERT D. GEORE.**

**GOD SAVE THE QUEEN.**

**JOURNAL**  
OF THE  
**PROCEEDINGS**  
OF THE  
**LEGISLATIVE COUNCIL**  
OF THE  
**Province of Nova-Scotia.**

SECOND SESSION OF THE EIGHTEENTH GENERAL ASSEMBLY.

ANNO SEPTIMO VICTORIÆ REGINÆ.

At Halifax, in the Province of Nova-Scotia.

LEGISLATIVE COUNCIL CHAMBER,

Saturday, 20th July, 1844.

The General Assembly having been prorogued to this day, the Council met.

PRESENT—

The Honorable S. B. ROBIE, President.

The Honorable PETER McNAB,  
NORMAN F. UNIACKE,  
ALEXANDER STEWART,  
WILLIAM RUDOLF,  
MICHAEL TOBIN,  
JOHN MORTON,

The Honorable HUGH BELL,  
STAYLEY BROWN,  
PETER H. CLARKE,  
MATHER B. ALMON,  
EDWARD KENNY.

At two of the Clock, P. M., His Excellency the Right Honorable Lucius Bentinck, Viscount Falkland, G. C. H., and Member of Her Majesty's Most Honorable Privy Council, Lieutenant-Governor and Commander in Chief in and over the Province of Nova-Scotia, and its Dependencies, &c. &c. &c., came to the Council Chamber, attended as usual, and being seated, the Gentleman Usher of the Black Rod received His Excellency's commands to let the House of Assembly know "It is His Excellency's will and pleasure they attend him immediately in this House"—who, being come, with their Speaker, His Excellency was pleased to open the Session with the following

His Excellency comes to Council Chamber.

H. A. attend.

**SPEECH:**

*Mr. President, and Honourable Gentlemen of the Legislative Council;  
Mr. Speaker, and Gentlemen of the House of Assembly;*

Speech.

I HAVE called you together in obedience to the Instructions of Her Majesty's Principal Secretary of State for the Colonies, in order to give you an opportunity to determine

determine whether you will appoint an Agent to represent the Legislature of Nova-Scotia at the Bar of the Privy Council, in the case now pending before the Judicial Committee, regarding the legality of the annexation of the Island of Cape Breton to this Province in 1820.

I WILL cause the Despatches I have received, having relation to this subject, to be immediately submitted to you.

I REGRET very much that it should have become necessary to convene you at a season of the year at which it must be inconvenient to many of you to leave your homes; but it is satisfactory to me to know that the business on which you are summoned to deliberate is of such a nature as leads me to hope that it may be readily despatched, and that its early completion will enable me at once to release you from further attendance.

The House of Assembly then withdrew, and His Excellency was pleased to retire soon after.

A Bill, entitled, An Act relating to Trespasses, was read a first time.

The President reported His Excellency's Speech—and the same being read by the Clerk,

Mr. McNab moved that the following Address be presented to His Excellency, in answer to his Speech :

TO HIS EXCELLENCY THE RIGHT HONORABLE  
LUCIUS BENTINCK,

*Viscount Falkland,*

*Knight Grand Cross of the Guelphic Order, and Member of Her Majesty's Most Honorable Privy Council, Lieutenant-Governor and Commander in Chief in and over Her Majesty's Province of Nova-Scotia, and its Dependencies, &c. &c. &c.*

**The Address of the Legislative Council.**

May it please Your Excellency :

The Legislative Council thank Your Excellency for the Speech with which you have been pleased to open the present Session of General Assembly.

We will give our immediate attention to the Despatches which have conduced the convening the Legislature at this time, in the hope that by an early determination thereon, Your Excellency may be enabled to relieve us from further attendance.

Which Address being read by the Clerk, was agreed by the House.

*Ordered,* That the said Address be presented to His Excellency by the whole House.

Peter Hall Clarke, Esquire, was introduced and presented his Mandamus—the same was read; whereupon the usual State Oaths were administered to him by Mr. Stewart, one of the Commissioners, and he having subscribed the same, after giving and receiving salutations to and from the Members present, his seat was assigned to him next to Mr. Brown.

*Ordered,* That Mr. McNab, Mr. Rudolf, and Mr. Kenny, be a Committee to wait on His Excellency the Lieutenant-Governor, to know at what time His Excellency will be pleased to receive this House with their Address.

Mr. McNab, the Chairman of the said Committee, reported that the Committee had waited upon His Excellency, and that His Excellency had been pleased to appoint Monday next, at one o'clock, p. m., to receive this House with their Address.

On motion made and seconded—the House adjourned until Monday, at half past 12 o'clock.

Monday,

H. A. withdraw.  
H. E. retires

Bill pro forma read.

Speech reported.

Address moved.

Address.

Address agreed to.  
To be presented by  
whole House.

Mr. Clarke takes  
oaths.

Com. to ascertain  
when H. E. will re-  
ceive Address.

Report of Com.

Adjourn.

Monday, 22d July, 1844.

The House met pursuant to adjournment.

PRESENT—

The Honorable S. B. ROBIE, President.

The Honorable PETER McNAB,  
NORMAN F. UNIACKE,  
ALEXANDER STEWART,  
WILLIAM RUDOLF,  
MICHAEL TOBIN,  
JOHN MORTON.

The Honorable HUGH BELL,  
STAYLEY BROWN,  
PETER H. CLARKE,  
MATHER B. ALMON,  
EDWARD KENNY.

PRAYERS.

The Minutes of Saturday were read.

At one of the clock, p. m. the House proceeded to the Government House with their Address, and being returned to the Council Chamber, the President reported that His Excellency had been pleased to receive the said Address and return the following Reply thereto: House wait on H. E. with Address.

*Mr President and Gentlemen of the Legislative Council,*

Reply.

I thank you for the Address which you have just presented to me.

Mr Stewart, by command of His Excellency, the Lieutenant-Governor, laid before the House, Message from H. E. with papers relative to Cape Breton.

A Copy of a Despatch from Lord Stanley to Lord Falkland, dated 3d June, 1844, No. 168, enclosing copies of Correspondence relating to a Petition for separating Cape Breton from the Province of Nova Scotia, namely:

- Lord Wharncliffe to Lord Stanley, date, 3d July, 1843,
- Lord Stanley to Lord Wharncliffe, date, 11th July, 1843,
- Lord Wharncliffe to Lord Stanley, date, 17th May, 1844,
- Lord Stanley to Lord Wharncliffe, date, 27th May, 1844,
- Lord Wharncliffe to Lord Stanley, date, 31st May, 1844,
- The Honble. W. L. Bathurst to Mr. Hardingham, date, 14th July, 1843,
- Mr. Hardingham to Mr. Bathurst, date, 18th July, 1843,
- Lord Stanley to Lord Wharncliffe, date, 1st June, 1844.

With the following Despatch referred to in No. 168, viz: Lord Falkland to Lord John Russell, No. 60—16th April, 1841.

Also, the Petition and case referred to.

The said Despatches and Papers were read and ordered to lie on the Table.

*(For Despatches and Papers vide Appendix, No. 1.)*

On motion made and seconded—the House adjourned until To-morrow, at 2 o'clock. Adjourn.

Tuesday, 23d July, 1844.

The House met pursuant to adjournment.

PRESENT—

The Honorable S. B. ROBIE, President.

The Honorable ALEXANDER STEWART,  
WILLIAM RUDOLF,  
MICHAEL TOBIN,  
JOHN MORTON,

The Honorable STALEY BROWN,  
PETER H. CLARKE,  
MATHER B. ALMON,  
EDWARD KENNY.

PRAYERS.

The Minutes of yesterday were read.

Mr. Stewart brought up the Petition of Thomas Boole, a Prisoner confined in Gaol, praying that a Bill might be passed for his relief. Petition of T. Boole.

The said Petition was read.

Ordered,

Ref. to Sel. Com.

*Ordered*, That the same be referred to a Select Committee, to examine and report upon.

Committee.

*Ordered*, That Mr. Rudolf, Mr. Morton, Mr. Brown, Mr. Clarke and Mr. Kenny, be a Committee for that purpose.

Adjourn.

On motion made and seconded—the House adjourned until To-morrow, at 2 o'clock.

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Wednesday, 24th July, 1844.

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The House met pursuant to adjournment.

P R E S E N T—

The Honorable S. B. ROBIE, President.

<p>The Honorable NORMAN F. UNIACKE, ALEXANDER STEWART, WILLIAM RUDOLF, MICHAEL TOBIN, JOHN MORTON,</p>	§	<p>The Honorable STAYLEY BROWN, PETER H. CLARKE, MATHER B. ALMON, EDWARD KENNY.</p>
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PRAYERS.

The Minutes of yesterday were read.

A Message was brought from the House of Assembly, by Mr. Whidden, with the following Bills:

Supreme Court C.  
Breton, and

A Bill, entitled, An Act relating to certain proceedings had and pending in the Supreme Court at Sydney, in the County of Cape-Breton.

Seal Fisheries Bills.

A Bill, entitled, An Act to continue the Act to encourage the Seal Fisheries of this Province.

Read 1st time.

To which Bills they desired the concurrence of this House.

The said Bills were read a first time.

Standing Order sus.

*Ordered*, That the said Bills be read a second time.

*Resolved unanimously*, That the Standing Order of this House, No. 72, relative to Bills not being read or proceeded in twice in the same day, be suspended as respects the said Bills.

Bills read 2d time &

The said Bills were read a second time.

Ord. to Committee.

*Ordered*, That the said Bills be committed to a Committee of the whole House.

Bills committed.

On motion, the House was adjourned, during pleasure, and put into a Committee on the said Bills,—After some time the House was resumed, and Mr. Uniacke reported that the Committee had gone through the said Bills, and had agreed to the same without any amendment.

Reported without amendment.

*Ordered*, That the said Bills be read a third time, at a future day.

Message from H. E.  
with Estimate.

Mr. Stewart, by command of His Excellency the Lieutenant-Governor, laid before the House,

An estimate of expenses to be provided for in the present Session of the Legislature of Nova-Scotia :

Which was read, and ordered to lie on the Table.

Adjourn.

On motion made and seconded—the House adjourned until To-morrow, at 2 o'clock.

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Thursday,

Thursday, 25th July, 1844.

The House met pursuant to adjournment.

PRESENT—

The Honorable S. B. ROBIE, President.

The Honorable ALEXANDER STEWART, WILLIAM RUDOLF, ROBERT M. CUTLER, JOHN MORTON, HUGH BELL,	§	The Honorable STAYLEY BROWN, ALEXANDER McDUGALL, PETER HALL CLARKE, MATHER B. ALMON, EDWARD KENNY.
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PRAYERS.

The Minutes of yesterday were read.

A Bill, entitled, An Act relating to certain proceedings had and pending in the Supreme Court at Sydney, in the County of Cape-Breton; also, Sup. Court Sydney and

A Bill, entitled, An Act to continue the Act to encourage the Seal Fisheries of this Province, Seal Fisheries Bill

Were read a third time, and the question was put by the President on each Bill, Read 3rd time.

Whether this Bill shall pass?

It was resolved in the affirmative. Agreed to,

A Message was sent to the House of Assembly by the Clerk,

To return the said Bills, and acquaint them that this House have agreed to the same without any amendment. And sent to H. A.

On motion made and seconded—the House adjourned until To-morrow, at 2 o'clock. Adjourn.

Friday 26th July, 1844.

The House met pursuant to adjournment.

PRESENT—

The Honorable S. B. ROBIE, President.

The Honorable NORMAN F. UNIACKE, ALEXANDER STEWART, WILLIAM RUDOLF, ROBERT M. CUTLER, MICHAEL TOBIN, JOHN MORTON,	§	The Honorable HUGH BELL, STAYLEY BROWN, ALEXANDER McDUGALL, PETER HALL CLARKE, MATHER B. ALMON, EDWARD KENNY.
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PRAYERS.

The Minutes of yesterday were read.

Mr. Stewart moved the following Resolution:

*Resolved*, That an humble Address be presented to His Excellency the Lieutenant Governor, to inform His Excellency that this House having taken into its deliberate consideration the Despatches and Documents submitted by His Excellency to this House, relative to the question now pending before the Judicial Committee of the Privy Council, have determined, that having full confidence in the learning, knowledge, and ability of the Attorney and Solicitor General of England, and the wisdom and integrity of the eminent Tribunal before whom they are to vindicate the legality of the annexation of Cape Breton to this Province, it is unnecessary to employ an Agent to represent Nova Scotia Proper before the said Tribunal. And further praying that His Excellency will be pleased to direct the proper Officers to collect from the Public Archives, such Records, Documents, and Information as may have a tendency to aid the said Tribunal in coming to a decision upon the said question, and that His Excellency will be pleased to transmit the same to the Right Honorable the Secretary of State for the Colonies for that purpose:

Resolution relative to Cape Breton question before Judicial Committee.

Motion to postpone  
Com

Which, being seconded, after long debate Mr. Tobin moved that the further consideration of the said Resolution be deferred until to-morrow: which, being seconded, and the question being put, there appeared for the Motion, six; against the Motion, six.

For the Motion.

Mr. Uniacke,  
" Tobin,  
" Brown,  
" McDougall,  
" Kenny,  
" Bell,

Against the Motion.

Mr. Cutler,  
" Clarke,  
" Almon,  
" Morton,  
" Rudolf,  
" Stewart,

Negative

Whereupon, the President gave his casting vote against the Motion.—So it passed in the negative.

Resolution passed.

Mr. Stewart moved that the Resolution do pass; which, being seconded and the question being put, was agreed to. Mr. Uniacke dissenting.

Com. to prepare ad-  
dress to H. E.

Ordered, That Mr. Stewart, Mr. Rudolf, and Mr. Clarke, be a Committee to prepare an Address to His Excellency the Lieutenant-Governor, in conformity with the above Resolution.

Adjourn

On motion made and seconded—the House adjourned until to-morrow, at 2 o'clock.

Saturday, 27th July, 1844.

The House met pursuant to adjournment.

PRESENT —

The Honorable S. B. ROBIE, President.

The Honorable NORMAN F. UNIACKE, §	The Honorable STAYLEY BROWN,
ALEXANDER STEWART, §	ALEXANDER McDOUGALL,
WILLIAM RUDOLF, §	PETER HALL CLARKE,
ROBERT M. CUTLER, §	MATHER B. ALMON,
HUGH BELL, §	EDWARD KENNY,

PRAYERS.

The Minutes of yesterday were read.

Com on Contingent  
Expenses.

On motion, *resolved*, that a Committee be appointed to take into consideration the contingent expenses of the House for the present Session.

Committee

Ordered, That Mr. Rudolf, Mr. Bell, and Mr. Kenny, be a Committee for that purpose.

Com. to prepare  
address to H. E.  
rel. to Cape Breton  
report Address.

Mr. Stewart, the Chairman of the Committee appointed to prepare an Address to His Excellency the Lieutenant-Governor, in conformity with the Resolution passed yesterday, relative to the question now pending before the Judicial Committee of the Privy Council, respecting the legality of the annexation of Cape Breton to Nova Scotia, in the year 1820, reported the draft of an Address, which he read in his place, and afterwards delivered it to the Clerk, who read the same as follows:—

TO HIS EXCELLENCY THE RIGHT HONORABLE  
LUCIUS BENTINCK,

*Viscount Falkland,*

*Knight Grand Cross of the Guelphic Order, and  
Member of Her Majesty's Most Honorable  
Privy Council, Lieutenant-Governor  
and Commander in Chief in and over Her  
Majesty's Province of Nova-Scotia, and  
its Dependencies, &c. &c. &c.*

**The Address of the Legislative Council.**

MAY IT PLEASE YOUR EXCELLENCY,

The Legislative Council respectfully pray your Excellency to convey to the Right Honorable the Secretary of State for the Colonies, their cordial acknowledgements for affording to the Provincial Legislature, an opportunity of becoming a party before the Judicial Committee of the Privy Council to the pending controversy, regarding the annexation to Nova Scotia of Cape Breton in the year 1820.

The Legislative Council have taken into deliberate consideration the Despatches and Documents submitted to them, and humbly inform your Excellency that reposing implicit confidence in the learning and ability of the Attorney General and Solicitor General of England, and the wisdom and integrity of the eminent Tribunal before whom they are to vindicate the legality of such annexation, the Legislative Council do not deem it necessary that an Agent should be specially authorized to represent the Colonial Legislature in the present enquiry.

The Legislative Council, however, in the hope that in the Public Archives of the Province, information may be found which may possibly be useful to that Tribunal in its deliberations upon the subject, pray that your Excellency will direct the proper Officers to search for Documents and Records having such tendency, and if any be discovered, that your Excellency will be pleased to transmit them to the Right Honorable the Principal Secretary of State for the Colonies.

*Ordered,* That the said Address be received and adopted.

Address adopted.

*Ordered,* That the said Address be presented to His Excellency by the whole House.

To be presented by whole House.

*Ordered,* That the Committee who prepared the said Address be a Committee to wait upon His Excellency, and ascertain when His Excellency will be pleased to receive this House with their Address.

Com. to ascertain when H. E. will receive Address.

A Message was brought from the House of Assembly, by Mr. Whidden, with the following Bills:

A Bill, entitled, An Act in relation to the performance of Statute Labour on the Highways in the County of Shelburne, during the present year.

Statute Labor Shelburne, and

A Bill, entitled, An Act to amend the Act to provide for an additional Sittings of the General Sessions of the Peace at Guysborough, and for other purposes.

Sessions Guysborough Bills.

To which Bills they desired the concurrence of this House.

The said Bills were read a first time.

Read 1st time.

*Ordered,* That the said Bills be read a second time.

*Resolved unanimously,* That the Standing Order of this House, No. 72, relative to Bills not being read or proceeded in twice in the same day, be suspended as respects the said Bills.

Standing order suspended.

The said Bills were read a second time.

Bills read 2nd time.

*Ordered,* That the said Bills be committed to a Committee of the whole House.

And ord. to com.

On motion, the House was adjourned, during pleasure, and put into a Committee on the said Bills,—After some time the House was resumed, and Mr. Rudolf reported the Committee had gone through the said Bills, and had agreed to the same without any amendment.

Committed Reported without amendment.

*Ordered,* That the said Bills be read a third time.

Read 3rd time.

The

The said Bills were read a third time, and the question was put by the President on each Bill.

Whether this Bill shall pass ?

It was resolved in the affirmative.

Agreed to.

And sent to H. A.

A Message was sent to the House of Assembly by the Clerk,

To return the said Bills, and acquaint them that this House have agreed to the same without any amendment.

Com. on Con. ex-  
penses report.

Mr. Rudolf, the Chairman of the Committee, to whom the contingent expenses of this House for this Session were referred, reported as follows :—

Report.

The Committee appointed to consider and report upon the contingent expenses of the present Session, report that there is required,

For the Chaplain,

£5 0 0

For the Clerk,

30 0 0

The Law Clerk,

20 0 0

The Gentleman Usher of the Black Rod and Sergeant at Arms,

10 0 0

Messengers,

6 0 0

£71 0 0

(Signed,)

W. RUDOLF,  
Chairman.

Committee Room, }  
July 27th, 1844. }

Report adopted.

Ordered, That the said report be received and adopted.

Com. on T. Boole's  
petition report.

Mr. Rudolf, the Chairman of the Committee to whom the petition of Thomas Boole, was referred, reported that the Committee had enquired into the subject and found that the matter had been arranged.

A Message was brought from the House of Assembly, by Mr. Whidden, with the following Resolutions.

£130 Contingent ex-  
penses of H. A.

Resolved, That the sum of One Hundred and Thirty Pounds be granted and placed at the disposal of the Clerk of this House, to defray the contingent expenses of this House, during the present Session.

£71 do. of Council.

Resolved, That the sum of Seventy one Pounds be granted and paid to defray the contingent expenses of the Legislative Council in the present Session.

To which Resolutions they desired the concurrence of this House.

Read 1st & 2nd time.

The said Resolutions were read a first time, and by order, the said Resolutions were read a second time, and the question was put by the President on each,

Whether this Resolution be agreed to?

Agreed to.

It was resolved in the affirmative.

And sent to H. A.

A Message was sent to the House of Assembly, by the Clerk,

To return the said Resolutions, and acquaint them that this House have agreed to the same without any amendment.

Com. report when H.  
E. will receive  
House with Ad-  
dress.

Mr. Stewart, the Chairman of the Committee of this House appointed to wait upon His Excellency the Lieutenant-Governor, and ascertain when His Excellency would be pleased to receive this House with their Address, reported that the Committee had waited upon His Excellency, and that His Excellency had been pleased to appoint half past one o'clock, p. m. on Monday next, to receive this House with their Address.

A Message was brought from the House of Assembly by Mr. Whidden, with the following Bill:

Appropriation Bill.

A Bill, entitled, An Act for applying certain Monies therein mentioned for the services therein specified.

To which bill they desired the concurrence of this House.

Read 1st time.

The said Bill was read a first time.

Resolved,

*Ordered*, That the said Bill be read a second time.

*Resolved unanimously*, That the Standing Order of this House, Number 72, relative to Bills not being read or proceeded in twice in the same day, be suspended, as respects the said Bill.

Standing Order suspended.

The said Bill was read a second time.

*Ordered*, That the said Bill be committed to a Committee of the whole House, presently.

Bill read 2d time & ord. to Com.

On motion, the House was adjourned, during pleasure, and put into a Committee on the said Bill.—After some time the House was resumed, and Mr. Rudolf reported that the Committee had gone through the said Bill, and had agreed to the same without any amendment.

Committed  
Reported without amdt.

The said Bill was then read a third time.

Read 3d time.

Whereupon, Mr. Brown moved that this House do adjourn until Monday next at 12 o'clock, at noon: which, being seconded, and the question being put, was agreed to.

Motion for adjournment.

Whereupon the House was adjourned until Monday next, at 12 o'clock.

Adjourn.

Monday, 29th July, 1844.

The House met pursuant to adjournment.

P R E S E N T —

The Honorable S. B. ROBIE, President.

The Honorable PETER McNAB,  
WILLIAM LAWSON,  
ALEXANDER STEWART,  
MICHAEL TOBIN,  
HUGH BELL,

§

The Honorable STAYLEY BROWN,  
ALEX. McDougall,  
PETER HALL CLARKE,  
MATHER B. ALMON,  
EDWARD KENNY

PRAYERS.

The Minutes of Saturday were read.

A Bill, entitled, An Act for applying certain Monies therein mentioned for the services therein specified, was read, and the question put by the President,

Appropriation Bill

Whether this Bill shall pass?

It was resolved in the affirmative.

Agreed to.

A Message was sent to the House of Assembly by the Clerk,

To return the said Bill, and acquaint them that this House have agreed to the same, without any amendment.

And sent to H. A.

*Resolved*, That a Committee be appointed to prepare an Address to Her Majesty, praying that no alteration be made in the mode of conveying the Mails from England to America, by Steamships, by way of Nova Scotia.

Com. to prepare Address to H. M. rel. to Steam Packets.

*Ordered*, That Mr. Stewart, Mr. Tobin, Mr. Bell, Mr. Brown, and Mr. Almon, be a Committee to prepare the said Address.

Committee.

Mr. Stewart, the Chairman of the Committee, appointed to prepare the said Address, reported the draft thereof, which he read in his place, and afterwards delivered it to the Clerk, who read the same, as follows:

Address to H. M. reported.

To the Queen's Most Excellent Majesty.

The humble Address of the Legislative Council of the Province of Nova Scotia.

May it please Your Majesty;

The Legislative Council of Your Majesty's loyal Province of Nova Scotia, beg leave to approach your Throne, and most humbly to inform Your Majesty, that they have learned with extreme regret, that it is in contemplation to change the present Route of the British North American Royal Mail Steamers, and that in future Your Majesty's

Address.

Mails

Mails are to be conveyed direct from Liverpool, Great Britain, to New York, and that by means of Branch Steamers, only, from the latter Port is the Post Office Communication between the Parent State, and Your Majesty's Subjects in the Lower Colonies of Nova Scotia, New Brunswick, Prince Edward's Island, and Newfoundland to be conducted.

The Legislative Council are yet unwilling to believe that this important change can have received the sanction of Your Majesty's Government, and they hope before it is permitted, due consideration will be given to the serious loss and injury which must inevitably result to the commercial interests of all the Lower Colonies.

The Legislative Council think it probable that the profits of the Mail Steamers may be increased by the proposed change, but they have hitherto rested secure in the belief that Your Majesty's Government having granted a large sum annually for the conveyance of the Mails direct to your North American Provinces, would be anxious to preserve to British Subjects, the principal advantages to be derived from the rapid transmission of intelligence from the Old World to the New.

The Legislative Council feel that they need not urge upon Your Majesty's Government the necessity of speedy communication with Halifax as an important Naval and Military Station, but they would respectfully submit that the commercial interests of these Colonies will not only be greatly injured, but that the advantages they now enjoy of acquiring the earliest information respecting the European Markets will be transferred to the most powerful commercial Rival of Great Britain.

The Legislative Council are not aware that the proposed alteration has been sought by Your Majesty's Subjects in these Colonies. It is possible that the Mails for Canada West may be earlier conveyed by way of the United States than by Pictou; upon trial, however, it has been proved that Letters have been conveyed to Canada more rapidly by Halifax and Boston than by Steam Navigation direct to New York, and therefore that if any change be required it is that the Mails intended for Canada should be carried to Boston instead of as now being landed at Halifax.

In confirmation of this view of the present route it may be stated that experience has proved that the passages of the Steamers to Boston, inclusive of the necessary detention at Halifax, are shorter than when made direct to New York.

The Legislative Council believe that the superiority of the Harbour of Halifax, over every other Port of North America, will be readily admitted—in no one instance have the Mail Steamers been retarded by ice—and the facility of its approach greatly diminishes the perils of a winter voyage. From its being several hundred miles nearer to Great Britain than any Port in the United States, and its situation in the Atlantic Ocean, it seems formed by nature to be the connecting point between the Mother Country and the vast Territory belonging to Your Majesty in North America.

The Legislative Council, therefore, being convinced that as the proposed change gives no well grounded expectation of a more speedy transmission of the Mails—that it affords no certainty of any ultimate advantage of economy in the public service—that it will be followed by pecuniary loss from the outlay which has been made for the convenience of the present route—and also, that by it very serious commercial injuries will be entailed on Your Majesty's Subjects in these Colonies, who have already suffered great losses in their Commerce and Shipping by the changes that have been made, and the hostile Tariffs that have been imposed by the United States of America; and, if this alteration takes place, they will, in addition to these losses, have to bear the mortification of seeing the Port of a Foreign, and not very friendly Nation, preferred to one of the best Harbours in Your Majesty's Dominions, and Your Majesty's loyal Subjects compelled to carry on their intercourse with the Parent State through a more distant Port, and through a Foreign Country.

The Legislative Council therefore humbly hope that any alteration in the present Route of the Steamers will not receive Your Majesty's sanction.

*Ordered,* That the said Address be received and adopted.

The Chairman of the Committee also reported the following draft of an Address to His Excellency the Lieutenant-Governor, praying His Excellency to transmit the foregoing Address to the Right Honorable the Secretary of State for the Colonies, to be laid at the foot of the Throne—which he read in his place, and afterwards delivered it to the Clerk, who read the same as follows :—

Address to H. E. reported.

TO HIS EXCELLENCY THE RIGHT HONORABLE  
LUCIUS BENTINCK,  
**Viscount Falkland,**

*Knight Grand Cross of the Guelphic Order, and Member of Her Majesty's Most Honorable Privy Council, Lieutenant-Governor and Commander in Chief in and over Her Majesty's Province of Nova-Scotia, and its Dependencies, &c. &c. &c.*

**The Address of the Legislative Council.**

MAY IT PLEASE YOUR EXCELLENCY.

The Legislative Council have passed an Address to Her Majesty on the subject of the reported change of the present route of the British North American Royal Mail Steam Packets, and praying that no such change in such route may receive Her Majesty's sanction—which Address the Legislative Council pray Your Excellency to transmit to the Right Honorable the Secretary of State for the Colonies, to be laid at the Foot of the Throne, together with Your Excellency's favorable recommendation of the prayer thereof.

Address.

*Ordered,* That the said Address be received and adopted.

Adopted

*Ordered,* That the Committee who prepared the said Addresses be a Committee to present the same to His Excellency the Lieutenant-Governor.

Com. to present to H. E.

Mr. Stewart, the Chairman of the said Committee, reported that the Committee had waited upon His Excellency with the said Addresses, and that His Excellency had been pleased to state he would, with much pleasure, forward the Address to Her Majesty, together with his favorable recommendation of the prayer thereof.

Report of Com.

At half-past one o'clock, P. M., the House proceeded to the Government House with their Address to His Excellency the Lieutenant-Governor, relative to the question now pending before the Judicial Committee of the Privy Council respecting the legality of the annexation of Cape Breton to Nova-Scotia in the year 1820; and, being returned to the Council Chamber, the President reported that His Excellency had been pleased to receive the said Address, and stated that he would comply with the prayer thereof immediately, and would also take immediate measures to procure and transmit the information as requested by the Council.

House wait upon H. E. with Address rel. to Cape-Breton.

At two of the clock, P. M., His Excellency the Right Honorable Lucius Bentinck, VISCOUNT FALKLAND, Knight Grand Cross of the Guelphic Order, and Member of Her Majesty's Most Honorable Privy Council, Lieutenant-Governor and Commander in Chief in and over Her Majesty's Province of Nova-Scotia, and its Dependencies, &c. &c. &c., came to the Council Chamber, attended as usual, and, being seated, the Gentleman Usher of the Black Rod received His Excellency's commands to let the House of Assembly know "It is His Excellency's will and pleasure they attend him immediately in this House," who, being come, with their Speaker, His Excellency was pleased to give his assent to five Bills, entitled as follows:

H. E. comes to Council Chamber.

H. A. attend.

H. E. assents to five Bills

An Act relating to certain proceedings had and pending in the Supreme Court at Sydney, in the County of Cape-Breton.

Sup. Court Sydney.

An Act to continue the Act to encourage the Seal Fisheries of this Province.

Seal Fisheries

An Act in relation to the performance of Statute Labour on Highways in the County of Shelburne, during the present year.

Statute Labor Shelburne

An Act to amend the Act to provide for an additional Sittings of the General Sessions of the Peace at Guysborough, and for other purposes.

Sessions Guysboro and

An

Appropriation

An Act for applying certain Monies therein mentioned for the services therein specified.

After which, His Excellency was pleased to close the Session with the following

**S P E E C H :**

*Mr. President, and Honorable Gentlemen of the Legislative Council ;*

*Mr. Speaker, and Gentlemen of the House of Assembly ;*

Speech

I thank you for the expedition with which you have despatched the important business that, in obedience to the Instructions of Her Majesty's Government, it became my duty to bring before you ; and I have much pleasure in dismissing you to the prosecution of your ordinary avocations.

Then the President of the Council, by His Excellency's command, said

**GENTLEMEN—**

Prorogation

It is the pleasure of His Excellency the Lieutenant-Governor that this General Assembly be prorogued to Monday, the Twenty-third day of September next—and this General Assembly is accordingly prorogued to Monday, the Twenty-third day of September next, to be then here held.

H. A. withdraw.  
H. E. retires.

The House of Assembly then withdrew, and His Excellency was pleased to retire soon after.

**JOHN C. HALLIBURTON,**

Clerk of the Legislative Council.

**APPENDIX**  
TO THE  
**JOURNALS**  
OF THE  
**LEGISLATIVE COUNCIL.**

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**APPENDIX No. 1.**

*(See Page 7.)*

[Copy.]

No. 168.

*Downing-Street, 3d June, 1844.*

MY LORD,—

Referring to my Despatch of this date, No. 167, I have now to transmit to you the accompanying copies of a correspondence between myself and the Lord President of the Council, on the subject of the Petition now pending before the Queen, in Council, respecting the annexation, in the year 1820, of the Island of Cape-Breton to the Province of Nova-Scotia.

Your Lordship will convene, at the earliest period which may be practicable, the Legislature of the Province of Nova-Scotia, to take into consideration the question whether they will constitute any Agent in this Country, with power to appear for them, by Counsel, at the Bar of the Privy Council, to oppose the Petition for restoring Cape-Breton to the position of a separate Colony.

In aid of their deliberations, I transmit to Your Lordship a copy of that Petition, and a printed copy of the case lodged in support of it at the Council Office.

On the last occasion, when, as appears from Your Lordship's Despatch of the 16th April, 1841, No. 60, this subject was under the consideration of the House of Assembly of Nova-Scotia, it does not appear that the House decided or deliberated on the question, whether the defence of the Petition to the Queen, in Council, should not be undertaken by them.

I have, &c.

(Signed) STANLEY.

The VISCOUNT FALKLAND, &c. &c. &c.

[Copy.]

Lord Wharncliffe presents his compliments to Lord Stanley, and has the honor to enclose, for His Lordship's consideration, a copy of a Petition, signed by 2000 inhabitants of Cape-Breton, and addressed to Her Majesty, in Council, for the Repeal of the Union between that Colony and the Province of Nova-Scotia; and the Lord President begs to be favored with the opinion of the Secretary of State as to the reference of this Petition to the Judicial Committee of the Privy Council.

*Council Office, 3d July, 1843.*

[Copy]

[Copy.]

*Downing-Street, 11th July, 1843.*

MY LORD,—

I have the honor to acknowledge the receipt of Your Lordship's Note of the 3d instant, enclosing for my consideration the copy of a Petition, which has been addressed to the Queen, in Council, by 2000 Inhabitants of the Island of Cape-Breton, for the Repeal of the Union between that Island and the Province of Nova-Scotia, and requesting to be favored with my opinion as to the reference of that Petition to the Judicial Committee of the Privy Council.

I have to acquaint you, in answer, that so far as Her Majesty's Executive Government are concerned, there is no objection to a reference of this Petition to the Judicial Committee, but that, if so referred, I should wish to be apprised of it, in order that Her Majesty's Attorney and Solicitor General may be directed to attend, on behalf of the Crown, the hearing of the Petition, to allege their reasons in support of the measure to which the Petitioners object as an infringement of the Law.

If, however, the question in debate should turn, not upon the abstract legal right, but on considerations of public convenience or policy, I am of opinion that it would not be proper to refer any such enquiry to the Judicial Committee, but that it should be reserved for the consideration of Her Majesty's Confidential Advisers, as involving many topics which could not be satisfactorily discussed nor conveniently explained in a debate at the Bar of the Judicial Committee.

I have, &amp;c.

(Signed) STANLEY.

The LORD PRESIDENT of the Council.

[Copy.]

*Council Office, Whitehall, 17th May, 1844.*

MY LORD,—

With reference to the Petition addressed to Her Majesty, in Council, by certain Inhabitants of Cape-Breton, for the Repeal of the Union between that Colony and the Province of Nova-Scotia, I have now the honor to transmit to Your Lordship a copy of the case which has been lodged in this Department on behalf of the Petitioners.

The Queen having been pleased, by an Order in Council, of the 15th July, 1843, to refer this Petition to the Judicial Committee of the Privy Council, the matter is now ripe for hearing, and I have to request that, in conformity with the intimation conveyed to me in Your Lordship's Letter of the 11th July last, Her Majesty's Attorney and Solicitor General may be directed to attend on the hearing, which will take place soon after the ensuing term, in order to allege their reasons, on behalf of the Crown, in support of the measure to which the Petitioners object as an infringement of the Law.

I have, &amp;c.

(Signed) WHARNCLIFFE.

The Right Honorable the LORD STANLEY, &amp;c. &amp;c. &amp;c.

[Copy.]

*Downing-Street, 27th May, 1844.*

MY LORD,—

I have had the honor to receive Your Lordship's Letter of the 17th instant, accompanied by a copy of the case, which has been lodged at the Council Office, in support of the Petition of certain Inhabitants of Cape-Breton for the Repeal of the Union between that Island and the Province of Nova-Scotia.

Although I continue to think it necessary that Her Majesty's Attorney and Solicitor General should attend the hearing of the Petition, yet on a perusal of the case of the

the

the Petitioners, I cannot avoid the conclusion that it is indispensable that an opportunity should be afforded to the Legislature of Nova-Scotia also to attend the hearing, should such be their wish, by their Agents and Counsel. The questions in debate are such as deeply concern that Province in its Revenues, and in all its other more considerable political interests. The vindication of the measure of 1820 would probably not be conducted so completely, or so much to their contentment, by any Advocates as by those who might be employed by their own Agents, and act under their own instructions.

Be that as it may, it appears to me to be due to the Provincial Legislature to call upon them to decide for themselves on the acceptance or rejection of the opportunity of making good the claims on which I have reason to conclude they will insist.

With Your Lordship's concurrence, therefore, I propose to instruct the Lieutenant-Governor of Nova-Scotia, to take the earliest occasion of intimating to the Legislative Council and Assembly, that the Lords of Her Majesty's Privy Council are prepared to hear any Counsel who may be authorized by them to oppose, on behalf of the Province, the claims of the Petitioners. If that course be taken, the hearing of the Petition must of course be postponed until the result of that reference shall be known.

I have, &c.

(Signed) STANLEY.

The LORD PRESIDENT of the Council.

[Copy.]

*Council Office, Whitehall, May 31st, 1844.*

MY LORD,—

I have the honor to acknowledge the receipt of Your Lordship's Letter of the 27th instant, referring to the Petition of certain Inhabitants of Cape-Breton, and suggesting the propriety of calling upon the Legislative Council and Assembly of Nova-Scotia to appear, by their Counsel, in opposition to the prayer of these Petitioners, inasmuch as "the questions in debate are such as deeply concern that Province in its Revenues, and in all its other more considerable political interests."

Before I concur in this suggestion, I wish to remind Your Lordship of the precise nature of the question now pending before the Judicial Committee. In conformity with the opinion expressed in Your Lordship's Letter of the 12th July, 1843, I have strictly confined the argument to be brought before the Judicial Committee to the question of constitutional right, reserving all the questions of policy for the consideration of Your Lordship's Department. The correspondence with the Petitioners' Agent, of which I enclose a copy, will shew Your Lordship that the parties have acceded to these terms.

This being the present state of the case, and the question being solely to ascertain whether, in the opinion of the Judicial Committee, the Prerogative of the Crown was or was not rightfully exercised in the annexation of the Island to the Province, it appears to me that the intervention of the Legislature of Nova-Scotia ought to be strictly limited to legal considerations, without introducing questions of a political nature, which would widen the field of discussion without bringing any important additional element to assist the decision of the Lords of the Council. For the questions to which Your Lordship alludes in your Letter of the 27th instant, as affecting the Revenues, and more considerable political interests of Nova-Scotia, are not within the scope or intention of Her Majesty's Order of reference to the Judicial Committee.—The vindication of the measure of 1820 rests entirely on the right of the Crown to make the annexation in the form in which it was made, and the question thus stated appears to be between Cape-Breton and the Government of the Mother Country, rather than between that Island and Nova-Scotia.

If the opponents of the Petition, either in Cape-Breton or Nova-Scotia, had thought  
fit

fit to come forward on the other side, the Judicial Committee would probably not have refused to hear them. But although a Counter-petition was got up in the Colony as long ago as the year 1841, it has never been presented to this Department. The time which has now elapsed, and the notoriety of the transaction, have given the opponents ample opportunities of coming before Her Majesty, in Council, to resist the application of the Petitioners. On the other hand, considerable inconvenience may arise from a further postponement of the decision of this question, which affects some important private interests as well as the public rights of the Colony.

If, however, notwithstanding these considerations, Your Lordship should still be of opinion that the interests and the public feeling of Nova-Scotia have a sufficient claim to be heard in this debate, I am ready to concur in Your Lordship's suggestion; and I have only to request that, in calling upon the Legislature of that Colony to appear, by their Agents, in this Country, if they should so think fit, Your Lordship will inform that Body, through the Lieutenant-Governor, that it is the constitutional right, and not the political expediency, of the annexation of 1820, which is now under the consideration of the Council.

I have, &c.

(Signed) WHARNCLIFFE.

The Right Honorable the LORD STANLEY.

[Copy.]

*Council Office, Whitehall, 14th July, 1843.*

SIR,—

In answer to your Letter to Mr. Reeve, of the 26th ultimo, requesting to be informed of the present condition of a Petition from certain of Her Majesty's Subjects, Inhabitants of Cape-Breton, in British North America, I am directed by the Lord President of the Council to state that, if the object of the Petitioners is simply to bring the legal question respecting the Union of Cape-Breton and the Colony of Nova-Scotia before a competent tribunal, there is no objection on the part of His Lordship, or the Executive Government, to a reference of the same to the Judicial Committee.—His Lordship is therefore prepared to move Her Majesty to make such a reference at the next Council, with the understanding that the argument which it may be your duty to bring before that Committee in support of this Petition, will be strictly confined to the legal question raised by the Petitioners, and will not extend to those considerations of convenience and policy which properly belong to another Department.

I am further to apprise you, that whenever the matter of this Petition comes on for hearing, Her Majesty's Attorney and Solicitor General will be directed to attend on behalf of the Crown, to allege their reasons in support of the measure to which the Petitioners object as an infringement of the Law.

I have to request that you will reply to this Letter at your earliest convenience, and that you will transmit to me some more copies of the Petition.

I have, &c.

(Signed) W. L. BATHURST.

G. GATTON HARDINGHAM, Esq., &c. &c. &c.

[Copy.]

*11, Serle-Street, Lincoln's Inn, 18th July, 1843.*

SIR,—

I have the honor to acknowledge the receipt of your Letter of the 14th instant, informing me that if the object of certain of Her Majesty's Subjects, Inhabitants of Cape-Breton, Petitioners to Her Majesty, in Council, was simply to bring the legal question respecting the Union of Cape-Breton and the Colony of Nova-Scotia before a competent tribunal for argument and judgment, the Lord President of the Council was

**APPENDIX**  
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APPENDIX No. 1.

(See Page 7.)

[Copy.]

No. 168.

*Downing-Street, 3d June, 1844.*

MY LORD,—

Referring to my Despatch of this date, No. 167, I have now to transmit to you the accompanying copies of a correspondence between myself and the Lord President of the Council, on the subject of the Petition now pending before the Queen, in Council, respecting the annexation, in the year 1820, of the Island of Cape-Breton to the Province of Nova-Scotia.

Your Lordship will convene, at the earliest period which may be practicable, the Legislature of the Province of Nova-Scotia, to take into consideration the question whether they will constitute any Agent in this Country, with power to appear for them, by Counsel, at the Bar of the Privy Council, to oppose the Petition for restoring Cape-Breton to the position of a separate Colony.

In aid of their deliberations, I transmit to Your Lordship a copy of that Petition, and a printed copy of the case lodged in support of it at the Council Office.

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(Signed) STANLEY.

The VISCOUNT FALKLAND, &c. &c. &c.

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*Council Office, 3d July, 1843.*

[Copy.]

[Copy.]

*Downing-Street, 11th July, 1843.*

MY LORD,—

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The LORD PRESIDENT of the Council.

[Copy.]

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fit to come forward on the other side, the Judicial Committee would probably not have refused to hear them. But although a Counter-petition was got up in the Colony as long ago as the year 1841, it has never been presented to this Department. The time which has now elapsed, and the notoriety of the transaction, have given the opponents ample opportunities of coming before Her Majesty, in Council, to resist the application of the Petitioners. On the other hand, considerable inconvenience may arise from a further postponement of the decision of this question, which affects some important private interests as well as the public rights of the Colony.

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I have, &c.

(Signed) WHARNCLIFFE.

The Right Honorable the LORD STANLEY.

[Copy.]

*Council Office, Whitehall, 14th July, 1843.*

SIR,—

In answer to your Letter to Mr. Reeve, of the 26th ultimo, requesting to be informed of the present condition of a Petition from certain of Her Majesty's Subjects, Inhabitants of Cape-Breton, in British North America, I am directed by the Lord President of the Council to state that, if the object of the Petitioners is simply to bring the legal question respecting the Union of Cape-Breton and the Colony of Nova-Scotia before a competent tribunal, there is no objection on the part of His Lordship, or the Executive Government, to a reference of the same to the Judicial Committee.—His Lordship is therefore prepared to move Her Majesty to make such a reference at the next Council, with the understanding that the argument which it may be your duty to bring before that Committee in support of this Petition, will be strictly confined to the legal question raised by the Petitioners; and will not extend to those considerations of convenience and policy which properly belong to another Department.

I am further to apprise you, that whenever the matter of this Petition comes on for hearing, Her Majesty's Attorney and Solicitor General will be directed to attend on behalf of the Crown, to allege their reasons in support of the measure to which the Petitioners object as an infringement of the Law.

I have to request that you will reply to this Letter at your earliest convenience, and that you will transmit to me some more copies of the Petition.

I have, &c.

(Signed) W. L. BATHURST.

G. GATTON HARDINGHAM, Esq., &c. &c. &c.

[Copy.]

*11, Serle-Street, Lincoln's Inn, 18th July, 1843.*

SIR,—

I have the honor to acknowledge the receipt of your Letter of the 14th instant, informing me that if the object of certain of Her Majesty's Subjects, Inhabitants of Cape-Breton, Petitioners to Her Majesty, in Council, was simply to bring the legal question respecting the Union of Cape-Breton and the Colony of Nova-Scotia before a competent tribunal for argument and judgment, the Lord President of the Council was

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was prepared to move Her Majesty to make a reference to the Judicial Committee at the next Council, with the understanding that the argument which it might be my duty to bring before that Committee in respect of the Petition, would be strictly confined to the legal question raised by the Petitioners, and would not extend to those considerations of public convenience and policy which properly belonged to another Department of the Government.

As I fully appreciate the propriety of the distinction you have been pleased to draw, I readily subscribe to the terms imposed; and I will transmit to you, as requested, some more copies of the Petition forthwith.

I have, &c.

(Signed) G. GATTON HARDINGHAM.

The Hon. W. L. BATHURST, &c. &c. &c.

[Copy.]

Downing-Street, 1st June, 1844.

MY LORD,—

I have the honor to acknowledge the receipt of Your Lordship's Letter of the 31st ultimo, respecting the Petition of certain Inhabitants of Cape-Breton to the Queen, in Council.

It was not my intention, in my Letter of the 27th ultimo, to suggest that the Legislature of Nova-Scotia should be invited to debate at the Bar of the Privy Council any questions of a political nature, or that they should be permitted in their argument there to go beyond those strict limits of legal enquiry to which Your Lordship refers. On the contrary, I contemplated, and still contemplate, a strict adherence of all the parties to the discussion to that single point as indispensable. I referred to the deep interest of Nova-Scotia in the questions in debate, not as suggesting that those interests, whether financial or political, should be debated at the Bar of the Privy Council, but as explanatory of my reasons for thinking that a question of Law, by the decision of which those interests will be so deeply effected, should not be discussed in the absence of the Legislature of that Province.

To Your Lordship's remark, that the question of the right of the Crown to annex Cape-Breton to Nova-Scotia appears to lie between Cape-Breton and the Government of the Mother Country, rather than between that Island and Nova-Scotia, I should subscribe, if the practical results arrived at by the Petitioners did not directly and most deeply affect the whole of the Province, of which, during the last 24 years, Cape-Breton has, in point of fact, formed a part. But such being the inevitable consequence of the success of the Petition, the people of Nova-Scotia are really the only persons whom the decision of this question of Law can materially affect. There is no British, as distinct from Nova-Scotian interest involved in, or dependent on, the controversy.

Of the proceedings of individual opponents of this Petition, the Legislature of Nova-Scotia have probably taken no heed, nor could that Body in any sense be held responsible either for the adoption or for the abandonment of such designs by any such persons.

With regard to the notoriety of the transaction, I apprehend that in no proceeding of a Judicial, or quasi Judicial nature can any such fact be insisted on as an answer to the right of all parties directly interested to an express citation, with a view to the hearing of their objections.

Whatever may be the inconvenience of delay, the inconvenience of proceeding in the absence of the Legislature of Nova-Scotia would, I believe, prove much more considerable. If the decision should be against the Petitioners, the only harm which could result from proceeding, without citation to the Provincial Legislature, would be that the expense and responsibility of sustaining the Act of 1820 must be borne by the British Treasury. But if the Petition should be successful, there cannot be the least

reason to doubt that the Legislature of Nova-Scotia would make the most decided opposition to the enforcement of so unwelcome a decision, adopted, as they would then truly say, without any opportunity of opposing it having been afforded to them. They would insist, (nor do I see how it could be disputed,) that they possessed means which the Government here did not possess, of illustrating the legal question in debate, from the Records and History of the Province. They would allege that the question had been discussed between parties, one of whom had the most obvious interest in success, and the other of whom had really no interest at all in the result. They would therefore demand the revival of the debate—to that demand it would be scarcely possible to oppose any effectual resistance, and the delay, which is now deprecated, would then be incurred to a much greater extent. The present Petitioners would then also have the further disadvantage of having to enter on the renewed argument with antagonists to whom the whole strength and weakness of their case had been previously disclosed.

For all these reasons, I am of opinion that it would be inexpedient to proceed to the discussion of this case at the Bar of the Privy Council, until the proposed communication shall have been made to the Legislature of Nova-Scotia, through the Lieutenant-Governor of that Province.

I shall therefore instruct him to make such a communication to them by the Mail which is to be despatched on Monday, the 3d instant.

I have, &c.

(Signed) STANLEY.

The LORD PRESIDENT of the Council.

[Copy.]

No. 60.

*Government-House, Halifax, April 16th, 1841.*

MY LORD,—

I forward herewith, (at the request of a Committee of the House of Assembly,) several Resolutions passed by that Body, having relation to the re-annexation, in 1820, under Lord Bathurst's Despatch, No. , date 15th August, 1820, of the Island of Cape-Breton to the Province of Nova-Scotia.

These Resolutions were moved by Mr. William Young, one of the Members for the Island of Cape-Breton, and were passed by a large majority of the Assembly, two of the Members for Cape-Breton voting *for*, and of the remaining four Members; two being absent, and two voting *against* them.

Their tenor sufficiently indicates the opinion of the House in as far as regards the *beneficial results* of the Union of the two Governments; the long agitated question of the legality of which Union will, it is probable, shortly be submitted for decision of the Judicial Committee of the Privy Council; those who are opposed to the measure having at length raised the funds necessary to enable them to follow the course prescribed by Lord Stanley, in his Despatch, No. 6, date June 28th, 1833, and Counsel having been retained, in order that the subject may be regularly brought forward.

I have, &c.

(Signed) FALKLAND.

The LORD JOHN RUSSELL, &c. &c. &c.

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**TO THE QUEEN'S MOST EXCELLENT MAJESTY, IN COUNCIL.**

**MAY IT PLEASE YOUR MAJESTY—**

The undersigned, Your Majesty's most dutiful and loyal Subjects, Inhabitants of the Island of Cape-Breton, in British North America, most humbly beg leave to approach Your Majesty, in Council, as supplicants to implore the protection of Your Majesty, and the restoration of those rights and privileges which were formerly pledged to them by His Majesty King George the Third, of rights and privileges which they had always been taught and led to believe were irrevocable unless by an Act of the Imperial Parliament, but of which, in compliance with the importunities and interested views of Nova-Scotia, they were, in an evil hour for Petitioners, deprived in the year 1820, by the advice of a former Colonial Minister, and without their previous knowledge or consent.

Your Majesty's Petitioners here beg leave, with all humility, to state that the measure of which they complain is the annexation, in the year 1820, of the Island of Cape-Breton as a County to the Province of Nova-Scotia—Petitioners being, by such annexation, deprived of the Legislature which had been solemnly pledged and granted to them by His Most Gracious Majesty King George the Third in the year 1784.

In explanation of the measure to which they allude, Your Majesty's Petitioners humbly submit that on 7th day of October, 1763, His Majesty King George the Third issued a Proclamation relative to certain Colonies which had been ceded to Great Britain by the Treaty of Paris, of the 10th of February in that year, wherein His Majesty was graciously pleased to make the following announcement in reference to Cape-Breton, namely:—"We have also, with the advice of our Privy Council, thought fit to annex the Island of St. John and Cape-Breton, or Isle Royal, with the lesser Islands adjacent thereto, to our Government of Nova-Scotia;" and immediately following is found this clause relative to the Province of Georgia:—"We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the lands lying between the Rivers of Attamaha and St. Mary's"—thus, in this Proclamation, a distinction is made at the outset—in one case the annexation being made to the Government, in the other to the Province. The same Proclamation proceeds to constitute the Government of Grenada, as "comprehending the Island of that name, together with Grenadines and the Islands of Dominica, St. Vincent, and Tobago"—yet it is believed that these last named Islands were never considered as being, by virtue of that Proclamation, parts of the Province of Grenada, but merely thereby comprehended under the General Government of the Governor-General of that Island—Dominica, St. Vincent, and Tobago, having each a separate Lieutenant-Governor, Council and Assembly, distinct from, and independent of, each other, as well as distinct from, and independent of, those of Grenada, except as under the same Governor-in-Chief. Your Majesty's Petitioners therefore here beg permission to remark, that it appears to them that Cape-Breton, as well as the Island of St. John, was evidently not intended to be annexed, by the said Proclamation, as a County to the Province of Nova-Scotia, but merely annexed to the Government of the Governor-General of that Province, in the same manner that Dominica, St. Vincent, and Tobago, were annexed to the Government of the Governor-General of Grenada, to each of which first named Islands Lieutenant-Governors were afterwards actually appointed in the same manner as to the latter Island, and who repaired to their respective Local Governments and immediately and respectively organized the Governments there, under a Governor and Council, as Your Majesty's Petitioners now proceed to shew, as regards Cape-Breton:

Petitioners, in proof thereof, crave leave to add, that on the 3d day of September, 1784, His Majesty granted, and a Commission issued, addressed to "Joseph Frederick Wallet DesBarres, Esquire," in which Commission he is stiled "Lieutenant-Governor of Cape-Breton, and its Dependencies," and wherein he is directed to "exercise and enjoy the said Office of Lieutenant-Governor of our said Island, and its Dependencies, with such powers and authorities, and according to such directions as are or shall be expressed in our Commission and Instructions to our Captain-General and Governor

Governor-in-Chief in our Province of Nova-Scotia, and our Islands of St. John and Cape-Breton, now and for the time being." And Petitioners further beg leave to state, that the said Lieutenant-Governor of Cape-Breton soon after repaired to said Island, and, upon his arrival there, organized the Government, which Government was, from that period until the year 1820, always administered by a succession of Lieutenant-Governors or Presidents of said Island, with the assistance of a Council independent of the Council and Assembly of Nova-Scotia. That His Majesty's Commission to the Governor-in-Chief of the Province of Nova-Scotia, and the Islands of St. John's and Cape-Breton, alluded to in the above recited Commission to the Lieutenant-Governor of the said Island, and dated on the 11th of September, in the same year, namely, in 1784—amongst other things, after stating that His Majesty in the ninth year of His Reign, had been pleased to appoint "Walter Patterson, Esquire, to be Captain-General and Governor-in-Chief in and over our Island of St. John and Territories adjacent thereto, in America," and had also "thought fit to erect that part of our Province of Nova-Scotia lying to the northward of the Bay of Fundy into a separate Province, by the name of New-Brunswick," proceeds as follows:—"We have thought fit to re-annex the Island of St. John, and its Dependencies, to our Government of Nova-Scotia," and then goes on to revoke a former Commission to the said Governor-General of Nova-Scotia, and also that to the said Walter Patterson as Governor-in-Chief of St. John's Island, and, in the new Commission to the said Governor-General of Nova-Scotia, concludes the description of His Excellency's Government as Governor-General as continued and bounded as follows, viz:—"To the Eastward by the Bay of Verte and the Gulf of St. Lawrence to the Cape or Promontory called Cape-Breton, in the Island of that name, including the said Island, the Island of St. John, and all other Islands within six leagues of the Coast." And His said Majesty, in this, His last recited Commission, further thus pledges himself and says, "And we do hereby require and command you to do and execute all things in due manner that shall belong unto your said command and the trust we have reposed in you, according to the several powers and authorities granted or appointed you by the present Commission and Instructions herewith given you, or by such further powers, instructions and authorities, as shall at any time hereafter be granted or appointed you under our Signet and Sign Manual, or by our Order in our Privy Council, and according to such reasonable Laws and Statutes as are now in force, or shall hereafter be made or agreed on by you, with the advice and consent of our respective Councils and Assemblies of our Province of Nova-Scotia and our Islands of St. John and Cape-Breton, under your Government." "And we do hereby give and grant unto you full power and authority, with the advice and consent of our said respective Councils, from time to time as need shall require, to summon and call General Assemblies of the Freeholders and Planters within your Government in such manner and form as has been already appointed and used, or according to such further powers, instructions and authorities as shall at any time hereafter be granted or appointed you under our Signet and Sign Manual, or by our Order in our Privy Council." "And our will and pleasure is, that the persons thereupon duly elected by the major part of the Freeholders of the respective Counties and places, and so returned shall, before their sitting, take the Oaths mentioned in the first recited Act of Parliament, altered as above, as also make and subscribe the aforementioned Declaration—which Oaths and Declaration you shall commissionate fit persons, under our Seals of Nova-Scotia, St. John, and Cape Breton, respectively to tender and administer unto them." "And we do hereby declare that the persons so elected, shall be called and deemed the General Assembly of our Province of Nova-Scotia, of our Island of St. John, and of our Island of Cape-Breton respectively." An Instruction appears also to have been given to the said Governor-General, of a corresponding date, to the following purport, viz: "And whereas the situation and circumstances of our Island of Cape-Breton will not, at present, admit the calling of an Assembly, you, or our Lieutenant-Governor of our said Island, shall, until it appears expedient to call such Assembly, in the mean time

time make such rules and regulations, by the advice of our Council for the said Island, as shall appear to be necessary for the peace, order, and good government thereof, taking care that nothing be passed or done that shall any way tend to affect the life, limb, or liberty, of the Subject, or to the imposing of any duties or taxes, and that all rules and regulations be transmitted by the first opportunity after they are passed and made for our approbation or disallowance." The above Instruction is in substance the same as contained in the Proclamation of the 7th October, 1763, with respect to calling Assemblies in the several Colonies alluded to in that Proclamation, and similar to that under which an Assembly was also granted to Nova-Scotia.

Petitioners here humbly represent, that it appears to them that His Majesty wished to mark his displeasure or disapprobation at an attempt which had been made on the part of Nova-Scotia soon after the Proclamation of the 7th October, 1763, to consider the Island of St. John and Cape-Breton as Counties of Nova-Scotia, which that Province appears to have done under a misconstruction of that Proclamation, as they find a subsequent instruction from His Majesty to the Governor-General of Nova-Scotia 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, or be deemed or construed to extend, to our Islands of Prince Edward, (formerly St. John's,) and Cape-Breton, under color or pretence that our said Islands are included in this, our Commission, and are parts of our Government of Nova-Scotia." "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."

Your Majesty's Petitioners here beg leave to remark, that were there any possibility of doubt of His Majesty's gracious intention that the Islands of St. John and Cape-Breton should have each a Legislature separate and distinct from that of Nova-Scotia, and also of the meaning of the Proclamation of 7th October, 1763, as respects Cape-Breton, it would be removed by the consideration of the facts, that Prince Edward's Island, (formerly St. John's,) was annexed by the same words in the same Proclamation as Cape-Breton to the Government of Nova-Scotia—that in the 9th year of the Reign of His late Majesty King George the Third, the Island of St. John was separated from the Government of Nova-Scotia, and Walter Patterson, Esquire, thereupon appointed Captain-General and Governor-in-Chief of said Island—that in September, 1784, as above recited, His Majesty, in His Commission to the Governor-in-Chief of Nova-Scotia, says—"We have thought fit to re-annex the Island of St. John, and its Dependencies, to the Government of Nova-Scotia"—thus placing it in the same relative situation to that Province in which it had been placed by the Proclamation of 7th October, 1763, and exactly similar to that in which Cape-Breton had been placed by the same Proclamation, and in which situation Cape-Breton always continued until the year 1820, the latter never having been separated nor had a Governor-in-Chief similar to St. John's Island—yet St. John's Island, with exactly the same claim as Cape-Breton, was long since authorized to convene a Legislature, consisting of a Lieutenant-Governor, Council and Assembly, and continues to enjoy the same at the present moment, while Cape-Breton is excluded from a similar consummation of the wishes of the Inhabitants.

That many of Your Majesty's Petitioners, or their ancestors, settled in this Island about and since the year 1784, at which time the Constitution contended for was granted to such Island, under the faith and in firm belief that such Constitution would be enjoyed by its Inhabitants—that some of them invested their property, and others, by

patient and unremitted industry, and amid many privations, acquired the same therein with reference to the operation thereon of the Laws of England, which then prevailed in said Island, and under a persuasion that so soon as the House of Assembly could be convened, such alterations, and such only from the wholesome Laws of the Parent State, would be introduced as their local situation might call for, but that they would not, as has been the case, be subjected to the Laws of another Colony without their consent, or their even having been consulted—that the Island of Cape-Breton steadily, and latterly, rapidly advanced in prosperity, under a Governor and Council, from the year 1784 until the year 1820, and this without the aid of the stimulus of the immense sums of money expended for the support of a large Army and Navy as enjoyed by the Province of Nova-Scotia, or any other of the various advantages possessed by that Province over this Island. That its Inhabitants were, at the latter period, earnestly expecting a House of Assembly to be convened under the Constitution long before granted by His Majesty, and for the calling of which Assembly the said Inhabitants had previously applied—but they now have to inform Your Majesty that, to their utter astonishment and dismay, at a period when the population of this Island amounted to some twenty thousand souls, many of them largely engaged in Trade—when the Commerce and Agriculture of the Island were in a state of advancement, and intelligent persons in sufficient numbers were among them to constitute an Assembly—at a period also when they had the past experience of other Colonies to profit by, and thus be enabled to avoid errors into which other Colonies had fallen in legislating—in a word, just at a time when they were in a more fit state than they had ever been, and fondly hoped soon to be taken as it were from the cradle of their political infancy, under a Governor and Council, and lead on through a vigorous youth up to manhood, under the auspices of their Local Legislature, the uplifted cup of hope was suddenly and unexpectedly dashed from their lips by the astounding announcement that they had been deprived of their Local Legislature, and annexed as a County to the Province of Nova-Scotia; and this too without any pecuniary remuneration for the losses they would thereby sustain and the depreciation in the value of their property which would follow, or any immunity from liability to the Public Debt of that Province; but, on the contrary, they have with concern seen yearly drawn from them large sums by Nova-Scotia, great part of which goes towards the liquidation of the Debt due by that Province—no part of which Debt was contracted by or for the benefit of this Island, but for Nova-Scotia alone, while the sums appropriated for Roads in Cape-Breton have borne but a small proportion to the sums granted to other Counties of the Province for the like services, and is far short of the proportion which the Population, Revenue, and wants of the said Island entitle it to.

And here Your Majesty's Petitioners venture, with the most profound respect, to allude to what they consider the illegality of the annexation of this Island, in the year 1820, to the Province of Nova-Scotia. They feel a delicacy in ranking such an Act amongst those of the Advisers of the Crown, but addressing as they do a Queen who wishes to Reign in the affections of Her Subjects, they trust Your Majesty will bear with them while they humbly state what they conceive the justice and merits of their case require. Your Majesty's Petitioners would therefore beg leave to call the attention of Your Majesty to the case decided by that eminent Judge, Lord Mansfield, *Campbell vs. Hall*, as stated in Cooper's Reports 204, as bearing on their claim. In that case the question appears to have been fully argued, whether the King, having once granted a Legislature to a Colony, such Constitution could afterwards be annihilated or abrogated unless by Act of Parliament. In the discussion of the case in question the Proclamation of 7th October, 1763, was referred to. That Proclamation states, that directions were given to the Governors of the Colonies therein mentioned, that so soon as the state of the Colonies will admit, Assemblies should be called, agreeably to the mode in other American Colonies. It was also shewn that, in pursuance of that Proclamation, Letters Patent had issued appointing Governor Melville to the Government of Grenada, with power to summon an Assembly when the circumstances

stances of the Island would admit. In delivering his judgment on that occasion Lord Mansfield traces the Constitutions of several Colonies, and, in reference to that of Jamaica, says—"In the year 1722, the Assembly of Jamaica being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearge, to know what could be done if the Assembly should obstinately continue to withhold all the usual Supplies—their Report was this—If Jamaica was still to be considered as a conquered Island, the King had a right to levy taxes upon the Inhabitants; but if it was to be considered in the same light as the other Colonies, no tax could be imposed on the Inhabitants but by an Assembly of the Island or an Act of Parliament."

"I have," says Lord Mansfield, "traced the Constitution of Jamaica." "King Charles the Second, by Proclamation, invited Settlers there—he made Grants of Lands, he appointed first a Governor and Council only, afterwards he granted a Commission to the Governor to call an Assembly. The Constitution of every Province under the King has arisen in the same manner, not from Grants, but from Commissions to call Assemblies—a maxim of Constitutional Law declared by all the Judges in Calvin's case, and the opinions of two such men as Sir P. Yorke and Sir C. Wearge, will require some authorities to shake." Lord Mansfield adds, in reference to the case immediately before him, and upon the authority of the Proclamations there alluded to, and the Commission to Governor Melville to call an Assembly, that thereby "the King had immediately and irrevocably granted that the subordinate Legislature should be exercised by an Assembly, with the consent of a Governor and Council." Your Majesty's Petitioners therefore humbly submit that it appears to them that when His Majesty, by his Commission to the Governor-in-Chief of Nova-Scotia and the Islands of St. John and Cape-Breton, dated the 11th September, 1784, granted a Constitution to the latter Island, consisting of a Lieutenant-Governor, Council and Assembly, distinct from those of Nova-Scotia, His Majesty thereby, to repeat the words of Lord Mansfield, "immediately and irrevocably granted such a Legislature to Cape-Breton."

Your Majesty's Petitioners would not presume to press what they conceive to be the illegality of the annexation in 1820, were their opinion, however clear to their own conceptions, unsupported; but their case having been submitted some years ago to no less eminent a personage than the present Lord Brougham, when at the Bar, they have the high authority of His Lordship's name and written opinion in their favour.

Your Majesty's Petitioners further humbly submit that, in addition to the circumstances of Cape-Breton having grown up under separate and distinct Laws and habits from those of Nova-Scotia, from 1784 to 1820, this Island has been formed by nature to be a distinct Colony therefrom, it being separated from Nova-Scotia by a Strait uniting one part of the Atlantic with another part of it called the Gut of Canso, which necessarily cuts off all land communication between the said Province and Island, the passage across which Strait is often at certain seasons of the year both difficult and dangerous, owing to its being filled with drift or floating ice—which difficulty, together with the extreme distance of many populous parts of this Island from Halifax, the Capital of Nova-Scotia, (Sydney, the former Capital of Cape-Breton, being about three hundred miles, and other Settlements much further distant therefrom,) causes a hindrance in resident Members attending the Assembly at Halifax, but which necessity and hindrance would not exist had this Island a Legislature of its own.

Petitioners beg also to submit, that the Island of Cape-Breton is fruitful in resources, which, could they be developed and fostered by a Local Legislature, would raise its Inhabitants to wealth and independence, as, in addition to the Sydney Coal Field, estimated to contain one hundred and twenty square miles of workable veins of Coal, varying in depth from three to eleven feet; and the Western Coal District, comprehending the River Inhabitants, Port Hood, and Cariboo Cove, on the Gut of Canso side of this Island, immense deposits of Gypsum are to be found in many parts of the Lakes of this Island, and which Lakes have a navigable and safe communication with the Ocean, as well as at Aspey Bay, near Cape North, at St. Ann's, at Plaister of

of Paris Cove, in the Gut of Canso, and other Harbours of the Island outside of the Lakes, and which might be an article of considerable export to the United States, under the fostering care of a Legislature in this Island. Lime Stone and a valuable description of Lead Ore are amongst its other productions.

In several Settlements on the Lakes numerous Salt Springs are to be met, and these being situated near to the veins of Coal, so necessary to the manufacture of Salt, and in the very heart of the best Fisheries of North America, would become of incalculable benefit to those Fisheries, and a source of wealth to the Island, under the protection of such a Legislature. Iron Ore also, of various descriptions, abounds in the Island, and various other Metallic Minerals, which also require such a helping hand. Among the principal Settlements of the Island may be mentioned the Town and Free Warehousing Port, and spacious, safe and excellent Harbour of Sydney, in the North East Quarter of the Island and opposite the main entrance into the Gulf of St. Lawrence, with its valuable Coal Mines, whence a large export of that article annually takes place to the United States and the British Colonies, and is the principal resort of the Settlers in that quarter for supplies, and to which to bring their Agricultural Produce and the proceeds of the Fishery. Also the Town and Free Warehousing Port, and superior Harbour of Arichat, in Isle Madame, which commands the Southern entrance into the Strait of Canso, a much frequented Passage into the Gulf of St. Lawrence, and dividing Cape-Breton from Nova-Scotia, with its extensive Fishery and noble Fishing Establishments, and also the depot for the Agricultural Produce and the Trade of the Southern parts of this Island—besides the ancient Settlement of Port Hood, now a Port of Entry and the Emporium of the Western parts of this Island. There are numerous other Settlements well worthy of particular notice would it not be entering too much into detail to treat at large of them.

Your Majesty's Petitioners further humbly submit, that, as they conceive, the importance of this Island would not only render it consistent with sound policy, but as imperatively requiring that it should constitute a Government of itself, or at least be the centre or head of one. Its value to France, when under her dominion—the immense expense incurred by that power in fortifying the Harbour of Louisburg, in it, and the influence and authority the possession of this Island gave France in America at that period, and evidenced by history and her anxiety to retain it, and strong aversion to its falling into the hands of Great Britain, may possibly revive and at some future period cause that power to endeavour to regain its possession—its geographical position and value in other respects, whether viewed as commanding at once the Gulf of St. Lawrence and adjacent Seas, and being consequently the key to Canada, or considering the money spent in its acquisition—the blood spilt in its capture—the valuable Fisheries on its Coast—the fine Timber in its forests—the fertile Land in its Territory, or its inexhaustible Mines of Coal and Iron, cause its prosperity and possession by England to be all important.

Situate as is this Island between the parallels of  $45^{\circ} 27'$  and  $47^{\circ} 5'$  North Latitude, and  $59^{\circ} 38'$  and  $61^{\circ} 50'$  West Longitude, being about 100 miles long and 80 miles wide, containing about 2,000,000 acres of Land, standing out in the Atlantic Ocean, in advance of, and as it were a bulwark and protection to, the British Possession in this quarter of the Globe, possessing some of the finest and most accessible Harbours in America; and separated by a narrow Strait which might be easily guarded from the American Continent. It is here that England might concentrate her forces, rendezvous her fleets, and defy the world—and should she, unhappily, by any possibility, at any future period, have cause to retire from other parts of America, nature has prepared for her this Isle, to which to withdraw, and wherein to make her final and successful stand as the permanent seat and key of British Dominion and Naval Supremacy in this hemisphere. But it is only by being a Government of itself that this Island can flourish or become to England the important station which nature has designed it, and which the security of the British Possessions in America may require it to be.

Your

Your Majesty's Petitioners therefore now humbly prostrate themselves at the Foot of the Throne, and, with uplifted hands and imploring prayers, beseech the merciful consideration of their Queen. They, as British Subjects, inheriting the feelings and common rights and privileges of Britons, which latter, according to their conception, and in accordance with the opinions of the great men of the present and former times, were expressly, immediately, and irrevocably pledged to them by His Most Gracious Majesty King George the Third, in the year 1784, unless annihilated or abrogated by an Act of the Imperial Parliament—pray Your Majesty for the restoration of the Constitution so as above granted to them, and for the convening of their Local Legislature, under a Lieutenant-Governor, Council and Assembly, conformably to the Grant of His Majesty King George the Third, and consequently that the Laws of Nova-Scotia, and the authority of its Legislature, may no longer be enforced over this Island. But should, notwithstanding the high authorities in Petitioners' favor, there possibly exist in Your Majesty's mind a doubt of Petitioners' strict, legal and constitutional right to what they seek, Your Majesty's Petitioners then further humbly beg leave to throw themselves on the goodness of their Sovereign, and hope that, as a matter of expediency, and to promote the interests of Your Majesty's loyal and dutiful Subjects in this Island, now estimated to amount to between fifty and sixty thousand souls, and in consideration of the injuries inflicted on them by the annexation, Your Majesty will be graciously pleased to exercise your high prerogatives of mercy and compassion, and grant, as an act of grace and favor, the separation of Cape-Breton from the Province of Nova-Scotia, and permit this Island to enjoy a similar Constitution to that of its Sister Island of Prince Edward, by directing the immediate convening of the Legislature prayed for—And your Petitioners, as in duty bound, will ever pray.

### In the Privy Council.

#### FROM THE ISLAND OF CAPE-BRETON.

IN the matter of the Petition of certain INHABITANTS of the ISLAND of CAPE BRETON, against the Annexation of that ISLAND to the PROVINCE of NOVA SCOTIA.

#### THE PETITIONERS' CASE.

THIS Petition was filed on the Second day of February, 1843.

It is signed by about two thousand of the Inhabitants of Cape Breton, pursuant to Resolutions adopted at a public Meeting, held in Sydney, the principal Town of the Island, on the 20th of May, 1842. By whom presented.

The Petition (among other things) represents, that the Annexation of Cape Breton to the Province of Nova Scotia as a County thereof, in 1820, was unconstitutional and illegal, and prays that the Government and Constitution established in 1784 may be restored, (claiming also the fulfilment of the promise then given of an Elective House of Assembly, and that a local Legislature be convened, "under a Lieutenant-Governor, Council, and Assembly, conformably to the Grant of King George the Third), and prays "that the Laws of Nova Scotia and the authority of its Legislature may "be no longer enforced over the Island." Prayer of the Petition.

The Island of Cape Breton is situate between the latitudes 45 degrees and 27 minutes; and 47 degrees and 5 minutes north, and the 59th degree and 38 minutes and the 61st degree and 50 minutes of longitude west. Its greatest length is about 100 miles and its greatest width about 80. It comprises an area of about two millions of acres, of which about one million two hundred thousand are fit for cultivation. Its present population is about 60,000 persons, who are principally engaged in agriculture, the fisheries, the mines, and the forests of the Island. Description of the Island.

First discovery and acquisition.

The first right of Great Britain to this as to every other Dependency in America seems to have been founded upon the original discovery by Cabot for King Henry the Seventh in 1497. Formal possession was afterwards taken by Sir Humphery Gilbert in 1583, at the Harbour of St. Johns's, Newfoundland, for the Territory two hundred leagues every way round it, within which circuit the whole Island of Cape Breton would be included. Between the years 1613 and 1629 the French, who are said to have previously intruded (first in 1598) into these dominions, were either subjugated or expelled.

Ceded to France, 1632

In 1632, however, Charles the first restored and ceded to France, by the Treaty of St. Germain's, "all places possessed by the English in New France, La Cadie, and Canada, "particularly Port Royal, Quebec, and Cape Breton;" and the Island of Cape Breton was immediately taken possession of by the French Government, and was never restored by Treaty till 1762. Cromwell reclaimed the whole of Nova Scotia in 1654, and in 1655 by the Treaty of Peace with France the rights of England were acknowledged by the former power.

Nova Scotia reconquered and restored to Great Britain 1655.

Patents to Sir William Alexander and La Tour.

The date of James the First's Patent to Sir William Alexander was 1622. This was confirmed by a Patent of Charles the First, dated 12th July, 1629, which re-appointed Sir W. Alexander Governor General. The Protector's Patent to Sir Charles La Tour (to whose father Sir William Alexander had sold his rights) was in 1656. This last Patent did not include Cape Breton, which however was included in the two former. The validity of all the three seems very questionable, and all appear to have been abrogated either by the purchase and surrender of the grants or by the cession and reconquest of the Country. From La Tour the property passed to Sir Thomas Temple, who was Governor and in possession till 1662; when he agreed to surrender it to King Charles the Second for a sum of £10,000. Another purchase of the seigneurie or property of all the Province seems to have been afterwards made in 1731 from the Heirs of La Tour by the Crown for 2000 Guineas.

Cession of Acadia to France, 1667.

In 1667 Acadia, without any boundaries, was again ceded to France by the Treaty of Breda.

Third cession to France, 1696.

In 1696, by the Treaty of Ryswick, the same Territory which had, on the breaking out of the War in 1689, been partly reclaimed by the English, was again ceded to France, the boundary of whose dominions was now established at the St. Croix.

Nova Scotia "with its ancient boundaries" restored to England, Cape Breton to France, 1713.

After the renewal of the War in 1701, the Peninsula of Nova Scotia having been again mostly recovered by the English (in 1710), was in 1713, by the Treaty of Utrecht, confirmed to England under the name of "Nova Scotia, or Acadia in its full extent, according to its ancient limits," "as also the Town of Port Royal, now called Annapolis Royal, and in general of all that depend on the said Counties and Islands belonging to them." By the same Treaty Cape Breton remained under the dominion of France.

Cape Breton becomes an important French Colony.

The French lost no time in planting the Island, and founding and fortifying its Capital Louisbourg, esteeming this possession as the key to dominion both by land and sea in America. In population, industry and commerce the Colony made rapid advances, and the Island of St. John's (Prince Edward'), now also under the dominion of France, was as well in trade as in government, a dependency upon Cape Breton.

First Patent for the Government of Nova Scotia, 1719.

Nova Scotia was in 1719 erected into a separate Province, by Letters Patent, appointing Richard Phillips, Esqr., Governor of Placentia in Newfoundland, and Captain-General and Governor-in-Chief of the "Province of Nova Scotia or Acadia," without any further description of boundaries. From this time the Province of Nova Scotia, under the same general description, had a regular succession of Governors and Lieutenant-Governors, who then resided at Annapolis Royal.

Its Government first organized.

In 1720, Governor Phillips, in obedience to the Royal Instructions, formed a Council of twelve persons for the civil government of the Province, until an Assembly could be called. The Province was now divided into twelve Districts, and each chose Deputies, who administered justice among the inhabitants, almost all of French descent (in number 16,000), with an appeal to the Governor and Council.

The

The Government of Placentia in Newfoundland continued to be combined with the Government of Nova Scotia until 1729, when Henry Osborne was by a separate commission appointed Governor of that Island and of Placentia, and the Letters Patent to the Governor of Nova Scotia were so far revoked.

Newfoundland separated from the Government of Nova Scotia, 1729.

In 1745, War having been again declared, Cape Breton was taken, by the surrender of Louisburgh. A Governor and a Lieutenant-Governor are said to have been appointed, and that Admiral Warren held the former office, and Colonel Warburton the latter. Upon recent search however no enrolment of any such Patents was found at the Rolls Chapel. Three Patents however are found there: one dated the 7th January, 1745, appointing Corbyn Morris, Secretary of the Island of Cape Breton; another dated 17th April, 1745, appointing Henry M'ulloch Clerk of the Naval Office of the Island of Cape Breton; and another, of the 20th March, 1746, authorizing the Lords of the Admiralty to constitute a Court of Vice Admiralty, and appoint a Judge and other Officers in the Island of Cape Breton, and the adjacent Isles thereto belonging. The last Patent recites that a Governor had been appointed to reside at Louisburgh, and otherwise to provide for the settlement of that Island, and that the Lords of the Admiralty had reported that they were not authorized to constitute a Court of Vice-Admiralty in places acquired since their former commission. The population of the Island at that time consisted of about six thousand persons, who thus continued under the British Government for a period of about three years, and until the restoration of the Island to France.

Conquest and Government of Cape Breton, 1745.

In 1748, the Island of Cape Breton was again ceded to France, by the Treaty of Aix-la-Chapelle.

Cape Breton restored to France, 1748.

In 1749, the Hon. Edward Cornwallis, being appointed to succeed Mr. Phillips as Governor of Nova Scotia, led out and planted at Halifax the first English settlement (about 5,700 persons) in that Province. By this commission a House of Assembly was first directed to be convened in Nova Scotia. On the 14th of July in that year he organized a Civil Government for the Colony, summoning certain persons to compose His Majesty's Council; in which, together with himself, the whole authority, both legislative and judicial, was for some years centred. He afterwards established Courts of Justice. These were remodelled by Governor Hopton, who succeeded in 1752; and in 1754 a Supreme Court was established, and a Chief Justice was appointed.

Nova Scotia first planted by English Settlers, 1749.

The War with France having been renewed in 1755, Louisburgh was besieged and taken by surrender on the 26th of July, 1758, and the Island of Cape Breton, together with St. John's, or (as since called) Prince Edward's Island, reverted to the English power. Both Islands seem to have remained for some years (about five) under military government.

Second Conquest of Cape Breton, 1755.

Previous to 1758, instructions had been given by the Crown to the Governor of Nova Scotia, to call an Assembly of the Province, pursuant to the Letters Patent of 1749, and in this year, 1758, certain Regulations for that purpose having been made by the Governor and Council, and received His Majesty's approbation, Writs were accordingly issued returnable on the 2nd October; on which day the first Legislative Assembly of Nova Scotia was convened. This Legislature immediately proceeded to enact several of the most important laws by which society is constituted. Besides confirming the previous establishment of a Judicatory, they enacted the Liturgy of the Church of England to be the form of worship in the Province, with full liberty of conscience to all but Papists, settled the rights of property in titles to real estate, defined crimes and punishments, and raised a revenue. About the same time (12th October, 1758), Governor Lawrence issued a Proclamation inviting Colonists into the country; and because some had hesitated to accept that invitation, on account of its silence as to the nature of the constitution and government of the Colony, he on the 11th January in the following year issued another Proclamation, which, for being most explicit in these respects, has been sometimes called the Charter of Nova Scotia.

First Assembly in Nova Scotia, 1758.

second and Third  
Assemblies in  
Nova Scotia, 1759,  
and 1761

On the 1st of August, 1759, another Session of the Assembly of Nova Scotia was opened, a dissolution followed, and a second Assembly was called; this was dissolved by the death of King George the Second, on the 24th October, 1760. A third Assembly succeeded, and was called on the 1st of July, 1761. The Province having been previously divided into Counties and Townships, the last Election was had up on an entire new principle of representation apportioned to the several Towns and Counties of the Province. A very considerable emigration to Nova Scotia had now taken place as well from the Old Colonies as from the Mother Country.

Cape Breton ceded  
to England, 1762.

In 1762, February 10th, by the Treaty of Paris, France renounced and guaranteed to Great Britain, "All Nova Scotia or Acadia, and likewise Canada, Cape Breton, and all the "Islands in the River and Gulph of St. Lawrence."

Royal Proclamation  
of 1763 annexes  
Cape Breton to the  
Government of  
Nova Scotia.  
Extracts

On the 7th of October, 1763, the celebrated Proclamation of the third year of the reign of George the Third, was issued, annexing the Islands of St John (now Prince Edward's) and Cape Breton to the Government of Nova Scotia.

The following Extracts from this Proclamation relate to the present inquiry:—

"We have thought fit, with the advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving subjects that we have, with the advice of our said Privy Council, granted our Letters Patent under our Great Seal of Great Britain, to erect within the Countries and Islands, ceded and confirmed to us by the said Treaty, four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz:—

"First, the Government of Quebec, bounded," &c.

"Secondly, the Government of East Florida, bounded," &c.

"Thirdly, the Government of West Florida, bounded," &c.

"Fourthly, the Government of Grenada, comprehending the Island of that name, together with the Grenadines, and the Islands of Dominica, St. Vincent, and Tobago.

"And to the end that the open and free Fishery of our subjects may be extended to and carried on upon the Coast of Labrador and the adjacent Islands, we have thought fit, with the advice of our said Privy Council, to put all that Coast, from the River St. John to Hudson's Streights, together with the Islands of Anticosta and Madelane, and all other smaller Islands lying upon the said Coast, under the care and inspection of our Governor of Newfoundland.

"We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.

"We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the lands lying between the Rivers Attamaha and St. Mary's.

"And whereas it will greatly contribute to the speedy settling our said new Governments that our loving subjects should be informed of our paternal care for the security of the liberties and properties of those who are and shall become inhabitants thereof, we have thought fit to publish and declare, by this our Proclamation, that we have in the letters patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express power and direction to our Governors of our said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the advice and consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and we have also given power to the said Governors, with the consent of our said Councils, and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said Colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the Laws of England, and under such regulations

“ regulations and restrictions as are used in other Colonies ; and in the meantime, and  
 “ until such Assemblies can be called as aforesaid, all persons inhabiting or resorting to  
 “ our said Colonies may confide in our Royal protection for the enjoyment of the benefit  
 “ of the laws of our realm of England ; for which purpose, we have given power under  
 “ our Great Seal to the Governors of our said Colonies respectively, to erect and con-  
 “ stitute, with the advice of our said Council respectively, Courts of Judicature and  
 “ Public Justice within our said Colonies, for the hearing and determining all causes,  
 “ as well criminal as civil, according to law and equity, and, as near as may be, agree-  
 “ able to the laws of England, with liberty to all persons who may think themselves  
 “ aggrieved by the sentence of such Courts, in all civil cases to appeal, under the usu-  
 “ al limitations and restrictions, to us in our Privy Council.

“ We have also thought fit, with the advice of our Privy Council as aforesaid,  
 “ to give unto the Governors and Councils of our said three new Colonies upon the  
 “ Continent, full power and authority to settle and agree with the inhabitants of our  
 “ said new Colonies, or to any other person who shall resort thereto, for such lands,  
 “ tenements and hereditaments, as are now or hereafter shall be in our power to dis-  
 “ pose of,” &c.

It may be remarked that this Proclamation uses the different words, *Government*, *Province*, *Colony*, and *Island*. An insular Colony in the British Dominions is almost uniformly styled an Island, as the name of the body politic, which in continental Colonies is designated a Province ; the word Colony seems common to both. It is true, indeed, that some dependant Islands which are not bodies politic are also mentioned in the Proclamation, but always with the omission of the word Island, as “ the Grenadines,” or with a qualification of “ lesser,” “ smaller,” or “ adjacent Islands,” as “ the coast of Labrador, and the adjacent Islands ;” and “ that coast, together with the Islands of Anticosti and Madelane, and all other smaller Islands lying upon the said coast.” But insular Colonies are described as “ the Islands of Dominica, St. Vincent, and Tobago.” The clause relating to Cape-Breton is at once an illustration of both these phrases, being “ the Islands of St. John and Cape-Breton or Isle Royale, with the lesser Islands adjacent thereto.” The word Government seems in this Proclamation, and in other public documents hereinafter cited, to be intended to designate a dominion consisting of one or more Provinces or Islands under the administration or authority of one Governor. With this explanation, the word Colony in the Proclamation would be used synonymously with Government only where the Government consisted entirely of one Colony : and the promise of Legislative Assemblies would apply severally to the Colonies mentioned in the Proclamation.

Interpretation of the terms Government Colony, &c., in this Proclamation.

Apart from this explanation, the promise given by the Proclamation to call Legislative Assemblies would appear somewhat equivocal. It might be, and it seems to have been at first doubted, whether one Legislative Assembly was to be convened for all the Islands or Colonies of each Government jointly, or for each and every Colony severally. In the present controversy, however, that question may be taken either way ; for if the promise applied severally, it seems as applicable to Cape-Breton as to any of the other Islands or Colonies enumerated : if it applied jointly, then its having been performed severally in every other instance, proves at least the power of the Crown so to perform it to Cape-Breton, and to endow any portion of the Government of Nova-Scotia, as the Island of St. John (Prince Edward's) was in 1770, and Cape-Breton was afterwards, in 1784, endowed.

Whether it promised Assemblies jointly for each Government, or severally for each Colony.

In effect, the grant of Legislative Assemblies by the Proclamation seems to have been interpreted by the Crown as applying both jointly and severally to the Colonies in every Government. The Commission to Robert Melville, Esq., (granted April, 1764,) appointing him Governor of Grenada, with the Grenadines, Dominica, St. Vincent, and Tobago, commanded him to exercise his authority according to laws thereafter to be made by him, with the advice and consent of the Council and Assembly of the Islands and Plantations under his Government ; and directed him further, according to his discretion, to call Assemblies “ jointly or severally,” within any of the  
 Islands,

It is executed at first both jointly and severally.

Islands, to be the Assembly of that Island within which the Assembly was chosen, or the Assembly of the said Islands in general. This Commission was at first administered, with the advice of a General Legislative Council for all the Islands jointly, until 1766, and the Ordinances of that body were received as laws in every of the Islands. Separate Councils were afterwards constituted, and separate Assemblies called : for Grenada, in 1766 ; for St. Vincent, in 1767 ; for Tobago, in 1768 ; and for Dominica, 1768.

It afterwards executed severally.

It seems, therefore, to have been afterwards considered by the advisers of the Crown, as the better opinion, that separate Assemblies for each Island in the Government of Grenada were required by the promise given in the Proclamation of 1763, to call them "in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate Government : " every one of those Colonies and Provinces having a separate Assembly.

The new Commissions after the Proclamation.

About the same time as the Proclamation of 1763, new Commissions, agreeably to its terms, were issued to all the Governments mentioned in it. That to the Governor of Newfoundland (Thomas Graves, 25th April, 1763) appointed him Governor of the Island of Newfoundland and the coast of Labrador, from the River St. John to Hudson's Straights, including the Island of Anticosti and the Island of Madelane, and the other smaller Islands. The new Commission to the Governor of Georgia (John Wright, 20th Jan., 1764) revoked the former, so far only as related to the boundaries of the Province, and then appointed him Governor of Georgia, describing its boundaries so as to include the lands annexed to the Province by the Proclamation. And the new Commission to the Governor of Nova-Scotia (Montague Wilmot, 21st Nov., 1763,) instead of describing the Province by the general terms till then used, of "our Province of Nova-Scotia or Acadian America," now introduced the following description: "Our Province of Nova-Scotia, which we have thought proper to restrain and comprize within the following limits, viz : To the northward our said Province shall be bounded by the southern boundary of our Province of Quebec, as far as the western extremity of the Bay des Chaleurs ; to the eastward by the said Bay and the Gulf of St. Lawrence, to the Cape or Promontary called Cape-Breton, in the Island of that name, including that Island, the Island of St. John, and all other Islands within six leagues of the coast ; to the southward by the Atlantic Ocean, from the said Cape to Cape Sable, including the Island of that name, and all other Islands within forty leagues of the coast, with all the rights, members and appurtenances whatsoever thereunto belonging ; and to the westward, although our said Province hath anciently extended and doth of right extend as far as the River Pentagonet or Penobscot, it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said River to its source, and by a line drawn due north from thence to the southern boundary of our Colony of Quebec." The Commission then (among other things) directs him to call "General Assemblies" within his Government, "in such manner and form as has been already appointed and used, or according to such further powers, instructions and authorities as shall at any time hereafter be granted or appointed you, under our Signet and Sign Manual, or by an Order in our Privy Council." As the Assembly of Nova-Scotia proper had been already constituted, and its Members apportioned to Counties and Towns within the limits exclusive of the two Islands of St. John and Cape-Breton, an Assembly called "in such manner and form as had already been appointed and used," could evidently be no fulfilment of the pledge given by the Proclamation to endow these Islands with such an Institution : and the Assemblies afterwards granted and appointed were separate Assemblies. It is further to be observed, that the previous Commission to the Governor of Nova-Scotia (Henry Ellis, Esq., 24th Sept., 1760,) had not that restriction in the power of calling Assemblies, but was to call them "in such manner and form as you, in your discretion, shall judge most proper, or according to such further powers, instructions and authorities, as shall at any time be granted or appointed you under our Signet and Sign Manual,

“or by an Order in our Privy Council.” It is contended, therefore, that the Commission to Montague Wilmot, of 21st Nov., 1763, gave him no power to legislate for Cape-Breton by means of the Assembly of Nova-Scotia, or if it did give him such power, it was contrary to the Proclamation.

The Legislature of Nova-Scotia, however, did on three occasions attempt to extend their authority over the Island of Cape-Breton, and once over St. John's, or Prince Edward's Island, also. In 1765, (December 10), Cape Breton was made a County of Nova Scotia by an Act of the Legislature of that Province, and empowered to return Two Members to the Assembly. In 1766, an Act of the Legislature of Nova Scotia declared the Island of St. John (Prince Edward's) and Cape Breton to have been, and by virtue of the Proclamation of 1763, subject to all the Laws of Nova Scotia. No Members for Cape Breton ever sat in the Assembly of Nova Scotia, it being found that there were not freeholders in the Island to make an election; and in 1770, Cape Breton was deprived of the right to return members, being then annexed to the County of Halifax, in that Province. It does not appear that any other attempts were made to introduce the Laws of Nova Scotia, or that they were ever enforced over this Island until the year 1820.

In 1769 (14th of July), the Island of St. John (now Prince Edward's) was separated from the Government of Nova Scotia, and erected into a Distinct Government, by the King's Letters Patent appointing Walter Patterson, Esquire, Captain-General and Governor-in-Chief of that Island. This Commission, after reciting that to the Governor of Nova Scotia, and the boundaries of that Province as last above described, revoked the same Commission so far as related to the Island of St. John, and gave the Governor of that Island all the powers of a Captain-General and Governor-in-Chief, and directed an Assembly to be called. On the arrival of Governor Patterson he is said to have found only 150 families on the Island. In 1778 he called there the first House of Assembly.

After the re-conquest of Cape Breton and the destruction of Louisburgh in 1758, the Island appears to have become much depopulated, and remained neglected and almost uninhabited, except by a few Fishermen of French extraction settled on parts of the Coast, (of whom there were in 1772 but 800), until the peace of 1782; after which the influx of American Loyalists led to the Island's being planted by subjects of British origin and to the separate institutions soon afterwards conferred.

In 1784, (16th August), the Province of Nova Scotia was divided by the King's Letters Patent, constituting all the parts, north of the Bay of Fundy, a separate Province, named New Brunswick, and appointing Thomas Carleton Captain-General and Governor-in-Chief in and over the same.

In the same year (3rd September, 1784), Letters Patent were also issued, appointing Joseph Frederick Wallet DesBarres, Esquire, Lieutenant-Governor of Cape Breton and its dependencies, and directing him to “exercise and enjoy the said office of Lieutenant-Governor of our said Island and its dependencies, with such powers and authorities, and according to such directions, as are or shall be expressed in our Commission and Instructions to our Captain-General and Governor-in-Chief of our Province of Nova Scotia and our Islands of St. John and Cape Breton, now and for the time being.”

Afterwards and about the same time also (11th September, 1784), the Commission of the Governor of Nova Scotia was revoked, and a new one (above alluded to) issued to the same person, John Parr, Esquire, which, after reciting a former Commission to him as Governor-in-Chief of Nova Scotia, including the Island of Cape Breton, and excepting the Island of Saint John (Prince Edward's), “which we had thought fit to erect into a separate Government:” and after further reciting that “His Majesty, in the ninth year of his reign, had been pleased to appoint Walter Patterson, Esquire, to be Captain-General and Governor-in-Chief in and over our Island of St. John, and territories adjacent thereto in America,” and had also thought fit to erect “that part of our Province of Nova Scotia, lying to the Northward of the Bay of Fundy,

The Legislature of Nova Scotia claims authority over Cape Breton.

The Island of Prince Edward made a separate Government, 1769.

Cape Breton depopulated until replanted by Loyalists in 1782.

Nova Scotia divided, and the Northern part made a separate Province and Government, 1784.

A Lieutenant-Governor appointed for Cape Breton; 3d Sept. 1784.

New Commission for the Government of Nova Scotia restricts its boundaries exclusively of New Brunswick, re-annexes the Island of Prince Edward to the Government of Nova Scotia, and grants a separate Legislature for Cape Breton, 11th September, 1784.

“ Fundy, into a separate *Province* by the name of New Brunswick ;” proceeds as follows ; “ We have thought fit to *re-annex* the Island of St. John and its dependencies to our *Government* of Nova Scotia ;” and then goes on to revoke a former Commission to the said Governor-General of Nova Scotia, and also a former Commission to Walter Patterson, as Governor-in-Chief of St. John’s Island : and in the new Commission to the Governor-General of Nova Scotia, the description of its boundaries includes the Island of St. John, as well as Cape Breton and all other Islands within six leagues of the Coast. And this new Commission further thus pledges the faith of the Crown, and confers as well on the Island of Cape Breton as on Nova Scotia and on the Island of Prince Edward, separately, distinctly, and respectively, full Legislative Power in these words, “ And we do hereby require and command you to do and execute all things, in due manner, that shall belong to your said command, and the trust we have reposed in you, according to the several powers and authorities granted or appointed you by the present Commission and Instructions herewith given you, or by such further powers, instructions and authorities as shall at any time hereafter be granted or appointed you under our Signet and Sign Manual, or by our Order in our Privy Council, and according to such reasonable laws and statutes as are now in force, or shall hereafter be made or agreed upon by you, *with the advice and consent of our respective Councils and Assemblies of our Province of Nova Scotia, and our Islands of St. John and Cape Breton under your Government.* And we do hereby give and grant unto you full power and authority, with the advice and consent of our said *respective Councils*, from time to time, as need shall require, to summon and call *General Assemblies*, of the Freeholders and Planters *within your Government*, in such manner and form as has been already appointed and used, or according to such further powers, instructions and authorities as shall, at any time hereafter, be granted or appointed you under our Signet and Sign Manual, or by our Order in our Privy Council :” and further the Commission proceeds, “ And our will and pleasure is, that the persons thereupon duly elected by the major part of the freeholders of the respective Counties and Places, and so returned, shall, before the sitting, take the oaths mentioned in the first recited Act of Parliament altered as above, as also make and subscribe the aforementioned declaration, which oaths and declaration you shall commissionate fit persons *under our seals of Nova Scotia, St. John, and Cape Breton, respectively*, to tender and administer unto them ; and until the same shall be taken and subscribed, no person shall be capable of sitting, though elected. And we do hereby declare, that the persons so elected and qualified should be called and deemed *the General Assembly of our Province of Nova Scotia, of our Island of St. John, and of our Island of Cape Breton respectively* ; and that you, the said John Parr, with the advice and consent of our said Councils and Assemblies, or the major part of them respectively, shall have full power and authority to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said Province and Islands, and of the people and inhabitants thereof, and such others as shall resort thereunto, and for the benefit of us, our heirs, and successors.”

The calling an Assembly in Cape Breton deferred, and a Legislative Council constituted, with limited authority in the meantime.

An Instruction appears also to have been given to the said Governor-General of a corresponding date, to the following purport, viz.—“ And whereas the situation and circumstances of our Island of Cape Breton will not at present admit the calling of an Assembly, you or our Lieutenant-Governor of our said Island shall, until it appears expedient to call such Assembly, in the meantime make such rules and regulations, by the advice of our Council for the said Island, as shall appear to be necessary for the peace, order and good government thereof, taking care that nothing be passed or done that shall any way tend to affect the life, limb or liberty of the subject, or to the imposing of any duties or taxes, and that all rules and regulations be transmitted by the first opportunity after they are passed and made, for our approbation or disallowance.”

Further Instructions from His Majesty to the Governor-General of Nova Scotia are

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*.

All the North American Provinces united into one Government, 1766.

After the year 1784, the Island of Cape Breton, as well as the Island of Prince Edward, continued annexed to the Government of Nova Scotia, and were always included in one and the same Commission to the Governor-in-Chief. He from the year 1787 resided at Quebec, and administered the Government of Lower Canada only, but combined also, by different Commissions, in his government, the Provinces of Upper Canada, Lower Canada, and New Brunswick, as well as of Nova Scotia. In each of the other Provinces and Islands there were always resident Lieutenant-Governors, who administered the government of each separately and quite independently, as well of each other as of the Governor-in-Chief in his absence.

Cape Breton still included in the Commission for Nova Scotia

For some time after 1784 the Commission for Nova Scotia, like that above cited to John Parr, appointed the person named Governor in and over the Province of Nova Scotia, describing the boundaries in these words—"Bounded on the westward by a line drawn from Cape Sable across the entrance to the centre of the Bay of Fundy; to the northward by a line along the centre of the said bay to the mouth of the Musquat River, by the said river to its source, and from thence by a due east line across the isthmus into the bay of Verte; to the eastward by the said bay and the Gulf of St. Lawrence, to the cape or promontary called Cape Breton, in the Island of that name, including the said Island, the Island of St. John, and all other islands within six leagues of the coast; and to the southward by the Atlantic Ocean, from the said Cape to Cape Sable aforesaid, including the Island of that name, and all other Islands within forty leagues of the coast, with all the rights, members, and appurtenances whatsoever thereunto belonging." And then authorized the calling of Assemblies, as well in the Islands of Cape Breton and Prince Edward, as in Nova Scotia respectively.

The Governor of Nova Scotia made a Governor in Chief of the Island of Cape Breton.

Afterwards, however (in 1816), a change was introduced in this Commission, and the person appointed Governor was made Governor-in-Chief of the Island of Prince Edward and of the Island of Cape Breton as well as of the Province of Nova Scotia, by inserting the words "*together with our Island of Prince Edward and our Island of Cape Breton,*" after the same description of boundaries as above given, and before the words "with all the rights, members and appurtenances whatsoever thereunto belonging." A further change, and more distinctly to the same effect, was made in 1818 by the Commission to the Duke of Richmond, which after reciting and revoking the Commission of 1816, appointed him "*Governor in Chief of our said Province of Nova Scotia, bounded as hereinbefore described, of our Island of Prince Edward, and of our Island of Cape Breton.*"

Acts of Parliament relating to the separate existence of Cape Breton

The separate and distinct existence of the Island of Cape Breton as a colony, subsequently to 1784 and until after 1820, was recognized and assumed by many Acts of Parliament passed in that period. The Annual Supply and Appropriation Bill, from the year 1783 until 1820, invariably contained, among the Colonial appropriations, one sum for the civil establishment of the Province of Nova Scotia, and another for that of Cape Breton, as separately and distinctly as for any other of the different Colonies. The Laws of Trade also, which, before the reconquest of Cape Breton in 1758, had mentioned and recognised the existence of the Province of Nova Scotia (as the 2 Geo. II. c. 35, in 1721), are found afterwards to specify Cape Breton as one of the Colonies in America—and particularly the very important statute of the 18 Geo. III. c. 7, continued and made permanent by the 28 Geo. III. c. 6, for regulating the trade of His Majesty's Colonies and Plantations in America with the United States, prohibits the importation of any goods from the United States "into the Provinces of Nova Scotia or New Brunswick, or the Islands of Cape Breton, St. John, or Newfoundland." But (by section 13) "the Governors, Lieutenant-Governors, or Commanders in Chief for the time being of the Provinces of Nova Scotia or New Brunswick, or of the Islands of Cape Breton or St. John, with the advice and consent of their respective Councils," might authorise the importation of certain articles. In 1793, however, the act 33 Geo. III. c. 51, after reciting the above-mentioned act of 28 Geo. III. c. 6, permits to be imported into the Provinces of Nova Scotia and

18 Geo. 3. c. 7.  
28 Geo. 3. c. 6.

32 Geo. 3. c. 51.

New Brunswick certain naval stores forbidden, by the 28 Geo. III. c. 6, to be imported into any of those Provinces or Islands. Thus there have been different laws of trade for the two Colonies of Nova Scotia and Cape Breton. And at the date of the Order in Council annexing Cape Breton to Nova Scotia, such differences still existed to a greater extent; for by 47 Geo. III. c. 37 (1807), the 49 Geo. III. c. 49 (1809), and the 58 Geo. III. c. 19 (1818), such ports as His Majesty might appoint within the Provinces of Nova Scotia and New Brunswick were opened at first to certain, then to all American productions in American ships, and at last to the ships and productions of any friendly power. This regulation, which placed Nova Scotia on so peculiar a footing with regard to trade, was in force in 1820 at the time of the Annexation, and could not then be lawfully enjoyed by Cape Breton, as the act already mentioned of 28 Geo. III. c. 6, was never repealed till by the 4 Geo. IV. c. 44, in 1822.

The Annexation now in question of the Island of Cape Breton to Nova Scotia took place in 1820, and was thus effected:—On the 27th of April in that year, Letters Patent were issued, appointing the Earl of Dalhousie Governor in Chief of the British North American Colonies; and in the Commission for Nova Scotia, on including the Island of Prince Edward (formerly St. John's) and the Island of Cape Breton, there was added, after mentioning the latter ("which we do hereby expressly direct and declare shall in future form part of our said Province of Nova Scotia"); and in the powers of legislation, all mention is omitted of the General Assembly of Cape Breton, the grant of which had till then been recognised and reiterated in all previous Commissions since the first above mentioned to John Parr, Esq. in 1784. A similar omission was made in the Instructions accompanying this Commission to the Earl of Dalhousie; and the following addition was now for the first time inserted, viz. "Whenever you summon General Assemblies for our Province of Nova Scotia, you are to summon and call to those Assemblies such a number of the freeholders and planters of the Island of Cape Breton as were usually summoned to such Assemblies immediately before the time when the said Island was first separated from our Province of Nova Scotia."

Upon this the Lieutenant-Governor of Nova Scotia, Sir James Kempt, on the 9th of October, in the same year, 1820, by orders from Earl Bathurst, then Secretary of State for the Colonial Department, issued a Proclamation at Halifax, Nova Scotia, declaring Cape Breton to be "a several and distinct County of the Province of Nova Scotia, to be called and known by the name of the County of Cape Breton, and to be represented and the Civil Government thereof to be administered, in like manner as other Counties of the Province are administered and governed." And that in pursuance of His Majesty's Instructions, he had "caused a writ in the usual form to be immediately issued, directed to the Provost Marshal or his Deputy resident in the Island, for the election of two members to serve in the General Assembly of Nova Scotia, being the number directed to be summoned to such Assembly before the time when the said Island was first separated from the Province of Nova Scotia." By the same Proclamation the Council of the Island of Cape Breton was dissolved: and "until more effectual provision shall be made by the legislature of Nova Scotia, or until further order shall be duly made thereon," all Justices and other civil officers were commanded to "continue in the execution of their respective offices, agreeably to the several Ordinances passed by the Governor and Council of Cape Breton." It was found necessary to alter the form of the writ which was issued for the election of two members to represent the County of Cape Breton in General Assembly, on account of many persons holding their lands under crown leases: to which exigency the writ was now adapted.

In December of the same year the laws and ordinances of that Province were extended to the Island of Cape Breton, by act of the Legislature of Nova Scotia. The Province of Nova Scotia was at that time governed by a peculiar system of laws, which, since the year 1784, had grown up under a separate Legislature, with a view only to the then existing limits of its territory and jurisdiction. The taxes in that Province

47 Geo. 3. c. 38.  
49 Geo. 3. c. 49.  
58 Geo. 3. c. 19.

Annexation of Cape Breton to Nova Scotia, 1820.

The Lieutenant-Governor of Nova Scotia proclaims the Island of Cape Breton to be a County of Nova Scotia.

The Laws of Nova Scotia enforced in Cape Breton.

Province were many and sufficiently onerous. Its public debt was large in proportion to either its revenue or population. Its currency was depreciated by an inconvertible paper money. Its law of inheritance was totally at variance with that of the common law which then prevailed in Cape Breton. Its Courts of Justice, with their rules of practice, summary forms of procedure, and tables of fees, made the administration of the law almost equally peculiar. Service in the militia, statute labour on the highways, qualification as jurors, in short, almost all the relations of individuals to the community, were there determined not only without consulting, but without even considering the inhabitants of Cape Breton. All these burdens and charges were now, by a single act of the Prerogative, imposed upon the Island of Cape Breton.

Opposition and Remonstrances in Cape Breton

The inhabitants of Cape Breton immediately, and on many subsequent occasions, expressed their strong dissatisfaction at this measure. The first Election of Members for the Assembly of Nova Scotia was held under a protest, and means were publicly taken to resist the annexation, and procure the restoration of the former Government and Constitution. A Petition was prepared to Parliament, and presented in the House of Commons in 1823. A Petition was afterwards prepared to the Crown, and transmitted to the Colonial Office. In answer to this last, the Principal Secretary of State for the Colonial Department recommended that steps should be taken to bring the question to a judicial decision in the Privy Council. Subsequent remonstrances have been addressed as well to Lord Glenelg when Colonial Secretary, as to Lord Durham when Governor-General. The question has been frequently debated in the Assembly of Nova Scotia, where the Members from Cape Breton, though some of them never failed to insist upon the illegality of the annexation, were too inconsiderable a minority to exercise an influence proportionate to their interests; yet upon a recent and the most solemn occasion, when that question came into debate, the House of Assembly expressly refrained from pronouncing any opinion on the legality of the measure, but contented themselves with only asserting its expediency. Public Meetings have also been called in the Island at various times, and Resolutions adopted expressive of the same views as now urged by the Petitioners; and though every act of resistance that might lead to a breach of the peace has been avoided, the present proceeding is finally instituted after taking legal advice, and in compliance also with the above-mentioned suggestion from Her Majesty's Principal Secretary of State for the Colonial Department, in order to bring the subject to a judicial determination.

Grounds on which the Annexation is contended to be valid

From the reference made or implied by these acts of the Prerogative in 1820 to the Proclamation of 1763, from the return thus made to the state of things supposed to have existed under that Proclamation, from the papers laid before Parliament in 1823 relative to the re-annexation of Cape Breton to Nova Scotia, from the declarations of those who have undertaken to defend that measure as well in the Legislature of Nova Scotia as elsewhere; and from other causes and reasons, it would appear that the re-annexation is to be justified by asserting not so much the validity of those acts of the Prerogative in 1820 as the invalidity of those in 1784, by which Cape Breton was separated from Nova Scotia; and it will probably be contended that the Proclamation of 1763 made Cape Breton an integral part of the Province to the Government of which it was annexed, and that the Crown had no power by the Letters Patent of 1784 to separate the Island from Nova Scotia and constitute therein a distinct Legislature; and that consequently it was lawful and necessary for the crown to retrace its steps and return to the state of things from which it never ought to have departed. On the other hand, it is contended by the Petitioners:—1st. That the Proclamation of 1763 in annexing Cape Breton to the Government of Nova Scotia, a Province already planted, constituted, and endowed with a Legislature, declared only that the Governor's Commission for that Province had been or was to be extended to include Cape Breton, but did not give or pledge to the Provincial Legislature of Nova Scotia, any powers of legislating over that Island. But this question is really of less importance, for, 2ndly. It is contended by the Petitioners that, assuming Cape Breton to have been made by that Proclamation, or any other act of the Prerogative, an integral part

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

sion for the local administration of Justice. In 1754, Lord Baltimore's claim, under the grant of 1621, was declared by the Law Officers of the Crown to be invalid, and has since been so considered, though he appears to have been restored in 1660 to his grant of 1521. In 1763, by the Royal Proclamation, the Coast of Labrador and the Islands of Anticosti and Madelane were declared to be put under the care and inspection of the Governor of Newfoundland. A new Commission issued to the Governor, by which he was appointed Governor of these places as well as of Newfoundland. In 1665 a Court of Vice Admiralty was established there. Acts of Parliament were from time to time passed for the government of Newfoundland, and the 5 Geo. IV. c. 67, authorized the issuing of a Charter of Justice, which was accordingly granted on the 19th September, 1825. On the 2nd March, 1832, new Letters Patent directed an Assembly to be called of the freeholders and householders within the Island. The stat. 2 & 3 Will. IV. c. 78. (1 August, 1832), continued the acts previously passed for the government of Newfoundland, until the same should be repealed or altered by His Majesty, with the consent of any House or Houses of Assembly, to be convoked from among the inhabitants of the Colony. An Assembly was accordingly called, and the suffrage given by Royal Proclamation to all householders for one year preceding the day of election. In 1842, the act 5 & 6 Vict. c. 120, empowered the Crown by Commission under the Great Seal, or by Instructions under the Signet or Sign Manual, to change the Constitution of the Island for a limited time. The 9th clause of this statute declared and enacted, "That nothing herein contained shall extend or be construed to extend to take away or diminish any Right or Prerogative vested in Her Majesty of enlarging, as to Her Majesty shall seem meet, any franchise heretofore granted by His late Majesty or hereafter to be granted by Her Majesty to Her Majesty's subjects in Newfoundland."

The annexation of the Island of Prince Edward to the Government of Nova Scotia in 1763, the separation of the Island from that Government in 1769, and the re-annexation in 1784, have been already mentioned. This re-annexation in 1784 was done not only by the same means, Letters Patent, but nearly in the same form and words, as were employed for the original annexation in 1663. Yet the power of the Crown to grant, and the right of the Island to retain its separate and distinct Assembly, were never called in question.

The division of the Province of Nova Scotia in 1784, and the constituting one half of it into a distinct Province by the name of New Brunswick, is another example of the Prerogative of the Crown, to divide by Letters Patent a Province previously constituted, and to continue and confer the same constitution separately upon each division.

The Madelane Islands, Anticosti, and the Labrador Coast, were, by the Proclamation of 1763, declared to be "put under the care and inspection of the Governor of Newfoundland." And he by new Letters Patent in the same year was made Governor of all those places. In 1774, by the stat. 14 Geo. c. 83, reciting the Proclamation of 1663, and "that certain parts of the territory, where sedentary fisheries had been established, &c., were annexed to the Government of Newfoundland," it was enacted (among other things), "that all such territories, islands and countries which have since the 10th of February, 1763, been made part of the Government of Newfoundland, be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec." A proviso follows that nothing in that Act shall affect the boundaries of any other Colony. This is the Act that modified the Proclamation of 1763, as to the Government of Quebec. In 1800, by the stat. 49 Geo. III. c. 27, reciting the Proclamation of 1763, and the stat. 14 Geo. III. c. 83, and that by the stat. 31 Geo. III. c. 21, the "Province of Quebec was divided into two Provinces of Upper and Lower Canada, the latter including the parts of the Coast of Labrador, and the said Islands so formerly annexed to the Government of Newfoundland," it is enacted that "such parts of the coast of Labrador," &c., "and the said Island by the said Proclamation," &c. except the Madelane

Prince Edward's  
Island

New Brunswick

Madelane Islands;  
Anticosti and La-  
brador

Madelane Islands, "shall be separated from the said Government of Lower Canada, and be again re-annexed to the Government of Newfoundland." And jurisdiction civil and criminal is given to the Supreme Court of Newfoundland over the territories so re-annexed, in the same manner as within the Island of Newfoundland. In 1825, by stat. 6 Geo IV. c. 59, the Island of Anticosti and the part of the Coast of Labrador re-annexed by the 49 Geo. III. c. 27 to the Government of Newfoundland, and the Islands adjacent to such part of the coast of Labrador, are "re-annexed to and made part of the Province of Lower Canada, and subject to the laws of the said Province and to none other." In 1839 the Bill first introduced for the Union of Upper and Lower Canada contained a clause transferring the Madelane Islands to the Province of New Brunswick. This Bill was withdrawn, and another next year introduced without such a clause.

By the Proclamation of 1763, the Province of Quebec (which as then defined comprised nearly what was afterwards made Lower Canada,) was, like the other Governments created by that Proclamation, promised a Legislative Assembly so soon as the circumstances of the Colony would admit. And accordingly in 1764, James Murray, Esq., the Governor of the Province, took measures by royal authority for the calling of an Assembly; but the Deputies being Roman Catholics, and unable to take the requisite oaths, no proceedings were thereupon had. The inhabitants however petitioned for the fulfilment of that promise, and after much inquiry at home, in 1774 the 14 Geo. III. c. 83, was passed for the more effectual government of that Province. By this act, after reciting that the provisions of the Proclamation of 1763, "and the powers given to the Governor and other Civil Officers of that Province by the grants and commissions issued in consequence thereof, have been found inapplicable," it was enacted "that the said Proclamation, so far as the same relates to the said Province of Quebec; and the Commission under the authority whereof the Government of the said Province is at present administered, and all and every the ordinance and ordinances made by the Governor and Council of Quebec for the time being relative to the Civil Government and administration of justice in the said Province, and all Commissions to Judges and other Officers thereof, be and the same are hereby revoked, annulled, and made void, from and after the first day of May, one thousand seven hundred and seventy-five." A Legislative Council under certain restrictions is then instituted. By the same statute a vast additional territory, the greater part of which was afterwards, by the Treaty of 1783, ceded to the United States, and the residue in 1791 made the Province of Upper Canada, was included in the Province of Quebec.

In 1791 the Province of Quebec was divided into the two Provinces of Upper and Lower Canada, by Letters Patent of the Crown: and the stat. 31 Geo. III. c. 31, which repealed the 14 Geo. III. c. 83, so far as it related to the Legislative Council thereby instituted, after reciting "that His Majesty had been pleased to signify by his message to both Houses of Parliament his Royal intention to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper Canada, and the Province of Lower Canada," proceeds to provide for the Civil Government of each. In 1838, by stat. 1 & 2 Vict. c. 9, the 31 Geo. III. c. 81, so far as relates to the civil government of the Lower Province, was suspended, and a Special Council with limited powers of legislation, was introduced for a limited time. This statute was amended by the 2 & 3 Vict. c. 53.

And in 1849, by the stat. 3 & 4 Vict. c. 35, Her Majesty was empowered, with the advice of her Privy Council, to declare, or to authorize the Governor-General of the two Provinces of Upper and Lower Canada to declare, by proclamation, that the said Provinces, from and after a certain day to be appointed, after the passing of this Act, shall form and be one Province, under the name of the province of Canada, and thenceforth the said Province shall constitute and be one Province, under the name aforesaid, from and after the day so appointed as aforesaid. New provisions for the Civil Government of the Province are then enacted. The Proclamation was afterwards made, and the Union accomplished accordingly.

Province of Quebec.

Divided into Upper and Lower Canada.

Re-united into one Province, Canada.

The

The precedents derived from the West Indian Colonies also are all illustrative of the power of the Crown to divide its Provinces, and of the irrevocable nature of any grant of a separate Legislature, notwithstanding the combination of several Provinces into one government.

James the First is said to have granted all the Charibbee Islands to the Earl of Marlborough, erecting them into a Province by the name of Carliola, on the model of the Palatinate of Durham. The patent (or right) of the Earl of Marlborough having been acquired by the Earl of Carlisle, King Charles I., in the first year of his reign (1625) granted all the Charibbee Islands to the latter Earl, with authority to make for the good government of the said Province such laws as he or his heirs, "with the consent, assent, and approbation of the free inhabitants of the said Province, or the greater part of them, thereunto to be called, and in such form as he or they in his or their discretion shall think fit and best. And these Laws must all men for the time being that do live within the limits of the said Province observe." And a further clause provided that the inhabitants of that Province should "freely, quietly, and peaceably have and possess all the liberties, franchises, and privileges of this kingdom." This Patent, having been revoked, and the Province granted to the Earl of Pembroke during the absence of the Earl of Carlisle from England, was on his return restored or regranted to him, and in the next year, 1628, he sent out planters to Barbadoes, and a Governor, Sir William Tufton, in 1629.

A General Assembly for Barbadoes was at an early date (1645) called and held by these Governors, consisting of the "Governor, Council, and Freeholders of every parish of the Island;" and in 1645 an act of this Legislature provided that "every parish should have two representatives." The power to convene General Assemblies seems always to have been construed and acted upon as divisible and several in its application to each of the Islands. The Patent of the Earl of Carlisle was surrendered by him to the Crown in the 15th of King Charles the Second, on purchase; and he, on the 12th of June in that year, appointed Lord Willoughby Captain-General and Chief Governor of Barbadoes and all the Charibbee Islands. There was one Great Seal "appointed for Barbadoes and the rest of the Charibbee Islands." He held the Assembly of Barbadoes as theretofore; and in 1663 that body granted the four-and-a-half per cent. duty on all exports of *that Island*, by an enactment in the following style: "Be it enacted, by His Excellency, Francis Lord Willoughby, Captain-General and Chief Governor of this Island of Barbadoes, and all the other Charibbee Islands, and by and with the Council and the Gentlemen of the Assembly of this Island." An Assembly was called in Antigua as early as 1668; in Montserrat, some time before; and in Nevis in 1664. These were all separate and distinct Assemblies in the same Government of the Charibbee Islands. The other Islands were in no condition for such an institution till some time afterwards.

In 1672, the Windward and Leeward Islands were formed into two distinct Governments by King Charles the Second, who by a new Commission appointed Lord Willoughby Governor of Barbadoes, St. Vincent, St. Lucia, and Dominica. (Tobago was possessed by the Dutch till 1748, and then, by the Treaty of Aix-la-Chapelle, made one of the neutral Islands, Grenada, which was in the hands of the French till 1672, St. Vincent, and Dominica, being the others).

Sir William Stapleton was appointed Governor of the Leeward Islands, consisting of Antigua, St. Christopher's, Nevis, Montserrat, and the Virgin Islands. Anguilla and Barbuda also belonged to this division. This Government continued until the year 1816, and was then dissolved, new Governments being formed by a different combination of the Islands.

Antigua was first planted in 1632 by the English. An Assembly for the Island was called as early as 1688. The Governor-in-Chief of the Leeward Islands has for many years resided there permanently, and is directed by his instructions to visit occasionally the other Islands in his Government. But these have all separate and distinct Councils and Assemblies, and form what is now called the General Government of Antigua.

St. Christopher's was first planted by English settlers in 1623. Warner was first made Governor in 1626. It was at first divided with the French in 1627; then entirely taken by them, the moiety restored at the peace of Breda; taken by them again in 1689; restored again by the treaty of Ryswick; the whole taken by the English in 1702, and ceded to us by the treaty of Utrecht, 1713; taken again by the French in 1782; and restored again to the English by the Treaty of Versailles in 1783. St. Christopher's has always had a separate and distinct Council and Assembly. The latter was first called as early as 1694 for the part of the Island then English; and in 1727, for the whole Island. An Act of the Assembly was also passed, by which the part of the Island which had previously belonged to the French, but had been ceded to Great Britain by the Treaty of Utrecht, was enabled to send Members to the Assembly. This Island is now annexed to the Government of Antigua.

The Island of Anguilla had a separate Constitution, consisting of a Lieutenant-Governor and Council, until the year 1825. Having been nearly desolated by the French in 1796, and its population afterwards greatly impoverished and almost disorganized, it was in 1825 united to St. Christopher's, and now sends a deputy to and is governed by the Assembly of that Island. This union was effected in the following manner: A Commission of Inquiry by the Captain-General of St. Christopher's, to which Government Anguilla was then annexed, was issued on the application of the Assembly and Council of Christopher's, pursuant to instructions from Lord Bathurst, on the 6th Nov. 1824. The Commissioners were instructed to call a General Meeting of the Inhabitants of Anguilla, and consult them upon Lord Bathurst's suggestion of their sending one Deputy to the St. Christopher's Assembly, and being thence governed by that Legislature; informing them, however, "that neither the Crown nor the Legislature (of St. Christopher's) would sanction the appropriation of any public money raised in the respective Islands but for the contingent expenses of each respectively." A Meeting was accordingly held in Anguilla, of the Lieutenant-Governor, H. M. Council, and the principal Inhabitants. The Commissioners then communicated their instructions, when the following resolutions were adopted by the Lieutenant-Governor and Council and inhabitants of Anguilla, without a single dissentient voice, almost every respectable inhabitant attending—"That it is expedient to send a representative from this Island to the House of Assembly of the Island of St. Christopher, upon the following conditions: That no measure relating to the Island of Anguilla shall originate or be agitated in the House of Assembly of St. Christopher's, except in the presence of the Representative from Anguilla, who shall be bound to attend." An Act was accordingly passed by the Legislature of St. Christopher's 1825 embodying this condition, and the Union was accomplished. Anguilla at that time contained about 3080 inhabitants, of whom but 225 were proprietors.

Nevis was first planted by the English 1628 under Sir Thomas Warner. It is separated from St. Christopher's by a narrow strait. It has ever had a separate and distinct Council and Assembly since 1664.

Montserrat was first settled by Sir T. Warner in 1632, taken by the French in 1664, and restored by the Treaty of Breda in 1667. It has always had a separate and distinct Council and Assembly from as early as 1668.

The smaller Island of Barbuda, 36 miles north of Antigua, about 20 miles long, with 1500 inhabitants, is the property of the Codrington family. It was formerly within the Government of the Leeward Islands, and is now included in the general Government of Antigua.

The Virgin Islands were first settled by the Dutch 1648, and taken by the English in 1666. The first Commission for their government was in 1672, when they were included in the Patent appointing Sir William Stapleton Governor of the Leeward Islands. In 1773 the inhabitants petitioned the Governor-in-Chief of the Leeward Islands for an Assembly (till then they had been governed by a Deputy-Governor and Council), and pledged themselves to grant the 4½ per cent. duty. This was complied with. The Governor-in-Chief of the Leeward Islands received instructions to issue

Writs for convening an Assembly. He issued his Proclamation for that purpose in 1773—the Assembly met and granted the Duty. This separate and distinct Legislature has continued to be convened ever since.

The General Assembly of all the Leeward Islands.

A very singular and somewhat anomalous Legislature has upon two occasions been assembled for the whole of the Leeward Islands; upon neither occasion however was this done without the consent of the separate Legislatures of each Island, and each continued notwithstanding to enjoy and exert their several and distinct powers and privileges. King William the Third, in a commission issued in the first year of his reign, (20th day of October, 1689,) authorized the Governors, Councils, and Assemblies of the respective Islands forming the Leeward Island Government, *jointly and severally*, “to make laws for the public peace, welfare, and good government of the “said Islands,” they having previously been accustomed to legislate severally only in their separate communities. Under this Commission a General Assembly of all the Leeward Islands was called; and in 1692 a Law passed therein for defining its authority and settling its Constitution for a limited period. Another law of a similar nature was passed in 1701, which being disallowed by Queen Anne on account of its exempting from the operation of all Acts any Island whose Representative should dissent, a third law of a similar character was passed in 1705 without that exemption. Whether this law gave such dissatisfaction to the separate Legislatures that they refused thereafter to concur in the Election of the General Assembly, certain it is that this system of a joint Legislation fell immediately into disuse from the year 1705, though the same form of Government continued. No such General Assembly was convened from that year during the long period of ninety-three years; that is to say, from the fourth year of the reign of Queen Anne to the 38th year of the reign of His Majesty King George the Third, the separate Legislation of each distinct Colony being alone resorted to in the mean time for the enactment of Laws and Ordinances. In the year 1798 however, being the 38th of King George the Third, in consequence of certain Resolutions of the House of Commons, communicated through his Grace the Duke of Portland, then Secretary of State, an occasion arose whereupon, at the request, and with the general and hearty co-operation of the then existing local Legislatures, a measure of joint Legislation was resorted to for a single specified object, namely, an amelioration of the condition of the Slaves. Subsequently to the year 1798 no other occasion arose for the exercise of a joint Legislation on the part of the different Colonies or Islands of which the then Leeward Island Government was composed, up to the period of the year 1816, being the 56th year of the reign of King George the Third. When the then Prince Regent seems to have dissolved and entirely abrogated the previously existing Government of the Islands of Nevis, St. Christopher, Montserrat, Antigua, Barbuda, Anguilla, and his Majesty’s other Islands, Colonies, and Plantations in America, called or known by the name of his Majesty’s Leeward Islands, at the same time cancelling the Great Seal thereof, and in lieu erected and established other Governments, appointing Major General Ramsay Captain-General and Commander-in-Chief of Antigua, Montserrat, and Barbuda. These Islands still retained their accustomed right of separate legislation, but the system of a joint legislation, with the other component parts of the previous Leeward Island Government, seems to have been thus entirely abrogated, the other Leeward Islands being also, at the same time, placed under a distinct Government of their own. This state of things continued for a period of seventeen years. In the year 1833 his late Majesty King William the Fourth established two new several West Indian Governments: By one Commission granted to Sir Evan Murray M’Gregor, Bart., the Islands of St. Christopher, Nevis, Anguilla, the Virgin Islands, and Dominica were added to the then existing Government of Antigua, Montserrat and Barbuda; and by another corresponding Commission, granted at the same time to Sir Lionel Smith, the Islands of St. Vincent, Grenada, and Tobago were added to the previously existing Government of Barbadoes. To neither of these Governments, however, was conceded any authority for a joint or general legislation, as had formerly been accorded to the Leeward Islands in the

the time of King William the Third, the then inserted words "jointly and severally," being now and thereafter entirely omitted. In the years 1837 and 1838, however, attempts were made by Her Majesty's Government to revive this General Assembly of all the Leeward Islands, and writs were accordingly issued under the supposed authority of the before-mentioned Act of 1705; but the separate Legislatures of several of these Islands opposed the measure, and insisted, not only that the former Government of the Leeward Islands had been dissolved in 1816, and that the new Government under that name was not composed of the same Islands, but that even previous to such dissolution the members of the General Assembly of the whole could not, by the above-mentioned Law of 1694, be elected without the concurrence of the separate Assemblies of each Island, and according to the last example of the holding of such a General Assembly (in 1798) the express and particular consent of every one of the separate Assemblies was a necessary preliminary. Her Majesty's Government consequently abandoned the attempt.

In 1672, Lord Willoughby (as above stated) was appointed Governor-in-Chief of Barbadoes, St. Vincent, St. Lucia, and Dominica. No attempt seems ever to have been made to call a joint Assembly for this Government. Such a measure appears, indeed, to have been suggested and considered in 1764, under the Commission to General Melville, but the subsequent calling of Assemblies severally for each Island was probably found more consistent, not only with the terms of the Proclamation of 1763, but also with the manner and form used in the other British Colonies.

St. Vincent remained long unplanted and uninhabited except by Natives and Negroes escaped from the wreck of a slave ship, and the supposed progeny of these two races, the Black Caribs. In 1719, it was first planted by the French. In 1723, this Island, together with St. Lucia was granted by George the First to the Duke of Montagu, who failed in attempting to take possession. In 1748, by the Treaty of Aix-la-Chapelle, St. Vincent was made one of the Neutral Islands, together with Grenada, Dominica, St. Lucia, and Tobago. In 1762, it was taken by Lord Rodney; and in 1763, was by Letters Patent and the Royal Proclamation, annexed to the Government of Grenada, General Melville being appointed the Governor-in-Chief of the Southern Charibbee Islands of Grenada, with the Grenadines, Dominica, St. Vincent, and Tobago. St. Vincent was taken by the French in 1779, and restored in 1783. It was made a separate Government in 1784, a Governor-in-Chief being then appointed for that Island only. It now belongs to the Government of what are commonly called the Windward Islands. Sir Charles Grey being Governor-in-Chief of Barbadoes, St. Vincent, Grenada, Tobago, and St. Lucia. A separate and distinct Legislature of a Council and Assembly was formed soon after the Proclamation of 1763 (it existed in 1767) and has continued ever since.

The possession of St. Lucia remained from 1672 disputed by the French and English, and enjoyed by neither. In 1748, it was made one of the Neutral Islands by the Treaty of Aix-la-Chapelle. In 1763, when the Neutral Islands were divided between Great Britain and France, St. Lucia was ceded to France. Taken by the English in 1779, it was restored to the French in 1783, retaken in 1794, evacuated in 1795, retaken again in 1796, restored to France in 1801, and from its next recapture in 1803, has remained an English Colony with a French population. Since the last re-capture of the Island it has been governed by order of the King in Council, under the local administration of a Governor and Council without an Assembly. St. Lucia is now annexed to the Government of the Windward Islands. No right analogous to Post-liminius, as far as political and constitutional privileges are concerned, seems ever to have extended to this Island, if indeed, such a right could ever extend to a Province once ceded to a Foreign Power and regained by conquest and cession.

The Island of Dominica, like St. Lucia and St. Vincent, continued from 1672 the disputed possession of France and England, till made, in 1748, one of the Neutral Islands, and in 1763 ceded to Great Britain. It was taken by the French in 1778, restored to the English in 1783, under whose dominion it has ever since remained.

In 1763, the Island was annexed to the Government of Grenada by the above-mentioned Letters Patent to General Melville, and the Royal Proclamation. In 1770, it was erected into a Government separate from and independent of the general Government of the Southern Charibbee Islands, Sir William Young, Bart. being made Governor-in-Chief. An Assembly, separate and distinct seems to have existed in 1768. The French had possession of this Island from 1778 to 1783, when it was restored to Great Britain. During the French occupation the Assembly still continued to pass Laws. But, after the restoration in 1783, a new Commission of Government was issued with all the powers and privileges formerly granted. The Island has since been annexed to the general Government of Antigua, of which it now forms a part. Its Legislature in all these changes has continued separate and distinct.

Barbadoes has always been under British Dominion, having had a succession of Governors-in-Chief since 1625, and an Assembly since 1645. But neither under Proprietary nor under Royal Governments, nor when the whole Charibbees, nor when the Windward only of these Islands were annexed to the Government of Barbadoes, does its Legislature appear to have exercised jurisdiction beyond the limits of that single Island; although the grant from other Islands of the four-and-a-half per cent. duty was always a desirable object for the Crown, and during some arbitrary periods of history; and the Legislature of Barbadoes had granted it in that Island so early as 1663, when King Charles the Second, in expectation of that grant, had made arrangements for acquiring the rights, and for dissolving the Government, of the Proprietor; and this was several years previous to the division of the Charibbee Islands into Windward and Leeward. A striking proof that the right to a Legislative Assembly was ever considered a several and distinct right in each of the Islands.

Grenada was originally planted by the French, and held exclusively by them, till made one of the Neutral Islands in 1748, and was conquered by the English in 1762, and ceded to them in 1763. It was then, as before seen, made a Government by the Royal Proclamation of 7th Oct. 1763, with the other Southern Charibbee Islands annexed, but General Melville's commission did not bear date till 9th April, 1764. For about a year afterwards the legislative authority was exercised by advice of a general Council jointly for all the Islands within the Government. An Assembly for Grenada was first called in 1765. It was on the 20th July, 1764, that Letters Patent were issued directing the four-and-a-half per cent. duty to be levied in Grenada. These Letters Patent were on long and elaborate argument adjudged in the King's Bench to be void. The duty was consequently discontinued, not only in that Island, but also in Dominica, St. Vincent, and Tobago, for the like levy in which similar Letters Patent had issued. The Island of Grenada was taken by the French in 1779, and restored again to England in 1783.

There are near or adjacent to most of the Colonies, as well in the West Indies as in North America, and in the former Provinces now forming the United States, Islands of lesser dimension, which are dependencies upon such Colonies, and frequently integral parts. Such were the Grenadines, small Islands lying between Grenada and St. Vincent, and all belonging to the former until 1784, when such of them as lay nearest to St. Vincent, viz. all north of Carriacou, were transferred to the latter. How this transfer was effected requires a remark. Previous to the last conquest by the French in 1779, the Letters Patent of the Governor of Grenada included the Grenadines, and the style and authority of its Legislature were accordingly: but the whole having been conquered by the French, whose institutions were substituted for the English, when, by the treaty of peace in 1783, that Island and St. Vincent were among others restored to Great Britain, the new commission to the Governor of Grenada was altered, so as to include only those of the Grenadines which lie southward of the Island of Carriacou, together with that Island, and those to the northward were transferred to St. Vincent. As far as this latter Island was concerned this transfer was sanctioned by an Act of the Assembly of that Island, passed 13th May, 1784.

Whether

Whether a similar Act was passed in Grenada, is not easily to be ascertained, from the very imperfect preservation of the records of that Island: probably, however, the right analogous to Postliminium being considered there so doubtful, that the re-assembling of their Legislature in 1784 commenced with the re-enactment of their former statutes and declaring the common law again in force, their constitutional and territorial rights also were considered to be so far derived from the new Letters Patent of the Governor, as to limit the authority of their Legislature to such of the Grenadines as were comprised in these Letters Patent. No complaint seems ever to have been made by the Islands north of Carriacou of their having been so transferred: and the transfer was no doubt made for their convenience, and perhaps at their own request. Such a right as Postliminium has evidently been considered, in several of the Colonies at least, as very doubtful. In Montserrat, indeed, there exist acts of its Legislature in 1668, which recite, that during the late war that Island had been fully subdued by the French, notwithstanding all resistance possible was made by the Inhabitants, and that in consequence all the constitutions of government, and all grants of land, and properties of all subjects within the Island, were destroyed and lost: and provisions are then made accordingly for re-instating these rights and privileges. Grenada, after long having a Governor-in-Chief, is now annexed to the Government of Barbadoes or of the Windward Islands.

Though included in the Patent of Charles the First, Tobago was, as before stated, possessed by the Dutch till 1748, then made a Neutral Island by the Treaty of Aix-la-Chapelle, ceded to Great Britain in 1763, and then annexed to the Government of Grenada as one of the Southern Charibbee Islands. An Assembly was called soon after (one existed in 1768.) The Island was taken by France in 1781, and ceded to that power in 1783, but re-taken in 1793. In 1794, the Island is said to have received a new Constitution. Its general nature appears by the Preamble of an Act of the Assembly of Tobago, passed on the 21st February, 1794. This Act recites, that by the conquest of 15th April, 1793, His Majesty acquired a right to establish such Government, and to impose such Laws on the inhabitants of the Island, as might be most agreeable to his royal will and pleasure; and that he had been graciously pleased to declare it to be his royal will and pleasure, that the Government of the said Island should be a separate Government, and consist of a Captain-General and Governor-in-Chief, a Lieutenant-Governor, or other Commander-in-Chief, for the time being, a Council, and a House of Representatives, of the inhabitants of the Island, under the denomination of a General Assembly; and that a General Assembly had accordingly been chosen and convened. The Act then proceeds further to recite that, "by the conquest of the Island and the final establishment of the Government thereof as aforesaid, all Laws heretofore enacted by former Legislatures of this Island ceased to be in force," and then it goes on to revive certain Acts for establishing Courts of Law, &c. In 1802 Tobago was ceded to France by the Treaty of Amiens, but in July, 1803, was re-taken by a British force, and was ultimately ceded to Great Britain by the Treaty of Paris in 1814. After this, its last restoration to the British Crown, the Island had for some time a separate and distinct Government unconnected with any other Colony, and possessed also a Legislative Constitution similar to its former privileges, though probably by virtue of new Commissions. It now forms part of the General Government of Barbadoes, but continues to have, as before, its separate Legislature and House of Assembly.

Tobago.

The other Southern Colonies.

Of the remaining Southern Colonies but brief notice is necessary. Trinidad, a Spanish Island, first came into British dominion in 1777 by conquest. It has a Governor-in-Chief and a Legislative Council. In the Institutions, or history of this Island, there seems to be nothing that can serve to illustrate the present question.

Trinidad.

Dutch Guyana consisted of three Colonies settled by Holland,—Berbice, in 1620, Essequibo afterwards, and Demerara last. After being taken and occupied for short periods, and again restored in 1781 and 1796 by the English, these Provinces were in 1809 again reduced to, and have since continued under, our dominion. In 1812, the

Guyana.

two Provinces of Essequibo and Demerara were united, their Judicial and Legislative Establishments being at the same time combined, and the right of suffrage altered by most important constitutional changes. In 1831, Berbice was united to the before united Colony of Demerara and Essequibo, the Judicial and Legislative Establishments and the right of suffrage being again at the same time altered by equally important constitutional changes, by orders of the King in Council, and a new Commission of Government, dated the 4th of March, in that year. By the latter Sir Benjamin D. Urban was appointed Governor and Commander-in-Chief of all the Territories within those three Colonies, which were thenceforth declared to be united and collectively to form one Colony, and to be governed according to the constitution of the before United Colony of Demerara and Essequibo, the constitution or form of civil government of Berbice being declared to be thereby abrogated and dissolved and extinct, and merged in the Government now introduced. A provision follows, that for the purposes of a certain Act of Parliament, the 5th, Geo. IV. c. 113, Berbice shall still continue a distinct and separate Colony. Such proceedings as these are, it is apprehended, to be justified only by the supreme and absolute power of the Crown to deal at its will and pleasure with conquered Countries. The Inhabitants of Guyana however have not failed to complain of this exercise of the King's prerogative. They deny its right to annul their ancient form of Government; a compact, they contend, having been solemnly entered into at the Capitulation in 1803, and signed by their Legislative as well as their Military Authorities, stipulating that the religion, laws, liberties, and institutions of the inhabitants should be guaranteed to them, unless altered with their own consent.

Jamaica  
In 1665 the Island of Jamaica, after having been 146 years in the hands of Spain, was conquered by the British forces sent out by Oliver Cromwell. A Military Government only existed for some years at first. A Legislative Council was authorized in 1661. The Legislative Council and Assembly were instituted in 1662, and the first Assembly called in 1664. And Assemblies have existed in succession ever since. This Constitution depends here, as in all other Royal Governments, upon the King's Commission and Instructions to the Governor. The attempt made by Charles the Second in 1678 to change this Constitution for one somewhat similar to Poyning's Irish Act, was made by introducing an Act of that character into the Assembly, which rejected the measure. The King's motive is supposed to have been to obtain the 4 per cent. duty before granted in Barbadoes. In 1839, on the Assembly of Jamaica refusing to exercise their legislative functions, the stat. 2 & 3 Vict. c. 26, was passed, which gave the Governor and Council of the Island power to revive expired Laws for a limited time.

The Cayman Islands  
The Cayman Islands are called a Dependency of Jamaica. They are under the authority of the Governor of that Island, who issues a Commission of the Peace for the administration of justice there, but in no way are their affairs interfered with or governed by the Assembly of Jamaica.

Honduras  
The condition of this possession is extremely peculiar. Its Laws were originally made and long administered by the voluntary consent of the Inhabitants. In 1765 a Code of this kind was sanctioned by Sir Wm. Burnaby, the Naval Commander-in-Chief on the Jamaica Station. The Jamaica Slave Act was introduced here by the like consent of the inhabitants, who still assemble and make their own Laws, subject to the approval of the Superintendent. This officer was some time (from 1749) appointed by the Governor of Jamaica, until the validity of such an authority having been questioned, in the case of Bradley v. Arthur, reported in 4 B. & C. 292, the appointment has since been made by the direct authority of the Crown. But the very peculiar character of this Dependency may prevent its affording any just inference or illustration in the present question.

The Bahamas  
The Bahama Islands, originally of Spanish dominion, were colonized by England first in 1629, reconquered by the Spanish in 1641, and by the English again in 1666. In 1667 the Islands were granted to the Province of Carolina. They were again taken

by Spain and France in 1703, and again recovered by England soon after. In 1706, Woods Rogers, Esq. was appointed Governor-in-Chief of the Bahamas by Letters Patent, which recite that four out of six of the Proprietors, the other two being minors, had surrendered their rights to the Crown. The Carolina Company surrendered its Charter of Carolina in 1720. A Commission for the separate Government of the Bahamas, issued in 1758, directed an Assembly to be called. An Assembly was called as early as 1764. These Islands were taken again by the Americans and Spanish in 1776, and by the English finally in 1782. New Commissions thereafter issued for the Government of these Islands; and in 1799 they passed an Act declaring the Common Law of England and certain enumerated Acts of Parliament in force in those Islands. This Colony is still governed by a Governor-in-Chief, with a Legislative Council and Assembly.

These Islands were first granted in 1612 to the Virginian Company, and sold by them to one hundred and twenty persons, who obtained Letters Patent from King James the First in 1612, when a Settlement was made. A Legislative Council existed till 1619, and an Assembly was then introduced. That form of Government has continued ever since. The Charter of Virginia was not yet cancelled when this Colony was thus separated from the former Government; its consent however seems to have been given by the previous sale.

The Bermudas.

The Charters, Patents and Acts of Parliament relating to the now United States when Colonies and Provinces of Great Britain, tend no less to show the Prerogative of the Crown to divide a Colony or endow any part of it with a separate Legislature, and the irrevocable nature of such an endowment.

The some time North American Colonies, now the United States.

The first Charter relating to the British Dominions in America seems to have been (in the year 1578) Queen Elizabeth's Charter to Sir H. Gilbert, to discover and take possession of all Lands unoccupied by Christians. That Charter gave him the right of property in the soil of those Lands, with power to govern them, and declares all who settled there should have all the privileges of natives of England. In 1584 Sir Walter Raleigh, half brother to Sir H. Gilbert, having obtained, it is said, a similar patent, sent out Amadus and Barlow, who having visited Albermarle Sound and returned home, made so favourable Report that Queen Elizabeth gave to the whole country the name of Virginia; and in the following year the first English Colony was planted on the Continent. This and several subsequent and similar attempts having failed, Raleigh about the year 1591 assigned his interest and patent to Sir Thomas Smith and a Company of Merchants.

The earlier Charters and Commissions.

The earlier Charters of Queen Elizabeth to Sir Humphrey Gilbert and Sir Walter Raleigh having been surrendered or forfeited to the Crown, King James the First, in 1606, established two Colonies between the 34th and 45th degrees of north latitude, to be called North and South Virginia, giving the former liberty to plant between the 38th and 45th degree, and the latter between the 34th and the 41st degrees, and to each a tract of 100 square miles.

North and South Virginia.

In 1609 the Company of South Virginia obtained from King James a Grant and Charter of 400 miles of Coast north and south of Cape Comfort, extending westward to the South Sea. In 1612 the Company of South Virginia obtained a third Charter, extending their limits to all Islands within 300 leagues of the coast. The Bermudas lying within these limits were sold soon after by that Company to Sir George Somers and others. In 1624 the Charter of King James was pronounced void by judgment in Banco Regis, on a Quo Warranto, and a new Commission issued by King James the First, appointing Sir F. Wyatt Governor of Virginia. Similar Commissions followed, making no mention of an Assembly till 1639, when Sir William Berkeley was instructed to call one.

South Virginia.

In 1620 King James the First granted another Charter to the Company of North Virginia, which was called thereafter "The Council of Plymouth," and gave them all lands between 40 and 48 north latitude, and westerly to the South Sea. This Company made several ill-defined, subordinate and interfering grants of large tracts, as to the

North Virginia.

the Duke of Hamilton, of the Naraganset Territory, afterwards part of Rhode Island; to Mason of New Hampshire; and to Fernando Georges and others, grants on the Kennebec River; and in 1624 they made a grant of lands at New Plymouth to certain persons who had before settled there. This was called the Colony of New Plymouth. In 1635 this Company surrendered its Charter to the Crown. On this surrender some of the sub-grantees, as the Duke of Hamilton and Fernando Georges, obtained peculiar grants from Charles the First; the latter was afterwards called the Province of Maine.

Massachusetts Bay.

In 1628 the Company of Plymouth sold a tract to Sir H. Roswell and others, who formed on it a settlement, which in 1629 was incorporated by a Royal Charter, and became the Colony of Massachusetts Bay. In 1639, the Charter of Massachusetts Bay was adjudged in Banco Regis to be seized into the King's hands; and in 1684 was cancelled in Chancery. That and some of the other Colonies seem to have had from this time no legal Government, except a Governor and Council, till the Revolution of 1688. In 1691 the New Charter of Massachusetts Bay was granted. It contains the following clause:—"We do by these presents incorporate into one real Province, by the name of 'The Province of Massachusetts Bay in New England,' viz. the former Colony of Massachusetts Bay, the Colony of New Plymouth, the Province of Maine, the Territory of Acadia or Nova Scotia, and the tract lying between Nova Scotia and the Province of Maine, and all Islands within ten leagues opposite to the main land within the said bounds." This may seem, at the first glance, an instance of several Provinces, having distinct Legislatures, being without their consent united into one by a Royal Charter; but a closer examination will show that this Charter had no such operation. None of the Territories so united to Massachusetts had then any separate Government or Legal Constitution. The Province of Maine having been granted by the Council of New Plymouth to Sir F. Georges, he, after the dissolution of that Council, obtained a grant of it from the Crown in 1639, with palatinate powers of Government; and the Agents of Massachusetts Bay, which had long claimed this tract of country as part of their own Province, and had by the voluntary submission of the inhabitants in Maine since 1652 exercised jurisdiction over it, at length, in 1677, purchased this grant of Georges' heirs or assigns. After which purchase Maine was legally held and possessed by the Company of Massachusetts. The Colony of New Plymouth had never been legally constituted by the Crown: the Charter of the Plymouth Company having been surrendered. The powers of self-government in this Colony were a mere usurpation of a Royal Franchise. The territory of Acadia or Nova Scotia had never been planted, and was at that time in the possession of the French, to whom it had been ceded by the Treaty of Breda. And the tract lying between Nova Scotia and the Province of Maine was the Sagadahoc Territory, which had been granted in 1664 by King Charles the Second to the Duke of York. It was for some time annexed to the Government of New York. It was by the French included in the Territory of Acadia, and at the time of this Charter, 1691, was, with all the rest of Acadia or Nova Scotia, ceded to and in the possession of that Power. On the death of Charles the Second, the right, if any, to this Territory merged in the Crown by the accession of James the Second, and was by the Revolution of King William and Queen Mary at the time of this Charter, and, like Nova Scotia, as yet uninhabited by British subjects. In 1774, by the statute of 14 Geo. III. c. 45, this Charter of Massachusetts was annulled, so far as relates to the Legislative Council being elective, and the Crown was empowered to appoint Councillors, "agreeably to the practice "in Colonies, whereof the Governors are appointed by Commission under the Great Seal."

New Hampshire.

The Council of Plymouth, in 1623, granted to Mason and others the Territories that afterwards became New Hampshire; but no powers of government passed to these assignees. The settlers in New Hampshire, in 1641, voluntarily submitted to and invited the jurisdiction of Massachusetts, and sent Deputies to its Assembly till 1679. The proprietor, Mason, as well as Georges the proprietor of Maine, complained

plained to the King of these usurpations, which Massachusetts was ordered to abandon, and did so, as far as respected New Hampshire, but afterwards purchased the Patent of Georges for Maine. King Charles the Second, in 1679, erected New Hampshire into a separate Province, and called there an Assembly in 1680. This Legislature continued ever after, as long as the dominion of Great Britain. In 1687 New Hampshire was combined, together with the rest of the New England Provinces, under the government of Sir Edmund Andros. In 1689 New Hampshire was united with the Government of Massachusetts, and so continued till about the year 1692. In 1697, and until 1702, it was, with Massachusetts, New York, and New Jersey, combined in one Government. In 1702 it was again combined with Massachusetts in one Government, and so continued till 1741, when a separate Governor was appointed for New Hampshire, which continued to be separately governed till the American Revolution.

In Connecticut, the first settlers, in 1630 and 1631, purchased lands of the natives, and acknowledged the jurisdiction of Massachusetts. Then they formed of themselves two Governments, one at Hartford, one at New Haven. These were both included in the Charter in 1662, which must have been their first legal Government or Constitution. The Colony seems to have been annexed to the Government of Massachusetts by the appointment of Sir Edmund Andros, Captain-General of all the New England Territories in 1687. He demanded the Charter, but it was refused. After the Restoration this Colony continued to be governed by the Charter of Charles the Second until the American Revolution.

Connecticut.

The plantations of Rhode Island and Providence were settled by voluntary emigrants, who bought lands of the Natives, and formed two distinct communities, in 1636 and 1638. In 1644 they obtained from the Long Parliament's Commissioners and Governors of all the Plantations, a Charter of Incorporation and Government. In 1663 they obtained a regular Charter from Charles the Second. In 1686 Andros demanded the surrender of this Charter. A Quo Warranto had issued. He broke their seal, dissolved their Government, and formed a Council for the administration of their affairs. In 1689 the Revolution restored their Charter, which thereafter continued until the American Revolution.

Rhode Island and Providence.

The Province of New York was first settled by the Dutch, who claimed from the Delaware to the Connecticut. Charles the Second, in 1664, granted the whole Territory between these Rivers to James Duke of York, who immediately conveyed to Lord Berkeley and Sir G. Carteret all that tract which afterwards constituted the Province of New Jersey. The country was wrested from the Dutch the same year by Colonel Nichols, the Deputy of the Duke, who had the government as well as property of the Province. The Treaty of Breda left this Territory in the hands of the English. The Dutch took the city in 1673, but restored it in 1674. The Duke (perhaps doubting his former title was gone by the conquest) then obtained a new patent, with powers of government. At his accession it merged in the Crown, he having however previously directed his Deputy to call an Assembly in 1682. But in 1687, King James united all the New England Provinces, together with New York, into one Government, by appointing Sir Edmund Andros Governor-in-Chief of the whole, giving a separate Legislative Council to each. The Revolution of 1688 put an end to this. Royal Governors of New York were appointed in succession thereafter, and separate Assemblies convened. In 1702 Lord Cornbury was Governor both of that Province and New Jersey at the same time; and, in 1697, Lord Bellamont was at the same time Governor of New York, New Hampshire, and Massachusetts. General Hunter was Governor of New York and New Jersey at the same time, in 1719, and Colonel Gasley in 1731. In 1766, by the Statute 7, Geo. III. c. 59, the Legislature of New York was forbidden to pass any Bill or Vote, except for adjournment, until provision should be made by them for supplying the King's Troops with such necessaries as required by certain Acts of Parliament. That Legislature not long after made the required provision and resumed its functions. No further change occurred till the American Revolution.

New York.

New Jersey.

The Duke of York's assignment of that part of New York called New Jersey, in 1664, to Lord Berkeley and Sir George Carteret, seems to have been supposed to embrace the Government as well as the Property of New Jersey. The assignees named Philip Carteret the Lieutenant-Governor. Jersey was taken by the Dutch in 1673, and restored to the English in 1674. The Duke, thereupon, obtained a new Charter from the Crown: and Carteret and the Assignees of Lord Berkeley having divided the Territory between them into two parts, called East Jersey and West Jersey, the Duke made new grants of each part separately to them, but insisted on retaining the Government of West Jersey in his own hands. He, therefore, appointed Sir Edmund Andros his Governor, both of New York and West Jersey, and Sir G. Carteret appointed the Governor of East Jersey. Sir E. Andros, however, drove out the Governor of East Jersey and assumed the Government of that Province himself, contending, probably, that the powers of government were not assignable in apportionments, or were not well assigned. On appeal, however, to the Duke, he dismissed Andros and made new grants of East and West Jersey to the Proprietors of each, with more explicit powers of Government. In 1680, and from that time to 1702, the several Proprietors named separate Governors for East and West Jersey. In that year the number of Proprietors, added to other difficulties, having made such a Government longer impracticable, they all of both the Jerseys surrendered their supposed powers of Government to the Crown, and the Queen Anne thereupon re-united the Two Jerseys into one Province, appointing the Governor of New York the Governor of both Divisions of New Jersey; and an Assembly was called for the whole. This, therefore, was perhaps the first legal Constitution of the Province of New Jersey; or, if it had before had a legal Constitution, that was voluntarily surrendered into the hands of the Crown, which was thereby enabled to effect the union as by title paramount. New Jersey continued under the same Governor as New York, each Province having its separate Assembly, until 1738, when a separate Governor was appointed for New Jersey, and its Government continued thereafter separate.

Delaware and Penn-  
sylvania.

The Swedes first had possession of the Territory of Delaware in 1627, and Governors of that Country resided there. They were subjugated by the Dutch in 1655. The Dutch were subdued by the English in 1664. The Grant or Charter to the Duke of York was held to comprise all the Dutch possessed, and consequently the Territory of Delaware, though on the South bank of that River. In 1681, the Duke of York conveyed to William Penn the Territory now called Delaware, then styled *the Lower Counties or the Territories*. Afterwards, in 1681, Penn obtained the Charter of Pennsylvania, and he granted this Province an Assembly in 1682. He gave it a new Grant in 1683. In 1700, his second Grant of Privileges was surrendered, and a third granted in the same year. Penn, therefore, was Proprietor and Governor, by different titles, of Pennsylvania and of the three Lower Counties or Delaware. Each Government had its separate Legislature. By the Grant of Privileges in 1700, an attempt was made to unite these two Provinces, with a provision that if either dissented, each should have the same Privileges distinctly. Pennsylvania passed an Act for the Union, extending all its Laws over the three Counties or Delaware, but they dissented and were always after governed by a distinct Legislature under the same Governor.

Maryland

Maryland was originally part of Virginia, and while that Province was governed by a Royal Commission, after the cancelling of its Charter in 1624, Maryland was separated from Virginia, and granted by Charles the First, in 1632, to Lord Baltimore; a most distinct example of the dismemberment of a Colony, and the creating within its limits a new Province and a distinct Government. The following is an extract from the Charter—"And further, our pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the now said Lord Baltimore, his heirs and assigns, and to the tenants, and inhabitants of the said Province of Maryland, both present and to come, and to every of them, that the said Province, tenants, and inhabitants of the said Colony or Country, shall not from henceforth be held or reputed as a member, or as part of the land of Virginia, or of any other Colony whatsoever,"

"now

“ now transported or hereafter to be transported; nor shall be depending on, or subject to their government in any thing from whom we do separate that and them. And our pleasure is, by these presents, that they be separated, and that they be subject immediately to our Crown of England, as depending thereon for ever.” Settlements were made in Maryland in 1634. In 1639 the first Assembly was called of Deputies, chosen part by the people, and part by the proprietors. In 1650, the Deputies chosen by the proprietors were, by an Act of the Assembly, formed into an Upper House. During the great Rebellion in England, the Upper House was voted useless in Maryland, but resumed its functions there on the Restoration here. The Proprietor was deprived of his rights by the Revolution of 1688, but afterwards recovered and enjoyed them till the American Revolution.

By King James's Charter, in 1606, of South Virginia, Sir Thomas Gates and others were authorized to plant and possess any part of it to an extent of 100 miles length on the coast and 100 miles depth into the interior. A Settlement was made the next year on the Chesapeake Bay. In 1609, the Company obtained a second Charter, with increased privileges and a Territory of 400 miles coast on each side of Cape Comfort, and extending into the interior to the South Sea, and also all Islands within 100 miles of the Coast. In 1612, a third Charter was obtained, granting them all Islands within 300 leagues of the Coast, which extent included the Bermudas. The Company sold these Islands to Sir George Somers, who obtained Letters Patent for their Government in 1612, and an Assembly was called there in 1619. In 1624, a Quo Warranto issued against the Company, and the Charter was annulled. The King, James the First, then issued a Royal Commission appointing a Governor and Council for the Government of the Colony, making no mention of an Assembly. In 1632, Maryland was separated from Virginia and made a distinct Province. Charles the First, in 1645, on renewing the Governor's Commission, declared his intention of having the Colony immediately dependant on himself, but in 1639, he directed the Governor to call an Assembly. Thus constituted, the Legislature continued until the American Revolution.

In 1630 Sir Robert Heath obtained of Charles the First a grant of a territory southward of Virginia, from 36th degree of north latitude, and named Carolina. This Patent was afterwards cancelled for non-performance of its conditions. Charles the Second, in 1663, gave Lord Clarendon and others a Charter, granting them all lands between the 31st and 36th degrees of north latitude, with the powers of legislation and government. In 1665 a third Charter was obtained, augmenting their territory from the 36th to the 29th degree, and west to the South Seas, which included the whole of what was afterwards called Georgia. A model of Government was now framed by the celebrated John Locke. In 1667 the Company of Proprietors obtained a grant of the Bahamas from Charles the Second. In 1670 Charleston was founded, and being at a great distance from Albemarle, the northern settlement, the Proprietors established a separate Government at Charleston, whence arose the division of the Province into North and South Carolina. Each had its own Assembly. The Constitutions of Locke were found practicable in neither. In 1693 they were abolished. In 1719 an insurrection of the people occurred, and in the following year, 1729, a scire facias was issued against the Charter. The Proprietors surrendered soon after to the King their powers of Government. A Governor was appointed by the Crown, and each Colony administered by a separate Council and Assembly till the American Rebellion.

This Province was first granted in 1732 to a Company incorporated for twenty-one years. They sent out settlers under General Oglethorpe in 1733. The Government was of a military character till 1746. The Company then appointed a Council of four to assist the Governor. In 1747 an Assembly of twenty-three Delegates was called to consider the question of Slavery. They resolved on its introduction. In 1752 the Company surrendered their Charter, and a Royal Government was established, consisting of a Governor, Council and Assembly. Georgia affords another clear

clear and certain instance of separating from one Colony a portion of its territory and erecting it into a distinct Province. The Charter of South Carolina was cancelled in 1720. The succeeding Commission to F. Nicholson as Governor contained no alteration of the former boundaries, which included the whole of what was afterwards Georgia. The following extracts from the Charter of Georgia in 1732 show how advisedly this separation was made. "And whereas the said Corporation intend to settle a Colony, and to make an habitation and plantation in that part of our Province of South Carolina, in America, hereinafter described: Know ye, therefore, that we, greatly desiring the happy success of the said Corporation, for their further encouragement in accomplishing so excellent a work, have, of our especial grace, certain knowledge, and mere motion, given and granted, and by these presents, for us, our heirs, and successors, do give and grant, to the said Corporation, and their successors under the reservations, limitations and declarations hereafter expressed, seven undivided parts (the whole into eight equal parts to be divided) of all those lands, countries and territories, situate, lying and being in that part of South Carolina in America which lies from the northern stream of a river there commonly called the Savannah, all along the sea coast to the southward, unto the most southern stream of a certain other great water called the Alatamaha, and westward from the heads of the said rivers respectively, in direct lines to the South Seas, and all that space, circuit and precinct of land lying within those boundaries. . . . All which lands, countries, territories and premises hereby granted or mentioned, or intended to be granted, We do by these presents make, erect and create one independent and separate Province, by the name of Georgia; by which name we will the same henceforth be called, and that all and every person and persons who shall at any time hereafter inhabit or reside within our said Province, shall be and are hereby declared to be free, and shall not be subject to, or be bound to obey, any laws, orders, statutes or constitutions which have been heretofore made, ordered or enacted, or which hereafter shall be made, ordered or enacted, by, for, or as the laws, orders, statutes, or constitutions by our said Province of South Carolina (save and except only the Commander-in-Chief of the Militia of our said Province of Georgia to our Governor for the time being of South Carolina, in manner hereinafter declared); but shall be subject to, and bound to obey such laws, orders, statutes, and constitutions, as shall from time to time be made, ordered and enacted for the better government of the said Province of Georgia, in the manner hereinafter directed."

The Eastern and all other Colonies of Great Britain, though of too recent an origin and too peculiar a condition to afford any precedents of importance upon the present question, do not, it is believed, offer any example unfavourable to the Petitioners' case. The separation, however, of the Island of Van Diemen's Land in 1825, from the government and territory of New South Wales, within the limits of which that Island had been included since the year 1786, may be mentioned as another exercise of the Prerogative to establish a new Colony from within the boundaries of another.

From this review of the usage and exercise of the Royal Prerogative over the Colonies for a period of above two hundred years, the following Conclusions appear to arise:—1st. That several Islands or Provinces, whether acquired by conquest or discovery, may be combined into one Government; and that the power given to the Governor to call General Assemblies within such Government, and by their consent to legislate, may be exercised severally for each Island or Province. 2nd. That such Governments may be dissolved, and others formed with different combinations of several Islands or Provinces, by acts of the Prerogative; but that such acts have no effect upon the separate and distinct existence of each Colony, or of its Legislature. 3rd. That a Colony may be divided or dismembered, by acts of the Prerogative; and such a division or member may be endowed with separate and distinct administration and legislative powers and privileges, and may be separated and erected into a distinct Province or Government. 4th. That when any such division or member of any Government or Province has been so constituted with such separate and distinct administrative

The Eastern Colonies

Conclusions from the foregoing instances.

strative and legislative powers and privileges, they can neither be annulled, nor impaired by any union of Governments or Provinces, unless with the consent of such Colonies themselves, or the authority of an Act of Parliament.

It is therefore most humbly hoped, on the part of the Petitioners, that the Annexation in 1820 of Cape Breton to the Province of Nova Scotia, and legislative authority of that Province over the Island, may be adjudged illegal, for the following, among other, Prayer.

## R E A S O N S.

**FIRST.**—BECAUSE the Island of Cape Breton was, by the Proclamation of 1673, annexed to the Government of Nova Scotia, in the same sense only as the Government of Grenada was by the same Proclamation declared to comprehend also the Islands of St. Vincent, Dominica, and Tobago: and that, as the promise afterwards made by the same Proclamation “to call General Assemblies within the said Governments respectively, “in such manner and form as used and directed” in the other Colonies and Provinces in America, applied to St. Vincent, Dominica, and Tobago severally, no less than to Grenada, so the same promise ought also to apply severally to the Island of Cape Breton, and seems to have been actually so applied and performed to the Island of St. John or Prince Edward, which was annexed to the Government of Nova Scotia by the same sentence of the Proclamation as annexed Cape Breton: such several application of that promise, and its several performance, being only consistent with the manner and form used and directed in the other Colonies, as well in the West Indies as on the Continent of America. Reasons.

**SECOND.**—Because, if the promise made by the Proclamation of 1763, to call Assemblies in those Governments respectively, be not understood as applying to Cape Breton, yet neither the Annexation of the Island to the Government of Nova Scotia by the Proclamation, nor the including that Island in the Commission to the Governor of Nova Scotia, could or did confer upon an Assembly, already constituted for that Province as it existed before such Annexation, the power of legislating for Cape Breton.

**THIRD.**—Because, even if by the Proclamation of 1763, or by the subsequent Commission for Nova Scotia, or by any other act of the Prerogative, the Island of Cape Breton had been so annexed to Nova Scotia, as to give its Assembly the power of legislating for the Island, still the Letters Patent of 1784, granting powers to constitute a several and distinct Council, and to summon a several and distinct Assembly in that Island, and by their consent to make laws for it, were authorized by usage and precedents, and were valid and effectual to confer such institutions severally and distinctly from the Province or Legislature of Nova Scotia.

**FOURTH.**—Because such institutions so conferred upon Cape Breton could not thereafter be revoked or annulled by an act of the Prerogative alone, which had then parted with its power of legislating for the Island, except through the instrumentality of those institutions, and could not therefore confer such a power upon any other person or body politic as the Legislature of Nova Scotia.

**FIFTH.**—Because the several and distinct existence of Cape Breton as a Colony apart from Nova Scotia, had, between 1784 and 1820, been recognized by several Acts of Parliament then in force, assuming and embodying that distinction, by which Acts Cape Breton and Nova Scotia were in 1820

severally

severally and respectively governed under different Laws of Trade and Navigation, each Colony being thereby liable to restrictions or exemptions from which the other was excluded.

**SIXTH.**—Because the validity of such an act of the Prerogative as in 1820 annexed Cape Breton to Nova Scotia is inconsistent with the private rights of the inhabitants of that Island, and irreconcilable with all the principles and precedents upon which the constitutional rights of British Colonies depend.

**HENRY BLISS.**

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