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**JOURNAL**  
OF THE  
**LEGISLATIVE COUNCIL**

OF  
**Prince Edward Island.**

ANNO SECUNDO VICTORIÆ REGINÆ.

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**SECOND SESSION OF THE FIFTEENTH GENERAL ASSEMBLY.**

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CHARLOTTETOWN:

PRINTED BY JAMES DOUGLAS HASZARD, PRINTER TO THE QUEEN'S MOST  
EXCELLENT MAJESTY.

1839.





BY HIS EXCELLENCY

SIR CHARLES AUGUSTUS FITZ ROY, K. H.,

Lieutenant Governor and Commander in Chief in and over Her Majesty's Island of Prince Edward, and the Territories thereunto belonging, Chancellor, Vice Admiral and C. A. FITZ ROY. Ordinary of the same, &c. &c. &c.

## A P R O C L A M A T I O N .

WHEREAS Her Majesty hath been pleased, by Letters Patent, under the Great Seal of the United Kingdom, bearing date at Westminster, the Thirteenth day of December last, to appoint Lieutenant General Sir JOHN COLBORNE, Knight Grand Cross of the Most Honorable Military Order of the Bath, to be Captain General and Governor in Chief in and over this Island, in the room of the Right Honorable John George, EARL OF DURHAM: And whereas, after reciting Her Majesty's pleasure that there should be two distinct and separate Councils in the said Island, Her Majesty did, in and by the said Letters Patent, grant and declare that there should be thenceforward, within this Island, two distinct and separate Councils, to be respectively called the LEGISLATIVE COUNCIL and the EXECUTIVE COUNCIL of the said Island, and did direct and declare Her Royal Pleasure to be, that the powers formerly vested in the Council of the said Island, as far as respected the enactment of Laws, should be and were thereby vested in the Legislative Council; and that all other powers whatever vested in the said Council, should be and were vested in the said Executive Council; and did declare that the said Council should consist of such and so many Members as Her Majesty should from time to time nominate and appoint under Her Royal Sign Manual and Signet, or as should be provisionally appointed by the said Sir John Colborne, until Her Majesty's pleasure should be known—provided that the number of Members for the time being, resident within the said Island, of the said Executive Council, should not be more than Nine, and of the said Legislative Council not more than Twelve, by any such provisional appointments.

And whereas Her Majesty hath been pleased to transmit to me the said Letters Patent, for my government, and to vest in me, in the absence of the said Sir John Colborne, as Her Lieutenant Governor in and over the said Island, all the powers and authorities which by the said Letters Patent are granted to the said Sir John Colborne.

And whereas Her Majesty, by Her Instructions under Her Royal Sign Manual, dated at Windsor, on the Thirteenth day of December last, did nominate and appoint *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, and James Peake*, Esquires, to be, during Her Majesty's pleasure, Executive Councillors in the said Island; and did further nominate and appoint *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, James Peake, Charles Worrell, Donald Macdonald, William Macintosh and John Livett*, Esquires, to be, during Her Majesty's pleasure, Legislative Councillors in the said Island.

And whereas I the said Lieutenant Governor, in virtue of the authority in me vested, and for further carrying into effect Her Majesty's Royal intentions, and fulfilling the object of the said Letters Patent in that behalf, have thought fit provisionally to appoint *Joseph Pope and John Small Macdonald*, Esquires, to be additional Executive Councillors in the said Island.

And whereas two of the said Legislative Councillors, *George Wright and James Peake*, Esquires, have resigned their seats in the said Legislative Council, I have thought fit, by virtue of the power and authority in me vested as aforesaid, provisionally to appoint *George Dalrymple, Samuel Green, Peter Stewart Macnutt and John Macgowan*, Esquires, to be additional Legislative Councillors in the said Island.

And whereas the General Assembly of this Island stand prorogued until Tuesday the Twelfth day of March, instant, then to meet for the DESPATCH OF BUSINESS; I have thought fit by this my Proclamation to promulgate the said Royal Commission, and the several matters aforesaid; and have also thought fit to convene the said General Assembly, on the said Twelfth day of March, instant, then to meet for the Despatch of Business, of which, as well the said Members of the said Legislative Council, as the Members of the House of Assembly, and all others concerned, are hereby required to take notice and govern themselves accordingly.

*Given under my Hand, and the Great Seal of this Island, at Charlottetown in the said Island, this 4th day of March, in the year of our Lord One thousand eight hundred and thirty-nine, and in the Second year of Her Majesty's Reign.*

By His Excellency's Command,

J. P. COLLINS, Col. Sec.

GOD SAVE THE QUEEN.



# JOURNAL

OF THE

## LEGISLATIVE COUNCIL

OF  
PRINCE EDWARD ISLAND.

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TUESDAY, 12th March, 1839.

In pursuance of the foregoing Proclamation, the Legislative Council met.

PRESENT:

The HON. <i>Thomas Heath Haviland,</i>	The HON. <i>Donald Macdonald,</i>
<i>George Dalrymple,</i>	<i>Samuel Green,</i>
<i>John Livett,</i>	<i>William Macintosh,</i>
<i>John Brecken,</i>	<i>John Macgowan,</i>
<i>George Richard Goodman,</i>	<i>Peter Stewart Macnutt.</i>

**A**T two o'clock, p. m. His Excellency Sir Charles Augustus Fitz Roy, K. H., Lieutenant Governor and Commander in Chief in and over Her Majesty's Island Prince Edward, and its Dependencies, &c. &c. &c. came to the Council Chamber, and being seated:

Letters Patent, under the Great Seal of the United Kingdom of Great Britain and Ireland, appointing Lieutenant General Sir John Colborne, Knight Grand Cross of the Most Honorable Military Order of the Bath, Captain General and Governor in Chief in and over the Island of Prince Edward, and directing therein a separation of the Councils, as also a Warrant appointing Sir Charles Augustus Fitz Roy, K. H., to be Lieutenant Governor of the said Island—having been read, Her Majesty's Instructions, under Her Royal Sign Manual, were read, and are as follow:

VICTORIA R.

L. S. INSTRUCTIONS to our Trusty and Well-beloved Sir JOHN COLBORNE, Knight Grand Cross of the Most Honorable Military Order of the Bath, our Captain General and Governor in Chief in and over our Island of Prince Edward, or in his absence to our Lieutenant Governor, or the Officer Administering the Government of our said Island for the time being. Given at our Court at Windsor, this Thirteenth day of December, 1838, in the Second year of our Reign.

FIRST.—With these our Instructions, you will receive our Commission under the Great Seal of our United Kingdom of Great Britain and Ireland, constituting you our Captain

General and Governor in Chief in and over our Island of Prince Edward. You are therefore, with all convenient speed, to assume and enter upon the execution of the trust we have reposed in you.

**SECOND.**—And whereas we have, by our said Commission appointing you our Captain General and Governor in Chief as aforesaid, declared our pleasure to be, that there shall be within our said Island of Prince Edward, two distinct and separate Councils, to be respectively called the Legislative Council, and the Executive Council, of our said Island, with certain powers and authorities therein mentioned; and have further declared our pleasure to be that the said Executive Council and Legislative Council respectively, should consist of such and so many Members as shall for that purpose be nominated and appointed by us, under our Royal Sign Manual and Signet, or as shall be provisionally appointed by you the said Sir John Colborne, until our pleasure therein shall be known. Provided always, that the total number of the Members for the time being of such Executive Council, resident within our said Island, shall not at any time, by any such provisional appointment by you, be raised to a greater number in the whole than Nine; and that the total number of the Members of the said Legislative Council, resident within our said Island, shall not at any time, by any such provisional appointment by you, be raised to a greater number in the whole than Twelve.

Now know you, that we, reposing especial trust and confidence in the wisdom, prudence and ability of our trusty and well beloved *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, and James Peake, Esqrs.* do hereby nominate and appoint them the said *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, and James Peake*, to be, during our pleasure, Executive Councillors in our said Island of Prince Edward, and we do hereby authorize and require you the said Sir John Colborne to summon them to our said Executive Council accordingly.

**THIRD.**—And we do further direct and appoint that the Members of our said Executive Council, shall take rank and precedence in the said Council, according to the order in which their names are hereinbefore inserted; and that in all other cases, the Members of our said Council, shall take rank and precedence therein, according to the date and seniority of their respective appointments.

**FOURTH.**—And further know you, that we, reposing especial trust and confidence in the wisdom, prudence and ability of our trusty and well beloved *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, James Peake, Charles Worrell, Donald Macdonald, William Macintosh, and John Livett, Esquires,* do hereby nominate and appoint them the said *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, James Peake, Charles Worrell, Donald Macdonald, William Macintosh, and John Livett*, to be, during our pleasure, Legislative Councillors in our said Island of Prince Edward; and we do hereby authorize and require you the said Sir John Colborne, to summon them to our said Legislative Council accordingly.

**FIFTH.**—And we do further direct and appoint that the Members of our said Legislative Council shall take rank and precedence in the said Council according to the order in which their names are hereinbefore inserted; and that in all other cases the Members of our said Legislative Council shall take rank and precedence therein, according to the date and seniority of their respective appointments.

The following Commission, by His Excellency the Lieutenant Governor's direction, was also read:

### PRINCE EDWARD ISLAND.

L. S. By His Excellency Sir CHARLES AUGUSTUS FITZ ROY, K. H., Lieutenant Governor and Commander-in-Chief, in and over Her Majesty's Island Prince Edward, and its Dependencies, Chancellor, Vice Admiral and Ordinary of the same, &c. &c. &c.

C. A. FITZ ROY, Lieut. Governor.

*To George Dalrymple, Samuel Green, Peter Stewart Macnutt, and John Macgowan, Esquires, Greeting:*

WHEREAS by Letters Patent under the Great Seal of the United Kingdom, bearing date at Westminster, on the Thirteenth day of December last, Her Majesty was pleased to constitute and appoint Lieutenant General Sir JOHN COLBORNE, Knight Grand Cross of the most Honorable Military Order of the Bath, to be Captain General and Governor in Chief in and over the Island of Prince Edward, in the room of the Right Honorable John George EARL of DURHAM; and having deemed it expedient that there should be two distinct and separate Councils in the said Island, Her Majesty did in and by the same Letters Patent, grant, provide and declare that there should thenceforward be within the said Island Prince Edward, to distinct and separate Councils, to be respectively called the LEGISLATIVE COUNCIL and the EXECUTIVE COUNCIL of the said Island, and did direct and declare Her Royal Pleasure to be, that all and every the powers and authorities theretofore vested in or exercised by the Council of the said Island, so far as respects the enactment of any Laws to be made within the said Island, shall thenceforth be and the same were thereby vested in the said Legislative Council, and that all other powers and authorities whatsoever vested in or exercised by the Council of the said Island, should be and the same were thereby vested in the said Executive Council; and Her Majesty did thereby appoint and declare that the said Executive Council and the said Legislative Council respectively, should thereafter consist of such and so many members as should from time to time, for that purpose be nominated and appointed under Her Royal Sign Manual and Signet, or as should be provisionally appointed by the said Sir John Colborne, until Her Majesty's pleasure therein shall be known: Provided nevertheless, that the total number of the Members for the time being, of the Executive Council, resident within the said Island, should not at any time, by any provisional appointment, be raised to a greater number than Nine; and that the total number of the Members of the said Legislative Council, resident within the said Island, should not at any time, by any provisional appointment, be raised to a greater number than Twelve; and Her Majesty did thereby direct that Five Members of the said Executive Council should be a Quorum, for the despatch of the business thereof; and that Seven Members of the Legislative Council should be a Quorum, for the despatch of the business thereof; and Her Majesty did thereby further direct and appoint that the Members of the said respective Councils should hold their places therein during Her Majesty's pleasure, and not otherwise; and that the senior members respectively for the time being, of each of the said respective Councils, preside at all the deliberations thereof respectively, saving when he the said Sir John Colborne should be present



and presiding at the deliberations of the said Executive Council. And in case of the death or absence out of the said Island, of him the said Sir John Colborne, Her Majesty did by these presents, give and grant all and singular the powers and authorities therein to him granted, to the Lieutenant Governor for the time being of the said Island: And whereas Her Majesty, by warrant under Her Royal Sign Manual and Signet, bearing date the said Thirteenth day of December last, hath been pleased to appoint me Her Lieutenant Governor of the said Island, and hath authorised and required me, in the absence of the said Sir John Colborne, to execute and perform all and singular the powers and directions contained in the said Letters Patent: And whereas Her Majesty, by Her Instructions under Her Royal Sign Manual, dated at Windsor on the said Thirteenth day of December last, did nominate and appoint *George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, James Peake, Charles Worrell, Donald Macdonald, William Macintosh, and John Livett*, Esquires, to be, during Her Majesty's pleasure, Her Majesty's Legislative Councillors in the said Island: And whereas the said *George Wright* and *James Peake*, Esquires, have resigned their seats in the said Legislative Council: Now know ye, that I the Lieutenant Governor, exercising the powers and authorities aforesaid, in the absence of the said Sir John Colborne, in virtue of said Letters Patent, and for further carrying into effect Her Majesty's pleasure therein declared, and reposing especial trust and confidence in the loyalty, integrity and ability of you the said *George Dalrymple, Samuel Green, Peter Stewart Macnutt* and *John Macgowan*, Esquires, do by these presents provisionally nominate and appoint you the said *George Dalrymple, Samuel Green, Peter Stewart Macnutt, and John Macgowan*, Esquires, to be Members of the Legislative Council aforesaid, for the said Island of Prince Edward, until Her Majesty's pleasure shall be made known: And I do hereby declare Her Majesty's will and pleasure to be, that all and every the powers and authorities at any time or times heretofore vested in the Council or Councils of the said Island, so far as respects the enactment of any laws to be made within the said Island, and any other Acts and functions which the said Council in its Legislative capacity heretofore has been accustomed to exercise, or might have exercised, shall henceforth be and the same are hereby vested in the said Legislative Council: And I do further declare Her Majesty's will and pleasure to be that any Seven of the said Legislative Council shall be a quorum; and that the senior Member of the said Council shall preside in the said Legislative Council.

Given under my Hand and the Great Seal of the said Island, at Charlottetown, this Fourth day of March, in the year of Our Lord One thousand eight hundred and thirty-nine, and in the Second year of Her Majesty's Reign.

J. P. COLLINS,

Secretary and Registrar.

Registered this 5th day of March, 1839.

Liber No. 2, Folio 83.

G. THRESHER, Deputy Registrar.

## LEGISLATIVE COUNCIL.

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Whereupon the following Gentlemen took the Oaths, and also took and subscribed the Oath of abjuration, pursuant to the Statutes, viz:

The HON. *Thomas Heath Haviland,*  
*John Brecken,*  
*George Richard Goodman,*  
*William Macintosh,*  
*John Livett,*

The HON. *George Dalrymple,*  
*Samuel Green,*  
*Peter Stewart Macnutt,*  
*John Macgowan.*

The Hon. *Donald Macdonald* took and subscribed the Oath appointed to be taken by the Act of the Eleventh year of His late Majesty King George the Fourth, by persons professing the Roman Catholic Religion.

Commissions appointing the Rev. *L. C. Jenkins*, to be Chaplain; *J. P. Collins*, Esq. to be Clerk; *John C. Wright*, Esq. to be Usher of the Black Rod and Serjeant at Arms; *James D. Hazzard*, Esq. Queen's Printer, to be Printer; and *John Rider*, to be Messenger to the Legislative Council, were also read.

The Gentleman Usher of the Black Rod then received His Excellency's command to desire the attendance of the House of Assembly immediately in the Council Chamber.

The House of Assembly, with their Speaker, having attended accordingly, His Excellency was pleased to open the Session with the following Speech:—

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

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

Having by the last packet received Her Majesty's commands to separate and reconstruct the Councils of this Island, it became my duty to terminate the late Session of the General Assembly, and to prorogue it for a short period, in order to carry this arrangement into effect. I have now called you together, trusting that you will, without inconvenience, be able to take up and complete such business as remained unfinished at the recent prorogation, or as the interests of the Colony may require.

During the short interval which has elapsed since the termination of the late Session, I regret to have to inform you that intelligence has reached me of active measures having been taken by the State of Maine, to enforce, by arms, their alleged claim to the territory in dispute between that State and Her Majesty's Province of New Brunswick. This outrage, in defiance of existing treaties, and of the amicable professions of the General Government of the United States towards that of Her Majesty, has created a sensation of general indignation in New Brunswick and Nova Scotia; and, although the season of the year precludes the possibility of this Colony rendering any active assistance at the present moment, yet I am sure it will universally respond to the feeling so forcibly expressed by the Council and Assembly of the neighbouring Province of Nova Scotia.

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

The Oath of Office was then administered to *J. P. Collins*, Esq. as Clerk of the Legislative Council.

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

*Resolved*, That an humble Address be presented to His Excellency the Lieutenant Governor, to return the thanks of this House, for his Speech delivered this day.

*Ordered*, That *Mr. Brecken*, *Mr. Macintosh* and *Mr. Dalrymple* be a Committee to prepare a Draft pursuant to the above Resolution.

On motion, *Ordered*, That *Mr. Brecken*, *Mr. Macintosh* and *Mr. Green*, be a Committee to revise the Journal of the House each day.

On motion, *Ordered*, That *Mr. Dalrymple*, *Mr. Macnutt* and *Mr. Macgowan* be a Committee to examine into, and report upon such Laws as are near expiring.

On motion, *Ordered*, That a Committee of Five Members be appointed to draw up a code of Rules and Standing Orders, for the government of this House.

*Ordered*, That *Mr. Brecken*, *Mr. Goodman*, *Mr. Macintosh*, *Mr. Livett* and *Mr. Dalrymple* do compose the said Committee.

On motion, *Ordered*, That the Journals of this House be printed daily, and that One hundred copies thereof be furnished.

On motion, *Ordered*, That *Moses Hayes* be appointed Doorkeeper to this House.

Adjourned until One o'clock to-morrow.

## WEDNESDAY, 13th March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable *Mr. Haviland*, President;

The Hon. *Mr. Brecken*,

*Mr. Goodman*,

*Mr. Macdonald*,

*Mr. Macintosh*,

*Mr. Livett*,

The Hon. *Mr. Dalrymple*,

*Mr. Greer*,

*Mr. Macnutt*,

*M. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

The Clerk of the Legislative Council requested leave to appoint *Mr. Charles Desbrisay* as his Deputy. Leave being granted, *Mr. Desbrisay* took the Oath of Office, and his seat at the Clerk's table.

*Mr. Brecken*, from the Committee appointed to prepare an Address in answer to His Excellency Speech, reported a Draft thereof, which he read in his place.

*Ordered*, That the Report be received, and the said Draft was again read by the Clerk, and it was ordered, that the House be forthwith put into a Committee of the whole, to take the same into consideration.

The House was adjourned during pleasure, and put into Committee on the said Address. After some time, the House was resumed, and Mr. *Brecken* reported, that the Committee had gone through the said Address, and made several amendments thereto.

The amendments being twice read by the Clerk, were agreed to by the House.

*Ordered*, That the said Address, with the amendments, be engrossed, and read a third time to-morrow.

On motion, *Ordered*, That the Committee who prepared the Address do wait upon his Excellency the Lieutenant Governor, to know when he will be pleased to receive this House with their Address.

Adjourned until One o'clock to-morrow.

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## THURSDAY, 14th March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Brecken*,

Mr. *Goodman*,

Mr. *Macdonald*,

Mr. *Macintosh*,

Mr. *Livett*,

The Hon. Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Pursuant to the Order of the Day, the Address to His Excellency the Lieutenant Governor, in answer to His Excellency's Speech, was read a third time, and passed.

Whereupon the President signed the same, and is as follows:

*To His Excellency Sir CHARLES AUGUSTUS FITZ ROY, K. H., Lieutenant Governor and Commander in Chief in and over Her Majesty's Island Prince Edward, and the Territories thereunto belonging, Chancellor, Vice Admiral, and Ordinary of the same, &c. &c. &c.*

*May it please your Excellency;*

We Her Majesty's faithful and loyal subjects, the Legislative Council of Prince Edward Island, convened in General Assembly, beg respectfully to offer our sincere thanks for your Excellency's Speech at the commencement of the present Session.

The reconstruction of the Legislative Council having rendered it necessary for your Excellency to close the late Session of the Assembly, we beg to assure you, that our best endeavors shall be directed to the com-

pletion of the business which then remained unfinished; and in entertaining any new measures, we hope, by a zealous attention to the best interests of the Colony, to merit the confidence which has been reposed in us.

We regret to learn, that a most wanton and unprovoked outrage has been committed by the State of Maine, on the neighboring Province of New Brunswick; and while we deeply deplore the consequences of a war with a country allied to us by common origin, language and interests, we will most readily concur with the other branches of the Legislature, in organizing the best means of promptly and efficiently assisting our fellow Colonists in New Brunswick in their laudable efforts to support their just rights, and to prevent the dismemberment of the British Empire.

Mr. Brecken, from the Committee appointed to wait upon His Excellency the Lieutenant Governor, to know when he will be pleased to receive this House with their Address, reported that they had waited upon His Excellency, and that His Excellency had been pleased to appoint half past One o'clock this day for that purpose.

A Message from the House of Assembly, by Mr. Clark.

In the House of Assembly,

Thursday, 14th March, 1839.

Resolved, That a Committee be appointed to keep up a good correspondence between the two branches of the Legislature, and to report their proceedings from time to time, with power to send for persons, papers and records.

Ordered, That Mr. Clark, Mr. Donald Macdonald, the Hon. J. S. Macdonald, and the Hon. Joseph Pope, do compose the said Committee.

Ordered, That the said Resolution be communicated by Message to the Legislative Council.

At half past One o'clock, the House proceeded to Government House with their Address, in answer to His Excellency's Speech at the opening of the Session, and having returned—

The President reported, that His Excellency had been pleased to receive the same, and to give an answer thereto, which was read by the Clerk, and is as follows, viz:

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

I thank you for this Address, and for the expression of your readiness to concur in resisting any aggression which may involve the security of Her Majesty's North American possessions.

Resolved, That the Clerk be directed to make arrangements for interchanging the Journals of this House, and the Laws of this Island, with the Legislative Councils of Lower Canada, Upper Canada, Nova Scotia, New Brunswick and Newfoundland, for the Journals of the Legislative Councils and Laws of those Colonies, respectively, for the use of the Legislative Library.

Adjourned until One o'clock to-morrow.

**FRIDAY, 15th March, 1839.**

The Council met, pursuant to adjournment.

**PRESENT:**

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Brecken*,

Mr. *Goodman*,

Mr. *Macdonald*,

Mr. *Macintosh*,

Mr. *Livett*,

The Hon. Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

**PRAYERS.**

**R**EAD the proceedings of yesterday.

*Robert Hodgson*, Esq. Her Majesty's Attorney General, having taken the Oaths, and taken and subscribed the Oath of abjuration, in pursuance of the Statutes, in the presence of His Excellency the Lieutenant Governor, took his seat at the Board.

Mr. *Brecken*, from the Committee appointed to draw up a code of Rules and Standing Orders, for the government of this House, reported, that the Committee had prepared a Draft, which he read in his place.

The said Report was then read by the Clerk.

*Ordered*, That this House be forthwith put into a Committee of the whole, to take the same into consideration.

The House was adjourned, during pleasure, and put into a Committee of the whole, on the Report of the Sub-Committee. After some time, the House was resumed, and Mr. *Attorney General* reported, that the Committee had gone through the Report of the Sub-Committee, and that they had agreed to the same, with several amendments.

*Ordered*, That the Report of the Committee be agreed to, and that the Rules be engrossed.

*Resolved*, That a Committee be appointed to join the Committee of the House of Assembly, to keep up a good correspondence between the two branches of the Legislature, and to report their proceedings from time to time, with power to send for persons, papers and records.

*Ordered*, That Mr. *Attorney General* and Mr. *Green* do compose the said Committee.

*Ordered*, That the said Resolution be communicated by Message to the House of Assembly.

*Ordered*, That Mr. *Goodman* and Mr. *Macdonald* have leave to absent themselves to-morrow.

Adjourned until One o'clock to-morrow.

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## SATURDAY, 16th March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Macintosh*,

*Mr. Dalrymple*,

The Hon. Mr. *Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Mr. *Brecken* informed the House that indisposition prevents Mr. *Livett* from attending in his place.

Ordered, That Mr. *Livett's* excuse be received.

Adjourned until One o'clock on Monday next.

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## MONDAY, 18th March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of Saturday.

On motion, the following Rules and Standing Orders, for the due government of this House, were read, as engrossed, and ordered to be established, viz:

*First.*—That Prayers shall be read every day by the Chaplain of this House, at the opening thereof.

*Second.*—The Members of this House are to keep their dignity and order in sitting, as much as may be, and not to remove out of their places, without just cause, to the hindrance of others that sit near them, and disorder of the House.

*Third.*—That immediately after Prayers, the minutes of the preceding day be always read.

*Fourth.*—That when this House is called together, notice shall be taken of such Members as are absent, unless excused by the Queen, the Governor in Chief, Lieutenant Governor, or Officer administering the Government of this Island.

*Fifth.*—That for absence, every Member is to make his excuse, by a Member of this House, and if allowed, he is to be excused, if not, he is to be censured by the House, as the fault requires.

*Sixth.*—To prevent misunderstandings, and for avoiding offensive Speeches, when matters are debating, either in the House or at Committees, all personal, sharp, or taxing speeches be forborne; and whosoever answereth another man's speech, shall apply his answer to the matter without wrong to the person; and as nothing offensive is to be spoken, so nothing is to be ill-taken, if the party that speaketh it shall presently make a fair exposition, or clear denial of the words that might bear any ill construction; and if any offence of that kind be given, as the House itself will be very sensible thereof, so it will sharply censure the offenders, and give the party offended a fit reparation and a full satisfaction.

*Seventh.*—That for avoiding all mistakes, unkindnesses, or other differences which may grow to quarrels, tending to the breach of the peace, if any Member shall conceive himself to have received any affront or injury from any other Member of the House, either in the Council Chamber, or at any Committee, or in any of the Rooms belonging thereto, he shall appeal to the House for his reparation; which, if he shall not do, but occasion or entertain quarrels, declining the justice of the House, then the Member that shall be found therein offending, shall undergo the severe censure of this House.

*Eighth.*—That if any Member have occasion to speak with another Member in this House, whilst the House is sitting, they are to go together below the Bar, or else the President is to stop the business in agitation.

*Ninth.*—The privilege of this House is, that no Member of the said House, during the sitting thereof, or within the usual times of privilege of Parliament, is to be imprisoned or restrained, without sentence or order of this House, unless it be for Treason or Felony, or for refusing to give security for the peace.

*Tenth.*—That such Members of this House, as shall make protestation, or enter their dissents from any vote of this House, as they have a right to do, without asking leave of this House, either with or without their reasons, shall cause their protestations or dissents to be entered in the Clerk's Book the next sitting day of this House, before the rising of the House, and shall then sign the same on such day before the rising of this House.



*Eleventh.*—That all Orders of the day, which by reason of any adjournment, shall not have been proceeded upon, shall be considered only as postponed to the next day on which the House shall sit.

*Twelfth.*—That when a question is under debate, no motion shall be received in the House, unless for the purpose of amending, committing or postponing it to a certain day, or for the order of the day, or to adjourn.

*Thirteenth.*—That an Order Book be kept by the Clerk, in which Member's desirous of introducing any subject to the consideration of the House, unconnected with any measure actually in progress, shall be required to enter notice thereof specifying the day on which the same shall be brought forward, giving at least One day's notice—not to extend to questions of privilege.

*Fourteenth.*—That any motion, with leave of this House, may be withdrawn at any time before amendment or decision.

*Fifteenth.*—That after the question hath been entirely put by the President, no Member is to speak upon the question before voting.

*Sixteenth.*—That after a question is put, and the House hath voted thereon, no Member shall depart out of his place, until the House hath entered upon some other business.

*Seventeenth.*—That in voting, the contents shall rise in their places, and the non-contents continue to sit.

*Eighteenth.*—That in all Messages from the Assembly to this House, with a Bill or otherwise, the same cannot be received unless the object of it be expressed verbally, as hath hitherto been the practice.

*Nineteenth.*—As it might deeply intrench on the privileges of this House, for any Member to answer an accusation in the House of Assembly, either in person, or by sending his answer in writing, or by his Counsel there—it is ordered, that no Member of this House shall either go down to the House of Assembly, or send his answer in writing, or appear by Counsel, to answer any accusation there, upon penalty of being committed to the Serjeant at Arms, or to prison, during the pleasure of this House.

*Twentieth.*—For our meeting with any of the Lower House, either upon occasion of Messages, which they send up to us, or upon Conference, when they come up to us, the manner is thus—When notice is given to the House, by the Serjeant at Arms, that a Message or Deputation is sent to us by the House of Assembly, they attend until the House is prepared to receive them; then we being seated, send for them; on their coming up to the middle of the Bar, the President rises, and goes down to the Bar, and receives their Message uncovered; the Message is then read and delivered to the President, by one of the Members of the deputation; on their retiring, the President resumes the Chair, and standing uncovered, reports the Message for the information of the Members; the House then resumes the business it had before it.

*Twenty-first.*—That each Member of this House has a right to require, that the question or motion in discussion be read for his information, at any time of the debate.

*Twenty-second.*—Bills are seldom opposed at the first reading, but are generally committed, upon motion, at the second reading, at which time the principle is usually debated.

*Twenty-third.*—That to annex any clause or clauses to a Bill of aid or supply, the matter of which is foreign to and different from the matter of the said aid or supply, is unparliamentary.

*Twenty-fourth.*—That when a Bill, originating in this House, has once passed through its final stage in this House, no new Bill for the same object can afterwards be originated in this House, during the same Session.

*Twenty-fifth.*—That for the future, no motion shall be granted for making any Order of this House a Standing Order, or dispensing with a Standing Order, the same day it is made, nor before the Members of this House in town shall be summoned, to consider of the same motion.

*Twenty-sixth.*—That Bills brought up from the House of Assembly, when reported by the President, and handed to the Clerk, shall be carefully read over by him, and all verbal mistakes, if any, noticed by him to the President in writing.

*Twenty-seventh.*—The President, when he speaks to the House, is always to speak uncovered, and is not to adjourn the House, or do anything else as mouth of the House, without consent of the Members first had—except such things as are of course, wherein the Members may likewise overrule; and in case of difference amongst the Members, it is to be put to the question; and if the President will speak to any thing particularly, he is to go to his own place as a Member.

*Twenty-eighth.*—That every Member, previous to his speaking to any question or motion, or other matter before the House, shall rise from his seat uncovered, and address himself to the House.

*Twenty-ninth.*—When a question is decided by vote, the number of both the affirmatives and negatives shall be inserted in the minutes, and also the Members' names, if desired.

*Thirtieth.*—That any Member may at any time desire the House to be cleared of strangers, and the President shall immediately give directions to execute the order, without debate.

*Thirty-first.*—That any Member who brings up a Petition, shall, in his place, acquaint the House of the general purport of such Petition, and ask leave for it to be read; which must be seconded before it is read.

*Thirty-second.*—No Member is to speak twice to any Bill at one time of reading it, or any other proposition, unless it be to explain himself in some material point of his Speech, but no new matter, and that not without leave of the House first obtained. Every Member speaks standing uncovered, and names not Members of the House commonly by their names, but “the Member that spoke last”—“last but one”—“last but two”—or some other note of distinction.

*Thirty-third.*—To have more freedom of debate, and to facilitate business, Committees are appointed, either of the whole House, or of individuals; Committees of the whole House sit in the House, but then the President sits not in the Chair as President.

*Thirty-fourth.*—Every Member is to sit in his due place when the House is put into a Committee.

*Thirty-fifth.*—If it be desired by any Member, that the House be put into Committee, it ought not to be refused.

*Thirty-sixth.*—That in a Committee of the whole House, the Rules of the House shall be observed, in so far as they may be applicable, excepting the Rule limiting the time of speaking; and that no motion for the previous question, or for adjournment, can be received, but a Member may at any time move that the Chairman do leave the Chair, or report some progress made, and ask for leave to sit again.

*Thirty-seventh.*—That no Bill, Resolution or other proceeding, founded upon any application, addressed to the House of Assembly, be sustained by the Council, unless an application to the same effect, with such documents as may accompany the same, be also presented to the Council in General Assembly.

*Thirty-eighth.*—That when any Bill shall be sent by this House to a Committee, such Committee shall examine in the first place whether the Standing Orders of this House have or have not been complied with, and shall report the same to the House.

*Thirty-ninth.*—That any Deputy or Assistant Clerk of this House, shall not be at any time suspended or displaced from his office or employment, without the leave of the House.

*Fortieth.*—That the Serjeant at Arms shall be entitled to take and receive the following Fees:—

For taking a Member of the House into custody,	-	£0 11 8
For taking a Stranger into custody,	- - -	6 8
For every day in custody,	- - - -	0 11 8
For bringing a Member of the House, or any other person to the Bar, to be reprimanded,	- -	0 6 8
For travelling charges, when ordered by the House, for every mile travelled,	- - - -	0 0 6

*Charles Worrell, Esq.* having taken the Oaths, and taken and subscribed the Oath of abjuration, in pursuance of the Statutes, in the presence of His Excellency the Lieutenant Governor, took his seat at the Board.

On motion, Resolved, That the Message of His Excellency the Lieutenant Governor, transmitted to the Legislative Council in its last Session, with a copy of a Despatch from the Right Honorable Lord Glenelg, dated the 15th of September last, suggesting several amendments to the Act passed in the Session of 1838, “for the regulation of the several Gaols within this Island, and establishing Prison discipline therein,” and the other documents therein mentioned, be referred to a Committee to be appointed by this House to examine the same, and report thereon by Bill or otherwise, with power to send for persons, papers and records.

Ordered, That *Mr. Attorney General, Mr. Brecken, Mr. Macintosh, Mr. Green and Mr. Macgowan* do compose the said Committee.

Adjourned until One o'clock to-morrow.

**TUESDAY, 19th March, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**READ** the proceedings of yesterday.

A Message from the House of Assembly, by Mr. Clark, with a Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island," to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

Adjourned until Three o'clock to-morrow.

**WEDNESDAY, 20th March, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**READ** the proceedings of yesterday.

Adjourned until One o'clock to-morrow.

## THURSDAY, 21st March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

The Hon. Mr. *Macintosh*,

*Mr. Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*.

PRAYERS.

**M**R. *Goodman* informed the House that indisposition prevents Mr. *Macgowan* from attending in his place.

*Ordered*, That Mr. *Macgowan*'s excuse be received.

Read a second time, the Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island."

On motion, *Ordered*, that the said Bill be referred to a Committee of Seven Members, to report thereon, with power to send for persons, papers and records.

*Ordered*, That Mr. *Brecken*, Mr. *Goodman*, Mr. *Worrell*, Mr. *Macdonald*, Mr. *Macintosh*, Mr. *Livett* and Mr. *Dalrymple*, do compose the said Committee.

Adjourned until One o'clock to-morrow.

## FRIDAY, 22d March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Mr. *Attorney General*, from the Committee to whom was referred His Excellency the Lieutenant Governor's Message, with the copy of a Despatch from the Right Honorable Lord Glenelg, suggesting several amendments to the Act passed in the Session of 1838, "for the regulation of the several Jails within this Island, and establishing Prison discipline therein," presented to the House the Report of the said Committee, which he read in his place, and afterwards delivered it to the Clerk, who read the same, as follows:

Your Committee, to whom was referred the Message of His Excellency the Lieutenant Governor, on the subject of the Act of this Island, passed in the Session of 1838, "for the regulation of the several Jails within this Island, and establishing Prison Discipline therein," and the various documents accompanying said Message, beg leave to report as follows: They recommend the adoption of that part of the Imperial Statute, which requires the Keeper or other Officer visiting Female prisoners, to be accompanied by the Matron, if one be appointed; but as there is no permanent appointment yet made of a Matron for Prince and King's County Jails, your Committee recommend that it be part of the clause, that in such case the Keeper, or other Officer should be accompanied by some female, leaving the selection of such female, in the case of said two Jails, to the discretion of the Keeper or Visiting Justices. Your Committee also recommend that that part of the Sixth Rule of the Imperial Statute, which relates to the classification of Prisoners, be adopted, as also the proviso of that rule, which authorises the Visiting Justices to employ prisoners in menial offices within the prison and its precincts. Your Committee also recommend the adoption of the 14th Rule of the Imperial Act, which allows prisoners confined for Debt, or before trial for any supposed crime, and not receiving any Jail allowance, to procure for themselves, or receive articles of food, bedding and clothing, and other necessaries, subject to such rules and regulations as the Visiting Justices may deem necessary; and also that part of the 17th Rule of said Act, which requires a Surgeon to examine a prisoner when committed; and that part of same rule, which prohibits the discharge of any prisoner whilst labouring under acute disease, unless at his own desire. Your Committee also recommend the adoption of the 18th Rule of the Imperial Act, relating to the bedding of Prisoners, and the numbers confined in each cell; also that part of the 19th Rule of said Act which relates to the providing of soap, towels and combs; also, that part of section 12, of same Act, which requires the Rules of the prison to be exhibited in conspicuous places within it; also, the 23d Rule of the same Act, which prohibits Garnish money; and also, the 40th section of said Act, which impowers the Justices to inflict punishment on persons convicted of introducing, or attempting to introduce spirituous or fermented Liquors within prisons. The above recommendations appear to your Committee to meet all the objections taken by my Lord Glenelg, to the Island Statute, with the exception of objection 3, 5 and 6; the third is, that "provision should be made for the regular employment of convicted and other persons;" the fifth, that "provision should be made for the performance of religious services, by a Chaplain, or other appointed officer;" and the sixth, "that the means of instruction ought to be afforded to the prisoners, and enforced;" and to the third objection, your Committee beg respectfully to remark, that by an Act of the General Assembly of this Island, of the 5th Will. 4, cap. 2, there appears sufficient power given to the Justices appointed under that Act, for the employment of convicted criminals, which Act could not have been adverted to by my Lord Glenelg. With regard to the fifth objection, your Committee beg to observe, that from the small number of criminals confined in our Jails, and from the multiplicity of creeds professed by the people of this Island, it appears to your Committee that the appointment of a Clergyman of any one denomination, would entail an expense upon the Colony, without benefiting any other criminals but those few that might chance to profess the creed of

that particular clergyman; and on this subject the Grand Jury of Queen's County, at the last Hilary Term of the Supreme Court, made a strong remonstrance against any one Clergyman being employed as a Chaplain to a Jail, to the exclusion of those of other denominations. Your Committee therefore recommend that the Visiting Justices be empowered to request the gratuitous services of Clergymen professing the faith of such criminals as may from time to time be imprisoned in the respective Jails of this Colony, at such times as they may fix upon; and that they be empowered to enforce the attendance of such criminals during the time of the performance of divine service by such Clergyman. And with regard to the sixth objection, your Committee deem it inapplicable to the local circumstances of this Colony, in consequence of its thin population, and the few criminals under punishment; the offence of Vagrancy, which in England is so rife, and to which this objection seems to the Committee more particularly to apply, being unknown in this Colony. Your Committee further recommend that a Bill, embodying the above suggestions and recommendations, be introduced in amendment of the Act of this Island relating to Prison Discipline.

*Ordered*, That the Report of the Committee be received.

On motion, *Ordered*, that the Committee who prepared the above Report, be a Committee to prepare and bring in a Bill in accordance with the said Report.

On motion, *Ordered*, that Mr. *Green* have leave to absent himself until Monday, the First of April next.

On motion, *Ordered*, that Mr. *Macnutt* have leave to absent himself until Monday the First of April next.

Adjourned until One o'clock to-morrow.

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**SATURDAY, 23d March, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. *Mr. Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

The Hon. *Mr. Macintosh*,

*Mr. Livett*,

*Mr. Dalrymple*,

*Mr. Macgowan*.

PRAYERS.

**R**EADE the proceedings of yesterday.

Mr. *Attorney General*, from the Committee appointed to prepare and bring in a Bill, in accordance with the Report of the Committee on the subject of the Act for regulating the several Jails within this Island, and establishing Prison discipline therein, presented to the House a Bill, as prepared by the Committee, and the same, on motion, was read a first time.

On motion, Ordered, that the said Bill be read a second time on Monday next.

Adjourned until One o'clock on Monday next.

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## MONDAY, 25th March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Goodman*,

Mr. *Macintosh*,

The Hon. Mr. *Macdonald*,

Mr. *Livett*,

Mr. *Dalrymple*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of Saturday.

Pursuant to the Order of the Day, the Bill to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein, was read a second time.

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

*Resolved*, That a copy of the Laws of this Colony, and two copies of the Journals of this House, be forwarded to His Excellency Sir John Colborne, Governor in Chief.

*Resolved*, That a copy of the Journals of this House be forwarded to each of the Houses of Assembly of Lower Canada, Upper Canada, Nova Scotia, New Brunswick and Newfoundland.

Adjourned until One o'clock to-morrow.



## TUESDAY, 26th March, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Goodman*,

Mr. *Worrell*,

Mr. *Macdonald*,

The Hon. Mr. *Macintosh*,

Mr. *Livett*,

Mr. *Dalrymple*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Mr. *Brecken*, by leave, presented a Petition from the Inhabitants of Townships Nos. 16 and 17, setting forth, that they have learned with regret, that certain individuals had convened a meeting for the purpose of petitioning the Legislative Council against the measures adopted by the House of Assembly, relative to the Fishery Reserves, and that the majority of the country were not informed of any such meeting—and praying that this House will make such order, as will secure to them the said Fishery Reserves.

The said Petition was read, and ordered to be referred to the Committee appointed to report on the Bill for the regulation of the Fishery Reserves in this Island.

Pursuant to the Order of the Day, the House was adjourned, during pleasure, and put into a Committee on the Bill to amend an Act for regulating the several Jails within this Island, and establishing Prison discipline therein—after some time the House was resumed, and Mr. *Attorney General* reported, that the Committee had gone through the Bill, and that they had agreed to the same, with several amendments.

*Ordered*, That the Report of the Committee be agreed to.

On motion, *Ordered*, that the said Bill be engrossed.

*Ordered*, That Mr. *Macgowan* have leave to absent himself until Friday the Fifth of April next.

Adjourned until One o'clock to-morrow.

**WEDNESDAY, 27th March, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. *Mr. Attorney General*,  
*Mr. Brecken*,  
*Mr. Goodman*,  
*Mr. Worrell*,  
*Mr. Macdonald*,

The Hon. *Mr. Macintosh*,  
*Mr. Livett*,  
*Mr. Dalrymple*.

PRAYERS.

**R**EAD the proceedings of yesterday.

A Message from His Excellency the Lieutenant Governor, by Mr. Secretary Collins:

C. A FITZROY, Lieut. Governor.

The Lieutenant Governor is desirous that the Legislative Council, at its rising to-morrow, should adjourn to Tuesday the Second day of April next.

Government House, March 27th, 1839.

Read a third time, and passed, the Bill, intituled "An Act to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein."

*Ordered*, That the said Bill be sent down to the House of Assembly, for their concurrence.

Adjourned until One o'clock to-morrow.

**THURSDAY, 28th March, 1839.**

The following Members of Council met, viz:

The Hon. *Mr. Goodman*,  
*Mr. Worrell*,  
*Mr. Macintosh*,

The Hon. *Mr. Livett*,  
*Mr. Dalrymple*.

**T**HE President being absent from indisposition, the Council could not proceed to business.

Adjourned until Tuesday next, the Second of April, at One o'clock.

## TUESDAY, 2d April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Hon. <i>Mr. Attorney General,</i>	The Hon. <i>Mr. Dalrymple,</i>
<i>Mr. Worrell,</i>	<i>Mr. Green,</i>
<i>Mr. Macdonald,</i>	<i>Mr. Macnutt.</i>

**I**N the absence of the President, *Mr. Attorney General*, the senior Member present, took the Chair; and there not being a Quorum, declared the House adjourned until One o'clock to-morrow.

## WEDNESDAY, 3d April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Hon. <i>Mr. Attorney General,</i>	The Hon. <i>Mr. Livett,</i>
<i>Mr. Goodman,</i>	<i>Mr. Dalrymple,</i>
<i>Mr. Worrell,</i>	<i>Mr. Macnutt,</i>
<i>Mr. Macdonald,</i>	
<i>Mr. Macintosh,</i>	

**I**N the absence of the President, *Mr. Attorney General*, the senior Member present, took the Chair.

PRAYERS.

Read the proceedings of Wednesday last.

*Ordered,* That *Mr. Brecken* have leave to absent himself until Monday next.

A Message from the House of Assembly, by the Hon. *Mr. Pope*,

In the House of Assembly,

Wednesday, April 3d, 1839.

Resolved, That a Committee of this House be appointed to join a Committee of the Legislative Council, for the purpose of taking charge of the Government House and Public Furniture.

*Ordered,* That the Hon. *Mr. Pope*, *Mr. Le Lacheur*, *Mr. W. Dingwell* and *Mr. Longworth* do compose the said Committee.

Ordered, That the foregoing Resolution be communicated by Message to the Legislative Council.

A Message from the House of Assembly, by Mr. D. Macdonald, with the following Bills, to which they desire the concurrence of the Legislative Council, viz:

A Bill, intituled "An Act to regulate the forfeiture of Lands, and the Settlement of the Inhabitants of this Island."

A Bill, intituled "An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives."

Also with—

The Bill, intituled "An Act to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein," agreed to, with certain amendments, to which they desire the concurrence of the Legislative Council.

Read a first time, the Bill, intituled "An Act to regulate the forfeiture of Lands, and the settlement of the Inhabitants of this Island."

Read a first time, the Bill, intituled "An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives."

On motion, the amendments made by the House of Assembly to the Bill, intituled "An Act to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein," was read a first time, and are as follows:

*Folio 1, line 5*—After the word "Island," insert "so far only as such Rules and Regulations can be adopted, without erecting any additional Building or Buildings to the Jails lately erected."

*Folio 4, line 9*—Before the words "a Surgeon," insert "that when necessary."

Strike out the *Second section*, and instead thereof, insert the following Clause, marked (A.)

CLAUSE (A.)

"And be it further enacted, That if any person, in contravention of the existing Rules, shall carry or bring, or attempt or endeavour to carry or bring into any Prison or House of Correction, any Spirituous or fermented Liquor, it shall be lawful for the Jailer, Keeper, Turnkey, or any other of the Assistants to the said Jailer or Keeper, to apprehend, or cause to be apprehended, such offender, and to carry him or her before a Justice of the Peace, (who is hereby empowered to hear and determine such offence in a summary way) and if he shall lawfully convict such person of such offence, he shall forthwith commit such offender to the common Jail of the County in which such Offender shall be convicted, there to be kept in custody for any time not exceeding Two Months, nor less than Five Days, without Bail or Mainprize, unless such Offender shall immediately pay down such sum of money, not exceeding Forty Shillings, and not less than Five Shillings, as the Justice shall impose upon such Offender; to be paid, one moiety to the Informer, and the other moiety in aid of the maintenance of such Prisoner; and if any Justice shall receive information, upon Oath, that any spirituous or fermented Liquor is unlawfully kept or disposed of in any Prison, he may enter and search, or issue his Warrant to enter and search for such Liquor; and in case it shall be found, it shall be lawful for the persons so finding to seize the same, and cause it to be disposed of as the Justice shall direct; and if any Jailer, or Keeper of any Prison shall sell, use, lend or give away, or knowingly permit or suffer to be sold, used, lent or given away in such Prison, or brought into the same, any spirituous or fer-

mented Liquor, in contravention of the existing Rules of such Prison, he shall for every such offence forfeit and pay the sum of Five Pounds—such Penalty to be recovered in a summary way before any one Justice of the Peace, upon the Oath of one or more credible witness or witnesses; and if the said Jailer or Keeper shall not immediately pay down the said Penalty, he shall be dismissed from his office and be rendered incapable of holding the said office again; and in the event of a second conviction of any Jailer or Keeper of such offence, he shall forfeit and pay the sum of Ten Pounds, and shall be dismissed from his said office, and be rendered incapable of holding the same again; and if he shall not immediately pay down the said fine, the said Justice is hereby authorized and empowered to issue his Warrant against him, and to cause him to be imprisoned in the common Jail of the County, for a period not exceeding Two Months—the said fine or fines, if recovered from any Jailer or Keeper as aforesaid, to be applied, one moiety to the Informer, and the other moiety to be paid into the Treasury, for the use of Her Majesty's Government.'

Adjourned until One o'clock to-morrow.

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## THURSDAY, 4th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Hon. *Mr. Attorney General,*

*Mr. Goodman,*

*Mr. Worrell,*

*Mr. Macdonald,*

The Hon. *Mr. Macintosh,*

*Mr. Livett,*

*Mr. Dalrymple,*

*Mr. Green.*

PRAYERS.

**I**N the absence of the President, *Mr. Attorney General*, the senior Member present, took the Chair.

Read the proceedings of yesterday.

*Mr. Green* informed the House, that indisposition prevents *Mr. Macnutt* from attending in his place.

*Ordered,* That *Mr. Macnutt's* excuse be received.

*Resolved,* That a Committee be appointed to join the Committee of the House of Assembly, for the purpose of taking charge of the Government House and Public Furniture.

*Ordered,* That *Mr. Livett* and *Mr. Dalrymple* do compose the said Committee.

*Ordered,* That the foregoing Resolution be communicated by Message to the House of Assembly.

Adjourned until Twelve o'clock to-morrow.

**FRIDAY, 5th April, 1839.**

The Council met, pursuant to adjournment.

**PRESENT:**

|                                       |                                |
|---------------------------------------|--------------------------------|
| The Hon. <i>Mr. Attorney General,</i> | The Hon. <i>Mr. Macintosh,</i> |
| <i>Mr. Goodman,</i>                   | <i>Mr. Livett,</i>             |
| <i>Mr. Worrell,</i>                   | <i>Mr. Dalrymple,</i>          |
| <i>Mr. Macdonald,</i>                 | <i>Mr. Green.</i>              |

**PRAYERS.**

**I**N the absence of the President, *Mr. Attorney General*, the senior Member present, took the Chair.

Read the proceedings of yesterday.

A Message from the House of Assembly, by *Mr. Yeo*, with a Bill, intituled "An Act relating to Treasury Warrants," to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

Adjourned until One o'clock to-morrow.

**SATURDAY, 6th April, 1839.**

The Council met, pursuant to adjournment.

**PRESENT:**

|                                       |                             |
|---------------------------------------|-----------------------------|
| The Hon. <i>Mr. Attorney General,</i> | The Hon. <i>Mr. Livett,</i> |
| <i>Mr. Goodman,</i>                   | <i>Mr. Dalrymple,</i>       |
| <i>Mr. Worrell,</i>                   | <i>Mr. Green,</i>           |
| <i>Mr. Macdonald,</i>                 | <i>Mr. Macgowan.</i>        |
| <i>Mr. Macintosh,</i>                 |                             |

**PRAYERS.**

**I**N the absence of the President, *Mr. Attorney General*, the senior Member present, took the Chair.

Read the proceedings of yesterday.

*Mr. Green* informed the House, that indisposition prevents *Mr. Macnutt* from attending in his place.

Ordered, That *Mr. Macnutt's* excuse be received.

A Message from the House of Assembly, by Mr. Thomson, with a Bill, intituled "An Act to further continue for one Year, and to amend an Act passed in the Seventh year of the Reign of His late Majesty King William the Fourth, for raising a Revenue in this Island"—to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

*Ordered*, That Mr. *Goodman* have leave to absent himself for Ten Days.

Adjourned until One o'clock on Monday next.

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## MONDAY, 8th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*.

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of Saturday.

A Message from the House of Assembly, by Mr. Palmer, with a Bill, intituled "An Act for rendering more effectual the Laws now in force for regulating the Retail of strong and spirituous Liquors," to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

Read a second time, the Amendments made by the House of Assembly, to the Bill, intituled "An Act to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein."

Read a second time, the Bill, intituled "An Act to further continue, for one Year, and to amend an Act passed in the Seventh year of the Reign of His late Majesty King William the Fourth, for raising a Revenue in this Island."

On motion, the said Bill was read a third time, and passed.

*Ordered*, That the said Bill be sent down to the House of Assembly.

Read a second time, the Bill, intituled "An Act relating to Treasury Warrants."

On motion, Ordered, that this House be forthwith put into a Committee of the whole, to take the same into consideration.

The House was adjourned during pleasure, and put into a Committee on the said Bill. After some time, the House was resumed, and Mr. *Dalrymple* reported, that the Committee had gone through the Bill, and they recommend that a Conference be desired with the House of Assembly on the subject matter thereof.

On motion, Ordered, That the Report of the Committee be agreed to.

Ordered, That Mr. *Brecken* and Mr. *Dalrymple* be a Committee to manage the said Conference, to meet in the Committee Room to-morrow, at Two o'clock.

On motion, Ordered, that the second reading of the Bill, intituled "An Act for the relief of certain of the American Loyalists, and Disbanded Provincial Troops, and their Representatives," do stand as the Order of the Day for Wednesday next.

On motion, Ordered, That the second reading of the Bill, intituled "An Act to regulate the Forfeiture of Lands, and the settlement of the Inhabitants of this Island," do stand as the Order of the Day for Thursday next.

Ordered, That Mr. *Attorney General* have leave to absent himself to-morrow.

Adjourned until One o'clock to-morrow.

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## TUESDAY, 9th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Brecken*,

Mr. *Worrell*,

Mr. *Macdonald*,

Mr. *Macintosh*,

Mr. *Livett*,

The Hon. Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

A Message from the House of Assembly, by Mr. Palmer,  
Mr. President,

The House of Assembly do agree to a Conference, as is desired by the Legislative Council, on the Bill, intituled "An Act relating to Treasury Warrants," and have appointed Mr. Palmer, Mr. Longworth, and the Honorables Mr. Pope and Mr. J. S. Macdonald, a Committee to manage the said Conference.



Thereupon the Committee went to the Conference, and having returned, reported that they had complied with the instructions given them by this House.

Read a third time, the Amendments made by the House of Assembly to the Bill, intituled "An Act to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein."

On motion, Ordered, that this House do agree to the said Amendments.

Ordered, That a Message be sent down to the House of Assembly, acquainting them that this House have agreed to their amendments.

A Message from the House of Assembly, by Mr. Le Lacheur, with a Bill, intituled "An Act to amend the Act for the Encouragement and Support of District and other Schools," to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

Read a second time, the Bill, intituled "An Act for rendering more effectual the Laws now in force, for regulating the Retail of Strong and Spirituous Liquors."

On motion, Ordered, That the said Bill be committed to a Committee of the whole House to-morrow.

On motion, Ordered, that the second reading of the Bill, intituled "An Act to amend the Act for the Encouragement and Support of District and other Schools," do stand as the Order of the Day for to-morrow.

Adjourned until Two o'clock to-morrow.

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## WEDNESDAY, 10th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Worrell*,

Mr. *Macdonald*,

Mr. *Macintosh*,

The Hon. Mr. *Livett*,

Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Mr. *Brecken*, by leave, presented a **Petition** from certain inhabitants of **Princetown Royalty**, setting forth—that they have learned with surprise, that a **Memorial** from that quarter had been presented to the **House of Assembly**, praying that **House** for **Legislative** aid in support of a **School** in the said **Royalty**, taught by **Alexander Rae, A. M.**, and praying that this **House** will take the premises into consideration, and that the present **School Act** may be left to its operation, as regards the said **Royalty**.

The said **Petition** was received and read, and ordered to lie on the table.

*Resolved*, That a **Committee** be appointed to wait upon **His Excellency the Lieutenant Governor**, and respectfully request that he will be pleased to direct that a copy of the **Commission** of **Sir John Colborne**, and of the **Royal Instructions**, or of such part as **His Excellency** shall feel authorized to make public, be laid before this **House**.

*Ordered*, That **Mr. Brecken** and **Mr. Green** be a **Committee** for that purpose.

**Mr. Brecken**, from the **Committee**, to whom was referred the **Bill**, intituled “**An Act for the regulation of the Fishery Reserves in this Island**,” made a **Report**, which he read in his place, and is as follows:

The **Committee** appointed to report upon the **Bill** from the **House of Assembly** for regulating the **Fishery Reserves**, beg leave to state, that they have carefully gone through the **Bill** and taken every means to make themselves acquainted with the several subjects embraced in this important measure—that they have had recourse to the best legal information on several points of difficulty which the **Bill** presented—that they have made several amendments to the **Bill**, which they respectfully recommend for the adoption of this **Honorable House**; and they further beg to submit the opinions of the **Attorney General** and **Solicitor General**, and **Charles Binns, sen. Esq.** on the points to which their attention has been directed, and they have to express their thanks for the readiness with which those gentlemen met the wishes of the **Committee** in this matter, as well as for the clear and able manner in which they have afforded the explanations required of them.

For the opinions referred to in the above **Report**, with the queries submitted to those gentlemen, vide **Appendix (A.)**

On motion, *Ordered*, that the **Report** of the **Committee** be received.

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

**Mr. Brecken**, by leave, presented a **Petition** from **Thomas Robinson**, as **Chairman** of a **Committee** of the **Loyal American Refugees and Disbanded Troops**, and their **Representatives**, praying that this **House** will sanction the **Bill** recently passed by the **House of Assembly**, and now before this **House**, for the relief of the said **American Loyalists and Disbanded Provincial Troops**, and their **Representatives**.

The said **Petition** was received and read, and ordered to lie on the table.

Pursuant to **Order**, the **Bill**, intituled “**An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives**,” was read a second time.

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

A Message from the House of Assembly, by Mr. Longworth, with a Bill, intituled "An Act to amend a certain Act therein mentioned, relating to Pounds," to which they desire the concurrence of the Legislative Council.

Also, with the following written Message:

Mr. President,

The House of Assembly desire a further Conference with the Legislative Council, on the subject matter of the last Conference, and have appointed the same Committee who managed the last Conference, a Committee to manage this further Conference.

On motion, Ordered, that a further Conference be agreed to, as is desired by the House of Assembly.

*Ordered*, That the same Committee who managed the last Conference, be a Committee to manage this further Conference, to meet in the Committee Room instantler.

*Ordered*, That a Message be sent down to the House of Assembly, acquainting them therewith.

Thereupon the Committee went to the Conference, and having returned, reported the substance thereof.

Read a first time, the Bill, intituled "An Act to amend a certain Act therein mentioned, relating to Pounds."

Pursuant to Order, the House was adjourned during pleasure, and put into a Committee on the Bill, intituled "An Act for rendering more effectual the Laws now in force for regulating the Retail of Strong and Spirituous Liquors." After some time the House was resumed, and Mr. *Livett* reported, that the Committee had made some progress therein, and that he was directed to move that they may have leave to sit again.

*Ordered*, That the Report of the Committee be received, and leave granted.

On motion, Ordered, that the Order of the Day for the second reading of the Bill, intituled "An Act to amend the Act for the Encouragement and Support of District and other Schools," be postponed until to-morrow.

Adjourned until Eleven o'clock to-morrow.

## THURSDAY, 11th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act for rendering more effectual the Laws now in force for regulating the Retail of strong and spirituous Liquors." After some time, the House was resumed, and Mr. *Livett* reported, that the Committee had gone through the Bill, and that they had agreed to the same, without any amendment.

On motion, Ordered, That the Report of the Committee be agreed to.

On motion, the said Bill was read a third time, and passed.

Ordered, That the said Bill be sent down to the House of Assembly.

The Council adjourned for one hour.

And being again met—

Mr. *Brecken*, from the Committee appointed to wait upon His Excellency the Lieutenant Governor, praying that he will be pleased to direct that a copy of Sir John Colborne's Commission, and of the Royal Instructions, be laid before this House, reported that they had waited on His Excellency, who was pleased to say, that he would comply with the wish of the House.

On motion, Ordered, That the Order of the Day for the second reading of the Bill, intituled "An Act to regulate the Forfeiture of Lands, and the settlement of the Inhabitants of this Island," be postponed until Monday next.

The Order of the Day for the second reading of the Bill, intituled "An Act to amend the Act for the Encouragement and Support of District and other Schools," being read,

On motion, Ordered, that the same be discharged, and that the said Bill be read a second time this day three months.

On motion, Ordered, that the Order of the Day for the House in Committee, on the Report of the Sub-Committee to whom was referred the Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island," be postponed until to-morrow.

Adjourned until Ten o'clock to-morrow.

## FRIDAY, 12th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Livett*,

The Hon. Mr. *Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Read a second time, the Bill, intituled "An Act to amend a certain Act therein mentioned, relating to Pounds."

Pursuant to Order, the House was adjourned during pleasure, and put into a Committee on the Bill, intituled "An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives." After some time, the House was resumed, and Mr. *Macgowan* reported, that the Committee had made some progress therein, and that he was directed to move that they may have leave to sit again.

*Ordered*, That the Report of the Committee be received, and leave granted.

A Message from the House of Assembly, by the Hon. Mr. *Pope*, with the following Bills, to which they desire the concurrence of the Legislative Council, viz:

A Bill, intituled "An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution."

A Bill, intituled "An Act for appropriating certain Moneys therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine."

Also, with the following written Message:

In the House of Assembly,

Friday, April 12th, 1839.

*Ordered*, That Mr. *Le Lacheur* be added to the Committee appointed to keep up a good correspondence between the two branches of the Legislature.

*Ordered*, That a copy of the above Order be communicated by Message to the Legislative Council.

Read a first time, the Bill, intituled "An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution."

Read a first time, the Bill, intituled "An Act for appropriating certain Moneys therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine."

The House was adjourned during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives." After some time, the House was resumed, and Mr. *Macgowan* reported, that the Committee had made some progress therein, and that he was directed to move that they may have leave to sit again.

*Ordered*, That the Report of the Committee be received, and leave granted.

On motion, *Ordered*, that the Order of the Day for the House in Committee on the Report of the Sub-Committee, to whom was referred the Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island," be further postponed until to-morrow.

Adjourned until Ten o'clock to-morrow.

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## SATURDAY, 13th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Worrell*,

Mr. *Macdonald*,

Mr. *Livett*,

The Hon. Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Mr. *Macdonald* informed the House that indisposition prevents Mr. *Macintosh* from attending in his place.

*Ordered*, That Mr. *Macintosh's* excuse be received.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives." After some time, the House was resumed, and Mr. *Macgowan* reported, that the Committee had made further progress therein, and that he was directed to move that they may have leave to sit again on Monday next.

*Ordered*, That the Report of the Committee be received, and leave granted.

Mr. *Brecken*, by command of His Excellency, laid before the House a copy of the Commission of Sir John Colborne, as Captain General and Governor in Chief; also, a copy of the Royal Instructions accompanying the said Commission. Which were ordered to lie on the table.

Vide Appendix (B.)

Read a second time, the Bill, intituled “An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution.”

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. *Brecken* reported, that the Committee had gone through the Bill, and that they had agreed to the same, with the following amendment, viz:

*Folio 2, line 6*—Strike out the word “Two,” and insert the word “Ten.”

On motion, *Ordered*, That the Report of the Committee be agreed to.

*Ordered*, That the Amendment be engrossed.

Read a second time, the Bill, intituled “An Act for appropriating certain Monies therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine.

Adjourned until Eleven o'clock on Monday next.

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**MONDAY, 15th April, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Worrell*,

Mr. *Macdonald*,

Mr. *Macintosh*,

The Hon. Mr. *Livett*,

Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of Saturday.

Read a third time, and passed, the Bill, intituled “An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution,” with the amendment.

*Ordered*, That the said Bill, with the Amendment, be sent down to the House of Assembly for their concurrence.

Pursuant to Order, the House was adjourned during pleasure, and put into a Committee on the further consideration of the Bill, intituled “An Act for the relief of certain of the American Loyalists, and Disbanded Provincial Troops, and their Representatives.” After some time the House was resumed, and Mr. *Macgowan* reported, that the Committee had made further progress therein, and that he was directed to move that they may have leave to sit again.

*Ordered*, That the Report of the Committee be received, and leave granted.

A Message from the House of Assembly, by Mr. D. Macdonald, with a Bill, intituled “An Act to revive and continue an Act therein mentioned, relating to the shutting up of old Roads,” to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

On motion, the said Bill was read a second time.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Bill, intituled “An Act for the relief of certain of the American Loyalists, and Disbanded Provincial Troops, and their Representatives. After some time the House was resumed, and Mr. *Macgowan* reported, that they had gone through the Bill, and that they had agreed to the same, with the following Amendments:

*Folio 1, line 10*—Strike out from the word “Claimants” to the word “accepted,” in the third line of the second folio, both inclusive, and insert—‘Proprietors of Lands in this Island, or their Attorneys for them, signed and delivered a Paper to the Right Honorable Lord North, at that time one of His Majesty’s Principal Secretaries of State, of which the following is a Copy, viz:—

‘We the undersigned Proprietors of Lands in the Colony of *Saint John*, being informed that many of the Loyalists at *New York* prefer a Settlement in that Island to one in *Nova Scotia*; and being very desirous of encouraging such a preference, and of affording an Asylum to those deserving fellow subjects, do engage for ourselves, or as Attorneys for others, to grant, as we hold of the Crown, and in the same proportions to each family as the other Loyal Emigrants receive in *Nova Scotia*, One fourth of the quantity of Lands placed opposite to our Names, which they shall receive, upon their arrival at *Charlottetown*, by application to the Governor and Council: and that they may receive the said Lands in the fairest and most impartial manner, we will direct that the whole be divided by the Surveyor General into Parcels, of not less than One Thousand Acres each, and drawn for by Ballot before the Governor and Council. In consideration of the preference expressed by those Loyal Emigrants, and of the conditions offered by us, we have the fullest confidence that your Lordship will give instructions to the Commander-in-Chief of His Majesty’s Forces at *New York*, to furnish such Loyalists as prefer a settlement in *Saint John’s*, with Provisions and Transports to carry them to *Charlottetown*, and every other necessary, such as is given to those who go to *Nova Scotia*: and that your Lordship will also give such instructions to the Governor of *Saint John’s*, as will place such Emigrants, in every respect, on a similar footing with their brethren who settle in *Nova Scotia*. The undersigned are the more zealous in promoting this measure, as they are persuaded it will greatly advance the prosperity of an infant Colony, which, from its



' natural and relative situation, is peculiarly adapted to become a permanent and valuable  
' possession to *Great Britain*. And they confide in your Lordship's wisdom and equity,  
' that you will obtain for them such an abatement of *Quit Rent*, as will place them on an  
' equality with their neighbouring Colonies, and, by that means, remove a cause which  
' may prevent many faithful subjects to this Country from emigrating to that Island from  
' the *American States*, and which has hitherto obstructed the settlement and prosperity of  
' this Colony.'

(Signed)

|                                                                                                                                | Acres. |
|--------------------------------------------------------------------------------------------------------------------------------|--------|
| Edward Lewis, - -                                                                                                              | 20,000 |
| John Townson, - -                                                                                                              | 10,000 |
| John Stuart, - -                                                                                                               | 10,000 |
| Richard Burke, - -                                                                                                             | 15,000 |
| John Moteux, - -                                                                                                               | 20,000 |
| Robert Mackay, - -                                                                                                             | 20,000 |
| Alexander Anderson, -                                                                                                          | 20,000 |
| John Patterson, - -                                                                                                            | 20,000 |
| John Patterson, Attorney for Wal-<br>ter Patterson, - -                                                                        | 40,000 |
| John Patterson, Attorney for An-<br>drew Todd, - -                                                                             | 21,000 |
| John Patterson, for Isaac Todd,                                                                                                | 20,000 |
| John Townson, for Charles Pearce,                                                                                              | 10,000 |
| Daniel Berreau, for Isaac Panchard,                                                                                            | 20,000 |
| Lawrence Sullivan, - -                                                                                                         | 80,000 |
| Philip Stephens, - -                                                                                                           | 20,000 |
| Lord Townshend, for Acres and<br>gives Two Thousand to a Loy-<br>alist, who is to draw for it in<br>the mode prescribed above, | 20,000 |
| Lord Townshend, for General<br>Honeywood, - -                                                                                  | 10,000 |
| Lord Townshend, for the Lord<br>Chief Baron Montgomery,                                                                        | 60,000 |

*Folio 2, line 3*—After the word "accepted," insert the word "and."

*Folio 7, line 8*—After the word "Law," insert "also."

*Folio 16, line 14*—Strike out from the word "on" to the word "Island," in line 19, inclusive.

*Folio 17, line 1*—Strike out from the word "and" to the word "conditions," in the third line of the same folio.

*Same folio, lines 4 and 9*—Strike out the word "that."

*Same folio, line 20*—Strike out from the word "Claimants" to the word "Townships," in folio 18, line 2, and insert "Proprietors of Townships, who purchased them from the Grantees, the said Grantees and Purchasers having neglected to perform the conditions of their Grants from the Crown."

*Folio 18, line 6*—Strike out from the word "raising," to the word "instituted," inclusive, and insert the words "did institute."

*Same folio, line 11*—After the word "Chancery," insert the word "and."

*Same folio, line 16*—Strike out from the word "or," to the word "Lands," inclusive.

*Folio 19, line 2*—Strike out from the word "behoof," to the word "the," on the 5th line, inclusive.

*Same folio, line 6*—After the word “Loyalists,” insert “and disbanded Troops.”

*Same folio, line 8*—After the word “locations,” insert “and which Act subsequently received His Majesty's assent.”

*Same folio, line 10*—Strike out from the word “and,” to the word “thercof,” in the 3d line, folio 20, inclusive.

*Folio 20, line 3*—Strike out from the word “and,” to the word “claimants,” in line 10.

*Same folio, line 11*—Strike out “the want of means,” and insert “their poverty.”

*Same folio, line 13*—After the word “Law,” insert the words “and Equity, the said Loyalists and others.”

*Same folio, line 24*—Strike out from the word “and,” to the word “Government,” in the last line, inclusive.

*Folio 21, line 3*—After the word “all,” insert “such.”

*Same folio, line 10*—Strike out the words “Proprietary Claimants,” and insert “Proprietors.”

*Same folio, line 17*—After the word “Lands,” insert the words “in the proportion hereinafter mentioned.”

*Same folio, same line*—Strike out from the word “now,” to the word “hereafter,” and insert “at the time being may.”

*Same folio, line 23*—Strike out the word “competent,” and insert the word “lawful.”

*Folio 22, line 3*—Strike out from the word “get,” to the word “made,” inclusive, and insert the words “and he is hereby empowered to examine such Witnesses on oath, and to take such affidavits.”

*Same folio, line 16*—Strike out the words “every one,” and insert the word “each.”

*Same folio, line 19*—After the word “all,” insert the word “American.”

*Same folio, line 23*—After the word “lodge,” insert the word “the.”

*Folio 23, line 4*—Strike out the word “state,” and insert the word “statement.”

*Same folio, line 14*—Strike out the words “and attested.”

*Same folio, line 15*—Strike out the word “state,” and insert the word “statement.”

*Folio 25, line 3*—Strike out from the word “providing,” to the word “Crown,” in the last line, both inclusive.

*Folio 26, line 4*—Strike out from the word “that,” to the word “hereafter,” both inclusive, and insert “which at the time being may.”

*Same folio, line 7*—Strike out from the word “at,” to the word “purchase,” in the 11th line, inclusive, and insert “a Grant for such quantity of Land as he or his ancestors, or the vender under whom he claims, would have been entitled to, as such American Loyalist, disbanded Officer or Soldier, as aforesaid.”

“ Provided always, and be it further enacted, That if any American Loyalist, disbanded Officer or Soldier, as aforesaid, his Heirs or Assigns, shall succeed in substantiating to the satisfaction of the said Commissioner, and of the said two branches of the Legislature, his or their claim to any particular quantity or description of Land, by virtue of any location, or of any Minute of Council, ordering any such particular quantity or description of Land to be located to such American Loyalist, disbanded Officer or Soldier, which Land, at the time of the passing of this Act, shall continue to remain in the seisin or possession of any Proprietor or Proprietors, by whom or on whose behalf the aforesaid Memorial to the Right Honorable Lord North was subscribed and delivered, or in the seisin or possession of persons claiming by inheritance from or under the said Proprietor or Proprietors, it shall and may be lawful for the Lieutenant Governor, or other Administrator of the Government for the time being, by and with the advice of Her Majesty's Executive Council, to issue a Warrant of Survey to the Surveyor General, directing him to lay off and survey such quantity and description of Land, as the said American Loyalists, disbanded Officers or Soldiers, their

Heirs and Assigns, shall so succeed in establishing their claims to; and upon the due Execution of the said Warrant of Survey, and the return thereof into the Secretary's Office, a Grant shall be issued by the Administrator of the Government for the time being, under the Great Seal of this Island, of the Land so laid off and surveyed to the said American Loyalists, disbanded Officer or Soldier, his Heirs or Assigns; and in case the said Proprietor or Proprietors, their Heirs or Representatives, shall have sold or leased such Lands before the passing of this Act, then it shall and may be lawful for the Lieutenant Governor, or other Administrator of the Government for the time being, by and with the advice and consent of Her Majesty's Executive Council, to issue a Warrant of Survey to the Surveyor General, directing him to lay off and survey other portions of unoccupied Land remaining in the possession of the said Proprietor or Proprietors, his Heirs or Representatives, to the extent to which the said American Loyalists, disbanded Officers or Soldiers, their Heirs or Assigns, would become entitled by virtue of such claims as aforesaid; and upon the due execution of the said Warrant of Survey, and the return thereof into the Secretary's Office, a Grant shall be issued by the Administrator of the Government for the time being, under the Great Seal of this Island, of the Lands so laid off and surveyed to the said American Loyalist, disbanded Officer or Soldier, his Heirs or Assigns.

*Folio 27, line 9*—Strike out from the word " Provided," to the word " aforesaid," in line 13, inclusive.

#### SCHEDULE (A.)

*Lines 9 and 10*—Strike out the words " hereby certify," and insert the words " make oath and say."

*Line 10*—Strike out the word " state," and insert the word " statement."

*Line 13*—After the word " attest," insert the word " the."

*Line 18*—Leave out the words " an entire," and insert the word " the."

*Last line*—Strike out the word " in," and insert the words " to substantiate."

#### SCHEDULE (B.)

*Line 7*—After the word " shilling," insert " For every oath ."

**On motion, Ordered,** that the Report of the Committee be agreed to.

**Ordered,** That the Amendments be engrossed.

Pursuant to Order, the House was adjourned during pleasure, and put into a Committee on the Report of the Sub-Committee, to whom was referred the Bill, intituled " An Act for the Regulation of the Fishery Reserves in this Island." After some time, the House was resumed, and Mr. *Brecken* reported, that the Committee had made some progress therein, and that he was directed to move that they may have leave to sit again.

**Ordered,** That the Report of the Committee be received, and leave granted.

**Adjourned until Eleven o'clock to-morrow.**

**TUESDAY, 16th April, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Worrell*,

Mr. *Macdonald*,

Mr. *Macintosh*,

The Hon. Mr. *Livett*,

Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Read a third time, and passed, the Bill, intituled "An Act to revive and continue an Act therein mentioned, relating to the shutting up of old Roads."

*Ordered*, That a Message be sent down to the House of Assembly, acquainting them therewith.

Read a third time, and passed, the Bill, intituled "An Act for the relief of certain of the American Loyalists and Disbanded Provincial Troops, and their Representatives," with the Amendments.

*Ordered*, That the said Bill, with the amendments, be sent down to the House of Assembly for their concurrence.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Report of the Sub-Committee, to whom was referred the Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island." After some time, the House was resumed, and Mr. *Brecken* reported, that the Committee had made further progress therein, and that he was directed to move that they may have leave to sit again to-morrow.

*Ordered*, That the Report of the Committee be received, and leave granted.

Adjourned until Eleven o'clock to-morrow.

## WEDNESDAY, 17th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

The House was adjourned, during pleasure, and put into a Committee, on the Bill, intituled "An Act to amend a certain Act therein mentioned, relating to Pounds." After some time, the House was resumed, and Mr. *Macdonald* reported, that the Committee had made some progress therein, and that he was directed to move that they may have leave to sit again.

*Ordered*, That the Report of the Committee be received, and leave granted.

A Message from the House of Assembly, by Mr. Thomson, with a Bill, intituled "An Act for providing Buoys and Beacons for the Harbours therein mentioned, and for a Nautical Survey of the Harbours of Charlottetown and Three Rivers," to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

The House was adjourned during pleasure, and put into a Committee on the further consideration of the Report of the Sub-Committee, to whom was referred the Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island." After some time, the House was resumed, and Mr. *Brecken* reported, that the Committee had made further progress therein, and that he was directed to move that they may have leave to sit again to-morrow.

*Ordered*, That the Report of the Committee be received, and leave granted.

Adjourned until Eleven o'clock to-morrow.

## THURSDAY, 18th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

A Message from the House of Assembly, by Mr. D. Macdonald,  
Mr. President,

The House of Assembly desire a Conference with the Legislative Council, on the amendment made to the Bill, intituled "An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution," and have appointed Mr. D. Macdonald, Mr. Le Lacheur, Mr. Rae and Mr. Fraser a Committee to manage the said Conference.

On motion, Ordered, that a Conference be agreed to, as is desired by the House of Assembly.

Ordered, That Mr. *Attorney General* and Mr. *Livett* be a Committee to manage the said Conference, to meet in the Committee Room instanter.

Ordered, That a Message be sent down to the House of Assembly, acquainting them therewith.

Thereupon the Committee went to the Conference, and having returned, reported, that they had met the Committee of the House of Assembly, who stated to them that the House of Assembly had disagreed to the Amendment made by the Council, to the Bill, intituled "An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution," for the following reasons:

1st. That the Leasehold Interests are of unequal value, some being for a long term of years, and others for a shorter period; some leases are at a high rent, and probably of no value, while on other leasehold lands the Tenants improvements far exceeds the Landlord's fee simple interest, and it is necessary that the Legislature should at an early period take the subject into consideration, and bring in a Bill more generally applicable to the different classes of leaseholders.

2d. That the reason which induced the House of Assembly to pass the Bill in its present shape, was, that the late period of the Session rendered it in many respects inconvenient

to enter upon the full consideration of a subject upon which such a variety of opinions were known to be entertained, and therefore that to pass the **Bill** for a shorter period than that proposed by the **Legislative Council**, would, without subjecting **Leaseholders** to any practical inconvenience, afford to the **Members** of both **Houses** of the **Legislature** sufficient time to mature their opinions upon a subject so important to a large class of the community.

On motion, **Ordered**, that this **House** do adhere to their **Amendment**.

On motion, **Ordered**, that a further **Conference** be desired with the **House** of **Assembly** on the subject matter of the last **Conference**.

*Ordered*, That the same **Committee** who managed the last **Conference**, be a **Committee** to manage this further **Conference**, to meet in the **Committee Room** instanter; and that the **Committee** of this **House** be instructed to state to the **Committee** of the **House** of **Assembly**, that the **Council** do adhere to their **Amendment**, for the following reasons:

That the adoption by the **House** of **Assembly** of the **Amendment** made by the **Legislative Council** to the **Act** to revive and continue an **Act** for regulating the **Sale** of the **Interest** of **Leaseholders**, when taken in **Execution**, will not preclude the **Assembly**, at its next or any subsequent **Session**, from proposing to the **Council** any well-matured plan for further protecting the **Interest** of **Leaseholders**, when taken in **Execution**; and while no greater inconvenience can possibly arise in altering or amending the **Act** in question, should the same be deemed necessary, whether it be passed for ten years or for two years, it will effectually insure protection to this deserving class of settlers, under any circumstances, for a longer period of time than that limited in the **Act**, as sent up by the **House** of **Assembly**.

A **Message** from the **House** of **Assembly**, by **Mr. D. Macdonald**.

**Mr. President**,

The **House** of **Assembly** do agree to a further **Conference**, as is desired by the **Legislative Council**, on the subject matter of the last **Conference**; and have appointed the same **Committee** who managed the last **Conference**, a **Committee** to manage this further **Conference**.

Thereupon the **Committee** went to the **Conference**, and having returned, reported, that they had complied with the instructions given them by this **House**.

The **House** was adjourned during pleasure, and put into a **Committee** on the further consideration of the **Report** of the **Sub-Committee**, to whom was referred the **Bill**, intituled "**An Act** for the regulation of the **Fishery Reserves** in this **Island**." After some time, the **House** was resumed, and **Mr. Brecken** reported, that the **Committee** had gone through the **Report** of the **Sub-Committee**, and that they had agreed to the same, with the following amendments:

*Folio 1, line 6*—Strike out from the word "**issued**," to the word "**made**," in the 16th line of folio 19, both inclusive, and insert—' bearing date on the Eighth day of *July*, in the year of our Lord One thousand seven hundred and sixty-seven, was graciously pleased to direct, that in order to promote and encourage the **Fisheries**, for which many parts of this **Island** are conveniently situated, there be a clause in the **Grant** of each **Township** that abuts upon the sea shore, containing a **Reservation** of liberty to all **His Majesty's** subjects in general, carrying on a free **Fishery** on the coasts of the said **Township**, and of erecting **Stages** and other necessary **Buildings** for the said **Fishery**, within the distance of five hundred feet from highwater mark:

And whereas the Grants of Townships Numbers Two (2), Ten (10), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-three (23), Forty-three (43), Forty-five (45), Forty-seven (47), Fifty-three (53) and Fifty-nine (59), contain the following reservation:—‘ And further saving and reserving a free liberty to all His Majesty’s subjects of carrying on a free fishery or fisheries on any part or parts of the coasts of the said Township, and of erecting stages, and other necessary buildings for the said fishery or fisheries, within the distance of Five hundred feet from highwater mark:’ And whereas the Grants of Townships Numbers One (1), Three (3), Four (4), Five (5), Seven (7), Nine (9), Thirteen (13), Fourteen (14), Eighteen (18), Twenty-two (22), Twenty-four (24), Thirty (30), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41), Forty-two (42), Fifty (50), Fifty-one (51), Fifty-four (54), Fifty-five (55), Fifty-six (56), Sixty-one (61), Sixty-two (62), Sixty-three (63) and Sixty-four (64) contain the following reservation:—‘ And further saving and reserving, for the disposal of His Majesty, his Heirs and Successors, Five hundred feet from high water mark, on the coast of the Tract of Land hereby granted, to erect stages, and other necessary buildings for carrying on the Fishery:’—And whereas the Right Honorable Lord Glenelg, Her Majesty’s Principal Secretary of State for the Colonies, by two several Despatches, bearing date respectively the Tenth day of May, and the Fourteenth day of September, One thousand eight hundred and thirty-eight, conveyed authority to the Lieutenant Governor of this Island for throwing open to all British subjects engaged in the said Fisheries, the said last mentioned reservations, and to place the same under the same conditions and restrictions as those which have been reserved for the use of all British subjects engaged in the Fisheries, to be regulated by such Laws as might be found necessary for preventing improvident and injurious practices in carrying them on: And whereas but a small proportion of the said Reservations has hitherto been required for the purpose of carrying on a Fishery, and many of them have been sold and leased with the adjoining Lands, by the original Grantees of such Townships, or their Heirs or Assigns, and have been cleared and cultivated, and dwelling houses and other valuable buildings have been erected thereon; and it is but just and equitable that the said Lessees and Purchasers, and their Heirs and Assigns, should be quieted in their respective possessions of the said Reservations, and that the future uses and occupations of the said Reservations should be regulated by Law:—Be it therefore enacted, by the Lieutenant Governor, Council and Assembly, That the clause in the Grants from the Crown, of the following Townships, to wit, Numbers One (1), Three (3), Four (4), Five (5), Seven (7), Nine (9), Thirteen (13), Fourteen (14), Eighteen (18), Twenty-two (22), Twenty-four (24), Thirty (30), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38), Thirty-nine (39), Forty (40), Forty one (41), Forty-two (42), Fifty (50), Fifty-one (51), Fifty-four (54), Fifty-five (55), Fifty-six (56), Sixty-one (61), Sixty-two (62), Sixty-three (63) and Sixty-four (64), reserving Five hundred feet on the coasts thereof respectively, for the disposal of His Majesty, his Heirs and Successors, for a Fishery, shall be construed to have the same meaning and effect, so far as extending the right to all British subjects to the use of the said Reservations, for the purpose of carrying on a Fishery thereon, with the reservations contained in the Grants from the Crown of the following Townships, to wit, Numbers Two (2), Ten (10), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-three (23), Forty-three (43), Forty-five (45), Forty-seven (47), Fifty-three (53) and Fifty-nine (59)—any thing in the said Grants of the said first enumerated Townships to the contrary thereof in any wise notwithstanding.

And whereas no Grants from the Crown of the following Townships appear on record in this Island, to wit, Numbers Eight (8), Twelve (12), Twenty (20), Twenty-five (25), Forty-four (44) and Forty-six (46): Be it therefore enacted, That if, at any period after the passing of this Act, any of the said Grants shall be placed on record, and it shall appear that a reservation on the coast thereof, in the form of either of the Reservations set forth in the preamble of this Act, is contained in the same, then the said Reservation in the said Grant, so recorded, shall be subject to all the enactments and provisions contained in this Act, relating to the Reservations in the Grants from the Crown, of the several Townships herein-before enumerated.



And be it further enacted, That in all cases where any person or persons, who at the time of the passing of this Act shall be in the *bona fide* possession or occupation of any of the said Fishery Reserves, either by virtue of any Deed, Grant, Lease, or Agreement for Lease, or other Conveyance, from any original Grantee, his Heirs or Assigns, every such person or persons, their Heirs, Executors, Administrators or Assigns, shall be, and they are hereby confirmed in their several possessions and occupations as aforesaid, subject nevertheless to the right reserved for a free Fishery for all Her Majesty's subjects, as hereinafter provided, under the following limitation and restriction (that is to say)—that no portion of the said Reserve which shall be occupied by any Building of any description, Farm-yard, Garden, Orchard, Mill-dam or Shipyard, or on the front side, or end nearest the coast of any Building, Farm-yard, Garden, Orchard, Mill-dam or Shipyard, or within the space of Sixty feet of any other side or end of any Building, Farm-Yard, Garden, Orchard, Mill-dam or Shipyard, as aforesaid, shall be liable to be occupied for the purpose of carrying on the said Fishery during the continuance of the term for which such person or persons shall be in such *bona fide* possession or occupation, as aforesaid.

And be it further enacted, That to prevent persons holding such Reserves, or any part or parts thereof, under any demise or lease, or agreement for a demise or lease, (whether the same be written or parol), from any Proprietor or Proprietors of any Lands adjoining thereto, from being harassed by suits at Law, for the recovery of any Rent already accrued due, or that might hereafter accrue due, thereon, in respect of such part or parts of the said Reserves, under any such demise or lease, or agreement for a demise or lease, as aforesaid, no Proprietor or Proprietors shall be entitled to bring any action, or recover in any Court of Law in this Island, against any Tenant or Tenants, Lessee or Lessees, in the occupation of any part or parts of the said Reserves, under any such demise or lease, or agreement for a demise or lease, as aforesaid, for any rent due, or hereafter to accrue due, in respect of such Reserves: And if on the trial of any action for Rent, the Defendant or Defendants shall prove that all the Rent for which such action shall upon such trial appear to have been brought has been paid or satisfied, except such portion thereof as may have accrued due in respect of land on the said Reserve, then such Defendant or Defendants may give this Act in evidence, under the general issue, and the same shall in such case be held a sufficient answer in any Court of this Island, to entitle such Defendant or Defendants to a Verdict in his or their favor; and the said Court shall tax to the said Defendant or Defendants such costs as are usually taxed, when a Verdict is given for the Defendant in said Court: Provided always, that nothing herein contained shall extend, or be construed to extend, to any suit or suits, action or actions, now instituted or pending, or which shall be brought or commenced before the passing of this Act, in any Court of this Island.

And be it further enacted, That no such Tenant or Tenants, Lessee or Lessees, shall be entitled to bring any action or suit, either at Law or Equity, in against any Proprietor or Landlord who shall have demised or leased, or agreed to demise or lease, any of the said Reserves, or any parts or portions thereof, for any damages whatsoever, by reason of the said Tenant or Tenants, Lessee or Lessees, being evicted from, or disturbed in his or their possession of such Reserves, or any part thereof, by virtue of this Act: and in any action or suit so brought or commenced in any Court of Law or Equity, for the purposes aforesaid, the Proprietor or Landlord may give this Act in evidence, as a full answer thereto; and if such suit or action shall be brought at Law, the Defendant or Defendants shall be entitled to a Verdict in his or their favor, with costs, to be taxed as usual in such cases; and if in Equity, the Complainant's Bill shall be dismissed with costs to the said Defendant or Defendants, as is usual in such cases.

And whereas great mischief and inconvenience may result from permitting persons wrongfully in possession of parts of the said Reserves to hold the same against the Proprietor, Lessor or Owner of the Lands adjacent to, and in the rear thereof, notwithstanding such persons may be liable to be ejected or removed from such Lands in rear thereof:—For the preventing of which, be it therefore enacted, That whenever any Proprietor, Lessor or Owner of Lands immediately in rear and adjacent to the said Fishery Reserves, shall, would or may be able to maintain an action against the Tenant or Tenants, Occupier or Occupiers of such Lands, for recovering the possession thereof, such Proprietor, Lessor or Owner shall also

have a right to enter into or maintain an action against such or any Tenant or Tenants, Occupier or Occupiers, having or being in possession of any part or parts of the said Reserves, adjacent to and in front of such Lands, unless such Tenant or Tenants, Occupier or Occupiers, shall shew a good and legal right and title thereto, or to the possession thereof:—And in like manner, be it further enacted, That whenever any Rent shall be due and in arrear, for and in respect of any Lands adjacent to, and in the rear of the said Reserves, and the Lessor or Landlord thereof shall be entitled to distrain therefor on such Lands, it shall and may be lawful for such Lessor or Landlord to enter upon any part or parts of the said Reserve, and distrain thereon, for the purpose of satisfying such arrears of Rent, although by virtue of this Act, such Rent may be only due and in arrear in respect of or chargeable on the Land adjacent to, and in rear of the part of the said Reserves upon which such entry may be so made, or distress taken: Provided, that the person or persons in possession of the part of the said Reserves, into which such Lessor or Landlord shall go, enter or distrain, be Tenant or Tenants, Occupier or Occupiers of the Land adjacent to and in rear thereof, and in respect of which such Rent shall have accrued due: And further provided always, that nothing in this clause contained shall extend, or be construed to extend, to give any right of action or suit against or in any way to enable or empower any Proprietor, Lessor or Owner, to disturb, injure or molest any person or persons in the possession of, or occupying any part of, the said Reserves for fishing purposes, according to and under the provisions of this Act, or to extend, or be construed to extend, to affect, change, alter, take away, or in anywise interfere with the right of Her Majesty, her Heirs or Successors, to the whole, or any part, of the said Reserves; but that as between her said Majesty, her Heirs and Successors, and such Proprietors, Lessors or Owners, the right to the said Reserves shall stand and be in the same plight and condition as if this clause had not been enacted.

And be it further enacted, That where any land that may be bounded by the sea coast of this Island has been granted or sold by the Crown, or on behalf of the Crown, or by the authority of the Act of the General Assembly intituled *An Act to authorize the sale of Lands in this Island, reserved as sites for Churches, and for Glebe and School Lands*, in pieces or parcels not exceeding Three hundred acres in one piece or parcel, without any allowance or deduction having been made for the said Reservation in the said Grants or Deeds, then, and in such case, such Grantee or Feoffee shall not be liable or subject to the said Reservation, but shall retain the same, and keep possession thereof, peaceably and quietly, the same as if this Act had not been made.

And whereas it is not reasonable or just that the Freeholders and Tenantry of this Island should be harassed with frequent and expensive litigation, if it can be prevented; but it is nevertheless probable, that in consequence of the numerous disputes and controversies likely to occur, as to the extent of the said Fishery Reserves, they will be exposed to the same, unless the extent of the said reserves be in some way defined and ascertained—For remedying of which, and for the preventing of harassing and ruinous litigation, be it therefore further enacted, That as soon as conveniently may be, after the passing of this Act, it shall and may be lawful for the Lieutenant Governor, or Commander in Chief, by and with the advice of Her Majesty's Executive Council, to appoint three fit and proper persons (of whom the Surveyor General of this Island for the time being shall be one), to be Commissioners for ascertaining and settling the extent of the said Fishery Reserves, in the manner hereinafter directed; which said Commissioners (being first duly sworn, before some Judge of the Supreme Court of this Island, well and faithfully to discharge the duties of their office, according to the best of their skill and judgment) shall within Twelve Months after their appointment, examine the Headlands or Entrances of the several harbours or inlets on the coasts of this Island, and define and settle the same, by declaring what respective headlands or points shall be considered and held to form the mouth or entrance of such harbours or inlets respectively: And the said Commissioners shall thereupon make a Report and Plan of their proceedings, under their hands, clearly pointing out and specifying the respective headlands or points so defined and settled by them as aforesaid, and shall file the same in the office of the Surveyor General of this Island—which Plan or Report, so filed as aforesaid, shall be received and taken as conclusive evidence of the proceedings of said Commissioners, in all the Courts of this Island; and that none of the said Fishery Reserves shall be held or construed to extend or come within the Mouth or Entrance of any harbour or inlet on the coast of this Island, beyond such respective

headlands or points so defined and settled as aforesaid: and in case of the death, absence or removal of any of the said Commissioners, before the whole duty of their office shall have been completed, it shall and may be lawful for the Lieutenant Governor, by and with the advice of Her Majesty's Executive Council, to appoint another or others in the place of such Commissioner or Commissioners so dying or being absent, or removing. Provided always, that the power of the said Commissioners shall not extend to declare any of the Marshes or Sandhills, or any part thereof, on the coasts of this Island, to be within the said Fishery Reserves; but the same are hereby declared not to extend to the said Marshes or Sandhills, or any part thereof—anything in the Reservations contained in the said Grants from the Crown of the respective Townships or Islands belonging thereto, to the contrary thereof, in any wise notwithstanding.

And be it further enacted, That as soon as may be, after the said Commissioners shall have made a Report and Plan of their proceedings as aforesaid, it shall and may be lawful for the Lieutenant Governor, by and with the advice of Her Majesty's Executive Council, to appoint Two or more persons, as Conservators of Fishery Reserves, in each of the Counties of this Island, who shall have full power and authority to enter into, examine, lay off and admeasure any parts of the said Reserves, in their respective Counties, in such form and manner as are hereinafter directed by this Act.

And be it further enacted, That when and as often as any person or persons shall be desirous of obtaining any part or parts of any of the said Fishery Reserves, for the purpose of carrying on a free Fishery, he shall apply to one or more of the Conservators appointed for the County in which such Reserve is situated (which application shall be made in writing, on or before the First day of *April*, in each and every year), and shall also make and subscribe the affidavit to this Act annexed, marked (A.), before the said Conservator, who is hereby empowered and required to administer the Oath and attest the same; whereupon the said Conservator is authorized and directed to proceed, without unnecessary delay, to examine the particular part of the said Fishery Reserve which the said applicant is desirous of obtaining; and if the said Conservator shall be of opinion that the said situation, so applied for, be eligible for the purpose for which it is required, he shall thereupon lay off a proportion of the said Fishery Reserve, to the extent to which the said applicant may be entitled, as is herein-after provided; and shall grant a Certificate, under his hand, stating the name of the person, if any, in the possession thereof, and describing the Boundaries, and the area thereof, and whether the same is in a cultivated or wilderness state—which Certificate shall be furnished to the person or persons applying for the said Fishery Reserve, who is thereupon required to serve a copy of the same at the Dwelling House of the person in possession of the same, if any; and within ten days next after such service, it shall and may be lawful for the said person or persons, to whom the said Certificate of the said Conservator is granted, to enter into possession, and occupy the said Fishery Reserve described in the said Certificate, so long as it shall be required for the *bona fide* purpose of carrying on a free Fishery as aforesaid: and in case the said Fishery Reserve shall be in a wilderness and unoccupied state, then it shall and may be lawful for the person or persons to whom the same has been allotted by the said Conservator, to enter into, take possession of, and occupy the same immediately upon the Certificate from the said Conservator being granted: Provided always, that if within four months next after granting such Certificate, no possession or occupation shall have taken place by such person or persons obtaining the same, then the said Certificate shall be void, and of no effect: Provided also, that in all cases where any person or persons shall consider himself or themselves aggrieved, by reason of any Station being selected and certified by any such Conservator, and which he or they shall consider ineligible or too extensive for the purposes required, then, and in such case, every such person shall have the right to appeal to the Supreme Court of Judicature, at any time within ten days after service of such Certificate, by giving to the said party applicant notice, in writing, of such his or their intention—which notice shall be in the form of the Schedule to this Act annexed, marked (B.); and upon hearing evidence thereupon, the said Court is hereby authorized and empowered, in a summary way, either to confirm the said Certificate, or vary or lessen the same, as to the said Court shall appear most conducive to the ends of justice, and in its discretion to give to either party such costs as the Court may award.

And be it enacted, That no person or persons shall be deemed to be carrying on a Fishery, under the meaning of this Act, unless such person or persons shall keep at least one good and sufficient Boat, of not

less than eighteen feet keel, properly equipped, and manned with at least four able-bodied men, and shall keep the same exclusively employed, for and during the space of Ninety days, between the First day of *May*, and the First day of *October*, in carrying on the Fishery; and that no person or persons shall occupy more than twenty feet of the front of the said reserved Lands for every male person.

Provided also, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to prevent any of Her Majesty's subjects, engaged in fishing Mackerel, Herrings or Alewives, from drying his or their nets, or from curing the fish so taken, on any part of the said reserved Land, not being previously occupied for the purpose of carrying on the Fishery.

And be it further enacted, That nothing in this Act contained shall be construed to prohibit or prevent any person or persons, who shall carry on a Fishery under the provisions of this Act, and who shall erect any Building or Buildings for that purpose on said Reserves, from removing such Building or Buildings, or from disposing, by himself or themselves, or his or their Heirs, Executors, Administrators or Assigns, of the said Building or Buildings, to any other person or persons who may continue to carry on said Fishery, as contemplated by this Act: Provided always, that if any such person or persons shall cease to carry on such a Fishery, between the First day of *May*, and the First day of *November*, in any year, or shall neglect to dispose of or remove such Building or Buildings, during the period aforesaid, then he or they shall forfeit the title of possession to such Premises, and the Buildings erected thereon, and the same may be occupied by any other person or persons, who shall, in the manner hereinbefore directed, have obtained the same for the purposes of the Fishery.

*Folio 20, line 8*—After the word “ thereof,” insert “ or of the Islands adjacent thereto.”

*Folio 21, line 1*—Strike out from the word “ Provided,” to the word “ Stores,” in the last line of folio 22, both inclusive, and insert—

And be it further enacted, That if any person or persons shall knowingly or wilfully make a false affidavit or oath, in any case wherein affidavits or oaths are required to be made or taken, under and by virtue of this Act, such person or persons, on due conviction thereof, shall be subject to the pains and penalties imposed by law upon persons guilty of wilful and corrupt perjury.

SCHEDULE (A.)

I *A. B.* of \_\_\_\_\_ in the County of \_\_\_\_\_ do make oath and say, that I am a British subject, and am desirous of embarking in the Fishing Trade of this Island, and intend to prosecute the same to such extent as I conceive will entitle me, under the provisions of the Act intituled *An Act for the regulation of the Fishery Reserves in this Island*, to a certain piece of Fishery Reserve Land, situate at \_\_\_\_\_ on Township Number \_\_\_\_\_ or \_\_\_\_\_ Island, in the County of \_\_\_\_\_ and fronting on \_\_\_\_\_ and that I wish to obtain possession of the said piece of Land, for the *bona fide* purpose of carrying on the business of the Fishery, and such uses as are immediately connected therewith, and for no other use or purpose whatsoever.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ }  
 day of \_\_\_\_\_ before me, }  
*A. B. Conservator.*

SCHEDULE (B.)

Take notice, that I do appeal against the order made by the Conservator of Fishery Reserves, made in your favour, for a portion of the land in my occupation, situate on Township Number \_\_\_\_\_ in the County of \_\_\_\_\_ for that [*here insert the reasons of appeal*], and that it is my intention to move the Supreme Court, at its next sitting in the said County, to hear and determine the said appeal according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 183

To Mr. C. D.

On motion, Ordered, That the Report of the Committee be agreed to.

*Ordered*, That the Amendments be engrossed.

Read a second time, the Bill, intituled "An Act for providing Buoys and Beacons for the Harbours therein mentioned, and for a Nautical Survey of the Harbours of Charlotte-town and Three Rivers."

The House was adjourned, during pleasure, and put into a Committee on the said Bill. After some time, the House was resumed, and Mr. *Green* reported, that the Committee had made some progress therein, and that he was directed to move that they may have leave to sit again.

*Ordered*, That the Report of the Committee be received, and leave granted.

Adjourned until Eleven o'clock to-morrow.

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## FRIDAY, 19th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

A Message from the House of Assembly, by Mr. *D. Macdonald*, with the Bill, intituled "An Act to revive and continue an Act for regulating the Sale of the Interest of Leaseholders, when taken in Execution"—agreed to, as amended by the Legislative Council.

Read a third time, and passed, the Bill, intituled "An Act for the regulation of the Fishery Reserves in this Island," with the amendments.

*Ordered*, That the said Bill, with the Amendments, be sent down to the House of Assembly for their concurrence.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act to amend a certain Act therein mentioned,

relating to Pounds." After some time, the House was resumed, and Mr. *Macdonald* reported, that the Committee had gone through the Bill, and that they had agreed to the same, without any amendment.

On motion, Ordered, That the Report of the Committee be agreed to.

On motion, the said Bill was read a third time, and passed.

*Ordered*, That a Message be sent down to the House of Assembly, acquainting them therewith.

Adjourned until Eleven o'clock to-morrow.

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## SATURDAY, 20th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The HON. *Mr. Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The HON. *Mr. Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

On motion, the House was adjourned during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act for providing Buoys and Beacons for the Harbours therein mentioned, and for a Nautical Survey of the Harbours of Charlottetown and Three Rivers." After some time, the House was resumed, and Mr. *Green* reported, that the Committee had gone through the Bill, and they recommend that a Conference be desired with the House of Assembly on the subject matter thereof.

On motion, Ordered, that the Report of the Committee be agreed to.

*Ordered*, That Mr. *Attorney General* and Mr. *Green* be a Committee to manage the said Conference, to meet in the Committee Room instanter.

A Message from the House of Assembly, by the Hon. Mr. *Pope*, with the Bill, intituled "An Act to prevent the Issue, Re-Issue, or circulation of Private Bank Notes in this Island," to which they desire the concurrence of the Legislative Council.

Read the said Bill a first time.

The House was adjourned for one hour.

And being met—

A Message from the House of Assembly, by Mr. Rae.

Mr. President,

The House of Assembly do agree to a present Conference, as is desired by the Legislative Council, on the Bill, intituled “An Act for providing Buoys and Beacons for the Harbours therein mentioned, and for a Nautical Survey of the Harbours of Charlottetown and Three Rivers,” and have appointed Mr. Rae, Mr. Clark, Mr. Thomson, and the Hon. Mr. Pope a Committee to manage the said Conference.

Thereupon the Committee went to the Conference, and having returned, reported, that they had complied with the instructions given them by this House.

On motion, Ordered, that the second reading of the Bill, intituled “An Act to regulate the forfeiture of Lands, and the Settlement of the Inhabitants of this Island,” do stand as the Order of the Day for Monday next.

Adjourned until Eleven o'clock on Monday next.

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**MONDAY, 22d April, 1839.**

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. *Mr. Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. *Mr. Livett*,

*Mr. Dalrymple*,

*Mr. Green*,

*Mr. Macnutt*,

*Mr. Macgowan*.

PRAYERS.

**R**EAD the proceedings of Saturday.

Read a third time, and passed, the Bill, intituled “An Act relating to Treasury Warrants.”

Ordered, That the said Bill be sent down to the House of Assembly.

The Order of the Day, for the second reading of the Bill, intituled “An Act to regulate the Forfeiture of Lands and the Settlement of the Inhabitants of this Island,” having been read, Ordered, that the same be discharged, and that the said Bill be read a second time this day three months.

A Message from the House of Assembly, by the Hon. Mr. Pope, with the Bill, intituled "An Act for the relief of certain of the American Loyalists, and Disbanded Provincial Troops, and their Representatives," agreed to, as amended by the Legislative Council.

Also, with the following written Message:

Mr. President,

The House of Assembly desire a further Conference with the Legislative Council, on the subject matter of the last Conference, and have appointed the same Committee who managed the last Conference, a Committee to manage this further Conference.

On motion, Ordered, that a further Conference be agreed to, as is desired by the House of Assembly.

*Ordered*, That the same Committee who managed the last Conference, be a Committee to manage this further Conference, to meet in the Committee Room instanter.

*Ordered*, That a Message be sent down to the House of Assembly, acquainting them therewith.

Thereupon the Committee went to the Conference, and having returned, reported the substance thereof to the House.

On motion, Ordered, that the Bill, intituled "An Act to prevent the Issue, Re-Issue, or Circulation of Private Bank Notes in this Island," be read a second time this day three months.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act for providing Buoys and Beacons for the Harbours therein mentioned, and for a Nautical Survey of the Harbours of Charlottetown and Three Rivers." After some time, the House was resumed, and Mr. Green reported, that the Committee had gone through the Bill, and that they had agreed to the same.

On motion, Ordered, that the Report of the Committee be agreed to.

On motion, the said Bill was read a third time, and passed.

*Ordered*, That the said Bill be sent down to the House of Assembly.

The House was adjourned, during pleasure, and put into a Committee on the Bill, intituled "An Act for appropriating certain Monies therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine." After some time, the House was resumed, and Mr. Macintosh reported, that the Committee had gone through the Bill, and they recommend that a Conference be desired with the House of Assembly on the subject matter thereof.

On motion, Ordered, that the Report of the Committee be agreed to.

*Ordered*, That Mr. Livett, Mr. Green and Mr. Macnutt be a Committee to manage the said Conference, to meet in the Committee Room to-morrow at Twelve o'clock.

Adjourned until Eleven o'clock to-morrow.



## TUESDAY, 23d April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,  
 Mr. *Brecken*,  
 Mr. *Goodman*,  
 Mr. *Worrell*,  
 Mr. *Macdonald*,  
 Mr. *Macintosh*,

The Hon. Mr. *Livett*,  
 Mr. *Dalrymple*,  
 Mr. *Green*,  
 Mr. *Macnutt*,  
 Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

A Message from the House of Assembly, by Mr. Clark.

Mr. President,

The House of Assembly do agree to a Conference, as is desired by the Legislative Council, on the Bill, intituled "An Act for appropriating certain Moneys therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine," and have appointed Mr. Clark, Mr. Le Lacheur, Hon. Mr. Pope, Mr. Palmer, Mr. Arbuckle and Mr. Rae a Committee to manage the said Conference.

Thereupon the Committee went to the Conference, and having returned, reported that they had complied with the instructions given them by this House.

Adjourned until Eleven o'clock to-morrow.

## WEDNESDAY, 24th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

Mr. *Brecken*,

Mr. *Goodman*,

Mr. *Worrell*,

Mr. *Macdonald*,

Mr. *Macintosh*,

The Hon. Mr. *Livett*,

Mr. *Dalrymple*,

Mr. *Green*,

Mr. *Macnutt*,

Mr. *Macgowan*.

PRAYERS.

**R**EAD the proceedings of yesterday.

*Ordered*, That the Bill for the regulation of the Fishery Reserves in this Island, as amended by this House, and sent down to the Assembly, be published in the *Royal Gazette* and *Colonial Herald*, Newspapers; and that Two hundred copies of the same be forthwith printed for circulation by the Printer to this House.

A Message from the House of Assembly, by Mr. Clark.

Mr. President,

The House of Assembly desire a further Conference with the Legislative Council, on the subject matter of the last Conference, and have appointed the same Committee who managed the last Conference, a Committee to manage this further Conference.

On motion, *Ordered*, that a further Conference be agreed to, as is desired by the House of Assembly.

*Ordered*, That the same Committee who managed the last Conference, be a Committee to manage this further Conference, to meet in the Committee Room instanter.

*Ordered*, That a Message be sent down to the House of Assembly, acquainting them therewith.

Thereupon the Committee went to the Conference, and having returned, reported the substance thereof.

On motion, that this House do adhere to the instructions given to the Committee of Conference, on the Bill, intituled "An Act for appropriating certain Moneys therein mentioned, for the service of the Year of Our Lord One thousand eight hundred and thirty-nine."

It was moved, as an amendment, that a further Conference be desired with the House of Assembly on the subject matter of the said Bill.

The House divided:

CONTENTS.

*The President,*  
*Mr. Attorney General,*  
*Mr. Brecken,*  
*Mr. Goodman,*  
*Mr. Worrell,*  
*Mr Macintosh,*  
*Mr. Livett,*  
*Mr. Dalrymple,*  
*Mr. Macnutt,*  
*Mr. Macgowan.*

NON-CONTENTS.

*Mr. Macdonald,*  
*Mr. Green.*

And it passed in the affirmative.

*Ordered,* That the same Committee who managed the last Conference, be a Committee to manage this further Conference, to meet in the Committee Room instanter.

A Message from the House of Assembly, by Mr. Clark.

Mr. President,

The House of Assembly do agree to a further Conference, as is desired by the Legislative Council, on the subject matter of the last Conference, and have appointed the same Committee who managed the last Conference, a Committee to manage this further Conference.

Thereupon the Committee went to the Conference, and having returned, reported that they had complied with the instructions given them by this House.

The House was adjourned for one hour.

And being met—

A Message from the House of Assembly, by Mr. Clark.

The House of Assembly desire a further Conference with the Legislative Council, on the subject matter of the last Conference, and have appointed the same Committee who managed the last Conference, a Committee to manage this further Conference.

On motion, *Ordered,* that a further Conference be agreed to, as is desired by the House of Assembly.

*Ordered,* That the same Committee who managed the last Conference, be a Committee to manage this further Conference.

*Ordered,* That a Message be sent down to the House of Assembly, acquainting them therewith.

Thereupon the Committee went to the Conference, and having returned, reported the substance thereof.

The House was adjourned, during pleasure, and put into a Committee on the further consideration of the Bill, intituled "An Act for appropriating certain Moneys therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine." After some time, the House was resumed, and Mr. *Goodman* reported, that the Committee had gone through the Bill, and that they had agreed to the same.

On motion, that the said Bill be read a third time, the House divided:

## CONTENTS.

*The President,*  
*Mr. Attorney General,*  
*Mr. Brecken,*  
*Mr. Goodman,*  
*Mr. Worrell,*  
*Mr. Livett,*  
*Mr. Dalrymple,*  
*Mr. Macnutt,*  
*Mr. Macgowan.*

## NON-CONTENTS.

*Mr. Macdonald,*  
*Mr. Green.*

And it passed in the affirmative.

*Ordered,* That the said Bill do pass.

*Ordered,* That a Message be sent down to the House of Assembly acquainting them therewith.

A Message from the House of Assembly, by Mr. Palmer.

In the House of Assembly,

Wednesday, April 24th, 1839.

*Resolved,* That an humble Address be presented to His Excellency the Lieutenant Governor, acquainting His Excellency that a portion of the Public Records, and also the Journals of the House of Lords and Commons, stated to have been sent from England, for the use of the Legislature, have not yet arrived; and that the Legislative Council be desired to join them.

*Resolved,* That a Committee be appointed to prepare the said Address; and also to form Rules for the Legislative Library, jointly with the Committee of the Legislative Council.

*Ordered,* That Mr. Palmer, Hon. Mr. Pope, Mr. Arbuckle, and Hon. J. S. Macdonald, do compose the said Committee.

*Ordered,* That the said Resolution be communicated by Message to the Legislative Council.

*Resolved,* That a Committee be appointed to join the Committee of the House of Assembly, to prepare an humble Address to His Excellency the Lieutenant Governor, upon the subject of that portion of the Public Records, and the Journals of the House of

Commons, which were omitted to be forwarded from England, for the use of the Legislature; and also to join the Committee of the House of Assembly, to frame Rules for the Legislative Library.

*Ordered*, That Mr. *Attorney General* and Mr. *Dalrymple* be a Committee for that purpose.

*Ordered*, That the said Resolution be communicated by Message to the House of Assembly.

Adjourned until Eleven o'clock to-morrow.

THURSDAY, 25th April, 1839.

The Council met, pursuant to adjournment.

PRESENT:

The Honorable Mr. *Haviland*, President;

The Hon. Mr. *Attorney General*,

*Mr. Brecken*,

*Mr. Goodman*,

*Mr. Worrell*,

*Mr. Macdonald*,

*Mr. Macintosh*,

The Hon. Mr. *Livett*,

*Mr. Dalrymple*.

PRAYERS.

**R**EAD the proceedings of yesterday.

Mr. *Attorney General*, from the joint Committee of the Council and Assembly, appointed to prepare an Address to His Excellency the Lieutenant Governor, relative to the Public Records, and the Journals of the House of Lords and Commons, presented to the House an Address, as prepared by the said Committee, which he read in his place, and is as follows, viz:

To His Excellency Sir CHARLES AUGUSTUS FITZ ROY, K. H., Lieutenant Governor and Commander in Chief in and over Her Majesty's Island Prince Edward, and the Territories thereunto belonging, Chancellor, Vice Admiral, and Ordinary of the same, &c. &c. &c.

The Joint Address of the Legislative Council and House of Assembly.

*May it please your Excellency;*

The Legislative Council and Assembly beg leave respectfully to request, that your Excellency will be pleased to convey their grateful thanks to Her Majesty's Government, for their liberality in having directed the several departments to transmit to this Island, for the use of the two Branches of the Legislature, copies of the Journals of the Houses of Lords and Commons, and of the Records published by the Record Commission—these valuable documents have arrived, with the exceptions mentioned in the list hereunto annexed.

The Council and Assembly further humbly request, that in conveying their thanks to Her Majesty's Government, your Excellency will be pleased to use your influence to obtain those portions which are yet required to complete them.

The Council and Assembly avail themselves of this opportunity of expressing their undiminished confidence in your Excellency's exertions, to meet the views and wishes of the Legislature, and to subserve the true interests of the people.

On motion, Ordered, that the said Address be agreed to.

On motion, the following Resolution was unanimously agreed to:

Whereas it appears from the Journals of the House of Assembly, that a Resolution has been passed by that body, gravely reflecting upon the discretion exercised by this House in refusing their assent to the Bill, intituled "An Act to regulate the Forfeiture of Lands, and the Settlement of the Inhabitants of this Island," Therefore, Resolved, that as, in the opinion of this House, the Bill in question contains principles subversive alike of all law, justice and equity, the Legislative Council require no further justification of the wholesome control which they have thought fit to exercise in rejecting the measure, than the transmission of the Bill so rejected, to Her Majesty's Government.

The House took into consideration the Incidental Expenses of the present Session, and allowed the same as follows:

The Rev. L. C. Jenkins, Chaplain to this House,	-	£15	0	0
John C. Wright, Esq. Usher of the Black Rod, and Serjeant at Arms, . 41 days, at 10s. per diem,	-	20	10	0
Clerk of Council, being the amount of his account, including Stationary,	- - - - -	72	8	9½
John Rider, Messenger to this House, 41 days, at 7s. 6d. per day, including sundry disbursements,	- - -	26	15	0
Moses Hayes, Doorkeeper, 43 days, at 6s. 6d. per diem,		13	19	6

On motion, Ordered, that the Printer to this House be directed to bind Seventy copies of the Journals of this House, of the last and present Sessions.

On motion, Ordered, that the Deputy Clerk of the Council be directed to prepare an Index to the Journals of this House of the last and present Sessions; and that he be allowed the sum of £7 10s. for his extra trouble in preparing the same, when completed, on certificate of the President.

*Resolved*, That the Committee of this House, authorized to frame Rules for the Legislative Library, jointly with the Committee of the House of Assembly, be authorized to frame such Rules during the recess; and also, to agree upon a fit person to be appointed a Librarian.

A Message from the House of Assembly, by Mr. Palmer.

In the House of Assembly,

Thursday, April 25th, 1839.

Resolved, That a Committee be appointed to join a Committee of the Legislative Council, to wait upon His Excellency the Lieutenant Governor with the Joint Address to His Excellency, on the subject of the State Records, and the Journals of the Houses of Lords and Commons.

Ordered, That Mr. Palmer, Mr. Longworth, Mr. Montgomery, and the Hon. J. S. Macdonald, do compose the said Committee.

Ordered, That the foregoing Resolution be communicated by Message to the Legislative Council.

Resolved, That a Committee be appointed to join the Committee of the House of Assembly, to wait upon His Excellency the Lieutenant Governor, with the Joint Address relative to the State Records, and the Journals of the Houses of Lords and Commons.

Ordered, That Mr. Attorney General and Mr. Dalrymple do compose the said Committee.

Ordered, That the said Resolution be communicated by Message to the House of Assembly.

Mr. Attorney General, from the joint Committee of the Council and Assembly, appointed to wait upon His Excellency the Lieutenant Governor, with the joint Address of both Houses, on the subject of the Public Records, and Journals of the Houses of Lords and Commons, ordered to be transmitted to this Colony, by Her Majesty's Government, reported, that they had accordingly waited upon His Excellency with the said Address, and that His Excellency was pleased to say, that he would have much pleasure in complying with the wishes of both Houses on this subject; and for that part of the Address which related to himself personally, he begged to express his sincere thanks to both Houses.

His Excellency the Lieutenant Governor having come to the Council Chamber, and being seated, the Gentleman Usher of the Black Rod received His Excellency's commands to desire the attendance of the House of Assembly immediately in the Council Chamber.

The House of Assembly, with their Speaker, having attended accordingly, His Excellency was pleased, in Her Majesty's name, to give his assent to the following Bills, viz:

An Act for the relief of certain of the American Loyalists and disbanded Provincial Troops, and their Representatives.

An Act to amend an Act for regulating the several Jails within this Island, and establishing Prison Discipline therein.

An Act to amend a certain Act therein mentioned, relating to Pounds.

An Act to revive and continue an Act for regulating the sale of the Interest of Leaseholders, when taken in Execution.

An Act to revive and continue an Act therein mentioned, relating to the shutting up of old Roads.

After which the Speaker of the House of Assembly addressed His Excellency as follows:

May it please your Excellency;

In the name and on behalf of Her Majesty's faithful Commons, I have the honor to present several Bills of aid granted this Session to Her Majesty, and to request your Excellency's assent to the same, viz:

An Act to further continue for one year, and to amend an Act passed in the Seventh year of the Reign of His late Majesty King William the Fourth, for raising a Revenue in this Island.

An Act for rendering more effectual the Laws now in force for regulating the retail of strong and spirituous Liquors.

An Act for providing Buoys and Beacons for the Harbours therein mentioned, and for a nautical Survey of the Harbours of Charlottetown and Three Rivers.

An Act relating to Treasury Warrants.

An Act for appropriating certain Moneys therein mentioned, for the service of the Year of our Lord One thousand eight hundred and thirty-nine.

To each of which His Excellency was pleased, in Her Majesty's name, to signify his assent.

And then His Excellency was pleased to make the following Speech to both Houses:

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

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

The labors of the Session having terminated, I have much pleasure in enabling you to return to your homes, after so long and close an attendance upon your Legislative duties.

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

The readiness and liberality with which you have voted the Supplies for enabling me to carry on the public service, for the current year, demand my warmest thanks.

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

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

Among the important matters which have engaged your attention, I have to regret that you have not been able to agree upon some measure for the regulation of the Fishery Reserves, so as to have given effect to the liberal concession proposed by Her Majesty's Secretary of State for the Colonies, of opening those Reserves which remained at the disposal of the Crown to all Her Majesty's subjects engaged in the Fisheries; I however, hope, that during the approaching recess, the means will suggest themselves of bringing to a satisfactory conclusion, this important question.

After which the President of the Council said—

Gentlemen;

It is the will and pleasure of His Excellency the Lieutenant Governor, that this General Assembly be prorogued until Tuesday the Second day of July next; and this General Assembly is accordingly prorogued until Tuesday the Second day of July next.

**END OF THE SESSION.**





# APPENDIX

TO THE

# JOURNAL

OF THE

# LEGISLATIVE COUNCIL

OF

PRINCE EDWARD ISLAND,

FOR THE SESSION COMMENCING THE TWELFTH DAY OF MARCH, AND ENDING  
THE TWENTY-FIFTH DAY OF APRIL;

1839.



# APPENDIX

(A.)

(SEE PAGE 33.)

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## QUERIES.

In pursuance of the Order in Council hereto annexed, marked (A), the Grant hereto annexed, marked (B), was issued on the Second day of September, 1768. With reference to the terms of that Order in Council, and of the said Grant, what in your opinion is the meaning of the term "Coast," contained in that part of the said Grant which reserves for the disposal of His Majesty, *His Heirs and Successors*, Five hundred feet from high water mark, on the coast of the tract of land thereby granted, to erect stages and other necessary buildings, for carrying on the Fishery? Is it strictly applicable to the sea coast, or sea shore only, or does it extend to the shores of the bays, inlets and rivers of this Island? If in your opinion it applies to the shores of the bays, inlets and rivers of the Island, what extent of the shores of the said bays, inlets and rivers, is embraced by the said reservation?

Does the Act of the 21 James 1st, cap. 2, intituled "An Act for the general quiet of the subjects, against all pretences of concealment whatsoever," extend to, and is it, in your opinion, now in force in this Colony?

Does the Act of the 9 Geo. 3d, cap. 16, intituled "An Act to amend and render more effectual an Act made in the Twenty-first year of the Reign of James the First, intituled *An Act for the general quiet of the subjects, against all pretences of concealment whatsoever*," extend to, and is it now in force in this Colony—premissing that from its conquest, until the Fourteenth day of July, 1769, it formed part and parcel of the Province of Nova Scotia, and at that date was constituted a separate government?

Supposing that both or either of the aforementioned Acts to be now in force in this Colony, do both or either of the said Acts contain any enactment or enactments, which, in your opinion, now bar the right of the Crown to make the disposition contemplated on the reservation quoted in the first query, and contained in the said Grant hereto annexed, marked (B), supposing that right has never yet been exercised by the Crown? Is that right of disposition barred after the lapse of any, and what time, and under what peculiar circumstances? Or is the Grantee, claiming *under that grant*, or *others claiming under him*, where the right of disposition has not been exercised by the Crown, estopped from setting up adverse possession against the Crown or the Grantee?

If the Crown have exercised its right of disposal of the reservations aforesaid, in one or more other cases of Grants containing similar reservations with that herein-before set forth, will that be a sufficient exercise of the general right to include within it the disposal of the reservations in the said grant hereto annexed, marked (B), in which such right of disposition has not been exercised?

If the Statutes of James First, and 9 Geo. 3d, extend to the Colonies, is the right of the Crown to the disposal of the said Fishery Reserves, such a right as comes within the meaning of these Statutes; or is it merely a trust for the benefit of the subject? And what, in your opinion, is the difference in point of Law?

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### *Opinion of the Attorney General, in answer to the foregoing Queries.*

I have given the Queries submitted to me every consideration in my power, and premising, that as a Member of that Legislative body from which they have emanated, I shall be enabled, on the discussion of the question to which they have reference, to offer orally, and if necessary, at length, such reasons as have had weight with me in forming the opinions which I am about to give, I shall now proceed to answer them as concisely as possible.

To the first query—I am of opinion that the word “Coast,” in the reservation contained in the grant submitted with this query, can only intend the “sea coast.” The definition of the word “coast,” as given in the best English Dictionaries, is “the edge or margin of the land *next the sea*,” and Crabb, in his Technological Dictionary, states it to be “the country *lying along the edge of the sea*.” In common parlance the term is never applied in any other manner; thus we say, the coast of a Country or Island, but never the coast of a River or Harbour. I feel convinced that no other construction could be given to it in the present instance, was there no other mode of arriving at the intention of the Crown in making the reservation, except what could be collected from the face of the grant itself; but the order in Council, referred to in the query, on which it must be presumed the grant issued, in my opinion, settles the point satisfactorily. The instruction or order is, “that there be a clause in the grant of *each township that abuts upon the sea shore*, containing “a reservation of liberty to all His Majesty’s subjects in general of carrying on a free fishery on the coasts *of the said township*.” The obvious meaning of the term “coast,” used in the grant, is, in my opinion, synonymous with the term “sea shore,” used in the instruction or order; and in fact the terms are synonymous in the instruction or order itself, for “sea shore” and “sea coasts” are both used to express the same meaning. I am aware that there is this discrepancy between the terms of the instruction or order, and those of the reservation in the grant, viz. that in the former, the right is to all His Majesty’s subjects, for a free fishery; and in the latter, it is for the disposal of His Majesty, His Heirs and Successors, for the same use—but the intention is not lost sight, and the same principle is carried out in both. I do not wish to be understood as meaning to say that the instruction or order could control the words of the grant, had there existed any *material* difference between them; on the contrary, in such case I should hold to the evident sense of the words of reservation contained in the grant; but in this case there is no such difference. I am of opinion that the term “coast” cannot be construed to extend to the shores of inlets or rivers, nor to those of any place, termed, in common parlance, “a bay,” which is not open to the sea, or which is so land-locked, that the jurisdiction of the ordinary tribunals of the Colony extends to it; but that it does extend to indentations on the coast which are open to the sea, and which are also termed “bays.” I am sensible that it may be objected that some of the grants of townships on this Island, which abut on rivers or inlets, contain similar reservations to those which abut on the “sea coast;” and that it may be asked, why this reservation was inserted in such grants, if not intended to embrace the shores of rivers or inlets? To this I reply, by a quotation from a work of authority, on the construction of grants, viz. that “the rule that grants shall be construed most favourably for the King, is subject to many limitations and exceptions. In the first place, no strained or extravagant construction is to be made in favour of the King. If the intention be obvious, Royal grants are to receive a fair and liberal construction.” If, therefore, I am correct in my opinion of the meaning of the term “coast,” it appears to me to be “a strained construction” of that term, to apply it to townships butting upon rivers or inlets; and I think that I have shewn, from the true meaning of the term used in the grants, and the instruction or order under which it is to be presumed they were issued, that *the intention is obvious*.

In the second query—I am of opinion that the Act of the 21st James 1st, cap. 5, mentioned in this query, is not in force in this Colony; it is quite inapplicable, and has no relation to the possession of lands of the Crown obtained after its passing.

To the third query—I will here introduce some quotations from the opinions of eminent Lawyers, to shew what is the general rule of construction as to Statutes made in England, applying to the Colonies. Mr. West

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says, in answer to a question as to the extension of the *common*, as well as *statute law*—"the common law of England is the common law of the Plantations, and all statutes in affirmance of the common law passed in England, antecedent to a settlement of a Colony, are in force in that Colony, unless there is some private Act to the contrary, *though no statutes* made since those settlements are there in force, unless the Colonies are particularly mentioned." The Attorney and Solicitor Generals Henley and C. Yorke, on a case referred from Nova Scotia, say—"we are of opinion that the proposition adopted by the Judges there, that the inhabitants of the Colonies carry with them the *statute laws* of this realm, *is not true*, as a general proposition, but depends upon circumstances, the effect of their charter, usage and Acts of their Legislature, and it would be both inconvenient and dangerous to take it in so large an extent." And the Attorney General Philip Yorke, (afterwards better known as the celebrated Lord Hardwicke) in reply to a question relating to the extension of English statutes to Maryland, says—"I am of opinion that such general statutes as have been made, since the settlement of Maryland, and are not, *by express words, located, either to the Plantations in general, or to the Province in particular*, are not in force there, unless they have been introduced and declared to be laws, by some Acts of Assembly of the Province, or have been received there by long uninterrupted usage or practice, which may import a tacit consent of the Lord Proprietor, and the people of the Colony, that they should have the force of a law there." And a note at the foot of this opinion, states, that "by Statute 25 Geo. 2d, cap. 6, sec. 10, it appears that the Legislature considered *usage* as sufficient to have extended an Act of Parliament to the Colonies." From its conquest, or cession by treaty, up to the 14th day of July, 1769, this Colony formed part of the Province of Nova Scotia, and at that date was constituted a separate government, being the very year in which the Statute of the 9th Geo. 3d, cap. 16, passed. In 1769, therefore, Nova Scotia had a Legislature of its own, and according to the dictum laid down in the foregoing opinions, the Act in question could not be in force there at that time. 1st. Because it has no express words locating it, (to use the phraseology of Mr. Attorney General Yorke) either to the Plantations in general, or to that Province in particular, it being a general Act. 2d. Because it does not appear to have been introduced and declared to be law in that Province at that time, (nor even up to the present time, according to Mr. Murdoch's Epitome). 3d. Because being then of so recent an origin, long uninterrupted usage or practice could not of course apply. Assuming it then not to have been in force in Nova Scotia in 1769, it may be necessary to consider whether its separation from Nova Scotia in that year, induced such a different state of things "quoad" this Colony, as to make the Act in force here. I cannot see that it did. This Colony was then *settled*, (the grant referred to in the first query, dated nearly a year previous, is good evidence of this fact) and up to the time of separation must have been deemed a part of Nova Scotia, (which had a constitution) and subject to its laws; and from the separation in 1769, until the first General Assembly, called here in 1773, a period of only four years, the Governor and Council appear to have had the power of passing ordinances, &c. binding on its inhabitants, because the first Act to be found on the Statute Book of this Colony, passed in 1773, abrogates such ordinances, &c. And the Act of the 9th Geo. 3d, cap. 16, in my opinion, being a general statute, and made, not only since the *settlement* of the Colony, but when it was either part of the Province of Nova Scotia, or subject to its own peculiar constitution, vested in the Governor and Council, and not containing express words locating it either to the Colonies in general, or to Nova Scotia, or this Island in particular; and never having been introduced and declared to be law by any Acts of either of those Colonies; and never having been received here by "long uninterrupted usage or practice," or in fact by any usage or practice whatever. I am therefore of opinion that it is not now in force in this Colony.

To the fourth query—The Act of the 21st James 1st, cap. 5, is entirely out of the question; but *supposing* the Act of the 9th Geo. 3d, cap. 16, in force here, I am of opinion that it does contain enactments to bar the right of the Crown to make the disposition contemplated in the reservation quoted in the first query, where adverse possession has been held of such reservation against the Crown for sixty years, in terms of said Act, supposing the right never to have been exercised by the Crown on any part of the reservation. By the term "adverse possession," here used, I do not mean a mere presumption of possession, by reason of a Grantee holding lands adjoining to such reservation, but an actual culture or occupation of it, by himself, or by some person claiming under him, or an actual culture or occupation of it by a stranger.

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To the fifth query—*Supposing* the Act of the 9th Geo. 3d, cap. 16, in force in this Colony, and that an “adverse possession” of the reservation contained in the grant referred to, has been held against the Crown for sixty years, in accordance with the construction which I have given the term “adverse possession,” in my answer to the last query, and that the Crown has exercised its right of disposal to similar reservations contained in other grants, I am of opinion that the exercise of such right in those cases could not be deemed to militate against the adverse possession to the Crown, of the reservation contained in the grant referred to.

To the sixth and last query—In my opinion, by the words of reservation contained in the grant referred to, that is to say—“saving and reserving, for the disposal of His Majesty, his Heirs and Successors, five hundred feet from high water mark, &c.” the right to the soil of such reservation is in the Crown, and never passed to the grantee; but in grants where the reservation gives “a liberty to all His Majesty’s subjects in general, to carry on a free fishery on the coasts of said township, &c.” the right to the soil is in the grantee, subject to such partial interruption, for the purposes of carrying on a fishery. Therefore, in the first case, I think the Crown has yet the right to dispose of such reservation, for the purpose of carrying on a fishery; and in the latter case, that the right may be exercised by the subject without any reference to the Crown.

ROBERT HODGSON, Attorney General.

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### *Opinion of the Solicitor General.*

HAVING given the best consideration I am able to the annexed case, I proceed to answer the queries therein contained; and as some of them are new and highly important, and many members of the body by whom the case is submitted, quite competent of themselves to draw legal conclusions, I trust I will be excused for assigning, with more than usual fulness, some of the reasons which have induced me to form the opinions I give.

In answer to the first query, viz:—what is the meaning of the term “Coast,” in that part of the annexed grant relating to the reserve of five hundred feet for a fishery? I think, as to so much of that question as relates to Rivers, there is little difficulty in saying, that the reservation cannot be held to apply to them. The rule of Law for the construction of every instrument is this—“that it must be construed according to its sense and meaning, as collected from the terms used in it, which terms are themselves to be understood in their plain, ordinary and popular sense, unless the context evidently points out that they must, in the particular instance, and in order to effectuate the intention, be understood in some other special sense.” And the grants (where the words are doubtful) are to be construed favourably for the Crown; there is nothing to exempt them from this rule of construction. Now, the word “coast” is always used, and is laid down by the best English Lexicographers, to denote *the edge or margin of land next the sea shore*; and it cannot be contended that a river forms part of the sea; indeed, (if it were necessary) there are plenty of authorities to prove it does not; and unless it did, its shore could not, according to the above definition, be termed the “coast.” But if the term be doubtful, all difficulty ceases when we refer to the Order in Council, of the 8th of July, 1767; it directs, that in the reserve be inserted, the grants of all townships *that abut upon the sea shore*. Now, if those who drew this order had understood themselves as making a reservation on the banks of rivers, it is impossible to suppose they would have taken the trouble, with such particularity, to have confined the reservation to townships abutting on the sea shore, since many which did not might be intersected with rivers. Again, the reservation is five hundred feet from high water mark, “*on the coast.*” Why insert the latter words, unless to contradistinguish *high water mark on the coast*, from *high water mark on the rivers*?

The remainder of the question, viz: that part which relates to Bays, I feel to be one of real difficulty. The most confined construction which can, I think, legally be given to that part of the grant, will be to hold the

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reservation to extend to such shores only as form the margin of waters over which the Admiralty Court would have jurisdiction. To what waters then on the coasts of this Island does its jurisdiction extend? A book of good authority thus speaks on the subject: "It is laid down as a general rule in our common Law books, that the Admiral's jurisdiction is confined to matters arising on the *high seas* only; and that he cannot take cognisance of contracts, &c. made or done in any river or creek within any county, &c. But our books seem not to be agreed what shall be counted *altum mare* or *the high seas*. By some it is no part of the sea where one may see what is done on the other side of the water. That what is within the *body* of the county is no part of the sea. That the Admiralty Court cannot hold plea of any thing done upon the River Thames, because within the body of the county. Nor of a matter arising at Limehouse. But by Owen, such place as is covered with salt water is *altum mare*. By Coke, the Admiralty Court hath cognisance of a matter done in a ship riding in a *port*, that is *not within* the body of the county."

In Brown's Admiralty Law, it is said—"the Statute of 15 Rich. declares that the Court of the Admiral hath no manner of cognisance of any contract done within the body of the county, either by land or water." In a note he adds—"this I conceive means the water of rivers, for on the sea coasts, the water between high and low water, when the tide is in, is not within the body of the county."

In one case where the sentry on board a ship in Portsmouth harbour fired at a boat without cause, and killed a boy therein, it was held Portsmouth harbour was within the Admiralty jurisdiction.

These authorities, and others that I might cite, though somewhat conflicting, clearly shew that the waters of bays are within the Admiralty jurisdiction; and as to be so they must be considered parts of the sea, (its jurisdiction, as will be observed, being confined to *altum mare*, or the high sea), I think that to the shores of such waters the reservation extends.

I will next state in what sense I conceive it was intended to be used, according to the intention to be collected from the grant and order in Council: To what parts did the King intend the reservation to extend? The order in Council expressly states that the object of the reservation was to promote and encourage the fishery. How was it proposed to do this? By accommodating and conveniencing the fishermen, and by reserving a place where they might erect fishing establishments, &c. Where would the fisherman naturally require and want this privilege? Certainly not in exposed and unsheltered situations, where the landing must be precarious, and his craft insecure; but in those bays and indentures, where, sheltered from storms, the produce of his industry might at all times be securely landed, and his boats lie protected and safe. In such places only would the right be of any value. Can it be supposed then that the King, intending to grant a privilege for the purpose of promoting and encouraging the fishery, would confine it to places where scarce any fisherman would use it? Such a construction would defeat his clearly expressed intentions, which the law will not allow. Besides, the reservation does not seem to contemplate any particular description of fishery, but extends to all generally. Now, 'tis well known that some kinds of fisheries are carried on in bays. Could the King be supposed, when reserving a piece of ground to promote and encourage a fishery of this kind, to mean that the fisherman should go away from the fishing ground, to some exposed situation, before he could land his fish? This would be no encouragement to carrying it on. It may be said that part of this reasoning would be equally applicable to rivers: I answer not, because the intention must be collected from the terms used, which I have already shown do not apply to them.

I do not know if there are in this Island any of those places usually called salt water lakes; or, perhaps some might call them (I think improperly) bays, where the entrance is so narrow, that the water is almost surrounded by land; such a place might perhaps be said to be *within the body of the county*, and would likely be held (when the order in Council was considered) to be exempt from it.

I cannot help adding, that the conclusion I have come to on this point, is very different from the opinion I entertained before I had maturely considered the order in Council, and grant; and I sincerely hope the view I now take may prove erroneous, as I am well aware of the great mischief this reserve will occasion



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by subjecting the best cultivated parts of the most fertile farms to useless interruption; a grievance which will become intolerable, unless, *before the reserves are thrown open*, strong and ample guards be provided to prevent interruption, through pretended exercises of the right.

The next question is, whether the Statute of 21 Jac. 1, cap. 2, (I presume a clerical error, meant for cap. 5) is in force in this Colony?

The answer to this is easily given. The Statute of 21 Jac. 1, cap. 5, merely enacted, that a quiet and uninterrupted enjoyment for sixty years, *before the passing of that Act*, of any estate originally derived from the Crown, should bar the Crown's right of recovery. This Act secured the rights of such as could prove a possession of sixty years, *at the time of its passing*; but no possession acquired after that period is within it. It cannot therefore be in force in this Colony, for the simple reason, that it is impossible a case can occur to which its provisions would apply.

The next question, viz.—Does the Statute of 9 Geo. 3, cap. 16, extend to this Colony? is by no means so easily answered. Before expressing an opinion upon it, I will therefore cite some authorities, illustrative of the general rules by which the application of English Statutes to Colonies is usually determined.

Where a country is conquered or ceded, and has already laws of its own, the King may change those laws, and impose those of England, or any other system he pleases; but until *he does actually change them*, the ancient laws remain in force. As the constitution of most American Colonies gave them the laws of England, so far as they were applicable to their circumstances, the English Statutes, passed antecedent to the dates of their respective constitutions, have been generally held to apply, but those subsequently passed do not. Thus the Statute of Frauds has been held not to extend to Barbadoes or Bermuda, but for the reason that they were settled before the passing of that Act. And for the like reason it has been held in the Courts of Pennsylvania not to extend there; and the rule above stated is fully confirmed by Lord Mansfield, in the case of *Campbell vs. Hall*.

The Province of Nova Scotia had a Legislature of its own long prior to 1769, when the Statute of 9 Geo. 3, cap. 16, was passed, and I think there is no doubt it does not apply there. And as this Island at that time formed part of the Province, (by which I presume is meant, it had received its constitution and participated in its laws) it did not apply here at that period. The question then is, did the constitution which the Island received on the 14th of July, 1769, have the effect of giving operation to an English Statute, which would have no effect if it still continued part of Nova Scotia? The question is a novel one, and therefore not perhaps altogether free from difficulty.

The American Judge Tucker, speaking of the old Colonies conquered from the Dutch and Swedes, and which form part of the present United States, says—“The tract claimed by these two nations was conquered by the English, and confirmed to the Crown of England by the treaty of Breda, in 1767. The Dutch inhabitants remained in their settlements in New York; the Swedes were removed from Delaware to New York, where they likewise remained. According to Judge Blackstone, the laws of England could have no authority there, this being a conquered and ceded country, and not a Colony originally planted by Englishmen. And according to his principles also, the laws of Holland and Sweden were the municipal laws of those Provinces until the period of their conquest, *and so continued until other laws were imposed upon them by the Crown of England*. When and in what degree a change was made in this manner, or whether any such change was ever *formally* made, can only be determined by recurrence to documents not within the reach of the author of these sheets.”

And a case bearing some similarity to the present, seems to have arisen in the Colony of New Plymouth. In consequence of the intolerant spirit of the Colonists, its charter was abrogated in 1684, and a new Charter was obtained for it in 1691, upwards of sixty years from the date of the former, and seventy years from the first settlement of the Colony. In the mean time, the laws of England had undergone many material alterations. On the publication of the new Charter, it was questioned what was the law in civil and criminal matters, and what English Statutes had operation. The difficulty appears to have been got rid of by

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passing an Act declaring the laws of Massachusetts to be in force.

The New England Colonies which sprung out of Massachusetts, seem to have taken the English Statutes in force at the time of receiving their respective constitutions, and not those of the Colony from whence they immediately emigrated.

These authorities might at first leave room to suppose, that the English Statutes, up to the date of a Colony's constitution, apply, no matter how it may be formed, whether by separation from an old, or by peopling a new one. But it appears to me as a general rule, (unless there be some special provision in the first Governor's commission or instructions, &c.) that where a Colony is divided into two, the mere effect of that division cannot be to deprive the part separated of laws by which it was previously governed, or to introduce Statutes which before had no operation. The Province of New Brunswick formed at one time part of Nova Scotia; after its separation the laws of the latter were, I presume, thought to be in force, as I find a statute was passed to annul them.

Predicating my opinion therefore on the presumption, that by its annexation to Nova Scotia, this Island must be considered to have received a constitution at that period, and that there is nothing in Governor Patterson's commission to take this case out of the general rule above stated, I think that though the statute of 9 Geo. 3, cap. 16, was passed prior to the 14th of July, 1769, it is not in force in this Island.

I am bound however to add, that my opinion may be much altered, by the perusal of documents which I have never seen, and on which the imperfect records of this Island afford very little information, viz: Governor Patterson's commission and instructions, the royal proclamation, letters patent, or whatever instrument it was, which annexed this Island, after its conquest, to Nova Scotia. The case submitted is, I apprehend, somewhat inaccurate in this respect, as it states it to have formed part of Nova Scotia, from its conquest; but the conquest or ceding of it by the treaty of Paris in 1763, did not constitute it part of that Province; and I rather think it will be found not to have been annexed for some years subsequent to that date, and until it was, the French laws would remain in force. The document which annexed it will inform us *when* and in what degree those laws were altered; and Governor Patterson's commission will also afford much information, by shewing whether at its date this Island was looked on as a conquered country, or in the same light as other Colonies, in consequence of its annexation to Nova Scotia; a point on which I confess some passages in the instructions to Governor Patterson, now in the Colonial Secretary's Office, (but so defaced that the whole cannot be read) cause me to entertain some doubt. If, however, Mr. Clarke, in his book on Colonial Law, be correct, the documents to which I allude will not affect the question, as he says that—"the laws of this Island must be the laws of England in force at the time of its acquisition (so far as they are applicable to the Colony); the laws of Nova Scotia, so far as they have not been altered since the Island became subject to a distinct Government; and the Acts passed in its own Assembly since that period." But as Mr. Clarke probably wrote only from general principles, and may not have examined the documents to see if there be any speciality in the case, the point is still worthy of attention.

I am aware that Mr. Murdoch, in his *Epitome of the Laws of Nova Scotia*, thinks the Statute will apply to that Province by presumption—that is, that after a possession of sixty years, a title would be presumed against the Crown. How far his dictum is correct, it is not necessary to inquire; as I am of opinion, that even taking the law as he states it, it will not affect the present question, there being, as I will presently shew, (in answer to the next query) a wide difference between the legal effect of the application of the Statute itself, and a presumption of law, drawn from analogy to the Statute.

As to the fourth query—Supposing the 9 Geo. 3, cap. 16, to be in force in this Colony, I think a case might arise on the reserve contained in this grant, within the enactments of the Statute. But before putting a case, I will state what I conceive to be the legal effect of the reservation in this grant, as regards the right of soil in the five hundred feet reserved. A grantee may reserve a right or privilege over the whole or some portion of the land granted, or may except a piece of the land described out of the grant. In the former case, the legal estate in all the land passes to the grantee; in the latter, he takes no interest in the piece excepted. The reserve in the present grant I conceive to be of the latter description; and my opinion is, that the legal estate, (or in plainer words) the right of soil in the five hundred feet from high water mark on

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the coast, did not pass to John Pownall, the grantee, but that the same remained in the Crown; nor as between the Crown and the public, was there any legal obligation to prevent the disposal of it in any way the Crown might think fit; though perhaps the grantee might have an equity to prevent the Crown's disposing of it in a way more injurious to him than the purpose for which it was reserved.

If I am correct in this, the five hundred feet excepted would (for the purpose of this Statute) stand in the same plight as other Crown lands, and the grantee would have no right to enter into possession of it.

Then suppose the grantee could prove sixty years possession of a piece excepted, (by which I mean leasing, cutting down, cultivating, clearing, and such other acts of dominion as usually denote ownership of property), that he had never (*since taking the grant*) acknowledged the right of the Crown, and that quit rent for the whole had been exacted. I think this would be a strong case within the statute. Its being excepted out of the grant would not avoid the effect of such a possession, because that would only shew that the grantee entered wrongfully; and a holding after a wrongful entry, is just the way to raise a case for the operation of the statute. If the legal title in the five hundred feet, after passing the grant, remained in the Crown, there would be the same right of action against the grantee for intrusion on the reserve, as on any other piece of Crown land in the Island; and where the 9 Geo. 3, cap. 16, applies, every right of this kind (except reserving liberties and franchises, which this is not) must be asserted within sixty years, or else it is barred by the positive enactment of the Statute. If a mere declaration by the Crown, that a certain tract of land is held for a particular purpose, were allowed to avoid the Statute, it seems to me its object (which was to prevent the waking up of rights long slumbered over and forgotten) might be wholly defeated. The only way in which the Crown could avoid the effect of such a possession, would be by shewing that it was permissive; but unless some application to the Crown respecting the reserve, or some acknowledgment of the right, could be shewn, it does not occur to me how this could be made to appear.

But suppose the Statute applies, as suggested by Mr. Murdoch, and that after sixty years possession a grant is to be presumed, "presumptions may be rebutted by facts, or by contrary and stronger presumptions;" and it is then a question for the jury. This will be better explained by quoting the words of an eminent judge—"Grants are to be presumed where the original possession or enjoyment cannot be otherwise legally accounted for, or satisfactorily explained. But where the original possession is satisfactorily accounted for and explained, without the aid of a grant or conveyance, it is then a question to be determined by the jury whether in fact any grant or conveyance was ever made." The different effect of the two modes of the application of the Statute will from this be clearly apparent. The Statute operates by positive enactment, and bars the Crown, how clearly soever the party in possession may appear to have been an intruder, the legal presumption drawn from analogy to it, only *presumes* a grant, which circumstances may rebut; and I think the fact of the piece being excepted out of the grant, and the right having been exercised on other townships, would be a presumption strong enough for that purpose; though this last would have no effect if the statute were in force; for if the owner of Lot Five proved sixty years possession, it would be no answer, on the part of the Crown, to say a similar exception was made on Lot 10, and sufficient vigilance has been used there to prevent its owner getting a sixty years adverse possession; each case would have to stand upon its own merits.

As to the question whether the grantee, and those claiming under him, would not be estopped from setting up adverse possession against the Crown—I do not see what the doctrine of estoppel can have to do with the case. Estoppel merely prevents a man from denying a fact he has before admitted; it does not prevent his asserting a right afterwards acquired, or availing himself of a flaw in his adversary's title, which has occurred subsequent to the admission—for example, a tenant is estopped from disputing his landlord's title; but admitting he had a good one, at the time he took his lease, he may shew that his landlord's title has since expired. In setting up a sixty years adverse possession in this case, the grantee would not dispute that the five hundred feet was excepted, or that, at the date of the grant, the crown had a right to it. He would merely say, that by circumstances which had subsequently occurred, the Crown had lost its right; which would be no denial of any thing previously admitted.

## APPENDIX (A.)

The answer to the question, if the Crown have exercised the right of disposal of the reserves in other townships, whether that would be sufficient evidence for an exercise of its right over that contained in this grant, is involved in the answer already given to the query which immediately precedes it.

The last query appears to me to be the same in substance as the fourth, which I have endeavoured fully to answer. If there be any material difference between the two, I do not understand the question, and cannot therefore answer it until it is more fully explained.

In conclusion, I must observe, that what I have said relates to the reservation in this grant, with respect to which only the queries are put. I cannot, however, but be aware that there are other grants where the reservation is very differently worded, viz: a reservation of a *liberty* to all His Majesty's subjects, &c. In such grants there is no doubt that the right of soil in the reserve passed to the grantee; and the observations I have made respecting the Statute of 9 Geo. 3, cap. 16, will not apply to them, because it is a mere liberty or franchise not within the Statute, and because the grantee's possession would not be inconsistent with the right claimed; nor had the Crown ever any right of action against him.

JAMES H. PETERS,  
Solicitor General.

Charlottetown, 2d April, 1839.

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Charlottetown, 3d April, 1839.

Sir,

I beg to acknowledge receipt of your Letter dated the 26th ultimo, as Chairman of a Committee of the Honorable the Legislative Council, accompanying certain documents and Queries which the Committee have been pleased to direct to me, and requesting my answers thereto, which I now respectfully submit.

I have the honor to be, Sir,

Your very obedient humble servant,

CHARLES BINNS, SEN.

The Honorable John Brecken, &c. &c. &c.

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I have perused the Copy Order in Council and Copy Grant submitted to me, and find the Grant does not appear to have or contain a reserve for the Fishery as in this Order in Council, neither as it respects the date or substance of the Order. That recited in the Grant, and under which it appears to have been issued, is dated 26th August, 1767, whereas the Copy Order sent to me bears date the 8th July previous, and the Reservation in the Grant as respects the Fishery is essentially different from the Order; but after all, perhaps the Order recited in the Grant means only the Mandamus to issue it—be that as it may, there are many instances of the Great Seal of Colonies having been used contrary to Royal Instructions, where the Government afterwards refused to interfere or disturb the Grantees; (1) and therefore, although I suppose all the Grants may have been originally intended to be made subject to the Fishery Reserve, as stated in the Copy Order in Council now before me, and many of them have not been so made, I am of opinion the Grants must all at this day be considered as valid as if this supposed mistake or alteration had never occurred; and so they appear to be treated by the late Despatch from the Colonial Office. But the legal effect of the two Reservations varies much in my opinion; the Reserve, as stated in the Grant before me ("for the disposal of the Crown, &c.") having, as I think, no legal operation whatever to divest the Grantee of the benefit conferred by the other parts of the Grant; it is a mere declaration of an intention on the part of the Crown, and must, in my opinion, be at least subject to the rules of Election, or as much as the Reserves, for laying out of Highways, Glebe and School Lands, &c. are; for if the Crown delays to do these until the Grantee or his

(1) Chalner's Opinions.

## APPENDIX (A.)

Assigns has sold or let the Land (particularly if in small tracts to actual settlers), surely it would be monstrous to hold, that the occupants could be legally disturbed, and under such a merely intended Reserve as this alluded to, which might never be acted on; besides, the Grant reserves the Quit Rent on the entire 20,000 Acres, and I believe payment has always been exacted to that extent; and it is a maxim that the King's Grant shall be construed for his honour, and generally in favour of the Grantee (2). Now, it would not by any means accord with this maxim, to exact and receive Quit Rent and Taxes for a large quantity of Land (and most valuable front lands too) from a Grantee, who at the same time is by some said to have no interest in it. I am aware it may be replied that the freehold and right of soil is in the Grantee, and he has a right to the wood and marshes on and in front of the supposed Reserves, under both forms of Fishing Reserves, and that this is an equivalent to the Grantee for the payment of Quit Rent; and I agree that the Grantee has those rights over the Reserves, (3) and that in no case have the public any other right than the use of them for curing fish.—Besides, it may be asked, how it is that the Grants to Loyalists, and those given of Lands on Townships 15 and 55 since their Escheat, contain no Fishery Reserves? And what is the operation of the Acts which have laid and enforced Assessments on Land; and also of certain parts of the Boundary Act, whereby it appears the Grantees may have lines run across the Island from natural marks on the very shores, and run across Rivers and Creeks, and whether salt or fresh water in them, and tide or no tide; and if land has been sold or let on either side of those lines, the Act deals with it, without any saving of rights of Fishery whatever? Now it is evident with respect to Townships 15 and 55, that supposing the Grantees to have forfeited their rights, still the right of the public in the Fishery Reserves on the coasts of those Townships, whatever it was, would remain, not being made dependent on any neglect of the Grantees, if the Reserve was in the words of the Order in Council now before me, as I suppose it was; and yet, the fronts of those Townships, I believe, are now nearly all granted away as I have mentioned. These facts may in part shew what has been the opinion at the Colonial Office as to Fishery Reserves here, until the exchange of recent despatches on that subject.

I have now stated my opinion as to the Fishery Reservation in the Grant before me, and I will proceed to give it as if the Grant contained a Reservation as in the Order in Council now before me. In such a Grant I think the Grantee must be supposed to be in actual legal possession of the whole premises mentioned in the Grant, including the soil of the Fishery Reserves, from the delivery of the Grant to him, or to any one on his behalf; but I do not think that either of the Statutes of James or George 3d., to which I am referred, extend to this Colony; and if they did, I am of opinion that they would not apply to the Fishery Reserves, as I think those Reserves would come within the meaning of "liberties and franchises" excepted in those Acts. I also am of opinion that the word "Coast" used both in the Order and Grant, must, by the rules of fair construction, be held as synonymous to the word "Seashore," used also with the word "Coast" in the Order in Council; and to say that the Coast extends into Harbours, and up Rivers and Creeks, would, in my opinion, lead to the grossest injustice and absurdity, and be also directly contrary to established Rules laid down for the construction of Royal Grants (4). I therefore think that where the Reserves have not been washed away since the Grantees received their Titles, the public have, under such a reservation as is contained in the Order before me, a right to land their fish on the coast or shore, or elsewhere, at the nearest place where they safely can to the Coast or Seashore, with a right of way from such nearest landing to that Coast or Shore, and there to cure and reship their fish, dry nets, &c, and no further right whatever.

As I am of opinion that the Acts mentioned do not extend to this Island, nothing arises on the question of Estoppels for me to reply; but I scarcely think that doctrine would hold for want of mutuality to bind the Grantees; and I do not think that the Fishery Reserve, as contained in the Grant now before me, raises even the slightest trust in favour of the public, for they are not so much as once named in it, and it is not stated whether the King or his subjects shall carry on the intended Fishery; and therefore, if the Grantee, to whom the fee is expressly given, subject to this easement, makes the first election to "dispose, &c." in such a case, I think the reservation and right of disposal is gone both from the Crown and the public, and the Acts I have referred to, and Instructions from the Colonial Office to make certain Grants I have also alluded to, confirm me in this opinion.

CHARLES BINNS, SEN.

(2) Chitty on Prerogative, 394, &c.

(3) Cun. Dictionary, title "Highway."

(4) Chitty on Prerogative, 391, &c.—and 399.

# APPENDIX

[B.]

(SEE PAGE 38.)

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VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c.

*To our trusty and well beloved Sir JOHN COLBORNE, Knight Grand Cross of the Most Honorable Military Order of the Bath, Lieutenant General of our Forces, Greeting:*

WHEREAS we did by certain Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the Sixth day of February, One thousand eight hundred and thirty-eight, in the First year of our Reign, constitute and appoint our right trusty and right well-beloved Cousin and Councillor John George EARL OF DURHAM, to be Captain General and Governor in Chief in and over our Island of Prince Edward, during our Royal pleasure, as by the said recited Letters Patent relating, being thereunto had, may more fully and at large appear: Now know you, that we have revoked and determined, and by these presents do revoke and determine, the said recited Letters Patent, and every clause, article and thing therein contained. And further know you, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you the said Sir JOHN COLBORNE, of our special grace, certain knowledge and mere motion, have thought fit to constitute and appoint, and do by these presents constitute and appoint you, the said SIR JOHN COLBORNE, to be our Captain General and Governor in Chief in and over our said Island of Prince Edward. And whereas we have deemed it expedient that there should henceforth be two distinct Councils in our said Island of Prince Edward, for the purposes hereinafter mentioned, We do therefore, by these presents, grant, provide and declare that there shall henceforth be within our said Island of Prince Edward two distinct and separate Councils, to be respectively called the Legislative Council and the Executive Council of our said Island of Prince Edward. And we do hereby further direct and declare our pleasure to be, that all and every the powers and authorities heretofore vested in or exercised by the Council of our said Island, so far as respects the enactment of any Laws to be made within our said Island, shall henceforth be, and the same are hereby vested, in the said Legislative Council; and that all other powers and authorities whatsoever heretofore vested in or exercised by the Council of our said Island, shall be and the same are hereby vested in the said Executive Council. And we do hereby appoint and declare that the said Executive Council and the said Legislative Council respectively shall hereafter consist of such and so many Members as shall from time to time for that purpose be nominated and appointed by us, under our sign manual and signet, or as shall be provisionally appointed by you the said Sir John Colborne, until our pleasure therein shall be known: Provided nevertheless, and we do hereby declare our will and pleasure to be, that the total number of the Members for the time being of our said Executive Council, resident within our said Island, shall not at any time, by any such provisional appointments, be raised to a greater number in the whole than Nine; and that the total number of the members of the said Legislative Council, resident within our said Island, shall not at any time, by any such provisional appointments, be raised to a greater number in the whole than Twelve. And we do further direct and appoint that Five Members of our said Executive Council shall be a Quorum, for the despatch of the business thereof; and that Seven Members of our Legislative Council shall be a Quorum, for the despatch of the business thereof. And we do further direct and appoint, that the Members of the said respective Councils shall hold their places therein during our pleasure, and not otherwise; and that the senior Members respectively for

## APPENDIX (B).

The time being of each of the said respective Councils shall preside at all the deliberations thereof respectively, save only when you the said Sir John Colborne shall be present and presiding at the deliberations of the said Executive Council—the seniority of the Members of the said Councils respectively between themselves being determined by such rules and regulations as are for that purpose provided by such Instructions as are hereinafter mentioned. 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 this present Commission, and the Instructions herewith given to you, or by such further powers, instructions and authorities as shall at any time hereafter be granted to or appointed you under our Sign Manual and Signet, or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and according to such reasonable Laws and Statutes as are now in force, or shall hereafter be made and agreed upon by you, with the advice and consent of our Council and Assembly of our said Island, under your government, in such manner and form as hereinafter is expressed. And our will and pleasure is, that you the said Sir John Colborne, as soon as may be after the publication of these our Letters Patent, do take the Oaths appointed to be taken by an Act passed in the First year of the Reign of King George the First, intituled “An Act for the further security of His Majesty’s person and government, and the succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales and his open and secret abettors,” as altered and explained by an Act passed in the Sixth year of the Reign of His late Majesty King George the Third, intituled “An Act for altering the Oath of Abjuration, and the Assurance; and for amending so much of an Act of the Seventh year of Her late Majesty Queen Anne, intituled “An Act for the improvement of the Union of the two Kingdoms;” as after the time therein limited requires the delivery of certain lists and copies therein mentioned, to persons indicted of high treason or misprison of treason; or in lieu thereof, the Oath required to be taken by an Act passed in the Tenth year of the Reign of His late Majesty King George the Fourth, intituled “An Act for the relief of His Majesty’s Roman Catholic subjects;” according as the said former Acts in the said last mentioned Act shall be applicable to your case; and likewise that you take the usual Oath for the due execution and performance of the office and trust of our Captain General and Governor in Chief of our said Island, and for the due and impartial administration of justice—all which said Oaths our Executive Council of our said Island, or any three or more of the Members thereof, have hereby full power and authority, and are required, to tender and administer unto you; all which being duly performed, you shall administer unto each of the Members of the said Executive Council and of the said Legislative Council respectively, such of the said Oaths mentioned in the said several Acts, as shall be applicable to the case of the individual Member of said Council taking the same; and you are also to administer to them the usual Oath for the due execution of their places and trusts. And we do further give and grant unto you the said Sir John Colborne, full power and authority from time to time, and at any time hereafter, by yourself, or by any other to be authorized by you in that behalf, to administer and give such of the said Oaths in the said several Acts contained as shall be applicable to the case of the individual to whom the same shall be administered, to all and every such person or persons as you shall think fit, who shall hold any office or place of trust or profit, or who shall at any time or times pass into the said Island, or be resident or abiding therein. And we do hereby give and grant unto you the said Sir John Colborne, full power and authority to suspend any of the Members of our said Executive and Legislative Councils respectively from sitting, voting and assisting therein, if you shall find just cause for so doing: And if it shall at any time happen that by the death, departure out of our said Island, suspension or resignation of any of the said Councillors, or otherwise, there shall be a vacancy in either of our said Councils, our will and pleasure is, that you signify the same to us by the first opportunity, that we may, under our signet and sign manual, constitute and appoint others in their stead: But that our affairs at that distance may not suffer for want of a due number of Councillors, We do hereby give and grant unto you the said Sir John Colborne full power and authority to choose as many persons out of the principal Freeholders, inhabitants of our said Island Prince Edward, as shall be necessary to supply any vacancy or vacancies which may from time to time occur in the said Councils, or either of them—which

## APPENDIX (B.)

persons so chosen and appointed by you shall be, to all intents and purposes, Councilors in our said Island, until their appointments shall either be confirmed or disallowed by us. And we do hereby give and grant unto you the said Sir John Colborne full power and authority, with the advice and consent of our said Executive Council, from time to time, as need shall require, to summons and call a General Assembly of the Freeholders and Settlers within the said Island under 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 such of the Oaths mentioned in the said several Acts as shall be applicable to the case of the individual taking the same; which Oaths you shall commission fit persons, under the public seal of our said Island, to tender and administer unto them; and until the same shall be so taken, no person shall be capable of sitting, though elected. And we do hereby declare that the persons so elected and qualified shall be called and deemed the General Assembly of our said Island of Prince Edward; and that you, the said Sir John Colborne, with the advice and consent of our Legislative Council and Assembly, or the major part of them, 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 Island, and the people and inhabitants thereof, and such others as shall resort thereto, and for the benefit of Us, our Heirs and Successors; which said Laws, Statutes and Ordinances are not to be repugnant, but as near as local circumstances will admit, agreeable to the Laws and Statutes of our United Kingdom of Great Britain and Ireland; provided that all such Laws, Statutes and Ordinances, of what nature or duration soever, be, within three months, or sooner, after the making thereof, transmitted to Us, under the public seal of our said Island, for our approbation or disallowance of the same, as also duplicates of the same, by the next conveyance; and in case any or all of the said Laws, Statutes and Ordinances, not before confirmed by us, shall at any time be disallowed and not approved, and so signified by us, our heirs or successors, under our or their sign manual and signet, or by order of our or their Privy Council, unto you the said Sir John Colborne, then such and so many of the said Laws, Statutes and Ordinances as shall be so disallowed and not approved, shall from thenceforth cease, determine and become utterly void, and of none effect—any thing to the contrary thereof in any wise notwithstanding. And to the end that nothing may be passed or done by our said Legislative Council or Assembly, to the prejudice of Us, our heirs and successors, We will and ordain that you, the said Sir John Colborne, shall have and enjoy a negative voice in the making and passing all Laws, Statutes and Ordinances as aforesaid; and you shall and may likewise, from time to time, as you shall judge it necessary, adjourn, prorogue or dissolve all General Assemblies as aforesaid. And our further will and pleasure is, that you shall and may keep and use the public Seal of our said Island of Prince Edward, for sealing all things whatsoever that pass the Seal of our said Island under your government. And we do hereby authorize and empower you to constitute and appoint Judges, and in case requisite, Commissions of Oyer and Terminer, Justices of the Peace, and other necessary officers, ministers in our said Island, for the better administration of justice, and putting the law in execution; and to administer, or cause to be administered, unto them, such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes. And we do hereby give and grant unto you, the said Sir John Colborne, full power and authority, in case any person or persons commissioned or appointed by us to any office or offices within our said Island, for which they may be liable to be removed by us, shall, in your opinion, be unfit to continue in our service, to suspend or remove such person or persons from their several employments. And we do hereby give and grant unto you the said Sir John Colborne, full power and authority, when you shall see cause, or shall judge any offender or offenders in criminal matters, or for any fines or forfeitures due unto us, fit objects of our mercy, to pardon all such offenders, and to remit all such offences, fines and forfeitures. And we do by these presents give and grant unto you the said Sir John Colborne, full power and authority, without expecting any further special warrant from us, from time to time, to give, order and warrant for the preparing of Grants of the Custodies of Idiots



## APPENDIX (B.)

and Lunatics, and their estates, as shall be found upon inquisition thereof taken, or to be taken, and returnable unto our Court of Chancery, and thereupon to make and pass Grants and Commitments, under the public Seal of our said Island, of the custodies of all Idiots and Lunatics, and their estates, to such person or persons suitors in that behalf, as according to the rules of Law and the use and practice in those and the like cases you shall judge meet for that trust. And we do by these presents authorize and empower you the said Sir John Colborne, to collate any person or persons to any Churches, Chapels, or other Ecclesiastical benefices within our said Island Prince Edward, as often as any of them shall be void. And our will and pleasure is, that all public moneys raised, or which shall be raised, by any Act made, or hereafter to be made as aforesaid, in our said Island, be issued out by Warrant from you, by and with the advice and consent of our said Executive Council, and disposed of by you for the support of the government of our said Island, or for such other purposes as shall be particularly directed in and by such Act, and not otherwise. And we do hereby likewise give and grant unto you full power and authority, by and with the advice and consent of our said Executive Council, in our name and on our behalf, to grant and dispose of, under the public Seal of our said Island, such lands, tenements and hereditaments within the said Island, as now are, or hereafter shall be in our power to grant or dispose of: Provided nevertheless, and we do require, that in granting and disposing of all such lands, tenements and hereditaments, you do conform to and observe the provisions in that behalf contained in any Act or Acts made, or to be made, by the Governor, Legislative Council and Assembly of our said Island, for regulating the sale and settlement thereof. And we do hereby declare our pleasure to be, that all such Grants shall be entered upon record by such officer or officers as shall be appointed thereunto, and shall be good and effectual in Law against Us, our heirs and successors. And we do hereby declare, ordain and appoint, that you the said Sir John Colborne shall and may hold, execute and enjoy the said office and place of our Captain General and Governor in Chief in and over our Island of Prince Edward, together with all and singular the powers and authorities hereby granted unto you for and during our will and pleasure. And in case of your death or absence out of our said Island, we do by these presents give and grant all and singular the powers and authorities herein to you granted, to our Lieutenant Governor for the time being of our said Island; or in the absence of any such Lieutenant Governor, to such person as we may, by warrant under our sign manual and signet, authorize and appoint to be the Administrator of the Government of our said Island—such powers and authorities to be by him executed and enjoyed during our pleasure. But if upon your death or absence out of our said Island, there be no person upon the place commissioned and appointed by us to be our Lieutenant Governor, or specially appointed by us to administer the Government within our said Island, our will and pleasure is, that until you return from any such absence, or until our further pleasure shall be known, the senior Military Officer for the time being in command of our land forces within our said Island of Prince Edward, shall take upon him the Administration of the Government thereof, and shall execute this our Commission and the aforesaid Instructions, and the several powers and authorities therein contained, in the same manner, and to all intents and purposes, as other our Captain General and Governor in Chief should or ought to do. And we do hereby require and command all our Officers and Ministers, Civil and Military, and all other the Inhabitants of our said Island, to be obedient, aiding and assisting unto you the said Sir John Colborne, in the execution of this our Commission, and of the powers and authorities herein contained.

In Witness whereof, we have caused these our Letters to be made Patent. Witness ourself at Westminster the Thirteenth day of December, in the Second year of our Reign.

By the Queen herself,

(Signed)

EDMUNDS.

A true Copy,

J. P. COLLINS, Colonial Secretary.

## APPENDIX (B.)

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### VICTORIA R.

INSTRUCTIONS to our trusty and well-beloved Sir JOHN COLBORNE, Knight Grand Cross of the Most Honorable Military Order of the Bath, our Captain General and Governor in Chief in and over our Island of Prince Edward; or in his absence, to our Lieutenant Governor, or other Officer administering the Government of our said Island for the time being. Given at our Court at Windsor, this Thirteenth day of December, One thousand eight hundred and thirty-eight, in the Second year of our Reign.

*First.*—With these our Instructions you will receive our Commission under the Great Seal of our United Kingdom of Great Britain and Ireland, constituting you our Captain General and Governor in Chief in and over our Island of Prince Edward. You are, therefore, with all convenient speed, to assume and enter upon the execution of the trust we have reposed in you.

*Second.*—And whereas we, by our said Commission appointing you our Captain General and Governor in Chief as aforesaid, declared our pleasure to be, that there shall be within our said Island of Prince Edward, two distinct and separate Councils, to be respectively called the Legislative Council and the Executive Council of our said Island, with certain powers and authorities therein mentioned; and have further declared our pleasure to be, that the said Executive Council and Legislative Council respectively should consist of such and so many Members as shall for that purpose be nominated and appointed by us, under our Royal Sign Manual and Signet, or as shall be provisionally appointed by you the said Sir John Colborne, until our pleasure therein shall be known. Provided always, that the total number of the Members for the time being of such Executive Council, resident within our said Island, shall not at any time, by any such provisional appointment by you, be raised to a greater number in the whole than Nine; and that the total number of the Members of the said Legislative Council, resident within our said Island, shall not at any time, by any such provisional appointment by you, be raised to a greater number in the whole than Twelve.

Now know you, that we, reposing especial trust and confidence in the wisdom, prudence and ability of our trusty and well beloved George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, and James Peake, Esquires, do hereby nominate and appoint them the said George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, and James Peake, to be, during our pleasure, Executive Councillors in our said Island of Prince Edward; and we do hereby authorize and require you, the said Sir John Colborne, to summon them to our said Executive Council accordingly.

*Third.*—And we do further direct and appoint, that the Members of our said Executive Council shall take rank and precedence in the said Council according to the order in which their names are herein-before inserted; and that in all other cases the Members of our said Council shall take rank and precedence therein according to the date and seniority of their respective appointments.

*Fourth.*—And further know you, that we, reposing especial trust and confidence in the wisdom, prudence and ability of our trusty and well beloved George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, James Peake, Charles Worrell, Donald Macdonald, William Macintosh, and John Livett, Esquires, do hereby nominate and appoint them the said George Wright, Thomas Heath Haviland, Robert Hodgson, John Brecken, George Richard Goodman, James Peake, Charles Worrell, Donald Macdonald, William Macintosh, and John Livett, to be, during our pleasure, Legislative

## APPENDIX (B).

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Councillors in our said Island of Prince Edward: and we do hereby authorize and require you the said Sir John Colborne, to summon them to our said Legislative Council accordingly.

*Fifth.*—And we do further direct and appoint, that the Members of our said Legislative Council shall take rank and precedence in the said Council according to the order in which their names are herein-before inserted: and that in all other cases the Members of our said Legislative Council shall take rank and precedence therein according to the date and seniority of their respective appointments.

*Sixth.*—And you are, with all due and usual solemnity, to cause our said Commission constituting you our Captain General and Governor in Chief as aforesaid, to be read and published at the first meeting of our said Executive Council of our Island of Prince Edward—which being done, you shall then take and also administer to each of the Members of our said Council the several Oaths therein required.

*Seventh.*—You shall also administer, or cause to be administered, the Oaths mentioned in our said Commission, to the Members and Officers of our said Executive and Legislative Councils and Assembly, and to all Judges, Justices and other persons who hold any office or place of trust or profit in our said Island; without the doing of all which you are not to admit any person whatever into any public office, nor suffer those who may have been already admitted, to continue therein.

*Eighth.*—You are not to suspend any of the Members of either of our said Councils without good and sufficient cause; nor without the consent of the majority of the Members of our said respective Councils signified in Council, after due examination of the charge against such Councillor, and his answer thereunto: and in case of the suspension of any of them, you are to cause your reasons for so doing, together with the charges and proofs against such Councillor, and his answer thereto, to be duly entered upon the Council Books, and forthwith to transmit copies thereof to us, through one of our Principal Secretaries of State. Nevertheless, if it should happen that you should have reasons for suspending any Legislative or Executive Councillor, not fit to be communicated to the said respective Councils, you may in that case suspend such person without their consent; but you are thereupon immediately to send to us, through one of our Principal Secretaries of State, an account of your proceedings therein, with your reasons at large for such suspension.

*Ninth.*—And whereas effectual care ought to be taken to oblige the Members of our said respective Councils to a due attendance therein, in order to prevent the many inconveniences that may happen for want of a quorum of the said respective Councils to transact business as occasion may require: it is our will and pleasure that if any of the Members of our said respective Councils, residing in our said Island, shall hereafter wilfully absent themselves from the said Island, and continue absent above the space of Six Months together, without leave from you first obtained, under your hand and seal, or shall remain absent for the space of one year, without our leave given them under our Royal signature, his or their place or places in the said respective Councils shall immediately thereupon become void: and that if any of the Members of our said respective Councils, residing in our said Island, shall wilfully absent themselves hereafter from the said respective Councils, when duly summoned by you, without good and sufficient cause, and shall persist in such absence after being thereof admonished by you, you are to suspend such Councillors so absenting themselves, till our further pleasure be known therein, giving immediate notice thereof to us, through one of our Principal Secretaries of State. And we do hereby will and require you, that this our Royal pleasure be signified to the several Members of our said respective Councils; and that it be entered in the respective Council Books as a standing rule.

*Tenth.*—You are to communicate to our said Executive Council such and so many of these our Instructions, wherein their advice and consent are mentioned to be requisite; and likewise all such others, from time to time, as you shall find convenient for our service to be imparted to them.

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*Eleventh.*—You are to permit the Members of our said respective Councils to have and enjoy freedom of debate and vote in all affairs of public concern which may be debated in the said respective Councils.

*Twelfth.*—And whereas by our Commission to you, under the Great Seal of the United Kingdom of Great Britain and Ireland, you are authorized and empowered, with the advice and consent of our said Executive Council, to summon and call General Assemblies of the Freeholders, inhabitants of our said Island, under your government, and with the advice and consent of the Legislative Council and Assembly of the said Island, or the major part of them, to make, constitute and ordain Laws, Statutes and Ordinances, for the public peace, welfare and good government of our said Island, it is our will and pleasure, that the following regulations be carefully observed in the framing and passing all such Laws, Statutes and Ordinances as may be passed by you, with the advice and consent of our said Legislative Council and Assembly, viz:

*Thirteenth.*—That the style of enacting the said Laws, Statutes and Ordinances, be by the Governor, Council and Assembly, and no other. That each different matter be provided for by a different Law, without including in one and the same Act such things as have no proper relation to each other. That no clause be inserted in any Act or Ordinance which shall be foreign to what the title of it imports; and that no perpetual clause be part of any temporary Law. That no Law or Ordinance whatever be suspended, altered, revised or repealed by general words, but that the title and date of such Law or Ordinance be particularly mentioned in the enacting part. That no Law or Ordinance respecting private property be passed without a clause suspending its execution until our Royal pleasure be known; nor without a saving of the right of Us, our Heirs and Successors, and of all bodies politic and corporate, and of all persons, except such as are mentioned in the said Law or Ordinance, and those claiming from, by and under them. And before such Law or Ordinance is passed, proof must be made before you in Council, and entered upon the Council books, that public notification was made of the party's intention to apply for such Act in the several Parish Churches where the Land in question lies, for three Sundays at least, successively, before any such Law or Ordinance shall be proposed; and you are to transmit and annex to the said Law or Ordinance a certificate under your hand that the same has passed through all the forms above mentioned. That in all Laws or Ordinances for levying moneys or imposing fines and forfeitures, express mention be made that the same are granted to us, our heirs and successors, for the public uses of the said Island, and the support of the Government thereof, as by the said Law or Ordinance shall be directed. That all such Laws, Statutes and Ordinances be transmitted by you within three months, or sooner, after the passing thereof, to us, through one of our principal Secretaries of State; and that all such Laws, Statutes or Ordinances be fairly abstracted in the margins, and accompanied with full and particular observations upon each of them—that is to say, whether the same is introductory to a new Law, declaratory of a former Law, or does repeal a Law then before in being. And you are also to transmit in the fullest manner the reasons and occasion for enacting such Laws or Ordinances, together with fair copies of the Journals and Minutes of the proceedings of the said Legislative Council and Assembly.

*Fourteenth.*—It is our will and pleasure, that you do not give your assent to any Act or Acts for raising Money by the institution of any public or private Lotteries.

*Fifteenth.*—It is our will and pleasure, that you are not to give your assent to any Bill for ascertaining the duration of Assemblies, the fixing or altering the qualifications of the electors or elected, or establishing any regulations with respect thereto, until you shall have transmitted the draft of such Bill or Bills unto us, through one of our Principal Secretaries of State, and shall have received our Royal pleasure thereupon; or that a suspending clause as aforesaid shall be inserted therein.

*Sixteenth.*—It is our will and pleasure, that you do not, upon any pretence whatsoever, give your assent to any Bill or Bills that may hereafter be passed by the Legislative Council and Assembly of the Island of Prince Edward, under your government, for the naturalization of Aliens; nor for the divorce of persons joined together in holy matrimony; nor for establishing a title in any persons to lands, tenements and real estates in our said Island of Prince Edward, originally granted to or purchased by Aliens antecedent to naturalization.

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*Seventeenth.*—And whereas great mischiefs may arise from passing Bills of an unusual and extraordinary nature and importance in our Plantations, which Bills remain in force there from the time of enacting until our pleasure be signified to the contrary: We do hereby will and require you not to pass or give your assent to any Bill or Bills of an unusual and extraordinary nature and importance, wherein our Prerogative, or the property of our subjects, may be prejudiced, or the trade and shipping of this Kingdom in any way affected, until you shall have first transmitted unto us, through one of our Principal Secretaries of State, the draft of such Bill or Bills, and shall have received our Royal pleasure thereupon, unless you take care that there be a clause inserted therein suspending and deferring the execution thereof until our pleasure shall be known concerning the same.

*Eighteenth.*—And it is our further will and pleasure, that you do not re-enact any Law to which the assent of us or our Royal Predecessors has once been refused, without express leave for that purpose first obtained from us, upon a full representation by you to be made to us, through one of our Principal Secretaries of State, of the reasons and necessity for passing such Law.

*Nineteenth.*—And it is our express will and pleasure, that no Law for constituting any Court or Courts of Judicature, or for establishing the Militia, shall be a temporary Law; and that no Law for granting unto us any sum or sums of money, by Duties of Impost, Tonnage or Excise, be made to continue for less than one whole year; as also that no other Laws whatsoever be made to continue for a less time than two years: except only in cases where it may be necessary, upon some unforeseen emergency, to make provision by Law for a service in its nature temporary and contingent.

*Twentieth.*—It is our will and pleasure, that you do not, on any pretence whatsoever, give your assent to, or pass any Bill or Bills in our Island of Prince Edward, under your Government, by which the Lands, Tenements, Goods, Chattels, Rights and Credits of persons who have never resided within our said Island of Prince Edward, shall be liable to be attached for the recovery of debts due from such persons, in any manner inconsistent with the usage and practice within this our United Kingdom of Great Britain and Ireland, until you have first transmitted unto us, through one of our principal Secretaries of State, the Draft of such Bill or Bills, and shall have received our Royal Pleasure thereupon—unless you take care in the passing of such Bill or Bills, that a clause or clauses be inserted therein, suspending and deferring the execution thereof until our Royal Pleasure be known thereupon.

*Twenty-first.*—It is our will and pleasure, that you do in all things conform yourself to the provisions contained in an Act of Parliament passed in the Fourth Year of the Reign of His late Majesty King George the Third, intituled “ An Act to prevent Paper Bills of Credit hereafter to be issued in any of His Majesty’s Colonies or Plantations in America, from being declared to be a legal tender in payment of money; and to prevent the legal tender of such Bills as are now subsisting from being prolonged beyond the period limited for calling in and sinking the same;” and also of an Act passed in the Thirteenth Year of His said late Majesty King George the Third, to explain and amend the above recited Act, passed in the Fourth Year of His Reign as aforesaid; and you are not to give your assent to or pass any Act whereby Bills of Credit may be struck or issued in lieu of money, or for payment of money to you our Governor, or to any other person whatsoever, unless a clause shall be inserted in such Act declaring the same shall not take effect until the said Act shall have been approved and confirmed by us, our Heirs or Successors.

*Twenty-second.*—You are not to suffer any Public money whatsoever to be issued or disposed of otherwise than by Warrant under your hand; but the Assembly may nevertheless be permitted, from time to time, to view and examine the accounts of money disposed of by virtue of Laws made by them, as there shall be occasion. And we do hereby particularly require you to take care, that fair Books of Accounts of all Receipts and Payments of all Public Moneys be duly kept, in which Books shall be specified every particular sum raised or disposed of, together with the names of the persons to whom any payment shall be made, to the end that we may be satisfied of the right and due application of the Revenue of our said Island of Prince

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Edward, with the probability of the increase or diminution of the same, under every head and article thereof.

*Twenty-third.*—Our will and pleasure is, that you do, in all civil causes, on application being made to you for that purpose, permit and allow Appeals from any of the Courts of common Law in our said Island of Prince Edward; and you are for that purpose to issue a Writ in the manner which has been usually accustomed, returnable before yourself and the Executive Council of the said Island of Prince Edward, who are to proceed to hear and determine such Appeals, wherein such of the said Executive Councillors of our said Island of Prince Edward as shall be at that time Judges of the Court from whence such Appeal shall be so made to you, and to our said Executive Council as aforesaid, shall not be admitted to vote upon the said Appeal, but they may nevertheless be present at the hearing thereof, to give the reasons of the Judgment given by them, in the causes wherein such Appeal shall be made: Provided nevertheless, that in all such Appeals the sum or value appealed for do exceed the sum of Three hundred Pounds, Sterling; and that security be first duly given by the Appellant to answer such charges as shall be awarded, in case the first sentence be affirmed; and if either party shall not rest satisfied with the Judgment of you and our Executive Council as aforesaid, Our will and pleasure is, that the Appellant may then appeal unto Us in Our Privy Council, provided the sum or value so appealed for unto Us do exceed Five hundred Pounds, Sterling, and that such Appeal shall be made within Fourteen days after sentence, and good security be given by the Appellant that he will effectually prosecute the same and answer the condemnation, as also pay such Costs and Damages as shall be awarded by Us, in case the sentence of you and the said Executive Council shall be affirmed: Provided nevertheless, when the matter in question relates to the taking or demanding any duty payable to Us, or to any Fee of Office or Annual Quit Rent, or other such like matter or thing, where Our rights in future may be bound, in all such cases, you are to admit an Appeal to Us, in Our Privy Council, although the immediate sum or value appealed for be of a less amount or value: And it is Our further will and pleasure, that in all cases where by your Instructions, you are to admit Appeals to Us in Our Privy Council, execution be suspended until Our final determination of such Appeal, unless good and sufficient security be given by the Appellee to make such ample restitution of all that the Appellant shall have lost by means of such Decree or Judgment, in case upon the determination of such Appeal such Decree or Judgment should be reversed, and restitution awarded to the Appellant.

*Twenty-fourth.*—You are also to admit Appeals unto Us in Our Privy Council, in all cases of Fines imposed for Misdemeanors, provided the Fines so imposed amount to or exceed the sum of One hundred Pounds, Sterling—the Appellant first giving good security that he will effectually prosecute the same, and answer the condemnation of the sentence by which such Fine was imposed, be confirmed.

*Twenty-fifth.*—You shall not remit any Fines or Forfeitures whatsoever above the sum of Fifty Pounds. // nor dispose of any Forfeitures whatsoever, until you signify the same to Us, through one of Our principal Secretaries of State, and shall have received Our directions thereupon; but you may in the mean time suspend the payment of the said Fines and Forfeitures.

*Twenty-sixth.*—You are, with the advice and consent of our Executive Council, to take especial care to regulate all Salaries and Fees belonging to places, or paid upon emergencies, that they be within the bounds of moderation; and that no exaction be made on any occasion whatsoever; as also that Tables of Fees be publicly hung up in all places where such Fees are to be paid.

*Twenty-seventh.*—And you are to transmit to Us, through one of Our principal Secretaries of State, with all convenient speed, a particular account of all establishments of Jurisdiction, Courts, Offices and Officers, Powers and Authorities, Fees and Privileges granted and settled within our said Island of Prince Edward; as likewise an account of all the expences, if any, attending the establishments of the said Courts and Offices.

*Twenty-eighth.*—And it is Our will and pleasure, that all Commissions to be granted by you to any per-

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son or persons, to be Judge, Justice of the Peace, or other necessary Officer, be granted during pleasure only.

*Twenty-ninth.*—You shall not displace nor suspend any of the Judges, Justices, Sheriffs, or other Officers or Ministers within Our said Island of Prince Edward, without good and sufficient cause, to be signified in the most full and distinct manner to Us, through one of Our principal Secretaries of State.

*Thirtieth.*—It being of the greatest importance to Our service, and to the welfare of Our Plantations, that justice be every where speedily and duly administered, and that all disorders, delays, and other undue practices in the administration thereof be effectually prevented. We do particularly require you to take especial care that in all Courts where you are authorized to preside, justice be impartially administered, and that in all Courts established within our said Island of Prince Edward, all Judges and other persons therein concerned, do likewise perform their several duties without delay or partiality.

*Thirty-first.*—You shall not, by color of any power or authority hereby or otherwise granted, or mentioned to be granted, unto you, take upon you to give, grant, or dispose of any place or office within our said Island of Prince Edward, which now is or shall be granted by Warrant under our Signet and Sign Manual, any further than that you may, upon the vacancy of any such office or place, or upon the suspension of any such Officer by you as aforesaid, put in any fit person to officiate in the interim, until you shall have represented the matter unto Us, through one of our principal Secretaries of State.

*Thirty-second.*—And whereas complaints have been made by the Officers of our Customs in our Plantations in America, that they have been frequently obliged to serve upon Juries, or personally to appear in Arms whenever the Militia is drawn out, and thereby are much hindered in the execution of their employments: Our will and pleasure is, that you take effectual care, and give the necessary directions, that the several Officers of our Customs be excused and exempted from serving upon any Juries, or personally appearing in Arms in the Militia, unless in cases of absolute necessity, or serving on any parochial offices which may hinder them in the execution of their duties.

*Thirty-third.*—And whereas you will receive from our Commissioners for executing the office of our High Admiral of our United Kingdom of Great Britain and Ireland, and of the Plantations, a Commission constituting you Vice Admiral of our said Island of Prince Edward, you are required and directed carefully to put in execution the several powers thereby granted to you.

*Thirty-fourth.*—And there having been great irregularities in the manner of granting Commissions in the Plantations to private Ships of War, you are to govern yourself, whenever there shall be occasion, according to the Commission and Instructions granted in this Kingdom; but you are not to grant Commissions of Marque or Reprisal against any Prince or State in amity with Us, to any person whatsoever, without our especial command.

*Thirty-fifth.*—Whereas Commissioners have been granted in our Colonies and Plantations, for trying Pirates in those parts, pursuant to the several Acts for the more effectual suppression of Piracy, and a Commission has been issued, empowering you as our Captain General and Governor in Chief of our Island of Prince Edward, with other persons therein mentioned, to proceed accordingly in reference to the said Island of Prince Edward: Our will and pleasure is, that in all matters relating to Pirates you govern yourself according to the intent of the said Acts.

*Thirty-sixth.*—You are to permit all persons inhabiting our Island of Prince Edward under your Government, to have full liberty of conscience, and a free exercise of their respective modes of religious worship, provided they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the Government.

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*Thirty-seventh.*—You shall take especial care that God Almighty be devoutly and duly served throughout your Government; that the Book of Common Prayer, as by Law established, be read each Sunday and Holiday, and the blessed Sacrament administered, according to the rites of the Church of England.

*Thirty-eighth.*—It is our will and pleasure to reserve to you the power of granting Licenses for Marriages, Letters of Administration, and Probates of Wills, as heretofore exercised by your Predecessors; and also to reserve to you, and all others to whom it may lawfully belong, the right of Patronage and Presentation to Benefices: You are not, however, to present any Protestant Minister to any Ecclesiastical Benefice, without a Certificate from the Bishop of Nova Scotia, of his being conformable to the doctrine and discipline of the Church of England, and it is our will and pleasure, that the person so presented shall be instituted by the Bishop, or his Commissary, duly authorized by him.

*Thirty-ninth.*—And you are to take care that a Table of Marriages, established by the Canons of the Church of England, be hung up in all places of Public Worship, according to the rites of the Church of England.

*Fortieth.*—And whereas you will receive, through one of our principal Secretaries of State, a Book of Tables in blank, commonly called the Blue Book, to be annually filled up with certain Returns relative to the Revenue and Expenditure, Militia, Public Works, Legislature, Civil Establishment, Pensions, Population, Schools, Course of Exchange, Imports and Exports, Agricultural Produce, Manufactures, and other Matters in the said Blue Book more particularly specified, with reference to the state and condition of our said Island of Prince Edward—now, we do hereby signify our pleasure, that all such Returns be accurately prepared and punctually transmitted to Us, from year to year, through one of our principal Secretaries of State; and that no Officer in our said Province, within whose Department it may be to contribute any Return or Returns for the purposes aforesaid, or to prepare the same when so contributed, shall be entitled to receive, or shall receive from you, any Warrant for the payment of his official salary, which may become due and payable to him, so long as such duty shall be in arrear, or remain unperformed.

*Forty-first.*—And in case of distress of any other of our Plantations, you shall, upon application of the respective Governors to you, assist them with such aid as the condition and safety of our said Island of Prince Edward, under your Government, can spare.

*Forty-second.*—You are likewise, from time to time, to give unto Us, through one of our principal Secretaries of State, an account of the wants of our said Island of Prince Edward, what are the chief products thereof, what new improvements are made therein by the industry of the Inhabitants or Planters, and what further improvements you consider may be made, or advantages gained by Trade, and which way we may contribute thereunto.

*Forty-third.*—If any thing shall happen which may be of advantage or security to our Island of Prince Edward, under your Government, which is not herein or by your Commission provided for, we do hereby allow unto you, with the advice and consent of our said Executive Council, to take order for the present therein, giving unto us, through one of our principal Secretaries of State, speedy notice thereof, that you may receive our satisfaction, if we shall approve the same: Provided always, that you do not, by colour of any power or authority hereby given, commence or declare War, without our knowledge and particular command therein.

*Forty-fourth.*—And whereas by our several Commissions under the Great Seal of the United Kingdom of Great Britain and Ireland, We have appointed you to be our Captain General and Governor in Chief of our Provinces of Upper Canada, Lower Canada, New Brunswick, and Nova Scotia, and of our Island of Prince Edward; and it is our intention that the Lieutenant Governors commanding in the said Provinces of Upper Canada, New Brunswick, Nova Scotia, and in our Island of Prince Edward, shall have and enjoy the full



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salaries, perquisites and emoluments granted to them, and arising from their respective Governments, in as full and ample a manner as if the said Governments were under distinct Governors in Chief, it is therefore our will and pleasure, that you shall not, at any time or times, when you shall be resident and commanding in chief in either of our said Provinces of Upper Canada, New Brunswick, Nova Scotia, or in our Island of Prince Edward, have or receive any part of the said salaries, perquisites or emoluments, but that the same shall continue to be paid and satisfied to the respective Lieutenant Governors of the said several Provinces and Island, in like manner as they usually are during your absence therefrom.

*Forty-fifth.*—And you are upon all occasions to send to us, through one of our principal Secretaries of State, a particular account of all your proceedings, and of the conuion of affairs within your Government.

Lieutenant General SIR JOHN COLBORNE, G. C. B.  
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