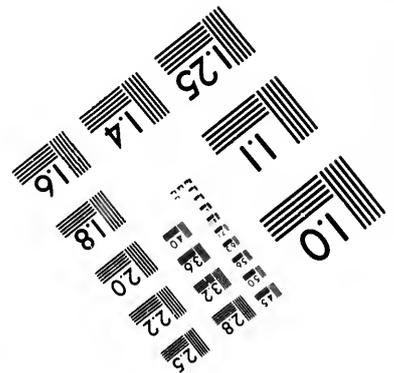
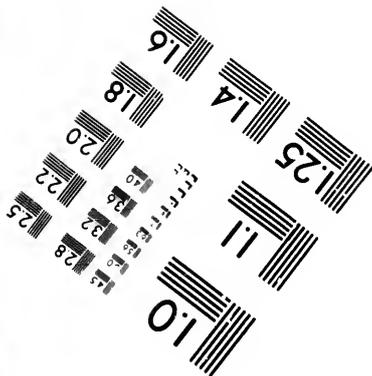
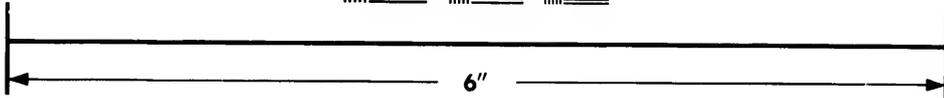
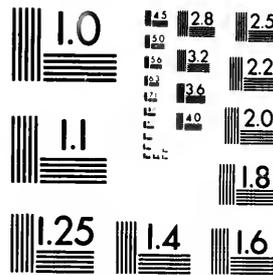


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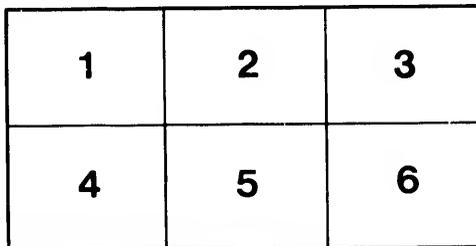
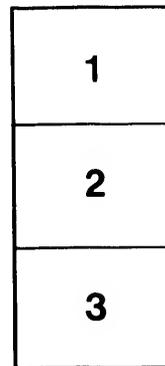
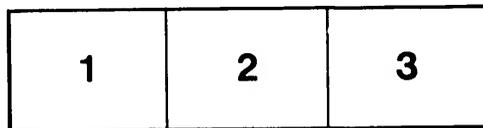
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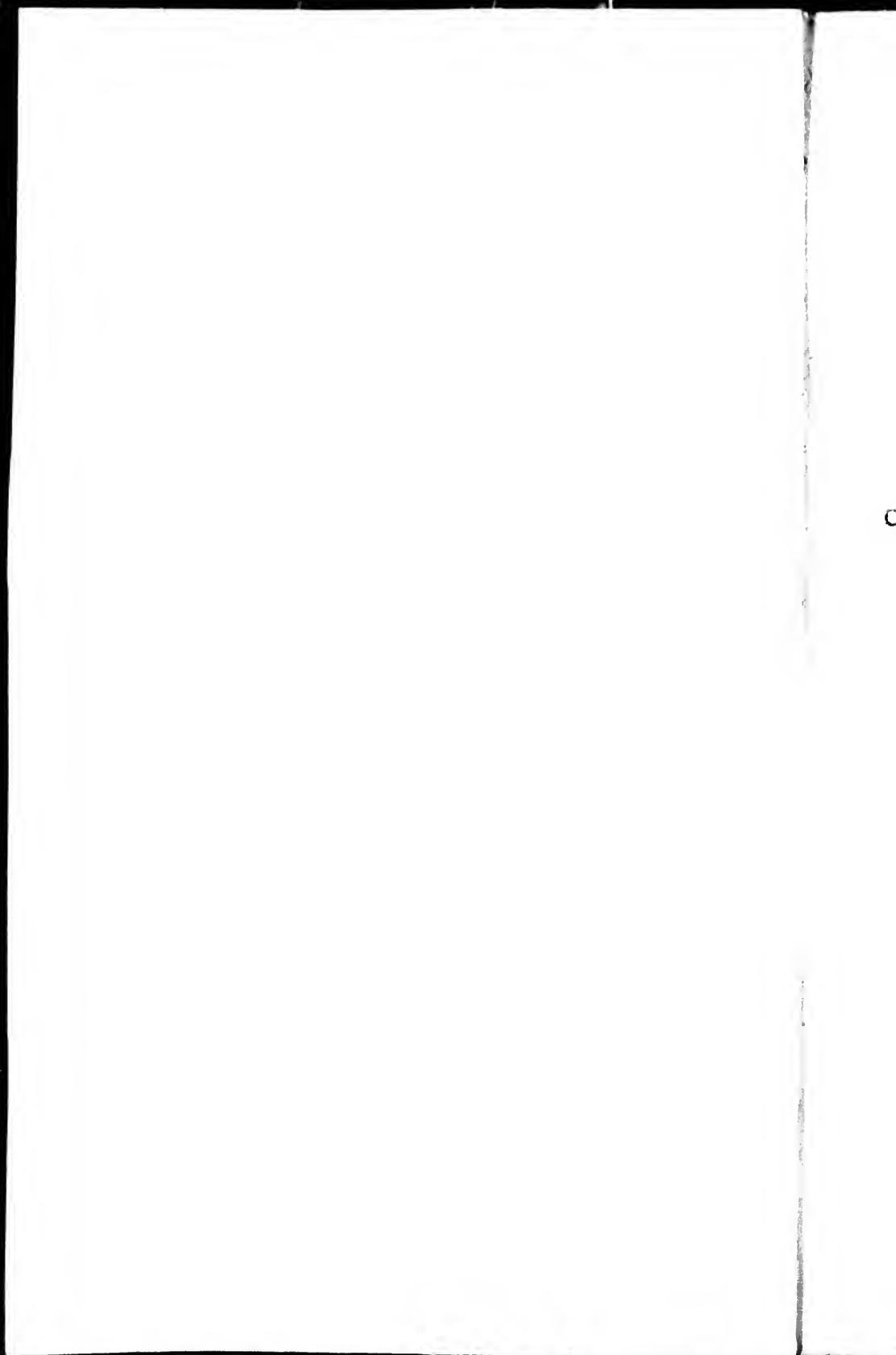
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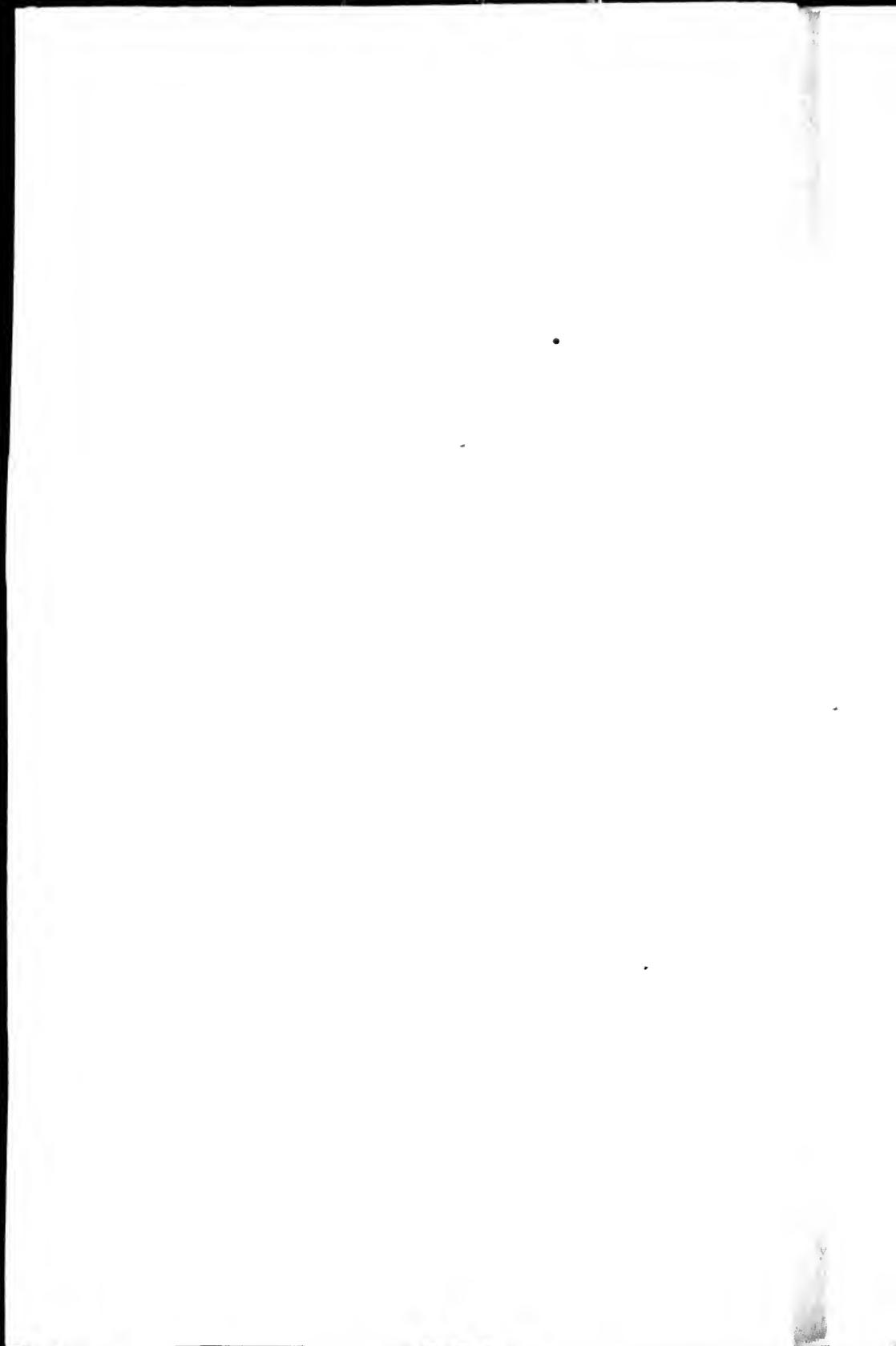


F. Douglas

Mr. Reeves's
E V I D E N C E
BEFORE A
COMMITTEE OF THE HOUSE OF COMMONS
ON THE
TRADE OF NEWFOUNDLAND.

L O N D O N:
PRINTED FOR J. SEWELL, CORNHILL;
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1793.



ADVERTISEMENT.

IN the Sessions 1793, a Committee of the House of Commons was appointed to enquire into the State of the Trade to Newfoundland, and to report the same, as it should appear to them, to the House. This Committee was sitting for many Weeks; during which several Persons were called to give the Committee Information upon the Subject. Some Merchants of the West Country took this Occasion to urge Complaints respecting most of the Regulations that had been made in the Island, and its Trade, since the Time of King William. The Persons who were foremost in these Representations were Mr. OUGIER and Mr. NEWMAN, both of Dartmouth; who were supported in some Particulars by Mr. JEFFEREY of Poole. The Statements of these Gentlemen are answered principally by Mr. GRAHAM, Mr. ROUTH, and Mr. REEVES; and in some Points by Mr. STREET and Mr. SAUNDERS, both of Poole. Some other

Gentlemen

A D V E R T I S E M E N T .

Gentlemen were examined; as, Sir HUGH PALLISER, Admiral EDWARDS, Sir RICHARD KING, Two of the Commissioners of the Customs, Mr. IRVING (the Inspector General of Imports and Exports) Mr. WALDRON, Mr. THOMEY, and some others.

The Evidence delivered by all these Gentlemen makes a thick Folio Volume. The Evidence of Mr. REEVES, as it relates to the Judicature of the Island, is now re-printed separate in this Form, and may be made an Appendage to "The History of the Government of Newfoundland."

JOHN REEVES, Esquire, Chief Justice of the Island of Newfoundland, being called in, was asked, If he had any Information to give to the Committee respecting the Government, and the Administration of Justice in the Island of Newfoundland? He desired to be permitted to deliver in the following Paper of Remarks; viz.

I have read over the Evidence that has been delivered, and the Appendix to it. It appears to me, that the Evidence delivered by Mr. Newman and Mr. Ougier is full of Mistakes, and that in many Places there are Facts alledged which are not founded. Many of these have been commented upon by some Gentlemen who have been examined before me, which will make what I have to say less prolix; I shall also confine myself principally to one Head of Enquiry before the Committee, namely, what regards the Administration of Justice; and if I say any Thing respecting the Trade and Fishery, it will only be incidentally.

The Complaints of those among the Western Merchants, who are pleased to join in holding a similar Language, being directed chiefly against the Alterations that have been made in Newfoundland within these last Five or Six Years, it seems extraordinary that they should depute nobody to urge these Complaints but Two Gentlemen, who have not been in the Island since the principal Part of the Grievances complained of have prevailed; one of them has not been there these last Twelve Years; the other not these last Sixteen Years. The oldest of these Grievances, namely, Stat. 15 Geo. III. is hardly within the personal Observation of either of them, as by their own Account it had passed several Years before it was carried into Execution in the Island.—This is the best Way of accounting for the Inconsistencies in the Evidence of these Gentlemen; but I know no Way of accounting for their being employed on a Service for which they were apparently so ill qualified. These Gentlemen carry on their Business at Newfoundland by Agents, in whom they repose an implicit Confidence; and if they themselves are deceived by them, it is not much to be wondered, that they should lay before this Committee as true, what they believe to be so.

Character of
Agents :

The Committee should understand, that the principal Merit of an Agent at Newfoundland is, to draw as few Bills upon his Principal as possible—in order to compass this, every decent

cent Method is employed to postpone and stave off Payments; this involves them in Suits; they are still less willing to pay the Expences that are incurred in such Suits; Attachments are made to execute the Judgment of the Court; the Agents then write Home to their Principals, complaining of the Courts and of the Judges, and ascribing to Injustice and Oppression what those upon the Spot know should be imputed only to the Willfulness and Perverseness of the Party.

Agents who thus embroil the Affairs of their Principals easily find People of the same Temper, and under similar Circumstances, whom they encourage in the same Resistance to the Administration of Justice; and then they have an Opportunity to collect Representations of the like Kind for confirming their Principals in the Belief of their own Story, and that every Misfortune and Loss originates from Courts and Officers of Justice. The Disposition Men have to throw Blame on every Body but themselves, induces Principals, who find their Affairs growing worse, to believe that all their Losses are derived from such Causes, and such alone.

To this Source are to be ascribed, I will ^{Of Princi-} venture to say, Nine Tenths of the Com- ^{pals.} plaints and Grievances that have lately been made respecting Newfoundland. This Credulity of some Principals at Home, as well as the Perseverance and Assiduity with which they endeavour to press others into the same

Belief with themselves, is a most extraordinary Part of the Dispute respecting Newfoundland. Some Instances of this Sort came to my Knowledge before I was connected with the Island, One of which I will take the Liberty of mentioning to the Committee ; I will also bring to their Recollection some Cases which are among the printed Evidence ; from these it will be better seen in what Sort of Temper these Complaints are made, and to what Sort of Credit they are entitled.

Newman's
Action.

I remember a Complaint made by Mr. Newman to the Board of Trade, of a Judgment given by the Court of Common Pleas against his Agent for £. 12, on a Bill drawn on Mr. Newman by his Agent in Favour of a poor Fisherman, who could neither read nor write. This Bill was refused Payment in England, and was sent the next Year over to Newfoundland, where Payment was likewise refused. As well as I recollect, the Objection made to the Payment in both Places was, that this Man had indorsed the Bill, by making his Mark, without any Attestation being annexed. The Judges of the Common Pleas thought this not a sufficient Objection in a Place where Nine Tenths of those to whom such little Bills are given can neither read nor write ; and that if this was established as a Point of Newfoundland Law, it would be a great Obstacle to these poor Men ever being paid at all : They accordingly gave Judgment against the Agent, who being of the Temper I have
above

above described, and not thinking himself justified with his Principal until he had stood out the utmost Process of the Law, refused to comply with the Judgment, which, in consequence, was carried into Execution by an Attachment and Sale of the Effects.

This Proceeding was made a Subject of Complaint at the Board of Trade; the Injustice of the Judgment, and still more the Injustice of the Execution, were urged in the strongest Terms; and the Complainants concluded their Representation with a Prayer (which is the singular Part of this Business for which I principally relate the Story) that all the Judges of the Common Pleas, being Four or Five Persons, together with the Sheriff, should be sent for to England to answer for this high Offence. This Complaint was referred to me as Law Officer of the Board of Trade, to report my Opinion thereon. It is unnecessary to mention what that Report was; but the Opinion I then formed has been confirmed by what I have since seen at Newfoundland.

Suffice it to say, the Board of Trade did not think this either an Error in Judgment, or a Maliciousness of Intention, sufficient to call Five or Six Gentlemen across the Atlantic to answer for the Part they had taken in it.

Another Example of the Disposition and Conduct of these Gentlemen I shall bring to the Recollection of this Committee from among the printed Evidence. It is the Case of an Agent of Mr. Ougier,

Ougier's
Action.

An Action was brought against him in the Court of Common Pleas. An Affidavit was made of the Debt, and Mr. Ougier's Goods were attached in the regular Way (see the Papers relating to this in the Appendix to the Second Report); it turned out upon a Trial (but not till after the Jury had taken an Hour to consider the Matter) that the Defendant did not owe the Money. Mr. Ougier has made heavy Complaint of this Proceeding, as if he had suffered unheard of Injustice, because his Goods were attached where it was proved afterwards no Debt was due. The Absurdity of such Complaint is so plain to every One who hears it, that there is no need to say a Syllable to refute it.

Though Mr. Ougier has been pleased to represent himself to be a Person of too much Credit at Newfoundland to be subjected to the usual Process of Attachment, he will not find any Body in this Kingdom who will think Justice is to be administered with such Partiality. One of the principal Grievances made by Mr. Ougier in this Matter of Complaint was, the Manner in which the Attachment was put on; namely, that it was excessive, and had the Effect of impounding 6 or £.7,000 worth of Goods, for securing 3 or £.400 of Debt, and so putting an utter Stop to his Business. When I was at the Bay of Bulls, where this Transaction passed, I was resolved to enquire into the Fact, in order to satisfy myself, and be able to explain it, should it ever be revived
among

among the extravagant Representations that are made respecting Newfoundland to Persons who have it not in their Power to refute them.

In the Presence of Mr. Lee, Mr. Ougier's Agent, Mr. Armstrong the Deputy Sheriff, and Mr. Ougier's Storekeeper, who was the Winter Agent, and had been the Cause of all the Mischief, I enquired into the whole Transaction; and it appeared to me, upon the Declarations of Armstrong, and the Admissions of the Storekeeper, that true it was, for several Days Mr. Ougier's Stores were not opened by Reason of the Attachment; but that the Attachment was declared by the Deputy Sheriff to be only for a small Sum, and that the Storekeeper might have had Access to the Stores for any Thing he wanted, provided a Sufficiency for that Sum was left; but that the Storekeeper obstinately refused to go near the Storehouse, to see whether he could have Access (as the Deputy Sheriff stated) declaring, that as the Property was attached, he would have nothing at all to do with it. For this, and for no other Reason was it that Mr. Ougier's Business was kept at a Stand for some Days; but whatever the Interruption might be, I do not conceive that any great Mischief was done to his Affairs by this blameable Conduct of his Deputy Agent, the Appointment of which Description of Persons makes the Affair of Agency more detrimental than it otherwise would be.

Mr. Lee has made an Affidavit of what

passed, when I was at the Bay of Bulls; and Mr. Ougier, in his Evidence, has made a Statement of the Matters of that Affidavit; but what he says does not appear to me to correspond with what is sworn in the Affidavit; and I will assure the Committee, that what is sworn in the Affidavit does not correspond with the Fact. I might possibly have admitted, that it was hard on Mr. Ougier to have his Goods attached where no Debt was owing, but that need not imply any Blame on the Court, or Officers of it; and if it might be so construed, I had otherwise very plainly expressed my Approbation of their Proceedings, and very severely reprobated the Conduct of the Store-keeper, who by his Frowardness had brought on all that had happened in his Master's Affairs, and in Addition to that, had caused him to be abused by very gross Misrepresentations. What I said upon the Whole of this Subject, namely, of opposing the Process of Courts, and then transmitting to England false and injurious Complaints, was very full and pointed; and I am very much astonished that Lee, to whom it was mostly directed, should make such a Relation, and swear to it.

Barter's
Case.

Another Instance, which shews how much these Gentlemen are abused, and how much they assist in deceiving themselves, is the Case of Thomas Barter. This is another Matter of Complaint against the Officers of Justice, which has been made a Subject of great Clamour, and which I examined into while at
St.

St. John's, for the same Reasons as I did the former.

This Examination was in open Court, and my Opinion upon the Matter I wrote at the Bottom of the Man's Petition of Complaint: I hoped by so doing to put an End to an ill-founded Story, and prevent the bad Use that I knew had been made of pretended Grievances like this; but such Men, I see, are not to be so checked; the Matter is again brought forward by Mr. Ougier, who takes upon him to say, "I was deceived and misinformed;" and in order to shew this, he has added to the other Papers Depositions of Persons made since to the Fact, some or all of whom, I believe (but I am not certain) I examined myself in Court. To this is subjoined a scandalous Affidavit made by Barter himself, highly reflecting upon me, and utterly false.

I beg the Committee to attend to this Transaction, as another strong Fact, to shew the Temper as well as Understanding of all the Parties concerned in it. That a Matter heard before a Chief Magistrate upon the Spot, with the Parties present, and brought Face to Face, and that an Opinion upon the Transaction so plainly expressed as mine is, at the Foot of that Complaint, should be brought forward in this Manner for this Committee to review it, upon a Hope that on the Face of these Papers there is any Thing that will induce the Committee to believe that the Judge was in the wrong and this Man in the right, is so contrary to

to every Thing I have ever met with, that I am at a Loss what to say upon it.

Papers in the
Appendix
not ordered
to be printed.

I understand that none of the Papers which were delivered in by Mr. Ougier, relative to this and the former Case, nor indeed any of the Papers in the Appendix, from Page 31 to 54, were intended by the Committee to be printed; and it is only by Mistake that they got a Place there. As they are there, I have made this Use of them, to shew the Complexion and Character of the Persons concerned in Complaints of this Sort. It is however very much to be wished that these Papers had never got into Print. First, Because, as I humbly submit, they are most of them irrelevant to the Matter now immediately under Enquiry. Secondly, Because they are of a Sort to gratify ill-disposed Men, who obtain all the Triumph they ever looked for in producing them, if they see their Names and Story in Print, and have the transient Gratification, in this Manner, of calumniating Persons in Office and Authority. If these Papers were to go no further than the House of Commons there would be no Harm, but as they are likely to travel to Newfoundland, it ought to be known that they were printed by Mistake, and not because the Committee thought them worthy of such Notice.

Among the Papers thus undesignedly put to the Press, there is a Summons to appear in Court, signed by Mr. D'Ewes Coke, the Comptroller of the Customs. This Paper was
delivered

delivered in by Mr. Ougier, as appears by the Second Report, without any Introduction, or any Observation to shew for what Purpose he delivered it in. This seems to me a singular Way of furnishing Information. As he has not explained the Design of producing that Paper, we are left to conjecture it. I have no Doubt that he meant the Committee should understand, that the Comptroller of the Customs had issued that Summons as a Justice of the Peace, contrary to the Clause in the Act of last Year, which disqualified the Officers of the Customs from acting as Justices; but the Paper purports to be issued from the Supreme Court, in which the Comptroller of the Customs was competent to be an Officer, if a proper Authority was given him under the Act of Parliament. Whether Mr. Ougier did not perceive this, or whether he did, and thought the Committee would not, they will equally discover what Sort of a Person they have to rely upon.

I have taken the Liberty to premise thus much with Regard to the Conduct of those who appear before this Committee, in order that what they say may be received according to the Credit that shall seem due to them. I shall now go on to examine some of the Facts and Observations which they have ventured to bring before the Committee, and shall proceed to give my Opinion upon the different Points of their Evidence. I shall do this upon the Foundation of such Observations, as I had

Newman
and Ougier's
Evidence
considered.

an

an Opportunity of making during my Residence in the Island, in the Summer of 1791 and 1792 ; and I shall derive Assistance from Sources of Information, which are not commonly accessible, but which have an Authority that I trust this Committee will not controvert ; I mean the Papers which are to be found among the Books of the Board of Trade, from the Beginning of this Century down to the present Time, consisting of Letters from the different Commanders and Officers of Government, and the Proceedings of the Board respecting the Trade and Fishery of Newfoundland ; some of these Proceedings (namely, the Representations of the Board made at different Times to His Majesty) have already been printed by Order of the House of Commons. The Letters, and other Information of which I now speak, are the Materials upon which the Board have formed the Opinions conveyed in such Representations ; I trust that these Materials will be received with all the Credit due to Official Papers, and I may venture to assure the Committee, that a Perusal of these Papers will enable them better to form an Opinion upon the Evidence that has been given, and will throw a new Light upon the whole Subject of Newfoundland. In these may be seen what has been the Evil complained of at different Times on both Sides ; how much was real, how much pretended ; what Remedies have been sought, and what have been applied for the curing of them.

Without

Without this Retrospect to the former History of Newfoundland, it is possible the Committee will be misled by a great deal that has been suggested by the Two Gentlemen before-mentioned.

Retrospect to former Periods.

The general Aim of Mr. Newman and Mr. Ougier, throughout the Whole of their Evidence, has been to persuade the Committee that the Trade is ruined by Stat. 15th Geo. III. and Stat. 26th Geo. III. and more especially by the Courts which have been established within these Four or Five Years; that all was Prosperity, Peace, and Content before that Period; that the best Policy for Newfoundland is to be found in Stat. 10th and 11th William III. and that the Rules and Regulations of that Statute, with the Jurisdiction of the Fishing Admirals, aided by the Captains of the Men of War, is the only Government necessary for Newfoundland; and that the Establishment of Justices of the Peace, and more especially of Custom House Officers, are all unnecessary, and some of them hurtful; finally, that all the Trade wish, is to be put again in the Situation where they were placed by the Statute 10th and 11th William III.

This is the Language, and this the Proposal held out by these Gentlemen; it becomes therefore highly important that Parliament, who are to decide what Policy shall be pursued in future with regard to this Trade and Fishery, should be informed what was the State of Newfoundland when it had no other Regulation,

Regulation, than that very one founded on Stat. 10th and 11th William III. which these Gentlemen wish to have restored. I hope, therefore, the Committee will permit me to lay before them some Extracts that I have made from the Papers before alluded to. I submit, that it would be very proper to insert them at Length in the Body of this Evidence, in order that they may be brought under Consideration in a regular Manner, together with the other Matters reported to the House.

It will be seen from these Papers, that it was upon a full Experience of the Inefficacy of the Statute of King William, and not till the Disorders in the Island had become intolerable, that the Crown came to the Resolution to appoint a Governor and Justices of the Peace, which was done in the Year 1728; it will be seen that this new Appointment of a Governor and Justices was as much deprecated, and caused as much murmuring as any of the Regulations that have been made of late; and that it was as confidently and as unjustly said at that Time as at the present, that the Consequence of such Establishments would be the Ruin of the Trade and Fishery.

I shall begin with such Papers as relate to the Period previous to the Appointment of the Governor and Justices in 1728, and follow those up with such as relate to the Disputes which arose in consequence of the Appointment of a Governor and Justices.

From the first Set of Extracts it will appear,
that

that the Statute of 10th and 11th William III. was not from the Beginning a Plan of Regulation that was carried into Execution with Effect. The Jurisdiction it gave was inadequate, and the Exercise of it was in every respect blameable. It will also be seen from these Papers, what were the Complaints respecting the Fishery and Trade in general during that Period of Time.

Among the earliest Information of this Sort, I find a Letter from Mr. George Larkin, written from St. John's, in the Year 1701; this was recently after the passing of the Act, and the Writer goes more fully into many Points of the Trade than the Officers of Government usually did. These Circumstances make this a valuable Paper; and it becomes much more so, when it is considered that Mr. Larkin was a Gentleman bred to the Civil Law, who was sent out for the special Purpose of making Observations in the American Settlements for the Information of Government at Home, as to the State of the Plantations, and the Execution of the Laws of Trade and Navigation.

Extracts from
Correspondence before
1728.

[N. B. Here followed Extracts from the Letters of Persons who corresponded with Government; but these are now omitted, as they may be seen in the foregoing History of the Government of Newfoundland.]

Such were the Representations made by the Officers of the Crown on One Hand, and by the
the

the Merchants on the other, respecting the Trade and Government of the Island. I have delivered them in their own Words, and the Committee will decide between them.

Extracts from
Correspondence after
1728.

In the year 1728, a Governor was appointed, with Authority to issue Commissions of the Peace; I shall now lay before the Committee such Information as will shew the Determination of the Western Merchants to resist any Regulation that had for its Object to put an End to the Anarchy, Injustice, and Oppression which prevailed while there was no Policy or Government for Newfoundland, but such as was provided by Stat. 10th and 11th Will. III.

[N. B. Here followed more Extracts, which for the above Reason are now omitted.]

I shall not trouble the Committee with any more Information of this Sort; I have perhaps already been too long upon this Head, but it seemed to me to be a very material Part of the Enquiry to ascertain what was the real History of this Stat. 10th and 11th Will. III. upon which the Western Merchants bestow so much Praise. To what I have said, I shall only add an Opinion given by the Board of Trade on this Statute in the Year 1765, and I shall submit what they say upon that Occasion to the Consideration of the Committee.

“ They conceived it highly exceptionable
“ in almost every Light in which it could be
“ viewed.

“ viewed. The Regulations intended for the
 “ Fishery were in general by no Means ap-
 “ plicable to the present State of it, and such
 “ of them as might be of Use were not en-
 “ forced by proper Penalties. And, confi-
 “ dered as a Regulation of Government and
 “ Civil Jurisdiction, this Act,” they said,
 “ was the most loose and imperfect that could
 “ have been framed, and Necessity had al-
 “ ready introduced Deviations from it in many
 “ essential Points.”

“ Without entering into the particular Re-
 “ gulations of the Act, and considering only
 “ its principal Imperfection, namely, the
 “ Fishery of the Island being altogether
 “ changed and varied from what it was when
 “ the Act was passed, it appeared to them to
 “ be disgraceful to suffer it to remain in the
 “ Statute Book; but as they feared it was
 “ too late in that Session to enter upon any
 “ new parliamentary Regulations, the further
 “ Consideration must be deferred for the pre-
 “ sent, unless His Majesty should be of Opi-
 “ nion that a Repeal of the Act should be
 “ moved for, and a short Law enacted, em-
 “ powering the King by Proclamation, Order
 “ in Council, or Instruction to the Governor,
 “ to make such Regulations with respect to
 “ this Branch of Commerce as he should,
 “ with the Advice of his Privy Council, judge
 “ most expedient.”

But nothing was done towards correcting
 or repealing an Act that had been condemned

so often by public and private Opinions of Persons best able to judge of its Merits.

After this View of the State of the Island under the Government of Statute 10th and 11th William III, the Committee will give very little Credit to the Gentlemen who describe those Times in such Terms of Applause. "Confidence and Harmony" (says One of them) "subsisted between all Descriptions of People, and Courts were held with Dignity, and had good Effect, from the Example of the Judges, to prevent Animosities and Disputes." Such Mr. Ougier represents to have been the old System of Newfoundland.

It appears from these Extracts, that there has always been a Set of Men who have invariably set themselves against every Attempt to introduce Order and Justice into that Island; that these Men have looked upon Newfoundland as their own Property, to be enjoyed exclusively of all the Rest of His Majesty's Subjects; and that every Thing they have urged at different Times has been to secure these private Interests of their own, independent of any Competition from other Traders, and of any Inspection from Government and its Officers.

For attaining this End, they have resorted to popular Topics such as "No Residents"—"A free Fishery carried on from Great Britain," &c. but in their Practice it has been found, that they were the First Encouragers of Residency and Population in carrying over the

the Bye Boatkeepers, who settled there and became constant Residents, from whom the principal Part of the present Inhabitants are descended; and it is confessed by Mr. Newman, that he has been in the Habit of giving Encouragement to those, and those only, who are Residents in the Island. It appears too, that the Freedom they have mostly sought and exercised was that of being free of all Rule and Order themselves, in the Enjoyment of an exclusive Monopoly, and at Liberty to exercise a Dominion over the Boatkeepers and poor Inhabitants, whom they kept in perpetual Thralldom.

I mean this should be confined to a certain Class among the Western Merchants, as well in former as in the present Times. No Doubt there were formerly, as I know there are now, Persons of so much Justice and Character as not to be guilty of the Oppressions and Opposition to the Establishment of Order and Government, which I have above described, and who would certainly never condescend to come to this Committee, and endeavour to support such extravagant Propositions, grounded upon such ill-founded Facts and Reasonings as have been heard from these Gentlemen.

I proceed to examine what further has been advanced by these Gentlemen respecting the Judicature of the Island. I cannot help remarking, that the greater Part of what they say originates from personal Considerations; it

Of the Judicature.

is mostly applicable to some certain Persons, and to some particular Occasion, and it is not founded upon any fair Ground of Complaint; it has in view Men, and not Principles, and thence it receives a Bias, which leads to Contradictions and Inconsistencies.

Mr. Newman and Mr. Ougier happened, through the Misconduct of their Agents (as I have before mentioned) to be Sufferers in the Court of Pleas; nothing therefore could in their Judgment be worse than the Court of Pleas. Some fair Pretence was to be found out for revenging themselves upon all the Judges and Officers of that Court. Hence the Attack upon the Sheriff, whom they think to disgrace by calling him an American. Hence the Attack upon Mr. Coke and Mr. Ogden, who, they think, may fairly be disqualified from acting as Justices of the Peace, because they are Officers of the Customs. In pursuit of their Object they run into a Round of Contradictions that are curious. First, they alledge that People were called from their Business to attend upon Juries in the Court of Common Pleas. This Objection was the Occasion of their being accommodated with a Court without Jury; they became dissatisfied with that Institution, and they were afterwards allowed a Jury in Causes above £. 10; they are now dissatisfied with this Concession, and want Juries in Causes not under Forty Shillings. To help these Claims they assert, that the Governors used to hear Causes with
a Jury;

a Jury; which Assertion I believe not to be true. They are dissatisfied with some particular Cause (as that of the Indorsement of the Bill of Exchange before-mentioned) because it was determined according to the supposed Usage of Newfoundland, and then they contend that all Causes should be determined according to the Law of England. Others again deprecate the Uncertainty, as they call it, of the Law of England, and hope all Causes will be determined according to the Usage of Newfoundland. They want Appeals to be for less Sums than £. 100, because a Cause under that Sum happened to be decided against Mr. Newman last Year. They have since intimated in a Paper just put into my Hands by Mr. Newman, that they wish to have a whole Year's Time for lodging Appeals, which I suppose is suggested by the Circumstance of a Defendant in an Appeal now pending having prayed the Court, that the Appellant may not have so long a Time as a Year. They desire that the Captains of Ships should determine Causes by the Law of England, and should be answerable to the Governor only, and not to the Chief Justice, who happens to be the only Person of all of them likely to know a little about the Law of England.

But it would be endless to recapitulate all the Contradictions and Inconsistencies which follow from this Disposition to cavil at Persons and Things, instead of coming fairly forward to inform the Committee with Impartiality,

and upon general Principles. I shall now proceed to examine what they have said respecting the Judicature Act of last Year, and shall begin with the Evidence of Mr. Newman.

What Newman says upon it.

In the First Place (Page 26) Mr. Newman prays that Causes exceeding Forty Shillings may be tried by a Jury, if either Party requires it.

Of Juries.

The Committee understand, that in the present Bill the Limitation is at $\text{£. } 10$, and it is upon the Requisition of the Defendant only. Respecting this Point, I know from my own little Experience, that nothing is so desirable for a Judge, who consults his own Ease, as that Matters of Fact of what Kind soever should be tried by any Body but himself; it has however been thought, that in Newfoundland it is more for the Convenience of the People that Causes should be tried without bringing so many Persons out of their Employment as are necessary to constitute Juries; and I have no Scruple to give another Reason, which I think a sufficient Objection to Juries; in a narrow Society, like that at St. John's, there are likely to be little Jealousies that render some Persons very unfit to decide between their Neighbours, and many very unwilling to submit to such a Decision. Owing to these Sentiments, it has happened in Point of Fact, that Juries have very rarely been called together in any Part of Newfoundland; so much so, that at the Quarter Sessions the Justices have long
 8
 been

been in the Practice of trying small Offences by a Petty Jury, without a Bill being previously found by a Grand Jury, which they call proceeding by Information. The summoning of Juries in the Court of Pleas was, I believe, rather a new Thing, and was so treated, while it could be made a Subject of Complaint; but when that Complaint was in some Measure listened to, and a summary Court was established, and the Want of a Jury could be made a Subject of Complaint, then came forward Persons who raised a Cry, as if the People of Newfoundland had always tried their Causes in that Way, and were particularly attached to that valuable Piece of English Jurisprudence, of which they were now deprived for the First Time. I am myself able to say something as to the Value the People at St. John's set upon Trials by Jury; of the 4 or 5 Causes that were tried by Jury last Season, the Majority, I believe, of the Defendants intimated, that they would have been better contented with the Opinion of the Judge, than the Verdict of their Neighbours; it is singular too, that the only Appeal from any of my Decisions is in a Cause where the Merits were tried by a Jury, and the Verdict was given against the Defendant. Perhaps I have some little to answer for in this Cause; for the Plaintiff, who was a total Stranger in St. John's, desired the Matter might be tried by a Jury; but the Defendant, who is a Resident Merchant in St. John's, said he would rather it should be tried by me. I re-

commended to him to pray a Jury himself, in order that the Plaintiff, whatever might be the Event, might go away satisfied with the Administration of Justice at St. John's; to this, after some Deliberation, the Defendant consented. The Defendant, however, was very discontented with the Verdict his Neighbours gave against him in Favour of the Stranger, and has appealed against the Judgment which passed upon the Verdict, though I do not see how he is thereby to obtain Redress. In that Cause, it was in Agitation to have a new Trial; but a whole Morning was spent without Effect in getting together another Jury. In the mean Time I heard the Parties; it did not appear to me that more Justice could be done by another Trial, and I accordingly refused a new Trial. Upon the Whole, I am of Opinion that Trial by Jury cannot and ought not to be in general Practice at Newfoundland; and I do not know that it can be put on a better Footing than it stands upon in the present Act.

Appeals.

The next Prayer is, that an Appeal may lie in Causes of £. 30, instead of being limited to Causes of £. 100. I am entirely of Opinion against this Proposal for the very same Reasons which Mr. Newman gives for it, Two of which are the Inconvenience and Expence; for both these would be greatly increased by allowing Appeals in such small Sums. In Causes where the Sums are large they are usually between Merchants, who can better attend to these

these Matters, who perhaps reside in Eng-
 land, and who at any Rate are better able to
 bear the Expence and Delay of Appeals; in
 Causes of smaller Value, it is usually some poor
 Resident Boatkeeper who is a Party, and who
 by such an Appeal would be completely de-
 prived of the Effect of his Suit, as he could
 never prosecute the Matter in this Country.
 Another Reason given for Appeals in smaller
 Sums is, that there have been several De-
 cisions where the Party has thought himself
 much aggrieved. As I hardly ever knew a
 Suit where Persons of the best Temper did
 not think themselves aggrieved if the Decision
 was against them, this appears to me no more a
 Reason for allowing Appeals in Causes of £. 30
 than in Causes of Forty Shillings. This is
 One of the Instances where Mr. Newman has
 given to the Committee as a public Reason
 what is only a private Grievance of his own;
 he alludes to his own Suit with Mrs. Butler.
 However, Appeals are allowed, not because par-
 ticular People are aggrieved, but in Order that
 Grievances may not abound; and the Griev-
 ance and general Inconvenience would be
 much greater in permitting every litigious Man
 to endeavour to set right what he thought
 wrong, by an Appeal in petty Causes, than it
 would be to trust in such Cases to the Discre-
 tion of a Judge, who by his Qualifications may
 be supposed to know what is right, and who
 can have no Temptation from Interest to do
 what is wrong. It is upon Considerations pro-
 bably

bably of this Sort that Appeals are not allowed from any of the Colonies in Sums under £. 100 ; I am therefore of Opinion this ought to stand as it does in the present Act; and I think that the Request for Appeals to be to the Courts at Westminster should not be complied with; for which Opinion I do not give any Reason, except that it is not allowed from any of the Colonies, and I do not see that any Distinction should be made in regard to Newfoundland.

Limitation
of Actions.

The Alteration prayed by Mr. Newman respecting the Clause of Limitation of Actions I think ought not to be complied with. In the First Place, that is not an *Ex post facto* Law, as he chuses to call it; for if the Law of England has been the Rule of Decision in Newfoundland (as they sometimes contend when they mean to found an Argument upon it) then the Limitation of Six Years was the Limitation of Actions in Newfoundland independent of this Clause in the Act of Parliament; and I should certainly have so held it if there had been no such Law passed. In the next Place, the Explanation they require is, in my Judgment, an Explanation that ought not to be made, because it would contribute to perpetuate what the Act meant should be limited to Six Years. I must again observe to the Committee that the Reason given by Mr. Newman for this Explanation arises out of his own Suit with Mrs. Butler, and is another Instance of his endeavouring to induce the
Committee

Committee to yield to Considerations that are partial and personal, and cannot fail of misleading those who attend to them; other Persons might want a different Explanation; and after all, any Explanation that is to be made must be subject to the Construction the Court at Newfoundland may put upon it, of which Construction they may perhaps equally complain.

The next Alteration Mr. Newman prays is, ^{Of Fees.} that the Fees, if any are to be charged, may be particularized in the Act, because at present they are extravagant. Though Mr. Newman has chosen to say that the judicial and executive Officers Fees are extravagant, he has given no Instance of the former being such, and the Instance he has given of the latter standing as it does without any Explanation, is no Instance at all.

I know that the Court Fees are very moderate, being calculated upon a Scale that makes the Administration of Justice cheaper than any Thing that is to be purchased in the extravagant Town of St. John's.

The Act of Parliament says, that the Officers Salaries shall be in lieu of all Fees and Emoluments; a Regulation that was made in consequence of injurious Complaints by Mr. Newman and Mr. Ougier, who charged the Judges and Officers of the Court of Pleas with encouraging Suits, and multiplying Occasions for paying Fees; which Charges they have repeated in the Evidence given to the
Committee.

Committee. It appeared to me, that the Act had nothing more in View than to remove all Imputation of that Sort, and that it is by no Means intended that Justice should be administered without paying any Fee at all. I thought such a Provision might operate as a Bounty on Litigiousness. I perceived that the Sort of Persons who commenced Suits were well able to pay Fees; and it did not seem to me, that Men like Mr. Newman and Mr. Ougier needed the Privilege of prosecuting their Suits *in formâ pauperis*; I accordingly desired Mr. Graham to make out a Table of Fees, which was at length settled in the Form contained in the Paper I now deliver in (which is annexed in the Appendix, N^o 14.) and I can venture to say this is by much the most moderate Table of Fees to be found in any Court in His Majesty's Dominions; I am sure it will be thought so by the Committee on Comparison with the Prices of Things in this Kingdom, and much more would they think it so, if they knew at what extravagant Prices every Thing is sold at St. John's. Mr. Newman and Mr. Ougier must be conscious of this, as they have contented themselves with a mere Insinuation that they are extravagant, lumping them with the Fees of the executive Officer (the Sheriff) against which they more particularly have made their Complaints.

In the Year 1791, when this Table of Fees was settled, I did not think myself at Liberty to make Enquiry into the Fees which the
 Sheriff

Sheriff's
 Fees.

Sheriff took beyond what are assigned him in this Table; he was an Officer appointed by the Governor, and I supposed he had Use for taking the Fees he did. In the Act of last Session I am authorized to regulate the Sheriff's Fees, and Poundage, which he receives independent of the Table; I accordingly made Enquiry into this Matter: I find that he charges Five Shillings *per* Day for a Bailiff keeping Possession, or travelling by Water, and One Shilling *per* Mile for travelling by Land; he says he takes no Fee for levying Money, which I understand to signify also the attaching of Debts in the Hands of Third Persons; but for levying Goods and Chattels, for selling them, and paying the Money over to the Party, he charges $2\frac{1}{2}$ *per Cent.* which, he says, is the common Allowance to all Persons who sell Goods by Commission; and these are all the Fees he takes. Comparing these Fees with the Fees paid for the same Business to Sheriffs in England, the Account will stand thus: The Sheriff of London, upon levying Goods, &c. charges $\text{£}. 5$ *per Cent.* upon the First $\text{£}. 100$, and $\text{£}. 2\frac{1}{2}$ *per Cent.* upon every $\text{£}. 100$ besides, which are higher Fees than the Sheriff of Newfoundland receives for the same Business. The Sheriff of London is allowed Half a Crown *per* Day for a Bailiff being in Possession; but the Difference between this Half Crown and the Five Shillings at Newfoundland must be charged to the Difference in the
Price

Price of Labour in the Two Places. We know that in all new Colonies the Price of Labour is greater than in an ancient Country like this; and where there is so much active Industry as in the great Fishery of Newfoundland, the Value of Time and of Labour is still higher. I am told that the Wages to Carpenters and Masons is 4*s.* 5*s.* 6*s.* and 7*s.* *per* Day in Newfoundland; and I know Persons who, in order to have such Artificers upon some reasonable Terms, are obliged to hire them by the Year, at the Rate of £. 30 or £. 40, besides their keeping. In Newfoundland it is a common Thing to give a Dollar to a Beggar. As to the 1*s.* *per* Mile charged by the Sheriff for a Bailiff's travelling, I know it to be nothing more than the Price paid to a common Messenger. Mr. Newman and Mr. Ougier know, as well as I, that a Messenger sent from St. John's to the Bay of Bulls over Land, a Distance I believe of 22 Miles, must be paid One Guinea and a Pair of Shoes, which Pair of Shoes, out of a Merchant's Store at St. John's, cost 8*s.* but might be bought in a Yorkshire Warehouse in London for Two Shillings, or Half a Crown.

The Sheriff of London's £. 5 *per Cent.* and 2½ *per Cent.* are Fees for himself as Sheriff, besides which his Bailiff, exclusive of his Half Crown by the Day, charges also to the Party One Guinea for levying the Execution; and to this are added all the subsequent
Expences

Expences of the Sale and Disposal of the Goods, occasioned by a Broker taking an Inventory, advertising the Property, the Auctioneer making a Sale, his Men attending it, and such other incidental Charges as may necessarily occur before the Money is raised in the Hands of the Sheriff to be paid over to the Party; for all which incidental Trouble it is reasonable that the Sheriff of Newfoundland should likewise make proper Charges; but whether the Charges stated in the Accounts are reasonable or not, must depend upon a particular Examination into the several Articles of Charge, and the Circumstances attending them, without which it is impossible to form a Judgment of the Paper delivered in by Mr. John Thomey. It is true, that Thomey spoke to me at Newfoundland about the Sheriff's Charges; I desired him and the Sheriff to talk together, and such Matters as they could not agree upon I would endeavour to settle between them. He was called away to another Part of the Island on his Concerns, and I left the Island without seeing any more of him. He wrote to me, as he truly says, since he has been in England, upon the Subject; but I knew that nothing could be done without the Presence of the Sheriff, either to redress him, or to understand the Nature of the Dispute between them; but these Considerations do not seem to have had any Influence to restrain him from laying these Papers before the Committee, who, without
knowing

knowing the Facts, or hearing the Sheriff, are not more in a Way of getting to the Bottom of this Transaction than I am. Upon casting my Eye over the Charges, they appear to me to be, in Addition to official Demands, a Mixture of mercantile Dealings, which do not necessarily belong to his Duty as Sheriff; and I am of Opinion, that unexplained as they now stand, they are not a Ground for forming any Judgment as to the Sheriff's Conduct with Regard to Fees in the Execution of his Office.

Should it be thought proper for Justice to be administered at Newfoundland without Payment of any Fees whatever, though I see no Reason for it, yet it may very well be done, as far as regards the Business of the Court; such small Salaries as would be necessary for the Clerks would not be a great Expence; but it is very different with regard to the Sheriff's Business and Attendance; his Time and Trouble, as well as that of his Bailiffs, the Expence of levying, &c. &c. must be paid for in some Way, but would lead to an Extent of Expence which I should never advise to throw upon the Government. Indeed, it seems to me, that whatever is done with regard to lowering or entirely abolishing Fees, those of the Sheriff cannot well be reduced below what I before stated them to be.

As to particularizing the Fees in the Act of Parliament, I see no other Objection to it than
this,

this, that such a Step would shew a Distrust of the Persons who are placed at the Head of the Court, which is not shewn with regard to the same Magistrates in any of the other Colonies; and yet if Men are trusted who go to a distant Country to reside for Years, surely those who return Home at the End of Three Months, and appear here to face every Enquiry, may be trusted. Besides, what has passed in this Examination has made public and fixed the Fees to every reasonable Purpose; and nothing that has been insinuated respecting the Sheriff's Accounts could have been prevented or cured by any Act of Parliament.

The next Point which Mr. Newman urges is, that the Clause for disqualifying Custom House Officers from acting as Justices of the Peace may be continued; to which I object for several Reasons.—First, It is another instance of a Suggestion made with no other View than personal Considerations. These Gentlemen had Reason, as they thought, to be dissatisfied, and they sought such an Occasion as this to be revenged on some of the Judges of the Court, of which Mr. Coke the Comptroller, and Mr. Ogden the Deputy Collector, were the Principal. Secondly, Because there is no Principle which makes the Office of Justice of Peace and Comptroller or Collector of the Customs incompatible. One Reason given by Mr. Newman, “that they
Disqualify-
ing Custom
House Offi-
cers.

or as Admiral Edwards expresses it in his Evidence, "both Judge and Jury," is not true; for the Revenue Causes, in which they are concerned, are heard before the Judge of the Admiralty, and the Justices of the Peace have nothing at all to do with them. The other Reason is, I hope, true in Substance, namely, "that the Office of Justice gives them an Influence in the Island;" but it is wrong in the Application of it, if Mr. Newman files that Influence "improper." It may be very well for a Merchant to say, that the Presence of a Person, who has Authority to keep the Peace is an "improper Influence," at a Time when the Revenue Laws are to be executed; but every one else knows, that there is a great Convenience in such an Aid, and often a Necessity; and it seems to me peculiarly proper, that a Comptroller of the Customs should have the Authority of a Justice of the Peace, to enable him better to discharge his Duty to the Crown; it is like carrying a Species of Writ of Assistance always in his Pocket. In all this, he only acts as a ministerial Officer, and what has been said about Judge and Jury has been said either ignorantly, or with a Design to mislead the Committee. The Third Objection to this Request is, that there are so few Persons who can properly be invested with the Office, that no new Difficulty should be thrown in the Way, by adding any Disqualification like this. The Custom House Officers should be Persons

sons who are not concerned in the Fishery ; so should Justices of the Peace. So difficult is it to find Persons to execute the first Office, that they are obliged, as the Committee have heard, to put the Office of Deputy Comptroller, Deputy Searcher, and Deputy Naval Officer into the Hands of one Person in the Out Ports, because it was thought that the Incompatibility of such Offices (which after all regards the Revenue merely, and is the Affair of the Crown and not of the Merchants) was a less Objection than the Incompatibility of Situation and Circumstances with either of these Offices would be, if put into the Hands of a Person concerned in the Trade and Fishery. If this is not conformable with the Practice in England, it is justified by a great Authority, I mean the Law of Necessity, which must supersede the Law of England, and is the Mother of Usage and Custom in many more Instances than this, in the Island of Newfoundland. To these Offices it has been usual also, in the Out Ports, to add that of Justice of the Peace ; which, whatever might be thought of the other Offices, it never entered into the Head of any Man to say was incompatible with either of them. Owing to the disqualifying Clause of last Year, the Governor was put under great Difficulty to find Persons in the Out Ports, whose Situation and Circumstances did not in some Measure disqualify them for executing this Office.

The Committee should also be informed

that this Clause was inserted in the Bill of last Year upon the private Suggestion of these very Two Gentlemen, Mr. Newman and Mr. Ougier; and I believe I may venture to say, that those whose Confidence they thus surprized were very soon satisfied they had given too much Credit to the Suggestion.

I cannot leave this Subject of the Custom House Officers without acquainting the Committee, that Mr. Coke, the Comptroller of the Customs, is of all Persons the properest to be a Justice of the Peace. He has resided in Newfoundland for Twenty-five Years; he is very well acquainted with the Usages and Customs of the Place; he is extremely fitted for it both by Temper and Understanding; he has been at the Head of the Commission at St. John's for several Years; has acquitted himself to the Satisfaction of all the Governors, and without the least Reproach from the People; and I can say of him, what cannot be said of any One other Justice in Newfoundland, however respectable, that he is perfectly independent of every Body, for he has left off his Practice as a Surgeon, and lives upon his private Fortune, with his Income of Comptroller of the Customs. This last Consideration of being independent, makes him the fittest Person to be employed by Government in that Country.

Commence-
ment of the
Current
Season.

Another Prayer of Mr. Newman is, that the current Season may be explained to stand from the 30th October in the preceding Year; this

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this is another Instance where Mr. Newman would impose upon the Committee, as general Information, what is in Truth nothing more than a Suggestion furnished by his own private Concerns. I think I remember, but I am not sure, that his Agent at Newfoundland pressed me upon this Point. Mr. Newman, perhaps, may keep his Books from the 30th October to the 30th October; another Man may keep his from the 5th November; another from the 20th November; another from the 1st December, as I believe some do: why then should Mr. Newman's Books be made a Rule for every Body else? I am of Opinion this should remain as it is; and then it will be left to the Construction of the Court, arising out of Circumstances and the Nature of Dealings between Parties, to say what shall be considered as Part of the current or Part of the preceding Year in any particular Case. To lay down any precise Period by Act of Parliament would be doing Mischief.

Mr. Newman desires, that in Cases of Bankruptcy. Bankruptcy the Creditor may have the same Power as in England. In this Request I do not know exactly what he means; but I should inform the Committee, that in framing the 6th Section of the Act respecting Insolvents, especial Care was taken not to introduce the Word "Bankrupt," nor to make any Reference to the Law of Bankruptcy in England, least any such Wording might draw after it all the complicated System which prevails here,

and which is so unfit for the Dispatch of Business at Newfoundland. I think that Caution was proper, and I think Mr. Newman is now asking for what he does not understand; unless indeed he confines his Demand to relieving Assignees from the Security they are required to give; and if that is his Aim, I should recommend not to comply with it.

Old and new
Judicature
compared.

I believe I have now remarked upon all the Alterations which Mr. Newman has suggested to be made in the Act of last Year. To these Mr. Newman has added some Observations upon the State of the Judicature previous to the Establishment of new Courts, and has made a Comparison of the ancient Judicature and the new. I am ready enough to agree with him, that in the former State of Things there was less Litigation than now; it is not easy to have Litigation without Courts. Litigation, as he calls it, is most certainly an Evil; but it is an Evil which we are obliged to employ, to expel or prevent another Evil, I mean, Oppression: There has been a long Struggle at Newfoundland between these Two Mischiefs; the Merchants never complained of the One, and the poor Inhabitants do not now complain of the other. During the Policy of the Fishing Admirals, there could be no Chance of any Complaint of Litigation; the Law as well as the Power was all on one Side; when these Evils were corrected, in some Degree, by the
Exertion

Exertion of the Governors and Surrogates in later Times, the Check given to Oppression was but temporary, that is, during the Time they were upon the Coast. Gradually the Court of Sessions and the Court of Vice Admiralty assumed a Jurisdiction in Civil Causes; and as these Courts were resident in the Country, they had more Time for the Administration of Justice than the Governor and Surrogates, who, during their Residence, were a good deal employed in passing from one Place to another. A little more Check was given to Oppression by Means of these Two Courts; however, their Exertions were but feeble; for being conscious that their Authority was only assumed, they found it prudent to hold their Hand, or to lay it on very gently, when a Trader of any Consideration was the Object. I believe, during the Reign of these two Courts, the Merchants had little to complain of; they got more Business done for them than against them, and they had no fair Cause to complain of what they call Litigation. I believe there was never a steady and vigorous Administration and Execution of Justice, sufficient to make the Merchants cry out, till the Institution of the Court of Common Pleas; it was then that People began to find out, that Redress could be had for the Poor as well as the Rich; and it was possible that People might then come forward with many Suits and Complaints. This was in the natural Course of Things, and not from any

D 4 unbecoming

unbecoming Industry of the Judges in that Court to foment Suits, as has been injuriously insinuated. Attornies may contribute to multiply Suits, but it is not in the Power of Judges to do it; and in Newfoundland there are no Attornies.

Now begun what the Merchants call Litigation; now ceased that "Harmony, Peace, and Content, when Parties were perfectly satisfied;" as described by Mr. Newman. The Inconvenience experienced by the Merchants from what they call Litigation, was, I believe, increased, when I went thither in 1791 and 1792; and I must say, that I think it very likely to continue, as long as a Judicature well adapted to the Exigencies of Justice, like the present, shall be open.

If the Merchants complain of this, they should recollect it is brought upon them by themselves; they may say what they please about all Parties being satisfied, but they know that they never let pass an Opportunity, when they felt themselves aggrieved, of insulting the feeble and temporizing Judicatures in the Island. Against Governors and Surrogates, who had a Force under their Command, they seldom ventured to do more than bring Actions against them in England; but against the Justices in the Court of Session, no Threats or ill Language were ever spared. These Liberties were taken, because the Merchants knew, and the Justices were conscious, that their Authority was not founded in
Law,

Law. These Uneasinesses first caused the Governor to seek a legal Establishment of a Court, and this was attempted in the Court of Common Pleas. They quarrelled with this Court, upon frivolous Pretences, because they had Reason to suspect it was not legal; it became therefore necessary to go a Step farther, and the Parliament was called upon to form a Court for the Island, that might be clear of all Objection as to its Legality. Since this new Establishment has commenced its Career, they have found Reasons to be dissatisfied with it, and are now looking back with Regret to the old Judicature of the Island, which they once treated with so much Contumely.

If the Committee shall think that these Notions “ of doing Justice to the Poor as well as to the Rich,” ought to be controuled by any Circumstances peculiar to a Fishery, or peculiar to the Fishery of Newfoundland: That the Merchant who lives in England has a Merit, in a national View, which entitles him to have his Interest secured, and his Inclination gratified upon any Terms, and with any Consequences that may follow: That the Interest of the Boatkeepers, Servants, and other Dependents upon the Merchants, because they reside at Newfoundland, is less deserving Consideration, and may be partially or wholly postponed, where it interferes with that of the Merchant who resides at Home: Should the Committee be of that Opinion, I have nothing to say in Favour of
the

the new Court; and I think it would be better at once to relieve the Merchants from the Litigation of which they complain, to consign the Boatkeepers to a State of Dependence and Oppression, of which they have not equal Opportunities to complain; and after that is done, perhaps the Merchants may rest quiet, and not a second Time stir up the Vigilance of Government to make Regulations, by repeating Complaints that were always frivolous, and very often unfounded.

Ougier's
Evidence
considered.

I shall now trouble the Committee with a few Remarks on what is said by Mr. Ougier, who bespeaks the Attention of the Committee, by representing himself as possessing a Deputation of a very extraordinary Sort indeed; he does not come, like Mr. Newman, to speak for his Neighbours in the West Country only, but speaks seemingly for the Merchants of Newfoundland, of Scotland, of Ireland, and of England; after which extensive Authority, he gives you this sweeping Clause, “ as well as “ from People in general, not immediately “ connected in the Trade, knowing its great “ Utility;” in such a Manner he would make the Committee believe, that what he pleases to say has the Concurrence of every Body concerned in the Trade, or who thinks about it; when it is well known that the Two great Towns in England, those of Poole and Dartmouth, do not agree in the same Plan of Policy, and that many Persons of Ireland and Scotland are concerned in the Trade in a
Manner

Manner differing from both, and whom Mr. Newman and Mr. Ougier for that Reason do not fail to load with the Imputation of not being Fishermen, but mere Traders. I shall not at present enter upon those Observations on the Trade and Fishery made by Mr. Ougier, in which I am sure this Mixture of supposed Constituents cannot go along with him; and in which I perceive great Mistake and Misrepresentation; but I shall content myself with proceeding to Notice what he has said with regard to the Judicature of the Island.

The great Crime with these Gentlemen is *Judicature*. "Residency," and the great Objects of Resentment are the Courts and their Officers; and therefore Mr. Ougier endeavours to fix this high Offence upon the Court and its Officers. He says, "That the Courts, the dependent Clerks, and other Officers, having Families, have tended to increase the Inhabitants of St. John's, keeping a Number of Female Servants," &c. This Charge is utterly untrue. The Clerk in the Court of Common Pleas had been a Resident Boat-keeper for many Years at Newfoundland, and upon his failing in Business was appointed Clerk to that Court. The Clerk and Assistant Clerks in the Court instituted in 1791, and also that in 1792, were all young Men who came out in the Admiral's Ship and returned Home in it, and are now in England. The Sheriff lived there as a Merchant before he was appointed Sheriff. Here then is no
Increase

Increase of Residents by Reason of the Court. I should not have said thus much upon a Suggestion that appears to me so frivolous, had I not thought it necessary to put the Committee Once more upon its Guard against Persons who pretend to speak of Facts, which it is wholly impossible for them to know, but which they advance with the same Confidence as if they had been resident in the Island.

The History Mr. Ougier has given of the Judicature is not correct, nor is it worth Retutation. On this Occasion he reminds the Committee of the Fees of the Sheriff, and refers to Mr. Thomey's Account, upon which I have before remarked. He throws in something, however, which shews to the Committee what Mr. Ougier considers as a good Reason for taking any Liberty with the Sheriff; he tells you that the Sheriff is, "an American." I believe this to be true. His Father, who now lives in London, was One of those unfortunate Persons, who, at the Beginning of the War, found it necessary to seek an Asylum somewhere, and he settled in Newfoundland. The Sheriff has long been a Merchant at Newfoundland, and is considered as a thriving Man. I am bound to say of the Sheriff, that he is an excellent Officer, unremitting in his Attention, and firm in the Execution of his Duty; and the Establishment of Courts would be ineffective but for such a Person as he has shewn himself,

self, to carry their Orders into Execution without any Respect of Persons or Fear of Opposition. He is also a very humane Man, and I am obliged to him for his Suggestions, in some Orders which I made for his Government, in levying Executions upon Boatkeepers and the poorer Sort of People.

It is unnecessary to remark on what Mr. Ougier says, in his Praise of the old Judicature of the Island, after what I have before said on the same Encomiums passed by Mr. Newman; but I shall just remark on the comparative Statement, which Mr. Ougier pleases to make of the old and new Judicatures: He says, “ Before the Laws of late Years, Matters were determined according to the Laws of England; since that by Laws very oppressive; before, People’s Property was safe; since, it is under continual Attachments; before, no Fees of Office; since, Fees that amount to Sums beyond the Possibility of any Description.” What Credit does this Gentleman expect to have, when such injurious and unfounded Assertions are detected and refuted? This gross Absurdity has been sufficiently exposed by what I have before laid before the Committee, and I shall now content myself with a Comparison, which I maintain to be as true as the other is false: Thus, “ Before the Regulations of late Years, the Administration of Justice was either partial, uncertain, or feeble, and the Interposition

Old and new
Judicature
compared.

“ sition of the Law was little better than
 “ the Oppression it ought to correct ; since,
 “ Matters have been determined according
 “ to the Law of England, as far as it was
 “ applicable to the Circumstances of the
 “ Island, equally with regard to the Rich and
 “ the Poor ; before, People were safe in the
 “ Property they plundered from the poor
 “ Boatkeepers ; since, these Plunders have been
 “ brought in Question, and as some of the
 “ Merchants, thinking they can trifle with
 “ the Judgment of Courts as they used to
 “ do, resist their Execution, their Goods are
 “ often attached, and sometimes sold ; be-
 “ fore, the Fees of Office, particularly those
 “ paid by the Poor, were extravagantly high
 “ and partial ; since, the Fees of Office are
 “ moderate, and equal to all, but they are
 “ sometimes remitted to the Poor, though
 “ they never are to the Rich.” This is the
 Comparison I think myself justified in mak-
 ing, and opposing to that of Mr. Ougier.

Of the Vice
 Admiralty
 Court.

I have Mr. Ougier's Authority for saying
 what I have about Fees in the old Judica-
 ture ; for Mr. Ougier says, that the Admiralty
 Court had some of its Authority taken from
 it by Stat. 26th George III. because the
 Judge imposed improper Fees, “ particularly
 “ on the Servants and the lower Class of
 “ People ; Half a Guinea, for Instance, was
 “ charged instead of Half a Crown, for a
 “ common Summons.” I shall beg the Com-
 mittee to remark, that this Judge of the Ad-
 miralty

miralty seems, by Mr. Ougier's Account, to have let off the Merchants at an easier Rate; and indeed it was probably so, otherwise they must have made the same Complaints against him, which they are now making against the Fees of my Court; though I perceive by the Table of Fees, that a common Summons may be had in the Supreme Court for Six Pence, which is only One Fifth of what Mr. Ougier seems to state as a reasonable Demand for the Judge of the Admiralty to have made. But the Merchants who feel so much for the poor Servants, where the Servants need no Compassion at all, and are only made a Pretence to cover the Views of the Merchants themselves, never made the least Complaint against the Judge of the Admiralty for exacting high Fees from the Servants. It was upon the Representation of the Governor, and not of the Merchants, that the Judge of the Admiralty was at last removed.

Mr. Ougier is as determined to keep up ^{Juries.} the Idea that Juries made a Part of the old Judicature as Mr. Newman; but the Committee should observe, that this is done with an Equivocation, which shews he meant to insinuate what he knew he could not venture directly to assert. He says, Causes were determined at St. John's, and the Out Ports, according to the Laws of England, with Juries, "when required," by the Governor and Surrogates. The Qualification, "when required," is a Salvo which renders this Assertion perfectly true.

true. It is consistent with the Fact of there never having been any such Thing as a Jury in the Island. I believe nobody would ever have thought of "requiring" such a Thing of a Governor; indeed a late Governor (Sir Hugh Palliser) in his Evidence says, that Causes should be determined in a summary Way; and so I take it they always were by the Governor; and I am almost sure it was always so with the Surrogates.

Custom and
Usage of
Newfound-
land.

As to the Law of England, which the Merchants sometimes insist has always been, and should hereafter be made the Rule of Decision for the Captains of the Ships of War, I only say, if that has been it may be so again; but at other Times the Merchants insist, that the Custom and Usage of Newfoundland should be the Rule of Decision, and not the Uncertainty of the Law, as they are pleased to term it; and then Mr. Ougier talks of all the Customs and Regulations previous to Stat. 15th George III. being revived and sanctioned by Parliament, as if that Statute had abrogated them, or as if those Customs and Regulations were to be found written in any Book, or could be taken down from the Memory of anybody, so as to be submitted to the Judgment of Parliament, and passed into a Law; all this arises from the same Persuasion, real or pretended, that great Alterations and Innovations have been made in the Policy and Usage of Newfoundland by that Statute, and by the Institution of Courts made since.

Courts,

Courts, in the Nature of them, are not necessarily an Alteration in the Law, but are only the Means and Mode of carrying pre-existing Laws into Execution. The Stat. 15th George III. did little more than make plain and explicit what had before been in Practice; and every Usage and Custom which was so before that Statute, is so at this Moment. A great Confusion has been made in this Question by what has been said about the Law of England and the Custom and Usage of Newfoundland; I will, with the Leave of the Committee, explain my Notions on this Subject.

It is a peculiar Property of the Law of England to give Sanction and Effect to local Usages and Customs that have prevailed for Length of Time. If the Law of England is the Rule of Decision in Newfoundland, the Customs and Usages of Newfoundland would thereby become established, because the Laws of England opens and receives the Customs and Usages of the Place into itself as a Part of it, and the Usages and Customs would then become the Law of the Land by virtue of the Force and Efficacy given to them by the Law of England. I should have thought that would have been the Case if the Parliament had been silent upon the Subject; but to put this Matter beyond all Doubt, it was wisely provided by the Judicature Act of last Year, that the Courts should “ determine
 “ Suits and Complaints of a civil Nature ac-
 E “ cording

" cording to the Law of England, as far as
 " the same can be applied to Suits and Com-
 " plaints arising in the Island of Newfound-
 " land;" upon which Act, and upon the
 Principles before laid down, I have repeatedly
 held, that the Custom and Usage of New-
 foundland should have the Ascendency when-
 ever they can be ascertained to have the ge-
 nuine Property of Custom and Usage, and to
 be clearly distinguishable from Irregularities
 and Abuses of a partial and local Nature.
 Conformably with this, hardly a Court Day
 passed that I had not to enquire and examine
 of the Persons around me about the Nature
 of Usages and Customs that were brought in
 Question. I did this with especial Care, be-
 cause I am satisfied, that for making People
 happy no less than for doing Justice, nothing
 is more necessary than preserving inviolate
 those Rules of Action to which they have been
 long habituated. A great many of such Cases
 I have put into Writing, because I thought,
 if a Collection of them were made and printed
 for the Use of the Magistrates and People
 there, it would contribute more than any
 Thing to make the Law certain, and enable
 People better to conduct themselves in all their
 Dealings. The frequent Change of Governors
 and Surrogates, the Feebleness and Instability
 of every Thing relating to Courts, had con-
 tributed to introduce the extremest Uncer-
 tainty. The Rule of Decision changed almost
 with every Change of Men, and People have
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lived in a perpetual Distrust, whether what was Law under their present Rulers would be Law under those who succeeded. I was so struck with the sad Effects of this Fluctuation, that I resolved to make some Collection of the Sort I mention; and if this Plan is pursued, it may very soon grow to a very useful Manual for Magistrates in that Country. I know no other Way of collecting together the Usages and Customs of that Place; and when they are thus collected, they will become the Law of the Place, without needing any Sanction from Parliament, in the same Manner as the Law of England is to be found in the Books where Decisions are reported.

Mr. Ougier supposes the public Fund has decreased, because it has been taken from the ^{The Public} Fund.

Justices and placed in the Hands of the Sheriff. It is a Mistake to suppose that it has at all changed Hands: The public Fund is certainly diminished. One Reason for its Diminution is, that there are only Twelve Public Houses in St. John's that now pay for a Licence; whereas heretofore there were 60 or more.

This Diminution in Public Houses was made by His Majesty's Instructions to the Governor, in consequence of Representations made by some Merchants of St. John's, who thought the Number of Public Houses there too great. Another Cause of the Deficiency is, that the Justices have more Delicacy in

imposing Fines than they had in those Days, when a System prevailed which seems to have been more agreeable to Mr. Ougier's Notions of Justice than the present.

Mr. Ougier says, he agrees with Mr. Newman in his Objections to the Judicature Act; he also further desires that the Charges of Writs may not be calculated according to the nominal Damages given in the Court, but according to those which are assessed by the Jury; to which I answer, that the Charges of original Writs must be calculated according to the nominal Damages, for there is no other Measure by which to fix the Charge at all. As to Writs of Execution, they are already constantly charged according to the Sum for which Judgment is given, and therefore no Regulation on this Head is necessary.

As to the Distinction, in Cases of Insolvency, between Supplies furnished for the Fishermen and Servants that are "really necessary" and those that are not, I do not see any more Reason for entering into such an Examination, than for prescribing set Prices at which the Merchants shall be obliged to sell their Goods to the Boatkeepers and Fishermen.

As to the Debts of Great Britain being preferred to the Debts of Newfoundland, there is no Difference in the Act between a Case of Insolvency and the Case of a common Action for the Recovery of a Debt; and in the Request here made, Mr. Ougier departs from
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the Principle the Western Merchants are pressing before the Committee. The Western Merchants are endeavouring to persuade the Committee, that there is no need of Courts at Newfoundland, except during the Fishing Season, for that all Matters of Consequence may be settled by People when they come Home. The Framers of the Judicature Act were of the same Opinion, and therefore it was provided that no Debts should be sued for at Newfoundland, but such as were contracted at the Place, and were absolutely necessary to be decided in the Island, for the Accommodation of those who always reside there; but these Gentlemen, never satisfied, now object to a Provision, which, if they were sincere in their Declarations for a Fishery from Great Britain, they ought to approve.

This is all I have to remark on what Mr. ^{The Passage} Ougier says relative to the Judicature. I shall ^{Money.} only remark on One other Part of his Evidence, which relates to the regulating Bill of last Year. Mr. Ougier thinks it a good Argument against that Bill, that the Cash in the Island would not make a Tenth Part of the Amount of all the Passage Money thereby required to be paid, and that paying it in Bills would cause Intricacies impossible to be regulated. If there was any Sense in what Mr. Ougier here says, it would be as good Reason for not paying any Duties of Customs, for not paying the Greenwich Hospital Money, for not paying Servants Wages, for

not paying Servants Passages as they are paid at the present Moment, and for not paying for any One Thing purchased in the Island; for the Committee should be informed, that there is hardly any Money passing at all at Newfoundland; all Business is transacted by Bills drawn upon Great Britain or Ireland; more than Two Thirds of these consist of Sums from £.10 down to 30s. and what more Difficulty there could be in a Master drawing Bills for the Passage Money, as proposed by the regulating Bill of last Year, than in drawing them for the Greenwich Hospital Money, or as they now actually draw them for the Passage Money of their Servants, I cannot see. The Merchants themselves know there is not any Difficulty in this Part of the Regulation, and the Difficulties they represent in the other Parts are little more than those which already exist under the Regulations of the Stat. 15th Geo. III.

The Motive for bringing forward the regulating Bill of last Year was this; by Stat. 15th Geo. III. the Hirers and Employers of Seamen and Fishermen are authorized and required to stop Forty Shillings out of the Wages of each of their Servants, in order to purchase him a Passage Home. The Master is then required to procure him a Passage, and to convey him on board Ship, and take a Receipt from the Captain for the Money. Such was the Regulation which was intended for securing to the Mother Country the Return
of

of Seamen, an Object always considered as of Importance on every Occasion when the Fishery had come into Discussion.

This Regulation had, however, been disappointed of its Effect, and greatly abused. The Masters never failed stopping the Forty Shillings, but there the Directions of the Statute have usually been abandoned, and the Money has in many Cases been misapplied. The Statute proceeded upon a Persuasion that every Scaman and Fisherman went out from hence at the Opening of the Season, and returned at the Close of it. But this is by no Means the Truth, nor was it so, I believe, when the Statute passed. There are now reckoned from 20,000 to 50,000 Inhabitants in the Island, who have no other Home. You may be sure all the Males of these are bred to the Fishery in one Way or other. The Numbers who are there employed, and are not Inhabitants, are reckoned at Seven or Eight thousand; but of these latter by much the greater Part do not come out and return the same Year; they return at the End of Two, Three, or Four Seasons, especially the Irish, who, when they come out first, make it a Rule to stay Two Summers and a Winter; and having done that they are very likely to continue longer.

When this is considered, it is easy to see that the Instances where the Master is to apply the Forty Shillings are very few, compared with those where it is not, and where it

need not be expended. With regard to all those born in the Island, and indeed all those who by Marriage or a Length of Residence have made that their Home, it is known to the Master that they need no Passage; with regard to those who are really Men of Passage, but who stay a Winter or Two, or more, each Master in his Turn may see a Reason for stopping the Passage Money, because that very Summer may by Possibility be the last the Servant will stay in the Country. But in both these Sorts of Instances what becomes of the Money which the Master has stopped? It remains in the Master's Pocket, and it is believed that there is Money enough of this Kind detained Yearly by the Masters out of the Servants Wages to support the whole Government of Newfoundland.

It was to correct this Abuse that the Bill of last Session was framed. The Remedy there intended was, to appoint Receivers, who should collect from every Employer Forty Shillings for each of his Men, which would have been done in the same Manner and with the same Ease as the Greenwich Hospital Money is now collected. It was meant, that the whole Business of providing Passages should be placed in the Hands of the Receivers; and certain Checks were devised for securing the Departure of the Seamen, the regular sailing of the Passage Vessels, the sufficient victualling of them, and the like. It was meant that the Forty Shillings should be paid

paid back to certain Descriptions of Servants, namely, those born or married in the Island, or having a Child born there, or being *bonâ fide* hired as Winter Servants. Such Persons as staid there, wintering upon their own Hands (who are known by the Name of Dieters) would have forfeited their Forty Shillings as Violators of the Law. These Forfeitures, together with the Savings that might be made in the Price of Passages Home, might very fairly have gone to make a public Purse, to be applied to the public Service of the Island. The Savings would have been considerable. They are at present a Source of Profit to the Masters, which I have not yet mentioned; for they are by the Act to stop the current Price of a Passage, not exceeding Forty Shillings; but, in fact, I believe, they always stop Forty Shillings, and I believe I may say as a Fact, that a Passage never amounts to that Sum; they are commonly Thirty-five and Thirty Shillings, and the last Season they might have been had for Twenty Shillings.

However, I learn from very good Authority, that in some Parts of the Island, where the Merchants send Men Home in their own Ships, they make them pay Fifty Shillings.

It is not therefore to be wondered, that the Merchants set themselves, with an Unanimity that had never before been seen amongst them, to oppose the regulating Bill. By this Bill, the Power of taxing every One of their Servants Forty Shillings would have been
taken

taken from them in the First Instance, and all the Savings and Profits that could be made, where Passages were actually to be provided, would go into other Hands. They considered the Forty Shillings as their own, the Law having authorized them to detain it; and, conscious that they had always grudged every Part of it, which they were sometimes obliged to refund, they could not but feel it as an Injury to be deprived of the Whole.

Construction
of Stat.
15 Geo. III.
as to Passage
Money.

I brought forward this Point of the Passage Money to be discussed in Court; and so it was several Times, when Merchants, Boat-keepers, and Servants were present. I found that some of the Merchants thought the Forty Shillings of Servants who did not go Home was forfeited to the Master; but there were very few of that Opinion; the Generality confessed they looked upon it as Money which could in no Sense belong to the Master, but neither did it belong to the Servant, the Act having clearly taken it from him. Some admitted, that it might belong to Servants of a certain Description, but not to those who broke through the Policy of the Mother Country, in staying in the Island. But they all agreed, that the Disposal of it in such Cases was a *casus omissus* in the Act; there being an Authority and Requisition to stop it, and to lay it out in a Passage, but no Requisition, nor even an Authority to return it to the Servant, or dispose of it in any other Way whatsoever. So that all the Opinions on the
Construction

Construction of the Act tended. as it seemed to me, to keep as much of this Money as possible from passing out of the Merchant's Pocket.

However, I ventured to put a different Construction upon the Act. I said, although there were no express Words to direct the Disposal of the Money in such Cases, it might plainly be collected, from the Whole of the Clause, in what Manner it was to be disposed, and to whom it belonged. It appears, that the Money is to be stopped for the Use of the Servant himself, to purchase him a Passage Home; but if his Home is in Newfoundland, or if he does not actually have a Passage Home, the special Application of the Money directed by the Statute is not made in one Case, and cannot be made in the other; and the Use for which it was appropriated by the Act not arising, nor calling for it, the Money, in Point of Law, remains in the Master's Hands as Money had and received, or detained, to the general Use of the Servant whenever he pleases to demand it.

Having made up my Mind to this Sense of the Act, I made Orders of Court upon several Masters to pay Forty Shillings, which they had stopped from Servants, Three, Four, or Five Years back; and during my Stay I caused several Sums of Money to be so refunded: In hearing Complaints made by Servants on this Subject, I met with Instances of Servants who had been resident Fifteen
Years,

Years, and some who were born in the Island, and never had been out of it, who alledged they had constantly had Forty Shillings stopped out of their Wages. But this Matter was so often agitated in Court, so many Examples were made of refunding, and I so plainly instructed the Justices upon this Head, that the Masters, I believe, will hereafter be less bold in keeping the Servants out of the Forty Shillings; at least in those Parts of the Island where there is any Regularity and Firmness in administering Justice; in the rest of it, this Point of Law, like the Whole of the Fishery Acts, will still go unregarded.

The other Part of that Bill consisted of the Duty upon Rum, on which nothing need be said, except that Rum is so cheap, and for that Reason drunk by the Fishermen in such Profusion, that there seems every Reason for endeavouring to check the Abuse of it, that there formerly was in this Country, to correct the Abuse of strong Liquors; in this Light it appears a fair Object of Taxation.

Upon the whole, it is for the Committee to consider whether this Piece of Regulation for bringing the Seamen Home, should be left as it is at present, in Statute 15th George Third, or whether some such Regulation as that proposed last Year may not be attempted. The Plan proposed by Mr. Ougier seems to have as many Objections to it, as any he can raise against that in the Regulating Bill. Besides, the Committee should be reminded,
that

that the Plan of giving Bond, is an Offer that was made by the Merchants many Years ago, long before Stat. 15th George Third, and was rejected, no Doubt, from a Conviction that it would be ineffectual. It is probable that Plan and others had been fully considered, before the Parliament determined upon the One contained in Stat. 15th George Third.

I shall make no further Remarks on the Evidence of Mr. Newman and Mr. Ougier, because I have promised to confine myself principally to what they have said upon the Judicature, and I fear I have already consumed too much of the Committee's Time on this Subject singly. I shall now proceed to take Notice of One or Two Things said by other Gentlemen, who have presented themselves here to be examined, where I see certain Allegations that ought not to pass uncontradicted.

Mr. John Thomey is brought forward by the Western Agents, to exhibit the Account of Charges made against him by the Sheriff, upon the Nature of which I have said enough already. He has also told the Committee of Two Writs of Execution for which he paid Fees to the Amount of £. 54. 15s. 6d. a Sum that must startle every Body who hears it mentioned; this Gentleman should have been ingenuous enough to tell the Whole of his Story. These Two Writs were some of those which contained, for aught I know, Thirty or Forty Defendants, and which were lumped

Thomey's
Evidence
considered.

lumped together in this Manner at the earnest Solicitation of this very Gentleman, Mr. Thomey, for his Accommodation; they were for the like Reason charged at a much smaller Fee, than if a separate Writ had gone against each Defendant singly. As to refusing to renew them, it was not surprizing that a fresh Writ should be paid for afresh; and I think it very likely, if he says so, that a List of small Debts like these, would not pay the Costs of Suit. There might be some other Reasons that operated at the Time, which I do not remember; for a Strictness about Fees never was suffered to stand in the Way of Justice.

Notwithstanding what Mr. Thomey has been pleased to say to the Committee about his Losses in the Trade, he held a different Language at Newfoundland, where he insisted that the Newfoundland Concern was a profitable one, and that the Proceeds of it had been employed by his supposed Partner in Bristol in other Concerns which had failed; and he shewed an Account of the Fish and Oil, which he had sent to Market for more than Twelve Years back, that induced me and others to believe what he said. As a further Proof, he has declared to the Committee, he intends to continue in the Trade.

Observations
on the new
Judicature.

With respect to the Judicature introduced by the Establishment of the new Court, I am satisfied that these Gentlemen do not know the Nature of the Objections they make, nor
of

of the Alterations they propose; and what is more, I am satisfied that they do not express the Sentiments of Persons who have resided at St. John's, and have seen the Manner in which the new Court exercises its Functions. They seem to me, in every Thing they have said, to have yielded to personal Considerations merely, or to certain Conceits, about the Law of England and Juries, which they do not at all comprehend. I believe I may, with perfect Truth, say to the Committee, that under this new Establishment, Justice has been administered more effectually, and more to the Satisfaction of the Majority of People who were concerned in it, and affected by it, than ever was before seen in that Country; and I believe the People were upon the whole, very glad at length to see a Person on the Bench of Justice, that cared not who was obliged or disobliged by any Thing he said or did; who had more Interest in doing his Duty than shrinking from it by temporizing; and who, coming there only for a Season, they knew must be clear from all those Partialities and Considerations, which it is sometimes so difficult for Residents, placed in the same Situation, entirely to overcome. The Court was not less recommended by the Mode of conducting Business; the Expence was small, and the Delay was nothing. The Reach it had in the trying and deciding of Causes exceeded that of any other Court; the Parties were heard in Person; they might be examin-
ed

ed upon Oath; other Persons who appeared to be interested might instantly be made Parties to the subsisting Suit; and upon Consideration of all the Circumstances of the Case, the Court had Authority to make such Order therein as should seem proper, so as to do complete and substantial Justice between all the Parties. This Court altogether appears to me better suited to attaining the Ends of Justice, and to accommodating the Parties, than any other Institution that can be devised. The Committee very well know, that the Law, as practised in this flourishing Kingdom, is not only regarded as the Means of establishing Rights, and redressing Wrongs, but also as a Science, in which great Learning and Ingenuity are exercised; this latter ought to be only a secondary Consideration; but in the Practice of the Law, it has gradually attained the Ascendency. The Argument of Law is frequently more thought of, than the Justice of the Case; hence the Debate and Deliberation, which lead to the Delay and Expence, so much lamented in the Conduct of Suits. But these Excesses do not enter into the Administration of Justice at Newfoundland. Without Counsel or Attornies to make Points or to defend them, the Argument is nothing, and Justice is every thing; to the accomplishing of which the Court is able to proceed, without the usual Formalities and Delays. In this the People of Newfoundland have a Privilege beyond all

His

His Majesty's Subjects. They consume neither Money or Time in prosecuting their Suits.

I will also inform the Committee, that there is in that Country no Imprisonment for Debt; that is, there is no Plaintiff who wishes to imprison the Defendant. It has been usual to require the Plaintiff to make an Allowance to his imprisoned Debtor of (I believe) One Shilling per Day. I thought this a Usage not to be disturbed, notwithstanding the Act of Parliament authorizes Imprisonment, and makes no Provision for any such Maintenance. During the Year 1791 and the Year 1792, Process was issued against the Person only in One Instance. This Man was put in Gaol. He was treated with this Severity, because it was believed he had Money in Ireland, for which he might draw, and to pay his Debt. He was kept there, I believe, during the Months of November and December, when the Sheriff turned him out of Gaol, because the Plaintiff ceased to pay his Maintenance. This Usage of Newfoundland is well warranted by the Nature of Things in that Island, where Labour is too much wanted to allow of such Causes of Imprisonment, and where Persons are supposed no longer to have a Maintenance, than while they are employed in earning it.

Upon the Whole, I most strongly recommend this Judicature to be continued at Newfoundland, and I think that any Alteration, that

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would give a greater Play to the Capriciousness and Litigiousness of Parties (which many of the Alterations suggested by Mr. Newman and Mr. Ougier have a Tendency to do) would be making this Court less useful, and less adapted to the State of the Country.

With respect to other Courts, I entirely differ from Mr. Newman and Mr. Ougier, who wish that the Justices of the Peace should have no Authority in Civil Matters; and that when the Governor, Chief Justice, and the Surrogates are gone, there should be no Means whatsoever for recovering Debts. It is true, that the Consequence of the Two Judicature Acts of 1791 and 1792 has been, that no Causes whatsoever have been heard, when the Governor, Chief Justice, and Surrogates were gone; but this has been found extremely inconvenient, and hurtful to many Persons. Whatever Reasons those Gentlemen may have for wishing the Administration of Justice to be still suspended, the Merchants of Harbour Grace, when I was there, delivered me a Paper, in which they state how much they were aggrieved by their old Courts being suspended, and pray they may, as heretofore, have a permanent Court of Session. They add these Words, to which I beg the Committee to attend. “ It falls particularly hard
 “ upon us, who have never made the least
 “ Complaint, or troubled Government in any
 “ Shape whatever, that we should be deprived
 “ of that Court, which we were (but are
 “ more

Memorial of
 the Merchants of
 Harbour
 Grace.

“ more so by fatal Experience) convinced was
 “ a salutary one, and answered the desired
 “ Effect.” I now deliver in this Paper
 (which is to be found in the Appendix,
 N^o 15.) and I again caution the Committee
 how they suffer that, which comes only from
 these two Gentlemen, to be received as the
 Language of the whole Trade, and of the
 whole Island. These Gentlemen have indeed
 (as the Merchants of Harbour Grace truly say)
 complained and troubled Government, and
 have heretofore been too much listened to.

Conformably with the Requisition of the Permanent
Courts re-
commended. above Paper, and with the Wishes and the
 Necessities of the People resident at St. John's
 and Harbour Grace, I should recommend, that
 in the Absence of the Chief Justice and Sur-
 rogates, there should be some Court for the
 Recovery of Debts to any Amount, and for
 determining Causes of any Sort or Kind; and
 that there should be an Appeal from such
 Court to the Supreme Court at St. John's.
 Some of the Persons to sit in those Courts can,
 from the Nature of Things, be no other than
 the very Persons who sat in the Court of Com-
 mon Pleas, and who have been so misrepre-
 sented. I know all the Clamours made against
 those Gentlemen to be ill-founded; I know
 them to be the most fit to be put in the same
 Station they were then in; and they ought to
 be placed there, not only for the Advancement
 of the public Service, but as a Testimony that
 their Conduct is approved, and that the Ser-

vants of Government will always be supported when they deserve it.

Such permanent Courts are necessary, because it is impossible, within the Compass of Time while the Governor, Chief Justice, and Surrogates are there, to hear all the Matters that it would be convenient to the Parties to bring to a Hearing in the Season. The Surrogates leave their Stations about the 20th or 21st of October; the Governor and Chief Justice depart from St. John's by the last Day of October at farthest. The Merchants do not wind up their Accounts till the middle of December, and some of them not till the First Week in January: though there may be a very good Reason why the King's Ships should not be hazarded on that Coast, at so late a Season, there seems to be no good Reason why, upon their Departure, the Business left undone should not be taken up by some Resident Court. It would also be extremely convenient to have some such Court to resort to, if necessary, during the Winter, and at the Opening of the Spring, before the Governor, Chief Justice, and Surrogates arrive: such Courts might prepare Matters, which they did not choose to determine, for the Determination of the Chief Justice and Surrogates, when they arrived; in the mean Time the Country would have all the Benefit which is derived from Courts in other Causes, and some of it even in those. At any Rate, the Stay of the Chief Justice, more especially of the Surrogates, is too

too short for beginning and ending all the judicial Business of the Island; these may be made extremely useful, as a subsidiary Aid to such permanent Courts, but ought not to be relied upon, in my Opinion, as the only Tribunals for deciding Differences.

The Committee have already been detained too long with what I have said upon the Judicature. I shall endeavour to be very short in the few Observations I have to make on Two or Three Points that have been spoken to by some of the Gentlemen.

Something has been said on the Nature of Property in Newfoundland, and I will lay before the Committee my Opinion upon this Question.

The different Titles under which, it appears, Land may be holden, seem to be reducible to these: by Grant; by Occupancy; and by Act of Parliament. It is very rare that a Title can be traced up to an original Grant; but where there are any such, it is a Grant either from a Governor or One of his Surrogates. These were made sometimes generally; sometimes to the Grantee for Life; and sometimes to him and his Heirs; they have of late Years been considered as nothing more than Grants during Pleasure, or at most, during the Time the Place granted is used for the Fishery; and Grants of late have been commonly expressed to be during the King's Pleasure, and for the Use of the Fishery. Much, however, of the Ground thus granted, is so situated

Of different
Titles to
Land.

ated as to be of no Use in the Fishery, and is actually used for growing Hay, and other farming or domestic Purposes. The Grants, whether ancient or modern, contain no Reservation of Rent, or any Acknowledgment or Consideration whatsoever; nor is it believed that any was ever paid for such Grants. Some indeed are to be excepted; namely, where a Piece of Land has been granted in Consideration of another that had been taken from the Grantee for building Forts, or some other public Service; there are several such Grants, and they are considered as the best Titles in the Island, on Account of this Consideration being expressed in them.

Titles by Occupancy I call such where there is no Grant, or any Thing to shew for the original Possession of the Ground as exclusive and private Property; this makes Three Fourths of the Ground that is used and possessed in the Island, more especially in the Cut Ports; where being removed from the Eye of Government, People make Inclosures, and carve for themselves almost as they please.

Besides these Modes of possessing Land, there is another which is authorized by the Acts of Parliament relating to Newfoundland; and the before-mentioned Tenures by Grant and by Occupancy may possibly be often sanctioned by the Fishery Acts, as far as such Tenures can be brought within the limited Sort of Property conferred by those Acts. The Titles that may stand upon the Authority of
Parliament,

Parliament, are such as are within the 3d, 4th, 5th, 6th, 7th, and 8th Sections of Stat. 10th and 11th William III. c. 25, and the 2d Section of Stat. 15th Geo. III. c. 31, compared together. On considering these Regulations, the Meaning of which is not very obvious or plain, it should seem that the Parliament meant to establish Two Sorts of Titles: First, they intended to ratify the Titles to all Land which the Inhabitants had converted into private Property before the Year 1685. Having made the Inhabitants easy in that Point, they required them to yield up all that had been appropriated between that Time and the passing of Stat. 10th and 11th William III. and that none should be appropriated by them in future in Prejudice of Ships coming from Europe; that Ships coming from Europe, and equipped conformably with the Fishery Acts, should have a Place for curing their Fish for the Season; but that at a subsequent Season the Spot so taken should be open for any other Ship to take, and might thus change its Master every Year. Hence arose what are called Ships Rooms, whether they are such as have long been so denominated, or whether they are any vacant or void Spaces, under Stat. 15th Geo III. which may be taken by any such Ship, the same as reputed Ships Rooms.

These Two Parliamentary Titles, namely, that of Property before the Year 1685, and that of Ships Rooms, though they are in the Letter of them the most defined and sure, yet

they are in their Consequences of less Value to Individuals than any of the former.

In the First Place, I do not believe that any Owner of Land can shew a Possession and Property in any Person under whom he Claims subsisting prior to the Year 1685. And although there must be many such, yet not being able to shew their original Title, they can claim by nothing better than the Occupancy of themselves and their Predecessors, and must be reckoned therefore in that Class of Landholders.

Of Ships
Rooms.

With regard to Ships Rooms, it is easy to see, in the short Mention I have just made of them, that they are quite the Opposite to private Property, and therefore hardly come within the Description of Titles which we are now seeking—Ships Rooms, and all vacant and void Spaces, which may be turned into Ships Rooms by those who chuse so to occupy them, are in common for the first Taker; who may possess One for the Season, at the End of which he must leave it, with all the Improvements he has made (which he is expressly prohibited by the Statute from removing) for some other Person to enjoy the next Season. The Consequence is, that this commonable Part of the Shore is of very little Value, and in some Places of none at all. In those Harbours where a clean Sea-beach is thrown up in great Quantities (as at Ferryland) and they are in the Practice of drying their Fish upon the Beach, a Ship's Room of
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that Kind is of Use; but in Harbours where there is no Beach, as at St. John's, and Fish cannot be dried on a Ship's Room, without the Expence of building a Flake, there a Ship's Room is not worth taking; and we see in consequence of it, some of the choicest Spots in the Harbour of St. John's lie vacant; no one thinking it worth his while to lay out Money on Ground which belongs to the Public.

However, it must be confessed that since commonable Ground has sunk in Value, there has been less Conscience or Scruple in making Encroachments on it; and it is owing to this that Ships Rooms have been gradually giving way to the Inclosures that are continually streightening them on all Sides. Many were interested in conniving at this; and most People, for the above Reasons, thought it more beneficial to the Public that such Ground should be so appropriated. These Innovations were made long ago, and are now of so long standing that nobody thinks of contesting the Point, unless it is some litigious Man, who seeks only to vex his Neighbour, and then the Claim meets with no Encouragement from a Court.

However, this Change in the State of commonable Ground on the Shore caused Alarm in some Persons who were solicitous to preserve the old System; finding so little remaining unoccupied of what used to be Ships Rooms, they thought the best Method of recovering the System, without disturbing private Rights, by exciting dormant and forgotten

ten Claims, was to create a new Quantity of commonable Ground; and it was accordingly declared by Stat. 15. Geo. III. that all vacant and void Spaces whatsoever should be considered as Ships Rooms.

From this Account of Ships Rooms, and the Change they have undergone, it is easy to see, that a great Part of the Ground, which might have been held for the Season under this Parliamentary Title, has passed into the Class of Land holden by Occupancy, and some of it, though less likely, into that of Land given by Grants from Governors.

Upon the Whole, the Title to an exclusive private Property in Ground must either be by Grant from some Governor or his Surrogate, by Possession before the Year 1685, or by Occupancy; and as Titles of the Second Sort cannot, I believe, be made out, all Titles may be reduced to Grants and Occupancy, the Title to Ships Rooms being rather a Right of Common than a Title to Land.

Whatever may be the original Title to Land, and the Security in it as against the Crown, the Owners as against one another remain undisturbed, and they sell, lease, and mortgage the same as in any other Part of the King's Dominions. Some of these Places, where Storehouses and Dwellings are built, let for very high Rents. Many Persons have such Estates, that bring in from One hundred to Three or Four hundred Pounds per Annum. Some of these live in the Island, some reside
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in England, and have the Rents remitted to them. There are Instances, where Persons resident in the United States, and become Citizens there, have received Rents from Newfoundland. It is upon Consideration of all these Facts that I thought, and still think, the Crown should receive some Acknowledgment, by Way of Quit Rent, for Ground which is so valuable to the Possessors.

Another Subject is the State of the wild Indians in the interior Parts of the Island.

At a Time when the Legislature is manifesting so much Anxiety for the Protection and Welfare of a People who do not belong to us (I mean the Africans while in their own Country) I make no Doubt of being heard while I say a few Words in Behalf of these poor People, who are a Part of the King's Subjects. These Indians inhabit a Country, the Sovereignty of which is claimed and exercised by His Majesty. Unlike the wandering Tribes upon the Continent, who roam from Place to Place, these Indians are confined to this Island, and in that View are more peculiarly our own People than any other of the Savage Tribes; they and every Thing belonging to them is in our Power; they can be benefited by none others; they can be injured by none others: In this Situation they are entitled to the Protection of the King's Government, and to the Benefit of good Neighbourhood from His Subjects; but they enjoy neither; they are deprived of the free Use of the Shores and the Rivers,

Rivers, which should entitle them to some Compensation from us; but they receive none; instead of being traded with, they are plundered; instead of being taught, they are pursued with Outrage and with Murder.

It seems very extraordinary, but it is a Fact known to Hundreds in the Northern Part of the Island, that there is no Intercourse or Connection whatsoever between our People and the Indians, but Plunder, Outrage, and Murder. If a Wigwam is found, it is plundered of the Furs it contains, and is burnt; if an Indian is discovered, he is shot at exactly as a Fox or a Bear. This has gone on for Years in Newfoundland, while Indians in all other Parts of the King's Dominions have received Benefit from their Connection with us, either in the Supply of their worldly Necessities by Traffick, or in being initiated in the Principles of Morality and Religion; but such has been the Policy respecting this Island, that the Residents for many Years had little Benefit of a regular Government for themselves, and when they were so neglected, it is not to be wondered that the Condition of the poor Indians was never mended.

When the Indians shew themselves, it is in the Bay of Exploits, and in Gunder Bay, to the Northward. They come down to get what the Sea Shore affords for Food. This is a lawless Part of the Island, where there are no Magistrates resident within many Miles, nor any Controul, as in other Parts, from the
short

short Visit of a Man of War during a few Days in the Summer; so that People do as they like, and there is hardly any Time of Account for their Actions. The Persons who are best acquainted with the Resort of the Indians, and who are deepest in the Outrages that have been committed upon them, are the Furriers of the Bays I just mentioned, and of the Places thereabouts. Some of these Men have been conversed with last Summer, and I understand, if they were relieved from the Danger of Enquiry into what is past, they would open upon the Subject, and make themselves useful in commencing any new System of Treatment and Conduct.

What then do I propose to be done for these Indians, and what is the Manner in which I propose it should be accomplished? In the First Place, it seems they ought to be protected from Violence, and that ought to be done by executing the present Laws against Offenders. I hope something is already begun towards attaining this, by what I said to the Grand Jury last Year, and the Apprehension expressed, as I understand, by some Furriers, who feared they should be brought to Justice; but in so distant a Part of the Island the Fear of the Law is little Security, and if it was to be executed, I hardly know the Means of doing it in the present Circumstances of the Island and its Government.

But supposing this attained, does our bare Duty towards these People end here? Separated

rated as they are from all the World but us, is it not incumbent upon us to use the Means in our Power to impart to them the Lights of Religion and civil Society? or at least, Does not our Interest suggest an Advantage that might be derived from a free and unrestrained Trade with them, in which Furs and other Produce might be exchanged for British Manufactures? Should any or all of these Considerations be thought sufficient for endeavouring to conciliate the Confidence of these People, and to open a friendly Intercourse with them, there seems no Difficulty or Hazard in the Undertaking. It is similar to what has already been done on the Labrador Coast with a Race of Savages said to be more untractable, and under Circumstances much less favourable. It is only to chuse between holding out Encouragement to the Moravians to send a Missionary, as they now do to Labrador, or employing the present Furriers, under the Direction of some Person who has a Talent for such Enterprizes. In both Cases, there should be some small Force; and if One of the Sloops of War upon that Station were to winter in the Bay of Exploits, or Gander Bay, for protecting such a Project in the Season that is most favourable to it, it would be as much Force as could be needed; but the Mode and Manner of carrying into Execution such a Scheme is for the Consideration of the Committee.

Of the Coast
of Labra-
dor.

Another Point to which I beg Leave to draw the Attention of the Committee is the present

present Condition of those who carry on the Fishery on the Coast of Labrador. Although this is not within the Commission of the Governor of Newfoundland, yet it so happens that he is the only Person who is in the Way of knowing any Thing about it. The Ship which is sent round the French Limits never fails of looking in on some Part of the Labrador Coast; and it appears from the Representations of the Captains who command those Ships, that there is great need of some Authority to interpose, and see Justice done between Master and Servant, at least as much need as there ever was at Newfoundland. The Employment and Relation of Persons is the same; the Abuses and Grievances are the same; amongst these is that old One of keeping Servants on the Coast from Year to Year; all which is more uniform and insurmountable, in Proportion as the Merchants are few, and can therefore combine to keep all their People in a more absolute State of Dependence.

The Coast of Labrador is under the Government of Canada; but the Influence it feels from a Center so far removed is very small; in Truth, there is no Government whatsoever on the Coast of Labrador, as I am informed by those who have been there.

This Coast was, after the Peace 1763, put under the Governor of Newfoundland, it being very properly thought that, as a Fishery, it would make a natural Appendage to this Government.

Government. But the Governor having set about applying to the Seal Fishery on that Coast the System of Laws made for Newfoundland, which, upon Consideration, were thought not adapted to the Fishery on that Coast, it was judged proper to disjoin it from the Newfoundland Government; and this was accordingly done by Stat. 14 Geo. III. for new modelling the Government of Quebec; and in the same Act, Power was given to His Majesty to reannex it again to the Government of Newfoundland, when he should so please*.

It may perhaps be doubted, whether this was the only or the best Way of curing the Evil; and it is very much to be wished that this Measure was reconsidered, and some Plan devised for affording to that deserted Coast, something like the Effect of a Civil Government.

Decrease of
the Trade
denied.

It has been strongly insisted by Mr. Newman and Mr. Cugier, and also by Mr. Jefferys, that the Trade has considerably declined of late Years as a lucrative Employment; but those Gentlemen state Facts, which are of themselves the strongest Evidence to the contrary. They complain, over and over again, of Interlopers in this Trade, whom they call Hucksters and Adventurers, insinuating that they intercept some of the Profits that belong to the regular Merchants alone. They also

* Vide the History of Newfoundland, p. 134.

complain

complain of the great Increase of Residents in the Town of St. John's. In Answer to which I would ask, why should People adventure in the Trade, and why should Multitudes flock to the Island, there to settle and traffic, if the Trade and Fishery were not a flourishing, and a lucrative Employment? In fact, there is every Appearance in the Town of St. John's, that the Trade and Fishery subsist in great Vigour. But these Gentlemen insist upon the contrary, and some Persons who hear them, as strongly insist, that the Merchants ought to be taken at their Word, relative to a Matter in which they themselves are the best Witnesses, and which is plainly evinced by so many Bankruptcies. But I shall contend, that the Merchants are not the better Witnesses for being concerned in the Matter; and that having an Object to attain by such Representation, they should be heard with all the Caution with which interested Witnesses are always heard. Again, their Evidence is opposed to the strongest Testimony from official Accounts, and the Averments of the Officers of Government, who have the best Opportunities of obtaining Information; and I can assure the Committee, that, in looking over the Papers of the Board of Trade, I have seen, for Years back, repeated Representations from the Merchants, alledging that the Trade and Fishery were ruined, and could never recover, if such and such Regulations were made, and these in as strong Terms as

any used on the present Occasion, and yet the Trade and Fishery have still gone on, and those Fortunes have been made, which some Persons now living still enjoy. This is an historical Evidence, that shews the Merchants are not entitled to implicit Credit, when they talk of being ruined.

I speak of the Trade in general; I do not mean to deny, that it may, at the present Time, be a losing Concern to some Persons; and it is most probable that unfortunate Individuals were, upon former Occasions, as well as the present, the Promoters of melancholy Representations, by which they meant to make Government believe, that the whole Trade was ruined, because they were. Mr. Newman and Mr. Ougier state themselves to be considerable Losers, and that their Trade cannot longer be carried on; and yet they would not like to be taken on their Word, and believed to be in the Way to Ruin; though I do not see why they should have the Benefit, in Point of Argument, of being ruined, and be permitted at the same Time to enjoy all the Credit of thriving Men, which they certainly will claim, notwithstanding what they now say; I will take it, if they please to declare so, that themselves, and the whole Town of Dartmouth sustain Losses that are not to be borne without Bankruptcy; but when all this is admitted, it makes nothing to the Point they urge; other Persons have been Bankrupts, and other Towns have been ruined, and
the

the Trade has yet gone on. Biddeford and Barnstaple were once great Towns in this Trade, and have long ceased to employ any Ship at all. Perhaps Dartmouth rose upon the Fall of these Towns, and some others may rise upon the Fall of Dartmouth; and with all these Changes, the Fishery, as a national Concern, may remain the same. We know that the Place of these decayed Towns has been supplied by Adventurers from other Parts of His Majesty's Dominions; Glasgow is one, Waterford is another; from both of these Towns there are very successful Trades carried on, sufficient to raise the Envy of Dartmouth, and make them apprehend, that they shall no longer enjoy an exclusive Trade to Newfoundland. But the new Trading Towns that have come into the Fishery of late Years, these Gentlemen never reckon in the Statements they make; they reckon all the Decrease, and pass over the Increase in Silence.

As to Mr. Jeffery's Disgust, and the Threat he makes of withdrawing from the Trade, he does not mention the Fortune he has raised in it, nor the other Trades, particularly that of Corn, which, as I am informed, he has lately entered into upon the Strength of the Capital acquired in the Fishery; and if he has the Fancy to change the Application of his Capital, I do not know that it proves any Thing, but that he prefers the Novelty, Profit, and Convenience of a Corn Trade at Home, to the old Concern of a Fishery across the At-

lantic; which may well be, and yet that Fishery continue as profitable as ever. If Mr. Newman and Mr. Ougier would take the same Resolution with Mr. Jeffery, it might be hoped, that Government would no longer be harrassed with vexatious Complaints about Newfoundland, and I have no doubt their Places would be immediately supplied by Persons of Capital, and of a Spirit to carry on the Trade with Success and Advantage to Great Britain; and the Sum Total of the Fishery would in such Case be as great, or greater than ever.

The Truth is, the Newfoundland Trade is thrown much more open than it used to be; instead of being confined to the West Country Merchants, and to those of Poole, and some few other Towns, it has been attempted by Adventurers from different Parts of the King's Dominions. It is in the Memory of several Persons, when the Trade at St. John's was in the Hands of Five or Six Merchants; these Persons brought out sufficient Supplies for the People they employed, either as Servants or Boatkeepers, to catch Fish for freighting their own Ships.

At that Time, no Doubt, the Merchants were able to make those Profits which usually attend a Monopoly; every Body was dependent upon them. At present the Number of Persons who can furnish Supplies, in the Town of St. John's, is so increased, that all Monopoly is broken, and a very active Competition

petition is come in its Place. All the Consequences of Competition have followed; the Prices of Supplies are lowered, and Boat-keepers are less dependent, having more Persons to take their Fish and supply them with Necessaries; hence the Murmur of the Western Merchants against Hucksters and Adventurers, and hence the Notion that the Trade is ruined. It is true that some of the Persons who sell Supplies at St. John's, do not carry on the Fishery, but they sell their Supplies to those who do; the Produce of the Fishery is still the Object of the Trade; Fish and Oil are still the staple Commodities, and I do not see but that Persons who make it their Object to deal in these Articles, must be reckoned among the Encouragers of the Fishery, although they do not themselves engage in keeping Boats or Ships.

I know the Western Merchants hold a high Language respecting their own Concerns, and the Merit they suppose they have in carrying on a British Fishery; they are inclined to consider the Sort of Persons I have before alluded to, as little better than Breakers of the Law, in carrying on the Trade in the Manner they do. I remember a very respectable Merchant of Glasgow being put down, in the Face of the Grand Jury, by an Insinuation from a West Countryman, that he was not so meritorious a Trader at Newfoundland as himself, who was a Fisherman. The poor Gentleman made no Defence; and after that I was not

so much surpris'd to see his Name, and that of several others circumstanced like himself, among those who sign the Paper of Approbation to the Western Delegates, with whom they, most certainly, have no common Cause, but quite the contrary; yet with whom they would gladly live at Peace, and that they know can be purchased on no other Terms than seeming to be one of them, and assisting to bear them out in their favourite Measures.

As to this Mode of carrying on the Trade, whatever the West Countrymen may say against those who practise it, they certainly introduced it themselves. It is well known at Newfoundland, that the most profitable Way of carrying on the Fishery is by supplying Boatkeepers, and taking in Payment for the Supplies the Fish and Oil they catch. It was this induced the Western Merchants, as well as those of Poole, to encourage the Settlement of Persons there many Years ago; as these increased, the Necessity of bringing Men from England must diminish. The Merchants found it their Interest to promote the former, and it was in vain to depend upon Regulations to force them to another Course; Residency and Population have increased, because it is generally held the cheapest and most profitable Way of carrying on the Fishery by Residents; when this was known, it was easily seen that any Man who could land at Newfoundland, with a Cargo of Supplies, was as fitted for carrying on the Fishery as a regular bred Fisherman;

man; from this Observation arose the Number of Adventurers who have of late Years come into the Trade, and who are so much censured by the Western Merchants for following the Example they had set. These new Comers have mostly resorted to St. John's, and to Conception Bay, where there is more Population, and where People are less united, and more at Liberty to engage with any new Merchants that present themselves. In Trinity Bay and Placentia Bay I believe these new Adventurers make very little Impression.

Whatever may be said by these Gentlemen of the Competition now prevailing at Newfoundland; it appears to me that it must be considered as a Mark of Prosperity, which shews the Trade is in Request. It may happen, indeed, that through this the great Gains of the Trade may change Hands, or it may even happen that the Gains in the Trade may be less to the individual Merchants concerned; but the Boatkeepers, who catch the Fish and Oil, and who thus create the Property by which the Merchant is to thrive, must certainly be Gainers by this Competition, for there are more Bidders for their Fish and Oil, and they have more Chances of getting their Supplies cheap; at any Rate, if the Sum Total of Fish caught and of Ships and Men employed is the same, or if they are increased, as appears by what some Gentlemen have said; and if the whole Concern is in the Hands of many Merchants instead of a few (which in



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a commercial Light is deemed always beneficial) what does it Matter that this or that Man or Town is falling to Decay, or this or that Mode of supplying is practised. These Modes all commence of themselves, they must of themselves change and die away; Fashions of Trade must be taken as they are, and cannot be controuled by Regulations.

Of Populati-
on and Resi-
dency.

With respect to the Population of the Island, and the Increase of Residents, this seems to me an Evil, if it is one, that cannot be so easily cured. I repeat, that the Merchants which pretend so much Zeal against Residents have been and still are the principal Encouragers of Residency; the Resident Boatkeepers are the Hens that lay them their Golden Eggs; so long as they are successful, and are able to pay their Way, no Merchant (with all his supposed Zeal for a Fishery carried on from Great Britain) ever wishes to remove them; but as soon as they run not only repeatedly in Debt (for the most thriving are so, and the Merchant takes pretty good Care to keep them so) but so much behind, Year after Year, as not to afford a Prospect of the Merchant being any longer a Gainer by them, then no Body is so anxious as he is to send them out of the Country to prevent their being burthensome to himself; and some of these are the Instances the Merchants cite, when they say they have brought many Home without taking any Thing for their Passage. The other Instances are of Servants who are grown
lazy

lazy and unprofitable ; but I must have other Testimony than their own Declarations to be brought to believe that this was ever done out of pure Zeal for a Fishery from Britain ; and this Want of Faith is not at all removed by the repeated Professions these Gentlemen have made of doing this and that for the Good of the Trade ; I have always thought it enough to expect from Merchants, that they pursued their own Interest, and in so doing were useful to their Country ; and not that they should, for the public Good, pursue some general Policy which was inconsistent with, and sometimes contrary to their own Interest.

While I was at Trinity Harbour last Summer, I saw a Boatkeeper of Perlican, who, with a Wife and Ten Children, wished to be carried to England to his Parish. The Merchant, by whom he had been supplied till the last Two Years, told me, he had fallen so in Debt to him that he could not supply him further, and he had offered to convey him and his Family to England, as he saw no Probability of the Boatkeeper retrieving his Affairs. The Boatkeeper, however, wished to try his Luck again, and persuaded a Merchant at Harbour Grace to supply him ; he went on for Two Seasons, had no Success, fell deeply in Debt to his new Merchant, and was, when I saw him, in Dread of being refused Supplies for the Winter, and his Family perishing for Want. To escape this he wished to go to England ; but the first Merchant now refused
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what he had before offered ; the Man was out of his Hands ; he was not bound by that Sort of Honour, which is well understood in the Island, to supply him during the Winter ; a Burthen which always falls on the Merchant who has the Fish during the Summer, and not being so bound, he had no need to renew his Offer of conveying the Man and his Family to England. I thought the first Merchant perfectly right ; he had done his Duty, while he had any Obligation on him. I mention this only to shew, that something else than Zeal for the Trade is the Motive for sending Home Persons without being paid for so doing.

But this Motive, such as it is, operates only in certain Parts of the Island ; in Trinity Bay, for example, it may operate, both with regard to Boatkeepers and Servants who become burthensome, and for this Reason ; the Merchants there are few ; every One knows his own Dependents ; their own Boatkeepers and Servants must, at any Rate, be maintained by the respective Merchants, and knowing that, the Merchants are solicitous to remove the Evil as soon as it appears, and are ready enough to prevent it. Thus in a small Society private Interest becomes a public Virtue. But it is very different in Conception Bay, and at St. John's, where the Population is larger, and there is less Dependence and Connection between Merchants, Boatkeepers, and Servants. In these Places Merchants may more easily
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shift off from themselves the Burthen of decayed Boatkeepers and unprofitable Servants upon the Public, to be supported as they can. I believe there are in these Places few Instances of Persons being sent out of the Country upon Considerations either of a public or private Nature, unless by the Interposition of the Magistrates. It is in those Places, particularly at St. John's, that the Application of the Law is more frequently needed, and more resorted to for enforcing the Policy of the Fishery Acts; and it is from the Application of them in these Places, particularly in the latter, that most of the Contests between the Merchants and Courts have arisen; and, what is said by Way of Observation upon them, ought principally to be confined to the Experience of them in those Places.

The Population of Newfoundland has certainly (by the best Accounts) increased considerably of late Years: I take the Beginning of this great Increase to have been at the Time the War with the Colonies broke out; and it has increased, for similar Reasons, still more since the Peace. We find, all through the History of this Government, that Newfoundland was resorted to by the New Englanders, as a Place for procuring Fishermen, Seamen, and Artificers; that Bounties were given for that Purpose by their Government; and that various Means were practised for seducing away our People to that Colony; they have been carried to the Number of

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Three or Four hundred in a Season. This Drain was always a Subject of Jealousy to the Mother Country, and it always made a Part of the Consideration, when the Probability of Newfoundland becoming populous was debated. Since this Intercourse has been stopped, every Person who does not return to the Mother Country stays in the Island; this of itself must add greatly to the Numbers of the lower Class of People. The Merchants are also increased, at St. John's at least, by Persons who have come from the revolted Colonies; but these are few in Number compared with those who have engaged in the Trade of late Years from other Parts of the British Dominions.

That Revolution has made an Alteration in the Value and Importance of Newfoundland, which seems to me never to have been sufficiently considered. It appears to me, that since the Peace 1783, Newfoundland has been more completely our own; that it has been a more genuine British Fishery, and of more Value to the Mother Country, than it ever was before. It is become a Sort of Cul de Sac; what does not stay there must come to Great Britain or Ireland; there is no longer the Competition and Interloping Trade of the New Englanders so much complained of heretofore by the Merchants. I cannot help thinking also, that since Newfoundland is so severed from New England, some of the Topics respecting the Population of the Island, and the Fears about Colonization, deserve less Regard. Notwithstanding

standing the Increase of Inhabitants, Newfoundland is still nothing but a great Ship, dependent upon the Mother Country for every Thing they eat, drink, and wear, or for the Funds to procure them; the Number of Inhabitants seems to me rather to increase this Dependence, inasmuch as their Necessities are thereby increased. They all look to the Sea alone for Support; Nine tenths of the People procure from the Soil nothing but Potatoes; and those who carry Cultivation furthest reap no Produce but what can be furnished by a Garden. In some few Places Hay is cut, but Corn is never thought of; neither the Soil or the Climate having encouraged the few Attempts that have been made to grow it. The Population, though said to be great, is scattered as thinly as the Products of the Earth. Distant Harbours and Coves, not easily accessible but by Sea, are the Places chosen for Residence, the People of which have little Knowledge, or Connection with one another, to unite them.

The Island is little known, and the Accounts given of the Population are not to be depended on; it is stated from Twenty to Fifty thousand Persons, who have no other Home. Be it as large as the highest of these Statements, I do not myself think it an Object to be apprehended. If any think the Collection of People in the Island has a mischievous Tendency, I hope the above Considerations may contribute to ease them a little on this Head.

Head. At any Rate, it is a Matter where we are to hope rather for Consolation than Cure; for I do not see how such a Population is to be rooted out, or indeed thinned, so as to make any considerable Diminution. There have been Projects, on former Occasions, when the Island was thought to be overrun with Inhabitants, for sending People to Nova Scotia, and other Places, where Inhabitants were wanted, but I do not remember that these were ever carried into effect.

Of the present Triennial floating Government.

I cannot help saying, that the grand Means employed to prevent the Increase of Inhabitants has, in my Opinion, contributed to their Increase. It has all along been the Inclination to say, that there should be no Resident Government, because, if there was, Newfoundland would become a Colony. None have been more strenuous than the Western Merchants in keeping up the Cry against a Governor; they have constantly alledged the above Reason, and that Reason has always passed for a good one.

I take the Liberty of doubting whether this Reason was a good one. I never can be brought to think, but that placing a Governor there, whose Business it should be to prevent People settling, would have been a more probable Method of preventing it than continuing the present floating Government, which has no regular Authority to send Persons Home, and which departs from the Island just at the Time when the Seamen and Fishermen are hesitating whether

whether they shall stay the Winter or not, and might be easily turned in their Resolution by the Apprehension of any Interposition from Authority. The Consequence has been, that Newfoundland has been peopled behind your Back ; you have abandoned it to be inhabited by any one who chose, because you thought appointing a Governor would constitute a Colony and encourage Population. The Western Merchants, who found out the Reason that " a Governor would make a Colony," knew perfectly well what they were about in urging it ; they knew that the Presence of a Governor would interfere with their Plan, which was to go on without Inspection or Controul ; they over reached those who heard them, and succeeded in the only Object they proposed to themselves: For in the mean time they, among the rest, proceeded to make all the Advantage they could, by adding to the Number of Residents every Year.

However it may have originated, the Population of the Island is such, as now to need the Controul and the Protection of Magistracy and Officers, like the rest of the King's Dominions. That Magistracy should be raised and strengthened, instead of being exposed to be disregarded and contemned, as has been attempted by some late Proceedings ; and in my Opinion, it will never be placed in a Situation to discharge its Functions properly, till there is something more of a resident Government.

The present floating Government seems to

me so constituted, as to confer the least possible Advantage of a Government. The Governor's Appointment continues for Three Years, the Term of his Station; the Captains of the Squadron, who are his Surrogates, are often changed during the Station. It happens, therefore, that the Governor has One Year to see and learn, another to execute his Authority with some Knowledge, and a Third Year with some little more.

If the Governor, who is changed every Three Years, has little Time to learn the Peculiarities of the Trade and Fishery, what is to be said of the Captains of Ships, who are often changed before the Station is out? And if you add to this that they all come to the Business of hearing Causes for the first Time in their Lives (unless by some Chance a Captain has been on the Station before) it seems altogether the most singularly contrived System, and most unsatisfactory to every Body concerned in it. It is therefore not to be wondered, that the Governors who succeeded Admiral Edwards, finding they could not determine Causes so easily as he says he did, and less liking than himself to pay a Sum of Money to compromise* any Action that might possibly be brought against them for what they did, ceased to hold Courts, and endeavoured to enforce an Observance of the Law, more by

* I understand it cost the Admiral £. 300 to compromise the Action brought against him.

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their Advice than their Authority. I think their Country owes them great Obligations for undergoing the Trouble and Anxiety so long as they did; and I think the same Thanks are due to the Surrogates, who have to the present Moment, continued to perform the same unpleasent Task in their several Stations. The stepping thus out of their professional Line, can never be submitted to from any other Consideration, than an implicit Obedience to all Commands imposed on them by their superior Officer. I was extremely glad, the last Season, to lend my Assistance in taking off some of this Load from the Surrogates. This I did in Part, during my Visit to Trinity Harbour and Harbour Grace; and I afterwards did the Whole of the Surrogate's Business at Ferryland, which, however, broke in too much on the Time I ought to have spent at St. John's.

It is to be wished, that the Captains of Ships should still continue to lend their Assistance as Surrogates in the Out Harbours. The Communication from Harbour to Harbour is only by Sea; and the Force of a Ship of War, may sometimes be wanted to enforce Obedience to Justice. In the Out Ports too, the Questions are of a more simple Nature, usually about Wages or Charges in an Account, either between Master and Servant, or Merchant and Boatkeeper, to which Gentlemen of the Navy may easily give their Attention; but at St. John's there are many Questions which arise

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upon complicated mercantile Dealings, which have led to a Length of Enquiry that would not be very agreeable to the Governor, or any of his Surrogates. Indeed all this was experienced before the Governors gave up the vexatious Employment of hearing Causes, and it has very much increased of late Years, since the Town of St. John's has increased in Population, and there has grown to be so much Trade and Traffic, which give Rise to mercantile Questions of various Sorts.

In Truth, the Surrogates are not able to get through the Business they are employed upon, without the Assistance of the Justices who reside on the Spot. I am sure I should not have been able to proceed without the continued Assistance of Gentlemen acquainted with the Place; during the first Year I was principally assisted by Mr. Graham, who had been Secretary to the Governors for several Years, and by Mr. Coke the Comptroller; these Two Gentlemen were Assessors in the Court of Civil Jurisdiction. The last Year Mr. Graham was no longer in Office, and the Court had no Assessors, so that I had nothing to depend on, but the voluntary Assistance of Mr. Coke, which he gave me very readily. So long as the present Triennial Government continues, there must be some Person or Persons kept in Office, who from long Habit and Experience may be able to keep alive the Knowledge that is necessary for conducting Affairs with Propriety. There should be a permanent Governor,

vernor, a permanent Lieutenant Governor, or a permanent Chief Justice; whether any such Person should reside there, or go and return as at present, is a Question of a different Sort.

I shall conclude what I have said, with reminding the Committee, that the Representations made against the late Regulations and Laws, have no Foundation but the Evidence of Persons who never saw the Nature or Effect of them; I mean Mr. Newman and Mr. Ougier, who have not been at Newfoundland, the former since 1778, the latter since 1780, I believe. And that Mr. Jeffery does not pretend to know any Thing of St. John's, where those Regulations principally took Place; that these Representations are answered by Persons who have constantly been on the Spot, Mr. Graham ever since 1778, I believe, and Mr. Routh ever since 1781, I believe, and who therefore speak of their own Knowledge. I say nothing of myself, who have been an Observer of a much shorter Period; but I may truly say, I have spared no Pains, by reading as well as Observation and Enquiry, to inform myself of the History and present State of the Island, as far as related to its Government and Judicature; I believe, I have seen more Parts of the Island than any of the Persons who have appeared before the Committee. Last Summer I made a Circuit round to Conception Bay and Trinity Bay; I returned to St. John's, and then made a Visit to Ferryland; I held Courts at all these Places; I made these Ex-

curfions to acquaint myfelf with the Nature of the Trade and Fishery in all its Parts, and of the State of the Ifland. This feemed to me neceffary towards forming a Judgment on the Queftions likely to be agitated; and I found it particularly fo in talking with the Merchants, who always took Advantage of the Officers of Government, by faying they were acquainted with St. John's only; but the reft of the Ifland was very different, and they could form no Judgment of the Out Ports. I have, by this Step, acquired a more general Knowledge of the Ifland, if not fo correct a one, as thofe who have had more Experience: and I am able, in fome Degree, to cope with Perfons who, when they are beaten out of an Argument that applies only to St. John's, fhelter themfelves in one that is peculiar to the State of the Out Ports, where every one cannot follow them.

I truft the Committee will underftand, that the Animadverfions I may have had Occafion to make in the Courfe of thefe Remarks, are confined wholly and entirely to the Two Gentlemen who have appeared before the Committee on Behalf of the Weftern Merchants. I can affure the Committee, that the general Character and Conduct of the Newfoundland Merchants is very different from what may be collected, either from what thofe Gentlemen have faid, or what I have been obliged to fay in Answer to them. They are in general Perfons very little difpofed to fhew Difcontent or
Difatisfaction,

Disatisfaction, and the least of any to cavil at Trifles; as far as I saw, from what appeared in Court, I must say they are most ready to conform to any Thing suggested for the Purpose of doing Justice to all Parties with whom they have Dealings; and upon the whole, I never was concerned in any Business that I found more manageable and easy, and this was principally to be ascribed to the Disposition of the Persons who were interested in it.

If there has appeared, in the agitating of the Question of Newfoundland, any Union or Agreement between the Merchants, which gives Colour for those Gentlemen to pretend they represent the Whole of the Trade, I will presume to assure the Committee that this is nothing more than Appearance; the Merchants do, I believe, unite in wishing to ward off the Regulation proposed last Year, which was to oblige all of them to pay the Forty Shillings Passage Money, into the Hands of Receivers appointed by Government; in this and in this only, I venture to say, is there any Union or Concert among the Merchants. It is certainly not a general Wish to have any of the Alterations made which these Gentlemen have proposed, nor is there any general Complaint of the Grievances which these Gentlemen have been pleased to make: Least of all can the Matter contained in the Evidence of these Gentlemen be considered as the general Language of the Merchants, or any Thing more

more than the Result of their own peculiar Method of thinking; I believe the Merchants in general are very well satisfied with the present Regulations, and also with the present State of the Trade, whatever these Gentlemen may alledge to the contrary. Then

Mr. REEVES being asked, How many Days was he at Newfoundland? he said, In 1791 we arrived the 10th of September, and departed the 1st of November. In 1792 we arrived the 3d of September, and departed the 30th of October.—And being asked, What is the Expence of the Establishment of the New Court? he said, He does not know, for nothing has yet been paid to any body, nor as far as he knows any Thing settled about it.—And being asked, How many Officers are created by this Court? he said, One of the young Clerks belonging to the Ship acted as Chief Clerk the First Year, and several other young Men of the Ship assisted in transcribing Papers. The last Year, Mr. Routh's Son, aged 20 Years, acted as Chief Clerk, and the Writs having been printed in England, there was no need of other Clerks to assist. There is now no need of any other Officer than such Clerk.—And being asked, How many Causes were tried in the Two Years? he said, He has a List (which he received from the Sheriff) of the Causes, the Sums for which they were brought, the Fees paid to the Court and the Sheriff during the Years 1791 and 1792, which he delivered in to your Committee, and is hercunto

hereunto annexed *. (Vide Appendix, N^o 16.)
 —And the Witness being further asked, Where is the Power of controuling the Sheriff? he said, The Sheriff he considers as an Officer of the Court, and as such subject to any Order and Direction the Court shall think proper to make, but he is appointed by the Governor.—And being asked, Whether there is any other Way of punishing the Sheriff for Misconduct but in that Court? he said, Yes, the Governor may remove him from his Office.—And being asked, Whether Damages are to be recovered against the Sheriff? he said, Yes, he is liable to any Action for Damages in the Supreme Court, or any other Court, either in Newfoundland or in England, that has Jurisdiction of such Suits.—And being asked, What Funds are in the Sheriff's Hands? he said, He understood the Sheriff to have no public Money in his Hands; but on the contrary, that he was in Advance to the Amount of £. 700, on Account of the Expences of the District: In Consideration of this, he (the Witness) left in his Hands the Fees received, both in the Years 1791 and 1792, in Easement of this Debt.—And being asked, From what Period did the Sheriff become in Advance? he said, He does not know; it was before his Time;

* By this Account it appears, that from September the 10th 1791 to October the 30th 1792, there were Actions brought in the New Court at St. John's, for recovering the Sum of £. 33,748. 18. 2½. The Fees in which, including those to the Sheriff and the Court, were £. 541. 7. 2. viz. to the Court, £. 289. 10. 1. to the Sheriff, £. 252. 17. 3.

he believes it was within the last Two or Three Years preceding.—And being asked, What Monies has the Sheriff received since he (the Witness) has known the Island, and to what Amount? he said, He does not know, but he believes very little, and that must have arisen from Licences for Public Houses in St. John's, and from Fines; and he remembers hearing only of One Fine of £. 10, which was imposed by the Justices on One Thomas Barter, who has been mentioned in the Evidence.—And being asked, What are his Advances on Account of the District? he said, The Maintenance of Felons, and other Offenders, in Gaol; the Support of casual Poor, being Dieters, and Servants, who resort to St. John's from different Parts of the Island.—And being asked, Whether in the Case where he obliged some Masters to refund Four Years Passage Money, did the Servants return Home? he said, He does not know; but he takes for granted, in all those Cases, the Servant was, at the Time, in Service to another Master, whose Duty it was to see he was sent Home.—And being asked, Did he think that sufficient Security for the Man's Return? he said, It is the only Security the Law has yet provided, but the Regulating Bill of last Year would have given a better.

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