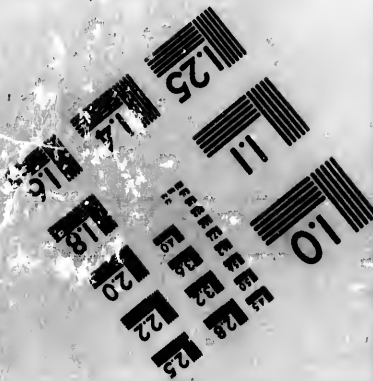
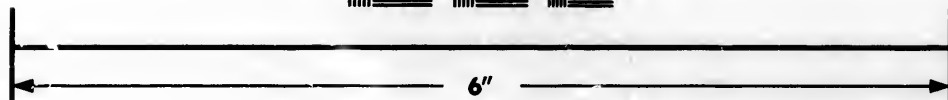
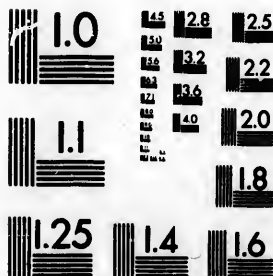


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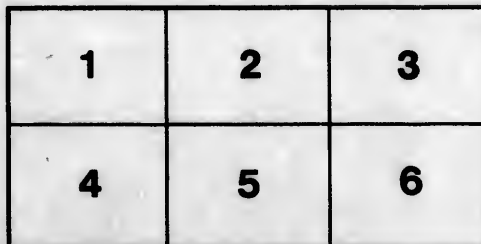
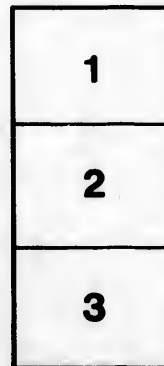
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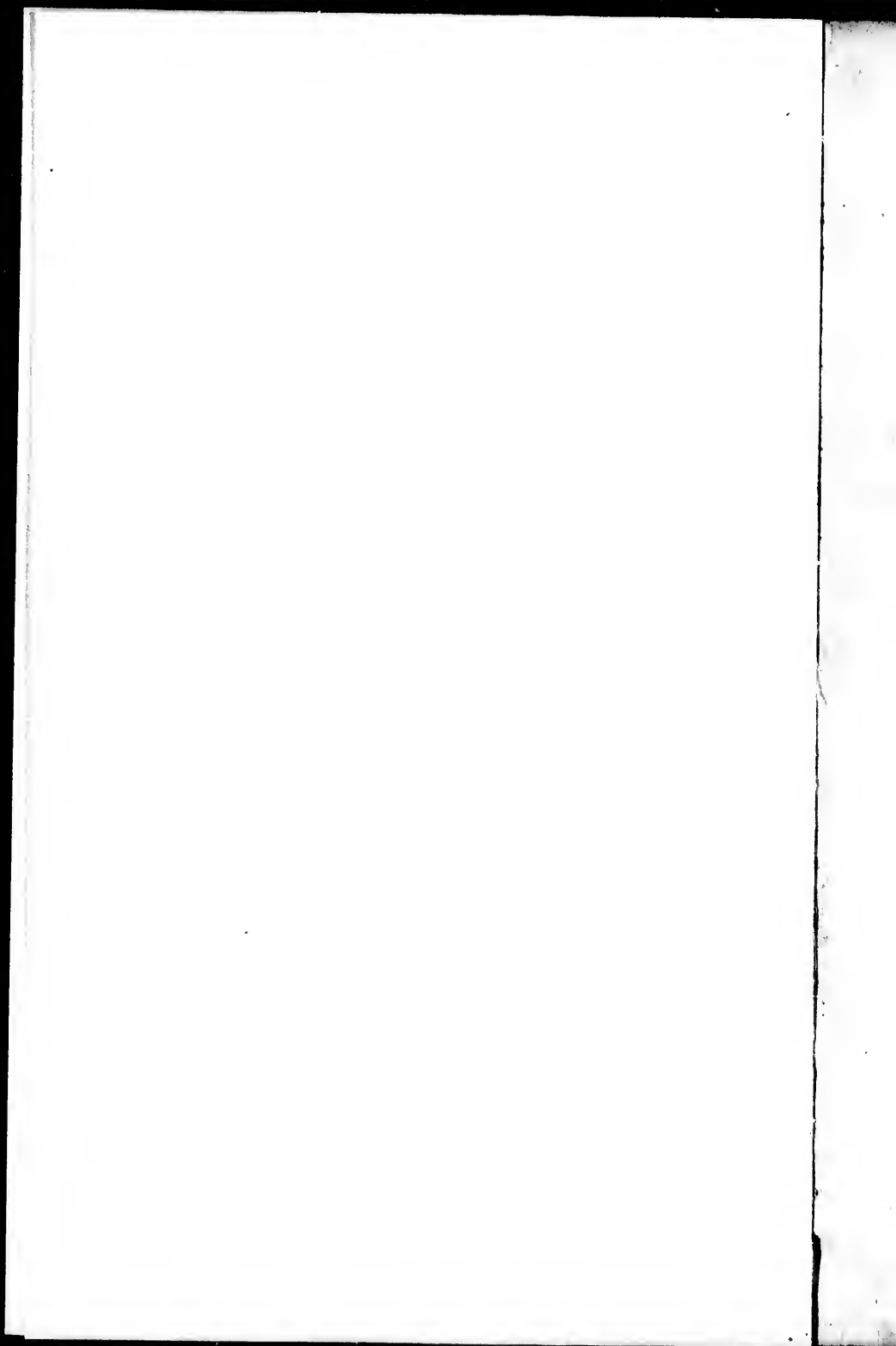
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IN REFERENCE TO ITS
COURTS OF JUSTICE,
Local Government, and Trade:

IN
A LETTER
ADDRESSED TO
THE RIGHT HONOURABLE
HENRY EARL BATHURST,
One of His Majesty's Principal Secretaries of State.

=====
BY AN INHABITANT OF THE COLONY.
=====

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AND

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AND

THE FUTURE

OBSERVATIONS, &c.

MY LORD,

THE high station which your Lordship holds in the councils of our most gracious Sovereign, the distinguished office which your Lordship sustains as a minister of his government, and the high personal character to which your Lordship has attained in the exercise of your important public employments, are the decisive inducements which lead me to regard your Lordship as the fittest person to whom I could address myself on the present occasion.

The representations of the Inhabitants of Newfoundland, which have already in various ways met the view of His Majesty's Government, and claimed its attention to the serious evils under which this ancient colony has so long and so unregardedly suffered; and the pledge which the King and his ministers have given on these occasions, do not warrant me to

address your Lordship as a stranger to the principal subjects of this letter.

To the mal-administration of justice in the subordinate courts of law, how large a portion of the evils by which the colony of Newfoundland is aggrieved may be ascribed, may be difficult to discern; but it is easy to comprehend that that portion must be of widely spreading magnitude, when it is considered that every new squadron of ships of war, and every single ship that arrives on the station, in their commanding officers, furnish a new set of itinerant judges, who, under every disqualification for the office, save the authority which they derive under the commission of the Governor, are dispersed along the coasts of the Island to exercise the functions of judges, in criminal, as well as civil causes, in the surrogate and sessions courts. When to the numberless errors in judgment, inevitably incident to such judges, and the consequent injuries to the rights of parties, are superadded the intemperate and unlawful finings, imprisonments, and floggings which they have inflicted; it becomes to a reflecting mind, a matter of surprise, how the moral relations of society have been held together, amid the heart-burnings and resentments which such a system of judicature must inevitably generate. An Englishman, accustomed to contemplate and admire the purity,

wisdom, and consistency with which justice is administered in the mother country, and computing the almost incalculable sum of its moral and beneficial influences on society, may perhaps, form a general estimate of the baneful effects inevitably resulting from a condition of judicature, so hostile as that of Newfoundland, to every recognized principle of English law.

The power which has been delegated to the Governor of appointing surrogate judges, and his selection of naval officers to fill that office, have afforded facilities to that disposition, which the Governors of Newfoundland have always manifested, to intermeddle with, and control the administration of justice. To those who are at all conversant with the history of this Colony, it is well known that prior to the Acts of 31st and 32nd of his late Majesty, and the appointment of a Chief Justice, the Governor used frequently to hold his court,* and, unsanctioned by any laws, to pronounce his decrees as a judge; and long since that period, and even subsequent to the passing of the present judicature law (49. Geo. 3rd) the Governors of Newfoundland have not scrupled, in violation of it, to entertain the complaints of parties, and to decide on their disputed rights, in respect to property in fishing rooms, &c. In these proceedings, opposed as they were to all the

* Reeves's History of Newfoundland, 155.

newly created laws, made for the better government of the colony, Governors have been so blinded by the love of power, that the precedents which their secretary might unfold in the records of the lawless proceedings of their predecessors, were by each successive Governor deemed an all-sufficient warrant in such unlawful assumption. The period however at length arrived, when, in the Supreme Court, the decisions of the Governor acting as judge, were no longer entertained as conclusive. Still the consolatory medium of the Surrogates remained; and of the Governor's undue interference with them in their capacity of judges, a few examples may suffice. It will be readily conceded by those who are conversant with naval discipline, that it may not at all times be obvious to the subordinate officer, to discriminate correctly, how far he might, or might not, be bound, as the Captain or Lieutenant-Judge, to fulfil to the letter, the behests of the Admiral-Governor, who confers upon him his judicial commission: and if even the caution and reflections of the subordinate officer, should lead him sometimes to examine and discriminate between orders imposed on him as judge, and those relating to his proper professional duties, we cannot be brought to conclude, in opposition to experience, that in such relations, the officer would be always bold enough to act under a due sense

of their wide distinction. The unfortunate Labrador case of *Jennings* and *Long*, is an illustration of the injuries that a Governor's order, under such circumstances, may inflict upon public justice, and the miseries it may create to the individual; and the case of *Long*, which has occurred during the present year, has been its sequel. The Passenger case, that was tried at Trinity by Capt. Nicolas, of H. M. S. Egeria, proves the consequences which an officer has to dread, if, upon the Governor's order to him as judge, he, from scruples of conscience and believing himself to be right, *refuses to reverse his own decision.*

In common with this system, it is notorious that the Surrogates who have been appointed to collect the Greenwich Hospital dues, while on their coasting circuits, have, in opposition to law, and the sense of the Supreme Court, expressed at the trial of a cause that was instituted by the Governor's Secretary, as collector of those dues, been directed to collect and enforce them from fishermen *in open boats*; and the Surrogates have carried with them from the Secretary's office, the Acts relative to those dues, with the Secretary's, or some other *sage* person's marginal interpretation, or rather *mis*-interpretation of the law of those statutes, *written in red ink*, for the Surrogate's governance in his office of

Collector-judge. It is particularly worthy of remark, that in this double department of office, the Surrogate is entitled to a handsome percentage on the sum he may collect.*

In the early part of the present Governor's residence in the colony, a case occurred, in which, *and not without precedent*, his Excellency proceeded on an *ex-parte misrepresentation*, to take measures to *transport*, under his own mandate, an individual (Mr. Dawe) out of the island; and wrote a note, or directed one to be written to the Magistrates, requiring them to take depositions *for that avowed purpose!* His Excellency was, however, made sensible of the outrage he was about to commit, and especially of the *personal responsibility* he would incur by such a measure.

In a recent case (Upham's), a master of a merchant ship, had in the Sessions Court, at the suit of the Collector of Greenwich Hospital dues, been erroneously adjudged to pay a fine or penalty of 35*l.*, in respect to an alleged irregularity in his ship's articles; and under which decision, execution was instantly levied on the defendant's property; when on application to

* The Governor himself is Collector of Greenwich Hospital dues, and he deputises his Secretary, Surrogates, and others, who receive at least 25 per cent. among them for the collection.

the Supreme Court, on the merits and law of the case, the judgment of the Sessions Court was reversed. The High Sheriff, in conformity with the decree of the Supreme Court, released the defendant's property then under execution; upon which his Excellency the Governor, (Collector of Greenwich dues,) reprimanded the High Sheriff, for having complied with the orders of the Supreme Court, and not having proceeded under the execution awarded by the Magistrates.

It was, during the late war, a custom established under the order of the Governor, for all vessels, after having been fully and regularly cleared at the Customs, in superaddition, to apply to his Excellency for a pass; and to adopt, on going out of port, a certain signal, as indicative of having received such pass; and which was notified to the officer commanding at the forts. This practice had been found productive of much delay, as well by the occasional detention of vessels, waiting to obtain this pass, as by some mistake, occasionally occurring on the part of the master of the vessel, in making the appointed signal, or in the officer or gunner at the fort misunderstanding it, or mistaking the description of the vessel. On the latter occasions, the *custom of the fort* was, to fire a gun to bring the vessel to; and

that not unfrequently to the *great peril* of the vessel, crew and cargo, at the moment while the vessel was passing through the narrow and difficult entrance of the port. If the vessel did not immediately heave to, *without regard to such danger*, of which it may be supposed a military gunner was no nice judge, a shot was fired at her, and the vessel was detained until the master, owners, or consignees, had paid 6s. 8d. for each shot or gun fired. On one of these occasions, a very few years since, a vessel under some such circumstance of mistake was fired at, and from the *first gun* the shot passed close by the helmsman; and after the vessel's sails were put aback, and she had come broadside to, (having gone out of port before the wind) she received a second shot in her waist, *between wind and water*, which pierced through the vessel and cargo, and had nearly caused their total loss, together with the lives of the crew. The vessel was, with great difficulty, got into port; and the damages which the owners incurred by the spoiling of a fish cargo, bound to a foreign market, and by the injury and detention which befel the vessel, exceeded the sum of 500*l.* Notwithstanding this serious memorial of the effects of arbitrary power, the practice of this useless *let pass* was persisted in. During the last year several cases of embarrassment have occurred by

the vexatious delay of vessels through the imposition of this arbitrary pass; and in particular a vessel bound to the West Indies, *which had received the appointed pass, and made the correspondent signal*, was through the gunner's mistake fired at and brought to, detained, and the usual 6s. 8d. exacted; upon which the owners brought an action in the Supreme Court, moderately laying nominal damages only, with a view to try the legality of the authority that imposed this pass. The result was, that the plaintiff recovered nominal damages against the party who fired at and detained the vessel. Without doing much violence to his Excellency's sense of decency, it might be reasonably expected, that the Governor would have paid *some respect to the decision of the Supreme Court* of the island, if not to the rights of individuals; but to instance how far he respected either the one or the other, he immediately ordered Captain Martin, of his Majesty's brig Clinker, to take his station, at the then late and stormy season of the year, near to the entrance of the port; and there to bring to every vessel that might sail out of port, not having a pass from his Excellency! Such was the mean-spirited spite and arrogance by which his Excellency manifested his resentment, on being restrained by law from shooting at his Majesty's

subjects, because they did not choose to comply with an unlawful command, which he persisted to impose on them. *Rules and regulations*, having no other foundation in law than the will of the Governor, are among the *novelties* noticed by an eminent lawyer,* the first Chief Justice appointed to Newfoundland, as having been put in practice, in the earliest periods of Newfoundland government ;—your Lordship will be sensible that these *novelties* have descended even to the present day.

It has been the practice of the Magistrates to require persons keeping public houses or retailing liquors in Newfoundland, to take a licence for that purpose ; and the sum to be paid for such licence has been arbitrary, and varied at different periods, as the Governor and the Magistrates have deemed expedient. The annual sum latterly exacted, has been 10*l.* ; but owing to the depression of the times, the keepers of public houses recently made a general resistance to the demand of such a sum ; and in the early part of the present year, the Justices in Sessions gave judgment against several persons who resisted the payment. In March last, a case was brought before the Supreme Court, in appeal upon this question ; when his Honour the Chief Justice, after having given the matter a long and

* Vide Reeves's Hist. of Newfoundland, 133.

patient hearing, arrived at the conclusion, that he could not sustain the Justices in Sessions in levying *an arbitrary tax*. The Magistrates, as usual in such cases, reported the affair to his Excellency the Governor, who on the *1st of April* wrote a letter to the Magistrates, stating that it was with considerable regret that he had learnt from them *that morning*, that *the recent judgment of the Supreme Court*, had deprived the public of those funds, which had been for so long a period raised in this district (St. John's), from granting licences to publicans, and which had *always been appropriated* to the payment of regular constables, (who attend upon the several Courts,) &c., and desiring the Magistrates to inform those constables, (who are hired by the Magistrates by the year,) that from *that time*, he (the Governor) would not have it in his power to give them any remuneration beyond the established fees (for service of any process). This letter, a copy of which is subjoined * for the perusal of your Lordship, was read in open Sessions, and the constables, as may be naturally conceived, were thrown into complete disorder at this threatened breach of faith; some considering themselves virtually discharged, and others resolving to contest the right of the Governor and Magistrates to discharge them, and

* Vide Addenda, A.

stop their salaries, in breach of their subsisting agreements. Pending the doubts and confusion thus created, and the relaxation of vigilance which ensued, an incident occurred to convince his Excellency and the Magistrates, that the services of the useful men, who were thus threatened to be made the victims of caprice and injustice, could not be safely dispensed with; for Sturgyss, a convicted murderer, made his escape from the jail, while there was not a constable on the spot to assist the jailor in the pursuit; and eventually the murderer completely effected his escape. This last incident was an apt sequel to the prelude of this murderer's case, which afforded one among many other occasions, wherein his Excellency evinced his sense of propriety and decorum. In the month of November, 1821, Sturgyss was tried for the wilful murder of Terence O'Shaughnessy, who was an intimate and inmate of the murderer, in the house occupied by him and his partner, who were shopkeepers in St. John's; the deceased being a visitor, on his way home to his native country, Ireland. Sturgyss and his partner were one evening in their kitchen, accompanied by O'Shaughnessy and another companion. It happened in the occurrence of some casual jest or frolic among the parties, that Sturgyss accidentally received a slight hurt, which he erro-

neously ascribed to O'Shaughnessy; and irritated by this trivial circumstance, he deliberately went in search of a weapon, first into an adjoining parlour, and then up stairs to his chamber, and in the dark, there found a sword-stick, which he drew on his way down stairs, and deaf to the remonstrances of one of his companions, who met him on his way to the stairs, he returned to the kitchen with the drawn weapon, and accusing O'Shaughnessy (who was peaceably standing by the fire) as being the author of the slight hurt he had received, saying merely, "it was you! it was you!" made several thrusts at him with the naked weapon, which O'Shaughnessy evaded, or parried with his hand, retreating backward to a corner of the room; to which Sturgyss pursued him; and there, still pressing upon him with the weapon, at length succeeded in stabbing his defenceless guest to the heart! O'Shaughnessy fell dead on the spot, without uttering a syllable. All the witnesses at the trial, testified the deceased to have been a very mild and amiable young man. After a most patient enquiry into the facts of the case, which were proved under their naked circumstances as above narrated, the Jury, who were all of the prisoner's country, and all Catholics, returned a verdict of "Guilty;" recommending the prisoner to mercy, but not stating *any grounds* of their recommendation. The prisoner

was a near relative of a Catholic Priest, and very early in the morning ensuing the trial, which was not terminated until late in the evening, a friend of the Priest waited on his Excellency the Governor, to solicit mercy on behalf of the guilty man; when, without further form or ceremony, his Excellency promised a respite until his Majesty's pleasure should be known. This promise his Excellency made *before he had received the report of his Honour the Chief Justice, who tried the cause*, on the merits of the case; and who, at an early hour in the morning succeeding the trial, waited on his Excellency in order to make his report; but the report of his Honour had been anticipated *and dispensed with!* and the determination of the Governor was already fixed and pledged! Was this decent my Lord?—Is this the manner in which the king would have his representative conduct himself on such grave occasions? Can such conduct satisfy His Majesty or the justice of the country? What, my Lord, would the Judges of England say to this?—That it is a mark of stupidity, folly, or something worse;—that the dignity of public justice was degraded, and the grace of mercy destroyed.

The same feeling which actuated his Excellency the Governor in the instances just detailed, it may be presumed led him to fortify

his Surrogates, as he calls them, and the Magistrates, with certain law opinions, which his Excellency obtained on his own ex-parte drawn cases, in order to resist the authority of the Supreme Court, in the event of its issuing a writ of certiorari, or exercising an authority, in certain cases, to review the sage decisions of the *Governor's* Surrogates, or the Magistrates as Justices in Sessions, &c. These opinions were consequently interposed under his Excellency's auspices, in the case of *Butler and Landrigan* against *Leigh and Buchan*, and in *Norris's* case in appeal, that was originally tried, and tried *originally* before Lieutenant Carter, the Ferryland Surrogate. Again were they interposed early in the present year, immediately preceding the departure of his Honour, the late Chief Justice from the Island, in a case wherein a bill was found in the Sessions Court of St. John's against a prisoner; and when his Majesty's Attorney General on examination of the indictment, finding the offence charged to amount to a capital felony, applied to the Supreme Court to issue a writ of certiorari in order to remove the indictment and proceedings into the Supreme Court; which was conceded. The Magistrates hesitated to obey the writ, with which they deemed it not prudent to comply until they should first submit the case to his Excellency the Governor, who,

as well as his sage legal-counsellor, his Purser-secretary, were of opinion that the Supreme Court exceeded its authority in issuing the writ of certiorari. The Governor therefore objected to a compliance with the writ as a matter of right: but thought that under circumstances, the Magistrates might concede it on the *request* of his Majesty's Attorney General, made under the sanction of the Supreme Court, as in a matter to be allowed only in courtesy. Some correspondence between the Magistrates and the Attorney General ensued relative to this proposition: with which the latter did not think fit to comply. The Governor however, eventually, most graciously left the Magistrates to use their discretion in this predicament, informing them, that if they should think it fit to refuse compliance with the writ he would sanction them in their refusal. The Magistrates having delayed the return of the process until the *last moment*, at length reluctantly yielded the point.

Thus, my Lord, have the subordinate courts of Newfoundland been stimulated into opposition to the authority of the Supreme Court. Thus have ignorance, error and injustice, confederated to conflict with uprightness, and knowledge and experience in the law, in order to strangle its principles and defeat its ends. Hence it is that a Surrogate, such even as is supplied to New-

foundland! scruples not to set at naught the principles and decisions of the Supreme Court, to the utter destruction of that uniformity and consistency of practice and principle, divested of which, the decisions of courts of justice become snares to betray, and can no longer be regarded as land-marks to govern our conduct in the manifold relations of society.

Amidst such a confusion of affairs, common sense and reflection naturally demand, what has the Governor and his Purser-clerk or Secretary to do *with the administration* of justice? The Governor, under the existing laws, is authorized to appoint certain judges of the inferior courts; and there his authority ends. Where then does he look for his warranty, in assuming a dictatorial superintendency over even a Magistrate, or a Judge of the most limited jurisdiction, in respect to his decision or judgment in any case? Is it not monstrous, my Lord, that a power so unauthorized by the law, so expressly forbidden in the principles of British jurisprudence, should erect itself, and interpose its domination to arrest that course of justice which the law prescribes? In tolerating such an interference, who can answer for the *motives* by which it may be sometimes influenced? Who, my Lord, is uninformed that in the British Colonies, all matters triable by the courts there, whether upon questions having

respect to the jurisdiction of those courts, or relating to any other subject, it is the province first of those courts, in their due order of authority, to determine the matter; and if parties are not satisfied with the decision of the court of highest authority in such Colony, an appeal therefrom lies to his Majesty in Council, the collective justice and wisdom of which court is conclusive upon the matter. But what law would be safe, what judge of any learning, character, or conscience, could, in the exercise of his functions of judge, submit to be subject to the opinions of a Governor and his Secretary, if even they were by talent and education qualified to understand cases, and expound the law upon them? and, however respectable other *opinions* may be, as such, they cannot, unless they are *judicial* opinions, and in their nature legal decisions, becoming rules of law, be interposed to control the proceedings and govern the judgments of a judge; whose decisions ought to be the result of sound knowledge in the law, exercised conscientiously with a view to dispense justice according to its principles, unbiassed by any extrinsic motive or influence whatsoever.

It must, I take leave to presume, be in your Lordships consideration, as it is in that of the public, a matter of surprise to reflect how it could happen that the Gaol and Court House of

St. John's, having been destroyed by fire in the year 1817, could not have been rebuilt until 1821. In the interval the Governor of Newfoundland contrived, without any delay or apparent difficulty, to build for himself a green-house at the cost to the public of about 700*l.*, while the Supreme Court of the island amid the scene of desolation, and the increase of suits which the successive conflagrations created in this town, was constrained to hold its sittings within the narrow limits of the charity-school assigned for the education of poor children; until its almost daily sittings there (where also the Sessions Court was held, and where the judge, juries, and parties, were literally huddled together like sheep in a fold) had well nigh proved the destruction of that charitable institution. Subsequently the Supreme Court took possession of the Commercial Room, an apartment hired by the mercantile part of the community as a news-room, &c., and where his Honour the Chief Justice continued to dispense public justice, until the present Court House was completed. Whether your Lordship was duly apprised of these matters I cannot take on myself to say; but the public of St. John's entertain an opinion on the subject, which, deduced from a succession of facts too notorious to be misunderstood, is, I think, pretty just.

It may, my Lord, be very naturally asked, how such an order of affairs, having respect to so important a branch of the government of a country, as the distribution of public justice, could subsist, and not sooner reach the ears of his Majesty's Government in England, under a formal public representation. The full developement of all the circumstances which this question involves, would require the details of a modern history of this colony and its local government. It may, however, be generally answered, that the laws which have at different periods been enacted for this country evince that representations or complaints of some sort have been made. From the period when the present judicature law was passed, (1809) until the termination of the late war, Newfoundland derived peculiar and increasing advantages to its trade; which enabled all classes to acquire for the time comparative wealth. During this interval, and in the comparatively affluent condition in which every man was placed, those necessitous expedients which poverty prompts, and which mainly generate the seeds of legal dissensions, were not called into action. Parties were able, and therefore commonly willing, to pay their just debts; and courts of law were consequently less resorted to. But when the altered condition of Europe on the return of peace, no longer left a market for the produce

of this country, but under the repeated annual reduction of fifty per cent. from its anticipated value—a change which no arrangements of those engaged in this trade could meet, or even foresee—poverty and ruin proclaimed themselves by daily insolvencies, which inevitably involved the conflicting interests of all ranks from the lowest to the highest. The terrible conflagrations which in four successive years, from 1816 to 1819, laid waste almost every establishment and dwelling in St. John's, aggravated these evils almost to their utmost possible extent. Thus, the general laws of England, as well as the *lex loci* were called into unexampled action, under the administration of persons utterly unpractised, and in every regard unqualified to administer them. In the midst of this general distress, and after a long suspension of its functions, the Supreme Court was again opened under the administration of His Honor Francis Forbes, Esq. who was appointed Chief Justice of the Island; when instantly the Court was filled by cases in appeal, and actions and suits almost beyond number. It was now soon found, that our evils had been aggravated by the misconstructions which the Courts had thencebefore put, in particular on our local law of distribution under insolvency. Those errors were redressed; the administration of justice in the supreme Court be-

came simplified and reduced to system. Its decisions were promulgated on grounds and principles at once consistent with the laws, and by the lucid expositions of the judge, rendered obvious to the understandings of the parties. Advantages which had, at least in recent times, been altogether a *desiderati* throughout the Newfoundland Courts. St. John's now became the emporium of law and justice to a wider extent than it had thencebefore been of the trade of the Island. Now, those who resided at a distance from the Capital, having questions to litigate, if they could possibly find the means, resorted to the Supreme Court, assured that, unaided by professional assistance, their cases would there meet the most patient hearing, and unwearied investigation of a judge whose sole regard and object were to dispense justice.

Exulting in the benefits which they daily derived from the superior principles and practice of the Supreme Court, the public were induced to hope that the other Courts might catch a portion of that light, which the presiding judge so unostentatiously, and with such little apparent effort, constantly diffused. But this hope has not been realized. He, however, whose bright example created the hope, has in the almost daily exercise of his judicial functions, taught the Inhabitants of Newfoundland to estimate the value of

justice by the benefits which they have derived under his own upright administration of it. His destinies have now led him into another hemisphere ; but the records of his judgments remain ; combining at once a lasting memorial of his integrity and talents and an example to his successor. Until his administration of the law shall be forgotten, the people of Newfoundland will not rest satisfied with any thing short of justice.

Under these circumstances, my Lord, whatever we might have hoped, it would have been almost folly to have expected that the Governor of Newfoundland would make the utter incompetency of the judges of the subordinate courts a subject of fair and full representation to His Majesty's ministers ; for the reform of the system consequent to such a representation would have proved destructive to that darling object of naval government, arbitrary power. The Governor would no longer have held the authority of sending forth *his* Surrogates coupled with his instructions to direct them in their judicial decisions ; and under the discontinuance of the monstrous system of appointing naval officers to be judges in our courts of law, it would have been found, that in times of peace a squadron of five ships of war was no longer required on the station ; and the reduction of the squadron would have diminished the emoluments of His

Excellency. No longer under such a system of reform could the Governor and his Secretary find favour or chance, in their unauthorized pretensions as expositors of the law. No longer, as heretofore, in perversion of legal authority and common sense, would the Chief Justice of Newfoundland, or His Majesty's Attorney-General, when drawn into conflict with His Excellency and his Secretary, upon subjects alike out of the province of their office and employment and the reach of their understandings, be met with the insulting and *conclusive* arguments, that such was the opinion of Mr. ———, His Excellency's Secretary, in respect to the law in question, and such was his Excellency's opinion also.

It has been transmitted, and has descended as an axiom in the naval government of this colony, "*that the Island of Newfoundland is a ship.*" In pursuance of this sage proposition, the Governors have, without reference to qualification, at all times *manned* every appointment from among their needy retainers; under which system it is, that half-pay Lieutenants have been created permanent Surrogates, and retired Surgeons have been erected into Magistrates, and become trading Justices of Peace. Nay, so regardful has his Excellency the present Governor been of the *moral character* of the present generation, that he has been careful to provide the colony with

a parson of the true breed; for he has actually foisted on the public a young man who stood rated as an *able seaman* on board the flag-ship of his Excellency until the 7th May last; when he went to England in His Majesty's ship *Egeria*, and came out again to undertake the cure of souls. It may be necessary to explain, that His Excellency during his residence at Newfoundland, has had with him his son, a boy of the age of ten or twelve years, for whose instruction Mr. Charles Blackman was retained; and his Excellency being an *excellent* economist thus contrived to saddle the public with the Schoolmaster's remuneration; for the patronage of the venerable Society for the Propagation of the Gospel has been obtained for him, no doubt at a considerable expense to His Excellency; and he is now a Missionary in Newfoundland, with an annual stipend from that highly respectable and liberal Society, of 250*l.* It was at one period a matter of debate, whether the Schoolmaster should be remunerated with the useless post of Naval Officer, be made a Surrogate, or be placed in the church. His predilection was to the judgeship, if opinion may be formed from one of those accidental developments of bias which mere chance not unfrequently discloses. It happened some time ago, that this *able seaman* was invited to a dinner given by the benevolent

Irish Society, at which, amid the conviviality which ensued, the health of His Excellency the Governor's son got coupled with a glass of wine, and the Schoolmaster, conceiving perhaps, "that he had taught the boy to speak" fancied it incumbent on him to recognize the good wishes of the company in a speech; he therefore rose, and to the no small diversion of the company, in the voice of a boatswain, exclaimed "*Gentlemen of the Jury!* I cannot express," &c.*

It is obvious that while the salaries attached to the office of judge in the inferior courts have been insufficient to induce any man of adequate abilities to accept the appointment, and the individuals who have been appointed to occupy those stations, have not possessed talents to enable them to make a decent figure in even the ordinary pursuits of life, they would remain content with their posts, and retain them at least without exciting envy or competition among the qualified, however they may have drawn on themselves the contempt or scorn of the public. But

* This Mr. Blackman so far from taking his abode in the quarters of an *able seaman* had his station in the officers' quarters of the barracks at Fort Townsend, where he had his coals, &c. at public expense. And since his secession from the *Sir Francis Drake's* books, a Mr. Kneeshaw, a half-pay pursuer, has kindly taken the nominal station of able seaman in his place, receiving the pay as such, and living in the officers' quarters at Fort Townsend.

while the salaries of all judges, save of the Vice-Admiralty Court, not even excepting the Chief Justiceship, have been inadequate and even paltry, the system of Surrogating has hitherto cost the country a sum immensely exceeding what would have been sufficient to have paid handsome stipends to men professionally bred and practised in the discharge of such important duties; but who, it is plain to see, have been shut out from the contemplation of accepting, and much less of seeking employment under the present system; in a country too, which certainly requires some extra inducement to lead a man to prefer it as a residence, and quit his abode in any other part of the British dominions. It is, my Lord, a lamentable truth to record, but in the contemplation of a subject of the highest importance to the welfare of society, it may in truth be said, without incurring the risk of personal offence to any individual, that except in the Supreme Court, where even the first and last Judges alone were duly qualified, there never has been a Judge of any court in Newfoundland, who by education and practice has been fitted with the essential qualifications to enable him to discharge the duties of his office to the satisfaction of the public, or in fulfilment of the law. How indeed should they dispense justice according to laws which they had not the

abilities to explain or knowledge to comprehend; according to laws which in numberless instances they had never read, or according to principles in which they had never been instructed.

It is to be much regretted that the officers of the British Navy, whose meritorious services to their country in the splendid exercise of their honourable profession have so justly called forth the highest public admiration, should have been placed in the invidious station of Judges in courts of law, under the certainty of incurring censure. It can however be no reflection upon them to say, that they are totally unfit to be such judges. "*Ne Sutor,*" &c. Who can be expected to shine, when placed out of his proper sphere? But for those, who not being exposed to the like obligations to which naval officers have been subjected in this particular, and who, being destitute in many instances of the common intelligence incident to educated life, have nevertheless assumed the functions of judges, they deserve all the shame and all the scorn with which they stand clothed.

In the institution of the Courts of Justice, under the Act of 49 of His late Majesty, the public appreciate the regard that the Legislature has had to shield suitors from those oppressive costs, which elsewhere prove too often an exclusion to the poor or the prudent man from the

pursuit of his rights; and, although the intentions of the Legislature may not in some particulars, such as the high tax* paid for a writ or a summons, have been strictly pursued by the local government, yet in the courts of common law, the expenses are, in general, not immoderate, if regulated by the watchful superintendance of the judge; which is not uniformly the case in the Surrogate and other subordinate courts out of St. John's. In the court of Vice Admiralty however, the public find, that in causes which are equally cognizable by other courts of the Island, being courts of record, the costs in trivial causes amount to the sum of forty or sixty pounds;† when the same cause might be tried with greater dispatch, and in the Supreme Court at least by a far abler and more competent judge, for the sum of forty shillings; and in any case rarely exceeding five pounds.

Moreover, in the latter court, a suitor would not have to encounter the anomaly of the Registrar and adverse suitor, standing in the relation of sons to the judge who tries the cause. What confidence, my Lord, can the public repose in a court, when, in a cause that involves the charge of a breach of the laws of Navigation or Customs,

* Vide Table of Fees, Addenda C.

† Vide Addenda, D. E. F.

the very Judge* himself is known to be called into conference with the Prosecutor and with the Governor, (who is usually interested in the forfeiture attaching to such cases) on the threshold of the proceedings, to settle the course of prosecution, or to debate whether there shall be a prosecution or not:—when it is known, that with the officers of Customs the Court of Vice-Admiralty commutes its fees, and thus favors them in the suits they institute.

Your Lordship will doubtless have been already informed, that in the month of September last, his Excellency the Governor issued what he deemed a Commission of *Oyer and Terminer*, “for hearing and determining all criminal causes, “treason only excepted.” In pursuance of this Commission,† John Broom, (heretofore a ship-master in the merchant service) William Carter, (judge of the Vice-Admiralty Court,) George Holbrook, (sailing-master in his majesty’s service, on half-pay, and surveyor of crown lands

* Vide case *Stewart v. Hutchings*, in Supreme Court, 1817, wherein it was given in evidence, that in previous proceedings had between the parties in the Vice-Admiralty Court, the Judge of that Court, the Governor, and the then Chief Justice, Mr. Tremlett, were in consultation, and resolved that the plaintiff had no right to his office of marshal, which was so extra-judicially determined by the Vice-Admiralty Court, contrary to law.

† Vide a copy of it, Addenda B.

in Newfoundland,) Peter Weston Carter, (registrar of the Vice-Admiralty Court, and son of the aforesaid William Carter, Esq.) John Terrington, (ordnance store-keeper, and formerly captain in the army) William Haly, (lieutenant-colonel on half-pay) Esquires, took the oath appointed by the Act 18th Ed. 3d, and proceeded to trial of the prisoners. This Court, in the personal character and profession of the individuals that constituted it, wore, it must be confessed, the aspect of a court-martial rather than a Court of common law. Another *novelty* incident to it as a Newfoundland Court, was, that father and son were seen among the judges.

In an early stage of this Court's proceedings on the trial of a prisoner for an assault, an exception was taken by him, under a plea to the jurisdiction of the Court, *on the insufficiency of the Commission* under which the Court was sitting. It was under circumstances of extreme difficulty and confusion of proceeding, that the prisoner was allowed by his counsel to state the heads of his objections in support of the plea; nor was a partial hearing accorded until the prisoner's counsel, after repeated ineffectual attempts, had been borne down by one of the judges; on one of which occasions William Carter, Esq. told the prisoner's counsel, that "if he (the Vice-Admiralty Judge) were at the

“head of the Commission, he would soon *put him down* ;” * though on what principles of law or justice he did not deign to explain. The objection, among others the most obvious to the understanding of the Court, seemed to be, that the Commission assigned no jurisdiction, inasmuch as no country, island, or place was expressed, within which the Court was to exercise its functions, or within which the offences to be tried must be found to have been committed, in order to be triable *under that Commission*. That in these particulars the Commission gave an *universal* jurisdiction, which rendered it *inoperative* and *illegal*. The difficulty which the prisoner’s counsel had to contend with, in order to obtain any hearing adverse to the jurisdiction of the Court, induced him to observe, that his Honor the Chief Justice, when sitting in the Supreme Court, always, when the question of jurisdiction had been moved, allowed the party every scope to his knowledge in citing authorities, and in argument, to sustain him; and not until he had concluded all he had to offer on the subject did the Chief Justice interfere with the party or his counsel; when his Honor then, as in the cases of *Butler* and *Landrigan* against *Buchan* and *Leigh*, examined the principles of the question, and pronounced his decision upon those princi-

* The gaol is immediately under the court-room.

ples which he illustrated. Wm. Carter, Esq. here took occasion to interrupt the prisoner's counsel, by observing, "that the jurisdiction of the present Court was superior to that of the Supreme Court, for that the Commissioners had power under their Commission to try a prisoner for an offence committed in the West Indies or elsewhere! whereas the jurisdiction of the Supreme Court was limited to the Government of Newfoundland."—John Broom, Esq. as Chairman, now informed the prisoner's counsel, that the Court wished first to dispose of the point "*no jurisdiction assigned,*" which, if found a valid objection, the other points might be dispensed with. Mr. Dawe, the prisoner's counsel, then having addressed the Court on this point, the Court called on his Majesty's Attorney-General for his reply, who thereupon declared, that he conceived the objections urged on the prisoner's behalf were valid, and that he must concede the point; whereupon the Court adjourned for two days to deliberate the matter. The Commissioners were evidently divided in their opinions, and did not all concur with the opinion of William Carter, Esq.: they therefore waited on his Excellency the Governor, to lay the case before him. He and his Secretary united in opinion with the Judge of the Vice-Admiralty Court, that the Commission was all-sufficient; and his Excel-

lency, after hearing the doubts expressed by some of the Commissioners, who suggested the propriety of a new Commission, informed the judges, that he would issue *no other Commission*, and that, sitting as judges under that, if they suffered their authority to be called in question and themselves to be insulted it would be their own fault. The Commissioners, after a further conference, agreed to proceed under the Commission as it stood, and resumed their sittings accordingly. On the prisoner being again put to the bar, he was informed by the Court, "that his plea had been considered by the Court, and *unanimously overruled*," and "that his trial must proceed accordingly." The prisoner's counsel now informed the Court, that he had other points and arguments to urge upon the question of jurisdiction *under that Commission*; but the Court immediately interposed, and informed the prisoner's counsel, "that they would hear nothing further on the subject!" and further, "that, as counsel for the prisoner, if he meant to conduct the prisoner's defence, he must *be cautious what he was about*, and keep to the common incidents of the trial." The prisoner's counsel replied, that since the Court refused to hear him on the prisoner's behalf, on a point which he conceived of the highest import, preliminary to the prisoner's further defence, he should de-

elined to interfere further, while he conceived that the Court had not jurisdiction, and upon which point nothing on the other side, or by the Court, was offered in support. The trial therefore proceeded, and the prisoner was acquitted.

Two days after these proceedings, another prisoner was put on his trial under an indictment for an assault, and who, on the indictment being read, *pleaded to the jurisdiction of the Court*; when Mr. Dawe, who had been retained by the former prisoner, rose, and informed the Court that he was prepared, and begged permission to state and explain the grounds of the plea. After a pause, and a conference on the part of the Commissioners, the Court informed Mr. Dawe, *that the plea was unanimously overruled!* The prisoner's counsel expostulated, and after some observations in regard to the *rights* of the prisoner on the occasion, proceeded to cite from Viner, Bacon, and other authorities, matter pertinent to the exceptions taken, when William Carter, Esq. interrupted him, informing him, "that the matter he was citing was irrelevant to the authority of *that Court*, and that "it was *useless* for him to proceed further." The prisoner's counsel contended that it was a matter of *right*, on the prisoner's part, to be heard by his counsel in argument on his plea, and was proceeding accordingly, when the Chairman,

John Broom, Esq., informed him, that if he persisted to sustain the prisoner's plea, he should be put away from the bar;—when Mr. Dawe rejoined, maintaining the prisoner's *right to be heard, before the Court should come to a decision*;—whereupon the Court ordered the marshal of the Court to put Mr. Dawe away from the bar, which order was accordingly forcibly executed. The Court now called on the prisoner to appoint another person to conduct his defence, in lieu of Mr. Dawe; when the prisoner, turning towards Mr. Dawe, replied he had no one besides him to conduct his defence. Mr. Dawe then again advanced, and addressed the Court, urging, on the part of the prisoner, that the grounds and arguments on which the prisoner rested his plea, ought, in *common justice, to be heard*; whereupon the Court addressing Mr. Dawe by the Chairman, informed him, that the Court ordered him to pay a fine of five pounds to the King for a contempt, and to stand committed until the fine should be paid; Mr. Dawe, refusing to pay the fine, was accordingly placed by the Court in custody of the high sheriff, and committed to prison, where he was detained during six days, and until the sittings of the Court were determined, and not then liberated until payment of the fine. Mr. Dawe, however, was not so unfortunate as a Mr. Miller, at Ferryland, was, in

being cast into a damp unhealthy dungeon. Mr. Dawe had a dry and wholesome cell; to which, however, he was *closely* confined the whole time; but becoming indisposed in health, he was allowed a fire, the coals of which were *excellent*, being part of his Excellency the Governour's liberal Government allowance; out of which his Excellency had recently sold one hundred hogsheads* to the high sheriff for the use of the gaol and court-house, at the price of six shillings per hogshead! It seems rather hard, my Lord, on the public purse, that these same coals should be *twice* paid for by the public; *once* for the use of his Excellency, and then *again* for the use of the gaol and court-house. Avarice, where is thy honesty! Shame, where is thy blush!

Your Lordship is at this period of time, no stranger to the details of various proceedings of the Surrogate and other subordinate Courts of Newfoundland. The proceedings of the late Court of Oyer and Terminer, if Court it be, that hath neither fashion, shape, feature, nor consistency, will shew to your Lordship what the judges of those subordinate Courts are capable of, in their combined talents and characters.

The Surrogate who has presided since May

* This is not the only instance in which his Excellency has abused the extension of his almost unlimited allowance of coals under a Treasury order upon the commissariat.

last, and who now presides, in the Surrogate Court of St. John's, holds his Court under a commission, framed and upheld by the same sage authority that digested the famous commission of Oyer and Terminer. By the statute 49 Geo. III. the Governor is authorized, from time to time, as may be necessary, to institute Surrogate Courts in Newfoundland, and to appoint Surrogates, with full power and authority to hear and determine all suits and complaints of a civil nature. The Governor's Commission, under which John Broom, Esq. now presides, constitutes him *Supreme* Surrogate in Newfoundland and the Labrador. The act of 49th of his late Majesty certainly gives no authority for the appointment of any judge of *such character or denomination*; and if there be no other law to sustain the Governor's appointment of a *Supreme* Surrogate, may it not, my Lord, be said that a Court held by such a Judge is what lawyers term *coram non iudice*? The statute referred to authorizes the erection of no more than two descriptions of Courts, the *Supreme Court* of Newfoundland and *Surrogate Courts*; but under what law *Supreme* Surrogate Courts can be erected we are yet to learn.

The judicious fitness with which his Excellency the Governor has exercised his authority in the appointment of Surrogates, when not se-

lected from among naval officers, may be instanced in the appointment he made, on the eve of his recent departure, of a Surrogate in the very populous district of Harbor Grace, where he selected from among the trading class a merchant, by no means a man of law or of letters, who had then lately incurred the misfortune of being declared insolvent, and who was still uncertificated. Is such a man, my Lord, however unimpeached his private character may stand—and I am far from questioning that point in the present instance—a fit person to dispense justice in the midst of his unsatisfied creditors? Or can it consist with decency to make such an appointment?

Under Courts and Judges so constituted, so exposed to suspicion, so widely deviating from established principles, has it been pretended to dispense justice according to law in Newfoundland; and under the miseries of such a dispensation, it becomes a matter of surprise, not to say of astonishment, that the public confidence in the laws themselves has not been broken down and lost and public tranquillity destroyed. That those evils, my Lord, have not ensued to an aggravated extent, may be justly ascribed in a great measure to the unvarying equanimity and high character of the Supreme Court, which, in times of great distress and difficulty, has, in the

exercise of all its functions and faculties, amid incessant toil, sustained, as well in the manner as in its principles, the true character of a *British Court of Justice*. What, my Lord, would become of the lofty character and stability of the British empire, if, throughout its dominions, its Courts of Justice were placed on a level with those of Newfoundland, where only one Judge amidst a hundred would be found qualified to fulfil his duty in the important trust reposed in him?

On perusing the acts of 10th and 11th William III. and 15th and 26th of his late Majesty, it will, I take leave to submit, my Lord, be found that those local laws are in a great measure either inapplicable or repugnant to the altered condition of this Colony, whose trade is not now, nor has for a long time been, as formerly, limited to a transient fishery, but is, at present, almost wholly sustained by a fixed population of considerable extent, and whose commercial intercourse with other British colonies and foreign countries also is considerable. The expediency of a revision of those laws must be too apparent to require particular illustration to your Lordship, who possesses such ample means of information on the subject.

On most occasions, when any revision of the laws of Newfoundland has been on the tapis, there have not been wanting persons to assert,

that there are separate and conflicting interests among those engaged in the trade of this colony ; but I must confess that I have never been able to discern that any peculiar *legitimate* interests do, in fact, stand opposed to general interests. This assumption has grown out of pretensions that were once, as is frequently noticed and reprehended in Mr. Reeves's History of Newfoundland, generally entertained by the west country merchants, whose view was to support only a transient fishery ; but in the absolute establishment of a sedentary fishery, these pretensions, meeting the common fate of other unsubstantial things, are fast sinking into oblivion. Nor can they be revived, unless it be conceded, as a general principle in the laws of British commerce, that the monopoly of a few to the exclusion and beggary of the many be a legitimate object.

The representations of the inhabitants of St. John's, have already made known to his Majesty's Government, that the more populous parts of this Colony, and especially St. John's, feel the want of parochial laws, to regulate and enforce those observances and obligations which concern the safety, moral order and conveniency of all societies. The objects which such local laws would have in view, could not, it may be presumed, be from time to time conveniently or efficiently met by the usual provisions of Parlia-

mentary enactments; for being of minor importance in a general view, although of material consequence to the comforts, security, and deficiencies of the community to which they would have relation, they appear more fit to be created when they may be speedily, and with facility amended or annulled as occasion may require, by some competent local authority, to be appointed for that purpose. It is by some persons contended, that a legislative House of Assembly is absolutely essential to the welfare of this Colony; but on this point there subsists a diversity of opinion, for even among those who consider a local legislative government for general purposes, on the usual constitutional principles under which it subsists in other colonies, to be in many respects desirable; numbers are found, who entertain a conviction, that the Colony, in its present condition, is not susceptible of such a mode of government, or, that it would at the present period be at least inexpedient, if not impracticable. It has gone abroad here since the departure of his Excellency the Governor, that he entertains the view of inducing the creation of an authority, to be vested in the Governor and a select Council, for the purposes of colonial legislation. While I feel convinced that no such course will be pursued, I can also, most confidently assure your Lordship, that it would

in its adoption be repulsive to the wishes and feelings of the inhabitants of this Island, who, from the too long endured experience they have had, in the *novelties* of Governors' orders* and regulations, entertain no disposition to forego, under the most limited medium, the paternal protection of the British Parliament, in the hope of finding a more sympathetic or kindly security under the wings of a naval Governor and his Council.

The depressed and still sinking condition of the trade of this Colony, which has its source in the fisheries alone, requires the most patient and indulgent consideration of His Majesty's Government in other particulars which involve its very existence: for while the Merchant each succeeding year contemplates the rapid decay of his capital, and the Planter and Fisherman find by experience, that whether the product of their labour on the seas, be in quantity abundant or scant, the very necessaries of life are in either case remote from their reach, it is evident that annihilation to the Colony must ensue unless some remedy or palliative be presently applied.

* Among the *novelties* is to be found the penalty of flogging attached to the breach of unlawful obligations. And at no very distant date there was an order given by a Governor to the magistrates for the transportation of his Gardener's wife without any previous trial.

The relief which seems most obvious to apply to this condition of evil, consists in the further extension of facilities to the import into the Colony, duty free, of all the prime necessities of life, of which the Island produces *none* except potatoes, from any country or place that will yield them at the cheapest rate, or in exchange for the staple produce of the Island: and the like facilities to the export of the produce of the Colony, to any country or place that will purchase it. It is scarce necessary to be observed, that the Colony is entirely dependant on foreign European markets for the sale of the chief portion and most valuable qualities of its fish; which when imported into those foreign states, has to encounter very heavy duties. On the sales of fish to those foreign states, which are almost without exception effected for money, the Newfoundland merchant mainly depends to make his remittances to Great Britain, in return for manufactured and other particular goods which he is not permitted, nor asks, to procure elsewhere. There may be, perhaps, inducements in the power of the British Government to propose, which might lead those foreign states to reduce such duties, which would, in all probability, be at once the means of improving the price of the selier and also increasing the consumption of the commodity.

During the last sessions of Parliament this Island, in common with other British colonies, derived from the laws that were then enacted, an extension in some sort of its commercial relations. But so far from the *peculiar trade* of Newfoundland having been benefited by those new laws, it is the prevalent opinion here that on the whole it is prejudiced by them, inasmuch as duties are laid on American bread and flour, articles of vital necessity, which might heretofore have been brought from England out of bond, or from Halifax or other colonial free ports, free of duty. This prohibition (as in effect the duties are) to principal articles the produce of the United States, will increase the difficulties of an interchange of produce between the two countries. The subjects of Great Britain consume but a small portion of the fish caught in Newfoundland, and that portion is almost limited to the inferior qualities sent to the British West Indies, for which rum is principally given in return. Indeed the inducements are not numerous which can lead any country to consume largely of salted-fish. The principal appear to be, its cheapness as an article of diet; its admissibility, to the exclusion of other articles of food, at particular seasons, and in particular countries, under the influence of religious opinions; and its conveniency of transport and facilities of pre-

servation, in certain countries where fresh animal food cannot be on all occasions procured or conveniently preserved. It would seem then, that the principal reliance the fish-catcher can repose under for a regular consumption of the article, will henceforward be, as it now is, its cheapness; for its consumption, as connected with religious sentiment becomes annually more precarious.

The Newfoundland fishery, it is universally felt and acknowledged, has received considerable injury to its interests in the concessions granted by the British Government, to the French and Americans, to catch and cure fish on the coasts of Newfoundland and Labrador; a privilege not allowed even to British subjects as respects the Island of Newfoundland, unless to such as are *residents there*, or to those who fit out from some part of the *British dominions in Europe*. These concessions of the interests of the inhabitants of Newfoundland, and for which doubtless the British nation received some equivalent, seem to found a distinct ground of claim on the part of this Colony to some requital.

To suggest to the consideration of your Lordship the importance of Newfoundland to the mother country, as a nursery for seamen, seems superfluous, since the principle has always been acted on, and is felt, as well by the British as

the French and the American Governments, who uphold their fisheries as objects of vital importance, by the grant of high bounties to their fish-catchers. But the people of Newfoundland conceive it would be unreasonable to ask such a support, convinced, that under a system of encouragement, unattended by any national sacrifice of importance to be felt by their common country, they would, in the staple of their commerce, by their own energies and the local advantages they possess from a residence on the spot, be enabled to compete with their neighbours at their very

Among the various incidents of expense from which the fisheries and fish-carrying trade might be relieved, is, the tax of the Naval Officer, levied on vessels, in addition to all the other customary charges of the Collector, Comptroller, and Searchers and Waiters, all of which officers are stationed here in St. John's, and have their deputies in the outports all receiving their usual fees. No one conversant with the origin of the Naval Officer who was appointed under the *Stat.* 15th, C. II. c. 7, in aid of the Governors of Colonies, at a period before custom-houses were established in those possessions, and when the services of the Customs devolved on the Governors, can say that such an officer has now any useful duties to perform; and since that office

has been abolished in other more opulent colonies, it would be hard to say that fees to the amount of five or six hundred pounds per annum, levied by this officer, for doing nothing, on so poor a trade as the fishery, can be well borne. It is well known that the signature of this officer is not required to legalise the clearance or entry of any vessel or her cargo. It has, nevertheless, been said here, as a pretext for the continuance of this officer in Newfoundland, whose nomination rests with the Governor, that he has duties to perform in making returns or reports of the fishery to the Governor! But it is well known, that if the office were abolished, all such returns would be made, and are in fact made to the proper departments of Government in England, without the help of this officer. But granting that an extra return may be deemed necessary to his Excellency the Governor, there are surely enough of officers beside to make such extra copy, and to whom, as servants of the public, it may with propriety be told, that with them, as with all others who depend on any employment for their support, diligence and economy are the order of the day.

There is one circumstance, my Lord, which, having relation to the distresses of this town, I take leave to mention: His Royal Highness the Prince Regent, in his humane munificence, was

graciously pleased to grant the sum of ten thousand pounds to be distributed to the sufferers by the late calamitous fires. *This sum*, my Lord, has *not* been distributed. But how many tithes of it have been dispensed *in fulfilment of the benevolence* of the Royal Grantor, it would be difficult to conjecture; for no accounts have been exhibited to the public, although some accounts have been kept by individuals among them. This sum, my Lord, was placed at the disposal of the Governor; while all other public subscriptions, which were liberal even here among those who were also sufferers, were placed at the disposal of a committee, who having faithfully distributed the relief amid the blessings of the unfortunate, rendered to the public an account of their trust. For the present, my Lord, I do not deem it necessary to urge any further observation on this subject.

When I sat down on this occasion to address your Lordship, I did not propose to myself the entering into a *detailed* exposition of the existing condition of this Colony, and of the administration of its Government;—a labour which my own avocations would not permit me at this juncture to undertake: but it being generally understood that these topics are under the actual consideration of his Majesty's Government, I could not withstand the impulse I felt in discharge

of a duty which I conceive that I owe to the public and myself, to submit to your Lordship some facts, such as have been of daily growth among us and indigenious to our condition, and which, marking the character of the times, might, I considered, prove useful as a data in some respects to suggest subjects for your Lordship's enquiries.

I should regret becoming instrumental to the injury of the feelings or interests of any individual, for I have no personal resentments to gratify. But if individuals are personally alluded to in what I have written, it has occurred only because the man cannot be separated from the measure. Nevertheless, it may be said with truth, while it is not meant in offence, that to those who may have such feelings to indulge, they may, on entering into the field which I have but looked into, find ample scope for their exercise. Who the writer may be that thus addresses your Lordship, is an affair that your Lordship will not condescend to enquire into; since it is the matter, and not the man, that is submitted to your Lordship. For himself, in respect to the matters which he has treated, the writer feels that some excuse should be offered in submitting details with such *minutiæ*; in which respect, the writer begs to observe, that he could not, with propriety, assume facts which

had occurred beyond the reach of your Lordship's observation, and make deductions from them, as though the circumstances were attended with all the notoriety which they would have created by having happened in England.

I take leave to assure your Lordship, that the inhabitants of Newfoundland repose every confidence in the justice and sympathy of His Majesty and his Government: and that they indulge in the belief, that their representations will meet the most favourable construction, and their suffering condition be promptly alleviated by those efficient measures which the extremity of their circumstances so loudly calls for; a relief which they cannot doubt would long since have been extended to them, if a faithful representation of their situation had been sooner laid before His Majesty's Government.

I take the honour to subscribe myself,

My Lord,

Your Lordship's very obedient Servant,

BRITANNICUS.

St. John's, Newfoundland,
December, 1822.

A D D E N D A.

(A.)

Fort Townshend, St. John's, Newfoundland,
1st April, 1822.

GENTLEMEN,

It is with considerable regret that I have learnt from you this morning, that the recent * *judgment in the Supreme Court* has deprived the public of those funds which have been for so long a period raised in this district from granting licenses to publicans, and which have *always been appropriated* to the payment † of regular constables since the period when licenses were granted to publicans for performing the service in person, and which was altered at their own request, much to the benefit of the public, as it appears that the two *situations* were considered as incompatible ‡ with each other ;

* How respectful ! How decent ! is this assertion.

† This is *not true*, for the sums received for licenses have far exceeded the pay of the constables.

‡ The *law* declares them to be incompatible. The imposition upon a *particular class of people*, of the performance of a *public duty*, was unjust ; and it was a Governor's unlawful ordinance that first established it as the condition of keeping a public-house, which was at length resisted. Tavern-keepers will acquiesce cheerfully in paying for a license such a sum as the law may ordain, but not *whatever* the Governor's caprice may institute.

and this arrangement having met the approbation of his Royal Highness the Prince Regent, I must beg leave to inform you that I am not authorized to pay those persons from any other fund, however necessary I may consider them, nor am I disposed to take such responsibility on myself. I must therefore request that you will inform the constables that it is not in my power to give them any remuneration beyond the established fees *after this communication*. But in consequence of the engagements made with them, and their past very meritorious conduct, which I have no doubt but you will agree with me in considering as having deserved the public approbation, I shall take the first opportunity of suggesting to Earl Bathurst * *that I may be authorized to pay them to this period*.

With respect to the granting licenses in future, I beg to inform you that his Majesty having in consideration the health and morals of all his subjects dwelling in or resorting to this Island, has strictly enjoined me not to allow more public-houses, particularly at St. John's, †

* This and the preceding period are alike admirable for their *justice and consistency!*

† Are then the morals of the St. John's people held in a higher care than the morals of the other inhabitants of Newfoundland? It is truly laughable to talk of *limitations* in number, when it has never been known that any person offering the license-money has been refused on such ground.

than are absolutely requisite for his said subjects; which number he concludes I shall be best able to judge of on the spot; and requiring that full and ample security be given for every such person who shall be allowed to keep a public-house, for his or her good behaviour. And I beg to inform you that I should consider thirty to be an ample number for this decreased population, when fifty were deemed sufficient in 1812. If, however, you should be unanimously of opinion that *forty* would be beneficial to the public, I shall feel no hesitation in extending them to that number, but not more; and for carrying on the operations of your Court of Sessions, you must take such measures for appointment of constables *as you may be authorized by law to compel to attend.**

I am, &c.

(Signed)

E. HAMILTON,
GOVERNOR.

To the Magistrates of St. John's.

* Who but must admire the *sense, perspicuity, and grammatical accuracy* of this concluding sentence! But indeed this letter is altogether, in itself, below criticism; and were it not for the perversions of truth it contains, and the *palpability of its object*, it would be utterly unworthy of notice. The *law and justice*, through the medium of the Supreme Court, set aside one of the Governor's *novelties*.—*Hinc illæ lachrymæ!*—But the attempt to dignify such a gallimaufry of

ADDENDA, B.

Copy, verbatim et literatim, of the Governor's Commission of Oyer and Terminer.

By his Excellency Sir Charles Hamilton, Bart. Vice-Admiral of the White Squadron of his Majesty's Fleet, Governor and Commander in Chief in and over the Island of Newfoundland and all its Dependencies, and Vice-Admiral of the same.

Whereas by his Majesty's Commission made Letters Patent, bearing date at Westminster the first day of June, in the fifth-eighth year of the reign of his late Majesty King George the Third, confirmed by Proclamation of his present Majesty George the Fourth, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, bearing date the 31st January, 1820, pursuant to an Act of Parliament passed in the 57th year of the reign of his said late Majesty, full power and autho-

venom and ignorance, by the introduction of even Majesty itself, is not its least disgusting feature. It is indeed planting jewels in a dunghill. Nevertheless, the authors of this mean stuff deem themselves all-intelligent, no less in law than in letters!—And indeed they are as intelligent in letters as in law.

rity is given and granted unto me to constitute and appoint, in cases requisite, Commissioners of Oyer and Terminer for hearing and determining all Criminal Causes (treason only excepted) according to law, and awarding execution thereupon. And whereas, by the 13th Article of his Majesty's instructions to me, bearing date on the 9th of May, 1818, it is his Majesty's will and pleasure that I should not make any appointment as shall interfere with the criminal jurisdiction belonging to the Supreme Court of Judicature, except only in cases when it may be inconvenient to try offenders in the said Supreme Court. And whereas the Chief Justice appointed in virtue of Act 49 Geo. III. cap. 27, instituting a Court of Civil and Criminal Jurisdiction, to be called the Supreme Court of Jurisdiction of Newfoundland, is at this time absent from this Island by permission, by reason whereof the Criminal Jurisdiction of the said Supreme Court is for the time being suspended. I do therefore, by virtue of the power and authority in me as aforesaid vested, hereby constitute and appoint you, John Broom, William Carter, George Holbrook, Peter Weston Carter, Arthur Holdsworth Brooking,* John Terring-

* Arthur Holdsworth Brooking, Esq. Collector of his Majesty's Customs at St. John's, declined sitting under this Commission, and was not sworn in.

ton, and William Haly, Esquires; Commissioners, with full power and authority to hear and determine all Criminal Causes (treason only excepted) according to law and justice, and proceed to sentence or acquittance as the case shall require. And I do further appoint you, John Broom, William Carter, George Holbrook, Peter Weston Carter, Arthur Holdsworth Brooking, John Terrington, and William Haly, Esquires, Commissioners, or any five or more of you; and that you do make your report to me of all such your proceedings had and done in the causes which shall be brought before you, or any of you, nominated, authorized, or appointed, as aforesaid.

In virtue whereof I have hereunto affixed my hand and seal, at Saint John's, in the Island of Newfoundland, this twelfth day of September, one thousand eight hundred and twenty-two, in the third year of his Majesty's reign.

(Signed) C. HAMILTON.

By his Excellency's command,
P. C. Le Geyt.

Fort Townshend, 14th September, 1822.

This day, John Broom, William Carter, George Holbrook, Peter Weston Carter, John Terrington, William Haly, Esquires, Commissioners of Oyer and Terminer herein appointed, took the oath required by Act 18 Edw. III. Stat. 4, before me, at Government House.

(Signed) C HAMILTON,

GOVERNOR.

ADDENDA, C.

Table of Fees in the Supreme, Surrogate Sessions, and Probate Courts of Newfoundland, as established in 1810.

IN THE SUPREME AND SURROGATE COURTS.

For a Writ or Summons, to be paid on issuing the same.

SUMS SUED FOR.		FEES.	
From	£	£	s. d.
40s. and under	5	0	5 0
50	5	0	15 6
100	5	1	2 6
200	5	1	13 6
300	5	3	12 6
400	5	5	4 0
500	5	6	0 0
1000	5	6	18 0
2000	5	10	13 6
3000	5	13	6 0
4000	5	15	0 0
10,000 and upwards	5	15	0 0
Drawing Affidavit of Cause of Action, and Oath		0	2 0
Rule to summon Special Jury		0	10 0
Common ditto		0	5 0
Special Jurors, each		1	1 0
Common (Petit) Jurors		0	5 0

HIGH SHERIFF.

Commission on Sales for any sum not exceeding 200L five per cent.

All sums above 200l. five per cent. for the first 200l. and for the remainder two and a half per cent.

Striking and returning Special Jury	0	10	0
Common ditto	0	5	0
Bailiff, each Jury	0	5	0
Ditto for Summons of each Witness	0	1	0
Sheriff's Bond	0	2	6
Arrest of Person in Civil Causes	1	1	0
For Custody of Property attached in his possession, per diem	0	5	0
For Bailiff for ditto	0	2	6

IN THE COURT OF SESSIONS.

FIRST CLASS.

	£	s.	d.
District	1	1	0
Sheriff	0	4	6
Clerk of Peace	0	12	0
Constable	0	2	6
	2	0	0

SECOND CLASS.

	£	s.	d.
District	0	10	6
Sheriff	0	4	6
Clerk of Peace	0	10	0
Constable	0	2	0
	1	7	0

THIRD CLASS.

District	0	4	6	Recognizance (District)	0	6	8
Sheriff	0	4	6	{ Summons (District)	0	2	6
Clerk of Peace	0	2	6	{ Constable serving	0	2	0
Constable	0	2	0	{ Warrant (District)	0	5	0
	0	13	6	{ Constable serving	0	2	6

CLERK OF THE PEACE.

	£	s.	d.
Precept for Quarter Sessions, with List of Jurors and delivery to Sheriff	1	0	0
Attendance at each Sessions	1	0	0
Making up Records of each Quarter Sessions	1	10	0
Drawing Depositions, and engrossing an Indictment or Information	1	1	0
Notice of Trial, and Judgment according to Rule of Court ..	0	3	4
Recording Acquittal or Conviction	0	5	0
Drawing Examinations or Depositions taken before a Magistrate	0	2	6
Drawing Subpœna or Summons	0	3	4
Ditto Affidavit	0	1	0
Ditto Commitment	0	5	0
For each Witness examined in Court	0	1	0
Writing a Complaint	0	3	4
A Recognizance	0	6	8
Attendance taking Recognizance on granting Licenses to Publicans; Recording same, with certified Copy for the party	0	14	6

CONSTABLE.

Serving a Warrant or Summons	0	2	6
Apprehending and conveying to Gaol.	0	2	6
Serving a Subpœna	0	1	0
Attending Trial, per day	0	2	6
Executing Precept at General Quarter Sessions	0	10	0
Ditto for any other Jury	0	6	8

GAOLER.

On Commitment, to charge	0	13	4
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PROBATE COURT.

SCALE.	IN COMMON FORM.		BY COMMISSION.			
	Probate.	Adminstrn.	Probate.	Adminstrn.		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Value under £10	0	8	6	0	17	0
£10 and under 20	1	2	6	1	9	6
20 .. 40	0	0	0	2	4	0
40 .. 100	2	2	0	2	13	6
100 .. 300	4	12	6	5	6	10
300 .. 600	6	19	2	7	13	6
600 .. 1000	8	2	6	8	16	2
1000 .. 2000	9	5	10	10	0	2
2000 .. 5000	12	0	0	12	12	0
5000 .. 10,000	15	0	0	16	0	0
10,000 and upwards.	20	0	0	21	0	0
Seamen or Soldiers } in the King's service }	0	5	0	0	5	0
	0	10	0	0	10	0

Note.—In none of the Courts do they tax Attorneys or Solicitors' Fees, as between party and party.

ADDENDA, D

In the year 1821 a suit was instituted in the Vice-Admiralty Court of Newfoundland by John Moore, Searcher of Customs, against certain merchandize imported in the British Schooner *Matchless*, Vint, master, of and from Halifax, Nova Scotia, into St. John's, Newfoundland, which goods were libelled, *as having been imported into Newfoundland by Aliens and persons not entitled to exercise the trade or occupation of a Merchant or Factor there.* This merchandize had three several claimants, and consisted of 251 barrels flour shipped in Halifax by the owners, *Reynolds, & Co.* British merchants resident there; and by them consigned *by Bill of Lading*, for sale *on their account*, to James Stewart, a British merchant in St John's. A further quantity of 400 barrels and 24 half barrels flour, and 200 half bags bread, the property of *James Milledge* a British subject, late a merchant (during thirty years) in St. John's, but then residing in Boston, U. S.; all which were shipped in Halifax by James and Michael Tobin, British merchants there, and by them consigned under *Bill of Lading*, to Hart, Robinson, & Co., British merchants in St. John's, for sale on owners account. Also 25 barrels apples, and 3 barrels nuts, shipped by the aforesaid J. and M. Tobin,

on account of *John Hanley* a British resident trader of St. John's and comprised in the last mentioned Bill of Lading. The Bills of Lading were carried from Halifax by William Cheever, late a merchant of St. John's, who was passenger in the vessel, and by him delivered *instantly* on the vessel's arrival in St. John's to the respective consignees.

Cheever is a native of the United States, and; although he had exercised for a series of years the occupation of a merchant in St. John's, it was contended by the *Promovent* that he had not been legally naturalized; and that his carrying the Bills of Lading, was evidence of factor-ship. And that moreover the whole of the property was Aliens, and that Melledge being *domiciled in Boston* he was, although a British subject, nevertheless an Alien, *quoad* this property the produce of the United States. The Statutes relied on in support of these premises, were 12th C. II. c. 18. s. 2.; 7th and 8th Wm. III. c. 22 s. 6.; 4th Geo. III. c. 15. s. 29 and 37; 26th Geo. III. c. 26. s. 16.; 28th Geo. III. c. 6. s. 12 and 13.

The *Claimants* contended, that Cheever never had exercised any act of Factor-ship in relation to the goods, and that merely being *the bearer* of the Bills of Lading, was no evidence thereof. That if in fact it had been in proof, that Cheever

had in Halifax, or elsewhere, so acted in reference to the Goods or the vessel, the Statute of 12th C. II. operated only so far as to enact the forfeiture of *such goods only*, as should be *found in the possession* of such Alien. That it could not be said these goods were in Cheever's possession, when in fact, the Bills of Lading were delivered over by him *to the consignees, before the goods were seized*. That the *actual possession of the goods* was in the master, and the constructive, in the consignee appearing on the face of the Bills of Lading, or his assignee, in neither of which characters Cheever ever stood. That as regarded *foreign ownership*, there is a material difference between the goods of Alien *friends* and Alien *enemies*; and that in respect to the goods of Alien friends, as such merely, none of the Statutes could sustain their condemnation.

That moreover as to the origin or ownership of the goods, and their importation into St. John's, the claimants pleaded the Statute of 58th Geo. III. c. 19. under which the goods in question were *lawfully imported into Halifax*, and *thence into Newfoundland*, as the cockets and clearances of the Halifax Customs evinced.

The Court condemned the property of *Melledge*, and *Reynolds & Co.* and restored the apples and nuts to *Hanley*, certifying probable

cause of seizure in respect to the latter. The two first claimants appealed, and the costs of the Vice-Admiralty Court of Newfoundland; *in the three claims*, are subjoined. It may be necessary to observe that this Court proceeds in a summary manner, so far as not having regard to particular forms. All the Claims were determined *under one proceeding*.

The Claimants of sundry Merchandize seized on board the Schooner *Matchless*, Debtors to the Vice-Admiralty Court.

	Judge.	Registrar.	Marshal.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
1821.			
Filing and entering Libel	1 10 0	0 6 8	0 0 0
Monition Drafting, sea and service	2 0 0	0 16 8	1 10 0
Attendance on Judge	0 0 0	0 10 0	0 0 0
Filing and entering Claim for Mr. } James Melledge	1 10 0	0 6 8	0 0 0
Marshal's Report of Bail	0 0 0	0 0 0	0 12 6
Bond	0 0 0	0 10 0	0 0 0
Filing and entering Claim for Rey- } nolds and Co.	1 10 0	0 6 8	0 0 0
Marshal's Report of Bail	0 0 0	0 0 0	0 12 6
Bond	0 0 0	0 10 0	0 0 0
Examination of eleven persons on } Interrogatories	0 0 0	12 16 8	0 0 0
Eleven Subpœnas	0 0 0	0 0 0	5 10 0
Exhibits	0 0 0	0 18 0	0 0 0
Filing and entering Allegation of } Mr. Cheever	1 10 0	0 6 8	0 0 0
Setting out the Case for hearing ...	0 0 0	0 4 6	0 0 0
Court Attendance four days	8 0 0	4 0 0	4 0 0
Decree	5 0 0	1 3 4	0 16 3
Taxing Costs	1 3 4	0 6 8	0 0 0
	22 3 4	23 2 6	13 1 3
Registrar	23 2 6		
Marshal	13 1 3		
Crier, four days ..	2 2 8		
	60 9 9		

(Signed) PETER W. CARTER,

St. John's, Newfoundland,
12th August, 1821.

REGISTRAR.

In Appeal.(Claimants of Goods per *Matchless.*)

	Judge.	Registrar.	Marshal.
1821.	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Filing and entering Appeal for } Mr. James Mellege	1 10 0	0 6 8	0 0 0
Marshal's Report of Bail	0 0 0	0 0 0	0 12 6
Bond	0 0 0	0 10 0	0 0 0
Filing and entering Appeal for } Messrs. Reynolds and Co.	1 10 0	0 6 8	0 0 0
Marshal's Report of Bail	0 0 0	0 0 0	0 12 6
Bond	0 0 0	0 10 0	0 0 0
Judge	3 0 0	1 13 4	1 5 0
Registrar	1 13 4		
Marshal	1 5 0		
Copy Proceedings	5 18 4		
	8 16 8		
	14 15 0		

(Signed) PETER W. CARTER,
REGISTRAR.Vice-Admiralty Office, St. John's, Newfoundland,
12th August, 1821.Vice-Admiralty Court's Charges to John Hanley, Claimant
in the foregoing Cause.

(CONTS.)	Judge.	Registrar.	Marshal.
1821.	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Filing and entering Claim for } Hanley	1 10 0	0 6 8	0 0 0
Bond	0 0 0	0 10 0	0 0 0
Marshal's Report of Ball	0 0 0	0 0 0	0 12 6
Commission of Sale	2 0 0	0 16 8	0 0 0
Decree of Restitution	2 0 0	0 16 8	0 0 0
Registrar's Poundage on Sale, } 27l. 6s. 6d. at 5 per cent.	0 0 0	1 7 4	0 0 0
Marshal's ditto ditto	0 0 0	0 0 0	1 7 4
Judge	5 10 0	3 17 4	1 19 10
Registrar	3 17 4		
Marshal	1 19 10		

(CHARGES)

£11 7 2

Advertising and crying Sale	1 6 0
Paid Cooper's Attendance	0 6 0
Paid Labourers	0 3 0

13 2 2

Proceeds Sale of 25 bla. Apples, &c.	27 6 6
Balance paid over to Hanley on restitution	14 4 0

(Signed) PETER W. CARTER,
REGISTRAR.Vice-Admiralty Office, St. John's, Newfoundland,
14th July, 1821.

ADDENDA, E.

In the year 1821 the British merchant-brig *Louisa*, owned and laden with a cargo of lumber, by a British merchant at St. Andrew's, arrived in St. John's, consigned to a British merchant there for sale of the cargo. The vessel and cargo were duly admitted to entry in St. John's; a few days after which one of the seamen of the vessel having had a quarrel with the master, went to Mr. J. Moore, Searcher of Customs, and informed him that the master of the *Louisa*, had, after his departure from St. Andrew's on his way to Newfoundland, been ashore in his boat at an Island or place in the bay of Fundy, and bought of American (U. S.) traders several kegs of crackers and barrels of bread. Mr. Moore, as an officer of Customs, felt it his duty to go on board and inspect the vessel, and enquire into the proceeding; and he found a barrel of bread and the remains of another, and also several kegs of crackers, which the master informed him he had taken on board at the place above mentioned, he the master, conceiving that he might be allowed to do so, as the articles were for the use of the cabin; and as *St. Andrew's* was a free port to which the traders of whom he bought the bread had free access, he did not apprehend any harm in the act. The matter was reported to the Collector and

Comptroller of Customs by Mr. Moore, who in the mean time held the vessel under seizure. The Collector having enquired fully into the circumstances of the case, and finding the articles in question of *but small value*, not exceeding three pounds, and those not of a *prohibited or dutyable nature*, being importable duty free under the free port law, (58th Geo. III. c. 19.) he admonished the master of the vessel, and warning him not to allow any of these articles to be landed, the Collector removed the seizure. The seaman who had given the information entered on board one of the ships of war, where he also promulgated the matters that had just transpired: whereupon, the Commander of His Majesty's ship sent an officer and boat's crew on board the *Louisa*, and there they found the bread and crackers, whereupon the officer again seized the same, together with the vessel and the cargo of lumber, removing all the crew of the brig *Louisa* on board of H. M. ship *Egeria*, where they were kept close prisoners for one week and upwards: in the mean time mooring the *Louisa* close by the *Egeria*. The officers of His Majesty's ship *Egeria* meanwhile entered into enquiries with the Collector of His Majesty's Customs, whom they urged to prosecute the vessel for breach of the law. The Collector of Customs explained to the Commanding officer of the *Egeria*, and also to the Vice-

Admiralty Court the grounds on which he conceived himself warranted, under his instructions from the Honorable the Commissioners of His Majesty's Customs, to discharge the information that had been laid before him and the other officers of Customs, and declined to have any concern in further legal proceedings. Notwithstanding all this, the brig *Louisa* and the cargo of lumber was by the commanding officer of H. M. S. *Egeria* libelled in the Vice-Admiralty Court! and in respect to the proceedings, several conferences took place of a very irregular nature; and also, when the crew of the *Louisa* were brought from their confinement on board the *Egeria*, to the Registrar's office, to be examined on interrogatories, an officer concerned in the prosecution was allowed to be present during such examinations; and after having been so examined, they were again conducted back to H. M. S. *Egeria*, and all access to them prohibited, until the Marshal of the Vice Admiralty Court noticed them to appear at the Registrar's office to be examined by the claimant.

The cause was tried, and the vessel and cargo of lumber discharged; the judge certifying probable cause of seizure. In the mean while, the master lost an advantageous sale of his lumber, for which he had previous to the seizure agreed, at a profitable price; but in consequence of the

detention he could not deliver it in conformity with the contract of sale, and two other cargoes arriving in the market, the price fell, and the bargain was renounced by the buyer. The master dreading detention, and terrified by the enormous expenses he was immediately and consequentially loaded with, despaired of obtaining redress in Newfoundland, and departed.

The following is a copy of the Vice-Admiralty Court's Bill of Costs in this most grievous cause.

The Claimant of the brig *Louisa*, of Saint Andrew's, and Cargo, seized by John Toup Nicholas, Esq. Captain of his Majesty's Ship *Egeria*, Debtor to the Vice-Admiralty Court of Newfoundland.

	Judge.	Registrar.	Marshal.
August, 1821.			
To filing and entering Libel	<i>l. s. d.</i> 1 10 0	<i>l. s. d.</i> 0 6 8	<i>l. s. d.</i> 0 0 0
Monition Drafting, Seal and Service	2 0 0	0 16 8	1 10 0
Attendance on Judge	0 0 0	0 10 0	0 0 0
Filing and entering Claim for Vessel and Cargo	1 10 0	0 6 8	0 0 0
Marshal's Report of Bail	0 0 0	0 0 0	0 12 6
Bond	0 0 0	0 10 0	0 0 0
Examination of 15 Persons on Interrogatories	0 0 0	17 10 0	0 0 0
Fifteen Subpœnas	0 0 0	0 0 0	7 10 0
Exhibits	0 0 0	0 18 0	0 0 0
Setting out Cause for hearing	0 0 0	0 4 6	0 0 0
Court Attendance, one day	2 0 0	1 0 0	1 0 0
Decree	5 0 0	1 3 4	0 16 3
Taxing Costs	1 3 4	0 6 8	0 0 0
Judge	13 3 4	23 12 6	11 8 9
Registrar	23 12 6		
Marshal	11 8 9		
Crier	0 10 8		
	48 15 3		

(Signed)

PETER W. CARTER,
REGISTRAR.

Vice-Admiralty Office, St. John's, Newfoundland,
18th August, 1821.

ADDENDA, F

*Extract from the Newfoundland Sentinel,
of August 19th, 1821.*

In our Sentinel of the 5th instant we briefly noticed the result of the Appeal by the Owners of the brig *Aurora* to the High Court of Admiralty, from the decision of the Vice-Admiralty Court of this Island, in the case of Mr. SAMUEL G. CARTER against that vessel for Salvage; since when we have received a full report of the same, in a late London paper, which we now lay before our readers. In doing this it may not be amiss to remark, for the information of such as are not acquainted with the fact, that Sir WILLIAM SCOTT, in all his decrees which we recollect to have read, is more liberal than otherwise in rewarding services of this nature, as he argues very justly that every encouragement should be given to induce people to render their assistance where life or property is in danger.

As some allusion was made by the Counsel for the Appeal to the heavy charges of the Court here, many of our readers may naturally feel desirous to become acquainted with their amount; in order therefore to gratify their curiosity and give them an opportunity of judging how far the ob-

ervation of the learned gentleman was correct, we have obtained copies of the accounts and have inserted them in the preceding page.* There are a number of items, it will be observed, to make the sum total, but that which strikes us more forcibly than many others, as requiring some explanation, is the charge of *1l. 3s. 4d.* for the Judge, and *6s. 8d.* for the Registrar, for taxing costs. Now we can very well imagine the necessity of taxing the Bill of an Attorney, on application from a person who believes he has been overcharged; but parties to charge for taxing a bill which is principally made up of their own fees, is what we cannot immediately comprehend the propriety of. However, we shall leave the subject to the consideration of those who may be better acquainted with it than we profess to be.

We shall only observe further, that a letter from London states, that Sir William Scott's attention being directed to the fees, said, previous to giving his judgment, "these charges are quite exorbitant; the proceedings of the court below are very extraordinary, but as it is not before me in evidence, I cannot interfere."

* See pages 75, 76.

Extract from the New Times, London, July 6.

HIGH COURT OF ADMIRALTY.

Aurora, Gardner.

This was an Appeal from Salvage, awarded by the Vice-Admiralty Court at Newfoundland, for services rendered to the above vessel in St. Mary's Bay, Newfoundland, in October, 1818. The circumstances are as follows :—

The brig *Aurora*, on her voyage in ballast from Bermuda to Newfoundland, arrived on the coast during a very thick fog, and got in between some rocks in St. Mary's Bay. In this situation she was discovered by the small schooner *Peg* and *Bid*, bound from St. Mary's Bay to St. John's, in the same island. The fog clearing off, the boat was sent with the master and four men from the schooner to assist the said brig in extricating her from the danger of shipwreck, which they very soon accomplished, the weather being such as to render such object far from difficult ; the owner remaining on board his said schooner during the whole transaction.

It appeared, that for the services thus rendered, the Judge of the Vice-Admiralty Court was pleased to decree the sum of 25*l.* as an adequate reward to the master and crew ; and the sum of 500*l.* to S. G. Carter, the owner of the schooner, including some losses and expenses incurred by

him, consisting of a boat, anchor and cable, &c. asserted to amount to 89*l*.

The brig, her tackle, apparel, and furniture, was valued at £1550; against which award of 500*l*. the present appeal was instituted.

The Counsel for the salvors argued, that the facts of the case exhibited a very meritorious salvage service, and fully justified the award of the Court below.

On the part of the owners of the *Aurora*, it was intimated by Counsel, that this was a family concern, the Judge of the Vice-Admiralty Court being father to the Registrar of the said Court, as well as to Samuel Gomond Carter, the owner of the *Peg and Bid*, the salvor. The learned Counsel further contended, that the circumstance of 25*l*. being awarded to the master and crew, was enough to infer that the danger and risk incurred was not sufficient either of life or property to the owner of the schooner, as to entitle him to any remuneration whatever for salvage, he having done nothing towards saving the brig, except allowing the master and crew to go to her assistance. In explanation of a tender of 250*l*. which had been made to the salvors, the learned Counsel on the part of the appellant said, the enormous charges of the Court at Newfoundland were sufficient to induce parties, in many cases, to submit almost to any terms rather than risk such extortion.

The learned Judge (Sir Wm. Scott) after recapitulating the circumstances of the case, was of opinion, that the risk both of life and property was by the Court below greatly over-rated, and much exaggerated by the evidence on the part of the salvor. The award to Samuel Gomond Carter, the owner of the schooner *Peg and Bid*, was in his opinion too high by far, and utterly out of all proportion to the sum awarded to the master and crew, as well as out of proportion to the services rendered (if any whatever could have been rendered) to the brig by the defendant. The fact was, that the master and four men were the only persons by whom in his opinion any service at all could have been performed, and that the owner was entirely free from any risk either of life or property; he considered, therefore, that the owner was not entitled to more than sufficient to cover his losses and expenses. Under those considerations he should have thought, that in giving even the sum of 200*l.* to Samuel G. Carter, the owner of the *Peg and Bid*, he would have been too liberal, and would have gone a great deal too far; but in consequence of 250*l.* being tendered by the agent of the *Aurora's* owners in the first instance, as contended by the Counsel on the part of the salvors, he should, in reversing the sentence of the Court below, be induced, though unwillingly, to decree the sum of 250*l.* to the salvor, including all loss and expenses.

The following is an Account of the Fees charged by the Court of Vice-Admiralty in the Case of Samuel G. Carter against the Brig *Aurora*, for Salvage.

	Judge.	Registrar.	Marshal.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Filing and entering Memorial of Claimants	1 10 0	0 6 8	0 0 0
Motion Drafting, &c.	2 0 0	0 16 8	1 10 0
Attendance on the Judge	0 0 0	0 10 0	0 0 0
Taking examination of six men	0 0 0	7 0 0	0 0 0
Filing and entering Allegation	1 10 0	0 6 8	0 0 0
Warrant to Attach the Vessel	2 0 0	1 12 8	0 16 6
Attendance on the Judge	0 0 0	0 10 0	0 0 0
Order to Marshal to report Bail	1 10 0	0 6 8	0 12 0
Entering Marshal's Report of Bail	0 0 0	0 6 8	0 0 0
Decree of Delivery upon Bill	2 0 0	0 16 8	0 0 0
Bond	0 0 0	0 10 0	0 0 0
Commission of Inspection	2 0 0	0 16 8	3 3 0
Petition of Parties for Appraisement	1 10 0	0 6 8	0 0 0
Decree for Appraisement	2 0 0	0 16 8	0 0 0
Attendance on the Judge	0 0 0	0 10 0	0 0 0
Commission of Appraisement	2 0 0	0 16 8	3 3 0
Memorial of Claimants for Publication of Proceedings—Entering the same	1 10 0	0 6 8	0 0 0
Decree for Publication	2 0 0	0 16 8	0 0 0
Attendance on the Judge	0 0 0	0 10 0	0 0 0
Copy of Evidence, &c.	0 0 0	3 0 0	0 0 0
Memorial of Defendant to proceed in the Case—Entering the same	1 10 0	0 6 8	0 0 0
Setting out the Cause for hearing	0 0 0	0 4 8	0 0 0
Decree for Salvage	5 0 0	1 3 4	0 0 0
Court Attendance	2 0 0	1 0 0	1 0 0
Taxing Costs	1 3 4	0 6 8	0 0 0
Drawing and engrossing Inventory	0 0 0	0 0 0	0 10 0
Serving three Summonses	0 0 0	0 0 0	1 10 0
Custody one day, 7s. 6d. Officer 5s.	0 0 0	0 0 0	0 12 6
Paid three Appraisers	0 0 0	0 0 0	9 9 0
	31 3 4	24 3 7	22 6 0
	24 3 7		
	22 6 0		
	77 12 11		
APPEAL.			
Defendant's half Costs of Suit, as per Decree	38 16 5		
Filing and entering Appeal	1 10 0		
Appeal Bond	0 10 0		
Copy of Proceedings and Decree under Seal of the Court	15 0 0		
	55 16 5		

(Signed)

P. W. CARTER,
REGISTRAR.

Vice-Admiralty Court, St. John's, Newfoundland.
30th November, 1848.

The following is an Account of the Fees charged by the Court of Vice-Admiralty in the Proceedings against the Brig *Aurora*, seized by the Officers of H. M. Customs, for having illegally imported two hhds. of Rum and two bls. Sugar.

	Judge.	Registrar.	Marshal.
	<i>L. s. d.</i>	<i>L. s. d.</i>	<i>L. s. d.</i>
Filing and entering Libel	1 10 0	0 6 8	0 0 0
Motion Drafting, &c.	2 0 0	0 16 8	1 10 0
Attendance on Judge	0 0 0	0 10 0	0 0 0
Taking eleven Depositions	0 0 0	12 16 8	0 0 0
Filing and entering Claim for Vessel	2 0 0	0 16 8	0 0 0
Order to Marshal to report Bail	1 10 0	0 6 8	0 12 0
Entering Marshal's Report	0 0 0	0 6 8	0 0 0
Bond	0 0 0	0 10 0	0 0 0
Altering and amending Libel	1 10 0	0 6 8	0 0 0
Ditto ditto Motion	1 10 0	0 6 8	0 15 0
Attendance on Judge	0 0 0	0 10 0	0 0 0
Memorial of Claimant to proceed in the Case—Entering the same	1 10 0	0 6 8	0 0 0
Decree for Publication of Proceedings	1 10 0	0 6 8	0 0 0
Attendance on the Judge	0 0 0	0 10 0	0 0 0
Copy of Evidence for Libellant	0 0 0	4 0 0	0 0 0
Ditto ditto Claimant	0 0 0	4 0 0	0 0 0
Marshal serving three Summonses	0 0 0	0 0 0	1 10 0
Filing and entering Memorial of Captain Gardner	1 10 0	0 6 8	0 0 0
Filing and entering Memorial of Newman and Co.	1 10 0	0 6 8	0 0 0
Exhibits	0 0 0	0 14 0	0 0 0
Setting out the Cause for hearing	0 0 0	0 4 6	0 0 0
Decree	5 0 0	1 3 4	0 0 0
Court Attendance	2 0 0	1 0 0	1 0 0
Taxing Costs	1 3 4	0 6 8	0 0 0
	24 3 4	30 18 6	5 7 0
	30 18 6		
	5 7 0		
	60 8 10		
APPEAL.			
Filing and entering Appeal	1 10 0	0 6 8	
Order to Marshal to report Bail	1 10 0	0 6 8	
Entering Marshal's Report	0 0 0	0 6 8	
Bond	0 0 0	1 0 0	
Copy of Proceedings	0 0 0	15 0 0	
	3 0 0	17 0 0	
	17 0 0		
	20 0 0		
Paid for Copy of Proceedings for the Coll. of H. M. Customs	10 0 0		
Total of Admiralty Court Charges	90 8 10		

St. John's, Newfoundland, 7th December, 1818.

