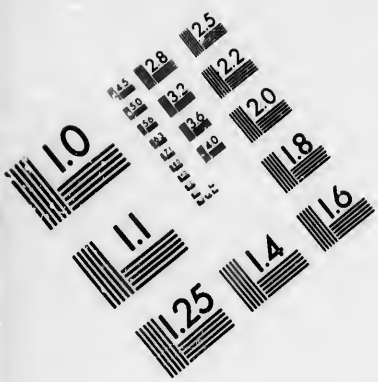
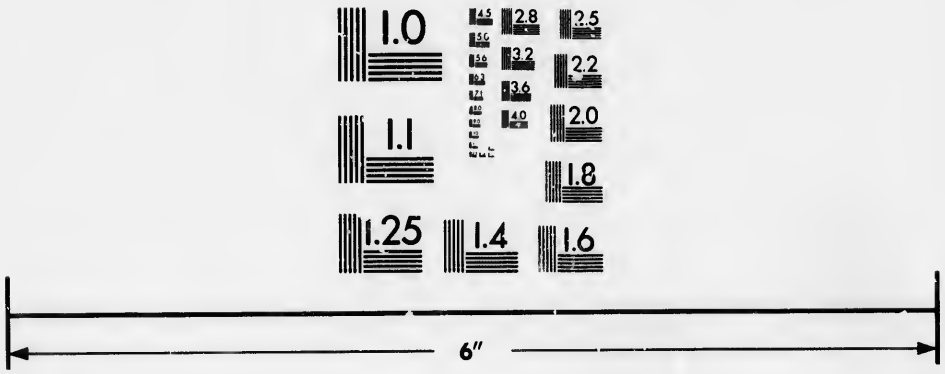
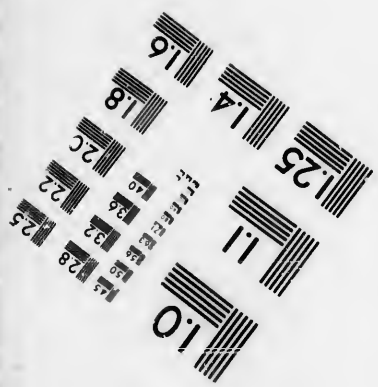
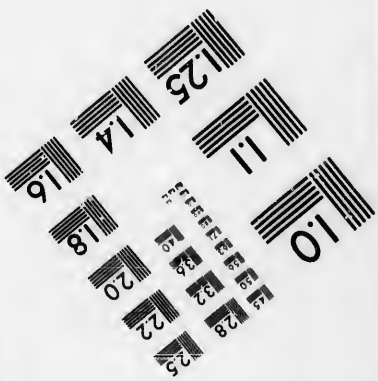


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☑ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☐ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
								✓			

The copy filmed here has been reproduced thanks to the generosity of:

Manuscript Division
Public Archives of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

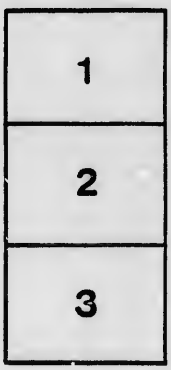
Division des manuscrits
Archives publiques du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



IN THE PRIVY COUNCIL.

IN THE MATTER

OF

THE COMPLAINT

OF THE

HOUSE OF ASSEMBLY OF NEWFOUNDLAND,

AGAINST

THE HONORABLE H. J. BOULTON,

Chief Justice of Newfoundland.

CASE

OF

THE CHIEF JUSTICE.

[FRERE, FOSTER & CO.

W. E. Painter, Printer, 342, Strand.]

In the Privy Council.

CASE

OF THE HONOURABLE HENRY JOHN BOULTON, Chief Justice of the Island of Newfoundland, in answer to the Case laid before Her Majesty's Privy Council on behalf of the House of Assembly of Newfoundland in support of an Address presented to Her Majesty by that House.

On the 21st November, 1833, Mr. Boulton received his Commission as Chief Justice of the Island of Newfoundland.

The House of Assembly there having, in October last, passed a Vote that an Address should be presented to her Majesty which reflected strongly on his judicial conduct, he obtained leave of absence from the Governor in January, and came to England to meet any charges which might be preferred against him.

The Chief Justice received a letter from Her Majesty's Under Secretary of State for the Colonial Department, acquainting him that Lord Glenelg had advised her Majesty to refer the accusation against him for the consideration of the Judicial Committee of Her Majesty's Privy Council; and requesting that the Chief Justice would report to the clerk of the council in waiting his arrival, that he might receive from the Lords of the Judicial Committee the usual summons to attend before them. 16 Feb. Appx. No. 1.

The Chief Justice reported himself accordingly, and presented his petition to the Judicial Committee, praying that a copy of the charges against him might be delivered to him. 18 Feb.

The Judicial Committee was pleased to direct that the persons who appeared on behalf of the House of Assembly, and who in the case are styled Delegates of the House of Assembly, should deliver in a copy of their charges against the Chief Justice within a fortnight, and reported their opinion to Her Majesty that it would be advisable for Her Majesty to refer the consideration of such charges to a committee of the Privy Council instead of the Judicial Committee. 23 Feb. 1838.

Her Majesty, with the advice of her Privy Council, was pleased to order that the said Address of the House of Assembly should be referred to a committee of the Privy Council to report thereon. 26 Feb.

On behalf of the House of Assembly, a case has been lodged, which it 13 March.

is presumed is intended to be a compliance with the declaration of the Judicial Committee, and to contain the charges preferred against the Chief Justice.

In a matter of such high importance, not merely to himself individually, but to the colony in which, during four years, he has filled the highest legal office, involving as it does the general administration of the laws, during the whole of that time, the Chief Justice of Newfoundland had a right to expect that the charges preferred against him should be so clear and definite as to enable him at once to see the misconduct with which he was charged, and the points to which his defence should be directed. This was no more than common justice would have entitled him to, but he more especially expected it, as, on the hearing of his said petition, one of the Lords of Her Majesty's Privy Council was pleased to say that such charges ought not to be vague and declamatory, but as precise and specific as articles of impeachment.

The Chief Justice does with all respect, but most strongly, insist, that the accusations as made against him in the case are not such as he ought to be called upon to answer, that they are loose and indefinite, and afford no accurate information of the offence imputed to him; and that, general as they are, the evidence adduced in their support is wholly insufficient to sustain them; he therefore most earnestly protests against the sufficiency of the charges. But in justice to his own character, and lest it should be supposed he fears investigation, he will endeavour to do what he conceives it was the duty of his accusers to have done, and what the Judicial Committee of Her Majesty's Privy Council intended they should have done, viz: to extract from the confused statement contained in their case, specific matter of complaint.

Before, however, he does this, he begs to make a few preliminary observations. It will be seen, on a perusal of the case, and of the documents which accompany it, that the charges contained in the report of the Committee of the House of Assembly, on which the Address to Her Majesty is founded, are more extended than those contained in the Address, and that the charges contained in the Address are more extended than those on which the advisers of the House of Assembly have ultimately thought it prudent to rely in their case. In some instances too, not only was there no evidence before the Committee of the House of Assembly to warrant the charges, but the testimony of the witnesses examined tended to disprove them.

As the House, in their Address, (page 14) state that Mr. Boulton "arrived in Newfoundland to assume the office of Chief Judge of the Supreme Court, *upon having been deprived of his situation of Attorney-General of Upper Canada*, he feels called upon to state shortly his previous professional career. He commenced his legal studies in Upper Canada in the year 1807, where his father was Solicitor-General. He came to England in 1811, and after spending three years in a solicitor's office in London, went to Oxford in the year 1814, quitted the University in 1816, studied under a Special Pleader, and was at a subsequent period called to the bar here. In 1818 he was appointed Solicitor-General of Upper Canada, which office he filled for upwards of twelve years, and was then appointed Attorney-General, and continued to fill the latter office until the 29th April, 1833, when he received a letter from the Secretary to the Governor, transmitting the copy of a despatch from Lord Goderich, then Secretary of State

Appx. No. 2.

State for the Colonies, stating that by the accounts he had lately received of the proceedings of the Legislature of Upper Canada, he had learnt that the Attorney and Solicitor-General of the Province had, in their places in the Assembly, taken a part directly opposed to the avowed policy of his Majesty's Government. And adding, in conclusion, that from the time of the Governor's receiving that despatch, they were to be relieved from the duties imposed upon them in their respective offices.

Immediately on receipt of this letter, the Chief Justice requested to be informed in what instance he had taken a part opposed to the avowed policy of his Majesty's Government, being entirely unconscious of having ever so acted.

He on the same day received from Colonel Rowan, the secretary, a letter, stating that the political proceeding to which the despatch of the Secretary of State particularly adverted was, that he and the Solicitor-General promoted the expulsion of a member of the Assembly, although the constitutional objections to that course had been conveyed to his Excellency the Governor, and were, *it was concluded*, communicated by him to the Attorney-General. Appx. No. 3.

The case referred to in the despatch was as follows:—Mr. M'Kenzie, then a member of the House of Assembly, and the same person who was leader of the recent rebellion in Upper Canada, had published a statement, which that House voted to be a libel on their proceedings; and they also voted that he should be expelled for having made the publication. In this vote the Chief Justice concurred.

Mr. M'Kenzie was re-elected, and a motion was then made to read the journal of his former expulsion, with a view to his re-expulsion. This motion the *Chief Justice opposed*, as Mr. M'Kenzie had committed no further offence, and it was negatived. But Mr. M'Kenzie immediately afterwards repeated his libel, and the motion for his expulsion being then renewed, the Chief Justice supported it, and such renewed motion was carried in the affirmative.

The Chief Justice had received no notification from the Governor, that it was the wish of his Majesty's Government that any particular line of conduct should be pursued in regard to Mr. M'Kenzie. Being thus deprived of his situation of Attorney-General, he forthwith proceeded to England, and represented his case to Mr. (now Lord) Stanley, then Secretary of State for the Colonies, who expressed himself perfectly satisfied with the Chief Justice's representation; and on the 17th June, 1833, the Chief Justice received from his Lordship a letter, in which he stated, that as it seemed to be clearly established that the Chief Justice was not sufficiently informed of the views of the particular question under discussion which were entertained by the Government at home; and that as he had no intention whatever of embarrassing the Colonial Government, the King had been graciously pleased to accept of his further services and that his Lordship had his Majesty's commands to offer him the appointment of Chief Justice of Newfoundland, which situation had recently become vacant. Appx. No. 4.

It was under these circumstances that the Chief Justice received his appointment, and he has the satisfaction of knowing that his appointment Appx. No 5.

15

ment was entirely approved by the Earl of Ripon, upon whose advice he was removed from the office of Attorney-General of Upper Canada.

The Chief Justice feels himself under great difficulty in preparing an answer to a case which contains much of declamation, much of general accusation and complaint, more of insinuation, and few or no definite charges.

The report of the committee of the House of Assembly, which forms the groundwork of the whole proceeding, professes, in the outset, to enquire into the administration of justice. 1st. In the Supreme Court. 2d. In the Circuit Courts. 3d. In the Courts of Session.

A perusal of it, however, shews, that it does not, in fact, fulfil this promise in any one particular, but is confined to animadversions on the conduct of the Chief Justice, personally.

The report endeavours to account for the absence of all information respecting the Circuit Courts, and Courts of Session, by insinuating, rather than alleging, an improper interference on the part of the Chief Justice, to prevent disclosures, which must have been criminatory of himself. No evidence is adduced in support of the insinuation, and the Chief Justice most distinctly and unequivocally denies it.

The Case contains at the outset the following statement:—" The " conduct of Mr Boulton, from the day he first presided as Chief Justice " to the last sitting of his court, has been, in the extreme, arbitrary and " unjust."

" In the regulations for the practice of the Supreme and Circuit " Courts, in the empanelling of juries, and in the forms of legal pro- " ceedings, he caused changes to be made, unwarranted by any authority " vested in him, and in direct opposition to existing laws. In the admi- " nistration of the law he violated all former precedents, setting equally " at nought the judgments pronounced by preceding Judges of Newfound- " land, and the customs and usages of the Island; whilst in suits between " individuals, partaking of a political character, he evinced a spirit of " partisanship and intemperance of conduct, totally unbecoming the high " situation which he held, and incompatible alike with the dignity of the " bench and the fair and impartial course of justice."

" The most serious injuries to the well-being of the Colony arose from " Mr. Boulton's proceedings. Confidence in the tribunals by which " justice was administered, and in the juries by whom facts were tried, " was completely shaken; the ruin and absolute destitution of a large " and meritorious class of subjects resulted from the judgments pro- " nounced; whilst Mr. Boulton's disregard of former precedents, and his " changes in practice, produced a state of confusion and uncertainty " amidst all classes."

Case No. 5, p. After making this general inculpation, the case professes " to " point out the illegal, unjust, and improper conduct pursued by " Mr. Boulton."

The

The charges against the Chief Justice, so far as he is able to collect them, are as follows:—

1st. That previously to his being sworn in, he caused the Sheriff to summon both the grand and petit jurors in a manner contrary to law, and unwarranted by any authority vested in him as Chief Justice. Case p. 5.

2d. That he acted upon rules and orders of Court, promulgated in January, 1834, whereby the existing rules regulating the number of grand jurymen, and the formation of grand juries, were rescinded before such new rules were promulgated, and before the period at which they became law. Case p. 5.

3d. That he altered the special jury system so as to enable persons of certain political sentiments, and in a certain class of society, in all causes to which they were parties, to obtain juries embued with the same political and party prejudices as themselves, and having a community of interest in the questions to be tried. Case p. 5.

4th. That he rescinded the rule by which each special juror was allowed one guinea for attendance, and thereby enabled parties vexatiously to bring the most trifling causes before special juries. Case p. 6.

5th. That he illegally caused the Sheriff to summon forty-eight petit jurors of the Island generally, instead of eighteen different and successive jurors, who were directed by former rules to attend each day. Case p. 6.

6th. That although the rules by which these changes in the jury system were effected, and, in part, subsequently legalized, did not become of force till April, 1834, yet that he caused all the trials, both civil and criminal, of the January term, to be had before juries summoned and selected under his arbitrary and unauthorised commands, in violation of the existing laws of the Colony. Case p. 6.

7th. That he caused the new rules to be signed by two gentlemen, who acted as judges; one of whom can scarcely be deemed to have been an Assistant Justice for so important a purpose, within the meaning of the act constituting the Supreme Court. Case p. 7.

8th. That notwithstanding the 58th rule of Court was not abrogated till October, 1834, and notwithstanding that being then abrogated, the 20th of the first series of rules was, by implication, restored to force, during the whole time he presided as Chief Justice, he caused the grand juries to be summoned in opposition equally to the 58th and 20th rules, leaving the selection entirely in the hands of the Sheriff. Case p. 8.

9th. That on 20th November, 1835, he completely, and without authority, altered the long-established law and usage of Newfoundland, by which the seaman was entitled to recover the amount of his wages from the merchant who received the proceeds of the voyage, so far as those proceeds extended. Case p. 9.

10th. That he arbitrarily, and injuriously to the interests of the fishermen, altered the form of the writ of attachment, by causing the words by which the boat and tackle of the fishermen were protected from attachment, to be erased. Case p. 7.

17

Case p. 8. 11th. That prejudicially to the previously-acknowledged privileges of the fishery, he disallowed the system of current supply; and declared that the supplying merchant had not a superior and prior claim upon the proceeds of the voyage for which he supplied, to the other, and prior creditors of the planter, and thereby materially shook the confidence which induced merchants to afford planters the means of carrying on their fishing voyages.

Case p. 8. 12th. That he publicly attached himself to one political party, and ceased not to be a partisan when he acted as judge; which last charge is alleged to be established by his charges to juries, and in the punishments he awarded. In support of this charge, the following cases are adduced as fully sufficient, viz.:—

Case p. 8. 1st. An action against the "Newfoundland Patriot," styled Garrett *v.* Parsons.

Case p. 8. 2. Carson *v.* Kielly.

Case p. 9. 3. The King against Patrick Morris and others.

Case p. 9. 4. The King against Robert Pack and others.

Case p. 10. 5. The King against Mackay.

Case p. 10. 6. The King against White.

Case p. 10. 13th. That he altered the treatment and discipline of the prison, and induced a severity in the gaol regulation, towards defendants, when committed to prison, previously unknown, and excluded Roman Catholic Clergymen from attendance at the gaol, except on particular days.

Case p. 11. 14th. That disregarding the decorum, if not the decency, which ought to characterize a judge, he acted as his own counsel in an action commenced by him.

Case p. 12. 15th. That he caused the Supply Bill sent up from the House of Assembly, containing a vote to defray the expenses of the delegates appointed to proceed to England to support their Address, to be rejected in the Legislative Counsel.

With regard to so much of the first charge as relates to an alteration of the system of empanelling juries before the Chief Justice was sworn into office, his answer is that he was sworn in on 21st November, 1833, and that the fact of his having been sworn in was duly notified in the Royal Gazette on the Tuesday following, and that the precept for summoning the first jury after his arrival was not issued till 12th December. The Chief Justice considering that, though not necessary in point of law, it would perhaps be more seemly as regarded the public, again took the oaths in open court when he first took his seat on the bench.

The remainder of the matters complained of in the 1st charge, and the whole of the matters complained of in the 2d, 3d, 4th, 5th, 6th, 8th, 10th, and 13th charges, though represented as the acts of the Chief Justice individually and alone, were, in fact, the acts of the Appx. No. 6 Supreme Court, and had the full and unanimous sanction and concurrence of

of the Assistant Judges; and they likewise presided as Judges jointly with the Chief Justice in each of the trials, except Garrett *v.* Parsons, mentioned or referred to in the 12th charge, in which the conduct of the Chief Justice is impugned. In making this remark, the Chief Justice has no wish to shrink from responsibility, but begs to draw the attention of their Lordships to the circumstance as an indication of the spirit in which the charges are preferred, and their Lordships will not fail to observe that the Committee of the House of Assembly did not think fit to go into any evidence on the subject of the two other heads of enquiry, viz.—the Circuit Courts and Courts of Session.

The Chief Justice will now proceed to consider the several charges in detail.

> First Charge.—That previously to his being sworn in, he caused the Sheriff to summon both the grand and petit jurors in a manner contrary to law, and unwarranted by any authority vested in him as Chief Justice.

In the Colony of Newfoundland the law of England prevails, except in so far as the same has been modified by any statute, or local enactment, relating particularly to the Colony.

By the statute 5 Geo. IV., c. 67, s. 17; and by the Charter granted in pursuance thereof, the Supreme Court of Newfoundland is empowered, under such regulations as after-mentioned, to make and prescribe such rules and orders as may be expedient, touching the forms and manner of proceeding in the said Supreme Court, and Circuit Courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein brought, and touching and concerning the appointment of Commissioners to take bail and examine witnesses; the taking examinations of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the Sheriff and his deputies and other ministerial officers; the summoning Assessors for the trials of crimes and misdemeanours in the Circuit Courts; the process of the said Courts, and the mode of executing the same; the empanelling of Juries, the admission of barristers, attorneys, and solicitors; the fees, poundage, or perquisites to be lawfully demanded by any officer, attorney, or solicitor, in the said Courts respectively, and all other matters and things whatever touching the practice of the said Courts, as may be necessary for the proper conduct of the business therein, and such rules and orders from time to time to alter, amend, or revoke, as may be requisite, provided always that no such rules or orders be in anywise repugnant to the said Act of Parliament or to the Charter; and that all such rules and orders be promulgated in the most public and authentic manner in the Colony for three calendar months at least before the same shall operate and take effect, and that the same be, by the first convenient opportunity, transmitted through the Governor, or acting Governor, to the King, his heirs and successors, for the signification of his or their pleasure, respecting the allowance or disallowance thereof. No alteration whatever in the manner of summoning the Grand Jury was made at the session of the Supreme Court, in January, 1834, or subsequently. As to the Petit Jury, although the charter empowers the Judges of the Supreme Court to make rules for their practice, the Chief Justice submits that they have no authority to make regulations repugnant to law.

Every person charged with felony has a right to challenge 20 Jurors peremptorily, yet by the rules which had been established before the arrival

19

arrival of the present Chief Justice, 18 jurors only were required to be summoned each day. Persons charged with felony were thus deprived of their right of challenge; to this practice the Chief Justice could not assent.

The terms of the old rule were simply affirmative, and the Chief Justice represented to the assistant judges, that the rule, so far as it was in derogation of the legal right of challenge, might be considered a nullity; and as the Supreme Court was a court of Oyer and Terminer and General Gaol Delivery, he suggested that a precept for summoning jurors in a form similar to that in use in England should be issued for the future. The matter was discussed, and his representation and suggestions met with the full approbation of the assistant judges, and a precept was in consequence issued under the hand and seal of the Chief Justice and Judges Des Barres and Brenton; by virtue of which the sheriff summoned 24 Grand Jurors and 48 Petit Jurors, who were drawn by ballot in like manner as they had previously been. The only change effected therefore was, that 48 Petit Jurors were summoned for the whole term, instead of having 18 summoned for each day.

Appx. No. 7. The reasons which induced the Chief Justice to suggest the alteration were fully detailed in the first charge delivered by him to the grand jury, and although his conduct in regard to this mode of summoning jurors has been matter of complaint in the several petitions against him to His Appx. No. 8. late Majesty (one of which is added in the Appendix), and to the Imperial Legislature mentioned in the Address, yet not only has he never received any notification that his conduct in that respect was considered illegal by any competent authority, but on the occasion of a debate in the Appx. No. 9. House of Commons, in 1835, on a similar petition to that set out in the Appendix, it was stated by a member of the government, that with respect to Juries, he thought the Chief Justice had acted very properly, for, in place of having a list of only 18 taken alphabetically, he had instituted a system by which 48 names were taken in the same manner as in this country.

The Chief Justice begs further to observe that although the change was effected more than four years ago, and notwithstanding the several petitions on the subject, no challenge to the array or otherwise, nor any objection to the regularity of any trial upon any such grounds has ever been made by any prisoner or other person whomsoever, concerned in such trials, prior to the hearing of the case.

Case p. 8 A motion for an enquiry, on the subject of the administration of justice, was made in the last House of Assembly. If there had been any thing illegal or improper in the conduct of the Chief justice, there was then an opportunity for inquiring into it; but the House thought fit to negative the motion.

The petition to His late Majesty from Downey and Malone, two of the prisoners tried at the January session, 1834, which is stated by Mr. Nugent, the chairman of the committee of the House of Assembly, and See evidence attached to Case p. 37. one of the three delegates by whom the case is lodged, to have been drawn by himself, contains, among others, the following allegations, viz.: "before "a trial at bar,* the law requires that the Sheriff return to the court, by "virtue of a general precept directed to him, a panel of forty-eight jurors, "'Liberos et legales homines de Vicineto.' Now, your Majesty's petitioners "had a right of peremptory challenge, which by the 22d Henry VIII. c. 14, stands

* All trials in Newfoundland are had at the bar in Term time.

as falsely upbraiding the aforesaid Robert John Parsons, the high-minded son of a British naval officer, with ignorance, and a standing in society inferior to him, (the Honourable Judge Boulton,) and breaking down the customs of the country, established for the protection of the Fishing Servants, customs sanctified by the uniform usage from time immemorial, and ratified by the undeviating practice of the courts, and the uniform decisions of former judges, the custom of giving the servants, no matter by whom employed, a lien upon the proceeds of the voyage in the hands of the supplying merchant, construing the law as opposed to securing to the fisher his wages, and thereby striking at the very existence of the fishery of Newfoundland.

That this rancorous hostility to the interests of the poor has been more sensibly developed by the same honourable individual in his character of President of the Council, by his successfully exerting himself to throw out a bill introduced into the House of Assembly by petitions of the merchants of St. John's, who were actuated by fears for the consequences to the Colony of these illegal decisions, a bill, having for its object to secure to the fisherman his wages. This bill passed the House of Assembly, a body principally composed of merchants engaged in the fishery; but it was flung out of the Legislative Council, *the great majority of the members of that body being individuals unconnected with the country and not interested in its welfare, not sympathizing with the poor, or solicitous for their improvement, but merely persons holding situations under Government, and appointed in England through the influence of the Honourable Judge Boulton*, and that by introducing a law to incorporate a bar of unqualified individuals, and ordering that no person should approach the court, and that no petition or memorial should be received by the bench but through that bar, he shut up the avenues to justice against the poor; that in accordance with this "order," the court at the first term of the Supreme Court in 1834, insultingly refused to take cognizance of a memorial from the Catholic Bishop of Newfoundland, although presented by that respected Prelate through the Clerk of the Court, who was a member of the bar, alleging it was not presented through the bar; and although the object of that memorial was for mercy for an unfortunate man condemned to death before the same honourable judge the day before, and who was to have suffered death within forty hours after, *although perfectly innocent of the crime for which he was about to suffer*, and only condemned through that criminal leaning of the Chief Judge to oppress the humble.

Your Majesty's Memorialists humbly and respectfully urge that such a man is not a person in whom a people could ever entertain that confidence that is essential for the due administration of justice, to be reposed in those who hold its balance, and the groaning under these oppressions, and labouring under these grievances, they, your Majesty's Memorialists, approach the foot of your Majesty's august throne, they fling themselves with confidence under the protection of your Majesty's sceptre; they implore your Majesty to direct that prompt investigation be made into these violent, these flagrant abuses; they pray your Majesty to institute inquiry into the violations of your Majesty's charters, and of the constitution above recited; and if your Majesty shall find, as your Majesty's Memorialists feel confident you will, the premises are based on facts incontrovertible; they, (your Majesty's Memorialists), humbly and respectfully pray your Majesty to purify the bench of justice, to order the removal from the office of all those who shall have been found offending: and they finally beseech your Majesty to assert the supremacy of the law, and vindicate the Royal prerogative, maintaining the inviolability of the Royal charter, by directing that the necessary steps be taken to visit the guilty with due and condign punishment.

And your Majesty's Memorialists, as in duty bound, will ever pray.

William Carson, M.D. and M.C.P.; Patrick Morris, J.P.; Patrick Doyle, J.P.
John Kent. M.C.P.; James Douglas; Thomas Beck.
Patrick Mullowney; John O'Mara; Law. O'Brien; John Dillon.
William Doutney; Timothy Flannery; Simon Morris; John Valentine Nugent.

N.B. The above are the only genuine signatures to the petition. The remainder of the alleged 5000 signatures are affixed to sundry sheets of paper annexed to the petition, and which signatures, upon an inspection, will be found to be almost wholly in the hand writing of a few persons.

(No. 9.)

EXTRACT FROM HANSARD'S PARLIAMENTARY DEBATES, 1835, Vol. 30, p. 672.

Mr. O'Connell.—It appeared that in 1826 the names of the juries were arranged in alphabetical order, and the jurors were directed to be called consecutively in that order. This was a perfectly fair mode of arranging a jury, without reference to party politics, or religion.—This was the case till Judge Boulton was appointed Chief Justice, and his first step was to abolish the former jury process. The result as the petitioners complained was that, instead of having an impartial jury, the jury box was now packed to suit party purposes.

Sir Geo. Grey could not but regret that such a petition should have been presented.—With respect to the juries he thought that Mr. Boulton had acted very properly, for in place of having a list of only 18, taken alphabetically, he had instituted a system by which 48 names were now taken in the same manner as in this country.

(No. 10.)

MR. RICHARD SULLIVAN,

To THOMAS RIELLY, Dr.

To overcharge on Spirits	£1	5	7
Washing	0	8	0
Splitting Knives	0	4	3
Bake pot	0	1	0
Court Charges	0	9	4
Priest	0	7	6
20 days work after the expiration of my time	3	6	8
To amount of wages	20	0	0
	£26	2	4

Cr.

By amount your account	£4	18	10
Do. Codner and Jennings' account	6	17	9
	£11	16	7
Balance due	£14	5	6

Equal to £12 5 0 Sterling.

IN THE SUPREME COURT OF NEWFOUNDLAND.

Between { Thomas Reilly, Plaintiff and R. Sullivan and Codner and Jennings, Defendants.

Plea—Non assumpsit.

(Signed) W. B. ROW, Defendant's Attorney.

30th December, 1833.

COPY.

Summons in Assumpsit.

WILLIAM the FOURTH by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. &c.

To the Sheriff of Newfoundland, and his Deputies, Greeting,

Command Richard Sullivan and Codner and Jennings, of St. John's, that justly and without delay, they keep with Thomas Reilly the promise made by the said Richard Sullivan, and Codner, and Jennings, with the said Thomas Reilly according to the force, form and effect thereof; and if they shall refuse to pay the same, then summon they to appear in Our Supreme Court of Judicature, in Saint John's, on the first day of next term, to shew cause wherefore——will not do it, and you are commanded to make return of what you shall do upon this Writ, at the time and place above mentioned.

Witness, the Honourable Henry John Boulton, Chief Judge of the Supreme Court, Saint John's, Newfoundland, the 25th day of November, in the 4th year of Our Reign, 1833.

(By the Court,)
(Signed) E. M. ARCHIBALD,
Chief Clerk, Supreme Court.

Signed, Geo. H. Emerson, Attorney.
£12 5 0 Sterling.

N.B.—A Bill of the particulars of Plaintiff's demand, must always be annexed to this Writ at first issuing; and a Copy of the Writ must be left with the Defendant.

N. 11.

(No. 11.) *Extract of a Report of Chief Justice Tucker, and Des Barres and Brenton, in August,* 1831.

5. *Geo. IV. c.* 67, *s.* 25. Whether those *preferences in payment* which are secured to certain classes of Creditors by this section, are or are not, conducive to the true interests of the fisheries is a "*vexata quæstio,*" upon which the opinion of the merchants is now very much divided. The *Chamber of Commerce* did, indeed, about the end of the year 1828, come to a resolution that the privilege of the creditor for supplies ought to be abolished; and we were led to believe that there was a very general, if not an universal, concurrence among commercial men in all parts of the island in this sentiment: but we have lately had an opportunity of ascertaining that *there are some merchants in this town, of the highest respectability, who are so far from coinciding in the view which the Chamber of Commerce have taken of this subject, that by them the repeal of the Law of Current Supply is regarded as the certain* DEATH BLOW *to our fisheries.* Under such a contrariety of feeling among persons whose situation in life must have prompted them to investigate this question with a more scrutinizing attention than we have been able to give to it, we wish *we could consider ourselves at liberty to decline any discussion of it.* As the Secretary of State will, however, probably desire to be furnished with our opinion, in order that he may throw the weight of it *into one of the scales if an exact equipoise should otherwise seem to exist between them,* it will be our aim, in conveying our opinion to his Lordship, to lay before him also the *reasons* upon which it is founded, in such a manner as will enable him to determine what degree of credit ought to attach to it.

The practice of remaining in this island during the winter, in opposition to the policy of the British Government, had not taken deep root before the merchants on the other side of the water began to perceive, that the fisheries could be carried on with MORE advantage by *these residents* than it could be either by the *fishing ships,* or by the *bye-boat keepers* who annually returned home; and they accordingly came forward with great alacrity to advance those residents, (who acquired, *probably from their connection with the soil,* the denomination of PLANTERS) all the supplies necessary for the prosecution of the fisheries. In a pursuit, however, which is exposed to all the vicissitudes of weather, and to various other casualties, instances of failure must occur very frequently; and as the planter's ability to pay for the supplies he had received depended wholly upon the success of his voyage, the merchants who had furnished those supplies became alarmed the moment they saw any cause to apprehend that the catch of fish would not be a good one. The fears of all the creditors of the planter being thus excited, each of them strove to obtain the earliest possible settlement of his account, by seizing all the property of the planter he could any how lay his hands on; and, in their several struggles for the attainment of this object, they often injured one another, besides ruining the unfortunate planter, by carrying off the fish before it was properly cured, and by putting an end to the voyage before the chance of taking more fish had entirely ceased. To prevent the fatal mischief resulting from such a system, the rule of *lien for wages,* and of *preference in payment for Current Supplies,* was first introduced by *Custom,* and afterwards sanctioned by *Law.* Nor can it be doubted but that in a state of society where, from the absence of all independent and impartial Courts of Justice, "*force* had usurped the privilege of *right,* and strength had become lord of imbecility," such a regulation, whatever exceptions it may otherwise be open to, must have proved practically beneficial, by removing those motives for the enforcement of immediate payment which had produced strife and contention, accompanied with serious loss among the creditors; exposed the poor planter to complete ruin; and inflicted a very severe injury upon the general interests of the fisheries. The merchants, however, were not slow in discovering that the lien upon the catch of the voyage which the servant was indulged with as a security for the payment of his wages, *had a direct tendency to lessen his interest in the success of the enterprise,* and, by consequence, to relax his exertions, as soon as he had perceived that there was fish enough caught to pay all the wages; and they stoutly maintained, that the *labour* which was employed in the fisheries ought only to be put, in respect of payment, upon the same footing with the *food* which was consumed in the prosecution of them, as the one was just as essential to them as the other. But whilst they protested and remonstrated against the *superior advantages* which by means of their lien the servants enjoyed over them, they did not scruple to push *their own privileges* very much beyond their due and natural limits, by extending those preferences in payment which the Law intended to *confine to debts contracted for supplies necessary to the fishery,* to debts contracted by the planter *for articles which had no real connection with it,* and by applying a rule which could only be salutary where, as in the instance of the *planter,* it is requisite to supply the want of *capital* by substituting *credit* in lieu of it, to the case of the *most extensive merchant,* and in fact to that of *every class of persons* who might happen to become *insolvent* in this Island. In these attempts they were for a long time assisted by the *Courts, which were far too feeble to oppose themselves,* even if they had wished to do so, to the united force of the mercantile body; and accordingly when *Mr. Forbes* was appointed Chief Justice of this Colony, it had become a generally-received doctrine, that the expression "*Current Season,*" was synonymous to *Year;* that the word "*supplies*" included *every article* that could be bought and sold; and that the

estate

23

estate of *every person* who was declared *insolvent* was liable to be distributed according to the law of *current supply*, whether he had, or had not, been directly engaged in the fishery. To an understanding enlightened like his, the decisions of the *Surrogates*, upon which this system had been built, appeared contrary to the principle by which the rule of current supply ought to be governed, and at the same time so injurious to the general interests of the trade of this Island, that he did all in his power to *reform a practice* which was too firmly fixed to admit of its being *altogether removed* by him; and, thro' his efforts, seconded by subsequent parliamentary enactments, the *most prurient and worst excrescenees* upon the law of *Current Supply* have been happily lopped off. Yet even in its present amended state we strongly incline to think, that the evils which spring from it, in conjunction with its *twin-born sister regulation* of "LIEN FOR WAGES," greatly preponderate over the advantages which are supposed to be derived from these preferences in payment. The argument by which it is attempted to maintain the necessity for their continuance is, that the merchant will not advance supplies to the planter, nor the fisherman engage in his service, if they should be deprived of any part of their present privileges; and that the planter being thus stripped of *credit*, would no longer be able to prosecute his employment. And assuming that the truth of this proposition cannot be controverted, its supporters at once proceed to deduce from it, as a necessary corollary, the *destruction of the fisheries*—the *extinction of the trade*—and the *starvation of the inhabitants of Newfoundland*. But though we are *fully sensible* that the *most serious misehief* might be produced by the absence of that care and caution which should always be observed in overturning ancient usages, *even when they rest upon foundations notoriously wrong;* and though we unhesitatingly admit, *that the Credit which is the offspring of preferences in payment ought not to be extinguished unless Credit ereeted on a firmer basis can instantly be substituted for it*, we are at the same time so much persuaded, that *such a substitution would take place, if the abolition of the law of current supply, and lien for wages, were* GRADUAL and PROSPECTIVE, that we have little hesitation in recommending, that for one year from the passing of another Act of Parliament the privileges of the servant and of the current supplier shall continue on exactly the same footing on which they now stand by this section—that after the end of one year the lien shall be taken away, and the preference of the supplier for the current season over the one of the preceding season shall also cease and determine—that creditors for wages that may become due in the second year after the passing of a new Act, and for such supplies necessary for the fishery as may bona fide have been furnished to the planter within two years from the passing thereof, shall *rank togetlier* in the same class of *privileged ereditors*, and shall be entitled to be paid 20*s* in the pound before any other description of creditor shall be admitted to participate in a dividend of the *Insolvent's Estate*, provided the Insolvency shall be declared in one of the Courts within two years from the passing of the Act—and that all debts which shall be contracted by any person after the termination of two years shall thenceforward be paid before all debts of an earlier date; but that among the debts that shall be so contracted, from the commencenent of the third year, no preference or privilege to *demands for wages* or to *claims for current supplies* shall in any shape whatever be granted or allowed.

Such notice will thus, we think, be given of the intention to abrogate the law of preference in payments, and such precautions used in preparing the way for its extinction, as will entirely prevent those inconveniences which might arise from the annihilation of the Credit which was built upon it before sufficient time had been allowed for the formation of another description of Credit upon a safer bottom: and, as the success of all attempts to introduce changes into an old system must principally depend *upon the existenee of circumstanees favourable to the contemplated alteration in it*, we have much satisfaction in adding, that various events connected with the trade of this country have for several years past been so gradually leading to the disuse of the privileges of the Current Supplier, that we are persuaded their ENTIRE REPEAL may now be effected with perfect ease and safety, provided a moderate share of prudence and caution is observed in the mode of doing it. The mere practicability, however, of innovation can never, we are fully aware, justify a departure from a long-established system, unless it can be clearly proved that the system is of such a nature as to call for a change; and we therefore feel it necessary to advert to some of the most prominent of those pernicious consequences resulting from the *lien for wages*, and the *preferable payment of current supplies*, which induce us to desire their entire abrogation. We do not scruple, then in expressing it as our opinion, that, through the *joint operation of those practices*, the following evils have been either *wholly produced or materially increased and aggravated* in those instances where their origin may more properly be ascribed to *some other causes*:—

1st.—Idleness and drunkenness among the labouring classes:

2nd.—Loss to the merchant, and ruin to the planter, from the means which they have furnished to the latter of carrying on the business of the fishery upon credit founded *on a false and destructive prineiple:*

3d.—Extensive litigation; accompanied with all the bad feelings and heart burnings which it never fails to engender:

duced by such a state of society are further increased by the fact, that the latter class of persons are mostly of a different religion from the former. The society of the Chief Justice is necessarily that of the educated part of the community; but in no respect whatever has he attached himself to any party. He now proceeds to the consideration of the different cases in which he is charged with having shewn partiality.

GARRETT *v.* PARSONS.

The Chief Justice protests against having isolated passages alleged to have been noted down by a bystander, as forming part of a charge delivered by him years ago, to which his attention was not called at the time, and to which no objection was made by the parties interested, imputed to him as misconduct. The action in question was an action for a libel. The Chief Justice's charge was necessarily oral, and occupied a considerable time in the delivery, and it is impossible for him now to recollect the exact expressions he used. But he has no doubt he told the jury on that, as he has on other occasions, to do as they would be done by, though in what precise words he amplified the sentiment, he does not pretend to describe. This, however, he can safely say, that the expressions alleged to have fallen from him are not fairly represented, and that the effect of his observations to the jury was, that they were to consider the words complained of as they understood them before they were sworn, and as people in general would understand them, and that there was nothing magical in their oath to make them interpret the words differently to what they would have done before.

CARSON *v.* KIELLY.

This was an action for defamation, both parties being medical practitioners in the town of St. Johns. The language complained of was alleged to have been used by the defendant with relation to the delivery of a poor woman, named Antle, by the plaintiff and Dr. Rochfort, who attended her as accoucheurs.

Mrs. Toole, a midwife, attended Mrs. Antle in the morning of 5th January, and found her very weak; and as her pains did not increase, advised her to send for a doctor; and accordingly, about five o'clock in the afternoon, the plaintiff, Dr. Samuel Carson, was sent for, and came, and gave orders that he should be sent for in about an hour's time, if no alteration took place. At the appointed time, her husband went for the plaintiff; but his apprentice, by his order, said he *was not at home*, though, in fact, he was so. It was also proved that plaintiff said the labour was likely to be a difficult one, and that having recently recovered from a severe fit of illness he did not wish to go. However, on a further application, he sent to Dr. Rochfort, and they ultimately went together.. Dr. William Carson, the plaintiff's father, and who is one of the delegates of the House of Assembly, by whom the case is lodged, proved that the observations of Mr. Kielly had obtained currency, and actions were talked of; that he went to the house of Mrs. Antle, on 14th February, and examined her person. He detailed a very disgusting examination which he and a young man, Dr. M'Ken, made, both internally and externally, during which she expressed, as he stated, excessive pain. He said that the examination was had in consequence of his son's stating that some reports had gone abroad injurious to his character, and

 that

that his son had requested him to make the examination to satisfy him. That he did not go as a matter of practice, but simply to be enabled to give an opinion on his son's conduct. When he had finished his evidence, which occupied a long time, the Chief Justice thought it right to ask if it did not occur to him that it was a very indelicate, as well as improper thing for him to go to the poor woman, and make such an examination, and to give great pain, merely to satisfy his son; and that in his (the Chief Justice's) opinion, he should at least have informed her why he came, in order that she might have exercised her judgment whether she would submit to an examination for such a purpose; and that he had no right to go and examine a female, as a carpenter might the workmanship of a house, respecting which there might be a dispute.

The trial lasted the greater part of two days, and the plaintiff's counsel ultimately recommended his client to become nonsuit, before the defendant's case was gone into, which he did; and the Chief Justice then made observations to the effect that he felt it to be a duty he owed to the public, and particularly to that portion of it who were poor, ignorant, and helpless, to express the strong sense he entertained of the conduct of Dr. Carson, the plaintiff, in denying himself when sent for, and that according to his own appointment, considering the dangerous condition in which by his own account he had left the patient; and the Chief Justice proceeded to point out the danger which medical men, more than most others, ran, in being guilty of negligence in the performance of their duty. That all persons, whether professional or not, who undertook to perform any act, whether science were requisite or not, engaged to use proper diligence and to bring an ordinary degree of skill to the accomplishment of their undertaking; and he alluded to several decisions, and particularly those of modern date, upon the subject of misconduct by medical men, and pointed out that the medical profession were not merely liable to actions for damages, but that in the event of death ensuing from their misconduct, they might be indicted for homicide.

These observations were made without premeditation, hypothetically, and as a warning to medical men generally, and also to inform the poor of their rights and remedies; and the Chief Justice so expressed himself at the time, but he did not recommend any action to be brought in this particular case, or otherwise express any opinion upon its merits; and the Chief Justice denies having used the expressions mentioned in the case. When he had finished these observations, the jury expressed their full concurrence in the propriety of the remarks. The Assistant Judges also perfectly coincided in the view the Chief Justice had taken of the case. Stress is laid on the fact of Mr. Kielly being the medical attendant of the Chief Justice's family. His opponent, Dr. Carson, attends Judge Brenton's family, and that of Mr. Thomas, the Foreman, and either he or Mr. Rochfort attended the family of every other juryman, if such circumstances deserve consideration.

Appx. Nos. 14, 15.

Appx. No. 16

In the ensuing term of the Central Circuit Court, Antle and his wife brought an action on the case against Dr. Carson and Dr. Rochfort for their alleged misconduct, and when it was at issue, a motion was made to postpone the trial and to transfer the cause to the Supreme Court, which might be done under the law of the Island, on account of the absence of material witnesses, and which would have had the effect of putting off the trial till the autumn. These witnesses were represented to be medical men, residing at about a day's journey from St. John's in the adjoining

adjoining district. The Chief Justice felt himself bound to refuse the application, they being merely required to give opinions upon the science of midwifery, and consequently were not, in the Chief Justice's judgment, that description of material witnesses, on account of whose absence trials were put off.

The defendants, Carson and Rochfort, then moved for a special jury, and the cause was set down, *by consent*, for Friday, the last day but one of the term. On that day they made another motion to put off the trial, upon the ground, that Mrs. Toole, the midwife examined in the former case, was sick, and expecting to be confined, and that her evidence was material; and although the defendants refused to consent that her evidence, as previously given, should be read, the Chief Justice put off the trial.

The Chief Justice had a duty to perform—the administration of justice equally to the plaintiffs as well as to the defendants. Had he allowed himself to have been influenced by the fear of being regarded as partial if he decided against Carson and Rochfort, and on that account been led to determine in their favour, without attending to the rights of Antle and his wife, he would have been guilty of a dereliction of duty which he cannot now charge himself with. This case stood again on the docket for trial at the last Central Circuit Court, in November last, when the Chief Justice referring to the application that had been made in the spring, said, that as the Supreme Court would sit in a few days, he would now transfer the cause to that court, at the instance of either party, as a short delay could not be material. No application, however, was made, and the cause was tried before him in the Central Circuit Court, and a verdict given for the plaintiffs. Appx. Nos. 17, & 18.

REX *v.* MORRIS AND OTHERS.

After a special jury had been struck, and summoned, a motion was made on behalf of the defendants to change the venue, and was refused, the court having no power to grant it. Mr. Morris, who is another of the delegates of the House of Assembly, by whom the case is lodged, had been, together with the other defendants, indicted for an unlawful assembly. The allegation in the indictment, that the meeting was on the Lord's-day, cannot be considered as made with the intention of charging a substantive offence. Mr Kent, one of the defendants, quoted some book to shew that it was not an offence to hold a meeting on a Sunday, to which the court assented.

The defendant, Power, keeps a grocer's shop, and is a man of moderate property, and the court were unanimously of opinion that he should pay a fine of £25.

The Chief Justice, in pronouncing the judgment of the court, took the opportunity of pointing out to the defendants and the public, the indecency of thus desecrating the Lord's-day, and he read some passages from the works of a Roman Catholic Bishop, whose opinions, he thought, would influence the numerous body of persons of the Roman Catholic Religion present, to show, that however exempt from temporal punishment such conduct might be, yet, that it was clearly repugnant to the divine commandment.

The

27

The Chief Justiee believes that the whole proeeeding has had a salutary effeet, as public meetings have sinee, as he is informed, and believes, been mueh less frequent at the chapel doors, and other places, on Sundays.

THE KING *v.* PACK AND OTHERS.

As to the defendants, Haydon, Meany, and Quirk, the Chief Justiee is charged with having openly "vitiated" the verdict of the jury by direeting the word "unlawful" to be substituted for "tumultuous" in the endorsement of the verdiet on the indictment, and with having said to the jury that an assembly to be tumultuous must be unlawful.

This complaint, like most of the others, wants the foundation of truth. The jury returned a verdict of "*Guilty of a tumultuous assembly*," but the clerk of the eourt, conceiving that the correct and technical mode of recording it was "guilty of an unlawful assembly," made the latter endorsement on the indictment without any previous communication with the Chief Justiee, or the Assistant Judges. Immediately afterwards he shewed the indorsement to the Chief Justice, who, supposing that to have been the meaning of the jury, intimated his assent merely by a nod; and the clerk of the court, thereupon desired the jury to hearken to the verdict as the court should reeord it. The reeord is not considered perfect until the jury have signified their assent to the verdict as entered on the indictment. When the clerk read the verdiet "guilty of an unlawful assembly," some individual jurors stated that they found the defendants guilty of a tumultuous assembly. The Chief Justice, thereupon, read to the jury that part of the indictment which charged the defendants with unlawfully, riotously, routously and tumultuously assembling; and asked if they intended to find them guilty of that part of the indictment? And he also read to them from "Russell on Crimes," which happened to be lying before him, a definition of a riot, rout, or tumult. There seemed to be a difference of opinion among the jurors, and the court in consequence, desired them to retire and make up their minds as to what they really did mean. They did so, and on their return theirforeman returned a verdict of "guilty ofa tumultuous assembly;" and that verdict was recorded without the slightest objection. All the defendants were subsequently brought up for judgment, on 5th January, when the Chief Justice entertained doubts whether a party was legally liable to punishment for a mere tumult, unless found to be unlawful, and intimated his doubts to the Assistant Judges, who concurred therein. No sentence was, in consequence, passed on the defendants Hayden, Meany, and Quirk, but they were discharged on entering into their own recognizances to appear for judgment when called on. They were so discharged, not on an application of their own, but at the instanee of the Chief Justiee, in consequence of the doubt so suggested by him.

The Court, at the same time, informed the Attorney-General that he might apply whenever he thought proper to have the defendants brought up for judgment, but that the Court, before it could make any order for that purpose, must be satisfied that the offence as found by the jury was indictable. The Attorney-General never made any such application.

Part of the punishment of Thomey Harding and Sanders was remitted by

by her Majesty. The Chief Justice is willing at all times to pay due deference to the opinion of her Majesty's advisers; still he cannot help retaining the opinion, that under the circumstances of the case, the punishment awarded by the Court was not disproportioned to the offence. For the reasons by which the Judges of the Supreme Court were guided, he refers to their Report on the subject to the Governor. Appx No.20

Lord Glenelg, in a despatch to the Governor, dated the 12th of January, 1837, expressed himself as follows:—"The impunity which has "hitherto attended the open violation of the laws at the late elections, "and the forcible rescue from the civil power of the persons who had "been arrested to answer for that offence, would become evils of the "greatest magnitude, if they should be acquiesced in as irremediable.

"The effect would be to give to mere violence permanent authority "in the colony, under your government.

"You will, therefore, leave no measure unattempted for bringing to "punishment the authors of these illegal acts."

THE KING *v.* MACKAY.

The complaint against the Chief Justice, for his conduct in this case, may be divided into three branches:—

First, That he stated that the question of assault was not a point for the decision of the jury.

Second, That the original verdict of "*Not Guilty*," ought to have been taken without objection.

Third, That he caused to be recorded a verdict different from that actually delivered, and in this case the fine imposed is complained of as exorbitant.

The first part of the complaint is not true in fact; the Chief Justice did not tell the jury that the question of assault was not one for their consideration. In summing up the case, after stating the law on the subject of assaults and batteries, he added, that it was for the jury to say whether they believed the defendant had done the acts sworn against him; but that whether such acts did or did not amount to an assault was a question of law; and the Chief Justice gave it as his opinion that if they believed the witnesses, the facts proved amounted in law to a battery.

As to the second part of the case,

The jury, in the first instance, brought in a verdict of not guilty generally, which was directly contrary, not only to the evidence, the truth of which there was no reason to doubt, but to the implied admission of the counsel for the defendant, who, when the cause was called on for trial, and in the presence of the jury, offered on behalf of his client to withdraw his plea of not guilty, and plead guilty, if the Attorney-General would wait till the defendant came into court. The case, on the part of the prose-

 cution,

29

cution, was most clearly proved; and the Chief Justice and Assistant Judges, therefore, thought that the jury must have either misunderstood the explanation the Chief Justice had given of the law, or have been obstinately bent upon acquitting the defendant; and the Chief Justice thereupon asked them the reason of their verdict, and if they were of opinion that the defendant did spit in the prosecutor's face, and some of them answered that they did not consider spitting in a man's face any insult, and that it was not intentional. The Chief Justice then read to them evidence which had been given of a positive threat to do it, which the defendant had uttered, and restated to them the law of assault, and directed them to reconsider their verdict. They did so; and, upon the second occasion, brought in a verdict of guilty of spitting in the prosecutor's face, while acting as constable. This verdict the Court thought, and the Chief Justice still thinks, amounted to a general verdict of guilty.

The offence was of an aggravated character. The defendant's conduct was calculated to bring on a general affray, and at a time when the street was much thronged, and the troops had been called out in consequence of the disturbed state of the town. The constables had been much beaten, and the Court thought it necessary to put a check on such tumultuous proceedings.

Case p. 10.

THE KING *v.* WHITE.

This case, like the rest, is grossly misrepresented. The Chief Justice was ignorant that either White or the prosecutor was a voter. There had been an altercation between them, in a field belonging to the defendant, in which he was at work getting in his crop. It was clearly proved that the defendant struck the prosecutor more than once, and had knocked him down, but it was doubtful on the evidence whether the latter had not begun the altercation, and the Chief Justice requested the jury to state which party they considered to have commenced it.

The jury thereupon found the verdict mentioned in the case. The Court, under the circumstances, thought the offence of a very trivial character, and passed a sentence accordingly.

In justice to himself, the Chief Justice has thought it right to enter into these details. At the same time, he protests most strongly against having his judicial conduct submitted to inquiry in the manner adopted by the House of Assembly and their delegates.

> Thirteenth Charge.—That he altered the treatment and discipline of the prison, and induced a severity in the gaol regulations towards defendants when committed to prison, previously unknown, and excluded Roman Catholic Clergymen from attendance at the gaol, except on particular days.

In pursuance of an act of the Colonial Legislature, empowering the judges of the Supreme Court to make regulations for the treatment and discipline of the prisoners confined in the gaol, the judges framed regulations; and in compliance with the desire of the Governor, the Chief Justice drew up a report on the gaols, dated 8th April, 1836. A copy of this report was forwarded to the Secretary of State for the Colonies,

Appx No. 21

Colonies, who thereupon expressed his approval of the regulations introduced. Appx No. 22

Afterwards, copies of certain recommendations of the House of Lords, on the subject of prison discipline, made in 1835, were sent by the Secretary of State for the Colonies, to the Governor of Newfoundland, to be submitted to the Colonial Legislature; and one thereof was sent to the Chief Justice, as President of the Council.

One of such recommendations was as follows:—"That convicted "prisoners be not permitted to receive visits or letters from their friends "during the first six months of their imprisonment, unless under peculiar "and pressing circumstances."

In compliance with the spirit of that recommendation, the Judges of the Supreme Court, about the month of May, 1837, to the best of the Chief Justice's recollection, framed a regulation to the effect that prisoners thereafter convicted should not be permitted to receive visits or letters from their friends during the first six months of their imprisonment, unless under peculiar and pressing circumstances, to be judged of by the Sheriff. To which, in consequence of there being no Chaplain to any of the gaols, a proviso to the following effect was added, viz:—That the clergy of every denomination should be admitted between the hours of nine and four, on Sundays and Wednesdays; and in case of prisoners condemned to death, or labouring under dangerous illness, at all times, subject to the controul of the Sheriff.

The Chief Justice not having in this country a copy of the regulation cannot set it out verbatim.

The Chief Justice refers to the return in the Appendix, shewing the number of visits by clergymen of the Protestant and Roman Catholic religion, for the years 1836 and 1837, during which period the majority of prisoners were generally Roman Catholic. Appx No. 23

He believes the prisoners generally made no complaint as to their treatment. Appx Nos. 24, 25, & 26.

FOURTEENTH CHARGE.—That disregarding the decorum, if not the decency, which ought to characterize a judge, he acted as his own counsel in an action commenced by him.

The Chief Justice, in acting as his own advocate in his own case, did what is, no doubt, unusual, and what he himself would not have thought it necessary to do in this country. Where there is an ample bar, and where the different branches of the profession are separated, the one from the other, the exigency of no case can require a suitor to plead his own cause. But in a smaller community, where a different course of practice prevails, a different line of conduct may be adopted without any breach of propriety. In Newfoundland, the same individuals practice in the double capacity of barrister and attorney. At St. John's the practitioners (including the Attorney-General, who conducts nothing but official business,) do not exceed five in number, three of whom engross nearly the entire business in Court.

The Chief Justice had reason to believe the Assistant Judges entertained doubts

doubts of their jurisdiction in a case to which he was a party, and being precluded from stating his opinion to them in private, and being at the same time, desirous of an opportunity of making known the reasons which influenced him on the question of jurisdiction, he thought the more correct and manly way of proceeding was to take the course he did. He had perfect confidence in the integrity and firmness of the Assistant Judges—a confidence which the result proved to be well founded; and was satisfied that deference to him would not bias their decision.

Even supposing the cause to have proceeded to a trial, and that the Chief Justice had not left it to the ordinary practitioners, it would have been by no means unprecedented in the colonial courts. During the time he filled the office of Solicitor General in Upper Canada he appeared as counsel for the plaintiff in a cause in which the Chief Justice of that province was defendant, and acted throughout as his own counsel; nor did the circumstance of his so acting excite any remark as being indecent or indecorous.

The speech of Mr. Morris which the Chief Justice complained of as being libellous, contained the following, among many others passages,
Appx No.26 some of which will be found in the Appendix:

"Judge Boulton has totally subverted the ancient laws and customs of "the country; has set aside the decisions of all former courts and judges. "This is a statement I have frequently made for the last three years. I "have made this statement frequently at public meetings; in published "speeches; in published letters. When I could not claim the privileges "of a member of this house, I made these charges openly and publicly, "against the course adopted by Judge Boulton. I was determined to "abide the consequences. No punishment would be too severe for me, "if I had, without foundation, made these charges. The proof of their "truth I think I might rest altogether in the simple fact that they have "never been denied,—the judges did not deny them,—the lawyers, who "owed Judge Boulton so much for giving them a monopoly, did not "stand forth in his defence,—no man has been found publicly, either in "the courts, or through the press, to defend him: the facts are notorious "and undisputed."

Mr. Morris here avows that the Chief Justice had been the object of his continued attacks for three years; and because the latter had hitherto forborne to notice his slanderous statements, he assumes that they were true.

The speech was printed by order of the House of Assembly. Mr. Nugent and Mr. Kent are active members of that house, and their names will be found affixed to most, if not all the petitions, which have been presented, containing similar calumnies. The Chief Justice believed he had it in his power to bring home the publication of that speech to both of them, as well as to Mr. Morris; yet when he at last determined to take the only means in his power of vindicating his character, the delegates of the house have the hardihood to assert that his action was brought in order to prevent them from proceeding to England. Had the defendants not interposed delay, and objected to the jurisdiction of the Supreme Court, the action might have been tried before they left Newfoundland.

Fifteenth Charge.—That he caused the supply bill, sent up from the House of Assembly, containing a vote to defray the expenses

expenses of the Delegates appointed to proceed to England to support their Address, to be rejected in the Legislative Council.

The Council, and House of Assembly, of Newfoundland, first met in pursuance of a Royal Commission, dated 2d. March, 1832. The Council is not limited to any particular number, but has never contained more than nine individuals, of whom the Chief Justice has been one. According to the instructions to the Governor, of 26th July, 1832, it was to consist of the Chief Justice, the chief officer in command of the land forces next after the Governor, the Attorney-General, the Collector or other chief officer of the Customs, the Colonial Secretary, and William Hayley, Esq. The House of Assembly consists of fifteen members. The qualification for a member is the occupation of a dwelling-house for two years, as owner or tenant; of a voter, a similar occupation for one year. Appx. No. 27

The Chief Justice has no controul over the votes of the Council. The reasons which induced the Council to reject the supply bill referred to in the case, will be found in their address to Her Majesty on the subject. The Chief Justice, however, thinks it proper to add, that the consideration of the supply bill was, in the first instance, referred to a committee, of which he was not a member, and that the Council adopted the opinion of their committee. Appx. No. 28

The Chief Justice should not have thought it right in answering charges preferred against him in his judicial character, to allude to petitions or addresses in his favour, had not the subject been mentioned in the case. But as his accusers refer to them, and allege that they have been surreptitiously obtained, he hesitates not to put them forward; and adds that they were entirely unsought for on his part, and that his accusers well know that he has no patronage to bestow, though they assert that these petitions have been obtained through the influence which patronage gives him. Appx. Nos. 29, 30, 31, 32.

The Chief Justice trusts he may, without indelicacy, remark that no appeal has ever been brought from any decision pronounced by him individually in a Circuit Court; and that a reference to the records of the Privy Council will shew that during the time he has presided as Chief Justice, there has not been a single appeal from the Supreme Court to her Majesty in Council. And although the speech of Mr. Morris, before referred to, was uttered and published with a very different object, the Chief Justice avails himself of a passage in that speech to shew the estimation in which, in the opinion of that individual, he is held by those best qualified to judge of his professional acquirements:

"The Judge did not untie, he cut the Gordian knot: he flung away "with contempt the system which so long prevailed in the courts. He "adopts his own system, his own practice, his own rules, his own princi- "ples. The Judges and the bar are 'ordered' to obey. He gives the word, "'left about, wheel!' No military evolution could be more promptly or "more silently obeyed; no voice was raised against the innovation by his "learned brothers or the bar; they have been silent on the subject. What "the Judge says is the law, is received by the bench as proofs from holy "writ. The faith of the bar is equally strong in his judicial infallibility."

The concluding part of the case contains an insinuation, that the Chief Justice has been instrumental in adopting measures for the purpose of

 preventing

preventing the Delegates from proceeding to England, in execution of the commission intrusted to them by the Assembly. There is not the slightest foundation for this insinuation. As the Chief Justice has always felt perfectly conscious of the integrity of his conduct, and had the fullest confidence in her Majesty's justice, he has never shrunk from the most complete investigation of that conduct, nor has ever sanctioned any measure which could obstruct such an investigation.

Under the foregoing circumstances, the Chief Justice trusts that their lordships will advise her Majesty to dismiss the charges against him, as being frivolous and groundless.

WILLIAM BURGE,
J. B. MONRO.

APPENDIX.

APPENDIX.

(No. 1.) Downing-Street, 16th February, 1838.

Sir,

I am directed by Lord Glenelg to inform you that his Lordship has received from the delegates appointed by the House of Assembly of Newfoundland, an Address from that House to the Throne, complaining of various acts done by you in your judicial character. Lord Glenelg has also received from Captain Prescott, the copy of an Address presented to him by the Assembly of Newfoundland, charging you *with a breach of their privileges in the prosecution for libel* of certain members of that house.

The accusations thus preferred against you by the Assembly of Newfoundland, being connected with the discharge of your judicial office, Lord Glenelg disclaims for her Majesty's Executive Government any right to decide on the questions involved in them. His Lordship has therefore advised her Majesty to refer those accusations for the consideration of the Judicial Committee of her Privy Council; and her Majesty having been pleased to approve of that advice, I am to request that you will report to the clerk of the Council in waiting, your arrival, and your address in London, in order that you may receive from the Lords of the Judicial Committee of the Privy Council the usual summons to attend before them.

I have the honour to be, Sir,
Your most obedient humble servant,
GEORGE GREY.

H. J. Boulton, Esq.

(Copy—No. 2.)

Downing-Street, 6th March, 1833.

Sir,

By the accounts I have lately received of the proceedings of the Legislature of Upper Canada, I have learnt that the Attorney and Solicitor-General of that Province have, in their places in the Assembly, taken a part directly opposed to the avowed policy of his Majesty's Government.

As members of the Provincial Parliament, Mr. Boulton and Mr. Hagerman are of course bound to act upon their own view of what is most for the interest of their constituents and of the Colony at large; but if upon questions of great political importance, they unfortunately differ in opinion from his Majesty's Government, it is obvious that they cannot continue to hold confidential situations in his Majesty's service, without either betraying their duty as members of the Legislature, or bringing the sincerity of the Government into question by their opposition to the policy which his Majesty has been advised to pursue.

His Majesty can have no wish that Mr. Boulton and Mr. Hagerman should adopt the first of these alternatives, but on the other hand he cannot allow the measures of his Government to be impeded by the opposition of the Law-Officers of the Crown. In order, therefore, that these gentlemen may be at full liberty, as members of the Legislature, to follow the dictates of their own judgment, I have received his Majesty's commands, to inform you, that he regrets that he can no longer avail himself of their services, and that from the time of your receiving this despatch they are to be relieved from the duties imposed upon them in their respective offices.

You will transmit copies of this despatch to Mr. Boulton and Mr. Hagerman.

I have the honour to be, Sir,
Your most obedient servant,
GODERICH.

Major-General Sir John Colborne, K.C.B.

(No. 3.) Government-House, 29th April, 1833.

Sir,

I have the honour to acquaint you, in reply to your letter of this day, that the Lieutenant-Governor understands that the part of your political proceedings to which the despatch of the Secretary of State particularly adverts, is, that you and the Solicitor-General promoted the repeated expulsion of a member of the Assembly, although the constitutional objections to that course had been conveyed to his Excellency by his Majesty's Government; and were, it is concluded, communicated by him to you.

I have the honour to be, Sir,
Your most obedient humble servant,
WM. ROWAN.

Henry J. Boulton, Esq., &c., &c., &c.

(No. 4.) Downing-Street, 17th June, 1833.

Sir,

Your return to England has enabled me to afford you an opportunity of submitting such remarks as you were desirous of making, on the despatch addressed by my predecessor to Sir John Colborne, on the 6th of March last, in which the Lieutenant-Governor was directed to signify to you, that in consequence of the course which you had taken as a member of the Assembly in Upper Canada, in certain recent debates, his Majesty had thought fit to dispense with your services as Attorney-General of that Province.

Having considered your explanation with the attention which it deserves, and with the most anxious desire to find sufficient grounds for recommending your case to the favourable consideration of his Majesty, I am happy to announce to you, that as it seems to be clearly established that you were not sufficiently informed of the views of the particular question under discussion which were entertained by the Government at home, and that you had no intention whatever of embarrassing the Colonial Government. The King has been graciously pleased to accept of your further services; and I have his Majesty's commands to offer you the appointment of Chief Justice of Newfoundland, which situation has recently become vacant.

I have the honour to be, Sir,
Your most obedient humble servant,
E. G. STANLEY.

H. J. Boulton, Esq. &c.

(No. 5.) Putney-Heath, August 20th, 1835.

Sir,

I have the honour to acknowledge the receipt of your letter of the 20th instant, enclosing a copy of one which you had addressed to Sir George Grey, upon the subject of a change in your present judicial situation in Newfoundland.

I can easily conceive that the peculiar circumstances of that Island, and of the condition of its society, may impose upon any one called upon to administer justice there, difficulties of no ordinary kind; and that neither irreproachable conduct, strict integrity, nor talent fully adequate to the discharge of high judicial functions, can secure the individual upon whom the discharge of those functions has devolved, from the effects of those vehement and bitter controversial feelings, by which small communities are at least as much agitated as the largest and most civilized countries. It is therefore by no means unnatural that after what has passed in respect to yourself in Newfoundland, you should seek to be removed to some other judicial situation in which your duties could be discharged with more comfort (perhaps I might say safety) to yourself and advantage to the public, than can well be expected in Newfoundland.

When Lord Stanley placed you in the situation of Chief Justice of Newfoundland, he did so with my entire concurrence, which I gave because I was satisfied that your personal character, your legal attainments, and your professional experience, qualified you for such a post; and although in the discharge of my duty I had thought myself compelled to recommend to his Majesty to place another gentleman in the situation of Attorney-General in Upper Canada, that step was not taken by me upon any ground which involved a disqualification on your part for judicial employment, and I am sure that the withdrawal of official confidence from a person holding, as you did, an office during pleasure under the Crown, would never be considered in this country, as a bar to professional advancement, where the connection of the Government and the party concerned would not be of the same character.

I am bound to add that although the explanations which you gave upon your return to England did not, in my judgment, alter the facts upon which I had advised a change in your situation, they did affect the inferences which had been drawn from those facts. You

You are at perfect liberty to make any use you please of this letter, and I am most willing to add, that I am sure that if you are placed in some other judicial situation more suitable to your convenience and comfort, the public will be well served, at the same time that your individual interests will be promoted.

I have the honour to be, Sir,
Your most obedient humble servant,
RIPON.

H. J. Boulton, Esq.

(No. 6.) St. John's, 15th September, 1837.

Sir,

Understanding that it is your intention to visit Great Britain this year, where you will have the opportunity, as well as the amplest means, of refuting the base and libellous misrepresentations which have been so unceasingly made for several years past of your public conduct, by a party alike characterized by their malevolence and their utter disregard of truth; we cannot separate for the circuits, without conveying to you the assurance of our sincere regard, respect, and esteem, and of our unfeigned conviction, that since you assumed the chief seat upon the bench of the Supreme Court of this Island, the laws have been firmly, faithfully, and impartially administered, highly to the advantage of the public, and greatly to the credit of the talent, zeal, and integrity which you have uniformly displayed in enforcing them. We have also much pleasure in adverting to the unanimity that has prevailed in the decisions of the Supreme Court, during the periods in which we have been associated with you on the bench, and we beg you to believe, that we are cheerfully ready to share with you in whatever may be the responsibility consequential upon them. With ardent wishes for your safe arrival in England, and for your speedy return to us, an event which we know to be most anxiously desired by all in this Island who respect the laws, and dreaded by those alone who are ever ready to violate them,

We are, Sir,
With great and sincere respect and esteem,
Your very obedient servants,
E. B. BRENTON, (Assistant Judge, Supreme Court.)
E. ARCHIBALD, (Acting Asst. Judge from Dec. 1833 to July 1834.)
GEORGE LILLY, (Acting Asst. Judge during the years 1834–5 and 6, for more than twelve months.)

To the Hon. Chief Justice Boulton.

(No. 7.)

Mr. Foreman and Gentlemen of the Grand Jury :—

To me it is a matter of extreme regret and deep concern, that the first exercise of the high functions with which I am invested, should be accompanied with circumstances calculated to render the discharge of my duties on the criminal side of the Court, painful beyond all former experience in this Island.

The unusual number, as well as malignant character of the charges which the sheriff's calendar presents for our investigation, would be regarded with feelings of the most painful nature by persons long accustomed to witness those frightful scenes of human depravity, which so frequently occur in the most crowded capitals in the old world, and which become the subjects of judicial investigation in their Courts of Justice; but to you who are living in a thinly populated island, where the kind and hospitable character of the people has hitherto shed a charm over the ruggedness of the hills, and where to love one another seems to have been the leading principle of action, the sudden irruption of those vindictive and malignant passions which have produced the awful catalogue of crimes which are now become the subject of deliberation, must be truly appalling.

Before entering, however, upon the consideration of the particular crimes enumerated in the calendar, I think it right to say a few words upon a subject deeply affecting the interests of those who are to be brought to trial during the present session of this court.

Among the various institutions of the Parent State, none stand more pre-eminently the subject of universal admiration, than the trial by jury, which has been justly styled the Palladium of English liberty; and, in the numerous colonies which she has planted, this inalienable guarantee of British freedom essentially distinguishes her hardy and enterprising descendants from the less-favoured inhabitants of those settlements which have been founded by the other states of Europe. The excellency of this mode of trial in civil proceedings has been universally felt; and so scrupulously desirous were our ancestors to guard their fellow subjects against unfounded accusations before the criminal tribunals, that in all felonies the strong and two-fold barrier of a presentment and a trial by jury has been wisely placed between their liberties and the prerogative of the crown.

To

To preserve the integrity of this most valuable institution from the danger of being invaded, and to secure its advantages in the fullest and most ample manner to those unfortunate persons, who, during the sitting of this court, may upon your presentment be put upon their trial of life or death, I have been constrained to cause an alteration to be made in the manner of impanelling juries heretofore practised in this court.

The trial by jury could never have acquired that height in the estimation of mankind, had it not been a first principle that each juror should be above every reasonable suspicion of bias towards either party, and therefore the right of challenge was coeval with the institution itself. In civil as well as criminal trials not affecting life, these challenges must be for cause shown; but in capital cases in favour of life, so much tenderness and humanity has our English law always extended towards the unfortunate culprit when capitally arraigned, that he is allowed an arbitrary and even capricious species of challenge, which, although by statute 22 Henry VIII., in cases of felony the number has been reduced to twenty, extended, nevertheless, at common law to thirty-five, being within one of three full juries, which is still the law with regard to peremptory challenge in trials for high treason.

This peremptory challenge is grounded upon two reasons:—1st, As every one must be sensible what sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another, and how necessary it is that a prisoner (when put to defend his life) should have a good opinion of his jury, the want of which might totally disconcert him, the law wills not that he should be tried by any one man against whom he has conceived a prejudice, even without his being able to assign a reason for such his dislike. The 2nd is, because upon challenges for cause shown, if the reason assigned prove insufficient to set aside the juror, perhaps the bare questioning his indifference may sometimes provoke a resentment, to prevent all ill consequences from which, the prisoner is still at liberty, if he pleases, peremptorily to set him aside. By the former practice of this court, I find it has been usual for the High Sheriff to summon from day to day, during the term, eighteen jurors only for the trial of all causes, as well criminal as civil, that may then be called on; and that after the first jury has been impanelled, even the remaining six have been allowed to return to their homes, thus leaving the court with only one jury for the trial of every cause during that day. To say nothing of the manifest inconvenience of such a course of procedure by the mere delay it must occasion, it would, if long persevered in, gradually subvert and destroy the integrity of the institution itself.

It may be very convenient, perhaps, for those who have affairs of their own to look after, that the smallest possible number should be required to attend; and it might be regarded as still more convenient by those upon whom the burthen may happen to fall, that even their attendance might be dispensed with, and that all the causes might be tried by the judges without the intervention of a jury at all, so long as they were spared the trouble of any participation in matters with which they had no immediate concern. To such I would reply in the language of one of our most eloquent writers upon English law, "that the liberties of England cannot but subsist so long as this Palladium (the trial by jury) remains sacred and inviolate; not only from all open attacks (which none will be so hardy as to make), but also from all secret machinations which may sap and undermine it, by introducing new and arbitrary methods of trial, by Justices of the Peace, Commissioners of the Revenue, or Courts of Conscience," or under the specious pretext, I would add, of *convenience* to those who are liable to be summoned to attend as jurors, by depriving parties of that fair and impartial selection which a full panel of forty-eight affords the chance of obtaining. And however *convenient* these new methods may appear at first, and however specious the reasons which may be urged to recommend them, yet, let it be remembered that delays and little inconveniences in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters, and that though begun with the best intentions, and in matters to the superficial observer, of little consequence, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern. It is plain, that if eighteen jurors only be summoned, it will be quite impossible for a prisoner to exercise his right of challenging twenty; and as there are upon the present occasion no less than thirteen persons charged in the Calendar with capital offences, I have deemed it my bounden and imperative duty to see, that such a sufficient panel of jurors be summoned as will afford the opportunity to those who shall be capitally arraigned, of exercising that absolute right of challenge which the common law of the land has assured to them.

To gentlemen of your intelligence, I feel that it is unnecessary for me to add any further remarks; and, indeed, I should not have detained you so long with the consideration of a subject not particularly connected with your duties, had I not felt solicitous to explain the grounds upon which I have thus early found it necessary to make so important an alteration in the practice of the court, in order that every person in any way affected by it might see that the change which has been introduced has proceeded solely from an anxious desire on my part to advance the ends of justice, and preserve inviolate the most valuable charter of public liberty—trial by jury.

(No. 8.)

TO THE KING'S MOST EXCELLENT MAJESTY.

The respectful Memorial of the undersigned Inhabitants of His Majesty's Island of Newfoundland.

MOST HUMBLY SHEWETH,

THAT beneath the sceptre of your Majesty there is not a people more distinguished at all times for their loyalty, for their love of the laws, their respect for the constituted authorities, and their firm attachment to the constitution of Great Britain, than the people of Newfoundland; and that they regard as the fairest pillar of that constitution, those laws which, by the Act of Settlement, the 12th and 13th William III. cap. 2, are declared to be "the birth-right of the people of England."

That the natural affection of the people of Newfoundland for your Majesty is immeasureably enhanced by your Majesty's exceeding watchfulness over their interests, evinced by your Majesty's most graciously according to this colony a constitution and an independent legislature. And that they regard his late Majesty's most gracious charter conferring upon them a Supreme Court, to be holden by a chief judge and two assistant judges, as a lasting monument of His Majesty's desire to secure to His Majesty's loyal subjects of Newfoundland the blessings of impartial justice.

That in the Royal charter last alluded to, extended to this country by your Majesty's Royal Predecessor, of happy memory, King George the Fourth, is embodied a provision empowering the Supreme Court "to make and prescribe such rules and orders, touching and concerning the forms and manner of proceeding in the said Supreme Court, and Circuit Courts respectively, the empanelling of Juries, &c., as to His Most Gracious Majesty, his Heirs or Successors, shall seem meet, for the proper conduct of the business in the said Courts."

That your Majesty's Memorialists always regarding this provision with deep feelings of gratitude, enabling, as it does, a local tribunal to suit its practice to the circumstances of the country, while they consider the accompanying limitations and qualifications, whereby a "public and authentic promulgation for three calendar months at least before the same shall operate and take effect," is made necessary; and by which is also required the approval of His Most Gracious Majesty, his Heirs or Successors, to ratify the same. Your Majesty's humble Memorialists consider these "limitations and qualifications" as calculated to secure the public from hasty, capricious, ill-advised or *malevolent* changes in matters of such vital importance.

That in accordance with these provisions of the Royal Charter of your Majesty's Royal Predecessor, of happy memory, a charter founded on, and granted by authority of a British Statute, the Honorable Richard Alexander Tucker, first Chief Judge, and Augustus Wallet Des Barres, Esq. and John William Molloy, Esquire, the first Assistant Judges of the Supreme Court, at the opening thereof, on the 2d January, 1826, did publicly promulgate certain rules, denominated "General Rules and Orders of the Supreme Court of Newfoundland," and did, in compliance with the other provisions aforesaid, after the promulgation thereof, immediately adjourn that Court, in order that the intervention of three calendar months between that day and the next sitting of the Court, might render their operation legal.

That the 12th April following was the first day of the first term of the Supreme Court, and on that day were promulgated certain other rules and orders, denominated "General Rules and Orders of the Circuit Courts of Newfoundland," which other rules and orders were not permitted to take effect for the space of three calendar months; and that from some of these rules and orders before recited, the approval of His Most Gracious Majesty was withheld, while the others were ratified by the Royal sanction; and that thus these rules and regulations thus publicly promulgated for three calendar months before the same were permitted to operate, and thus ratified by His Most Gracious Majesty's approval, as required by the charter, by virtue and under the authority of the 5th Geo. IV. chap. 67, were rendered *virtually* the act of the British Legislature, and *really* that of His Most Gracious Majesty in Council, and of the Supreme Court of Newfoundland.

That amongst these rules and orders, were certain rules directing the manner in which Juries "should" be empanelled, viz.: from the 20th to the 30th inclusively, requiring the sheriff to have his several panels of the juries arranged alphabetically, and to strike each jury consecutively from the corresponding panel, beginning for each new jury at the name next following the last of the last jury; thus rendering it impossible for a corrupt sheriff to pack a jury; and that these rules continued in full force and operation until the close of the year 1833, to the entire satisfaction of all classes of the community.

That in the preparation of these rules and orders much time was taken to deliberate; the judges approached the subject with feelings uninfluenced by prejudice. The Honorable Chief Judge Tucker had been so long in the country administering justice, as to acquire much experience, as well in the practice of the Courts, as in the manners and habits of the people, they were adopted at a moment when every feeling of party lay dormant, and by a tribunal, over which presided as

Chief

40

Chief Judge, a man, who by his sound knowledge of the law, by his peculiarly protective watchfulness of the interests of the poor, and by his equitable adjudications, generally commanded the public confidence; and though a high Tory in principle, sat upon the bench the idol of a Whig people.

That all these bulwarks of British law, and all these barriers erected by your Most Gracious Majesty's Royal Predeeessor, of happy memory, to guard the lives and liberties, the dearest interests of your Majesty's loyal subjects, from danger, have been rendered nugatory by the most flagrant and outrageous violation of your Majesty's most gracious charter.

That on the 31st December, 1833, the Honorable Chief Judge Boulton was sworn into office, and that immediately afterwards upon reciting his charge to the grand jury from a manuscript, he announced, that at some time prior not only to that day on which he had been sworn, but antecedent to the day on which the several juries had been summoned, "*he*" had ordered an alteration to be made in the manner of empanelling juries heretofore practised in this Court.

That the first intimation the public had had of an alteration in their jury system was this *post facto* announcement of the learned judge, and not only had there not been a public and authentic promulgation for three months of a rule of such importance, not only had the approval of your Most Graeious Majesty not been solieited subsequently to such promulgation, and previously to the operation of such rule, but sueh "alteration" as actually and professedly effected at a time when *only one sworn judge* holding your Majesty's Royal Commission or Patent was in the Island at the time, and consequently at a time when no Supreme Court existed, and made too by an *unsworn individual, whose Commission had not even yet been opened.*

That this was the time seleeted for making an alteration so violent, an alteration so hasty, in the jury system hitherto in practiee in the Courts of Newfoundland, an "alteration" of a system formed after mueh deliberation, embracing what was most valuable of Peel's Jury Laws, the Jury Laws of England effected in an instant, before the public had intimation of the fact, an "alteration" made by an individual totally ignorant of the customs of the country, unacquainted with the circumstances of its inhabitants, and utterly inexperienced in the workings of the system altered; of a system formed by an honorable judge from long experience, well acquainted with the manners, habits, and dispositions of the people of Newfoundland; an "alteration" effected by an unauthorised individual, unknown in the country, of a system established by rule of the Supreme Court, ratified by the solemn approval of your Most Gracious Majesty in Council, and sanctioned by the uniform practice of the Court, since the first day of the first term of the Supreme Court, an alteration of a system formed by judges far above all suspicion of being influenced by prejudice, and at a time when every feeling of party was merged in the universal sentiment of thankfulness for a boon so benign, but sueh alteration carried into exeeution at a moment when considerable political exeitement existed, in consequence of an election having been carried by the power of the people, and made at such a time by an individual who came to this country with the character of being rancorously opposed to the liberties of the people, and made secretly and behind the back of the people; "an alteration," in tine, of a system formed by authority of the British legislature, formed by publicly promulgated rule of the Supreme Court, the three judges of which had been previously sworn in open court, and ratified by your Majesty, and your Majesty's Council, under the same awful obligation of an oath to judge in justice; and yet sueh alteration, effected by an individual looked upon hy the people with suspicion, and made by him before the public had even the solitary security of his single oath, that his alteration was not intended to deprive them of that great shield that had proteeted their lives and their liberties under the administration of former judges.

That subsequent to the carrying into effect of this "alteration," in the jury system, one rule of the Supreme Court was made, viz.:—No. 1 of the new rules on the plea side, rescinding all the former general rules upon the subject; but although a similar violation of the former general rules of the Supreme Court for the establishment of a similar system in the Circuit Courts, had also been effeeted, no rule of the Supreme Court has ever since been promulgated to rescind the former rules for these courts; and juries, notwithstanding, eontinue to be empanelled, and property to be eonveyed, and the liberty of the subject restricted, upon the alteration prineiple, infamously and notoriously packed to suit party purposes.

That your Majesty's Memorialists are of opinion, that nothing can more foreibly develope your Majesty's late Predecessor's anxiety to throw the protective shield of the law round the property, the liberty, and the lives of your Majesty's loyal subjects of Newfoundland, than that provision in the same Royal charter, which, while it requires the *annual* appointment of a sheriff, for the due execution of the laws, gives the people the security of an annual oath, and an annual recognizance of nine thousand pounds, for the honest, the impartial, the legal discharge of his duties; but yet, that notwithstanding that provision, no sheriff was appointed, or re-appointed during the year 1833. No sheriff was sworn, nor did any individual, as required by the Royal Charter, lodge recognizances *to any amount in the Supreme Court.*

That nevertheless, the "alteration" before alluded to, so made, and at such a time, was carried into

into execution by David Buchan, Esquire, Royal Navy, pretending to act as sheriff, although without an appointment, without an oath, and without a recognizance.

That before juries thus summoned, by an unsworn sheriff, upon the authority of the dictum of an unsworn judge, several individuals have been tried for their lives, convicted, condemned te die, and such sentence carried into execution by tho aforesaid David Buchan, Esquire, pretending to act as sheriff.

That it is provided by the said Royal Charter, that upon the departure from the Island of the sheriff, another sheriff shall be appointed by the Governor, shall be sworn, and shall enter into the aforesaid recognizances, but that although the said David Buchan did, early in the year 1834, leave this Island, and go to Great Britain, yet not only was another sheriff not appointed nor sworn, but *an unsworn sub-sheriff* continued to act for tho aforesaid David Buchan, Esquire, and writs were executed, professing to be signed by the said David Buchan, and even by the said unsworn sub-sheriff, a man who has acted for years in succession, (as your Majesty's Memorialists believe, contrary to law), in the same capacity of sub-sheriff, without an oath, by such officer, pretending to be a sub-sheriff, when no such officer any longer existed as high sheriff. By such a man was the capital sentence of the Supreme Court, passed in consequence of the verdict of the juries before alluded to, carried into execution.

That your Majesty's Memorialists regard the charters of their King as the palladium of their liberties, that they always looked upon their provisions as fixed and immutable, save only by authority of the Parliament of Great Britain. That thinking thus, they felt their liberties secure, and approached with confidence tho bench of justice, but that they look upon the alteration of the jury system by the Honorable Henry John Boulton, as a violent and radical subversion thereof, and as presumptuously substituting his capricious will for the wisdom of the British Senate, the Council of the King, the Supreme Court of Newfoundland, and the Monarch of Great Britain.

That during the administration of Judge Boulton, no acting judge appointed in the absence of Assistant-Judge Des Barres, has been permitted to retain his commission, save only during each term or session of the Supreme Court, and that consequently all the functions by Royal Charter permitted to be fulfilled only by the Supreme Court, the granting administrations or probates, the appointing of guardians, &c., &c., have been fulfilled by an unauthorized tribunal.

And that your Majesty's Memorialists therefore feel that under such a system—if the long established rules of the courts can be broken without an instant's notice; if the functions of the Supreme Court can be usurped by one or two individuals; if public officers can be permitted to act officially without those guarantees for good and honest conduct, which the laws require, if juries can be summoned by persons not under the obligation of an oath; and if life can be abstracted under colour of law, by parties whom the laws recognize not as qualified, your Majesty's humble Memorialists feel that liberty is uncertain, property insecure, and life in peril. Your Majesty's Memorialists feel that if those extraordinary circumstances are permitted to be enacted today, they may again be enacted to-morrow, and those proud institutions intended to promote the happiness, and insure the prosperity of your Majesty's loyal subjects, be made to the dark designs of those who for purposes the most corrupt, would feign subvert the constitution.

That further your Majesty's Memorialists are of opinion, that it is peculiarly the duty of a judge to stand apart from every party, nor mix his name with public discussion, whether political or religious, and that it is only by pursuing his course upon these principles, that he, to whom is delegated to administer justice *to all*, can soar above the suspicion of partiality, but that in place of thus standing the chartered mediator between *all* parties, the Honourable Henry John Boulton has signalized himself all through by his attachment to a party distinguished in their religious principles by illiberality, and in their political feelings by hostility to the public interests.

That publicly assuming the leadership of that party, he, (the Honourable Chief Judge,) publicly declared it his opinion, that Catholic must essentially be opposed to Protestant, and Protestant to Catholic; and that it is the solemn conviction of your Majesty's Memorialists, that any man professing publicly such principles, nay, any man not publicly repudiating such principles, when publicly imputed to him, is utterly incompetent to hold with an even hand the balance of justice.

That upon the occasion last alluded to in his character of leader, he, the Honourable Judge, used all the influence of his position, and all the weight of the bench, giving the judges chambers as a place of meeting, for the purpose to plunder the people of a charitable institution, founded in the year 1802, by his Excellency Admiral Gambier, then Governor, and the Right Reverend Doctor O'Donnell, Catholic Bishop of Newfoundland, for the express purpose of amalgamating Protestant and Catholic, by affording a virtuous education to the children of Catholic and Protestant parents, without reference to their respective creeds; an institution which though from its foundation invariably superintended by a Protestant master, and Protestant mistress, was supported by the subscription and countenance of every Catholic Bishop and Catholic Priest in Saint John's, and by the Catholic people generally, the Catholic Bishop and Catholic Clergy, as well as the Protestant Rector, being members of its committee.

That the strongest principles of party leaning have exhibited themselves in the description of evidence

evidence admitted in the courts, the widest latitude being given to one class, and the strictest restriction exhibited towards the other; and that in his adjudications generally, he (the Honorable Chief Judge), has given reason to believe that the religious or political principles of parties litigant under his, (Judge Boulton's) administration, are a surer passport to sway him in his decisions, than the abstract justice of their causes.

That this has been strongly exemplified in the persecution of Robert John Parsons, Printer of the PATRIOT newspaper, a journal opposed in politics, and that had boldly animadverted on the mal-administration of the law by the Honourable Judge, condemned by the Honorable Judge Boulton himself, to pass not the residue of the term of the court, but three calendar months in the most *loathsome dungeon* of the common gaol: and not only that, but to pay a fine of fifty pounds sterling for an alleged contempt of the Central Circuit Court, conveyed in a paragraph of that paper, commenting upon a most unconstitutional charge of that honourable gentleman, although that high-minded young victim by affidavit, asserted his entire innocence of the charge of contempt; and that in every step taken in that case, the honorable judge developed not only the strongest party leaning, but a cruelly vindictive determination to extinguish a *spirited public journal*, the more effectually to secure the subjugation of a free people.

That in charging the jury in another attack upon the same journal, at the same term of the same court, the same spirit was strongly manifested in the case of Garratt *versus* Douglas and Parsons, for an alleged libel, as proprietor and printer of the PATRIOT newspaper, the honourable judge having used the following expression:—"*You are to judge of that paper (the Patriot,) with exactly the same feelings as you regarded it on the morning of its publication; your having taken an oath here does not alter the matter;*" thus implying as your Majesty's memorialists believe, that the juror's oath to return a verdict *according to the evidence*, need not be regarded, but that the best criterion whereby to estimate the value of the publication, was not the evidence, but the excited and exasperated feeling called up by its first perusal. And that further on the same charge, on the subject of ascertaining damages, the honourable judge remarked, "*In considering the amount of damages, you are bound to give such damages as you would think equitable, were you individually parties in this cause. I do not mean to say, if you stood in the position of the defendants, but such damages as you would think fair if you stood in the calm and dispassionate situation of the plaintiff.*"

That your Majesty's memorialists humbly and respectfully urge, that an honourable individual deemed by your Majesty not worthy to fill the office of Attorney-General in Canada, yet promoted to the advanced position of Chief Judge in Newfoundland; an honourable individual, who, upon landing upon the shores of this country, commenced his career by subverting the Jury Laws, before he was sworn, thus depriving your Majesty's loyal subjects of the advantages of the British Constitution, whose second act was to fling a slur upon the dignity of the Supreme Court, by dragging from the bench the only remaining one of the first chartered judges, Assistant Judge Des Barres, and forcing him to hold up his right hand at the bar, as a criminal in that court, upon the bench whereof his right to sit was delegated to him personally by the charter, upon a paltry charge of misdemeanor, trumped up by an individual usually employed by the honourable judge as an informer, which charge was scouted from the court by an honourable jury, and elevated to his (Judge Des Barres's) seat, an individual (the Clerk of the Court,) who had never acted in the courts in any other character than as the servant to the bench, schooled in obeying the dictum of the court; and not content with this, but still following up the persecution of the same Assistant-Judge Des Barres by an unconstitutional private inquisition in the judges' chambers, the minutes of which lie before your Majesty, in the office of your Majesty's Right Honourable Secretary of the Colonies; an honourable individual, who, in violation of the principle laid down by former judges, forbade the public to approach the courts even for the purposes of petition, save through the members of a bar, not possessing public confidence:—an honourable judge, passing sentence of death upon parties convicted without sufficient evidence, and suffering such convictions to be carried into execution by individuals not legally authorized, and illegally permitting a man to continue for ten months in prison on suspicion of murder, without having a bill of indictment preferred against him:—an individual remarkable in his overweening desire to have all power centered in himself for having altered the constitution of the Legislative Council, requiring five to form a quorum, and himself to be of that number, and exhibiting his love of innovation by first altering the name of the President of the Council to that of speaker, until corrected by your Majesty's Government, and even since refusing to adopt the rejected title, but in his messages to the House of Assembly merely signing himself Henry John Boulton, without any addition whatsoever:—an honourable individual acting in the three-fold capacity of Legislative Councillor, Executive Councillor, and Judge, one day recommending the enacting of laws, the next assisting in their introduction, then advising their execution, and a fourth passing judgment in accordance with that advice:—an honourable individual distinguished for bigotry, illiberality, and intolerance, and permitting those feelings to influence his decisions in the courts:—an honourable judge in fine, who, upon every occasion from the bench, marks his hostility to the humble classes of society, superciliously and insultingly, as well

as

as falsely upbraiding the aforesaid Robert John Parsons, the high-minded son of a British naval officer, with ignorance, and a standing in society inferior to him, (the Honourable Judge Boulton,) and breaking down the customs of the country, established for the protection of the Fishing Servants, customs sanctified by the uniform usage from time immemorial, and ratified by the undeviating practice of the courts, and the uniform decisions of former judges, the custom of giving the servants, no matter by whom employed, a lien upon the proceeds of the voyage in the hands of the supplying merchant, construing the law as opposed to securing to the fisher his wages, and thereby striking at the very existence of the fishery of Newfoundland.

That this rancorous hostility to the interests of the poor has been more sensibly developed by the same honourable individual in his character of President of the Council, by his successfully exerting himself to throw out a bill introduced into the House of Assembly by petitions of the merchants of St. John's, who were actuated by fears for the consequences to the Colony of these illegal decisions, a bill, having for its object to secure to the fisherman his wages. This bill passed the House of Assembly, a body principally composed of merchants engaged in the fishery; but it was flung out of the Legislative Council, *the great majority of the members of that body being individuals unconnected with the country and not interested in its welfare, not sympathizing with the poor, or solicitous for their improvement, but merely persons holding situations under Government, and appointed in England through the influence of the Honourable Judge Boulton*, and that by introducing a law to incorporate a bar of unqualified individuals, and ordering that no person should approach the court, and that no petition or memorial should be received by the bench but through that bar, he shut up the avenues to justice against the poor; that in accordance with this "order," the court at the first term of the Supreme Court in 1834, insultingly refused to take cognizance of a memorial from the Catholic Bishop of Newfoundland, although presented by that respected Prelate through the Clerk of the Court, who was a member of the bar, alleging it was not presented through the bar; and although the object of that memorial was for mercy for an unfortunate man condemned to death before the same honourable judge the day before, and who was to have suffered death within forty hours after, *although perfectly innocent of the crime for which he was about to suffer*, and only condemned through that criminal leaning of the Chief Judge to oppress the humble.

Your Majesty's Memorialists humbly and respectfully urge that such a man is not a person in whom a people could ever entertain that confidence that is essential for the due administration of justice, to be reposed in those who hold its balance, and the groaning under these oppressions, and labouring under these grievances, they, your Majesty's Memorialists, approach the foot of your Majesty's august throne, they fling themselves with confidence under the protection of your Majesty's sceptre; they implore your Majesty to direct that prompt investigation be made into these violent, these flagrant abuses; they pray your Majesty to institute inquiry into the violations of your Majesty's charters, and of the constitution above recited; and if your Majesty shall find, as your Majesty's Memorialists feel confident you will, the premises are based on facts incontrovertible; they, (your Majesty's Memorialists), humbly and respectfully pray your Majesty to purify the bench of justice, to order the removal from the office of all those who shall have been found offending: and they finally beseech your Majesty to assert the supremacy of the law, and vindicate the Royal prerogative, maintaining the inviolability of the Royal charter, by directing that the necessary steps be taken to visit the guilty with due and condign punishment.

And your Majesty's Memorialists, as in duty bound, will ever pray.

William Carson, M.D. and M.C.P.; Patrick Morris, J.P.; Patrick Doyle, J.P.
John Kent. M.C.P.; James Douglas; Thomas Beck.
Patrick Mullowney; John O'Mara; Law. O'Brien; John Dillon.
William Doutney; Timothy Flannery; Simon Morris; John Valentine Nugent.

N.B. The above are the only genuine signatures to the petition. The remainder of the alleged 5000 signatures are affixed to sundry sheets of paper annexed to the petition, and which signatures, upon an inspection, will be found to be almost wholly in the hand writing of a few persons.

(No. 9.)

EXTRACT FROM HANSARD'S PARLIAMENTARY DEBATES, 1835, Vol. 30, p. 672.

Mr. O'Connell—It appeared that in 1826 the names of the juries were arranged in alphabetical order, and the jurors were directed to be called consecutively in that order. This was a perfectly fair mode of arranging a jury, without reference to party politics, or religion.—This was the case till Judge Boulton was appointed Chief Justice, and his first step was to abolish the aormer jury process. The result as the petitioners complained was that, instead of having an impartial jury, the jury box was now packed to suit party purposes.

Sir Geo. Grey could not but regret that such a petition should have been presented.—With respect to the juries he thought that Mr. Boulton had acted very properly, for in place of having a list of only 18, taken alphabetically, he had instituted a system by which 48 names were now taken in the same manner as in this country.

(No. 10.)

MR. RICHARD SULLIVAN,

To THOMAS RIELLY, Dr.

To overcharge on Spirits	£1	5	7
Washing	0	8	0
Splitting Knives	0	4	3
Bake pot	0	1	0
Court Charges	0	9	4
Priest	0	7	6
20 days work after the expiration of my time	3	6	8
To amount of wages	20	0	0
	£26	2	4

Cr.

By amount your account	£4	18	10
Do. Codner and Jennings' account	6	17	9
	£11	16	7
Balance due	£14	5	6

Equal to £12 5 0 Sterling.

IN THE SUPREME COURT OF NEWFOUNDLAND.

Between { Thomas Reilly, Plaintiff and R. Sullivan and Codner and Jennings, Defendants.

Plea—Non assumpsit.

(Signed) W. B. ROW, Defendant's Attorney.

30th December, 1833.

COPY.

Summons in Assumpsit.

WILLIAM the FOURTH by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. &c.

To the Sheriff of Newfoundland, and his Deputies, Greeting,

Command Richard Sullivan and Codner and Jennings, of St. John's, that justly and without delay, they keep with Thomas Reilly the promise made by the said Richard Sullivan, and Codner, and Jennings, with the said Thomas Reilly according to the force, form and effect thereof; and if they shall refuse to pay the same, then summon they to appear in Our Supreme Court of Judicature, in Saint John's, on the first day of next term, to shew cause wherefore——will not do it, and you are commanded to make return of what you shall do upon this Writ, at the time and place above mentioned.

Witness, the Honourable Henry John Boulton, Chief Judge of the Supreme Court, Saint John's, Newfoundland, the 25th day of November, in the 4th year of Our Reign, 1833.

(By the Court,)
(Signed) E. M. ARCHIBALD,
Chief Clerk, Supreme Court.

Signed, Geo. H. Emerson, Attorney.
£12 5 0 Sterling.

N.B.—A Bill of the particulars of Plaintiff's demand, must always be annexed to this Writ at first issuing; and a Copy of the Writ must be left with the Defendant.

N. 11.

(No. 11.) *Extract of a Report of Chief Justice Tucker, and Des Barres and Brenton, in August, 1831.*

5. *Geo. IV. c. 67, s. 25.* Whether those *preferences in payment* which are secured to certain classes of Creditors by this section, are or are not, conducive to the true interests of the fisheries is a "*vexata quæstio*," upon which the opinion of the merchants is now very much divided. The *Chamber of Commerce* did, indeed, about the end of the year 1828, come to a resolution that the privilege of the creditor for supplies ought to be abolished; and we were led to believe that there was a very general, if not an universal, concurrence among commercial men in all parts of the island in this sentiment: but we have lately had an opportunity of ascertaining that *there are some merchants in this town, of the highest respectability, who are so far from coinciding in the view which the Chamber of Commerce have taken of this subject, that by them the repeal of the Law of Current Supply is regarded as the certain* DEATH BLOW *to our fisheries.* Under such a contrariety of feeling among persons whose situation in life must have prompted them to investigate this question with a more scrutinizing attention than we have been able to give to it, we wish *we could consider ourselves at liberty to decline any discussion of it.* As the Secretary of State will, however, probably desire to be furnished with our opinion, in order that he may throw the weight of it *into one of the scales if an exact equipoise should otherwise seem to exist between them,* it will be our aim, in conveying our opinion to his Lordship, to lay before him also the *reasons* upon which it is founded, in such a manner as will enable him to determine what degree of credit ought to attach to it.

The practice of remaining in this island during the winter, in opposition to the policy of the British Government, had not taken deep root before the merchants on the other side of the water began to perceive, that the fisheries could be carried on with MORE advantage by *these residents* than it could be either by the *fishing ships*, or by the *bye-boat keepers* who annually returned home; and they accordingly came forward with great alacrity to advance those residents, (who acquired, *probably from their connection with the soil*, the denomination of PLANTERS) all the supplies necessary for the prosecution of the fisheries. In a pursuit, however, which is exposed to all the vicissitudes of weather, and to various other casualties, instances of failure must occur very frequently; and as the planter's ability to pay for the supplies he had received depended wholly upon the success of his voyage, the merchants who had furnished those supplies became alarmed the moment they saw any cause to apprehend that the catch of fish would not be a good one. The fears of all the creditors of the planter being thus excited, each of them strove to obtain the earliest possible settlement of his account, by seizing all the property of the planter he could any how lay his hands on; and, in their several struggles for the attainment of this object, they often injured one another, besides ruining the unfortunate planter, by carrying off the fish before it was properly cured, and by putting an end to the voyage before the chance of taking more fish had entirely ceased. To prevent the fatal mischief resulting from such a system, the rule of *lien for wages*, and of *preference in payment for Current Supplies*, was first introduced by *Custom*, and afterwards sanctioned by *Law*. Nor can it be doubted but that in a state of society where, from the absence of all independent and impartial Courts of Justice, "*force* had usurped the privilege of *right*, and strength had become lord of imbecility," such a regulation, whatever exceptions it may otherwise be open to, must have proved practically beneficial, by removing those motives for the enforcement of immediate payment which had produced strife and contention, accompanied with serious loss among the creditors; exposed the poor planter to complete ruin; and inflicted a very severe injury upon the general interests of the fisheries. The merchants, however, were not slow in discovering that the lien upon the catch of the voyage which the servant was indulged with as a security for the payment of his wages, *had a direct tendency to lessen his interest in the success of the enterprise*, and, by consequence, to relax his exertions, as soon as he had perceived that there was fish enough caught to pay all the wages; and they stoutly maintained, that the *labour* which was employed in the fisheries ought only to be put, in respect of payment, upon the same footing with the *food* which was consumed in the prosecution of them, as the one was just as essential to them as the other. But whilst they protested and remonstrated against the *superior advantages* which by means of their lien the servants enjoyed over them, they did not scruple to push *their own privileges* very much beyond their due and natural limits, by extending those preferences in payment which the Law intended to *confine to debts contracted for supplies necessary to the fishery*, to debts contracted by the planter *for articles which had no real connection with it*, and by applying a rule which could only be salutary where, as in the instance of the *planter*, it is requisite to supply the want of *capital* by substituting *credit* in lieu of it, to the case of the *most extensive merchant*, and in fact to that of *every class of persons* who might happen to become *insolvent* in this Island. In these attempts they were for a long time assisted by the *Courts, which were far too feeble to oppose themselves*, even if they had wished to do so, to the united force of the mercantile body; and accordingly when *Mr. Forbes* was appointed Chief Justice of this Colony, it had become a generally-received doctrine, that the expression "*Current Season*," was synonymous to *Year;* that the word "*supplies*" included *every article* that could be bought and sold; and that the

estate

estate of *every person* who was declared *insolvent* was liable to be distributed according to the law of *current supply*, whether he had, or had not, been directly engaged in the fishery. To an understanding enlightened like his, the decisions of the *Surrogates*, upon which this system had been built, appeared contrary to the principle by which the rule of current supply ought to be governed, and at the same time so injurious to the general interests of the trade of this Island, that he did all in his power to *reform a practice* which was too firmly fixed to admit of its being *altogether removed* by him; and, thro' his efforts, seconded by subsequent parliamentary enactments, the *most prurient and worst excrescences* upon the law of *Current Supply* have been happily lopped off. Yet even in its present amended state we strongly incline to think, that the evils which spring from it, in conjunction with its *twin-born sister regulation* of "LIEN FOR WAGES," greatly preponderate over the advantages which are supposed to be derived from these preferences in payment. The argument by which it is attempted to maintain the necessity for their continuance is, that the merchant will not advance supplies to the planter, nor the fisherman engage in his service, if they should be deprived of any part of their present privileges; and that the planter being thus stripped of *credit*, would no longer be able to prosecute his employment. And assuming that the truth of this proposition cannot be controverted, its supporters at once proceed to deduce from it, as a necessary corollary, the *destruction of the fisheries*—the *extinction of the trade*—and the *starvation of the inhabitants of Newfoundland*. But though we are *fully sensible* that the *most serious mischief* might be produced by the absence of that care and caution which should always be observed in overturning ancient usages, *even when they rest upon foundations notoriously wrong*; and though we unhesitatingly admit, *that the Credit which is the offspring of preferences in payment ought not to be extinguished unless Credit erected on a firmer basis can instantly be substituted for it*, we are at the same time so much persuaded, that *such a substitution would take place, if the abolition of the law of current supply, and lien for wages, were* GRADUAL and PROSPECTIVE, that we have little hesitation in recommending, that for one year from the passing of another Act of Parliament the privileges of the servant and of the current supplier shall continue on exactly the same footing on which they now stand by this section—that after the end of one year the lien shall be taken away, and the preference of the supplier for the current season over the one of the preceding season shall also cease and determine—that creditors for wages that may become due in the second year after the passing of a new Act, and for such supplies necessary for the fishery as may bona fide have been furnished to the planter within two years from the passing thereof, shall *rank together* in the same class of *privileged creditors*, and shall be entitled to be paid 20*s* in the pound before any other description of creditor shall be admitted to participate in a dividend of the *Insolvent's Estate*, provided the Insolvency shall be declared in one of the Courts within two years from the passing of the Act—and that all debts which shall be contracted by any person after the termination of two years shall thenceforward be paid before all debts of an earlier date; but that among the debts that shall be so contracted, from the commencement of the third year, no preference or privilege to *demands for wages* or to *claims for current supplies* shall in any shape whatever be granted or allowed.

Such notice will thus, we think, be given of the intention to abrogate the law of preference in payments, and such precautions used in preparing the way for its extinction, as will entirely prevent those inconveniences which might arise from the annihilation of the Credit which was built upon it before sufficient time had been allowed for the formation of another description of Credit upon a safer bottom: and, as the success of all attempts to introduce changes into an old system must principally depend *upon the existence of circumstances favourable to the contemplated alteration in it*, we have much satisfaction in adding, that various events connected with the trade of this country have for several years past been so gradually leading to the disuse of the privileges of the Current Supplier, that we are persuaded their ENTIRE REPEAL may now be effected with perfect ease and safety, provided a moderate share of prudence and caution is observed in the mode of doing it. The mere practicability, however, of innovation can never, we are fully aware, justify a departure from a long-established system, unless it can be clearly proved that the system is of such a nature as to call for a change; and we therefore feel it necessary to advert to some of the most prominent of those pernicious consequences resulting from the *lien for wages*, and the *preferable payment of current supplies*, which induce us to desire their entire abrogation. We do not scruple, then in expressing it as our opinion, that, through the *joint operation of those practices*, the following evils have been either *wholly produced or materially increased and aggravated* in those instances where their origin may more properly be ascribed to *some other causes*:—

1st.—Idleness and drunkenness among the labouring classes;

2nd.—Loss to the merchant, and ruin to the planter, from the means which they have furnished to the latter of carrying on the business of the fishery upon credit founded *on a false and destructive principle*;

3d.—Extensive litigation; accompanied with all the bad feelings and heart burnings which it never fails to engender:

4th.—Numerous insolvencies:

5th.—And, as a *general consequence* naturally flowing from the several *particular effects* already specified, the *most serious injury to the fisheries and trade of the Island.*

Among all the feelings which influence human beings, there is unquestionably none so universal or so powerful, as SELF-INTEREST; and accordingly the exertions of mankind in any given pursuit will invariably be in *the direct ratio of the force with which this feeling is connected with the attainment of the object proposed.*—Hence it is obviously desirable, that it should, as much as possible, be *kept constantly alive*, and made to act unremittingly, in every department in life, from the highest offices in the State to the most humble situation in which human agency can be employed; but there are *some occupations* which demand that a *direct and immediate interest* in their success should be presented to the view of those engaged in them with *an intensity of operation* which is not so *absolutely requisite in others;* for, if an occupation be in its nature *extremely laborious and hazardous*—if it be attended with *the privation of many comforts*—and if those who have the direction of it *possess little authority over the subordinate agents*—a sense of their own interests, continually acting on their minds, can *alone* excite these agents to those efforts which necessarily cost them considerable pain. And this is so precisely the character of the *fisheries* that it seems to us impossible that they can be carried on in the manner they ought to be, unless the fisherman shall be stimulated, *by the consciousness that he has a direct share in the proceeds of the voyage, to render it as productive as he possibly can.* In the SEAL-FISHERY, indeed, it is generally allowed, that every person engaged in it must have a share of the seals caught by him; and though the peculiar dangers to which the persons who follow that branch of the fisheries are exposed, may make the plan of service upon wages still more unsuitable to it than it is to the Cod-fishery, there is yet a sufficient resemblance between the two branches, in several material points, to convince those who look into the subject with strict impartiality, that a system which would be altogether fatal to the one, must also be, to some extent, injurious to the other. But the cupidity of gain, however delusive the prospect of realizing it may be, will continue to maintain the practice of conducting the Cod-fishery with hired servants, so long as men who have no capital, and consequently nothing to lose, shall be able to obtain supplies, and to hire servants, upon the credit which the law of current supply, and of lien for wages, now secures to them; and at the same time the fisherman, instead of being furnished with an incentive to industry, by an interest in the fruits of his toils and labours, is actually encouraged to idleness by an assurance that it signifies not a jot to him whether the catch be great or small, provided the amount of the proceeds of the voyage shall be only large enough to pay the wages that are due out of it. Nor does an interest in the success of the enterprise, even to the trifling extent of covering the wages, act upon each individual with due force: for as each man in a boat has the same lien upon the fish caught by his comrades as upon that which is taken by himself, those who are idly disposed will be prone to rely less upon their own exertions than upon the efforts of those whom their own bad example will have a strong tendency to corrupt; and thus the law, by giving to the idle man an interest in the labour of the industrious one, confirms the one in his idleness, and tempts the other to imitate it. But in this country, where rum is so excessively cheap, drunkenness is, among the lower orders, the inseparable companion of idleness, or rather they stand toward each other in the relation of effect to cause: and therefore whatever has a tendency to create the one must likewise produce the other.

If it be true, as it certainly is, that the evils which take place in all transactions between man and man, from the absence of integrity on either side, can never be effectually prevented by any regulations which the acutest and most sharp sighted genius can contrive, it must follow that a system which lessens the attention that ought always to be paid to character, by substituting preferences in payment in lieu of honesty and skill on the part of the planter, must in the end prove detrimental to the merchant: and if the fact that the law of current supply has done so can be established by the experience of those who have trusted to it, since the monopoly of the fish-markets which this country enjoyed during the war has ceased, we are convinced, that, in a great majority of instances, the merchants who have advanced supplies chiefly on the security which that law professes to confer on them, have had deep cause to regret the confidence they reposed in it. But whatever loss it may have occasioned to the merchants, the planters, taken in a body must have been still greater sufferers from it: for by enabling persons, who are in no respect qualified to sustain the character of an useful planter, to obtain supplies, and to hire servants, it has kept the price of the former, and the wages of the latter, so much beyond what the fisheries under their present circumstances can bear, that many of them who have amassed large sums of money in the golden days of these fisheries, are already very nearly reduced to poverty; whilst others, whose funds were more limited, are altogether sunk in hopeless ruin. In short, the planters who, destitute of capital, devoid of knowledge, and deficient in principle, have sprung up wholly from the law of preference in payments, have destroyed those planters who, together with a competent share of knowledge and experience in the conduct of the fisheries, possessed also some property—just as Pharaoh's lean kine ate up the fat ones.

It is so obvious that all privileges conferred on particular classes of creditors must tend to pro-

duce

duce controversy between them and those who are excluded from the same privileges; the one eternally striving to push them much *beyond*, and the other as zealously endeavouring to confine them as far within their legitimate bounds: that we shall refer to the records of the courts of Newfoundland for the sake of shewing how numerous the pretences are which ingenuity, goaded by interest, has devised in the conflicts which these privileges in respect to payment gave birth to, rather than from any idea that it can be necessary to offer proof of a proposition which must be regarded as an *axiom*. It is, indeed, curious to observe how this law of preference has entered into, and blended itself with, the greater part of the questions that have come before the courts, in such a manner that the largest portion of those bitter waters of legal strife which have hitherto so much abounded in this colony has manifestly been "EX HOC FONTE DERIVATA."

The most singular property of the law of Current Supply is, that it at once tends to *create* credit and *destroy* it; for as the preference in payment occasions an issue of supplies in many cases where they ought to be denied, so the fear of losing this "vantage-ground," by neglecting to enforce an early payment, frequently urges the supplier to insist on a settlement much sooner than he otherwise would be inclined to do; and thus the law, like a most unnatural parent, cruelly suffocates its own offspring almost as soon as it has "stepped over the threshhold of life." That insolvencies should follow in the train of such system may reasonably be expected; and that they *have actually done so* is too certainly attested by the melancholy list of them which the records of these courts will exhibit.

If the truth of our four first propositions has been established by these observations, we may fairly assume, as a general deduction from the whole, that the law of lien for wages, and preferable payment for current supplies must be highly prejudicial to the prosperity and happiness of the people of Newfoundland; and as we have before attempted to explain the manner in which we conceive that it may be abolished without depriving this community of any counter-benefits they may be supposed to have derived from it, we shall now dismiss a subject upon which we have dwelt with an interest and zeal commensurate with its extreme importance to the welfare and prosperity of this colony.

(No. 12.)

Extract from the report of the Attorney General on the Fishery Laws. February, 1832.

Stat. 5 Geo. IV. c. 67, section 25. This section involves a point which, of late years, has given rise to the expression of divers opinions, viz.,—*Privileged claims of Debt.* When Newfoundland was altogether, or for the most part, a transitory fishery carried on by ships, then these distinctions, growing out of maritime law, were well applied. But I conceive that as the principal reasons on which they were originally founded no longer prevail as a general rule under the altered mode of trade, that it would benefit the community at large *to abrogate privileged debts and claims of this sort altogether*, as well in respect to fishermen and other servants in the fishery, as to the merchant or the current supplier.

I have reflected much on this point, and my long experience in the colony has, I think, enabled me to estimate justly the degree of good and evil produced by the law as it now exists, during the course of the last twenty years. And my opinion is, that these distinctions have been productive of more evil than of good. Their abrogation would leave untouched any priority of claim, or election of parties to sue, which seamen, *as such*, possess under the maritime law of England. Fishermen and other fishing servants, doubting the character or responsibility of the hirer, would have the election of hiring on the shares (in lieu of wages); and good masters and good servants would acquire a better and more just station than that now held under the present rule; and so also would it prove with the honest and industrious planter. The bad or dubious among each class would find the necessity of reformation; or at least have a strong incitement to retrieve and sustain character and confidence: and I am persuaded that it would diminish greatly the frauds but too frequently practised, but difficult to detect, of collusive claims contrived between dishonest planters and their servants.

(No. 13.)

To the Right Honourable the Lords of a Committee of His Majesty's Most Honourable Privy Council, appointed for the consideration of all matters relating to Trade and Foreign Plantations.

May it please your Lordships.

In obedience to your Lordships commands of the 26th of April last, we have considered the question to us referred, and are of opinion that if fish or oil taken by fishermen be by the master of such fishermen fairly and *bona fide* sold and paid for, such fish or oil cannot in the hands of a vendee be made liable to the wages of such fishermen, but such fish or oil in the hands of any person claiming under the master of such fishermen, such as assignees in case a commission of bankrupt was issued against him, or in the hands of any person who had not paid a fair and valuable consideration for it, would be so liable. We are of opinion, therefore, that if the

the vendee had not paid for the fish or oil upon notice given of the fishermen's wages being due, it would be his duty to retain, or if he refused so to do, that a *Court of Equity* here would, and that *a court at Newfoundland therefore ought to restrain the payment of the money* so due for the fish or oil until the wages were discharged.

This distinction between a purchaser and persons claiming under the party is adopted and reasoned upon in the case of Stracey and another, versus Halse, reported by Douglas 395, and also in the cases subjoined thereto by way of note. In order to affect the fish or oil in the hands of a *bona fide* purchaser, we think that the words used in the statute of 15 Car. II., c. 11, s. 13, "into whatsoever hands it shall come, or by whatsoever conveyance, or title claimed" ought to be added. But whether it would be prudent to subject fish or oil taken by fishermen to the payment of their wages in the hands of a fair purchaser without any previous notice given of their demands, we submit to your Lordships' consideration.

(Signed,)

R. P. ARDEN,
A. MACDONALD.

May 10th, 1778.

(No. 14.)

Statement of Mr. Robinson.

Having seen a petition lately addressed to his Majesty by Dr. Samuel Carson, respecting some proceedings which are stated to have taken place with reference to an action for defamation recently tried in the Supreme Court, between the petitioner as plaintiff, and Mr. Keilly, in which I was one of the counsel for the defendant; and as my name is mentioned in the petition, and assertions are made therein which I happen to know are incorrect, it is but right that I should contradict some of those allegations which are, within my own knowledge, untrue.

As regards that part of the petition which alludes to a visit made to a man named Mulcaby, I can only say, that I know not such a person. I never visited, in company with the Chief Justice, a person answering the description given of Mulcaby and his family, and I never heard the Chief Justice make any such examination as Dr. Carson says he heard of, and believes.

With respect to the observations which are stated by Dr. Carson to have been made in court by the Chief Justice after he (Dr. C.) had elected to become nonsuit in his action against Mr. Keilly, I must say, that none such were used. I was in court during the whole of the said trial, which lasted nearly two days. The Chief Justice animadverted in strong terms upon the facts which the plaintiff established against himself by his own witnesses; and he explained the legal liabilities to which all professional men, attornies and others, but especially medical men, subjected themselves in case of negligence or gross unskilfulness; but, certainly, he did not use the language attributed to him by Dr. Carson, or any of a similar meaning and import. The observations were such as, I apprehend, any judge in England under similar circumstances would have felt himself constrained to make: the Assistant Judges appeared to acquiesce in what the Chief Justice said: and the Special Jury, who had heard the plaintiff's side of the case, and who had not quitted their box, arose, and stated, in effect, that they would not be doing their duty if they did not express publicly their unanimous concurrence in the propriety of all that had fallen from the court.

BRYAN ROBINSON.

St. John's, 8th August, 1837.

(No. 15.)

Letter from Mr. Row to Mr. Archibald.

St. John's, August 10, 1837.

Dear Sir,

Having seen a petition from Dr. Samuel Carson to her Majesty, complaining of the conduct of the Chief Justice in the several actions of Samuel Carson *v.* Edward Keilly, and Charles Antle and Jane his wife *v.* Samuel Carson and John Rochfort; the former in the Supreme and the latter in the Central Circuit Court; and having been the leading council for the defendant in the former cause, and sole council for the plaintiffs in the latter, I think it due to the Chief Justice to offer, through you, the following remarks upon it:—

In reference to the action, Carson *v.* Keilly, it is alleged in the petition that the plaintiff had called for a nonsuit in consequence of Mrs. Wix, a witness on his behalf not recollecting the superscription of the letter in which the alleged libel was contained, and that the Chief Justice did, after the nonsuit had been so called for, in open court, profess that he watched the case of Mrs. Antle from her delivery to the present time, and that it was his intention, had Mrs. Antle died, to have bills of indictment sent to the Grand Jury, and that they should be found, and that he would have the parties tried and hanged for the offence.

Upon

Upon this statement I wish to observe that Mrs. Wix was the third witness called by the plaintiff; that she was examined at an early hour of the first day of the trial; that afterwards the remainder of that day, and until a late hour of the next day, was occupied in examining other witnesses for the plaintiff, and that it was not until after the plaintiff's case had fully closed, and I had risen to proceed with the defence, (nor I believe until I had actually commenced speaking,) that the plaintiff's counsel rose and said he would take a nonsuit; and I am quite certain that, in the observations which the Chief Justice then thought it his duty to make, he did not use the above expressions imputed to him by the petitioner, nor any others of the same import; the mistake of the petitioner can only be accounted for by the fact of his not having been in court at the time.

Respecting the action by Antle, I know not by what means the petitioner has convinced himself that it was brought at the suggestion of the conspirators, as he is pleased to call the Chief Justice and his lady; for myself, I had not the slightest communication with either of them on the subject, nor had I any reason whatever to suppose that my clients had. Long before the trial of Carson v. Kielly, I had heard of Mr. Antle's intention to sue the petitioner, but my retainer was in the usual and ordinary way, by his calling at my office, and he did not mention any person as having suggested the action to him.

Another part of the petition on which I wish to remark is, that in which the petitioner says the Chief Justice proposed to allow the evidence of Rochfort taken on the trial of Carson v. Kielly to be received in evidence as well as that of Mrs. Toole; "both which propositions the opposing council did not decline." Now, if the petitioner means that I did not decline them *both*, he is right, for I consented to take the evidence of *one* of them, viz., Mrs. Toole, who was stated to be unable to attend; but if he means that I consented to take the evidence of Rochfort also, he states what is untrue. When Rochfort was produced for examination on the former action, I considered him the party principally interested in the issue, and objected to his evidence on the ground that he was set out on the record as one of the injured parties; but the court overruled the objection; and I certainly would not have admitted that evidence in a cause wherein he is directly a party, nor did I consent to do so.

I shall only further observe that, when I sent to Dr. Samuel Carson a bond to the effect of the security he had proposed in court to give, he refused to sign it; and concerning Mrs. Toole, that I was informed by my client she had been seen out of doors the day the trial was put off, and that I have otherwise heard she was not confined until a considerable time afterwards.

I am, Dear Sir,

Your obedient servant,

W. R. ROW.

E. M. Archibald, Esq., Chief Clerk of the Supreme Court.

(No. 16)

Letter from Mr. Thomas, Foreman of the Jury in Carson v. *Keilly.*

Sir,

St. John's, Newfoundland, 29th July, 1837.

I have been given to understand that a petition has been forwarded to the Home Government by Doctor Rochfort, praying that another judge may be appointed to try a cause at issue between him and a person named Antle, on the ground that an evident partiality or party feeling had been exhibited by you in a previous trial, connected with the same matter, in which Doctor Samuel Carson, was plaintiff, and Doctor Kielly, defendant.

Having been one of the jury in the case, Carson v. Kielly, and when called on to express the opinion of that jury, acting in the capacity of foreman, I should feel myself wanting in my duty both to the bench and to the jury, if I did not detail to you, Sir, the feelings and convictions of my brother jurors and myself on that trial.

I went to that jury without any previous knowledge of the facts connected with the case, and had to gather my information on the subject entirely from the plaintiff's evidences, none other having been examined. Both the Court and the jury were occupied nearly two whole days in listening to the most sickening and disgusting details that perhaps were ever exposed in a court of justice; the most patient attention, (as far as I could judge), appeared to be paid to the investigation both by the bench and by the jury; and although the extraordinary length of time taken up by the plaintiff in opening and detailing his case, occupying the greater part of two days, was sufficient to tire ordinary listeners, yet there appeared, on the part of the court and jury, no other desire than that of investigating the matter, and eliciting the truth. In taking down the evidence, I particularly noticed that you read over sentence by sentence in the hearing of the court and witnesses, and afterwards repeated the whole of his evidence to each witness; and on one occasion, on the second reading, you corrected Doctor Rochfort's evidence agreeably with his own suggestion; the other parts of his evidence he perfectly concurred in, on hearing it read over.

The first impression made on the minds of the jury appeared to be, that Doctor Kielly had overstepped the bounds of propriety, in speaking in too strong terms of a brother practitioner; but

but as the case developed itself in the cross-examination of witnesses, there appeared to have been a palpable mismanagement and misconduct somewhere; and the expressions of Doctor Keilly carried with them, in the minds of the jury, but the sentiments of a feeling man, hastily delivered as he emerged from the sick-room of the unfortunate and ill-treated woman, unconscious perhaps of his being overheard. Doctor S. Carson appeared from his evidences, to have been in a weak state of health, and Mr. Rochfort appeared to have been the chief operator in the delivery of Mrs. Antle; and it was not until the examination of the last of the plaintiff's witnesses, his own apprentice, Alexander, that the jury were convinced of the gross misconduct on the part of Doctor S. Carson, in denying himself to Antle, when actually at home; thereby leaving the unfortunate woman unaided in her pangs, and depriving her of any other medical assistance which her husband might have procured her, if he had not hopelessly depended on the return of the plaintiff, who had seen her once, and had promised to return by a given hour, then arrived.

Such was the state of the trial, when the plaintiff's case being closed, the jury were permitted to retire to obtain some refreshment; and on our return to the court, the plaintiff's attorney had advised him to accept a nonsuit.

You then addressed the court, stating that the most disgusting details had been developed in the course of the trial, that unwarrantable liberties had been proved to have been taken with a female in the humbler walks of life; not for the purpose of affording her relief in her misery and affliction, but for the baser purpose of establishing an action against a rival practitioner, by such indecent investigation; that you alluded to this circumstance for the purpose of informing the common people of their rights, and that no one could, without their permission, so grossly infringe on their liberties. You then adverted to the improper conduct of the plaintiff in undertaking the woman's case, and then denying himself and deserting her, leaving her to much suffering, and a prospect of almost certain death, although he had previously described her case as a dangerous one; he not having consented to go to her, or to procure her other assistance, until he was called on, and found to be at home, by Mr. C. Winton.

There certainly appeared to be no warmth nor improper feeling about you, Sir, in the delivery of your address; and so decidedly were the jury of the same opinion as the court, that after consulting together, they requested me to express to the court that they perfectly concurred in every sentiment that had fallen from you respecting the disgusting trial just closed. It may be still in your recollection, that I was seated nearly in the centre of the back bench, and therefore in an eligible situation for consulting my brother jurors, and collecting their opinions. One gentleman however, seated nearest the bench, and at the greatest distance from me, may not have been a party to the consultation; but he immediately rose after me, and expressed a similar opinion to that which I had offered on behalf of the jury.

These are my recollections, Sir, of the trial, Carson v. Keilly, in which Doctor Rochfort appeared as the principal evidence. I paid great attention during the progress of the case, and I am satisfied that the foregoing statement is perfectly correct.

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

WM. THOMAS,

Foreman of the special jury in the case of "Carson v. Keilly."

(No. 17.)

IN THE SUPREME COURT, NEWFOUNDLAND.

The Honourable Henry John Boulton, *Plaintiff*,
and
Patrick Morris, John Kent, and John Valentine Nugent, *Defendants*.

Edward Mortimer Archibald, of St. John's, in the Island of Newfoundland, Chief Clerk and Registrar of the Supreme Court of the said Island, maketh oath and saith that he hath been present at, and during every term of the said Supreme Court, which hath been holden since the said plaintiff was appointed Chief Justice of the Island aforesaid, and likewise at and during every term of the Central Circuit Court which hath been holden since the beginning of the year one thousand eight hundred and thirty-five, and therefore hath had the most ample opportunity of witnessing the conduct of the said plaintiff in the discharge of his judicial functions during the whole of the period aforesaid:—And this deponent saith that he hath seen the publication which is the subject matter of this action, and wherein the plaintiff is said to have exhibited, on various occasions, great partiality on the bench, that his adjudications have been biassed by strong party prejudices, and that his judgments have been unjust, arbitrary, and illegal.

And this deponent further saith, that he hath not upon any occasion known the said plaintiff to exhibit any partiality in his decisions upon the bench, nor have his adjudications, to the best of deponent's observation and judgment, been biassed by any party prejudices or undue influence whatsoever, but on the contrary, so far as deponent has heard or known, have given general satisfaction

52

to suitors.—And that during the whole period that the said plaintiff has presided in the Supreme and Central Circuit Courts not one appeal has ever been made and prosecuted from the decisions or judgments of either Court.

And this deponent further saith, that he was present at and during the whole of a trial which took place in the Supreme Court in the month of May last, between Samuel Carson, plaintiff, and Edward Keilly, defendant; and upon the conclusion of which, (the plaintiff having become nonsuit,) the said plaintiff, Henry John Boulton, made some observations, a statement of which was afterwards set forth in an affidavit made by the said Samuel Carson, attached to a petition from him to the Queen. And this deponent saith, that the said Samuel Carson was not present in Court during any part of the time that the said observations were made by the said plaintiff; and that the said Samuel Carson having casually met this deponent in the street on the day following, remarked to deponent that he understood the said plaintiff had on the day previous made some severe observations in reference to him, and that he regretted he the said Samuel Carson had not been present in Court at the time, or words to that effect.

This deponent also saith, that he was present in Court during the last term of the Central Circuit Court when the said plaintiff who presided as the Judge thereof, offered to transfer into the Supreme Court, at the instance of either party, a certain cause then pending in the said Circuit Court, between Charles Antle and wife, plaintiff, and the said Samuel Carsan and John Rochfort defendants, the counsel of both parties being also present in Court,—that neither of the parties, plaintiffs or defendants availed themselves of the said offer, but that on the day following, to the best of deponent's recollection, the counsel for defendants moved for a rule for a new special jury, on the ground that several persons of the jury formerly struck in the cause, were absent from the Island, or ill and unable to attend—which motion being consented to by the counsel for the plaintiffs, a new jury was accordingly struck, and the cause subsequently tried in the said Central Circuit Court.

Sworn at St. John's, Newfoundland, this thirtieth day of December, A.D. 1837,

EDWARD ARCHIBALD.

The words "statement," and "the Queen," being written on an erasure.

E. B. BRENTON, (Assistant Judge, Supreme Court.)

(No. 18.)

IN THE SUPREME COURT OF NEWFOUNDLAND.

Cause { Henry John Boulton, *Plaintiff;*
v.
Patrick Morris, John Kent, and John Valentine Nugent, *Defendants.*

William Bickford Row, of St. John's, in the Central District of Newfoundland, Esquire, Barrister-at-law, maketh oath and saith, that he was counsel for the plaintiff in the cause Charles Antle and Jane his wife, versus Samuel Carson and John Rochfort, which was commenced in the term of the Central Circuit Court, holden in the month of June last, and at the instance of the defendants continued to the following term, which was holden in November, when the said cause was tried, and a verdict found for the plaintiffs. And this deponent further saith, that upon the docket of issues being first called over, in the November term, the Chief Justice (the Hon. Henry John Boulton), who presided in the said court, referring to an application that had been made by the defendants in the former term, to transfer the said cause to the Supreme Court, on account of the alleged absence of certain witnesses who resided in Conception Bay, beyond the jurisdiction of the Central Circuit Court, said that as the term of the Supreme Court would be held so soon, he would now, if it were moved for by either party, transfer the cause to the Supreme Court, or words to that effect. And this deponent further saith, that Mr. Emerson, the counsel for the defendant. Rochfort, was present at the time, and said he would consider of it against next court day, or words to that effect. And this deponent further saith that he believes, but is not certain, that the defendant Carson, was also present at the time. And this deponent further saith, that upon the next court day, (to the best of his recollection as to the precise day,) the defendants, on the ground that several of the special jury, returned on the former panel, were absent from the island, moved the court for a new special Jury to be struck, and that a new jury was struck accordingly; but that during the whole term no motion was made to transfer the cause.

Sworn before me at St. John's, the 1st day of February, 1838.

W. R. ROW.

E. M. ARCHIBALD,
Commissioner for taking affidavits in the Supreme Court.

(No. 19)

NEWFOUNDLAND—IN THE SUPREME COURT.

Between { The Hon. Henry John Boulton, *Plaintiff;*
And
Patrick Morris, John Kent, and John Valentine Nugent, *Defendants.*

Nicholas Stubb, of Harbour Grace, in the Northern District of Newfoundland, Esq., Deputy Sheriff, maketh oath and saith, that on his return from St. John's to Harbour Grace, in the month of January last, after the trial of James Power and others for a riot which took place during the elections then recently held at Harbor Grace aforesaid, this deponent had a conversation with the said James Power, now one of the Members of the House of Assembly, for Conception Bay, relative to the said trials; when the said James Power expressed himself in terms of approbation of the conduct of the said plaintiff, as Chief Justice, and said he did not see how any one could find fault with it; and that, judging from the conduct of the said plaintiff on the bench, no one, he conceived, could doubt his impartiality. The said James Power further said, that he considered the said plaintiff had been rather hard in his remarks upon him, and Mr. Pack, another of the defendants, but that he (Mr. Power) had had a narrow escape, and it would make him careful how he came from Carboneur to Harbour Grace, with a large body of men, on any occasion again. He also observed that if the said plaintiff was so bad a man as many wished to make it appear, it must be very deep in his heart, as no one could perceive it in his conduct on the bench; and that the whole of the conversation of the said James Power, of which this deponent does not now remember the particulars, was in approval of the judicial conduct of the said plaintiff.

And this deponent further saith that he hath just returned from the Northern Circuit, in the course of which he hath visited all the principal places in the Northern District of this island, and that in all these places this deponent hath heard from every one of respectability and intelligence expressions of the most unqualified approval of the judicial character of the said plaintiff and of his general conduct, and reprobation of the many vile attacks which have been made against them.

NICHOAS STABB,
Deputy Sheriff Northern District of Newfoundland.

Sworn to at Harbour Grace, this 29th day of December, A.B. 1837, before
JOHN STARK,
Commissioner of Affidavits, Supreme Court.

(No. 20.)

JUDGES' CHAMBERS.

Sir, St. John's, 17th Feb. 1837.

We have had under our consideration the petition of William Harding, transmitted to us by your Excellency's direction, for our opinion as to the propriety of your complying with its prayer: and we now have the honour to lay before your Excellency, the reasons which have influenced us in recommending that the judgment of the court be carried into effect.

The riot, of which the petitioner and two others undergoing the like sentence, were convicted by a special jury upon the clearest and most satisfactory evidence, was of no ordinary character, and so far from no evidence having been adduced as the petitioner alleges, "that he was in any way armed for, are actively participating in outrage," it was distinctly stated that he and his associates were armed with clubs, and were in the front ranks of those who made the attack upon the unarmed and peaceable people who were in the interest of their opponents at the election.

It is true the actual conflict did not continue more than two or three minutes as stated by some of the witnesses, and four or five as stated by others; but that tends only to shew the extreme violence of the onset, when so much bloodshed and personal injury were committed in so short a time. After the conflict was over, or perhaps more correctly speaking, after the attack had succeeded, and the voters on the other side had been dispersed and drawn away, and prevented for fear of further violence from coming forward to vote for the candidates of their choice, Mr. Jacob, a very respectable and intelligent magistrate, said to the petitioner Harding, "You are going on very swimmingingly now, (that is from the absence of all opposition in consequence of the voters

opposed to his party being driven away and those on his side polling alone,) but perhaps when we (meaning the friends of Ridly and Prowse,) get to the other end of the Bay, (where the people were supposed to be chiefly adverse to the side espoused by petitioner,) you will not get on so well: Harding, the petitioner replied, "we don't fear that, for we have got 500 marshalled men to go round the Bay with us," which expressions could bear but one interpretation; although petitioner, when judgment was passed upon him, said, he meant that these men were to go round the Bay to vote over again; so that he did not deny the intention of taking these men round to the other places appointed for holding the poll, but wished it to be believed that no violence was intended, an interpretation quite incredible in any view of the case.

The assemblage consisted of about 600 persons, at the head of whom, after two of the candidates, were the petitioner and those convicted with him, and from the evidence it is probable that about 200 were armed with various kinds of sticks. As soon as they arrived at the hustings, the two candidates who headed them left the procession and ascended the platform, when a shout was immediately set up and a violent attack made upon the other party, who gave no provocation whatever, either by word, gesture, or otherwise, and were entirely unprepared for such an assault, having no sticks or weapons of any kind to defend themselves. Under these circumstances we can form no other opinion than that the intention of this assemblage of persons, of whom petitioner was one of the chief, was to intimidate and prevent, by violence, those opposed to them from exercising their right of suffrage. The whole conduct of the party from the first moment of their arrival to the close of the poll, so far as it was stated in this and another trial arising out of similar conduct on the same day tends to prove this in the clearest manner, and we have no doubt that such was the intention of petitioner and those acting with him. It is true he was represented at the trial and we have no doubt correctly enough, to be in the common acceptation of the term, an honest and respectable man in his situation of cooper and publican, and that ordinarily he is a peaceable and well-behaved man, but in our opinion, as was said to him at the time of judgment being pronounced, his respectable standing made his example the more pernicious to those beneath him, and we can perceive no principle which should induce the punishment of a day labourer while his associates of a superior station should be excused. If such persons as the petitioner, and those still above him, at whose instigation the lower orders acted, were to use their best exertions to put down instead of excite such conduct, the mere labourers would not be so likely, to say the least of it, to commit such outrages, and we are therefore of opinion that petitioner is one of the most culpable, and ought not to be pardoned unless it should be determined to grant a general pardon to all those who have been convicted of similar offences.

Instead of expressing regret at having committed the offence of which he has been committed, the petitioner endeavours to impugn the justice of his sentence, and to excuse himself upon grounds the most frivolous: such, for instance, as this being the first instance in Newfoundland of persons having been indicted for riots and assaults during an election, as if it were previously a matter of serious doubt in the mind of any man, however ignorant, whether any class of persons might properly go armed with c[illegible] and beat those whom they conceived to be opposed to them upon any subject, either of poli[illegible]r religion. There cannot be a question but that every one knew he was doing wrong when joining in such a course of conduct. If these persons had simply transgressed some law of recent enactment, prohibiting that which had previously been legal, of course much might justly be said upon the harshness of punishing with an appearance of severity persons who might possibly be ignorant of the change which had been introduced. But eve[illegible] man, even in savage life, knows that it is wrong to beat his unoffending neighbour.

If the petitioner and his associates had come forward and expressed regret for what they had done, and had given any indication of a determination to act differently in future, we should have had great pleasure in recommending the pardon of them all, the chief end of punishment having then been attained; but so far from this being the case, the newspaper, which is the organ of the party to whom these persons are attached, is holding them up as martyrs in the cause of liberty, and the judges as their partial and unjust oppressors. We, of course, considered the whole circumstances of each case, when we awarded the punishments to be inflicted; we reflected upon the state of the colony, and the height at which insubordination had arrived, and the almost utter contempt for all law which had been manifested in Harbour Grace and Carboneur, and we sentenced the several prisoners to as light punishments as we believe would have been awarded to them in other countries where our laws prevail under similar circumstances, and we see no reason peculiar to the petitioner for any relaxation in his favour. Had any manifestation of regret been shewn, and a reasonable prospect of better conduct for the future been held out, we would heartily have concurred in a general pardon being granted; but we very much doubt if the petitioner's prayer were granted, whether it would be attributed to clemency or to weakness.

His Excellency the Governor.

We have the honour to be,
Your most obedient humble servants,
H. J. BOULTON, Chief Justice.
E. B. BRENTON, Asst. Judge.
GEO. LILLY, Asst. Judge.

Report of C. J. Boulton to the Governor on Prison Discipline.

(No. 21.)

Sir, St. John's, April 8, 1836.

With reference to the paper enclosed to me on the 25th of January by your Excellency's direction, containing the heads of a report which your Excellency had been called upon to make respecting the gaols and the present system of prison discipline in this colony, and in compliance with your Excellency's request to be furnished, by me, with such information as I could supply on these subjects, as well as with any suggestions which my experience in such matters might induce me to offer, I have the honour to submit the answers annexed to the respective questions herewith returned; and as I conceive that facts will be more valuable than mere speculative opinions, I have thought it advisable to state, for your Excellency's information, the condition in which I found the gaol of Saint John's, upon my arrival here in the autumn of 1833, and the gradual improvements which have taken place under the alterations, which I have induced up to the present time.

On my assuming the duties of Chief Justice of Newfoundland in the autumn of 1833, I found the gaol in Saint John's full of prisoners, eighteen or nineteen in a cell, and with little regard to classification. The cells were so exceedingly confined, and with scarcely any ventilation, that I could with difficulty even enter them; to have remained in any of them for a few minutes would have been out of the question. There was no yard and no way for the prisoners to go to the privy, except through the gaoler's kitchen, and consequently they all performed the necessary calls of nature in pails with lids to them in their respective cells, and these being in a crowded state, such a practice was as offensive to decency, as in my opinion it must have been injurious to health. These pails were occasionally brought out through the kitchen and emptied into the privy, which, being connected with the door of the gaoler's apartments by an enclosed covered way, constantly sent forth a stench, which at certain points of the wind pervaded the whole building, and rendered the gaoler's apartments exceedingly offensive.

The prisoners had hammocks slung for them in their cells, and these were not taken down during the day, and there being no gaol yard for any of them to walk in, many continued in bed or lounged upon their hammocks the greater part of the day,—their diet was very good (having meat or fish every day), and although the smell of the cells was offensive beyond endurance to any except the lowest and most depraved of human beings, yet instances were not wanting of persons committing petty offences in order to be imprisoned during the winter, that they might be lodged and fed at the public expense. The gaol was, therefore, a scene of depravity for low persons to congregate in, and instead of being a terror to the vicious, it was looked upon by many as a dernier resort when their money should be squandered in drunkenness. Many of these wretched beings were eaten up with scurvy, and there were few uninjured in their health; the only matter of astonishment to me was, that they were alive. In almost any other climate such a state of filth in so crowded a condition must have produced a gaol fever: there were some that could not stand, and when I had them brought out into the open air, they were almost overcome by the transition. There was a small yard behind the cells with a pump in it, used by the sheriff and gaoler to put fuel and other things in, but there was no access to it from the gaol.

Although the whole building is exceedingly ill contrived for the purposes of either a gaol or court house, nevertheless, I thought it might at once be rendered comparatively *sweet* and *cleanly* with a few trifling and obvious improvements, and therefore, to get rid of the smell from the privy, I ordered the covered way to it to be immediately pulled down, which, by cutting off the funnel which led the bad air directly into the building, at once removed all annoyance from that quarter. Considering it essential that the prisoners should have occasional access to the open air, and particularly that in the day time they should go out of their cells to perform their ordinary calls of nature, I converted the fuel yard into a gaol yard, and directed a door to be cut into it, and a place to be erected there to which the prisoners might resort, and *regulations have been made for those who are not convicts, having the use of the yard at stated hours of the day.* The diet, as it will be seen by referring to the regulation herewith communicated, I caused to be changed to bread and burgoo only, allowing no animal food whatever; which I had every reason to believe, from my knowledge of the treatment in some of the penitentiaries in America, would be quite sufficient to preserve good health.

Instead of their hammocks being allowed to remain all day in their cells I have directed that each prisoner shall take his hammock out every morning before breakfast to be aired, and that it shall not be returned until evening, and that the windows be kept open during a great part of the day for ventilation.

In making the door into the yard it became necessary to pull down the partition of two ill constructed cells and to take a passage off to pass to the door, but instead of two larger cells I have caused three smaller to be made by the side of the passage, in which not more than one

 prisoner

prisoner is confined at a time, if the state of the gaol will permit it; more than two however, have never been confined in either of them.

I have also desired that the prisoners be classified with reference to the two principal divisions of crime, and with reference to their being convicts or merely committed for trial.

I have also desired that not more than one person be confined in a cell whenever the number of prisoners will allow of such an arrangement.

The gaol being small and the number of cells but few, the confinement of military convicts in the common gaol has produced much inconvenience, as one of the largest cells has been required for them;—at first they were mingled with the common mass of civil prisoners, but I have directed the soldiers to be kept separate, for many reasons too obvious to need a more particular notice, and I have accordingly desired that one cell be appropriated for their reception.

These changes having a reference chiefly to cleanliness, health, diet, classification, and total seclusion, being now in full operation, I shall in a few words state what I believe to be the result.

The number of prisoners committed is very greatly diminished, and the stay of those who are entitled to bail or discharge, is in the same degree shortened, and there are no volunteers for imprisonment,—the cells are all sweet and clean, the prisoners are in excellent health, some indeed have improved in health, being cut off from spirits and other means of debauchery, and the expense of maintaining those confined has been diminished about 60 per cent. per man.

I have thought it proper simply to state these facts, in order that the Government may judge from the practical results of experience, what benefits may be derived, even under the disadvantages of a prison so inconveniently constructed as that in St. John's, from a little attention to prison discipline. The whole subject has been so ably discussed of late years, as well by the philanthropist as the statesman both in Europe and America, that it would appear like affectation were I to offer any thing beyond a simple narration of the result of my own experience, although I may be permitted concisely to state the leading principles which have influenced me with regard to any alterations or improvements which I may have proposed to others or effected myself.

With regard to the building intended for a prison, whatever may be the degree of guilt, or the character of the persons confined therein, cleanliness and wholesome air have always been regarded by me as deserving the first consideration in all plans for the improvement of prison discipline. There is nothing which so degrades the mind as filthy habits, and I am convinced that purity of mind is very much preserved, nay, even reclaimed, by cleanliness of person—and cleanliness costs nothing.

The diet of prisoners, I have always thought, should be as plain, simple, homely, and devoid of relish as is consistent with wholesome nurtiment. Coarse bread for dinner, and oatmeal, or Indian corn meal, and water boiled to a moderate consistency, is sufficient for breakfast and supper; this dietary has been found sufficient in other prisons, and in the one under my own eye, in Saint John's, it has preserved the prisoners in perfect health, although several have been employed at hard labour on the roads. I should add, however, that although called hard labour, it has been little more than moderate exercise, insomuch that when the prisoners have not been taken out for a day or two, they have asked to go to work.

I quite concur in opinion with those who have said that labour in a prison should be regarded as a relaxation and an indulgence, rather than as part of the punishment where the prisoner is in solitary confinement.

(No. 22)

Extract of a despatch from the Secretary of State for the Colonies, addressed to his Excellency Captain Prescott, and dated Downing-Street, 10th June, 1836:—

"I have perused with much gratification the report on this subject, drawn up by the Chief Justice. The regulations which he has introduced in the gaol of St. John's for removing or mitigating the evils which had previously existed in that establishment appear to have been judiciously devised, and to have been carried into effect with energy and decision. The diminution in the number of prisoners—the improved state of their health—and the reduction of the expenditure of the gaol, are testimonies of the wisdom and the humanity of Mr. Boulton's measures. I feel confident that he will not relax in his vigilance in enforcing them, and in securing, to the utmost of his power, a sound system of prison discipline, than which nothing is more essential to a just and merciful administration of the law."

(No 33.)

Memorandum of the Days on which the Prisoners in confinement in the Gaol of Saint John's, were visited by the Clergymen of their respective Congregations.

1836. Month, date		NAMES OF CLERGYMEN.		No. of Prots.	No. of R. C.
Jan.	10	Sunday	the Rev. Mr. Bridge		
	24	"	do		
Feb.	7	"	do		
	12	Friday	do		
	21	Sunday	do		
	28	"	do		
March	6	"	do		
	13	"	do		
	13	Friday	do		
April	3	Sunday	do		
	10	"	do		
	17	"	do		
May	1	"	do		
	8	"	do		
	15	"	do		
	22	"	do		
	29	"	do		
June	5	"	do		
	12	"	do		
	19	"	do		
	26	"	do		
July	3	"	do		
	10	"	do		
	19	Tuesday	Rev. Edward Troy		
Agust	7	Sunday	" Mr. Bridge		
	14	"	do		
	28	"	do		
Sept.	25	"	do		
Oct.	17	"	do		
	23	"	do		
	30	"	do		
Nov.	14	"	do		
Dec.	4	"	do		
	11	"	do		
1837.					
Jan.	6	Friday	Rev. Mr. Troy		
	8	Sunday	do		
		"	Mr. Bridge		
	15	"	do		
		"	Mr. Troy		
	22	"	do		
		"	Mr. Bridge		
	29	"	do		
		"	Mr. Waldron		
Feb.	5	"	Mr. Troy		
		"	Mr. Bridge		
	12	"	do		
		"	Mr. Troy		
	19	"	Mr. Bridge		
	26	"	do		
March	5	"	do		
		"	Mr. Cleary		
	14	Tuesday	Mr. Waldron		
		Visited three Service.	prisoners, no		
	17	Friday	Mr. Waldron		
	19	Sunday	Mr. Bridge		
	26	"	Mr. Murphy		
April	2	"	Mr. Waldron		
		"	Mr. Bridge		
	3	Monday	Mr. Murphy		
	9	Sunday	Mr. Bridge		
	16	"	do		
		"	Mr. Murphy		
	22	Saturday	Mr. Troy		
		Three Hours in			
	23	Sunday	Mr. Murphy		

1837. Month, date.		NAMES OF CLERGYMEN.		No. of Prots.	No. of R. C.
April	23	Sunday	Mr. Bridge		
	24	Monday	Mr. Troy		
	25	Tuesday	do		
	26	Wednesday	do		
	28	Friday	Mr. Murphy		
	29	Saturday	Mr. Troy		
	30	Sunday	Mr. Bridge		
		"	Mr. Troy		
May	4	Thursday	Mr. Waldron		
	6	Saturday	Mr. Troy		
	7	Sunday	Mr. Bridge		
		"	Mr. Troy		
	14	"	Mr. Bridge		
	21	"	do		
		"	Mr. Birnie		
	28	"	Mr. Bridge		
June	4	"	do		
		"	Mr. Murphy		
	11	"	Mr. Waldron		
		"	Mr. Bridge		
	18	"	Mr. Waldron		
	26	"	Mr. Bridge		
July	2	"	do		
	5	Wednesday	Mr. Dalton		
		With the 3 Carbonear men only			
	9	Sunday	Mr. Bridge }	6	7
		"	Mr. Murphy }		
		Harding, Saunders and Thomey, this day discharged.			
	16	Sunday	Mr. Bridge	6	4
	23	"	do	1	4
	30	"	do	2	5
	6	"	do		7
	13	"	no clergyman attended		8
	20	"	Mr. Bridge	2	7
	27	"	do	2	8
Sep.	3	"	do	3	9
	10	"	do	2	8
	17	"	no service		6
	24	"	no clergyman attended	2	7
Oct.	1	"	Mr. Bridge	1	9
	8	"	do	2	11
	15	"	do	2	16
	22	"	do	1	13
	29	"	do	1	15
Nov.	6	"	do	1	15
	12	"	do	1	20
	19	"	do	6	19
	26	"	do	3	19
	28	"	Mr. Murphy		
Dec.	3	"	Mr. Bridge	7	12
	10	"	do	6	6
	11	Monday	do		
	13	Wednesday	do		
	14	Thursday	do		
	15	Friday	do		
	16	Saturday	do		
	17	Sunday	do	7	7
	18	Monday	do		
	19	Tuesday	do		
	20	Wednesday	do		
	21	Thursday	do		
		"	Mr. Falconer		
	22	Friday	Mr. Bridge		
	23	Saturday	do		
	24	Sunday	do	7	8

The Rev. Mr. Bridge,	Protestant,	The Rev. Mr. Cleary,	Roman Catholic,
" Falconer,	do.	" Murphy,	do.
" Troy,	Roman Catholic,	" Birnie,	do.
" Waldron,	do.	" Dalton,	do.

Bridget Haire, a Roman Catholic, committed to gaol 7th August, on a charge of murder, tried 8th Dec., and sent to Harbor Grace Gaol, the 20th of same month.

George Avory, a Protestant, committed to the gaol on a charge of murder, the 23d Nov., and tried the 22d Dec., found guilty of manslaughter.

John Morrisy, committed to trial on the 9th Nov., 1837, where he remained until the 18th Dec. following, although his friends repeatedly offered to bail him out, which he would not permit.

The foregoing is a correct copy of the book kept by me of the visits of clergymen to the Gaol of St. John's.

2d Jan. 1838.

B. G. GARRETT, *High Sheriff.*

(No. 24.)

IN THE SUPREME COURT OF NEWFOUNDLAND.

Cause. The Hon. Henry John Boulton, *Plaintiff*, *v.* Patrick Morris, John Kent, and John Valentine Nugent, *Defenaants.*

This deponent, Elizabeth Currie, wife of John Currie, gaoler of Harbor Grace, maketh oath and saith, that shortly after Harding, Thomey and Saunders had been released from Saint John's Gaol, where they had been confined under a judgment of the Supreme Court for a Riot at the election, William Harding, one of the above named parties, in the kitchen of this deponent in the Court House, said that the dietary he had received in the gaol at Saint John's had agreed very well with him, and that he expected to live twenty years longer for it—William Harding had called to see one Dennis Mahon, a prisoner in gaol, where he communicated the foregoing to this deponent.

ELIZABETH CURRIE.

Sworn to at Harbor Grace, this 29th December, 1837, before

JOHN STARK Commissioner of Affidavits, Supreme Court.

(No. 25.)

IN THE SUPREME COURT OF NEWFOUNDLAND.

Cause The Honourable Henry John Boulton, *Plaintiff*, *v.* Patrick Morris, John Kent, and John Valentine Nugent, *Defendants.*

John Munn, of Harbor Grace, in the northern district, merchant, maketh oath and saith, that shortly after the liberation of Mr. William Harding, of Carbonear, from the gaol, in St. John's, where he had been confined for riot, during the election at Harbor Grace, in the fall of 1836, whilst walking in the town of Harbor Grace, with other gentlemen, he met the said William Harding, who voluntarily entered into a statement of the treatment whilst confined as aforesaid, and said that he could find no fault with the sheriff, gaoler, or any other person connected with it: that his health had been remarkably good, and the prison diet had agreed well with him; that once during his confinement there was no oatmeal to make burgoo, and bread, &c. was given in lieu thereof, which he did not like so well, and on complaining to the High Sheriff, that gentleman at once said, if there was a barrel of oatmeal in the country it should be procured for him; his reason for preferring burgoo was, that he was more regular in his body whilst using it. He spoke in strong terms of the general treatment of the gaol, and said his health was never better than whilst there, much more so than since he had left it, owing to his living more regular.

He concluded by stating that he could not desire a better place to put his son for a twelvemonth, provided it was not for any crime.

JOHN MUNN.

Sworn to at Harbor Grace, this 29th day of December, A. D., 1837, before

JOHN STARK, Commissioner of Affidavits, Supreme Court.

William Punton of Harbor Grace in the northern district, merchant, maketh oath and saith, that he was also present and heard the before recited statement of William Harding, relative to his treatment whilst in the St. John's Gaol, made by the said William Harding.

WILLIAM PUNTON.

Sworn at Harbour Grace, this 29th day of December, A. D. 1837, before

JOHN STARK, Commissioner of Affidavits, Supreme Court.

(No. 26.)

NEWFOUNDLAND—IN THE SUPREME COURT.

Between { The Hon. Henry John Boulton, *Plaintiff*, and Patrick Morris, John Kent, and John Valentine Nugent, *Defendants*.

Richard Perchard, of St. John's in the Central District of Newfoundland, keeper of her Majesty's gaol at St. John's aforesaid, maketh oath and saith that he hath been the keeper of the said gaol for about sixteen years—that since the regulations established for the said gaol were put in operation in the year 1834, the prisoners confined therein have been remarkably free from disease. That William Harding, William Saunders, and Roger Thomey, in particular, who were confined in the said gaol during the winter of the present year, upon a conviction for riot, enjoyed good health during the period of about six months that they were so confined. And this deponent further saith that the said William Harding stated to this deponent that although the confinement was unpleasant and annoying to him, as a man with a family, yet that as regarded his health he, the said William Harding, had not had such good health for seven years before, as whilst so in confinement—that he said the improvement in his health was owing to the burgoo which was part of his diet while in gaol, and which he considered very wholesome, and further, that when he returned home he would cause it to be used in his family, and more especially that he himself would use it, since he had found while using it that his health was better than it had been for seven years before—that the said William Harding hath often while in confinement made use of similar expressions and observations to this deponent and to other persons in his presence—and that also he often expressed himself to this deponent perfectly satisfied with his treatment while in gaol, saying that it was clean and wholesome, and although he said the confinement was irksome, he had not otherwise any complaint to make.

And this deponent further saith that the said prisoners were frequently furnished with warm water, at their own request, for the purpose occasionally of making their burgoo thinner and for other purposes, and this deponent expressly saith that no warm water was ever at any time furnished to the said prisoners, or any of them, except at their own request.

And this deponent further saith that no visitor, ever at any time went in to see the prisoners, except in company with this deponent, who was present, also, at and during the whole of every conversation which was had with the said prisoners, which conversations moreover were held through a grating in the cell door. And this deponent also saith that the said prisoners, nor any one of them, ever gave any instructions or directions whatever, for preparing any petition from them complaining of their treatment, or for any other purpose to the knowledge, or in the hearing of this deponent; who must have known and heard of such instructions if any had been given. And this deponent further saith that the first he ever knew or heard of a petition from the said prisoners was upon a day about the end of the month of March, to the best of deponent's recollection, when John Valentine Nugent one of the defendants above named, produced and read to the said prisoners, in the presence and hearing of this deponent, a petition drawn up and prepared for signature, and which petition was signed by the said prisoners; upon the request of the said John Valentine Nugent, they, the said prisoners, being permitted by this deponent to come out of their cell into the passage in order to sign the same.

RICHARD PERCHARD.

Sworn at St. John's, Newfoundland, this 29th day of December, 1837.

E. M. ARCHIBALD, Commissioner for taking Affidavits in the Supreme Court.

(No. 26*.)

Extracts from the speech of Patrick Morris, Esq., printed by order of the House of Assembly.

I rise to move for a committee to enquire into the present state of the administration of justice in this colony. For the last four years the country has been kept in a continued state of agitation —universal murmurs and complaints have been heard from every quarter—public meetings have been convened—petitions have followed petitions to the King and both houses of the Imperial Parliament; it is therefore full time for this house to enquire into the subject. The first great object of all government should be the pure and impartial administration of justice; it is the distinguishing feature of the incomparable constitution under which we have the happiness to live; the Queen is placed upon her august Throne, the Peers in the Upper and the Commons in the lower house of Parliament, mainly for the purpose of placing twelve men in a jury-box to adjudicate between man and man—it was for the purpose of more effectually securing a pure administration of justice that our late revered and beloved sovereign William IV. granted to Newfoundland a representative government. It is to be lamented that his Majesty's Ministers should so long neglect the complaints and petitions of the people of Newfoundland. The charges brought against the local administration are of a most serious character—enquiry only was prayed for. It was the duty, the bounden duty of the Minister to grant that enquiry. I cannot account for the extraordinary conduct on the part of the liberal administration of Lord Melbourne. The petitions of the people of Newfoundland breathe the most devoted loyalty to the King—express sentiments of the most profound gratitude for the great constitutional boon recently conferred upon them; it was the duty of the Minister to foster and encourage these loyal and grateful feelings. The charges made against the administration of justice were either true or false, enquiry alone could place the subject in its true colours, and justice to all parties required it. . . . .

Lord John Russell, when introducing the Canada resolutions on a late occasion in the House of Commons, stated that popular assemblies were hardly ever wrong at the commencement, and hardly ever right at the close. This, then, is the commencement on the part of the Local Assembly of Newfoundland to enquire into the grievances of the people—the cordiality and sincerity with which their efforts may be met on the part of the government, will be the means of averting those evils here which have assumed so alarming and so dangerous a character in the neighbouring colonies; the position in which Newfoundland stands is most favourable; there is not the slightest cause of complaint against the general acts of the parent government; their late Majesties George IV. and William IV. graciously granted all that the people asked of them; they first gave them the great Charter of Justice, the last gave them a Constitution. The people of Newfoundland are perfectly satisfied—they are profoundly grateful—they look for no organic changes—all they ask is, to have the great principles granted by their King extended to them in the magnanimous spirit with which they were conceded. Sir, Newfoundland is the oldest colony belonging to Her Majesty, the first-fruit of the naval enterprise of England; yet nothwithstanding, it was left a prey to a heartless mercantile monopoly, whose withering policy was to blight and blast every germ of improvement in the bud; centuries passed away before anything like civil government was formed: thousands of persons made princely fortunes in Newfoundland, while the country was left in a state of pristine barbarism; the 10th and 11th William and Mary was the first act under which Newfoundland was governed; a few other laws were passed chiefly for the regulation of the fisheries: in 1792 and 1793 the first judicature acts were passed, under the advice of the celebrated Mr. Reeves, the first Chief Justice of Newfoundland; these acts were followed by the 49th of George III., which made very little alteration in the previous system; in 1824, the present judicature act was passed, and a charter of justice granted to Newfoundland, as perfect as well could be made by the act of the legislature, directed by the wisdom of able and constitutional lawyers; fortunately for the country, this, the new system of judicature, was first put into operation in this island by the learned, benevolent, and enlightened Chief Justice Tucker. It afforded the most general satisfaction to the people under his administration, it worked with wonderful effect; contentment, peace, and harmony reigned throughout the Island—a murmur of complaint was not heard—the most unbounded confidence was placed in the administration of justice—the laws were obeyed, the bench was respected, the judges were venerated; disagreeing with the great mass of the people on political subjects, Judge Tucker retained their confidence by the able and disinterested manner in which he administered the laws, without distinction of party, country or creed—a zealous Protestant Churchman, imbued with the principles of high Toryism—strongly opposed to the constitutional regeneration of the country, to the establishment of this branch of the legislature, opposed even to its agricultural improvement—yet he managed to keep the sacred functions of the judge distinct from his opinions as a politician, he never became a partisan—loved by the Catholic, venerated by the Protestant, respected by the Whig and the Tory, he preserved the sacred ermine of justice without spot or stain; and he did not permit "rich men to rule the law, or laws to grind the poor." Justice was not only administered pure, but it was high above suspicion. This, Sir, is a correct report of the state of the administration of justice in Newfoundland, and which it would be vain to contradict, at the period when the benevolent Tucker so ill-advisedly as far as himself

himself was concerned, and so unfortunately, as far as the country was concerned, resigned the high station of Chief Justice of this Island, and was succeeded by the present Chief Justice Boulton: the degradation of the judges and, as a natural consequence, the prostration of justice commenced with the prosecution, or rather persecution, of Judge Des Barres; this extraordinary prosecution, it was said, was commenced under the advice of Judge Boulton, and immediately preceding his accession to the bench. The particulars of that case must be fresh in the recollection of every honourable member in this house; but, as the proceedings here this day on the important question now before the house, will have to be judged by the public, by other parties, and in other countries, I think it necessary briefly to glance at some of its particular and leading features. Judge Des Barres was one of the superior judges, appointed coeval with the charter; he acted with Judge Tucker for eight years, without the shadow of a charge being made against him in his public character, and without a blemish on his private character. Sometime about the month of December, 1833, some trival dispute arose between him and one of the common constables, who charged him with an assault in the execution of his duty in serving a summons on one of his (Judge Des Barres') servants, for this offence bills of indictment were preferred against him, and found by the grand jury; the judge was suspended, was dragged from the bench, arraigned at the bar of his own court like a common malefactor; in the course of the trial, his council produced a written paper, the summons from the Court of Sessions to his servant; on the production of this paper, the judge intimated to the jury that it was neither more nor less than a forgery, and that if he was the person who forged it, that he was guilty of a more flagitious act than the one he then stood charged with, of assaulting the constable; this altered summons, with the other evidence against the honourable judge, went to the jury, who honourably acquitted him, not alone of the assault but of the most serious offence of fabricating the document to secure his acquittal. It is, I believe, a principle of English law, that when a man is once tried and acquitted of an offence, that he cannot again be tried under the same charge; but that protection which the most humble individual could claim in a British court of justice, was denied to the honourable judge; a new charge was fabricated—a private inquisition, over which the Chief Justice of the Island presided, was formed, to enquire into the new charge against the judge—evidences were examined in private conclave; he was again arraigned before this Newfoundland Star Chamber; the inquisition, as a matter of course, by implication found him guilty—the report of the proceedings of the inquisition was transmitted to his Excellency Sir Thomas Cochrane, the Governor of the Island, the result was that Judge Des Barres had to proceed to England to defend his character and conduct before the Colonial Minister. I had occasion shortly after to proceed to London on my own private affairs, where I met Judge Des Barres, then suffering under this gross imputation: he requested me to attend a consultation with his law-adviser to determine the proper course for him to adopt. On the occasion I gave my opinion unhesitatingly, that the Colonial Minister could not on *exparte* statements decide the question. I stated that Judge Des Barres should demand from the Colonial Minister a commission, to enquire into the nature of the charge at Newfoundland, where evidences could be examined on the spot. Judge Des Barres did not appear to approve of this course. Some time after, the matter was brought before the King's judicial council, who acquitted Judge DesBarres, but the Colonial Minister in conveying the decision of the council to him, stated that the only way he could purge himself from the gross allegations made against him, of fabricating the summons, was to have the case submitted to a jury in Newfoundland. This was precisely the course that I recommended to Judge Des Barres. On the arrival of Judge Des Barres at Newfoundland, I presume orders were received by the Governor to institute this important inquiry—a special commission was instituted to try the case; it appears that Judge Des Barres when entering into this arrangement with the Colonial Minister had objected to Judge Boulton trying the case, which objection was allowed; he also objected, I think not advisedly, to Judge Brenton; this objection, I presume, the Governor was directed to assent to; under these circumstances a new judge was to be appointed to try this novel case. Mr. George Lilly was appointed for the purpose. I now, Sir, have to place before you the exact position at this period of the judges of the Supreme Court of Newfoundland—one of the judges was charged with the most serious crime; he first objects to the Chief Justice trying him, on the ground of partiality and personal hostility; he objects to the other judge also, on the ground of partiality;—he himself is the third and only remaining judge: here the tribunals of the country are rendered incompetent to try this case; the judges, are charged with partiality—is it by the public? is it by individual suitors in the court? no, the charge is made by one judge against the other: it is admitted by the Colonial Minister, it is sanctioned by the governor of the Island, who has to appoint a new judge to try the judges themselves—the ministers and the governor, by admitting the possibility of this partiality on the part of the bench, were themselves the first to degrade the character of the judges in the eyes of the people, and no verdict of a jury on Judge Des Barres could be more severe a sentence on him than this act on the part of the Ministerand the Governor with respect to the other judges. Judge Des Barres had to pass through the ordeal of another trial by jury, and under a judge manufactured for the occeasion; after a long and patient trial he was not only acquitted, but the slightest

62

slightest shadow of doubt did not remain on the mind of any impartial man, that the whole charge was the most monstrous and unfounded that ever disgraced a court of justice. After this case it was not to be wondered at that the people should not have a very high opinion of the pure state of the administration of justice. This extraordinary prosecution of Judge Des Barres, was amongst the first of the causes that shook the confidence of the people in the public tribunals; it was the first, but they accumulated in rapid succession; they may be chiefly comprised under the following heads.

1st. That the most violent violations have been made of the King's Royal Charter of justice, founded on acts of the Imperial Parliament, and which was intended by a gracious King to secure the lives and liberties of his loyal and faithful subjects of Newfoundland.

2nd. That on the 31st December, 1833, the Hon. Chief Justice Boulton was sworn into office, and that immediately afterwards when reciting the charge to the grand jury, he announced that at some time previous, not only to that day but antecedent to the day the juries had been summoned, he had "ordered an alteration to be made in the manner of empanelling juries before practised in this court."

3rd. That the first intimation the public had of the alteration in the jury system was this announcement of the learned judge, and not only had there not been a public and authentic promulgation of a rule of such importance—not only had the approval of his Majesty not been solicited subsequently to such promulgation and previously to its operation, but such alteration was made by him before he was sworn into office, and at a time that there was only one judge (Judge Brenton) holding his Majesty's Commission, Judge Des Barres being at the time under suspension.

4th. That since this arbitrary and illegal change in the jury system, the selection and summoning of jurors have been left to the discretion of the sheriff, public confidence being thereby lost in the impartiality and purity of trial by jury.

5th. That in the same illegal and unconstitutional manner the rules and practice of the courts have been rudely and violently changed and abrogated, and new rules and practice introduced totally inapplicable to the peculiar circumstances of Newfoundland.

6th. That the Chief Justice Boulton has, since his accession to the bench, totally subverted the ancient laws and customs of Newfoundland, disregarded and set at naught the precedents and decisions of all former courts and judges, and his dictum has become the uncertain and varying law of the land.

7th. That his decisions on cases connected with the fisheries, in the various relations of merchants, boat-keepers, fishermen, and servants, are opposed to the common law, contrary to the statute law, to the long established usages and customs, to the decisions of all former judges and courts, and most injurious to the interest of this great fishery.

8th. That the courts of justice are virtually closed against the people by the excessive charges in the Supreme Courts and Courts of Sessions, and more particularly by the monopoly of a few practitioners at the bar, who by a most unjust act of the Legislature *were first made lawyers*, and afterwards got exclusive privileges under the "Lawyers' Incorporation Act," introduced into the council by Chief Justice Boulton,

9th. That the Chief Justice has exhibited, on various occasions, great partiality on the bench; his adjudications have been biassed by strong party prejudices; his judgments have been unjust, arbitrary, and illegal; opposed to the mild and merciful principles of English law, opposed to public liberty, to Magna Charta, which proclaims that "Freemen should not be immersed for small faults, or above measure for great transgressions."

. . . . . .

From the promulgation of the law and the charter, down to the period of the retirement of Judge Tucker, in no part of his Majesty's dominions could a rich man or a poor man obtain justice, cheap and impartial justice, more speedily than in his Majesty's Courts of Newfoundland. Since, though the laws remain unchanged, though the King's Charter remains unaltered, the people exclaim with one voice that they have not the advantage of the one, nor the protection of the other; they exclaim that their lives, their property, and their liberties lie at the discretion of the judges.

. . . . . .

When Judge Tucker and the other judges promulgated the Charter, and established the Supreme Court, they formed rules for the Supreme and Circuit Courts. By one of the clauses of the Charter, they were bound to publish them three months before they were put into operation. They accordingly adjourned the Court for three months for that purpose. They had to form, under the law, a jury system; they made no secret of the source from whence they took it; it was founded on the Imperial Law then recently passed, commonly called Peel's Jury Law. Mr. Tucker knew that he was bound by the laws of England: he naturally, therefore, took Mr. Peel's Act for his guide. In this Mr. Tucker acted up to the spirit and letter of the law and the Charter.

. . . . . .

Peel's Jury Bill is adapted as near as the circumstances of Newfoundland would admit. But this was not all: profiting by the dictates of experience, the great constitutional lawyer, by two or three subsequent rules, brought his system as near to perfection as any human system could have

have been expected to arrive, merely by the substitution of the ballot for the alphabetical arrangement. Before Judge Boulton ascended the Bench, before he was sworn into office, before he had any legal power to exercise the functions of Chief Justice of Newfoundland, he utterly destroys this splendid jury system of Mr. Tucker, founded upon an act of the Imperial Legislature. In his first address to the Grand Jury, he states that he "ordered an alteration to be made in the manner of empanelling juries before practiced in this Court." Here, I contend, is a gross violation of the King's Charter. That Charter commands a promulgation of three months of rules for the government of the Court before they can be acted upon. I shall now place Judge Boulton's rules and orders in juxta-position with Mr. Tucker's, particularly as respects the summoning and empanelling of juries. By one dash of his pen he swamps nearly all the principal rules that regulated the practice of the Courts, previous to his accession to the Bench. In the new rules, "It is ordered that the 1st, 2d, 3d, 4th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 22d, 26th, 25th, 29th, 30th, 31st, 32d, 39th, 40th, and 59th rules of the Supreme Court, made on the 2d January, 1826, and 12th January, 1830, be rescinded." And by the 9th rule it is further ordered, "that a panel of forty-eight jurors shall be summoned by the Sheriff eight days previous to the sitting of the Court for the trial of all issues found therein." According to this rule of Judge Boulton, the Sheriff is ordered to summon forty-eight jurors. Every thing is left to his discretion; *there is no qualification required; the alphabetical arrangement of Mr. Peel is dispensed with; the Sheriff may summon forty-eight soldiers or forty-eight sailors, to be jurors, under that rule;* this is the hasty and capricious way in which Judge Boulton disposed of the jury system of Mr. Tucker; and what have been the consequences? The lives, and property, and liberty of his Majesty's subjects of Newfoundland have been more than once exposed to the mercy of juries notoriously packed; what never occurred in any part of his Majesty's dominions, under this new jury system, a selection has been made of one political party for the purpose of trying individuals of another political party. Under this jury system those prosecutions took place the last year, when six of the representatives of the people, two clergymen, a number of other most respectable inhabitants were tried, and some of them convicted, who had to remain in a gloomy dungeon during the winter, until relieved from the unjust punishment by almost the last act of our late lamented and beloved Sovereign. I ask if, in the history of English law, can be pointed out a parallel to this hasty change in the jury system, and in the rules of Court, ordered by Judge Boulton. He had only arrived in the country; he was an utter stranger to its laws and customs, the manners of the people, and the practice of the Courts; it was inconsistent with the deliberate character of a judge; I doubt whether such an instance could be found in the history of judicature in any age or country. It was not alone the liberties and rights of the people that were invaded by this violation of the jury system, but the rights of property were equally so, by adopting a new course of practice in the Courts, and a new principle in the adjudications, Judge Boulton has totally subverted the ancient laws and customs of the country; has set aside the decisions of all former courts and judges; this is a statement I have frequently made for the last three years; I have made this statement frequently in public meetings, in published speeches, in published letters; when I could not claim the privileges of a member of this House, I made these charges openly and publicly against the course adopted by Judge Boulton. I was determined to abide the consequences; no punishment could be too severe for me if I had, without foundation, made these charges; the proof of their truth, I think, I might rest altogether on the simple fact that they have never been denied. The Judges did not deny them. The Lawyers, who owed Judge Boulton so much for giving them a monopoly, did not stand forth in his defence. No man has been found publicly either in the courts or through the press, to defend him. The facts are notorious and undisputed. The question, therefore, resolves itself into this simple proposition:—Is Mr. Boulton justified in the course he has pursued? It is my duty, this day, to prove that he is not—that he has trampled on the rights, privileges, and immunities of British subjects. If he is upheld in the course he has pursued, the boasted liberties of British subjects in Newfoundland, security to life, liberty and property, is not worth a pin's point. I fearlessly state that Judge Boulton was bound by the common law of Newfoundland, and that he could not, without a violation of his duty as a Judge, deviate from it. The Judges are sworn to abide by the laws; the law is founded on precedent, and explained by it. It has been said that he found a bad and absurd system on his assuming the Bench, and that he made a most beneficial change. This I deny. But if they admit the change, they acknowledge the charge. I unhesitatingly state that Judge Boulton, in his adjudications, was bound by the ancient laws and customs of the country, sanctioned by acts of the Imperial Legislature, and by the concurrent decisions of all former Courts and Judges since their first establishment in Newfoundland.

These are the principles that guide and direct the Judges in British Courts of justice. They are equally binding on the Judges and Courts of Newfoundland In direct violation of these principles, Chief Justice Boulton rased to the ground the whole superstructure of the

commercial

commercial laws of the country. He swept away, root and branch, the laws and customs that regulated the various relations between merchant and planter, fisherman and servant. At this moment I defy any man in the country—the Judges, the Lawyers, the most *experienced merchants;* the oldest and most *intelligent planters*, to state what principles govern the judges in their adjudications on the property and industry of the country. The beacon-lights have been extinguished; the landmarks of the law have been removed; chaos and confusion have succeeded to order, law and justice; the people have been thrown upon a trackless ocean without helm or compass; and in many instances they have been obliged to take the law into their own hands to secure to themselves their just rights. The peculiar laws and customs that regulated the trade and fisheries of Newfoundland, were adapted for a fishing country. Newfoundland was first settled by British subjects, and has continued purely British from the reign of Henry VII. down to the present day. The customs and laws of Newfoundland, therefore, were as much the laws of England as the peculiar laws and customs of Kent or Cornwall, or any other county of England. The laws first introduced into Newfoundland were formed upon the maritime laws of Europe, and were in accordance with the maritime law of England. The great policy of these laws was to give protection to those engaged in the hazardous employment of the fisheries. The object of these laws and customs may be comprised under two heads—protection to the merchant who gives supplies to the boat-keeper and fisherman to carry on the fishery, which is understood under the name of the Law of Current Supplies; the other is the law which secures to the fishing servant and seamen their wages, by giving them a preferable claim on the proceeds of the voyage. I contend that these were the laws of Newfoundland since the establishment of a fishery. I contend that they are the laws of Newfoundland at this day. I contend that they must remain the law until they are altered by an act of the legislature. Judge Boulton has disregarded these laws; he has sunk the judge; assumed legislative power; and this is the main question at issue between him and the country. It has been said by high authority, that it could not be disputed that Judge Boulton was a good English lawyer. I say, Sir, if he understood the first principles of English law, the laws and customs of Newfoundland should be his sole guide, on presiding in the courts of Newfoundland. It is the great perfection of the British Constitution and laws, that they can be adapted to the peculiar circumstances and situation of the people in every quarter. They are founded upon those leading and general principles common to men in every age and country. The British constitution gives security and protection to all, without distinction, who may take refuge under its wide-spreading branches. These are the opinions of every man who understands the British Constitution and British law.

It is useless to accumulate further arguments to prove what must be well known to every member of this House, and to every man acquainted with the history of the trade or the practice of the fishery, that the laws that regulated the preferable claim of the merchant for his supplies, and the seaman or fisherman for his wages, were the laws of Newfoundland from the earliest period—from the commencement of the fishery itself. These laws have been violently changed by the late unauthorized decisions of the Courts—ruin and desolation have followed to the industrious classes of the community in every part of the Island where those ancient laws have been violated. The advantages to the trade and fisheries, of the laws of current supplies and servants' wages, are so well explained by the various decisions of all former Judges, and more particularly by Chief Justices Reeves, Forbes, and Tucker. They are so well known to every member of this house that it is quite unnecessary for me to say one word upon the subject; but as our proceedings on this important inquiry may have to be judged by persons not so intimately acquainted with the trade and fisheries of Newfoundland as the hon. members of this House, I shall refer to a few familiar examples out of hundreds to which I could refer, of the desolating consequences to the poor planters, boat-keepers, fishermen, seamen, and servants, that have followed the hasty decisions of the Court which deprived them of the protection which the laws had so long afforded them. By the ancient laws no attachment would be granted by the Courts, against the person, boats, craft, or flakes of the planter or fisherman, during the fishing season: this regulation afforded ample protection to the planter and the fisherman; during the fishing season he could not be interrupted; under the new system the person, the boats, nets, and craft, and the fish and oil of the planter or fisherman may be attached in the midst of the fishing season, not only for a debt due to the merchant who supplied for the then current season, but even for a debt of old standing; this interruption of the planter and the fisherman completely destroys his means of paying either the new or the old debt. It is known that many cases have occurred of attachments in the midst of the fishing season having been made upon boat-keepers and planters, and which caused immediate ruin to these unfortunate people. The petition presented by the hon. member for Conception Bay, from one of his constituents, fully explains the great hardships inflicted upon the unfortunate fishermen and planters of this Island. This individual, it appears, was supplied by a merchant in Conception Bay with all necessaries for carrying on the fishery: he had commenced his voyage, and after some time his supplying merchant had intimation that it was the intention of a person to whom the planter was indebted for supplies, issued in a previous year, to get an attachment against his property; when the

supplying

supplying merchant ascertained this, he hastily took from him the little fish that he had caught, and in the mean time the attachment came and was laid upon his boat; the voyage was completely destroyed; the sharemen and servants were discharged, and the unfortunate planter was thrown into prison. I shall state another case. A merchant carrying on business in this town the last summer, suspended payment; he had supplied in the fishery, and amongst others he had given supplies to a large Western-boat, which before his failure had made one or two successful trips to the Westward; the boat, after landing her fish, had come to St. John's to get some additional supplies for prosecuting the voyage, but instead ofgetting supplies the trustees for the insolvent estate seized on the boat. The fishermen who were engaged on the shares for the season, and who had engagements to be employed for the whole of the season, were summarily thrown out of employment, and before they could get their own share of fish that was caught in the boat, they had to take law proceeding to recover it: the expenses were so great that the poor men got scarcely any thing for their summer's work, and they had no remedy. Under the old system such a case of hardship could not occur, so cautious were the courts that in the very writs of attachment an exception was always made of boats, nets, craft, and every other property connected with the fishery. This will more clearly appear by the blank form which I now hold in my hand. Under the old form, previous to the late changes, boats, crafts, nets, &c., were excepted in all attachments; in the form in the new rules of Court this exception is left out; the exception was agreeably to the law and custom of the fishery time out of mind. Who will say that it was not a good, just, and wholesome custom? What is this Newfoundland custom after all, but an extension of the principles of English law to the fisheries of Newfoundland? By law the tools of the artizan and mechanic are secured to him from attachment, the principle may be traced back as far as Magna Charta itself, which saves to the husbandman his implements of husbandry: it is a security absolutely necessary for the protection of the planter and fisherman to enable them to prosecute the fishery. Under the old system the supplying merchant for the current season had a preferable claim for his supplies for that season; this was a security to the merchant; it was a protection to the planter. The connection between merchant and planter is not unlike the connection between landlord and tenant: that connection which so long subsisted between the merchant and the planter, has been rudely severed. Any person now having a claim against the planter or boat-keeper, real or imaginary, may now step in and carry away the fish and oil of the planter, which he was enabled to catch by the supplies and assistance which he received from his supplying merchant. Those only acquainted with the nature of the Newfoundland fisheries, and with the heart-rending scenes which have occurred within the last two or three years, can judge of the great injustice and hardships that have been inflicted on the wretched planters of Newfoundland, by the violent change that has been made.

The planters are not the only sufferers—the seamen and fishermen who compose so large and so valuable a portion of the community, have been altogether sacrificed. Generally speaking, the planters who hire the servants have no means of paying them but by the fish and oil, the produce of their labour; if this be taken out of the hands of the planter, and the merchant receiver not bound to pay the wages, it may be said that the servant has no security whatever. In most instances he is shipped from May until October—his wages do not become due until the end of his servitude—in the intermediate time the fish is caught, it is cured, and transferred to the warehouse of the merchant; the planter has no means whatever of paying the servant his wages if the merchant do not do it. Under the old system, if the merchant received as much fish and oil as the wages amounted to he was bound to pay the servant's wages before he could receive one penny for his own supplies; under the existing system, the servant cannot recover from the merchant—he is therefore placed in this predicament, he must either take the law into his own hands, arrest by main force the fish and oil on the planter's room, even before his wages become due, or most likely he will lose it altogether. In numberless cases reference was made to myself, by servants placed in this predicament; I advised the servants invariably to secure themselves, and as the law that protected them was grossly violated by the Judges of the country, *that they should take the law into their own hands; in some instances they had, under this advice, to resist the authority of the King's Writ, in the hands of the High Sheriff of the Island,* and who I may confidently state, was in every instance obliged to strike and submit to the more just claim of the servant.

The most singular circumstances connected with the extraordinary violations and innovations of the long established laws and customs of the fishery, and which may be said regulates the whole property and industry of the country is, that they have been made without the Judge, as far as I can ascertain, extending his judgment or giving a single reason, except that they were absurd and barbarous. Judges Reeves, Forbes, Tucker, and the other Judges, left us able and elaborate judgments on most cases that came before them—and the whole current of their reasoning went to uphold the wholesome principles of that system which have been summarily denounced as absurd and barbarous. Had Judge Boulton followed the example of his predecessor—had he condescended to give reason or argument for his abrogation of the laws, my duty, this

day

64

day would not be near as difficult as it is. "I wish mine enemy would write a book." In this instance the Judge has acted wisely—he followed the advice of Mr. Forbes, given to one of the Naval Surrogates in proceeding on his maritime circuit around the Island. Mr. Forbes told the Naval Judge "to decide every case that came before him, if he could, but for the life of him not to attempt to give a reason for his decisions." Had Judge Boulton only given his reasons and arguments for the course he adopted, the country would judge of the comparative merit of the reasoning at both sides, but at present the case stands precisely in this form: We have the laws and customs and practice of the Courts, from time immemorial, sanctioned by the policy of the Parent Government and the Acts of the Imperial Parliament, and the concurrent opinions and judgments of all former Judges, on the one side—and we have Judge Boulton's Act, without a single argument or reason to support it, sweeping away by one fell swoop all the commercial laws of the country, on the other.

I have read a good deal—I have had some little experience in the world—I have, as far as my limited capacity would allow, studied the histories of ancient and modern times, but such an act of wholesale despotism on the part of a subordinate magistrate, never came under my observation. I verily believe that history cannot afford such an example of daring presumption and profound ignorance, and disregard of those philosophic principles which are the very foundation of all laws. I am the more surprised at the course adopted by Judge Boulton, when I consider that when he made these alterations he had only just arrived in the country an utter stranger, unacquainted with the manners of the people—the localities of the trade and fisheries. He came direct from Upper Canada, an agricultural country, without ships, seamen, or fisheries—without a seaport on its extensive margin. His practice as a lawyer, in Upper Canada, must have been widely different from the practice in Newfoundland, where the chief occupation of the people consists in maritime employments connected with the fisheries; the settlement of disputes between merchants, planters, and boat-keepers constituted the chief, almost the only business of the Courts of Newfoundland. The Judges and practitioners had a right, therefore, to make themselves acquainted with the mercantile laws, and with the maritime laws regulating ships, fishermen, and seamen, and the peculiar and local laws of Newfoundland for the regulation of the fisheries; instead of getting acquainted with these he alters the rules and practice, and adopts a new principle of decision; in short, he adopts the system of Upper Canada, instead of studying and learning the system and practice of the Courts of Newfoundland; he found it much easier, as "the mountain did not come to Mahomet, Mahomet went to the mountain." The Judge did not untie, he cut the gordion-knot—he flung away with contempt the system which so long prevailed in the Courts—he adopts his own system, his own practice, his own rules, his own principles. The Judges and the bar are "ordered" to obey. He gives the word "left-about, wheel!"—no military evolution could be more promptly or more silently obeyed; no voice was raised against the innovation by his learned brothers, or the bar; they have been silent on the subject—what the Judges say is the law is received by the bench as proofs from Holy Writ. The faith of the bar is equally strong in his judicial infallibility.

I shall now briefly call the attention of the House to another, and which shall be the concluding branch of the subject which I have pressed so long on your patience. I approach it with strong feelings of repugnance; charges of partiality and injustice should not be made against men in whose hands is placed the administration of the laws—their character is public property—charges should not be made against them on slight grounds—he who does so assumes a position of fearful responsibility—he should not alone himself be fully satisfied of the justice of the charges, but he should be prepared to prove them, so that not a shadow of doubt should remain on the public mind. No punishment would be too severe for the man who would unjustly, harshly, or wantonly fling imputations on the Tribunals of Justice. I am in a great degree relieved from this responsibility; I have only to state facts, indisputable facts, not to express vague or uncertain opinions. Loud charges of partiality and injustice have been made against the administration of the laws by thousands of his Majesty's subjects, in petitions to the King and both Houses of the Imperial Parliament. The industrious classes of the community have loudly complained—the planter, the fisherman, the seamen state, and truly state, that they have been ruined and beggared by the unjust and illegal adjudications of the bench. Ministers of the Gospel, members of the learned professions, of high-standing, magistrates, old and respectable citizens of various countries and of various creeds, have united in their complaints against the administration of justice, and have solemnly appealed to Almighty God for the truth of their allegations.

His Majesty's Secretary of State for the Colonies, with the King's Governor of Newfoundland, strongly impeach the Tribunals of Justice in the case of Judge Des Barres. In the High Court of Parliament the injustice of the Chief Judge of Newfoundland was proven in the case of Mr. Parsons, the printer of the *Patriot* newspaper, and admitted by his Majesty's Government, who ordered the remission of the infamous and unjust sentence in that case. The gross injustice of the bench was lately proven and admitted in the case of Harding, Thomey and Saunders; the moment this case was made known, even by *exparte* statements, the King, William

the

the Fourth, flung back the bars of the dungeon, remitted the fine and the imprisonment. But why do I accumulate cases to prove the polluted state of the administration of Britisth justice in Newfoundland? I might have confined myself to the extraordinary proceedings that took place in the Supreme Court of Newfoundland in December last, immediately after the general election. On that occasion the vital principle of British liberty, trial by jury, was completely laid prostrate. Juries in Newfoundland were made the engines of worse than eastern despotism. There is no tyranny so much to be dreaded as that which assumes the form, and at the same time violates the principles of the British constitution. In December last the High Sheriff of Newfoundland, under the immediate influence, if not under the orders of the bench, selected a jury from one political party for the purpose of trying another political party for political offences. Will the fact be denied? It cannot. I vainly look back to the worst pages of English history to find a parallel to the extraordinary prosecutions that took place during the reign of terror in December last. The proceeding of the clubs of Paris during the sanguinary period of the French Revolution, is the nearest approach to it. For something like an example in English history, I have to look back to the reigns of the Tudors and the Stewarts.

The state trials bear abundant testimony to the turpitude of the judges in those days; how much like the conduct of the judge of the Supreme Court, in December last:—"They explained away and softened the palpable contradictions of the witnesses for the crown—insulted and threatened those of the accused—checked all cross-examination—assumed the truth of the charge throughout the whole of every trial." I vainly look through the page of history for an example in conformity with the proceedings of the Newfoundland Grand Jury; persons were summoned before them from various parts of the Island, under the immediate directions of the bench; they did not know against whom they were required to give evidence, and after being sworn, they were called on to give testimony against their neighbours, their friends, of expressions made use of in the strictest confidence; and the most extraordinary feature in their proceedings was, that James Power and Robert Pack, Esqs., the members for Conception Bay, were summoned and examined to support bills of indictment which were found against themselves: so much for the acts of the Grand Jury. I shall now state of what materials that body was composed, as well as the composition of the Special Jury, which had to pass judgment on the presentments of the Grand Jury. The Grand Jury was composed of two of the defeated candidates at the late election, and the principal members of their committee: the Special Jury was selected from the very same party. The individuals who were arraigned before them were charged with the political offence of defeating them at the election, among whom were two clergymen, six of the representatives, representing more than a majority of the people of the whole Island, and a number of respectable citizens, their friends and supporters. I may be told that this was all according to English law—that the individuals had the advantage of trial by jury; but I indignantly reply, give me the law of Algiers, of Persia, or of Turkey—give me naked, undisguised despotism, before such a monstrous perversion of English law and English justice.

I have now stated the principal grounds on which I move for a committee of the whole house to inquire into the administration of justice in Newfoundland. I have made a plain statement of facts; I have said only what I know, or believe, to be true; if those facts are not founded in truth, there is nothing more easy than to prove their falsehood. I again repeat the charge, the judges have usurped the power of the law—they have violated the law—they have trampled upon private rights—they have invaded the public rights—under their rule there is no liberty in Newfoundland.

(No. 27)

Members of the Council on Mr. Boulton's arrival in Newfoundland, in 1833:—

The Hon.	The Chief Justice,	The Hon.	W. Thomas, Merchant,
...	... Commandant,	...	John Bingly Garland, Merchant since resigned,
...	... Attorney General,		
...	... Collector of H. M. Customs,	...	John B. Bland, Merchant. Appointed in 1836.
...	... Colonial Secretary,		
...	W. Haley, retired Lt. Col., since dead,	...	John Sinclair, Merchant.
...	John Dunscomb, Merchant,		

MEMBERS OF THE ASSEMBLY IN NEWFOUNDLAND.

Name of Member.	*Place Represented.*	*Calling of each Member.*
William Carson,	Saint John's,	Medical Practitioner.
John Kent,	do.	Auctioneer and Commission Agent.
Patrick Morris, J. P.	do.	Supplying Merchant.
Peter Winser	Ferryland,	Planter and Dealer.
John Valentine Nugent,	St. Mary's & Placentia,	Retailer of Small Wares, lately kept a School.
Patrick Doyle, J. P.	do.	Was formerly Master of a Vessel—at present carries on no particular business.
Henry Butler,	Burin,	Formerly in a small business, but failed—present occupation unknown.
William B. Row,	Fortune Bay,	Barrister and Attorney—has declined taking his seat.
Peter Brown,	Conception Bay,	Dealer and Shopkeeper.
James Power,	do.	Dealer.
John M'Carthy,	do.	Planter and Dealer.
Anthony Godfrey,	do.	Dealer
Thomas Fitzgibbon Moore,	Trinity Bay,	Fisherman—was a constable when elected.
Hugh A. Emerson,	Bonavista,	Solicitor-General.
Edward J. Dwyre,	Fogo,	Fisherman.

(No. 29)

Commercial Room, St. John's, Newfoundland, 9th April, 1835.

Sir,

We, the Commercial Society of this town, having observed with indignation and regret the attempts which have been lately made through the medium of the PATRIOT newspaper, to prejudice the public mind both here and elsewhere against you, by attributing to you in your judicial capacity, cruelty, partiality, and injustice, and being fully sensible how necessary it is to the safety of the lives and properties of the inhabitants of the Colony, that the laws should be fearlessly and conscientiously administered, and that those who honestly discharge their duties should be resolutely supported in the same—deem it incumbent upon us, as well from a principle of justice to you, Sir, as to ourselves and to the community in which we live. to stand forth in vindication of your conduct and character, and unequivocally to express to you, and to the public, our thorough conviction of the utter falseness of every imputation thus raised against you. Indeed so notoriously are they devoid of foundation, that were they not to be carried beyond our own shores, it might be considered an useless expenditure of time to take any notice of them, but when we recollect that those calumnies may reach other countries where they might possibly obtain some credit from being suffered here to pass uncontradicted.

And when we remember how vitally essential it is to the ends of justice, and to the welfare of society, that the judicial bench should remain not merely free from pollution, but from the suspicion of taint; we feel ourselves called upon, on the present occasion, as an influential part of this mercantile community, to give expression to our sentiments.

We beg, Sir, to assure you, that the ability, integrity, and firmness which have characterized your judicial and personal conduct since your arrival amongst us, have procured for you the respect and confidence of this society; and whilst you continue so to discharge the onerous and responsible functions of your high office, you may calculate with certainty upon the approbation and support of the independent and thinking portion of the inhabitants of this colony, and you will assuredly enjoy that invaluable reward which power can never give; nor can change take from you the peace-giving commendations of an approving conscience.

I have the honour to be, Sir, your very obedient, humble servant,

WILLIAM THOMAS,
President of the Chamber of Commerce.

Honourable H. J. Boulton, Chief Justice of Newfoundland, &c., &c., &c.

(No. 30.)

St. John's, Newfoundland, June 10th, 1835.

Sir,

Having learned that it is your intention to proceed shortly to England, we the undersigned inhabitants af St. John's, taking into consideration the present state of this Colony, but more especially of this town, and observing the attempts that are daily making to excite an unjust prejudice against you; feel it a duty we owe to you, Sir, to the public, and to ourselves to embrace this opportunity of expressing our assurance of the regard and esteem we entertain for your public character.

We know, Sir, that we are blessed in the possession of wise and merciful laws sufficient to protect us in the enjoyment of all rational liberty, and competent to furnish a remedy for every wrong. But we also know, and recent events have not tended to diminish the force of our conviction, that firmness and determination in carrying those laws into effect, are indispensably requisite to ensure the confidence of the public.

A few weeks only have elapsed, Sir, since the Commercial Society deemed it necessary to present an address to you expressive of the high sense that body entertained of the ability, integrity, and firmness of purpose which have invariably characterized your judicial conduct. Referring to those sentiments equally honourable to you, Sir, as they are creditable to the body from whom they emanated, we trust that we may be permitted to assure you we fully participate in them, and desire at the same time to add our unqualified testimony in approbation of the manner in which the judicial functions of your high office have been discharged ever since you arrived in this Colony.

Whilst we have observed, with deep regret and indignation, the unprincipled and disgraceful attempts which have of late been made, and are still continued, to raise an unfounded prejudice against you in the public mind, we have witnessed with admiration and satisfaction the manliness and

and dignity, with which those attempts have been met, and the temper and moderation with which you have vindicated the respect due to the tribunals of our country.

In ordinary times we might not have deemed it necessary on an occasion of your temporary absence from the judgment seat to address you in this public manner, but these, Sir, are not ordinary times, and we feel it incumbent upon us thus to step forward, and proclaim our utter abhorrence of the proceedings of a certain party in this town, calculated as, we know they are, to distract our hitherto peaceful community, to endanger the tranquillity of the Island generally, and which in our opinion will, if not repressed, eventually lead to the subversion of all law and order, and while we express our abhorrence of these proceedings, we declare it to be our fixed determination to sustain, by every means in our power, the legally constituted authorities of the land, and to preserve, in all their purity, the laws by which we are governed. In presenting you with this tribute of our respect, we cannot give better proof of the sincerity of our sentiments than by offering to you our best wishes for a safe and pleasant voyage to England, and an earnest hope that you may speedily return to us in good health, to resume that seat which you have hitherto occupied with honour to yourself and advantage to the public.

Signed by 579 Merchants and other inhabitants of St. John's

(32)

To the Honourable Henry John Boulton, Chief Judge of the Supreme Court of the Island of Newfoundland, and President of Her Majesty's Council, &c.

Deeply interested as we are in the welfare and prosperity of this Island, we should be wanting in every principle of true patriotism, were we to remain idle spectators of the passing events of the present day.

No persons can be more convinced of the necessity of the fountain of justice being pure and uncontaminated, free from every bias of party or politics, none would be more ready to raise their voices against the sacred bench of justice being prostituted to any such purposes, than those who now address you.

It is on these grounds that we feel imperatively called on to record our indignation at the many wanton attacks that have been made on you, for a conscientious, upright, and honourable discharge of the duties of your high office.

The firmness with which the laws have been administered since you presided as Chief Judge, have already had the effect of diminishing crime, and decreasing litigation throughout the colony; and without meaning in the least to detract from the merit of the very eminent men who have preceded you in your present office, we can truly say, that to none more than yourself can the motto that surmounts the seat of justice in the Supreme Court, of

"Neque inflecti gratia—Neque perfringi potentia—Neque adulterari pecunia"

be more justly applied.

The removal of your lordship would, we conceive, be fraught with the greatest evil that could be inflicted on this country.

Deprived as we are in this Bay of any protection, save what we derive from a vigorous administration of the law, and surrounded as we are by a populace easily excited to riot and disturbance, as the few past years have unfortunately shown, we should deeply deplore any event that would prevent your return to us, and we confidently hope that our most gracious Sovereign will be pleased to continue to intrust to your care, that sword of justice which you have wielded as a terror to evil doers, and as a protection to all classes of her Majesty's subjects.

We cannot refrain also from expressing our admiration at your conduct as President of her Majesty's Council, and although many of the undersigned are temporary sufferers by the non-passing of the "Supply Bill," yet are we convinced, that the principles which actuated your opposition to that measure, are such as would govern a wise and patriotic legislator, and such as the interests of this Colony required.

For opposing such, and other crude acts, and for the firm administration of the laws without bending them to the will of a party, your lordship has drawn down the violent hatred of the members who have gone as delegates from the House of Assembly, to lay their alleged grievances at the foot of her Majesty's throne, complaints against your lordship forming a prominent part of them. But whilst democracy has shewn itself in almost open rebellion in a neighbouring Colony, and its leaders have been held up by those persons as examples of true patriots, for the imitation of the inhabitants of this island, we should hope their representations will have no effect prejudicial to your lordship, whose character for honesty and integrity stands too firm to be shaken by the efforts of your enemies.

The House of Assembly, as at present constituted, composed of men, for the most part possessed of little interest in the country, and less ability to legislate for it—not chosen by the unbiassed voice of the electors, but forced on the country by the influence of the Catholic Priesthood; supported by mobs of non-electors, in opposition to the wishes of the wealth, intelligence, and real constituency of the Colony, cannot be expected to enjoy their confidence; neither do they possess it.

To the Council, therefore, have we looked for that salutary check upon them, which forms so admirable a part of our constitution.

We trust that your absence from this country will be but of short duration; and that you will return to resume the duties of your office with the marked approbation of our most gracious Queen; an event which will be hailed with proud satisfaction by the whole intelligence of the Colony, but gratefully welcomed by none, more than by those who have the honour to subscribe themselves,

Your most obedient Servants,

J. BURT, Clerk.

JOHN SNOWBALL, Wesleyan Missionary.

Harbour Grace, 19th December, 1837.

William Punton, Merchant.
George Thorne, Merchant.
John Munn, Merchant.
Nicholas Stabb, Deputy Sheriff.
John Stark, Magistrate.
James Bayly, Magistrate.

Thomas Danson, Magistrate.
W. Stirling, Magistrate.
Alfred Mayne, Barrister at Law
Richard Anderson, Barrister at Law.
Thomas Ridley, Merchant.
James Pitts, Merchant.
Joseph Soper, Merchant.
Mark Parsons, Merchant.
William Parsons, Planter.
Thomas Godden, Shopkeeper.
Alexander Prole, Shopkeeper.
William Lejeates, Accountant.
John Charles Nuttall, Merchant.
William Dow, Surgeon.
Robert Lee Whiting, Carpenter.
Thomas Kitchen, Mason.
John Currie, Farmer.

Samuel Bennett, Smith.
Robert Parsons, Planter.
Ambrose Parsons, Planter.
Archibald Munn, Accountant.
George P. Tillard, Merchant.
George Hippisley, Accountant.
Levi Pike, Planter.
Jacob Moore, Householder.
John Kingwell, Newfoundland School Society Teacher.
E. L. Brown, Her Majesty's Customs.
James Sharp, Constable.
Henry Webber, Planter.
Samuel Elliott, Storekeeper.
H. G. Clow, Barrister.
William Henderson, Merchant.

LETTER FROM DR. CARSON,

SPEAKER OF THE HOUSE OF ASSEMBLY, AND ONE OF THE DELEGATES,

Published in the Newfoundland Patriot, of the 16th of December, 1837,

ON THE EVE OF HIS DEPARTURE FOR ENGLAND.

TO THE HOUSEHOLDERS OF THE ISLAND OF NEWFOUNDLAND.

GENTLEMEN,

Nearly thirty years I have advocated your Interests—your Liberties. Compare Newfoundland in 1808 with Newfoundland in 1837. History does not record a revolution, in so short a period, so complete so satisfactory. The sword has never been drawn—one drop of blood has not been shed—your liberties have been achieved—solely by the undeviating advocacy of Truth and Justice, your Franchises which is that of every Householder, are founded in Justice—your Parliaments are limited to four years. In religion the voluntary system is most complete—you have no dominant Church—no Clergy Reserves. One ambitious tyrant alone blasts your happiness, and paralyzes the patriotic exertions of your representatives, to whom you have confided your interests: from some hidden mystery, the executive who ought to be the protector of your chartered rights, appears to be an ally. The puisne Judges he has chained to his chariot wheels. The Executive and Legislative Councils, are the serviles creatures of his will. The bar are obedient to his nod. The Special Juries, by a man of his own creation, are selected political partisans. He has lately aimed a deadly blow against the usefulness and respectability of the medical profession. Through his ascendancy in the Councils and on the Judicial Bench, he has endeavoured to burke the rights and privileges of the people. At the advanced age of sixty-seven I embark for England, at this inclement season of the year, for the sole purpose of averting arbitrary power, the despotism of an individual—an individual who ought never to have been permitted to contaminate our shores, as Chief Justice,—an individual who had been ignominiously dismissed from the office of His Majesty's Attorney-General of Upper Canada.

I have the honour to be, Fellow Countrymen,

with best wishes for your happiness and prosperity.

WILLIAM CARSON.

Brig Picton, St. John's Harbour, Dec. 1837.