

**CIHM
Microfiche
Series
(Monographs)**

**ICMH
Collection de
microfiches
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1999

TH
co
ma
th
sig
ch



This
Ce

10

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
- Only edition available / Seule édition disponible
- 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 restorations 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
- 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.
- Opposing pages with varying colouration or discolorations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'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		14x		18x		22x		26x		30x	
							✓					
	12x		16x		20x			24x		28x		32x

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

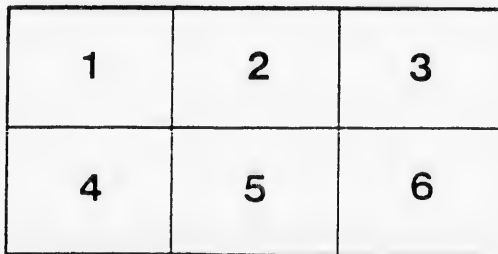
Public Archives of Prince Edward Island

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 \rightarrow (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:

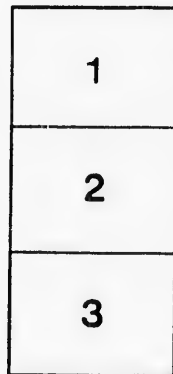
Public Archives of Prince Edward Island

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 \rightarrow 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.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



APPLIED IMAGE Inc

1653 East Main Street
Rochester, New York 14609 USA
(716) 482-0300 Phone
(716) 288-5989 - Fax

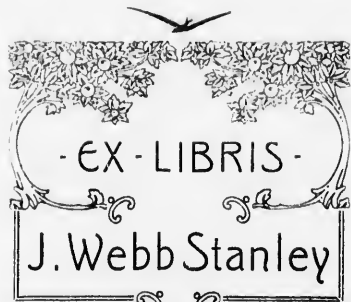
CONSIDERATIONS
RESPECTING
PROPRIETARY CLAIMS
TO
TOWNSHIP LANDS
IN
PRINCE EDWARD ISLAND.

BY THE HON. WILLIAM SWABEY, M. L. C.

CHARLOTTETOWN.

PRINTED AT THE EXAMINER OFFICE.

1859.



TH

II

My

I

rema

not

pred

most

Ca

Edw

hand

the C

titles

M

no w

tary

the

facts

now

have

auth

am n

same

Islan

haps,

to ob

it exp

by ex

by po

that t

C ant

that t

wisod

TO HIS GRACE
THE DUKE OF NEWCASTLE,

HER MAJESTY'S PRINCIPAL SECRETARY OF STATE
FOR THE COLONIAL DEPARTMENT.

MY LORD DUKE,—

I have taken the liberty of addressing to you a few remarks on a subject which I have reason to believe will not fail to interest your Grace, as it has done your predecessors in the high office which you hold under our most gracious Sovereign.

Certain popular views of the tenures of Land in Prince Edward Island have been long entertained, on the one hand favorable to the present position of the Grantees of the Crown; and on the other, denying the validity of the titles under which they hold.

My views on this interesting question, in which I am in no way personally interested, are opposed to the proprietary claims; but I have been slow to adopt them; and in the following pages I have collected a few of the main facts and authorities which exist to support the opinion I now entertain. I must, however, premise that what I have put together affords a mere abstract of voluminous authorities and documents on which this case depends. I am not aware that the subject has ever been treated in the same manner. When I was recently a member of the Island Government, I had access to papers, of which, perhaps, it would not be easy for me at the present moment to obtain an equally deliberate perusal. I have thought it expedient and just to treat of the explanations supplied by existing instruments, because I hear it stated broadly, by persons whose position should give the assertion weight, that the original conditions of settlement contained in the Charters have been so modified by time and by concessions that their existence can scarcely be said to be now recognised. I believe these assertions to arise either from an

unwillingness to give the subject a fair investigation, or a reluctance to undertake the labor, or possibly from necessary information being withheld.

My assertion, however, is this—whatever concessions have been offered or modifications made, they have been conditional, whilst the conditions have been never accepted, or if accepted, never performed in such a manner as to entitle the parties to whom they were offered to their benefit. I do not greatly differ from those who consider that, with possibly some exception, the whole of the Grants made by the Crown are liable to forfeiture, but my endeavour has been to shew how such a forfeiture is reconcilable to substantial justice.

I am quite aware that the facts and authorities I have put together are incomplete; but I leave them to explain whether they are not sufficient to give a general idea of the truth and actual position of affairs—sufficient as a specimen of what may be extracted from existing memorials and documents, and to sustain the assertion, that no value has been given by the Grantees in Prince Edward Island for important possessions and privileges, given to them on conditions of things to be done which have never been performed, and payments to be made which have never been liquidated.

I have the honor to be,

Your Grace's very obedt. humble servt.,

WILLIAM SWABEY,

Member of the Legislative Council of P. E. Island.

CL

T

claim

the v

picd

filled

Colo

Fr

ques

Lots

TH

cally

only

tedio

To

to do

are s

this

Maug

from

to Hi

parts

for k

Nava

cation

savin

sors,

Chur

acres

Grant

hereo

CLAIMS TO TOWNSHIP LANDS

IN

PRINCE EDWARD ISLAND.

THE object of the following statements is to collect into one point of view the actual state of the Proprietary claims to Township Lands in Prince Edward Island, and the various transactions respecting them, which have occupied at various times the labors of the Legislature, and filled the correspondence of the different Ministers at the Colonial Office.

From these statements are at present excluded any questions or facts regarding the several Town and Pasture Lots.

The subject will be as far as possible treated chronologically, though it may be not uniformly so, and a synopsis only given of the whole case. The full details would be tedious, and are not required.

To commence our subject intelligibly—the first thing to do is to extract the conditions on which the Townships are still held, however they may have been demised. To this end we take the grant of Lot 58, made to Joshua Mauger, Esq., and we transcribe the reservations therefrom; they are in these words: “Saving and reserving to His Majesty, his heirs and successors, all such part or parts of said tract of land as have been already set apart for building wharves, erecting fortifications, enclosing Naval yards, or laying out highways for the communication between one part of said Island and another; also saving and reserving to His Majesty, his heirs and successors, one hundred acres of the said tract for the site of a Church and Glebe for a Minister of the Gospel, and thirty acres for a Schoolmaster, *yielding and paying* by the said Grantee, his heirs and assigns, (which, by the acceptance hereof, he binds and obliges himself, his heirs, executors

and assigns), to pay His Majesty King George the Third, his heirs and successors, or to any person lawfully authorised to receive the same for His Majesty's use, a free yearly Quit Rent of six shillings sterling for every hundred acres so granted; the first payment of the same to commence and become payable, on one half of the granted premises, on the Feast of St. Michael, which shall first happen after the expiration of five years from the date hereof, or within fourteen days after; and also yielding and paying the like Quit Rent for the whole twenty thousand acres hereby granted, on the Feast of St. Michael next ensuing after the expiration of ten years from the date hereof, or within fourteen days after; and so to continue payable yearly hereafter for ever. And the said Grantee binds and obliges himself, his heirs and assigns, to settle the said tract hereby granted within ten years from the date hereof, with Protestant settlers, in the proportion of one person to every two hundred acres,—said Protestant settlers to be introduced from such parts of Europe as are not within His Majesty's dominions; or with such persons as have resided within His Majesty's dominions in America two years antecedent to the date hereof. And if the said Grantee shall not settle one third of the tract in the proportion aforesaid, within four years from the date hereof, then the whole of the said tract shall become forfeited to His Majesty, his heirs and successors, and this Grant shall be void and of non effect," &c.

There being no reservation for Fisheries in this Grant, we further extract from the Grant of Lot 24 in the said Island, the following, in addition to the same conditions above extracted:—

“And also saving and reserving for the disposal of His Majesty, his heirs and successors, five hundred feet from high water mark on the coast of the said tract hereby granted, to erect stages, and other necessary buildings for carrying on the Fishery,” &c.

These words are held by the Crown Lawyers in England and in the Island to convey the freehold to the Crown, consequently any uses made of these Reserves without license therefrom is an indefensible usurpation.

tion
or t
His
Fis
erec
Fis
feet
T
sub
pur
need
but
whi
beco
in th
W
the
proo
plic
cond
comp
been
relin
It
tions
Hous
comp
follow

The
Asser
Instr
origin
expir

We now proceed to extract the terms of those reservations, the freeholds in which do not belong to the Crown or to the Island Government. They are thus expressed:—

“ And further saving and reserving a free liberty to all His Majesty’s subjects of carrying on a free Fishery, or Fisheries on any part or parts of the said Township, and of erecting stages and other necessary buildings for the said Fishery or Fisheries, within the distance of five hundred feet from high water mark.”

These words of reservation entitle any of Her Majesty’s subjects to occupy any of this class of reserves for fishing purposes. To regulate the use of these when it becomes necessary, the Legislature must pass the requisite laws; but they cannot be alienated or diverted from the use for which they are designed; and under no circumstances can become the property of the persons to whom the freehold in the remaining part of the tract has been granted.

We now commence the arduous task of resewing from the various places in which they lie concealed the various proofs that none of the conditions of the Grants are complied with; or if, in some cases, it can be shewn that conditions substituted for them have been performed, no compliance with the condition of paying Quit Rent has been performed; and no claim to such rent has ever been relinquished.

It appears from old Council Journals and Royal Instructions, to be found in the Secretary’s Office, and from the House of Assembly Journals, that in the year 1769 it was computed that the Quit Rents annually payable stood as follows:—

26	Lots at 6s	Stg.	£780	0	0	
29	do.	4s	“	558	0	0
11	do.	2s	“	110	0	0

66 £1448 0 0 stg. per annum.

The 67th Lot was then ungranted. It will be seen in the Assembly Journals, 1833, page 37—“ That (by the Royal Instructions there recited) one moiety of the Quit Rent originally reserved on such Lots, and to commence at the expiration of five years from the date thereof, shall, by

the terms of those new Grants, commence and become payable to Us, our heirs and successors, from and after the first day of May last past"—(that is in the year 1769)—“That the other moiety, the payment of which was to take place at the expiration of ten years, shall not commence and become payable until the expiration of 20 years from the date thereof.”

By this it will be seen that if the terms named by His Majesty's Ministers had been adopted, which they were not, new Grants would have been issued, by which the owners or grantees of Townships would have been bound to pay during the fifteen years possession after the five first, dating from the original Grant, the moiety of £1448 sterling per annum, and at the date of 20 years from the commencement the whole sum of £1448 would become payable annually as Quit Rent; this apparently, if we commence in May 1769, the account would stand somewhat as follows:—

Twenty years, at £724		£14,480	0	0
From 1789 to 1832, 43 } years, at £1448 }		62,264	0	0
		£76,744 0 0		

As this arrangement was not made, the whole sum is due, with the exception of the proportion which would have been payable on the escheated Lots 55 and 15; and it must be borne in mind that we are not including sums payable on Town, Pasture, and Common Lots, which will greatly increase the sum of £76,744, probably making it more than £100,000 sterling.

¶ We think the next subject of interest is the actual escheat which took place when Governor Smith was at the head of affairs of the Lots 55 and 15. How that came about—under what authority—and what has become of that authority.

Firstly,—Under what authority did Governor Smith act? It cannot be otherwise than that the following Act was his authority, as I will, in the sequel, demonstrate. This Act was passed in 1803, and is in page 82 of the Journals of Assembly for the year 1835. It is a Bill in-

titled "An Act for revesting in His Majesty, his heirs and successors, all such lands *as are or may be* liable to forfeiture within this Island.

"Whereas, notwithstanding the various instances of forbearance and indulgence of our most gracious Sovereign towards the Grantees or Proprietors of the several Lots, half Lots, or shares of Lots of land in this Island, the said Proprietors, a few only excepted, have so wholly neglected the settlement and improvement of their lands, that at this day, now upwards of thirty years from the date of their respective grants, by far the greatest part of the Island is abandoned to a state of wilderness, discouraging and distressing to His Majesty's faithful subjects, its present Inhabitants—destructive to the just views and expectations of Government, and burthensome to our Mother Country, in supporting and maintaining its establishment. And whereas, in consequence of the late humble and dutiful representation of the late House of Assembly to His Majesty's Ministers, the actual state of the Colony, as above mentioned, has been taken under their consideration; and on the sixth day of August last, His Majesty was graciously pleased to signify his royal pleasure by the Right Honorable Lord Hobart, one of His Majesty's principal Secretaries of State, to the Lieutenant Governor of this Island, that the Government of this Island should be prepared to pursue, without loss of time, when circumstances should render it advisable, the requisite and legal steps for effectually revesting in His Majesty such lands as might be liable to be escheated and forfeited to His Majesty, either by non-improvement, non-payment of the Quit Rents, or non-performance of any of the conditions of the Grants thereof; and the line of proceeding established in the neighboring Colony of Nova Scotia in that respect, should be adopted and followed in this Island. Wherefore, in ready obedience and conformity to His Majesty's gracious pleasure, so as aforesaid signified, and for effectually promoting and encouraging the settlement and prosperity of this Island: Be it enacted by the Lieutenant Governor, Council, and Assembly, that on or before the second day of April next, it shall and may

be lawful to and for the Governor, Lieutenant Governor, or Commander-in-Chief, of this Island for the time being, and he is hereby authorised and required, with the advice of His Majesty's Council, to appoint and constitute, by Commission to be issued for that purpose, a fit and proper person for the time being, to be Commissioner of Escheat and Forfeitures of Land within this Island, which said Commissioner is hereby authorised and empowered, from time to time, on information being made and filed before him by His Majesty's Attorney or Solicitor General, for and on behalf of his said Majesty, his heirs and successors, touching or concerning the performance or non-performance of the conditions of any of the Grants or Letters Patent, by which the Lots or parts or shares of Lots of Land, have or might have been at any time heretofore held, by the oath of twelve good and lawful men, freeholders of land in the Island aforesaid, for that purpose to be duly summoned by the Sheriff of this Island, or his Deputy, by virtue of a precept to be directed to him, and empannelled, sworn, and charged to enquire, on the part and behalf of our said Lord the King, whether the Lots or parts or shares of Lots of Lands, in such information respectively mentioned and described, are or shall be liable to be escheated and forfeited to His said Majesty, his heirs and successors, either by non-improvement of the lands, non-payment of the Quit Rents, or non-performance of any other of the conditions of the respective Grants or Letters Patent thereof; and the said Commissioner shall have power and authority to summon witnesses to attend and give evidence before the said Inquisition. And the said Commissioner of Escheat and Forfeitures for the time being is hereby required and directed duly to return the Inquisition, which he shall from time to time take by virtue of this Act, into the office of the Registrar of the Court of Chancery of the said Island, under his seal and the seals of those by whose oath he shall take the same; and thereupon the lands and premises therein contained are hereby declared to be re-vested in His Majesty, his heirs and successors—any former Grant or Letters Patent thereof notwithstanding. And it shall and may be lawful to and for the Governor,

Lieute
Island
His M
return
to all

“ A
said,
feitur
shall,
natio
Charl
all pe
of La
that t
and
time
the s
Cour
six r
said
filed
for a
Gaz
Clerk
manu
print

“
ed o
or In
by v
the
whic
be t
noti
cern
bein
be t
by
Gov
said
such

Lieutenant Governor or Commander-in-Chief of the said Island for the time being, with the advice and consent of His Majesty's Council, to make Grants of such lands so returned, which Grants shall be good, valid and effectual, to all intents and purposes whatsoever.

“And be it further enacted, by the authority aforesaid, that the Clerk of the Court of Escheat and Forfeitures, (who is to be appointed in manner aforesaid), shall, within six days next after the filing of every information in the said Court, put up at the Court House in Charlottetown a notice signed by him, thereby notifying all persons interested in the Lot, or part or share of Lot of Land, on such information mentioned and described, that the same has been filed for the purpose of escheating and forfeiting such lands and premises, and of the time when an Inquest of Office was held and taken before the said Commissioner of Escheats and Forfeitures at the Court House of Charlottetown, which time shall not exceed six months from the publishing the said notice; and the said Clerk shall, upon each and every information being filed as aforesaid, also publish a like notice in the *Gazette*, for and during the space of one month; and in case no *Gazette* shall be printed in the said Island, then the said Clerk shall post up within the time aforesaid in the usual manner, and in the accustomed places, such notice in printing or writing.

“Provided, that it shall be lawful for all persons interested or entitled to such lands as are comprised in any Office or Inquisition so returned into the said Court of Chancery by virtue of this Act as aforesaid, to traverse the same in the Court within twelve months from the date thereof; which said notice hereinbefore directed, and Inquisition to be taken in pursuance thereof, shall be deemed sufficient notice to the traverser and all parties interested or concerned in such traverse, without any writ of *feri facias* being issued; and if the said Office or Inquisition shall not be traversed within the said time, the Grant of such land by virtue of such Inquest by the Governor, Lieutenant Governor, or Commander-in-Chief, with advice as aforesaid, shall be absolute, according to the form and effect of such Grant.”

Such was the Act which passed in 1803. In regard to it, however, there seems something mysterious, for as we shall presently show, Lieutenant Governor Smith put it in force in the cases of Lots 15 and 55. Yet that being done, further proceedings under the Act were dropped, and we find in 1835, Journals of the Assembly, page 80, resolutions throwing some light on the matter. Having made enquiry from Lieutenant Governor Fanning, the House of Assembly first received the following answer, April 1, 1803:—"His Excellency the Lieutenant Governor gave his assent to a Bill, intituled 'An Act for effectually revesting in His Majesty, his heirs and successors, all such lands as are or may be liable to forfeiture within this Island.'" The resolutions to which we allude above were passed November 20th, 1805. We extract the following:—

"1st, *Resolved*, That the proceedings of the Legislature of this Island were in strict conformity with His Majesty's Royal pleasure, signified by his Secretary of State to the late Lieutenant Governor Fanning, in passing the two Acts, namely, for enforcing the due and regular payment of the Quit Rents, and for reinvesting His Majesty with the unsettled lands of this Island.

"2nd, *Resolved*, That it appears to this Committee, and they have the strongest reason to believe, that the Royal assent to the said Act for reinvesting, &c., has been graciously afforded by His Majesty.

"3rd, *Resolved*, That the Committee hath great reason to apprehend, that such, His Majesty's Royal allowance, has been withheld by means of unfounded representations of interested individuals in England, which the Assembly of this Island had no opportunity of answering."

"4th, *Resolved*, That it is the opinion of the Committee that the proceedings which have taken place under the former Act, viz: for enforcing the due and regular payment of the Quit Rents, have been suspended through the same means; and that thus the measures planned by the wisdom of His Majesty's Councils for the settlement and prosperity of this Island are wholly frustrated, and His Majesty's gracious and beneficent intentions rendered ineffectual."

We conclude from the above that the Act respecting the manner of enforcing payment of Quit Rents is still in force. It will be found in the Statutes of 1802, page 195; and at the foot of the Act is this note: "It appears by Governor Smith's proclamation of 3rd February, 1818," (to which we shall in due course advert), "that this Act has received the Royal allowance."

But when we turn over a few pages of the laws, we find on page 208 the following title:—"An Act for revesting in His Majesty, his heirs and successors, all such Lands as are or may be liable to forfeiture within this Island;" but in the margin is the following, be it observed, without date:—"This Act has not received the Royal allowance." The foregoing resolutions of the House of Assembly, taken in conjunction with Lieutenant Governor Smith actually escheating Lots 55 and 15, several years afterwards, make it indisputable in our minds, that either the Royal allowance was duly received and suppressed; or that the Act became law by its disallowance not being notified. The guilty collusion of the Proprietors and other parties causing it to be so noticed on the Statute Book, is very evident.

But it must be observed, that whilst we are ready to maintain that this Act, of which all that is given in the Statute Book is the title only, as we have above recited, is now in full force, we are not at all solicitous that it should be so, because even were there no Act at all, the common law of the land would reinvest all the land which has not paid Quit Rent or complied with the other conditions in the hands of the Island Government, Her Majesty's assignees under the Civil List Bill.

Here, however, let us pause to observe that the obstruction, concealment, and other contrivances to elude this enactment, to which we have made allusion, is nothing more than was always in the power of the Lieutenant Governor or Government under the old regime. Long possession of office and unchallenged responsibility—the impracticability of getting sight of public documents, concerning which no man could be questioned, and all the tricks that were most abundantly practised, were nothing more than the consequence natural to a state of things when the officers

of the Government were not dependent on the people but the Proprietors for the length of tenure of office, and when holding no seats in the Legislature they could not be questioned.

Further proof of the existence of this missing Statute (missing but for the Journals of the Assembly), is afforded by extracts we shall make from Lord Hobart's despatches, he then being Colonial Secretary; and not only so, but that it was enacted at the command of the Crown, and so could not have had the Royal assent withheld from it, as most dishonestly stated by the publishers of the Statutes in those times.

Lord Hobart says, in a despatch on the subject, dated August 6, 1802, and to be found in the Journals of 1833, pages 37 and 38:—

“It is highly expedient that a proper and effectual method should be established of collecting Quit Rents. I am, therefore, to signify you His Majesty's pleasure, that you are in the strongest manner to recommend the Legislature of the Island under your Government to pass an Act for these purposes, and I enclose you herewith certain clauses, &c.

“With respect to the measure to be adopted for the recovery of such lands as may be liable to be escheated and forfeited to the Government, either by non-improvement, non-payment of Quit Rents, or non-performance of any other conditions of the Grants, the practice which has prevailed in Nova Scotia, (to the Lieutenant Governor of which Province you will apply if necessary,) will, it is conceived, be a sufficient precedent for your guidance and direction; and it is His Majesty's pleasure that, after having fully informed yourself on this subject, you should follow the same line of proceeding.”

But we think enough has been shewn on this head to remove the least hesitation as to the justice and necessity of immediately commencing proceedings regarding the Escheat of all lands liable thereto.

We have omitted, however, the following resolutions of the House of Assembly, passed January 4th, 1833:—

tha
Ese
fro
sta
suc
ope
bee
Col
the
obt
thu
wou
sma
of a
“
in a
full
of I
as I
V
hav
still
N
men
occu
Con
189
was
ing
of
Kin
such
It m
obse
*
proof
missio
Index
falsific

Resolved,—That it is the opinion of this Committee, that although the Act of 1803, for regulating a Court of Escheat, was passed in strict conformity with the despatch from His Majesty's Minister on that subject, notwithstanding the obvious advantages to be derived from such laws, had they been permitted to go into fair operation, certain Proprietors and their adherents have been but too successful by means of false statements at the Colonial Office, artfully to defeat and entirely to frustrate the final passing or enactment thereof, by preventing their obtaining the Royal allowance, and that the Proprietors thus acted from the most sordid motive, namely, that they would have been compelled by these laws to contribute a small sum towards the improvement of the country, by way of a tax on their wilderness lands.

Resolved, That it is the opinion of the Committee, that in all probability this Island would have been by this time fully settled, the titles of every man secure, &c. if the Act of 1803, authorising an Escheat, had gone into operation, as His Majesty at first graciously intended it should."

Voting for these resolutions, it is worthy of remark, we have the names of Messrs. Green, Brennan and Cooper, who still reside in the Island.

Now, further to shew that the cooking of public documents to support proprietary imposition was no uncommon occurrence in bygone days, we extract from the Journals of Council the following, dated February 3rd, 1818, (page 189 of Executive Council Journals:) "His Excellency was pleased to direct that a proclamation be issued, notifying that the marginal note inserted at the commencement of the Quit Rent Act of this Colony of the 33rd of King George III., stating that it does not appear that such Act had received the Royal allowance, is erroneous*." It may, perhaps, be as well, notwithstanding the seeming obscurity of the subject, to take up the history of the

* Vide page 194 of the Minutes of Council, from 1810 to 1820, for proof that the Hon. Robert Gray and the Hon. W. Johnston were Commissioners for revising the proof sheets of the Laws of the Colony; and the Index to them, it appears, furnishes prima facie, evidence of their having falsified the Statutes.

various projects as well as enactments which have engaged the Government of this Island, its Legislature, and the respective Colonial Secretaries.

The first Act of which we have any notice is the last in the Statute Book in 1773, and is there marked as repealed by 43rd Geo. 3rd, cap. 2, 1802, which latter Act points out the method to be adopted for the recovery of Quit Rents, &c. It has no relation to that of the 33rd Geo. 3rd, which relates to rescinding certain proceedings had on the subject of Quit Rents, so far as we collect from the title. Where the Bill is, we are unable to say.

Several intermediate records on the proceedings in Council, however, exist, of which we make some extracts, to exhibit the opinions of the Government of the day. "At a meeting of Council, 13th March, 1784, the Lieutenant Governor, Walter Patterson, Esq., a Bill intituled an Act for repealing an Act for the effectual recovery of certain of His Majesty's Quit Rents," &c., was laid before Council; also part of a letter from the Secretary of State, directing the above Act to be laid before the General Assembly of this Island.

It appears the Council took time to deliberate on this measure, which was, no doubt, concocted by proprietary influence at home. On the 13th April they came to some very long resolutions, which they conclude thus:—

"They are, therefore, of opinion that an humble Petition and Remonstrance be prepared, stating facts as they really stand, humbly offering their reasons why the Bill in question should not be laid before the Assembly."

The reasons which precede the prayer are, as may be seen in the original document, absolute refutations as to matters of fact on which the Proprietors had procured the Bill by false statements at the Colonial Office.

Some Quit Rents are accounted for, as received in the year 1784, and applied by the Crown to the payment or part payment of the Civil List.

But, perhaps, no document on this subject is more conclusive than the following. It bears date the first day of October, 1816, (quere, 1818?) and is as follows:—

Hon
Stat
the
in th
they
and
and
I ha
Coun
of th
new
day o
yearl
of De
or wi
resun
Crow
Th
this p
1st
2nd
due fr
3rd
the fo
Coloni
Fro
1823,
40, J
censur
regard
"A
been re
in 181
years a
Quit R
paymen

" A PROCLAMATION.

" By His Excellency Charles Douglas Smith.

" Whereas it having been signified to me by the Right Hon. Earl Bathurst, His Majesty's Principal Secretary of State for the Colonial department, that it is intended on the part of the Crown to extend to the Proprietors of Land in this Colony immunity from certain forfeitures to which they were liable by the conditions of their original Grants, and also to grant remission of certain arrears of Quit Rent, and fix a scale for the future payment of such Quit Rent— I have thought fit, by and with the advice of His Majesty's Council, to apprise the Proprietors of Land in this Island of this His Majesty's most gracious intention, and that a new rate of Quit Rent will commence from the twenty-fifth day of June in the present year; and that the first half yearly payment will be demanded on the twenty-fifth day of December next; and that if payment shall be neglected or withheld by any Proprietor, measures will be taken to resume immediate possession of the Land on the part of the Crown."

The observations which offer themselves, arising out of this proclamation, are obvious.

1st, That it was issued by order of the Crown.

2nd, That it remitted no arrears, in many cases then due from the year 1764.

3rd, That it asserted the right of the Crown to order the forfeiture of the lands, which right has devolved on the Colonial Government.

From a despatch signed " Bathurst," dated 10th May, 1823, addressed to Lieutenant Governor Smith, vide page 40, Journals of 1825, it appears that his Excellency was censured for not having attended to his instructions in regard to the Quit Rents. The words are as follows:—

" As it appears that the collection of Quit Rents has not been regularly enforced since the date of your proclamation in 1818, but that in numerous instances arrears for *several* years are now due, I am to observe that the Collector of Quit Rents may *for the present* limit his demands to the payment of the Quit Rents, due for the current year, which

he will consider himself authorised to enforce, and that the levy of arrears may be *suspended* until you have remitted to me an account of the sums due by the different proprietors, with the reasons which have induced you to allow them to accumulate instead of collecting them half yearly, as you were instructed to do in 1818."

In the time of Lieutenant Governor Sir Aretas Young a despatch was laid before the House of Assembly which contains the following passage :—

"The agreement respecting Quit Rents in Prince Edward Island, embodied in the 4 Geo. 4th, cap. 17,—(the Land Assessment Act since continued and which foregoes the claim for Quit Rents during its operation and that of the subsequent Acts up to 1863 or 1864,)—must not be disturbed; but so far as is consistent with that agreement, I am desirous to extend to Prince Edward Island a very advantageous arrangement, which has lately been offered to the Colonists of New Brunswick. The enclosed extract will explain to you that arrangement. And the following is the manner in which I propose that it should be made applicable to Prince Edward Island. "During the first two years after the expiration of the five years for which the claim for Quit Rents has been suspended, the Quit Rents should be redeemable at fifteen years purchase; during the next period of two years they should be redeemable at eighteen years purchase; at all subsequent periods they should be redeemable at twenty years purchase. The claim to Quit Rents will revive retrospectively and prospectively at the termination of the existing agreement; but following the analogy of the measure adopted in New Brunswick, I am of opinion that the arrears due up to the time when the plan I have described will come into operation should be remitted."

"Having established these *conditions*, I think that the punctual payment of all redeemed Quit Rents ought to be rigorously exacted. The objections which I entertain to a forfeiture of lands under a breach of the conditions requiring them to be settled with a certain number of occupants, would by no means apply to a forfeiture of them for

non
the
on t
A
Ass
prop
foll
"
Asse
been
desp
W
missi
The
its be
there
Third
to the
opera
farthe
tion w
Propr
the p
that th
and th
of the
as we
to inst
suppos
Hon. C
pressed
and is
ment it
In sh
Home C
unless
must be
have tak
depends

non-payment of Quit Rents. It appears to me clearly for the interest of the Colony that the rights of His Majesty on this latter point should be enforced with rigour."

As belonging to this, we find in 1838 that the House of Assembly addressed Sir Charles Fitzroy to know if any proprietors had availed themselves of this offer. The following is the answer:—

"The Lientenant Governor acquaints the House of Assembly that no commutation of Quit Rents has as yet been made by any Proprietor in accordance with the above despatch."

We think immense assurance is required to infer a remission of Quit Rents from the foregoing despatch. Firstly, The offer was made for a given time, which elapsed without its being accepted. Secondly, There is nothing contained therein to connect it with the renewed Land Tax Acts. Thirdly, It says, "I am of opinion that the arrears due up to the time when the plan I have described will come into operation shall be remitted." Now, this plan has never farther come into operation, for these conditions of commutation were rightfully, perhaps, made by the creditors of the Proprietors, then the Crown—but can in no way concern the present owners; and it must always be kept in view that the Island has given value for these debts, the Estates and their incumbrances. Now, we have no doubt whatever of the power of the Government of this Island, even if, as we have said before, there were no Escheat law extant to institute of its own authority an Escheat. It cannot be supposed that this right is doubted by any one, when an Hon. Gentleman—a Barrister long in Parliament—has expressed, as is on record, his opinion, that this right exists and is inherent in the legal privileges of the Island Government itself.

In short, not to be prolix, we have the authority of the Home Government expressed so recently as in 1838, that unless certain conditions were entered into the grants must be forfeited; and we know that those conditions never have taken place. Any alteration of the rate of Quit Rent depends on the same premises.

That there has been no correspondence on this subject immediately, since 1838, proves only that during the existence of the Land Tax Acts the subject has been considered in abeyance; but we believe there was a better reason than these Acts supply for its not having been taken up by any who now consider it their duty to enter on the subject—namely, a forfeiture to the Crown would not have greatly forwarded the interests of the Island collectively, or of the tenantry. Who could say what would have been done with the forfeited lands? But if now forfeited, they become the property of the Island, whose Government, under the direction of the Legislature, is fully invested with the power of confirming freehold acquired rights, and of permitting leaseholders on very easy terms, and on the principle of paying by instalments, to become freeholders. No reference to the Colonial Office is needed for this operation.

A Commission must be established by vote of the Legislature to investigate the state of every acre of land in the Colony, in order that justice and indulgence may be afforded to every claimant. The unsettled lands would be, of course, sold to the best advantage, at such times as might be best suited to the operation.

The further questions on this subject are two: First of all, the liability to Escheat arising out of non-performance of conditions. The second, the state of the Fishery Reserves.

Under the first head there will be a great deal of conflicting evidence respecting any relaxation of the original conditions with which the grants were burdened; and though we may revert to the subject, we shall be content now to refer to this same despatch of Lord Goderich, dated 27th January, 1833, in which we have these words, after dealing with Quit Rents, by making an offer for their conditional remission. His Lordship says:—"I shall be very glad to accede to this course, and shall be prepared to advise His Majesty to remit immediately the claim to arrears due from the persons who may be desirous to effect such an adjustment. I shall also be willing to consent that they may receive at the same time a formal release from

the condition requiring them to settle their lands in the proportion of one person to every two hundred acres."

Now, from this it may clearly be deduced that it was the opinion of the Colonial Minister that whatever modifications, if any, of these conditions had taken place, they had been useless to the Proprietors, either from lapse of the time to which the offer of the terms had been limited, or any other cause whatever; and that unless a recognised act of grace—complete in its conditions on both sides—could be pleaded, the lands still remained subject to these original conditions. This subject, or rather its detail—not by any means its principle and its original obligations, would embrace a mass of evidence, applicable in the same manner, perhaps, in no two cases; and it is beyond our present intention to enter on it.

As to the Fishery Reserves, it was left to Sir Edward Bulwer Lytton to consider the claim of the Crown to them as obsolete, and to claim them for the Proprietors, who never yet claimed them for themselves. It matters not what lapse of time has occurred. Lapse of time, indeed, could not have effected a title derived from the Crown; but were it otherwise, to this plea it would be necessary to add that the claim had lain dormant. Now, the records of licenses being granted for the use of these Fisheries are numerous, and spread over all the time. It can be further shown that the Proprietors themselves, or if not all, yet some of them, have desired to hold them on lease, the better to authorise the payment of rent by their tenants, as sub-lessees. So lately as within these last four years an action was brought against Mr. Cox, of Morell, which established these rights, said by the late Colonial Ministers to be obsolete, and during the Government of Sir Alexander Bannerman a proclamation was issued—the propriety of which no one then doubted—warning people against encroachments on these Reserves.

It is, indeed, true that the Proprietors or occupiers have paid Land Tax on these Reserves. Why should they not? The Land Tax is only a substitute for Quit Rent, passed in fact by the liberality of the Crown, that the Island might take the income arising from it, instead of itself, and

it no more can confirm their titles, or afford an argument for that confirmation, than can the payment of that tax by any of their tenants.

As to the relations between the Proprietors and the Island, they are these: they annually abstract from the Island large sums which ought to be expended for its benefit within it. The small contributions they have ever made to any object within it are so few as to form only very partial instances of their having any other object but to exact from it what they can, without any acknowledgment of the duty they owe to the inhabitants and to the Crown of contributing to its welfare. They have disregarded all the gracious and favourable offers made to them on the subject by the Crown, and set at nought all the conditions on which they accepted the boon the Crown conferred on them. Can it be doubted that a different line of conduct would have placed the concerns and means of this Island on a footing highly different from that which exists? Latterly they have had conditions far too favorable offered to them, which they have rejected. It has, therefore, become the duty of those who rule us to claim the property which has been conferred on the Island by the Civil List Bill of 1851. I did myself belong to a Government which thought it adviseable, as there would be no difficulty in demonstrating, to come to a settlement with the Proprietors, without the process of an Escheat Court. This very proper undertaking has been defeated, between the efforts of the proprietary body and those who are their Agents, and with whom they are associated on the Island. Personally I am prepared to be told that I have occupied formerly a different position in the discussion of these questions from that which I now assume. That is, indeed, very true; for I could not then, with the best consideration I could give the subject, convince myself that either the tenantry or the Island Government would be much bettered by the Crown resuming the lands, by the substitution of one landlord for another. The case is now entirely altered; and it is the bounden duty of every Government to realise to the public purse all the property to which it is entitled,—whilst no difficulty, when the

Island Government becomes Proprietors, can arise in adjusting all interests which have become vested, or retailing freeholds to the tenantry by the payment of low prices in small instalments, or by some means advantageous to those provided by the existing Land Purchase Bill.

WILLIAM SWABEY.

Charlottetown, November, 1859.

