THE ESTABLISHMENT OF
CONSTITUTIONAL GOVERNMENT
IN NEWFOUNDLAND, 1783-1832

A Study of Retarded Colonisation

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By


PREFACE

This monograph was originally planned as a thesis to be presented for the degree of Doctor of Philosophy of the University of London. As a post-graduate student at King's College, University of London, from 1936 to 1938, I worked under the direction of Professor A. P. Newton, Rhodes Professor of Imperial History, to whom I am indebted for direction towards a subject in a virgin field, advice regarding source materials, and constant encouragement and supervision. His own enthusiasm for historical research inspired me in my efforts, while his kindly advice and sound criticism were placed wholeheartedly at my disposal. But for him this work could not have been produced in its present form.

It is a pleasure, moreover, to record the thanks of a New Zealand student to the authorities of the University of London, and especially to those connected with the Institute of Historical Research, who treated me with every courtesy and who did all in their power to make my course of study in London so pleasant and successful. My thanks are also due to the various libraries and officials connected with the institutions and organisations in which I conducted my research: The Public Record Office, The British Museum, The Royal Empire Society, The Colonial Office, The Society for the Propagation of the Gospel, The Methodist Missionary Society, The Colonial and Continental Church Society, and The Phoenix Assurance Company. I desire also to thank Miss Gladys Buhler, the Assistant-Secretary of the Imperial Studies Committee, for her much-appreciated interest and assistance in the preparation of this book.

It is fitting that as a graduate of the University of New Zealand, I should acknowledge my indebtedness to those Professors and Lecturers of the University of Otago who gave me that early training which was the foundation for more extensive
study in London. As a graduate with Honours in History, I am glad to acknowledge the excellent training received in the Department of History at the University of Otago under Professor J. R. Elder, whose friendly assistance in my studies has proved a constant source of encouragement.

The publication of this work has been greatly facilitated by the kindly interest shown and aid generously given by Mr. W. J. Fleming, Mr. James Fleming, and Mrs. R. McLintock Fleming, of Glasgow. To the latter I am especially indebted for her careful reading of the galley proofs and her painstaking care in correction.

Finally, I place on record my deep sense of gratitude to the University of London, and to the Imperial Studies Committee of the Royal Empire Society. Without the generous grants given by these bodies the publication of this monograph in its present form would have been impossible.

A. H. McLINTOCK.

University of Otago,
 August, 1940.
The publication of this work has been greatly facilitated by the kindly interest shown and generously given by Mr. W. J. Fleming, M.A., Headmaster of Highgate School, and Miss E. McInnis Fleming of Glasgow. To the latter I am especially indebted for her careful reading of the galley proofs and her painstaking care in correction.

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ALTHOUGH Newfoundland is often called "Britain's oldest colony," in point of fact nothing is further from the truth. Certainly it has been settled—if such a term is applicable to colonisation as it existed there before the nineteenth century—for a longer period than any of the other dominions which today constitute the British Commonwealth of Nations. Yet it was not until 1624, or more than three centuries after its discovery, that Newfoundland was raised to the dignity of a colony.

Naturally enough the peculiar circumstances which were responsible for this belated recognition of colonial status form one of the most interesting and unusual developments in British colonial history. Newfoundland, indeed, in its growth as a colony, has never lost that unique quality which in many ways is revealed in the unexpected or even the dramatic. It was the only colony in British North America which refused to join the Canadian Confederation. Its constitutional progress has always been marked by rancorous party strife, political crises, and economic upheavals almost, if not quite, without parallel. During the greater part of the nineteenth century, the problem of French participation in the Newfoundland fisheries and the claim of the colonists to exercise territorial rights along their coasts created acute diplomatic difficulties which remained for years a source of irritation between England and France. In recent years, after a protracted dispute between Canada and Newfoundland over the Labrador boundary, the Privy Council, in passing judgment on a case which attracted world-wide attention, confirmed the right of Newfoundland to the possession of the coast in question. And still more recently, overwhelmed by economic disasters beyond their power to remedy, its people voluntarily surrendered their right to self-government, becoming in effect a "dominion in suspense". Thus the island is the first and as yet the sole British dominion to relinquish
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temporarily its constitutional powers for a government by royal commission. It is therefore obvious that the study of such an unusual chain of circumstances, each link of which has been forged by past events, is of peculiar interest and undoubtedly value to the student of colonial history.

Although the island possesses so unique a story, it still lacks a scholarly and comprehensive account of its development. There are reasons, however, which explain this rather surprising fact. As the protracted diplomatic controversy between Britain and France concerning fishing rights in Newfoundland waters did not conclude till 1904, the historical records from 1757 at the Public Record Office, London, which form the most valuable field of research, were until recently closed to public inspection. Consequently would-be historians were forced to turn to more accessible though much less dependable sources of material, with the result that at the present time the histories of the island are few in number and for the most part poor in quality. This is indeed a matter of regret. Britain’s colonial policy towards the island and its fisheries has never been clearly appreciated, and the reasons for the mother country’s persistent efforts to destroy a flourishing settlement have seldom been understood. In fact, without a careful study of the late eighteenth-century records of Newfoundland, some of the most interesting aspects of British colonial history are completely overlooked. Even among the early nineteenth century documents there exists much that has been ignored, notably despatches and other official papers from the Colonial Office at a time when the question of some form of constitutional government for Newfoundland was at last being considered. In this respect a hitherto unknown report 1 by James Stephen on the island legislature demands serious attention from all students of constitutional history.

One great objection to the so called histories of Newfoundland which have been compiled by local writers has been the desire of their authors to gloss over unpleasant facts which might be interpreted as being derogatory to the colony and thereby portraying a hopelessly biased attitude towards British policy. In particular they have launched bitter attacks on the admiral governors who made Newfoundland “a fief of the

INTRODUCTION

Admiralty ". In this respect at least they have had ample justification. With few exceptions the admiral governors of the late eighteenth and early nineteenth centuries, excellent seamen though they were, displayed a complete lack of sympathy and understanding towards the question of island colonisation. Instead of accepting settlement as an accomplished fact, they stubbornly refused to consider the island as anything but a station for the seasonal fishery, and in consequence were guilty of extreme harshness to the hapless inhabitants who defied the legislation of Great Britain by remaining there. But even the governors were the victims of the unique system which made such a form of maritime government possible. The main charge which can be laid against them was their complete lack of vision and their reluctance to submit willingly to the inevitable.

Without question the fifty-year period after 1783 is the most important in the island's history, for it marks the transition from a struggling community of a few thousand fishermen in 1783 into a flourishing colony which received the gift of representative government in 1832. It was the period in which the old transatlantic fishery fell away and died, leaving the control of the industry in the hands of the rapidly increasing island population. It was the time, too, when the vast resources of the fisheries were exploited to the full, when the great sealing industry first rose to prominence and when, during the amazing prosperity of the Napoleonic Wars, the trade entered upon its golden age, soon, unfortunately, to end in economic ruin and despair. It was then, also, that the peculiar maritime system of the island government and a unique judicature developed, like rank and poisonous weeds, to choke and wellnigh overwhelm an unwanted colony which defied the legislation of Great Britain to crush it. And even in the wider aspect of imperial politics, the fifty-year span is too important to be ignored, for the fortunes of the colony and its position within the empire were indissolubly linked with the national and colonial policy of Great Britain. At a time when the British Government viewed with disfavour the introduction of colonial questions into parliament, Newfoundland affairs, compared with those of other colonies, received more than their fair share of attention. The discussions were not limited to matters
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which were purely the concern of the colony; they covered indeed a wonderfully varied field. The fishing concessions of 1763 and 1815, the trade relations between the island and the new American states, colonial participation in the fisheries, the granting of bounties, the regulation of the French shore, the revision of the ancient fishing laws, and many other questions of importance both to mother country and to colony were hotly debated. To the student, their main interest lies far beyond what they disclose of Parliament's attitude towards the colony; their value is revealed in the light they throw upon the general colonial policy of Great Britain. Yet, in spite of the deep significance of this period, no phase of Newfoundland history has been more neglected or less studied. Consequently, as the existing histories of the island have disregarded this great transitional era, they lack that unity of thought which makes the past a living contribution to the present. The purpose of the present work is to bridge that gap.
ABBREVIATIONS OF WORKS

B.M. Add. MSS. Additional MSS. in the Department of Manuscripts, British Museum.
B.T. Jour. Journal of the Board of Trade.
Cal. St. Pap. Am. and W.I. Calendar of State Papers, America and West Indies.
C.J. Journals of the British House of Commons.
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CHAPTER I

THE LEGACY OF THE PAST

In 1497 when John Cabot discovered the Island of Newfound-
land, claiming it for Henry VII, English trans-Atlantic enter-
prise began. Men were not slow to take advantage of this
new discovery, for, following the amazing reports of Cabot and
the great Portuguese navigator, Gaspar Corte-Real, concerning
the multitude of fish swarming in the waters around its coasts,
Newfoundland soon became the fishing station and base for
the hardy adventurers from England, Spain, France and
Portugal, all eager to exploit the rich harvest of the sea. Not
for nothing was the island known to Continental Europe as
"Terra Nova del Baccalaos" or "The New Land of Codfish". So
rapidly did the fisheries grow in importance that by the
beginning of the sixteenth century the long series of annual
expeditions from Europe to Newfoundland had become an
accepted fact and the fishery had already assumed the character
it was to preserve with but slight modifications for several
centuries. During this early period, English interests in the
fisheries increased so steadily as to raise the trade to a position
of great national importance. From the outset, by reason of
their geographical situation, the fishing towns and villages of
the West of England became the centre from which, in the
spring, the small vessels made their hazardous voyage to the
Banks, returning in the autumn laden with the dried cod.
It is therefore hardly surprising that by these fishermen
and traders from the West of England, the great cod banks,
the Eldorado of the western seas, appeared their exclusive
preserve, to be guarded as jealously as the richest mines of
Mexico and Peru. In fact, the determination of these men to
dominate and control the Newfoundland trade comprises the
main story of the island until the dawn of the nineteenth century. Thus the fisheries, symbol of wealth and trade monopoly, became the all-important factor in the shaping of the political, economic, and social life of the island, determining its destiny and endowing it with a unique character.

Already in those early years the fisheries had developed along methodical and well-planned lines. About fifty to three hundred miles to the south-east of Newfoundland lay the Great Bank, the principal resort of the fishing adventurers from Europe. On this great fishing ground the bankers, as the deep sea fishing vessels were called, remained for weeks at a time. As soon as the catch was made, the wet or "green" cod, split, cleaned, and salted, was packed in casks of brine, ready for direct carriage to the European market. There were, however, other methods adopted, especially by the English, who preferred to fish nearer the land. The catch was therefore brought ashore at a previously selected fishing station or ship's room for the curing and drying of the fish, operations requiring not only great skill and patience, but also favourable climatic conditions. If the ocean were in truth the harvest field, the foreshore was no less the granary or storehouse for the fruits of the season. As the summer advanced, the fishing rooms became scenes of ordered activity. From the forests which clothed the shores, timber was readily obtained for erecting shelter-huts, repairing or building boats and constructing stages or flakes. Upon these stages the cod was spread and turned at intervals, according to the climatic conditions prevailing. But in general a period of five to six weeks was sufficient to see the fish thoroughly cured. It was then collected into circular stacks, each containing from forty to a hundred quintals and covered with bark as a protection from the weather, or removed into storehouses until shipped abroad. In this state the cod was graded or culled according to quality, the finest, known as "merchantable", being exported in bulk mainly to the Mediterranean market, where salted fish was always in great demand. Next in grade came the "Madeira", consisting chiefly of slightly damaged fish which being otherwise sound still brought a good

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1 See Appendix III, Map of Newfoundland, pp. 195-6.
3 One quintal approx. 112 lbs.
THE LEGACY OF THE PAST

price. The lowest quality of all, "West Indian", comprised the broken or badly cured portions, and was exported in casks principally to the West Indies.

So great was the success of the fishing that the little West-country vessels were quite incapable of transporting all their dried fish to the market. To carry this surplus catch, large merchant vessels known as "sack" ships began to share in the trade. As in most matters pertaining to the fishery, a fairly well-defined routine was followed. In the spring, either in ballast or laden with goods and provisions for the season, the sack ships left Britain for Portugal or some other foreign country to secure adequate supplies of staves and the all-essential salt. On arrival at Newfoundland, they obtained in exchange cargoes of dried fish for the West Indian or Mediterranean ports. Late in the autumn when these ships returned to England with wine, oil and other commodities from abroad or with the more precious bullion received in payment for the salted cod, the circuitous voyage ended. No wonder such an enterprise received the full approval of the British government. Its nature was two-fold. According to the mercantile theories of the day, it created a favourable flow of trade by concentrating in Britain the products of the fishery, and in a wider sense it produced a race of hardy seamen whose return to Britain in the autumn of each year was of fundamental importance in maintaining the maritime prosperity and naval supremacy of the mother country. (In short, it was considered contrary to the national policy to allow fishing communities to spring up in Newfoundland or to permit seamen to winter there. In theory, therefore, each tiny and self-contained fishing establishment upon the island came to life with the arrival of the spring fishing fleet and was completely abandoned in the autumn, thus leaving the country in much the same state as it had been before its discovery—uninhabited save for a few wandering tribes of Indians who hunted undisturbed upon its solitary wastes.

As early as the reigns of James I and Charles I, in fact, before this definite policy towards the island had been clearly formulated, various settlements were formed there under a series of charters in accordance with the accepted colonial practice of

1 C.O. 194/42. Waldegrave/B. of T., Observations, 9 May, 1799.
that time. Apparently difficulties and disappointments retarded any real progress towards colonisation, so much so that by the middle of the seventeenth century, or about one hundred and fifty years after its discovery, Newfoundland contained merely three hundred and fifty families, or less than two thousand inhabitants, who were scattered in tiny settlements along the eastern shore, mainly from Cape Bonavista to Trepassey. Obviously such a drift towards the establishment of a colony, presaging as it did the inevitable development of an island fishery, aroused the hostility of the western fishing merchants who presented a bitter and unremitting opposition towards any project for colonisation. In order to maintain their monopoly of the fisheries, it became the traditional policy of these men to stress on every possible occasion the national importance of the Newfoundland fisheries as a training ground for seamen, second only to the coastal trade of Great Britain. In asserting this, they were astute enough to echo what were simply the generally accepted mercantilist theories of the day, their contention in the main being that possession of the fisheries was almost synonymous with maritime supremacy. Had England been the only nation which appreciated the value of the fisheries as a school for seamen, it is questionable whether the statements presented by the western merchants would have received much consideration. But the growing sea-power of France and her plain determination to utilise to the full the Newfoundland fisheries as a training ground for her seamen, forced the issue. Henceforth, whenever the British fisheries were endangered by threats of increasing colonisation, the western merchants and the Newfoundland naval governors invariably advanced the plea that first and foremost they were "a nursery for seamen", of greater value to the nation than any economic principles which might be involved.

Thus, long before the struggling settlements in Newfoundland had become well established, the policy of colonisation gave way to that of encouraging the fisheries from Europe, and to this end, the "merchants, traders and adventurers" of...

1 C.H.B.E., Vol. VI, Chap. V, Nfd. to 1783, A. P. Newton; John Guy's 
Venture, 1610-11, p. 125; Kirke's Patents for Colonisation, 1657, p. 130.
2 Ibid., p. 132.
3 Lounsbury, op. cit., p. 172.
Poole, Bristol, and other western ports received charters conferring on them valuable fishing privileges highly detrimental to the settlers' welfare. One of these, the "Western Charter", issued by the Privy Council in 1634 and renewed in 166x and 1670, consisted of a series of regulations which were in the main a codification of the traditional customs of the fishery. In effect, by asserting that "no planter should cut down any wood, or should plant within six miles of the seashore", and "no inhabitants or planter should take up the best stages before the arrival of the fishermen", it confirmed the vested interests of the western adventurers in the fishery, and, by placing the inhabitants in a subordinate position, set further obstacles in the way of settlement.¹

A still more decisive check on colonisation was about to be imposed. In order to protect the fisheries and to give parliamentary sanction to the policy which had been adopted towards the island colony, an act was passed in 1698 designed expressly for encouraging the Newfoundland trade.² The preamble reveals how admirably the trade fulfilled the requirements of the mercantile theories of the day, being beneficial "not only in the employing great numbers of seamen and ships, and exporting and consuming great quantities of provisions and manufactures of the realm, whereby many tradesmen and poor artificers are kept at work, but also in bringing into this nation, by returns of the effects of the said fishery from other countries, great quantities of wine, oil, plate, iron, wool and sundry other useful commodities, to the increase of His Majesty's revenue, and to the encouragement of Trade and Navigation". In view of the great importance of this trade, it is not surprising that the act shattered the hopes of those who advocated colonisation as a national policy. For the fishery was to remain entirely free to all-comers. Ships-rooms or fishing places, if occupied for the season, were to be abandoned in the autumn and left vacant for the first arrival in the following spring. Thus the act refused to recognise the private ownership of stages, fishing rooms, and the like,³ and as a further hindrance to settlement, it stipulated that no fisherman or inhabitant of the island could

¹ History of the Govt. of Nfld., John Reeves, 1793, p. 15.
² Stat. 10 and 11 William III, cap. 29.
³ Ibid., sect. 5.
occupy a ship's room until all the overseas fishermen had established their claims. It is easy to criticise an act which deliberately sounded the death-knell of colonisation in Newfoundland. Writers who have had the interests of the colonists at heart, have taken pains to point out that the passage of such an act through parliament could be attributed only to bribery at the instigation of the merchants concerned in the trade. But it seems certain that their selfish desires merely coincided with the broader policy of the government. In a century which was to witness the maritime strength of Britain as a deciding factor in the struggle for colonial and commercial supremacy, the value of the fisheries as a "nursery" far outweighed any of the supposed advantages the establishment of a colony in Newfoundland might possess. In one respect, the act of 1698 was unique. It was entirely declaratory and directory. Though it contained rules for the guidance of the fishermen, there was not the slightest reference to any express punishment for those who ignored its provisions. For this reason, the act had a most pernicious influence over the control of the fisheries and the growth of the colony. The amazing thing is that until its repeal in 1824, it remained the fundamental law of Newfoundland. In fact, its presence upon the Statute-book was a constant reminder of the triumph of the mercantile interests over colonisation. It became the symbol of oppression and tyranny; it sanctioned obsolete and selfish customs; and it alone permitted the furtherance of a policy which was to retard the natural development of the island for over a century. Yet it was this negative aspect of the act which ultimately saved the colony and enabled a handful of settlers, handicapped it is true by unjust restrictions, to remain in the island. Their presence was not long ignored. Frequent complaints of disorders and lawlessness among them forced the Board of Trade to review the position, the more so since the serious defects in the act had become apparent. In 1701 George Larkin, who had been sent out by the Board on an inspecting tour throughout

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1 Ibid., sect. 6.
3 Lounsbury, op. cit., p. 275.
the colonies, commented unfavourably on the situation in Newfoundland. It served as a sanctuary for evil-doers, and those fishermen who remained behind to winter in the island were often "spirited" away by the New England traders, a practice the Board considered so detrimental to the national welfare that it had no hesitation in reporting that "the Newfoundland fishery which was formerly the great nursery for breeding up stout and able mariners, was now become a mere drain that carried off very many of the best and most useful of all British sailors." In short, the Board of Trade, in its report of 1718, expressed its concern regarding the future of the trade and the fisheries. In particular, it professed to see in the growth of a colony at Newfoundland a direct threat to the maintenance of British fishing interests there, and feared that the increase of island fishermen would handicap the fishing vessels belonging to the western adventurers.

In view of the subsequent history of the island during the eighteenth and early nineteenth centuries, the conclusions embodied in the report were deeply significant. They became the guiding principles of a national policy which saw in Newfoundland merely an unwanted colony, where, in spite of all restrictions, there still existed a society which clung tenaciously to the fisheries as its sole means of livelihood. Contrary, therefore, to the generally accepted views of the century, Newfoundland became the one place within the colonial empire where inhabitants were not considered a form of wealth or a national asset. Rather was their presence there an impediment to the growth of British commercial and naval supremacy. For it must not be forgotten that the England of the eighteenth century was not over-populated and in comparison with her rival, France, was weak in man power. Thus emigration, far from being encouraged, was frowned upon, especially when it drew from the mother country those trained seamen who were of paramount importance in maintaining British sea-power. So long as the island remained the nursery, but not the home, for seamen, Newfoundland fulfilled all the requirements of the ideal colony.

It supplied the mother country with goods she herself could not

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produce; it absorbed her manufactured products; it afforded a valuable field of employment for thousands of her fishermen; it supported a highly important branch of British commerce in the Mediterranean, thus preserving a favourable trade balance. Undoubtedly in this well-adjusted scheme of national economy, Newfoundland and Great Britain were mutually complementary. Yet this ideal relationship, sanctioned by current mercantile theories, rested upon an insecure foundation. So long as the island remained unsettled, nothing could disturb the even flow of trade. If, however, settlements were established, the economic unity of the Empire would be in jeopardy. For it was inevitable that a colony of fishermen would speedily monopolise the fisheries, obtain their supplies from the cheaper markets of America, and assume control of the carrying trade between Newfoundland and Europe. Faced therefore with the problem of safeguarding Imperial trade, the Board had no alternative but to condemn wholeheartedly the presence of settlers in the island and as an additional safeguard to recommend their immediate removal to Nova Scotia or some other adjacent colony. Thus the fisheries, which from the outset had provided the incentive to settlement, became ultimately the greatest hindrance. To maintain the vital principle of Imperial economic unity some sacrifice was required, and as an offering England laid upon the altar of mercantilism the colony of Newfoundland.

Fortunately for the struggling community, the Board’s suggestions were not carried into effect. As it possessed no authority for enforcing the recommendations it repeatedly made concerning the state of the colony, the settlers continued their undisturbed existence side by side with the adventurers who arrived, like birds of passage, every spring. By the middle of the eighteenth century, the island had assumed a unique character. It was something more than a fishery and something less than a colony. Yet in theory it remained a no-man’s-land; or, in the picturesque imagery of William Knox, the island was considered a great English ship, moored near the Banks during the fishing season for the convenience of the English fishermen.

2 Second Report, Commons’ Committee, 1793, p. 76.
In spite of all obstacles, settlement slowly increased. Waifs and strays, evil-doers and vagabonds, the flotsam and jetsam of the fishery, left stranded upon the shore by the receding tide of summer fishermen, remained to winter in an island which contained no vestige of civil government and no effective law. While it is impossible to state with any certainty the number of people who resided there during the eighteenth century, for the statistics forwarded by the admirals to the Board of Trade were usually unreliable, it may fairly be inferred that the permanent population of the English settlements, by the end of the first decade, numbered about three thousand. Evidently the dawn of the century had witnessed a rapid growth in the island population, for in the winter of 1683-4, only one hundred and twenty men remained behind. Apparentlv between 1720 and 1740 there was little increase, although by the 'fifties the numbers had grown to approximately six thousand. But a fresh impetus to settlements was provided by the Seven Years' War, which ousted the French from any share in the fisheries. Moreover, the impressing of fishermen for the Royal Navy and the fear of French depredations had seriously retarded British activity in Newfoundland waters. Consequently the inhabitants, profiting by the particularly favourable situation, indulged in a mad scramble to secure the best fishing sites available. They considered the restrictive provisions of the Act of King William as being already a dead letter.

But this rapid increase of population, together with the flagrant disregard for the law, was not permitted to proceed unchecked. In 1764, at the close of the war, Hugh Palliser was appointed the naval commander on the Newfoundland Station. An excellent and conscientious seaman, deeply concerned about the preservation of the British fisheries and bitterly hostile towards the unrecognised colony, Palliser was the first of a long line of naval governors who were determined to crush the
settlement at all costs. His views, though narrow, were typical of the age; his creed, though bigoted, was simple and sincere. He believed that the maintenance of Britain’s interests in the fisheries was of the greatest consequence to the nation, "because from that arises great wealth to the subjects, great revenue to the Crown, and, above all, because our naval strength, consequently the security of the whole, depends more upon them than upon any other branch of trade whatever". 1 Certainly the trade seemed to justify the efforts of the mother country to preserve it. In 1768, Palliser’s last year on the station, twenty thousand men were employed in the fishery, of whom twelve thousand returned to Great Britain, Ireland and Jersey, thus constituting a valuable reserve of trained seamen. Further, the value of the produce was estimated at £600,000, "which is so much net gain to the nation, being taken out of the sea, and finally centres in Britain". 2 No further vindication of the policy was needed.

Such tangible evidences of the success of the overseas fishery readily outweighed the nebulous advantages which a colony might have possessed. The trade, it was clear, could not face the growing competition of an island fishing community, nor could it hold its monopoly if the Act of King William were renounced. As Palliser saw it, the position simply resolved itself into the clear-cut alternative of preserving the trade at the sacrifice of a colony, or of permitting the inhabitants to assume control of the entire fisheries. Palliser’s training and outlook, his own cherished beliefs and sympathies, settled the question without hesitation. The colony had to go. There could be no compromise. And for the remainder of his active life Palliser became the implacable enemy of Newfoundland colonisation.

Palliser’s alarm at the growing menace brought home to the Board of Trade the urgency of crushing by some legislative measure the colony which, even in its half and half existence, constituted the weak link in the chain of economic unity. In England the political situation was particularly favourable to the promulgation of such doctrines, for in 1770 the government of Lord North took office. Regarding with whole-hearted approval the existing mercantilist theories, and in colonial

1 B.T. 5/77, Sir H. Palliser’s Evidence, 8 April, 1784.
2 Ibid.
affairs being unsympathetic and repressive, it lent a ready ear to the proposals instigated by Palliser and warmly endorsed by the Board. At the very time when American affairs were fast reaching breaking point, the government passed the Act of 1775 sanctioning anew the coercive policy of the past.  

As Palliser’s Act had no distinct purpose beyond restoring to British fishermen the entire control of the Newfoundland fisheries, it therefore expressed no new principles and formulated no fresh policy. In this respect it was but a recapitulation of the earlier act of 1698, save that its provisions were more affirmative than negative. “For the new legislation was expressly framed “to secure the annual return of the fishermen, sailors and others employed therein, to the ports of Great Britain . . . at the end of the fishing season”.”  

Masters were strictly forbidden to carry passengers from Newfoundland to the continent of America; they had to enter into an agreement with their servants before the season commenced regarding the length of service and the amount of wages to be paid; above all, in order to check the notorious practice of leaving seamen destitute in the island, they were directed to withhold a portion of their servants’ wages, not exceeding forty shillings, as payment for their return passage.  

As an incentive to masters to participate in the fisheries with their utmost vigour, a system of bounties was also instituted.  

For the colonists the real threat to their security lay in those provisions of the act which concerned the preservation of a free fishery for the western adventurers. For many years, as Palliser had noted with concern, a steady encroachment on the ship’s rooms by the inhabitants had proceeded openly, although contrary to the Act of King William. More alarming still, many of them had obtained grants of land from various governors, though clearly contrary to law. Such a radical change in the state of the commonable land on the shores of the island was obviously incompatible with the idea of a free fishery. By 1775 so little remained unoccupied of what were once ships’ rooms that the authorities, loath to disturb private rights by asserting

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1 Stat. 15 Geo. III, cap. 31, commonly known as Palliser’s Act.
2 Ibid., Preamble.
3 Ibid., sects. 13 and 14.
4 Ibid., sect. 1.
5 Rothney, op. cit., p. 62.
the claims of the Crown, created by legislation new commonable areas. For the act stipulated that all vacant and void spaces whatsoever should be considered as ships' rooms. In this way it was hoped that the regulations of King William would again be observed, and that the fishery from Europe would still be free to expand.

To those who had hoped for a more liberal policy, the act was a bitter disappointment. It revealed the intention of the British Government to foster the overseas fishery at all costs, even if by so doing it meant the virtual extinction of a struggling community. Little seemed to be done to consider the fate of the colonists. They were threatened with complete extinction, not by force, but by legislative measures which, vesting in the Crown all rights to the land, left them unwanted and unrecognized completely outside the national policy. With justice the unfortunate settlers could claim that Palliser's Act was calculated "to controvert the policy of nature, to keep the island of Newfoundland a barren waste, to exterminate the inhabitants, to annihilate property, and to make sailors by preventing population".

Fortunately for the future of the colony, the outbreak of the War of American Independence interfered with the operations of the act. For the hazards of war made the participation of British fishing vessels in the bank fishery a matter of extreme difficulty. Thus the inhabitants, freed in large measure from outside restrictions, seized the opportunity of consolidating their position. In fact, the eighteenth-century wars were the salvation of Newfoundland colonization. During such periods of national upheaval when the naval forces on the station were fully occupied with measures for the island's defence, the settlers had ample facilities for extending their activities in ways directly contrary to the law, by annexing plots of ground, encroaching on ships' rooms, and erecting buildings without licence or authority. On the return of peace it was not always easy to remedy matters, for unlawful practices which had sprung up in the long years of war were, as the naval governors frequently found to their intense annoyance, exceedingly hard

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1 Palliser's Act, sect. 2.
to eradicate. But even under normal conditions the supervision exercised by the naval governors was haphazard and uncertain, and in some cases, perfunctory.

From the very character of the maritime government which existed in Newfoundland during the greater part of the century, this could hardly have been avoided. The whole system centred in the fisheries. Every spring the Board of Admiralty in England ordered a number of warships to spend the summer in Newfoundland waters, for the dual purpose of protecting the British fisheries and maintaining order. The admiral or officer commanding the squadron was designated in his Commission as "Governor and Commander-in-Chief in and over" the island of Newfoundland. Generally he sailed from England in the late spring, having under his protection those fishing vessels from the western ports which desired to join his convoy. At the earliest, he arrived on his station about the beginning of June. Often it was much later. Although he made his headquarters at St. John’s, most of his time was spent in cruising from harbour to harbour, settling disputes and overseeing the fisheries. Thus the conscientious governor, eager to further the interests of the trade and to preserve the nursery for seamen, was "more characterized by the bustle and prying disposition of an exciseman, and the insidious logic of an attorney", than by a desire to remedy matters ashore. His concern for the inhabitants was purely a secondary consideration. Their interests were always subordinated to the welfare of the adventurers from Great Britain, for to the naval governor Newfoundland was merely "a fief of the Admiralty". When towards the end of October his summer sojourn in Newfoundland terminated, he sailed for Britain without a thought to the fate of those unfortunates who remained to face the perils of the Newfoundland winter, save that their presence there could always be construed into a possible threat to the fishery.

When the American War ended in 1783, the population of Newfoundland had increased steadily until it numbered some ten thousand winter settlers, the majority of whom were grouped in scattered communities along the island’s six thousand mile coastline. The determining factor in bringing these

1 Ibid.
tiny settlements into being was their proximity to good fishing grounds. Problems concerning climate, the quality of the soil, the isolated nature of settlement, which in other colonies were vital considerations of inhabitancy, did not concern a people whose sole interest was the sea and its harvest. With the passage of time, many of these fishing communities had grown, in spite of the restrictions of the law, from ships' rooms, occupied annually by adventurers from Europe, to villages containing a few families. At first these people, who for the most part were the descendants of settlers from the West of England, Ireland and Jersey, were grouped along the Avalon peninsula which lay in close proximity to the Banks. Towards the close of the century, however, the principal harbours northward all contained flourishing settlements and even the isolated west coast, possessing the most fertile soil in the island, contained a few permanent fishing establishments, soon to be forcibly abandoned to the French.

The distribution of the people among such small and scattered outposts had, naturally, far-reaching consequences upon the island's political and social life. On account of their extreme isolation and loneliness, the inhabitants were driven in on themselves. In the north the severity of the winters produced an ice-bound coast for months at a time. Thus communication by sea became impracticable, and as the island was devoid of roads—the construction of which would have implied a more definite stage of colonisation—each tiny community was cut off from contact with the outside world. Towards the south, although the climate was not so severe, winter conditions brought an enforced isolation leading to grave social evils, which from earliest times had become a matter of notoriety. So self-contained and isolated were the fishing villages that inter-marriage had in many places united the various families into one general relationship, and this, together with chronic disease and an ill-regulated diet, had produced the gradual degeneration of a splendid stock. "The generality are a barbarous, perfidious, cruel people," was the verdict of the day. Even in 1764 Palliser had reported that

"the far greatest part of the inhabitants live as mere savages, without religion, without marrying or christening their children." In fairness to the settlers it must be asserted that, apart from the operation of laws which left them without any legal status or consideration, the absence of the social standards of civilised life from their communities was due, not to the depravity of the people, but to their unfortunate circumstances. In the whole island five clergymen were supported by the Society for the Propagation of the Gospel, but they could do little to extend their efforts or influence beyond the restricted districts in which they laboured. One or two Roman Catholic priests and, later, a few Methodist missionaries who worked mainly in the isolated outports, comprised a tiny band of self-sacrificing workers who endeavoured, amid heartbreaking surroundings, to raise the social standards of the people. During the long winter months when the cessation of the fisheries produced an enforced idleness, appalling scenes of misery and degradation existed unchecked. Drunkenness was the prevailing vice, for rum, which was imported duty free from the West Indies because it was considered a necessity for the fishing, was so cheap that enormous quantities were consumed. As disease and fever frequently raged, the squalor and poverty of the inhabitants was inexpressible.

In a measure, years of poverty and economic distress were unavoidable, for to communities entirely dependent upon the fisheries for their livelihood, each fresh season brought its uncertainty, beyond the power of man to control. Variable weather conditions, a late or an early season, inadequate bait supplies, erratic prices in distant markets, and, above all, the movements of the cod, were factors which by producing marked fluctuations in the annual catch gave a precarious character to the industry. To the wretched eighteenth-century inhabitants, the failure of the fisheries was a disaster which menaced their...
very existence. There was nothing left for them to fall back on. Efforts to cultivate the sterile soil had always been sternly forbidden, and though the shortage of provisions during the War of Independence had fostered to a slight extent the clearing and cultivating of the land, beyond the growing of potatoes the island produced nothing. Dependent entirely upon the goodwill of the merchant for food supplies advanced on credit, the community in years of economic distress was often famine stricken, frequently lacking the common necessities of life. In the winter of 1784 so great was the distress in St. John's that the merchants, alarmed at the growing mob-violence which the authorities were powerless to check, appealed for assistance to the lieutenant-governor, the officer commanding the troops, and five hundred starving inhabitants were supplied with food from the military stores. No wonder that the British Government, on hearing of these unruly and turbulent scenes remained firm in its belief that settlers were undesirable, unnecessary, and unworthy of the slightest consideration.

The headquarters of the island government, such as it was, were situated at St. John's, the principal port. During the century its growth had been unexpected and irregular. In times of war the threat of an enemy attack and the depredations of privateers had forced shipping from the unprotected outports to await the protecting convoy in its well-fortified harbour. Thus it became the principal station for the navy and for the troops employed in its defence. As the town grew, wharves, warehouses, and dwellings, all erected on ships' rooms in direct contravention to the law, crowded the waterfront where fish flakes and salting houses added to the general confusion. Sir Joseph Banks credited it with being the most disagreeable town he had ever seen, for dirt and filth reigning unequalled.

By 1783, when St. John's boasted a winter population of three thousand, conditions, if anything, were worse. Seven years of almost constant warfare had permitted illegal practices

4 Paterson, op. cit., p. 139.
to proceed unchecked. It therefore ceased to be primarily a place engrossed in the actual business of the fishery, and tended rather to become the principal depot for the supplying of goods to all parts of the island. Merchants from England, Ireland, and the West Indies, instead of engaging actively in the fisheries, erected well-stocked warehouses from which were shipped to the outports the general requirements the trade demanded, receiving in payment the dried cod. The port increased steadily in commercial importance, and at the height of the season was crowded with shipping from Europe, the West Indies and America, unloading rum, sugar, molasses, provisions, clothing and the like, or procuring cargoes of fish and oil for distant markets.¹

Without any plan or arrangement—such, indeed, would have been illegal—the town grew rapidly. Behind the motley assortment of buildings and wharves that lined the crowded water-front ran rows of houses, packed so closely that access to the harbour was extremely difficult. In some cases all approach was totally cut off, a flagrant breach of King William's Act.² This not only interfered with the free exercise of the fishery but also, in a place where everything was built of wood and where the warehouses were stored with highly inflammable materials, made the danger of fire a very real menace. With its narrow winding streets, its crowded, wooden houses, its complete lack of sanitation, its filth, its dirt, its smells, St. John's was in truth the eighteenth-century counterpart of medieval London.

From the political aspect, the greatest significance in the town's growth lay in the rapid encroachments on the ships' rooms or fishing places which the Acts of 1698 and 1775 had declared specifically should be free and open to all engaging in the fishery. The process had been gradual and cloaked by various legal pretexts. In some instances, governors had permitted favoured individuals to erect houses upon ships' rooms on the vague understanding that the fishery would not be

¹ B.T. 6/37. Description of St. John's, A. Buchanan, 24 Jan., 1785, and C.O. 194/45, Sir Erasmus Gower's Observations, Append. II., p. 76, Table of Shipping, St. John's, 1781-1803.

² From 1781-83 on an average 111 ships arrived, 10,245 tons.

³ B.M. Add. MSS. 38, 347, op. cit., l. 385.
handicapped thereby. Frequently the occupier of land adjoining a ships' room, when building or repairing his flake, would extend them as inconspicuously as possible beyond their just limits. In much the same way a corner of an unoccupied plot would become a small garden, to be transformed, when circumstances were favourable, into a dwelling-house. Only by the use of subterfuge and in many cases by an insolent disregard for the law, did such practices meet with success. For one thing the governor's term of office in the island was so short and so often spent in supervising the conduct of the fisheries that illegal encroachments were generally overlooked, and frequently, in the early decades of the century, elicited merely a mild protest which was conveniently ignored. Not till Palliser's day did the naval governors exercise a more thorough control, but by that time, after years of uninterrupted ownership, the usurper would confidently claim his section as private property, though on not the slightest legal foundation.

As far as this legal possession of land in Newfoundland was concerned, most of it was held on titles affording the occupier only a slight measure of security. By far the commonest were those resting simply on the claim of undisturbed occupancy, there being no grant or any other document to support the pretensions of the so-called owners. Contrary though this was to the Act of King William, the process of encroachment continued steadily, especially during the American war when the inhabitants in the distant outports, removed from the eye of the government, enclosed and carved out sections for themselves almost without restraint. In a few cases, titles could be traced to original grants from the governors made solely on the understanding that the places granted were to be used exclusively for the fishery. But with the changes of the years, many of the sections granted, particularly those bestowed on officers of the garrison, ceased to be of any service to the fishery and were actually used for general farming purposes. No rents were collected from these holdings nor was anything ever paid, for the original grants were invalid and beyond the power of the governors to bestow. The only titles in the whole island which

1 Ibid., t. 377.
3 Ibid., pp. 29–30.
rested upon a sure and clearly defined basis were those confirmed by Act of Parliament. In 1698 the rights of the inhabitants to land which had been converted into private property before 1685 were legally recognised, although a century later, as no original title existed, it was exceedingly doubtful if such claims could be substantiated. Therefore, the one remaining title possessing the complete sanction of parliament concerned the occupancy of ships' rooms which the Acts of 1698 and 1775 had set aside as places available for the use of the fishing adventurers from Europe. The time for legal occupancy was, however, simply for the duration of the fishery. At the end of the season the rooms had to be completely vacated in order that they might be left available for the first-comers of the following year. On account of their giving a title of occupancy solely for a season, ships' rooms were clearly quite the opposite of private property and under no legal circumstances could they ever pass into private hands.

In spite of doubts as to legal titles to land and security against the dormant claims of the Crown, property holders throughout the island held their possessions undisturbed, and sold, leased and mortgaged as if their title deeds were indisputable. If boat keepers and owners of fishing vessels had no stages or flakes of their own for curing the fish, they generally hired them from others at a high rental. It was a common practice for merchants living in England to own such establishments, from the rental of which they derived considerable incomes. Yet the Crown received no acknowledgment in any way for property which was so highly valued. In fact, had it asserted the right of claiming some form of rental for the maintenance of the island government, illegal occupancy would have been given a legal authorisation which it was still the national policy to deny. Thus in theory the rights of the Crown had been to a great extent conveyed away to the exclusive uses of the fishery and the unwarrantable encroachments which the law had been powerless to prevent, created a form of land tenure unique in British colonial history.

1 States, 10 and 11 William III, cap. 25, sect. 6.
By 1783, therefore, there really existed no indefeasible title to property in any part of the island, and it was this uncertainty which made the inhabitants "a people distracted about property". For unauthorised ownership of land was held only through undisturbed occupancy over a number of years, or on the no less insecure foundation of inherited interests. To employ again the figure used by Knox when he compared Newfoundland to a great ship, it might be suggested that its passengers were those western merchants and adventurers who held property there purely for the purposes of the fishery. They had made the voyage so often and had occupied the same quarters so long that the captain and their fellow-passengers alike acknowledged that they held an unwritten but unmistakable title to them. So unanimous was this acceptance that the holders, as a matter of course, presumed to dispose of their quarters as they thought fit, subject, however, to the unquestioned right of the captain to dispossession them whenever necessary. The inhabitants were the stowaways whose unwarrantable intrusion rendered them liable to the most drastic and uncompromising treatment, against which they could utter no word of legal protest. Thus in the great ship "Newfoundland", the wretched stowaways could claim no redress for wrongs inflicted and even the passengers, law-abiding as they appeared to be, were subject to the discipline of the quarter-deck and the justice of the high seas.

It was inevitable that a general stocktaking would follow the Peace of 1783. For the war had interfered not only with the operation of Palliser's Act, particularly as regards the return of seamen to Britain, but also with the status of the island which, along with the vexed question of property, had to be reconsidered. Accordingly in 1786 the whole matter came before the reconstituted Committee for Trade with a view to its framing various recommendations for parliamentary consideration. With characteristic thoroughness the Committee entered upon its task. The principal merchants of Poole and Dartmouth, the officers who had commanded or served on the Newfoundland station, the Crown representatives from the island, as well as other authorities on the subject, were all

\footnote{1 S.P.C, Rev. James Balfour/Secretary, 29 Nov., 1788.}
invited to give evidence. True to their bigoted and selfish policy, the western traders marshalled all the arguments available in one united attack against the colony. The fishery, they declared, must remain entirely British, by which they meant its continuance as a preserve of the western interests. The island, they asserted with a show of patriotic fervour, must never become a colony, for then, as had been the case in New England, the colonists would oust the British adventurers from the fisheries, with the consequent loss of the great nursery for seamen. As if to strike a final blow at all colonial pretensions in Newfoundland, they made the additional suggestion that on no account should property in the soil be permitted. It is hard to believe that at the very time the western merchants were pressing for the complete condemnation of the colony, the island possessed a winter population of approximately ten thousand settlers.

On the very important and vexatious question of land occupancy, the Committee, desiring an authoritative statement, requested the Law Officers of the Crown to consider the legal aspects of land tenure within the island, in the light of the Acts of 1698 and 1775. From an interpretation of the law as it then stood, there could be but one answer. They ruled that no person who had not a definite grant from the Crown had any right of property in any part of Newfoundland, save those who used the fishing rooms in accordance with the provisions of the Acts. It followed, therefore, that as all property on the island belonged wholly to the Crown, the governor could legally prevent the enclosure of lands or the erection of buildings not warranted by law and could dispossess, if he thought fit, those who held land on undisturbed possession. The whole problem, however, had to be considered with caution for, as the Law Officers reminded the Committee, "how far it may be proper to exert that right in any case where the fishery is not affected

must be left to His Majesty's Royal consideration under all the circumstances of each particular case. 1

For the most part the evidence presented to the Committee revealed clearly that the conception of the fisheries as a "nursery" still obsessed men's minds. As an advocate of this school of thought, Palliser was its ablest exponent and his statements carried great weight with the Committee. He still dreaded the rise of a colony, seeing in every effort to establish settlements there a threat to the fisheries which constituted a standing marine force for the defence of the mother country. 2 Much the same views had also been expressed by George Chalmers, the chief clerk of the Committee and the friend of many of the most prominent men of his day. It was obvious that in championing whole-heartedly the cause of the British fishermen to the detriment of the colonists, Chalmers was merely echoing the accepted beliefs of those Englishmen who deplored the growth of anything which would tend to weaken the naval strength of the country. "For", it was argued, "if the use of a nursery is to supply the public with sailors, when the danger of war require their aid, it is in vain to breed seamen, whose services cannot easily be commanded when they are wanted the most." 3

In short, the very arguments which influenced the Board of Trade in 1718 to condemn the colonisation of Newfoundland operated as powerfully seventy years later. It would have been surprising had the report of 1718 not been upheld. The Committee in 1786, still mercantilist in principle, was anxious to safeguard Britain's trade interests as an offset to the loss of the American colonies. Consequently the development of her commerce and the restoration of her maritime supremacy which the late war had jeopardised, became the policy of the hour. All the old arguments of the Palliser school against Newfoundland colonisation were therefore upheld and the Committee, in expressing a general condemnation of a colonising policy for the island, maintained that on no account should property in the soil be recognised. Yet although the Committee deplored

the growth of inhabitancy and believed that the fishermen should be "induced and compelled by every wise and proper regulation to return", it was admitted that from a change of circumstances it might be beneficial to the fishery to permit a certain number of fishermen to remain behind for the winter, in order that all fishing equipment and the like should be repaired in readiness for the coming season. By granting such a concession, even if in the nature of an evasion of the law, the Committee hoped that the British fishermen would thereby possess advantages over their French rivals who by treaty were forbidden to winter on the island.

With these aims in view, the government in the session of 1786 introduced a bill which was "to amend and render more effectual the several laws now in force for encouraging the fisheries carried on at Newfoundland, and ports adjacent, from Great Britain, Ireland, and the British dominions in Europe". Charles Jenkinson, the capable and energetic president of the Committee for Trade, in sponsoring the measure made it clear that the government's intention was to preserve at all costs the British fishery "by confining it to British ships, navigated from Great Britain, and by no means permitting any stationary settlement to be made on the island of Newfoundland". That such already existed, Jenkinson was evidently prepared to ignore. In theory they were to be regarded as non-existent. To encourage the British fishermen, bounties were to be granted on much the same plan as in 1775. Further clauses relating to the employment of "green" or untrained seamen and fresh penalties for fishermen deserting or absenting themselves from their duty were also included in the Act. But nothing was said concerning the all-important question of private property in Newfoundland. Apparently it was taken for granted that the provisions of King William's and Palliser's Acts still held good. Thus, in accepting the new measure, parliament endorsed the policy of past days and added one further restriction to the many already harassing the struggling colony.

3 Afterwards Lord Hawkesbury, and later, the Earl of Liverpool.
6 Ibid. Sect. 5.
7 Ibid. Sects. 6 and 12.
In still another field, the results of the Committee's findings became apparent for, founded upon the new enactment, a revision took place in the form of the standing Royal Instructions for Newfoundland. Through them rather than by an act of parliament, was made the determined attack on the island settlements; by them were bestowed upon the high-handed and autocratic governors such powers as enabled acts of injustice to proceed unchecked. For as regards land ownership the most positive instructions were given. The ancient ships' rooms were to be preserved according to the Act of King William, while the remaining shores of the island were to be kept open for the fishing adventurers from British Europe. On no account were they to be occupied as private property. As a further deterrent to the pretensions of the inhabitants who had repeatedly claimed land "upon various unwarrantable pretences", the governor was expressly warned that no title whatever to land or houses in the island would receive legal recognition. In an effort to check settlement, the instructions, however, went even further. As an additional safeguard to the fishery, it was stipulated that a strand or margin of six hundred yards' width (altered to two hundred yards in the instructions of 1792) from the high-water mark was to be kept clear of all buildings and erections except fishing establishments while, as a further precaution, the right to hold private property even beyond that distance was emphatically denied.

It was clear that the inhabitants were to receive no mercy.

For the western merchants and the fishing adventurers from British Europe, the Act of 1786 was a fresh triumph, reaffirming their traditional claims. To the unfortunate inhabitants, it was merely another malicious trick of fate which was to make of Newfoundland "the Cinderella of the Empire". A more ruthless policy in British colonial history never existed. "Newfoundland is in no respect a British colony and is never so considered in our laws. On the contrary, the uniform tenor of our laws respecting the fishery there, and of the King's Instructions founded upon them, goes . . . to restrain the subjects of Great Britain from colonising that island ", William Grenville

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1 C.O. 195/12. Special Instructions to Governor Elliot, June, 1786.
2 Ibid. Sect. 7. This clause was responsible for many of the injustices the inhabitants were later to experience.
THE LEGACY OF THE PAST

frankly admitted. Hence the naval governor of the late eighteenth and early nineteenth centuries, armed with those instructions, was in duty bound forced to withhold from the unhappy settlers anything that might serve to encourage them to remain in the island. As Lord North tersely put it, "whatever they loved to have roasted, he was to give them raw, and whatever they wished to have raw, he was to give it to them roasted". Such then was the enlightened colonial policy of an era which had witnessed the loss of a great transatlantic empire, and such was the spirit of antagonism in which the vital problems of the peace, so far as they concerned Newfoundland, were approached and settled.

2 Second Report, Commons' Committee, 1793, pp. 16-17, Wm. Knox's evidence.
CHAPTER XI

THE PROBLEMS OF THE PEACE

It was inevitable that the War of Independence and the loss of the rebellious colonies should profoundly influence Britain's colonial outlook. At a time of national humiliation and disillusionment, Englishmen naturally focussed their attention more on the disasters of the war than on the assets of the peace. For if the old canons of mercantilism meant anything, England was ruined. Her colonial monopoly, the preservation of which men had long believed was essential to the national welfare, had been completely destroyed. No wonder that in the first shock of such a calamity, popular opinion was best expressed in the Earl of Shelburne's gloomy foreboding that with the establishment of American Independence England's sun had set.1

But such feelings of pessimism did not prevail for long. Hope slowly revived as men recalled to mind those provinces in America which still acknowledged Britain's dominion and which afforded fresh opportunities for an extension of maritime enterprise.2 Indeed from the viewpoint of trade it was not so certain that the loss of the colonies was a complete disaster, no matter what the political implications might suggest. For the thirteen colonies had always proved a thorn in the flesh of the mother country. So stubbornly had they resented her efforts to fit them closely into the imperial scheme that by the middle of the eighteenth century they had almost ceased to conform to the ideal type of colony that mercantilists ardently desired. For this reason the calamity which robbed Britain of her settled colonies also rid her of an irritating problem of an acute political nature and left her with the remnants of an empire.

2 Ibid., p. 136. Attorney-General, 2 July, 1782.
THE PROBLEMS OF THE PEACE

almost entirely maritime in character, destined however to provide her with renewed opportunities for an uninterrupted expansion of trade.

Yet at first sight, out of the wreckage of the old empire, little of value remained. Britain's possessions might still be extensive, but with the exception of the West Indies they were poorly developed and thinly populated. Indeterminate trade potentialities were the only assets they offered. In this colonial miscellany, Newfoundland occupied a place of considerable importance—one of the lesser gems without doubt, but still a precious jewel in the Imperial Crown. For among Britain's American possessions of one hundred and fifty years ago, the island was second only to the West Indies as a source of wealth, a fact easily lost sight of to-day when, in terms of her vast overseas trade, Britain's commerce with Newfoundland appears trifling. In fact, if this consideration is ignored, the full significance of the island's early history will be overlooked. Only by achieving a true historical perspective, freed from the obscurities and distortions of past years, is it possible to recapture something of the late eighteenth century attitude towards the Newfoundland trade. It contained the very essence of British maritime supremacy. Next to the coasting trade, its fisheries were the most valuable school for seamen in the empire, affording, moreover, a double market of consumption and supply for the mother country. They absorbed English produce and manufactured goods, and the dried cod in return provided a staple of exchange for Britain's Mediterranean requirements. As the centre of an ever-widening circle of commerce in which the balance of trade was markedly in favour of Great Britain, the fisheries occupied a place of primary importance in eighteenth-century economy. No wonder that the preservation of this trade at all costs to the exclusion of other interests became a fundamental tenet of England's economic creed.

On the conclusion of the war in 1783 one of the most pressing problems demanding immediate solution concerned the regulation of the colonial trade. Pitt, a sincere and intelligent disciple of Adam Smith, was loath to pursue a policy of commercial enmity towards the revolted states. He believed that the American trade should be permitted to proceed without
any inconvenience or artificial obstructions, holding firmly to the belief that unnatural hindrances would react adversely on British rather than on American interests. In this spirit Pitt framed the American Intercourse Bill which was based on the avowed intention of establishing on free-trade principles the commerce of Great Britain, the remaining colonies and the United States. Under any circumstances such a radical departure from the old colonial system would have been vehemently attacked. Under the peculiar conditions existing at a time when Englishmen, still smarting from the disasters of the late war, were clinging tenaciously to the remnants of their great mercantilist empire, the bill was doomed to failure. To the opponents of the measure it seemed as if Pitt were deliberately sacrificing British trade and navigation to American interests. In the Commons, the most telling attack was made by William Eden who, in expressing the convictions he afterwards reiterated concerning the future of the Newfoundland trade, asserted that the overthrow of the Navigation Acts was tantamount to Britain’s losing all her seamen and all means of manning her ships in times of national emergency. In effect, the failure of Pitt’s bill revealed unmistakably the national determination to reconstruct from out the ruins of the old a new commercial empire in which the former colonists would be excluded from all trade privileges. Obviously the benefits of an exclusive Imperial trade were still too evident to be lightly discarded for the more nebulous advantages accruing from the cultivation of American friendship. Moreover in this new scheme the remaining colonies were still to conform to the principles which made mother country and colony mutually complementary. Indeed, concerning the commercial problems of the day, men concurred fully in the belief “that it was better to have no colonies at all, than not to have them subservient to the maritime strength and commercial interests of Great Britain”. Thus to safeguard the new order it became the national policy to prevent the Americans from securing a share

3 Afterwards Lord Auckland.
of the remaining colonial carrying trade, to maintain exclusively the colonial market for the mother country, and to develop the North American colonies as sources of supply for the food-
stuffs and lumber the West Indies and Newfoundland required.

Before the war such supplies had been drawn largely from those colonies which had recently secured their indepen-
dence. It was true that the fishing adventurers from Europe had generally taken with them, particularly from Irish ports, the provisions necessary for the seasonal fishing in Newfoundland. But as supplies from the North American colonies could usually be procured at prices considerably lower than those prevailing in England or Ireland, the custom had gradually developed of overseas fishermen purchasing their requirements from Newfoundland merchants who bought in the cheapest markets. The war, however, had dried up that convenient source of supply and the merchants were again forced to rely upon provisions imported at high cost from Britain and Ire-
land, although it was generally believed that Canada and Nova Scotia would be able to supply any deficiency that might exist. But theory and fact are two different things and this assumption was open to serious question, in spite of the forceful arguments of those merchants interested in the Canadian trade, of whom Brook Watson was the parliamentary representative. In view of the uncertainty of the situation, parliament adopted a policy of compromise, of reconciling the immediate fact that Canada and Nova Scotia could not at the moment take the place of the American states as sources of supply for the West Indies and Newfoundland, with the old-established theory of the preserva-
tion of the Navigation Laws. Thus instead of laying down any permanent rule for regulating this complicated and hitherto unexplored subject, parliament on July 2nd, 1783, vested in the crown, for a limited time, authority to control the commerce with America by means of orders-in-council.¹

Somewhat surprisingly, no regulation was made concerning the importation of Newfoundland food supplies from the United States. More than likely those merchants in England and Ireland who exported provisions to the fisheries were not at all eager to see a trade monopoly challenged by the revolted

GOVERNMENT IN NEWFOUNDLAND, 1783–1832

Regarding the trade as their exclusive privilege and firmly upholding the Navigation Laws as the main support of British commerce, they were prepared to force the Newfoundland fishermen and settlers to rely mainly upon provisions exported at high prices from the British dominions in Europe rather than upon cheap food supplies imported from America. For these reasons they deemed it expedient to refrain from adopting measures for opening up a questionable trade with the United States, one which, in all probability, would challenge their jealously-guarded privileges.

Within the island matters soon became serious. Prices rose rapidly to unprecedented heights and this, together with the reluctance of the merchants to lay in sufficient stocks of provisions to supply both fisherman and settler alike, had produced great distress among the poorer classes as well as seriously handicapping the fishery, for the success of which cheap provisions were an essential. During the summers of 1783 and 1784 when the position had become acute, British vessels laden with foodstuffs had arrived at St. John’s from Philadelphia. Although at first at a loss how to proceed and completely unaware of the legal position, the governor, Admiral Campbell, decided to allow the cargoes to be sold, a proceeding which naturally produced widespread relief and reduced the price of bread and flour considerably. In defending his action the governor maintained that, although the order-in-council did not permit the importation of bread and flour from the United States, neither did it expressly prohibit such a trade and therefore what was not positively forbidden might without question be permitted.

It was apparent that such an indulgence would arouse the opposition of the western traders who were antagonistic to any semblance of commercial intercourse between Newfoundland and the United States. Accordingly they took steps to have it prohibited. Actuated purely by selfish motives, though professing great concern for the future of the fisheries, they stated their dread of any open trade developing between

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1 Conditions existing in the West Indies at this time were very similar.
5 Ibid. 664. Memorial, Dartmouth Merchants/Lord Sydney, 16 April, 1784.
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the countries in question. While admitting that provisions in certain seasons might be obtained at lower prices in America than in Britain, they argued that a free system of trade would imperil British trading interests in the fisheries. For America, would not only secure an entry into a hitherto exclusive market but, in receiving the dried cod as payment for food supplies, would also gain a share of the coveted carrying trade. In order to safeguard their position, they identified themselves completely with the old mercantile system, asserting that “the chief support of Newfoundland hath ever been the Navigation Act, so far as it prevents foreigners from trading there: therefore, foreigners once admitted, under any colour or pretence whatever, will not fail to put an end to its utility at a very early period.”1 In thus astutely associating their case with the maintenance of the Navigation Acts, the petitioners, mindful of the collapse of Pitt’s Intercourse Bill in 1783, felt certain that parliament would again uphold their cause.

But the interests of the island fishermen and settlers were championed by the naval officer at St. John’s who, along with other crown officials in the island, had been accused by the Dartmouth merchants of seeking to further his own ends by securing an open trade.8 In constructing his case round the whole question of cheap supplies, Buchanan, the naval officer, was on safe ground. He argued that it was not the prosperity of a few rich and grasping merchants that mattered so much as the general welfare of the thousands of struggling fishermen who constituted the backbone of the industry. As the island—in accordance with the ancient policy—was not cultivated, food supplies had necessarily to be imported from abroad. If, as had been the case for many years, regulations permitted the importation of cheap salt from any European port to the fisheries to enable the French competition to be successfully faced, it was no less essential for other necessities such as provisions, pitch, tar, and lumber, to be purchased in the cheapest market. In short, those arguments which revealed the advantages of permitting American produce to enter the British West Indies, applied to Newfoundland with double force.8 Moreover,

1 Ibid.
2 C.O. 194/35. 647. A. Holdsworth/Lord Sydney, 2 April, 1784.
3 C.O. 194/35. 651. Buchanan/Stewart, 5 April, 1784.
Buchanan made it perfectly clear that unless the British fishermen were assisted in that way, the difficulty of facing, not the French, but the new American competition, would become increasingly evident. For the Americans, besides being in a very favourable position as regards their food supplies, were no less fortunate concerning their proximity to the fishing banks, thus enabling them to commence the season at an earlier date than could the fishermen from Europe. It was therefore obvious that every burden and restriction laid upon the British fishery would operate as a direct and powerful encouragement to its foreign rivals.¹

Thus the problem of maintaining inviolate the Navigation Acts became the battleground on which both parties launched their fiercest attacks. The conflict, though primarily local in character, was not, however, of minor importance for it raised national trade issues and political considerations too serious to be ignored. The allegations on both sides, of those who argued for a free commerce with the United States and of those who were wholly and unreservedly against such a trade, led to a careful investigation of the situation by the Committee for Trade.² Nothing revealed more plainly the complete selfishness of the western fishing interests than the evidence submitted by the merchants of Poole and Dartmouth. They clung steadfastly to the belief that no deviation from the strict principles of the Navigation Laws should be tolerated. To enlist the sympathy of mercantilists and manufacturers, they asserted that the fisheries afforded British goods a safe and valuable market which, if once thrown open to foreigners, would rapidly diminish.³ They hinted darkly at the risk of smuggling and to give colour to their arguments, they drew attention to the growing practice of American vessels sailing under false clearances and registers, thereby participating illegally in British commercial privileges. With absolute indifference to the misery and suffering of the poorer itinerant fishermen or to the hapless inhabitants, they protested with emphasis that no bread or flour should be imported from America even in British ships. Though prices in Newfoundland soared to famine rates,

¹ B.T. 6/87. Statement to C. of P.C. for Trade, A. Buchanan, 7 Jan., 1785.
³ The value of the trade was stated to be £100,000–£150,000 p.a.
they would still maintain a monopoly rather than permit any foreigner to share, even indirectly, in the coveted trade.\(^1\)

To combat these uncompromising assertions, the governor of Newfoundland, Admiral Campbell, and Buchanan, the naval officer at St. John's, advocated the free importation of bread and flour as the sole means of breaking the food monopoly of the merchants. If prices were to be maintained at reasonable rates, some form of competition was essential.\(^2\) Moreover, prior to the Revolutionary War, supplies of bread and flour as well as live-stock had been freely imported from America to the fisheries which were then in a flourishing condition. It appeared therefore that a revival of the practice would prove beneficial to the trade as a whole.\(^3\) But the most telling argument against the exclusive trade was the fear of a growth of smuggling, that bugbear of eighteenth-century mercantilism. For, as the Americans had been permitted by the Treaty of 1783 to fish along the Newfoundland coast, the very nature of which made the adequate supervision of their vessels an utter impossibility, a contraband trade in bread and flour and perhaps also in manufactured goods could easily proceed unchecked. The passing of provocative trade restrictions would certainly tempt Americans engaged in supplying their own fishermen with provisions in Newfoundland waters to extend their efforts in more profitable ways, despite the vigilance of the British cruisers.\(^4\)

From the mass of conflicting evidence, from "assertions of the most positive nature contradicted by assertions equally positively given",\(^5\) the Committee had to reach a satisfactory solution. It was certainly not inclined to favour any policy which might weaken British commercial interests and was not in the least concerned with questions of cheap food supplies for the inhabitants. But it did fear the rapid growth of a contraband trade which the peculiar nature of the Newfoundland fisheries undoubtedly favoured. Obviously the evils arising from an open trade with America appeared less dangerous than those threatening from a restricted one, of which smuggling

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\(^1\) B.T. 3/2. Evidence of Dartmouth merchants, 24 Jan., 1785.
\(^2\) Ibid., Evid. of Ad. Campbell and A. Buchanan, 17 and 24 Jan., 1785.
\(^3\) Ibid., Evidence of Evan Nepean, 20 Jan., 1785.
was decidedly not the least. In the end, a solution more or less in the nature of a compromise was agreed upon. The Committee decided to recommend that permission for the importation of bread, flour and live-stock from the United States should be granted, but only in British-built ships owned by British subjects, and possessing a licence issued in Great Britain from the Commissioner of the Customs.¹ As the licence was to remain valid for seven months, and as the temporary act for regulating by order-in-council all trade with the United States was due to expire, the Committee deemed it necessary for parliament to pass a special act for the purpose of the Newfoundland trade. As an additional safeguard and realising that its suggestions were purely experimental, the Committee further recommended that the act should be in force for one season only.¹

No time was lost in introducing the bill into parliament and the debates which followed were among the most interesting of the day. It was not because the Newfoundland trade was regarded as being of the highest importance to the nation. The reason lay deeper. Since the West Indian debate in 1783, men's ideas on trade problems occasioned by the loss of the American colonies had clarified; various schools of economic thought had developed along divergent lines; the rival trading interests had marshalled their arguments; and the preservation of the Navigation Acts was about to be called in question. Although few Englishmen were prepared to abandon laws which had been hallowed by the past and which were believed to form the sole bulwark of England's commerce against the onslaughts of foreign competition, there were a great many prominent thinkers, particularly Lord North and Charles Jenkinson, who were prepared from motives of expediency to modify the laws to suit the peculiar needs of the time. But there was also a strong body of opinion which desired the strict maintenance of the existing laws, no matter how inapplicable to the abstract theories of free commerce they appeared.² Thus rigid conservatism was offset by cautious innovation and a blind obstinacy balanced by a calculated self-interest. With Lord Sheffield as their high priest, those opposing the measure

strenuously maintained that as the Navigation Acts had given
Britain the trade of the world, their unbroken continuance was
synonymous with her maritime and commercial strength. They firmly believed that any breach in the solid wall of Navigation would see the collapse of Britain's power. By reason of his varied knowledge and practical experience, William Eden was eminently suited to uphold once again the old economy as he had done so ably in 1783. Eden was no lover of vacillating or half-and-half measures. If his conservatism was whole-hearted and uncompromising, it was none the less sincere and upright. "I am not yet brought so low", he cried, "as to be reconciled to the modern plan of gratuitous and endless concessions." In all matters which concerned American trade he was at one with Sheffield. The United States must be prepared to accept the disadvantages as well as the imaginary sweets of independence. Rather than modify the existing Navigation Laws to suit American needs, it was imperative to preserve them intact at all costs. But the arguments for their strict preservation did not follow along purely academic lines. The merchants' contentions were more matter of fact. They endeavoured to prove that the importation of foodstuffs from the United States into Newfoundland was entirely unnecessary owing to the current prices of bread and flour in Great Britain being lower than those prevailing overseas. They also echoed Sheffield's argument that as Canada offered an alternative source of supply for the fisheries, there was not the slightest reason for delivering the trade of Great Britain and her colonies into the hands of any foreign power.

It was strikingly apparent that, in the main, public opinion was still strongly opposed to anything which might weaken the principles of Navigation or which might savour of concessions to the new states. The bitterness of the war had not been forgotten and the country was in no mood for the conciliatory gestures of those who, like Pitt and Shelburne, professed the teachings of Adam Smith. Fox, too, had shown a marked

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1 Obs. on the Commerce of the Amer. States, Lord Sheffield, 1781, p. 120.
3 Sheffield, op. cit., p. 2.
5 Sheffield, op. cit., p. 46.
tendency to swing towards free-trade theories. In opposing the measure, he had advocated an unrestricted intercourse between America and Newfoundland, the sole regulations necessary being those which provided for the carriage of produce in British vessels, according to the Navigation Acts. His plea fell on deaf ears. Neither the government nor the Committee for Trade was prepared to sacrifice obvious trade advantages for uncertain commercial privileges which would probably favour the maritime expansion of the new states more than that of Great Britain. It was still the intention of the government to preserve the strict tenor of the laws of navigation unless their modification was deemed expedient by certain unforeseen contingencies, such as those for which the bill provided. As Lord North was careful to point out, it was still an established general principle of government to suppose that a mother country ought to hold the monopoly of trade with her colonies. But every general principle had, sooner or later, to adapt itself to the peculiar circumstances of the time and obviously the question of supplies for the Newfoundland fisheries was an allowable exception. The contentions of those merchants who desired the exclusion of foreign supplies were easily disproved. Since Canada, owing to the failure of the harvest had had to import American flour, it was absurd to look there for provisions for the fisheries. In the case of Britain, the export of corn was governed by stringent regulations. Clearly those who desired a restricted commerce were prepared to force thousands of needy fishermen into the hands of grasping monopolists, thereby imperilling an industry of incalculable value to the nation. Of the alternative policies confronting parliament, that of permitting a limited American trade seemed by far the lesser evil, especially as it implied nothing the least contrary to a strict adherence to the Navigation Laws. An adaptable orthodoxy had proved more acceptable to parliament than a stubborn dogmatism. The measure was accordingly passed.

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1 Ibid., p. 295. Charles Fox on N. N. Trade Bill, 15 Feb., 1785.
The Act, being experimental, was in force only for the season of 1785 and in the following year the Committee again considered the question. The merchants still maintained that the trade should be prohibited, though they preferred a renewal of the measure rather than an unrestricted intercourse. The Committee had not the slightest hesitation in recommending its renewal, for the provisions imported from America, though of no great quantity, had been sufficient to keep prices down to a reasonable level. By the end of 1787 the government could claim with satisfaction that the success of the policy was indisputable. The fisheries had prospered “under a politic restraint and prudent limitation of its trade” and the number of British seamen employed in Newfoundland waters had increased steadily. To those who saw in Newfoundland nothing but a nursery or training ground for seamen, such considerations justified a measure which had at first been adopted with apprehension. Thus the mode of occasional supply for the fishery was continued, and from time to time further commodities such as tar, lumber, and pitch were added to the licence.

The loss of the thirteen colonies had not produced a wider outlook concerning trade, for if a slight modification in the laws had been permitted for the general benefit of the fisheries, the canons of mercantilism continued to meet with popular acceptance. In substance the Navigation Acts remained inviolate. Colonial trade and shipping were amenable to their regulations and the dream of British statesmen was still the creation of a maritime monopoly in which mother country and colonies, mutually complementary, would unite in forming a jealously guarded preserve. Nothing reveals more clearly the British government’s complete disregard for any lesson the revolt of the colonies might have taught than its determination to maintain the Newfoundland fisheries as a British monopoly, to the exclusion of foreign or even colonial interests. “It is most essential to preserve the Newfoundland fishery as a British fishery”, Jenkinson, the president of the Committee for Trade re-

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1 B.T. 5/3, Evidence of Merchants, 11 Jan., 1786.
3 Table of Food Prices, 1775–85.
and the menace of colonial competition from the island and other North American settlements always appeared to eighteenth-century statesmen as one of the most undesirable features of the trade. In particular, the growth of the New England colonies had occasioned keen colonial rivalry in the fisheries. As early as the middle of the seventeenth century, New England and western fishing interests had clashed. In the following century, efforts to check colonial fishing activities in Newfoundland waters had produced considerable ill-feeling and resentment. At a time when conciliatory measures might have done much to pacify the indignant New Englanders and check the drift to war, the passing of Palliser's Act in 1773 served to fan their resentment and the several restrictions it placed upon colonial trade added one more spark to the smouldering fire that was soon to blaze upon the continent. In uncompromising terms, the act stated that the privilege of drying fish upon the shores of Newfoundland was to be restricted entirely to British subjects carrying on the fisheries from the British dominions in Europe. This imposed a severe handicap upon the New England fishermen whose rapidly increasing participation in the trade had seemed to the statesmen of the Lord North school a most undesirable practice and one which demanded summary treatment. In order, therefore, to maintain the western merchants in a virtual monopoly of the Newfoundland trade and to protect the interests of the mother country, colonial enterprise was sacrificed and colonial sympathies were estranged.

With the conclusion of the War of Independence, changing economic conditions and the unsatisfactory state of affairs in Newfoundland made a revision of the fishing laws imperative. As the Treaty of 1783 had defined the privileges of the new American states in Newfoundland waters, it was believed that all fear of further colonial competition in that exclusive sphere of British enterprise had been removed. In this respect the loss of the colonies appeared to the fishing monopolists an unqualified blessing. The fisheries had reverted to a more satisfactory state in which the New Englanders, being foreigners,
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were rigidly excluded from anything outside their treaty rights. As it was considered most unlikely that any further colonial competition in the fisheries would arise, the Act of 1786 omitted all reference to the clause in Palliser's Act limiting the fishery to British subjects from Europe, although it was never repealed. 1

Within a year from the passing of the revised Fisheries Act, the British fishing monopoly was again menaced by colonial competition from an unexpected source. In 1787 the appearance of a small Bermudian fishing vessel upon the Newfoundland fishing grounds, while it created some measure of surprise, aroused little apprehension, for its efforts met with trifling success. 2 The following year, however, saw the arrival of nineteen small craft from the Bermudas, their total catch being some twelve thousand quintals of fish which had been cured and dried on the shores of the island, contrary to the provisions of the old act of 1775. 3 Forced to immediate action by the protests of the British fishermen who would brook no rivals, the governor, Admiral Elliot, warned the Bermudians that they were encroaching upon a British monopoly. To check further competition and to prevent ill-feeling, he advised the Bermudians to refrain in the future from sending any fishing vessels to the banks. 4 At the same time Elliot informed Lord Sydney of the new colonial menace and warned him that if the inhabitants of Bermuda were permitted to participate in the fisheries, those of Nova Scotia and other British colonies in America would claim similar privileges, with the result that the nursery for seamen would again be jeopardised. 5

Clearly the Committee for Trade, which had striven so strenuously to safeguard the British fisheries, could not overlook the new development. The governor on his arrival in England at the close of the season was invited to appear before the Committee to submit his case. As an admiral of the fleet to whom the maintenance of the fisheries as a British preserve was an essential national policy, Elliot drew the most ominous conclusions from the threat of Bermudian competition. He

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1 Stat. 26 Geo. III, cap. 26. For the events leading to the passing of this act, see Chap. I., pp. 22-3.
feared that by 1789 at least one hundred and twenty Bermudian fishing vessels would appear on the banks and that at the rate at which they had been developing their interests in the fisheries, it would be only a matter of time before the whole trade would fall into the control of the British colonies in North America.1

Meanwhile the Bermudians, fully aware that Admiral Elliot’s evidence would prove unfavourable to them, lost no time in presenting their case. In a letter to Lord Hawkesbury, their governor begged for a special indulgence. The Bermudians, he affirmed, were not so sufficiently numerous as to become the powerful rivals of the mother country. In order to negate the “nursery for seamen” plea, he asserted that the growth of Bermudian fishing operations would ultimately lead to a strong body of hardy seamen in the Bermudas and the consequent development of a naval power which would counterbalance the loss of valuable ports in the old southern colonies of North America.2 In addition, the economic aspect of the case was not ignored, for the Committee was informed that as the Bermudian carrying-trade to the West Indies and other markets had suffered greatly since the war, the Newfoundland fisheries afforded the one remaining support for the fishermen and their families.3

It was soon evident that the disastrous war had not introduced a more generous spirit into colonial affairs. The debates on Pitt’s Intercourse Bill and, later, on the Newfoundland Trade Bill, had proved unmistakably that few were prepared to modify a principle which had been a cardinal feature of British mercantile policy for centuries. Restrictions against which the American colonists had protested in vain were certainly not likely to be tossed aside to help a weak and struggling colonial community, strong enough, however, to suggest a covert threat to the fisheries of Great Britain. To the British statesmen, the problem of colonial participation in the fisheries admitted of but one answer. Any privileges in Newfoundland which might be granted the Bermudians would certainly be claimed by other interested colonies, and the old question of

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colonial rivalry and the maintenance of a British monopoly would become problems of an irritating and unsatisfactory nature. In short, the admission of the Bermudians would be tantamount to the mother country's surrender of one of her most valuable branches of commerce.\(^1\) In order, therefore, to clarify the position, to put an end to all fears of colonial rivalry, and to safeguard the British fishery, parliament passed an act which declared unmistakably and emphatically that "by immemorial usage as by the provisions of former laws," the sole right of landing or drying fish on the shores of Newfoundland belonged exclusively to the subjects of Great Britain and of the British dominions in Europe, the solitary exception being the rights granted to the French in 1783 by the Treaty of Versailles.\(^2\)

The French claims to the Newfoundland fisheries and the rights assigned them by treaty, the genesis of the "French shore" and its diplomatic complications, are among the most amazing and interesting incidents in colonial history. Since the middle of the seventeenth century, the colony had been harassed by the legislative measures of the British government. Until the dawn of the twentieth century, it was fated to be handicapped still further in its natural expansion by treaty restrictions which made the island in very truth "the sport of historic misfortunes." A source of trouble and irritation between colony and mother country and the frequent cause of friction between Great Britain and France, the French shore was destined to become one of the major diplomatic problems of the nineteenth century, concerning which bitter and rancorous controversy constantly raged.

In 1713 by the thirteenth article of the Treaty of Utrecht, France ceded to Great Britain the sovereignty of the island of Newfoundland, with the proviso that French subjects should be granted the right of taking and of drying fish on the shores of the island from Cape Bonavista on the east coast and thence by the extreme north, to Point Rich, on the western coast.\(^3\) Within these limits the French fishermen were permitted to engage in the fishery only for the duration of the season, and as a further deterrent to settlement were denied the privilege of

\(^3\) See Appendix III, Map of Nfd., pp. 195-6, for French Limits in 1713.
erecting any permanent buildings along the shore. The conditions of which were renewed without alteration in 1763, was enjoyed concurrently with British fishermen. The French, however, soon found cause for complaint. They protested that Point Rich which marked their limits on the west coast, was placed too far north by English geographers. In addition and with some justification, they objected to the encroachments along the east coast by English settlers who had taken exclusive possession of many of the finest fishing stations between Cape Bonavista and St. John.

Thus in 1783 the aim of French diplomacy, so far as it concerned the fisheries, was to remove these grounds of complaint and to maintain the French fishermen in the possession of an exclusive fishery, thereby avoiding all dangers of future friction. The French were reluctant to accept anything less for they were not prepared to grant to a traditional rival privileges which would imply an undisputed possession of the fisheries. If France had been willing in 1713 to cede the sovereignty of an island which promised little as a colony, she had never surrendered her claims to the fisheries which, during the whole of the eighteenth century, were a contributing factor to the maintenance of the balance of power. France, no less than Britain, appreciated their importance as a nursery for seamen and realised that their control was synonymous with maritime supremacy. For this reason while the preliminary discussions concerning the conditions of peace were proceeding, France clung tenaciously to her fishery rights. After long and intricate negotiations, protracted chiefly by the French desire to obtain, and the British disinclination to grant, an exclusive fishery, the French government accepted a new arrangement concerning the French shore.

On the east coast of the island, the limit of the French fishery was removed from Cape Bonavista to Cape St. John in the north; by way of compensation, the limit on the western coast was extended from Point Rich to Cape Ray. But the French, still anxious to avoid anything in the nature of a concurrent fishery, pressed, even to the last moment of the negotiations, for a more specific agreement. In the end they reluctantly

1 See Appendix IV, A and B, pp. 197-8, for Treaty Agreements in 1713 and 1763.
3 See Appendix III, Map, p. 196, for Limits in 1783.
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withdrew the term "exclusive" by which they had endeavoured to designate their rights and accepted instead a fishery which the Treaty defined as being the same as that conferred by Utrecht, but only on the understanding that their claims would be guaranteed by a ministerial declaration. Thus, to end what appeared likely to develop into a diplomatic stalemate, and more or less as a compromise, Britain agreed to take positive measures for preventing British fishermen "from interrupting in any manner, by their competition, the fishery of the French," and further, that all settlements within the French limits would be removed. Nor were the French the only nation that received concessions in 1783. By a separate treaty between Great Britain and the United States, American subjects were permitted to enjoy a general and unmolested participation in the Newfoundland fishery in common with British subjects but without the privilege of curing and drying their fish on shore. Naturally enough, such generous concessions produced a storm of protest. Lord Townshend declared that the admission of France to a further participation in the Newfoundland fisheries was "a piece of the most dreadful policy and concession that ever disgraced a negotiation." With remarkable acumen, Sir Peter Burrell saw in the vague and uncertain wording of the treaty "an eternal source of quarrels and disputes." Fox also lamented additional foreign competition in the fisheries and feared that the rights which Britain still claimed there were "such as tend to create jealousies which may be pretences for war at a future period." In an effort to defend the treaty and to justify the fishing concessions, Andrew Kippis, a friend and disciple of Shelburne, warmly supported the new arrangement of the French limits for he believed that the old rivalries and disputes would at last cease. Moreover, it was not so certain that Britain had made a bad bargain. The east coast which

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1 See Appendix IV, C, pp. 198-200, for terms of Treaty of Versailles in 1783, and for the Declaration and Counter-Declaration.
2 "... ne troublent, en aucune manière, par leur concurrence, la pêche des Français...."
3 Ibid. As protracted disputes concerning the interpretation of the Declaration were frequent, the essential section of the text is also given in French, in Appendix IV, C.
4 See Appendix IV, F, p. 201, Treaty of Paris, 1783.
6 Ibid., p. 510.
7 Ibid., p. 534.
had been previously assigned to the French possessed natural fishing advantages, one league between Capes Bonavista and St. John being worth ten along the western shore. As regards the privileges bestowed upon the Americans, Kippis preferred to believe that they were essential to a lasting peace, without which all hopes of reconciliation would have vanished. But in spite of such assertions, Englishmen in general believed that Britain had granted amazing concessions without having received corresponding benefits. Few, if any, thought for one moment that the future of the colony was in jeopardy or considered that the question was anything but a commercial proposition. It was the fishery, not the colony, the trade and not the inhabitants, that was the real concern of the day. The matter, however, was beyond remedying and bitter protests and idle recriminations could avail nothing.

After the long interruption of the war, the French lost no time in occupying their new limits and in engaging in the fishery with characteristic thoroughness. By 1786 they had approximately seven thousand men there who made a total catch of four hundred thousand quintals. Encouraged by a liberal system of bounties, the French fishermen spared no effort to increase their catch and in all weathers fished from early morning till late at night. The fish was cured with the greatest care and as the treaty forbade the erections of flakes or stages, the drying operations were carried out upon hurdles or on stones along the beaches. But in spite of such exertions, the fishery failed to prosper. A succession of bad seasons forced it to remain entirely dependent upon the government's bounty, while the fact that the end of each season witnessed the complete exodus of the fishermen to France, provided a further handicap. Unlike their English rivals, the French could leave no one on the island to guard the stores and fishing gear left behind and to make the essential preparations for an early commencement of the fishery the following year. To enforce these treaty provisions, periodic visits by British men-of-war kept the French limits under constant supervision and no fixed settlements or settlers were permitted to remain.

1 Considerations on Provisional Treaty, A. Kippis, 1783, p. 69.
2 Ibid., p. 48.
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In 1783 the British government, mindful of its treaty obligations, instructed the governor of Newfoundland, Admiral Campbell, to put the French in possession of St. Pierre and Miquelon and to allow them to occupy the limits assigned them by treaty. As regards the British fishermen or the inhabitants scattered along the coast, not the slightest order was given for their removal. Thus throughout the season of 1783 and almost throughout that of 1784, the British fishermen remained in possession of their old fishing grounds and exercised a concurrent fishery with the French. Their presence within the limits was soon to be challenged. In September, 1784, the French commandant, claiming an "exclusive" fishery, wrote to Governor Campbell demanding the withdrawal of British inhabitants and fishermen from the coast before the commencement of the next season. The governor neither assented nor objected to this peremptory request, but replied cautiously that by every means in his power he would endeavour to induce the British subjects in Newfoundland to observe the provisions of the treaty. To make these known, he issued a proclamation stating the terms of the treaty and the declaration and calling on all persons who had fixed settlements between Cape St. John and Cape Ray "to remove them without loss of time". 

More than likely no one within the French limits took the slightest heed of what was but one more document to the list of gubernatorial edicts which, experience had proved, could always be conveniently ignored. In any case no attempt was made to enforce the order for the removal of the "fixed settlements", and the concurrent fishery proceeded as before. The initial successes of the French fishery and the British fishermen's fears of a growing competition created fresh difficulties and bitter jealousies. In June, 1784, the plundering of the French brig L'Actif, lost in the bay of Greenspond and pillaged by the inhabitants, occasioned fresh protests, and in the following year persistent and deliberate outrages by British
fishermen on French fishing equipment aggravated the uneasy situation.\(^1\) Though it was quite evident that most of the French complaints were much exaggerated and were in many cases "only a trumped-up French trick" to secure an exclusive possession of the shore;\(^8\) there were, however, sufficient incidents of a genuine character to justify their annoyance.

A protest from the French ambassador upon the subject of the losses of the French fishermen forced the British government to consider the matter,\(^3\) with the result that the Committee for Trade began the first of a long series of investigations on the Treaty rights. Its report was cautious, non-committal, and evasive.\(^4\) The Committee certainly believed that no privileges beyond treaty stipulations should be extended to the French and strongly affirmed British sovereignty over the whole island, including the French shore. But concerning the real point at issue, the interpretation of the Treaty, "the Committee did not think themselves sufficiently informed or authorised to answer the question". At the same time, the opinion was expressed that if the Ministry deemed it advisable to prevent British subjects from exercising a concurrent fishery, the settlers should be removed by British, and not French, officers, and further, that in cases of contravention, the French should not be permitted to exercise any authority but should apply to the governor or his officers for redress.\(^4\)

The report evidently met with the approval of the British government, for the Royal Instructions issued to Governor Elliot on his appointment in June, 1786,\(^8\) directed him to give "the most positive orders and injunctions" to the naval officers upon the station that the French were to have full enjoyment of the fishery, without obstruction or interruption.\(^8\) Moreover, he was required to investigate all French complaints and in order to obviate further disputes, he was to prevent, as far as possible, any British subjects from fishing within the French limits.\(^7\) The vagueness of this phrasing showed that the government, like the Committee, had adopted an evasive attitude for, while

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2. Ibid. Ellford/Nepean, 5 Nov., 1785.
6. Ibid., Art. 27.
7. Ibid., Art. 28.
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undoubtedly anxious to confer on the French a free and uninterrupted fishery, it was not prepared to admit an exclusive claim. As was subsequently explained to the governor, with reference to the interpretation of the words, “as far as possible”, the British fishery was so regulated that the use of force against those who persisted in their resolution to fish within the French limits would be most improper and contrary to the Act of King William.1

Before these Royal Instructions were issued, the French, determined to take the law into their own hands, began to clear their shore of English settlers during the season of 1786, in virtue of the exclusive right to which they laid claim.2 No protest was made by Governor Elliot concerning these high-handed proceedings and indeed on one or two occasions British warships had actually assisted in dispossessing the inhabitants and overseas adventurers and in destroying their fishing rooms and flakes.3 So far as the inhabitants were concerned, their misfortunes concerned no one but themselves. They possessed no legal standing in the island and their presence there was always an impediment to the British fishery. But in the case of those fishermen from Britain who carried on the fishery in accordance with the Act of King William, their protests could not be lightly dismissed.4 Nathan Tory of Poole, who claimed to have held a fishing room for twenty-four years, complained in 1786 of having been forcibly ejected by the French.5 Mindful of his instructions, the new governor, Admiral Elliot, refrained from interfering and advised him to withdraw his entire effects from the French limits.6 Lord Sydney approved of this reply7 and the British government appeared to sanction the French action in securing an exclusive fishery by forcible methods. But two further dispossessed occupiers, smarting from the high-handed treatment of the French, informed the governor that they intended “to pursue the fishery with an armed ship, to vindicate their rights according to the Statute of 1698.”8

1 C.O. 193 15, 162. Sydney/Elliot, 5 June, 1787.
5 Ibid. Gov. Elliot/Tory, 21 July, 1786.
7 C.O. 194/37. Elliot/Sydney, 23 May, 1787.
Had such an action proceeded unchecked, serious diplomatic difficulties between the two countries would certainly have arisen. Although the governor was advised to do his utmost to maintain the peace, so long as the Act of King William remained upon the Statute-Book, he had no legislative power to compel British fishermen to refrain from visiting the French shore. Only by fresh legislation could the difficulty be legally solved and accordingly the purpose of the bill which Pitt brought before parliament in the session of 1788 was to remove all English competition from within the French limits and to give the crown the power of suspending the rights of British subjects along the French shore. Pitt was careful to point out that Britain did not recognise the existence of any strict agreement with the court of France concerning the enjoyment of an exclusive right. There was but a stipulation to prevent British subjects from molesting those of France. But as a proof of good faith and conciliation, he urged a liberal construction of the Declaration. To win over the fishing interests to his side, he stressed the advantages arising from the exercise of separate fisheries for, apart from the danger of jealousy and conflict, there was always the fear that a concurrent fishery would enable the French, by adopting the more satisfactory modes of curing fish which English fishermen employed, to become more formidable rivals there. Apparently British merchants and traders viewed the bill without alarm. As colonisation was not a national policy and as the French shore promised little as regards good fishing grounds, most Englishmen accepted the new arrangement without demur.

After reciting the treaties and declaration, the new Act provided that all permanent establishments along the French shore should be removed. To fulfil the purposes of the Treaty of Versailles according to the Declaration, it was lawful for the King, by the advice of Council, to give the necessary instructions to the governor or his officers for the removal of flakes, stages, and other works for the purpose of carrying on the fishery, if such lay within the French limits, "any law, usage or custom, to the contrary notwithstanding". As a penalising
clause, it was enacted that British subjects refusing to conform to the provisions of the Treaty and Declaration were to forfeit the sum of two hundred pounds.\footnote{\textit{Ibid.}, sect. II.}

At first glance it might appear that the Statute of 1788 was an indirect surrender to France of a right which it had been considered as impolitic to mention either in the treaty or declaration. Pitt, however, had emphatically denied the existence of any strict agreement with France on the question of an exclusive fishery, in spite of the methods adopted by the British government to restrain their subjects from entering the French limits. Neither did the act declare that an exclusive fishery had been granted the French, nor that it was unlawful for British subjects to resort to the French shore for the purposes of the fishery. It merely declared that they should be liable to certain penalties if they interrupted the French fishermen. In such matters, jurisdiction within the French limits was to be exercised by British and not French naval officers. There was no uncertainty concerning British sovereignty over the whole island, including the French shore.

With the passing of the Act, it was apparent that additional instructions to Governor Elliot were necessary. Accordingly, he was directed on his arrival at Newfoundland to give notice to all British subjects there that they were not to interrupt in any manner, by their competition, the fishery of the French. In the event of any refusing to depart, he was given full authority to remove their fishing establishments and to compel them to leave by any means which might be deemed necessary. Concerning the French, the wording was more definite. They were to fish at not more than the distance of half a mile above the entrance or mouth of any river, their disregard for which in the past had seriously handicapped many salmon fisheries. They were not allowed to cut wood unless for building flake or repairing boats. Finally, at the end of the season, British cruisers were to visit the French shore to see that these stipulations had been observed, and to make certain that no French fishermen were remaining behind to winter in the island.\footnote{C.O. 195/16, 166. Further Instructions to Gov. Elliot, 18 June, 1788.}

In the few years of peace that remained before the outbreak of the Revolutionary wars swept the French fishing fleets from
the Newfoundland coast, neither the passing of the act, nor governors' instructions, nor proclamations, produced any practical change. As the French had already obtained by 1786 the exclusive possession of their Treaty limits through their own naval force and as they hoped to establish there an exclusive jurisdiction, they naturally objected to the presence of British warships along their coast. In 1788 the French showed a marked reluctance to pass on to British naval officers any information concerning their fisheries. In the following year a more serious development took place. Interrupted in their fishery some five leagues up the river Humber by a British naval officer who seized their nets, the French showed considerable resentment. Later in the season, in St. George's Bay, the French commandant, de Vaugiraud, threatened to fire upon a British cruiser unless it withdrew from the harbour within two hours, on the grounds that the French shore was during the fishing season under French jurisdiction. But the British officer refused to withdraw and "the chevalier relaxed in his declaration by not putting his bombast into execution". Although the commendable restraint exercised by the officers of both nations did much to smooth over differences of treaty interpretations, the French persisted in their claims and, in the few brief months of 1802 when they again occupied their limits, this right of complete sovereignty was reasserted.

It is clear that the few years of peace after 1783, far from solving the question of Treaty rights, had left the main issue still unsettled. For it is evident that the French were convinced that an exclusive fishery was justly theirs by virtue of the Treaty and the Declaration of 1783. On the other hand, it is hardly likely that the British government which in 1788 issued orders to British officers to exercise their jurisdiction along the French shore, would have done so had it been thought the French possessed that right. In any case the Treaty of Utrecht which affirmed British sovereignty throughout the island, had not been abrogated. The Royal Instructions were therefore justified. "Even the act which expressly forbade British fishermen from interfering with their rivals in the French

1 C.O. 194/42, 73. Captain Reynolds' Report, 1788.
2 ibid., 58. Captain Drew's Report, 1789.
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limits, could have been modified or repealed entirely by the will of parliament. Two factors, however, strengthened the French position and left them in almost undisturbed possession. The ancient British policy which was so strongly reasserted during the decade following the Peace of Versailles emphatically condemned settlement in any shape or form. Thus, particularly along the western coast, the fate of these settlers who had been dispossessed by the French occasioned no regrets. The treatment meted out to them, drastic though it seemed, was quite in keeping with the official attitude towards settlers in any part of the island whether within or without the French limits. Moreover, the repeated failure of the French fishery along their coast offered no inducement to British fishermen to resort there. In short, the French possession of the coast became exclusive, not through any treaty obligations and certainly not through Britain’s relinquishing her jurisdiction within that sphere, but purely as a measure of expediency dictated by the policy of that time.

Thus within a few brief years from the signing of peace in 1783, Newfoundland’s future within the empire and its subsequent fate were decided. In all matters the development of the colony was held subservient to the national policy, and the report of the Committee for Trade and the enactments of parliament constituted the colony’s condemnation. After 1783 Britain’s attitude towards Newfoundland and its problems had become clearly defined. No colony, no colonial interference in the fisheries, no open trade, no breach in the Navigation Acts, no competition along the French shore, comprised a policy of absolute negation. All hopes that the island would receive colonial recognition appeared doomed to bitter disappointment. The outbreak of war in 1793, however, gave a fresh impetus to colonisation and saved the island communities before the restrictive legislation of the British parliament had had time to operate effectively.
CHAPTER III

THE STRUGGLE FOR LEGAL REFORM

For the greater part of the eighteenth century, interest in Newfoundland affairs was concerned solely with the preservation of the British fisheries and the development of the trade according to the Acts of Navigation. As the investigations and reports of the Board of Trade had made it evident that the colonisation of the island was no part of the national policy, those inhabitants who remained there contrary to the wishes of the government received no consideration whatever. Even as late as the peace of 1783, the indifference of the British government to their fate dispelled the hopes of those who sought to win some concessions from the home authorities. The time itself was not opportune for, despite the loss of the American colonies, Englishmen were not yet prepared to adopt a broader and more enlightened view on colonial affairs. And in the case of Newfoundland, trade interests were paramount. Moreover the growing alarm at the trend of events in France where the very throne was tottering, was sufficient to act as a deterrent to those possessing liberal sympathies. Yet in spite of such opposition and prejudice, the closing decade of the century witnessed in Newfoundland the inauguration of legal reforms which ultimately paved the way for all future constitutional developments.

From the beginning of the British fishery there, the presence of large numbers of fishermen, if only for the summer, made some system of rough-and-ready justice necessary. As the annual return of all the fishermen was accepted as a matter of course, it was not considered expedient to erect a court of any kind in the island. In 1625, however, Captain Richard Whithbourne was sent out with a commission from the high court of admiralty, authorising him to empanel juries and to inquire into the various disorders committed by fishermen frequenting the
coast.  

Apparently no further action was taken till 1633 when the Privy Council, having considered many complaints concerning the conduct of the fisheries in the island, framed regulations whereby it was hoped many obvious abuses would be remedied. The Western Charter, as it was called, stipulated that for serious offences such as theft or murder, the offender should be brought to England, there to be tried by martial law. If guilt were proved by two witnesses, the penalty was death. The mayors of the Western ports were to try minor offences and to examine witnesses on oath. In most cases this provision speedily fell into disuse. Thus by the middle of the seventeenth century and before any system of judicature had been instituted in Newfoundland, the people, whether living or frequenting there, were subjected to the criminal law of England, so far at least as regards serious offences.

While for the most part the Act of King William placed upon the Statute Book a great many obsolete regulations which had come into being with the fishery, it did attempt to improve the process of the law within the island. It had long been realised that evil-doers there "hath many times escaped unpunished because the trial of such offenders had heretofore been ordered and adjudged in no other court of justice", than by martial law. To remedy this unsatisfactory state of affairs it was enacted that all those accused of capital offences in Newfoundland were required to be taken to England and there tried in any county or shire according to the laws of the land. Although this regulation would possibly cover all serious cases, provision was still necessary for the settlement of those minor disputes arising from the fishery which demanded immediate redress. In order to determine summarily such differences and to preserve peace among the fishermen, the act therefore gave legal recognition to a singular tribunal which had existed from the dawn of the fishery. By immemorial custom, the master of the first fishing vessel which arrived in any harbour of Newfoundland was accepted as being the admiral there for the duration of the season, the master of the second vessel becoming

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2 Ibid., p. 130. As these regulations were framed by Charles I’s government the preference for the summary process of martial law instead of the procedure of criminal law is obvious.
3 Stat. 10 & 11 King William, cap. 23, sect. 15.
4 Ibid., 13.
the vice-admiral and of the third, the rear-admiral. At each fishing station and harbour, these men were by the act given powers which vested in them something of the authority of a court, for they were authorised to settle disputes between the fishermen and the inhabitants concerning the seasonal occupancy of ships' rooms, stages, and the like, the aggrieved suitor, however, possessing the right of appeal to the commander of any of the King's ships on the station.

In yet another way the act granted further powers of jurisdiction to these fishing admirals, for they were authorised to enforce its regulations in order "to preserve peace and good government among the seamen and fishermen, as well in their respective harbours, as on the shore." Thus they fulfilled the functions of police, possessing a limited but none the less indisputable civil and criminal authority. But the most amazing feature of this scheme of justice which the act embodied was the surrender of the entire control of the colony, including the administration of the law, into the hands of men who by education or training were quite unfitted to assume such powers. Furthermore, no jurisdiction existed to call the merchants and western adventurers to account whenever they transgressed the law. No wonder that for well over a century the Act of King William exercised such a pernicious influence over the growth of the colony or that it received such whole-hearted support from the western merchants who "reflected with pleasure on the glorious Acts of King William and Mary; laws wisely calculated to promote the interests and success of that trade, and the only laws necessary for that purpose".

By the beginning of the eighteenth century, no regular system of jurisdiction had been established and the powers vested in the fishing admirals and the naval officers were obviously ill-adapted to meet the needs of a settled and steadily growing community. Independent of all other objections, the entire absence of these maritime tribunals during the long winter season left the population totally devoid of any form of judicial government. It is not surprising that the island became known as a sanctuary for evil-doers or that scenes of wide-

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1 Ibid., sect. 4.
2 Ibid., sect. 15.
3 Ibid., sect. 14.
THE STRUGGLE FOR LEGAL REFORM

spread disorder followed upon the departure of the fishing fleet at the close of the season. As in all primitive communities, the only law was the will of the stronger. George Larkin, whose observations on Newfoundland in 1701 are so full of interest, informed the government that quarrelling and disputes reached a climax in the autumn and in the rigour of the winter, "masters beat servants and servants their masters". But during the summer things could not have been much better, for the fishing admirals, he asserts, were generally the first to disregard the provisions of the Act of King William. To secure justice from these men was an impossibility. The suitor who bribed most successfully was certain to secure a favourable judgment. 1

As the administration of justice rested in such hopelessly corrupt and incompetent hands, the inhabitants, alarmed at the widespread scenes of anarchy, joined together in an effort to introduce law and order into a turbulent community. In the winter of 1703 a few took refuge in an island in Trinity Bay and drew up for their guidance a communal code of law. 2 A few years later, an assembly of masters, merchants, and the chief inhabitants, with the approval of the naval officer in command, framed a number of rules for the guidance of the community during the winter. Unfortunately this attempt to introduce some semblance of civil government into the island terminated abruptly with the peace of 1713, when fishermen from the West came out in increasing numbers and the tyranny of the fishing admirals was renewed. 3 Still later, however, at the close of the season in 1723, the principal merchants and inhabitants of St. John's, in an effort to maintain order, pledged themselves in a solemn, social contract to form a political community, three members of which were chosen to manage its affairs and administer justice. The experiment, though interesting, was never repeated. It was hardly likely that the wilder spirits in such an unruly town would have obeyed its decrees. 4

Larkin was well aware of the perils confronting a community which possessed no civil government. He therefore advocated the appointment of one of the most influential inhabitants in each of the harbours as a justice of the peace, and further, that

2 Paterson, op. cit., p. 36.
3 Ibid.
4 Ibid., pp. 40–2.
a lawyer should be sent out to act as judge-advocate with power to decide all cases in a summary way. Rather surprisingly, his suggestion was not considered seriously until 1728 when the Board of Trade, forced to take up the question of the establishment of civil law in Newfoundland, was of opinion that the appointment of judges and justices of the peace to decide disputes and administer justice during the winter was necessary to check in some measure the prevailing scenes of anarchy. Furthermore, they proposed that some person of legal standing should visit the island in the summer to frame regulations for the preservation of order among the inhabitants. It was unfortunate that the government did not accept completely the Board's recommendations. The naval officer in command of the convoy was certainly designated in the commission as governor and commander-in-chief "in and over our said island of Newfoundland", and although he was given authority to appoint justices of the peace, neither he nor they were to act contrary to the Statute of 1698, nor to interfere with the powers of the fishing admirals or the naval officers safeguarding the fishery. Instead of appointing a lawyer, the authorities sent out copies of an ancient legal treatise, unintelligible to laymen, and a miscellaneous bundle of acts relating to the fisheries and the trade and navigation of the kingdom.

Thus armed, the governor proceeded to give effect to the terms of his commission and appointed, from among the most suitable inhabitants, justices of the peace who were to hold courts somewhat analagous to the Quarter Sessions in England. In his own person, he also assumed a kind of civil jurisdiction, in which he acted as arbitrator rather than as judge. But these efforts to introduce law and order were to a great extent frustrated by the western merchants and adventurers who saw in every attempt to remedy the weaknesses of the Act of 1698 a direct attack upon their jealously guarded privileges. Moreover, the fishing admirals, incompetent though they were, viewed the newly appointed justices with suspicion and threw

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1 Larkin, op. cit., p. 433.
3 Ibid. Osborne's Commission, p. 376.
4 Reeves, op. cit., p. 73.
the struggle for legal reform

every possible obstacle in their way. Unfortunately while the powers of the justices rested upon no surer foundation than the King’s Commission, the authority of the admirals rested upon the Statute of King William thus giving them in every legal battle an incontestable advantage. Fully aware of the invidious position of the justices, the Board sought the advice of the Attorney-General who ruled that whereas the whole authority of the fishing admirals was limited to the determination of differences arising between the masters of the fishing boats and the inhabitants—in effect, a kind of civil jurisdiction—the authority of the justices concerned merely breaches of the peace. Clearly the great mistake made by the British government lay in its reluctance to pass a special act providing for the constitution, law, and government of the island, but as this would have implied a recognition of settlement and would in any case have been contested by the fishing interests, nothing was done. Consequently contentions, confusion, and uncertainty became the features of civil government there during the eighteenth century.

Unsatisfactory conditions prevailed until 1750 when in an effort to remedy matters a new clause was inserted in the governor’s commission, empowering him to appoint commissioners of oyer and terminer for the trial of all felonies according to English law. The court was held once a year during the residence of the governor and no person was to be executed until a report of its proceedings had been forwarded to the King-in-Council. This was invariably followed by a pardon. Thus while murderers were usually released after a year’s imprisonment, a petty thief was often severely flogged. Nor did the legality of the court remain unchallenged. Many who recognised no law in Newfoundland but the Act of King William questioned the right of the Crown to establish it. Moreover, the fact that it possessed no civil jurisdiction and no power to function during the governor’s absence weakened its administration and curtailed its authority. Without doubt few criminals in Newfoundland were ever punished, especially

3 Paterson, op. cit., p. 71.
in the distant outports where a complete disregard for the law proceeded unchecked.¹

In 1763 the Treaty of Paris conferred on Britain vast possessions in North America. In order to bestow upon them some form of civil government, a Royal Proclamation based upon a report from the Board of Trade was issued. As Newfoundland was still considered a resort for fishermen and not a colony, it did not share the boon. The western merchants made it clear that the fishery required no further legal control. They deprecated, as fatal to the trade, the establishment of additional courts which, introducing further legal uncertainties, would permit litigious and troublesome proceedings to arise.² Thus the inhabitants were forced to rely upon the justices of peace for the administration of the law. But in 1765, when a court of vice-admiralty was set up at St. John's, an interesting and highly significant development took place. As the governor and the fishing admirals alone possessed the right of settling certain civil cases—a totally inadequate arrangement which lasted for the duration of the seasonal fishery—it became inevitable that the new court, together with the courts of session, should extend their powers beyond their lawful limits. They tended, therefore, to become the resort of those who desired the settlement of civil suits. This was clearly wrong, for the court of vice-admiralty was purely one of revenue and the sessions were solely for the trial of petty criminal offences. Both, however, supplied an elementary need, thus justifying their unlawfully assumed powers.³ To confirm this usage and to give parliamentary sanction to this unwarranted practice, Palliser's Act conferred upon these courts a limited jurisdiction of a civil nature, mainly concerning disputes between masters and their employees.⁴ So flagrantly did the court of vice-admiralty abuse this privilege that it became 'more like an inquisition than a court of justice.'⁵ Consequently, when the new Act of 1786 was passed, its civil authority was withdrawn and left entirely with the sessions.⁶ Yet in spite of this, both

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¹ Paterson, op. cit., p. 167.
² First Report, Commons' Committee, 1793, p. 13.
courts continued to take cognizance of all civil cases, whatever their nature, and their decisions were quite illegal. Justice administered under such circumstances could hardly claim to be anything but irregular and certainly rested on no legal foundation.

Thus in Newfoundland towards the end of the eighteenth century, the law of necessity had superseded the law of England. The whole island judiciary, evolved by force of circumstances to supply its legal deficiencies, was unstable and make-shift. To a great extent it depended for its successful functioning on the ability and character of the justices who presided over its improvised courts. Indeed, a capable and disinterested magistracy was "the corner-stone of the super-structure". Unfortunately as the justices were men who, from lack of training or from motives of self-interest gave unjust and unlawful decisions, chaotic conditions prevailed throughout the courts. But even when they endeavoured to carry out their duties conscientiously, there was no power, in the absence of the governor, to support them. In the outports this weakness produced alarming consequences. Crimes were daily committed with impunity, for the offenders, "knowing there is no person to call them to account, rather look on it as merit more than injury". The worst feature of this judicial system—if such it can be called—was the power it bestowed upon the merchants who did not hesitate to turn the course of justice to their own ends, and who reigned unchallenged as absolute despots, knowing no law but their own inclinations. By 1790 there was not a single magistrate in the whole island who possessed independent means. As they were all engaged in some branch or other of the trade, it was difficult for even the best intentioned among them to pass judgment impartially upon matters which concerned them directly or indirectly. Even the better educated and more enlightened magistrates, such as the clergy or the surgeons generally to be found in the outports, were under the merchants' patronage, that "should either of them decide a case in favour of an oppressed servant against an unjust master, he would be certain to lose his Easter offering

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if a minister, or his practice as an apothecary or surgeon, should be of the faculty ". Apart, moreover, from the unsatisfactory rulings of these courts, the charges levied were exorbitant, the expense of the most trifling case being commonly twenty pounds. So costly was justice that prosecutions were rare and culprits escaped unpunished. By the end of the century the whole system of justice in Newfoundland was entirely inadequate and hopelessly corrupt, intolerable to inhabitants and fishermen alike.

While the courts of vice-admiralty and the sessions had gradually usurped civil powers no law had conferred upon them, a peculiar form of maritime government, without parallel in British colonial history, had also been slowly evolving. It was an off-shoot of the courts of the fishing admirals which, although sanctioned by act of parliament, had become obsolete in practice. Apart altogether from the partiality and despotism with which the admirals had exercised their powers, their courts rarely functioned when most urgently required. Either the admirals were absent at the deep sea-fishery or, as frequently happened, they were too engrossed in their own affairs to observe the provisions of the statute and to enforce their judicial powers. Under these circumstances the reluctantly exercised authority of the fishing admirals was first reinforced and later entirely usurped by the naval officers on the station. According to the Act of 1698 these commanders held an appellate jurisdiction from the decisions of the fishing admirals and with that their powers ceased. To meet the requirements of the situation, however, and to maintain some semblance of order among the fishermen, the officers of the King’s ships gradually ousted the admirals from their ancient privileges and assumed unlawful powers. From being merely judges of appeal, they began to entertain complaints both civil and criminal, seeking guidance from “the statute of William, the instructions from the governor, and their own good sense, paying always a due regard to the customs and usages of the country.” They went even further. As they could not conveniently exercise their

1 C.O. 104/29, Waldegrave/Portland, 23 Oct., 1797.
4 Reeves, op. cit., p. 133.
assumed authority at the remote bays and fishing stations throughout the island, they appointed deputy judges to represent them there who, by a term borrowed from the civil law, they named surrogates. These deputies were almost invariably lieutenants or midshipmen of the naval vessels in Newfoundland waters. Supported in their unlawful pretensions by a warrant issued by the governor, these men based their interpretation of justice mainly upon admiralty law, believing in all sincerity that the fishery was entirely an admiralty concern and a nursery for seamen, and as such ought to be regulated.¹ On this amazing system, some ten thousand settlers depended for justice and redress. Every court within the island was exercising unlawful powers, as were the governor and his deputies. For, assuming a right not vested in his commission, the governor himself took an active part in the administration of justice, presiding in the Court of Sessions and hearing and determining every class of action, civil and criminal.² When the governor and his surrogates departed at the close of the season, the courts of vice-admiralty and the sessions again considered all cases of a civil nature.

In spite of such illegal proceedings, matters concerning the judiciary proceeded with apparent smoothness for some considerable time, neither the governor's nor the surrogates' assumed powers being questioned. But in this singular system there lurked a danger. So long as there was an absolute acquiescence in the decisions of these courts and the rulings of the surrogates, all was well. It needed, however, merely the challenge of a dissatisfied suitor to upset the stability of a hopelessly illegal system. This occurred in 1780 when the governor, Rear-Admiral Edwards, was proceeded against in Exeter by disgruntled merchants who queried a judgment made by him in the court of St. John's. On the wise recommendation of the judge who realised the illegality of the admiral's actions, the case was settled by arbitration.³ In its implications the result of the trial was significant. It paralysed the activities of the governors in the island courts; it confirmed the suspicions held by many regarding the legal status of the surrogates.

² Ibid., f. 4.
The merchants were not slow to act. In 1788 a Dartmouth trader challenged the judgment of one of the outport surrogates. The case was referred to the Law Officers of the Crown who ruled that neither the governor nor his surrogates possessed authority to sit as judges in cases of a civil nature. Clearly a legal deadlock had arisen.

Edwards’ successor, Admiral Campbell, realised his legal limitations and proceeded to act with caution, confining himself in his judicial activities solely to the settling of fishing disputes as authorised by the Act of King William. Yet rather than leave a growing commercial community without some regulative authority in civil matters, the governor adopted the plan of receiving petitions from complainants and, after careful consideration, expressing his opinion in writing. This, if accepted and followed, would be equivalent to the judgment of a court. Obviously such an improvised mode of dispensing justice was not always acceptable and it could not in any case function during the winter. Consequently suitors, desirous of a more certain course of redress, began to appeal again to the courts of session and vice-admiralty, although they too possessed no such powers.

Matters were therefore no better than before, for the authority of the courts was still as feeble as ever. In the rapidly developing town of St. John’s, the centre for all the large trading establishments in the island, it was essential that civil disputes should be settled by some means or other. Yet the justices of the peace, fully aware of their precarious legal status, knew that they had less power in the courts than the governor himself. They therefore rejected causes, the determining of which might bring them into conflict with either of the disputants. The powerful merchant class who dominated the community seldom accepted their decrees and never without questioning their legality. Aaron Graham, who acted as secretary to the governors of Newfoundland for thirteen years and whose evidence during the Inquiry of 1793 was so informative, re-

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2 Third Report, Commons’ Committee, 1793, Graham, p. 3.
3 C.O. 194/21, iii, op. cit., p. 4.
4 Reeves, op. cit., p. 100.
5 C.O. 194/21, iii, op. cit., l. 6.
6 1779-91.
corded vividly the chaotic state of affairs in the courts. The governors were reluctant to inform suitors that they possessed no authority to hear them and therefore referred them to the magistrates. If it were not perfectly convenient or if the complaints were likely to lead to unpleasant complications, they in their turn directed them to the court of vice-admiralty which, according to the whim of the judge, heard or rejected their complaints. It is hardly surprising that when Admiral Milbanke was appointed governor in 1789 the administration of justice was at a complete standstill.

In a determined effort to remedy matters and to place the administration of justice upon a surer foundation, the new governor was strongly advised by his secretary, Aaron Graham, to establish a court whose authority would be unquestionable. By a straining or rather an overstraining of the terms of the King's Commission which stated that the governor was given "full power and authority to constitute requisite commissions of oyer and terminer, for the hearing and determining all criminal causes, treason excepted, according to the law"; they argued that it was justifiable for the governor to institute a court of civil jurisdiction. They named this new creation a Court of Common Pleas and, in order that as little deviation as possible might be made from the old procedure, the governor maintained the surrogate system and appointed his naval officers as judges with powers to dispense justice in the outports. In his new court at St. John's, Milbanke, profiting by the lessons of the past, did not preside himself but nominated proper judges from the meagre talent available, "with full power and authority to hold courts of Judicature and hear Pleas . . . "

The legality of Milbanke's court rested entirely upon his interpretation of the wording of his commission. It is difficult to believe that Milbanke seriously considered he possessed the authority on such an ambiguous phrasing of establishing a complete court of justice. A careful study of his commission

1 Third Report, Commons' Committee, 1793, p. 3.
3 Third Report, op. cit., p. 4.
4 C.O. 194/21, 90. Governor Milbanke's Commission, 17 April, 1789.
5 Third Report, op. cit., p. 4.
must have made it plain that his authority was limited to the appointing of judges or commissioners of oyer and terminer and justices of the peace. It was never intended that the governor of Newfoundland should possess the right to appoint standing judges as well as occasional justices, and Milbanke was undoubtedly aware of this.¹

Dubious as was the institution of such a court, there was no doubting its usefulness. Thoroughly convinced of its success after a season's trial, Milbanke urged its being placed upon a permanent footing. By such means Newfoundland would possess a judicature as efficient as, yet much less expensive than, any permanent colonial judiciary.² Milbanke's experiment, however, was not allowed to proceed unheeded. It was apparent that while the community at large accepted without question the judgments of the court, the Western merchants, clinging tenaciously to the Statute of 1698 and zealous as always to protect their own selfish interests, unhesitatingly challenged its legality. In a memorial presented to the Committee for Trade, the traders and merchants of Dartmouth, Exeter, Topsham, and Teignmouth charged the new court with interrupting the business of the fishery "on every frivolous occasion", and in addition, with demanding exorbitant fees.³ Milbanke had not the slightest difficulty in refuting these ridiculous charges. During the seven weeks he spent as governor in the island in the autumn of 1789—a period which, incidentally, gives some notion of the transitory character of the Newfoundland government—only four courts were held, each lasting but a few hours yet distributing "equal and immediate justice without respect of persons". As Milbanke bluntly asserted, this was most displeasing to the merchants, whose one idea of justice was to obtain a court "by which they may be permitted, whenever they think proper, to tear to pieces the boatmen and other poor people, with impunity".⁴

Neither Milbanke's innovation nor the complaints of the merchants could be ignored. Accordingly the whole question was placed before the Committee for Trade which was again to deliberate upon the affairs of the island. The matter under

¹ Reeves, op. cit., p. 163.
³ C.O. 194/27, 113 and 114. Memorials of Merchants, Jan., 1790.
consideration was not completely new for, during the Inquiry of 1786 when serious allegations had been made concerning the oppression of the Court of Vice-Admiralty, the establishment of some form of civil judicature had been investigated. Admiral Campbell, the governor of the day, had begged for authority to appoint judges to determine actions of debt or disputed property. But the uncompromising statements of Sir Hugh Palliser, whose opinions strongly influenced the Committee, checked any tendency towards legal reform. It was feared that the establishment of a new court was entirely incompatible with the exercise of a free fishery which required nothing more than the settlement of all legal disputes in a summary way and without expense, in accordance with the Act of 1698. By 1790, however, the situation had changed. The action of the governor in setting up his Court of Common Pleas, together with his report upon the chaotic judicature of the island, had convinced the Committee that a court of civil jurisdiction was essential for the consideration of all questions not provided for by any act of parliament. Obviously the Committee was concerned solely with the welfare and prosperity of the trade for, in seeking the guidance of the Law Officers of the Crown upon the constitution and powers of the new court, it still laid emphasis upon the maintenance of the fisheries as a nursery for seamen, with which policy the new court was not to interfere.

Any doubts regarding the legal status of Milbanke’s court were dispelled by the report of the law officers who, in affirming that the governor held no judicial authority under the wording of his commission, refused to recognise it. But they believed that by Royal Letters Patent a civil court could be legally established in Newfoundland, with authority to hear and determine in a summary way all pleas concerning debts, accounts, contracts and the like. They recommended the appointment of an English barrister of not less than five years’ standing to preside over the court, together with two disinterested assessors nominated by the governor. Right of appeal to the King-in-Council would be permitted and to prevent many of the high-

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2 Ibid. Sir Hugh Palliser’s Evidence, 14 Jan., 1786.
handed and unjust proceedings which had characterised the island courts in the past, they ruled that no one should be arrested for a debt of less than five pounds. In addition, to bring the court into conformity with the national policy towards Newfoundland, its session was to extend only from the first of June to the first of December.¹ In effect, it was to serve the interests of the fishery, for the inhabitants who were still to be left for more than half a year without means of obtaining legal redress were not given the slightest consideration. The Committee accepted this plan with whole-hearted approval, contenting itself with minor alterations and additions. In one respect a significant suggestion was made. In order to allow time for the judge to complete the business of the court which was bound to be excessive as the season drew to its close, it was deemed necessary for the governor to remain upon the station as long as circumstances would permit.² Hitherto a few weeks spent by the admiral-governor and his squadron in Newfoundland waters had been thought sufficient for the supervision and protection of the fishery. The slight extension of the judicature, relatively unimportant though it appeared, indicated a more definite step towards a resident government.³

With the prejudice of the sailor towards the more formal process of the law, Admiral Milbanke did not welcome the new plan. He much preferred the constitution of his own Court of Common Pleas which functioned without the assistance of any lawyer and which required merely the legal sanction of the Crown to establish it on an indisputable foundation. For he believed that a civil court in what was purely a fishing community should be presided over by a person who possessed a thorough knowledge of the trade and certainly not by eminent lawyers in whose ponderous decisions, usage and custom would count but little. Moreover, the appointment of lawyers would serve to introduce attorneys into the courts and so involve their proceedings that frequent litigations would create constant confusion in the trade and fishery.⁴

Contrary to expectation nothing further was done and neither commission nor instructions for the governor, who was,

about to sail to his station, were forthcoming.1 Lord Hawkesbury, the president of the Committee for Trade, had certainly authorised the preparation of the Royal Letters Patent which had been forwarded in due season to the Lord Chancellor for the affixing of the Great Seal. There the matter remained more or less in abeyance, for the Chancellor, Lord Thurlow, had expressed himself as being averse to the institution of such a court by Patent and much preferred that the whole question should receive parliamentary sanction. He believed that Milbanke’s Court of Common Pleas should be permitted to function, provided that its jurisdiction was limited to cases of urgency and that it did not encroach upon the privileges of the Sessions Courts.2 Thus advised, Milbanke set out on his brief visit to his seat of government, repeating his experiment of the previous year with but one modification. In 1789 his court had in all cases summoned juries. In view of the strong protests launched by the trade against its interference with the fishery, Milbanke gave suitors the choice of having their causes tried with or without a jury, according to their inclination.3

By the spring of 1791 the position regarding the island judicature was still uncertain and unsatisfactory. Conscious of the fact that the growing opposition of the merchants towards the makeshift court was fast gathering to a head, Milbanke was reluctant to sail without the Royal Patent for which he waited in vain.4 It appeared, however, as if a complete deadlock had arisen, for the government, having the question of the Canadian Bill before it that session, was naturally anxious to avoid the introduction into parliament of another highly controversial subject. In the eighteenth century Newfoundland affairs were never dismissed lightly. To reason with the Chancellor seemed the obvious solution of the difficulty.5 But proving hostile to the proposed Patent which appeared to him objectionable, Lord Thurlow left the government with no alternative but to introduce a bill for that purpose.6 At once the western merchants

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1 C.O. 194/38. Milbanke/Grenville, 6 July, 1790.
2 Ibid. Evan Nepean/Milbanke, 24 Aug., 1790.
3 Third Report, Commons’ Committee, 1793, p. 6.
4 C.O. 194/31, 130. Milbanke/Grenville, 6 April, 1791.
5 C.O. 194/38. Hawkesbury/Grenville, 20 April, 1791.
and traders, aware that their interests were again to be questioned and their privileges jeopardised, acted without hesitation. From those western ports engaged in the Newfoundland fishery, petition after petition was presented to parliament, and each stage in the progress of the bill evoked further vehement protests. In asserting that there was not the slightest need for a civil court in Newfoundland and that the fisheries would probably be ruined by its exorbitant fees, the merchants merely reiterated their earlier arguments against Milbanke's innovation. But they were on surer ground when they objected to the constitution of the new court which, by proceeding summarily, would deprive suitors of the right of trial by jury and place in the hands of the judge and his assessors greater power than even the Chief Justice of England possessed. Yet as they had frequently stated that trial by jury interfered unduly with the fishery, the merchants themselves were in the main responsible for this provision:

In a sense, it seems surprising that the institution of a civil court in the island should have provoked such criticism and aroused such hostility. But the indirect issues were far greater than the question under consideration. The merchants were fully aware of the growing colony there and the steady increase of population which made some form of civil government almost inevitable. The encroachments on ships' rooms by the settlers and their flagrant disregard for the regulations controlling the fishery, increased the alarm of the western merchants who even at the close of the eighteenth century were determined to maintain Newfoundland "as a Plantation of Poole". They feared that the establishment of a civil court would imply the creation of a supreme court and sooner or later colonial recognition for the island. In the many battles of the past concerning the national policy towards Newfoundland, the vested interests had always triumphed, and would continue to do so as long as the Statute of King William remained the law of the fisheries. In consequence, the merchants insisted that the only effectual government for the island was that which had existed in the past and which, moreover, had afforded ample redress on every needful occasion.

2 Ibid. Petition from Dartmouth, 25 May, 1791.
3 C.O. 194/21, 139. Petition, Dartmouth Merchants, May, 1791.
In the Commons, the champion of the western ports was Edmund Bastard, the Member for Dartmouth. To him the proposed court seemed an evil of the greatest magnitude, serving rather to encourage settlers to remain in the island than to return to England in accordance with the policy of Great Britain. As the fishery was entirely seasonal and supposedly transient, there was not the slightest need for legal proceedings apart from what could best be conducted in the courts of England. In deploring the growing tendency towards the regulation of the fishery, Bastard was merely the mouthpiece of those monopolists who objected strongly to the presence of court and customs officials in Newfoundland. The island was their preserve and not even the British government should encroach upon it. Either Newfoundland must remain a complete fishery, or become a settled colony. No half measures were possible.1

It was not difficult for the Attorney-General,2 who had framed the bill to refute such exaggerated and biased statements. He made it clear that while the government was prepared to encourage the fishery at all costs, it was not inclined to accept without question the charges levied by the merchants against the courts. In this respect the wealthy traders had overreached themselves for, in deprecating the need for some other form of justice than that laid down in 1698, they had shown that the poorer fishermen and boatkeepers would never receive impartial judicial decisions at their hands. Had they secured their own way, the thousands of servants who formed the mainstay of the fishery would have remained forever at their masters' mercy. For this reason the merchants' complaints fell upon deaf ears, though the government was cautious enough to institute the court merely for one year and to limit its jurisdiction to matters pertaining to the settlement of debts and disputed accounts.3

Thus after nearly two centuries of unrecognised settlement, a regular judicature was established by Act of Parliament.4 Admittedly experimental and entirely inadequate and concerned solely with the requirements of the fishery and not with the

2 Sir Archibald Macdonald.
3 Parlia. Register, vol. 29, p. 540, 26 May, 1791.
4 Stat. 31 Geo. III, cap. 29.
needs of the inhabitants, it nevertheless marked the first of a series of gradual reforms which were to culminate in the granting of self-government to the colony. Except in minor matters, the provisions of the new act were those recommended by the Attorney and Solicitor-General and the Committee for Trade. The constitution of the court was simple. It consisted of a chief justice appointed by the Crown and two assessors nominated by the governor. As the court was to function only during the governor's residence in the island, to avoid confusion the jurisdiction of the courts of session to suits relating to the wages of seamen and fishermen was therefore suspended. In the governor's absence the civil court ceased its duties, thereby leaving the courts of session to resume their powers and provide the inhabitants with some semblance of civil jurisdiction during the winter months.1

To the post of Chief Justice in the new court the Crown appointed John Reeves who in 1767 had become legal advisor to the Committee for Trade. The choice was excellent. Not only did Reeves prove painstaking and conscientious but he also possessed a sound and impartial judgment which makes his observations and reports so valuable. As soon as Reeves arrived at St. John's early in September, 1791, he found the makeshift machinery of justice there at a complete standstill. For when it was known in the island that an act of parliament was pending, the courts of session, vice-admiralty, and the newly erected common pleas, knowing their authority rested on highly questionable grounds, at once suspended their proceedings. As this had occurred some three months prior to Reeves' arrival, the inconvenience and uncertainty to which the commercial community was subjected can easily be understood.

Nor did the new court when finally established remedy matters. Its jurisdiction was limited by the nature of the island communities. The act permitted the setting up of but one court which was necessarily situated at St. John's, the seat of government. As there was no communication to any other part of

1 Ibid., sects. 4 and 5.
2 Reeves furnished two reports upon the operations of the 1791 Judicature Act in Newfoundland, one (C.C. 194/38, Misc. Papers) to Henry Dundas, and the other (B.T. 1/2, 11) to the Committee for Trade. The latter, very accurate and voluminous, guided the Committee in its deliberations in 1792.
the island except by sea and, as the court at St. John's sat only from early September till late October, business arising there or in the adjacent harbours occupied its complete attention. In consequence, the influence of the court was entirely local. In the distant outports to the north or south, no means of remedying civil disputes existed, especially as what magistrates there were showed not the slightest disposition to interfere. For this reason many fraudulent and hard-pressed debtors were able to avoid meeting their just commitments.  

In an endeavour to restore the administration of justice and to relieve the civil court from many burdensome and trivial causes, Reeves suggested that Milbanke's court of common pleas should again function. But such was the uncertainty regarding its legality that the judges, fearing they might expose themselves to actions which dissatisfied suitors would possibly bring against them, refused to accept office. In an effort to overcome this difficulty Reeves adopted a novel plan. The new court supplied the governor's surrogates with blank writs, returnable at a distant date. When complaints were made to the surrogates in their outport stations the writs were completed and issued. As this meant that the defendants were summoned to the court at St. John's at the very height of the fishing season, Reeves anticipated that this inconvenience would lead to the amicable settlement of disputes on the spot. Judgment would accordingly rest on a voluntary acceptance of the surrogates' decisions. Unfortunately these efforts to secure the settlement of civil causes by arbitration met with little success, for often they were of too complex a nature for such a simple procedure. As far as the court of St. John's was concerned, it afforded complete satisfaction during the seven weeks it remained open. Whenever possible as an expedient to relieve the pressure of business, Reeves attempted to settle various disputes either by discussion or by writing a few lines of advice at the foot of petitions presented to him. By the close of his first season in Newfoundland, Reeves had grasped the peculiar nature of its social conditions and the essential requirements of the fishery. He realised the inadequacy of the island judicature and knew that if justice were ever to be dispensed satisfactorily
in the outports, the appointment of magistrates, legally trained and of high character, was essential.  

The undoubted success of the civil court in 1791 had convinced Reeves that the time was opportune for the institution of a supreme court at St. John’s, possessing jurisdiction both civil and criminal. In civil matters the old procedure should be followed, but in criminal cases he believed a trial by jury was necessary. Knowing full well the peculiar circumstances existing in a transient fishing community, Reeves wisely advocated the court’s proceeding according to local usages and customs and the common law of England. To afford some measure of relief to the civil court in St. John’s, the courts of session should still be permitted to try petty offences, especially those arising from disputes over wages. Finally, in an endeavor to introduce some satisfactory system of justice into the unruly outports, the Chief Justice was firmly persuaded that the surrogate courts, presided over by the naval officers on the station, should be granted legal status. If these suggestions were adopted, Reeves firmly believed that many of the abuses which had disgraced the island for centuries would ultimately be swept away and that justice would be administered upon an impartial and efficient basis.

The Committee for Trade accepted the recommendations of the Chief Justice and proceeded to incorporate them in a bill to be presented to parliament in the spring of 1792. Thoroughly alarmed at its new purport, the trade reiterated with amazing monotony the old arguments against the courts. The merchants of Exeter, Bristol, Dartmouth, Totnes, Poole, Teignmouth, and other places engaged in the Newfoundland fishery, united in protest against the burdens and restrictions lately imposed upon them. Stressing the recent decline in the trade which was facing keen French competition, they petitioned parliament to inquire into the whole question before proceeding to legislate further. The Member for Poole, Benjamin Lester, who was also engaged in the trade, complained bitterly to Pitt that the merchants had always been satisfied with the ancient method of government and had never desired anything more, but some

1 Ibid., II. 37-40.
2 Ibid., II. 35.
3 C.J., vol. 47, pp. 689, 690, 713, 715, 723, 733, 734-735, record petitions presented to Parliament by the western ports.
person or persons for their own emolument to make an office, have offered to His Majesty's Ministers a new mode for the administration of justice at Newfoundland, without consulting the trade on the subject. In prophetic vein, he warned Pitt that the proposed tax on rum to pay salaries for officers who are not wanted would ruin the trade and make Newfoundland a colony filled with lawyers. Even more lugubrious were the complaints of Michael Angelo Taylor who voiced the doleful forebodings of those who believed the trade had seen its brightest and best days. Unless relief was soon granted, he feared that another two or three years would see the end of what had been "a great national concern, both as a source of wealth and as the foundation of our maritime strength and superiority".

But beyond promising the trade a parliamentary inquiry into the whole matter the following year, Pitt ignored their protests and without further discussion parliament accepted the new act for establishing courts of judicature in the island. In its main features the act was destined to remain unaltered for more than thirty years, forming the foundation on which the entire legal structure of Newfoundland was established. It authorised the erection of a court of civil and criminal jurisdiction, over which one judge presided with authority to decide all criminal cases without either jurors or assessors. In civil cases where the cause of action exceeded ten pounds, the defendant had the right to claim a trial by jury. If, however, a sufficient number of jurors failed to attend—always a possibility in a fishing community—the judge could claim the assistance of two assessors. Most significant of all, in the light of the colony's subsequent constitutional development, was the legal recognition the act bestowed upon the naval officers or surrogates for, with the advice of the chief justice, the governor was empowered to institute surrogate courts of civil jurisdiction to hear and determine in a summary way all suits within their cognizance according to the law of England. While minor matters respecting seamen's wages and all petty suits were

3 Stat. 3d Geo. III, cap. 46.
4 Ibid., sect. 1.
5 Ibid., sect. 4.
6 Ibid., sects. 2 and 3.
relegated to the courts of session, the court of vice-admiralty was limited strictly to maritime and revenue causes. Like its predecessor, the act was to remain in force for the current season only, when on receipt of a further report from the chief justice the whole question would be reviewed.

On his return to the island in the summer of 1792, Reeves visited the principal outports to gain reliable information respecting the administration of justice there. What he saw convinced him that nothing further was required to regulate the fishery beyond the appointment of magistrates of upright character to enforce the law. On this account the act, when renewed in 1793, was little altered. On several occasions it was confirmed by successive statutes until finally it was made perpetual in 1809. To the British government and those interested in the trade, it appeared as if everything had been settled satisfactorily and that the fishery at last possessed an efficient judicature. Yet to the inhabitants and those few merchants whose trading establishments were centred in the island, the shortcomings of the act were apparent. For ten months of the year they had no court where they could secure legal redress and they were therefore compelled to await the opening of the supreme court in September, where local pleas received scant consideration, so great was the pressure of business arising from the fishery. "It matters not what new models are introduced into this island, provided justice is permanent", the local merchants informed the authorities. "The new forms have been attended with disappointment and the present state we are in, more than one half of the island is nearly, if not quite, the whole season without any effective justice whatever." In plain terms they stated their demands. "We want permanent justice at all seasons of the year, winter and summer, whether the governor is absent or present." But while the government was prepared to legislate in the interests of the fishery and to institute courts of law for its control, there was still not the

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2 Reeves' Second Report, presented to the Committee for Trade on 5 Dec., 1792, is as valuable as his earlier one.
4 *Stat.* 33 Geo. III, cap. 76.
5 *Stat.* 49 Geo. III, cap. 27.
slightest tendency to consider the requirements of those who formed an unwanted colony. The Acts of 1792 and 1793 were never intended to encourage the settlers to remain there nor to safeguard their civil rights.

Meanwhile the inquiry so ardently demanded by the western merchants had at last commenced. In February, 1793, parliament had appointed a committee to investigate the state of the fishery and its apparent decline, due mainly, if the complaints were well founded, to the " vexatious execution of some of the regulations of the Act of 1775, to the exaction of fees by the Customs House officers, and finally to the alteration in the mode of dispensing justice by the governor and his surrogates through the substitution of a court at St. John's with jurisdiction over the whole island."

In submitting their evidence to the Committee, the delegates representing the Western ports did not hesitate to express the gravest fears concerning the future of the transient fishery. Their statements, so positive and alarming, were easily disproved. Statistics covering nearly one hundred years of the fishery and compiled by the Committee for Trade from its official records, and the evidence of reputable and impartial witnesses such as Reeves and Graham revealed unmistakably the exaggerated and biased complaints of the trade. Yet not all the charges against the recent innovations were based on selfish or bigoted motives. Men like William Knox, a former under-secretary and an ardent champion of a regulated trade, or Sir Hugh Palliser, old in years but steadfast in his beliefs, still looked to the maintenance of the Newfoundland fishery as the great nursery for the maritime needs of Britain. In all sincerity they feared that the institution of a civil governor or a civil court there would become a national menace, fostering thereby the growth of a colony which would compete on favourable terms with the transient fishery of the mother country.

Partly because the charges of the trade had called in question

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1 C.J., vol. 48, p. 282, 26 Feb., 1793. Among those constituting this Committee were Lord Sheffield, Charles Jenkinson, M. A. Taylor and those members representing the trade interests of the western ports. The Committee published three valuable reports (Parl. Pap., vol. 42, XII), which afford much interesting data concerning the trade and the fishery.

2 Second Report, Commons' Committee, 1793, Appendix 6 (H).

his jurisdiction and partly too because of their hopelessly bigoted character, Reeves tore the merchants’ evidence to shreds and castigated them unmercifully for their tyranny and unwarranted pretensions. They looked on Newfoundland, he informed the Committee, as their own exclusive property or private preserve, to be handed down from father to son. It was therefore perfectly natural for them to oppose with vehemence every attempt to introduce law and order into the island. In that spirit they had questioned the right of the Crown to appoint a civil governor or justices of the peace or commissioners of oyer and terminer. For that reason too they had protested bitterly against the establishment of a court resting on unquestionable authority, preferring rather the feeble jurisdiction of the earlier courts where they could intimidate the justices and obstruct the proceedings. In order to justify his uncompromising assertions and counterbalance the arguments of Knox and Palliser, Reeves reminded the Committee that the merchants had been astute enough to link their representations to the national policy of the day. Thus their watchwords, “No Residency”, and “A Free Fishery”, merely expressed their desire to free Newfoundland from all government control, and make of it an island possessing no courts, no custom house, no trade restrictions, and no justice. In short, secure in the enjoyment of a jealously guarded monopoly, they would be at liberty “to exercise a dominion over the boatkeepers and poor inhabitants, whom they kept in perpetual thraldom”.

In unmistakable fashion, the inquiry revealed the selfish motives which guided the merchants in their protests, and no less completely vindicated the Acts of Judicature. If outwardly the inhabitants appeared to have gained little of consequence from the reforms, indirectly they had won a valuable victory. For although the new court was limited in its function and possessed little real power, and although the government of the island still rested upon the ancient principles, yet the fishing monopolists had experienced their first defeat. Had Reeves remained the Chief Justice after 1793 or had Britain not become engrossed in a fresh conflict with France to the exclusion of all matters of colonial interest, further reforms of a more vital

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THE STRUGGLE FOR LEGAL REFORM

character might have been granted. As it was, the slender judicature of 1793 remained unchanged for more than thirty years. Unfortunately for the colonists, Newfoundland affairs ceased to become the concern of parliament and the slight advance in constitutional development which the acts had heralded became the sole concession the island was to secure for another quarter-century. The government of the island therefore remained fundamentally an administration having its sources in the fishery which the national policy still decreed should be conducted from the British dominions in Europe. It still came to life with the arrival of the fishing fleet in the spring and after a short and uneventful existence it expired with the departure of the fleet at the close of the season, leaving the inhabitants, like the dead leaves of autumn, helpless before the blasts of legal adversity. It still maintained an incompetent and corrupt magistracy in the lonely outports, where a flagrant disregard for the law proceeded unchecked. And most significant of all, in bestowing legal powers upon the governor's surrogates and recognising their courts, it permitted a gradual distortion of judicial authority against which the island political reformers of the early nineteenth century were to launch their fiercest attacks.
CHAPTER IV

THE ERA OF TRANSITION, 1793-1815

It was once a commonplace for those desirous of promoting friendly relations between Great Britain and America to assert that colonial self-government was a direct outcome of the American War of Independence, and that the lessons which the mother country learned in that disastrous struggle were at once applied to colonial affairs. Nothing could be further from the truth. Not until more than half a century had elapsed from the break-up of the old empire did Englishmen believe that guiding principles for the government of colonies could be deduced from the records of the past. In fact, so far from producing a more enlightened attitude towards the remaining colonies, the immediate result of the war was to render British statesmen particularly unsympathetic to colonial problems. Whenever possible they avoided the introduction into parliament of questions concerning colonial administration and for nearly forty years after the close of the war evinced no desire to encourage colonial autonomy in any shape or form. Even if, by securing in 1791 a limited form of representative government Canada appears an exception, the exodus of the United Empire Loyalists from the United States had compelled the British government to bestow upon them that form of representative institution under which they had been born and bred. Yet in a constitutional sense little of real value had been granted, for as the council nominated by the governor was not subject to the control of the elected assembly, the power of self-government was obviously limited. Sooner or later the antagonism between the two divergent branches of the Canadian legis-

1 Gladstone and Britain's Imperial Policy, Paul Knapland, 1927, p. 10.
lature was bound to produce the inevitable deadlock which culminated in the crisis of 1837.¹

Undoubtedly the outstanding feature of British colonial administration in the years which followed the peace of 1783 was its restrictive character. Certainly the period was hardly one in which drastic and epoch-making reforms could be expected. In 1793 the declaration of war by France upon Great Britain and the frightful excesses of the Parisian mob had done more to estrange Englishmen from the principles of the Revolution than all the eloquence of Burke. Even Englishmen of liberal sympathies, while indifferent to the prevailing hysteria of the day, realised that the growth of "French principles" might overthrow the whole structure of society. Consequently the British government embarked upon a series of reactionary legislative measures which sought to check all social and political excesses. Personal liberty was rigorously restricted, the Habeas Corpus Act was suspended, and the freedom of the Press drastically curtailed. Even after the early panic had subsided, a blind and unreasoning opposition to any measure of reform persisted. For nearly a quarter of a century it became almost an impossibility to secure parliamentary support for anything which aimed at the removal of obvious abuses or which threatened to change existing institutions. No wonder, therefore, that during these years British colonial administration became more restrictive, more reactionary, and that an enlightened policy towards the remaining colonies was conspicuously absent.² It was not entirely dictated by fear, though many Englishmen still believed that the more liberal the treatment meted out to the overseas possessions, the greater the risk of secession. Nor was it entirely due to the fact that in the principal colonies still held by Britain, the tradition of local autonomy was absent. The matter was rather economic than political. In concerning itself primarily with the development of British trade and the safeguarding of British commerce, the government merely expressed the popular beliefs of the day which asserted that the adoption of a liberal policy towards the overseas possession was detrimental to the general prosperity and welfare of the nation.

¹ Reports and Despatches of Earl Durham, 1839, p. 77.
While the years following the close of the American War proved clearly that the economic principles of the old régime were to be strongly maintained, the period witnessed, however, an alteration in the mode of colonial administration. In 1782 Burke’s Act abolished the American Secretaryship and the Board of Trade. Colonial affairs became the concern of the Home Secretary, assisted after 1786 by a Committee of the Privy Council, to consider and report upon questions of trade. Under the presidency of the capable and conscientious Charles Jenkinson, the Committee-supported whole-heartedly the Navigation Laws and as far as Newfoundland was concerned followed the ancient policy with full approval. In all questions of colonial trade, the Council invariably adopted a policy which would assist the commerce of Great Britain. Apart from economic values, it therefore possessed no conception of the future of the colonial empire. Unfortunately, too, for the development of a more liberal system of colonial government, the Secretaries of State, the men to whom the guidance of colonial affairs was entrusted, were not the type to inaugurate schemes of vital reform. Either they lacked the vision, or their tenure of office was too brief. Lord Sydney, who held the seals of office from 1783 to 1789, was too uncertain in outlook, too hesitant, and too indolent ever to further the cause of struggling colonies. His successors, William Grenville and Henry Dundas, though men of greater attainments, were in office for too short a period to effect any drastic changes in the scheme of colonial administration, and from 1794 to 1801 the Duke of Portland, a man of mediocre ability, possessing neither reforming zeal nor powers of initiative, controlled Britain’s colonial policy. In 1801 the third secretary of state who since 1794 had acted as war minister, assumed control of the colonial department. Consequently during the Napoleonic wars the colonies were neglected. Not until Lord Bathurst took office in 1812 did any real change in colonial administration take place.

In still another way colonial affairs were ignored. In large measure men believed that parliamentary interference in such

1 Williams, op. cit., vol. II, p. 49.
2 Manning, op. cit., pp. 33 and 93.
3 Ibid., p. 92.
questions had done much to drive the American colonies into open revolt. They preferred, therefore, to avoid colonial measures in parliament which in any case provided the opposition with excellent opportunities for embarrassing the government. Thus between 1783 and 1820 the only measures affecting the government of the colonies which received the consideration of parliament were those referring to the Newfoundland Judicature and the penal settlements of Australia. In the case of Newfoundland, the refusal of the Lord Chancellor to affix the great seal to the Royal Letters Patent which the Committee for Trade had drawn up in order that a civil court might be established there, had forced the issue into parliament. A few years later when the Governor of Newfoundland complained strongly to the Secretary of State of the unsatisfactory observance of marriages in the island, he was informed that no effective remedy for the evil could be applied without recurrence to parliament but that, as an alternative, the matter would be brought before the Privy Council. It is not surprising that for many years the question was forgotten. Again in 1803 when another governor, Sir Erasmus Gower, had urged the need for some reforming legislation, the Earl of Liverpool had advocated additional laws, "made by the King on the advice of the Privy Council, as thought necessary". But when it was realised that such a step would contravene the provisions of the Act of King William and thus force the government to secure the approval of parliament, the matter was quietly shelved from year to year until less disturbing reports were received from Gower's reactionary successors. In short, the policy of idle drift became most acceptable and colonial questions which involved constitutional difficulties were relegated to the limbo of the past. For twenty years after Gower had first commented adversely on the obsolete character of the royal instructions, the colonial secretary with monotonous regularity instructed each successive governor of Newfoundland to report upon them. In 1824 Sir Charles Hamilton, equipped with practically the

1 Ibid., p. 68.
3 C.O. 193/13, Portland/Waldegrave, 16 May, 1798.
same instructions that Elliot had received in 1786, was still informing Bathurst of their shortcomings.\footnote{C.O. 194/67, 122. \textit{Hamilton/Bathurst, Comments on Instructions}, 2 Feb., 1824.}

In the light of colonial administration, the Napoleonic period was reactionary and retrogressive for the exigencies of a long and arduous war had forced all colonial questions into a convenient background. Even before the outbreak of war in 1793, hopes of new reforms in the colonial sphere appeared nebulous, so strongly did the mercantilists dominate the political arena. The prolongation of the struggle rendered any concessions even less likely. In such an era it seemed hopeless for Newfoundland to look for further reforms beyond those meagre benefits the Judicature Act of 1793 had conferred upon the fishing interests there. The colony appeared doomed. Condemned by the economic and mercantile theories of the day, ignored by a lethargic and inefficient colonial administration, crushed by an unnatural code of laws, and harassed by the relentless policy of the Committee for Trade, the unfortunate inhabitants seemed to face an unhappy and uncertain future. Yet in spite of such oppression the closing decade of the eighteenth century fore-shadowed the coming changes. It marked the gradual emancipation of the colony from the restraining shackles of the past. It saw the end of centuries of dominance by selfish and tyrannical men. It witnessed the amazing growth of an unwanted colony destined to win a tardy recognition from a grudging government. In very truth, England’s extremity became Newfoundland’s opportunity, and the war which for many was a source of misery appeared to Newfoundland as an instrument of liberation.

Without the incidence of eighteenth-century wars, it is doubtful whether the colony would have survived at all, so rigorous was the policy against settlement. Almost invariably, the war responsibilities of the naval governors left them little time to enforce the provisions of the acts, no matter how zealous they were. Thus the effective operation of Palliser’s Act of 1775 was seriously retarded by the long struggle with America. The return of peace found the inhabitants in possession of privileges beyond the governor’s powers to remove and when he concluded his brief term of office, his successor generally accepted
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things as he found them. Consequently when England in 1793 began a desperate twenty-year struggle with revolutionary France, the last vestiges of the Acts of King William and Palliser were speedily swept aside.

It is difficult indeed to see how otherwise Newfoundland would have freed itself from its legislative yoke. Certainly after 1783 the trend of events gave no promise of hope or encouragement. As enunciated in 1786, the policy of the Committee for Trade was as restrictive and arbitrary as that of 1718. Even in 1790 when considering the question of a civil court for the island, the Committee endorsed the ancient fishing policy whose cardinal tenet was "to bring back the fishermen at the end of every season... and to prevent their establishing themselves as a colony."\(^1\) Moreover, the Inquiry of 1786 had made evident the Committee's determination to remedy the evils which had crept into the island during the War of Independence, and in consequence the instructions issued to the new governors concerning settlement were positive and uncompromising.\(^2\) For nearly thirty years these instructions remained unaltered, save those clauses referring to the administration of justice which the acts of 1792 and 1793 had rendered obsolete: in spirit the commissions and instructions issued to the early eighteenth-century governors were similar to those of nearly a century later, while the reports of Governors Holloway, Duckworth, and Keats—men whose terms of office coincided with the closing years of the Napoleonic wars—display the same hostility towards settlement or to anything that would give the island the character of a colony as did those of the earlier governors of the Palliser school. It is difficult to believe that as late as 1816 when the population of the island was approximately thirty thousand, Keats could write to Bathurst that "notwithstanding the clamour of a party for colonisation, averse to any restraints and hostile in the extreme to the ancient system, I can discover no immediate necessity for any material alteration in the ancient system or laws as they relate to the fishery."\(^3\)

Nor did the general trend of evidence submitted to the Com-

\(^1\) C.O. 194/22, 117. C. of P. C. for Trade, Instructions to Law Officers, 10 May, 1790.
\(^2\) C.O. 193/11. Instructions to Gov. Elliot, June, 1786.
\(^3\) C.O. 194/37, 32. Keats/Bathurst, Obs. on Art. V of Instructions, April, 1816.
mittee of the House of Commons in 1793 reveal the promise of more enlightened and sympathetic legislation. It was perfectly clear that the meagre concessions of an island judicature, wrung tardily from a reluctant government, were for the convenience of the fishery and not the settlers. As Edmund Bastard, the western mouthpiece, had said rather brutally as he summed up the position, if laws were needed for the inhabitants of Newfoundland, it would be better, rather than encourage them by legal provisions to remain, to force them by regulations to leave the island. Expressions of a similar nature from such an intelligent observer as William Knox revealed unmistakably that the temper of the day was against any colony there. Knox believed that the most satisfactory policy to adopt was to revert to the old idea of considering the island merely as a great ship. In that case the inhabitants would have to go, preferably to Canada, provided the government transported them there and gave them grants of land. If, however, the present settlers were permitted to remain in the island, so long as no civil governor was appointed or grants of land were made, he failed to see how such a backward and struggling community could ever develop into a colony. Even Reeves, the first chief justice and a man possessing a deep sympathy towards the unfortunate settlers, could not forget that he was a servant of the Committee. As if in confirmation of its policy, he asserted that since the peace of 1783 Newfoundland had become more completely their own, a more genuine British fishery, and of greater value to the mother country than ever before. But Reeves could not forbear to say a kindly word for the inhabitants, although he too clung to the figure that Newfoundland should always remain a great ship. The presence of inhabitants there, he affirmed, would serve but to increase their dependence upon Britain and afford a valuable market for supplies, since, beyond the cultivation of a few potatoes and a little hay, the development of agriculture appeared hopeless. In the face of such evidence and the national policy of the time, even the most ardent advocate of Newfoundland colonisation—if such then existed—would have doubted that the day of its emancipation was near or that

3 Ibid. Third Report, Reeves' Evidence, p. 171.
factors, unforeseen by colonial administrators or Committees for Trade, and beyond the power of legislation or force of government to control, were shortly to operate for the ultimate welfare of the unwanted and unrecognized colony.

After the peace of 1783, the failure of Palliser’s Act to secure the return of seamen to Britain had been a continual source of anxiety to the government. From the moment of its appearance upon the statute book, the act of 1775 had proved ineffective, especially as the War of Independence had limited its application. The revision of the fishery laws in 1786 did little to improve matters, for the Committee’s admission that the presence of a certain number of seamen in Newfoundland during the winter to prepare for the spring fishery would be of decided advantage, merely opened the door for further evasions. Merchants and fishing adventurers who sought to avoid the provisions of the acts of 1775 and 1786 found they could do so with impunity. It was an easy matter for them to plead the need for permanent servants there to repair and build flakes, cut wood, and overhaul the fishing vessels and their gear in the off-season. In fact, they made no secret of their contempt for any other act than their glorious statute of King William. As John Jeffery, one of the western merchants who gave evidence at the inquiry of 1793 ingenuously remarked, “new regulations and restrictions have been imposed by the fifteenth of the King,1 which have been found to be of the most pernicious tendency; so much so that in practice they have been generally disregarded and never enforced except from necessity.”2 In plain terms, the Newfoundland merchants and western fishermen calmly ignored any legislation that did not operate to their advantage.

From the merchant’s viewpoint, the main source of contention related to the return of seamen. Palliser’s Act declared that the hirers and employers of all fishermen and other servants employed in the fishery possessed authority to retain the sum of forty shillings from each employee’s wages, to be reserved as payment for a passage home at the season’s close.3 From the aspect of a national fishery, the idea was sound. But like many meritorious laws which appear upon the statute.

1 Palliser’s Act of 1775.
2 First Report, Commons’ Committee, 1793, p. 72.
book, their practical application was full of pitfalls. That they should be given legislative authority to retain forty shillings from their servant’s wages appeared to the merchants as another gracious expression conferred on them by a beneficent government. They had no complaints on that score and whatever their attitude to the other clauses of the act, they observed this injunction to the very letter. Unfortunately for the ultimate welfare of the trade, the expectations of the legislators were not realised. Rather than be deprived of what promised to become a highly remunerative source of income and regardless of whether their servants remained to winter in the island or even to drift to America, the merchants deducted punctiliously the forty shillings as the law prescribed. The unfortunate servants, hired for the duration of the season, were consequently often abandoned by their masters who were thereby saved further expense. But even to those masters, who prior to 1793 secured their employees a passage home; the act was a boon for the average price of a passage was between twenty and thirty shillings. By 1820 when the act had become obsolete, the merchants still deducted the passage money from their servants’ wages and many large mercantile establishments enriched themselves by thousands of pounds from this source.

But for the outbreak of war with France in 1793, the government would probably have amended the act. As it was, engrossed in a struggle which taxed the resources of the nation, it failed to remedy matters. Weaknesses apparent in time of peace became intensified under the stress of war, and although masters still retained the forty shillings which with the passing of the years they almost considered as a bounty bestowed upon them by a paternal government, the price of a passage from Newfoundland rose so alarmingly that by 1806 it was valued at five pounds. Five years later, when commenting on the inadequacy of forty shillings as passage money, Governor Duckworth suggested the British Government’s making good the deficiency. Even then the measure might have proved futile, for owing to the scarcity of shipping in the Newfound-

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land trade, all ships' cabins were stored with dried fish. The transportation of servants to Britain had become entirely a secondary consideration.

In still another way circumstances fostered the growing disregard for the laws against settlement. The risk of crossing the Atlantic in time of war increased a thousandfold when enemy privateers were particularly active and when the French fleet, under Richery, ravaged the coasts of Newfoundland in the season of 1796. As the merchants and traders soon found, it was safer and much more convenient to remain behind in the island. Consequently their servants, fearful moreover of the activities of the press-gang in British ports, required little encouragement to follow their masters' example. Thus a temporary measure of convenience speedily grew into an accepted custom and, whether one of subterfuge or expediency, the fact remained that by the close of the eighteenth century, Newfoundland had received a great influx of permanent residents. In their selfishness, the masters gave no thought to the poor wretches so often shamefully abandoned who, left without employment during the long winter, spent their time in riot and debauchery. Yet those western merchants who flouted the law and encouraged their servants to do likewise little realised they were forging a weapon for their own destruction. While ardently advocating a non-resident fishery, they were creating a strong colony destined ultimately to sweep away the last vestiges of the ancient transitory fishery.

So strongly did successive naval governors deprecate this unlawful practice that the government, while loath to modify the existing legislation to suit the changing conditions of the war, issued strict instructions to the governors, authorising them to enforce the acts by whatever measures they deemed effective. They, however, were powerless to enforce in war, measures which in peace were open to evasion. Spasmodic proclamations urging the enforcement of the acts were worse than useless. They merely revealed the impotence of the governor's powers. So rapidly did settlement proceed—if,
indeed, the presence of thousands of idle and irresponsible persons there could warrant such a term—that by 1797 the island possessed more the appearance of a colony than a fishery, “a great evil,” so the naval governors believed. Well might the baffled Duke of Portland, conscious of the rapid changes he was powerless to check, confess that as regards settlement the national policy had been completely defeated.

Though the issuing of proclamations could scarcely be expected to check the growth of population, the governors were forced to adopt such unsatisfactory modes of procedure. As early as 1764, in consequence of the arrival from Ireland of poor and dissolute women who occasioned much disorder, the indefatigable Palliser had ruled that no woman could land unless security for good behaviour had first been lodged. But it needed more than proclamations to stem the steady flow of emigration, particularly from Ireland, which proceeded almost unchecked. Knowing the difficulty of securing servants at Newfoundland, the western fishermen on their way to the banks would call at Cork or Waterford to procure provisions and “cargoes” of Irish emigrants. Left destitute in the island at the close of the season and frequently pledging their services for the following year in return for a winter’s lodging, the poor creatures existed under appalling conditions and although the law frowned upon such proceedings, were often “spirited” to the New England colonies. Towards the close of the century when the rebellion of the United Irishmen blazed forth, the process of Irish emigration was greatly accelerated. Soon Newfoundland contained thousands of poor Irish servants who defied the authorities to remove them. To prevent the arrival of further destitute and in many cases undesirable new-comers, Governor Gower revived Palliser’s forty-year-old proclamation.

Efforts by other governors to compel these servants, or dieters as they were called, to leave before the winter failed lamentably. The steady tide of population still flowed on and the war which saw in 1793 an island community of nearly twenty:

1 C.O. 194/40. Waldegrave/Portland, Enclos., 3 Feb., 1798.
2 Jt. App., vol. 4, p. 1929. Record Bk., St. John’s, Portland/Waldegrave, 16 May, 1798.
3 Proclamation, Gov. Hugh Palliser, 4 July, 1764.
5 Proclamation, Gov. Erasmus Gower, 18 Sept., 1809.
These abortive efforts on the part of the governors to exercise their limited powers and enforce their assumed authority did little beyond arousing antagonism and resentment. In St. John’s, the seat of government, the situation which had been bad enough in the War of American Independence became a thousand times worse during the Napoleonic struggle. Owing to the decline of the transient fishery, vacant ships’ rooms, no longer claimed by overseas adventurers in accordance with the act of 1698, soon became illegally occupied by dwelling-houses erected there without plan or arrangement. By 1807, so rapidly did the encroachments proceed that only nine ancient fishing rooms in the town could be recognised, let alone used. Not only did these enclosures obstruct the fishery. They also increased the danger of fire and disease, there being not the slightest provision for sanitation. To introduce some order into this mediaeval chaos, Governor Gower planned a ten yards’ wide road running parallel with the water-front and at a distance of two hundred yards from the high-water mark, within which distance, so his instructions laid down, no building could be permitted save for the purpose of the fishery. Gower, however, was no reactionary, and when he realised that St. John’s was fast losing its character as a fishing town, becoming rather a commercial and trading centre for the island, he boldly advocated the leasing of the remaining ships’ rooms on a thirty years’ tenure. It certainly appeared ironical to those who desired funds for the better government of St. John’s and other growing communities, that the rentals in the town alone from unauthorised holdings were computed to be nearly twenty thousand pounds annually, of which the Crown did not receive one penny.

Nothing further was done to remedy matters and the town’s growth remained haphazard and irregular. In 1809 Jenkin Jones, a highly observant and reliable traveller, left on record

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1 See Appendix VIII, Graph A, p. 211, Growth of Population.
4 Ibid. Proclamation, New Road, 29 Sept., 1804.
5 C.O. 194/43. Gower/Windham, Oba. on Instructions, 29 April, 1806.
his impressions of the town as he then saw it. The crowded wharves and stores, built mainly upon the ancient ships' rooms, lined the busy water-front and created a scene of animation and prosperity. Through the heart of this incongruous jumble, the main street, nearly two miles in length and flanked on the one side by stores and mercantile establishments, and on the other by a miscellaneous assortment of shops, ran from one extreme of the harbour to the other. Although called a street, said Jones, it was in fact merely a crooked and narrow alley, in some places narrowing to six feet in width, in others attaining a maximum of eighteen feet. As practically all the buildings were of wood and stored with highly combustible material, the town, to Jones's professional eye, presented "a mass of insecurity and danger in respect of fire, hardly to be paralleled."

In this filthy, overcrowded, and insanitary town, nearly ten thousand people had their homes. Yet St. John's possessed not the slightest vestige of municipal control, the few magistrates there exercising but a tardy and ill-recognised authority.

Meanwhile, the reports of successive governors had made it plain that nothing further could be gained by half-heartedly ignoring the unwarrantable encroachments at St. John's upon the fishing rooms which once had remained open each year for the use of the annual adventurers in the fishery. During these years the cost of the civil government had risen steadily from less than one thousand pounds in 1783 to almost four thousand in 1811. To a government feeling the strain of a long and burdensome war, the prospect of securing a revenue from the leasing of obsolete ships' rooms naturally appealed. But as the legal recognition of these holdings was directly contrary to the Act of King William, parliamentary sanction for the new measure had to be obtained. In 1811, therefore, a new legislative provision made it lawful for a certain specified number of ships' rooms in the town of St. John's "to be granted, let and possessed as private property". The land, divided into a

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1 Jenkin Jones, an indefatigable traveller who became the manager of the Phoenix Assurance Co., of London, visited Newfoundland and America on business in 1809. His journal in the archives of the Phoenix Assurance Co. is full of interest, his account of St. John's, 6 June, 1809, being highly informative. Another of his letters on the town is found in C.O. 194/60. Misc. Papers, 15 Dec., 1817, written after the great fire there in 1817.
2 C.O. 193/16, 310, 311. Civil Establishment, Nfld., 1811, £3,971.
4 Stat. 51 Geo. III, cap. 45.
certain number of lots, was disposed of by public auction on leases of thirty years, renewable provided that regulations concerning buildings and overcrowding had been observed. Through the stimulus of war and the amazing prosperity of the town, the surprising annual rental of sixteen hundred pounds accrued from their disposal. Still more significant was the indirect influence of the new act. Though the leasing of a few ships' rooms in an overcrowded and ill-planned town might seem, by itself, a matter of small moment, the new measure hinted at future far-reaching changes. That certain provisions in the Statute of King William had been repealed and that the Crown at last recognised land occupancy seemed a propitious omen which augured well for the future of a colony still regarded as an unwanted offspring burdened by the stigma of illegitimacy.

But these slight concessions, it was clear, had been granted through motives of expediency. Not for one moment did the government waver in its intention to enforce rigorously the regulations retarding colonisation. The governors, in their dual roles of civil administrators and naval commanders, ardently endorsed this policy for they still feared that the growth of the colony would produce a corresponding diminution in the number of men available for manning the navy. Possessing no experience of civil government and regarding the island as a great ship subject to naval discipline, they interpreted their obsolete instructions in the narrow letter of the law. As their annual sojourn at the seat of government rarely exceeded ten weeks, they had little opportunity, even if they possessed the inclination, to make a sympathetic study of the island's problems. Moreover, during the French Revolutionary Wars, the strategic value of Newfoundland made it incumbent upon the governor to devote all his available time to its defence and the protection of its trade. Occasionally reports stressing the need for reforming measures were forwarded to the Secretary for State by enlightened governors such as Gambier and Gower. Invariably their successors, more reactionary and of narrower vision, dispelled what few reforms

1 C.O. 104/52. Duckworth/Liverpool, 1 Nov., 1811.
2 Gov. Elliot's Instructions of 1786 were issued to successive governors until the repeal of the fishing acts in 1824.
might possibly have been introduced, by lamenting constantly on the rapid growth of population and the drift towards colonisation.

In 1786 Governor Campbell had made it clear to the Committee for Trade that the fishery at St. John's had been greatly handicapped by the injudicious manner in which merchants and inhabitants had been permitted to build along the waterfront. To check this undesirable practice, which had developed rapidly during the American War, Campbell had summarily demolished many of the houses, and to warn future offenders had issued a proclamation upon the subject. In framing new instructions for Elliot, Campbell's successor, the Committee did not overlook the question but on the contrary gave positive orders that no grants of land were to be given and that no buildings unconnected with the fishery were to be erected within a distance of six hundred yards from the high-water mark. In 1789, when Governor Milbanke commanded on the station, the law against unauthorised buildings was applied with the utmost rigour and the clearing and enclosing of blocks of forest land was declared illegal. A request from a Catholic priest for leave to build a chapel in an outport drew from the fiery admiral the unequivocal reply that, so far from being disposed to grant further facilities to the Roman Catholics, he seriously intended laying those already there under particular restrictions, the more so since many of the poorer Irish, finding that they could obtain absolution in the island, deliberately refrained from leaving at the close of the season. Still more emphatic was his letter addressed to a merchant who had had the temerity to erect within the prescribed limits a house which, as it possessed a chimney, was clearly not intended for the fishery. "It must and shall come down", was the fiat of this martinet of the quarter-deck. With such zeal did Milbanke interpret his instructions that in his brief tenure of office,

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2 Adm. 80/121. Proclamation Concerning Buildings, 26 Oct., 1784.
3 C.O. 195/11. Elliot's Instructions, Art. 7, pp. 10-14. In 1792 the distance was altered to 200 yards.
6 Third Report, Commons' Committee, 1793, Enclosures 2 (Appendix No. 11). For full text of this remarkable letter, see Appendix V, pp. 204-5.
he reduced the number of winter inhabitants in St. John's alone by eight hundred.\footnote{Third Report, Commons' Inquiry, 1793. A. Graham's Evidence, p. 84.} Equally as zealous was Governor Waldegrave who, disgusted by the indifference of his predecessors to enforce the law, gave the sheriff the strictest injunctions to see that no buildings within the two hundred yards' limit possessed chimneys or even the means of lighting fires.\footnote{Ibid., p. 193.} Otherwise they might act as shelters to the dieters during the winter. Furthermore to prevent misapprehensions arising from fictitious land grants which new governors on the station often ignorantly endorsed, Waldegrave, in a singular document called "A Hint to my Successor", declared emphatically that no one save the officer commanding the troops had received a right to property and even that under rigid restrictions.\footnote{Ibid., p. 193.}

By the close of the century the position regarding property had become acute, so rapidly had the population increased. Moreover, the arbitrary powers vested in the governor were so unrestrained that holders of land by occupancy naturally realised the insecurity of their tenure and landed proprietors remained in possession solely at the governor's caprice. Even the inhabitants born and bred in the island had great difficulty in securing the necessary permission to erect a dwelling.\footnote{Third Report, Commons' Committee, 1793. p. 84.} Yet, in spite of the exertions of many of the governors, the encroachments proceeded steadily. Apart from the rents accruing from the few ships' rooms leased at St. John's in 1811, the Crown gained no pecuniary advantages from these unwarrantable proceedings. While it still claimed to be the only proprietor of the land, the truth was that all the real advantages of property and ownership were passing into other hands, without its deriving any compensation or profit whatever.

The longer the continuation of the Napoleonic Wars, the more confirmed by usage were practices obviously illegal. Even governors who by training and conviction condemned the colony realised the dependence of an island population upon essential food supplies. Owing to the scarcity of provisions during the war, they were compelled to ignore the widespread cultivation of land, no matter how bitterly they decried it, for, as in 1783, cheap provisions for the fishery were a vital
necessity. According to Gower, by 1806 every settled harbour was surrounded by cultivated lands held contrary to the law. Yet if the inhabitants were forced to relinquish their holdings, the island's dependence upon uncertain food supplies from overseas would be greatly increased. Gower was frankly sympathetic towards the settlers and keenly appreciated their efforts to improve their wretched circumstances and to surmount impediments unknown in other British colonies. Unfortunately Holloway, his successor, had served on the station in Palliser's day and represented the old school of bigoted and intolerant governors. He strictly forbade the erection of buildings within the two hundred yards' limit, and so far from recommending an adoption of the far-seeing and humane suggestions of his predecessor—a copy of Gower's report having been submitted to him—he advocated a rigorous application of the old statutes. He deplored Gower's lax policy which appeared to strike at the very regulations which maintained the fisheries as a maritime nursery. Yet neither reactionary reports nor repressive proclamations could stem the rising tide of settlement. In 1809, while admitting that the practice of enclosing and cultivating the land had proceeded despite the thunder of his edicts, Holloway was forced to confess that a severe winter, together with the American embargo, had created such distress that he did not think it consistent with the claims of humanity to check such unlicensed liberty.

One might well sympathise with the bewildered and harassed inhabitants who received grudging concessions from one governor only to find his successor withdrawing them. Duckworth, as aggressive as Milbanke and of the same school as Palliser and Holloway, warned the settlers, particularly those around Conception Bay, that the cultivation of unlawfully occupied land was pursued at the imminent risk of their forfeiting all labour and expense bestowed upon it. The governor's restrictive measures soon brought him into violent conflict with the pros-

1 C.O. 194/43, f. 34. Sir Erasmus Gower's Report, 1804.
The growing discontent with the island system of government and the dictatorial methods of the naval administrators became manifest during Duckworth's stormy term of office and resentment which had been smouldering for years soon burst into flame. Determined to oppose the coercive edicts of the government and to establish an unchallengable right of property upon an undisturbed possession of twenty years, the principal merchants claimed the liberty to erect buildings of any description without having previously obtained the permission of the authorities. Duckworth, however, refused to acknowledge that right and as a retaliatory measure, issued in 1812 an additional proclamation forbidding the enclosing of land and the unauthorised erection of buildings for any purpose whatever. Yet even Duckworth was forced to admit that, if the inhabitants were to exist at all, some cultivation of the soil was absolutely necessary. This view Lord Bathurst supported, for it was obvious by reason of the hostilities with America that the difficulty of securing cheap provisions for the fisheries was steadily increasing. Accordingly the new governor, Admiral Keats, was authorised to grant leases of small sections to industrious settlers, the rights of the Crown being secured by an annual quit-rent. Acting on these instructions, Keats made a few inconsiderable grants which ranged from small plots to a maximum of four acres, chiefly for growing potatoes. But so sterile was the soil and so precarious the returns, that little fear was entertained of such trifling concessions ever encouraging colonisation.

During this transitional period of the Napoleonic Wars, the most important factor in developing Newfoundland colonisation was the increasing participation of the inhabitants in the fisheries. It was clear that a rapidly expanding community restrained by artificial barriers from a natural mode of settlement, could turn nowhere but to the fishing for its sustenance. Most significant of all, the presence of thousands of hardy fishermen there during the winter and early spring provided a fresh stimulus to a branch of the fishery which had remained com-

1 S.P.G., David Rowland/Sectetary, 23 Dec., 1811.
4 C.O. 194/54. Bathurst/Keats, 7 April, 1813.
paratively undeveloped since the island’s discovery. For the seal fishery was destined to give a more permanent character to the more or less transitory settlements which had come into being with the ancient cod fishery. As the season for engaging in sealing was the early spring and therefore before the arrival of the “transient” fishing fleet from Britain, it followed that as long as the island remained unsettled during the winter the industry was neglected. Consequently sealing did not develop until the close of the Seven Years’ War when island settlement had greatly increased.² At first it was carried out by a few hardy winter inhabitants who had settled along the isolated harbours of the north-eastern coast. The seals were generally caught in nets,³ and the work was particularly arduous. Nets of strong twine, measuring some two hundred feet in length and about eighteen in depth, to which were attached foot ropes from half-worn hawsers discarded from the summer fishery, were set inshore in about forty fathoms of water. When the seals ranged about the sea bottom in quest of food, they became entangled and were then dragged ashore where none but experienced sailors could disengage them without damaging the nets. So laborious and arduous was this method of netting seals—for generally a “crew” of four or five men attended to some twenty nets—that only active and hardy fishermen could engage in it.⁴

But towards the close of the century the rapid increase of the winter population, particularly of trained fishermen, led to their participation in the sealing and to the adoption of better methods. It had long been known that during January and February the seals which frequented the coasts of Labrador and northern Newfoundland resorted to the ice in vast numbers. By mid-February the young seals were born there and, under the influence of a southerly current and strong north-east winds, the ice-drifts slowly moved down the north-eastern coasts of Newfoundland where they were frequently interrupted in their course by the deeply indented coastline. In some seasons the ice was driven inshore as far to the southward as St. John’s.

¹ Lonnsbury, op. cit., p. 313.
² C.O. 194/42. Gower, Obs. on Fisheries, t. 16, 1804.
⁴ C.O. 194/43. Gower, Obs. on Fisheries, p. 17, 1804.
It therefore became an easy matter for the sealers to cross the ice floes to commence the annual slaughter. In particular two species of seals, the harp and the hood, were highly prized. As the latter herded on the seaward side, the harp seals formed the bulk of the catch, each fully developed seal yielding from ten to sixteen gallons of oil. By the beginning of the nineteenth century nearly one hundred thousand seals were killed on the ice, men, women, and even children working with incredible labour to secure in a few short weeks a valuable harvest.¹

Yet even this method possessed its disadvantages. Not only was it impossible to rely with certainty on the ice floes moving close inshore but also, along the more thickly populated coast southward of Bonavista, their appearance was rare. From about 1790, therefore, small schooners were fitted out to proceed northward to meet the ice. This boat fishery generally extended from the middle of March till early May. Most of these ventures were financed by the merchants who received half the proceeds of the voyage which in a favourable spring were sufficient to defray the expenses of fitting out the vessels for the cod fishery which commenced at the close of the sealing. So remunerative did the industry prove that in 1804 no less than one hundred and fifty vessels, island built, and manned by nearly two thousand fishermen, participated in the spring sealing.² The value of the new industry as a training ground for seamen was not overlooked. Zealous naval governors such as Duckworth derived some slight comfort from the thought that there was no other employment so well calculated to breed intrepid seamen who could in times of national emergency be drafted into the navy.³

In spite of the inevitable seasonal fluctuations, the industry progressed steadily. From an insignificant beginning in the middle of the eighteenth century, it showed little progress until the closing decade when with the increase in the resident population more satisfactory methods were adopted. Towards the close of the wars, a very considerable catch was being made. As the population steadily increased, the sealing returns grew correspondingly higher, until by 1832 nearly seven hundred

¹ Prowse, op. cit., p. 419. See Appendix VIII, Graph B, p. 212.
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thousand skins were taken. Nor were the benefits from this extensive industry purely material. There remained that strong psychological stimulus which the community received from a successful spring seal fishery, thus giving rise to the saying that a good seal fishery meant a good cod fishery. In that spirit of buoyancy, the fishermen made their preparations for the main business of the season.

The greatest change that the transitional era witnessed was undoubtedly the complete extinction of the traditional "transient" cod fishery. In a very real sense, the whole question of Newfoundland colonisation centred round the control of its ancient industry. As long as the western adventurers monopolised the trade and could demonstrate to the government the maritime value of the fisheries, efforts to colonise the island were abruptly restrained by the statutes of King William and Palliser. But if through unforeseen circumstances the island fishery became the monopoly of the inhabitants, the tyrannical policy of past years would cease to justify itself and the repressive legislation which the national policy had dictated would inevitably fade into oblivion. As this was precisely what occurred during the protracted struggle with Napoleon, these years of change and upheaval constitute the most important period in the island's history, forming in very truth the vital background to the colony's later development.

Even by 1792 the competition of the colonists was apparent to the western adventurers. A century of restrictive enactments had failed to stamp out a growing community of hardy fishermen who eked out a precarious livelihood from the fisheries. In contrast to the "transient" or bank fishery, these people concentrated mainly on the "shore" or sedentary fishery which commenced about the end of May. At this season, the caplin, a small fish of the smelt family, spawned in shallow water, thus becoming an easy prey to the cod which fed greedily upon it. The development of the shore fishery was therefore attributable to two factors, the regular arrival of the caplin inshore and the practical certainty that the cod would follow them. Moreover, it was a mode of fishing which appealed.

1 See Appendix VIII, pp. 233-234. Compare Graph A (showing rise of population) with Graph B (development of sealing).
THE ERA OF TRANSITION

particularly to the poorer inhabitants who were debarred on grounds of expense alone from participating in the traditional bank fishery. In a few favoured places along the coast, often before the caplin or herring had appeared, the cod would arrive in such abundance as to admit of their being "jigged" or hooked without even the use of bait. But in general when once they moved close inshore, the cod were caught almost exclusively with the bait of caplin, herring, or squid. As was natural, the supplies of bait frequently fluctuated, often with disastrous results to the fishermen who found an abundance of cod without the means of catching them.¹

To engage in this shore or sedentary fishery, the inhabitants needed little in the way of elaborate equipment. Their largest boats carried only three or four hands. In many places small skiffs controlled by two men were favoured. The fishing was usually carried on but a mile or two from the shore, the vessels returning to land each evening. In adopting such simple methods—and indeed, they had no choice—the settlers possessed a great advantage over those who sought to develop the shore as well as the bank fishery, for instead of having to employ shoremen at high wages to cure and prepare the fish for market, they did it themselves with the assistance of their wives and children. Thus while the men concentrated upon the actual business of the fishery, the women and children formed the "shore gang", and split, salted, and cured the fish as part of their daily routine.² Gower, whose observations on the fishery during the early nineteenth century are so valuable, paid a high tribute to the enterprise of these settlers who frequently left their homes during the season to fish along the Treaty limits, deserted temporarily by the French. "The activity of these industrious people is so great that their women, even in advanced pregnancy, rather than stay at home, take midwives with them on this expedition", he remarked.³ So rapid was the expansion of this shore fishery that even the merchants were compelled to modify their old-established methods, and instead of conducting the fishery by servants whom they engaged for the season, were content to purchase the cured season's catch directly from the settlers.⁴

² Meth. Miss. Soc., William Wilson/Secretary, 6 Sept., 1825.  
³ C.O. 194/45. Gower, Obs. on Fisheries, 1804, f. 7.  
⁴ Ibid., f. 14.
As this-shore fishery appealed primarily to those impoverished inhabitants who did not possess the necessary capital to engage in the bank or deep-sea fishery, it became rather an individual occupation, easily adapted to the needs of thousands of isolated fishermen scattered along the island’s six thousand miles of deeply indented coast. From May till October, the island fishermen pursued this fishery, and as their numbers grew they gradually ousted all other rivals until it remained entirely under their control. In striking contrast to the bank fishery which had developed into an industry carried on at all seasons and in all weathers, the sedentary lasted for one brief season, leaving those who followed it to face long periods of enforced idleness in an island where law and order were as yet unknown.

This gradual change in the character of the fishery had not escaped the notice of Reeves in 1791. By that time, he observed, Newfoundland could no longer be regarded as a place resorted to only by those British fishermen who still followed the ancient mode. Such a class still undoubtedly existed but the greater proportion of the western adventurers had become merchants who, no longer content to catch and cure the fish, speculated in fish and oil. They gradually relinquished their former role, choosing rather to buy and sell the dried cod and to furnish on credit to boatkeepers and inhabitants all requirements for the current season. On such a basis many of the prominent trading firms with headquarters at Poole or Dartmouth conducted their business and towards the close of the eighteenth century profited by their trade monopoly to amass immense fortunes. By the outbreak of the Revolutionary Wars, these merchants had assumed such powers that the entire trade of the island passed into their hands. They formed a hierarchy which dominated the life of the entire community, exercising in the world of commerce a despotism as tyrannical and intolerant as that of the maritime administrators in civil affairs.

Besides the powerful merchants, the boatkeepers who employed boats purely for the shore fishery comprised, according to Reeves, still another section of the transient community in Newfoundland. Most of them were west countrymen who

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1 B.T. 1/2. Reeves’ First Report, ff. 21-2, 16 Dec., 1791, and Report, Commons’ Committee, 1817, p. 4.
2 Third Report, Commons’ Committee, 1793, p. 43.
in the traditional manner made the voyage every season. They were men of substance who in past days had formed the backbone of the fishery, constituting as it were its yeomanry. It was this class which had suffered most from the rise of residency. Clearly the resident fishermen possessed considerable advantages over their overseas rivals who, unless supported by bounties, could never hold their position in the trade. Last of all in this migratory community came the common fishermen, the servants without financial reserves and incapable of engaging in the fisheries unless employed by the merchant or the boatkeeper. It was for this class that the clause concerning passage money was inserted in Palliser's Act; and it was this class which formed the nucleus of the permanent fishing communities.¹

Like Reeves, the British authorities were not unaware of the change and the growing competition which the industry faced from the inhabitants. From a complete survey of the fishery from 1699 to 1793, which George Chalmers compiled from reports furnished mainly to the Board of Trade,² it was evident from the state of the trade before 1774 that both the number of ships and passengers carried to the fisheries had fallen considerably. At the same time there had been a great increase in the number of boats employed by the inhabitants. This naturally coincided with the growth of the island population, which had risen from twelve thousand in 1774 to some fifteen thousand in 1792. That the inhabitants were securing a greater proportion of the total catch was also apparent. In 1774 they caught and cured about three hundred thousand quintals out of the total catch of seven hundred thousand quintals. Eighteen years later this proportion had considerably increased, although of course the aggregate fluctuated considerably with the success of the season.³ The western traders and boatkeepers had grounds enough for alarm. Well aware of the fact that the sympathies of the government inclined to their cause, in 1795 they begged for a revision of the laws in order that the trade and fishery might revive and become again a great nursery for seamen and a valuable branch of the

¹ B.T. 1/2. Reeves' Report, ff. 23-4.
² First Report, Commons' Committee, 1793. Appendix 6 (H).
³ B.M. Add. MSS, 38,229, f. 9. Chalmers/Hawkesbury, 19 April, 1793. See also Appendix VIII, Graph C, p. 311, for catch of settlers and overseas fishermen.
Commerce of Great Britain. And had not the government been engrossed in the Revolutionary Wars, there is little doubt that further restrictive measures against colonisation would have followed. Lord Hawkesbury was keenly alive to the menace of the growing colony which, however, he believed had been kept in check by Palliser's Act of 1775. To combat a further development of settlement, he maintained that the natural line of conduct to be followed lay in a more vigorous enforcement of its provisions by such new modifications as the changing circumstances warranted.

Though it is idle to speculate upon what might have happened if war had not occurred in 1793, it is obvious in the light of the island's past history that the efforts of the government to destroy the colony would have been doomed to failure. As it was, the struggle with France not only saved the colony from the tyranny of further legislation but it also enabled it to control that very fishery which it was the aim of the existing legislation to preserve entirely for British fishermen. The earlier eighteenth-century wars had always seriously inconvenienced the transient fishery; the closing war was to witness its annihilation. The effects were soon felt. Fear of the attacks of French privateers upon the bank fishing craft deterred many western fishermen from making the annual voyage. The activities of the French fleet in North American waters heightened their alarm. To a lesser extent, the sedentary fishery escaped the interruptions and distractions of the war, for even Admiral Richery's brief excursion along the Newfoundland coast in 1796 did very little damage. On the other hand, although an efficient convoy system had been developed, the risks attached to the pursuance of the transient fishery were too great. The insurance rate rose so rapidly that by 1795 it stood at 20 per cent, a sufficient deterrent to those merchants financing the Newfoundland voyages. Moreover, the operations of the press-gang caused a serious diminution in the number of seamen available for the fisheries. In this respect the western merchants had no just grounds of complaint, seeing that they had always endeavoured to win the

1 Adm. 1/473. Committee Dartmouth Merchants/Gov. Wallace, 14 Mar., 1795.
2 B.T. 6/57, Hawkesbury's Oba. on Fisheries, 1699–1795, 20 April, 1793.
support of past governments by stressing the value of the fisheries as a training ground for seamen who were therefore to be of value to the navy in times of emergency. So great was the need for men that at the outbreak of the war the government had to rely upon the press-gang to fill up the complements of the Channel, Mediterranean, and North Sea fleets. By 1804 the effects of the impressment of seamen had been so severely felt that the bank fishery from Britain was reduced to a mere twenty sail, manned by two hundred and fifty men, the decline being due entirely to the shortage of seamen. But in any case, war or no war, as soon as the island became settled, the fisheries were bound to lose their ancient character which generations of western traders and fishermen had struggled hard to preserve. The island fishermen could conduct their fishery more economically than could their rivals from Britain; their needs were fewer and their equipment was cheaper. This aspect of the trade had not been overlooked by Gower, who realised that the inhabitants, while fitting out their vessels for the fishery at less expense, could also commence the season as soon as the cod appeared. Nor did they find it difficult to dispose of their dried cod since the merchants, debarred by the war from securing their supplies in the normal way, relied more upon the island catch which they purchased on very profitable terms. In spite of the collapse of the transient fishery, the change developed with such speed that the export of fish from the island remained as high as that of peace years when thousands of fishermen and hundreds of fishing vessels had made the annual voyage. That the prolongation of the war was strengthening the position of the inhabitants was apparent. Commenting in 1812 on the change, Duckworth was forced to confess that the entire fishery had become sedentary and that it was highly problematic whether the return of peace would revive the practices of past days. Clearly, no further legislation which the government might devise could ever hope to crush the island fishery. To the naval governors still obsessed by the maritime value of the fishery, the passing of the old régime was a matter of deep
regret. Yet they derived some consolation from the fact that the new fishery might also serve as a nursery for trained seamen, as liable for service in the navy as seafaring men in any other part of the empire.¹

It is true that the coming of peace momentarily revived the hopes of those who longed for the trade to regain its eighteenth-century pre-eminence. For a few short years the western fishermen half-heartedly resumed the fishery but the economic ruin which followed the peace shattered all notions of the transient fishery's ever becoming a force in Newfoundland affairs. Whereas in 1792 some two hundred and seventy vessels, the greater portion being bankers, made the voyage, in 1817 the numbers had shrunk to a mere fifty which six years later had diminished still further to a pitiful fifteen, forlorn relics of a fishing armada which had once sailed forth annually to win a precious harvest from the western seas. So completely had the island fishermen won the day that in 1823 out of the total catch the ship fishery secured but a paltry 5 per cent.²

Thus by the close of the war in 1815 a profound change in the character of Newfoundland had taken place. During the long period of warfare, its history had again demonstrated the futility of planning a hard and fast colonial policy and of endeavouring to maintain a system which from its very inception contained the seeds of decay destined to flourish and spread in the wilderness of war. Just as many carefully devised plans break down because of eventualities the wisest cannot foresee, so in the case of Newfoundland unexpected factors, far beyond Britain's power to control or even restrain, eventually freed the colony from its ancient thraldom. Even if the Acts of King William and Palliser remained upon the Statute Book, their presence simply indicated the completeness of their defeat, for they had become obsolete, dead letters, mute witnesses of the failure of the age-old policy to check the inevitable. And even if the island still possessed that peculiar amphibious government which gave its administration so unique a character, it was like a husk without a kernel, a hollow sham. Nor was the future devoid of promise. The era which saw the complete

¹ C.O. 194/57, 51. Bathurst/Kesta, 15 April, 1816.
² C.O. 194/67, 125. Hamilton/Bathurst, 2 Feb., 1824. See also Appendix VIII; Graph C, p. 313.
collapse of the ancient policy; the gradual development of cultivation, the success of a vigorous and growing population in maintaining unaided the pursuance of the fisheries on methods adapted to their own peculiar needs, foreshadowed a coming triumph. It cannot be dismissed lightly. In a very real sense, the era of transition became one of emancipation. If outwardly in 1815 the island still appeared much as it had been in 1793, and if once again hopes were entertained of a recrudescence of the traditional policy, the close of the Napoleonic struggle saw Newfoundland a colony in fact, if not in name.
CHAPTER V

POST-WAR DIPLOMACY AND DISILLUSIONMENT

At the close of hostilities in 1815, conditions in Newfoundland to all intents and purposes seemed little different from those prevailing in 1783. No change had occurred in the maritime system of government, the royal instructions of 1786 still serving as the guide to the admirals on the station. The Fishing Acts, though in practice obsolete, were still invoked by reactionaries desirous of restraining colonisation. And while it was true that after a bitter struggle a court of civil and criminal jurisdiction had been instituted, the administration of justice had fallen into the hands of persons utterly unfitted by training or character to exercise such powers. It was no wonder that the growing population, forced by the peculiar nature of the fisheries and by repressive legislation to cling tenaciously to the island littoral, remained as isolated, as ill-governed, as oppressed, and as much at the mercy of the unprincipled monopolist, as at any previous period. Moreover, apart from its coastline, the island was as completely unknown as when Cabot first sighted it. No one had ever seriously considered exploring the interior, which remained the undisputed hunting grounds of the native Beothucks, fast disappearing as a result of the inhuman treatment meted out to them by semi-civilised fishermen scattered along the north-eastern coast. Although more widespread, the fishing settlements preserved their earlier characteristics. Here and there, it is true, usually in the face of ill-considered opposition, spasmodic attempts to cultivate the soil had proceeded half-heartedly. Nor was this surprising. Too often the early

1 To their credit, the governors of Newfoundland did everything possible to protect these unfortunate Indians. C.O. 194/50, Duckworth/Liverpool, 27 Oct., 1811, gives a long account of an expedition to the Indian country round the Bay of Exploits in 1811, and C.O. 194/63, 56, of another in 1820. See also The Beothucks or Red-Indians, the Aboriginal Inhabitants of Nfld, James P. Howley, 1915. A most exhaustive work on the subject.
or late frosts, the sterility of the soil, the difficulty of attending both to the demands of the fishery and to the crops, had doomed high hopes to ignominious and disheartening failure. Thus for the most part an island population of approximately thirty thousand souls had to depend for its winter provisions on imported supplies advanced on credit by the merchant monopolist at prices which invariably left the struggling fishermen in perpetual debt.

As in 1783, the advent of peace in 1815 brought Newfoundland once again into the full current of international affairs. The coveted fisheries, sources of inexhaustible wealth and prized as "nurseries" by maritime nations, were again to become a cause of dispute and compromise. During the war years the island fishermen had enjoyed an undisputed possession of the fisheries, including those along the French treaty limits. The peace shattered that profitable monopoly. For the French and the Americans, having enjoyed the almost absurdly generous terms awarded them by the treaty of 1783, were not prepared to accept some thirty years later new arrangements which would prove detrimental to their interests. The fear that Britain might insist upon the American surrender of old treaty concessions produced a storm of Yankee protest. "As well might they insist that we should abandon independence itself, as ask us to concede this important right and interest which is interwoven with the sinews of our very existence as a maritime power and a commercial people. The right of these fisheries is one of the glorious trophies of the War of Revolution." French opinion, though less noisy, was no less insistent. Under such circumstances the fortunes of an unrecognised colony counted but little. Its fisheries were merely a pawn in the diplomatic game, to be sacrificed to the cause of international friendship. Ironically enough, the ill-advised concessions which Britain was to make were destined to remain an open sore in Anglo-French relations for almost another century, giving rise to frequent disputes between the two governments and retarding the normal development of the colony in a humiliating and irritating manner.

2 The Times (New York News, 30 May), 21 July, 1814.
As soon as peace negotiations commenced, Newfoundland fishing interests, actuated by motives of self-preservation, warned the British government of the dangers of throwing open the fisheries to France and America. In a despatch to Lord Bathurst, Governor Keats expressed the hope that the Americans would lose their old privileges, for in the St. Lawrence and along the Labrador coast they were strong rivals to the Newfoundlanders. In 1812 they had had about fifteen hundred vessels there, in addition to three or four hundred on the banks. To strengthen his case, he complained at some length regarding the abuses of illicit trading—always a strong plea—and past interferences with the salmon fishery. As was perfectly natural, Keats viewed the whole question from the standpoint of naval supremacy. The fact that generous fishing concessions were detrimental to a growing community troubled him little. The maintenance of British interests in Newfoundland waters was his primary concern. But the island merchants who had enjoyed for many years a monopoly of the coveted Mediterranean trade were loath to welcome their old rivals to the fishing grounds. To return to the French their islands of St. Pierre and Miquelon was surely a generous enough gesture of good-will. To cede again the French shore from which during the war an abundant harvest had been reaped was almost unthinkable. Trade monopolists of the old school ardently supported these views and even went so far as to affirm that any British minister who allowed foreign interests to share in the fisheries was "actuallyconcerting and encouraging measures for its ruin". Apparently the British government, however, renewed the old arrangements with France almost as a matter of course. The Newfoundland merchants and traders, while realising the hopelessness of excluding France from the fisheries, pressed strongly for rights within the French limits. Their memorials were presented to the Committee for Trade which considered at length the question of foreign participation and the claims of British interests. The Committee realised that the long war had held out inducements to British fishermen to erect within the French limits costly fishing establishments which, if forcibly abandoned,
POST-WAR DIPLOMACY AND DISILLUSIONMENT

would entail considerable hardship. But they were also aware that the new treaty of 1814 placed France upon the old footing of 1792. More than likely those negotiating the treaty had not realised the difficulties of the past or the fresh contingencies which had arisen. It appeared, therefore, as if the growing band of settlers along the old French limits was to share the fate of those who were dispossessed in 1783. To the Committee, compromise seemed the only solution. Accordingly they suggested that no instructions for the removal of settlers from that part of the coast should be issued but that the fishermen should be permitted to complete their fishing operations for the season.

If, however, measures could be devised for preventing disputes, a concurrent fishery would undoubtedly prove the better plan for, should the French and Americans be granted full rights to the fishery, the most serious consequences would probably ensue, involving the ruin of a valuable commercial enterprise intimately connected with the maritime strength of Great Britain.

This, indeed, seemed to sum up the prevailing view of the day, further expression of which was voiced in parliament by Sir John Newport, who strenuously opposed the granting of additional concessions. For the trade, he declared, had risen to a position of almost unparalleled prosperity during the war years merely because of the absence of vexatious and unwarrantable foreign competition. So rapid had been its growth that by 1814 nearly eighty thousand tons of shipping, manned by sixteen thousand seamen, had been required to carry to British and foreign markets the produce of the fishery which he valued at approximately three million pounds. Unfortunately for the hopes of those who desired an unconfined British fishery, the government was not free to act as most Englishmen wished. The ill-judged concessions of 1783 had given both French and Americans a share in a coveted and valuable trade which they were not prepared to relinquish without a struggle. In short, they claimed that the peace had restored, *ipso facto*, the rights previously enjoyed. So strongly did the Americans press their claims that it was soon evident

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1 See Appendix IV, D., p. 201, Treaty of Paris, 30 May, 1814.
that the whole question could be settled only by compromise or war. Harassed by post-war problems of an acute and distressing economic nature, the British government desired anything but a recourse to war. Consequently it approached the American question in the attitude of conciliation, paying little heed to the protests of those rabid patriots who would have withdrawn every privilege.

In one sense the American claims were not so complicated as the French, for no question of settlement was involved. For this reason Bathurst's despatches on American rights were not couched in the vague and uncertain terms which marked those that referred to the French shore. In his despatch of June, 1815, Bathurst reminded the Newfoundland governor that the treaty of 1783 had contained two distinct stipulations, one recognising the right of the Americans to fish upon the high seas, the other granting the privilege of fishing within the British jurisdiction. The American declaration of war had abrogated this last clause which the Treaty of Ghent had not renewed. Under these circumstances, Americans no longer possessed the right to fish within the British jurisdiction or to use British territory for purposes connected with the fishery. As they would probably be unaware of this new arrangement, and might, in consequence, seek to re-enter the fishery upon the old terms, he authorised the governor to permit them to remain for the duration of the season upon the clear understanding that no such indulgence would be granted in the future.

Much the same attitude was revealed in the following year's despatch to Keats' successor, Admiral Pickmore, who was informed that while negotiations were proceeding with the American government, he was to continue to be guided by the previous instructions. And in this generous attitude of conciliation, the British government continued to extend the old privileges to the American fishermen, until by the Convention of 1818 the question was settled definitely. It was agreed that along the southern coast of Newfoundland from Cape Ray to the Ramean Islands, and also along the coast of Labrador, the subjects of the United States should possess the right to catch

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2 Ibid., p. 57. Bathurst/Pickmore, 31 May, 1816.
and dry fish in any of the unsettled bays or harbours as well as to fish (but not to dry) along the western coast from Cape Ray to the Quirpon Islands.¹

Meanwhile the treaties of 1814 and 1815 had conceded to the French their old privileges, no apparent effort having been made to remove by mutual discussion those difficulties which had rendered the enforcement of the Treaty of Versailles so difficult a task.² In all these arrangements the fate or future of Newfoundland counted but little, for it received no greater consideration in 1815 than it did in 1783. But concerning the settlers along the French shore, more uncertainty was revealed. More than likely the British government, bearing in mind the recommendations of the Committee for Trade, hesitated to adopt the unequivocal language of the proclamation which the act of 1788 had authorised.³ This was certainly not the case in 1802 when by the peace of Amiens the fisheries reverted to their former state. In that year the governor, Admiral Gambier, received the same instructions from the Crown as those of 1789 and 1792, requiring all British subjects to depart from the French limits.⁴ But it is doubtful whether at that time more than a handful of settlers occupied fishing rooms along that coast.⁵ By 1814, however, the situation had changed. During the war years, the rapid growth of population had resulted in the French shore, in common with other fishing districts around the coast, possessing fishing stations of some importance, a fact the Committee had clearly realised. Moreover, the British government was no longer certain as to what attitude might best be adopted towards this mushroom colony of the war years. It was not quite so simple a problem as the Committee had faced in 1786. On the one hand, the reports of the governors stressed the obsolete nature of the fishing laws and the impracticable provisions of the royal instructions. Yet on the other hand, there was also the hope that with the peace the transient fishery might revive and ultimately win its old place in the fishing economy. In 1815 Keats anticipated a reversion to the

² See Appendix IV, D and E, p. 201, Treaties of Paris, 30 May, 1814, and 20 Nov., 1815.
³ Vida ante, chap. II, pp. 48-49.
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ancient system; a year later he could discover no immediate necessity for any material alteration in the existing laws. Under these circumstances, it was perfectly natural for the government to refrain from making drastic changes until it became apparent what the years of peace would bring forth. Accordingly, in the Royal Instructions issued to Keats at the close of the war, their obsolete character was recognised and a general discretion was given to the governor to dispense with their observance, this being continued year by year until the repeal of the Acts of King William and Palliser in 1824.

Thus when peace returned in 1814 and 1815, the governor of Newfoundland was left without powers or directions of any kind to exclude the settlers from the French limits. On receiving a copy of the Treaty of 1814, Keats applied for instructions concerning the fate of the English settlements there. The Colonial Secretary, Lord Bathurst, was fully aware of the findings and recommendations of the Committee for Trade, as well as with the post-war difficulties in the island. He therefore contented himself by advising the governor to refrain from taking action against the fishing stations which British subjects possessed within the French limits, provided always that the French fishermen were not interrupted in any way by their presence. Obviously Bathurst hoped for the exercise of a concurrent fishery along the French shore. But before these instructions reached him, Keats, finding that French vessels had arrived in accordance with their treaty rights, followed the example of his predecessors by issuing a proclamation advising British subjects to remove their effects from that coast. This could hardly have occasioned him any heartburnings, for, as he was a strong advocate for the revival of the old policy, the removal of settlers from any part of the island fully accorded with his views. On the occasion of the next year's peace, Bathurst's despatch was even more non-committal, merely directing the governor to enforce the treaty.

In the meantime the Act of 1788 which had lapsed with the

war was not renewed, neither was any reference to the French fishing rights included in the Royal Instructions which still retained their earlier form. It is clear that the British government's reluctance to evoke the stringent regulations of 1788 against settlement within the French limits furnished unmistakable evidence that the colonists were at last receiving a greater measure of consideration. It is also certain that in spite of Keats's proclamation, the fixed population did not quit their settlements but continued to fish in much the same manner as they had done during the war years.

In one other important aspect, the conditions existing along the French shore after 1815 differed from those of the earlier period. After the peace, the great reduction in the strength of the squadron on the Newfoundland station made it increasingly difficult for the governor to undertake the regulation of the fisheries as had been the case in the decade after 1783. Whereas both in 1786 and 1802 explicit instructions had warned the governors not to permit any French officer to exercise acts of sovereignty along the coasts of the island, after 1815 the clause was not renewed. Consequently owing to the absence of British patrolling vessels along the French limits, the French proceeded to regulate the fishery as they pleased, even assuming rights of sovereignty within those waters.

Unfortunately the unsatisfactory nature of the new treaties soon became apparent. Before long a series of wearisome diplomatic disputes, often irritating and sometimes alarming, commenced between Great Britain and France on the one hand, and France and the United States on the other. The main cause of contention sprang from the reluctance of the British government to reassert the stringent policy which the Act of 1788 had so adequately expressed. It was not that the government's policy after 1815 was vacillating or timorous. It was merely non-committal and evasive, restrained from a clear-cut expression by the knowledge that Newfoundland was no longer a great ship from which stowaways could summarily be ejected, but a mushroom colony which showed no tendency to cease growing. Such caution is understandable. But the French for

1 Gov. Elliot's Instructions, 1786, Art. 27; Gov. Gambier's Instructions, 1802, Art. 4.
their part saw no difference between what had been the practice in the past and what concerned the present. Nor were they slow to act. In 1820 they lodged complaints concerning the destruction of French huts and stores at Quirpon by British fishermen. In the following year when the H.M.S. Egeria put into La Croque Harbour on the north-eastern coast of Newfoundland, her captain was informed by the French commandant there that the coast was theirs by exclusive right, a position somewhat akin to that of 1789 when the captain of the Echo protested against the French assumption of sovereignty. Emboldened by the absence of British patrolling cruisers, the French went further. In 1822, still maintaining their right to an exclusive possession, they forbade a British settler in Bonne Bay, on the west coast of the island, to carry on his salmon fishery, though it had been developed before the peace of 1814. It was evident that if the British government hesitated to enforce the removal of the settlers, the French were eager to assert their authority. They were not prepared to brook any rivals, either British or American. In a high-handed and provocative manner and upon the threat of seizure, they drove American fishing vessels from the limits assigned them by Britain in the Convention of 1818. Thus within a few years of the peace, the French had asserted and secured full sovereign powers along the French shore.

Alarmed by the French complaints concerning the depredations of the British fishermen, Governor Hamilton on his own initiative issued a proclamation intimating that the French were “to have full and complete enjoyment of the fisheries within the limits . . . in the manner they are entitled to enjoy the same under the said Treaty of Utrecht.” In many ways the document was surprising. As no order in council had been passed since the peace and as no instructions had been issued authorising the removal of British settlers, the proclamation, like many of its kindred, rested on not the slightest legal foundation. Hamilton himself possessed little knowledge of the
earlier history of the French shore and was unaware that from 1783 to 1793 British cruisers had patrolled the coast to remove all evidences of French fixed settlements. And although he referred correctly to the treaties of 1814 and 1825, he quoted erroneously the limits assigned the French by Utrecht. On the further erroneous assumption that the Act of 1788 was still in force, Hamilton threatened to prosecute all those settlers who refused to leave the French shore. But whatever force of law the proclamation may have possessed, it was discreetly ignored by a community to whom the thunder of a gubernatorial edict was a daily occurrence. It was as completely ignored by the home authorities who, having realised at last the total failure of the old legislation, began to revise those regulations that governed the island’s destiny. In 1824 when the old enactments were repealed, the island was at last raised to the status of a colony. With this change the royal instructions were revised, and in their new form they contained no clause which referred to the fisheries. But the act of 1824 gave the Crown much the same power of removing settlers from the treaty limits as did the previous one of 1788.

The mere passing of these revised laws was not sufficient to end the difficulties which were constantly arising. As British naval supervision along the extensive French shore became more spasmodic, the French fishermen began to extend their operations, frequently fishing boldly outside their boundaries and even on occasion wintering in the island. In 1826 the British officer on the Labrador coast, whilst admitting that British fishermen had destroyed French property at La Croque Harbour, reported that the French constantly infringed the treaty and fished in places where they possessed no rights. So vehement were the protests of British fishermen and so frequent were the French encroachments, that action was at last taken. Three French vessels, guilty of fishing beyond their limits along the southern coast of the island, were seized and taken to St. John’s for prosecution in the court of vice-admiralty. But as the court declared itself unauthorised to take cognizance of such offences against the provisions of the treaty, they were

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1 Ibid. Hamilton/Wilmot Horton, 14 June, 1824.
released unpunished. The court, indeed, could hardly have ruled otherwise, for the Advocate-General to whom the question was submitted, considered "that the language of the contracting parties and the Declaration and Counter-Declaration annexed to the Treaty of Versailles (1783) seems to place the execution of the Treaty, with regard to the restrictions on the influence, and authority, to be exercised by them on their respective subjects rather than on the effects of penalties to be enforced by the injured party". The correct course of action to be pursued was to warn off the transgressors, at the same time calling the attention of their government to the treaty infringements. In practice this procedure was seldom adopted. After the peace of 1783 when British cruisers annually visited the French shore to destroy all evidences of fixed settlement, and again after 1815 when the French took the law into their own hands, prompt action became the rule, followed later by the inevitable diplomatic protest.

But this French assumption of exclusive rights which curtailed the activities of British as well as American fishermen in Newfoundland waters could not be ignored indefinitely. In 1827 Sir Thomas Cochrane who was then governor, complained strongly of the acts of aggression committed by the French along their limits. Grounds for an added grievance lay in the fact that since the peace the French fisheries between Quirpon and Cape St. John had become the most valuable along the coast, offering a further inducement to British fishermen to resort there rather than to the distant and inhospitable coasts of Labrador. In order, therefore, to secure as favourable a consideration as possible for British fishermen and if possible to safeguard their rights and interests, Cochrane urged that the exclusive claim maintained by France should be critically examined. The governor's request at last drew from the British government an expression of opinion concerning the whole question, the first, indeed, since the peace. In his despatch to Cochrane, Huskisson, the colonial secretary, instructed him not to interfere in the dispute between the French and the Americans. It were better for them to settle their

1 Ibid. Ad. Lake/Gov. Cochrane, 26 July, 1826.
2 Ibid. Advocate-General/Canning, 18 Oct., 1826.
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differences without British mediation. But as regards the exclusive claims advanced by France, he maintained that, while the British government did not recognise them, "it had been judged expedient, for the purposes of avoiding the risk of unpleasant collision, to abstain from acting upon a claim which may yet be considered as open to be enforced." With this vague pronouncement, Cochrane had perforce to be content.

In all probability, the government realised the impracticability of a concurrent fishery. In the following year, Cochrane himself was forced to admit that a spirit of hostility and ill-will between the two groups of fishermen was increasing, engendered mainly by unlawful French encroachments. These provocative proceedings were if anything becoming more frequent and the French fishermen had extended their operations along the coast to the south of Cape St. John, a clear infringement of the treaty. To check these unlawful intrusions, British fishermen had provided themselves with arms to drive off the offenders. It was obvious that relations were becoming increasingly strained. At this juncture, as if to add to the difficulties of the situation, the members of the Chamber of Commerce at St. John's, attracted by the prosperous nature of the fishery within the French limits, advised the governor that they intended to send a British fishing vessel to the French coast and asked if it would be afforded definite protection. In informing the colonial secretary of this foolhardy venture, Cochrane, while considering himself debarred from acceding to the merchants' request, confessed that he possessed no power to restrain such an enterprise which might ultimately prove advantageous to the British fishery. To restrain if possible the impetuosity of the merchants, Cochrane advised the abandonment of the attempt and promised to visit the French shore the following season when he would submit a report based on his own observations.

In the meantime the Chamber of Commerce at St. John's, undeterred by the cautious advice tendered by the governor, submitted their case to Sir George Murray, the colonial secretary. In advising him of the hardships they had to experience
in being driven from their old stations between Quirpon and St. John to Labrador, where the fishery was not so successful, they asserted that the French exclusive claim was unjustifiable in the light of the treaties. Accordingly, they intended to fish within the French limits that coming season. As not the slightest reply was given to this communication, the St. John's merchants in the spring of 1829 fitted out the schooner Hannah and despatched her to Croque Harbour, within the French limits. The French did not hesitate to act in a manner which, even if they had possessed an indisputable exclusive claim, could not be defended on treaty grounds. In forcibly removing the Hannah, they exercised a right of sovereignty which no treaty had ever conferred upon them.

When Cochrane's visit to the French shore at last took place in the summer of 1830, he received a formal complaint from the commander of one of the French cruisers concerning the Hannah which, he declared, had been driven away in accordance with his instructions. As British sovereignty along the coast had never been relinquished, Cochrane rightly protested against such coercive measures. As to the advisability of pursuing a concurrent fishery, it was clear to Cochrane that the idea was impracticable. Along the whole French shore, there was not a single spot unoccupied where another fishing establishment could be set up. He was therefore forced to conclude that in spite of the need of the colony for more fishing grounds, due to the diminution of the catch and the steadily increasing population, the pursuance of a concurrent fishery would definitely interfere with the rights of the French. For the French had spared no effort to develop their fisheries to the utmost and, stimulated by a generous system of bounties, had as many as twelve thousand men and over two thousand fishing boats along their coasts or on the banks during the season of 1829. The great success of this fishery provided a further stimulus to the French determination to maintain an exclusive fishery. The colonial agent for Newfoundland, Villiers, to whom the case of the Hannah was also made known, protested vehemently against the French assumption of sovereign rights along their

3 Ibid. Cochrane/Murray, 26 Nov., 1830.
coast and urged the British government to secure without delay the just rights of its subjects.¹

The government, however, was not prepared to take action but conformed rather to Huskisson's hesitant policy of 1827. The French for their part were under no misapprehension concerning their claims. Emboldened by the non-committal British attitude, they lodged a strong diplomatic protest concerning the Hannah. In a note to Palmerston, Talleyrand made no attempt to evade the issue. In reminding the British government "que la France a un droit de pécherie dans un espace déterminé des côtes de l'Ile de Terre-Neuve, que ce droit est exclusif et que par conséquent il ne peut éprouver aucune concurrence de la part des armateurs Anglais . . . .", the astute old diplomat at last made use of the very term which the treaty of 1783 had avoided.²

Such, then, was the diplomatic position which confronted the colony in 1832. Already handicapped by the post-war years of acute economic depression, the island was to face a further disability of a highly irritating nature. As the best farming country within the colony lay along the western coast which formed part of the French shore, its development was seriously retarded and its inhabitants whose presence there constituted additional diplomatic difficulties were deprived of all civil privileges. And although the attitude of the British government in 1783 can easily be understood, and perhaps in a measure excused—for the island was not then considered a colony and the limits surrendered to the French were almost unsettled—little can be said in extenuation of a policy which renewed so generously in 1814 and 1815 the concessions of earlier years. For by the close of the Napoleonic Wars, Britain was fully aware of the altered circumstances in Newfoundland which had rendered obsolete the old legislation. Yet no apparent attempt was made to modify the treaties to suit the new conditions, or, indeed, to remove the causes of friction which had arisen previously. Moreover, after the peace of 1815 the absence of any definite instructions from the colonial office to the governors indicated an attitude of hesitancy and uncertainty of which the

² C.O. 194/82. Backhouse/Hay, 21 May, 1831. (Enclos.) Talleyrand/Palmerston, 19 May, 1832.
French took full advantage. The passing of the act of 1824, with its renewal of the regulations of 1788, followed still further by the tacit submission of the British government to the open assumption of France to exercise authority within the sovereign jurisdiction of Great Britain, encouraged France to claim unjustifiable privileges galling to the pride of the colonists. For Newfoundland, the tragedy of the French shore lay in the immediate period after 1815 when no attempt was made to settle national differences or redraw the treaties in the light of the colony's surprising development. Each year which permitted France to exercise unchecked full rights of sovereignty, confirmed her in a practice which remained a constant humiliation to a growing colony and served as another bitter reminder of the legacy of the past. When eventually representative government was bestowed upon Newfoundland, the French practices had become so well established that the intricacies of the diplomatic tangle were far beyond the efforts of an untried colonial legislature to unravel. By 1832, therefore, French diplomacy had triumphed. What Britain was not prepared to grant in 1783 and what Pitt had specifically denied in 1788, was claimed some fifty years later by France as an unquestioned and unchallengeable right.

Meanwhile within the island matters were far from satisfactory. Owing to the demands of a long and arduous war, little time or thought had been conferred upon its internal government. This, however, hardly concerned the merchants and traders who saw in the duration of a struggle fresh opportunities for amassing fortunes from the fisheries. In an era of amazing prosperity they soon forgot their gloomy forebodings. Freed by the operations of the war from all foreign competition, the merchants enjoyed an undisturbed monopoly of the Mediterranean markets. So high were the prevailing prices for fish and oil that the trade experienced years of unparalleled success. The war was the golden age for Newfoundland. Yet there was a less pleasing aspect to this alluring picture. Owing to the American embargo and the scarcity of supplies from Europe, the cost of provisions soared alarmingly until by 1813 famine prices

1 Vidé ante, chap. II, pp. 48-49.
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had been reached.1 Wages naturally had also risen, but in no way commensurate with the increased cost of food. Under such conditions of scarcity the poorer settlers braved the restrictions of the governors and sought by every means in their power to cultivate the soil. So acute was the shortage of food in the distant outports and so great was the prevailing distress, that the inhabitants were forced to kill the few domestic animals they possessed and even to consume the vital seed potatoes on which they relied for their main winter supplies.2

Meagre as are the records of these years in their references to the poorer class of inhabitants, they serve nevertheless to reveal the appalling poverty and misery which existed almost unrecognized in the island's scattered settlements. During the war years and indeed for some time afterwards, the governor rarely visited the out-harbours. His sole knowledge of affairs was based mainly on what he saw in the prosperous port of St. John's, together with the obscure information he gleaned from reports furnished by officials in the outports. In these wretched communities the merchant reigned supreme, waxing rich on the sale of fish and oil bought at low prices from the toiling fishermen to whom payment was made in fresh supplies of food, clothes, stores and other requirements for the fishery. He became the overlord in this struggling society, exercising an unrestrained and tyrannical power. Everything favoured the rise of a powerful merchant class. Profiting by an indifferent and seasonal government, the weak courts of justice, the restrictions forbidding cultivation, the scattered settlements, and the scarcity of imported supplies, the merchant assumed the authority of an absolute despot. In every outport or distant harbour and wherever settlement existed at all, he or his agent dominated a primitive and almost mediaeval society. Law there was none, save the will of the strong. If a fisherman fell into

1 Prices of Provisions.

<table>
<thead>
<tr>
<th>Year</th>
<th>Bread and Flour</th>
<th>Beef and Pork</th>
</tr>
</thead>
<tbody>
<tr>
<td>a 1784</td>
<td>18/- to 22/- cwt.</td>
<td>£4 5s. 6d. barrel.</td>
</tr>
<tr>
<td>b 1804</td>
<td>28/- cwt.</td>
<td>£4 10s. 6d.</td>
</tr>
<tr>
<td>c 1805</td>
<td>38/-</td>
<td>£4 10s. 6d.</td>
</tr>
<tr>
<td>d 1813</td>
<td>60/-</td>
<td>£4 10s. 6d.</td>
</tr>
</tbody>
</table>

1 B.T. 5/3, 394. Prices of fish and bread, 1783-6.
2 C.O. 104/43. Prices at St. John's, 1804.
3 C.O. 104/47. Holloway/Castleragh, 29 Sept., 1808.
4 S.P.G., Rev. Clinch/Secretary, 23 July, 1813.
debtor and appeared hopelessly insolvent, his effects were seized without warning and sold without hope of redress. Only the influence of the governor could check the growing activities of this island oligarchy which, indeed, constituted the one rival to gubernatorial despotism. In 1799 Governor Waldegrave, a particularly bitter commentator on the powerful merchant class, complained that the supplier had the power of setting his own price on the goods issued and on the fish taken as payment. "Thus we see a set of unfortunate beings," he wrote, "working like slaves and even hazarding their lives, when at the expiration of their term, however successful their exertions, they find themselves not only without gain, but so deeply indebted as to force them to emigrate or drive them to despair." For greed and rapacity, the merchants of St. John's were the worst the old sea-dog had ever met.

On such a basis of avarice and tyranny, a credit or barter system was instituted. Entirely primitive in its character and reducing the inhabitants to a state of servitude, it was destined to become the central feature of Newfoundland's political and social economy. Under the abnormal war conditions and the obsolete laws which played so great a part in the erratic and peculiar development of the island in the opening years of the nineteenth century, it is difficult to see how these social evils might have been avoided. They formed but another legacy from the past. As the old legislative scheme collapsed and the island population increased, no effort was made to foster the island's self-reliance or to provide for the welfare of a community placed in an exceedingly precarious situation. It is true that from time to time half-hearted suggestions for removing the surplus population to Nova Scotia had been tentatively advanced. But the collapse of the transient fishery had rendered it imperative, if the fishery was to exist at all, for a large island population to remain there. Nothing, therefore, save a policy of negation was followed. In consequence, relieved from all legislative restraints and strengthened in their position by

3 S.P.G. Waldegrave/Portland, 22 Oct., 1799.
a war which seemed almost endless, the merchants established their credit or "truck" system on such a secure foundation that the years of peace perpetuated it.

In practice, the simplicity of this method of trading appealed strongly to an ignorant and illiterate people to whom money brought little benefit. In the spring before the commencement of the fishery, each fisherman applied to his merchant for supplies of gear, salt, clothes and provisions to enable him to conduct his fishing operations and to support himself and his family during the current season. The goods were advanced on credit, the security being the fish and oil he would gain from his season's exertions. No agreement was made, however, concerning the price to be paid for the fish he was bound to submit in the autumn to balance his account. That important point was settled by the merchants themselves. By the beginning of the nineteenth century it had become customary for the principal merchants in the island to meet at St. John's during July and August to settle the price of fish and oil. Technically, this was known as "breaking the price", and on the merchants' ruling were fixed the standard rates for the season, both in St. John's and in the outports. The prices were always adjusted to favour the merchants. If, late in the season, bad market reports were obtained, prices always dropped. In the event of unexpected high prices ruling abroad, however, the merchants took care never to upset their earlier pronouncements. The gross injustice of this system was evident. The advantages which the merchants secured over the simple and hard-working fishermen were most unfair, the more so since the administration of justice in the outports was in their hands. The courts were therefore incapable of remedying matters, or indeed, of affording poor suitors the slightest protection. To add to the fisherman's burden, too often the poor seasonal catch, or the low prices prevailing, made it impossible for him to meet his current obligations. Accordingly, he remained in perpetual debt. In the primitive and isolated fishing stations, these methods produced a careless and improvident attitude towards life and, in years of plenty, habits of profuse extravagance. As a modern

1 C.O. 194/45, f. 73. Gower's Remarks on Fishery, 1804.
2 C.O. 194/50, ff. 5-10. Stewart/Bathurst, Obs. on Nfld., 4 Mar., 1817.
3 Commons' Committee, 1817, John Job's Evidence, p. 45.
GOVERNMENT IN NEWFOUNDLAND, 1783-1832

The writer has said, the "truck" system which, since the dawn of the nineteenth century, has been an integral part of the island's social life, is vicious in theory and damaging in practice. It saps the sturdy independence of the fishing community and becomes as subtle a danger as can face a people—subtle because it impoverishes and enslaves the victims, and then makes them love their chains.¹

Such, then, was the flimsy commercial structure created during the war years on the uncertain foundation of high prices and unstable credit. The devastating economic collapse of the post-war years—the first, alas, of many such—was tragic evidence of the system's shortcomings. All too soon the unparalleled prosperity of the war, the profuse extravagance of the people, the reckless credit of the merchant, were brought to an end in ruin. For the peace rudely disturbed that monopoly of the fisheries the island had for long enjoyed. The reappearance of the French and Americans as eager competitors was a severe blow to the trade;¹ the diminishing demands for dried cod in the markets of Spain and Portugal, sadly impoverished through the loss of a South American empire, produced an unprecedented fall in prices.² To add to the island's troubles, the duties on British cod in foreign markets increased rapidly. In 1792 the Spanish duty on Newfoundland fish was four shillings and eightpence per quintal; in 1815 it stood at the prohibitive figure of ten shillings and sixpence. The Neapolitan duty rose almost as high.³ Faced by these rapid post-war changes for which it was ill-prepared, the trade experienced a sudden and ignominious collapse. By 1815 wages had abruptly dropped by half.⁴ Dried fish, which had brought as high a price as two pounds a quintal, slumped to a paltry thirteen shillings.⁵ As if nature herself were conspiring to magnify the colony's misfortunes, the annual catch also revealed an amazing and alarm-

¹ The Story of a Labrador Doctor, Sir Wilfred Grenfell, 1932, p. 96, and also for modern analysis of the "truck" system, see Nfld. Royal Comm., 1933, chap. VI, paras. 270-280.
⁵ Meth. Miss. Sec. Pickavet/Secretary, 2 Dec., 1816.
ing diminution. Whereas in 1813 a fisherman averaged one hundred and twenty quintals for the season, some three years later he could secure but seventy-five.\(^1\) To add to the hopelessness of the situation, the 1817 season witnessed a further failure in the shore fishery. Moreover the "transient" bank fishery which had shown some evidence of revival since the peace met with ill-success. Worse still, the spring sealing on which the community relied for much of its prosperity also experienced an unprecedented failure. So severe was the winter that with the coming of spring, large fields of ice enclosed the entire coasts, rendering navigation impossible. Consequently the sealing schooners remained ice-bound.\(^8\) In a few places where the ice was free, the scarcity of provisions for victualling the vessels was a further obstacle to success.\(^8\) The magnitude of these disasters completed the economic ruin of the post-war era. Old-established trading firms which had speculated too rashly became hopelessly insolvent; their collapse entailed the ruin of hundreds of boatkeepers and fishermen who relied implicitly upon them for the disposal of their catch and the furnishing of supplies. From October, 1815, to March, 1817, nearly one hundred bankruptcies were declared at St. John's, and in the surrogate court there, between two and three thousand writs were issued.\(^4\) The effect of these disasters upon a helpless community is not difficult to imagine. Throughout the bitterest winter ever experienced in the island, the wretched inhabitants, deprived of their usual sources of supply, eke out a miserable existence. Food riots of an alarming character occurred at St. John's, and in the outports lawlessness and anarchy reigned almost unchecked.\(^6\) So bad were conditions at St. John's that by the spring of 1817 three thousand people were receiving relief,\(^6\) many of whom had been ruined through no fault of their own, but were the unfortunate victims of a vicious system which left them in years of distress without means of subsistence. To add to the misery.

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1 Commons' Committee, 1817, John Preston's Evidence, pp. 33–4.
5 Ibid. Letters submitted by Garland and Attwood, pp. 8 (A, B, C and D) and 22.
of a frightful winter, the town was ravaged again and again by fire, a calamity long foreseen.1 Whatever the causes of these appalling conflagrations, whether due to carelessness, drunkenness, or incendiarism, there was not the slightest doubt that the presence of a large floating population, utterly devoid of any winter occupation and living in idleness and debauchery, constituted a serious menace to the prosperity of the colony. For many years their numbers had been steadily increasing. Towards the close of the eighteenth century, the economic and political unrest in Ireland had stimulated emigration to an abnormal degree. During the war years when high wages were common, the fisheries of Newfoundland drew thousands of poor and ignorant Irish servants to the island, a large number of whom had been associated with the "United Irish" movement in their own country. In Newfoundland they established a similar organisation.2 The garrison at St. John's, composed mainly of Irish troops, was won over to the cause. A day for a general uprising was fixed and plans were drawn up for the government of the island under a Directory of Five. Fortunately, their scheme miscarried. The Roman Catholic bishop, Dr. O'Donel, hearing indirectly of the conspiracy, informed the authorities and thus what might easily have become a murderous uprising collapsed, almost without bloodshed.3

Although the plot had proved a fiasco, it was evident that the maintenance of law and order during the long winter months when almost all vestiges of government had disappeared was no light task. High wages, the cheapness of rum, and the absence of authority permitted these irresponsibles, the waifs and strays of the fishery, to pass the winter in riot and revelry.4 In the early years of the nineteenth century, the steady flow of Irish immigration into Newfoundland proceeded almost unchecked. From 1811 to 1830, the only years for which

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1 C.O. 194/57, 47. Keats/Bathurst, enclosing letter from Chief Magistrates, concerning fire of 12 Feb., 1816, and C.O. 194/59, 27. Pickmore/Bathurst, 12 Nov., 1817; ibid., 29, 22 Nov., 1817, contain full reports of disastrous fires, which almost destroyed St. John's.


3 W.O. 1/78, pp. 184, 189, 193, 199 and 209, contain informative, though somewhat hysterical, letters on the conspiracy.

POST-WAR DIPLOMACY AND DISILLUSIONMENT

reliable figures are available, over twenty-four thousand arrived, to constitute during the winter months a grave problem for the authorities.¹ Had the island possessed the means of feeding this surplus and destitute population and had rich agricultural land been lying idle for these new arrivals to develop, all would have been well. But Newfoundland could not absorb them in any satisfactory way; in consequence, they were faced with the alternatives of moving onwards to the Canadas, of returning to Ireland, or if they possessed no further means, of starving in the island.

Undoubtedly the methods exploited by masters and owners of emigrant ships to induce such unfortunate creatures to leave their homes were little short of iniquitous. The wretched emigrants, herded together like cattle in filthy and insanitary quarters, had often to face the horrors of a boisterous and prolonged crossing. So appalling were the conditions prevailing that even the slave ships of the day seldom presented such disgraceful scenes.² Frequently these vessels arrived at St. John's reeking with typhus, which soon spread rapidly through that filthy and crowded town. Many of the Irish emigrants had been tempted to make the voyage through alluring prospects of high wages in the fishery. Others, in accordance with the common practice, had booked their passage on security, staking all on the hopes of gaining a speedy and lucrative employment. Not half of these unfortunates secured work and even those who did found themselves at the close of the season when the cost of their passage had been deducted from their meagre wages, comparatively penniless and without the means to support themselves during the winter.³ It was the presence of this derelict society, always destitute and often indolent and vicious, that created grave social difficulties. In St. John's, which by 1815 possessed a population of approximately ten thousand, the position was particularly acute and, in an effort to maintain order, bands of armed citizens formed nightly patrols to guard the wharves and other public property.⁴

³ C.O. 104/64. Hamilton/Bathurst, 4 Dec., 1821.
But as no improvement in the economic situation took place, it became apparent to the authorities that the island contained a large floating population far beyond its capacity to absorb or the fishery to employ. The removal of a large number of the inhabitants seemed the obvious solution to the problem.

The suggested project was by no means new. The Board of Trade had considered it again and again. For as the unwanted population of Newfoundland had increased and as the protests of the western adventurers and the advocates of the ancient policy had grown more insistent, so did schemes for the removal of the inhabitants suggest themselves. To safeguard the transient fishery, both Knox and Waldegrave had advocated the removal of the population to Nova Scotia and Canada. The war, however, upset these plans. Not until the economic disasters of the peace had brought home to the government the problem of this growing indigent class, did the matter seriously revive. Early in 1817 the Committee for Trade, while inclining favourably towards a movement which would stimulate emigration from Newfoundland to Canada, feared that the time was inopportune. Apparently in spite of the Committee’s findings, the government seemed to have considered seriously the removal of at least one thousand settlers to the undeveloped crown lands in Nova Scotia. This policy was naturally warmly endorsed by the western merchants who still entertained hopes of the fishery again reverting to its ancient state. In the Inquiry of 1817 they pressed for the removal of from five to twenty thousand of the island population, little realising that if their wishes were put into effect, further rival fishing communities would spring up in British North America. Perhaps for this reason the government hesitated to act. It is more likely that, realising the situation could be remedied only by large-scale emigration which the distressed North American colonies were not prepared to receive, the government merely deferred the matter until a more favourable occasion. Bathurst therefore informed the governor, Admiral Pickmore, that he was not authorised to embark upon any project for emigration. Within

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1 C.O. 194/60. Thos. Lack/Goulburn, 24 April, 1817.
2 C.O. 43/55. 37. Goulburn/Harrison, 7 May, 1817.
4 C.O. 195/17. 75. Goulburn/Pickmore, 24 June, 1817.
a few years, however, the question was again brought to the government’s notice. Alarmed at the great distress which still prevailed in St. John’s, the more responsible citizens petitioned the governor “to encourage the immediate departure of as many indigent persons for Nova Scotia, New Brunswick or Canada as can be induced to go . . . before winter comes on. . . .” The governor supported the plea, but, as he lacked the authority to enforce it, the undesirable and indolent section of the population had full liberty to remain.¹

In spite of the British government’s refusal to countenance any scheme for the removal of settlers from Newfoundland, the local authorities at St. John’s acted on their own initiative. Greatly concerned about the unprecedented numbers of idlers and lawless characters who flocked there during the winter, the magistrates urged the governor to take drastic steps to relieve the menace of unemployment. Accordingly on his authorisation over one-thousand of these unfortunates were shipped back to Ireland at the close of the 1816 season.² Although but a palliative, for the removal of a few waifs and strays could do little to ease the internal situation, the practice soon became firmly established. In spite of Bathurst’s admonition, each year witnessed a similar proceeding on the part of the authorities. In 1821 the governor, Sir Charles Hamilton, not only shipped a considerable number of women, children and infirm people back to Ireland but also removed others to Prince Edward Island, where there was a demand for winter labour. Even Nova Scotia received consignments of these outcasts. But as that colony protested with some justification against such action, no more were sent there that year.³

Such conditions of appalling social distress and economic ruin, the collapse of the trade, and the failure of the fisheries, could not be ignored indefinitely. At the behest of the erstwhile prosperous traders whose war fortunes seemed destined to be dissipated by the economic blizzard which had swept the island, Michael Angelo Taylor, in June, 1817, drew the attention of parliament to the ruinous state of the trade.⁴ It was agreed

¹ C.O. 194/65, 85. Hamilton/Bathurst, 6 May, 1822.
² C.O. 194/57. Pickmore/Bathurst, Annual Report, 11 Dec., 1816. See also, Parl. Pap., 1824 (71), XVI, 475, for list of inhabitants removed.
³ C.O. 194/64. Hamilton/Bathurst, Annual Report, 4 Dec., 1821.
that a select committee should investigate the whole question. But while the inquiry revealed unmistakably the appalling destitution existing in Newfoundland, the lamentable state of the trade, and the laxity of civil authority there, little of value emerged for future guidance. The trade, and not the colony, the merchant, and not the settler, were the main considerations which concerned the committee. Only the representatives of the merchants and western fishing interests were invited to submit their evidence which in truth was but an echo of that of 1793. They saw in the problem nothing but the preservation of their own trade which they maintained should be safeguarded by a system of bounties and the removal of thousands of the island’s population. Nothing was said of the social evils crying out for remedy, of the iniquitous “truck” system, of the maladministration of justice, of the illiteracy and degradation of the people, nor of a thousand and one matters of paramount importance to the colony’s welfare. Once again the merchants had been tried and found wanting. Their motives were thoroughly selfish and bigoted, each desiring his own gain and none the public benefit. Hopes that parliament would approve another system of bounties were soon dispelled. In the light of the new economy, the old mercantile arguments appeared weak and futile. Eighteenth-century trade theories had lost their appeal. Beyond the granting of ten thousand pounds to relieve the internal distress in Newfoundland, the Commons refused to take further action to bolster up a dying trade.

During these years of disappointments and disaster, few changes of any significance had taken place within the island. The population was too ignorant, too engrossed in the business of the fishery to attempt to modify deep-rooted customs, no matter how pernicious they appeared. The law did nothing to check the growth of many social abuses, for the courts which had been established towards the close of the century had failed lamentably to justify their existence. In most instances they interpreted the law with eighteenth-century fanaticism, displaying on the one hand a cynical disregard for the misfortunes of a despairing community, and on the other an ingratiating indulgence towards the tyranny of officialdom. The chief

1 See Report, Select Committee on Nfd. Trade (1817), VI, p. 465.
2 John Preston advocated the removal of 20,000.
POST-WAR DIPLOMACY AND DISILLUSIONMENT

justices were but harmless sycophants, securing their appointments through the governors' good-will and maintaining them by an unquestioning subservience. Neither by training nor ability were they at all fitted to assume the onerous duties and extensive powers the Acts of Judicature had conferred upon them. In its antagonism towards the struggling colony, the government did not concern itself unduly with the ill-assorted worthies who adorned the highest judicial office. In this respect Newfoundland again appeared an exception to the general rule, for almost invariably only barristers trained at the English bar were appointed to colonial chief justiceships. Thus for nearly twenty years after the institution of a supreme court at St. John's, the chief justices of Newfoundland were a disgrace to any colonial judiciary. It is true that Reeves who became the chief justice in 1791 for the brief tenure of two fishing seasons, was the legal adviser to the Committee for Trade. He, however, was appointed primarily for the purpose of reporting upon the system which had been established. Unfortunately his successors were men of a different calibre. D'Ewes Coke, who followed Reeves, had commenced his professional career as a surgeon in one of the outports, becoming later a customs officer at St. John's, which position he continued to hold after his appointment as chief justice. Richard Routh, also from the customs, continued the same practice. Jonathan Ogden, the garrison surgeon, was the next dignitary to adorn the bench, retiring ultimately through ill-health to make way for the greatest worthy of them all, Thomas Tremlett. Starting off life as a merchant's clerk in an out-harbour, Tremlett became, on the recommendation of the governor, Admiral Gambier, who succeeded to Tremlett's eloquence in sermonising, secured the coveted chief justiceship in 1803. Secure in his position of

1 Manning, op. cit., p. 161.
2 For list of Chief Justices of Nfld., see Appendix II, p. 194.
3 Both Coke and Ogden were judges in Milbanke's Court of Common Pleas. Their right to preside even in that simple court had been hotly contested by Bastard, during the debate on the Nfld. Judicature Bill. Parl. Register, vol. 20, p. 338, 26 May, 1791.
4 C.O. 194/43. Gambier/Hobart, 21 May, 1803. See also C.O. 194/50. Stewart/Bathurst, Obs. on Nfld., 4 May, 1817, for comments on these judges.
eminence, Tremlett allowed his powers of oratory—and profanity—to have full sway. But at least he possessed a mind of his own. He clashed with the autocratic Holloway and the merchant oligarchy and, so far as his limited knowledge of the law permitted, interpreted it without fear or favour. After Tremlett had dispensed a crude though impartial justice for over ten years, the colonial secretary, wearied by the interminable charges that the trade levied against him, deemed it advisable in the interests of internal peace to effect an exchange between the equally unpopular chief justice of Prince Edward Island and the obnoxious legal luminary of Newfoundland. The new arrival, Caesar Colclough, could boast some training in the law, but he was pompous, conceited, and without the slightest pretension to any strength of character, becoming rather the tool of government. Fortunately for Newfoundland, ill-health hastened his retirement.

With such incompetent judges upon the bench, the courts soon won a reputation for unconventional and disorderly procedure. It was not uncommon for the judge and clerk of court to bring forward the necessary evidence and to draw up the indictment. Moreover, owing to the lack of lawyers at St. John's—the direct outcome of the naval governors' refusal to countenance them—persons unacquainted with the rules and usages of a court of law were permitted to plead. Consequently scenes of uproar and indecorum, far beyond the power of the court to restrain, were the inevitable outcome of a farcical system. And if matters were so bad in the principal court of the island, it is easy to understand the hopeless position existing in the outports where the administration of justice was in the hands of the magistrates, aided it is true by the spasmodic visits of the naval surrogates. In many instances the magistrates were merchants and, as most of the causes brought forward were of a civil nature, they frequently sat in judgment upon their own cases. It is hardly surprising that the impartiality of these

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1 C.O. 194/48 and 50, contain full reports of the charges levied against Tremlett.
2 For further details of Tremlett and Colclough, see History of Prince Edward Island, A. B. Warburton, pp. 431–6.
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courts was so often called in question. Although the administration of justice was in such incompetent and corrupt hands, it was difficult to see how under the circumstances the system could have been remedied, for in practically all the out-harbours there was no one suitable to act as magistrate save the merchants whose interests were closely interwoven with the trade and fishery.

At a time when the administration of justice had sunk to such a low ebb, the appointment of Francis Forbes to the chief justiceship took place. A man of sound training, upright principles, and strong character, Forbes was eminently suited to introduce law and order into the chaos of the courts. For although it was possible through the unique system of island judicature for an incompetent chief justice to permit abuses to creep in unchecked, it was none the less possible for a judge of high professional standing to raise the judiciary to a place of dignity and high prestige. But the presence of a strong chief justice in Newfoundland was not hailed with delight by the admiral governors, who resented any opposition to their autocratic wishes and authority. Forbes therefore became the subject of frequent complaint and was suspected of holding liberal political opinions, acquired presumably by reason of his Bermudian birth and American travels. Governor Hamilton, who possessed no love for his independent chief justice, begged the government to appoint some legal adviser to the crown, to counterbalance the influence and authority of the supreme court.

Hamilton's grievances were concerned chiefly with certain decisions the chief justice had given against the crown on the vexed and still unsettled question of land occupancy. In the disastrous years of the post-war era in Newfoundland the obsolete nature of the laws against cultivation and building had been so blatantly challenged that the crown had been compelled to defend its rights. The ultra-conservatism of Keats had forced the issue. In 1816, hoping possibly that the bank and transient

1 C.O. 194/43. Gambier/Hobart, Annual Report, 27 Nov., 1802; C.O. 194/63. Nicolas/Bathurst, 3 June, 1822; and C.O. 194/74, Cochrane/Bathurst, 29 Jan., 1827, all mention these abuses.
fishery would revive, he had refrained from advising the government to remove the restrictions on buildings within the two hundred yards' limit; nor, indeed, would he permit any encroachments to take place. As regards the ownership of land beyond the limits, Keats was no less positive, for in reasserting the rights of the crown, he refused to acknowledge any property in land, no matter how long the occupancy, unless traceable to an undisputable grant.

In this atmosphere of repression and intolerance, Forbes attacked the absurd pretensions of the crown as maintained by the dogmatic governors. Fully aware of the disabilities concerning land tenure under which the community laboured and realising that the time was advantageous for the overthrow of the old fishing dispensation, he boldly declared himself wholeheartedly on the side of the settlers. His legal mind refused to countenance the intolerable regulations governing land tenure in the island; his sense of order and his strong love of justice made him eager to remove the last vestiges of an arrogant tyranny which denied a population of forty thousand a right to those privileges which civilised communities possessed without question. His sympathies were with the harassed inhabitants living under a constant threat of dispossession for, as he well knew, "of all the evils in society, uncertainty in the law is among the greatest, and there cannot be any uncertainty more distressing than that of the right by which a man holds his habitation". Forbes was soon given the opportunity to end that uncertainty. In 1818 the crown proceeded against a merchant who claimed part of the water-front as private property on which he had erected and enclosed his fishing establishment. To the intense annoyance of the authorities, Forbes confirmed the merchant's right. In the following year he administered a further rebuff to an overbearing officialdom by upholding the unauthorised occupancy of land for purposes other than the fishery, claimed solely on the plea of undisturbed possession. As these judgments swept away century-old pretensions, destroyed the dormant claims of the crown, and struck

1 C.O. 194/57, 57. Keats/Bathurst, Obs., Art. 5.
2 Ibid., Obs., Art. 6.
at the heart of constituted authority, Sir Charles Hamilton immediately referred the cases to the Attorney and Solicitor-General who, much to the governor’s mortification, upheld the decisions of the chief justice. Clearly the old régime was fast drawing to a close.

In many ways the transitional era ended in an atmosphere of hopelessness and despair. Famine, disease, ruin, and fire appeared the inevitable accompaniments of Newfoundland life. Yet terrible as had been the experiences of the settlers during the post-war years of depression and calamity, the future was not devoid of hope. For the unparalleled economic depression was mainly responsible for the final overthrow of the transient fishery which seemed, under the stimulus of the admiral governors, to be reviving in a way which could not fail to menace the colony. Moreover the new economy which refused to sanction the artificial support of the overseas fishery gave the trade its death-blow and destroyed that oppression which the Acts of King William and Palliser had legalised. Even the disorders and social unrest of these years were not without some influence on the trend of government, for after 1817 the admiral governors no longer came and went like birds of passage but remained in residence on the island, winter as well as summer, thus foreshadowing a more permanent and less nautical form of administration. Finally, with the appointment of men of character and ability to the chief justiceship, the old legal abuses gradually disappeared to make way for a new system which contained the elements of English jurisprudence. And although the struggle for colonial status had still to be fought and won and although many degrading and obsolete customs had still to be swept away, the ancient tyranny had lost its power. The triumph of the colonists, though long deferred, was none the less assured. The post-war disasters had not been endured in vain for the island’s hour of travail was the inevitable prelude to the colony’s birth.

1 C.O. 194/64. Harrison/Goulburn, 10 Aug., 1821.

<table>
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<th>Year</th>
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<td>1813</td>
<td>276</td>
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<tr>
<td>1817</td>
<td>48</td>
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<tr>
<td>1823</td>
<td>18</td>
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In 1823 the boat and shore fishery accounted for 750,000 quintals; the bank fishery, 34,000,
CHAPTER VI

THE FIGHT FOR COLONIAL STATUS

From an imperial aspect the years which followed the peace of 1815 were of profound importance both to mother country and to colonies. During that period of unsettled economic conditions, of social misery and political unrest, questions which had been forgotten or ignored in the desperate war years presented themselves anew with added insistence. The growth of industry in England, with the consequent rise of a new class possessing great wealth and an unquenchable self-confidence, introduced a new force into politics, destined ultimately to end the political stagnation of the Napoleonic era. The new movement manifested itself in various ways. It applied the political speculations of the utilitarian philosophy to political action; it revived vital constitutional and administrative problems; it stimulated humanitarian concern for the growing social evils of the age; it fired the zeal of the early nineteenth-century constitutional reformers. Nor was its influence confined to matters of local or even national importance. It revealed itself in a much wider sphere which embraced, not merely Great Britain and her colonies, but even the other great commercial nations of the day.

As far as the colonies were concerned, the peace witnessed the belated re-entry into parliamentary discussions of questions relating to their general administration and development. And though problems of trade were still of paramount importance, it was clear that the political situation had completely changed since 1783, when the Acts of Navigation had been so hotly attacked or defended. For the old mercantilist system had lost its appeal. In the new world of speculative thought, political and economic theories which imposed artificial restraints upon the flow of trade could no longer be supported. Neither could
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they justify the existence of a colonial empire upon such an insecure foundation. Accordingly colonial affairs were viewed in an entirely new light. To the radicals the panacea for all colonial ills was the full emancipation of the colonies from every tie that bound them to the mother country. The sooner they were granted self-government and complete political freedom, the better for all concerned.1 To the utilitarian thinkers, dazzled by the prospect of a free cosmopolitan trade, the existing colonial empire which cast a heavy burden upon a harassed though indulgent parent, possessed neither logic nor purpose. A colony which cost five hundred thousand pounds annually to maintain and did not return five hundred pence was obviously a mere encumbrance.2 In a world of utility where hard cash spoke with no uncertain voice, satisfactory trade returns provided the only sane basis for political union. Even by 1817 parliament had inclined to this view, for although the old "nursery" slogan was again invoked, it had refused to safeguard the Newfoundland fishing trade by means of a modest bounty. It was not merely because the economic position of Britain demanded a rigorous curtailment of expenditure. The fact was that the disciples of Adam Smith had maintained with a large measure of success that to support a trade by artificial aids was entirely uneconomic and therefore contrary to the national welfare.3 It was clear that political thought had undergone an amazing transformation. What would have sounded as sheer heresy to the eighteenth-century mercantilist was accepted as sound common sense by the new economists, and the broader conception of trade which Pitt and Shelburne had striven to reveal in 1783 was at last acceptable to the majority of Englishmen. In the case of Newfoundland, this new outlook meant a complete surrender of the ancient policy. In a matter-of-fact and unimaginative world, the age-old plea of the value of the fisheries as a school for seamen—the national acceptance of which had been responsible for the impolitic regulations of centuries—had lost its magical appeal. The ancient shibboleths no longer cast their spell. For it was argued, and with a show of reason, that all branches of British maritime

2 Ibid., N.S., vol. 6, p. 1076. Sir Isaac Coffin, 13 March, 1822.
commerce were as much nurseries for seamen as were the Newfoundland fisheries and that in effect if bounties were granted to the fishing trade, they could also be justified for any other branch of Britain's overseas commerce. In commenting upon parliament's refusal to save the transient fisheries by a system of bounties, *The Times* declared that the idea of maintaining at great expense a colony simply as a nursery for seamen seemed as ill-advised a policy as building a ruin to improve a prospect. Indeed, it was just as rational for the nation to ship each year a certain number of seamen to double Cape Horn as to support a "nursery" in a trade which seemed irretrievably a losing concern. So spoke the new economy.

Although the early nineteenth-century reformers and political thinkers possessed few constructive ideas on colonial affairs, they were well aware that some change of outlook was needed. In particular they attacked the stereotyped policy of the colonial office, at that time under the guidance of Lord Bathurst as colonial secretary and Henry Goulburn as under-secretary. Bathurst, a conscientious but unimaginative statesman of the old school, was certainly the last person to initiate in colonial affairs schemes of drastic reform; Goulburn, although more energetic and enterprising, possessed neither a clear-cut nor purposive policy. As had been the case during the Napoleonic Wars, it appeared as if the colonial office simply accepted things as they were, introducing no modifications save those absolutely necessary. This was particularly true of Newfoundland where, during the early decades of the nineteenth century, obsolete instructions were issued to successive governors with monotonous regularity. In this respect, when a new system of government for Newfoundland was under consideration in 1817, the opinion expressed by the Committee for Trade that "the subject ought not to be determined upon without the most mature deliberation", coincided entirely with the views of the colonial office. This caution, however, was carried to extremes, for even as late as 1828 the governor of Newfoundland was forced to complain that in spite of the altered status of the

2 *The Times*, 4 July, 1817. Leader on "Nfld. Distress."
3 Lord Bathurst was colonial secretary from 1812 to 1827; Goulburn was under-secretary from 1812 to 1821.
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In other directions the colonial office displayed a singular lack of initiative, for although petitions levying charges against colonial officials were generally investigated and answered, it was rare indeed for drastic action to be taken. Matters were invariably smoothed over and, rather than dismiss an offending or incompetent official, the colonial office usually transferred him to another sphere of labour. Such complaints were by no means uncommon for it was certainly true, as was later asserted, that the scum of England was poured into the colonies and that briefless barristers and broken-down attorneys were pushed into positions of responsibility. Although these abuses had little or nothing to do with the Bathurst administration and were probably beyond the power of the colonial secretary to check, they served nevertheless to bring the whole department into disfavour. In common with other British overseas possessions, Newfoundland received its share of unsuitable and unsatisfactory officials. After 1815, for instance, the island governors had frequently requested the colonial secretary to appoint a fully qualified attorney-general there to act as legal adviser to the crown. The government at last acceded to the request, not because it was convinced of the necessity for such an appointment but simply because a position had to be found for a dissolute customs officer from the port of London, dismissed for taking fees. The new arrival possessed not the slightest legal knowledge for such an important post, nor were his drunken habits and broken-down appearance at all in keeping with the dignity of his office. The presence of this legal derelict in the island courts was a constant source of embarrassment to the administration. Yet his successor was little better and finally, after being appointed to the bench as one of the new judges for the supreme court in 1826, was summarily dismissed for

1 C.O. 194/76. Cochrane/Huskisson, 21 May, 1828.
3 Letters of Sir George Cornwall Lewis, 1870, Malta, 3 Oct., 1837.
contemptible and dishonest practices. Although it was the exception rather than the rule for men of ability to be appointed to colonial positions, it must also be remembered that the acute financial stringency of the post-war years made it impossible for highly remunerative salaries to be offered. Consequently men of pre-eminence were seldom tempted to consider a colonial appointment. And thus, although there was a large measure of truth in the charges which Hume in 1825 brought against the colonial administration which, he declared, had been a disgrace for the last twelve or fourteen years, the fault was hardly Bathurst's. Where, however, the colonial secretary could be held culpable was his failure to initiate a definite colonial policy and to sweep away obsolete practices which made the administrative machinery so unwieldy.

With regard to the attitude of the colonial office towards Newfoundland during these difficult post-war years, the reports of its governors were to a great extent responsible for the policy of idle drift which is so characteristic of the period. Their steady insistence on the belief that years of peace would see a distinct revival in the transient fishery could not fail to influence Bathurst and Goulburn who felt that hasty legislation would in all probability be foolhardy. Unfortunately they failed to consider the hardships, necessarily increasing year by year, under which the island population laboured. Yet in one respect a slight though not insignificant change had taken place in the old-established mode of government. The inquiry of 1817 had revealed the need, so often stressed in the past, of some form of permanent government for the island during the winter months. Accordingly it was decided that the naval governor, instead of leaving his station in the late autumn, should continue to reside at St. John's for the complete year. At the same time the governor was requested to inform the colonial office of what changes in the old system of government might be deemed expedient in view of the altered conditions existing in Newfoundland. Naturally enough the post-war admiral-

\[1\] C.O. 194/72, 23, 23. Cochrane/Bathurst, Judge Molloy's dismissal, 12 Sept., 1826.
\[3\] Commons' Committee, 1817, p. 39, Attwood's Evidence.
\[4\] C.O. 195/17, 73. Bathurst/Ficke, 1 June, 1817.
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governors, Sir Francis Pickmore, a thorough-going Tory broken in health and unable to live through the severity of his first island winter, and Sir Charles Hamilton, a zealous upholder of the old traditions, were careful to refrain from condemning a system which had created them. It was not from these early nineteenth-century governors that reforming measures appeared.

A study of the naval governors' reports and despatches reveals unmistakably their complete inaptitude for civil government. Not that it was ever intended that they were to assume such administrative powers. In the early eighteenth century when the colony contained but a handful of settlers, the commodore's role was rather that of a fishery control officer—though on a more exalted plane—than of a colonial governor. As the colony grew, the amphibious character of the government became more emphasised, until by the close of the century the governor was as much concerned with affairs on land as he was with those at sea. Owing to this peculiar development his position became paradoxical, for though he apparently possessed unrestrained authority, having no council or assembly to thwart his will, in reality his power was strictly limited, there being no legal channel through which he could constitutionally act. In fact, while guarding the vessels employed in the fisheries and maintaining order among them, he became at the same time simply an overseer deputed by the government to report upon the internal state of the island. With the island judicature—in theory at least—he could not interfere. He could neither hold nor establish courts, nor meddle with their decisions, limitations which were, however, not always observed. In 1822 when pressing for a revision of the laws, the inhabitants of St. John's informed the colonial secretary that the governor "appoints and removes at his pleasure the judges of the surrogate courts, the magistrates, high sheriff, coroner, and every other officer under the crown. . . ." Yet with so much unconstitutional authority he has no legal power." Such, then, was the anomalous position of the governor in the island administration.

But there was one way in which the governors believed they possessed a certain measure of legislative power. Through

2 C.O. 194/63. Committee, St. John's/Bathurst, 6 Dec., 1822.
proclamations issued on their authority they claimed the right to establish on such a basis a code of law for the island. A more incongruous and varied list never existed. It included rulings concerning churches, marriages, Roman Catholics, public houses, unlicensed buildings, streets, ships' rooms, diets, fishing rights, bait, the French shore, illicit trading, deportation of undesirable women, the "spiriting" of fishermen, the cultivating of the land, destruction of the forests, Indians, sea-birds, and a host of other matters which went to comprise this amazing miscellany. Considered in mass, they bear witness to the indefatigable efforts of nearly a century of maritime governors to control and restrain the growing colony; viewed separately, they testify to the bigoted and tyrannical character of the island administration. Whatever the governors themselves thought of the legality of their edicts, it is clear that the British government did not consider they possessed the force of law. In 1788 when matters over the French shore had become acute, it was deemed necessary to pass a special act for the purpose of restraining fishermen from fishing within the French limits, although Governor Campbell had previously issued a proclamation upon the subject. And even though Reeves in 1792, in an effort to introduce some semblance of order into the island chaos, had ruled that the governors' proclamations must be considered as the law of the land, their legality was frequently challenged. Reeves's successors, it is true, only too anxious to please their dictatorial overlords, had supported this view, though it appears certain that the proclamations were flagrantly disregarded by the community as a whole. Yet as the issuing of these edicts depended upon the whim of the governor and certainly not upon any legislative enactment, Forbes in 1820 made it clear that the governor held no legislative power whatever. Consequently the proclamations were illegal. Thus at one stroke the chief justice robbed the governors of their power to browbeat and intimidate a long-suffering population. That such a drastic curtailment of authority would please an overbearing governor was too much to expect and the aggrieved personage, on Forbes's

3 C.O. 194/69. Francis Forbes, Comments on Surrogacy and the Supreme Court in Nfld.
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retirement from office, suggested to the colonial secretary that the politics of his successor was a material point of consideration.

Even in other directions the governors had sought to exercise illegal authority. On various occasions and mainly for the purpose of raising revenue for the support of the magistracy in St. John's and the outports, they had endeavoured to levy rates and impose taxes. As early as 1730 the Attorney-General had ruled that the governor of Newfoundland possessed no such power which, he held, rested upon the consent of some assembly of the people. In 1803 Gambier, who was anxious to raise money to alleviate the social disorders in the island, made tentative inquiries regarding such a possibility but the old ruling was once more upheld. Still later, Sir Charles Hamilton approved of the imposition of a rate for general purposes at St. John's and appeared surprised to find that the measure aroused considerable opposition. It never occurred to the governors that personal liberty was a factor worthy of the slightest consideration. Only the rulings of the law officers of the crown curbed their unconstitutional pretensions. Questions concerning the right of the governor to refuse a licence for a printing press, to prosecute daring pamphleteers, to deport political agitators, to appoint lawyers of the courts, and many others of a similar nature, were proved to lie beyond the just confines of their power. No wonder that the reactionary Keats, who resented bitterly any restriction of his nebulous authority, complained of the difficulties experienced in the administration of government in Newfoundland "from an increased population and settlement, and especially from some late opinions of the Crown Lawyers, which have a tendency to abridge the ancient authority of the governor, and approximate it to an established colony."

Jealous of their privileges, the governors constantly challenged the right of the Commander-in-Chief in British North America to control the troops stationed in the island. In 1799 the Duke of Kent, who had participated in a long and rather

1 Francis Forbes was appointed chief justice of New South Wales in 1823.
4 C.O. 194/43. Gambier/Hobart, 1st May, 1803; ibid., misc. papers, Law Officers' reply, 3 June, 1803.
aimless correspondence with Governor Waldegrave upon the subject, was compelled to inform Dundas of "the most unpleasant circumstances having occurred repeatedly in the island of Newfoundland, from the unwarrantable interference of the admiral commanding on that station with the troops." The events which gave rise to such differences were usually trivial but causes of friction constantly arose, mainly owing to the exaggerated ideas which the governors possessed of their own importance. Even in 1827 it was necessary for the colonial secretary to advise Sir Thomas Cochrane as to the extent of his military authority. And so the energies of these naval martinet, restrained in some directions, received full outlet in others. They overruled the incompetent justices of the courts; they remonstrated with local dignitaries concerning indifferent church going; they took offence at the lack of public warmth and demonstrations accorded them on their arrival at, or during their departure from, the seat of government. With a fine disregard for the feelings of the unwanted settlers, they swept away encroachments, checked cultivation, prevented the formation of roads, demolished buildings, and bestowed or cancelled land grants at will. In short, they governed by "pure, unqualified, unmitigated despotism." Nor did their despatches to the colonial office reveal evidence of statesmanship or political enlightenment. With but few exceptions the admiral governors, at the end of their first season of some eight weeks on the Newfoundland station, wrote in a most positive manner concerning their impressions of the colony and the form of government it required. Few suggestions regarding the welfare of the inhabitants were made; fewer still were put into effect. The men, however, were not to blame. The fault lay with the system which placed them there. Governors who had been bred to the quarter-deck from early youth, who were accustomed to implicit obedience, whose lightest word was unquestioned, were clearly not the type to evolve an enlightened and sympathetic government in an island where the very
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presence of settlers was considered a threat to maritime supremacy. Soon or later, however, the naval régime was bound to be challenged. As the unwieldy system drew to a close, its obvious weaknesses invited attacks from those who had no respect for rank or person but saw rather in the figure of the naval governor the embodiment of all they hated most.

Little was done during the eighteenth century to question the domination of the admirals. The island was too isolated, its society too scattered and primitive, to permit the growth of a movement designed to secure political reform. Every movement requires its leaders, and it was not until the dawn of the new century that Newfoundland at last contained settlers, competent by education and professional standing, to challenge the existing order. In St. John’s a medical practitioner named William Carson, a man of Scottish birth and training, assumed the self-elected office of champion of island reform. At first Carson appears to have interested himself in devising plans for the development of the whaling industry in Newfoundland, but to a man of his temperament and strong democratic convictions, the amazing system of government under which the island laboured speedily directed his energies into political channels. In many ways he was eminently suited for the task. Apart from the advantages of his education, he possessed high courage and was a born fighter whose loyalty and integrity were unquestioned. In short, Carson was a true liberal of the early nineteenth century. He was no ranting demagogue and indeed his cold, clear-cut arguments appealed little to the ignorant masses. Moreover he was too formal, too dogmatic, too self-opinionated, ever to kindle in the hearts of his supporters a wild and fiery enthusiasm or to weld them into a loyal band of ardent reformers who would acknowledge him as their chosen leader. Yet in some respects his intense individualism was a splendid asset, for as he entered the political arena at a time when personal liberty in Newfoundland was at its lowest ebb, only a lone and fearless fighter could hope to achieve any measure of success. Jeopardising his practice as a physician and incurring the bitter enmity of the governors and their

1 C.O. 194/89. William Carson/T. Spring Rice, 18 July, 1834. Carson was born in Kirkcudbrightshire in 1770, set up practice in St. John’s in 1808, and died there in 1843.

sycophants, Carson maintained the wellnigh hopeless struggle for ten years, until by the early twenties the growing clamour for reform created the nucleus of a party pledged to secure colonial recognition for the island.

Carson's early attacks on the government were made through pamphlets. Although he was the island pioneer in political authorship, his efforts were not destined to win him fame or establish his reputation as a pamphleteer. Neither his mental qualities nor his literary attainments were suited to such a form of expression. His pedantry and coldness of style prevented him from writing in a vivid and popular way of those abuses that required immediate reform. But there was no doubting his sincerity or the revolutionary nature of his political aspirations. Consequently when his first pamphlet made an unexpected appearance in 1812, it created an alarm in the minds of the local authorities out of all proportion to its worth. Governor Duckworth at once reported on the circulation of a very mischievous pamphlet, while the chief magistrate at St. John's, in a moment of hysteria, believed that it had a tendency to degrade and weaken the government of this country, as well as to incite a spirit of insubordination in the minds of the lower classes of society...

Indeed, what appears to-day as a very dreary and heavily laboured demand for a civil government and a local legislature was apparently at that time construed into sedition of the highest form. For the first time in Newfoundland history the attributes of government had been seriously questioned and sharply criticised.

Had Duckworth had his way, Carson would have paid dearly for his temerity. To the governor's disgust, however, the law officers doubted the advisability of proceeding against the author. To secure relief for his lacerated feelings, Duckworth contented himself by venting his spleen upon Carson on every possible occasion, and in an effort to prejudice him locally dismissed him from his post as surgeon to the St. John's volunteers.

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2 Ibid., Duckworth/Bathurst, 23 July, 1812.
cution acted as a stimulus to further efforts. Accordingly in 1813 a second pamphlet appeared. Its title, *Reasons for Colonising the Island of Newfoundland*, was proof positive that Carson had made an open declaration of war and that he was prepared to attack the ancient policy and the dominance of the naval governors. To the island intelligentsia among whom the pamphlet circulated, the publication of a few unpalatable truths concerning the intolerable tyranny of the maritime administration was greeted by surreptitious sniggers and ill-concealed delight. To the horrified Duckworth the effort was most indecent and libellous. Moved to righteous indignation, the new governor, Admiral Keats, lamented that the undisturbed happiness of the island should be interrupted "by the arts of wicked and designing men who by an abuse of the mild laws under which we live, by poisonous publications, and on frivolous and groundless pretexts", were bringing into disrespect and contempt the government which protected them. Alas, what black ingratitude!

The chief merit of Carson's early reforming efforts is the plain matter-of-fact enunciation of his political aspirations which these pamphlets so unmistakably expressed. They served to focus public attention upon those local problems which demanded speedy redress. Viewed in the light of modern democratic thought, Carson's demands were modest and reasonable. But to the island authorities who still denied to Newfoundland even the slightest recognition of colonial status, a desire to secure a complete legislature and a civil government possessing powers and privileges comparable to the British constitution could be classed only as rank heresy. With the publication of the two pamphlets, Carson's literary work somewhat abruptly terminated. His energies, however, soon sought new outlets. In the main he was responsible for the formation of a political committee at St. John's which began to press with steady insistence for those reforms he so ardently desired. That even by 1819 Governor Hamilton was forced to complain of a growing democratic spirit within his government was a tribute to the success of Carson's work in the political field.

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For a complete decade after Carson's last publication, nothing further was done through the medium of pamphlets to arouse British interest in the island's affairs. But in 1823 another champion entered the political arena. The new-comer was Patrick Morris, a St. John's merchant, who in temperament and talents offered a striking contrast to the stolid and pedantic Scottish doctor. Morris possessed all the qualities of the popular demagogue. His Irish wit, his ready tongue, his impetuosity, his love of argument, soon brought him to the forefront as a born controversialist. At a time when the agitation concerning the colonial status of Newfoundland was fast approaching a climax, Morris seized the opportunity to publish a series of pamphlets dealing with political questions in which he ridiculed the preposterous system of island government. He directed his literary shafts against the maritime government, the poor judiciary, the governors' absolute and high-handed powers, and all the other abuses to which Carson had drawn earlier attention, but expressed in a much livelier prose, interspersed by flashes of wit and biting sarcasm. Upon the misguided admiral governors he poured forth a torrent of irony, believing them to be the true lineal descendants of the ignorant and tyrannical fishing admirals. "Indeed," he says in a passage which reveals him at his best, "only that I am not a believer in the doctrines of Pythagoras, I would suppose that the souls of the Fishing Admirals, on their last voyage across the Stygian Lake, were transferred into the bodies of their successors. The government of Newfoundland by the Admirals of the British Fleet exhibits examples of the danger of placing uncontrolled power in the hands of any man or set of men, and affords melancholy proofs that English gentlemen, the representatives of a constitutional King—of the highest rank in the truly honourable profession to which they belonged—did, in the exercise of power, act more like Persian Satraps or Turkish Bashaws than men who, it is to be supposed, were well read in the constitutional history of their country."  

While it is true that these pamphlets of Carson and Morris

1 Morris was born in Waterford, Ireland, in 1789. He arrived at Newfoundland in 1800, became Colonial Treasurer in 1840 and died in 1849.

THE FIGHT FOR COLONIAL STATUS

undoubtedly drew some attention to the grave political evils and social abuses which existed in Newfoundland, it is questionable if their efforts would have been crowned with success but for the naval surrogates' gross misuse of authority which ultimately brought the island's affairs again before parliament. In 1792 the Act of Judicature had legalised the singular maritime tribunals of the naval officers who, during the eighteenth century, had gradually usurped the lawful duties of the fishing admirals.1 At first the surrogates were not eager to act as maritime judges, presumably on account of disputes that had arisen in the past.1 But as the magistrates in the outports were both incompetent and corrupt and as there was no one else available on whom their duties could devolve, the governor and chief justice were left with no alternative but to appoint naval officers to act as judges. Newfoundland again became the theatre of experiment, and the settlers were presented with the extraordinary spectacle of naval officers holding courts of civil jurisdiction, with the right of hearing and determining all cases in a summary way, according to the law of England—a situation surely without parallel in colonial history. Though honest and well-intentioned, the surrogates possessed no legal training and little enough knowledge. Yet in the course of their legal duties they had to decide an endless variety of intricate cases arising from insolvencies and other mercantile transactions.1 In many instances familiarity with lawsuits soon bred a supreme confidence, and the naval officers, as Morris sarcastically wrote, “stumbling upon an odd volume of Blackstone or Burns's Justice, were quite anxious to display their legal lore; imagining they were competent to decide cases involving principles of law the most intricate, connected with the Bankruptcy Law, Bills of Exchange and the Law of Insurance.”1

If the justice of the surrogates was administered upon a fairer, though perhaps a no more competent, basis than that of the magistrates, the courts were productive of much abuse. The existence of a tribunal to which suitors could apply at small expense had a natural tendency to promote litigation. Accordingly the arrival of a surrogate in an out-harbour was often a

1 Vide ante, chap. III, pp. 60–1.
4 Morris, op. cit., p. 31.
signal for an outburst of legal controversy which apparently these naval Solomons enjoyed as keenly as did the contestants.¹ In 1824 one of these officers claimed to have disposed of seven hundred cases in eight months, and as proof of the satisfactory nature of his rulings he instanced only four appeals.² But as appeals could be made only from judgments above forty pounds, whether the decision of the surrogate was objectionable in law or otherwise, the verdict of the courts could seldom be challenged.³ To add to the difficulties of this rough-and-ready legal procedure, many of the more headstrong surrogates paid little heed to the rulings of the supreme court on points of law and frequently deliberately ignored its decrees.⁴ It was therefore apparent by the early 'twenties that the Judicature Acts had simply substituted one system of legal chaos for another. Obviously they offered an easy target for the attacks of Carson and Morris.

Apart altogether from inherent weaknesses, the system possessed one serious defect. It had long been the custom, even before surrogacy was legalised, for these maritime tribunals to enforce their decisions by the use of the lash, a practice generally accepted as being part and parcel of the whole unhappy system.⁵ The miserable wretches who received such unmerciful treatment had no means of redress and were compelled perforce to suffer in silence. But in 1820 matters reached a crisis when two cases of extraordinary severity were heard on appeal at the supreme court at St. John's. At last the advocates of reform were furnished with valuable material to lay a definite charge concerning the abuses of the surrogate courts before the colonial secretary. Two fishermen, Landergan and Butler, found guilty on slender evidence of contempt of court, had been sentenced by outport surrogates to receive thirty-six lashes apiece. The unfortunate Landergan collapsed after receiving fourteen, and Butler, on promising to give up certain property in question, was released after a dozen lashes had been inflicted. Although Chief Justice Forbes concurred with the surrogates that contempt had been committed, he strongly deprecated their mode

¹ C.O. 194/67. Tucker/Hamilton, 10 Jan., 1824.
of procedure. One suspects that Forbes welcomed an opportunity to castigate publicly the high-handed naval officers and to condemn a system he held in abhorrence.\(^1\) If anything, Forbes's caustic strictures added fresh fuel to the fires of growing discontent, a fact Carson and Morris, realised full well. The occasion had at last arisen for joint action, and at a public meeting convened at St. John's and presided over by Morris, it was decided to bring the whole subject before the British parliament.\(^2\) The first popular movement towards securing a reform in the legal fabric of government had commenced.

The petition was presented early in 1821. It was well drawn up and in cold, clear-cut language conveyed unmistakably the disabilities under which the colony suffered. In particular it brought into question the system of surrogacy and instanced several wrong and unlawful decisions from those courts. In demanding redress, the petitioners reminded parliament that although they possessed no legislature of their own, constitutional government of some form or other had been conceded to less important colonies. Surely Newfoundland deserved a similar boon from a generous mother country.\(^3\)

The governor, Sir Charles Hamilton, an unbending Tory, was far from sympathetic towards the complaints and aspirations of the petitioners. In a despatch to Bathurst, he stated bluntly that he neither approved of the statements nor coincided with the conclusions.\(^4\) Concerning the main point at issue, the surrogate system, he warmly supported it, not merely because the naval officers gave their judgments with the utmost impartiality, but also because the majority of cases which came before them were of a maritime nature, well within their capacity to decide. In spite of Hamilton's efforts to gloss over the serious charges levied against the surrogates and to defend their courts, there is no question that the opinion of Forbes, the chief justice, carried greater weight with the colonial secretary. He condemned them, not on humanitarian, but on legal grounds. For although the maritime courts, he affirmed,

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\(^1\) C.O. 194/64, 55. Full report of proceedings against Landergan and Butler in supreme and surrogate courts.
\(^2\) C.O. 194/64. Report, Public Meeting, St. John's, 14 Nov., 1820.
\(^3\) Ibid. Dawe/Bathurst, 19 Mar., 1821.
\(^4\) Ibid., 68. Hamilton/Bathurst, 3 Feb., 1821, and ibid., Enclosure, Hamilton's Comments on the Petition.
took cognizance of the greatest number of actions involving principles of primary importance, their decisions varied in character and consequently gave rise to extraordinary diversifications in legal interpretation throughout the island.\(^1\)

The petition received little support from the colonial under-secretary, Goulburn, who declined to interfere in the matter.\(^2\) Orders, however, were issued to the governor that the use of corporal punishment by the surrogates was in future to be strictly forbidden,\(^3\) but beyond this the colonial office was prepared to take no action. The policy of idle drift still proved most acceptable. Fortunately for the hopes of the petitioners, the matter did not rest there. In parliament the growing band of humanitarians comprised a talented group to whom colonial problems of social injustice and tyranny could readily be referred, and issues which the colonial office evaded could not be ignored when raised in public debate. Parliamentary support was therefore readily secured, and in the session of 1821 the system of Newfoundland government was discussed for the first time for thirty years. In many respects the time was most opportune. Radicals and liberals alike were stressing the fact that constitutional development in the British colonies was unnecessarily slow.\(^4\) Moreover, humanitarian sympathies had been aroused through outrageous proceedings in New South Wales, where the lash had also been a feature of government and where a similar colonial autocracy—a governor freed even from an advisory council—had been roundly condemned.\(^5\) Under these circumstances, the petitioners were justified in entertaining high hopes that all their ills would at last be remedied. The movement, however, was premature, for although Sir James Mackintosh in a very clear and able speech informed the Commons of the evils of surrogacy in the island and stressed the need for a local legislature, his appeal failed.\(^6\) Yet one useful purpose had been served. The future status of Newfoundland had at last aroused British interest.

The question of an island legislature was not entirely new.

\(^{1}\) Ibid. 72. Enclos., Report, Surrogate Courts, Francis Forbes, 8 Aug., 1821.
\(^{2}\) C.O. 194/68. Dawe/Bathurst, 19 April, 1824.
\(^{4}\) Ibid., p. 493. Sir James Mackintosh.
\(^{5}\) Ibid., p. 473.
In 1791, John Reeves, in his first report upon Newfoundland, had seen the need for some legislative power there to administer justice and to maintain some form of internal government. Reeves realised that considerations of local affairs, often of a trivial character, were beneath the dignity of the British parliament and to avoid this he proposed that the governor should be authorised to summon a council consisting of at least twenty representatives of the merchants, boatkeepers, and the judiciary, with full power to frame bye-laws and other regulations needed for the internal government of the colony. To meet the incidental administrative costs and to provide for the upkeep of an efficient judiciary, he suggested a tax upon rum which, even at the low rate of one shilling a gallon, would realise at least twenty thousand pounds annually. But as it was feared that Reeves's far-seeing proposals would foster colonisation and run counter to the national policy of the day, his carefully drawn-up schemes were completely ignored.

For a complete decade the matter remained in abeyance. But in 1802 when contemplating the wretched conditions under which the inhabitants existed, Gambier was forced to the conclusion that the absence of a power for framing laws for the internal regulation of island affairs was a serious defect in the mode of government. Accordingly he proposed "the establishment of a legislative power in Newfoundland, similar to that which has been found necessary to the prosperity and good government of other parts of His Majesty's foreign dominions." Once again no action was taken for Lord Liverpool, to whom the report was submitted, considered that the plan was inexpedient. Sir Erasmus Gower, Gambier's successor, and a man possessing sound judgment, was at first inclined to support his predecessor. At the end of his term of office, however, his opinions underwent a drastic change. Alarmed at the rapid decline in the transient fishery, he abandoned the idea of a legislature and believed that government by proclamation—if such, indeed, could be given legal recognition—was all that was necessary. He did not even favour the formation of a council but rather made it clear that no alteration in the ancient order

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2 B.M. Add. MSS. 38,228, f. 192. Reeves/Liverpool, 1792.
should be considered. The plan was therefore quietly forgotten. A succession of highly conservative naval governors saw any further suggestions for administrative reform completely ignored, although at the same time the necessity for creating some form of local authority to frame bye-laws was fully realised and indeed approved of as answering the purpose of a local legislature unaccompanied by any of its evil consequences. But what one governor approved another condemned, and as the years passed it became apparent that no reforming proposals would emanate from the governors' despatches. Thus the demands for self-government came from another source. As early as 1832, Carson had voiced the plea for some form of constitutional government and year by year it was reiterated with added emphasis.

By the early 'twenties it was clear that the British government was at last prepared to end the island's political stagnation, though to what extent was problematical. For although Lord Bathurst was aware that some alteration in the system of government was necessary, he was not at all convinced of the desirability of a legislative assembly there. With good reason he doubted the ability of the colony to meet the cost of an elected assembly. Naturally enough, the reactionary Hamilton allied himself completely with the views of the colonial secretary and in the following year was content merely to revive Duckworth's suggestion for some form of local authority. Bathurst could do little more than endorse such cautious plans, for the weight of reputable opinion in Newfoundland was all against further concessions, and although Francis Forbes, whose opinions were very well received by the colonial office, was markedly sympathetic towards the inhabitants, he doubted the wisdom of granting self-government. For one thing the complete absence of roads made winter communication by land impracticable, and as sea travel then was also out of the question, it would be impossible for an assembly to meet at what would otherwise have been the most convenient season. Yet if it assembled during the summer, when the whole business of the island was closely interwoven with the fishery, it appeared highly improb-

able that members would neglect their private concerns to
attend to the affairs of the colony. Nor did Forbes believe that
apart from St. John’s, where Carson’s and Morris’s influence
had been most felt, a popular demand for such an innovation
was evident. It was clear that what the isolated fishing com-
unities required was not a general assembly but rather
something of a parochial character to attend to matters of
local interest.¹

When the Newfoundland-Laws-Bill was introduced into
parliament in March, 1823, it was obvious that Forbes’s report
had determined the policy of the government. Its aims were
threefold, to secure an improvement in the mode of adminis-
tering justice, to revise the obsolete fishing laws, and to
institute a local body for the framing of bye-laws.² In view of
the peculiar circumstances of the colony and its economic
difficulties, it was believed that, instead of a legislative assembly,
a committee elected by the resident inhabitants and vested
with a limited authority to enact local regulations, would prove
more satisfactory.³ Compared with the demands of Carson and
Morris, the concessions embodied in the bill appeared meagre
and insignificant.

Such cautious and trifling changes which the bill foreshadowed
soon produced a strong outcry at St. John’s, where the com-
mittee had fondly hoped for better things. Although aware of
Bathurst’s reluctance to grant a legislature, the members of the
Committee did not lose heart, but fired anew by the zeal of their
party leaders, presented their plea with added insistence. As
they reminded the colonial secretary, constitutional govern-
ment had been bestowed upon the Canadas, Nova Scotia,
Prince Edward Island, and Bermuda, but Newfoundland, the
oldest possession in America, was deprived of such a boon. To
avoid anything which might savour of compromise or result in
the establishment of a council, the committee further expressed
the opinion that any unconstitutional government would be
most obnoxious, to which even the present chaos would be
preferable.⁴ An appeal was also made to the reforming party

⁴ C.O. 194/65. Committee, St. John’s/Bathurst, 6 Dec., 1822.
in parliament and, to the delight of the committee, Joseph Hume was prevailed upon to champion their cause.

By this time Hume had established himself as an authority on finance and as an indefatigable opponent of every kind of abuse and extravagance. It was easy to ridicule his interminable speeches and, as he resolved all questions of a political nature into a final analysis of shillings and pence, to accuse him of being better suited to teach hedge-school arithmetic than to participate in politics. But few of his contemporaries possessed his knowledge of financial affairs. As regards the government of Newfoundland, he found it a subject after his own heart. For some time serious doubts had arisen concerning the general expenditure of local finances, and to clarify the whole position Hume moved for a full investigation into the island revenues, a step which revealed a highly unsatisfactory system of auditing. But during this session of 1823, Hume's main work was to criticise trenchantly the government's neglect of the colony. He attacked the surrogate courts and the unhappy and absurd system of maritime administration; he instanced glaring abuses, and in characteristic fashion drew parliament's attention to the heavy expenses incurred by maintaining in Newfoundland waters a large naval force simply for judicial requirements. Like Sir James Mackintosh he made a strong appeal for self-government and, although his well-constructed if somewhat ponderous speech failed to secure the support of the Commons, there is little doubt it forced the government to reconsider the question in a more generous spirit.

No one could possibly accuse the colonial office of hasty or ill-considered action in the matter. The bill was withdrawn and submitted for reconsideration to those who had furnished earlier reports. The main tug-of-war occurred between the governor and his chief justice. Hamilton, aware that the overthrow of surrogacy would weaken his powers, was determined to retain the system; Forbes was no less determined to destroy

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1 The Times, 7 Nov, 1832.
2 See Accounts and Papers relating to Nfld. (1824), 71, XVI, 425.
3 C.O. 194/68. Dawe/Bathurst, 19 April, 1824; and Stewart/Horton, 16 June, 1824.
4 C.O. 194/68. Cochran/Wilmot Horton, 6 Sept., 1824. The cost of the naval force in Nfld. was £20,000 p.a., besides occasional losses of ships.
it. To support his contentions, Hamilton forwarded to Bathurst the opinions of his wellnigh octogenarian sheriff, John Bland, whose ultra-conservative views well-befitted an official of an archaic administration. Ripe in years if not in wisdom, this ancient prop of government somewhat uncharitably believed that the popular demand for an institution whose real character would be a "burlesque upon legislation" sprang from men who desired to open the road to their own private advancement. For Carson and others of his kind he professed little love, and regretted that the colonial secretary had been too readily seduced "by half a dozen contemptible adventurers" into the notion that some drastic change in the ancient system was essential. And so, in spite of the assertions of local political agitators, "the bane of most countries and beyond all question, the pest of this"; the sheriff was no less anxious to see all ideas of local government similarly ignored, for, as he assured the governor, with a trifling amendment to the supreme court and an extension of judicial authority in the outports, the interests of the fishery required no additional safeguard. Like many others, he failed to realise that Newfoundland had at last become a colony and was no longer a mere fishing station. That even by 1824 a governor should submit such a hopelessly biased report to support his own contentions seems almost incredible; what is more surprising, he apparently bestowed on it his blessing.

By 1824 it was evident even to the Committee at St. John's that a limit had been reached to the concessions the colonial secretary was prepared to grant. No useful purpose could therefore be served by prolonging an investigation which merely revealed the irreconcilable nature of the reports submitted by the governor and his coterie on the one hand and by the advocates of colonial self-government on the other. Faced with so much conflicting evidence, Lord Bathurst wisely adopted an essentially moderate course, holding firmly to the opinion that the colony was by no means prepared for self-government, a
point at least where the governor and his chief justice met upon common ground. It was also apparent that, if the island judiciary was to be reformed at all, the maritime itinerant judges would have to go. Apart altogether from considerations concerning the abuses of the surrogate courts, their fostering of litigation, and their ill-qualified judges, Bathurst was fully aware of more serious objections which rendered their abolition imperative. For one thing, suitors at these maritime tribunals, conscious of the doubtful legality of the naval officers' rulings, seldom accepted their decisions with satisfaction. Consequently whenever judgment was given above forty pounds—the statutory sum for appeal—the disgruntled petitioners invariably resorted to the supreme court which soon became over-burdened with business of a highly controversial character. Moreover, as Hume had repeatedly pointed out, the cost of maintaining the naval surrogates was out of all proportion to the peace-time requirements of the colony.

Thus the changes which were embodied in the legislation of 1824 were such as made the session, constitutionally, the most important in Newfoundland's history. For while it witnessed the transition from the ancient system of government based on custom and tradition to an embryonic form of constitutional government, it also sanctioned the abandonment of that unique judicature whose obscure origins were veiled by the mists of antiquity. Furthermore, to meet the new requirements of the colony and to provide it with a judicature modelled on the jurisprudence of England as far as was applicable to the peculiar circumstances of island settlement, new methods, necessarily experimental, were introduced. As a substitute for the surrogate system, circuit courts were instituted over which three judges were to preside. For it had long been felt that the duties which devolved upon the chief justice of Newfoundland were too onerous and of too responsible a nature to be vested in a single person. Thus the new legislation provided for the appointment of a chief justice and two assistant judges who were to hold not merely a supreme court at St. John's but also

1 The complete revision of the laws of Newfoundland and its recognition as a colony, were effected by three Acts passed in June, 1824: (a) Judicature Act, 5 Geo. IV, cap. 67; (b) Fisheries Act, 5 Geo. IV, cap. 51; and (c) Marriage Act, 5 Geo. IV, cap. 68.
separate circuit courts in the more distant settlements. By such methods the government hoped that the problem of the administration of justice in the outports—always a weak point in the island judiciary—would be satisfactorily solved. As the circuit courts would preserve the itinerant character of outport justice and as they would still afford suitors the advantages of the mobile surrogate system, the fact that they were to be presided over by fully qualified lawyers appeared of inestimable advantage to the isolated inhabitants. In view of this new arrangement and possibly also because of the many complaints regarding the incompetence of the local magistracy, the limited criminal jurisdiction which had hitherto been exercised by the courts of session, under commissions issued by the governor, at last ceased. Their powers therefore became strictly circumscribed and were confined to settlements of debts not exceeding forty shillings and similar suits of little consequence. In one other respect the Judicature Act introduced a much-needed reform concerning the local government of St. John's which by the 'twenties had grown to a not inconsiderable town of twelve thousand inhabitants. It seemed amazing that so important a commercial centre should have had not the slightest governing body possessing the power of making bye-laws for its better regulation, though this was but one of the many island anomalies which the new legislation endeavoured to remove. Hence the act provided for the establishment of a corporation, by charter, vested with authority to impose and levy rates and assessments upon the householders and inhabitants as might be deemed necessary.

In a wider sphere the efforts of the government to remove long-standing and serious abuses in the island life were apparent. For many years social reformers in Newfoundland had noted with concern a prevailing laxity regarding marriage. By the nineteenth century the rapid increase of an ignorant and scattered population, the isolated settlements, and the lack of clergymen, had aggravated those social excesses and weaknesses which had always been an unhappy feature of Newfoundland life. In 1797, alarmed at the widespread indifference towards

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1 Stat. 5 Geo. IV, cap. 67, sects. 2, 7 and 8.
2 Ibid., sect. 22.
3 Ibid., sect. 35.
the observance of marriage, Governor Waldegrave, a warm supporter of the Church of England, issued a proclamation declaring null and void all marriages not solemnised by the proper authorities. As, however, but five clergymen of the Established Church were stationed in the island at that time and as many of the out-harbours, often inhabited only by Irish Catholics, did not see a clergyman from one year’s end to another, it is hard to understand from what motives the governor acted.

In general, besides the Church of England clergy, there were Catholic priests, magistrates, and Dissenting laymen who all claimed the right to perform the marriage ceremony. To add to the confusion concerning the whole question, the law officers of the crown were unable to reach any satisfactory decision regarding the validity of marriages celebrated in an irregular manner. Well aware of the undesirable nature of affairs, Bathurst, an ardent churchman, was determined to prevent anyone other than a priest in Holy orders from celebrating marriages in Newfoundland. Accordingly in 1817 it was enacted that all marriages there should be celebrated by persons in Holy orders save in cases of peculiar and extreme difficulty. Any other union would be declared null and void.

Bathurst’s well-intentioned efforts to remedy matters failed lamentably. If anything, they added to the general confusion, for the act was full of ambiguities which arose mainly from the vague and undefined nature of its phraseology. Even if the term “Holy orders” was meant to embrace not only the Church of England clergymen but also ministers of the Church of Scotland, Roman Catholic priests, and Methodist missionaries, their numbers were so sparse as to restrict their activities to a few favoured communities, and as the act neither defined what precisely would constitute a case of peculiar or extreme difficulty, nor specified the authority on whom such decisions were to rest, it speedily became a dead-letter and the irregularities proceeded as before.

Thus in 1824 the government again sought to evolve order from this marital chaos. The earlier act was repealed and
therefore all past marriages were left on precisely the same footing as they would have stood had parliament not interfered in 1817. But although it was still a general principle that all possible marriages should be celebrated by persons in orderr provision was also made for the secretary of state or the governor to grant licences to teachers or dissenting preachers endowing them with similar powers. Finally, as proof that the British government at last recognised the existence of an ordered society in Newfoundland, an office for the registration of marriages was established. The new measure hardly achieved the success anticipated. Many abuses still lingered on, for though the provisions of the act were drafted with greater care than were those of 1817, the ignorance and degradation of the people, their deep-rooted customs, and their self-contained communities perpetuated serious social evils the law appeared impotent to check.

With the repeal of the obsolete fishing laws embodied in the Acts of King William and Palliser, the last vestiges of the age-old policy were swept away. In spite of carefully devised plans of legislative enactments and gubernatorial edicts, the colony had triumphed, and an island of some fifty thousand inhabitants, which had survived some of the most bitter and selfish attacks in colonial history, experienced for the first time a real sense of legal security. To foster the natural development of settlement and to afford every facility for cultivation, the governor was authorised to make grants of all waste lands still claimed by the crown. And thus, although the acts did not grant all that was desired, the recognition of colonial status which they conferred upon Newfoundland encouraged the hope that the privileges of constitutional government which so many other colonies enjoyed would soon be similarly granted to an island where Britain had carried out her greatest colonial experiment in retarded colonisation.

1 Stat. 5 Geo. IV, cap. 68, sect. 1.
2 Ibid., sect. 2.
3 Ibid., sects. 3 and 4.
4 Ibid., sects. 6, 7 and 8.
5 S.P.G., Archdeacon Coster/Secretary, 22 Dec., 1826.
6 Stat. 5 Geo. IV, cap. 51.
7 Ibid., sects. 14 and 15.
CHAPTER VII

THE ESTABLISHMENT OF REPRESENTATIVE GOVERNMENT

ALTHOUGH the legislation of 1824 at last raised Newfoundland to the status of a colony, the new form of government was not instituted until two years later. The delay was unavoidable for although Lord Bathurst wisely believed that the establishment of an island legislature would be most inadvisable, he was at the same time uncertain as to what type of government would best suit the island's requirements. At this time, however, the colonial office had been concerned about the new constitution for New South Wales, which ultimately took the form of a council comprising the governor and the five principal officers of the crown. Consequently it is not surprising that the mode of government adopted for Newfoundland followed much the same plan, or that the commission to the new governor, Sir Thomas Cochrane, authorised him to establish a similar council whose members were nominated by the crown. As this council was strictly advisory in its functions, for it was to be summoned by the governor to discuss only questions proposed by him, and as it was entirely official, the executive powers of the governor differed little from those under the old order. Thus in spite of the enactments of 1824 which swept away the last vestiges of maritime government from Newfoundland, the old tradition of a dictatorial and autocratic administration lived on.

To those who had been leading the island reforming party, the appointment of Sir Thomas Cochrane as a successor to Sir Charles Hamilton brought at least some slight measure of satisfaction. The old governor had held office for six years, the

last of which had been marked by rancorous political strife. By temperament, training, and outlook he was ill-suited to fulfil the role of mediator, maintaining rather an unbending conservatism which scorned any efforts to placate—by conciliatory overtures—those agitating for local government. But in fairness to Hamilton it must be confessed that, in interpreting his instructions according to the strict letter of the law, there was little opportunity for his revealing powers of initiative. No wonder that, seeking for self-justification at the close of his unhappy term of office, he reminded Lord Bathurst that the weakness of the island administration did not spring from the actions of past governors. "If the system required alteration", he wrote, "it was no fault of mine. I was bound to maintain it as it existed, and follow in those steps of my predecessors which had been sanctioned by your lordship." 1

Cautious as were the innovations which the acts introduced, in several respects significant changes had taken place. In the past, it had been customary for the naval governor of Newfoundland to rank as one of the foremost seamen of his day, a fact easily understood when the efficient defence of the island and its fisheries was primarily of national and strategic importance. At the close of the Napoleonic Wars, the reduction of the naval force in Newfoundland waters and the establishment of a resident government modified the old conception of affairs. Thus Hamilton's successor, Sir Thomas Cochrane, was a young man of thirty-six holding merely the naval rank of captain, which he had secured in 1806 at the surprising age of seventeen on the unblushing patronage of his father, Sir Alexander Cochrane, who had commanded the squadron. 8 The young governor had seen service in West Indian and North American waters, serving on the latter station until 1824, the year of his new appointment. Although Cochrane does not appear to have distinguished himself in any exceptional way, he at least possessed some superficial knowledge of his government which was more than many of his eminent predecessors ever had. Beyond that, he appeared singularly ill-equipped for the task of guiding a struggling and despondent colony through years of economic depression. For if his youth promised a more

1 C.O. 104/67. Hamilton/Bathurst, 23 April, 1824.
conciliatory and possibly a more accommodating government, the rigid and disciplined outlook which years of service afloat had woven into the very fibre of his being, allied him in training and character with those fiery martinet who had preceded him. Moreover, while his politics were best expressed by those "Tory" principles which the average naval officer of the day accepted without question, he had had not the slightest experience of civil government, save what the quarter-deck could give. To all intents and purposes, colony or no colony, it appeared as if Newfoundland were still to be governed as a fief of the Admiralty.

Towards his new government Cochrane displayed an unbounded enthusiasm and entered upon his duties with preconceived notions of the part he was destined to play in guiding the infant colony along the path of constitutional development. Writing to Wilmot Horton shortly before leaving London, Cochrane made it clear that "pomp and circumstance" were to become prominent attributes of his administration. "For I am quite persuaded from what I have heard of the people", he asserted with youthful assurance, "that a governor ought to go among them with all the attributes of consequence and authority belonging to the situation to ensure him that respect they are not over anxious to observe to those placed over them."

Love of show, an artless pageantry, and a display of official dignity became Cochrane's guiding principles. Although no island militia existed, his aides-de-camp were dubbed Colonels of Militia. The royal liveries which made garish the days of state reception, together with a lavish and even reckless expenditure, speedily created an ephemeral popularity which the gathering storm of political controversy was soon to dispel. Even Morris succumbed to the governor's blandishments and burst somewhat imprudently into panegyrics concerning the glories of the new régime. Alas, for fleeting popularity! The same mob which watched with interest Cochrane's elaborate investiture of the tinsel and trappings of office was destined

1 C.O. 194/70. Cochrane/Horton, 29 July, 1825.
2 Sketch of State of Affairs in Nfld, Captain Prescott, 1841, p. 5. (Pamphlet, C.O. Library.)
3 Arguments to prove ... the policy of granting to Nfld. a constit. govt., P. Morris, 1828, p. 24.
some nine years later to besmirch them with all the filth and refuse the wharves of St. John’s could furnish.

In order that his dazzling receptions might be held in the most imposing surroundings, Cochrane embarked upon the building of an elaborate and pretentious government house which ultimately cost a horrified Treasury well nigh five times the original estimate. His extravagance was not limited to attempts to glorify his own office or person. Regardless of expense and with a carefree abandon, he appointed highly paid officials to trifling positions, planned grandiose schemes for the development of public works, and advocated a widespread building programme for St. John’s. But Cochrane’s profuse expenditure of public money was not permitted to proceed unchecked. Still smarting from his first costly experiment, the Treasury flatly refused to sanction further public work and in order to curb the governor’s impetuosity, sharply challenged the immoderate expenses of his yacht. To add to Cochrane’s chagrin, Hume’s advocacy of economy in colonial affairs, combined with Huskisson’s financial reforms and the remonstrances of the Treasury were at last bearing fruit, and the governor was bluntly informed of a drastic reduction in his salary. After protesting bitterly at this unexpected rebuff, Cochrane, loath to curtail his expenditure, proferred the suggestion that the deficiency in his salary might possibly be made good from the meagre local funds. His request was emphatically refused. Such, then, was the character of the man who became the first civil governor of Newfoundland at a time when the natural difficulties of settlement there had been aggravated a thousand fold by years of distress and neglect.

As regards the conditions facing the inhabitants during these years, little if any improvement had taken place in the economic situation and the fisheries consequently failed to provide a

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1 C.O. 194/77. Dawson/Hay, 15 Mar., 1828; also Parl. Debates, 3rd series, vol. 5, p. 283, 25 July, 1831. T. Spring Rice informed the Commons that the estimates were framed to delude them. The cost, which was £38,175, had been paid for by unauthorised bills.

2 C.O. 194/85. Tucker/Stanley, 17 July, 1833. One Clerk to the Council received approximately £50 a sitting, so seldom did it meet.


4 Ibid., 300. Stanley/Cochrane, 26 Dec., 1827. His salary was reduced from £4,200 to £3,000.

livelihood for many. Poverty and disease existed side by side, producing an appalling social degradation towards the alleviation of which practically nothing was done. In the autumn of 1825 so bad was the threat of famine that when Cochrane arrived at the seat of government he was assailed by clamorous representations concerning the prevailing distress. "Perhaps no governor ever assumed his government under more discouraging circumstances or where more seemed to be expected of him by those within his jurisdiction," he informed Bathurst. 1 Certainly conditions could hardly have been worse. In some of the isolated though thickly populated outports where a succession of hitherto good seasons had attracted many settlers, an unexpected failure both of harvest and fishery produced a state of famine. To add to the widespread misery, many large mercantile firms closed to escape insolvency and the wretched fishermen were deprived summarily of their usual sources of supply. 2 In St. John's, as in earlier years, hundreds of destitute working people looked to the government as their sole support. Furthermore, the steady flow of Irish immigration which the authorities seemed powerless to check, aggravated a pitiful situation made more alarming by frequent epidemics of typhus which these unfortunates so often introduced. 3 As conditions became worse, the growing lawlessness and insubordination in the outports where authority was weak, frequently necessitated the presence of a naval or military detachment there for the long and terrible months of winter. 4 Yet through all these difficult and trying years, the demand for an island legislature was presented with added insistence.

In this atmosphere of hopelessness and utter despair, Cochrane's rosy dreams were speedily dissipated. To his credit, however, he flung himself whole-heartedly into the task of mitigating to some extent the acute distress and in formulating plans for a systematic scheme of public relief. Fully aware of the extent to which the improvident inhabitants had come to rely upon government assistance, he saw that the pernicious system of granting aid without exacting any return would have

1 C.O. 194/70. Cochrane/Bathurst, 7 Dec., 1825.
4 C.O. 194/74. Cochrane/Bathurst, 30 Jan., 1827.
to cease. To achieve that end he looked somewhat optimistically to the development of agriculture as the obvious mode of securing adequate winter supplies for the island's floating population. That agriculture could never become the principal pursuit of the people he fully understood, but he did believe that, with proper guidance, it could be developed sufficiently to remove the threat of famine. By the terms of his commission Cochrane had been empowered to make small grants of land at a nominal quit rent to deserving and well-intentioned settlers, and for the first time in the island's history the settlement of the crown lands had become a definite national policy. Unfortunately in spite of these innovations the position concerning the ownership of land was still uncertain, for owing to the many years of privation hundreds of fishermen had been forced to cultivate the soil in order to eke out a miserable existence. As their holdings were unauthorised, many settlers who received legal grants from the government found themselves in open conflict with those who on no stronger claim than occupancy maintained their right to the property in question. Thus disputes of a highly involved and bitter nature were by no means uncommon and provided an additional obstacle to the furtherance of agriculture which, it must be admitted, was practised by many in a half-hearted and casual manner. The blame, however, did not rest entirely on the inhabitants, for the difficulties which had to be overcome before the cultivation of much of the newly-granted land proved successful were almost insuperable. The barren soil, the shortness of the season, the prevalence of early and late frosts, and the concentration of the inhabitants upon the fisheries, together with the bitter fact that the finest land lay within the French limits where settlement was forbidden, produced a chain of discouraging circumstances which depressed the most optimistic. Even Cochrane's sanguine hopes were soon dissipated and he was reluctantly compelled to admit that at its best agriculture could never become anything but an auxiliary to the fisheries.

1 C.O. 194/70, 5. Cochrane/Bathurst, 7 Dec., 1825.
4 C.O. 194/73, 3. Cochrane/Bathurst, 13 Jan., 1827; and also Tucker/Goderich, 13 Oct., 1827.
5 S.P.G., Rev. John Chapman/Secretary, 1 Dec., 1830.
6 C.O. 194/81. Cochrane/Goderich, 28 April, 1831.
In other respects the governor's efforts to develop the colony met with a greater measure of success. In particular the disgraceful state of the island roads, for the most part mere bridle-paths, engrossed his attention. It seems scarcely credible, though it testifies to the rigorous and repressive nature of a century of maritime government, that in 1826 the only properly constructed road in all the island was a section half a mile long, made purely for military purposes. Instead of following the practice of his predecessors in shipping from St. John's the most destitute and thriftless inhabitants, Cochrane employed them in road making, a measure productive of much good. Nor did he view with equanimity the atrocious conditions existing in the town which, bad as they had been in earlier years, had reached a state which almost beggared description. In 1824 Sir Charles Hamilton could write of St. John's as "uniting many of the disgusting scenes of Wapping and Billingsgate, with the additional filth which numberless hogs and dogs create", while Cochrane believed it was impossible to paint in proper colours the lawless and disgraceful state of its society. Yet until some attempt to initiate a scheme of self-government was made by its twelve thousand inhabitants, little could be done to remedy the absurd and intolerable situation.

But the problem of determining what mode of local government was best adapted to the town's peculiar needs was not at all simple and straightforward. Few of its citizens possessed either training or aptitude for positions of trust and responsibility. In 1824 Hamilton had warned the authorities that the granting of a Charter of Incorporation to the town would have the effect of investing a few troublesome persons with dangerous powers, and perhaps with that in mind Bathurst took no further action beyond requesting the new governor to report upon the question. With commendable zeal Cochrane urged the inhabitants to adopt some suitable system, but although several meetings took place, no unanimity was reached. In fact,
before the discussions had far advanced, dissensions created by party factions and political cabals had ruined all hopes of a successful outcome to the proceedings. The most sensible plan to Cochrane, and one which possessed the added merit of having considerable local support, provided for the formation of a town council with power to make bye-laws and to impose moderate assessments on all houses and lands within the town’s limits.1 But Bathurst was not prepared to act on that recommendation alone. In the following year Cochrane again reported adversely on the position. Apart from the ever-present difficulty of finding even in so large a community the type of citizen to whom civic responsibility could safely be entrusted, he feared that, in a population composed almost equally of Catholics and Protestants, the danger of local discussions arousing bitter sectarian strife was too evident to be lightly ignored. If, however, the British government was prepared to settle the question by further legislation, ignoring the inevitable storm of island protest, the vexatious problem would at long last be satisfactorily solved.2 Fortunately the colonial office refused to endorse a policy which hinted at coercive methods, for it was rightly felt that the institution of a town charter by legislation would be received by the majority of the inhabitants, not as an act of grace conferred upon them by a paternal government, but as an unconstitutional infringement of their rights. Consequently the local deadlock continued, with the result that St. John’s presented the singular spectacle of a thriving and populous community devoid of the legal machinery essential to its proper government.

Even in other directions the operation of the new acts had failed to produce the results anticipated, especially in judicial matters where the inadequacy of the new courts to meet the peculiar requirements of the colony had become increasingly apparent. Immediately upon his arrival at the seat of government, Cochrane, with characteristic energy, had co-operated with the judges in formulating plans for the establishment of the circuit courts which were to be held in three separate districts throughout the island settlements, to be known

1 Ibid.
2 C.G. 194/74. Cochrane/Bathurst. Private Despatch, 5 May, 1827.
respectively as the Central, Northern, and Southern Circuits. As some little time was taken up by the judges in preparing new rules and orders for these courts, it was not until early in January, 1826, that the Supreme Court was at length formally opened, an occasion which provided Cochrane with an opportunity for an imposing display of pageantry, in which drums, bands, guards of honour, and royal salutes all played their impressive parts.

It was decided to hold the supreme court at St. John’s in three sessions, at the close of each of which the judges would commence their district circuits. In drawing up their rules of procedure they realised that the circuit system, which departed so radically from the inexpensive and summary proceedings of the maritime surrogate courts, would perhaps create confusion and certainly irritation if the practices of similar courts in England were strictly followed. Moreover, it was felt that the absence of trained lawyers in the island courts would make the introduction of fresh rules of procedure a matter of peculiar difficulty. Not that the judges themselves were men of marked ability who had had long experience in courts of law. Forbes’s successor, Richard Tucker, had been a paymaster in North America before he was appointed as chief justice of Newfoundland. The qualifications and experience of the two assistant judges were not more impressive. Augustus Des Barres, though called to the bar of Nova Scotia, had never held a brief in his life, while Molloy, who had left England under a cloud, was soon dismissed for common swindling. Such then were the men who were entrusted with the administration of the law and the dignity of legal procedure in Newfoundland.

It is interesting to note Bathurst’s comments upon the rules of court which the judges submitted to the colonial office and which were certainly perused and reported upon by James Stephen, its legal adviser. By this time the exceptional conditions prevailing in the colony were fully known, for prior to the legislation of 1824 highly informative reports from various

1 C.O. 194/70. Proclamation, Sir Thos. Cochrane, 10 Dec., 1825.
sources had been collected by the department. Thus it was realised that, owing to the nautical character of the island life and its low social standards, the lack of trained legal practitioners and the old-established practice of settling all suits summarily without any form of legal process, there existed within the island a combination of circumstances most unfavourable to the introduction of a more systematic form of procedure. In concurring with the views of the judges Bathurst admitted that the inhabitants of Newfoundland lived under conditions without parallel in any other of the British colonial possessions. At the same time, he advised the judges to amend their rules and regulations whenever the changing state of society warranted it. To do this was no easy matter, for as the British government had in the past refused to legislate for the island's unwanted settlers, the inhabitants had been compelled to substitute local usages and customs for written laws. Of these usages, a few had been incorporated in the legislation of 1824; others had been sanctioned by judicial recognition; some had become obsolete. But by far the greater proportion were unsettled in the eyes of the law. In consequence the island jurisprudence remained ill-defined and variable and, as the proclamations of the governors had no longer any legal standing, it was impossible for the administration to remedy any deficiencies in the parliamentary statutes. This serious weakness in the common law frequently produced anomalous situations beyond the power of the authorities to remedy and afforded loopholes through which wrongdoers often evaded the just punishment of the courts. In practice, the maintenance of law and order in the community depended primarily on common co-operation and certainly not on the authority of the law which could generally be challenged effectively by capricious or argumentative inhabitants. So impotent was the law to enforce regulations for the public welfare that, in order to check domestic animals from wandering at large, the settlers of necessity were compelled to apply to the British government for parliamentary redress, and although it was thought beneath the dignity of parliament to legislate on so trivial a subject,

1 C.O. 193/177, 233. Bathurst/Cochrane, Rules of Court, 10 April, 1826.
3 C.O. 194/74. Cochrane/Bathurst, 7 Jan., 1827.
it was admitted that the remedy could be supplied from no other source.¹

As if to add to the complexities of the island judicature, the system possessed an additional peculiarity which was also an impediment to the efficient administration of justice. According to the Judicature Act of 1809, the guiding principle concerning the law in Newfoundland rested upon the fiat of the chief justice, who had authority to apply, as far as was applicable to the conditions and circumstances of the colony, the statute laws of England.² Hence it followed that, as the judges were called upon to determine not what the law actually was but rather what, in the condition of the colony, it ought to be, they combined with their judicial functions a kind of legislative power.³ Consequently the interpretation of the law varied with the views of successive chief justices. In an effort to end a hopeless system, Sir Thomas Cochrane, in January, 1827, advocated the selection from the British Statute Book of those laws most applicable to the colony, together with further enactments which would supply existing deficiencies in the island law, the whole to be sanctioned by parliament as a new code for Newfoundland.⁴ But as the acts of 1824 were to be revised within five years, it was felt that until the whole system again received the attention of parliament it were best to hold the matter in abeyance.

If the acts appeared inadequate from a theoretical aspect, in practice their weaknesses became strikingly apparent. After but two years of trial it was evident that the circuit courts were much less efficient and satisfactory than the surrogate courts they had superseded. Too often the judges' extensive itineraries were interrupted by unfavourable weather conditions, and as their fixed routine made no allowance for such contingencies, the prompt and regular appearance of the court in the outports was more often the exception than the rule. In addition, as the times allotted for the court sessions were necessarily short, they were entirely inadequate to deal with the crop of disputes which the closing season invariably produced.⁵ As if

¹ C.O. 105/18, 57. Goderich/Cochrane, 27 July, 1832.
² Stat. 49 Geo. III, cap. 27.
³ C.O. 105/18, 57, op. cit.
⁴ C.O. 194/74. Cochrane/Bathurst, 7 Jan., 1827.
to add a further burden to the already harassed circuit courts, the act had withdrawn from the sessions the limited criminal jurisdiction they had hitherto enjoyed. Consequently many trivial matters which in the past had received cognizance there, were relegated to the new courts for settlement and the authority of the sessions was strictly limited to suits of a civil nature. This alteration also proved unsatisfactory for it was obvious that that portion of magisterial jurisdiction which still remained with the justices of the peace in session was precisely of such a nature as to disqualify them from discharging their duties impartially. As the most suitable magistrates were still found only in the merchant class, the old abuses were never remedied and too frequently in cases of a civil nature the defendant was the judge. Naturally, the rulings of these courts were generally derided by a lawless community which profited little from the example of those who occupied positions of trust. To the newly appointed judges who well realised the weakness of the whole system of magistracy—a problem which had been commented on by various governors for nearly a century—it seemed that only the establishment of district courts and resident judges could provide an effective remedy. As, however, the judges were powerless to alter the law, the island judicature remained almost as confused and inadequate as it had been a century earlier.

Neither did the legislation of 1824 alleviate the social conditions which were a disgrace to any British colony nor, as regards the regulation of marriages, did it effect any tangible improvement. Although the governor was empowered to grant licences to school teachers and dissenting preachers for the celebration of marriages, so few of that class existed in Newfoundland, especially in many distant out-harbours, that those who desired marriage were often seriously inconvenienced. In 1826 when reporting on conditions within his circuit, Judge Des Barres recorded the celebration of a very few marriages, mainly owing

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1 Stat. 5 Geo. IV, cap. 67, sect. 22.
5 Stat. 5 Geo. IV, cap. 68, sects. 3 and 4.
to the absence of suitable inhabitants eligible for holding licences. At Fortune Bay, an out-harbour containing a population of five or six thousand, matters were so bad that scenes of social degradation and misery were common. Yet without any further legislation from the British parliament there was no constitutional way of counteracting so great an evil. The best that could be hoped for was an immediate revision of the colony's laws, and to this end the reforming party within the island again directed their efforts.

While it is undoubtedly true that few of the political committee at St. John's had really expected the government's full acceptance of their proposed measures for an administration, the meagre nature of the 1824 concessions occasioned much disappointment. Indeed, when it was realized that no legislature was to be bestowed upon the island, the committee, of which Morris and Carson were still the leading spirits, immediately formulated fresh plans for reviving the agitation and in January, 1825, it discussed publicly the new enactments. While there was general satisfaction at the repeal of the obsolete fishing laws which constituted a legal barrier to colonisation, the battle was but half won, for the committee was determined to press for full constitutional rights. The task, however, was not easy, for as Morris reminded the inhabitants, the effects of years of misrule could not be swept away in a day. Politically, Newfoundland was still as much in her infancy as when first discovered by Cabot and only under the guidance of a constitutional government could she hope to reach a prosperous maturity.

Naturally Morris's reforming zeal did not permit him to remain a silent witness to the unsatisfactory political situation which had developed within the island, and in an effort to stimulate public interest he turned again to pamphleteering. Ostensibly, his intention in publishing his second political pamphlet in 1827 was to refute certain allegations concerning the deplorable social conditions in the colony which had been voiced at the London meetings of the Society for the Propaga-
tion of the Gospel and the newly constituted Newfoundland School Society. This latter organisation, founded in 1823 by Samuel Codner and supported by many of the prominent men of the day, had for its aim the establishment of schools in Newfoundland which should serve the dual purpose of providing religious and general education. Although for over a century the Society for the Propagation of the Gospel had concerned itself with Newfoundland, few schools of any value existed and the many reports furnished by clergymen and teachers there presented an unforgettable picture of misery, want, and degradation. Fully aware that it was not in the interests of the reforming party in the colony to allow such derogatory statements of a public nature to pass by unchallenged, Morris in his pamphlet undertook to prove that the imputations cast upon the people of Newfoundland were utterly groundless and without the slightest foundation. That Morris was unaware of the grave social evils which existed in the colony seems almost incomprehensible. More than likely, as an astute politician, he deliberately blinded himself to the facts at issue. Consequently his pamphlet was composed mainly of irrelevant arguments of little value to the political discussions of the day. The misdeeds of the fishing admirals, the autocratic naval governors, the blundering surrogates, and the selfish and tyrannical western merchants, topics which had served well enough to provide controversial material in the days when the Act of King William remained upon the Statute Book, began at last to pall. But Morris apparently used them as a prelude to introduce a subject dear to his heart, and one which, to be candid, alone justified his literary effort. [His plea was for self-government.]

It is time to take us in Newfoundland out of leading strings", he reminded the colonial secretary. "Three hundred years is in all conscience a sufficient minority. We are now of sufficient age to take care of our private affairs." (Morris) realised that before matters could progress much

1 The Nfld. School Society subsequently became the Colonial and Continental Church Society.
2 Documents in the Archives of the S.P.G., the Meth. Miss. Soc. and the Colonial and Continental Church Society, as well as the despatches of governors and other officials refer repeatedly to the shocking social conditions which existed in the island communities.
4 Ibid., p. 53.
further, it was essential to frame a straight-forward declaration of the aims for which the island reformers were striving. In his last and best-written pamphlet which appeared in 1828, these objects were clearly stated, first, that a constitutional government for the colony was an absolute necessity and secondly, that the internal resources of the island, hitherto ignored, should be fully developed to support a growing population. In spite of his Irish wit and persuasiveness, his arguments were beginning to wear thin and were often irrelevant and biased. Once again he failed to make good his case and, wandering away from his original theme, could not resist one final tilt at the surrogates, the merchants of Poole, or his pet aversion, the naval governors whom he unmercifully castigated. With a sublime indifference to what had been taking place in St. John’s, he accused the government of failing to provide a local system of civic administration there. Yet his case for self-government was too well expressed to be lightly brushed aside, for as he plausibly expressed it, “if Newfoundland has not been well governed, it is not for want of remonstrances, representations and petitions from the inhabitants. We find various measures recommended. Do, sir, put an end to this quackery; like a good physician, infuse a little of the wholesome blood of the Constitution into the government of that neglected country; let it be no longer the theatre of experiment.”

Whatever their reception at Downing Street, these literary efforts of Morris renewed political discussions in the colony and provided material for further protest and agitation. In St. John’s the indefatigable Carson became the prime mover in framing a petition for self-government. At the same time, the committee which had done so much to champion the island’s cause in earlier years was revived and for the first time interest in the growing movement was shown in more remote districts. Probably the long-continued economic depression had fostered the belief that a local legislature was the one sure panacea for all the ills which beset the community and that until the future of the colony rested in its own hands, its resources would never

1 Arguments to prove the Policy and Necessity of granting to Nfld. a Constitutional Government, P. Morris, 1828, Introduction.
2 The pamphlet was addressed to the Colonial Secretary, Wm. Huskisson.
3 Ibid., p. 85.
be developed adequately. Morris, indeed, had suggested as much. 1

In January, 1829, as an outcome of the committee’s activities, a petition was presented to Sir George Murray, the colonial secretary. 2The demand was again made for a constitutional government “as much as circumstances will permit, in accordance with the principles of the British Constitution.” 3 For as the acts of 1824 were shortly to be reviewed, the committee believed that the time was opportune for pressing its demands. As, however, the memorial possessed but five hundred signatures, it is unlikely that the government paid much heed to its contents. Yet in spite of repeated disappointments, the committee, undoubtedly deriving encouragement from the growth of the reforming movement in the British parliament, persevered in its attempts to win further supporters to its cause. In an effort to press the colony’s claims with determination as well as to enlist liberal sympathies, the chairman of the committee visited England armed with petitions and addresses from various settlements throughout the colony. 4 At last the colonial office realised that the political agitation, no longer confined to St. John’s, had become a widespread movement embracing all classes of society. In view of this development, the colonial secretary felt that the best means of settling the question was to secure from the governor a further report upon the advisability of instituting some form of local self-government. 5

Sir Thomas Cochrane was well aware that growing hopes of a legislature were entertained throughout the colony. He knew too that his opinions on the subject would carry considerable weight with the colonial secretary. Consequently he was reluctant to furnish an adverse report, not only because it would retard the constitutional development of the colony, but also because he would jeopardise his own popularity as governor. 6 But when he considered the backward state of society, the paucity of intelligent and honourable men for positions of public trust, the scattered nature of settlement, and all those manifold

1 Morris, op. cit., p. 87.
2 C.O. 194/76, 3. Cochrane/Murray, 10 Jan., 1829. Enclosure, Memorial, 1 Jan., 1829.
3 C.O. 194/84. Brooking/Goderich, 10 Jan., 1832.
5 C.O. 194/81. Cochrane/Goderich, 14 April, 1832.
objections which had been so clearly enunciated by his predecessor a few years earlier, Cochrane found that in all honesty he could do nothing else than condemn the project. As far as they went his statements were fair and comprehensive. What he failed to recognise was that the demand for reform had to be satisfied in some constitutional way or other, and that a mere reiteration of negatives would appease no one.

On receipt of the report, Lord Goderich, who apparently concurred fully with its contents, requested the governor to suggest some plan for extending the existing form of government which was then an advisory council consisting of five nominees of the crown. It seems somewhat surprising that when the question of a Newfoundland legislature was fast becoming acute, the colonial secretary did not consider the advisability, later suggested by Lord Durham, of incorporating the colony in a larger and more experienced political community. Whether that step would have proved a success is open to serious doubt, for the unique character of the colony would have made such a union extremely difficult, besides leaving unsatisfied the desires of the colonists to assume the complete control of their own administration. For his part, Cochrane advocated the establishment of a local legislative council with powers to enact laws for the interior government and police of the island. As the existing council which had never been more than purely provisional was confined to five crown officials, he suggested an extension of its members to fourteen, one half of whom were to represent the government and the remainder the influential section of the business and professional community. In order that the administration might be placed upon a firmer foundation, he also urged the imposition of a duty on spirits. Like his predecessors, Cochrane failed to realise that a duty or tax imposed by a council upon the people without their consent was quite unconstitutional and would never be sanctioned by the home authorities. In general, although his view of the entire question was based on a careful analysis of well-compiled facts, he overlooked the strong democratic spirit which existed in his government. Reform, indeed, was in the air.

1 Earl Durham, Reports, op. cit., p. 143.
British parliament the Reform Bill had become the rallying ground for liberalism, and those whose sympathies lay with this movement were favourably inclined towards the island reformers. In short, Cochrane was out of touch with the spirit of his times.

Nor were the governor's objections to an island legislature the only ones which were brought to the notice of the colonial office. During these years of agitating and petitioning, the western trading interests, particularly those still centred in the town of Poole, had viewed with dissatisfaction the changing political situation within the colony. Although the days had gone when Newfoundland was considered "a plantation of the merchants of Poole and her people their slaves" and although the repeal of the fishing acts had emancipated the colony from the domination of the western fishermen, the prominent merchants of the west of England who still engaged in the trade regarded with apprehension the movement to self-government which might easily destroy the few vestiges of power they yet possessed. Though the fisheries had certainly become sedentary, the merchants and capitalists were almost entirely (transitory) regarding the colony more as an exclusive investment, yielding rich dividends, rather than as a place in which to settle and form homes. In other words, they identified themselves with no other interests except those relating to the colony's trade. In 1829 when the laws concerning the fisheries and the judicature were about to expire and it seemed probable that parliament would review the existing legislation, the merchants of Poole, alarmed at certain alterations in the acts which the St. John's Chamber of Commerce strongly advocated, framed an emphatic protest against its suggestions which had "a tendency to invalidate and indeed to destroy, that security which the existing laws in a degree afford the merchant."

To Cochrane's credit, he refused to associate himself with such protests for he well realised from what narrow and bigoted
minded motives they sprang. As he informed Sir George Murray, the colonial secretary, the Newfoundland trade had for centuries been in the hands of those who were inimical to any measure which might advance the welfare of the colony and, indeed, the only time at which the western merchants expressed any concern for its unhappy state was when their trade monopoly was imperilled. That Cochrane's charges against the trade were fully justified, the island's past history afforded every confirmation. If further proof were needed, the remonstrances of the Poole merchants in January, 1832, when they heard "with alarm and regret" that the British government intended to establish a local legislature, verified the governor's assertions. Although the merchants' arguments were clothed in a semblance of altruism, their concern for a backward colony which in their eyes was far too immature to manage its own affairs, had its roots in a determination to frustrate every effort to grant to the colony a government "that must unavoidably be highly prejudicial to their long-vested interests." From this purely selfish standpoint, the petitioners desired the government to reconsider the question and to adopt some other plan which, while providing for a limited measure of local government, would still leave the affairs of the colony for parliamentary consideration as had been the custom of past years. Even though the protests from Poole reinforced Cochrane's contentions that the time was not ripe for an island legislature, there was nothing in common between them and they sprang from entirely different motives. In spite of his Tory principles, the governor honestly believed that the colony was not capable of managing its own affairs while on the other hand the western merchants, apparently full of concern for the future of the island, considered the subject purely from selfish and narrow aspects of trade. It does not appear that the government paid much heed to the Poole remonstrances, for the trade had long lost the position it had held in the days of mercantilist monopolies. By the close of the Napoleonic Wars it was already dying, and these last feeble protests were its swan song.

1 C.O. 194/78, 19. Cochrane/Murray, 7 May, 1829.
2 C.O. 194/84. Memorial and Remonstrances of Poole, 30 Jan., 1832.
3 Ibid.
4 With his usual inaccuracy, Prowse believed that it was the influence of the western interests that retarded self-government. Prowse, op. cit., p. 428.
That the British government in the main realised the difficulties attendant upon the establishment of a legislature in Newfoundland and that Sir Thomas Cochrane's objections had received careful consideration is quite evident. The governor himself, at that time on leave in England, personally informed Lord Goderich that those colonists who were agitating for reform—men like Carson and Morris—were more or less self-seekers who hoped under a new form of government to assume positions of local consequence. Cochrane was far too conservative and too steeped in naval tradition to realise that the desire of free men to govern themselves was something which could never be answered by cold and well-reasoned arguments. He probably felt that, seeing he had used the full weight of his position to thwart the local reformers in his government, their triumph would lower the prestige of his office. Be that as it may, he won Goderich to his way of thinking and felt certain that beyond an extension of the council no further political concession would be bestowed upon the colony.¹

Fortunately for Newfoundland the whole question was left no longer to the decision of Downing Street but to the judgment of Westminster. Fortunately, too, for the petitioners, it was the era of the reform bills with Britain fast approaching a desperate political crisis. During the decade which had elapsed since parliament first considered the colony's administration,¹ many significant political changes had taken place. The humanitarian issue, brought into prominence by the abuses of the surrogate courts, had outlived its usefulness. But liberalism was the new cry and the affairs of the colony were swept into parliament on the rising tide of political reform; for although all thinking Englishmen could advance many powerful objections to a Newfoundland legislature, the difficulty lay rather in their finding valid arguments for withholding a boon which other colonies had secured almost without question.² In the Commons, Newfoundland interests were capably brought to the fore by the member for Worcester, George Robinson, who had acquired through a long period of residence and extensive trading activities in the island, a valuable fund of local know-

ledge and a sympathetic insight into its affairs. For the first time the question of the colony's future was discussed in parliament, not from humanitarian, economic, or party motives, but from a genuine desire to foster its welfare. Although Robinson's effort apparently received little support, the future was not devoid of hope for, in November, 1830, on the resignation of the Duke of Wellington, Earl Grey's ministry assumed office. (Liberal in outlook and pledged to a policy of parliamentary reform, it offered to those who pressed for the recognition of the colony's demands an additional opportunity for presenting their case to a sympathetic government.) With political acumen, Robinson therefore awaited a favourable occasion for renewing the attack. This at length occurred in July, 1831, when the charges of the Civil Establishment of Newfoundland—a sum of eleven thousand pounds—were before the House. In opposing the motion, Robinson emphatically declared that if Newfoundland were granted a local legislature, parliament would never again be requested to provide a further farthing, a bait which Hume and his followers eagerly swallowed.

By this time the agitation concerning the Reform Bill was at its height and the uncertainties of the political situation and the party struggles of 1831 completely overshadowed the efforts of the colony's sympathisers to secure the ardently desired boon. Once again Robinson astutely awaited a convenient moment for drawing the attention of parliament to the claims of the island. When the new parliament had assembled, on the very evening which saw the Reform Bill presented for its third reading, Robinson, conscious that he had a golden opportunity for winning liberal support, begged his fellow members to end the political stagnation of the colony by bestowing upon it a constitutional government. It was evident that the colonial office was averse to such a step. Strongly influenced by Cochrane's arguments and realising the inherent weaknesses in the island's social structure which made future action difficult and uncertain, Goderich hesitated to accede to the request.

3 Ibid., 13 Sept., 1831.
4 C.O. 324/90, 19. H. W. Hay/Cochrane, 6 July, 1831. "... I think the arguments which you have brought forward in your public despatches against
the more clamorous cry from those in Britain who demanded greater political freedom. This unity of aim created a common bond between the reformers of Newfoundland and Britain, strengthened, indeed, by the radical fervour of Hume whose interests in the welfare of the colony were in direct proportion to its cost upon the Imperial exchequer. "It is monstrous to govern this great colony from Downing Street," he cried indignantly. "Surely the British House of Commons which is about to give representation to the people and property of this country will not refuse it to the inhabitants of Newfoundland." Beyond pledging itself to extend to the colony as much freedom as was compatible with local circumstances, the government promised nothing, and with this guarded and obscure assurance preferred to let the question lapse during the remainder of the stormy session of 1831.

As if conscious that the coming session was to mark the triumph of Grey's ministry and the realisation of their long-cherished hopes, the inhabitants presented additional petitions to the new parliament from St. John's and the outports. Although these memorials contained no further arguments in favour of self-government, they revived the question in a parliament pledged to advance the popular cause of reform. And it was hardly in accordance with the new political theories of the day to withhold from an importunate colony those very principles which liberals so zealously championed. Consequently the passing of the Reform Bill was as much a victory for the inhabitants of Newfoundland as for those of Great Britain, and in both countries no hint of an impending disillusionment marred the general rejoicings. Thus in spite of the opposition of the colonial office towards the suggestion of a local legislature, the government was more or less compelled to give way. On the very day the Reform Bill received the royal assent, Lord Hawick introduced a bill for establishing by royal commission an island legislature. As Lord Goderich stated in terms which almost

2 Ibid., Lord Althrop, Chancellor of the Exchequer, 13 Sept., 1831.
4 7 June, 1832.
GOVERNMENT IN NEWFOUNDLAND, 1783-1832

embody the Whig philosophy of government, parliament simply extended to another of the colonies those principles of government which had elsewhere been brought to the test of repeated and successful experiment. In short, what had for long been fervidly desired though bitterly and harshly opposed, was ultimately secured without question or reservation.

The problem of a Newfoundland legislature did not end with the consent of parliament to the new measure. Of greater importance politically was the question of determining what form of constitution would best suit the colony’s peculiar needs. Apart altogether from the consideration that the establishment of a Newfoundland legislature was the first major undertaking of the Whig ministry in colonial affairs, viewed in the light of colonial government and policy, the main interest centres in the efforts of James Stephen to formulate a novel scheme of colonial self-government. As Stephen at that time had been counsel to the colonial office for some nineteen years, he possessed a unique knowledge of the existing types of colonial constitutions and of the problems and difficulties which constantly beset them. A keen and intelligent student of history, a clear-headed and cautious administrator, Stephen was aware of serious weaknesses in the colonial administration, and in many of his findings anticipated the criticisms of colonial reformers such as Durham. Certainly Stephen was no dogmatic conservative, concerned solely with the maintenance of things as he found them for, apart from his conscientious and painstaking efforts to secure a thorough grasp of any question at issue, his sympathetic attitude towards the backward colonies and his firm belief in the virtues of constitutional government as a panacea for colonial ills, marked him in the colonial field as one of the most enlightened officials of his day.

In his survey of Newfoundland affairs Stephen saw the weakness of granting to that inexperienced colony the stereotyped constitution in which the King was supposedly represented by the Governor, the House of Lords by the Council, and the

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1 C.O. 194/18, 57. Goderich/Cochrane, 27 July, 1832.
2 James Stephen became legal adviser to the Colonial Office in 1813. From 1834-6 he was Assistant Under-Secretary, and from 1836-47, Permanent Under-Secretary. His report, C.O. 194/63, 21, Enclos., 19 Dec., 1837, is perhaps the most important in the Newfoundland series. The full text is given in Appendix VII., pp. 207-10.
Representative Government Commons by the Assembly. On Stephen's analysis the resemblance was but superficial; in no real sense did the colonial legislatures exist as the counterpart of the British parliament, for although in certain aspects they were analogous in structure to the British constitution, there remained vital differences between them. In particular the colonial assembly, as the elected body, should have held pride of place but unfortunately the council, comprising nominees of the crown, generally overshadowed it. For this reason Stephen firmly believed that a nominated council which, indeed, possessed nothing in common with its so-called prototype, the House of Lords, was ill-suited to the needs of colonial life and that its members, by the autocratic exercise of their powers, too often aroused the enmity of the community. "As nominees of the Crown, the councillors are regarded with the jealousy which reasonably attaches to all who partake of the Royal Authority," was his considered judgment. "Bearing a local rank, and dignified with the appellation of 'honourable', they provoke plebeian or democratic hostility which is neither awed nor softened by any of those hereditary claims by which the nobility of England vindicate their elevation in society."¹ Nor was he convinced that, in practice, these councils justified the theory that they served as a check on the hasty action of the elected assembly. On the contrary Stephen accused them of constantly embarrassing the governor in the exercise of his duties, rendering him either listless when he ought to be active, or daring when he ought to be cautious."²

If Stephen thought little of the value of the colonial councils, he was certainly more sympathetic towards the assemblies which, in colonies where the population was homogeneous, were of inestimable benefit to their communities. Though it was true that at times their proceedings lapsed to a mere burlesque and that their authority was frequently exercised in an autocratic manner, he believed that they stimulated social and intellectual life in the colonies, besides creating a healthy interest in all questions of a public character. In short, Stephen credited them with exercising their legitimate powers in a manner for which they rarely obtained sufficient recognition.

¹ Ibid.
² Ibid.
Stephen's problem was to reconcile if possible those two conflicting elements in the colonial legislature. To achieve this, he suggested unifying in one legislative body the nominees of the crown and the elected representatives of the people, a system which had prevailed in Guiana before its conquest by Great Britain and which was known to possess in practice many of the advantages it promised in theory, by casting upon the governor an individual responsibility of adopting or rejecting the proposals of the combined assembly and council. Only by the adoption of such a scheme, which apparently the colonial secretary also viewed with satisfaction, did Stephen believe that a harmonious constitution could be established, (in which the nominated and elected members would "mutually enlighten, assist and check each other"), thereby leaving to the governor the unrestricted exercise of his own proper responsibilities.

That this was not a fleeting fancy on Stephen's part is clear. As early as 1826, when reporting to Wilmot Horton upon the advisability of instituting some form of local government for Newfoundland, Stephen had advocated, as an alternative to a legislative council which should be responsible for the internal government of the island, an assembly composed of members elected by the people, together with the nominees of the crown. Through the adoption of such a plan he was certain that "the feelings of the inhabitants might perhaps be conciliated, without incurring the many inconveniences with which a Legislative Assembly upon the old model is usually attended."a

In order to carry this scheme into effect, Stephen recommended authorising the governor by royal commission to submit to the elected assembly of Newfoundland when convened, the proposal of amalgamating council and assembly. To this step there existed one powerful objection. If the island assembly were prepared to adopt the plan, all would be well. If, however, it refused to sacrifice its individuality to the common good, nothing further could be done. Fully conscious of this disability, Stephen considered the possibility of introducing, through the exercise of the royal prerogative, a clause in the governor's commission which would authorise him to effect the union of the assembly and council. As no precedent existed to justify

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such action, he cautiously refrained from advising the colonial secretary to adopt that suggestion. There remained, therefore, but one alternative, that of securing the sanction of parliament. Unfortunately there were still difficulties to be faced. For one thing, Newfoundland affairs had already received more than their fair share of attention from the new parliament. Furthermore, the Whig ministry was obviously reluctant to bring forward a controversial measure which the opposition could easily interpret as a radical and highly undesirable alteration in a hitherto unquestioned mode of colonial government. In view of this, Stephen recommended leaving the union to be effected by a legislative act originating in the island assembly.

Lord Goderich, the colonial secretary, accepted the report in its entirety and incorporated its principal features in his general instructions to Sir Thomas Cochrane, to whom was entrusted the onerous task of establishing the new administration. As both Goderich and Cochrane well knew, the situation was one of peculiar difficulty. From the very nature of things, the institution of a legislature in a colony where even the simplest forms of government existed only in a rudimentary state and where its people were in many respects primitive and utterly devoid of elementary political experience was no light undertaking. As it was inevitable that the assembly, when convened, would possess obscure and erroneous notions regarding its powers and forms of procedure, the governor was advised to guide its deliberations in the true spirit of co-operation—a difficult matter at any time—and doubly so in a colony where memories of gubernatorial interference and tyranny aroused bitter suspicion and resentment at Cochrane’s well-meaning actions.

Valuable as are Goderich’s comments upon the state of the colony, it is not until reference is made to the new form of constitution that the despatch assumes a special interest. In his survey of the usual colonial legislatures, Goderich, like Stephen, viewed with concern the unsatisfactory relationship between council and assembly which, as Durham observed a few years later, simply resolved itself into a collision between the representative body on the one hand and the executive on

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the other, aggravated by the elected assembly’s inability to influence even slightly the composition or proceedings of the council. By 1832 the unwieldy nature of this partnership had become so apparent that the colonial secretary reached the definite conclusion that the council as a separate branch of the colonial legislature was worse than useless. Accordingly Cochrane was enjoined to do everything within his power to secure the union of the two divergent bodies. "I should regard with satisfaction any arrangement which would consolidate the council and assembly into a single House, in which the representatives of the people would be met by the official servants of the Crown”, Goderich wrote. This, indeed, was no formal expression of the politician, for as Lord Howick, the colonial under-secretary, pointed out in a personal letter to Cochrane which accompanied his commission and instructions, both Goderich and he were genuinely anxious to witness the success of the plan. To secure this desirable end, Cochrane was therefore advised to conciliate public opinion to the new proposal, and in order that the principal inhabitants of the colony might become conversant with the arguments which prompted the colonial secretary to such a course, he was at liberty to publish the despatch.

The fear that the nominees of the crown might secure a preponderant voice in the deliberations of the united assembly was, of course, a powerful objection to Goderich’s proposal, and one which was bound to antagonise many of the colonists to the colonial secretary’s plan. Goderich, however, had anticipated this and, to allay such fears, proposed the inclusion in the combined legislature of three nominees only whose main duty would be to explain the view of the executive government upon the measures submitted to the combined body. As far as concessions were concerned, Goderich could hardly have done more. Yet the acceptance or rejection of his plan rested entirely on the whim of the people. Consequently what might possibly have proved an interesting experiment in colonial government, productive, perhaps, of further changes in other fields, failed signally to capture the imagination of the mem-

1 Report, Earl Durham, op. cit., p. 143.
3 Ibid. Goderich/Cochrane, 27 July, 1832.
bers of the new assembly. The pity is that the colonial secretary left the decision in their hands. If, as was so strongly asserted, Goderich was convinced of the hopeless failure of the old system of colonial government, it was surely his duty to bring the question before parliament in an effort to win its approval. As it was, the newly-elected assembly, overwhelmed by Cochrane’s "appropriate and decorous solemnities" which marked the opening ceremony¹ and actuated by a sense of self-importance, dismissed the matter almost without discussion, unanimously deciding that the suggested union, "not being in accordance with the principles of the British constitution, was in no wise applicable to the circumstances of the colony."² In asking the members of the first island assembly to accept a proposal which all felt constituted their death warrant, Goderich was expecting too much from human nature.

Apart, however, from the fetish of constitutional rights, the assembly opposed the measure on other grounds. Those more liberal in their political views feared that the participation of the executive officers in the debates would secure for them, in virtue of their superior knowledge, an ascendancy over their less-informed fellow members. On the other hand, the more conservative asserted that the abolition of the council would place the complete control of the legislative proceedings in the hands of the people’s representatives, who would not fail, when opportunity offered, to outvote those nominated by the crown.³ In any case, it was perfectly natural for the colonists to feel singularly proud of their newly-won constitution which placed them on an equality with the British North American colonies. What, therefore, implied a surrender of their dearly won privileges received but scant consideration. Perhaps the general attitude towards the governor also contributed to the failure of Goderich’s plan. By 1832 Cochrane was far from popular with the masses who, aware of his persistent opposition towards an island legislature, were inclined to believe that any proposal cordially endorsed by him would react to their own disadvantage. Possibly, too, there still existed in the minds of many the suspicion that the proposal of the colonial secretary

² C.O. 197/2. Assembly’s Address to Governor, 9 Jan., 1833.
was only a thinly-veiled attempt to curtail the full authority of their administration. Years of repression and legislative tyranny were not easily forgotten in a day. Consequently the project terminated abruptly and not till some ten years later, when the island's political affairs had become hopelessly involved, was it even revived.\footnote{Parlia. Pap., 1842. vol. 28, p. 143. Lord Stanley/Sir John Harvey, 19 Nov., 1841.}

Thus by 1832 the struggling infant colony had entered upon another phase of its constitutional development. The outlook, however, was not promising. For although the advent of the island legislature had been hailed with delight, there were indications that its future would be jeopardised by circumstances of a nature perhaps never before confronting a young colony. Irrespective of the assembly's decision to maintain a form of government which speedily involved both chambers in acrimonious strife, there existed other discordant factors beyond the powers of the legislature to control. Though the unjust enactments of bygone years had been repealed, their cumulative effect on the island's social life could not be eradicated, and evils which had flourished under the misrule of centuries lived on to harass, and almost destroy, the infant government. Throughout the colony, especially in the distant out-harbours, ignorance and vice still reigned unchecked. Scenes of frightful distress were common. In many isolated settlements, famine and crushing poverty were the daily portion of hundreds of wretched inhabitants whose independence and thrift had been sapped by years of care-free reliance upon the merchants' good will. Turning instinctively to the new government for aid, these people soon became an intolerable burden upon its slender finances. Unfortunately they controlled the elected assembly, for as the suffrage was on a particularly generous basis, the sole qualification being one year's occupancy of any description of dwelling, the power of election was vested in illiterate and primitive communities where even the elementary forms of local government had never existed. Moreover, in districts where the population was divided almost equally into Protestants and Catholics, the flames of political and sectarian strife were fanned by unscrupulous rancers who did not hesitate to mislead the bigoted and ignorant masses. Further distrac-
tions sprang from the conflicting interests of the wealthy merchant oligarchy and the poverty-stricken fishing class. Without question, the institution of the long-anticipated legislature in Newfoundland was but the prelude to years of internal political strife, economic chaos and religious discord—a tragic harvest of an ineradicable past.

Although the fifty-year period which ended in 1832 with the establishment of representative government in Newfoundland is the most important era in its history, forming, as it were, the vital link between its illicit past and its more orthodox future, it is singularly devoid of those incidents which so often attract the lover of the dramatic. During those vital years when the colony’s affairs were almost entirely subordinated to the epoch-making changes in Europe, little of profound political consequence, save the diplomatic disputes concerning the French shore, arose within the colony to lift it from a comparative obscurity. No great personages moved upon the island stage. As men became engrossed in European problems and the French cataclysm, they ceased to interest themselves in the future of an island which provided them with few opportunities for enhancing their reputations or receiving coveted political rewards. Even immediately after 1783, when the fate of the fisheries and the problems of imperial trade momentarily brought Newfoundland to the forefront of parliamentary debate, the giants of that day, Fox, Burke, Pitt, North, and Eden, appear as shadowy figures in an unsubstantial world of changing politics where the concerns of an unwanted fishing community had little part. Nevertheless, the period cannot lightly be dismissed as being negligible merely because of an apparent uneventfulness. For the river of history, as it flows through the far-flung continent of human life towards the ocean of eternity, is fed by streams of varying character. Some are turgid and blood-stained, others raging and boisterous torrents. Many, clear and placid, move sluggishly onwards to lose themselves in the mighty flood. Yet even these possess their undercurrents of tragedy and their eddies of strife and unrest. So with Newfoundland. Modest and unpretentious as is its story, no student of its history can set it aside without feeling strangely moved at the wonder of human pertinacity in creating from "a great ship" an amazing colony which, in spite of inherited
weaknesses and economic disabilities, stands to-day as a testimony to the power of a people to nullify Britain's greatest experiment in retarded colonisation.
APPENDIX I

LIST OF GOVERNORS OF NEWFOUNDLAND, 1782-1832

1782. Vice-Admiral John Campbell.
1786. Rear-Admiral John Elliot.
1789. Admiral Mark Milbanke.
1792. Rear-Admiral Sir Richard King.
1794. Rear-Admiral Sir James Wallace.
1797. Vice-Admiral Hon. John Waldegrave.
1800. Vice-Admiral Charles Pole.
1801. Lt.-Governor Robert Barton.
1802. Admiral James Gambier.
1804. Admiral Sir Erasmus Gower.
1807. Admiral John Holloway.
1810. Vice-Admiral Sir John Duckworth.
1813. Vice-Admiral Sir Richard Keats.
1816. Vice-Admiral Sir Francis Pickmore.
1818. Vice-Admiral Sir Charles Hamilton.
1825. } Captain Sir Thomas Cochrane.
APPENDIX II

LIST OF CHIEF JUSTICES OF NEWFOUNDLAND, 1791-1833

1791-1792. John Reeves.
1793-1797. D'Ewes Coke.
1797-1800. Richard Routh.
1803-1813. Thomas Tremlett.
1813-1815. Caesar Colclough.
1816-1822. Francis Forbes.
1822-1833. Richard Tucker was sole judge until 2nd January, 1826, when, under the provisions of Stat. 5, Geo. IV., cap. 67, the new justiciary was:

Richard Tucker, Chief Judge.
John Molloy, Augustus Des Barres, Assistant Judges.

Molloy was soon dismissed from office, and on 26th September, 1826, Edward Brenton was appointed as assistant judge in his stead.
APPENDIX III

MAP OF NEWFOUNDLAND

A. THE FISHERIES.

The relationship between the Bank Fishery and the early settlements along the Avalon Peninsula (S.E. Newfoundland) is clearly seen. The development of the Newfoundland Shore Fishery by the inhabitants in opposition to the transient Bank Fishery, was one of the most important factors in the growth of the colony.

When the north-eastern and western coasts were reserved for French fishermen, the Labrador Shore Fishery grew in importance, particularly after 1813.

The Spring Seal Fishery could be engaged in only by the resident inhabitants, for the transient fishing vessels did not arrive till much later in the season.

B. THE TREATY LIMITS.

(a) The French shore.

The Treaty of Utrecht gave to French fishermen the right of taking, curing and drying fish from Cape Bonavista to Point Rich (black line on map), but in 1783 the limits were altered from Cape Bonavista to Cape St. John, and thence to Cape Ray (broken line). This arrangement, and the question of the interpretation of the wording of the Treaty, gave rise to endless disputes.

(b) The Convention of 1818 gave American fishermen the right of taking, curing and drying fish on the unsettled coast from Cape Ray to the Ramean Islands, and of fishing along the western shore from Cape Ray to the Quirpon Islands.
Map of NEWFOUNDLAND showing FISHING AREAS

Legend
- Bank Fishery
- Shore
- Labrador Shore Fishery

TREATY LIMITS
Rights ceded to France by:
- Treaty of Utrecht, 1713
- Treaty of Versailles, 1783
Rights ceded to U.S.A. by:
- Convention, 1818
APPENDIX IV

EXTRACTS FROM TREATIES BETWEEN GREAT BRITAIN AND FRANCE
RELATING TO THE FISHERIES OF NEWFOUNDLAND

A. TREATY OF UTRECHT, 17TH APRIL, 1713.

XIII. The Island called Newfoundland, with the adjacent islands, shall, from this time forward, belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island, are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this Treaty, or sooner, if possible, by the Most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, His Heirs and Successors, or any of their subjects, at any time hereafter lay claim to any right to the said island and islands, or to any part of it, or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France, to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista, to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river of St. Lawrence and in the Gulf of the same name, shall hereafter belong of right to the French; and the Most Christian King shall have all manner of liberty to fortify any place or places there.

B. Treaty of Paris, 10th February, 1763.

V. The subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII, of the Treaty of Utrecht; which article is renewed and confirmed by the present Treaty (except what relates to the Island of Cape Breton, as well as to the other islands and coasts in the mouth and in the gulf of St. Lawrence). And His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the gulf of St. Lawrence, on condition that the subjects of France do not exercise the said fishery, but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the said gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the Island of Cape Breton out of the said gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coasts of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said gulf, shall remain on the foot of former Treaties.

VI. The King of Great Britain cedes the Islands of St. Pierre and Miquelon, in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said Islands (to erect no buildings upon them, but merely for the convenience of the fishery) and to keep upon them a guard of fifty men only for the police.

C. Treaty of Versailles, 3rd September, 1783.

IV. His Majesty the King of Great Britain is maintained in His right to the Island of Newfoundland, and to the adjacent Islands, as the whole were assured to Him by the Thirteenth Article of the Treaty of Utrecht; excepting the Islands of St. Pierre and Miquelon, which are ceded in full right, by the present Treaty to His Most Christian Majesty.

V. His Majesty, the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two Nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the

1 Hertlet's Treaties, vol. I, p. 239.
EXTRACTS OF TREATIES

eastern coast of Newfoundland, in fifty degrees North latitude; and His Majesty the King of Great Britain consents on His part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Ray, situated in forty-seven degrees, fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

VI. With regard to the fishery in the gulf of St. Lawrence, the French shall continue to exercise it conformably to the fifth article of the treaty of Paris.

(Declaration of His Britannic Majesty.)

The King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only insure the execution thereof, with His accustomed good faith and punctuality, but will besides give, on His part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

A cette fin, et pour que les pêcheurs des deux nations ne fassent point naître des querelles journalières, Sa Majesté Britannique prendra les mesures les plus positives pour prévenir que ses sujets ne troublent, en aucune manière, par leur concurrence, la pêche des Français, pendant l'exercice temporaire qui leur est accordé, sur les côtes de L'île de Terre-neuve; et elle fera retirer, à cet effet, les établissements sédentaires qui y seront formés. Sa Majesté Britannique donner des orders pour que les pêcheurs Français ne soient pas gênés dans la coupe de bois nécessaire pour la réparation de leurs échaffandages, cabanes, et bâtiments de pêche.

To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing His subjects from interrupting in any manner by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the island of Newfoundland; and He will, for this purpose, cause the fixed settlements which shall be formed there, to be removed. His Britannic Majesty will give orders, that the French fishermen be not incommodeed, in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

The Thirteenth Article of the Treaty of Utrecht, and the method of carrying on the fishery which has at all times been acknowledged,

1 Martin's Recueil De Traités, vol. 1780-4, p. 320.
shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting, in any manner, the French fishermen, during their fishing, nor injuring their scaffolds during their absence.

The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said Islands, and that of Newfoundland, shall be limited to the middle of the channel.

Given at Versailles, the 3rd September, 1783.

(L.S.) MANCHESTER.

(Counter Declaration of His Most Christian Majesty.)

The principles which have guided the King, in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that His Majesty, has had no other design than to render it solid and lasting, by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel. The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions, not to rely upon His constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns upon this matter, it is sufficiently ascertained by the fifth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day, by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that He is fully satisfied on this head.

In regard to the fishery between the Island of Newfoundland, and those of St. Pierre and Miquelon, it is not to be carried on, by either party, but to the middle of the channel, and His Majesty will give the most positive orders, that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen.

Given at Versailles, the 3rd of September, 1783.

GRAVIER DE VERNIER
D. Treaty of Paris, 30 May, 1814. ¹

VIII. His Britannic Majesty, stipulating for Himself and His Allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the colonies, fisheries, factories, and establishments of every kind, which were possessed by France on the 1st of January, 1792, in the seas and on the continents of America, Africa, and Asia; with the exception however of the Islands of Tobago and St. Lucia, and of the Isle of France and its dependencies, especially Rodrigues and the Séchelles, which several colonies and possessions His Most Christian Majesty cedes in full right and Sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and Sovereignty to His Catholic Majesty.

XIII. The French right of fishery upon the great bank of Newfoundland, upon the coasts of the island of that name, and of the adjacent islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792.

E. Treaty of Paris, 20 November, 1815. ²

XI. The Treaty of Paris, of the 30th of May, 1814, and the final Act of the Congress of Vienna, of the 9th of June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty.

EXTRACTS FROM TREATIES BETWEEN GREAT BRITAIN AND THE UNITED STATES OF AMERICA, RELATING TO THE FISHERIES OF NEWFOUNDLAND

F. Treaty of Paris, 3rd September, 1783. ³

III. It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea.

where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

G. Convention Respecting Fisheries, Boundary, and Restora­tion of Slaves, October 20th, 1818.

I. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Quirpon Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company. And that the American fishermen shall also have liberty for ever, to dry and cure fish in any of the unsettled bays, harbours and creeks of the Southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador, but so soon as the same, or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever, any liberty heretofore

EXTRACTS OF TREATIES

ENJOYED OR CLAIMED BY THE INHABITANTS THEREOF; TO TAKE, DRY, OR CURE FISH ON, OR WITHIN THREE MILE LIMITS OF ANY OF THE COASTS, BAYS, CREEKS, OR HARBOURS OF HIS BRITANNIC MAJESTY'S DOMINIONS IN AMERICA NOT INCLUDED WITHIN THE ABOVE-MENTIONED LIMITS; PROVIDED HOWEVER, THAT THE AMERICAN FISHERMEN SHALL BE ADMITTED TO ENTER SUCH BAYS OR HARBOURS FOR THE PURPOSE OF SHELTER AND OF REPAIRING DAMAGES THERETO, OR IN ANY OTHER MANNER WHATSOEVER, BUT THEY SHALL BE UNDER SUCH RESTRICTIONS AS MAY BE NECESSARY TO PREVENT THEIR TAKING, DRYING, OR CURING FISH THERETO, OR IN ANY OTHER MANNER WHATSOEVER, ABUSING THE PRIVILEGES HEREBY RESERVED TO THEM.
APPENDIX V

ADMIRAL MILBANKE'S LETTER TO MR. GEORGE HUTCHINGS REGARDING HIS RIGHT TO ERECT A HOUSE

15TH OCTOBER, 1790

"I have considered your request respecting the alteration which you wish to make in your storehouse, near the water side, and as it appears that the alteration will not be anyways injurious to the fishery, you have hereby permission to make it. As to Alexander Long's House which has been built contrary to His Majesty's express commands, made known to the inhabitants of this place by my Proclamation of the 13th of last October, it must and shall come down. The pretence now set up, of its being intended for a craft house, serves rather to aggravate than extenuate the offence; for by the confession of your tenant to the magistrate who forbade him to go on with the work after it was begun, as well as to me, when I viewed the house on Saturday last, no such use was to be made of it, as he said it was intended only as a covering to his potato cellar, though there is a compleat [sic] chimney, if not two in it, and lodgings for at least six or eight dieters. I shall embrace this opportunity of warning you against making an improper use of any other part of (what you are pleased to call) your ground: for you may rest assured that every house or other building erected upon it hereafter, without the permission (in writing) of the governor for the time being (except such buildings and erections as shall be actually on purpose for the curing, salting, drying, and husbanding of fish, which the fishermen from any part of His Majesty's European Dominions, qualified agreeable to the Act of the 10th and 11th William III, and the 15th of George III, have a right to erect, without asking permission) must unavoidably be taken down and removed, in obedience to His Majesty's said commands. And it may not be amiss, at the same time, to inform you I am also directed not to allow any possession, as private property, to be taken of,

1 Third Report, Commons' Committee, 1793, Appendix No. 12 (Enclos. 3).
or any right of property whatever acknowledged in any land whatever, which is not actually employed in the fishery in terms of the above-mentioned Acts, whether possessed by pretended grants from former governors, or from any other (no matter what) unwarrantable pretences; therefore it behoves you, with all possible despatch, to employ the whole of the ground which you now lay claim to, in the fishery, lest others should profit by your neglect, and make that use of it which the Legislation of Great Britain intended should be made of all the land in this country, and without which no one has a right to claim it as his own.

The Sheriff will have directions about the removal of the houses above mentioned which you will no doubt assist him in executing."
APPENDIX VI

SIR JOHN DUCIFWORTH'S PROCLAMATION CONCERNING THE CULTIVATION OF LAND

9TH AUGUST, 1810

"WHEREAS I have observed, and otherwise understood, that enclosures have been made to great extent and lands cultivated throughout the district of Conception Bay, without any grant for that purpose or authority from the governor of any description, All persons are hereby warned that as such proceeding is in direct opposition to the positive Instructions of His Majesty, if anyone shall attempt to make any enclosure, or to occupy land for the purposes of cultivation or otherwise, it will be at the imminent risk of forfeiting all the labour and expense that he may have bestowed upon it, as he would assuredly be dispossessed the moment it should come to the knowledge of the governor."

1 Adm. 90/122, p. 25.
APPENDIX VII

REPORT BY JAMES STEPHEN ON THE SUGGESTED FORM OF THE
LEGISLATURE FOR NEWFOUNDLAND

19TH DECEMBER, 1831

"... Ever since the practice of creating chartered corporations for the government of British colonies has fallen into disuse, it has been the general course of proceeding to grant to those settlements constitutions of which the type is to be found in the government by King, Lords and Commons, as existing in Great Britain, His Majesty being represented by the Governor, the House of Peers by the Council, and the Knights-and Burgesses of our Parliament by the members of the Assembly. This is not the occasion for discussing the wisdom of these Colonial Institutions, yet being now in the nineteenth of the years during which I have had occasion to read and to advise upon the local enactments of all these bodies, I may lay claim to a more than ordinary acquaintance with the real effects of this system. The result of my observations is, that in every colony where the population is homogeneous, that is, not divided into castes as in the West Indies, or composed of different nations as in the Cape of Good Hope and Lower Canada, a Legislative Assembly is an inestimable benefit; that it executes its proper functions with a degree of ability for which it rarely obtains sufficient credit; that it either prevents discontents or gives them a safe direction; that it creates most useful exercise of the understanding; affords much innocent pleasure; and creates a subject of permanent interests in societies which would otherwise stagnate in a listless unconcern about all questions of a public character. That the solemnities of such Bodies sometimes degenerates into a sort of mock heroic, and that they not rarely become the occasion of much petty tyranny, their warmest friend would admit. But the burlesque injures no one, and the occasional injustice may be considered as the price which all human societies must pay for the advantages of civil Government. I have no knowledge of any Legislature having yet

appeared in the world which has answered so completely the ends of its existence, as have the General Assemblies of New Brunswick, Nova Scotia and Upper Canada.

"The chief practical error in this scheme of colonial constitutions consists, I think, in the formation of the Legislative Council. It has nothing in common with the House of Peers. As nominees of the Crown, the Councillors are regarded with the jealousy which reasonably attaches to all who partake of the Royal Authority. Bearing a local rank, and dignified with the appellation of 'honourable', they provoke plebeian or democratic hostility which is neither awed nor softened by any of those hereditary claims by which the Nobility of England vindicate their elevation in society. The Council neither dazzles the imagination, nor engages the affections, nor appeals to the self-love of the Colonists. They are in possession of so much unmitigated authority as their constitutions can impart, and of nothing more.

"The Council is scarcely more useful than popular. The theory is that they are a check on the precipitation of a popular representative Body, removing the Governor beyond the necessity of direct conflict with the Assembly. The fact is, that they are either inert, or are roused into activity in defence of their own privileges or as the Governor's Agents in unpopular measures. They relieve him from responsibility but not from obloquy. They impart neither dignity to his station, nor weight to his authority, but render him either listless when he ought to be active, or daring when he ought to be cautious.

"A far better arrangement is that which exists in Demerara, where the Nominees of the Crown and the Representatives of the People are united as one legislative Body. They mutually enlighten, assist and check each other, and the governor feels the full weight of his own proper responsibility.

"I should propose to transcribe, mutatis mutandis, the original Nova Scotia Commission and Instructions, addressing them to the Governor of Newfoundland. I would authorise him to propose to the Assembly when convened, the admission to their Body of a certain number of the government officers, ex officio, with the assurance that, upon such a Bill being passed by them, the Legislative Council would be dissolved, being called together only for the acceptance of that Bill, and the incorporation of its official members into the House of Assembly.

"I think that this might perhaps be lawfully done in a more direct and immediate manner, but as I can find no precedent for such a Commission, I should prefer leaving the union to be effected
PROPOSAL FOR LEGISLATURE

by a Legislative Act to be passed by the Assembly, and to originate with them. This would not only place the lawfulness of the proposed constitution beyond dispute, but would relieve the Government from all the embarrassment inseparable from the establishment of new forms of Government, and the promulgation of what might be deemed new constitutioned theories.

"The independence of the Governor and the Judges on the Assembly, might I think, be readily secured. All that is necessary would be, to propose to Parliament to transfer to the Assembly of Newfoundland the appropriation of the Revenue at present raised within the Colony, with the exception of some specified sum, which should be declared for ever applicable to the support of the Governor and the Judges. The same object might successfully be accomplished by an appeal to the Assembly, at their first meeting.

"At the moment of obtaining so great a boon, the popular branch of the Legislature might reasonably be expected to be even profuse in the expression, and in the proof, of their gratitude. As an inducement to make the concession cheerfully, the independence of the Judges might perhaps be very properly offered. It is a boon which costs the Crown nothing, for they are virtually independent already.

"If an assembly be convened in Newfoundland, I should conceive it right, as it would evidently be most convenient, to leave to that body the regulation of the system of Judicature which at present exists in the Island. The Judges, after years of delay, have at length written a report of their opinion, as to the changes it would be fit to introduce. It occupies a great space but amounts I think at last, to very little more than a recommendation that three or four petty Judicatories should be established in different parts of the Colony to administer Justice in trifling cases, in settlements too remote from the seat of Government to be reached by the Judges in their circuits. Sir Thomas Cochrane, if I rightly understand him, concurs in this advice but with the important qualification that when these subordinate Tribunals shall have been constituted, one of the Judgeships of the Supreme Court should be reduced. With the infelicity which attends upon all discussions of this kind originating in the colonies, there is, in the present case, no answer from the Judges to the remarks of the Governor. They do not appear to have been communicated to the Judges, and therefore in this, as in most other cases, where such authorities conflict with each other, there must either be a great delay in seeking further lights, or the risk of doing serious mischief by advancing without them. The best practicable measure appears to me to be that of

transferring the whole question to the proposed local Legislature. I believe that they would pass as good a Bill as could be framed in this Country, but even if not, they will like it better as being their own workmanship, and in due time will have learnt how to supply its deficiencies or to correct its errors."
APPENDIX VIII

GRAPHS

The data for the compilation of these graphs were furnished by the annual reports submitted by the Governors of Newfoundland to the Committee for Trade. Though not at all accurate, they serve to indicate the various changes taking place within the island. In themselves they possess little historical value, but when they are studied in conjunction with contemporary despatches, the changes in the fisheries and the trend of population are revealed in a way that could hardly be bettered.

*C.O. 194/51. Nov. 5, 1821, Duckworth/Liverpool. One of the many complaints regarding their inaccuracies.

Graph A. Growth of Population.

The steady upward rise of the island’s population in the eighteenth century, in spite of legislative enactments, is clearly seen.
1800, owing to the unexpected development of the colony during the war years and the influx of Irish emigrants, the population increased so rapidly that by 1824 it had more than trebled itself.

Graph B.

*Development of Sealing.*

This bears a close relationship to Graph A, for the growth of an island resident population was the vital factor in the development of a spring seal fishery. While the annual fluctuations in the catch bear witness to the uncertainty that must always be a feature of such an enterprise—the catch in 1817 being particularly disappointing—the steady increase in the period 1800-30, was the direct outcome of the efforts of a growing population to seek some profitable employment before the commencement of the cod fishery.
In this graph, the total catch, the combined efforts of transient fishermen and the inhabitants, is represented by the heavy line, its erratic nature being mainly due to the annual fluctuations in the total catch. It must not be forgotten, however, that the war years, particularly from 1800-15, curtailed drastically the activities of the Bank fishermen from Great Britain. The catch made entirely by the resident population is shown by the broken line, and from 1800, this proportion of the total catch rose so rapidly as to indicate the virtual extinction of the old-established transient fishery, the preservation of which had been for long the cherished scheme of successive British governments. Although with the coming of peace in 1815 this fishery revived slightly, the inhabitants still maintained a virtual monopoly of the industry, and it was in large measure the failure of the overseas fishermen to re-establish their position, that paved the way for the repeal of the obsolete fishing enactments in 1824, thus raising the island to the status of a colony.
BIBLIOGRAPHY

NEWFOUNDLAND, 1783-1832

PART I

MANUSCRIPT SOURCES AND OFFICIAL PAPERS AND PUBLICATIONS

1. Public Record Office.
2. Other Collections.
4. Select List of Parliamentary Debates.

PART II

OTHER WORKS—GENERAL BIOGRAPHY

2. Newspapers.
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PART I

MANUSCRIPT SOURCES AND OFFICIAL PAPERS AND PUBLICATIONS

II. PUBLIC RECORD OFFICE

A. COLONIAL OFFICE.

Undoubtedly the Public Record Office in London contains the most important collections of manuscripts concerning Newfoundland. Of these, those classified under the Colonial Office (C.O.), provided the main source of material for the preparation of this work. It was this section which until recently was closed to public inspection. The manuscripts are arranged in several important groups.

(a) Original Correspondence, Secretary of State.

For the period under review (1783-1832), this series (C.O. 194) extends from volumes 35 to 86. The most important manuscripts are the governors' despatches, with their enclosures, to the Secretaries of State. From 1783 to 1811 (C.O. 194/35-50), each volume also contains a "miscellaneous" section, consisting of incoming correspondence from various government departments, officials and general correspondents, besides containing memorials and petitions. Many of these documents, especially the reports upon the fisheries furnished by the governors and the naval officers on the Newfoundland station, are also found in the Board of Trade, the Foreign Office and the Admiralty sections. After 1811, a more methodical arrangement of the manuscripts is followed, all papers referring to Public Offices and Miscellaneous Matters being classified in separate volumes. There is, however, one serious break in the continuity of the series and from 1791 to 1796 no despatches or general papers of any value are available there. Fortunately for the progress of this work, the necessary material was discovered in other sections, particularly in those of the War Office and the Board of Trade.

(b) Original Correspondence, Board of Trade.

In this series are contained a miscellaneous set of papers from the early eighteenth to the nineteenth century. Although most of these
are available elsewhere, they form an accessible source for many of the eighteenth-century Board of Trade Reports.

(c) Entry Books (Class 195).
Containing copies of all out-going correspondence, the most important being the draft commissions and instructions to the naval governors. These are well indexed and arranged chronologically.

(d) Sessional Papers (Class 197).
These contain the minutes of the colonial council from 1825, and of the assembly from 1833. The council minutes contain very little of value.

(e) Blue Books of Statistics (Class 199).
These cover the period from 1821 to 1833. Most of their statistical data is contained in the governors' despatches to the Secretaries of State or to the Committee for Trade.

(f) Original Correspondence, Secretary of State. Law Officers' Opinions on Cases (Class 323).
This series consists of decisions of the law officers of the crown on various points submitted for their consideration. All of those which refer to Newfoundland are also included among the original correspondence with the Secretary of State.

(g) Entry Books of Commissions, Petitions, Grants, Orders in Council, etc. (Class 324).
Of particular value in this section are letters on North American affairs from R. W. Hay and Wilmot Horton. Many of these are highly relevant to the subject and a few throw an interesting light upon what would otherwise have remained obscure.

(h) Miscellaneous, Memoranda, etc. (Class 325).
A valuable set of reports and the like on questions of trade and the fisheries.

(i) North America, General. Letters from the Secretary of State, (Domestic), (Class 43).
A few letters which are highly relevant.

(j) A Few Papers from Bermudian and New South Wales series in points which are relative to Newfoundland. (Classes 37 and 202).
(a) C.O. 194, vols. 35 to 86. Original Correspondence, Secretary of State.
(b) C.O. 194, vols. 21 and 23. Original Correspondence, Board of Trade.
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(d) C.O. 197, vols. 1 and 2. Sessional Papers.
(f) C.O. 323, vols. 93 to 95. Law Officers' Reports.
(h) C.O. 325, vols. 6 and 7. Miscellaneous, Memoranda, etc.
(i) C.O. 43, vols. 49 to 80. Original Correspondence, Secretary of State, Domestic.
(j) C.O. 37, vol. 23. Original Correspondence, Secretary of State (Bermuda).

B. ADMIRALTY.

Although the amount of material to be found in the Admiralty records pertinent to the subject is small, it is, nevertheless, of undoubted value. Newfoundland was long governed as "a fief of the Admiralty", and although many reports and despatches are duplicated in the in-letters to the Secretary of State, there are some very important manuscripts which are found nowhere else.

(a) In Letters to the Secretary (Adm. 1).

The indexes cover the period from 1762 to 1867. This series, besides containing letters from the admirals and captains, also possesses a number of papers which refer to the operation of the vice-admiralty court at St. John's which for many years possessed a limited civil jurisdiction.

(b) Out-Letters from the Secretary (Adm. 2).

Most of these refer to instructions issued to the admirals serving on the Newfoundland station. They possess little value. These are arranged chronologically but unclassified.

(c) Ships' Logs (Adm. 50 to 53).

These logs of warships which served on the Newfoundland station are useful in confirming the movements of the admirals and their surrogates, their dates of arrival and departure from the station, and the like.

(d) Miscellanea, Greenwich Hospital (Adm. 80).

A very valuable section. This includes a book of orders and proclamations of the governors of Newfoundland from 1749 to 1811, and a letter book (1813-17) of the secretary of the governor of Newfoundland. There are also papers relating to colonial and foreign trade, of indirect interest to Newfoundland.
GOVERNMENT IN NEWFOUNDLAND, 1783-1832

(a) Adm. 1, vols. 472-9. In-Letters to the Secretary.
(c) Adm. 30-3. Admirals' Journals. Captains', Masters' and ships' logs.
(d) Adm. 80, vols. 121-3, also vols. 116 and 117. Books of Orders and Proclamations, etc.

C. War Office.

The importance of this section to the period under consideration lies in the fact that part of the missing correspondence to the Secretary of State which leaves a gap of five years in the colonial office records (C.O. 194), is found among the in-letters to the Secretary-at-War. In the Colonial Office Index at the Public Record Office, there is now a reference to guide the investigator for the years 1791-6 to this section. Here, too, are found numerous letters concerning the mutiny in the Newfoundland regiment and the conspiracy of the United Irishmen.

(a) W.O. 1, espec. vols. 15, 16 and 18. In-Letters to the Secretary-at-War.

D. Board of Trade (post 1784).

Next to the Colonial Office section, the Board of Trade papers are the most important group for the period. They are classified in well-defined groups.

(a) In-Letters to the Secretary (B.T. 1).

This is a huge collection of in-letters, reports, trade returns and the like, arranged chronologically from 1791. Volumes 1 to 81 are not indexed. This section contained many of the missing papers from the C.O. 194 series and well repaid a careful search. In particular, two voluminous reports on the Newfoundland Judicature by John Reeves, the first chief justice and the legal adviser to the Committee for Trade, have apparently hitherto been unknown. The Newfoundland governors' reports on the fisheries, trade returns, and similar papers are also here. Evidently these reports were forwarded in triplicate, to the Secretary of State, the Admiralty, and the Committee for Trade.

(b) Out-Letters from the Secretary (B.T. 3).

Although containing a few papers of value, this set is not of any importance.
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(c) Minutes of the Committee (B.T. 5).

After 1786, the Committee concerned itself closely with Newfoundland affairs and conducted several investigations into the state of the trade, the fisheries, and the judicature of the island. It is impossible to understand British colonial policy during those years without following carefully the deliberations and decisions of the Committee.

(d) Miscellanea (B.T. 6).

A varied but none the less valuable collection of documents on Newfoundland's early history, papers concerning the fisheries and American trade, further Minutes and reports of the Committee and an index to the first Committee papers.

(c) B.T. 5, vols. 1-47. Minutes.
(d) B.T. 6. Miscellanea, especially vols. 20-2, 57, 80, 81, 87, 89-93, 96, 115, 180-82, 185, 189, 249, 250-2. The series runs to 272.

E. FOREIGN OFFICE.

State Papers, Foreign, France, contain a great many valuable documents concerning the Anglo-French relations in the Newfoundland fisheries. Although some of these have been grouped together, it is easier to work from the Colonial Office series which contains in duplicate all the essential papers relative to the long-protracted disputes between England and France over the French shore.

2. OTHER COLLECTIONS

(a) Additional Manuscripts in the Department of Manuscripts, British Museum.

There is no lack of interesting material here, though it is to be found more in isolated fragments than in bulk. There are, however, some excellent reports on the fisheries, the trade and the early settlements. The Liverpool papers which are classed with the Additional MSS., provided some of the most useful material outside the Public Record Office, and contain many letters of general interest, particularly those dated towards the close of the eighteenth century which are not to be found elsewhere. Some of the Liverpool papers are, naturally enough, included also in the Board of Trade and Colonial Office series.
A few of the more important papers are:

Dr. Gardner's "History of Newfoundland", written in 1786. Its value lies in the light it throws upon the oppressions of the courts at that time. Add. MSS. 15,493.

A paper upon "Landed Property in Newfoundland", by Archibald Buchanan, the naval officer at St. John's. Add. MSS. 38,347, f. 373.


Newspaper Cuttings from Newfoundland Papers. (Mainly concerning events in 1824 and 1833.) Add. MSS. 8135, ee. 6.


(b) Manuscripts in the Archives of the Methodist Missionary Society.

The letters from the Methodist Missionaries in Newfoundland to the secretary of the society are full of interest. These letters are arranged chronologically but are not indexed. One or two reports on the general state of the island; particularly in the early years of the nineteenth century, are of value in revealing social conditions among the settlers.

(c) Manuscripts in the Archives of the Society for the Propagation of the Gospel.

These papers are very carefully indexed and arranged. The society has maintained missionaries in Newfoundland since the beginning of the eighteenth century and consequently their reports are unequalled for revealing something of the ordinary life of the people which the official despatches never mention. Some of the reports are printed, a particularly interesting one being that of the Archbishop of Nova Scotia who visited Newfoundland in 1827.

(d) Reports of the Colonial and Continental Church Society.

Founded in 1823 and known originally as the Newfoundland School Society, this Society possesses no manuscript reports available for inspection. The printed reports from 1823 are, however, of some value, though not comparable to those of the older societies.

(e) Reports of the Historical MSS. Commission, London.

Printed abstracts of reports and documents which have been published from time to time by the Historical MSS. Commission contain little of value to Newfoundland, save some odd letters and references in the Bathurst, Dropmore, and, for the earlier period, the Dartmouth papers.
Established in 1782, the company had an early business connection with Newfoundland, especially with St. John's. In 1799 Jenkin Jones, later manager of the company, visited Newfoundland and North America. An able correspondent, Jones left on record some reliable and interesting impressions of his travels.

The documents contain valuable abstracts of documents on the early history of Newfoundland in a very accessible form.

These twelve volumes comprise an extremely important collection of printed material relating to Newfoundland from the early eighteenth century to the late-nineteenth century. The documents were collected in connection with the dispute between Canada and Newfoundland over the Labrador Boundary. Some of the material has been compiled from original sources, some from the Calendar of State Papers, Colonial and Admiralty Series, and some from Parliamentary Reports. A number of papers, especially those from the Newfoundland Record Books, are unavailable elsewhere in print. A few are of particular value in helping to fill the five-year gap in the Colonial Office series.

The full text in French is given in Marten's "Recueil de Traites", and in English in Hertslet's and Malloy's Treaties.

A few papers referring to the diplomatic controversy between Britain and France concerning the fisheries. A disappointing collection from the Newfoundland viewpoint.

3. SELECT LIST OF PARLIAMENTARY PAPERS

Bills, Reports of Select Committees, Miscellaneous Statements and Accounts

In the period under review, many parliamentary papers on various subjects were published. The majority were more or less of a statistical nature compiled from trade and fishing returns furnished
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to the Board of Trade. A few referred to finance, and in this respect the most important set were those published in 1824, at the request of Joseph Hume who was inclined to query the Newfoundland civil expenses. Some were concerned with constitutional questions. But the most important group were reports from select committees in 1793 and 1817. These are almost invaluable for a proper study of the period, the three reports of 1793 with their useful appendices comprising a unique collection of highly interesting data.

Papers concerning the Fisheries and Trade.
(3) Relating to Trade and Fisheries (1793). XXXVIII: 762.
(4) Convention with U.S.A. concerning the Fisheries (1819). XVIII: 42.

Reports.

Papers and Accounts.
(10) Papers and Accounts relating to the Island of Newfoundland (1824). XVI: 412.

Papers concerning Constitutional Changes.
(11) Instructions to Nfld.-Governor and legal authorities at Nfld., relative to the operations of Acts 5 Geo. IV, cap. 51 and 67 (1830). XXI: 222.
(12) Papers relating to the proposed changes in the Constitution of Nfld. (1842). XXVIII: 143.
(13) Despatch ... relating to the Bill for the government of the Colony of Nfld. (1842). XXVIII: 159.

4. SELECT LIST OF PARLIAMENTARY DEBATES

Although parliament during the Napoleonic era devoted little time to the consideration of colonial affairs, Newfoundland was far from disregarded. The national importance of the fisheries, the
concessions granted both to France and America, and above all the presence of a strong merchant class in Britain which possessed considerable political influence, forced the government, often reluctantly, to bring questions concerning the island before the Commons. Moreover, the attitude of radicals like Hume, and of humanitarians such as Lushington and Mackintosh, was a constant embarrassment to the government. Consequently many of the debates, especially during the 'twenties, give an excellent indication of colonial policy and thought of that time. In much the same way, the debates on trade in 1783 and 1785, compared with those in 1817, serve to reveal the amazing change in the economic outlook of the nineteenth, as compared with the eighteenth, century.

The debates are reported in various series, in the Parliamentary History, the Parliamentary Register and the Parliamentary Debates (Hansard). The following are the principal debates between 1783 and 1832 which directly concern Newfoundland:

Principal Debates.

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3. ACTS OF THE IMPERIAL PARLIAMENT

(1) 10 and 11 Wm. III, cap. 25. (King William.)
(2) 15 Geo. III, " 31. (Palliser.)
(3) 26 Geo. III, " 1. (N€d. Trade with U.S.A.)
(4) 26 Geo. III, " 26. (Fisheries.)
(5) 28 Geo. III, " 35. (French Shore.)
(6) 29 Geo. III, " 53. (Fisheries.)
(7) 31 Geo. III, " 29. (Judicature.)
(8) 32 Geo. III, " 46. (do.)
(9) 33 Geo. III, " 76. (do.)
(10) 49 Geo. III, " 27. (do.)
(11) 51 Geo. III, " 45. (Ships' Rooms.)
(12) 57 Geo. III, " 51. (Marriage.)
(13) 4 and 5 Geo. IV, " 52. (Fisheries.)
(14) 4 and 5 Geo. IV, " 67. (Judicature.)
(15) 2 and 5 Geo. IV, " 68. (Marriage.)
(16) 2 and 3 Wm. IV, " 78. (Repres. Govt.)
PART II

OTHER WORKS

GENERAL BIBLIOGRAPHY


Apart from well-known guides to the manuscripts relating to Newfoundland in the Public Record Office, there are some excellent bibliographies which serve to provide the student with ample material for general investigation. The most useful is undoubtedly that of the Cambridge History of the British Empire, vol. VI, pp. 880-5. This is very carefully compiled and well-classified. The Catalogue of the Royal Empire Society, vol. III, pp. 487-503, contains a lengthy list of volumes connected directly or indirectly with Newfoundland, and many of these would be found only with difficulty elsewhere. R. G. Lounsbury’s “The British Fishery at Newfoundland, 1634-1763”, provides an excellent survey of the earlier sources of Newfoundland history. In this field, R. Perret in “La Géographie de Terre-Neuve” also gives a very full list of books of value. Besides these, there are Grace Gardner Griffin’s “Writings on American History” which are published yearly as a supplement to the Annual Report of the American Historical Association. These are of particular value in that they contain references to many contemporary studies connected with Newfoundland. The report of the Newfoundland Royal Commission, published in 1933, furnishes further sources of reference, mainly concerning the fisheries.

2. Newspapers.

In general, this proved a very disappointing field of research. The Times certainly contained a few references to the island and contributed a valuable leader or two on the state of the trade in the early nineteenth century. But other newspapers of the West and the South of England provided practically nothing of value. In the miscellaneous correspondence to the Secretary of State (C.O. 104), quite a number of Newfoundland newspapers containing reports of
especial interest, are enclosed. These, reinforced by the newspaper cuttings in the manuscript section of the British Museum, afford much valuable evidence of the attitude of the settlers towards the political and social problems of their day.

3. Pamphlets.

In the library of the Colonial Office, London, there is a very fine collection of nineteenth-century pamphlets on Newfoundland affairs. Strangely enough those of Carson, the first island pamphleteer, are not found there but are included in the C.O. 194 series. Morris's three pamphlets are bound in one volume. The main pamphlets of value are as follows:

(1) "Letter to the Members of Parliament", William Carson, M.D., Greenock, 1812.
(2) "Reasons for Colonising the Island of Newfoundland", William Carson, M.D., Greenock, 1813.
(3) "Observations on the Government, Trade, Fisheries and Agriculture of Nf.d.", (Colonus), London, 1824.


While there are a great many books relating directly or indirectly to the subject, there are few that contribute much of value. The nineteenth century certainly produced a crop of local histories purporting to portray the story of the island. Whatever merit these possess from a literary view-point, they are valueless to the historical scholar.


Bonnycastle, R., *Newfoundland in 1842.* London, 1842. Throws light upon the social conditions within the island.

Cartwright, G., *A Journal of Events, during a Residence of Sixteen Years on the Coast of Labrador.* Newark, 1792. Contains an informative account of early exploration in Newfoundland near the Bay of Exploits:

*Captain Cartwright and his Labrador Journal.* (Edited by C. W. Townshend.) London, 1911. Contains many references to the native Beothucks.


Cormack, W. E., *Narrative of a Journey Across the Island of Nfld.* St. John’s, 1822. The first account of the exploration of the interior of the island.


Eden, William (Lord Auckland), *Journal and Correspondence.* London, 1862.


Jukes, J. B., *Excursions in and about Nfld.* London, 1842. Valuable references to the social life of the island, the Beothucks and the general state of the colony.
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Knaplund, Paul, Gladstone and Britain's Imperial Policy. London, 1927.


Reeves, John, The History of the Government of Nfld. London, 1793. Based on records of the Board of Trade, this is a most reliable work on the early years of the colony.


Royal Commission, Report on Nfld. London, 1933. An exceedingly useful analysis of the problems confronting the island to-day. It contains, however, much which is relevant to the colony's earlier history.


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