

The Colonial Herald,

AND

PRINCE EDWARD ISLAND ADVERTISER.

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CHARLOTTETOWN, SATURDAY, FEBRUARY 24, 1844.

[No. 347-

DOCUMENTS LAID BEFORE THE HOUSE OF ASSEMBLY.

FISHERY RESERVES.

(Copy—No. 57.)
Downing Street, 29th December, 1843.

Sir;
With reference to that part of my Despatch of the 14th of July last, No. 27, in which I informed you that it would not be in my power to submit to the Queen any advice as to the answer which it might be proper for Her Majesty to return to the Address of the Assembly of Prince Edward Island, on the subject of the Fishery Reserves; until I should be in possession of the Report of Her Majesty's Attorney and Solicitor General, on the question of Legal right involved in that Address, I have now the honor to transmit, for your information, a copy of the case submitted to them, and of the opinion which they have delivered, on the imperfect information supplied to them.

I have to instruct you to furnish me with an authentic copy of the usual Deed of Grant, in order that the questions in debate may be presented more fully, for the consideration of the Law Officers of the Crown.

I have, &c.
(Signed) STANLEY.
Lieut. Governor
Sir H. V. Huntley.

Questions upon the Subject of the Fishery Reserves of Prince Edward Island.

FIRST.
The Fishery Reserves are described in some of the Original Grants issued under the Order in Council of 1767, in the following Terms:—"Saving and reserving a free liberty to all His Majesty's subjects of carrying on a free fishery or fisheries on any part or parts of the coasts of the said Townships, and of erecting stages and other necessary buildings for the said fishery or fisheries within the distance of 500 feet from highwater mark."

In other original Grants, the Reserves are described as follows:—"Saving and reserving, for the disposal of His Majesty, his heirs and successors, 500 feet from highwater mark, on the coasts of the tracts of land thereby granted, to erect stages or other necessary buildings for carrying on the Fishery."

In these two cases in whom is the fee simple of the land so reserved?

SECOND:
What is meant by the term Coast?

THIRD:
Does the term "Coast" limit the reservation to Townships that abut upon the Sea Coast, or does it extend to Townships that abut within Head-lands, Bays, Harbors or Rivers; and if it does extend to Townships abutting within such Head-lands, Bays, Harbors or Rivers, how far within the same does it extend?

FOURTH:
Several small Islands are situate at a short distance from the Coast of Prince Edward Island, the grants of which reserve a liberty to all His Majesty's subjects of carrying on a free fishery or fisheries on any part or parts of the Coasts of said Islands, and of erecting stages and other necessary buildings for the said fishery or fisheries, within the distance of 500 feet from highwater mark: does the said Reserve extend round the whole of these Islands?

FIFTH:
There are also several small Islands situate at the entrance of Bays or Harbours of Prince Edward Island, the Grants of which contain a like reservation: In cases where these Islands assist to form the Bays or Harbors, and parts are inside and parts without said Bays or Harbors, does the above mentioned Reserve extend round the whole of said Islands, or does it only extend to those portions of said Islands which from the outside of such Bays or Harbours?

SIXTH:
Several small Islands are altogether within the Bays or Harbors of Prince Edward Island, the Grants of which contain a like Reservation: does the said Reserve extend round the whole of these Islands?

(Copy.)
Temple, Dec. 22d, 1843.

Sir;
We have the honor to acknowledge the receipt of your letter of the 3d Sept. last, wherein you state, that doubts having arisen in Prince Edward Island, as to the right of the Public to the use and occupation of certain Lands in that Island, denominated "Fishery Reserves," the Commissioners of Colonial Lands and Emigration have, by direction of Lord Stanley, proposed a Statement on the subject, to be submitted for the decision of Her Majesty's legal Advisers.

A copy of that statement, you were pleased to enclose, and you requested we would take the subject into our consideration, and report to Lord Stanley our opinion on the questions proposed in the accompanying paper.

In obedience to Lord Stanley's commands, we have read the statement referred to, and have fully considered the matters therein stated, and beg leave humbly to report, for his Lordship's information—

1st.—That we cannot form any clear opinion on the points submitted to us without seeing the particular Grant on which a question may arise, and without a full description of the locality and boundaries of the premises comprised in that Grant; but as far as we can collect from the statement before us, in the first case put, (in which there is stated to be a reservation in the Grant of a free liberty to Her Majesty's subjects,) it appears to us, that the fee simple of the Land is in the Grantees. The Land itself is not reserved or excepted. In the second case, the effect to be given to the supposed Reservation must depend on the context, and the other parts of the deed; the words are sufficient to except the soil itself; but those words may be controverted, if there is an intention apparent from the whole of the Deed that an easement only to enter for the purpose of the Fishery should be reserved to the Crown.

2d & 3d.—The word coasts has no clearly defined legal meaning, and its meaning, in any particular Grant, may depend on the other parts of the Deed, and the description and local situation of the premises. We should conceive, however, that generally it would be taken to apply to those places in which the Sea ebbs and flows, and that it would extend, therefore, to those portions of the Bays, Harbours, and Rivers, in which there was an ebb and flow of the Sea.

4, 5, & 6.—If the Grants be of the whole of the Islands, the Reservation would appear to apply to the whole extent of the Coast round the Islands that were granted, and in the grant of which this Reservation occurs.

We are, &c.,
(Signed) FREDERICK POLLOCK,
W. FOLLETT.
J. Stephen, Esq., &c. &c. &c.

(Copy—No. 69.)
Downing Street, 8th April, 1843.

Sir;
I have received your Despatch, No. 72, of the 17th February, enclosing, for the consideration of the Law Officers of the Crown, in reference to the question which has been raised in Prince Edward Island relative to the "Fishery Reserves," Copies of the two descriptions of Grants which were issued to the original-Proprietors of land in the Colony.

The case having been again submitted to the Attorney and Solicitor General, with a request that they would state whether they perceived in the terms of those Grants any ground for modifying the opinion delivered by them in December last, I enclose herewith, for your information and guidance, a copy of the Supplementary Report which has been received from those officers on the subject.

I have, &c.,
(Signed) STANLEY.
Lieutenant Governor
Sir Henry Vere Huntley,
&c. &c. &c.

(Copy.)
Temple, 1st April, 1843.

Sir;
We beg to acknowledge the receipt of your Letter, of the 29th ult., wherein you were pleased to observe, that with reference to that part of our Report of the 22nd December last, in which we stated that we could not form any clear opinion on the points submitted to us in Mr. Stephen's Letter of the 3d September, respecting the Fishery Reserves in Prince Edward Island, without seeing the particular Grant on which a question might arise, and without a full description of the locality and boundaries of the premises comprised in that Grant, you had been directed by Lord Stanley to transmit to us, the copy of a Despatch from the Lieutenant Governor of the Colony, enclosing authentic transcripts of the two descriptions of Grants which were issued to the original Proprietors of Land there; and that you had also been directed to add, for the convenience of reference, a copy of our Report of the 22d December, together with a copy of the case originally submitted to us on the subject; and you were pleased to request that we would take these papers into consideration, and report to Lord Stanley whether we perceived in the additional information now supplied any ground for modifying the opinion which we submitted to His Lordship in December last.

In humble obedience to Lord Stanley's commands, signified as above, we have read the additional Papers referred to us, and upon full consideration, beg leave to report, for His Lordship's information, that as it appears that in Lord William Campbell's Grant, 500 feet from Highwater mark on the Coast are saved and reserved "for the disposal of His Majesty" to erect stages and other necessary Buildings, we think that the Soil is reserved; but in the other Grant the reservation is of "a free liberty to all Her Majesty's subjects to carry on a free fishery within the distance of 500 feet from Highwater mark," which, in our opinion, does not reserve the Soil. We see no ground for any other modification of our opinion.

We are, &c.,
(Signed) FREDERICK POLLOCK,
W. FOLLETT.
G. W. Hope, Esq., &c. &c. &c.

POST OFFICE DEPARTMENT.
Post Office, Charlottetown, Feb. 13th, 1844.

Sir;
I beg to transmit to you a copy of correspondence between this Office and the Head of the Department at Halifax, on the subject of the Inland Mails of this Island, which, at the request of His Excellency the Lieutenant Governor, you have been pleased to desire me to furnish, for the information of the House of Assembly.

I am, Sir,
Your most obedient humble servant,
THOMAS OWEN.

The Honorable
T. H. Haviland, &c. &c. &c.
General Post Office,
Halifax, 9th May, 1843.

Sir;
I have to acknowledge the receipt of your Letter of the 27th ult., containing copy of a Report of a Committee of the House of Assembly respecting the Post Office, and of a Letter addressed by you to His Excellency the Lieutenant Governor, on the subject.

So far as a change in the route of the Mail Carriers is concerned, if the alteration can be effected without destroying any Contract at present subsisting, you are at liberty to comply with such suggestions as you consider are calculated to improve the accommodation; but as I have received instructions not to incur any increased expense, nor to set up any new Posts without the Post Master General's authority, you must respectfully acquaint His Excellency that you cannot at present take any steps, as regards those recommendations of the Committee which have for their object the establishment

of new Way-offices, in an increased communication with those already established, where such increased communication would be attended with additional expense.

I am, Sir,
Your most obdt. Servt.,
H. M. WATSON,
Acting Deputy P. M. G.
The Postmaster, P. E. Island.

Charlottetown, P. E. Island,
7th July, 1843.

Sir;
I was directed by His Excellency the Lieutenant Governor, some time ago, to advertise that I would receive Tenders from persons willing to convey the Inland Mails agreeably to a Report and recommendation of the House of Assembly, for the purpose of ascertaining if any improvement could be made, without adding to the cost for their transmission—which Tenders I laid before His Excellency in Council, and I was subsequently directed by His Excellency to report to him my opinion respecting the Tenders I had submitted. I now take the liberty to forward to you a copy of that communication, and the reply I received on the subject. His Excellency is desirous to comply so far with the suggestions of the Assembly as to cause a courier to be employed on the south side of the Island, to convey the Mails to Bedeque, by Tryon River, instead of those Mails going by the North side to Princetown and St. Eleanor's, and returning the other way. This alteration would be a very great improvement, and notwithstanding it will add a small sum yearly to the expense, yet the facilities it will afford, and the increased intercourse it will tend to create, by allowing the return Mails to come in the same week, will more than compensate for the additional expense, and for which the Legislature has made provision. May I therefore ask your permission to be allowed to comply with the desire of His Excellency, as stated in his accompanying communication.

I am, Sir,
Your most obdt. humble Servt.,
THOMAS OWEN.
Arthur Woodgate, Esq.,
Deputy Post Master General.

Secretary's Office, July 3d, 1843.

Sir;
Your report of the 7th ult., upon the several Tenders called for, with the view of ascertaining if increased facilities could be afforded in the present mode of transmitting the Inland Mails, has been brought under the consideration of the Lieutenant Governor and the Executive Council, and I am instructed to inform you, that His Excellency and the Board concur with you on the propriety of limiting any immediate attention in transmitting the Inland Mails to that under which the Mails to the Westward is conducted, and you are desired to accept the Tender of Paul Mabey, junr., for conveying the Mail to Bedeque by the Tryon River route, and to employ him weekly for that purpose, and to direct the present contractor, Thomas Crabb, to proceed as usual to St. Eleanor's, and return to Charlottetown by the same road, viz.: Princetown, New London, &c., and that you carry this arrangement into effect as soon as convenience will permit.

I have the honor to be,
Your obdt. Servant,
(Signed) T. H. HAVILAND.
Thomas Owen, Esq., Postmaster.

General Post Office,
Halifax, July 13, 1843.

Sir;
I have to acknowledge the receipt of your Letter of the 7th inst., with copy of a communication you had addressed to the Provincial Secretary of the Island (with copy of his reply), respecting the Tenders for the conveyance of the Inland Mails which were advertised for, agreeably to the directions of the Lieutenant Governor, and requesting permission to be allowed to comply with His Excellency's request, as stated in his communication; and in reply, I beg to acquaint you, that as you have represented the alteration to be advantageous, and which will tend to facilitate the intercourse of the Island, by allowing the return Mails to come in the same week, and as the Legislature has made provision for the expense, I can see no objections to the proposed alteration, and therefore request your compliance with His Excellency's directions.

I am, Sir,
Your obedient Servant,
A. WOODGATE.
The Postmaster, Prince Edward Island.

PROVINCIAL PARLIAMENT.
LEGISLATIVE COUNCIL,
MONDAY, February 12.

RESPONSIBLE SYSTEM.
Immediately after the appointment of a Committee, on motion of Mr. Young, on the subject of the Fishery Reserves, The Hon. Mr. Young again rose, and observed that he had consulted the newspaper reports of the Legislative proceedings in Canada, under the Responsible System, and, by these reports, he found that when any information relative to the public questions, beyond what had been communicated to the Legislature by the voluntary command of His Excellency the Governor General, was required by either branch of the Legislature, it was the practice to apply directly by question to any member of the Legislature who was also a member of the Executive, for the information sought. The member of the Executive so interrogated, if at liberty so to do, might impart the required information at once. If otherwise, on his alleging his obligation to silence, the member putting the question might require the member of the Executive to request His Excellency's permission to impart the information sought. This was, besides, the practice of the Imperial Parliament upon an Address, and, as a straight forward and direct proceeding, was certainly to be preferred. He would, therefore, adopt it, and as Mr. Brecken was a member of the Executive, he would at once directly ask him whether or not His Excellency the Lieutenant Governor had received any information relative to the Fishery Reserves, and, if he had, of what nature. If Mr. Brecken should reply he was not at liberty to answer the question, he (Mr. Young) would then request him to ask His Excellency's permission to make an explicit declaration on the subject.

The Hon. Mr. BRECKEN replied, that the information sought could not then be elicited through him, either in the one way or the other. Mr. Young's recourse to the Responsible System was, in the matter, certainly too late. Its operation was easily evaded, as he himself (Mr. Young) had chosen a different mode of proceeding. He had proposed an Address, and obtained a Committee to prepare one, and by the old system he would have to abide.

GOVERNMENT HOUSE AND PUBLIC FURNITURE.
On motion, the hon. Mr. Irving was appointed one of the Committee to take charge of Government House and public Furniture, in the room of Mr. Hensley, who has resigned his Seat as a Member of this House.

Hon. Mr. Young took occasion to enquire if it were not possible to increase the power of this Committee, so as to render them Conservators of the Ground as well as of the House and Furniture of Government House. It was annoying to trace the progress of devastation and desolation which have been going on there. One Governor, on coming into possession of these Grounds, improves and beautifies them in such a manner that it is quite delightful to perambulate their shady and ornamented walks. Another, on succeeding such a one of taste, lays waste all former improvements and embellishments, by converting what were pleasure grounds into turnip and potatoe fields. In the time of Sir Charles FitzRoy, it was, indeed, delightful to walk through the grounds of Government House; but, now, in their denuded state, they looked more like a bare garden than a domain of a genteel residence. In Sir Charles FitzRoy's time, the water which forms the boundary of these grounds on one side, was beautifully belted with groups of trees. These trees are now cut away, and nothing but unsightly stumps left in their stead. In Sir Charles's time the walk to Brighton Lodge past Government House was a favourite resort of the people of Charlottetown, ornamented and shaded as it was with the woods in the rear of the house, which, while they shaded the road, hid from view whatever might be unsightly in appearance of the stables and other offices, and only left it in the power of the imagination to conceive their nature. Now the screen and shades afforded by these are gone; the offices/buildings of Government House are exposed to the public gaze in all their naked deformity; and, in lieu of them, the eye rests upon nothing but a blackened tract of scorched stumps, which would almost disgrace the abode of a Squatter.

In a conversation across the Table which arose out of the observations of the hon. Mr. Young, it was elicited that the Grounds of Government House are the property of the Governor for the time being, having been so granted by the Crown—that the Governor is at perfect liberty to convert them to whatever use he pleases—they having, in fact, been granted to him for a Farm; that he may cut down every stick thereon, and that Government House itself, having been built upon his property, seems to be further in the power of the Governor for the time being than our Legislature intended it should be.

Hon. Mr. Young gave notice that he would, on a future day, again bring the subject under the notice of their Honours.

TUESDAY, February 13.
House in Committee on Bill for the Protection of Sheep against Vicious Dogs, the Hon. Mr. Irving in the Chair.
On the reading of the first clause of the Bill it was found in the very outset, that the old Law had been amended, to the effect that in case any Sheep, Lamb or Lambs, shall be injured by any Dog, the owner of said Dog shall be liable to make compensation to the owner of such Sheep, Lamb or Lambs, for such injury, to any extent not exceeding Five Pounds.

The Hon. Mr. Holl observed, this was a very useful and very necessary amendment; an opinion in which the rest of the House seemed fully to concur. It afterwards appeared that what their Honours considered another very necessary amendment had been made, in cases of non-payment of penalty, in authorising the Justice of the Peace to issue his Warrant for distraint, as soon after Judgment as he may think fit, and directing that it shall not be withheld more than one month.

His Honor the President, with respect to this amendment, remarked that, viewed in connexion with another clause of the Bill, which, when there shall be no goods and chattels on which to distrain—authorised the imprisonment of an offender for a period not exceeding three months, the amendment was a very desirable one; inasmuch as it would render amenable to Law such offenders as, hanging loose upon society, without any property at stake thereon, had nothing but their liberty on which the law could lay hold: the power given to Justices of the Peace forthwith to follow up Judgment would induce them to prevent the escape of such offenders from the penalty of the Law. Such offenders could not easily be punished, unless by laying hold of them immediately.

The Hon. Mr. Holl considered that power to imprison offenders, in cases in which no goods or chattels could be found on which to levy, seemed to be absolutely necessary to prevent evasion of the penal operation of the Law. It was within his own knowledge that offenders, under the old Law, having goods and chattels, had assigned these over before Judgment, when apprehensive thereof, and by such assignment had rendered Judgment nugatory.

The House being resumed, Mr. Irving reported the Bill agreed to without any amendment.

Mr. HOLL also observed upon the propriety of holding persons offenders against this law, whose dogs shall be in the habit of roaming or prowling about, without their masters, or masters' servants, whether or not such dogs had been observed to kill or injure Sheep. The mischief done was generally in the night time, when it could very rarely be observed.

GOVERNMENT HOUSE GROUNDS.

The Hon. Mr. YOUNG, agreeably to notice, rose to move for the appointment of a Committee to wait upon His Excellency with a request that his Excellency will be pleased to lay before this House a copy of the Grant of the Government House Grounds. Mr. Young said, his object in moving for a copy of the Grant was to ascertain whether or not, according to the legal and true construction of the Grant, the Grounds were altogether beyond the control of our Legislature. If, on the examination of the Grant, it should be found they were not so, the House might then agree to address the Queen on the subject, praying her Majesty to appoint a Commission to examine into their present state, and to report respecting them. At present he merely wished for information—information which could be supplied only by the Grant itself. Whether he should subsequently take action upon the subject would altogether depend upon the precise legal construction which the Grant might be found to bear. Before the question should be put upon his motion, he wished to remark, that, with respect to the enquiry which he wished to institute, he was not influenced by any private feelings or private motives. Their honours would remember that last year he had addressed them upon this subject to the same effect. He altogether disavowed being influenced in the matter by anything but public principle. The reasons which he had urged in the enquiry in the present session, were precisely such as he had stated in the previous one.

Mr. Young's motion was agreed to, and himself and Mr. Irving appointed a Committee accordingly.

THURSDAY, February 15.
FISHERY RESERVES.

Hon. Mr. DALRYMPLE, from the Committee appointed to wait upon His Excellency with an Address upon the subject of the Fishery Reserves, reported that his Excellency had been pleased to say he would afford the information required.

Hon. Mr. YOUNG, from the Committee appointed to wait upon His Excellency with the message requesting a copy of