The Examiner.

A WEEKLY JOURNAL OF POLITICS, LITERATURE AND NEWS.

"This is true Liberty, when Freeborn Men, having to advise the Public, may speak free."---Euripides.

VOL. XXII.] CHARLOTTETOWN, PRINCE EDWARD ISLAND, MONDAY, MAY 22, 1871. [NO. 21.

The Examiner

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P. R. BOWERS,

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A few doors West of the Catholic Cathedral.

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PRINTED AT THIS OFFICE.

CLUBBING RATES.

WE will send the "Examiner" for 1871, and any one of the following periodicals at the annexed rates, payable in advance:

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We can supply any of the English, American or Colonial Publications, at the lowest cash rates.

P. R BOWERS.

ALMANAC FOR MAY.

MOON'S CHANGES.

Full Moon, 4th day, 6h. 43m. even., E.
Last Quarter, 11th day, 10h. 11m. morn., W.S W.
New Moon, 19th day, 6h. 38m. morn., S. S E
First Quarter, 27th day, 8h. 50m., morn., N. E.

D M	DAY WEEK	SUN rises	SUN sets	Sun fast clock	Moon S le	High Water	Day's length
		h m	h m	m s	h m	h m	h m
1	Mon	5	7 4	3 1	3 26	7 3	14 3
2	Tues	4 9	5	3 8	4 0	8 35	16
3	Wed	4 7	6	3 15	4 27	9 3	19
4	Thur	4 4	7	3 22	rises	10 16	22
5	Frid	4 5	8	3 27	8 15	11 5	24
6	Sat	4 4	9	3 33	9 33	11 52	25
7	Sun	5	4 3 7	1	3 37	10 49	ve 27
8	Mon	4 2	1	3 42	11 54	1 34	30
9	Tues	4 1	1	3 47	Morn	2 28	32
10	Wed	4 0	1	3 4-	0 44	3 26	34
11	Thur	3 9	1	3 56	1 26	4 2-	37
12	Frid	3	1 7	3 52	2 0	5 30	39
13	Sat	3 6	1	3 53	2 23	6 3	42
14	Sun	5	3 5 7	1 9	3 54	2 50	7 30 44
15	Mon	3 4	2	3 54	3 10	8 20	45
16	Tues	3 3	2	3 53	3 34	9 7	49
17	Wed	3 1	2	3 52	3 36	9 5	52
18	Thur	3 0	2	3 50	4 19	10 3	54
19	Frid	2 9	2	3 48	sets	11 9	56
20	Sat	2 8	2	3 45	8 44	11 47	58
21	Sun	5	2 7 7	2	3 42	9 44	Morn 15 0
22	Mon	2 6	2	3 38	0 32	0 25	2
23	Tues	2 5	2 9	3 34	11 21	1 10	4
24	Wed	2 4	3 0	3 29	1 59	1 50	7
25	Thur	2 3	3 1	3 23	Morn	2 34	10
26	Fri	2 2	3 2	3 17	0 36	3 21	1
27	Sat	2 1	3 3	3 11	1 10	4 9	13
28	Sun	5	2 0 7	3 5	3 4	1 38	5 5 15
29	Mon	1 9	3 6	2 57	2 1	6 2	17
30	Tues	1 8	3 7	2 49	6 59	2 58	18
31	Wed	1 7	3 9	2 41	2 52	7 55	20

Business Cards.

HENRY J. GAFFNEY, M. D.

PHYSICIAN & SURGEON,

OFFICE IN

North American Hotel,

KENT STREET.

Charlottetown, Aug 3, 1870

MR. A. SMYTHE,

PROFESSOR OF MUSIC,

Has Removed his Academy to Water St.,

(Opposite the late Telegraph Office.)

Pianoforte and Melodeon Tuning punctually attended to.

July 25, 1870. 1y

CARVELL BROTHERS,

AUCTIONEERS,

Commission Merchants,

AND

GENERAL AGENTS,

BANK BUILDING, QUEEN STREET,

Charlottetown, P. E Island

A. McNEILL,

Reading Room Proprietor

COMMISSION MERCHANT

AND

AUCTIONEER.

CHARLOTTETOWN.

March 21, 1870. 1 yr

WILLIAM DODD,

Commission Merchant and

AUCTIONEER,

QUEEN SQUARE,

CHARLOTTETOWN, P. E. ISLAND.

H. HASZARD.

Commission Merchant,

GENERAL AGENT,

AND

AUCTIONEER

Uppe. Queen Street,

Charlottetown, - - - P.E.I.

N. B.—Orders from abroad, and the country will receive prompt attention.

April 26, 1869

1871 Fresh Seeds. 1871

GARDEN, AGRICULTURAL, and FLOWER SEEDS and BULBS.

INDIAN CORN

Grown by an experienced cultivator in CORNWALLIS. For Sale by

WM. R. WATSON.

City Drug Store, Victoria Building. April 17, 1871.

HANDBILLS and POSTERS printed at EXAMINER Office.

Business Cards.

HAPPY HOME HOTEL.

The above New Hotel, in Sydney Street, opposite Blatch and McKenzie's, is now open for the Public, The H H. H is only one block south of the Market Square, affording Country People a favorable opportunity of obtaining Refreshments for themselves, and good Stabling and Provender for their Horses The Proprietor of the HAPPY HOME HOTEL is determined to give the best possible satisfaction to his Patrons. The Stabling is good, with abundance of Provender for Horses. In connection with the Hotel is a supply of

Groceries, Confectionary, &c.

Seven or eight permanent Boarders can be accommodated at a reasonable rate per week.

Good People, please call and judge for yourselves!

A. A. McKENZIE.
Proprietor

Sydney Street, Ch'town, Jan 23 1871.

Apothecaries' Hall,

The Old Stand, West Corner of Queen Square.

ESTABLISHED, 1810.

By Steamer *City of Cork* from ENGLAND. Brigantine *James* from MONTREAL and other recent arrivals, the undersigned has completed his importtions for the winter consisting of

GENUINE DRUGS & CHEMICALS,

Dye Stuffs, Varnishes, Paints, Oils, Colors, &c.

PATENT MEDICINES, PERFUMERY, TOILET ARTICLES, &c., &c.

The whole of which will be sold at a small advance on cost.

Special attention, by an experienced hand, to the preparation by day and night of Physicians prescriptions and private recipes.

T. DESBRISAY.

Charlottetown, Jan. 2, 1871.

A. HERMANS,

Bell-Hanger, Gun and Tin-Smith,

Dorchester Steet,

(Next to "Examiner" Office.)

BEGS to return his thanks to the general public for the liberal patronage extended to him since his commencement in business, and asks for a continuance of the same. He keeps constanty on hand

A neat Assortment of

TINWARE, KITCHEN UTENSILS

&c., &c., &c.

ALL ORDERS in the above BUSINESS will be punctually attended to

Having lately made large purchases in the Cheapest Markets, intended for House Builders, such as

Gas Fitting, Water Closets, Bell Fittings, &c., &c.

I am prepared to SELL THEM at RATES AS LOW AS CAN BE HAD IN THE CITY, and will fit them up in a good workmanlike style

To a generous public, I would say, that all orders in THIS BRANCH OF MY BUSINESS will be attended to with Despatch

A Lot of First Class WATER COOLERS on hand.

SAYER'S CRYSTAL BLUE,

Sold Cheaper than ever

July 12, 1869

BOSTON STEAMERS!

'Alhambra' & 'Commerce.'

ONE of the above Steamers will leave Boston every SATURDAY for this Port, *via* Halifax and Canso, commencing on the 8th inst. and will continue, until further notice Returning will leave Charlottetown every Thursday, at 12 o'clock, noon.

For Freight or Passage apply to

CARVELL BROS, Agents.

Ch'town, April 10, 1871. tf

Apothecaries' Hall,

The Old Stand, West Corner of Queen Square.

ESTABLISHED, 1810.

JUST RECEIVED, a fresh supply of FELLOWS' COMPOUND SYRUP OF HYPOPHOSPHITES, and Wyeth Brothers' COMPOUND SYRUP of PHOSPHATES (Chemical Food).

—ALSO—

A Good Assortment of Aniline Dyes, Roseine, &c.

T. DESBRISAY.

Ch'town, Jan. 2, 1871.

Salt! Salt! Salt!

10,000 bushels Cadiz Salt.

THE Subscriber offers FOR SALE, immediately on arrival, in lots to suit purchasers the Cargo of the Brigantine *Katie*, now on her way from Cadiz.

GEORGE W. HOWLAN.

Cascumpec, April 3, 1871 h sj 2 m

LOST.

A RED SETTER DOG, slightly lame, answers to the name of "Bran." Whoever brings the same to Government House, or gives such information as may lead to his recovery, will be handsomely rewarded.

Private Secretary's Office, April 17, 1871.

Seeds. Seeds. Seeds.

FRESH and good for the Garden and farm at

BEER & SONS',
Seed Store.

April 24, 1871. 1m

Co-Partnership Notice.

MR. WM. HENRY AITKEN has, this day, been admitted a partner in our Firm.

CARVELL BROS.

Ch'town, April 24, 1871. 4in

General Advertisements.

POWNAL NURSERY.

Fruit & Ornamental Trees, &c.

THE Subscriber will offer for Sale, in their proper season, the following

FRUIT TREES!

800 Grafted Apple, of 7 different hardy kinds, at 24s. per doz. a part of which are from Cornwallis, N. S; 50 Crab Apple Trees, at 3s. each; 1000 Ungrafted or Seedling Apple, raised from the Baldwin Apple Seed. These are sure to be hardy, and we have no reason to doubt but they will yield fruit, after their kind are from 5 to 7 feet high; sold at 10s to 12s. per doz. 300 Large Blue Plum Trees, and a few Green Gage, as good as can be had on the Island, 9s. to 12s. per doz. A few dozen Red Cherry 1s. each; 500 Black Currant Bushes 5s per dozen.

ORNAMENTAL!

700 Lombardy Poplars, 6s. to 9s. per dozen I expect a few dozen of Oak Trees.

GARDEN & OTHER SEEDS!

Also, a large variety of different kinds of Seeds, suitable for Market or private Gardens.

(See Catalogues of Seeds and Trees).

The above will be offered for sale at the Subscriber's, and at his large Double Stall in the Market House, Charlottetown, on Market Days.

Orders sent will be thankfully received and attended to

In regard to Cabbage and other Plants. I am making preparations to supply the Market boxed as last year, having 20 lbs. of select Seeds in reserve for that purpose.

EGGS.—I will pay the Highest Cash Price for any number of Eggs, at the Market House.

JAMES. J. GAY.

Pownal Village, Lot 49 April 20, 2871.

THROUGH TICKETS

TO ALL PLACES IN

Canada, Western States, California, etc.,

May be had at lowest rates, on application to

F. W. HALES,
Steam Navigation Company's Office,
Lower Water Street.

Ch'town, April. 24 1871.

COLFORD BROS.,

Importers and Dealers in

TOBACCO,

CIGARS,

and Smokers Articles,

HALIFAX .....N. S.

May 1, 1871. 1y

COTTON WARPS.

FROM NEW BRUNSWICK COTTON MILLS.

9 Bales Assorted Numbers in White and Colored,

FOR SALE by

CARVELL BROS.'

May 1, 1871.

Vaccination.

IN accordance with the "Act to promote Vaccination," I have appointed Doctor Johnson's Dispensary, Kent Street, as the place where I will attend, every Tuesday and Wednesday, from 2 to 4 o'clock, p. m., in order to Vaccinate those who may attend for such purpose.

H. A. JOHNSON,

Superintendant of Vaccination for Ch'town and Royalty.

April 24, 1871—1 m

FOR SALE

AT

Queen Square Furniture Store!

Children's Carriages,

At a discount of 20 per cent from usual prices

JOHN NEWSON.

April 24, 1871.

Cheap China and Earthenware Store.

JUST RECEIVED FROM ENGLAND, A

LARGE ASSORTMENT

OF

Dinner Sets, China Sets, Stone China Sets, Toilet Sets,

And a Handsome Assortment of

EARTHENWARE

of all descriptions, to be sold Cheap, Wholesale and Retail.

J. LaLACHEUR.

Old Stand, Reddin's Building, Queen Street.

Ch'town, May 1, 1871.

NEW YORK FLOUR DEPOT.

Spring Importations.

JUST LANDED ex Schooner "M. E. MacLean," from New York—

670 Bbls. Flour, (fresh ground,)
50 Sides Heavy Sole Leather,

which will be sold

CHEAP FOR CASH.

WM. McGILL.

Ch'town, April 24, 1871.—1 m

JUST RECEIVED.

200 BBLS. CANADA FLOUR, a superior article. To arrive by *Commerce*, a further supply of that CORNMEAL.

BLATCH & McKENZIE.

May 8, 1871. Pat 2w

Insurance.

The Travellers' Insurance Comp'y,

OF HARTFORD, CON.

Cash Assets - - - - - $1 600,000.

Grants everything desirable in

LIFE & ACCIDENT INSURANCE

ON THE MOST FAVORABLE TERMS.

Accident Department.

THE Travellers' Insurance Company, in its Accident Department, is a General Accident Insurance Company, granting policies of Insurance against Death or wholly Disabling Injury by Accident to men of all trades, professions, and occupations, at rates within the reach of all. It insures against accidents by machinery, accidents from the use of tools and implements, accidents that occur in the usual and lawful avocations of life as well as accidents by travel.

General Accident Policies are written for a term of one to twelve months each, and insure a sum of $500 to $10 000 against Death by Accident and $3 to $50 weekly indemnity for wholly disabling injury by accident, not to exceed twenty-six weeks for any one accident, at an annual cost of $5 to $10 per thousand for occupations not specially hazardous. Hazardous risks taken at higher rates.

Life Department.

In its Life Department, the Travellers grants full Life and Endowment Policies, embracing the best features of the best companies, but without the complications or the uncertainties or the note system. It sells Insurance rather than future "dividends." Its contract is a plain one, its security is ample and unquestioned and its rates of premium are exceedingly low. It prefers to do business on a cash basis, and thus gives its policyholders advantages not attainable under the credit system.

Premium system, the favorite low rate cash plan.

All policies non-forfeitable Its ten, fifteen and twenty year policies can be converted into Endowments, at the option of the insurant This feature is original with this Company.

The Travellers' furnish everything desirable in either Life or Accident Insurance. It has issued 215 000 general accident policies and Paid Fourteen Thousand Claims for death or injury by accident; the amount thus returned to policy holders averaging about Seven Hundred Dollars a Day for ever working day during the past seven years.

In its Life department it has written 11,390 policies; and its Low Rate Cash Plan is steadily growing in favor with the insuring public.

Example of Life Rates.

The holder of a policy for $1000 will pay an annual premium of $17 20, which will cost in most other companies very nearly $30 Hence the assured can secure in the Travellers a Life Policy for over $5000 for the same annual premium as charged by other companies for only $1000, and the insurance take effect from date of policy without waiting for bonus additions, which are uncertain, and at best require the assured to have a guarantee of life for a number of years in order to realize.

Halifax Board of References:

Hon W. A Henry, Mayor.
A. Uniacke, Esq, Custos.
S. Tobin, Esq, Ex Mayor
N Clark, Esq., Clk. Peace.
G. Taylor Esq., Sup. N. S. R.
James Scott, Esq., Merchant.
E. W. Chipman, Esq, do
W. N. Wickwire, M. D., Medical Referee.

Canada Board of References:

C. J. Brydges, Esq., Managing Director Grand Trunk Railway, Montreal
W. K Muir, General Superintendent Great Western Railroad, Hamilton
Hon L Holton, late Minister of Finance, Montreal.
Hon. Alexander Campbell, Commissioner of Crown Lands, Kingston.
Hon. W. M. McMaster, M. L. C., Firm McMaster & Nephews, Merchants Toronto
William Workman, Esq., President City Bank, Montreal
Hugh Allen, Esq Firm Hugh & Andrew Allen, General Merchants and Agents Montreal Ocean Steamship Company. Montreal.
J. L. Beaudry, Esq, Mayor of Montreal.
Edwin Atwater, Esq., Firm E Atwater & Co., Merchants and President Citizens' Insurance Co, Montreal
Henry Starnes, Esq., Manager Ontario Bank Montreal.
James Johnson, Esq, Ex-President Provincial Exhibition, London.

Applications for Life or Accident Insurance are respectfully solicited.

J. D WELLS.
General Agent for Maritime Provinces.

Office in McLeod's Buildings, No. 114 Hollis Street, Halifax. 3 m.

UNION HOUSE!

Hurrah for the Railroad!

THE Subscriber thankful to his friends and customers generally, for their patronage since his commencement in business in UNION HOUSE Charlottetown, and in soliciting a continuance of the same, begs leave to inform the public that he has refitted up the Union House at a LARGE COST inside and out, and is now prepared to accommodate the

TRAVELLING PUBLIC,

and hopes to merit a share of Public Patronage If you want to be in the business part of Charlottetown, stay at the UNION HOUSE

TERMS MODERATE.

A FIRST-CLASS BARBER'S SHOP

in connection with the Hotel, where you will always find the Barber at his post. In connection with the above Hotel is an

OYSTER SALOON,

fitted up in good style, second to none in the Provinces, where you can get Oysters done up in

First Class Style,

at any time up to 11 o'clock, p. m., Sundays excepted.

CHOICE LIQUORS

of all kinds, the very best in the market, and attentive waiters always in attendance. Come one! Come all! But don't get off the track.

JOHN S. O'NEILL.

Union House, Ch'town, May 1, 1871. 3m

AUCTION SALES

OF

PUBLIC LANDS!

THE Commissioner of Public Lands will, on THURSDAY, the 8th day of June next, at 10 o'clock, a. m., on the spot, offer for sale, at Public Auction, by the lot, the whole of Cascumpec Point, comprising about 250 acres of excellent land, laid off for a town and subdivided into 180 Lots, containing an area varying from two roods to three acres each. According to the plan of the same to be seen at this Office, and at the office of the Hon. G. W. Howlan, Alberton.

Purchasers will find in this property a valuable investment; it being situated in the harbor of Cascumpec, surrounded with good water privileges, and in the immediate vicinity of the terminus of the trunk line of railway to be constructed through this Island. It is eligibly situated for business, and, judging from the rapid growth of Alberton and the further contemplated facilities of communication, it is destined, ere long, to become a town of considerable importance.

TERMS OF SALE.—Twenty per cent. deposit, and the balance payable in three equal annual instalments with interest, paid yearly.

FRANCIS KELLY,
Com'r.

Land Office, May 11, 1871. till 8th june.

SUPREME COURT.

Important Civil Suit, respecting the Right of Way and alleged Obstruction at the west end of Pownal Street.

THE CITY CORPORATION *VS.* J. S. CARVELL, ESQ.

RESPONDENT, MARSHALL FLYNN; APPELLANT. DANIEL DINN.

An Appeal Case from the Mayor's Court to the Supreme Court.

(CONTINUED.)

John McKinnon sworn. Examined by Mr. E. Palmer. I have resided 43 years in the West River. I know the end of Pownal Street, and have come that way. I came that way because it was a short cut. I have brought loads of wood that way, and have seen others bring loads. I have seen it used in summer to bring lighters up loaded with stone. The lighters were some of them three or four feet in width, others were six or seven feet. I have landed stone and brick there when tide was high for Mr Purdy. This was 10 years ago. I was there this year. Took no particular notice how far breastwork was from the wharf—I think it is 7 or 8 feet. A lighter could not get up there now unless it was a very small one. I have driven loads of hay up there, and have seen others do so. I could not now. Have seen people from Belfast and South Shore go and come that way. The obstruction is an inconvenience to the public at large.

Cross-examined by Mr. Hodgson. I was not spoken to by the Mayor or City Council about this matter. I do not know that the Mayor tried to prevent the obstruction.

John McLean sworn. Examined by Mr. E. Palmer. I live in the vicinity of Pownal Wharf, and am acquainted with it since its erection. I have seen people coming ashore near the west side of it. They came different ways. I know position of the breastwork. Though people come different ways—yet all converge towards the end of Pownal Street. There is a spring to one side, and persons coming that way have to keep near the wharf on one track. Could not come through now. The wharf leaves a ridge of ice. Could not bring a good large load of wood or oakum, or boards that way now. Some years ago several persone came that way. I have knew people to come in summer to that way in lighters. Have seen people discharging from them. There have not been so many come that way of late years. A lighter could not come up there now unless one about seven feet wide. I saw the breastwork after part of it had been pulled down.

Cross-examined by Mr. L. H Davies. After I came from California I saw an old schooner near there. She was water-logged. She laid about same place as the present breastwork, or a little further out. She laid on her keel, and was about 12 feet wide. She was owned by John Purdy who ordered her to be left there He and his brother managed their father's estate. He was never prosecuted for leaving the schooner there to my knowledge. She was carried away accidentally by the ice. She spread, her timbers went to peices and some of them lay there yet. The bank is steep, there is a gutter there formed by the water running down. Carts might go up. I have seen horses with loads go up occasionally. There might be away there, but it did no look like it. Mr. Purdie lived there since 1847 or 1848.

James Merry sworn. Examined by Mr. E. Palmer. I am acquainted with Pownal Wharf having worked there. I recollect when the obstruction was put up. It was commenced in March. Daniel Dinn was overseer. It was about 3 or 4 feet nearer the top of the wharf than at the bottom. I saw the line tested the other day by Mr. Ball. I waited on him to take distances.

Mr. Hodgson objected to this being taken as evidence on the ground that prosecution was travelling out of the bill of indictment, as the evidence should be based upon the breastwork as it stood in March, and not what it is now. Objection overuled.

I was present this morning when Mr. Ball made his examination. The obstructien was a certain distance towards the houses. It might be 2 feet over the line of the street. The old obstruction was over the range of the street. The present obstruction is about five inches at the top from being within range of the line of houses, and at the bottom projects a foot beyond the line of the street. I think it was impossible for any sleigh to go through the gap before the second of March. A loaded sleigh of boxes or barrels could not get through now without touching the jagged ends of the trees and bush projecting out from the breastwork. The depth of water at the inside of the embankment is 5 or 6 feet. I am working a good spell in Charlottetown, and for the last two years I worked down there, there has been a pretty good thoroughfare. The embankment at present crosses the track where sleighs usually come into town in winter. In glib ice they come in any where, but they must come through this gap.

Cross-examined by Mr. Charles Palmer. From the top of the gap the distance across to the outside of the piles driven down alongside the wharf is about 3½ feet. When I stood by the buildings the obstruction appeared to be projecting outside the line of the street. I was doing this by myself, and had nobody to hold a stick at the wharf to ascertain the exact distance. I just took a range of the breastwork in a line with Mr. Rankin's building. It might have projected more than a foot, but was not less than two inches. It is two feet further off from the end of the wharf now than it was then. The way I came at the two feet was by rule of measure. I measured the distance across in the first instance, and measured it again to-day. I had a rod and laid it upon the brush at the top, and then measured the rod with my rule. From the end of the brush to the wharf was 7 feet 8 inches. According to the survey it is 5 inches at the top of the breastwork within range of the street line. The difference between the first and second measurement is three feet and a half. The stick I measured with had some inches marked on it. I was in a hurry and had not marked my name or initials upon the pole.

John Gormley sworn. Examined by Hon. Atty. General. I reside in town and know where the obstruction is. I was employed about it and helped to pull it down. The work I pulled down was two or three feet off from the wharf. I did not measure it but I could step on the wharf. The obstruction ran east and west, and I helped pull down 30 feet of it in length. I sighted the obstruction from Neil Rankin's house and suppose it encroached on the street about four inches at the top and 2½ feet at the bottom. I have observed people landing there but not since the obstruction was erected. I could not pass there with the obstruction since March. The bottom of the present obstruction is on the line of the street. The obstruction in March which we pulled down went two feet or eighteen inches closer to the wharf than the present one.

His Honor remarked that unless the buildings sighted by witnesses were ascertained by competent surveyors provided with scientifical instruments to be erected exactly on the line of the street, the evidence would amount to nothing in establishing the relative position of the breastwork:

Witness resumed. The difference between the obstruction now and in March is about 2 feet or more off the wharf. In March I could step on the breastwork from the wharf, but now I could not. The distance now is 7 feet 8 inches, and the depth of water outside the breastwork is about 6 feet—cannot say about the depth of water inside—but they used to go in with lighters and land brick on the wharf.

Cross-examined by Mr. Hodgson. Sleighs used to come up in winter—the passage was narrow enough. I swear a sleigh could not get through. His Worship the Mayor told me to work. The Mayor was the boss. The Mayor and some of the City Council were on the wharf. I did not hear the Mayor say that it must be pulled down. The men while pulling it down were guarded by the police. I did not measure the distance at present across from wharf to breastwork—could not jump it. I did not try it, but I am quite sure that I could do it quite easily in March. It then was three feet wide at top and two feet six inches at bottom. I could not say how much it levelled off. I did not swear it was 2 feet across—it was about two feet, perhaps it was. I said it might be three feet and a half. It might be 3 feet 9 inches. I will not swear it was four feet. It might be eight. *Question.*—if a man swore it was 8 feet would he swear to what was false? Answer.—I don't think that it was 8 feet. I will not swear to any such a thing. Perhaps it might be 10 feet for anything I know. I swear no such thing that it was ten feet. I will swear that it was not 8 feet at the bottom. Perhaps it was, and perhaps it was not—take it slanting and it might be. I did not measure the height of the wharf. I suppose it was angling, it might be 14 feet and it might 11 feet, but I will not swear. I do not know the height of the breastwork—it was not 10 feet high. I know it was not because I could look over the top of it. I swear that I could see the top of the breastwork on the 2nd of March. I looked over the top of it standing on the ice. I suppose it was 7 feet high or perhaps six. I am not 7 feet high. I did not look at the sky at all. I was often down there and looked over it. I was there all day working. I did not look over it to measure it. I did not say the wharf was 14 feet high, it might be 11 feet. I could see over the top of the stove pipe in this room and I could see over the top of the breastwork. I got no instruction from the Mayor to pull down the breastwork. The city paid me. All the Councillors were not there. I was an hour and 25 minutes pulling it down. I will not undertake to say where the line of the street is, nor to say that Mr. Rankin's house is on the line.

John Ball sworn. Examined by Mr. E. Palmer. I am land surveyor. This morning I went down and compared the line of obstruction with the Line of Pownal Street. The Mayor gave me instructions to go down and see whether the nuisance was upon the street or not. I took instruments with me. I took the centre of the street as near as I could get it, and ran off my distance from that. Rankin's house is at the corner of the street, and the houses in that vicinity are very regular more so than you find them in almost any other part of the town.

A plan was here produced by William Crabb, Deputy Register of Deeds, based on the assumption that the factory and Rankin's house were placed on the line of the street.

The plan was objected to by Mr Hodgson, as bearing no more resemblance to the real line of the street than a ledger does to the cash book; for, if the first entries made were incorrect, all subsequent would be incorrect in a similar manner to the first.

A plan of the City of Charlottetown, drawn by the late George Wright, Esqr., then Surveyor General, was next produced, showing that Mr. Rankin's house is back from the line of the street, from a foot to eighteen inches. Witness—John Ball—went on to say, He took Rankin's House as a guide, supposing it to be correct. All the other houses are in a range with Rankin's house, and were likewise off the street. I ranged the breastwork with Rankin's house, and found the end of it was off the street. It was not a staunch, solid breastwork at the end, but as near as possible, it was off five inches. It was not built up in regular blocks. The present obstruction at top is 5 inches west of Rankin's line. In order to get the exact centre of the street, we should have to get the little blocks that have been put down to mark the centre. I took the course of the street, and the course of the wharf built out from it into the harbor, showing that the Ordnance property cuts into Pownal Street wharf. James Merry, and another man I did not know, were assisting me in running the lines.

Peter MacGowan. City Clerk, sworn. Examined by Mr. E. Palmer —Produced the City Bye-laws in relation to Streets and Squares, also produced Extract of Minutes of Council, passed 1st May, 1856, in confirmation of City Bye laws.

Cross-examined by Mr. Hodgson. The City Bye-law is read three times, is engrossed, and passed by the City Council; then it goes to the Executive Government, like a Bill passed by the Legislature, and after being read a third time, it comes back again to be confirmed, and after it is sanctioned, it is copied into this book, with the other City Bye-laws, but this book itself does not go before the Lieutenant Governor, in Council. I received a communication that it was thus confirmed. I presume there was a copy of notification to the City Council confirming the Governor's assent. I made a pretty diligent search for the original notification, and in place of that, I have submitted a certified copy. The documents in my office are very voluminous, and I am interrupted continually by persons making enquiries. I have looked at all the bundles, but it might, possibly, be wrapped inside another paper.

Re-examined by Mr. E Palmer. This is a record book of the City Bye-laws. It is the invariable practice that the same document that goes up to the Lieutenant Governor always comes back again. Latterly I send duplicates. I am quite certain that there is no other copy of Bye-laws, passed that same time, than the one produced.

Mr. HODGSON said before going into the case, he would submit to his Lordship that they have not proved the Bye-laws. In the first place, they submit a document which they purport to be a copy of the Bye-laws, but there is no evidence to show that the proper number of Council members was present, and it was also necessary for the learned Counsel to prove that a notification to attend meeting had been sent to each member; neither has it been shown that such notification had been published in the Royal Gazette; and he would venture to say that there never was such a burlesque upon any society as the Corporation of the City of Charlottetown in its trying to mock the City of London, and should it continue much longer to do so, its fate will probably be similar to that which happened the toad, in the fable of the "Toad and the Ox," where we read how the toad was punished for eating hay in imitation of the ox. The 36th Bye-law says it shall be competent for the City Council of said city, composed of not less than two-thirds of its members, to make such Bye-laws; but no proof has been offered to show that this Corporation Act received the sanction of two-thirds of the members present. There is no presumption made in favor of the Mayor, or any jurisdiction under him or the City Council This Act, therefore, has no validity, unless it is proved that there were two-thirds of the members present voted in favor of it. We have no record of the meeting to show who were present, and, unlike the City of London, the Mayor of this Town has no presumption in his favor at all. The City of London has no charter, but from time immorial, has guaranteed certain liberties such as has never been claimed by this city, and hence the Statute is our guide in civic matters. It is not merely directory, but mandatory; it is not permissive, but declaratory, proving that no Bye-law has effect until such is first published for general information. Where is the proof here that such has been the case? No Bye-law can have effect until the Statute is complied with, for it specially declares that all Bye-laws shall be null and void until the same shall be published. The presumption is, that they cannot prove that it has been published, and I ask your Lordship to let the words of the Statute have their plain, simple effect. My Lord, this document has the same effect as a deed, signed, sealed, but not delivered. No proof that notification of approval has been given lies before us, or that it ever received the the sanction of the Lieutenant Governor. They are bound to prove a notice of approval.

Mr. E. PALMER said that it was like an Act going home for the Royal assent, and not being heard of for a length of time—say three or six months — that silence or non-assent is taken for approval, and has none the less force in law.

Mr. HODGSON—I have never had the honor of a seat in the Executive Council, but I have yet to learn that his Honor's approval can give effect to an Act of the Legislature. If your Lordship please, I will name again the objection raised on the ground of a non-suit in this case. First, it has not been proved that two-thirds of the members were present at the meeting on passage of said Bye-law. Second, no notification of attendance has been shown; and, thirdly, that it has not been proved that the same has been published for general information.

Mr. E. PALMER contended that they had traced it up to the Lieutenant Governor, and until it has been disapproved, it stands approved.

Mr. HODGSON replied that the onus of evidence devolved upon the learned Counsel of the Plaintiffs to prove that such has been done, showing that the Lieutenant Governor took the matter into his consideration, and with regard to the question of search, the party must be in a position to prove that due search was made, and that the original copy cannot be found. I submit, my Lord, that it is absolutely necessary for the prosecution in this case, to show that the parties have sustained some damage before they could commence a criminal suit, or issue a summons under the City Bye-laws; therefore, my Lord, I submit that the Bye-law is illegal. Here a suit is commenced, by order of the Mayor and City Council, by their representative, Thos. Flynn, who knew of no wrong, no damage being done. The man who arrests these criminals, is the man who shovels snow away from the door of the Police Court, and is the person who brings the action, and it devolves upon him to show that he has been injured in some way. A person cannot abate a nuisance until he can show in what way he has received an injury from it. The learned Counsel must not blow hot and cold in this matter. He first endeavored to show that it is not a bill of indictment, and then he turns round and says that a common informer is not entitled to show that he has sustained some injury, because the Statute empowers him to come in and lodge complaint. A man coming from the other Provinces, or outside the limits of the City, who has received no injury from a nuisance created here, has no complaint that would warrant a magistrate in issuing a writ to abate the nuisance, which did not interfere with him in any manner, and there is not one word on the Statute Book of the Colony how a writ can be issued to a foreigner, or any other individual, to abate a nuisance, save and except the party who sustained the damage. A man, certainly, cannot abate a nuisance unless he can show damage. An easement always is taken from one who has an interest in the land, and Mr. Purdy, as we can show, had been in the possession of the land on which the breastwork is erected for 20 years, up to his death.

Mr. Hodgson cited Washburn on Easements Page 130 to prove that an individual cannot gain an easement or interest in anothers property by travelling across his land, whether by following the same track or different paths. He next contended that the case before the Court was a criminal prosecution over which the Mayor under the City Bye-laws had no jurisdiction, and consequently the decision of His Worship was null and void. The Court is here to-day trying to ascertain whether the party has been guilty of a crime of which there is no reference in the City Bye-laws. According to the nature of a bill of indictment a man must know upon what ground he has been committed. Mr. Carvell is an enterprising merchant—endeavours to extend his operations. He has done a great deal of business in which he has expended large sums of money, and the Corporation true to their instincts whenever a man starts ahead are sure to hem him round with obstacles until they drive him from among us, or ruin his business. This is the kind of corporation imposed upon us, whose jealousy ever prevented it from allowing others to do good and never did any good itself that was ever heard of. I submit my Lord the Defendants had not the usual warning, and the Judges who tried the case before it came up here, pre-judged the proceedings and had no jurisdiction to hear the envidence under the Statute

Mr. C. PALMER next addressed the Court on behalf of the Appellant and reviewed the testimony of the witness. He argued that the opinions of the witnesses based upon the range of the houses of Pownal Street could not be taken as *prima facia* evidence that the breastwork encroached upon the line of of the street, and the plan produced in Court by the City Surveyor being also based upon the same supposition shewed still further to prove that no case has been made out. They brought the surveyor here to prove that the breastwork encroached upon the thoroughfare, but he comes into court and says "my survey I find is wrong," therefore, his evidence goes for nothing. If they had Purdy's warehouse out to the line of the street is it paramount that the breastwork would be clear altogether. It will be argued that the Bye-laws are legal and that the Corporation has jurisdiction over the city. A Corporation is nothing more than a private individual coming in here, because they are not in their judicial capacity in this place. The Bye-law does not dispense with a single sentence of what the Statute imposes. The Statute says that they may make a bye-law, but there must be a two-thirds vote upon that bye-law. The Mayor is not authorized to make a bye-law, therefore, it ought to be proved that two-thirds of the City Corporation were present when the one now before the Court was constituted a bye-law. Secondly, the Statute says "provided always that such bye-law shall be transmitted to his Excellency the Lieutenant Governor in Council for his approval. I admit the force of your Lordships remark that if no disallowance is proved it stands confirmed, but that applies only to the Statute. They may say ch! but there bye-laws are promulgated to the public. What then? Here is a man outside the city limits who is not aware what they contain, and he has no right to recognize them. The next objection is the want of jurisdiction altogether. The corporation members may say we have a a right to come here independ-