

much more than mere nominal rent—the main object of the Government being to retain possession of the soil, and not to allow their claim thereto to lapse through any laches on their part, but that at all times when such reserves, or any portions of them, might be required for bona fide fishing purposes, they might at once be able to grant licences of occupation, under proper restrictions or regulations, for such purposes. With respect to any portions of such reserves, in the possession of small freeholders, which had unfairly been included in the description, and within the boundaries of their freeholds, in their deeds thereof, and for which, consequently, they had paid, as well as for the adjoining lands included in their deeds, it was never intended that such freeholders who, with respect to such reserves, had been as unfairly dealt with by the proprietors, as the tenants in similar circumstances, it never had been the intention either of the late Government or of their supporters in the Legislature, and neither, I think, would it ever be the intention of any Government to deal with them as with the proprietors; but, on the contrary, to set towards them in the matter in the most lenient and indulgent manner; and, for such a mode of dealing with them, a precedent may be found in the legislative proceedings with respect to such properties and such reserves in Nova Scotia. In comparing the several Despatches which have, from time to time, been sent out to the different Governors of the Colony, from Downing-street by successive Colonial Secretaries, occasional discrepancies will be found, but there is a general agreement in all, with the exception of that now under consideration, with respect to the fact that there has been no relinquishment by the Crown of the property reserved for the purposes of free fisheries for all British subjects, either as respects those reserves in which the Crown Law Officers have given it as their opinion that the fee simple is in the grantees or proprietors, or with respect to those in which they have declared the fee simple to be in the Crown; and also that, neither by any laches or negligence on the part of the Crown in the protection of those reserves for the purposes to which they were originally dedicated, or by any cessation, on the part of the people, in asserting the public right thereto, or failure to remonstrate, on every proper occasion, against any attempted alienation of them from the public service to which they were originally dedicated, has the claim thereto become obsolete. It has been said, however, with respect to such Despatches, that they contain mere individual opinions, suggestions or advice, but that, as not proceeding from any legal authority, they are in no way obligatory or binding on any of the parties concerned. This may be true, but it is also true, I think, that when we consider that these opinions, suggestions or counsels, proceeded from individuals who were, at the time of their penning or dictating such Despatches, the servants and advisers of the Crown, and bound by every obligation of honor and loyalty to protect, from all innovation or infraction, the interests of the Kings or the Queen whom they served, that, therefore, these opinions, suggestions or counsels, must have proceeded from the most deliberate and profound consideration of their import, and of the consequences and effect which would proceed from or be caused by them, and that, being founded in law, they must have the full weight and force of law to govern and direct concerning the rights and property to which they have reference, and on which they bear. The case is now, however, very different with respect to these reserves from what it was when those Despatches, asserting the rights of the Crown to dispose of the reserves the fee simple of which is in the Crown, were written, and to which generally I have referred. Ever since Responsible Government was graciously conceded by Her Majesty the Queen to this Colony, these reserves have been fully as much at the disposal of the Government of this Colony, as before that event they had been at that of the Crown. In the Civil List Act passed at that time, and which has been faithfully and fully carried out hitherto, a surrender is made to the Assembly by Her Majesty of all the Crown revenues in this Island, a very important part of which as territorial revenue is the Fishery Reserves of which the fee simple is in the Crown; and it is the bounden duty of the Government and of the Legislature of this Colony to take care that the public right in these reserves shall be fully preserved, and that they shall never be used or occupied unless for the public benefit. The legal opinions of the Crown Law Officers, Sir Frederick Pollock and Mr. Follett, concerning the Fishery Reserves to which I have alluded, and the correspondence connected therewith, show that the greatest possible care was taken that their opinions should be based on the real facts of the question, and that no mistake should be made through any misapprehension of them on their part. With your Honors' permission I will read the whole. His Honor then read the following correspondence on the subject of the Fishery Reserves:

"DOWNING STREET, 29th Dec., 1842.

"SIR;

"With reference to that part of my Despatch of the 14th of July last, 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, in 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 question 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. HUSTLEY."

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

"1st. 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 Township, and of erecting stages and other necessary buildings for the said fishery or fisheries within the distance of 500 feet from high water 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 the high-water 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?"

"2d. What is meant by the term Coast?"

"3d. Does the term 'Coast' limit the reservation to Townships that abut within head-lands, bays, harbours or rivers; and if it does extend to Townships abutting within such head-lands, bays, harbours or rivers, how far within the same does it extend?"

"4th. Several small Islands are situated at a short distance from the coasts 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 Island, and of erecting stages and other necessary buildings for the said fishery or fisheries within the distance of 500 feet from high water mark: Does the said reservation extend round the whole of these Islands?"

"5th. 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 harbours, and parts are inside and parts without said bays or harbours, does the above mentioned reserves extend round the whole of said Islands, or does it only extend to those portions of said Islands which form the outside of such bays or harbours?"

"6th. Several small Islands are altogether within the bays or harbours of Prince Edward Island, the grants of which contain a like reservation: Does the said Reserve extend round the whole of these Islands?"

"TEMPLE, Dec. 22d, 1842.

"SIR;

"We have the honor to acknowledge the receipt of your letter of the 3rd September last, wherein you state that doubts have 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 Land and Emigration have, by the direction of Lord Stanley, prepared a statement on the subject, to be submitted to 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 opinions on the points submitted to us without seeing the particular grant in 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 grants. The land itself is not reserved or exacted. In the second case, the effect to be given to the supposed reservation must depend upon 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 to enter for the purpose of the Fishery should be rendered to the Crown.

"2nd and 3rd. The word 'coasts' has no clearly defined legal meaning; and its meaning in any particular grant, may depend upon 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 and 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. STEPHENSON, &c. &c. &c."

"DOWNING STREET, 8th April, 1843.

"SIR;

"I have received your Despatch 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 the 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 paper which has been received from those officers on the subject.

"I have, &c., (Signed) "STANLEY.

"Sir HENRY VERE HUSTLEY, &c. &c. &c."

"TEMPLE, 1st April, 1843.

"SIR;

"We beg to acknowledge the receipt of your letter of the 20th ult., wherein you were pleased to observe, that with reference to that part of our report of the 22d December last, in which we stated that we could not form any clear opinion on the points submitted to us in Mr. Stephens' letter of the 3rd 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 high water 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 liberty to all Her Majesty's subjects to carry on a free fishery within the distance of 500 feet from high water 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."

[Hon. Col. Swabey's Speech will be concluded in our next No.]

HOUSE OF ASSEMBLY.

HOUSE IN COMMITTEE ON THE DRAFT ADDRESS. (Debate continued.)

Hon. COL. GRAY.—In consequence of what we have just heard from the leader of the late Government, I rise for the purpose of justifying to this Committee, and to the country, the statement which I made some time since, and which the hon. member has seen fit to stigmatize as untrue. I stated, Sir, that the Bill guaranteeing the Loan had been abandoned by the Imperial Parliament, in consequence of the falsehoods and misrepresentations contained in the Despatches on the subject of the financial condition of the Colony.—and not from the opposition of the Proprietors. I will now state, that I received a letter from London, informing me that the then Colonial Minister, Lord Stanley, had said,

in the House of Commons, that the Island was not only out of debt, but that there was a small surplus in its favor; and my correspondent asked, if such were the case, how did it happen that the Government owed me £9000, which they could not pay me? On reference to the reports of the Debates in the House of Commons, I found that his Lordship had made the statement attributed to him. On what foundation could it have been based, except on official communications between the local Government and the Colonial Office? And was the statement in accordance with facts? Sir, it is no matter of surprise to me that the Government of Great Britain, discovering the deception by which it had been attempted to mislead them, should decline to proceed with the measure in question. I shall not pay to the understanding of the Committee so poor a compliment, as to ask hon. members what would be the result to the country of the management, by the late Government, of £100,000 under the Loan Bill? Their past conduct in connection with the Land Purchase Bill suggests the ready answer.

Hon. Mr. COLES.—Mr. Chairman, I deny the statement of the hon. member. The Government owes him nothing. He received for his claim on the Worrell Estate Government Debentures, payable in ten years. The truth is, that the Colony was out of debt at the time the Despatch was sent home. Since then the Revenue has suffered to a trifling extent, as might naturally be expected, from the depression in commercial affairs. There is a wide difference between a debt overdue, which the debtor cannot pay, and a sum of money not yet payable.

Hon. COL. GRAY.—The hon. member has the faculty of constructing, on the smallest medium of truth, a lofty superstructure of assertion. The late Government did owe me £9000, which they were unable to pay me—the amount I had advanced to the former owners of the Worrell Estate. When that property was offered to the Government, the vendors said that the transfer could not be effected, because the Government were unable to pay my claim. In consequence of that I took Debentures for the amount.

Hon. Mr. COLES.—The statement of the hon. member is not correct. It never was the intention of the Government to pay cash for the Worrell Estate. It was bought under the provisions of the Land Purchase Bill, and the purchase money was payable in ten years.

Hon. Mr. HAVILAND.—It is strange, Mr. Chairman, that if the Colony was out of debt when the Worrell Estate was purchased, the late Government should assume a debt to the Hon. Col. Gray to the amount of £9000, and tax the people for the annual interest on that amount. I rather think their ideas of finance are somewhat akin to those of the Rustico Freuchman, who, when he gave a promissory note for a sum of money which he owed, thanked God that that debt was paid. (Laughter.)

Hon. Mr. PALMER.—Do I understand the hon. member, Mr. Coles, to say, that the late Government was prepared to pay off the £9000?

Hon. Mr. COLES.—No.

Hon. Mr. PALMER.—That Col. Gray wanted the money?

Hon. Mr. COLES.—No.

Hon. Mr. PALMER.—That he did not want it?

Hon. Mr. COLES.—Yes.

Hon. Mr. PALMER.—Then, Mr. Chairman, that is more than I ever heard from Col. Gray himself. I understood that he wanted his money, and could not get it. If the mortgage is due, and he cannot get his money, every word he has said is correct, and undeniable.

Hon. Mr. COLES.—The late Government told the vendors that they had, and would have, nothing to do with the mortgage. This discussion has arisen from the hon. member, Col. Gray, stating that the Government owed him £9000, which they were unable to pay him; while the fact is, that amount is not payable for six or seven years to come.

Hon. Mr. YEO.—If the Proprietors have opposed the Loan they must have been actuated by a regard for the interests of the people of the Colony far higher than they manifested for themselves, for the Loan once obtained, they could readily get rid of their lands; and I assure you, Mr. Chairman, many of them would only be too happy to do so.

Hon. Mr. LONGWORTH.—I have not hitherto occupied the time of the Committee in this discussion, Mr. Chairman, nor is it my intention to engage much of their attention on the present occasion. But, Sir, the honourable member for the Third District of Queen's County, Mr. Coles, had a great deal to say last evening on the subject of the Loan Bill, while alleging his reasons for the advocacy of a Court of Escheat. With reference to that portion of the debate, wherein that hon. member sought to attribute the withdrawal of the Guarantee Bill not to the actual cause—the official misrepresentations of the Proprietors, I may be permitted to shew briefly, but, I trust, satisfactorily, to the Committee, that the Despatch to which such frequent allusion has been made, did not contain a true statement of our affairs; and it is right that I should do so in answer to the observations of that hon. member, not only because he was a member of the late Government, but especially because he was the avowed leader of it; and it is quite a legitimate inference that he bore a principal part in the preparation of the Despatch referred to. He stated that the financial condition of the Colony had nothing to do with the loss of the Bill, which he alleged was sacrificed to a combination of Proprietors and other opponents—that the Bill was based on sound policy, and its passage was fully justified by the state of our finances. I say, Sir, without hesitation, that facts do not warrant the hon. member in making such a declaration. True, he mentioned in terms of apparent self-gratulation, that the Government were still in possession of 40,000 acres of land, remaining unsold from the Worrell Estate,—and assumed that the disposal of them would realize a large sum of money—that £16,000 were due from the purchasers of lands on that Estate—that consequently the Land Purchase Bill had been a boon to the country. That assertion, Mr. Chairman, I deny. I maintain, that so far from the operation of that Bill being beneficial, it has been, and will continue to be, disastrous to the country. What has been the result up to the present time? Has the Bill been self-sustaining, as its advocates so confidently predicted? I was not a member of this House when the Land Purchase Bill was passed, but well do I recollect hearing the arguments urged in support of it at the time. We heard the blessings enumerated which were to flow from it. That the poor settler was to get his farm at a small price: that the minds of the tenantry were at length to be set at rest, and those great ameliorations of our social condition were to be effected by the magical virtues of this Bill, without any cost to the public at large—for would not the Bill be self-sustaining? Alas for the prophets! The public accounts, the official records of the country shew, that so far from earning that character for itself, and justifying the favorable anticipations of its friends, the Bill, as hitherto administered, has not paid its working expenses. So great a proportion of the receipts has been expended in the maintenance of a staff of officials, and in defraying other charges, that nought has been reserved for the nucleus of a sinking fund necessary to meet the Debentures as they shall become due. And thus the late Government, having already disposed of the most valuable portion of the Estate, we find no provision made for the payment of the Loan already raised under the Purchase Bill, and which must shortly become due; and the expectation of providing for that contingency out of the present unsold and comparatively valueless part of the Estate, appears to me to partake rather of the Utopian character. Now, Sir, I ask any reasonable man if, with the proof before us of the management of the comparatively trifling business the late Government were called upon to discharge, in connection with the Worrell Estate and Lot 11 purchases, what would probably be the results if they had £100,000 to dispose of under the Loan Bill?

The measure would certainly have afforded a grand prospect for the friends and supporters of the Government, but most assuredly it would have proved, upon a magnificent scale, most disastrous to the real and vital interests of Prince Edward Island. With respect to the causes which influenced the Imperial Government in withholding its assent to the measure, and ultimately laying it upon the shelf, the hon. member alluded, at considerable length, to the correspondence which had taken place between a former Secretary of State for the Colo-

nia, Mr. Labouchere, and His Excellency the Lieut. Governor—from July to September, 1856. Referring to Mr. Labouchere's Despatch of the 18th July, 1856, it appears that minister had required full and precise information to be furnished to him as to the financial position and resources of the Colony, before proceeding further with the consideration of the proposed loan. These, Sir, are the terms in which the request was made, and on which I rely as the proof of what I now state: "I have to state in reply, that Her Majesty's Government are prepared to give a favourable consideration to this suggestion, and that the local Land Purchase Act, to which reference is made, appears to them to furnish fair principles of adjustment, which might be extended by increasing the sum to be raised under Imperial guarantee. It would be necessary, however, before proceeding further, that Her Majesty's Government should be informed of the amount of the proposed loan, and they should, at the same time, receive a full statement of the financial resources of the Island, and of the precise nature of the provision to be made for securing the repayment of the principal and interest of the loan. Her Majesty's Government would not feel justified in pledging themselves to any decision on this subject till such information is before them." The hon. member stated that His Excellency had discharged his duty by submitting the question to his Council, and had obtained a detailed statement, prepared by a Committee of that body, purporting to contain a statement of the resources and financial condition of the Colony, and had transmitted the same to Mr. Labouchere. For having done so no blame can be imputed to His Excellency in the matter, it being fairly presumable that he would repose a sufficient amount of confidence in his Council to warrant him in believing that those gentlemen had prepared, or compiled, a true statement from the public records of the Colony. On reference, however, to this document, prepared by the late Council, it appears, that although the Council submitted three tabular statements, it did not appear from any of them, or from the document itself, what was the real position of the Colony at the period therein referred to, viz: 31st January, 1856. It does not shew, as it ought to have done, by reference to the public accounts, as examined and certified by the House of Assembly, how our debt and credit account stood on the public records of the Colony. All it gave was, first, a naked abstract, shewing the amount of the Revenue from the year 1848 to 1856; secondly, a tabular statement, shewing the Revenue and expenditure for the same period of time, but without shewing the balance against the Colony as it really existed at the close of each year; and thirdly, a financial statement, marked C, purporting to shew the liabilities and assets of the Colony on the 31st January, 1856. By this last mentioned statement, the Council takes credit for all the unsold portions of the miserable Worrell Estate, without shewing, as it ought to have done, that the expense of working that Estate was more than the proceeds arising from it, and by this statement there actually appears to be a balance in favour of the Colony, on 31st January, 1856, of £6,521 6s. 3d. sterling, equal to £9,781 19s. 4d. currency. The following is the statement from the document in question:—

FINANCIAL STATEMENT OF THE COLONY OF PRINCE EDWARD ISLAND UP TO 31ST JANUARY, 1856.

	Debt in sterling.			Assets in sterling.			Balance in favor of Colony.		
	£	s.	d.	£	s.	d.	£	s.	d.
LIABILITIES.									
Treasury notes afloat at this date,	7,666	13	4						
Debentures under act 14 Vic., do.	6,666	13	4						
Debentures under act 16 Vic., do.	12,000	0	0						
Treasury warrants do.	7,108	18	2						
ASSETS.									
Assets in Treasury this date,				24,707	12	7			
44,582 acres public lands, at 4s.,				8,916	8	0			
7,392 acres Crown lands, at 3s. 4d.,				1,222	0	0			
Bonds in hand for public lands,				1,000	0	0			
Balance due on sales of public lands, secured on lands by defeasement on deeds according to statute,				4,107	10	6			
Balance in favor of the Colony,	6,521	6	3				6,521	6	3
Totals,	39,963	11	139,963	11	16,521	6	3		

And the reference to, or explanation of, that tabular statement in the document in question is certainly not calculated to give Her Majesty's Government a correct view of the subject. It is as follows: "Tabular statement (C) is a statement of the finances of the Colony on the 31st January, 1856, which has been carefully prepared, and contains, in the opinion of your Committee, a just and correct view of its present financial condition, which proves, after taking credit to the Colony for the value of Government lands, estimated at low rate, and charging it with all debentures afloat, and with £27,665 13s. 4d., Treasury notes afloat, not bearing interest, that, strictly speaking, at that date the Colony not only was out of debt, but that a balance existed in its favor, amounting to £6,521 6s. 3d. sterling." This, I say, Mr. Chairman, is a most deceptive document, and calculated to deceive any man not intimately acquainted with the state of our public accounts, and as the result proved, did actually deceive and mislead Mr. Labouchere himself. Any person taking up this document would naturally say that our finances were in a sound and flourishing condition, when they actually appear to be a balance in favor of the Colony of £9,781 19s. 4d. currency but, Mr. Chairman, what was the fact, and what was the true state of our finances, as shewn by the public accounts for the same period? Why, instead of there being a balance in favor of the Colony of £9,781 19s. 4d., there was actually a balance against, or in other words, a debt due by the Colony of £13,101 18s. 14d., as shewn by the public accounts authenticated by the Legislature in the session of 1856. The following is an abstract of the public accounts as published in the journals of the House of Assembly for that year, after having passed through the ordeal of the Committee on public accounts and therefore bearing the stamp of authenticity on its front

GOVERNMENT OF PRINCE EDWARD ISLAND.			
Dr.		Cr.	
Warrants unpaid 31st January, 1856,	£10663	6	11s
Treasury notes, 11500 0 0			
Debentures issued under Act 14 Vic.,	10000	0	0
Debentures issued for purchase of Worrell Estate, under Act 16 Vic.,	18000	0	0
	£50163	6	11s
Balance against the Colony 31st of January, 1855,	£9893	5	8s
Expenditure to 31st January, 1856,	45289	14	7
	£55183	0	34
Assets in Treasury 31st January, 1856, viz:			
Bonds,	£27035	16	1
Cash,	10025	12	8
Balance,	13101	18	1
Receipts for year ended 31st January, 1856,	£42081	2	
Bal. as above,	13101	18	1
	£55183	0	

What I complain of in this case is, that the Council kept that statement from the eyes of the Colonial Minister, that withheld from him the document which would have shewn at a glance what our financial condition, what the debt of the Colony, actually was. He would have seen, that there was a balance of £9,781 19s. 4d. currency in favor of the Colony, and that there was a debt due by the Colony of £13,101 18s. 14d. against it, at the period in question—making a difference between the actual and the true condition of our finances, of the sum of £27,665 13s. 4d. The statements were calculated to deceive, and mislead, the British Government; had they not, we