THE AMALGAMATED ASSEMBLY OF NEWFOUNDLAND
1841-1847

GARFIELD FIZZARD

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ABSTRACT

By the end of the 1830's, Newfoundland's legislature was in trouble. As in most of the British colonies with "representative government", the nominated council and the elected assembly were so much in conflict that the functioning of the executive was being hindered.

In 1842 Lord Stanley, the British Colonial Secretary, and Sir John Harvey, the Governor, decided that the council-assembly conflicts might best be eliminated if there was created a unicameral legislature. The system - known in Newfoundland as the "amalgamated legislature" - was established by an act of the British Parliament to continue until September 1, 1846, unless Parliament prolonged it. Under the system, the legislature functioned without the frequent impasses that had harassed its predecessor, for each bill was now subject to a majority vote in a single chamber. In addition, Harvey often intervened to prevent obstructive tactics by certain members; in many cases he encouraged the withdrawal of bills that were arousing bitter party antagonisms. In spite of its relative success, both political parties disliked the system. The Liberals, while in the majority among elected members, constituted the minority in the full assembly, and suffered many defeats. The Conservatives, on the other hand, had such a small

margin that an absence or an abstention could result in failure for them.

The Liberals began to accept "responsible government" (to a bicameral legislature) as their political aim. At the same time, they were ready to accept a return of their former constitution as an immediate alternative. The Conservatives, too, were ready to accept the old bicameral legislature. As the majority in the council undoubtedly would be Conservatives, they would be able to veto any legislation passed in an assembly dominated by Liberals.

In deciding whether to continue the amalgamated system or to change it, the officials in Westminister in 1846 were guided by Governor Harvey. Although he was convinced that the existing constitution had some advantages, he was aware that it had few, if any, supporters among the colonists, and recommended that it be replaced by the old bicameral system. This the British Parliament did in 1847 after extending the amalgamated system for one year.

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PREFACE

The three dates in Newfoundland's political history of the nineteenth century, which every child in the province learns, are: 1824 (when Newfoundland received civil government), 1832 (when it was granted "representative government"), and 1855 (when it required "responsible government"). Most histories either ignore 1842, or refer to it simply as the beginning of the "amalgamated legislature" - the union of the council and the assembly - which was effective but awkward and was withdrawn.

My initial casual curiosity with this period was based on the familiar historical "why". Why was it introduced, and why was it abandoned? My interest was increased when I read Mr. Martin Wight's The Development of the Legislative Council (London: 1945). It is evident from this book that the system of a mixed unicameral legislature was not exclusive to Newfoundland. Its introduction in the colony was part of a trend that was developing at the time in British colonial administration. In fact, the beginning of this trend in the 1840's was as important to the crown colonies as the application of "responsible government" was to the more politically advanced colonies, such as Canada and Nova Scotia. An awareness that the system, which has

often been described as "awkward", has been applied successfully to many British colonies made the inquiry more significant to me.

The thesis deals with the period from 1841 to 1847. While the decision to impose the amalgamated system on Newfoundland was made in London in 1842, an adequate answer to the question "Why was it introduced?" can be found only if one knows the reasons for the breakdown of the old form of representative government in 1841. 1847 is the logical date at which to conclude this inquiry, for the constitution was abandoned at that date.

The first chapter serves as a background to the main part of the thesis. In it the constitutional history of the British Empire is briefly surveyed, with special attention given to the amalgamated system. In the second chapter consideration is given to the reasons for the decisions to terminate the old bicameral legislature in favour of the new unicameral one, and to the procedure by which this change was made. In the third chapter the first session of the new legislature is analysed to discover the extent to which the system fulfilled the expectations of those who saw it as a solution to Newfoundland's political problems. In the fourth chapter the second and third sessions are similarly considered to

determine whether the system continued to have the results it experienced in the initial stages. In the fifth chapter the reasons are sought to the question "Why was the mixed unicameral legislature abandoned?"

I wish to acknowledge the help of the following in the preparation of the thesis: Memorial University, for awarding me a graduate fellowship; Dr. G.O. Rothney, for supervising much of my work, the staffs of Gosling Memorial Library, Memorial University Library, the Library of the Newfoundland Law Society, the Library of the Newfoundland Legislature, and the Newfoundland Archives, for their patience and help in locating materials; and Miss Ethel Janes, for her help in reading much of the preliminary draft.

ABBREVIATIONS

cap.	chapter
C.O.	documents in the archives of the Colonial Office, Public Records Office, London.
D.N.B.	Dictionary of National Biography
ed. (plural, eds)	editor
f. (plural, ff.)	and the following page
ibid.	in the same place
no.	number
n.p.	no page given in the manuscript
n.pl.	no publisher given
p. (plural, pp.)	page
sec.	section
ser.	series
sic	incorrectness in quotation

I

THE EMPIRE SETTING

In 1842 the British Parliament suspended the Newfoundland legislature consisting of a nominated Legislative Council and an elected House of Assembly. In its place Newfoundland was given a unicameral legislature made up of both nominated members and elected members. The experiment lasted only until 1847, when the old legislature was restored. Why was it made, and why after five years was it abandoned?

In order to understand this period in the constitutional history of Newfoundland, it is necessary to enquire first whether or not this sort of constitutional change fitted into contemporary British practice in the colonies at this time, and if so, to what extend it was successful elsewhere. It is necessary also to discover if any factors in Newfoundland's constitutional history influenced the colonists' reactions in 1842.

It will be recalled that the colonies of England were originally settled by Englishmen, and from the first settlement, the principle was accepted in theory that Englishmen should retain their traditional rights and privileges when they settled overseas. The charter of the Virginia Company, granted in 1606, for example, promised the colonists of what proved to be England's first permanent colony "all liberties, franchises

and immunities ... to all intents and purposes, as if they had been abiding and born within this our realm of England or any other of our said dominions."[1] No mention was made in the charter of any participation in government by the settlers; the first colonies of England's empire were the results of private enterprise and were somewhat like "company towns". But soon all their legislatures included some representatives of their inhabitants. For example, in 1619, the colonists of Virginia for the first time elected burgesses to sit with the governor and council,[2] and one year later Bermuda was given a council partly elected and partly nominated.[3] By the middle of the seventeenth century, while there were differences in organizational details, all the English settlement colonies of North America had some form of popular assembly.[4]

When the English Parliament asserted its power over the king in 1688, the colonists sought to obtain similar constitutional changes for themselves, - that is, the equivalent of a balance of monarch, lords, and commons.[5]

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[1] G.W. Prothero, Select Statutes and Other Constitutional Documents Illustrative of the Reign of Elizabeth and James (Oxford: 1913), pp. 459-60.

[2] Martin Wight, The Development of the Legislative Council 1606-1945 (London: 1945), p. 26.

[3] Ibid., p. 27.

[4] Harold U. Faulkner, American Political and Social History (New York: 1952), p. 40.

[5] Wight, Legislative Council, p. 31.

Most of the colonies succeeded in evolving a rough parallel in the form of governor, nominated council, and elected assembly, - an organization which has been called "the old representative system".[1] The colonial assemblies had less power in relation to the other branches of the legislature than did the English House of Commons.

England's conquest of other nations' colonies forced a reconsideration of questions involving representation in colonial legislatures. The principle of limited representation might well be accepted when the colonists were English or of English descent, but it was held officially in London that the same principle did not necessarily apply to colonies inhabited by conquered people. The English courts ruled in 1609 that conquered colonists could not claim the same privileges as English colonists, and that the Crown had power to institute any form of government that it considered necessary.[2] To encourage Englishmen to settle in Jamaica, however, the home government in 1661 did, in fact, grant it a representative assembly.[3] This precedent was followed in most of the conquered colonies. By 1763, all the colonies of Great Britain, settled or conquered, with the exception of Gibraltar and Minorca, had acquired representative institutions.[4]

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[1] Ibid., p. 27.

[2] Ibid., p. 28.

[3] Ibid.

[4] Ibid., p. 29.

During the Seven Years War, Great Britain changed her policy regarding the government of conquered colonies. With the acquisition of so many of these colonies, some with features which made the wisdom of granting representative institutions questionable, the British government in some cases withheld the old representative system. The constitution of Senegambia, imposed by order-in-council in 1765, after the capture of Senegal from the French, was the first to provide government with no form of popular representation.[1] Instead, it provided government by a governor and a legislative council. As Senegambia was little more than a trading post and soon ceased to be a British colony,[2] this constitution is of historical importance only in that it set a precedent.

Of much greater interest is the system established in Quebec in 1774, - the second colonial constitution deliberately to withhold elected representation.[3] When France ceded Quebec in 1763, the first impulse of the British government had been to create in Canada the old form of representative government. General Murray's Commission of

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[1] Ibid., p. 35.

[2] In 1783 Senegal was returned to France, and Gambia was returned to the Company of Merchants. (Wight, Legislative Council, p. 36)

[3] Wight, Legislative Council, p. 33.

November 21, 1763, stated:

> And we do hereby give and grant unto you ... full power and authority, with the advice and consent of our said council, ... so soon as the situation and circumstances ... will admit thereof, and when and as often as need shall require, to summon and call general assemblies of the freeholders and planters within your government.[1]

Due to the hesitations of the governors, however, an assembly had not yet been called in 1770, when the Tories replaced the Whigs in the government of Great Britain, and in 1774 the Quebec Act provided for a unicameral legislature without any elected popular representation.

Throughout the remainder of the century, British governments applied this policy to all newly-conquered colonies. When Great Britain gained seventeen more colonies in the Anglo-French Wars of 1793-1815, representative government was denied to all but one of them.[2] Tobago was the exception. Thus, by the 1830's, most of the governments of the British colonies were based on one of two types of constitution. The colonies settled by Englishmen and those conquered before the Seven Years War were under the old representative system, consisting of a governor, an appointed council, and an elected assembly. Most of the colonies conquered during and after the Seven Years War were under the autocratic rule of a governor and his council.

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[1]William Houston, Documents Illustrative of the Canadian Constitution (Toronto: 1891), pp. 74-5.

[2]Wight, Legislative Council, p. 48.

The latter group became known as "crown colonies".

The 1830's and the 1840's saw the beginning of change in both types of constitution. As a result of the Durham Report, most of the colonies with the old representative form of government moved toward "responsible government", at first with limitations on their legislative power, and finally with complete independence from the British Parliament. Change in the autocratic governments in the crown colonies was inevitable, for while conquered colonists legally could not claim the right to participate in their government, to the liberal spirit of the age in Great Britain, such complete autocracy in any British colony was distasteful. In addition, any degree of self-government in these colonies would bring them more responsibility for the financing of their own governments and would thus correspondingly lighten the burden carried by the British Parliament. The old representative system was unsatisfactory, not only because it would give more power than might be considered wise to conquered and sometimes backward people, but also because in those colonies to which it had been granted, conflicts between elected assemblies and nominated councils indicated that the system was unsuitable for effective colonial government.

A new form of government for the crown colonies was needed - a system which would give the colonists some voice in their government but which would permit rigid

control by the British government if necessary. The answer chosen lay in the creation of a unicameral legislature in which the appointed members and elected members would sit together. The nominated members could be either officials or private members. If the British government wanted entensive control, the proportion of nominated members to elected members would be high; to permit more legislative power by the representatives of the colonists, the British government needed only to reduce the proportion of nominated members to elected members.

In the 1830's there was already a colony with a legislature composed of both elected representatives and nominated members sitting together in one chamber. This was British Guiana, which had been formed by a union of Demerera and Berbice in 1831.[1] Prior to its conquest by the British in 1796, Demerera had been a Dutch colony with a semi-representative form of government.[2] It had had a Court of Policy consisting of five officials appointed by the governor and five members elected for life.[3] In addition, six Financial Representatives were elected but only for two-year terms. The Financial Representatives and

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[1] The Cambridge History of the British Empire, II, 475.

[2] C. Clementi, A Constitutional History of British Guiana (London: 1937), p. 54.

[3] The Cambridge History of the British Empire, II, 475.

The Court of Policy sat together to form the Combined Court, which had the right to vote revenue to cover the estimates introduced by the governor. When Great Britain captured Demerera, it recognized the two semi-representative bodies as the legislature of the colony, the members being merely required to take an oath of allegiance to the British monarch.

Thus, there was already a precedent in the British Empire for the combination of nominated and elected members in a single legislative chamber. Since the 1840's, British governments have adopted this system in almost every new colony which has been set up. Vancouver Island, created in 1856, was actually the last colony to receive the old representative system,[1] and by 1945 there were twenty-one colonies with mixed unicameral legislatures, while only three retained the bicameral form of "representative government".[2]

By the second half of the nineteenth century, many colonies with popular representation did not have bicameral legislatures; hence, the old definition of "representative government" was no longer applicable to these colonial systems. The Colonial Laws Validity Act of 1865 described a "representative" legislature as "any colonial legislature which shall comprise a legislative body of which one half

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[1] Wight, Legislative Council, p. 70.

[2] Ibid., pp. 170-1.

are elected by the inhabitants of the colony".[1]

The first two colonies in which unicameral legislatures were established by the British Parliament were Newfoundland and New South Wales. In both of these the system was introduced in 1842.[2] The New South Wales constitution was more successful than that of Newfoundland, and became a model for other colonies, including British Columbia, Natal, and the rest of the Australian colonies.[3]

The success of the New South Wales constitution was due in part to the peculiar nature of the colony. Prior to 1823 it had been little more than a large penitentary. On that date it acquired the then familiar crown colony system of governor and council.[4] Such a status did not satisfy the "emancipists", the freed convicts who wanted to participate in governing the colony.[5] On the other hand, the "enclusionists", who had arrived as free immigrants, opposed any representative institutions in the colony, for they did not wish to be governed in part by people who had been lately in prison.

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[1] Ibid., p. 77.

[2] Wight (p. 76) in error gives 1841 as the date when the system was introduced in Newfoundland. The act by which it was established in the colony was passed on August 12, 1842. [(In the Matter of the Boundry, I, 323)]. The act which gave the same system of New South Wales was also passed in 1842. [E. Sweetman, Australian Constitutional Development (Melbourne, 1925), p. 173)].

[3] Wight, Legislative Council, p. 76.

[4] E. Sweetman, Constitutional Development of Victoria 1851-1856 (Melbourne, 1920), p. 96.

[5] Sweetman, Australian Constitutional Development, pp. 17 ff.

The British government was in a dilemna because, like the enclusionists, it feared the consequences which might result from representative institutions in a colony in which ex-convicts formed a large part of the electorate. In addition, it was probable that council-assembly conflicts, so common in the British North American colonies, would plague New South Wales also, if the old representative system was granted. Yet, British subjects hardly could be permanently denied some form of representative assembly.

The emancipists apparently believed that such a system was too much to request at that time, for they did not press for it. Chief Justice Forbes (formerly of Newfoundland), who sympathized with the emancipists, suggested in the 1820's that an alternative to the bicameral legislature could be a "blended" legislature, one-third elected and one-third nominated.[1] He made no mention of the Demerera constitution, to which such a system would be similar. In 1827 Governor Darling, also, suggested that a blended legislative council was a possibility.[2] A correspondent of Chief Justice Forbes, Sir James Mackintosh, made the same suggestion in the House of Commons in 1828.[3] In 1835 the Australian Patriotic

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[1] Ibid., p. 69.

[2] Ibid., p. 65.

[3] Ibid., p. 68.

Association, a society of emancipists, requested a blended house for a period of seven years.[1]

In 1840 Lord John Russell presented to the House of Commons a bill which would have provided for the establishment of a council made up of both nominees and representatives of the people.[2] He proposed that this plan should continue for ten years only, because, he said, he expected that as New South Wales increased in population and wealth, the colonists would want constitutional institutions similar to those of the British North American colonies. The bill was withdrawn, however, because of objections by members who had been influenced by the protests of enclusionists in New South Wales.[3]

The emancipists continued to advocate the introduction of the blended house as a temporary measure. In the meantime, the enclusionists had withdrawn their objections to the request of the emancipists for representative institutions, and joined them in their request for a blended house. In 1842 Lord Stanley brought in a bill basically the same as that which had been introduced two years earlier by Lord John Russell.[4] This time the bill passed all the stages without

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[1] Ibid., p. 113.

[2] Ibid., p. 163.

[3] Ibid., p. 165.

[4] Ibid., p. 172.

opposition, presumably because the members knew that the act would now be approved by most of the colonists.

Up to a point the development of the New South Wales constitution had been similar to that of Newfoundland. Both colonies had been settled for a long period before they were accepted as colonies, and both had received their first council at approximately the same time, - New South Wales in 1823 and Newfoundland in 1824.[1]

As in New South Wales, the reformers in Newfoundland early sought to achieve some participation in the government of the colony. By 1831 the advocacies of the reformers in Newfoundland were receiving support from some of those who were seeking an extension of the franchise in Great Britain. The Newfoundlanders found help in George Robinson, a member of the House of Commons, who had dealings with Newfoundland, and in Joseph Hume, the Whig leader, who grasped at every opportunity by which the British government might reduce its expenditures on the colonies.[2] In 1831 Robinson requested the British government to consider granting Newfoundland a representative legislature. He was promised only that the colonists would receive as much freedom as local circumstances

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[1]Wight, Legislative Council, p. 7.

[2]A.H. McLintock, The Establishment of Constitutional Government in Newfoundland 1783-1832 (London: 1941), p. 182.

permitted.[1] The subject was then dropped for that session.[2]

The Newfoundland reformers continued to petition the British government. The officials of the Colonial Office, in considering possible forms of government for Newfoundland, had at their disposal an important document by James Stephen, which he had written in December, 1831, when he was legal adviser to the office.[3] It had become evident to him that the old representative system was breaking down. He put the blame on the legislative councils:

> The chief practical error of this scheme of colonial constitution consists, I think, in the formation of the Legislative Council. It has nothing in common with the House of Peers. As nominees of the Crown, the Councillors are regarded with the jealousy which reasonably attaches itself to all who partake of the Royal Authority.
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> The Council is scarcely more useful than popular ... they are either inert, or are roused into activity in defence of their privileges or as the Governor's Agents in unpopular measures.[4]

In his document he favoured a unicameral legislature made up both of nominated and elected members, - a system similar to that in Demerera. There, he contended, "the Nominees of the Crown and the Representatives of the People ... mutually enlighten, assist and check each other, and the governor feels

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[1] Ibid., p. 183.

[2] Ibid.

[3] Ibid., p. 184.

[4] Ibid., p. 208.

the full weight of his responsibility."[1]

Stephen questioned the propriety of introducing the system in Newfoundland on the authority of either the British Parliament or royal prerogative. Instead he recommended:

> I should propose to transcribe, mutatis mutandis, the original Nova Scotia Commission and Instructions, addressing them to the Governor of Newfoundland. I would authorize him to propose to the Assembly when convened, the admission to their Body of a certain number of the government officers, ex officio, with the assurance that, upon such a Bill being passed by them, the Legislative Council would be dissolved, being called together only for the acceptance of that Bill, and the incorporation of its official members into the House of Assembly.[2]

This was not the first time that Stephen had raised the question of a possible unicameral legislative for Newfoundland. In 1826 in a report to Wilmot Horton, undersecretary for the colonies, on the advisability of granting representative institutions to Newfoundland, he had recommended an assembly made up of elected members and nominees of the Crown.[3]

Lord Goderich, the Colonial Secretary, accepted the recommendations in Stephen's memorandum of December, 1831. The Royal Commission, which provided for the establishment of the old representative system, consisting of a governor,

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[1] Ibid.

[2] Ibid.

[3] Ibid., p. 186.

a nominated council, and an elected assembly, was issued to Governor Thomas Cochrane on March 2, 1832.[1] The instructions based on the Commission were issued on July 26, 1832.[2] In a separate despatch Lord Goderich instructed Cochrane to raise the subject of "amalgamation" soon after the first meeting of the legislature.[3]

Although Stephen drew up Goderich's despatch and the memorandum on which it was based, he later denied faith in the principle of the mixed unicameral legislature. In a departmental minute in 1841 to Hope, an undersecretary in the Colonial Office, he stated:

> I confess myself an entire Dissentent from the proposals contained in Lord Ripon's Despatch of 1832, [Lord Goderich's despatch to Cochrane on July 27, 1832.] although I believe it stands word for word as I myself originally prepared the Draft. But I need not say that in that, as in many other cases, it is prefectly consistent to write such Drafts and to dissent from the policy of them.... It is a maxim with me admitting of no single exception that the model of Governor, Council, Assembly, is on the whole the best for every Colonial Society.[4]

His objection was based on the conviction that a single chamber consisting of both elected and nominated members would turn out to be nothing more or less than "a pure

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[1] See Appendix E, p. 175.

[2] In the Matter of the Boundry, II, 731.

[3] C.O. 195/18, 57. Goderich to Cochrane, July 27, 1832.

[4] C.O. 194/112, 492 ff. Harvey to Stanley, December 21, 1841. Departmental minute, Stephen to Hope.

Democracy". He held that:

> The nominated Members will either form a distinct party and Consolidate the opposition party, and be overpowered by them - or they may shrink from so invidious a position.... In either Case the Governor will be left to contend with the Assembly singlehanded.[1]

Governor Cochrane presented a copy of Goderich's despatch of July 27, 1832, to the House of Assembly soon after it met for the first time on January 1, 1833.[2] He hoped that it would receive the "deliberate and serious consideration" of the House.[3] But the Assembly on a unanimous motion, replied, "... the measure recommended by the Right Honourable Secretary, not being in accordance with the principles of the British Constitution, is in no wise applicable to the circumstances of this Colony."[4] During discussion on the despatch, John Kent, one of the reformers, said that he thought it was unfortunate that Lord Goderich had chosen the Dutch for his model in legislation.[5] Nothing less than a legislature on the British model would suffice.

The reaction of the Assembly is understandable. Some of the Liberals had tried for many years to get a popular assembly. To them the ideal constitution was that

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[1] Ibid.

[2] Newfoundland, Journal of the House of Assembly, January 9, 1833, p. 14.

[3] Ibid.

[4] Ibid., January 10, 1833, p. 14.

[5] Public Ledger (St. John's: January 11, 1833).

based on the old representative system, which had become familiar in other parts of British North America. Although they were cognizant of the conflicts between the councils and the assemblies, they did not see these as indications of an inherent weakness in the constitution. John Kent said, "The objections which were urged against Councils would be easily removed by appointing to them men who sympathised with, and possessed the confidence of, the people."[1] Moreover, the Liberals feared that many of the elected members of the Assembly might be too easily swayed by officials who were superior in debate.[2] The Newfoundland Conservatives opposed any amalgamation of the chambers, for they saw in it the dangers of a "pure Democracy".[3]

In recommending the voluntary acceptance by the Newfoundland assembly of a mixed unicameral legislature, the Colonial Secretary was originating what was later to become the normal policy of British governments in regard to the constitutions of Crown colonies, - that the legislatures should consist of nominated and elected members sitting in a single chamber. This eventual decision was based on the conviction that the old representative system was failing to

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[1] Ibid.

[2] L. Harris, "The First Nine Years of Representative Government in Newfoundland". (Unpublished M.A. thesis, Memorial University of Newfoundland: 1959), p. 54.

[3] McLintock, Constitutional Government, p. 189.

provide effective and smoothly functioning government in the colonies. Whereas some colonies, such as Canada and Nova Scotia, were ready for responsible government, those which were not, would be better served, it was believed, by an amalgamation of the nominated and elected branches of the legislature. Unlike the colonists of New South Wales, who accepted this system as the best system they could expect, Newfoundlanders would not voluntarily accept it in 1832. Both political groups believed that it would endanger their prospects for power. It was not until ten years later that they received the system, at a time when their wishes were not taken into consideration.

II

THE ADOPTION OF THE AMALGAMATED SYSTEM IN 1842

In 1832 the House of Assembly and the Legislative Council in Newfoundland rejected Lord Goderich's advice to sit together in one chamber. Goderich feared that unless there was such an amalgamation, conflicts similar to those experienced between the houses of the legislature in other British colonies, such as the Canadas and Nova Scotia, would plague the government in Newfoundland. The question now arises whether or not Lord Goderich's fears were well-founded, and if so, what steps were taken to make the legislature function smoothly.

The first legislature, from 1833 to 1836, progressed with little difficulty between the two houses.[1] This harmony existed because the majority in the House of Assembly were conservative - the same political colour as that of all the members of the Legislative Council.[2] The tone of the second legislature, from 1837 to 1841, was very different, for the Liberals were in a majority in the House. Now each party dominated a branch of the legislature.

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[1] M.O. Morgan, "The Financial Affairs of the First Newfoundland Assembly", Newfoundland Quarterly, LIII (June, 1954), 12 ff.

[2] Ibid.

The struggle between the House of Assembly and the Legislative Council came to a climax in 1841. Bills were sent from the House of Assembly to the Legislative Council only to be amended and returned to the Assembly, where they were usually rejected.

Two of the most important issues in the struggle between the two houses in 1841 were finance and the regulation of elections respectively. The financial controversy had begun in the session of 1840, when the Legislative Council had opposed the inclusion of £1,500 in the contingency bill, which provided for the expenses incurred by the Assembly.[1] Both houses had remained adamant, and no contingency bill had been passed. After the session of 1840 had ended, the majority of the members of the Assembly had sent a memorial to the Governor requesting him to issue warrants on all those items to which the Legislative Council had agreed.[2] In this the Governor and Legislative Council had concurred.[3] In the session of 1841, the House of Assembly attempted to include in the contingency bill the clauses to which the Legislative Council had objected in the previous session. When the Legislative Council refused to consider them, the House of Assembly removed them from the

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[1] C.O. 194/111, 319 ff. Prescott to Russell, June 9, 1841.

[2] [H. Prescott], A Sketch of the State of Affairs in Newfoundland (London: 1841), p.37.

[3] Ibid.

contingency bill, but included them in the regular supply bill.[1] The Legislative Council, with the support of the Governor,[2] amended the supply bill,[3] and returned it to the House of Assembly, where it was dismissed as void by the Speaker.[4] Thus, no supply bill was passed for 1841.

The second major source of controversy between the House of Assembly and the Legislative Council in the session of 1841 was the matter of regulating elections. Two by-elections in December, 1840, had brought the issue to a head. One of these was in St. John's as a result of Patrick Morris's appointment to the Council in March, 1840,[5] and the other in Conception Bay on the death of Anthony Godfrey, one of the members of that district, in September, 1840. There had been no accounts of any serious incidents in St. John's, where Lawerence O'Brien had been elected. At some of the polls in Conception Bay, however, there had been disturbances, which the Liberals considered insignificant,[6]

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[1] C.O.194/111, 319 ff. Prescott to Russell, June 9, 1841.

[2] Ibid.

[3] Newfoundland, Journal of the Legislative Council, April 6, 1841, p. 62.

[4] Newfoundland, Journal of the House of Assembly, April 13, 1841, pp. 185-6.

[5] Newfoundland, Blue Book, 1840 , p. 64.

[6] Patriot (St. John's: January 6, 1841).

but which Governor Prescott described as "brutal violence and outrage"[1] and "serious riots".[2] Although the two candidates, Edmund Hanrahan of Carbonear and James L. Prendergast of Harbour Grace, had both been Roman Catholics,[3] certain priests had joined in the campaign for Hanrahan, the successful contestant.[4] On the other hand, some merchants in the district had exerted their influence in support of Prendergast.[5] Thomas Fitzgibbon Moore, member for Trinity Bay, said in the House of Assembly, in January, 1841:

> ... if a man did not vote for the merchant he could not get anything to eat, and would be starved, and if he did not give his vote to the priest he couldn't get absolution, and in either case he was sure of starvation or damnation.[6]

In his opening speech on January 2, 1841, the Governor stated that the "scandalous events" which had occurred in the by-elections in Conception Bay and St. John's proved that it was necessary to pass such laws as might "preserve the public peace and secure the free and

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[1] C.O. 194/109, 70. Prescott to Russell, December 10, 1840.

[2] [Prescott], Affairs in Newfoundland, p. 10.

[3] L. Harris, "The First Nine Years of Representative Government in Newfoundland". (Unpublished M.A. thesis, Memorial University of Newfoundland: 1959), p. 139.

[4] Ibid.

[5] Ibid., p. 141.

[6] Patriot (St. John's: January 6, 1841).

undisturbed exercise of the elective franchise."[1] The House of Assembly asked for reports and other documents which the Governor considered evidence of "scandalous events" at the by-elections.[2] Prescott replied that they were of common notoriety, and refused to comply with the request. He added:

> So convinced am I of the absolute necessity of an amendment of the election law, that I avail myself of this opportunity to state, that should unhappily no legislative enactment be made during this session, to secure the just exercise of the franchise and the public tranquility in future elections, I will not undertake the responsibility of issuing Proclamation, or writs for the election of a new House of Assembly, or make myself accountable for the serious consequences, the confusion and bloodshed so likely to ensue thereupon under the present system, - but referring the whole affair to the Supreme Government, I will, as in duty bound, implicity follow such directions as I may receive in that behalf.[3]

The Solicitor General, with Prescott's approval, introduced a new election bill in the House of Assembly.[4] In a despatch to the Colonial Secretary, the Governor expressed doubt that it would succeed, - "there is great reason to fear that those who find their account in the existing unhappy state of affairs will be able to defeat all my efforts in the cause of order".[5] The bill was, in

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[1] Newfoundland, Journal of the House of Assembly January 2, 1841, p. 6.

[2] Ibid., February 9, 1841, p. 63.

[3] Ibid., February 12, 1841, pp. 70-71.

[4] C.O. 194/111, 107 ff. Prescott to Russell, February 16, 1841.

[5] Ibid.

fact, amended by the Assembly.[1] When it was sent to the Legislative Council, it contained the following provisions:

(a) forty days were to elapse between the date of issue of the writs and nomination day;

(b) polling was to be held for four days rather than for an unlimited time as was then the practice;

(c) all householders were to be allowed to vote, if they could prove their qualifications, even if their names were omitted from the register.

The Legislative Council, in amending the bill, reduced the period between the date of the issue of the writs and nominations from forty to thirty days; reduced the length of the polling period from four days to two; and allowed no voting rights to unregistered householders.[2] The Assembly refused to consider the amended bill; hence, it did not become law.

The House of Assembly attributed the cause of the conflicts between the two houses of the legislature to the fact that the same Council acted in both legislative

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[1]The changes made by the Assembly are not know, as the original bill, which the Solicitor General introduced, has not been found.

[2]Newfoundland, Journal of the House of Assembly April 7, 1841, pp. 178-83.

and executive capacities.[1] In the session of the Assembly in 1841, John Kent introduced an address to the Queen, asking that the Executive Council be separate from the Legislative Council.[2] The address, which was passed without amendment and without division,[3] stated in part:

> ... as the union in the same persons of power Executive and Legislative, is inconsistent with the principles of the British constitution, and as the neighbouring colonies have ... been permitted to enjoy the advantage of having their Governors advised by the Council who are not permitted to exercise legislative functions, so may the present Executive and Legislative Council of Newfoundland be dissolved, and two Councils appointed, the one to exercise powers of the Legislative body, and the other to advise the Governor on matters pertaining to the administration of his Government.[4]

Governor Prescott advised the Colonial Secretary to ignore the address, which, he maintained, excited no

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[1]Cochrane's Commission and Instructions of 1832 had established a "Council" whose "advice and consent" was needed before any legislation could be enacted. In its first meeting in a legislative capacity, the Council passed a resolution in which it incidentially referred to itself as the "Legislative Council". The Governor in one of his first messages to the Council also called it the "Legislative Council". The Council acting as a body in an executive capacity came to be known unofficially as the "Executive Council". The terms were used with such frequency by these bodies, the governors, and the officials in the Colonial Office, that they may be considered as semi-official designations.

[2]Newfoundland, Journal of the House of Assembly January 29, 1841, p. 43.

[3]Ibid., February 1, 1841, pp. 45-6; February 2, 1841, p. 49; February 5, 1841, p. 55.

[4]Ibid., February 5, 1841, p. 55.

public attention or interest.[1] He added that it was not worthy of note as it had come from a house composed mainly of people in the lowest class of society and was "not supported by public opinion". These and all other references to the House of Assembly and the voters showed that he had nothing but scorn for the "masses" and their representatives. He believed that most of the inhabitants were of such a low standing that the views held by their representatives were not supported by "respectable" public opinion. As to the substance of the request, he expressed the opinion in a private letter to a friend in Great Britain, that there were not enough "people of respectability" in Newfoundland to have an executive council, a legislative council, and an elected assembly of separate membership.[2] He would not object to having a separate executive council, however, if it contained members of the legislature council and the assembly, and if such a request came from a "respectable and full House of Assembly".

In the same letter, Governor Prescott held that the political difficulties in Newfoundland were caused by:

(a) the character of the Roman Catholic bishop;

(b) the lack of any property qualification for representatives in the elected assembly;

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[1] C.O.194/111, 100 ff. Prescott to Russell, February 11, 1841.

[2] [Prescott], Affairs in Newfoundland, p. 58.

(c) almost universal suffrage;

(d) the small number of districts and members, the Proclamation by July 26, 1832, having established nine districts represented by fifteen members;

(e) the election law, which did not require simultaneous elections, thereby permitting rioters to travel from booth to booth.

The lack of property qualifications for membership in the assembly, Prescott believed, explained the poor calibre of its members. "Some of them", he reported, "[are] of so low a description as to make one believe they were elected in the spirit of burlesque."[1] In this he was concurring in the views of a conservative newspaper, the Public Ledger, which had said in 1839:

> ... a greater pack of knaves does not exist than that which composes the House of Assembly of this colony. Take them for all in all, from the Speaker downwards, we do not suppose that a greater set of lowlife and lawless scoundrels, as public men, can be found under the canopy of Heaven.[2]

The qualifications for voting or sitting in the assembly, as they existed in 1841, were based on a proclamation issued on July 26, 1832, by Governor Cochrane in the name of the King,[3] under authority granted to him by his

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[1] Ibid., p. 52

[2] Public Ledger (St. John's: October 11, 1839).

[3] In the Matter of the Boundry, II, 745.

Commission as Governor dated March 2, 1832.[1] Members of the assembly were required:

(a) to be of twenty-one years or more, and male;

(b) to be of sound understanding;

(c) to be a natural-born subject of the king, or to have been naturalized;

(d) to be innocent of any infamous crimes;

(e) to have occupied a dwelling house in Newfoundland as an owner or a tenant for two years immediately preceding the day of the election.

The qualifications of voters were the same as those of members, except for the period of required residence. An inhabitant could vote after only one year's occupancy of a dwelling house in Newfoundland, either as an owner or as a tenant.

In March, 1841, the affairs of the Newfoundland legislature reached the attention of the British Parliament. On March 19, the Earl of Aberdeen[2] laid before the House of Lords a memorial from the St. John's Chamber of Commerce.[3]

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[1] Ibid., 723.

[2] The Earl of Aberdeen was a Tory and a member of the Opposition. He had been Secretary of State for War and the Colonies in Peel's ministry of 1834, and was later to become Secretary of State for Foreign Affairs in Peel's ministry, September, 1841. [D.N.B., VIII, 201].

[3] United Kingdom, Parliamentary Debates, 3rd. ser., LVIII, 391, March 19, 1841.

The President of the Chamber, William Thomas, and one vice-president, William Bickford Row, were members of the colonial Council.[1] The memorial dealt mainly with violence at elections, with particular reference to the by-election in Conception Bay in December, 1840. It was largely an indictment on the Roman Catholic clergy for forcing the members of their faith to vote for "nominees of the bishop" by using threats, violence and intimidations.[2] The Chamber of Commerce complained that because of violence at the by-elections, fishermen in St. John's had lost seventeen days of work, and those in Conception Bay had lost twenty-nine days. According to the Chamber, much of the trouble at elections was due to the fact that the salaries of magistrates and constables were dependent on an annual grant from the House of Assembly. This, the Chamber stated, influenced the actions and decisions of the police and lower courts in cases arising from violence at the polls. The memorial therefore requested that the salaries of the magistrates and the police be placed on the reserved list.[3]

Prescott supported the memorial in transmitting it

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[1] C.O. 194/111, 107 ff. Prescott to Russell, February 16, 1841.

[2] Ibid.

[3] Ibid.

to the Colonial Secretary, and stated that the facts were undeniable and the requests reasonable.[1] In his opinion only the British government could make the changes requested.

James Stephen, permanent undersecretary for the colonies, agreed with Prescott that the situation in Newfoundland could be improved by the British government.[2] But, believing that colonial governments in general ought to be free to run matters of local concern,[3] Stephen declined to recommend interference by the home government. In any event, the Colonial Secretary would not have to make a final decision until he learned the fate of the election bill then before the Newfoundland legislature.

The Earl of Aberdeen, in supporting the memorial from the Chamber of Commerce, repeated Prescott's views that the clashes in the Newfoundland legislature were the result of a low calibre of elected members.[4] He claimed, for example, that one member was a menial servant receiving £10 a year as wages. With such members, he said, it was really a "burlesque on legislation". He recommended that

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[1] Ibid.

[2] C.O. 194/111, 108 ff. Prescott to Russell, February 16, 1841. Departmental minute, Stephen to Smith.

[3] P. Knaplund, James Stephen and the British Colonial System, 1813-1847 (Madison: 1953), pp. 25-6.

[4] United Kingdom, Parliamentary Debates, 3rd. ser., LVII, 391, March 19, 1841.

a parliamentary inquiry should be held, but did not press the matter after the Marquis of Normandy, formerly Secretary of State for the Colonies, suggested that the House should first learn whether or not the Newfoundland legislature passed the election bill.[1]

On March 30, John Pakington, Conservative member for Droitwick, laid the memorial of the Chamber of Commerce before the House of Commons, and supported it by again attributing the root of the trouble in the Newfoundland legislature to the poor quality of the elected legislators, to their urge to spend money, and to the dependence of the law officers on annual votes from the assembly. He expressed the belief that the constitution, which had been established in 1832, was premature, and moved that a committee be appointed to inquire into it. Lord John Russell, then Colonial Secretary and leader of the House of Commons for the Whig government of Lord Melbourne,[2] while agreeing to the formation of a committee, did not accept the opinion that the constitution was premature. He maintained that much good work had been done under it. David O'Connell, the Irish patriot, entered the debate, claiming that the lower class in Newfoundland were victims of malignity and discrimination.[3] He said

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[1] Ibid., March 19, 1841.

[2] D.N.B., XVII, 458.

[3] United Kingdom, Parliamentary Debates, 3rd. ser., LVII, 705, March 30, 1841.

that out of £19,000 paid in official salaries, at least £18,000 were paid to "the minority". He was probably referring to salaries being received by Protestants. He gave no authority for the figures he used. William Witham, Law Agent in Great Britain for the House of Assembly of Newfoundland, requested permission to appear at the Bar of the House to speak on behalf of his client.[1] No record of such an appearance has been found. The House of Commons appointed a Committee of Enquiry, which, according to the Public Ledger, consisted of John Pakington, Lord John Russell, Lord Stanley, Viscount Howick, William Gladstone, Sir George Grey, Lord Viscount Sandon, Lord Ashley, Sir James Graham, Sir Thomas Cochrane, Charles Buller, and Messrs. Shiel, Ward, and Lacelles.[2]

While the matter of the Newfoundland constitution was before the British Parliament, the Newfoundland legislature was rapidly approaching its end. The failure of the election bill and the supply bill meant that the House of Assembly and the Legislative Council had reached a deadlock on two important issues. The Governor therefore decided to prorogue the General Assembly. Immediately prior to the closing of the legislature, the House of Assembly adopted an address to the Queen, explaining its

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[1]Newfoundland, Journal of the House of Assembly April 26, 1841, p. 221.

[2]Public Ledger (St. John's: April 27, 1841).

reasons for rejecting the amendments which the Legislative Council had made to some of the Assembly's bills.[1] It also appointed John Kent, Peter Brown, Lawrence O'Brien, and John Nugent, the Solicitor to the House, to go to London and appear before the Parliamentary Select Committee.[2] Governor Prescott appointed James Simms, the Attorney General, and James Crowdy, the Colonial Secretary, to go as representatives of the Council.[3] The Governor, in proroguing the General Assembly on April 26, 1841, made a curt speech:

> As a committee of the House of Commons has been appointed to enquire into the state of Newfoundland, before which committee I shall have to appear, I will, on the present occasion confine myself to the expression of my regret that such proceeding should have become indespensably necessary to the tranquility and welfare of the colony.[4]

The next day he dissolved the Assembly.[5]

Thus, with the dissolution of the legislature and the Governor's refusal to take the responsibility of calling a new election, the constitution in effect was suspended. Further decisions now rested with the British

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[1] Newfoundland, Journal of the House of Assembly April 23, 1841, pp. 209-16.

[2] Ibid., April 26, 1843, p. 223.

[3] C.O. 194/111, 319 ff. Prescott to Russell, June 9, 1841.

[4] Newfoundland, Journal of the House of Assembly April 26, 1841, p. 226.

[5] Newfoundland, Journal of the General Assembly, 1843, p. iii.

government.

The spring and summer of 1841 were periods of political unrest in Great Britain, Parliament and the public being preoccupied by the great debate over the Corn Laws. It is not likely that the members of the Select Committee were very interested in a controversy over a small colonial legislature. In any event, they had not yet reported when the House of Commons was dissolved on June 23, 1841. No official account of the work done by the Select Committee can be found, but a private correspondent in Great Britain, writing to Robert J. Parsons, editor of the Patriot, reported that before discontinuing its work, it had examined "Messrs. Brooking and Job, Dr. Shea and Sir T. Cochrane", all of whom agreed that Newfoundland was unfit for a representative legislature.[1]

In the British elections of 1841, the Liberals, under Lord Melbourne, won fewer seats than the Conservatives; nevertheless, they were still in office when the House met on August 19.[2] Melbourne resigned on August 30, after a vote of non-confidence on the Throne Speech,[3] and Sir Robert Peel formed a Conservative government a few days later.[4] The new Colonial Secretary was Lord Stanley.

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[1] Patriot (St. John's: July 28, 1841).

[2] Annual Register, LXXXIII (1841), 147.

[3] Ibid., 197.

[4] Ibid., 198.

The two delegations which had gone from Newfoundland to appear before the Select Committee of the previous session, had been in London during the last days of Melbourne's administration. John Nugent, Peter Brown, and Lawrence O'Brien, of the House of Assembly, had visited the Colonial Secretary a few days before the Prime Minister resigned, but, according to the Colonial Gazette, Lord Russell had promised nothing.[1] The deputation from the Council had approached the Duke of Wellington on the chance that he would be the Prime Minister or the Colonial Secretary in the new Conservative government. He had declined to hear them on the grounds that he definitely would have no responsibility for deciding on Newfoundland's constitution.[2]

The formation of the new Conservative government in Great Britain almost coincided with the arrival in Newfoundland of Sir John Harvey, the new governor. Governor Prescott, intending to give evidence before the Select Committee of the House of Commons, had left Newfoundland on May 24, 1841,[3] but had arrived in London too late to appear before the Committee.[4] Colonel Sall, senior officer in the Royal Newfoundland Companies, had been Administrator

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[1] Colonial Gazette (London: August 25, 1841). Reprinted in the Public Ledger (St. John's: October 1, 1841).

[2] Public Ledger (St. John's: October 1, 1841).

[3] C.O. 194/111. 268 ff. Prescott to Russell, May 11, 1841. Enclosure, Prescott to Sall.

[4] Newfoundlander (St. John's: July 15, 1841).

in the absence of a governor.[1]

Prior to his appointment to Newfoundland, Sir John Harvey had been Lieutenant-Governor of New Brunswick. In that colony he had had an impressive term of office. Lord Sydenham, Governor General of British North America, had stated in 1840 that Harvey and the New Brunswick government fulfilled his view of a true colonial administration:

> There reigns in New Brunswick the most perfect tranquillity and an entire harmony between the Executive government and the Legislature. This state of things is greatly owing to the course which had been pursued by the Lieutenant-Governor whose personal popularity appears to be considerable and no doubt much is due to the good sense of the Inhabitants. The happy effects of it are to be seen in the rapid advance which the Province is making to wealth and prosperity.[2]

Harvey had had doubts about accepting the appointment to Newfoundland.[3] Nevertheless, he had received his Commission as Lieutenant-Governor on May 13, 1841, pending the receipt of his Commission and Instructions

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[1] Newfoundland, Minutes of the Executive Council (1825-1842), p. 364, May 24, 1841.

[2] A. Shortt, The Makers of Canada, Vol. VII: Lord Sydenham (Toronto: 1912), p. 265.

[3] C.R. Sanderson, ed., Sir George Arthur Papers (Toronto: 1959), III, 424.

as Governor and Commander-in-Chief of the Colony.[1] These he had received on July 20, 1841, before leaving for Newfoundland.[2] He arrived in St. John's on September 16.[3]

All who were interested in the political future of Newfoundland were in a state of great uncertainity in early September, 1841. The constitution in effect had been suspended; the Select Committee of the British House of Commons, while not completing its work, had received opinions adverse to the continuation of representative government in Newfoundland; a new British government was being formed; and a new governor for Newfoundland had been appointed.

Soon after his arrival in Newfoundland in September, Harvey reported to the Colonial Office his impressions of the political situation in the colony. In a despatch to the Colonial Secretary, who he thought was

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[1] C.O. 195/19, 1. Russell to Harvey, May 13, 1841. According to Russell, Harvey's Commission as Lieutenant-Governor was merely a "temporary measure" to enable him to take over the administration of Newfoundland while his Commission as Governor was being prepared. His temporary Commission had been drawn up in London before the Colonial Secretary learned that Harvey was to go to London before he went to Newfoundland. It is not known whether his status as Lieutenant-Governor made him subordinate to the Governor General in Canada; no copy of his Commission has been found, and no reference to his powers was made in the despatch on the matter. [C.O. 194/112, 1. Russell to Harvey, July 8. 1841].

[2] C.O. 195/19, 1. Russell to Harvey, July 20, 1841.

[3] C.O. 194/112, 229 ff. Harvey to Russell, September 17, 1841.

still Lord John Russell, he wrote that the suspension of the legislature had helped to calm the turmoil among the people.[1] Nevertheless, he declared that no intelligent person wanted the withdrawal of the legislature to be permanent.

In this despatch, he made the following recommendations for modifying the constitution:

(a) the qualifications for members of the elected assembly should be raised to an annual income of £100 or property valued at £500;

(b) elections should be simultaneous;

(c) electoral districts should be subdivided to double the membership of the elected assembly;

(d) qualifications for voters should be increased to two years residency;

(e) the Council should be replaced by a legislative council and an executive council;

He recommended an enlarged assembly on the grounds that the inhabitants had fewer representatives in the legislature in relation to their population than did the other colonists of British North America. Whereas in Newfoundland the average number of people represented by each member was

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[1] C.O. 194/112, 285 ff. Harvey to Russell, October 6, 1841.

6,500, in Nova Scotia it was 3,500; in New Brunswick it was 5,000; and in Prince Edward Island it was 2,000.[1] An increase in the residence qualification for voters was necessary, he believed, as those who had been in Newfoundland less than two years might be among the large numbers who had come from Ireland and would leave for the mainland of North America as soon as they had sufficient money.[2] Such people, Harvey contended, had no permanent interest in the colony, and hence did not deserve the franchise. With respect to the recommendation that the existing Council be replaced by an executive council and a legislative council, he stated that much of the conflict between the houses of the legislature had become serious because the Assembly identified the Governor with the Legislative Council through his association with its members in their executive capacity.[3] He recommended the creation of a distinct executive council of nine members of whom three would be chosen from the legislative council, three from an elected assembly, and three from among the

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[1] C.O. 194/114, 29 ff. Harvey to Stanley, January 10, 1842.

[2] Ibid.

[3] C.O. 194/112, 285 ff. Harvey to Russell, October 6, 1841.

officers of the government.[1] Later he revised this recommendation, suggesting instead that the executive council be composed of seven members: the Attorney General, the Provincial Secretary, the Surveyor General, the Collector of Customs, and three members of the assembly to be recommended by the Governor.[2]

Stanley approved of the separation of the executive and legislative functions by the creation of a distinct executive council, if sufficient personnel could be found.[3] James Stephen agreed with Harvey's five recommendations but believed that the Newfoundland legislature, rather than the Colonial office, should put them into effect.[4] This, however, raised the question whether it was advisable to call the legislature in its old form to institute such changes. In a despatch to Harvey, Stanley gave his views on the troubles in Newfoundland. There were, he asserted, three causes:

> 1st the interference of the R.C. priesthood with Election matters, which had led to feelings of religious animosity previously unknown in the Colony, and the scenes of a scandalous character, shocking

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[1] Ibid.

[2] C.O. 194/112, 482 ff. Harvey to Stanley, December 21, 1841.

[3] C.O. 194/112, 296 ff. Stanley to Harvey, November 19, 1841.

[4] C.O. 194/112, 295 ff. Harvey to Russell, October 6, 1841. Departmental minute, Stephen to Hope.

> to religious and well-disposed Roman Catholics. 2nd. The undefined and exaggerated notions which the two Houses, and especially the House of Assembly, entertain of their perculiar rights and privileges; and 3rdly, the conflicting interests of the two great parties in the Island, the resident, and the mercantile portion of the community.[1]

With respect to the first of these causes of trouble, he believed that a raising of the qualifications of voters might contribute to a solution. To overcome the second source of conflict, he thought that the exclusive right to initiate money bills should be vested in the governor, as in the Crown in Great Britain. With reference to the third cause of strife, he offered for Harvey's consideration the possibility of amalgamating the two houses of the legislature. This he saw as a possible means of enabling the governor to hold the balance between "the resident and the mercantile portion of the community." This was the first time that either Stanley or Harvey had mentioned the amalgamation of the two branches. By a strange coincidence, Harvey also suggested it in a despatch written the day before Stanley's despatch arrived in St. John's.[2] Harvey wrote that the idea had come from a recommendation of Lord Goderich (later Lord Ripon) in his

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[1] C.O. 194/112, 296 ff. Stanley to Harvey, November 19, 1841.

[2] C.O. 194/112, 482 ff. Harvey to Stanley, December 21, 1841.

despatch to Governor Cochrane of July 27, 1832.[1]

While the possibility of an amalgamated legislature was being considered in the Colonial Office, Harvey continued to make observations and recommendations concerning the various branches of the administration in Newfoundland. In his view, if there was to be an amalgamated legislature, the electoral districts and the number of representatives could remain as they were at that time, and a legislative council of nine members could be added to the elected assembly.[2] The assembly would then consist of twenty-four members. He recommended that two ex-officio members should be added to the three already in the Council.[3]

Harvey believed that if the Council was to be kept

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[1]See above, p. 15.

[2]C.O. 194/112, 482 ff. Harvey to Stanley, December 21, 1841.

[3]Cochrane's Instructions of July 26, 1832, named four ex-officio members of the Council: "The Chief Officer in command of Our Land Forces ... next after the Governor", the Attorney General, The Colonial Secretary, and the Collector of Customs. [In the Matter of the Boundry, II, 731]. In Prescott's Instructions of March 24, 1838, the phrase "next after the Governor" was dropped. [Newfoundland Archives. Harvey's Instructions, July 21, 1841. Unclassified]. The Commandant, who was the "Chief Officer" continued to sit in the Council. But when Harvey was appointed in 1841, he, unlike his predecessors, was given military command of the land forces; hence, he replaced the Commandant as the "Chief Officer". The Commandant could no longer sit in the Council; the number of ex-officio members in the Council was thus reduced to three.

as a separate branch of the legislature, it should be enlarged.[1] He recommended that if this was done, five merchants should be added to the existing members, with the exception of James Spearman, the Collector of Customs, who was about to resign. There would then be eleven members in the legislative council. He listed the following as those he believed to be qualified: R. Job, "a wealthy merchant of this town [St. John's] - a highly respected, benevolent and informed Dissenter of the Congregation [Congregationalist] "; P. Doyle, "a very intelligent respectable Roman Catholic gentleman of St. John's"; B. Pack, "a wealthy and intelligent merchant of Carbonear"; P. Brown, "a Roman Catholic merchant of Harbour Grace, Conception Bay - a member of the late Assembly - very favourably spoken of"; and either Thomas Bennett or his brother, Charles Fox Bennett, "Protestant merchants of St. John's".[2] Harvey also sent to the Colonial Office the names of those he wanted in the proposed district executive council.[3] They were James Crowdy, Joseph Noad, James Tobin, William Thomas, William Carson, and John Kent. Thus, his original number of nine members, and later seven, had been

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[1] C.O. 194/114, 115 ff. Harvey to Stanley, February 4, 1842.

[2] Ibid.

[3] C.O. 194/114, 88 ff. Harvey to Stanley, January 21, 1842.

further reduced to six. He had become uncertain whether he could find "a sufficient number of persons of suitable respectability, intelligence and attainments"[1] without filling most of the positions on the executive council by members of the legislative council.[2] He had made his selections carefully, keeping in mind the religious and class distinctions in the colony. Crowdy was Colonial Secretary and Noad was about to be appointed Surveyor General; Tobin and Thomas were members of the existing Council; Carson and Kent presumably would be members of the elected assembly. The religious requirements would have been met, - Tobin and Kent were Roman Catholics; Crowdy, Thomas, and Carson were Anglicans; and Noad was a Dissenter. The various classes were also represented, - Crowdy and Noad would be officials; Thomas and Tobin were merchants; and Carson and Kent would represent "'native' or permanent Interest" in the colony.

Harvey sought the opinions of five political leaders concerning the proposed changes in the election law.[3] They were William Thomas and Patrick Morris, members of the Council; William Carson, who had been Speaker of the

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[1] C.O. 194/114, 482 ff. Harvey to Stanley, December 21, 1841.

[2] C.O. 194/114, 88 ff. Harvey to Stanley, January 21, 1842.

[3] C.O. 194/ 121 ff. Harvey to Stanley, February 11, 1842.

House of Assembly in the second legislature, Charles Fox Bennett, a merchant in St. John's; and P. Carter, a magistrate of St. John's. Harvey asked them four questions:

(a) what would be the effect of a rent or property qualification for voters?

(b) what should be the qualifications for voters?

(c) should there be an increase in the number of electoral districts, and if so, what would be the best method?

(d) what should be the qualifications for members of the elected assembly?

In answer to the first and second questions, Morris, Carson, and Bennett favoured a property qualification with a rigid system of registration. Thomas wanted a £10 rental in St. John's, and a £5 rental in the outports, or a 40 shilling freehold with two years residency in the district. Carter wanted a £5 rental and one year's occupancy of a house or two years' residency in the district.

Concerning the third question, Morris wanted the number of members for each district doubled with no increase in the number of districts. Carson suggested that towns with a population of 2,000 should return one member and those of 5,000 two, in addition to the existing representation. Thomas wanted Conception Bay to be divided into four districts, and every other district with a population of

5,000 and at that time returning only one member to return two. Carter recommended a sub-division of electoral districts and an increase in the number of members.

In answering the fourth question Morris suggested freehold property of £25, rental of £50 per annum, or £400 in chattel property. Carson wanted the Canadian qualification of £500 in real property. Thomas preferred an income of £100 or assets of £2,000 above debts. Carter wanted £100 per annum from property or office. Bennett argued that none was necessary, but if it was established, it should be £1,000 free of incumbrances. He held that if the electors themselves were respectable and independent, they would choose the proper representatives. These suggestions, together with Harvey's proposed composition of an executive council and a legislative council, had been made when the idea of an amalgamated legislature was still only a point of discussion in the Colonial Office and between Stanley and Harvey.

In January, 1842, although he was aware that Stephen opposed the amalgamation of the two houses,[1] Stanley decided to proceed with the plan.[2] The question of the

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[1] C.O. 194/114, 39 ff. Harvey to Stanley, January 10, 1842. Departmental minute, Stanley to Hope.

[2] Ibid.

way by which this change should be made was raised in the Colonial Office.[1] Stephen stated that as the original constitution was based on a Commission under royal prerogative,[2] no reference to Parliament was necessary if the franchise was to remain the same or was to be extended. If, on the other hand, the franchise was to be restricted, the Crown would have to receive the authority of Parliament.[3] As it was anticipated that the change in the constitution would include an infringement of the franchise, an act of Parliament was necessary. Stephen suggested that Parliament should be asked to pass permissive legislation, giving the Crown power to raise the property qualifications for members, to extend the period of residency for members and voters, to require candidates to have their rates and taxes paid, to give the Crown sole power to initiate money bills, to abolish the Council as a distinct branch of the legislature, and to create an amalgamated legislature.[4] While there was some disagreement in the Colonial Office concerning the

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[1] C.O. 194/114, 40 ff. Harvey to Stanley, January 10, 1842. Departmental minute, Stephen to Hope.

[2] The constitutions of all British North American colonies, except Canada, had the same origin.

[3] C.O. 194/114, 40 ff. Harvey to Stanley, January 10, 1842. Departmental minute, Stephen to Hope.

[4] Ibid.

propriety of such a request,[1] Stephen's suggestion prevailed in the bill as it was presented to Parliament.

On May 26, 1842, in the House of Commons, Stanley introduced the bill which allowed for the following changes in the constitution of Newfoundland:[2]

(a) (Section 1) the qualification for members was to be an annual income of £100 or possession of property of £500 clear of all incumbrances;

(b) (Section 2) the qualification for electors in the country districts was to be possession of freehold tenements of forty shillings; electors in towns were to occupy a dwelling house of annual value of £5 as owner or tenant for two years prior to the election;

(c) (Section 3) the minimum length of residence for electors was to be increased from one to two years;

(d) (Section 4) the assembly was not to appropriate public money except at the request of the Crown;

(e) (Section 5) elections were to be simultaneous;

(f) (Section 6) the Queen was to be given the power "to abolish the Council ... as a distinct house or branch of the Legislature thereof, and to authorize and empower the members of the said Council to sit and

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[1] C.O. 194/114, 42. Harvey to Stanley, January 10, 1842. Departmental minute, Hope to Stanley.

[2] Royal Gazette (St. John's: June 28, 1842).

vote in the House of Assembly as Members thereof, as fully in all respects as the elected Members", providing that the members of the Council would make up no more than two-fifths of the House;
(g) (Section 7) an executive council was to be established.

Daniel O'Connell attempted to have consideration of the bill delayed until representations from the Newfoundland Assembly were placed before the House. He introduced a petition from William Witham, agent of the House of Assembly in Newfoundland, stating that the delegates from the Assembly, who had come to London in the summer of 1841, had not had sufficient time to appear before the Select Committee before it adjourned. They had been promised, according to the petition, that no decision would be made before they were heard. He did not refer to the proposal for the amalgamation of the legislature, presumably because he had no direction from his client on the question. O'Connel failed in his attempt to obstruct proceedings on the bill at this stage.[1]

At the second reading, O'Connell, C. Buller, Philip Howard, and Wyse opposed the principle of the bill. Vernon Smith, who had been parliamentary undersecretary for the

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[1] Royal Gazette (St. John's: August 23, 1842).

colonies from 1839 to 1840, when Lord John Russell had been Colonial Secretary,[1] suggested that the bill should include a section limiting itself to four or five years, and that it should not include the monetary qualifications for electors.[2] To gain more support for the bill, Stanley agreed to these suggestions; he removed the second section and added another that limited the act to September 1, 1846, unless otherwise decided by Parliament.[3]

In the committee stage O'Connell and Joseph Hume tried to have the House remove the first section, concerning the qualification of members,[4] but were not successful. The bill made no reference to the length of residence required of members. The Colonial Secretary presumably thought that such reference was unnecessary, for the bill, concerned only with changes in the constitution of Newfoundland, would not affect the length of residence for members, set at a minimum of two years by the Royal Proclamation of July 26, 1832.[5] O'Connell argued that the bill should make explicit the residence qualification of two years for members. The House at first objected to the

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[1] Knaplund, James Stephen, pp. 25-6.

[2] Royal Gazette (St. John's: August 23, 1842).

[3] Newfoundlander (St. John's: August 25, 1842).

[4] Ibid., August 25, 1842.

[5] In the Matter of the Boundry, II, 747.

recommendation, but later adopted it after Stanley agreed that for clarification such a clause could be inserted.[1]

The sixth section provided for the abolition of the Council as a distinct branch of the legislature. O'Connell attempted in vain to have this clause omitted.[2] He said that he never agreed with the practice which "until later ... was unknown in our colonies." He was supported by Howard, Wyse, and Hume, the latter contending that Newfoundlanders should be heard on the subject.[3] Vernon Smith agreed with the section only because the bill was limited in its duration.[4] The constitution was therefore, he said, an experiment "to try the effect of a system which had been adopted in New S. Wales and elsewhere." Lord Stanley said that while he did not accept the principle of "legislating with only one chamber", perculiar circumstances made it necessary in Newfoundland.[5]

The other sections passed without opposition. The changes made in the bill by the House of Commons, therefore, were:

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[1] Newfoundlander (St. John's: August 25, 1842).

[2] Newfoundlander (St. John's: September 8, 1842).

[3] Ibid., September 8, 1842.

[4] Ibid., September 8, 1842.

[5] Ibid., September 8, 1842.

(a) the removal of property qualifications for voters;

(b) specific mention of the two years' residence qualification for members;

(c) the limitation of the act to September 1, 1846.

The bill passed third reading on a vote of fifty-five to twelve,[1] was adopted by the House of Lords with little debate,[2] and received the royal assent on August 12, 1842.[3]

The act was based largely on Harvey's recommendations, which were a compromise between the proposals of the House of Assembly on the one hand, and Governor Prescott, the Legislative Council, and the Chamber of Commerce on the other. The Assembly had wanted especially an executive council and a legislative council of separate membership. This, they believed, would make the legislative council less an organ of government; hence, there would be fewer conflicts between the assembly and the legislative council. Prescott, the Legislative Council, and the Chamber of Commerce had urged the Colonial Secretary to raise the qualifications for voters and members of the assembly, so that only men of "wealth and intelligence" would play a role in the legislature. This would result in a majority

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[1] Ibid., September 8, 1842.

[2] Ibid., September 8, 1842.

[3] See Appendix I, pp. 190-3.

of conservatives in the assembly, and this in turn would improve relations between the assembly and the council. Thus, each side had been given the essential change which it had sought, while the Colonial Office had added an idea of its own, the amalgamation of appointed and elected legislators in one house.

Harvey had approved the bill when it was sent to him in draft form.[1] After receiving a copy of the act in September, 1842, he also approved of the changes made by Parliament.[2] That the act was limited to four years would make it, he believed, more acceptable to Newfoundlanders.

The newspapers in the colony varied in their reaction to the changes make in the constitution. The conservative newspapers, while largely ignoring the provision for the amalgamated legislature, favoured particularly simultaneous elections and the exclusive right of the Governor to initiate money bills.[3] The liberal, Roman Catholic newspapers, the Newfoundlander[4] and the Indicator[5] disapproved strongly of the amalgamation of the two houses, and wanted instead a closer analogy to

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[1] C.O. 194/114, 397 ff. Harvey to Stanley, June 24, 1842.

[2] C.O. 194/115, 31 ff. Harvey to Stanley, September 6, 1842.

[3] Times (St. John's: June 29, 1842).

[4] Newfoundlander (St. John's: September 1, 1842).

[5] Issues of the Indicator have not been found, but the Patriot made frequent references to its views.

the British constitution. The Patriot, another liberal newspaper, had at first warmly welcomed the bill,[1] but later criticized it for not granting responsible government.[2] Nevertheless, it approved of amalgamation, and stated that the elected segment should be able to control the appointees.[3]

The new Commission and Instructions for Sir John Harvey, based on the new Newfoundland Act, were issued on September 1, 1842,[4] and received by the Governor on September 22.[5] They repeated the substance of the act respecting the qualification of members and electors; that is, members were to have a minimum annual income of £100 or property valued at £500, clear of all incumbrances, and were to be residents of the colony for at least two years prior to the election. The residence qualification for voters was also raised to two years. These qualifications were to be in addition to those in effect under the Royal Proclamation of July 26, 1832,[6] which were not affected by the act. His instructions also repeated the provision of the act that he was to initiate all money bills.

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[1] Patriot (St. John's: June 29, 1842).

[2] Patriot (St. John's: August 3, 1842).

[3] Ibid., August 3, 1842.

[4] See Appendix F, pp. 180-5; Appendix G, pp. 186-7.

[5] C.O. 194/115, 75 ff. Harvey to Stanley, September 23, 1842.

[6] See above, p. 28.

The Commission instructed Harvey to require elections to be held within ten days from the receipt of the writs by the Returning Officers. The elections were to be completed within eight hours of the commencement of polling.

The Commission did not eliminate the Council which existed under the authority of Cochrane's Commission of 1832, and which was known unofficially as "Executive Council" or "Legislative Council", depending on the capacity in which it was functioning.[1] Harvey's Commission directed, "the Legislative Council... shall no longer sit and vote as a distinct House or Branch of the Legislature", and empowered the members of the legislative council "to sit and vote in the House of Assembly, as Members thereof, as fully in all respects as elected Members of the said House."[2] The act limited the size of the legislative council to two-fifths of the elected members of the legislature. As there were to be fifteen elected members, Harvey was instructed by the Commission to make ten provisional appointments to the legislative council. Later these would be either accepted or rejected by the Queen.

With respect to the new separate executive council, Harvey was empowered to appoint seven members on his own

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[1]See above, p. 25.

[2]Royal Gazette (St. John's: September 23, 1842).

authority. Any additional members would have to receive warrants from the Queen. There was no mention in the Commission or Instructions of ex-officio members in either of the Councils. Under Cochrane's Instructions of 1832, the Chief Officer in command of the land forces, the Attorney General, the Colonial Secretary and the Collector of Customs were ex-officio members of the Council.[1] As the legislative council was a continuation of Her Majesty's Council under the old representative system, the ex-officio membership continued to apply to it. However, the executive council, being a new creation, was not governed by the old instructions with regard to ex-officio membership.

In confidential instructions to Harvey, Stanley emphasized the need for discretion in carrying out his official public Instructions, for the only opposition during the passage of the bill through Parliament had come from sympathizers of those who had been in the majority in the past House of Assembly.[2] He reminded Harvey that he could expect some resentment from another quarter:

> ... it is possible that some dissatisfaction may hereafter be felt by the Representatives of the opposition party from the loss of the absolute control, which as a separate body they exercised in the Council by way of veto on the proceedings of the Assembly, and it will require some ... discretion on your part so to

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[1] In the Matter of the Boundry, II, 731.

[2] C.O. 194/116, 107 ff. Stanley to Harvey, September 3, 1842.

> constitute the new legislature, as to keep in the hands of the Executive a power which it is essential that it should possess, for holding the balance and acting as a mediation between the contending factors in politics and in religion.[1]

The old Council, which met for the last time on September 23, 1842,[2] was composed of the following: James Simms, Attorney General; James Crowdy, Colonial Secretary; James Spearman, Collector of Customs; Joseph Dunscomb; William Thomas; Patrick Morris, Colonial Treasurer; William B. Row; James Tobin; and Joseph Noad. With the exception of Spearman, who was now resigning, all would continue automatically to be members of the Legislative Council.

In relieving them of their executive functions, Harvey said:

> ... it is to me a source of no trifling satisfaction that though disunited in one respect we are far from being so in another, and that in your Legislative capacities, Her Majesty's subjects and interests in this Colony will continue to experience the benefits of your valuable and patriotic service.[3]

On September 26, the new Executive Council of seven members were sworn into office. They were James Simms, Attorney General; James Crowdy, Colonial Secretary;

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[1] Ibid.

[2] C.O. 194/115, 75 ff. Harvey to Stanley, September 23, 1842.

[3] Newfoundland, Minutes of the Executive Council (1825-1842), September 23, 1842, n.p.

Patrick Morris, Colonial Treasurer; Joseph Noad, Surveyor General; William B. Row; and William Carson.[1] Four members of the former Council were not included in the Executive Council. They were James Tobin, Joseph Dunscomb, William Thomas, and James Spearman. While the act set no limit to the number of members the Crown could appoint in addition to the seven appointed by the Governor, Stanley advised Harvey not to request the Crown to appoint more than four. Harvey planned to draw these additional members from the elected portion of the House of Assembly.[2]

William Thomas was chagrined that he had not been invited to sit in the Executive Council. As Thomas was President of the Chamber of Commerce, Harvey feared the annihilation of support from the mercantile body; he therefore acquiesed, and appointed him to the Executive Council on September 29.[3] Although some newspapers in St. John's accused Harvey of being weak,[4] he had learned that the Executive Council could be a very useful political instrument:

> ... such has been the eagerness evinced to obtain membership in the Council ... that I shall deem it the

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[1] Royal Gazette (St. John's: September 27, 1842).

[2] C.O. 194/115, 96 ff. Harvey to Stanley, October 5, 1842.

[3] Ibid.

[4] Patriot (St. John's: October 5, 1842); Newfoundlander (St. John's: October 6, 1842).

> most expedient and advantageous course to seek to purchase the good will and support of all Parties at so cheap a price.[1]

Both Liberals and Conservatives found reason to criticize Harvey's appointments to the Executive Council. While Liberals resented his surrender to the mercantile body in appointing Thomas, Conservatives denounced him for appointing Carson.[2] There had been some opposition to Harvey prior to these appointments. The Public Ledger had been critical of him in July, 1842, because Noad had been appointed Surveyor-General.[3] The opposition of the Public Ledger, which was to grow with time, was based to a large extent on Harvey's liberal outlook. On July 26, it had drawn a parallel between the situation in Newfoundland and in Nova Scotia, where Lord Falkland was "a whig-radical Governor manifesting, as far as may be, his own whig-radical predilections, in the face of a conservative administration at home."[4] At that time the Newfoundlander had been somewhat indifferent: "We have paid not a little attention to the acts of our Governor, from the moment that Excellency landed on our shores to the present time, and

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[1] C.O. 194/115, 96 ff. Harvey to Stanley, October 5, 1842.

[2] Public Ledger (St. John's: October 7, 1842).

[3] Public Ledger (St. John's: July 19, 1842).

[4] Public Ledger (St. John's: July 26, 1842).

if we do not find in them much to laud or to admire, we could not point to one of them, of a character deserving of censure."[1] The Patriot had been disappointed that Harvey had given his approval to the new constitution.[2]

Harvey was very anxious to call the Assembly into session, as the government was facing a financial crisis. This situation had begun with the failure of the legislature of 1841 to pass a supply bill and a contingency bill,[3] with the result that the Executive could pay only the salaries on the permanent civil list. Harvey had solved this problem with the approval of the Colonial Office, the Council, and the leading members of the House of Assembly, by granting his warrant on the Colonial Treasury to give effect to all items and grants of the supply bill to which both branches of the legislature had agreed.[4] But a bigger problem had soon faced him. The Revenue Act, passed by the House of Assembly in 1841 was limited to June 30, 1842.[5] Most of Newfoundland's revenue came from customs duties

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[1] Newfoundlander (St. John's: July 21, 1842).

[2] Patriot (St. John's: August 24, 1842).

[3] See above, pp. 20-1.

[4] C.O. 194/112, 347. Harvey to Stanley, October 16, 1841. Enclosure, Prescott to the Council.

[5] Newfoundland, Acts Passed in Session of 1841, p. 1.

imposed by the Newfoundland legislature. Of the total revenue of approximately £40,000 in 1841, £24,000 had come from colonial duties and £16,000 from imperial duties.[1] Of the latter amount, £12,000 had been deducted for the reserved salaries and the expenses of collecting the duties. The Newfoundland legislature therefore had had £28,000 at its disposal. Without the colonial duties, the revenue of the colony would be limited to approximately £4,000 from imperial duties. Anticipating the expiration of the Revenue Act, Harvey had suggested in October, 1841, that the British Parliament should pass a short act to continue the Revenue Act of Newfoundland.[2] Stanley refused, and in answer to a request for instructions, he left Harvey free to take any action he thought was proper.[3] At the same time he suggested that a possible solution would be to continue the collection of the taxes allowed by the Revenue Act of 1841, and to leave the money on deposit for the use of the new legislature. Both Stanley and Harvey had been aware that if there were no customs duties for a period, merchants would import large quantities of goods, thereby depriving the government of revenue for many months after

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[1] C.O. 194/114, 163 ff. Harvey to Stanley, February 18, 1842.

[2] C.O. 194/112, 323 ff. Harvey to Russell, October 8, 1841.

[3] C.O. 194/114, 175 ff. Stanley to Harvey, June 3, 1842.

the enactment of new revenue legislation.[1] Harvey had decided against Stanley's suggestion on the grounds that he had no authority to enforce it. Instead, he had ordered the Collector of Customs to secure bonds from the importers. These would be paid if the next legislature passed an act authorizing the collection of duties for which bonds had been given.[2] But the Collector of Customs had run into difficulty with importers. Some had objected violently to giving the bonds, and at least one merchant, having given the bond under protest, had issued charges against the Collector. The Governor, with the consent of the Council,[3] had ordered the Collector to discontinue accepting bonds, and instead to give notices to the importers. This meant that the Collector was to keep records of duties which would have been paid if a Revenue Act had been in force, and which would be paid if the next legislature made its Revenue Act retroactive to July 1, 1842. The Governor had added the hopeful, but one suspects vain provision that the Collector would continue to receive payment of duties "if voluntarily tendered."[4] Stanley had indicated

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[1] C.O. 194/114, 352 ff. Harvey to Stanley, May 23, 1842.

[2] C.O. 194/114, 401 ff. Harvey to Stanley, June 25, 1842.

[3] Newfoundland, Minutes of the Executive Council (1825-1842), July 4, 1842, n.p.

[4] C.O. 194/114, 414 ff. Harvey to Stanley, July 5, 1842.

his approval of the scheme.[1]

By the autumn of 1842 Harvey was doubting whether even this scheme would succeed:

> ... the new legislature will be found invariably opposed to any measure of which the object is to legalize the retrospective Collection of Duties, and that therefore all those which would have accrued since the 1st July last and which cannot I fear be estimated at less than £18,000, must be regarded as lost to the Provincial Treasury.[2]

The merchants without exception, reported Harvey, imported large amounts of goods after the expiration of the Revenue Act. He feared that the proposition of refunding any part of the profits which had been thus acquired would be resisted by all the "Representatives of the 'Commercial Interests' in the Assembly".[3] Harvey was of the opinion that the best procedure would be to include in the public estimates, services to the full amount of the lost duties, and to leave the Assembly to devise means of raising the deficient amount.[4] The additional money might be acquired by either increasing duties or by raising a loan on the credit of the legislature. Whatever the course to be taken, it was imperative that the Assembly be called as soon as possible.

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[1] C.O. 195/20, 90. Stanley to Harvey, August 19, 1842.

[2] C.O. 194/115, 162 ff. Harvey to Stanley, November 15, 1842.

[3] Ibid.

[4] Ibid.

The colonists were now about to elect their representatives to a new legislature. Lord Goderich's fears in 1832, that the elected assembly and the legislative council would be continually in conflict, had not been borne out in the first legislature, in which the nominees of the Crown and the majority of the elected members had been of the same political party. In the second legislature, however, most of the elected representatives had not been of the same party as that of the nominees. The conflicts anticipated by Goderich had then developed and became so intense that the two branches had reached a stalemate in the session of 1841. The two branches had made different proposals for bringing about a better relationship: the Legislative Council had wanted higher qualifications for elected members, and the House of Assembly had wanted separate executive and legislative councils. The British Parliament in the Newfoundland Act of August, 1842 had compromised between these two views. On the one hand, it had separated the Council (although all the members of the executive, except Carson, continued to sit in the Legislative Council); and, on the other hand, it had raised the qualifications for members of the assembly, but not for voters. In addition, it had added a new element on its own initiative, - the legislative council was required to sit with the elected members in a single legislative chamber.

In this way it was hoped by the authorities in Westminister that the process of government in Newfoundland would henceforth be able to proceed without the conflicts between appointed and elected legislators which had brought about the deadlock that had existed prior to 1842.

III

THE FIRST SESSION OF THE AMALGAMATED ASSEMBLY, 1843

By the autumn of 1842, Governor Harvey had the instructions he needed to call a new assembly. The British government anticipated that as a result of the changes in the constitution, the Newfoundland legislature would now function smoothly and would not obstruct the government. The first test of this optimistic assumption was to come when the amalgamated assembly opened in January, 1843.

The new system was largely ignored by the candidates during the campaign, which started before the official proclamation on November 9, 1842, announced the election.[1] The constitution was mentioned in only five of the twenty-one campaign addresses available. Of the five, Richard Barnes in Trinity,[2] John Dillon in Placentia - St. Mary's,[3] Simon Morris in Placentia - St. Mary's,[4] and Robert John Parsons in Fogo[5] seemed to disapprove, while Thomas Job in

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[1] Newfoundland, Journal of the General Assembly, 1843, p. xi.

[2] Public Ledger (St. John's: October 11, 1842).

[3] Patriot (St. John's: November 23, 1842).

[4] Patriot (St. John's: November 16, 1842).

[5] Newfoundlander (St. John's: November 22, 1842).

Placentia - St. Mary's did not commit himself.[1] Although William Carson, Lawrence O'Brien, and John Nugent were among those who did not mention the system in their campaign addresses, the meeting which nominated them passed a number of resolutions condemning it:

> ... the sole object of the minister in the infusion of Ten Nominees of the Crown into the Assembly, consisting only of 15 members, is to obtain for a party an undue influence in the legislature and utterly to neutralize the Representation of the people.
>
> . . . . . .
>
> This agression upon the liberties of the people of Newfoundland, has been effected ... in the grossest violation of a solemn pledge made by the late Right Honourable Secretary, Lord John Russell on the 39th [sic] August, 1841, and reiterated by the present Right Honourable Secretary, Lord Stanley, to the Representatives of the people of Newfoundland.[2]

The last part of this resolution probably referred to the meeting of John Nugent, Peter Brown, and Lawrence O'Brien with Lord John Russell immediately before he resigned in 1841,[3] when he was said to have promised that no decision concerning the Newfoundland constitution would be made before he consulted them. The resolution stated that Lord Stanley had repeated this promise after he took office, but no evidence can be found to verify this assertion.

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[1] Patriot (St. John's: November 2, 1842).

[2] Newfoundlander (St. John's: September 15, 1842).

[3] See above, p. 35.

The Liberals contended that the government was influenced by Protestants and merchants. For example, one of the recommendations of the meeting which endorsed Carson, O'Brien, and Nugent urged the people of Newfoundland to "use every legal and constitutional exertion to promote the return, at the General Election, of a large majority of Representatives favourable to popular rights, and opposed to Church Ascendency."[1]

The opponents of the Liberals in St. John's were Thomas Bennett, Walter Grieve, and Patrick Keough, whom the Public Ledger, in giving its support, called the "Conservative Candidates".[2] According to the Public Ledger, Thomas Bennett was English and of Charles Fox Bennett and Company, Grieve was Scottish and of Baine Johnston and Company, and Keough was Irish and a former member of the House of Assembly.[3] An indication of political manipulation by Governor Harvey may be in evidence in the candidacy of Thomas Bennett. In the initial meeting of the Conservatives, Charles Fox Bennett was announced as a candidate in St. John's.[4] But a few days later, his

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[1] Newfoundlander (St. John's: September 15, 1842).

[2] Public Ledger (St. John's: October 4, 1842).

[3] D.W. Prowse, A History of Newfoundland (London: 1895), pp. 430-1.

[4] Times (St. John's: September 21, 1842); Public Ledger (St. John's: September 30, 1842).

brother, Thomas, published his campaign address,[1] and Charles Fox withdrew from the contest. The Patriot held that Charles Fox Bennett had retired from the campaign in favour of his brother Thomas when Harvey had promised that he would make Charles Fox a member of the Legislative Council.[2] This might have been true, for in a despatch in February, 1842, before Stanley had decided to introduce the amalgamated legislature, Harvey had indicated that he would have liked to have Thomas Bennett in the Legislative Council.[3] But since he preferred to be a member of the House of Assembly, Harvey had hoped to have him in the Executive Council as a representative of the Assembly. Harvey told the Colonial Secretary that he would then appoint Charles Fox Bennett to the Legislative Council.[4] He did, in fact, make Charles Fox a member of the Legislative Council on January 16, 1843,[5] and Thomas, who was unsuccessful in the election, became a member of the Executive Council in August, 1843.[6]

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[1] Public Ledger (St. John's: October 4, 1842).

[2] Patriot (St. John's: October 5, 1842).

[3] C.O. 194/114, 121 ff. Harvey to Stanley, February 11, 1842.

[4] Ibid.

[5] C.O. 194/116, 10 ff. Harvey to Stanley, January 16, 1843.

[6] Newfoundland, The Blue Book, 1843, p. 64.

The campaign proceeded with relative quiet, the calm broken by only two incidents. One was John Nugent's arrest, which resulted from a charge of libel by Charles Simms, a magistrate and a brother of the Attorney General.[1] The case arose from an article printed in Nugent's newspaper, the Vindicator, in May, 1842.[2] The Liberals were enraged at the arrest. The three Conservative candidates in St. John's disclaimed any connection with the incident, and offered to put up bail for Nugent. The Liberals refused, raised the money themselves, and had him released.[3] In a despatch to the Colonial Secretary, Harvey denounced Simms for exciting bitter feelings in the campaign.[4]

Charles Simms was involved in another incident which, while not directly connected with the election, enflamed Roman Catholic sensibilities. This was a dispute between Charles Simms, a stipendiary magistrate, and James Tobin, a Liberal member of the Legislative Council and a honorary magistrate. Although they were of equal authority, Simms expelled Tobin from the police court during a case in which a Roman Catholic was charging the Chief Constable

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[1] C.O. 194/115, 183 ff. Harvey to Stanley, December 21, 1842.

[2] Ibid.

[3] Ibid.

[4] Ibid.

with assault.[1] Simms contended that Tobin was interfering with the proceedings of the Court. John Kent, on behalf of 4000 Roman Catholics, presented a petition to the Governor, protesting Simms's action.[2] The controversy eventually ended when, through Harvey, Tobin received and accepted an apology from Simms.[3]

The election, held on December 20, 1842, was completed without disorder. The successful candidates were:

Lawrence O'Brien of St. John's, for St. John's;
John Valentine Nugent of St. John's, for St. John's;
William Carson of St. John's, for St. John's;
Thomas Ridley of Harbour Grace, for Conception Bay;
John Munn of Harbour Grace, for Conception Bay;
James Luke Prendergast of Harbour Grace, for Conception Bay;
Edmund Hanrahan of Carbonear, for Conception Bay;
John Dillon of St. John's, for Placentia - St. Mary's;
Simon Morris of St. John's, for Placentia - St. Mary's;
Richard Barnes of St. John's, for Trinity;
Thomas Glen of St. John's, for Ferryland;
Robert Carter of St. John's, for Bonavista;

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[1] Ibid.

[2] Ibid.

[3] C.O. 194/117, 100 ff. Harvey to Stanley, July 25, 1843.

John Slade of Twillingate, for Twillingate;
Bryan Robinson of St. John's, for Fortune Bay;
and Clement Benning of Burin, for Burin.[1]

According to an analysis of the results by the conservative Times, there were seven Conservatives: Ridley, Munn, Glen, Robinson, Carter, Barnes, and Slade; six "Radicals": Carson, O'Brien, Nugent, Hanrahan, Dillon, Simon Morris; and two "Conservative sympathizers": Prendergast and Benning.[2] On the other hand, the liberal Patriot, reported that seven Conservatives and eight Liberals had been elected. These two interpretations suggest that there was disagreement concerning the political allegiance of Prendergast and Benning. Whereas the Times called them "Conservative sympathizers", the Patriot apparently was including them among the Liberals. Divisions during the first session of the new House were to show that the Patriot, not the Times, was right.

On January 16, 1843, the first of the new Assembly, Harvey appointed Charles Fox Bennett and John Kent to the Legislative Council.[3] Bennett was a Protestant merchant,[4]

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[1]Newfoundland, Journal of the General Assembly, January 14, 1843, p. 6.

[2]Times (St. John's: January 4, 1843).

[3]C.O. 194/116, 10 ff. Harvey to Stanley, January 16, 1843.

[4]Public Ledger (St. John's: December 16, 1842); Patriot (St. John's: January 11, 1843).

and Kent was one of the leading Roman Catholic Liberals. The appointments brought the membership of the Legislative Council to ten, the number required by Harvey's Commis sion of September 1, 1842. Of these, six were officials of the administration, that is, members of the Executive Council. They were James Simms, Attorney General; James Crowdy, Colonial Secretary; Partick Morris, Colonial Treasurer; Joseph Noad, Surveyor General; William Thomas; and William Bickford Row. The other four - Charles Fox Bennett, John Kent, John Dunscomb, and James Tobin - were private members, that is, members of the Legislative Council only. Harvey had chosen Kent and Bennett with care. It was evident, he believed, that among the elected members, the numerical strength of the two parties was almost equal. Of the private members in the Legislative Council, Kent and Tobin were Liberals, and Bennett and Dunscomb were Conservatives. Thus, among the non-official members in the Assembly, the two parties were nearly balanced. Harvey believed that this was an excellent situation:

> [It will] enable the Governor to command a majority upon any question in which either of the parties may concur in his views, by merely requiring from the official members that support of his measures, which by the tenure of their office they are bound to afford him.[1]

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[1] C.O. 194/116, 10 ff. Harvey to Stanley, January 16, 1843.

Harvey was therefore counting on his Executive members to vote as a group on his orders, and thereby assure him success if he gained the support of either the Liberals or the Conservatives.

As soon as the Assembly met, the contest between the two parties began. One of the spoils of the contests in former assemblies had been the allocation of the principal offices of the assembly. Such was to be the case in the amalgamated legislature as well. Before the House met, Harvey had attempted to acquire control of some of the patronage. He had noted that from the introduction of representative government there had been a struggle between the governors and the assembly involving the power to appoint the Clerk and Assistant Clerk of the House of Assembly. In 1836 Lord Glenelg, the Colonial Secretary, had ordered Governor Prescott to insist on the power of the Crown to make the appointments, as the Clerk of the House of Commons of Great Britain was appointed for life, and had the power to appoint all other Clerks. But when Glenelg had learned that while the Crown appointed the Clerks in the Canadas and New Brunswick, the assemblies of Nova Scotia and Prince Edward Island appointed their own Clerks, he had directed Prescott to yield to the Assembly of Newfoundland, and to permit them to appoint their Clerk.[1]

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[1] C.O. 194/115, 128. Harvey to Stanley, October 18, 1842. Departmental document.

Harvey had believed that the beginning of a new constitution was a suitable occasion to return the power to the governor,[1] but Stanley had advised him not to begin the controversy again.[2] The despatch had not reached Harvey before the opening of the Assembly. On the advice of his Executive Council,[3] however, he had decided not to interfere with the power of the Assembly after all.[4] It seems clear, however, that Harvey had at first hoped to use these offices as instruments of his personal patronage.

The main office within the patronage of the Assembly was that of Speaker. Immediately prior to the opening of the Assembly, Harvey received a petition from the majority of the elected members asking him to prevent the members of the Legislative Council from voting for the officer.[5] Harvey did not name the petitioners in his report to the Colonial Office. He refused the petition, perhaps on the grounds that his Commission of September 1, 1842, had stated that the nominated members were to sit and vote "as fully

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[1] C.O. 194/115, 126. Harvey to Stanley, October 18, 1842.

[2] C.O. 195/20, 128-9. Stanley to Harvey, December 27, 1842.

[3] Newfoundland, Minutes of the Executive Council (1842-1855), January 11, 1843, p. 16.

[4] C.O. 194/116, 33 ff. Harvey to Stanley, January 19, 1843.

[5] Ibid.

in all respects as the elected Members".[1]

The test of party strength came at the beginning of the session, with the election of the Speaker. On a motion by Lawrence O'Brien, William Carson was nominated.[2] The House divided as follows:[3]

For Carson	Against Carson
Lawrence O'Brien (St. John's)	John Munn (Conception Bay)
William Carson (St. John's)	Thomas Ridley (Conception Bay)
John Nugent (St. John's)	Robert Carter (Bonavista)
James Prendergast (Conception Bay)	Thomas Glen (Ferryland)
Edmund Hanrahan (Conception Bay)	Richard Barnes (Trinity)
John Dillon (Placentia-St. Mary's)	Bryan Robinson (Fortune Bay)
Simon Morris (Placentia-St. Mary's)	James Simms (nominated)
James Tobin (nominated)	Joseph Noad (nominated)
John Kent (nominated)	John Dunscomb (nominated)
	Charles F. Bennett (nominated)
	William Thomas (nominated)
	William Row (nominated)

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[1]See Appendix F, p. 183.

[2]Newfoundland, Journal of the General Assembly, January 16, 1843, p. 8.

[3]Ibid.

The motion for Carson was therefore defeated by twelve votes to nine.[1] On a motion by William Thomas, James Crowdy, the Colonial Secretary, was nominated.[2] The House divided as it had on Carson's nomination in reverse, and Crowdy was elected.[3]

In his confidential instructions to Harvey in September, 1842, Stanley had stated that the Speaker should be an elected member of the Assembly.[4] Before the House had met, Harvey had expressed doubt to Crowdy whether he should stand for the office.[5] According to Harvey, Crowdy had attempted to decline the nomination. Stanley had some misgivings about Crowdy's being Colonial Secretary and Speaker of the Assembly at the same time, but decided not to interfere with the Assembly's privilege of choosing its own Speaker.[6]

In considering their personal attributes, Harvey preferred James Crowdy to William Carson. He reported to

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[1]John Slade and Clement Benning, members for Fogo and Burin, respectively, were not sitting at this time. Patrick Morris and James Crowdy did not register their votes.

[2]Newfoundland, Journal of the General Assembly, January 16, 1843, p. 8.

[3]Ibid., January 16, 1843, p. 9.

[4]C.O. 195/20, 97-114. Stanley to Harvey, September 3, 1842.

[5]C.O. 194/116, 74 ff. Harvey to Stanley, January 27, 1843.

[6]C.O. 194/116, 33 ff. Harvey to Stanley, January 19, 1843.

the Colonial Secretary:

> ... the advantage of having in the chair of the Assembly a gentleman with whom I can communicate with so much satisfaction and confidence, and who is believed fully to concur in the moderate sentiments which the Head of the local Government [Governor Harvey] is considered to entertain are incalculable.[1]

Harvey believed that Carson was not qualified for the position,[2] and by appointing him to the Executive Council in September, 1842, he had hoped to dissuade him from accepting nomination.[3]

The election to the second position within the patronage of the Assembly, that of Clerk of the House, showed the maximum number of votes each party normally could expect to muster during the session. Clement Benning had now taken his seat, and Patrick Morris, who had not taken part in the divisions for the Speaker, voted in this election; the only two who did not vote were James Crowdy, the Speaker, and John Slade, who did not sit during the session of 1843.[4] On a motion by Bryan Robinson, Edward Mortimer Archibald (an official who had been brought over from Nova Scotia by the Colonial Office) was nominated as

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[1] C.O. 194/116, 33 ff. Harvey to Stanley, January 19, 1843.

[2] C.O. 194/115, 96 ff. Harvey to Stanley, October 5, 1842.

[3] Ibid.

[4] In later sessions Slade voted with the Conservatives.

the Clerk.[1] In the division that followed, the same twelve who had voted for Crowdy now voted for Archibald. The nine Liberals who had voted against Crowdy were joined by Patrick Morris and Clement Benning in voting against Archibald.[2] The Conservatives therefore had a majority of twelve votes to eleven.

The vote for the office of Doorkeeper was also won by the Conservatives, this time by eleven to ten.[3] The pattern of the previous vote was repeated, except for a reduction of one vote in each party. William Carson of the Liberals and William Thomas of the Conservatives did not vote.

The votes for the other two offices at the disposal of the House, Clerk Assistant and Messenger, showed that the Liberals were not as well disciplined as the Conservatives. In the vote for the Assistant Clerk, the Conservatives won with eleven votes to five.[4] The only Conservative who did not vote was John Dunscomb. Five Liberals - Edmund Hanrahan, Simon Morris, James Tobin, Clement Benning, and Patrick Morris - did not record their votes. In addition,

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[1] Newfoundland, Journal of the General Assembly, January 17, 1843, p. 19.

[2] Ibid., January 18, 1843, p. 21.

[3] Ibid.

[4] Newfoundland, Journal of the General Assembly, January 21, 1843, p. 27.

William Carson was not sitting at this time. The other five Liberals were therefore left to be defeated by the eleven votes of the Conservatives.

The Conservatives had won all the votes involving appointments. They had accomplished this because their members in the Legislative Council, together with their elected members, were able to outweigh the Liberals. It was the composition of the Legislative Council that gave the Conservatives the larger number of votes, for among the elected members, the Liberals were more powerful. Of the fourteen elected members sitting in this session, eight were Liberals and six were Conservatives. The death of William Carson on February 26, 1843, reduced the number of Liberals to seven. Of the ten members of the Legislative Council, seven were Conservatives and three were Liberals. The Conservative votes in the Legislative Council had been reduced to six with the appointment of Crowdy as Speaker. Thus, on the basis of votes for the Assembly's offices, the maximum strength of the Conservatives was twelve, of whom there were six each from the Legislative Council and the elected membership. In a tie they could depend on the support of the Speaker. The total strength of the Liberals was eleven, of whom three were in the Legislative Council, and eight were elected members.

The following diagram illustrates the composition

of the Assembly in January, 1843:

Legislative Council			Elected Members	
Conservatives	Liberals		Conservatives	Liberals
C.F. Bennett	Kent		Munn	O'Brien
Dunscomb	Tobin		Robinson	Nugent
Simms*	P. Morris*		Ridley	S. Morris
Thomas*			Barnes	Hanrahan
Row			Carter	Prendergast
Noad*			Glen	Dillon
Crowdy* (Speaker)				Benning
				Carson*
			Absent: Slade	
* Members of the Executive Council				

Immediately after it had elected its officers, the House turned its attention to finance - one of the most important factors in the breakdown of the old representative system in 1841. In the amalgamated legislature, as in the assemblies under the old system, the procedure with regard to a finance bill was unlike that of any other bill. In the case of supply bills, the governor introduced estimates in the House. The Assembly then went into Committee of the Whole House on Supply to consider each request. The

Committee made its report in the form of resolutions, which made itemized grants to the governor. For example, the second supply bill of the first session was based on one hundred and eleven resolutions. Revenue bills were passed after the Assembly went into the Committee of the Whole House of Ways and Means, and passed the appropriate resolutions.

In this session the Assembly passed all the money bills with little debate and with but one division. There were seven of these: two supply bills, two revenue bills, a loan bill, an indemnification bill, and a contingency bill.

Prompt consideration of the revenue bill was of utmost importance. From June 30, 1842, as a result of the expiration of the Newfoundland Revenue Act, the only revenue of the colony had come from duties under imperial acts.[1] The colony had thereby lost approximately £20,000.[2] The Governor had had records kept of the goods imported during the interval, and had hoped that the Assembly would make the revenue bill retroactive to June 30, 1842. Shortly after the opening of the session, the bill was introduced and passed, after the ordinary rules had been waived in order

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[1]See above, pp. 60-1.

[2]Newfoundland, Journal of the General Assembly, 1843, Appendix, p. 302.

to permit a quicker process.[1] It was in essence a duplication of the Revenue Act of 1841. Being an emergency measure, it was to expire on July 30, 1843. But contrary to Harvey's hopes, it was not made retroactive to June 30, 1842.[2] Whether or not there was a difference of opinion in the Assembly on the question is not known, for no division was called. In the absence of a retroactive clause, the bonds, issued to the customs officers by importers in obedience to the Governor's proclamation,[3] were not payable, and the records kept of goods imported during the interval were useless. £20,000 was therefore lost premanently to the colony. To make up the deficency, the Governor, through the Colonial Secretary, introduced a bill to permit him to raise a loan for that amount on the credit of the colony.[4] The bill was passed without a division.

By the indemnification bill the Assembly reimbursed the Governor for the £21,500 of the Colony's revenue which

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[1]Newfoundland, Journal of the General Assembly, January 24, 1843, p. 33.

[2]C.O. 194/117, 75 ff. Harvey to Stanley, July 24, 1843. Enclosure, Attorney General's observations on the acts of the Newfoundland legislature, 1843.

[3]C.O. 194/114, 401 ff. Harvey to Stanley, June 25, 1842.

[4]C.O. 194/116, 42 ff. Harvey to Stanley, January 25, 1843.

he had spent.[1] As no supply bill had been passed by the Assembly in 1841, the Governor had had no authority to make this expenditure. He had, however, spent the money covered by the items in the supply bill in which both the House of Assembly and the Legislative Council had concurred.[2] These had totalled £17,000. He had also spent £4,500 which he had not requested from the legislature.[3] The bill to cover these expenditures, too, passed without a division.

The contingency bill was passed with only one division. On the third reading, William Thomas and Richard Barnes attempted in vain to prevent payment of the members of the Legislative Council.[4] The only member to vote with them was James Simms. Voting against them were John Nugent, Edmund Hanrahan, Clement Benning, Lawrence O'Brien, Bryan Robinson, Patrick Morris, Thomas Tobin, and John Kent.[5]

Of the bills affecting the constitution, two concerned the privileges of members and eight involved the power of the Assembly as a whole. Of the former, the

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[1] C.O. 194/117, 75 ff. Harvey to Stanley, July 24, 1843. Enclosure, Attorney General's observations on the acts of the Newfoundland legislature, 1843.

[2] See above, p. 60.

[3] C.O. 194/117, 75 ff. Harvey to Stanley, July 24, 1843. Enclosure, Attorney General's observations on the acts of the Newfoundland legislature, 1843.

[4] Newfoundland, Journal of the General Assembly, May 22, 1843, p. 258.

[5] Ibid.

first bill determined the method of judging controverted elections. The bill was drawn up by a Select Committee composed of Bryan Robinson, John Nugent, and Joseph Noad, who had been appointed to draft a bill in accordance with resolutions adopted by a Committee of the Whole House on privilege.[1] The bill provided that a Select Committee of the House of Assembly would consider petitions which objected to any person's election to the House.[2] The bill was passed early in the session, and immediately received the Governor's signature.[3] James Simms, the Attorney General, disagreed with the provisions of the act; in his observations to the Colonial Secretary, he held that political views would enter into any decision by members of the Assembly. A better method, he argued, would be to give the Courts power to consider the petitions.[4] Royal assent was given without question, however, and trial by Select Committee remained in force until 1887, when it was replaced by trial before the judges of the Supreme Court bench.[5]

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[1]Newfoundland, Journal of the General Assembly, February 10, 1843, p. 55.

[2]C.O. 194/117, 75 ff. Harvey to Stanley, July 24, 1843. This procedure was similar to that being used by the British Parliament.

[3]Newfoundland, Journal of the General Assembly, March 15, 1843, p. 107.

[4]C.O. 194/117, 75 ff. Harvey to Stanley, July 24, 1843.

[5]J.R. Courage, "Development of Procedure in the House of Assembly of Newfoundland". (Unpublished M.A. thesis, Memorial University of Newfoundland, 1960), p. 157.

Shortly after the bill became law, two petitions presented to the House showed that the method was no guarantee of justice in controversies arising from elections. One petition from Peter Winser objected to the election of Thomas Glen in Ferryland,[1] and the other from Henry Winton objected to the election of Clement Benning in Burin.[2] In a straight party vote, the Liberals defeated a motion by Thomas Ridley and John Munn to have Winton's petition considered.[3] Winser's petition was also unsuccessful; on a motion by Thomas Glen, the Conservatives prevented its consideration.

Another bill involving the privilege of members of the House dealt with the oaths taken by members. At this time Protestant members took four oaths: one of allegiance to the Queen, one denouncing pretenders to the throne, one admitting the supremacy of the Crown, and one declaring against transubstantiation.[4] The Roman Catholics took one of allegiance, which included declarations that the Queen was supreme in temporal or civil jurisdication, and

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[1]Newfoundland, Journal of the General Assembly, February 7, 1843, p. 43.

[2]Ibid., February 7, 1843, p. 46.

[3]Ibid., May 3, 1843, p. 211. The Conservatives lost their majority when Robinson, Thomas, and Dunscomb did not register their votes.

[4]Patriot (St. John's: January 17, 1844).

that it was not an article of their faith that "princes excommunicated or deprived by the Powe(?), or any other authority of the See of Rome might be deposed or murdered by their subjects".[1] These oaths were based on Governor Cochrane's Commission of 1832, which referred to several imperial acts concerning oaths for members of the British Parliament.[2] They were the same as those taken in the assemblies of Nova Scotia, New Brunswick, and Prince Edward Island.[3] Separate oaths had been issued for Canada in 1840.[4]

John Nugent proposed a bill which would require all members to take only a simple oath of allegiance to the Queen.[5] For the most part, the religious faith of the individual members determined their reaction to the bill. Ten Roman Catholics and thirteen Protestants were sitting in the House when the bill was being considered. The Roman Catholics were John Nugent, James L. Prendergast, Edmund Hanrahan, John Dillon, Simon Morris, Clement Benning, Lawrence O'Brien, Patrick Morris, James Tobin, and John Kent. The Protestants were John Munn, Richard Barnes, Thomas Glen, Thomas Ridley, Robert Carter, Bryan Robinson, James Simms,

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[1] Ibid., January 17, 1844.

[2] See Appendix E., p. 176.

[3] C.O. 194/120, 39 ff. Harvey to Stanley, January 31, 1844. Departmental minute, Blackwood to Hope.

[4] Ibid.

[5] Newfoundland, Journal of the General Assembly, January 17, 1843, p. 10.

William Thomas, William Bickford Row, Joseph Noad, John Noad, John Dunscomb, Charles Fox Bennett, and James Crowdy, the Speaker. In a division on second reading, Nugent's bill was carried by a vote of twelve to seven. The House voted as follows:

For the bill		Against the bill
Nugent	O'Brien	Barnes
Prendergast	Tobin	Carter
Hanrahan	Kent	Robinson
Dillon	Glen	Row
S. Morris	P. Morris	Noad
Munn		Dunscomb
Benning		Bennett

Two Protestants - Munn and Glen - voted with the Roman Catholics. On third reading Simms and Robinson attempted to give the bill a six-month postponement.[1] The House divided:

For the postponement	Against the postponement	
Barnes	Nugent	Dunscomb
Carter	Prendergast	Dillon
Simms	Hanrahan	Glen
Robinson	S. Morris	Row
	P. Morris	Tobin
	O'Brien	Kent

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[1] Ibid., May 17, 1843, p. 235.

The bill was therefore passed, and Harvey signed it. He reported to the Colonial Secretary that some members had voted for the bill only because they were confident that the Queen would disallow it.[1] In any event, a clause in the act suspended its effect until it received royal assent.[2]

Members of the Colonial Office were not certain whether the authority for the oaths rested with the British Parliament or with the Queen. If it was with the former, only another act by Parliament could change them; if it was with the latter, only a revision of the Governor's Commission could change them. Stanley was inclined to think that they were based on royal prerogative.[3] The correct procedure then would be to present an address to the Queen. In any case, the passing of an act by the Newfoundland Assembly was not the correct method, and royal assent was therefore withheld.[4]

Eight bills involved the power of the Assembly: two, dealing with crown lands and reserved salaries, affected the Assembly's relationship with the British Parliament, and six concerned the judicial system in Newfoundland.

When Newfoundland first received representative

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[1]C.O. 194/117, 332 ff. Harvey to Stanley, November 30, 1843.

[2]Newfoundland, 6 Vict. (1843), Cap. 9.

[3]C.O. 195/20, 227-9, Stanley to Harvey, March 25, 1844.

[4]Ibid.

government, an act of the British Parliament had given the Newfoundland legislature control over all imperial duties except for a reserved civil list of £6,550 and the expenses of collecting the duties.[1] The British Parliament had now passed an act,[2] which, after July, 1843, would reduce imperial duties to such an extent that those collected in Newfoundland would not cover the reserved civil list. A bill introduced by James Simms, the Attorney General, provided for the Executive's exclusive control over £6,550 from the Colonial Treasury.[3] The bill was passed without amendment and without division.[4]

The other subject concerning the Assembly as a whole, that of control over crown lands, had originated in 1837.[5] At that time the House had asked the Crown to remove all restrictions on the cultivation of the soil. Lord Glenleg, the Colonial Secretary, had replied that the practice of granting free land had been discontinued in all the colonies, and sale by auction had been substituted. Pending the passing of a law by the local legislature, the

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[1] See above, p. 61.

[2] Royal Gazette (St. John's: September 6, 1842).

[3] Newfoundland, Journal of the General Assembly, May 12, 1843, p. 222.

[4] Ibid., May 16, 1843, p. 231.

[5] C.O. 194/116, 209 ff. Harvey to Stanley, May 25, 1843.

Governor was to use the same regulations as were being used in Australia. These, however, had been suspended in Newfoundland later in the same year while Lord Durham was investigating land grants in the British North American colonies. In 1840 land had been sold at public auction under regulations issued by the Governor and the Council. Later that year the Assembly had passed a bill which would have provided for the sale of land at fixed prices. The Legislative Council had refused to pass it, and James Simms, the Attorney General, had drafted legislation by which sale would have continued to be by auction. This had not been introduced into the legislature. Both bills had been sent to the Colonial Office for consideration. The Commissioners of Colonial Lands had stated that they preferred sale of land at fixed uniform prices. Lord John Russell, the Colonial Secretary, had concurred, but with no strong opinions on the matter.

In his opening speech in 1843, Harvey said that he would have a bill introduced to deal with crown lands. The bill, brought in by James Simms,[1] was based on the recommendation of the British Commissioner of Crown Lands that crown lands be sold at a fixed price. After dismissing the proposed legislation in the Committee stage, the

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[1]Newfoundland, Journal of the General Assembly, February 9, 1843, p. 52.

Assembly passed resolutions to the effect that all lands should be sold at public auction, and that all revenue should be at the disposal of the House of Assembly.[1] Harvey reported to the Colonial Secretary that the defeat of his bill was due not so much to objections to its provisions as to the fact that it contained no provision whereby the revenue from the sale of land would have been put at the disposal of the Assembly.[2] It was not for any immediate financial benefit that the House of Assembly wanted control over revenue from crown lands, for in the year ending in March, 1842, the income from crown lands had been £1,063 while the expenditure had been £1,082.[3] The £583 brought forward from the previous year had left a balance of £519. The Colonial Secretary instructed Harvey to give in to the House on both counts: to sell the land by auction and to place the revenue in the Colonial Treasury.[4] This, he wrote, was consistent with the practice which had been adopted in some other British North American colonies.

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[1] Ibid., May 15, 1843, p. 225.

[2] C.O. 194/117, 313 ff. Harvey to Stanley, October 23, 1843.

[3] C.O. 194/116, 209 ff. Harvey to Stanley, May 25, 1843.

[4] C.O. 195/20, 194-7. Stanley to Harvey, November 1, 1843.

For the most part, the six bills affecting the judiciary were intended to increase the power of the legislature over the Courts. At this time that power was not extensive. When Newfoundland had received full recognition as a colony in 1824, the British Parliament had given the Supreme Court of Newfoundland power

> to make and prescribe such Rules and Orders touching and concerning the Forms and Manner of Proceeding in the said Supreme Court and the Circuit Courts respectively, and the Practice and Pleadings upon all Indictments, Information, Actions, Suits and other matters to be therein brought, ... the impannelling of Juries; ... the Fees, Poundages on Prerequisites to be lawfully demanded by an Officer, Attorney, or Solicitor in said Courts respectively.[1]

The first legislature had passed some minor legislation concerning officers of the Courts,[2] and the second legislature had established the fees to be charged by police officers and Courts of Session.[3] The Supreme Court had continued to make rules in areas not regulated by the legislature. In Stanley's opinion the legislature, and not the Courts, should have made many of these regulations, particularly those concerning fees.[4] As these fees went into the general

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[1]United Kingdom, 5 Geo. IV (1824), Cap. 67, Sec. 17.

[2]Newfoundland, 3 Wm IV (1833), Cap. 6; 5 Wm. IV (1835), Cap. 2; 5 Wm. IV (1835), Cap. 11.

[3]Newfoundland, Journal of the House of Assembly, April 29, 1840, p. 212.

[4]C. O. 195/20, 83-5, Stanley to Harvey, July 12, 1842.

revenue of the colony, any regulation of them was similar in effect to a revenue law. Although the Courts had been constituted the proper authority to make such regulations in 1824, Stanley argued that the practice should not be continued. He therefore instructed Harvey to invite the Assembly to make all further regulations, and to consider whether they should sanction those already established by the Courts. In his opening address, Harvey repeated Stanley's suggestion.[1]

Two of the bills dealing with the Courts continued acts soon to expire, and passed with little debate. These were a bill by John Kent to continue the combination of the offices of Clerk of the Supreme Court and Clerk of the Central Court,[2] and one by John Nugent to continue the fees charged in the Sessions Court.[3] A new bill commuting the fees of the Sheriff's office was introduced by Bryan Robinson,[4] and passed without division. The other three new bills were not passed. They were one introduced by Carter concerning Circuit Courts,[5] one by William Row, an

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[1] Newfoundland, Journal of the General Assembly, January 17, 1843, p. 17.

[2] Ibid., March 22, 1843, p. 120.

[3] Ibid.

[4] Ibid., April 20, 1843, p. 185.

[5] Ibid.

Executive member, regulating the Supreme Court,[1] and one by John Nugent regulating the empanelling of juries.[2]

John Nugent's bill would have repealed the rules which regulated the empanelling of juries in the Supreme and Central Courts.[3] The bill was concerned particularly with the method of empanelling special juries, such as those used in cases arising from violence at the polls. Under the existing rules, memberships in the special juries were as limited as that in the Grand Juries, that is, to "all principal merchants and gentlemen resident".[4] The Liberals believed that they were at a disadvantage with only "principal merchants and gentlemen" on the jury in any case of a political nature.[5] Nugent's bill would have reduced the qualification of members in special juries to three months residence in the colony and ownership of a house of annual value of £30 or occupancy, as a tenant, of a house of annual value of £60.[6] Grand Juries would continue to be limited to "merchants and gentlemen". No

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[1] Ibid., March 11, 1843, p. 100.

[2] Ibid., February 13, 1843, p. 59.

[3] E.M. Archibald, Digest of the Laws of Newfoundland, (St. John's: 1847), p. 127.

[4] Newfoundlander (St. John's: March 7, 1844).

[5] Ibid., March 7, 1844.

[6] Newfoundland, Bills and Miscallaneous Papers, 1843, p. 29.

division took place on the bill. Nugent withdrew it after the Committee stage, and indicated that he would introduce a similar bill in the following session.[1]

An analysis of the session showed that the private members proposed more bills than did the Executive members. Of the twenty four new non-finance bills, seventeen were introduced by private members and seven by Executive members. Of the private members, the Liberals and the Conservatives introduced an almost equal number: the Liberals were responsible for eight and the Conservatives for nine. The result of the proposed legislation showed that neither the Liberals nor the Conservatives completely controlled the House. Of the eight Liberal bills introduced four were passed; of the nine Conservative bills, two were successful. There might have been two reasons for this lack of complete legislative power by either of the parties. First, party loyalty was not always very strong, and members sometimes voted against those with whom they were usually in sympathy. Second, the parties were so evenly matched that the absence of one or two members could often determine the outcome of a vote.

The Governor, too, was not successful in all his attempts to have legislation passed. Before the session started, Harvey had anticipated no trouble in controlling

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[1]Newfoundland, Journal of the General Assembly, April 19, 1843, p. 181.

the Assembly through the combined support of the Executive members and the private members of one or the other of the parties.[1] His expectations were ill-founded. While all the finance bills proceeded smoothly, of the seven new non-finance bills introduced by members of the Executive, the Assembly passed only three. They were the ordnance property bill, the law of attachment bill, and the reserved list bill. The bills rejected by the Assembly were the militia bill, the crown lands bill, the Supreme Courts practice bill, and the fisheries bill.

It is to be noted that two of the bills which the Governor had specifically mentioned in his opening speech - the crown lands bill and the militia bill - were rejected by the Assembly. The first of these has already been discussed.[2] The second, providing for the establishment of a militia, must have been very important to Harvey. As a soldier who had recently come from New Brunswick with the tensions on its border with the United States, Harvey believed that Newfoundland, as all other colonies, needed a militia. In his opening speech to the Assembly, he had said that he would have a bill introduced to establish a militia.[3] James Simms proposed the bill,[4] but in a division

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[1] C.O. 194/116, 10 ff. Harvey to Stanley, January 16, 1843.

[2] See above, pp. 90-2.

[3] Newfoundland, Journal of the General Assembly, January 17, 1843, pp. 14-5.

[4] Ibid., February 9, 1843, p. 52.

on second reading, the private members defeated it by voting in a block against the Executive members.

When the House of Assembly prorogued, both the Governor and the local newspapers surveyed the session and the constitutional experiment. All agreed that the amalgamated system had been successful in that at least some legislation was passed. During the session twenty-five bills had been accepted against only ten minor acts adopted during the previous session. Nevertheless, except for Harvey, no one approved of the constitution, although in some instances it seems that the criticism was directed not so much at the nature of the system as at the Governor's handling of it.

The conservative Public Ledger was critical on four counts. First, it complained that people who had made themselves conspicious by their violence in the past were being made members of the Legislative Council.[1] It was probably referring to Patrick Morris, John Kent, and James Tobin. Second, it contended that while the members of the Legislative Council could have had a modifying influence on the Assembly, these members "who have been long wont to indulge in declamatory exhibition", were too set in their wasy to change.[2] Third, the Public Ledger noticed that the

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[1] Public Ledger (St. John's: January 10, 1843).

[2] Public Ledger (St. John's: April 21, 1843).

checks and controls of a bicameral legislature did not exist in the unicameral system. Fourth, it criticized the Assembly for its "extravagence" in making grants for roads, and implied that the responsibility rested with Harvey, who had submitted such large estimates.

The attitude of the conservative Times toward the Assembly was slightly different. It condemmed the "reckless expenditure of the public money",[1] but blamed especially the members of the Legislative Council, rather than the elected representatives, for accepting Harvey's estimates for road building. It did not criticize the Governor for presenting large estimates. According to the Times, he had accepted all the petitions he had received for roads, only because he did not know which proposed expenses were justified. It hinted that Harvey had expected the House to reduce the estimates, but, in fact, Harvey had made it clear to the Colonial Secretary[2] and to the Assembly[3] that he approved of these proposed expenditures. In a despatch to the Colonial Secretary, he noted with satisfaction:

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[1] Times (St. John's: April 26, 1843).

[2] C.O. 194/116, 160 ff. Harvey to Stanley, April 28, 1843.

[3] C.O. 194/116, 190 ff. Harvey to Stanley, May 22, 1843.

> ... the representatives of the Mercantile Interests appear equally disposed with the members of the heretofore opposite party to concur in the reimposition of duties on such articles as may best bear them... to a point which may enable the Government to carry forward the proposed improvements in roads, education, etc.[1]

According to the Times, as the Liberals could not be expected to want a reduction in expenditure, it was the responsibility of the Conservatives to see that expenses were cut. At the same time it gave its views for the Conservatives' initial approval of the new constitution and the Liberals' apposition to it:

> Why was there such a mighty stir among the so-called liberal section of the community, and why was there indignation so loudly and unqualifiedly expressed upon the introduction of the present system of government? Or why was it hailed with satisfaction by men of British and Conservative feelings? Simply because the same view of the matter was taken by both parties: they both foresaw in it the means of destroying the misused power of an intolerant faction.[2]

It went on to complain, "We, however, amongst others, calculated upon an amount of advantage which we do not appear to have obtained."[3]

The Newfoundlander, a liberal newspaper, criticized the constitution for placing too much power in the hands of the governor.[4] While it admitted that harmony existed in

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[1] C.O. 194/116, 160 ff. Harvey to Stanley, April 28, 1843.

[2] Times (St. John's: April 26, 1843).

[3] Times (St. John's: May 31, 1843).

[4] Newfoundlander (St. John's January 12, 1843).

the Assembly, it complained, "peerages and pensions seem to us to form too essential an ingredient in the production of this 'harmony'".[1] It continued, "We speak of Sir John Harvey with every personal respect - but if public opinion be necessary for the support of a Government the days of the present one are numbered."[2]

The liberal Patriot mentioned plans for the formation of a "Newfoundland Repeal Association" to agitate for the withdrawal of the amalgamated system - "the infamous Constitution by which we are oppressed",[3] and held that "a more intolerable curse than the amalgamated Legislature never scourged a colony!"[4] With obvious reference to the decisions of the House with regard to public positions within its patronage, the Patriot objected to the constitution for making possible "the barbarous act of turning from their offices the old officers of the Assembly and placing partizans and placemen in their places!"[5] However it directed no criticism at Harvey: "You are the victim of ...

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[1] Newfoundlander (St. John's: April 13, 1843).

[2] Newfoundlander (St. John's: May 25, 1843).

[3] Patriot (St. John's: January 25, 1843).

[4] Patriot (St. John's: May 17, 1843).

[5] Ibid., May 17, 1843.

a bureaucracy - by whom you are ruled".[1] The Indicator, another liberal newspaper, while disapproving of the system, stated that because of the "skill and statesmanlike qualities" of the Governor the constitution was a success.[2]

In his observations, Harvey indicated his approval of the constitution: "I am very much disposed to regard [it] as peculiarly adopted to the state of society in the minor colonies of Her Majestrys' Colonial Dominions. I would say to all whose population is less than 200,000."[3] He contended that public opinion favoured it, and discounted press opposition as a measure of popular opinion.[4] He continued with reference to the new constitution:

> The Conservative (Mercantile) class have seen all their hopes realized as to its effects in neutralizing the obstructive power of the popular Branch of the former Legislature, while the fears of the Liberal Party have been proportionally relieved by finding themselves met in a spirit of moderation and conciliation which they had little expected from their late political antagonists of the Council.[5]

The only criticism he had of the constitution was that it placed too much power in the hands of the governor, thus

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[1] Patriot (St. John's: March 15, 1843).

[2] Reprinted in the Newfoundlander (St. John's: April 13, 1843).

[3] C.O. 194/116, 190 ff. Harvey to Stanley, May 22, 1843.

[4] C.O. 194/116, 226 ff. Harvey to Stanley, May 30, 1843.

[5] Ibid.

making the success of the system largely dependent on him.[1]

During the session Harvey had submitted the names of five men for appointment to the Executive Council.[2] This had been in compliance with the Instructions accompanying his Commission of September 1, 1842. He had been instructed to make his first seven appointments to the Executive Council on his own authority.[3] Any additional members were to be appointed by the Queen. The five nominated by the Governor were Thomas Bennett, "a Protestant merchant of St. John's"; Robert Job, "a Dissenter merchant of St. John's"; Bryan Robinson and Thomas Ridley, Protestant elected members of the Assembly; and Lawrence O'Brien, a Roman Catholic elected member of the Assembly.[4] As at this time there were six members of the Executive Council,[5] the five new appointments would make a membership of eleven, one more than the maximum number suggested by Lord Stanley.[6] Although

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[1] Ibid.

[2] C.O. 194/116, 116 ff. Harvey to Stanley, March 16, 1843.

[3] See above, pp. 55-6.

[4] C.O. 194/116, 116 ff. Harvey to Stanley, March 16, 1843.

[5] They were James Simms, James Crowdy, Patrick Morris, William B. Row, Joseph Noad, and William Thomas. William Carson had died in February, 1843.

[6] C.O. 195/20, 97-114. Stanley to Harvey, September 3, 1842.

he believed that the Executive Council would thus become too large, Lord Stanley gave Harvey permission to make the appointments.[1] In reply Harvey stated that he planned to tell the three elected members that their appointments would be in effect only so long as they retained their seats in the House of Assembly.[2]

The appointments, made on July 29, 1843,[3] were not greeted with public acclaim. The Times implied that the Executive Council had become too big.[4] The Public Ledger condemned a "fallacy" in the appointments:

> ... the stress ... seems to have been laid upon the fact of an individual, having been returned for the representation of some one or other of the districts, having a claim to consideration in the appointments to office of honour or trust.[5]

It saw in the appointments an attempt by Harvey to buy the support of opposition groups:

> The policy of His Excellency the Governor, in the administration of the affairs of the colony has now pretty well developed itself ....Within one common vortex does Sir JOHN HARVEY appear desirous of drawing all those who are within the more immediate sphere of his influence, and by various baits and allurements

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[1] C.O. 195/20, 145-6. Stanley to Harvey, June 2, 1843.

[2] C.O. 194/116, 291 ff. Harvey to Stanley, June 30, 1843.

[3] C.O. 195/20, 161-2. Stanley to Harvey, July 20, 1843.

[4] Times (St. John's: September 13, 1843).

[5] Public Ledger (St. John's: September 22, 1843).

> does he apparently seek to entrap others who ought to possess sufficient firmness to resist a well-understood approaching evil.[1]

The Newfoundlander darkly hinted that the Governor had used the appointments as personal patronage.[2] The Patriot stated:

> The Executive Council of Newfoundland at the present moment is composed almost of all those who have ever been the most obstinately opposed to peace and welfare and happiness of the people .... The only difference which "Sir John Harvey's Constitution" has made to the "Family Compact" has been to extend its ramification and encrease its strength![3]

Thus, through his handling of the Assembly and his appointments to office, Harvey had not gained the complete loyalty of either the Liberals or the Conservatives. But each party was tempered in its disfavour by the realization that it was getting at least some of the Governor's patronage.

In its first session the amalgamated legislature had proved partially successful. On the one hand, many bills, including some introduced by members of the Executive, were either defeated or withdrawn. The Governor failed in some of his attempts because he was unable to win the continuous support of either of the parties, and because sometimes his proposals were opposed by most of the private

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[1] Public Ledger (St. John's: August 29, 1843).

[2] Newfoundlander (St. John's: August 24, 1843).

[3] Patriot (St. John's: September 20, 1843).

members in the Assembly. On the other hand, important legislation, especially concerning revenue, had been passed without difficulty. The basic reason for this degree of success was that each bill depended on a majority vote in one chamber only. Hence, stalemates similar to those which had faced the House of Assembly and the Legislative Council in the second legislature were now impossible. There were other, less important reasons: the Executive members in the legislature gave more direct guidance in the discussion of their bills than had been possible when they were not in the House of Assembly; both political parties succeeded in getting some of their bills passed and thus neither felt that degree of frustration which would have made co-operation impossible; and, finally, the Governor simetimes used his influence to discourage prolonged debates that could have ended in impasses.

IV

THE SECOND AND THIRD SESSIONS OF THE AMALGAMATED ASSEMBLY, 1844 AND 1845

In its first session, the amalgamated legislature, while not working with complete harmony, had not seriously obstructed the work of the Executive. The next two sessions would show whether the functioning of the Assembly, the relationship between it and the Governor, and initial responses to the system would change as Newfoundland acquired more experience with the mixed unicamerial legislature.

Several matters which had been raised in the first session were settled in 1844 and 1845. One of these was the House of Assembly's control over crown lands. In the session of 1843, the Governor had had a bill introduced to provide for the sale of crown lands at fixed prices, but the House had refused to pass it.[1] In the session of 1844, the Attorney General, in accord with instructions from the British Colonial Secretary, introduced a bill which regulated the sale of land by public auction and granted the revenue to the colonial Treasury.[2] The bill was passed without

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[1] See above, pp. 91-2.

[2] Newfoundland, Journal of the General Assembly, January 16, 1844, p. 14.

difficulty, but Stanley withheld his recommendation for royal assent until the Newfoundland legislature made certain minor changes.[1] These amendments were made in the session of 1845 by a bill introduced by Joseph Noad.[2]

The problem of oaths for members of the Assembly, which had been raised in 1843, was also settled in 1845. In the session of 1843, the act requiring all members to take only a simple oath of allegiance had contained a clause which suspended the effect of the legislation until royal assent was given.[3] Stanley had replied that as the authority for these oaths rested on royal prerogative, they were outside the jurisdiction of the Newfoundland legislature. In the session of 1844, two members took the old oaths. They were John Slade, the member for Fogo, who had not sat in the first session, and Robert John Parsons, who had been elected in a by-election in St. John's in June, 1843, to fill the vacancy left by the death of William Carson.[4] Both members were Protestants. Slade took the four oaths for Protestants, but Parsons identified himself so closely with

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[1] C.O. 195/20, 291. Stanley to Harvey, November 30, 1844.

[2] Newfoundland, Journal of the General Assembly, February 3, 1845, p. 22.

[3] See above, p. 89.

[4] Newfoundland, Journal of the General Assembly, January 10, 1844, p. 6.

the Roman Catholics that he took the oath required of them.[1]

In 1845 the House of Assembly, in accordance with a suggestion from Stanley, appointed a Select Committee to draw up an address to the Queen on the matter of the oaths.[2] The members of the Committee were John Nugent, who had made the motion; Lawrence O'Brien, who had seconded it; and Thomas Glen, who had voted for the oaths bill in 1843.[3] In the address presented by the Committee for the approval of the House, the Queen was asked not to require any oaths except one of allegiance which would be taken by all members regardless of their religious faith.[4] The address was adopted without division,[5] and forwarded without comment by the Governor.[6] Alterations were made in Harvey's Commission; the sections pertaining to oaths were revoked, and all members were henceforth required to

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[1] Patriot (St. John's: January 17, 1844).

[2] Newfoundland, Journal of the General Assembly, January 20, 1845, p. 9.

[3] Newfoundland, Journal of the General Assembly, April 24, 1843, p. 193; March 17, 1843, p. 235.

[4] Newfoundland, Journal of the General Assembly, January 22, 1845, p. 13.

[5] Ibid.

[6] C.O. 194/122, 48 ff. Harvey to Stanley, February 1, 1845.

take only an oath of allegiance.[1]

The House was not so successful in dealing with the qualification of jurors. In the session of 1844, John Nugent introduced a jury bill[2] almost identical to the one which had run into difficulty in the previous session.[3] This time he left the property qualifications to be decided in Committee.[4] The bill went through second reading, but the Committee rose without a report, thereby putting an end to it.[5]

In the following session, William Row, acting for James Simms, the Attorney General, introduced a bill[6] which limited membership on special juries to

> every Principal Merchant or Chief accredited Agent of mercantile establishment, and every officer of the Army or Navy on half pay ... who shall have been three months resident within this Colony, and to every person

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[1]Newfoundland, Journal of the General Assembly, Session of January 15, 1846, Appendix, p. 315. The Assembly held three sessions in 1846: January 15-April 28, June 16-August 4, December 1, 1846-January 14, 1847. Sessions will be designated by their opening dates.

[2]Newfoundland, Journal of the General Assembly, January 10, 1844, p. 9.

[3]See above, pp. 95-6.

[4]Newfoundland, Bills and Miscallaneous Papers, 1844, p. 1.

[5]Newfoundland, Journal of the General Assembly, March 12, 1844, p. 67.

[6]Newfoundland, Journal of the General Assembly, February 24, 1845, p. 53.

> ... having, holding, occupying, or possessing, in his own right, ... a House of Houses, Lands or Tenements, in fee simple, of the clear annual value, after deduction of all charges, of £50, or being in the sole occupancy of a House or Houses, Lands, or Tenements, ... of clear rent of £70, and having been three months residents with the said District.[1]

These property qualifications were an increase over those in Nugent's bill of 1843. Nugent had wanted membership to be limited to owners of houses valued at £30 and occupants of houses valued at £60.[2] The House sat several times in Committee to consider Row's bill. On one occasion, John Kent attempted to have the House give instructions to the Committee to set the qualification in Supreme and Central Courts at residency in the district for three months and ownership of freehold estate of yearly value of £15 or personal estate of £300.[3] The division was strictly along party lines:[4]

For the motion	Against the motion
Kent	Thomas
Nugent	Row
Parsons	Noad
Dillon	Robinson
Hanrahan	Carter
Simon Morris	Barnes
Prendergast	Munn

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[1] *Patriot* (St. John's: March 5, 1845).

[2] See above, p. 95.

[3] Newfoundland, *Journal of the General Assembly*, March 27, 1845, p. 91.

[4] *Ibid.*

The vote was thus tied, and James Crowdy, the Speaker voted with the Conservatives to defeat the motion. The Committee sat again, and rose without a report.[1]

The Executive lost another bill concerning the judiciary during the session. Bryan Robinson, an Executive member, introduced a bill "for the more efficient administration of justice in the outports."[2] The detailed provisions of the bill have not been found. On a motion for second reading, the House again divided along party lines:[3]

For second reading	Against second reading
Barnes	Nugent
Carter	Hanrahan
Glen	Simon Morris
Robinson	Parsons
Simms	Kent
Thomas	Patrick Morris
Bennett	Benning

Thereupon James Crowdy voted with the Conservatives for futher consideration of the bill.[4] But a few days later Robinson withdrew it without stating any reason.

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[1] Ibid., April 12, 1845, p. 116.

[2] Newfoundland, Journal of the General Assembly, February 12, 1844, p. 51.

[3] Ibid., April 17, 1844, p. 113.

[4] Ibid.

These were not the only failures of Executive members during the two sessions. Of the fifteen bills they introduced, six were rejected.[1] The Assembly amended three of the nine it eventually accepted. A rejection of any bill introduced by an Executive member was tantamount to a rejection of a policy of the Governor. In 1844 this became most apparent when Harvey's plan to change the Education Act was thwarted by the Assembly. The nineteenth section of the act, which had been passed in 1843, provided for the appointment of a school inspector, for whom £300 had been appropriated.[2] Harvey believed that one supervisor would be impracticable. With educational facilities divided between Protestants and Roman Catholics, the officials of any school would probably refuse to admit a supervisor not of their faith.[3] To circumnent the problem, Harvey had Joseph Noad introduce a bill allowing for two inspectors.[4] A motion for second reading, made by Noad and seconded by Ridley, was followed by an amendment by Barnes and Slade to

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[1]These numbers do not include the bills which were drawn up by a committee and presented to the House by a member of the Executive.

[2]C.O. 194/120, 188 ff. Harvey to Stanley, June 3, 1844.

[3]Ibid.

[4]Newfoundland, Journal of the General Assembly, February 1, 1844, p. 31.

postpone consideration of the bill for six months.[1] The amendment was successful, thereby defeating the bill for that session. As there was no division on this motion, the stand taken by each member is not known. It is evident, however, that the Conservatives were not united in their reaction to the bill. Harvey's explanation for his failure was that the majority had voted against it from "motives of either economy or of lingering party feeling".[2]

Thomas Glen had earlier introduced a bill to suspend the nineteenth section.[3] After the Assembly rejected the Governor's proposal, Glen moved second reading of his bill.[4] The vote was almost along party lines, perhaps because it was an open secret that if the section was allowed to stand, John Nugent would be at least a temporary inspector.[5] The division was as follows:[6]

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[1] Ibid., March 15, p. 70.

[2] C.O. 194/120, 188 ff. Harvey to Stanley, June 3, 1844.

[3] Newfoundland, Journal of the General Assembly, February 2, 1844, p. 32.

[4] Ibid., March 15, 1844, p. 70

[5] Public Ledger (St. John's: March 19, 1844).

[6] Newfoundland, Journal of the General Assembly, March 15, 1844, p. 70.

For the bill	Against the bill
Bryan Robinson	Edmund Hanrahan
James Simms	John Dillon
William Thomas	Clement Benning
William Row	Lawrence O'Brien
Charles Fox Bennett	Patrick Morris
John Slade	Joseph Noad
John Munn	John Kent
James Prendergast	
Richard Barnes	
Robert Carter	
Thomas Glen	
Thomas Ridley	

John Nugent and Robert J. Parsons abstained,[1] and the votes of Simon Morris and John Dunscomb were not recorded. Only Prendergast and Noad voted against their party. The Conservatives won the division, but Glen later withdrew the bill.[2]

With the failure of his plans to have two inspectors, Harvey was placed in a dilemna. The only solution he now saw was the appointment of two inspectors, one for the

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[1] Public Ledger (St. John's: March 19, 1844).

[2] Newfoundland, Journal of the General Assembly, April 24, 1844, p. 127.

schools of each faith, in alternate years.[1] He appointed John Nugent as inspector of Roman Catholic schools for 1844 to 1845, and at the same time informed the Protestant school boards that Nugent was not authorized to visit their schools except by invitation.[2] In a despatch to the Colonial Office, he stated that he had filled the position first with a Roman Catholic because the bishop of the Church of England had just arrived in Newfoundland and had had no time to consider a Protestant for the position. As was to be expected, the Conservatives resented the appointment. The Public Ledger described Nugent as a man "who, in his connection with a certain journal in this country sympathized with the Canadian rebels in their unpardonable revolt, but a few years since".[3]

Stanley doubted the wisdom of having inspectors appointed for alternate years; he preferred to have two inspectors share the appropriations each year.[4] In reply,

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[1] C.O. 194/120, 188 ff. Harvey to Stanley, June 3, 1844.

[2] C.O. 194/120, 290 ff. Harvey to Stanley, July 13, 1844.

[3] Public Ledger (St. John's: August 2, 1844).

[4] C.O. 195/20, 256. Stanley to Harvey, July 19, 1844.

Harvey argued that under such an arrangement, the emolument for each inspector would be insufficient.[1] Stanley also expressed the opinion that no school which was receiving a grant from the government could refuse to admit a government inspector.[2] Harvey did not comment on this opinion, perhaps because while he knew that Stanley was correct, he did not want to add fuel to the controversy. He must have realized that the resentment of the Conservatives would be intensified if all Protestant schools were required to accept Nugent as an inspector. In a despatch to the Colonial Secretary, Harvey indicated that he intended to have his bill introduced in the following session. With the publication of Stanley's views on the need to solve the problem, Harvey anticipated no difficulty in getting the Assembly to pass it.[3] But no such bill was introduced during the session of 1845. The matter was finally settled in 1846 when the House passed a bill by Kent to repeal the nineteenth section.[4] Harvey had once again failed to get the support of the majority in the Assembly.

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[1] C.O. 194/121, 29 ff. Harvey to Stanley, September 3, 1844.

[2] C.O. 195/20, 256. Stanley to Harvey, July 19, 1844.

[3] C.O. 194/121, 29 ff. Harvey to Stanley, September 3, 1844.

[4] Royal Gazette (St. John's: May 19, 1846).

Although Harvey failed in many of his attempts to have legislation passed, there is no indication in his despatches that he was resentful at this time. Indeed, he often made excuses for the behaviour of the members. This compromising and conciliatory attitude was best illustrated in his handling of the road grants in the two sessions. To get money for roads, residents in the various districts had been sending petitions to either the governor or their representatives in the House. As these petitions would have the effect of money bills, the governor's consent was necessary before the Assembly could consider them. Harvey in the session of 1843 had initialled all petitions for roads before they had been presented to the House.[1] In opening the session of 1844, Harvey said that no additional money would be requested for roads in the session.[2] But during the session some elected members received requests for road grants. Harvey agreed to having them presented to the House,[3] and gave his consent to the bill arising from them.[4]

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[1] C.O. 194/122, 273 ff. Harvey to Stanley, June 21, 1845.

[2] Newfoundland, Journal of the General Assembly, January 10, 1844, p. 7.

[3] C.O. 194/120, 175 ff. Harvey to Stanley, May 21, 1844.

[4] Newfoundland, Journal of the General Assembly, April 29, 1844, p. 164.

Stanley strongly chided him for surrendering his power, for although he had technically asserted his power by sanctioning the introduction of the petitions in the House, it was clear that he had yielded to pressure.[1]

Harvey did not take Stanley's advice, however, and in the session of 1845 he permitted a more serious violation of his power. The money the House granted for roads was more than the Governor had requested, clearly the initiation of money grants by the House.[2] Harvey had two choices: to consent to the grant, or to refuse to sign the bill, thereby stopping all road construction for that year.[3] He signed the bill, and in a despatch to the Colonial Secretary attempted to justify his action on the grounds that the increase was small and that a road grant was essential.[4] Stanley was not convinced that Harvey should have given his consent, and cautioned him against bowing to the Assembly.[5] At the same time he criticized Harvey's

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[1] C.O. 195/20, 251. Stanley to Harvey, July 4, 1844.

[2] C.O. 194/122, 145 ff. Harvey to Stanley, April 23, 1845.

[3] Ibid.

[4] C.O. 194/ 122, 273 ff. Harvey to Stanley, June 21, 1845.

[5] C.O. 195/20, 320. Stanley to Harvey, July 25, 1845.

method of introducing requests for road grants in the House. Stanley held that the initialling of petitions was irregular and too informal, and that the principle of the Crown's power to initiate money bills could only be maintained by messages from the governor to the House. Harvey did not heed the advice, and in the session of 1846 continued to initial petitions.

Thus, Harvey was waiving his legal power so as not to offend the Assembly. Had he insisted on his rights, he would have antagonized the majority in the House. In bowing to them, he was paying the price of the calm in his relationship with them. Nevertheless, he was not without influence in his dealings with the Assembly. As neither the Liberals, nor the Conservatives, nor the Governor, could completely dominate the Assembly, many of the important controversial bills were either defeated or withdrawn at the Committee stage. On party issues, the Conservatives could have forced a vote, and if all their nembers had been present, they could have won. On the other hand, the Liberals, by prolonging debates, could have obstructed the passage of any bill that was obnoxious to them. While there were no observations by politicans or the Governor to throw light on the reasons for the parties' failure to bring many controversial issues to a head, there are indications that Harvey played a role behind the scenes. For example, he maintained that he influenced the progress of a bill in 1844.

John Kent introduced one providing for the establishment in St. John's of a non-denominational academy[1] which would offer no religious instruction.[2] Bryan Robinson and Robert Carter attempted in vain to stop progress of the bill at the Committee stage[3] because of the clause which would prevent any form of religious education. Harvey told his Executive Council that he would neither give his assent to a bill nor transmit it to the Colonial Office if it expressly excluded religious instruction.[4] According to Harvey, when John Kent learned of the Governor's objections, he withdrew the clause which referred to religion,[5] and the bill was passed.[6]

During the two years, Harvey continued to use membership in the Executive Council to placate those whose antagonism could be embarrassing or annoying to him. In

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[1]Newfoundland, Journal of the General Assembly, February 1, 1844, p. 30.

[2]C.O. 194/120, 260 ff. Harvey to Stanley, July 8, 1844. Enclosure, Harvey's observations on the acts of the Newfoundland legislature, 1844.

[3]Newfoundland, Journal of the General Assembly, April 24, 1844, p. 133.

[4]C.O. 194/120, 265 ff. Harvey to Stanley, July 8, 1844. Enclosure, Harvey's observations on the Academy Act.

[5]Ibid.

[6]Newfoundland, Journal of the General Assembly, April 25, 1844, p. 136.

September, 1845, William Dunscomb and Joseph Noad resigned from the Legislative Council. Dunscomb, who had been a member of the Council from 1833 to 1842,[1] had continued in the Legislative Council under the amalgamated system, but had been excluded from the Executive Council.[2] Noad had been appointed Surveyor General and member of Her Majesty's Council in 1842 before the introduction of the new constitution.[3] Under the new system his membership in the Legislative Council had continued, and he had also become a member of the new Executive Council.[4] After his resignation from the Legislative Council, he continued to be a member of the Executive Council.[5] On the recommendation of Harvey, Hugh A. Emerson, the Solicitor General, was appointed to replace Noad in the Legislative Council, and John Stuart, head of a mercantile house in St. John's, replaced Dunscomb.[6] At the same time, Walter Grieve was appointed to the Executive Council.[7] As he was Scottish, Harvey hoped that his appointment would satisfy the Scottish residents who resented

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[1]Newfoundland, The Blue Book, 1841, p. 64.

[2]Newfoundland, The Blue Book, 1842, pp. 64-6.

[3]C.O. 195/20, 64. Stanley to Harvey, March 13, 1842.

[4]Newfoundland, The Blue Book, 1843, pp. 64-6.

[5]C.O. 194/122, 376 ff. Harvey to Stanley, September 14, 1845.

[6]C.O. 195/20, 339. Stanley to Harvey, December 1, 1845.

[7]Ibid.

the fact that they were not represented in the Executive Council.[1] Here was another example of Harvey's attempt to buy loyalty.

There was little notice of these appointments in the local newspapers, except for the observation of the Newfoundlander:

> It has been a prominent feature in Sir John Harvey's dexterous policy to buy off the opposition of every man whose influence he apprehended might disturb the "harmony" which is boasted of as a result of the amalgamated Government.[2]

The amalgamated system underwent much scrutiny during the two years and substitutions were also widely discussed. The most controversial issue in 1844 was a bill, introduced by Richard Barnes, Conservative member for Trinity, which proposed a new constitution to replace the existing one when it expired on September 1, 1846.

The main provisions of the bill were:

(a) the continuation of an executive council distinct from the legislative council;

(b) the establishment of a legislative council distinct from the elected assembly;

(c) the establishment of an assembly consisting of twenty-five members to represent twenty-four districts

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[1] Ibid.

[2] Newfoundlander (St. John's: December 4, 1845).

(St. John's was to have two members).

(d) the continuation of the existing qualification for members and electors.

(e) the continuation of the governor's exclusive power to initiate money bills.

(f) the continuation of simultaneous elections.[1]

In introducing the bill, Barnes was sharply critical of the amalgamated system, and expressed the fear that it might become permanent: "as a chain upon our necks, it may keep us licking the dust perhaps for half a century to come".[2] He objected to the extensive power of the governor and to the presence of the nominated members in the assembly. He was not, however, criticizing Governor Harvey or the nominated members then in the House. The real danger, he said, lay in the possibility that their successors might take advantage of their positions at the expense of the colony.

The bill faced immediate and bitter opposition, mainly from the Liberals. John Kent, one of the leading opponents, reminded Barnes that he had had no instructions from any committee of the House to prepare a constitution.[3]

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[1] Newfoundlander (St. John's: February 8, 1844).

[2] Ibid., February 8, 1844.

[3] Newfoundlander (St. John's: April 13, 1845).

He also maintained that an assembly in which nominated members sat and voted was not the proper body to consider a constitution. A better procedure, he said, would be to have the old system returned, and to have the assembly then decide whether changes were necessary. Robert John Parsons criticized the bill for not providing responsible government.[1] Although he disapproved of the amalgamated system on principle, he said that it was more successful than a bicameral system without responsible government.[2]

The Liberals' main objections were directed not at the provisions for the return of the old representative system, but at the clauses which would have increased the membership in the House and redistributed the districts. They were convinced that if the bill was accepted, they would have little chance to win the majority of elected seats as they had done in the previous two elections.

Petitions protesting the proposed division of districts were introduced from Carbonear, Brigus, Harbour Grace, Harbour Main, and St. John's.[3] Most of them were from Roman Catholics.[4] One petition from Conception Bay favoured the bill.[5]

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[1]Parsons was elected on June 7, 1843.

[2]Newfoundlander (St. John's: February 5, 1844).

[3]Newfoundland, Journal of the General Assembly, April 1, 1844, pp. 94-5.

[4]Ibid.

[5]Ibid., April 11, 1844, p. 106.

Of the thirty-four divisions in the session, sixteen resulted from motions on Barnes's bill. Most of these were attempts by Liberals to prevent further consideration of the bill. The votes at the divisions were almost entirely along party lines. No liberal voted against his party in the sixteen divisions, while Thomas Ridley, at one division,[1] and John Dunscomb, at two divisions,[2] were the only Conservatives to vote with the Liberals. Although they were in the minority at each division, the Liberals tried to obstruct progress of the bill by continually introducing motions for adjournments and postponements of debate. Amendment followed amendment in spite of continual defeats. Eventually they were successful; at second reading Barnes agreed to withdraw the bill because, he said, there was not sufficient time to give it careful consideration.[3]

Harvey believed that the introduction of the bill was premature, that it should not have been introduced until 1845 or 1846.[4] He expressed his opinion to the members of his Executive Council,[5] but with little success, for the Conservative members of the Executive Council in the House

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[1] Ibid., April 3, 1844, p. 101.

[2] Ibid., April 11, 1844, p. 104.

[3] Ibid., April 11, 1844, p. 107.

[4] C.O. 194/120, 131 ff. Harvey to Stanley, April 20, 1844.

[5] Ibid.

continued to vote for further consideration of the bill. In a despatch to the Colonial Secretary, Harvey stated that Barnes had withdrawn the bill after learning of his objection to it and receiving his promise that he would send it to the Colonial Office.[1]

Stanley was interested in the bill and asked for Harvey's views on it.[2] Harvey replied that he assumed that no change in the Newfoundland constitution could be made except by an act of the British Parliament.[3] Recognizing the importance the House of Assembly put on the divisions of the districts, Harvey noted that an accurate census was needed before the districts could be fairly distributed. As the last census had been taken ten years earlier, Harvey planned to introduce a census bill in the following session.

Harvey continued to extol the amalgamated legislature. For example, at the closing of the session in 1844, he said:

> ... without expressing any opinion as to how far the present form of constitution may or may not be that which is best adapted to the actual condition of this colony, or how far it may be susceptible to modification or improvement, it is highly satisfactory to know that

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[1] Ibid.

[2] C. O. 195/20, 274. Stanley to Harvey, September 3, 1844.

[3] C.O. 194/121, 90 ff. Harvey to Stanley, October 3, 1844.

> a sounder condition or better assured sources of public revenue - a legislature appropriation of it to more useful purposes - a more remarkable absence of crime - more generally prevailing habits of industry and sobriety - a strong attachment to the parent state - a more general diffusion of loyal and peaceable disposition, and I will add of contentment and satisfaction - among all classes of people - could scarcely have existed under any constitutional form of Government in this or any other of her Majesty's colonial dominions.[1]

He could not report to the Colonial Office, however, that everyone in Newfoundland agreed with him. Nevertheless, he was still optomistic that it would gain favour among Newfoundlanders:

> ... before the period assigned for ... the Constitution's duration shall have arrived, many who do not now deem it expedient to declare their sentiments in its favour will be found among the advocates of its continuance.[2]

Later the same year he was not so confident. He must have doubted that the initial objections to the system by members of both political parties would be dispelled. He was convinced, however, that a return to the old constitution would resurrect the old conflicts, for the conditions in the society which had contributed to the strife had not been fundamentally changed. He therefore suggested that if the bicameral legislature was restored, several modifications on the old form were necessary:

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[1]Newfoundland, Journal of the General Assembly, April 29, 1844, p. 165.

[2]C.O. 194/120, 151 ff. Harvey to Stanley, October 25, 1845.

(a) there should be a separate executive council in addition to the legislative council.

(b) the legislative council should not consist of fewer than ten members.

(c) the elected assembly should consist of not fewer than twenty-five elected members; in addition, three members should be nominated by the Crown to represent the executive in the assembly, to introduce and explain government legislation. The question of the nominees' power to vote could be decided later.

(d) the quorum of the assembly should not be fewer than fifteen.

(e) there should be a permanent civil list including the magistrates.

(f) the candidates should pay the expenses of the elections and the expenses of dealing with all petitions arising from them. This, in Harvey's opinion, would secure "greater respectability in the class of candidates."[1]

In addition, Harvey suggested that all petitions involving the elections should be tried by the Courts and not by the

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[1] C.O. 194/121, 120 ff. Harvey to Stanley, October 18, 1844.

House of Assembly as was provided by the Controverted Elections Act of 1843.[1] Harvey admitted that this was not his suggestion, but that it had originated with someone else. It is probable that James Simms, the Attorney General, was responsible for it, for he had made the same recommendation in his observations on the Controverted Elections Act.[2]

By the next year there were indications that Harvey would not advise the British government to continue the system after 1846. In referring to the inhabitants of Newfoundland in a despatch to the Colonial Secretary, he conceded:

> ... by the manner in which they have cooperated with the Queen's representative in extracting all practicable benefit from this modified form of the Constitution they have in my opinion acquired a strong claim to the restoration, with restriction of the usual form of Colonial Representative Government.[3]

During the two years the attitude of the various newspapers remained unchanged, although, as in the initial stages of the system, they often failed to distinguish between the constitution and the Governor's handling of it. According to the Newfoundlander, the only benefit that

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[1] See above, p. 85.

[2] C.O. 194/117, 77 ff. Harvey to Stanley, July 24, 1843. Enclosure, Attorney General's observations on the acts of the Newfoundland legislature, 1843.

[3] C.O. 194/122, 443 ff. Harvey to Stanley, October 25, 1845.

Newfoundlanders were receiving from the amalgamated legislature was that when they again received the bicameral system they would conduct their political affairs in such a way that there would never be any reason to have the amalgamated system reimposed on them.[1] This view was in accord with its frequent argument that the old constitution was superior to the amalgamated constitution, and that the breakdown of the former had been caused not by any inherent weakness, but by the abuses to which it had been subjected. The Newfoundlander stated that under the new constitution the political parties had dissolved, with the result that there was a "blending of energies to the accomplishment of common objects".[2] This it attributed, not to the system, but to the "state of political prostration" as a result of past conflicts, to the conviction by Newfoundlanders "that the future would not be wisely employed if its transactions were governed by the precedents of the past,"[3] and to Harvey's shrewd purchase of loyalty from some leading opponents of the government. But the Newfoundlander did not disapprove of Harvey's political manoeuvring: "Much

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[1] Newfoundlander (St. John's: December 19, 1844).

[2] Newfoundlander (St. John's: October 17, 1844).

[3] Newfoundlander (St. John's: December 12, 1844).

beneficial legislation has been given to the country, no one we believe will hesitate to acknowledge. But we owe these to the discretion and Generalship which guided its movements".[1]

The other liberal newspapers agreed with the Newfoundlander in its acclaim for Harvey. The Patriot, while still objecting to the constitution, continued to give the "able and conciliating policy of Sir JOHN HARVEY" the credit for the success with which the constitution was functioning.[2] The Indicator saw the presence of Harvey as essential to the welfare of the colony: "We fully appreciate the irreparable injury that the removal of Sir John Harvey may inflict on Newfoundland".[3]

Among the conservative newspapers there was some disagreement. The editor of the Times wrote of Harvey:

> Our excellent Governor ... evinces the same anxious desire cordially to cooperate with the Legislature in advancing the interests and prosperity of the colony which has been a marked feature in his administration of this government.[4]

The Public Ledger continued to take the opposite view. Its

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[1] Newfoundlander (St. John's: January 9, 1844).

[2] Patriot (St. John's: April 16, 1845).

[3] Indicator (St. John's: April 15, 1845).

[4] Times (St. John's: January 25, 1845).

disgust of Harvey reached a new extremity in 1844 and 1845. Commenting on the appointment of Nugent as a school inspector, words almost failed it: "This colony owes to Sir John Harvey nothing - NOTHING! We wait for his successor."[1] In 1845 it resigned itself to Harvey's policies: "Sir JOHN HARVEY seems to have it all his own way; and honest men have only to stand aloof, to fold their arms, and quietly await the issue."[2] The Harbour Grace Herald, which rarely commented on politics, held views similar to those of the Public Ledger.

The differences of opinion concerning Harvey among the conservative newspapers might have had their roots in personal disagreements lost to the present. On the other hand, these differences might have been an indication of a division among the merchants in their attitude toward Harvey's policies. He might have been successful with some merchants and unsuccessful with others in his attempt to persuade them that local improvements in the colony were necessary. He had reported in 1843 that the mercantile interests were concurring in the expenditures for local improvement. In 1844, however, he admitted that his greatest difficulty in administering the government of Newfoundland lay in inducing the merchants in the Assembly to co-operate

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[1] Public Ledger (St. John's: August 2, 1844).

[2] Public Ledger (St. John's: January 14, 1845).

in promoting internal improvements in the colony.[1] On many occasions he had emphasized to them his conviction that the true interests of all classes lay in the development of the resources in land and sea. He claimed some success in his attempt, and stated as an example that the majority of the committee which drew up the revenue bill were large importers.[2] Undoubtedly Harvey had had difficulty in convincing many of the merchants that they should concur with his views. Local improvements necessitated high revenues which, at this time, came almost exclusively from customs duties. The importers tended to resent any duties, for while they had to pay them to get the goods into the colony, there was no certainty that with Newfoundland's barter system they would be reimbursed.[3]

In the session of 1844 and 1845, then, although the legislature worked more smoothly than under the old representative system, it was not without weaknesses, and perhaps would have been even less successful had it not been for the Governor's conciliation and appeasement. During the period the legislators and the public remained unchanged in their opposition to the system. Only Harvey saw any

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[1] C.O. 194/120, 131 ff. Harvey to Stanley, April 20, 1844.

[2] Ibid.

[3] Harold A. Innis, The Cod Fisheries: the History of an International Economy (Toronto: 1954), p. 387.

any good in the constitution, and by the end of 1845, he was beginning to accept the fact that it would never receive public support.

V

THE RESTORATION OF THE BICAMERAL SYSTEM, 1846 AND 1847

Under the Newfoundland Act of 1842, the amalgamated system would automatically expire on September 1, 1846, unless it was prolonged by the British Parliament. In the early months of 1845, therefore, the officials in the Colonial Office were required to design the form of Newfoundland's future constitution. They were faced with three possibilities: the continuation of the amalgamated legislature, the return of the old representative system, or the introduction of a new, untried constitution, such as the application of "responsible government" to the colonial administration.

The members of the Newfoundland Assembly in 1846, while they must have been aware that the future form of their legislature was being considered in the Colonial Office, did not make any specific recommendations on the subject. Instead, they debated the principle of "responsible government", which was being discussed in all the British North America colonies. Except in the writings of some Liberals, such as Robert John Parsons, little attention had been given publicly to the question in Newfoundland. In 1843 Governor Harvey had addressed his Executive Council

on the subject.[1] He had read to them the circular memorandum which he had published in New Brunswick in 1839, after Lord John Russell, the Colonial Secretary, had informed him that high government offices, with the exception of judicial positions, were no longer to be held for life or during good behaviour but were "henceforth entirely dependent upon the Will of the Sovereign, or that of Her Majesty's Representative."[2] Harvey had interpreted this to mean that members of the executive council, the Law Officers, and the heads of the government departments owed a direct responsibility not to any representative body, whether nominated or elected, but to the Governor as the representative of the Crown. In his speech to the Newfoundland Executive Council, he had immediately added that he believed that it was one of his

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[1] C.O. 194/116, 18 ff. Harvey to Stanley, January 16, 1843. Enclosure, Governor's address to the Executive Council.

[2] C.O. 194/116, 14 ff. Harvey to Stanley, January 16, 1843. Enclosure, Circular Memorandum by Harvey.

The despatch to which Harvey referred was apparently similar to the one Russell sent to C. Poulett Thomson, Governor of Canada, on October 16, 1839, which stated, in part: "The tenure of colonial officers held during Her Majesty's pleasure, will not be regarded as equivalent to tenure during good behaviour; ... such officers may be called upon to retire from the public service as often as any sufficent motive of public policy may suggest the expediency of that measure." [W.P.M. Kennedy, Documents of the Canadian Constitution, 1759-1915 (Toronto: 1918), p. 524].

duties to administer his office without identifying himself with any political party. This was Harvey's concept of responsible government.

In the House of Assembly on February 10, 1846, John Kent proposed a set of resolutions on responsible government.[1] They were based largely on speeches made in the House of Assembly of Nova Scotia in 1844.[2] These speeches in turn made extensive use of the resolutions adopted by the House of Assembly in Canada in 1841 and the published views of Sir Charles Metcalfe when he was Governor of Canada. A resolution of the Assembly in Canada on September 3, 1841, had stated:

> ... the chief advisers of the Representative of the Sovereign, constituting a Provincial Administration under him, ought to be men possessed of the confidence of the Representatives of the people, thus affording a guarantee that the well-understood wishes and interests of the people, which our Gracious Sovereign has declared shall be the rule of the Provincial Government, will, on all occasions, be faithfully represented and advocated.[3]

On March 5, 1844, a member of the House of Assembly in Nova Scotia had said:

> In Canada, as in this country, the true principle of the Colonial Government is, that the Governor is

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[1] Newfoundland, Journal of the General Assembly, February 10, 1846, pp. 34-7.

[2] Ibid.

[3] Ibid., February 10, 1846, p. 35.

> responsible for the acts of his Government to his Sovereign, and the Executive Councillors are responsible to the Governor. He asks their advice when he wishes, he adopts it at his pleasure, and it is the duty of those that disapprove of his acts to retire from the Board.[1]

Sir Charles Metcalfe earlier had said:

> ... it should be competent to the Council to offer advice on all occasions ...; and that the Governor should receive it with the attention due to his constitutional advisors; and consult with them on all cases of adequate importance ...; that the Council should be responsible to the Provincial Parliament and people; and that when the acts of the Governor are such as they do not choose to be responsible for they should be at liberty to resign.[2]

John Kent's resolutions stated that these speeches and resolutions expressed the "true principles of Colonial Government, as applicable to any future form of Constitution which the Imperial Parliament might in its wisdom cede to Newfoundland."[3] During the debates on Kent's resolutions, Bryan Robinson proposed amendments which stated in part:

> That the true principle of Colonial Government is, that the Governor is primarily responsible for the Acts of his Government to His Sovereign, and the Executive Councillors are responsible to the Governor, as well as morally responsible for their advice to the country.[4]

The Assembly voted on the resolutions and the

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[1] Ibid., February 10, 1846, p. 36.

[2] Ibid., February 10, 1846, p. 37.

[3] Ibid.

[4] Ibid., February 12, 1846, p. 40.

amendments only after much debate. The House divided on the amendments as follows:[1]

For the amendment	Against the amendment	
Thomas	P. Morris	S. Morris
Row	C.F. Bennett	Dillon
Robinson	Kent	Hanrahan
Emerson	O'Brien	Parsons
	Ridley	Prendergast
	Barnes	Nugent
	Munn	Carter
	Glen	

The amendments were therefore defeated, and the House then divided on the resolutions:[2]

For the resolution		Against the resolution	
Glen	Prendergast	Thomas	Ridley
S. Morris	Nugent	Rowe	Carter
Dillon	Carter	Robinson	Munn
Hanrahan	Kent	Emerson	Barnes
Parsons	O'Brien	C.F. Bennett	

The resolutions were thereby adopted by ten votes to nine. The voting was almost entirely along party lines. Thomas Glen, who gave no reason for his stand, was the only member

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[1]Newfoundland, Journal of the General Assembly, February 16, 1846, p. 50.

[2]Ibid.

who opposed those with whom he usually voted. Five members did not record their votes: John Simms, who was sick;[1] John Stuart and James Tobin, who had leaves of absence;[2] John Slade; and Clement Benning.

The division illustrated again the importance of a single vote in the amalgamated legislature. For example, if Simms had not been absent, the vote on the resolution would have been tied, and Crowdy, by casting a negative vote, would then have defeated it.

When he forwarded the resolutions to William Gladstone, the Colonial Secretary,[3] Harvey iterated his views on responsible government:

> The Resolutions have references to what is denominated "Responsible Government" - a principle which I have always regarded as utterly inapplicable to the Administration of Colonial Affairs if not ... inconsistent with the due relation of a British colony to the Parent State.[4]

He added that if colonial governments were made responsible to their bicameral legislatures, the council-assembly strifes would not be eliminated.[5] He did not elaborate,

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[1] C.O. 194/125, 34 ff. Harvey to Gladstone, February 17, 1846.

[2] C.O. 194/125, 20 ff. Harvey to Stanley, January 16, 1846.

[3] Gladstone had become Colonial Secretary in Peel's new ministry on December 20, 1845. Peel had resigned when he had failed to get support from some of his ministers, including Stanley, in intending to repeal the Corn Laws.

[4] C.O. 194/125, 34 ff. Harvey to Gladstone, February 17, 1846.

[5] Ibid.

and did not mention the possibility of applying responsible government to the amalgamated system. He reminded Gladstone that in Newfoundland there was little public interest in responsible government. During the debate on the resolutions, John Kent had said, "I have ... not alone to contend the hostility of those in power, I have to contend with the apathy of the people."[1]

In reply to Harvey, Gladstone observed that as the resolutions were not made an address to the Crown, no comment from him was necessary.[2]

The despatches between the Governor and the Colonial Secretary on the resolutions were part of the correspondence concerning the type of constitution Newfoundland should have after the Newfoundland Act expired on September 1, 1846. In October, 1845, Harvey had recommended that the new act contain the following provisions:[3]

(a) the legislature would again become bicameral;

(b) the legislative council would consist of ten members;

(c) the elected assembly would consist of twenty-five members;

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[1] Newfoundlander (St. John's: February 16, 1846).

[2] C.O. 195/20, 360-1. Gladstone to Harvey, May 18, 1846.

[3] C.O. 194/122, 422 ff. Harvey to Stanley, October 12, 1845.

(d) the existing qualifications for voters and members would remain;

(e) elections would continue to be simultaneous;

(f) the executive council would continue to be distinct from the legislative council;

(g) the electoral districts would be sub-divided by the governor and the executive council.

He had also repeated an opinion he had earlier expressed that much of the conflicts between the legislative council and the elected assembly could be prevented if two or three persons were nominated by the Crown to sit in the assembly. He had admitted, however, that this would be resented by most Newfoundlanders. The best alternative, he had suggested, was the appointment of several elected members to the executive council.

Stanley had not commented on these recommendations, but had instructed Harvey, with the help of his Executive Council, to draw up a bill which would guide the officials in the Colonial Office as they prepared the legislation to be presented to the British House of Commons.[1]

The proposed bill, which was drafted by James Simms

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[1] C.O. 195/20, 337-8. Stanley to Harvey, November 22, 1845.

and approved by the Executive Council,[1] was sent to Gladstone on April 12, 1846.[2] Much of the bill dealt with changes in the basis for representation in the assembly. It will be recalled that this was the most contentions issue to come out of Barnes's bill in 1845.[3] The government's proposals on this matter had been made by a committee of the Executive Council, composed of Patrick Morris, Joseph Noad, Bryan Robinson, Thomas Bennett, and Robert Job.[4] Harvey had appointed Morris especially to avoid accusations by the Roman Catholics that they were the victims of discrimination.[5] The committee had been instructed to

> take population as their basis but with discretionary power to deviate from the strict application of that principle according as the distribution of the inhabitants or to other local circumstances or considerations which might appear to render it expedient.[6]

The bill provided for no change in the boundaries of the nine electoral districts. For most districts there would

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[1] Newfoundland, Minutes of the Executive Council (1842-1855), April 4, 1846, p. 96.

[2] C.O. 194/125, 117 ff. Harvey to Gladstone, April 12, 1846.

[3] See above, p. 125.

[4] Newfoundland, Minutes of the Executive Council (1842-1855), May 2, 1845, p. 68.

[5] C.O. 194/125, 117 ff. Harvey to Gladstone, April 12, 1846.

[6] Ibid.

be an increase in the number of representatives. In St. John's the number would be raised from four to six; in Conception Bay from four to seven; in Trinity, Bonavista, Fogo, and Fortune from one to two. Burin and Ferryland would each continue to be represented by one member, and Placentia - St. Mary's by two. Under this arrangement, Harvey maintained, the members of the assembly would fairly represent the wishes of both the Roman Catholics and the Protestants: thirteen would be returned by districts of Protestant majority, and twelve by districts of Roman Catholic majority.[1] In the total population, the Protestants slightly outnumbered the Roman Catholics.[2]

Most of the other provisions of the proposed bill embodied the suggestions that Harvey had made in the autumn of 1845, but there were some additions. One was that controverted elections would be tried by the Supreme Court of Newfoundland. This would repeal a colonial act of 1843 which gave the assembly power to judge disputes arising from elections.[3] Another additional clause, apparently overlooked by Harvey, would give the governor exclusive power to initiate all money bills. Another addition to Harvey's recommendations would permit the assembly to

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[1] C.O. 194/125, 117 ff. Harvey to Gladstone, April 12, 1846.

[2] [Prescott], Affairs in Newfoundland, p. 9.

[3] See above, p. 85. He had also made this suggestion in October, 1845. [See above, p. 130].

appropriate money only after it had passed a resolution for each item, or after it had passed a separate bill. Harvey and the Executive Council were thus attempting to prevent the assembly from combining the regular appropriation with grants to which the legislative council had already objected, as the House of Assembly of 1841 had done. Another new clause would require any bankrupt member of the assembly to resign. No mention was made of members of the legislative or executive councils in this regard; as they were appointees, appropriate instructions from the Crown would be sufficient.

When the proposed bill was received at the Colonial Office on May 29, 1846, James Stephen stated that its presentation to Parliament was unnecessary.[1] All that the Crown needed, he argued, was permission from Parliament to separate the elected assembly from the legislative council. William Gladstone agreed that Parliament should not be asked to regulate the basis for representation in Newfoundland's assembly. He could see no objection, however, to requesting it to make the other changes mentioned in the proposed bill, for in 1842 it had passed legislation on the details of Newfoundland's constitution.[2] As Stephen and Gladstone continued their discussion on this point by conference,

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[1] C.O. 194/125, 119 ff. Harvey to Gladstone, April 12, 1846. Departmental minute, Stephen to Lyttelton.

[2] C.O. 194/125, 121. Harvey to Gladstone, April 12, 1846. Departmental minute, Gladstone to Stephen.

there is no further record of their difference of opinion.

In a departmental minute, Gladstone referred to a letter by Spearman, a visitor to the Colonial Office.[1] This might have been James Morton Spearman, the former Collector of Customs of Newfoundland, who had resigned in 1842.[2] He recommended that the expenses of the elections should be borne by the candidates and that the members of the legislature should not be paid.[3] Harvey had already made these suggestions. He had stated that because the majority of the members were so poor that their emolument for sitting in the legislature constituted a large part of their income, they could not make independent decisions.[4] The retention of their seats was so important to them, he maintained, that they continually bowed to public pressures, and were therefore "merely Delegates from their constituency".[5] While Stephen concurred in these opinions, he did not think that an act by Parliament was needed.[6] Instead, he stated,

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[1] C.O. 194/125, 129 ff. Harvey to Gladstone, April 12, 1846. Departmental minute, Blackwood to Stephen.

[2] See above, p. 57.

[3] C.O. 194/125, 129 ff. Harvey to Gladstone, April 12, 1846. Departmental minute, Stephen to Blackwood.

[4] C.O. 194/125, 133 ff. Harvey to Gladstone, April 12, 1846.

[5] Ibid.

[6] C.O. 194/125, 129 ff. Harvey to Gladstone, April 12, 1846. Departmental minute, Stephen to Blackwood.

the Queen should instruct the governor to refrain from initiating bills which would allow for election expenses or payment for members.

Before Harvey submitted the proposed bill, he had suggested to the Colonial Secretary that the old bicameral legislature be returned to Newfoundland for a definite period.[1] Apparently the British Parliament would decide at the end of that period whether Newfoundland should continue to have that form of government or should again be given a mixed unicameral legislature. Harvey had held that such an implied threat by the British Parliament probably would have a sobering effect on politicans in Newfoundland. Gladstone promised only that the proposal would be "carefully considered".[2] In the meantime, Harvey had withdrawn it, stating that he hoped Newfoundlanders would consider the return of the bicameral legislature as a "Boon freely conferred."[3]

On June 5, 1846, in a departmental minute on the

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[1] C.O. 194/125, 34 ff. Harvey to Gladstone, February 17, 1846.

[2] C.O. 195/20, 360-1. Gladstone to Harvey, May 18, 1846.

[3] C.O. 194/125, 133 ff. Harvey to Gladstone, April 12, 1846.

despatches dealing with the constitution, Gladstone asked members of the Colonial Office whether the postponement of an act of Parliament to change the colony's constitution would cause serious inconvenience.[1] Blackwood, an undersecretary, replied that it would "revive the last form of Government which was not found to answer."[2] It would be undesirable, he believed, to extend the life of the amalgamated system even for a short period, but as the Revenue Act of the colony would be effective until January 5, 1848, there would be no problems of a "pecuniary nature". Lord Lyttelton, the parliamentary undersecretary, answered, "I should expect inconvenience from any course except simply that of contributing the present state of things and that would be a considerable disappointment to the Colonists."[3]

On June 15, Gladstone received another despatch from Harvey in which he suggested that the new act should forbid the Newfoundland legislature to sit during 1847.[4] His only stated reason for this recommendation was that the

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[1] C.O. 194/125, 129 ff. Harvey to Gladstone, April 12, 1846.

[2] Ibid.

[3] Ibid.

[4] C.O. 194/125, 200 ff. Harvey to Gladstone, May 15, 1846.

colonial Treasury would save £4,000. He observed, however, that if the House of Commons in the session of 1846 did not grant a bicameral legislature to Newfoundland, there would be widespread disappointment in the colony. In his opinion, the House of Commons should therefore pass the appropriate legislation with the proviso that the elections for the new assembly be held in the summer of 1847. The House could then meet before the Revenue Act expired in January, 1848. To Stephen this was a very strange request because the Newfoundlanders who would be disappointed if the British Parliament did not return the bicameral system would be equally dissatisfied if they were deprived of an assembly for a year.[1] In any event, as a dutiful civil servant, Stephen was more concerned about what he considered to be proper procedures than the wishes of Newfoundlanders: "I confess I would rather have some disappointment in Newfoundland, than an ill-timed and very embarrassing controversy in the House of Commons - especially when (as I think it might clearly be shown) the disappointment was unreasonable."[2]

To Lyttelton Harvey's despatch indicated that he

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[1] C.O. 194/125, 202 ff. Harvey to Gladstone, May 15, 1846.

[2] Ibid.

was not as concerned as previously about the disappointment that Newfoundlanders would feel if their constitution was not changed in 1846.[1] He therefore suggested that a bill be submitted to Parliament to continue the amalgamated system for one year. Stephen agreed with Lyttelton,[2] but Gladstone wanted immediately to restore the old representative system with modifications, and ordered Stephen to draft legislation for this purpose.[3] By June 22, Stephen had the bill completed.[4] It stated that, with certain exceptions, the changes made in the constitution of Newfoundland by the Newfoundland Act of 1842 would cease after September 1, 1846. The powers to be retained by the Crown would be:

(a) to establish property and residence qualifications for members of the assembly;

(b) to initiate all money bills;

(c) to require simultaneous elections.[5]

Before the bill could be presented to the House of

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[1] C.O. 194/125, 201. Harvey to Gladstone, May 15, 1846. Departmental minute, Lyttelton.

[2] C.O. 194/125, 202 ff. Harvey to Gladstone, May 15, 1846. Departmental minute, Stephen.

[3] C.O. 194/125, 204. Harvey to Gladstone, May 15, 1846. Departmental minute, Stephen to Lyttelton.

[4] Ibid.

[5] Ibid.

Commons, the controversy in Great Britain over the Corn Laws brought about the defeat of Peel's Tory government. It will be recalled that the same issue had brought Peel to power in 1841, when a new constitution for Newfoundland was being considered in the Colonial Office. One June 29, 1846, Peel and his government resigned,[1] and the Whigs, under Lord John Russell, took office a few days later.[2] Lord Russell had been Colonial Secretary in the former Whig administration. The new Colonial Secretary was Lord Grey.

On June 9, Newfoundland suffered a catastrophe when a devastating fire consumed a large part of St. John's. Property valued at about £900,000 was destroyed.[3] Harvey moved quickly to save the situation. He issued a proclamation calling the legislature to meet in six days; forbade the export of provisions for a limited period; warned the public against contructing buildings on burnt material until the Assembly had decided on regulations; addressed circulars to the Governor General of British North America, the Lieutenant-Governors of all the neighbouring British colonies, and the

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[1] The Annual Register, LXXXVIII (1846), 152.

[2] Ibid., 161.

[3] Newfoundland, Journal of the General Assembly, August 4, 1846, p. 90.

British Consul in New York, requesting provisions; and called a meeting of the leading citizens in St. John's.[1]

Governor Harvey called the Assembly into special session on June 16.[2] In his opening speech he said that the Assembly would be responsible for raising the money required to rebuild St. John's.[3] To help them, he said, he would support them if they asked the British government to guarantee loans made to the Newfoundland government, provided they did not want to raise more than £500,000 in this way. During the session the House passed a bill giving the Executive Council power to raise £250,000 on the guaranty of the British government.[4] When the despatch reached the Colonial Office, now under Lord Grey, Stephen expressed doubts that the Newfoundland legislature was able to pay the interest on the proposed loan.[5] He observed that the Assembly apparently expected to pay the interest out of its regular revenue, for it had not provided for any special revenue. The British government refused to guarantee any loan to the Newfoundland government; the Colonial Secretary suggested instead that the local legislature should use the

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[1] C.O. 194/125, 264 ff. Harvey to Gladstone, June 10, 1846.

[2] Newfoundland, Journal of the General Assembly, June 16, 1846, p. 5.

[3] Ibid., June 16, 1846, pp. 7-8.

[4] Ibid., June 20, 1846, p. 16.

[5] C.O. 194/125, 320. Harvey to Gladstone, June 23, 1846. Departmental minute, Stephen to Gladstone.

security of its own revenue.[1] The British government did, however, make an outright grant of £25,000[2] in addition to the £5,000 it had given when the news first reached London.[3]

In July, 1846, while the colonial government was supervising the rebuilding of St. John's, Governor Harvey received a Commission as Lieutenant-Governor of Nova Scotia.[4] His appointment had been made after he had informed the Colonial Secretary that he was dissatisfied with his post in Newfoundland, and had twice requested a new position. In March, 1846, he had asked for a transfer "to a higher and more lucrative Command and in a milder climate."[5] A more important factor in this dissatisfaction might have been the realization that he had been unable to win Newfoundlanders to his conviction that the amalgamated legislature was superior to the old representative system.

Harvey's disenchantment with the colonists and their legislators was also the result of the Assembly's

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[1] C.O. 195/20, 383-4. Grey to Harvey, July 27, 1846. An act to raise £200,000 on the credit of the colony was passed in the session of December 1, 1846. [Royal Gazette (St. John's: January 26, 1847)].

[2] C.O. 195/20, 376-9. Grey to Harvey, July 18, 1846.

[3] C.O. 195/20, 370-3. Gladstone to Harvey, July 3, 1846.

[4] C.O. 194/125, 353. Harvey to Gladstone, July 8, 1846.

[5] C.O. 194/125, 65. Harvey to Gladstone, March 3, 1846.

repeated refusal to establish a militia. In the session of 1843 he had attempted to have a militia bill passed, but it had been defeated when every private member had voted against it.[1] In the session of July 15, 1846, there had been so much opposition to two militia bills from members of both parties that the Attorney General had been forced to withdraw them.[2] When Harvey had sent the despatch concerning the loan bill of the session of June 16, 1846, he had shown his bitterness at their refusal to establish a militia:

> The appeal for a loan comes with a very indifferent grace from the inhabitants of the Colony which has refused to adopt the necessary preliminary means for enabling it to cooperate with Her Majesty's troops in defending it against foreign agression.
>
> . . . . . .
>
> The conduct of the great mass of the people of Newfoundland in rejecting <u>any</u> Militia Bill, has exerted such a deep feeling of disgust in my mind that ... I must again earnestly renew to you my request that if I am not previously transfered to Halifax or elsewhere, I may be allowed to return to England in September on leave of absence.[3]

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[1] See above, pp. 97-8.

[2] Newfoundland, <u>Journal of the General Assembly</u>, April 6, 1846, p. 106; April 23, 1846, p. 150.

[3] C.O. 194/125, 338. Harvey to Gladstone, June 26, 1846.

The Assembly was sitting in its special session when Harvey received news of his appointment. In an address to the Governor, the House unanimously congratulated him, and expressed its regret that he was leaving Newfoundland.[1]

Among the many eulogies the newspapers pronounced on Harvey, there were a few mild criticisms. The Newfoundlander reminded him that it had criticized him mainly because he had not acted according to his own convictions, but had accepted the advice of "unscrupulous" men in his Executive Council.[2] The disapproval of the Morning Courier was more direct: "That he has displayed that profound political sagacity in his Government of this Colony, which some of the addresses lately presented ascribe to him, may well be questioned".[3]

Harvey left St. John's on August 25.[4] Colonel Robert Law, the Commandant, became the administrator in the absence of a governor.

On August 7, the British Parliament had passed a bill to continue the amalgamated legislature for one year.[5] It seems that Stephen had had no difficulty in persuading the

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[1] Newfoundland, Journal of the General Assembly, July 9, 1846, p. 34.

[2] Newfoundlander (St. John's: July 16, 1846.)

[3] Morning Courier (St. John's: August 26, 1846).

[4] Royal Gazette (St. John's: August 25, 1846).

[5] See Appendix J, p. 194.

new Colonial Secretary that this was the best procedure. In a despatch to Harvey, Grey had stated, "The knowledge derived from your Despatches that this postponement in deciding upon the future Constitution of the Island would not be prejudicial to its interests, determined Her Majesty's Government in recommending the present measure to Parliament."[1] The law was published in St. John's on September 8.[2]

For the most part the act went unnoticed in the Newfoundland newspapers. The Patriot was only mildly critical.[3] The Newfoundlander also objected: "The evils of which the anomaly of Amalgamation was designed to be remedial are no longer known."[4] This public apathy is understandable. The residents of St. John's were too preoccupied with the effects of the fire to debate the continuation of its constitution for one year. Newfoundlanders suffered other economic adversities which brought many of them so close to starvation that their only interest in the government was based on their need for food. On

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[1] C.O. 195/20, 390-1. Grey to Harvey, August 18, 1846.

[2] Royal Gazette (St. John's: September 8, 1846).

[3] Patriot (St. John's: September 30, 1846).

[4] Newfoundlander (St. John's: September 17, 1846).

September 19, a storm caused much destruction along the coast.[1] In addition, the fishery and the potato crop failed. The situation became so desperate that Colonel Law, anticipating unrest among those who would be in dire straits during the winter, asked the Colonial Secretary to station a man-of-war in the colony.[2] He was denied the request.[3]

Although the British Parliament had extended the amalgamated system until September 1, 1847, the existing Assembly would automatically expire before that date. Under an act of the Newfoundland legislature in 1836, the duration of any assembly was limited to four years after it first met.[4] As the amalgamated legislature had met for the first time on January 16, 1843, it would not be able to meet after January 16, 1847. Colonel Law, who wanted the legislature to consider the many problems created by the depression, had two choices: he could call elections for an assembly which might meet only once, or he could call a special session of the amalgamated

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[1] D.W. Prowse, A History of Newfoundland (London: 1895), p. 461.

[2] C.O. 194/126, 40. Law to Grey, September 25, 1846.

[3] C.O. 195/20, 422-3. Grey to Law, November 6, 1846.

[4] Newfoundland, 6 Wm. IV (1836), Cap. 7.

legislature late in 1846. He chose the latter course, and called the third session of the Assembly in 1846 to meet on December 1.[1]

Although the members were called primarily to attend to the economic situation in Newfoundland, they did not ignore the fact that within a few months the British Parliament would consider legislation concerning the Newfoundland constitution. When a similar situation had existed in the early months of 1846, the Assembly had been content to pass general resolutions on responsible government. In this session, however, its recommendations were more specific. On January 13, 1847, the House passed the following resolutions introduced by John Kent:

(a) there should be two branches of the legislature sitting in separate chambers;

(b) the elected assembly should consist of twenty-five members;

(c) each member should represent 4000 residents;

(d) the qualifications for electors and members should remain unaltered;

(e) elections should continue to be simultaneous;

(f) the Crown should continue to hold the exclusive power to initiate money bills;

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[1]C.O. 194/126, 153. Law to Grey, December 10, 1846.

(g) the executive council should be chosen from both branches of the legislature.[1]

These resolutions were almost identical to the suggestions made by Harvey in the autumn of 1845.

John Kent had included a resolution that the electoral divisions should remain the same, but under pressure from Bryan Robinson, Charles Fox Bennett, and Patrick Morris, he withdrew it.[2] The resolution concerning the qualification for members and electors was passed only after much debate. Robinson said he believed that candidates should pay for the expenses of elections; Job seemed to favour the resolution, but wanted some clarification included to make it effective; Patrick Morris agreed with the resolutions, and Robert John Parsons opposed any monetary qualification for membership in the House.[3]

John Kent deliberately refrained from referring to responsible government in any of the resolutions.[4] He might have done this to avoid prolonged debate, which would have prevented the House from making any recommendations to the Colonial Secretary.

Both political parties, then, indicated that they

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[1]C.O. 194/127, 36. Law to Grey, January 26, 1847. Enclosure, Resolutions of House of Assembly, January 13, 1847.

[2]Morning Courier (St. John's: February 23, 1847).

[3]Ibid., February 23, 1847.

[4]Ibid., February 23, 1847.

preferred the old representative system to the amalgamated legislature. The Conservatives undoubtedly wanted the relatively secure position of having their members make up the majority in a separate nominated chamber, with the power to veto any legislation of the elected house. On the other hand, the Liberals disliked being in a minority in the amalgamated legislature, even though they were sometimes successful in getting legislation passed. They might also have been anticipating the introduction of responsible government in the colony's administration, and might have believed that they would stand a better chance of forming an executive if it were responsible to the elected assembly of a bicameral legislature, rather than to a mixed unicameral one.

The debates in the House of Assembly gave rise to discussions among the newspapers on the subject of the constitution. On one point they all agreed: the Assembly was right in not recommending the continuation of the amalgamated system. On Kent's resolutions there was some disagreement. The Public Ledger agreed with the "general abstract of his reasoning", but not with the assumption that the previous bicameral legislature was one of "practical reform".[1] It was apparently opposing any representative

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[1] Public Ledger (St. John's: January 12, 1847).

assembly for the colony. The Morning Courier objected to the "very amusing nonsense"[1] concerning the qualification for voters: "We think the resolutions are far too democratic to serve the Colony a properly balanced constitution".[2] The Newfoundlander completely concurred with Kent's resolutions: " They embrace the principles on which alone we would willingly see our new constitution based".[3] The Patriot objected to Kent's resolutions on the grounds that they did not specifically request responsible government.[4] In reply, the Morning Courier asserted that it favoured the principle of responsible government, but added: "We do not wish to be misunderstood as advocating the establishment of the system in Newfoundland."[5] The only proper basis for responsible government, it claimed, was "household suffrage".

While Newfoundlanders were debating their constitution, a new governor was appointed. He was Sir John Gaspard LeMarchant, a forty-four-year-old Lieutenant Colonel, who was now receiving his first civil appointment.[6] His first

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[1] Morning Courier (St. John's:March 10, 1847).

[2] Morning Courier (St. John's: February 24, 1847).

[3] Newfoundlander (St. John's: January 28, 1847).

[4] Patriot (St. John's: January 23, 1847).

[5] Morning Courier (St. John's: April 3, 1847).

[6] Prowse, History of Newfoundland, p. 462.

Commission as Governor of Newfoundland, issued on April 1, 1847, was temporary; his permanent one would have to await the British Parliament's new legislation on Newfoundland's constitution.[1] He arrived in St. John's on April 22.[2]

There was little recorded discussion in the Colonial Office concerning the new bill to be presented to Parliament to replace the Newfoundland Act of 1846, by which the life of the amalgamated system was extended to September 1, 1847. Lord Grey, the Colonial Secretary, did not ask for guidance from LeMarchant, who had just arrived in Newfoundland, and was therefore unfamiliar with the political situation in the colony.[3]

The bill, which passed both houses of Parliament without debate and without amendment, was entitled "An Act to render permanent certain Parts of the Act for amending the Constitution of the Government of Newfoundland."[4] It received royal assent on June 25, 1847.[5] It stated that when the Newfoundland Act of 1846 expired on September 1, 1847, the changes made in the colony's constitution by the

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[1] C.O. 195/21, 19. Grey to LeMarchant, April 1, 1847.

[2] Royal Gazette (St. John's: April 27, 1846).

[3] C.O. 194/127, 35. Law to Grey, January 26, 1847. Departmental minute, Grey.

[4] See Appendix K, pp. 195-6.

[5] Ibid.

Newfoundland Act of 1842, would be revoked, except for the following provisions:

(a) the qualification for members was to be an annual income of £100 or possession of property of £500 clear of all incumbrances.

(b) the members and electors were to be residents of the colony for two years.

(c) the governor was to have sole power to introduce money bills.

(d) the elections were to be simultaneous.[1]

This act was almost identical to the bill which James Stephen had drafted in June, 1846.[2] It differed only in that it specified the property and residence qualifications. It omitted two provisions which both Harvey and the House of Assembly had advocated: that the executive council should be separate from the legislative council, and the elected house should consist of twenty-five members. Grey gave no reason for these omissions. He remarked only: "We have thought it better on every account to propose to Parliament the re-establishment there of the Constitution in its original form, with such securities only against abuse as the experience of former times has proved to be indespensable."[3]

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[1] Ibid.

[2] See above, p. 150.

[3] C.O. 194/127, 312 ff. Grey to LeMarchant, July 3, 1847.

The newspapers gave little attention to the new act when it was published in St. John's on July 27, 1847, perhaps because its provisions had been anticipated and discussed. The reactions of those which expressed their opinion were as one would expect. The Public Ledger[1] and the Morning Courier[2] both decried the continuation of the low property qualifications for members and the lack of property qualifications for voters. The Newfoundlander was satisfied with the act,[3] and to the Patriot it was acceptable only if the principle of responsible government was applied to its operation.[4] Governor LeMarchant, in his despatches to the Colonial Office, did not comment on the act.

Thus, the amalgamated system had come to an end in Newfoundland. Five years earlier it had been imposed by the authorities in Westminister as an experiment in colonial government. They had hoped that it would show that the council - assembly conflicts, so common in many colonies under the old representative system, could be eliminated or rendered incapable of obstructing the colonial government. While it had been partically successful in this regard, it

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[1] Public Ledger (St. John's: June 25, 1847).

[2] Morning Courier (St. John's: June 26, 1847).

[3] Newfoundlander (St. John's: July 1, 1847).

[4] Patriot (St. John's: July 26, 1847).

had not become popular with Newfoundlanders. The duration of the system had been limited to September 1, 1846, unless the British Parliament decided to extend it. When the officials in Westminister had been making a decision on what constitution for the colony should be presented to Parliament, they had been guided largely by Harvey's recommendations. While he had been convinced that the amalgamated legislature had many advantages over the system Newfoundland previously had experienced, he had been aware of popular opposition to it, and had not advised that it be continued. On the other hand, he had not hesitated to recommend rejection of responsible government for the colony even after resolutions for its introduction had been passed in the Assembly; he had noted that with the Liberals in favour of the system and the Conservatives opposed to it, the members had been almost evenly divided on the question. There had remained, then, only a return to the old bicameral legislature. In recommending this, he had known that he would satisfy the Liberals, who would accept it and would then attempt to have responsible government applied to it, and the Conservatives, who would be in a majority in the legislative council and therefore would be able to block any legislation from an elected house dominated by Liberals. The officials in the Colonial Office had decided to accept Harvey's recommendations for the basic organization of the colony's administration, although some of his suggestions

concerning the details of the system had been ignored. This decision had been made in 1846, when Gladstone was the Tory Colonial Secretary, and had been upheld by Grey, the new Whig Colonial Secretary. He had agreed, with his subordinate officials, however, in having Parliament extend the life of the amalgamated system for one year, while the proper legislation was being prepared to return the old representative system to the colony. Thus, when the other colonies of British North America were about to abandon the old representative system, Newfoundland received it for the second time. There were no indications that the council-assembly conflicts, which had brought the legislature to a standstill in 1841, would not again obstruct the colonial administration.

APPENDICES

APPENDIX A

GOVERNORS AND ADMINISTRATORS OF NEWFOUNDLAND, 1834 -- 1848

Captain Henry Prescott, Commissioned Governor of Newfoundland in September, 1834; left Newfoundland on May 24, 1841.

William Sall, Lieutenant Colonel, Royal Newfoundland Companies, administrator of Newfoundland from the departure of Captain Prescott on May 24, 1841, to the arrival of Sir John Harvey on September 16, 1841.

Sir John Harvey, Knight Commander of the Order of the Bath, Major General, appointed Lieutenant Governor of Newfoundland on May 13, 1841; commissioned Governor and Commander-in-Chief of Newfoundland on July 20, 1841; arrived in Newfoundland on September 16, 1841; recommissioned Governor and Commander-in-Chief of Newfoundland in accord with 5 and 6 Victoria, Cap. 120 (The Newfoundland Act of 1842) on September 1, 1842; left Newfoundland on August 25, 1846.

Robert Law, Lieutenant Colonel, Royal Newfoundland Companies, administrator of Newfoundland from the departure of Sir John Harvey on August 25, 1846, to the arrival of Sir John Gaspard LeMarchant on April 24, 1847.

Sir John Gaspard LeMarchant, Knight, Lieutenant Colonel, commissioned Governor and Vice-Admiral of Newfoundland on April 1, 1847; arrived in Newfoundland on April 24, 1847; recommissioned Governor of Newfoundland in accord with 10 and 11 Victoria, Cap. 44 (The Newfoundland Act of 1847) on July 19, 1848.

APPENDIX B

PRIME MINISTERS, COLONIAL SECRETARIES, AND PERMANENT UNDERSECRETARIES, GREAT BRITAIN, 1830 - 1852

	Prime Ministers	Colonial Secretaries	Permanent Undersecretaries
1830	Lord Grey (later Earl Grey) (1830-June, 1834)	Lord Goderich (1830-March, 1833)	R.W. Hay (1825-1836)
		E.G. Stanley (later Lord Stanley) (March, 1833-June, 1834)	
1834	Lord Melbourne (June, 1834-November, 1834)	T.S. Rice (later Lord Monteagle) (June, 1834-November, 1834)	
1835	Sir Robert Peel (December, 1834-April, 1835)	Lord Aberdeen (December, 1834-April, 1835)	
	Lord Melbourne (April, 1835-September, 1841)	Charles Grant (later Lord Glenelg) (April, 1835-February, 1839)	James Stephen (later Sir) (1836-1847)
		Lord Normanby (February, 1839-September, 1839)	
		Lord John Russell (September, 1839-September, 1841)	
1841	Sir Robert Peel (September, 1841-June, 1846)	Lord Stanley (September, 1841-December, 1845)	
		W.E. Gladstone (December, 1845-June, 1846)	
1846	Lord John Russell (June, 1846-1852)	Lord Grey (June, 1846-1852)	Herman Merivale (1847-1859)

APPENDIX C

MEMBERS OF THE COUNCILS OF NEWFOUNDLAND, 1842-1848

Her Majesty's Council (last session on September 23, 1842):

James Simms, Attorney General, appointed July, 1832.
James Crowdy, Colonial Secretary, July, 1832.
James M. Spearman, Collector of Customs, July, 1832.
Joseph Dunscomb, May, 1833.
William Thomas, May, 1833.
Patrick Morris, Colonial Treasurer, March, 1840.
William Bickford Row, February, 1841.
James Tobin, February, 1841.
Joseph Noad, March, 1842.

The Legislative Council (September 26, 1842 to September 18, 1848):

James Simms, Attorney General, appointed July, 1832.
James Crowdy, Colonial Secretary, July, 1832.
John Dunscomb, May, 1833; resigned September, 1845.
William Thomas, May, 1833.
Patrick Morris, Colonial Treasurer, March, 1840.
William Bickford Row, February, 1841.
James Tobin, February, 1841.
Joseph Noad, Surveyor General, March 1842; resigned September, 1845.
Charles Fox Bennett, January, 1843.
John Kent, January, 1843.
Hugh A. Emerson, Solicitor General, November, 1845.
John Stuart, November, 1845.

The Executive Council (September 26, 1842, to July 24, 1848):

James Simms, Attorney General, appointed September, 1842; became Assistant Judge October, 1846.
James Crowdy, Colonial Secretary, September, 1842.
Patrick Morris, Colonial Treasurer, September, 1842.
William Bickford Row, September, 1842.
Joseph Noad, September, 1842.
William Carson, September, 1842; died February, 1843.
Bryan Robinson, August, 1843.
Thomas Bennett, August, 1843.
Robert Job, August, 1843.
Thomas Ridley, August, 1843.
Lawrence O'Brien, August, 1843.
Walter Grieve, November, 1845.
Edward Mortimer Archibald, Attorney General, October, 1846.
William Thomas, September, 1842.

Her Majestry's Council (first session on September 16, 1848):

Robert Law, Lieutenant Colonel, Royal Newfoundland Companies, appointed July, 1848.
Edward Mortimer Archibald, Attorney General, July, 1848.
James Crowdy, Colonial Secretary, July, 1848.
James M. Spearman, Collector of Customs, July, 1848.
William Thomas, July, 1848.
Patrick Morris, Colonial Treasurer, July, 1848.
William Bickford Row, July, 1848.
James Tobin, July, 1848.
Joseph Noad, July, 1848.

APPENDIX D

ELECTED MEMBERS OF THE NEWFOUNDLAND LEGISLATURE (1838-1852)

Second Legislature (1838-1841):

John Kent, elected in St. John's, May, 1837.
William Carson, St. John's, May, 1837.
Patrick Morris, St. John's, May, 1837; appointed to Majesty's Council March, 1840.
Lawrence O'Brien, St. John's, December, 1840.
Peter Brown, Conception Bay, May, 1837.
James Power, Conception Bay, May, 1837.
Joseph McCarthy, Conception Bay, May, 1837.
Anthony Godfrey, Conception Bay, May, 1837; died September, 1840.
Edmund Hanrahan, Conception Bay, December, 1840. × ERROR
Thomas F. Moore, Trinity Bay, May, 1837.
Hugh A. Emerson, Bonavista Bay, May, 1837.
Edward Dwyer, Fogo, May, 1837.
Peter Winser, Ferryland, May, 1837.
John Nugent, Placentia-St. Mary's, May, 1837.
Patrick Doyle, Placentia-St. Mary's, May, 1837.
Henry Butler, Burin, May, 1837.
William Bickford Row, May, 1837.

Third Legislature (1843-1847):

Lawrence O'Brien, elected in St. John's, December, 1842.
John Nugent, St. John's, December, 1842.
William Carson, St. John's, December, 1842; died, February, 1843.
Robert John Parsons, St. John's, June, 1843.
Thomas Ridley, Conception Bay, December, 1842.
John Munn, Conception Bay, December, 1842.
James L. Prendergast, Conception Bay, December, 1842.
Edmund Hanrahan, Conception Bay, December, 1842.
Richard Barnes, Trinity Bay, December, 1842; died, September, 1846.
Thomas B. Job, Trinity Bay, November, 1846.
Robert Carter, Bonavista Bay, December, 1842.
Thomas Glen, Ferryland, December, 1842.
John Dillon, Placentia-St. Mary's, December, 1842.
Simon Morris, Placentia-St. Mary's, December, 1842.
Clement Benning, Burin, December, 1842.
Bryan Robinson, Fortune Bay, December, 1842.
John Slade, Fogo, December, 1842.

Fourth Legislature (1848-1852):

Lawrence O'Brien, elected in St. John's, November, 1848.
John Kent, St. John's, November, 1848.
Robert John Parsons, St. John's, November, 1848.
James L. Prendergast, Conception Bay, November, 1848.
Edmund Hanrahan, Conception Bay, November, 1848.
Nicholas Mollow, Conception Bay, November, 1848.
Richard Rankin, Conception Bay, November, 1848.
Thomas B. Job, Trinity Bay, November, 1848.
Robert Carter, Bonavista, November, 1848.
George H. Emerson, Fogo, November, 1848.
Peter Winser, Ferryland, November, 1848.
John Delaney, Placentia-St. Mary's, November, 1848.
Ambrose Shea, Placentia-St. Mary's, November, 1848.
Joshua G. Falle, Burin, November, 1848.
Hugh W. Hoyles, Fortune Bay, November, 1848.

APPENDIX E

EXTRACTS FROM THE COMMISSION OF SIR THOMAS COCHRANE, MARCH 2, 1832[1]

Whereas We did by Our Letters Patent, bearing date at Westminister, the 28th day of December, in the 1st year of Our reign, constitute and appoint you, the said Sir Thomas John Cochrane, to be Governor and Commander-in-Chief in and over the Island of Newfoundland and Territories within the limits therein described, as by the said recited Letters Patent, relation being thereunto had, may more fully and at large appear: Now know you, that We have revoked and determined and by these presents do revoke and determine, the said recited Letters Patent, and every clause, article and thing therein contained: and further know you, that We, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Sir Thomas John Cochrane, of Our especial grace, certain knowledge and mere motion, have thought fit to constitute and appoint you, the said Sir Thomas Cochrane, to be Our Governor and Commander-in-Chief in and over Our Island of Newfoundland and the Islands adjacent, and all the Coast of Labrador, from the entrance of Hudson's Straits to a line to be drawn due north and south from Anse Sablon on the said Coast, to the 52nd. degree of north latitude, and all the Islands adjacent to that part of the said Coast of Labrador, as also of all Forts and Garrisons erected and established, or to be erected and established, in the said Island of Newfoundland and the Islands adjacent, or on the Coast of Labrador within the limits aforesaid, or in the said Islands adjacent to that part of the said Coast, for and during Our will and pleasure.

And We do hereby require and commend you to do and execute all things in due manner that shall belong unto your said command and the trust We have reposed in you, according to the several powers and authorities granted or appointed you by this present Commission and the Instructions herewith given you, or according to such further powers, directions, and authorities as shall at any time hereafter be granted or appointed you under Our Sign Manual and Signet, or by Our Order in Our Privy

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[1] In the Matter of Boundry, II, 723 ff.

Council, or by Us, through one of Our Principal Secretaries of State, and according to such reasonable laws and statutes as shall hereafter be made and agreed upon by you with the advice and consent of the Council and Assembly of Our said Island and its Dependencies under your government, when such Assembly shall be called.

And Our will and pleasure is, that you, the said Sir Thomas John Cochrane, after the publication of these Our Letters Patent, do take the oaths appointed to be taken by an Act passed in the 1st year of the reign of King George the First, intituled, "An Act for the further security of His Majesty's Person and Government, and the succession of the Crown in the heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors," as altered and explained by an Act passed in the 6th year of the reign of King George the Third, intituled, "An Act for altering the Oath of Abjuration and the Assurance, and for amending so much of an Act of the 7th year of her late Majesty Queen Anne, intituled 'An Act for the improvement of the Union of the two Kingdoms,' as after the time therein limited requires the delivery of certain Lists and Copies therein mentioned to Persons indicted of High Treason or Misprision of Treason," or in lieu thereof the oath required to be taken by an Act passed in the 10th year of the reign of his late Majesty, intituled, "An Act for the relief of His Majesty's Roman Catholic Subjects," according as the said former Acts or the said last mentioned Act shall be applicable to your case; and likewise that you take the usual oath for the due execution of the office and trust of our Governor and Commander-in-Chief in and over Our said Islands and Territories, and for the due and impartial administration of justice; and further, that you take the oath required to be taken by Governors of Plantations, to do their utmost that the several laws relating to trade and the plantations be duly observed; which oaths Our Council of Our said Island and its Dependencies, or any Three of the Members thereof, have hereby full power and authority and are required to tender and administer unto you, and in your absence to our Lieutenant-Governor, if there be one on the place; all which being duly performed, you shall administer to each of the members of Our said Council such of the said oaths mentioned in the said several Acts as shall be applicable to the case of the individual Member of Our said Council taking the same; and you are also to administer to them the usual oaths for the due execution of their places and trust respectively;

all which oaths shall also be administered by the Governor or person administering the government of Our said Island and its Dependencies for the time being, to all such persons as shall hereafter be appointed to be Our said Council, before they respectively enter upon the execution of the duties of such their offices.

And We do hereby give and grant unto you full power and authority to suspend any of the Members of Our said Council from sitting, voting and assisting herein, if you shall find just cause for so doing; and if it shall at any time happen that by the death, departure out of Our said Island and its Dependencies, suspension of any of Our said Councillors, or otherwise, there shall be a vacancy in Our said Council, any three of whom We do hereby appoint to be a quorum, Our will and pleasure is that you signify the same unto Us by the first opportunity, that We may, under our Signet and Sign Manual, constitute and appoint others in their stead: but that Our affairs at that distance may not suffer for want of a due number of Councillors, if ever it shall happen that there be less than seven of them residing in Our said Island and its Dependencies, We do hereby give and grant unto you, the said Sir Thomas John Cochrane, full power and authority to choose as many persons out of the principal freeholders, inhabitants of our said Island and its Dependencies, as will make up the number of Our Council to be seven, and no more, which persons so chosen and appointed by you shall be to all intents and purposes Councillors of Our said Island and its Dependencies until either they are confirmed by Us, or that by the nomination of others by Us under Our Sign Manual and Signet, Our said Council shall have seven or more persons in it.

And We do hereby give and grant unto you full power and authority, with the advice and consent of Our said Council, from time to time as need shall require, to summon and call general assemblies of the freeholders and householdres within the said Island and its Dependencies under your government, in such manner and form, and according to such powers, instructions and authorities as are granted or appointed by your General Instructions accompanying this your Commission, or according to such further powers, instructions and authorities as shall be at any time hereafter granted or appointed under Our Sign Manual and Signet, or by Our Order in Our Privy Council; and Our will and pleasure is, that the persons thereupon duly elected by the major part of the freeholders and householders of the respective Towns or Districts, and so returned, shall

before their sitting take such of the oaths mentioned in the said several Acts as shall be applicable to the case of the individual taking the same, which oaths you shall commission fit persons, under the seal of Our said Island and its Dependencies, to tender and administer unto them; and until the same shall be so taken, no person shall be capable of sitting, though elected: and We do hereby declare that the persons so elected and qualified shall be called and deemed the General Assembly of Our said Island of Newfoundland, and you the said Sir Thomas John Cochrane, by and with the advice and consent of Our said Council and Assembly, or the major part of them respectively, shall have full power and authority to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of Our said Island and its Dependencies, and the people and inhabitants thereof, and such others as shall resort thereto, and for the benefit of Us, our heirs and successors, which said laws, statutes and ordinances are not to be repugnant, but as near as may be agreeable, to the laws and statutes of this our United Kingdom of Great Britain and Ireland.

Provided that all such laws, statutes and ordinances, of what nature or duration soever, be, within three months or sooner after the making thereof, transmitted to Us, under the public seal of Our said Island and its Dependencies, for Our approbation or disallowance of the same, as also duplicates thereof by the next conveyance. And in case any or all of the laws, statutes and ordinances not before confirmed by Us shall at any time be disallowed and not approved, and so signified by Us, Our heirs or successors, under Our or their sign manual and signet, or by order of Our or their Privy Council unto you, the said Sir Thomas John Cochrane, or the Commander-in-Chief of Our said Island for the time being, then such and so many of the said laws, statutes and ordinances as shall be so disallowed and not approved shall from thenceforth cease, determine and become utterly void and of none effect, anything to the contrary thereof notwithstanding. And to the end that nothing may be passed or done by Our said Council and Assembly to the prejudice of Us, Our heirs or successors, We will and ordain that you, the said Sir Thomas John Cochrane, shall have and enjoy a negative voice in the making and passing such laws, statutes and ordinances as aforesaid, and that you, or, in your absence, the officer administering the Government, shall and may from time to time, as you or he shall judge it necessary, adjourn, prorogue or dissolve all general assemblies as aforesaid.

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And Our further will and pleasure is, that all public moneys raised, or which shall be raised by any Act hereafter to be made within Our said Island and its Dependencies, be issued out by warrant from you by and with the advice and consent of the aforesaid Council (and not otherwise), and disposed of by you for the support of the Government, or for such other purpose as shall be particularly directed or appointed in and by such Act, and not otherwise; And We do likewise give and grant unto you full power and authority, by and with the advice and consent of Our said Council, to settle and agree with the inhabitants of Our said Island and its Dependencies for such lands, tenements and hereditaments as are now, or hereafter shall be, in Our power, to dispose of, and them to grant, to any person or persons, upon such terms, and under such moderate quit-rents, services and acknowledgments to be thereupon reserved to Us, as you or they, by the advice aforesaid, shall think fit, which said grants are to pass and be sealed by Our Public Seal of Our said Island and its Dependencies, and being entered upon record by such officer or officers as shall be appointed thereunto, shall be good and effectual in law against Us, Our heirs and successors. And We do hereby give you the said Sir Thomas John Cochrane full power and authority to order and appoint fairs, marts and markets, as also such and so many ports, harbours, bays, havens and other places for the conveniency and security of shipping, and for the better loading and unloading of ships and merchandizes, in such and so many places as by and with the advice and consent of Our said Council shall be thought fit and necessary.

APPENDIX F

COMMISSION OF SIR JOHN HARVEY, SEPTEMBER 1, 1842[1]

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To Our trusted and well-beloved Sir JOHN HARVEY Knight Commander of the Most Honourable Military Order of the Bath, Major General in our Army, Our Governor and Commander-in-Chief in and over Our Island of Newfoundland and its Dependencies, Greetings:-

WHEREAS by a Commission under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminister, the second day of March in the year one thousand eight hundred and thirty-two, His late Majesty King William the Fourth did give and grant unto the then Governor of the Island of Newfoundland full power and authority, with the advice and consent of the Council of the said Island, from time to time, as need should require, to summon and call General Assemblies of the Freeholders and Householders within the said Island and its Dependencies, in such manner and form, and according to such powers, instructions and authorities as were granted or appointed by certain Instructions under His said late Majesty's Sign Manual and Signet accompanying the said Commission; and His said late Majesty did, by the said Commission, declare that the persons so elected having taken certain oaths thereinmentioned, should be called and deemed the General Assembly of the said Island of Newfoundland; and the said Governor, by and with the advice and consent of the said Council and Assembly, or the major part of them respectively, was by the said Commission, empowered and authorized to make, constitute and ordain Laws, Statutes and Ordinances for the public peace, welfare and good government of the said Island and its dependencies and the people and inhabitants thereof, and such others as should resort thereto, and for the benefit of His said late Majesty His Heirs and Successors: And whereas, by the beforementioned Instructions so referred to as aforesaid in the said Commission, the said Governor was authorized

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[1] The Royal Gazette (St. John's: September 23, 1842).

to issue a Proclamation dividing the said Island into Districts or Counties, Towns or Townships, and appointing the number of Representatives to be chosen by each of such Districts or Counties, Towns or Townships respectively: And Whereas the Proclamation referred to in the said last mentioned Instructions was accordingly issued by the said Governor in the name of and on the behalf of His said late Majesty, whereby the said Island was divided into Nine Districts for the purpose of the Election of the Members of the said Assembly; and it was by the said Proclamation, amongst other things declared, that every Man being of the full age of Twenty-one years and upwards, and being of sound understanding, and being a natural born subject of His said late Majesty, or having been lawfully naturalized, and never having been convicted in due process of law of any infamous crime, and having for two years next immediately preceding the day of Election occupied a Dwelling House within the said Island as Owner or Tenant thereof, should be eligible to be Member of the said House of Assembly; And it was by the said Proclamation further declared, that every Man who for one year next immediately preceding the day of Election had occupied a Dwelling House within the said Island, as Owner or Tenant thereof, and who in other respects might be eligible according to the regulations aforesaid to be a Member of the said House of Assembly, should be competent and entitled to vote for the Election of Members of the said Assembly in and for the District within which the Dwelling House so occupied as aforesaid by him might be situated: And whereas in pursuance of the said Commission, Instructions and Proclamation, General Assemblies have since been elected and holden in and for the said Island of Newfoundland, in the manner therein prescribed, and the said Commission and Instructions have from time to time been renewed on the appointment of the successive Governors of the said Island, and divers laws have been made in pursuance thereof by the said Governor, Council and Assembly: And whereas we did, by certain Letters Patent, under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date Westminister the twentieth day of July one thousand Eight hundred and forty-one, in the fifth year of our Reign, constitute and appoint you the said Sir JOHN HARVEY to be our Governor and Commander in Chief in and over our said Island of Newfoundland and its dependencies; And whereas by a certain Act of Parliament passed in the sixth year of our Reign, intituled "An Act for amending the Constitution of the Government of Newfoundland," it is, amongst other things, Enacted, that it shall be lawful for us, in or by any Commission or Commissions under the Great Seal of the United Kingdom to be hereafter issued for

the Government of Newfoundland, and in and by any Instructions under our Signet and sign manuel accompanying and referred to in any such Commission or Commissions, to establish a qualification, in respect of Income or Property, in right of which any person may be hereafter elected to serve as a member of the said Assembly, provided that no such qualification shall be fixed at more than a net annual income, arising from an source whatsoever, of One hundred Pounds, or the possession of property, clear of all incumbrances, exceeding Five Hundred Pounds in amount or Value.

NOW KNOW YE, that we, reposing especial trust and confidence in the prudence, courage, and loyalty of you, the said Sir JOHN HARVEY, of our especial grace, certain knowledge and mere motion have thought fit, by this our Commission under the Great Seal of our United Kingdom of Great Britain and Ireland, and in pursuance and exercise of the powers in us vested in and by the said recited Act of Parliament, to establish, and we do hereby establish, a qualification in respect of Income or Property, for all persons to be hereafter elected to serve as members of the said Assembly, (that is to say) the Qualification mentioned and set forth in and by the Instructions under our Signet and Sign Manual accompanying and referred to in this our Commission; And whereas it is by the said recited Act further enacted, that it shall be lawful for us in a manner aforesaid to fix and determine the length of the period of residence within any Electoral District in the said Island which shall be required, in addition to any other qualification, for Voting at Elections within such District, or for being elected to serve as a Member of the Assembly, provided that such period shall not extend beyond the period of two years next proceding any such Election: Now we do therefore, by this our Commission, and in pursuance of the powers in us vested in and by the said recited Act of Parliament, fix and determine the length of the period of residence within any Electoral District in the said Island which shall be required in addition to any other qualification, for voting at Elections within such district, or for being elected, (that is to say) the period set forth in and by the before-mentioned Instructions: And whereas it is by the said recited Act of Parliament further enacted that it shall be lawful for Us, in manner aforesaid, to restrain the said Assembly from appropriating to the Public Service within the said Island any part of the public revenue thereof, in cases where such grants of money shall not have been previously asked by Us or on our behalf: Now we do hereby, by this our Commission, and in pursuance of

the powers in Us vested by the said recited Act of Parliament in that behalf, restrain the said Assembly from appropriating to the public service within the said Island any part of the Public Revenue thereof in cases where such services shall not have been previously recommended, or such grants of Money shall not have been previously asked by Us or on our behalf: And whereas it is by the said recited Act further enacted that it shall be lawful for us, in manner aforesaid, to restrain and prohibit the Election of Members to serve in the said Assembly in different Districts on successive or different days, and to require that all such Elections shall be simultaneous, and shall be completed within a time to be limited: And we hereby, by this our Commission, and in pursuance of the powers in us vested by the said recited Act of Parliament in that behalf, restrain and prohibit the Election of Members to serve in the said Assembly in different Districts on successive or different days, and do require that all such Elections shall be simultaneous and shall be completed within a time to be limited (that is to say) within the period of Ten complete days from the day of the receipt, by the Returning Officer of each District, of the writ authorizing such Election, and that the polling at every such Election shall be completed within Eight successive hours next immediately following the commencement of each polling. And whereas it is by the said recited Act further enacted that it shall be competent to Us, in manner aforesaid, to establish an Executive Council, for advising the Governor of the said Island, apart and distinct from the Legislative Council thereof: Now we do hereby, by this our Commission, and in pursuance of the powers in us vested by the said recited Act of Parliament, establish an Executive Council for advising the Governor of the said Island, apart and distinct from the Legislative Council thereof-which Executive Council shall consist and be composed of such persons as are mentioned or referred to in and by the Instructions, under our Signet and Sign Manual, accompanying and referred to in this our Commission. And whereas it is by the said Act further enacted, that it shall be lawful for Us, in manner aforesaid, to abolish the Legislative Council of the said Island as a distinct House of Branch of the Legislature thereof, and to authorize and empower the Members of the said Legislative Council to sit and vote in the House of Assembly, as Members thereof, as fully in all respects as the elected Members of the said House;- Provided always, that the number of members so to be authorized to sit and vote in the said House of Assembly shall never be more than two-fifths of the whole number of the members of such House of Assembly.

Now we do hereby, by this our Commission, and in pursuance of the powers in us vested by the said recited Act of Parliament, direct that the Legislative Council of the said Island shall no longer sit and vote as a distinct House or Branch of the Legislature thereof; and do authorize and empower the Members of the said Legislative Council to sit and vote in the House of Assembly, as Members thereof, as fully, in all respects as the Elected members of the said House - It being our will and pleasure that the total number of the members for the time being of the said Council shall henceforward be equal to, but not more than two-fifths of the whole number of the members of the said House of Assembly. And whereas it is necessary, in order that the total number of the Members of the said Council henceforth may be equal to two-fifths of the said House of Assembly, that the number of the Members of the said Council at present appointed under our authority should be increased; and it is expedient that you, the said Sir JOHN HARVEY, should be authorized and empowered to appoint such additional number of Members of the said Council as will make up the total number of Members for the time being to be equal to two-fifths of the said House of Assembly: We do therefore, by this Our Commission, authorize and empower you, the said Sir JOHN HARVEY, to nominate and appoint, from time to time, such and so many persons to be Members of the said Council as will make up the total number of the Members for the time being to be equal to two-fifths of the whole number of the said House of Assembly; Provided nevertheless, and it is our further pleasure, that the Members of the said Council who may be so nominated and appointed by you shall hold their seats provisionally and until our further pleasure shall be signified: and you are forthwith to report to Us, through one of our Principal Secretaries of State, the names and qualifications of the persons who may be so appointed by you to be Members of the said Council, in order that We may, under our Signet and Sign Manual, confirm or disallow any such provisional appointment, as we may see occasion. And in case of your death, or absence out of our said Island and its dependencies, We do hereby give and grant all and singular the powers and authorities herein to you granted, to our Lieutenant Governor for the time being of our said Island, or in the absence of any such Lieutenant Governor to such Person as we may by Warrant under our Signet and Sign Manual authorize and appoint to be the Administrator of the Government of our said Island - such powers and authorities to be by him executed and enjoyed during our pleasure. But if, upon your death or absence out of our said Island and its dependencies, there be no person upon

the place commissioned and appointed by us to be our Lieutenant Governor, or especially appointed by us to administer the Government within the said Island and its dependencies, Our will and pleasure is, that until you return from such absence, or until Our further pleasure shall be known, the Senior Military Officer for the time being in Command of Our Land Forces within Our said Island of Newfoundland and its dependencies, shall take upon him the Administration of the Government thereof, and shall execute this Our Commission, and the Instructions herein referred to, and the several powers and authorities herein and in the said Instructions contained, in the same manner and to all intents and purposes as other Our Governor and Commander-in-Chief should or ought to do. And we do further declare Our pleasure to be that this present Commission, and the Instructions accompanying it, shall continue in force until the first day of September one thousand eight hundred and forty six and no longer, unless Parliament shall otherwise order. And We do hereby revoke and annul the said recited Letters Patent of the twentieth day of July one thousand eight hundred and forty one, and Our Instructions under Our Sign Manual and Signet accompanying and referred to in the said Letters Patent, so far as the same are in any wise repugnant to this our Commission and the said recited Act, or to either of them.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself, at Westminister, the first day of September, in the Sixth Year of Our Reign.

APPENDIX G

INSTRUCTIONS ACCOMPANYING COMMISSION OF SIR JOHN HARVEY

SEPTEMBER 1, 1842[1]

ADDITIONAL instructions to Our trusty and well-beloved Sir JOHN HARVEY, Knight, Commander of the Most Honourable Military Order of the Bath, Major-General in Our Army, Our Governor and Commander in Chief in and over Our Island of Newfoundland and its Dependencies, or in his absence to Our Lieutenant-Governor or the Officer Administering the Government of Our said Island and its Dependencies for the time being. Given at Our Court at Windsor, this First day of September, 1842, in the Sixth Year of Our Reign.

First - WHEREAS by Our Commission under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminister, the First day of September, 1842, in the Sixth Year of Our Reign, and addressed to you the said Sir John Harvey, We have, in pursuance and exercise of the powers in us vested in and by a certain Act of Parliament passed in this sixth year of Our Reign, entituled "An Act for amending the Constitution of the Government of Newfounaland," established a qualification in respect to Income or property for all persons to be hereafter elected to serve as Members of the Assembly of Newfoundland, that is to say, the qualification mentioned and set forth in and by the Instructions under Our Signet and Sign Manual accompanying and referred to in Our said Commission. Now by these Our Instructions under Our Signet and Sign Manual (being the Instructions referred to in the said Commission and accompanying the same,) We do, in further pursuance and exercise of the powers aforesaid, declare Our Pleasure to be that the said qualification shall be fixed at a net Annual Income, arising from any source whatsoever, of One hundred Pounds, or the possession of Property clear of all incumbrances of Five hundred Pounds, in amount of value.

Second - And whereas by Our said recited Commission we have, in pursuance and exercise of the powers in Us vested by the said recited Act, fixed and determined the length of the period of residence within any Electoral

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[1] The Royal Gazette (St. John's: September 27, 1842).

District in the said Island which shall be required in addition to any other qualification for voting at Elections within such District; or for being elected, that is to say, the period set forth in and by the Instructions aforesaid. Now by these Our Instructions We do, in further pursuance and exercise of the powers aforesaid, declare that the period aforesaid shall be the period of two years next preceding any such Election.

And whereas, by Our said Commission We have, in pursuance and exercise of the powers in us vested by the said recited Act, established an Executive Council for advising the Governor of the said Island, apart and distinct from the Legislative Council thereof, and have declared that the said Executive Council shall consist and be composed of such persons as are mentioned or referred to in and by the Instructions under Our Signet and Sign Manual accompanying and referred to in our said Commission.

Now therefore, by these Our Instructions, under Our Signet and Sign Manual, (being the instructions referred to in Our said recited Commission, and accompanying the same,) We do declare Our Pleasure to be that the said Executive Council shall consist of such and so many persons, not exceeding Seven, as may be appointed by you for that purpose, and of such other persons as may from time to time be by Us appointed to be Members of the said Executive Council by Warrants to be for that purpose issued under Our Signet and Sign Manual.

Provided nevertheless, and it is Our further pleasure, that the Members of the said Council who may be appointed by you as aforesaid shall hold their seats provisionally, and until Our further pleasure shall be signified thereupon.

And you are forthwith to report to Us, through one of Our Principal Secretaries of State, the names and qualifications of the persons who may be appointed by you to be Members of the said Council, in order that We may confirm or disallow any such provisional appointment, as we shall see occasion.

APPENDIX H

THE NEWFOUNDLAND ACT, 1832, 2-3 WM. IV, CAP 78[1]

An Act to continue Acts relating to the Island of Newfoundland, and to provide for the Appropriation of all Duties which may hereafter be raised within the said Island. [1st August 1832].

Whereas an Act was passed in the Fifth Year of the Reign of His late Majesty King George the Fourth, intituled An Act for the better Administration of Justice in Newfoundland, and for other Purposes: And whereas a certain other Act was passed in the said Fifth Year of His said late Majesty's Reign, intituled 'An Act to repeal an Act passed in the Fifty-seventh Year of the Reign of His late Majesty King George the Third, intituled 'An Act to regulate the Celebration of Marriages in Newfoundland, and to make further Provision for the Celebration of Marriages in the said Colony and its Dependencies:'' And whereas by an Act passed in the Tenth Year of His said late Majesty King George the Fourth the said Acts were continued in force until the Thirty-first Day of December One thousand eight hundred and thirty-two; And whereas it is expedient that the said Acts be further continued in force until the same shall be repealed, altered, or amended by any Act or Acts which may for that purpose be made by His Majesty, with the Advice and Consent of any House or Houses of General Assembly which His Majesty may at any Time see fit to convoke within the said Colony of Newfoundland; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for His Majesty, or for any Governor, Lieutenant Governor, or Officer administering the Government of Newfoundland, in pursuance of any Commission or Instructions to him for that Purpose addressed by His Majesty, with the Advice and Consent of any House or Houses of General Assembly which His Majesty may hereafter be pleased to convoke from among the Inhabitants of the said Colony, by any Act or Acts to be from Time to Time for that Purpose

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[1] In the Matter of the Boundry, I, 321 ff.

passed, to repeal in whole or in part, or to amend, alter, or vary, the said recited Acts or any of them, or any Part thereof; and that, until so repealed, amended, altered, or varied, the said recited Acts shall be and continue in full Force and Effect.

And whereas by virtue of divers Acts of Parliament divers Duties are now payable to His Majesty within the said Island of Newfoundland; be it therefore further enacted, That when and so soon as any House of Houses of General Assembly shall have been convoked by His Majesty from among the Inhabitants of the said Colony, and shall have actually met for the Dispatch of the public Business thereof, the nett Produce of all Duties levied within the said Colony, by any Act of Parliament now or hereafter to be in force there, shall be appropriated and applied in such Manner and to and for such Purposes as His Majesty, with the advice and Consent of such House or Houses of General Assembly, shall from Time to Time direct: Provided always, that from and out of such nett Proceeds shall be deducted in each and every Year a Sum not exceeding Six thousand five hundred and fifty Pounds, to be applied from Time to Time in and towards the Maintenance and Support of the Governor, or of the Officer for the Time being administering the Government of the said Colony, and of the Chief and other Judges, and of His Majesty's Attorney General, and of the Colonial Secretary of and for the said Colony, at such Times and in such Shares and Proportions as the Lords Commissioners of His Majesty's Treasury, or any Three of them, by any Warrant or Warrants to be by them from Time to Time issued, shall direct; provided also, that so far as respects such Appropriation as aforesaid of the said Duties, this present Act shall not take effect or come into operation till the First Day of April One thousand eight hundred and thirty-three; and provided also, that it shall and may at any Time hereafter be lawful to and for His Majesty, by any Act or Acts to be by Him for that Purpose made, with the Advice and Consent of any such House of Houses of General Assembly as aforesaid, to repeal so much of this present Act as relates to the Application of the said annual Sum of Six thousand five hundred and fifty Pounds, in case such House or Houses of General Assembly shall concur with His Majesty in making what shall appear to His Majesty to be an adequate Provision for the Maintenance of the several Officers aforesaid, permanently secured upon Funds adequate to that Purpose.

APPENDIX I

THE NEWFOUNDLAND ACT, 1842, 5-6 VICT., CAP. 120[1]

An Act for amending the constitution of the Government of Newfoundland. [12th August 1842].

Whereas by a Commission under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing Date at Westminister the Second Day of March in the Year One thousand eight hundred and thirty-two, His late Majesty King William the Fourth did give and grant unto the then Governor of the Island of Newfoundland full Power and Authority, with the Advice and Consent of the Council of the said Island, from Time to Time as need should require, to summon and call General Assemblies of the Freeholders and Householders within the said Island and its Dependencies, in such Manner and Form, and according to such Powers, Instructions, and Authorities as were granted or appointed by certain Instructions under His said late Majesty's Sign Manual and Signet accompanying the said Commission; and His said late Majesty did by the said Commission declare, that the Persons so elected, having taken certain Oaths therein mentioned, should be called and deemed the General Assembly of the said Island of Newfoundland; and the said Governor, by and with the Advice and Consent of the said Council and Assembly or the major Part of them respectively, was by the said Commission empowered and authorized to make, constitute, and ordain Laws, Statutes, and Ordinances for the public Peace, Welfare, and good Government of the said Island and its Dependencies, and the People and Inhabitants thereof, and such others as should resort thereto, and for the Benefit of His late Majesty, His Heirs and Successors: And whereas by the before-mentioned Instructions so referred to as aforesaid in the said Commission the said Governor was authorized to issue a Proclamation dividing the said Island into Districts or Counties, Towns or Townships, and appointing the Limits thereof, and declaring and appointing the Number of Representatives to be chosen by each of such Districts or Counties, Towns or Townships respectively: And whereas the Proclamation referred to in

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[1] In the Matter of the Boundry, I, 323 ff.

the said last-mentioned Instructions was accordingly issued by the said Governor in the Name and on the Behalf of His said late Majesty, whereby the said Island was divided into Nine Districts for the Purpose of the Election of the Members of the said Assembly; and it was by the said Proclamation, amongst other Things, declared, that every Man being of the full Age of Twenty-One Years and upwards, and being of sound Understanding, and being a natural-born Subject of His said late Majesty, or having been lawfully naturalized, and never having been convicted in due Course of Law of any infamous Crime, and having for Two Years next immediately preceeding the Day of Election occupied a Dwelling House within the said Island, as Owner or Tenant thereof, should be eligible to be a Member of the said House of Assembly; and it was by the said Proclamation further declared, that every Man who for One Year next immediately preceding the Day of Election had occupied a Dwelling House within the said Island, as Owner or Tenant thereof, and who in other respects might be eligible, according to the Regulations aforesaid, to be a Member of the said House of Assembly, should be competent and entitled to vote for the Election of Members of the said Assembly in and for the District within which the Dwelling House so occupied as aforesaid by him might be situated: And whereas, in pursuance of the said Commission, Instruction, and Proclamation, General Assemblies have since been elected and holden in and for the said Island of Newfoundland in the Manner therein prescribed; and the said Commission and Instructions have from Time to Time been renewed on the Appointment of the successive Governors of the said Island, and divers Laws have been made in pursuance thereof by the said Governor, Council, and Assembly: And whereas it is expedient that the Changes herein-after mentioned should be made in the Constitution of the Government of the said Island; be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for Her Majesty in or by any Commission or Commissions under the Great Seal of the United Kingdom, to be hereafter issued for the Government of Newfoundland, and in and by any Instructions under Her Majesty's Signet and Sign Manual accompanying and referred to in any such Commission or Commissions, to establish a Qualification in respect of Income or Property in right of which any Person may be hereafter elected to serve as a Member of the said Assembly; provided that no such Qualification shall be fixed at more than a net annual

Income, arising from any Source whatsoever, of One hundred Pounds, or the Possession of Property, clear of all Incumbrances, exceeding Five hundred Pounds in Amount or Value.

II. And be it enacted, That it shall be lawful for Her Majesty, in manner aforesaid, to fix and determine the Length of the Period of Residence within any Electoral District in the said Island which shall be required in addition to any other Qualification for voting at Elections within such District, or for being elected to serve as a Member of the Assembly; provided that such Period shall not extend beyond the Period of Two Years next preceding any such Election.

III. And be it enacted, That it shall be lawful for Her Majesty, in manner aforesaid, to restrain the said assembly from appropriating to the public Service within the said Island any Part of the public Revenue thereof, in Cases where such Services shall not have been previously asked, by or on Behalf of Her Majesty.

IV. And be it enacted, That it shall be lawful for Her Majesty, in manner aforesaid, to restrain and prohibit the Election of Members to serve in the said Assembly, in different Districts, on successive or different Days, and to require that all such Elections shall be simultaneous, and shall be completed within a Time to be limited.

V. And be it enacted, That it shall be competent to Her Majesty, in manner aforesaid, to establish an Executive Council for advising the Governor of the said Island, apart and distinct from the Legislative Council thereof.

VI. And be it enacted, That it shall be lawful for Her Majesty, in manner aforesaid, to abolish the Legislative Council of the said Island as a distinct House or Branch of the Legislature thereof, and to authorize and empower the Members of the said Legislative Council to sit and vote in the House of Assembly as Members thereof, as fully in all respects as the elected Members of the said House: Provided always, that the Number of Members so to be authorized to sit and vote in the said House of Assembly shall never be more than Two Fifths of the whole Number of the Members of such House of Assembly; Provided also, that it shall be competent to Her Majesty again, in manner aforesaid, to re-establish the Legislative Council as a separate House of the Legislature of the said Island.

VII. And be it enacted, That any such future Commission or Instructions as aforesaid shall be laid before both Houses or Parliament within Thirty Days next after the Date thereof, should Parliament then be in Session, or if not, then within Thirty Days next after the Commencement of the then next Session of Parliament.

VIII. Provided always, and be it enacted, That no Change which shall be made in the Constitution of the said Island under this Act shall continue for a longer Time than the First Day of September, One thousand eight hundred and forty-six, unless Parliament shall otherwise order; but this Enactment shall not be construed to annual or affect any Laws, Statutes, or Ordinances made by the Legislature of the said Island as constituted under the Authority of this Act.

IX. And be it declared and enacted, That nothing herein contained shall extend or be construed to extend to take away or diminish any Right or Prerogative vested in Her Majesty of enlarging, as to Her Majesty shall seem meet, any Franchise heretofore granted by His late Majesty or hereafter to be granted by Her Majesty to Her Majesty's Subjects in Newfoundland.

X. And be it enacted, That nothing herein-before contained shall extend or be construed to extend to repeal or after the Provisions of an Act passed in the Third Year of the Reign of His late Majesty King William the Fourth, intituled An Act to continue certain Acts relating to the Island of Newfoundland, and to provide for the Appropriation of all Duties which may hereafter be raised within the said Island.

XI. And be it enacted, That this Act may be amended or repealed by any Act to be passed during this Session of Parliament.

APPENDIX J

THE NEWFOUNDLAND ACT, 1846, 9-10 VICT., CAP. 45[1]

An Act to continue until the First Day of September One Thousand Eight Hundred and Forty-seven certain of the provisions of an Act of the Fifth and Sixth Years of her present Majesty, for amending the Constitution of the Government of Newfoundland. [7th August 1846].

Whereas by an Act passed in the Fifth and Sixth Years of the Reign of Her Majesty, for amending the Constitution of the Government of Newfoundland, divers Powers and Authorities were for the purpose vested in Her Majesty, and it was thereby provided that no change which should be made in the Constitution of the said Island under the said Act should continue for a longer time than the First Day of September One Thousand Eight Hundred and Forty-six, unless Parliament should otherwise order: And whereas by virtue of the provision last aforesaid the changes made in the Constitution of the said Island under the said Act will cease to be in force upon and from and after the First Day of September now next ensuing, unless further provision in that behalf be made by Parliament; and is expedient that the changes made in the Constitution of the said Island under the said Act should continue to be in force until the First Day of September which will be in the Year One Thousand Eight Hunderd and Forty-seven: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the changes made in the Constitution of the said Island under the said recited Act shall continue in force until the First Day of September which will be in the Year One Thousand Eight Hundred and Forty-seven.

11. And be it enacted, That this Act may be amended or repealed by an Act to be passed during this session of Parliament.

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[1] The Royal Gazette (St. John's, September 8, 1846).

APPENDIX K

THE NEWFOUNDLAND ACT, 1847, 10-11 VICT., CAP. 44[1]

An Act to render permanent certain Parts of the Act for amending the Constitution of the Government of Newfoundland. [25th June 1847].

Whereas by an Act passed in the Session of Parliament holden in the Fifth and Sixth Years of the Reign of Her present Majesty, intituled An Act of amending the Constitution of the Government of Newfoundland, it was amongst other things enacted, that it should be lawful for Her Majesty, in or by any Commission or Commissions under the Great Seal of the United Kingdom, to be thereafter issued for the Government of Newfoundland, and in and by any Instructions under Her Majesty's Signet and Sign Manual accompanying and referred to in any such Commission or Commissions, to establish a qualification in respect of Income or Property in right of which any person might be thereafter elected to serve as a Member of the Assembly of Newfoundland; provided that no such Qualification should be fixed at more than a net annual Income arising from any source whatsoever of One hundred Pounds, or the possession of Property, clear of all Incumbrances, exceeding Five hundred Pounds in Amount or Value; and that it should be lawful for Her Majesty, in manner aforesaid, to fix and determine the Length of the Period of Residence within any Electoral District in the said Island which should be required, in addition to any other Qualification, for voting at Elections within such District, or for being elected to serve as a Member of the Assembly, provided that such Period should not extend beyond the Period of Two Years next preceding any such Election; and that it should be lawful for Her Majestry, in manner aforesaid, to restrain the said Assembly from appropriating to the public Service within the Island of Newfoundland any Part of the public Revenue thereof in Cases where such Services should not have been previously recommended, or such Grants of Money should not have been previously asked by or on Behalf of Her Majesty; and that it should be lawful for Her Majesty, in manner aforesaid, to restrain and prohibit the Election of Members to serve

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[1] The Royal Gazette (St. John's) July 27, 1847).

in the said Assembly in different Districts on successive or different Days, and to require that all such Elections should be simultaneous, and should be completed within a Time to be limited, and that any such future Commission Instructions as aforesaid should be laid before both Houses of Parliament within Thirty Days next after the Date thereof, should Parliament then be in Session, or if not, then within Thirty Days next after the Commencement of the then next Session of Parliament; and it was thereby provided that no Change which should be made in the Constitution of the said Island under the said Act should continue for a longer Time than the First Day of September One thousand eight hundred and forty-six, unless Parliament should otherwise order: And whereas by an Act passed in the Session of Parliament holden in the Ninth and Tenth Years of Her Majesty's Reign, intituled An Act to continue till the First Day of September One thousand eight hundred and forty-seven certain of the Provisions of an Act of the Fifth and Sixth Years of Her present Majesty, for amending the Constitution of the Government of Newfoundland, it was enacted, that the Changes made in the Constitution of the said Island under the said recited Act should continue in force until the First Day of September One thousand eight hundred and forty-seven: And whereas upon and from the said First Day of September One thousand eight hundred and forty-seven the Changes made in the Constitution of the said Island under the first-recited Act will cease to be in force unless further Provision in that Behalf be made by Parliament; and it is expedient that from and after the said First Day of September One thousand eight hundred and forty-seven the first-recited Act should cease to be in force, save only so far as the same is herein-before recited: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much as is herein-before recited of the first-recited Act shall be permanent, and that upon and after the first day of September One thousand eight hundred and forty-seven so much of the said Act as is not herein-before recited shall cease to be in force.

II. And be it enacted, That this Act may be amended or repealed by any Act to be passed during this Session of Parliament.

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