

THE FIRST NINE YEARS OF REPRESENTATIVE GOVERNMENT
IN NEWFOUNDLAND

BY

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ABSTRACT

Representative Government was granted to Newfoundland in 1832. In 1841 the Imperial Parliament found it necessary to suspend the system of Government that had been introduced. The aim of this thesis is to contribute something to the knowledge of the history of the intervening years and to attempt to answer the question of why suspension was necessary.

In pursuance of this aim the political and social background is established in chapters one and two respectively. This having been done, the events of the nine year period are dealt with in chronological order, though the financial affairs of the first Assembly, the by-election of 1833 and the election of 1836 are dealt with in separate chapters.

The significance of dealing with these specific topics separately is that they each contribute something to the development of the theme which is that under existing circumstances representative institutions in Newfoundland were doomed to failure.

The circumstances to which reference is made were antipathy to law and government, lack of cohesion within the Newfoundland community, lack of education or political experience, isolation, poverty, an unsound economy, a deep-rooted class division, the intrusion of large numbers of poor immigrants who could not be readily absorbed into the social

or economic life of the Colony, religious antagonisms, and an unsympathetic Imperial Government.

For nine years the struggle continued between the Assembly, aspiring to broader democracy, and the Council, holding tenaciously to their vested interests. The struggle to control finance constituted the major battle and the result was stalemate.

The decision to suspend the constitution was made, ostensibly because of election riots in 1840 and the fear that a general election would result in more serious outbreaks, but actually because all those concerned knew that under existing conditions the established institutions could not possibly function.

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P R E F A C E

The nine years with which this thesis is concerned have not as yet received detailed attention in the general histories of Newfoundland which have been written. Yet during those years Representative Government was granted to Newfoundland, found unworkable and suspended. The aim of this thesis is to contribute something to the knowledge of that period and to attempt to determine why the suspension was necessary.

In preparing the first chapter, I must acknowledge the help I had from the valuable work of A. H. McLintock. Similarly, in writing Chapter Four I found Professor M. O. Morgan's work on the financial affairs of the Assembly most useful.

The most important source has been the official correspondence between the Secretaries of State and the Governors of Newfoundland, contained in the C O series 194 on microfilm at the Archives of the Memorial University of Newfoundland. I owe a great debt of gratitude to the Carnegie Foundation, who through their generous grant made possible the establishment of the Archives, without which this thesis could not have been written. In addition to the microfilm correspondence and other documents located in the Archives I have consulted the Journals of the Assembly and Council, newspapers and contemporary books and pamphlets. I make no claim to completeness or finality.

I am greatly indebted to Dr. Harvey Mitchell, archivist-historian at the University, for his kindness and helpful advice; to Dr. D. M. Young, who supervised my research; and to Dr. G. O. Rothney for his constant encouragement. I should also like to express my thanks to Miss Sadie Organ who supervised the preparation of my bibliography; Miss Agnes O'Dea who was always ready to help; and the staff of Memorial University Library for the courtesy and consideration shown me.

CHAPTER ONE

P O L I T I C A L P R E L U D E

At the beginning of the nineteenth century there was still no settled government in Newfoundland. The establishment of any form of local administration had been precluded by the long standing conception of Newfoundland as a mere fishing station and a training school for seamen. Dating from 1729 an Admiral was granted a commission as governor for three or four years, and came out each summer to reside for approximately four months, corresponding to the period when the British fishing fleet was operating in coastal waters. For the balance of the year lawlessness prevailed. This lawlessness was produced in part by the large numbers of discontented young Irishmen who arrived in large numbers during the early years of the nineteenth century.¹ Religious intolerance, a vicious credit system, and a constantly fluctuating source of income combined to place the miserably poor immigrant in a position which often forced him to take the law into his own hands. The result was that every type of crime flourished, especially in the winter months when the harsh naval punishments of the surrogate courts were not to be feared since these courts operated only during the fishing season.

As early as 1791 John Reeves, the first Chief Justice of Newfoundland², had expressed the need for some legislative body in Newfoundland to maintain some form of

1. In 1814-15, 11,000 immigrants arrived in St. John's from Southern Ireland. This was the peak year.
2. Reeves was the author of a Constitutional History of Newfoundland in two volumes. He was also Counsel to the Board of Trade for a period.

internal government but his plan was ignored since it was contrary to the national policy of the time.

In 1802, after the matter had been held in abeyance for ten years, Admiral James Gambier, Governor of the day, proposed "the establishment of a legislative power in Newfoundland, similar to that which has been found necessary to the prosperity and good government of other parts of his Majesty's foreign dominions"¹ but Lord Liverpool, to whom the report was addressed decided that the plan was inexpedient².

Though some of the naval governors who followed Gambier, notably Duckworth, felt that some local authority to frame by-laws would be an asset, unaccompanied by the evil consequences that a local legislature would entail³; it was almost inconceivable that men trained in the disciplinarian school of the Navy would seek for any great degree of "democracy" before the mast. Thus, the agitation for local government had to come from a source other than the Admiral Governors.

Two individuals who for a period of twenty years kept up a constant demand for an Assembly were William Carson, a Scottish doctor, born in Kirkeudbrightshire in 1770, who had set up practice in St. John's in 1808, and Patrick Morris, a merchant of St. John's who was born in Waterford, Ireland, in 1789. These two, using as their chief source of ammunition the inhuman and unjust behaviour of the surrogates, kept up a constant bombardment of the Colonial Office.

1. C.O. 194/43. Gambier/Hobart, 12 December, 1803
2. C.O. 194/44. Miscellaneous Papers, Observations, Lord Liverpool
3. C.O. 194/53. Duckworth/Bathurst, 2 November, 1812

Liberals and humanitarians were condemning in Parliament the use of the lash and when Chief Justice Francis Forbes¹, who was a relative of James Stephen and closely allied with the evangelical movement as well as with Wilberforce and the anti-slavery group, attacked the practice in Newfoundland on grounds of illegality as well as inhumanity, Morris took the occasion to call a public meeting in St. John's and through it bring the whole matter before the British Parliament². As a result of the petition corporal punishment was forbidden, but towards a legislature no move was made.

By the 1820's, however, it seemed as if the British Government might be prepared to do something towards ending the political stagnation in Newfoundland. The time was propitious. There was an air of reform in the Colonial Office inspired by a general desire for efficiency in government. During the 20's the Government of New South Wales was re-modelled, the Newfoundland Act, which reformed the judicature³, was passed, and minor changes were made in the constitutions of other colonies. In 1825 Governors' instructions for all the colonies were re-modelled. At about the same time the system of Blue Books was instituted and an attempt was made to bring order into the finances of the colonies. That an Assembly would be granted to Newfoundland still appeared dubious, however, since Lord Bathurst⁴ was not convinced of its expediency, and indeed many informed people, including many in Newfoundland,

1. Chief Justice 1816-1822
2. C.O 194/64. Report of Public Meeting, St. John's. 14 November, 1820.
3. 5 George IV. Cap 67.
4. Secretary of State for War and the Colonies.

concurred with his opinion. Even Francis Forbes, who was extremely sympathetic towards the inhabitants of Newfoundland doubted the wisdom of establishing self-government.

That this view was held was not necessarily a mark of the holder's conservatism. Indeed there were good reasons for this stand. An Assembly could not meet during the summer without interfering greatly with the private concerns of the members nor could it meet in winter when lack of communications precluded travel. Moreover among the coastal inhabitants a scarcity of educated men made the task of finding suitable members a difficult one, while the poverty of the Island seemed to indicate that an Assembly would be hard put to raise by taxation sufficient funds to carry on the day-to-day affairs of the Colony. Moreover, it was not at all definite that outside St. John's and its immediate vicinity to which Carson's and Morris's influence was limited, there was a popular demand for an Assembly. What Forbes suggested was not an Assembly but rather some organization on the parochial level to attend to matters of local concern.¹

It was Forbes, too, who gave impetus to the movement for recognition of Newfoundland as a settled Colony². Indeed there was in progress an almost imperceptible evolutionary movement that had, in 1791, seen the establishment of a supreme court but the successors of Reeves were so untrained and inefficient that legal proceedings were farcical in nature.

1. C.O. 194/69. Report, Francis Forbes, 14 May, 1823
2. The type of those established by settlement of vacant territory or by extrusion of aboriginal inhabitants who had no rights in international law.

The power of the Naval Governors was still absolute, the governor was not resident for more than half a year and the act of William III prohibiting private ownership of land¹ was still on the statute books.

Forbes, after his appointment in 1816, challenged these absolute laws in his decisions and by doing so made himself unpopular with reactionary governors and West Country merchants who still fondly hoped that the transient fishery, which had died out during the Napoleonic wars would revive to its former place of pre-eminence. It did not, and an acknowledgement that a resident population had established itself and of the need for recognizing the existing social ills came with the appointment of Admiral Pickmore in 1817 as a resident governor on a year round basis. This accomplished and with more competent men on the Chief Justice's bench, the situation began to improve and in 1824 an Act of Parliament swept away the last traces of government by Naval officers. Autocratic Government survived, however, for the Governor, Sir Thomas Cochrane, was given all-embracing powers and the Council, which his Commission of the 20th August, 1826², authorized him to summon was to be a purely advisory body.

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Though the pomp and circumstance with which Cochrane began his term of office might indicate a measure of prosperity to the casual observer, social conditions were deplorable.

1. 10 & 11 William III, Cap. 25.
2. Joint Appendix. Labrador Boundary Dispute. Vol 11, page 718.

Poverty, famine, lawlessness, typhus and cholera were wide spread. Clergy and teachers were so few in number as to have a negligible effect. The new judicial system was found to be less efficient, if more humane, than the surrogates. Still the demands for self-government continued and the growth of the reform party in the British Parliament, indeed the actual assumption of office in 1830 by a government dedicated to reform, was a harbinger of success to come.

When through petition, the Colonial Secretary became aware that the movement for self-government was not confined to St. John's he asked Sir Thomas Cochrane for a report on the advisability of establishing local self-government¹. Cochrane condemned the whole idea and upon being asked to suggest an alternative, suggested a legislative council of fourteen members, half to represent the government and the other half the influential business men of the community. He was in fact suggesting a form of government similar to that which had been introduced in Trinidad in 1831².

Nor was Cochrane alone in his opposition to self-government. The Poole Merchants heard "with alarm and regret" of the contemplated establishment of a local legislature "that must unavoidably be highly prejudicial to their long vested interests."³

Fortunately for those who sought representative government for Newfoundland this was the era of political reform at Westminster and those who could easily find valid objections

1. C.O. 194/80. Goderich/Cochrane, 1 January 1831
2. Craig, Hewan. The Legislative Council of Trinidad and Tobago. London. Faber and Faber. 1952. pp. 17-18
3. C.O. 194/84. Memorial and Remonstrance of Poole, 30 January 1832

to a Newfoundland legislature were hard pressed to find arguments for withholding that which had been secured to other colonies almost without question. Newfoundland's interests were capably served by George Robinson, the member for Worcester, who had had long and extensive trading concessions in the Island and was fully cognizant of local conditions and sympathetic towards the inhabitants.

Robinson seized on an opportune moment to press Newfoundland's case. The whole question of taxation was a thorny one for the reform parliament and when in July, 1831, the charges of the Civil Establishment of Newfoundland were before the House, Robinson opposed the motion granting supply and declared that if Newfoundland were granted a local legislature, Parliament would never again be required to provide a farthing for this purpose¹. Joseph Hume, a radical and an authority on finance, always eager to be shown how money could be saved, supported Robinson's request without questioning too deeply the validity of his argument.

But political crisis at home drove the Newfoundland case to the background. Robinson waited and on the evening that the Reform Bill was presented for third reading he was able to obtain liberal support and with that backing was able to again beg² his colleagues to grant Representative Government to Newfoundland. The Colonial Office was opposed and the Government pledged itself only to extend to the Colony as much freedom as was compatible with local circumstances.

1. Parl. Debates, Vol 5(3rd series) p.283. 25 July 1831, as quoted in McLintock. The Establishment of Constitutional Government in Newfoundland 1783-1832. London, 1941. page 182.

2. Parl. Debates, Vol 21(N.S.) 13 Sept 1831. Quoted in McLintock. p.183

Local petitions continued to be sent and despite the opposition of the Colonial Office the opportunity to reduce expenditure combined perhaps with the spirit of reform to produce the desired effect. On the same day that the Reform Bill received Royal Assent, Lord Howick introduced a bill for establishing by Royal Commission an island legislature.

This did not, of course, solve everything. The type of legislature to be set up had still to be determined and the man to whom fell the task of surveying Newfoundland affairs and suggesting a form of government suitable to the needs of the people was James Stephen, an enlightened official, legal advisor to the Colonial Office since 1813, and a firm believer in representative government as the remedy for colonial troubles.

His report submitted in the form of a memorandum on the 19th December, 1831¹, declares that in his belief colonial legislatures have always been of inestimable benefit but "the chief practical error consists ... in the formation of the legislative council". Elucidating he states that it has nothing in common with the House of Lords and serves only to provoke "democratic hostility" and is "scarcely more useful than popular". Removing the Governor from the necessity of direct conflict with the Assembly, "they relieve him of responsibility but not of obloquy. They impart neither dignity to his station, nor weight to his authority, but render him either listless when he ought to be active, or daring when he ought to be cautious".

1. C.O 194/82. p.21. Enclosure.

"A far better arrangement", he says, "is that which exists in Demerara, where the nominees of the Crown and the representatives of the people are united in one legislative body".

Stephen therefore proposes that the original Nova Scotia Commission and Instructions be sent to Cochrane, and that he be authorised "to propose to the Assembly when convened, the admission to their body of a certain number of 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"¹.

Since there was no precedent for such a Commission Stephen felt that the Union ought to be effected by a legislative act originating in the Newfoundland Assembly. He also suggested that the idea be planted and fostered by Cochrane prior to the meeting of the Assembly so that the lawfulness of the constitution would be beyond dispute. This would relieve the British Government "from all embarrassment inseparable from the establishment of new forms of government and the promulgation of what might be deemed new constitutional theories"².

In order to make the governor and judges independent of the Assembly Stephen proposed that Parliament transfer to Newfoundland the appropriation of revenues raised within the Island, with the exception of a specified sum to be used in

1. Ibid. This was the Demerara system.

2. C.O 194/82. p 23. Memorandum of Stephen.

perpetuity to support the governor and judges. Thus we are assured that Newfoundland too is to be burdened with a Civil List so dear to the hearts of Colonial Office officials but anathema to all Colonials.

It is interesting to note here in passing that Stephen had not the least idea that the Assembly would reject any of these proposals. Having recently been granted the boon of self-government, the Assembly "might reasonably be expected to be even profuse in the expression, and in the proof, of [its] gratitude".

This theory of a joint legislature was not adopted by Stephen on the spur of the moment. As far back as 1826, he reported to Wilmot Horton that for Newfoundland an Assembly of elected members mixed with Crown appointees might conciliate the feelings of the inhabitants "without incurring the many inconveniences with which a Legislative Assembly upon the old model is usually attended"¹.

On March 2, 1832, in accordance with Stephen's suggestions there was passed under the Great Seal of Great Britain a Commission appointing Sir Thomas John Cochrane to be Governor and Commander-in-Chief in and over the Island of Newfoundland, the coast of Labrador, etc; and authorizing him to convoke a Legislative Assembly of the Colony².

Though Lord Goderich, the Colonial Secretary, had accepted Stephen's report in its entirety, he too was chary

1. C.O 194/73. Stephen/Wilmot Horton, 16 September 1826.
2. His Commission and Instructions are printed in Joint Appeal. Labrador Boundary dispute. Vol.II, page 723 ff.

of asking Parliament to set a constitutional precedent by introducing the joint legislature system into Newfoundland, feeling, as did Stephen, that the thing could be accomplished more readily and with less chance of friction by an act of the Colonial Assembly.

Cochrane's instructions varied little from the standard formula and in the words of Cochrane were "in many cases obsolete and deviated from in every colony"¹. In one instance, however, there was a difference. "The clause prohibiting the governor from giving assent to any tax affecting the trade and commerce of the mother country is [was] omitted"². Cochrane's instructions were to the effect that he should not "assent to any act imposing discriminatory duties on British produce or taxes for other purposes than those of raising revenue". The omission of this clause by the Colonial Office was merely a recognition that it was a dead letter and was being completely ignored by the governments of all British Colonies where Assemblies had been established. and who had received the instructions containing it. But he that as it may, the question of colonial powers of taxation was to cause serious trouble later.

In this chapter an attempt has been made to establish the political foundation upon which the edifice of representative government in Newfoundland is to be erected. It already begins to be

1. C.O 194/85..Cochrane/Goderich, 12 March, 1833

2. C.O 194/85, p. 106. Cochrane/Assembly. 4 March, 1833.

obvious that it will not be "founded upon a rock". Political experience is almost completely lacking; a large body of Newfoundland opinion is opposed to the introduction of representative institutions; officials at the Colonial Office realize that the system they are introducing has serious defects; and these same officials have so far misjudged the Newfoundland temperament as to confidently believe that a new system, more likely to succeed, will be substituted for the old, with a modicum of effort, as soon as the first Assembly convenes. Political inexperience in Newfoundland, political misjudgement in Whitehall, opposition in high places, and a system of Government which has never been an unqualified success, combine to create a foreboding that the structure is being laid upon sand.

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CHAPTER TWO

THE SOCIAL SETTING

In the preceding chapter the political scene was set and some attempt made to indicate structural weaknesses in the politic foundation. The object of this chapter will be to establish the social setting with a view to determining the readiness of Newfoundland society to take upon itself a large share in the administration of its own affairs.

On September 4, 1832, there was published in St. John's a proclamation of William IV, giving to Sir Thomas Cochrane by Letters Patent, under the Great Seal, bearing the date at Westminster, March 2, 1832, authority to summon a general assembly of the freeholders and householders of Newfoundland.

The proclamation stipulated that every man of twenty-one years and upwards, of sound understanding, a natural born or lawfully naturalized subject, who had never been convicted of any infamous crime and who had for two years, next immediately preceding the day of election, occupied a dwelling on the Island as owner or tenant, would be eligible to be a member of the assembly. It was further proclaimed that every man who had for one year occupied a dwelling as owner or tenant and had fulfilled all other requirements above stated, would be eligible to vote.

At first glance this appears to grant practically universal male suffrage but a closer look will indicate that this is not necessarily the case. It is true that qualifications were set very low but nevertheless there must have been many men in the colony who neither owned nor rented a home. All those

living under the roofs of parents or parents-in-law, as well as many itinerants who were unsettled because of recent arrival in the Colony or light-footed from inclination were automatically excluded. This fact is borne out by complaints which arose at the time of the election that as many as five or six or even more who lived in the same house had voted. It is true that no great wealth was required for the ownership of a house in Newfoundland, for many of the fishermen's dwellings were merely shacks erected with a minimum of labour and at practically no expense.

We get some idea of the extent of the franchise if we look at figures for the first election. In the district of St. John's approximately 3,000¹ voted out of a total population of about 15,000. Assuming that one-third of the population was under twenty-one years of age and that half of the adults were female we find that approximately 5,000 men over twenty-one lived in the district of St. John's. The vote was therefore three-fifths of the total or sixty percent and, since we can further dismiss those who did not exercise the right to vote, we can draw as a fairly safe conclusion that the franchise was widely held. This is not an altogether surprising conclusion when we remember that this was the era of reform but to Cochrane and others of his persuasion it was a disturbing one.

In a letter to Stanley, Cochrane states that the qualifications laid down for voters has resulted in almost universal suffrage and as a consequence "the Roman Catholics

1. Public Ledger. November 13, 1832

who are a majority among the lower classes have the choice of representatives in their hands and, since they are completely subservient to their clergy (who take an active part in politics), it follows that the clergy control the representatives to the legislature" ¹.

This statement was not strictly true when applied to Newfoundland as a whole, though it did apply to the district of St. John's from which he was writing. In that district the Roman Catholic section outnumbered all Protestant groups combined by more than two to one, the actual figures according to the census of 1827-28 being 4951 Protestants and 10,214 Roman Catholics. Actually, the only other districts where Roman Catholics predominated were Ferryland and Placentia and St. Mary's. In five districts, Conception Bay, Bonavista Bay, Trinity Bay, Fogo and Fortune Bay the Protestants held a substantial majority while in the ninth district, Burin, the numbers were nearly equal.

An examination of the following table showing districts, boundaries, and apportionment of members will show that if the electorate voted on a strictly denominational basis the membership of the house would consist of six or seven Roman Catholics and eight or nine Protestants. Insofar, then, as statistics may be trusted, they show that Cochrane's conclusions lack validity for the whole Island but are justified in St. John's, the district with which he was particularly concerned during the first election.

1. C.O 194/85. p. 370. Cochrane/Stanley. 26 December, 1833.

	NAME	BOUNDARIES	MEMBERS
1.	St. Johns's	Petty Harbour to Broad Cove	3
2.	Conception Bay	Broad Cove to Bay Verds Head	4
3.	Fogo	Cape St. John to Fogo Island	1
4.	Bonavista	Cape Freels to Cape Bonavista	1
5.	Trinity Bay	Cape Bonavista to Bay Verds Head	1
6.	Ferryland	Petty Harbour to Cape Race ✓	1
7.	Placentia & St. Mary's	Cape Race to Rushoon ✓	2
8.	Burin	Rushoon to Garnish	1
9.	Fortune Bay	Garnish to Bonne Bay	1

With reference to the table it should be noted that the Bonne Bay referred to is not that located on the North West Coast but rather a settlement on the South Coast of Newfoundland some four miles west of Great Jarvis and presumably the place now called McCallum Bay.¹ This appears to be an illogical point at which to terminate the district unless there had been another district covering the remainder of the South Coast. It is certain that at this time practically every cove on the coast was inhabited² and there were several centres where there was, comparatively speaking, a considerable population. Why so many people should be deprived of the right to representation is difficult to determine. It might be conjectured that the person at the Colonial Office who prepared the divisions based

1. Archdeacon Wix states that he left Great Jarvis and sailed four miles westward to Bonne Bay. McCallum Bay is still the boundary of an electoral district.
2. Wix' Six Month's of a Newfoundland Missionaries Journal, London, 1836. Wix' visits prove this point conclusively.

his decisions on information obtained prior to 1815 when that portion of the coast was largely uninhabited but it is inconceivable that a copy of the 1827-28 census was not readily available. In any case the Governor and Council of Newfoundland had authority to use their knowledge of local geography for the purpose of rectifying the boundaries and they must certainly have been aware that a South Coast population existed. Indeed Cochrane had first hand information since he had visited that coast himself.

It might also be noted here that the District of Fogo extended eastwards as far as Fogo Island while the District of Bonavista began at Cape Freels. This leaves, apparently, a gap consisting of that portion of coast lying between Cape Freels and a point on the shore due south of the eastern extremity of Fogo Island which would fall in the vicinity of what is now Musgrave Harbour. Since this portion of the coast is straight with very few harbours it may not have been much frequented but nevertheless it is most probable that there were some people in the area and even if there were none it would have been quite reasonable to include it in one of the districts bordering it. The most likely possibility is that its omission was another oversight on the part of the Colonial Office which the Governor either did not notice or did not take the trouble to rectify. As far as I have been able to ascertain neither the inhabitants of this area nor indeed those of the South Coast took any active notice of the fact that they were disenfranchised. It is somewhat of a paradox that any portion of the Newfoundland coast should be excluded, for Cochrane's Commission had made him Governor and Commander-in-Chief in

and over the whole of Newfoundland and its dependencies. It might be argued that the population was not dense enough to warrant representation from the Treaty Shore, but at least one area, that from Cape Ray to Bay of Islands was well settled ¹. The people of the Codroy Valley and the St. George's-Port au Port area were particularly prosperous, engaged for the most part in agricultural activities. But even if the population was scattered the Treaty Shore could have been shared between the two districts of Fogo and Fortune Bay; though the cost of setting up polling stations from Cape St. John to Bay of Islands may not have been warranted by the numbers eligible to vote.

It seems obvious though that political expediency at this time when a real effort was being made to foster friendly relations with France would not admit of offending that nation for the sake of granting voting rights to a handful of illiterate fisherfolk.

The Colonial Assembly did not, however, hold to this view and were inclined to the opinion expressed by Reeves that the French merely had a licence to come and go during the fishing season ². They gave voice to this opinion when they passed an Act to increase representation in the Assembly by including among others a representative from the St. George's Bay area. Royal assent to the bill was withheld ostensibly because the Imperial Parliament was awaiting the census returns but actually as an expedient of foreign policy.

1. Duplicate Despatches to Colonial Office (G.10,5.)
Captain Polkinghorne/Admiral Sir Charles Paget. 12 September 1838
2. Quoted in Thompson, F.H. The French Shore Problem in Nfld
An abridgement of an unpublished Ph.D thesis at the Library of Rhodes House, Oxford, 1953, pp.53-54.

In pursuing the above argument we have had occasion to note that the population of the South Coast had increased greatly during the first two decades of the nineteenth century. Before 1815 there were very few settlers west of Placentia Bay and even the west side of that Bay was practically empty. Burin, before 1815, was almost unknown, yet by 1832 it had become the centre of an electoral district. During the Napoleonic Wars many British subjects had taken up residence on St. Pierre but in 1815 these were moved to Fortune Bay, this group being the vanguard of an influx that was to occupy the whole South West coast. In 1818 there were only three or four families between Cape La Hune and Cape Ray but in 1839 there were settlers in almost every cove and some centres had grown quite populous.¹ Burgeo, for example, had approximately 700 people.

It may seem at first glance that this was a peculiar occurrence, for the South West coast had not much to recommend it to fishermen-farmers. The cliffs were precipitous, the water rough, the fish in deep water and the soil scant and stony.

But a great attraction existed in the form of the hard cash available from the French at St. Pierre and from the banking fleet that came out from France each spring. To slaves of the credit system cash was so scarce as to be irresistible. The invaluable product that the South Coast fishermen had to offer in exchange was nothing more romantic than herring, caplin, and squid, the bait without which the French fishery could not successfully be carried on.²

1. This information is from Thompson but Archdeacon Wix' Journal bears it out.

2. Frowse, D.W. A History of Newfoundland. London 1895. p.577-8

It is all too obvious to us that this traffic could not but have a detrimental effect on the Newfoundland fishery and on its position in World Markets. Actually Newfoundland's competitors were being aided and abetted by the greed of the few to the general disadvantage of the whole colony. Even had the trade been in bait alone the situation would have been serious but accompanying the bait trade was wholesale smuggling which after 1832 deprived the Colonial Government of much needed revenue.¹

But even this does not constitute the whole story. The French were being paid a substantial bounty on codfish by their government and it was sometimes their practice to buy fish from South Coast fishermen at a price less than the bounty. Newfoundlanders were willing to do this because their entire catch was mortgaged to the merchant with whom they dealt and they knew that, small or large, their voyage would not net them sufficient to have a cash surplus. In their opinion the only ones to suffer from their cupidity would be the merchants with whom they had no sympathy. It is easy to look back and decry the "greed and stupidity" of these men but man's selfishness has always been a fairly constant factor and it is not to be doubted that most fishermen would respond in exactly the same way today if faced with a similar situation.

Nevertheless, the fact remains that the Coast had been settled quickly and as is easily imaginable social institutions had not had time nor opportunity to become established. Life was rugged. Each family, as a general rule,

1. Capt. Bennett, H.M.S. Rainbow/Prescott. August 31, 1836.
Printed in appendix to Journal of Assembly 1837

had two "houses",¹ a summer shack on the coast near the fish and a winter "tilt" some distance inland near the caribou wintering grounds. These dwellings were usually built of logs "chinned" with moss. Many of the winter tilts had chimneys² built of wood since brick was unobtainable and the men had neither the skill nor energy to build with stone. This meant, of course, that the chimney caught fire quite frequently and when a fire was burning somebody was always close at hand with a pump, home made from the barrel of an old musket, to keep the fire from getting out of control. On the other hand the Summer houses of Fortune Bay had chimneys lined with tin which lasted several years and here fires occurred much less frequently.³ Household furniture was very crude and it was not uncommon to find an entire family sleeping in one bed.

Actually conditions varied even from settlement to settlement. In one community one might find industrious men and tractable women who made their own clothes, kept their houses decent and behaved in a manner befitting the housewife; in the next settlement might be found dirt, disease, drunkenness, and licentiousness.⁴ /

Indeed Archdeacon Wix found on his journeys many women who customarily went about in a state of undress which would have been shocking to a more worldly man than his Reverence.

1. Bonnycastle, R. Newfoundland in 1842 Vol. 2. London 1842. p. 125
2. Ibid. cf. Wix p. 64-65
3. Wix. Six months of a Newfoundland Missionaries Journal. p. 65
4. Ibid. page 61. cf. page 171.

The staple diet on the South Coast was fish in the summer and venison in the winter. Caribou was extremely plentiful and were killed in large numbers. On the East Coast the meat of the seal as well as that of sea birds added variety to the diet of bread, potatoes, and molasses.

Rum was the most common beverage and almost everyone would as lief forego his food as his "morning" as the stiff drink of rum which began the day was called. The habit of smoking was also indulged in by the women who used short-stemmed black pipes.

Conditions on the East Coast were on the whole somewhat better than those described above. The East Coast had been longest settled and the hardy settlers had been able to carve a considerable equity in the colony from the forbidding Atlantic and the not too friendly land. The more industrious had built for themselves more substantial homes than were common on the South Coast, while the more fertile soil permitted a comparatively extensive agriculture.

The east side of the Avalon peninsula and the North shore of Conception Bay were quite populous, together containing more than half of the total population of the Island. In these areas a fairly large number of businessmen were established who lent a "cultural tone" to the otherwise rough and ready colony. It must be borne in mind though that these same areas contained large numbers of newly arrived immigrants who were improvident, unsettled, and primed for trouble.

The town of St. John's¹, the seat of Government, and rapidly assuming the position of most important distributing centre in the Colony, was a conglomerate in every respect.

1. For a description of St. John's, 1842. See Bonnycastle p. 228 ff.

The houses straggled along the side of a steep hill overlooking the busy waterfront. The houses of the well-to-do merchants stood out conspicuously among the shacks of the fishermen. The streets roamed in every conceivable direction having been built to conform to the haphazard manner in which the houses had been located. When it rained the lower part of the town was deluged by floods of water pouring down the steep incline. Mud was everywhere and in the muddy paths and streets roamed pigs and other assorted livestock. Carts lumbered through the narrow lanes bearing all manner of freight from the wharves, including fish offal and other equally offensive material, some of which not infrequently dropped to the ground. Prosperity mixed with poverty, grandeur with squalor. Crowning the hill on which the town was built was Government House, erected by Sir Thomas Cochrane as a residence for himself and his successors, and undoubtedly suggesting graphically to the indigent fisherman in his shack the great gulf that was fixed between the two classes of society in St. John's.

Elsewhere on the East Coast there were other fairly large mercantile centres, Brigus, Harbour Grace and Carbonear. Here an element of "respectability" softened the rough edge of society but here as in St. John's the striking difference between the supplier and the supplied was obvious. Farther to the north the town of Trinity¹ had become well established. It was a busy port, exporting and importing and supporting a comparatively large population. Unlike the Avalon Peninsula and Conception Bay it had received very few immigrants from the latest influx, simply

1. For comparative importance of Trinity see Prowse (1895) p.193

because it was a Protestant town and the immigrants who were largely Roman Catholic settled among their fellows.

The East Coast also boasted several other long-settled and well-established communities, and on that Coast society had begun to lose those qualities of elemental living associated with the "frontier" and still much in evidence on the South Coast. In all cases, therefore, where it is necessary to refer to conditions in Newfoundland, it would be wise to remember the comparatively-speaking advanced social character of the East Coast.

Throughout the Island illiteracy was very common though it was not unusual to find a family in which the art of reading and writing had been preserved. But short of an occasional Bible and prayer book reading matter in the districts remote from St. John's was in extremely short supply.¹

Schools, as might be expected, were also few and far between though great progress had been made from the time when Gambier had established the St. John's school in 1804². This school was still in operation and was being subsidized by the Government to the extent of £104 annually. In addition the Newfoundland and British North American School Society, which had begun its operations in St. John's in 1825 had by 1832 extended its services to other communities and employed 22 teachers to cope with 1756 children and 242 adults. This group also received a subsidy of £100 per year from the Government. In addition to the above subsidies £500 were

1. This is true of the South Coast particularly according to Wix.

2. C.O 194/85. Cochrane's report to Assembly, Jan 7, 1833

allocated to Gambier's school and the British North American School Society for the purpose of erecting school buildings. > Meanwhile the basis of the denominational educational system had been laid, for in 1832 the established church was operating 35 schools employing 35 teachers. The St. John's Asylum School, built in St. John's to teach poor children of all faiths, was also operating at this time ¹.

It will be apparent from this summary that most Newfoundland children got no formal education, though a few, mostly in St. John's and its immediate vicinity, did learn the rudiments of reading, writing and arithmetic. Cochrane meanwhile regretted that there was no seminary for the higher classes. This resulted in children having to go abroad and "run the risk of returning with feelings estranged from the land of their birth and with prejudices which (might) never be wholly removed" ².

The spiritual welfare of Newfoundland fishermen was no better served than were their educational needs. The larger centres of population had churches and clergy, but in hundreds of small communities religion was virtually extinct; though dim flames still flickered in the consciousness of some, who had not been long enough out from the "Old Country" to have forgotten, or who had been brought up "in the nurture and admonition of the Lord" by parents more zealous than the majority of their fellows. It is true that missionaries made long trips occasionally, calling at many settlements, baptizing, marrying, burying and leaving in their wake a scattering of lay readers inspired for the moment by the evangelism of the preacher.

1. Ibid

2. Ibid

But these visits were separated not by months but by years. Since the Marriage Act of 1817¹ prohibited non-conformist clergy from performing the marriage ceremony adulterous relationships were common, bastardry was rife and even incestuous relationships were met with fairly frequently².

Overindulgence in rum was an almost universal failing and any excuse was a good one for getting drunk. Brawling, violent robbery and even murder went unpunished.

One must not imagine that there were no decent people settled in Newfoundland. There were. But scattered throughout the whole colony were lawless individuals whose activities went unchecked because of a scarcity of police and the isolation of many settlements.

Communications, which even today are a problem, were extremely bad in 1832. There were no roads except one which had been partly built between St. John's and Portugal Cove. Travel was by sea in summer and even this was sometimes hazardous since accessibility of fish was always considered as being more important than snug harbours with safe approaches. Wood trails between settlements had been established but these were used mostly in winter when the bogs and ponds were frozen and overland travel was fairly simple. The Indian snow-shoe or "racquet" had been adopted in most areas so that snow did not present a great problem.

The economy since it was based on a single industry was obviously not a stable one; particularly since that one industry was subject to so many vagaries. A late spring, inclement weather, lack of bait, a rainy autumn, unfavourable

1. Wix makes several references to this. It must be remembered that many people considered non-conformist marriages perfectly all right. cf. Pedley. History of Newfoundland.

London. 1863 p.377

2. Wix. page 171.

foreign market conditions, all these and indeed others as well could throw the whole colony into a state of near famine. Where the soil was favourable the more energetic settlers had garden plots and produced some vegetables, particularly potatoes, but these crops were inconstant and when a bad growing season combined with a bad fishing season, dire distress was everywhere apparent.

If it had been possible for the people to put by their surplus in good years to assist them over the hard times, all might have been well, but the credit system effectively prevented this. For by virtue of this system very little actual money came the way of the fishermen. The merchants, who did not usually consider themselves as residents but rather as transients here to make, as quickly as possible, enough money to enable them to return "home" and live out their days in "middle class respectability", advanced to the fisherman each spring fishing equipment and food to conduct the fishery that year and feed his family during the summer. In return, the fisherman mortgaged his entire catch to the merchant and in the autumn when "squaring-up" time came, he usually found that at best he had caught enough fish to pay his bill and buy the bare necessities for the winter; at worst that he could pay neither for the food nor equipment he had received that spring, and consequently had to seek further credit to carry him through the winter and equip him again for the next fishing season. While some merchants faced with a whole community which had had a poor season were unable or in some cases unwilling to extend this extra credit, most of them were only too willing to accept a moral mortgage on a fisherman's lifelong production.

In fairness to the merchant it must be said that he did perform a necessary function. He served as a source of supply and the very fact of extending credit must have been responsible for the averting of much hardship. His exact role in the Newfoundland story and whether the system that evolved was the best one under the circumstances could very well be the basis of a special study which cannot be attempted here. But whatever the case, the Newfoundland fisherman was a slave of the economic system, who could look forward to no surety but a pauper's grave.

While it is true a fairly large number of East Coast residents earned a little extra money each year by participating in the seal hunt, so unaccustomed were they to having money that it was usually squandered ¹.

Life was, of course, not all a tale of woe. There were certain advantages. Firewood was readily attainable in most areas and the materials for house building and ship building could be had quite near almost every settlement. Thrown on their own resources the fishermen became excellent carpenters and shipwrights, either carrying on the traditions brought from across the ocean or developing new methods and skills to suit the circumstance of their environment.

Wild life, in the form of birds, caribou, seals and fish, was abundant and a sufficient quantity of protein food at least, was available to most people. Wild fruits and berries also grew in abundance so that actual starvation was rare and indeed, for the provident soul, almost impossible.

Organized local government was completely lacking.

1. C.O 194/85 p.14. Memorandum to Assembly.

That which in settled colonies had been brought from home, planted and nourished to become the backbone of civil administration, had, because of the haphazard illegality of settlement in Newfoundland, never been introduced. It is almost certain that the first settlers came from areas where they had been subject to local government but lacking leadership, that which might have been, under favourable conditions, transferred to the colony, was left behind with many other traditions. So a new tradition of aversion to authority, local or otherwise, was planted, flourished, and became an integral part of Newfoundland's history.

It has previously been mentioned that the population of St. John's and Conception Bay districts had been considerably augmented by the introduction of large numbers of immigrants who had not as yet been assimilated into the Island society. They were in the main from the South and West of Ireland, a fractious group¹, who had not as yet found the social and economic betterment, the search for which had led them to leave their native land.

The employed portion of this group were largely servants or fishermen but there were among them many unemployed and these particularly were ready for trouble. Their critics asserted that they were ever willing to submit all argument to the logic of force and that they respected no authority but the church to which they were servile. While this is undoubtedly a prejudiced opinion it is obvious that the Church could exert much influence for good or ill and wise church leadership could contribute much to the maintenance of the public peace.

1. Pedley. page 295.

The Roman Catholic bishop of the day, Rev. Michael Anthony Fleming, together with several of his clergy newly out from Ireland, promulgated the idea that the Irish Catholics were numerically superior in Newfoundland and ought to possess political power concomitant with their numbers¹ .

The foremost spokesman for the new idea was Rev. E. Troy, Chaplain to Bishop Fleming, but it is almost a certainty that he expressed the Bishop's views. When, however, it became necessary to have something written the man called upon was John Valentine Nugent, an ex-schoolmaster from Ireland, who had to flee his home because of "his violence in politics". He had had legal training and spoke and wrote fluently.

Not all the Roman Catholics in Newfoundland followed the lead set by the new Bishop and his recently imported clergy. Many of the old guard protested vigorously. Typical of these was Father Browne who wrote in 1838 that "The present disorganized state of society here originated solely with and from Doctor Fleming ... whose ambition is such that he will not be content with anything less than absolute power, civil and ecclesiastical"² .

Other evidence of dissatisfaction with Bishop Fleming's policies is seen in the first general election campaign. At that time the Bishop gave his support to John Kent, his brother-in-law newly out from Ireland, and Dr. William Carson ever the champion of the liberal cause and thus allied with the Bishop, whereupon many of his parishioners threatened to alienate themselves from him and entered a Candidate of their own in the person of a

1. Duplicate Despatches to the Colonial Office 1836-37, Des. 22, Enc.
2. G 105. Duplicate Despatches to the Colonial Office 1838-39
Father T. Browne/Crowdy. Jan. 9, 1838

merchant, Kough¹. The Bishop was not prepared to make an issue of it and Kough defeated Carson in the election.

It is noteworthy that John Kent was elected at the head of the poll, for since he was a comparative newcomer it is fairly certain that most of his votes must have come from fellow-countrymen who like him were recent immigrants and who in this contest forecast the political force they were to exercise during the next ten years in areas where they had settled.

The election itself seems to have been conducted in a reasonably orderly manner, only two complaints of illegal practice were brought forward. Both these were in the form of petitions to the Assembly, one from William Carson, and the other from Hugh Alexander Emerson. Both petitioners claimed that they should have been returned in their districts, St. John's in Carson's case, Bonavista in Emerson's.

The manner of voting did not lend itself to an altogether peaceable proceeding. Polling stations were not established in every community but rather in strategically located centres throughout the district. To each of those centres in turn the returning officer would travel and take the vote, which was given orally and not by secret ballot. Each candidate would muster his supporters and present them to the polling clerk in "tallies" of five or more depending on local agreement. Since transportation was difficult provision was made in the election proclamation for those who lived fifteen miles or more from a polling station to submit their ballots in writing subscribed by two witnesses.

1. C.O 194/85. Cochrane/Stanley. 26 December 1833

The candidates usually accompanied the returning officer on his round and if at any time it was felt that one candidate or the other was assured of victory the other could withdraw from the contest and the poll would then be declared. It was therefore possible that many electors would not have the opportunity of voting.

The one outstanding defect of the system was that the secret ballot was not used but at this time this was a universal failing. This led in some instances to cases of intimidation by threat or by actual physical violence. The case of William B. Row, a candidate in the district of St. John's, may serve as a case in point.

He was a Protestant and a businessman and was therefore supported by most of the large mercantile firms, as a glance at the list of people with whom names of supporters might be registered shows. For that list contained the names of most of the larger St. John's business houses ¹. Be that as it may, Mr. Row was ordered by the supporters of Kent and Carson, to quit his campaign and was threatened with dire consequences should he persist. So seriously did he take the warnings and the demonstrations that accompanied them that he withdrew from the contest. This was an isolated incident at the time but in later elections force was used to great effect by the "liberal" party.

Apart from this the only untoward happenings in connection with the election were those mentioned above. In Carson's case, as he reports it, the candidates for St. John's had entered into a gentlemen's agreement prior to polling day,

1. Public Ledger, September 28, 1832.

by virtue of which agreement each candidate would come forward separately with "tallies" of ten voters. Mr. Kent, says Carson, brought forward two "fictitious candidates" and thus gained three "tallies" to his opponent's one. Mr. Kough, in no wise to be outdone, did likewise, and indeed not only kept even with Mr. Kent but outstripped him. Meanwhile Carson had "tallies" amounting to 400 voters prepared but got no opportunity to present them¹.

Nor was this the only violation with which Kough was charged. In Carson's own words most of Kough's supporters were "paupers and fishermen" with no fixed abode and therefore ineligible to vote. Furthermore, though "splitting" of votes was expressly forbidden by Imperial Statute², which stated explicitly "no more than one voice ... to one house or tenement, several, even six, and seven, and more, eating from the same dish and cooking from the same kettle, were admitted by the returning officer as good voters."

Feeling that the illegally cast ballots would not be counted and that he would therefore win, Carson did not request that the poll be held at Portugal Cove but allowed it to be declared at St. John's where Kough was declared elected with 647 votes to Carson's 622³.

The case of Emerson was somewhat different. In his petition he states that he had led the poll at Bonavista, King's Cove and Keels, whereupon his opponent, William Brown, had withdrawn from the contest. The returning officer had,

1. Journals of Assembly. Wednesday, January 2, 1833

2. 10 Anne Cap. 23.

3. Journals of the Assembly Petition of Dr. Wm. Carson.
Wednesday, January 2, 1833.

however, refused to acknowledge Emerson's victory and had gone on to Greenspond (a Brown stronghold) but had not gone to Cape Freels, a scheduled polling station; for at Greenspond Brown had been declared elected ¹.

Both petitioners begged to have their opponents unseated and themselves put in their stead, but eventually the petitions were withdrawn.

In 1833, Hay² wrote to enquire of Cochrane whether it might be possible to ship some convicts to Newfoundland. Cochrane replied, "not only do we not want any but could profitably transport a few thousand of our population which is increasing beyond the state of the Colony to support it ... [for] during the first thirty years of [the nineteenth century] imports have increased, the codfishery has decreased, and the population has tripled"³. This indicates graphically the state of the colony at this time but notwithstanding the sparse population ⁴, the scattered nature of settlement, the isolation, the poverty, the unsound economy, the illiteracy, the immorality, the lack of religious guidance, the dearth of political experience or tradition, things were on the move by the end of 1832. Despite the untoward incidents above related, elections had been held in the nine districts and the fifteen elected representatives of the people had come to St. John's to take their places on stage as the curtain was raised on the first act of a political production that was to run for approximately nine years.

1. Journals of the Assembly Petition of Hugh A. Emerson. Wednesday, January 2. 1833
2. Permanent Undersecretary for War and the Colonies 1825-54
3. C.O 194/85. Cochrane/Hay. 5th November 1833. p. 336
4. 60,088 according to census of 1827-28.

If the political basis of representative government for Newfoundland shows evidence of weakness, the social structure outlined in this chapter gives no great cause for optimism. An ill-educated public with no political experience, a lack of communications, the absence of any cohesive community spirit, and an unsound economy, together do not present a hopeful picture, but nevertheless one with possibilities of improvement. But add to the scene the fact that society is made up of two groups, one, the fishermen, servants, labourers, tradesmen and the unemployed; the other, the mercantile and official aristocracy, whose interests must clash producing inevitable conflict. Then to this unprepossessing picture add a touch of religious iconoclasm and even the optimist can see the storm clouds gathering.

CHAPTER THREE

THE CURTAIN RISES

The stage has been set. The action is about to begin. As it does begin we shall be bearing in mind the weaknesses that have been noted and attempting to ascertain the extent to which these weaknesses operate to the detriment of sound government.

Before going on to the opening of the First Assembly, however, it might be of interest if we were to take a brief moment aside to meet the principal characters who will soon be on stage.

The man to first hold the limelight will be the Governor, Sir Thomas John Cochrane. During the first five years of his tenure of office Sir Thomas achieved great popularity in Newfoundland. This popularity was not confined to any one class or group but was expressed by spokesmen for all factions.

Patrick Morris says of him in one of his pamphlets "Our present Governor has been since his arrival improving the condition of the country and the people and ... I maintain that he has done more real good to the Colony since his appointment than all his predecessors put together"¹. This opinion was reiterated by both Dr. Carson and Bishop Fleming².

Cochrane was not a brilliant man but he was methodical and had some sound ideas. He was eminently practical and a man of unbounded activity. He took an active interest in the welfare of the Colony and considered it necessary to develop the internal resources of the Island. He encouraged road building, sometimes

1. Morris, P. A View of The Rise, Progress, and Present State of the Newfoundland Fishery. Poole. 1828

2. Pedley. C. History of Newfoundland. London. 1863. p.387.

at his own personal expense and also was a strong supporter of agriculture. He could often be found personally supervising the road building operations or the agricultural operations in progress around St. John's. He often offered personal suggestions to farmers as to means of improving crops and increasing productivity.¹

He was equally active socially and spent a great portion of his substantial income on entertainment. That this was so is perhaps some indication that the charges against Cochrane that he loved ostentation were true. Chief Justice Tucker brings the charge against him that the financial embarrassment of the Colonial Assembly was due to his "inordinate love of power and selfish appropriation to objects connected with his own person or office of all the monies over which he has any control"². As examples of this tendency Tucker cites the construction of Government House and the Colonial Vessel which "he delights to call his yacht". He is, says Tucker, "the source of a greater charge upon the public than any other Governor in His Majesty's Dominions"³.

Another serious charge laid by Tucker, and one more detrimental to his character was that he had great facility in telling a story so that the facts given would be true but stated in such a way as to twist the story into a line favourable to himself. In fact, says Tucker, he "excels in the art of making truth the minister of deceit"⁴. This may have been a legitimate criticism since most Colonial Governors were apt to write their dispatches in a manner that would reflect no discredit on themselves. Indeed the dispatches were often written in a vein

1. Prowse p. 425

2. C.O 194/86. p. 306R. Tucker/Stamley. July 1833

3. Ibid. p.307

4. Ibid. p.308

that the Governors felt would be pleasing to the Colonial Office, the facts of the case notwithstanding.

Cochrane was a Tory and was opposed to the idea of Representative Government for Newfoundland. He felt that the Newfoundland tax potential was so limited as to make the task of self-government economically impossible. Moreover, he could not conceive of the "lower classes" being capable of governing themselves, and suggested instead of an elected Assembly an enlarged Council which would consist of the "principal inhabitants" and the officers of Government "ex-officio". There are many who would say that subsequent events proved him not altogether mistaken.

In all justice it must be said that he conscientiously tried to make the Government he introduced succeed, and he is not deserving of the extreme criticisms levelled against him at the time of his departure.

The man who in 1833 was the Governor's most severe critic was Chief Justice Tucker. He also had been held in high esteem in the Colony, gaining admiration during Cochrane's absence. Even the Governor who was involved in a feud with Tucker at the time wrote to Lord Goderich, "Mr. Tucker, to good natural abilities, adds a very fair portion of legal requirements, particularly considering that he did not make the bar his profession"¹.

Nevertheless Tucker appears to have been a man who held his own opinion in too high esteem. He would brook no opposition to his viewpoint, and a criticism of his decisions, to again quote Cochrane, "deprive him of all self control and ...

1. C.O 194/85 p. 114R. Cochrane/Goderich. 11th March, 1833

produces manifestations of temper which ... were better avoided.¹

That this opinion is a biased one goes without saying, nevertheless subsequent events provide a measure of justification for the statement.

Judge Tucker's resignation meant a considerable sacrifice on his part. His salary as Chief Justice was substantial especially since it had been augmented by a pension of £365 per annum from his previous employment in Nova Scotia. That he was willing to give up both salary and social position to uphold an opinion which his legal knowledge must have told him was based on faulty reasoning is an indication of a stubborn pride, though a defender might say it was merely an indication that he had the courage of his convictions.

Whatever the case, many people in the Island continued to think highly of him even after his resignation, and for several days preceding his departure from Newfoundland the local press was filled with accounts of meetings held and speeches made, all expressing the greatest degree of admiration for his character as a judge and as a citizen, while lamentably deploring the fact that the country was to be deprived of his presence.²

Another gentleman with whom we ought to have at least a nodding acquaintance is Dr. William Carson. From the time of his arrival in Newfoundland in 1808 he had assumed the role of champion of the poor. He had worked assiduously to build a good practice for himself and had sponsored projects to help the poorer class³. He was very outspoken and was vehement both in his speech and his writing. He quarrelled with Cochrane,

1. Ibid

2. C.O 194/86. p.323 - 24, Tucker/Stanley. July 1833

3. C.O. 194/88 p.95 ff Petition of Dr. Carson to the Secretary of State.

who despised him as a "democrat", and did not fail to make his opinion of the Governor known at the Colonial Office. He was a close personal friend of Bishop Fleming and sponsored the political cause of the poor Irish. He was a liberal and scorned the pretensions of the local aristocracy, though he, himself, built one of the finest estates in the country. This estate, "Billies" afterwards called Rostellan, was an indication to some of his critics that at heart he was one of the aristocrats, but the fact that he was not accepted as such turned his aspirations to bitterness.

He was defeated in the first election and this somewhat surprising result is attributed by Frowse to the fact that a rumor was circulated on election day to the effect that Carson had stated that he didn't care who won as long as those "yellow bellies" from Wexford were defeated. Whereupon all the Wexford men had given their votes to Kough, a native son¹. Be this as it may, his fiery personality made a tremendous impression on the Newfoundland scene from the moment of his arrival until his death.

Other men whom we should mention in passing are Patrick Morris, John Kent, John Nugent, and James Simms. Patrick Morris was an Irish merchant of St. John's who joined with Carson in agitation for Representative Government. Though he wrote and spoke fluently and acquired a reputation as an orator he took a back seat to Kent and Nugent in the political antics that followed 1832, and finally joined the Council which must have been accepted by his fellow liberals as a betrayal. John Kent, a political neophyte, and newly arrived

1. Frowse does not give the source of this story and we may attribute it to local legend, probably based on fact.
cf. Pedley p.295

from Ireland, was the type of the new immigrants, vociferous, belligerent and extremely popular. He led the poll at the first election and continued throughout the first two Assemblies to hold popular support. John Nugent was a fiery Irish school teacher and lawyer who spoke and wrote brilliantly for the liberal cause. James Simms was a Tory, an Anglican and an aristocrat of the old school. Dignified and slow spoken, he had the ability to be bitingly sarcastic and ever fought any measure that might tend to advance the liberal cause to the detriment of his class.

On January 1st, 1833, Sir Thomas Cochrane, with all pomp and dignity opened the first session of the Colonial legislature. The legislature thus called into being was bicameral. The lower house or House of Assembly consisted of fifteen elected members representing districts as set out in the table in chapter two above, and headed by the Speaker. The upper chamber was the Council, which consisted of six members, five of whom were officials, holding office "ex officio". They included the Chief Justice of the Supreme Court, the Commandant of the troops, the Attorney General, the Colonial Secretary, and the Collector of Customs. The sixth member was appointed from the local aristocracy, the necessary qualifications being Anglicanism and Conservatism.

This Council also served as the Governor's Executive Council, the only distinction being that when sitting for legislative purposes the Governor was forbidden to attend.

But before the newly elected Assembly became a duly

constituted body the Governor presented to it an address, outlining the formal organization of Parliament and comparing it with the British Model with respect to the rights and privileges of the several branches, insofar as these "rights and privileges are applicable to the condition of a dependency on the parent state". Nor was the occasion lost on which the munificent British Parliament might be praised for the great boon which had been granted; for, declared Cochrane, "all the various measures that have been pursued, or the changes that have from time to time taken place, to meet the varying conditions of this Colony ... [dwindle] into insignificance when compared with the momentous measure now about to be called into operation in compliance with the desires of your fellow countrymen, and in the hope of promoting their prosperity "¹ .

It could with justice be here interjected that all the measures that had been taken to meet the varying conditions of the Colony did not need comparison to cause them to dwindle into insignificance, but since it is an occasion of note, and since on such an occasion the oratorical flow should not be stopped by dams of reason, we will let the matter pass, and permit Cochrane to continue.

When he had concluded his outline of the form of the institutions about to be introduced he proceeded with a valiant attempt to prevent the development of friction between Council and Assembly. Aware that the canker of dissension was immobilizing similar institutions in other colonies, and fearing that a similar disease would infect the infant legislature of Newfoundland, he determined to forewarn the members that they

1. C.O. 194/85. Cochrane/Goderich. Report of Address to Assembly. January 3. 1833.

might be forearmed. While in no way denying the right of each branch of the legislature to defend its own privileges, he emphasized the importance of avoiding any infringement of the privileges of the other branch and at the same time interpreting any supposed infringement as liberally as possible. To permit details of little actual import to lead to differences that could produce no other effect than loss of dignity and general harm to the country, was not the course that would be followed by those genuinely interested in the welfare of Newfoundland. So Cochrane reasoned, and whether it was his advice or some other factor it is a fact that the first Assembly was moderate in its actions and with one or two exceptions the Assembly and Council worked together very well.

When Cochrane had concluded his lecture the business of getting the Assembly formally operating was begun. Mr. John Bingley Garland, the representative from Trinity Bay, was elected speaker, and the houses thereupon assembled to hear Cochrane's opening speech.

In his address Cochrane outlined the state of the Colony and suggested a frame of reference within which the legislators might work. His proposed legislation included attention to schools, roads, navigational aids, the state of the law in the colony, quarantine laws, the establishment of a militia for the purpose of keeping the peace in the outports, the plan for which had already been approved by the Imperial Parliament but had been deferred because of the expense involved, the establishment of a savings bank which would encourage habits

of thrift among a population of spendthrifts, and for which the plan had also received Imperial approval, as well as other worthwhile projects, including police and fire protection for St. John's and some system of town planning¹.

All this would have made an admirable programme could it have been brought to fruition, and it was most unfortunate that circumstances to be related hereafter prevented such a happy consummation.

The obstacle that persistently blocked efforts of the Assembly to fulfil the function for which it had been brought into being was financial, and before progressing any further it is necessary to take a look at the financial structure upon which the civil administration of this colony had been built and the system that the Colonial Office had thought fit to devise for the assumption of financial responsibility by the Colonial Government.

Previous to 1832, all duties and revenues raised in Newfoundland were paid into the military chest, a fund of the British Treasury. The Governor had power to issue warrants against the Treasury for the funds necessary to the administration of the Colony without reference to the revenue. Treasury subventions made up any deficit between current expenditure and revenue.

Under the new constitution all revenue at the disposal of the Assembly were to be paid into the Colonial treasury, while all revenues reserved to the Crown would continue to be paid into the military chest. The Governor was still to be responsible

1. C.O 194/85. Cochrane/Goderich. January 3. 1833.
Copy of address read to Assembly and Council.

for the issuing of all warrants, but these warrants when drawn on the military chest were to be subject to Treasury approval; when drawn on the Colonial Treasury they were to be subject to supplies voted by the Assembly.¹

Though the Howick Act of 1831 had given effect to measures which gave considerable financial control to other colonies, Newfoundland was accorded different treatment. All duties levied within Newfoundland by any British Statute² were placed at the disposal of the Assembly but from the gross proceeds was to be deducted the cost of collection, and in addition the sum of £6,550 was reserved for the salaries of a permanent Civil List made up of the Governor, judges, Attorney General, and Colonial Secretary. Moreover, an account of all expenditures had to be rendered to the Imperial Government so that in reality an effective control was maintained over Newfoundland finances. This eventually led to a clamor against disparatory treatment and a demand for equal rights.

Realizing the bitterness of the struggle that was being waged in connection with the Civil List question in other colonies, it is to be assumed that the Colonial Office gave much serious thought to this question. The conclusion which was apparently reached was that the Newfoundland Assembly, overflowing with gratitude for the very fact of its existence, would consent to a less advantageous arrangement than had been wrung unwillingly from the parent Government by the Canadas. But since the arrangement did in fact constitute disparatory treatment it led eventually to trouble.³

1. Morgan, M.O. "Financial affairs of the First Nfld. Assembly" The Nfld Quarterly, vol. LIII No. 2. June 1954. p.14.
2. 2 & 3 William IV, cap. 78
3. C.O 194/87. p. 48. Cochrane/Stamley 29 March 1834
cf p. 84. Petition of Assembly.

Another matter that had to be decided was whether the Assembly should simply vote supplies in a lump sum and leave details of expenditure to the executive Government or whether the supply bill should detail expenditure. The solution reached was to permit the Assembly "while avoiding interference with the prerogative powers of the Crown", to detail expenditures under specified headings.

On only one occasion was there a deviation from this arrangement. At that time Cochrane was advised by Treasury that an expenditure of £853. 6s 11d drawn from the Military Chest had been disallowed. He interpreted this information as a demand for a refund and without the formality of a supply vote, issued a warrant on the Colonial Treasury. This was an unconstitutional action and Cochrane knew it, but since the expense was a legitimate Colonial one, covering the expenses of the first session of the legislature, he did not feel that anyone would raise serious objections to his action. As a matter of fact the Assembly did not argue the validity of the expense too strenuously, but rather, strongly deplored the manner in which the money had been disbursed. There was justification for their attitude, since control of the purse is the most jealously guarded privilege of lower houses in the British system and without this control their position could soon become untenable.

Nevertheless, the Colonial claim for a refund on the grounds that Cochrane, as representative of the Crown, had erred in judgement was silly, since his error did not in any way lessen the responsibility of the Assembly to pay its own operating expenses. When the Governor had admitted his fault and had been

rapped on the knuckles by the Colonial Office, thus proving that no one was attempting to establish a precedent, the matter should have been dropped.

Continuing his address to the Assembly Cochrane advised the members that the British Government would meet all expenses of government until April 1st and that as a consequence all colonial revenues were appropriated to the Crown until that time. After that date the new Assembly was to be responsible for the expenses of government but how this was to be accomplished was not hinted at, though they were advised that there was a current deficit of £6,573.

Actually, Lord Howick, in preparing the estimates for Newfoundland, had based his calculations on the customs collections for the year 1832, which amounted to some £16,000. This was a most ill-advised, if not an actually stupid conclusion, since receipts in that year were higher than had ever been realized before. In fact, the average for the five years preceding 1832 was only £8,600¹.

Faced with these unpleasant realities the Assembly looked around for a source of money and immediately called to mind the surpluses that in past years had been paid into the British Treasury. It was estimated that some £120,000 had been accumulated over and above what had been spent in the Colony, and it was felt that the time had now come when some of this should return whence it came. A petition was therefore prepared for submission to His Majesty², asking that, inasmuch as the parent government had so far made a profit from Newfoundland

1. C.O 194/87 p.43. Cochrane/Stanley. 18 Feb. 1834.
2. C.O 194/87 p.50. Petition of Assembly, Feb. 1834.

a grant in aid be made. Further a request, the first of many, was made that crown revenues derived from the rent of ship's rooms, sale and rent of crown lands, and other similar sources be placed at the disposal of the Assembly. Since a permanent Civil List had been arranged without their prior consent, the Assembly felt that the Colonial Office could do no less than accord it the same privileges as had been extended to the Assembly of Lower Canada in return for its Civil List. A

At this time also, Thomas, one of the members for St. John's, introduced a revenue bill. The outcome of this bill was such, however, and its effect on the first Assembly so great that a later chapter will be devoted to it, when its ramifications will be fully discussed.

For the present, therefore, it would be worth while to turn our attention to issues other than financial that occupied the attention of the Assembly during its first days.

On January 7th, in an attempt to implement Stephen's plan and solve the problem of a Council that might prove troublesome, Cochrane presented to the Assembly the idea of a joint legislature. In all conscience we must admit that the Governor had done his utmost to prepare the ground for such a move. He had talked privately to the "influential" people and if not fully convinced that the plan would be accepted he was certainly not prepared for the "prompt and unhesitating negative" which met the proposal.¹

The Assembly barely went through the forms of a discussion, and dismissed the scheme on the same afternoon as

1. C.O 194/85. Cochrane/Goderich, 13 January, 1833.

it was presented to them, and replied to Cochrane that the plan had been dismissed "as not being in accordance with the principles of the British Constitution and in no wise applicable to the circumstances of the Colony" ¹.

Though opposition in both Assembly and Council was unanimous, indicating that the seed Cochrane had sown had fallen on stony ground, the reasons advanced by the separate bodies were diametrically opposed. On the one hand the so-called "democratic" party felt that the fusion with themselves of a group with superior knowledge, acquirements and social prestige would result in that group, or more simply, the executive members of the government gaining control of the Assembly, while on the other hand those of a "more institutional" viewpoint felt that the effect would be to establish a democracy which would result in the officers of the Government being, at all times borne down by those who would not hesitate to unite themselves against a group which they felt had no community of feeling with themselves.

So confident of a favourable reaction had been the Colonial Office that the provisional council which had been appointed pending the introduction of the Amalgamation idea consisted of only six members. At the same time the 63rd clause of the Royal instructions stated that while administering the Colony in the absence of the Governor, the consent of seven members was necessary to the execution of many measures. It is obvious, then, that the bare minimum would have been seven councillors if the Colony were to be prepared for all contingencies, and even that number would very likely be unsatisfactory since

1. Ibid

unanimity is difficult to attain. The Colonial Office should have realized that "the best laid schemes of mice and men [or, indeed of Governors and politicians] gang aft agley".

When the amalgamation scheme had been given up as impossible of attainment, it became essential that a permanent council be appointed or that the present council be confirmed in office and their numbers increased . Even if this increase had not been made compulsory by the terms of the Royal instructions, Cochrane felt that nothing but good could come from such an action. For the addition of some of those whom he delights to call the "principal inhabitants" could not but lend weight to the Council's actions, especially when these actions entailed the refusal of some measure advocated by the Assembly. A Council of nine or ten would be much better than the existing Council provided four or five of the members were chosen from among the "principal inhabitants".

The Canada Constitutional Act of 1791 had originated the phrase "executive council" and had also in fact originated the Council itself¹. A division of the old advisory Council into executive and legislative bodies had been effected in New Brunswick in 1832. Cochrane now felt that such an action would be of benefit to Newfoundland for the division of the Council in order to have unofficial representation on the Executive Council would serve as a partial solution to the problem inherent in the old representative system of the gulf between executive and legislature. In addition to the benefits that would be derived by the Colony as a whole, Cochrane felt

1. Wight, M. Development of the Legislative Council. London 1946.
p.46.

that the institution of the Executive Council as a separate body would help him as well, for said he "it appears as an anomaly ... that the Governor has to consult on the propriety of some measure (the expediency of which he doubts) with the same men who have settled the question elsewhere"¹.

The introduction into the Council of men outside either house would provide an admirable opening for the Chief Justice. As president of the Council as then constituted he was apt to suffer loss of dignity from being embroiled in politics and also would be much too frequently called upon to be absent from his primary duties and responsibilities on the Bench. As a member of the Executive Council he could devote most of his time to his judicial function and still be available when called upon to advise the Governor on matters in which he would be considered an expert.

Unfortunately, Cochrane's recommendations were not accepted, though they were designed not only to assist the Governor but to promote the general well-being of Newfoundland as a whole. The only concession made, and that only because it was compulsory, was the enlargement of the Council to ten. It still remained purely nominative, though the additional members were non-official, (and it still combined legislative and advisory functions). The Council was not permitted, however, to assume the title of "Legislative Council" and when it did so Spring Rice wrote, "the title of Legislative Council assumed by the Council of Newfoundland is a designation to which they have no legitimate claim. They are simply the Board of Council and except by

1. C.O 194/85. Cochrane/Goderich. January 13, 1835.

His Majesty's sanction the Governor cannot recognise them under any other appellation"¹.

While remaining nominative, the Council also remained a vested interest. In 1835 Carson complained in "The Patriot" that it was exclusively Episcopalian and as a matter of course it was composed of the most wealthy and most conservative element of the population. There can be no vestige of doubt but that this group would hold on to the existing form of the Council as long as was humanly possible.

Though the newly constituted Legislative body had refused Stephen's plan for amalgamation as "not being in accordance with the principles of the British Constitution and in no wise applicable to the circumstances of the colony"², they were to find that the system adopted "in accordance with the principles of the British Constitution" was not "applicable to the circumstances of the Colony" either. Indeed any system would have had a difficult time attempting to make amends for three hundred years of neglect, especially since no precedent had been established, for no other colony was or ever had been in circumstances even remotely resembling those of Newfoundland.

These circumstances have been briefly outlined in Chapter 2 above but their effects have been so far reaching in the subsequent history of this Island that a repetition of the more salient points cannot be amiss here.

We find representative institutions being introduced to a colony with a scant population, consisting of a society with two classes, the poverty stricken fishermen and the prosperous merchants. Illiteracy is almost universal,

1. C.O 194/85. Spring Rice/Prescott. Oct 21, 1834.

2. See above, page 36

transportational facilities except by sea are non-existent, communities are scattered and isolated, the economy based on fish alone is highly unstable, immorality is everywhere apparent, and the recent influx of a new group into the settled population has laid the foundation for bitter racial and religious quarrels.

It is obvious that any government attempting to translate this 42,000 square miles of misery into a self-supporting colony with workable representative institutions and a reasonable degree of security for its populace had two strikes against it from the beginning.

Had the Assembly been fortunate enough to hit on a period of comparative prosperity for their inauguration their task would still have been a monumental one, but they were not so fortunate.

Because Newfoundland's economy has always been subject to the vagaries of wind and weather, the unpredictable movements of the fish, the presence or absence of bait and the conditions in world markets, our history has been made up of a never ending series of economic undulations. The new legislature was launched in a trough. The year 1832 was a particularly bad one. The fishery was almost a complete failure in most districts. The ships which frequented the coast of Labrador, whence they were forced by the expediency of British foreign policy which had alienated a great portion of the Newfoundland coastline from their use, returned with empty holds. To complete the picture of misfortune the potato crop failed completely.¹

Previous to the opening of the Assembly the Governor

1. Minutes of Council. 26 November, 1832 and also 5 January, 1833

in Council had been besieged with petitions from Bay Bulls, Port de Grave, Bonavista, Trinity and the north shore of Conception Bay all claiming that famine threatened and requesting financial aid. It should not be assumed that every community in which the pinch of hunger was felt petitioned the Governor for assistance. In many settlements there was no one sufficiently literate to prepare a petition and in others there was no one with sufficient initiative to take such a step.

The petitions were discussed in Council, and Chief Justice Tucker who had just returned from the Northern Circuit, was able to inform the councillors that the petitioners had not overstated the case. He reiterated their claim that actual famine must ensue if immediate action were not taken and recommended that five thousand barrels of potatoes or the equivalent in bread be sent immediately.

The Governor, however, acting cautiously when disbursement of treasury funds was involved, did not feel that the Council should act as supply merchants which was the responsibility of the fish buyers¹. He did not seem to realise that a bad year for the fishermen would be an equally bad year for the merchants, and while there were many establishments well able to carry all their debtors through the winter without an impossible financial strain being placed on their resources, there were many small dealers who were ruined by such a bad season. So notwithstanding the recommendations of the Chief Justice, Cochrane suggested that an investigation into the circumstances of each of the petitioning communities be made.

1. Minute of Council. January 5, 1833.

When this investigation had been completed there would still be alternative courses of action open to the Council. They would have to decide: (1) Whether they should provide relief under the head of contingencies which should be ~~be~~ defrayed out of sums drawn from the Treasury in England, (2) Whether the whole matter should be referred to the newly formed Legislature.

The Council seized the opportunity "to pass the buck" and chose the latter course of action though they should have realized that the Assembly was in no position to take any positive action since they were completely lacking financial means¹. When they advised the Governor of this fact and suggested to him that he was the only one capable of dealing with the situation, he repeated his former doubts about the necessity of relief and requested the various members of the Assembly to provide him with first-hand information on conditions in their own districts. Their statements merely confirmed what the petitions and the report of the Chief Justice had already made abundantly clear; namely, that in most districts there were famine conditions in the making, that many merchants had failed and were thus without the means of providing help, and that the only source from which alleviation could come was the Treasury to which the Governor held the key.

Still eager to economize, Cochrane informed the Assembly that he had already spent more than was justifiable and would provide famine relief only on charge to the Assembly, who would undertake to repay him as soon as duties were collected.

The Assembly in refusing this arrangement stated that
1. Minute of Council. January 8, 1833.

to borrow from the parent government at this stage would be "a measure fraught with the most ruinous effects on the finances of the Colony, involving it in debt at its first step in provincial legislature, highly dangerous as a precedent, and calculated to fix an incubus on its independence, which, in the course of time, might work its destruction" .

It is commendable in the Assembly that they were able to resist the temptation to become the heroes of the hour to the starving fishermen they represented, and in the light of financial developments it is fortunate that they had the will power and common sense to do so. When Cochrane was finally convinced that the Assembly was adamant in its attitude, he offered to provide help to the extent of matching public subscription pound for pound. The Governor and Council set the amount of relief to be given at one-third pound of bread per person per day for those who had fish of their own. For those with no fish the ration was to be one-half pound of bread. In addition each person was to get a pint of molasses for the winter. It is obvious that these quantities, while preventing famine, would certainly not eliminate hunger but the Council felt that to give more than enough for bare existence would encourage lazier people to take advantage of "dole"¹.

If the Assembly had not already been aware of the tremendous task facing the Government of Newfoundland, the widespread misery experienced throughout the winter of 1833 must have made them fully aware of their responsibilities, but before anything could be done the question of finances had

1. Minute of Council, 11th January, 1833.

to be considered.

The first scene has now been played and the playing has done nothing to lessen the apprehension of those desiring a successful conclusion. Widespread economic distress has appeared and the financial resources of the Colony have shown themselves unequal to the Challenge. The legislature has not shown itself so tractable as the Colonial Office confidently expected and has rejected out of hand the system that might have been its salvation. The anomalous situation of a council at the same time legislative and executive has been pointed out, while the composition of the Council as a reserve for Anglicans of wealth or position presages conflict.

CHAPTER FOUR

M A T T E R S F I N A N C I A L

The financial affairs of Government tend to be rather complicated. It was therefore considered advisable to attempt a separation of finances from other matters of concern and as simply as possible to outline the financial affairs of the first Assembly with a view to showing how far they contributed to its failure. That is the purpose of this chapter.

As has been stated above, quite early in the first session of the Legislature, Thomas, one of the members for St. John's introduced a revenue bill which suggested the imposition of an import duty on wines and other spiritous liquors to be collected by the Custom House Officials to avoid the necessity of setting up an expensive excise establishment.

The choice of a commodity on which to place the duty had to be carefully made for the state of the economy and the poverty of the populace as a whole would not permit the imposition of an additional burden which would result from the taxing of a food staple or an article necessary to the prosecution of the fishery. This narrowed the field of choice considerably, for imports at this time were in the main bare necessities. Those "luxury" items which were imported were so few as to make the amount of duty collectable on them negligible.

The choice of spirits was therefore a reasonable one, though the vast quantities which were consumed would give one the impression that it was no "luxury" item but a food staple¹. Besides this, one correspondent to the newspapers proclaimed that the tax on rum was a discrimination against the poor since

1. 12 - 15 gallons per person per year.

"none of your polite aristocratic caste would pollute your organs with such abomination"¹.

The choice having been made, it became a matter of some urgency to get the bill through the Legislature quickly for local merchants, under the misapprehension that the Assembly lacked the power to pass a revenue bill before April 1st, were hastening to import large stocks of liquor prior to that date, thus hoping to avoid the tax. The bill met no opposition in the Assembly and was sent quickly to the Council.

The revenue bill was debated in the Council with only four members present. These were Chief Justice Tucker, President of the Council; James Crowdy, Colonial Secretary; Attorney General Simms and Collector of Customs, Spearman. The Chief Judge opened the debate² by stating that he had no confidence in the efficiency of the system of government that had been instituted in Newfoundland, for there was lacking that great variety of controlling powers so necessary to the preservation of the equilibrium in a representative system. In Newfoundland there was no such variety of interests but rather only two, the suppliers and the supplied, whose opinions were so conflicting that one class must have an overruling interest to the exclusion of the other. Thus Tucker stated his "causus belli", but he was unwilling to proclaim this opinion for public judgement and thus, rationalizing his behaviour, he based his objections to the bill on different grounds.

He could not support the bill, he declared, for two reasons: (1) the Assembly had not the legal power to enact such a bill; and (2) even if it had such power it ought not to

1. Public Ledger, January 12, 1833

2. C.O 194/85. Printed report of Tucker's speech.

exercise it. Having thus attacked the bill on grounds of inexpediency and illegality, he proceeded to advance his reasons for having done so.

A Colonial Assembly, he declared, could not possibly be permitted to tax an article which was already taxed by the Imperial Government; for such taxation would tend to derange "the great harmony" of the Empire. Neither Newfoundland nor Great Britain could hope to profit from it since it would be a direct invitation to the West Indies to take retaliatory action by the imposition of a tax on local fish and the United States would certainly not permit the upsetting of its partial reciprocity treaty with Great Britain without taking positive action.

But admitting the legality, which he was in no way prepared to do, the Chief Justice would still have opposed the bill on grounds of expediency. "Who is to pay the tax," he asked. "Newfoundland fishermen have no surplus property. The merchants cannot bear an additional burden, the fishermen cannot bear the weight of the tax. We must look to the mother country for assistance. Our situation is not far removed from primitive barbarity. We have an uneducated people, we are without means to impart to their minds the benefits of education or the blessings of religion. In our situation the form of government is only the 'vox et praterea nihil' "¹.

Having expressed these simulated objections, Tucker then stated once more his real objection, namely an unwillingness to sanction anything that might lead to the success of those

1. C.O 194/85. printed report of Tucker's speech.

representative institutions "which had been foolishly requested and unfortunately granted". Why should Newfoundland be now faced with the impossible task of raising £30,000 annually which otherwise would have come from the mother country. In effect Tucker said that though Representative Government had unfortunately been granted, the withholding of funds would ensure its speedy demise and a return to the "happy" state that existed prior to 1833.

Collector of the Customs, Spearman, now spoke in defence of the bill. In his opinion no part of the bill was in any way repugnant to any British Statute. Indeed other North American colonies had passed similar legislation and had had it approved by the Privy Council. As a matter of fact an Act of Parliament¹ specifically stated that articles subject to Imperial duties were "subject also to duty under any Colonial Act"², which definitely implied the legality of colonial taxes on articles already taxed imperially; while the Act³ which imposed a tax on rum imported into the Canadas stated that the tax was additional to any tax imposed by the Colonial government.

Opposition on the grounds of inexpediency was ridiculed by Spearman for whether or not the tax would raise sufficient revenue to pay government expenses had no bearing on its acceptance in principle.

Despite Spearman's best efforts, however, the councillors present divided evenly on the issue- Tucker and

1. 6 George IV cap 114, Section 11.
2. Quoted in "Financial Affairs of First Nfld Assembly", Nfld Quarterly V53, no 2. June 1954, p. 16.
3. 7 & 8 George IV cap. 56.

Simms versus Spearman and Crowdy. Lacking the three-quarters majority necessary to pass a revenue bill it was thrown out.

Tucker's action was interpreted by the Assembly, the public, and even by Cochrane as an attempt to destroy the form of Government which he opposed, and indeed there was justification for this opinion, for his legal knowledge was certainly not so deficient as to permit him to be fully convinced by the arguments he put forward.

Cochrane, who had himself been an opponent of Representative Government was, when it became an accomplished fact, willing to subjugate his personal feelings to a real desire to promote the welfare of the Colony. Shortly after the opening of the Assembly he had sent to both Chambers copies of his instructions, making special note of the fact that the clause prohibiting taxation on British trade had been removed. He had, moreover, shown the Council Goderich's reply to his query of 20th July on the same subject. In part this letter had read as follows: "You will perceive that the clause prohibiting the Government from giving its assent to any tax affecting the trade and commerce of the mother country has been omitted. It is therefore only necessary for me to desire that you will not assent to any act imposing discriminatory duties on British produce or taxes for other purposes than that of raising revenue"¹. He was consequently at a complete loss to understand the action of Tucker and Simms and said in a letter to Goderich, "If these two gentlemen have decided correctly, then every Assembly, Council and Governor in every colony will have been acting illegally for

1. C.O 194/85. p. 106-107. Cochrane/House of Assembly.
quote from Goderich's letter.

the past hundred years, and every sovereign and Privy Council for the same period will have sanctioned and abetted such illegal acts"¹. The only conclusion he could reach was that Tucker and Simms with the evidence before them must have known the bill was legally sound and took the action they did in an attempt to make abortive the established government.

Cochrane was now in a predicament. The Assembly had appealed to him for help and though he was sympathetic there was no immediate action he could take. Under the terms of establishment the Assembly were to assume responsibility for finances on April 1st², and all they had at their disposal was about £2,000, the net proceeds of Imperial duties after the deductions for the Civil List and collection costs. An appeal was made to the Colonial Office to have the law officers of the Crown rule on the revenue bill and meanwhile Cochrane boldly decided to continue meeting expenses from the military chest, hoping that under the unusual circumstances pertaining the home government would approve his action. Meanwhile the Assembly, as an indication of their good faith, had offered to turn over to Cochrane's use all revenues at their disposal.³

When Tucker realized that Cochrane did not intend to support him in his opposition to the revenue bill, he entered into a lengthy correspondence with the Governor and suggested to him a way out of the dilemma. The suggestion was that he be given leave of absence to go to England and that while he was gone the Assembly could be prorogued, reassembled and the bill passed.⁴

1. C.O. 194/85. p. 92. Cochrane/Goderich. 12th March 1833
2. C.O. 194/85. p.14. Memorandum of Cochrane to Assembly. Jan. 1833
3. C.O. 194/85. p.215. Assembly/Cochrane March 1833
4. Gazette. March 5. 1833. Tucker/Cochrane.

This would have been a reasonable suggestion if Tucker had not stated that he would remain unalterably opposed to the bill though "all the law officers of the Crown" held a contrary opinion, and would, moreover, if a test case came before him on the Bench, declare the bill "ultra vires" and thus null and void. To have the bill passed in the Judge's absence and thrown out on his return would not settle anything but merely complicate the issue. Cochrane, therefore, wisely rejected the offer and refused to grant the leave of absence.

In high dudgeon Tucker made arrangements for his departure with or without permission declaring that "my residence in the Colony may tend to obstruct the proceedings of the Colonial legislature"¹.

Meanwhile he had published all the correspondence which had passed between the Governor and himself relative to the controversy and affirmed that "it is my unalterable purpose never to return to my office of Chief Judge of this Island if it shall appear to His Majesty's Government that the grounds upon which I opposed the bill did not abundantly justify me in doing so"².

Tucker did not return to Newfoundland for, "having placed his retention of office on the issue of his view of the law respecting the power of taxation ... in Colonial government ... the Secretary of State would not under any circumstances ... have allowed him to retain his office of Chief Justice"³.

There could have been no doubt but that Tucker's objections would be overruled by the law officers of the Crown

1. Correspondence between Tucker and Cochrane, printed in Gazette. 5 March, 1833
2. Ibid.
3. C.O 194/85. p. 100. Hay..Memorandum.

and by mid-April the confident expectations of all who favoured the revenue bill were justified, for James Stephen, whose opinion had been sought, stated: "It was never the policy of Great Britain to interdict to the Colonial Legislatures the power of raising duties of customs, except in the case where goods were of British produce or manufacture. Even that exception has been virtually disregarded throughout the Colonies for the last half century until at length, in the case of Newfoundland it was erased from the Governor's instructions as obsolete and meaningless. I am therefore of the opinion that the objection raised by the Chief Justice was invalid"¹.

Though this was conclusive proof that the Assembly had been within its legal rights in imposing the tax, it did not in any way alleviate the financial embarrassment which faced the Colony. The bill had not been passed and there was no money available to meet the day to day expenses of Government. Fortunately the Imperial Government realized this and advised Cochrane that the expenses of Newfoundland's Government would be underwritten by the British Treasury until March 31, 1834. Moreover a parliamentary grant of £13,000 had been voted to cover the anticipated deficit on a budget of £29,000.²

This means that for the first year of its existence the Legislature of Newfoundland was relieved of all financial responsibility, which in turn meant that during that year it could not even begin to fulfil the function for which it had been called into being. It could act merely as an advisory body whose bills, without money to implement them, were meaningless in a great many cases.

1. C.O 194/86. p. 12 Stephen/Hay 16 April 1833

2. C.O 194/85. p. 276 ff. Cochrane/Stamley. Oct. 21. 1833

The Assembly, however, was now in a position to make sure that they would have revenues available when April, 1834 came. In July, 1833, therefore, the Assembly was prorogued for four days and then reassembled, whereupon the bill imposing taxes on spirits was reintroduced and this time passed without opposition.

Meanwhile more financial trouble was brewing. In the fall of 1833 an Imperial Act¹ was passed for the purpose of regulating trade, which repealed all acts of a similar nature that had been passed previous to 1765. Since these repealed acts had been the major source of Colonial revenues from Imperial duties, and the sole source of the Civil List reserves, the Colony was again faced with a serious problem.

The new act levied a general duty on wines and spirits but stipulated that only the excess over duties levied on the same articles by the Colonial Legislature was to be collected. This in effect meant that the duties would bring no revenue to the Colony.

To further complicate an already difficult situation the famous revenue act of 1765 was not repealed. This act laid down that duties collected in British North America were payable to the Crown and the Collector of Customs thus claimed that all revenues collected by virtue of acts passed prior to 1765 were to be paid into the Military Chest and not the Colonial Treasury.² This appeared to be in direct conflict with the Act 2 & 3 William IV, Cap. 78, which stated specifically that all Imperial revenues raised in the Colony were at the disposal of the Assembly provided only that the reserved sum of £6,550 be set aside.

1. 3 & 4 William IV, Cap. 59

2. C.O 194/85. p.329. Cochrane/Stamley. 2 November 1833

Cochrane surmised and eventually had his opinion supported by the Colonial Office, that the application of the Act¹ to Newfoundland had been an oversight which would be corrected. In any event, the amount involved was so small as to be negligible and the important issue was to find the means of raising additional revenues to take up the slack caused by the loss of Imperial duties.

Additional taxation was the answer and when the question of a taxable commodity again arose the original arguments were again advanced and the logical solution seemed to be to increase the tax on spirits.

Cochrane agreed but requested that the Assembly pay from the proceeds enough into the Military Chest to cover the Civil List salaries. The Assembly, however, who had for some time been complaining that the Civil List reserve was too high and that Crown revenues derived from rental and sale of ship's rooms, crown lands, and allied sources should have been by right put at the disposal of the Assembly, refused Cochrane's request. Thereupon the matter was referred to the Committee of the Privy Council for Trade and Foreign Plantations, but the body recommended no immediate action since the Colonial Act was due to expire at the end of the year. At the same time the Governor was instructed to withhold his consent from any future bill that imposed duties without categorically stating that such duties were over and above those imposed by the Imperial Act of 1833. The second session of the first general Assembly ended on this note and it still had not assumed its full responsibilities or

1. 3 & 4 William IV, Cap. 59.

performed the function for which it was intended. That this resulted from a number of unfortunate events which unhappily coincided may be true, but to the opponents of Representative Government for Newfoundland there was vindication of their judgement and they could not be blamed for their smug "I told you so's".

On January 29, 1834, the third session was called together and one of the first items on the order paper, amusing in retrospect, did not indicate an exactly healthy financial position. The first two sessions of the Assembly had met in rooms rented from a certain Mrs. Travers. The third session moved into chambers in the Court House but were greatly embarrassed when Mrs. Travers refused to give up their furniture, books and papers until she should be paid the rent for her rooms which she had so far been unable to collect.¹ The Colonial Treasury was empty and how to fill it seemed a problem without solution.

The existing level of taxation was as high as the circumstances of the populace would permit. New taxes on the necessities of life would perforce increase the hardships of a people already suffering every conceivable distress. The only hope seemed to be to address the British Government with a request for assistance.

The petition² which embodied the plea for financial help laid most of the blame for the existing state of affairs on the British Government and their deliberate policy in the past of discouraging settlement in Newfoundland, while at the same time other colonies were being generously aided and developed

1. Journals of Assembly, Feb. 15. 1834

2. C.O. 194/87 p.42 ff. Petition and Covering letter from Cochrane/Stamley.

by the application of British capital and parliamentary grants. Not only had Newfoundland been denied development but that industry which had proved of inestimable benefit to the parent state, namely the fisheries, had been cramped by the treaties negotiated between Britain and foreign states.

Moreover, when Representative Government had been sought it had never been imagined that the Colonial Government would have been burdened with so expensive a Civil List as that which was now operative but rather, that as had been the case in most other colonies, this expense would be met by parliamentary grant¹.

The ghost of their earlier exuberance now returned to haunt the wretched inhabitants of Newfoundland. The Secretary of State for the Colonies unkindly reminded the Assembly that they had based their request for a legislature on the grounds that the wealth and population of the Colony had increased to such a degree that the British Government would be entirely relieved of the responsibility of providing even a farthing for Newfoundland administration². Furthermore, grants to other colonies with representative institutions had by this time come to an end except in the case of Prince Edward Island, and the grant to that Colony was shortly to be discontinued.

The analogy was hardly fair. To all intents and purposes legal settlement in Newfoundland had just begun so that instead of being the oldest colony, Newfoundland was really the youngest and therefore entitled to the same assistance as had been afforded other infant colonies. It must also have been patently obvious to all concerned that in 1832 Newfoundland's economic position

1. Journals of Assembly. February 17, 1834

2. C.O 194/87 p. 48 Stanley/Cochrane. 29 March 1834

was not one that would permit an independent financial existence. The over-enthusiasm expressed by the petitioners was but further evidence of man's eternal optimism used as an argument of expediency. There were many people in the Colonial Office who must have been aware of the true economic position of the Island and the improbability, short of a miracle, of other than deficit financing. A study of the records for the five year period immediately preceding 1833 would have shown an annual deficit of some £12,000, a not inconsiderable sum considering the poverty of the country.

But be that as it may, the upshot was that Imperial assistance was refused and the Assembly was still in an embarrassed financial state. The supply vote for 1834 had, meanwhile, cut expenditures to a level below which it seemed impossible to drop. Salaries of certain government officials, including the surveyor general, had been discontinued, because, the Assembly argued, it should not incur the cost of collecting revenues which it had not the right to spend. The salary of the Judge of the Vice-Admiralty Court was also discontinued since this was a general maritime court and therefore a matter of Imperial, rather than Colonial, concern. The three schools which the Government had been supporting were also cut off, but this was a common sense measure of equity since no other schools in the Colony received special grants, or indeed any government aid, and the singling out of three for support could only produce claims of discrimination. But despite all these savings there was still a deficit of £5,000.

Winter was now approaching and it did not present a happy prospect. The year had been a bad one. The fishery had failed again and the seed potatoes which had been provided by the government at a cost of £1,200¹ had failed to grow. Cochrane had no choice but to summon a special session of the Legislature in September to debate what might be done.

Two alternatives presented themselves; either to put an "ad valorem" duty on all imports or else to borrow. Neither course would provide a happy solution to the problem. The duty, if imposed in the autumn, would be grossly inequitable since many merchants already had their winter stock in and thus the burden would fall on those who had not as yet received their winter supplies. On the other hand, to saddle the infant Government with debt which, under existing circumstances, would have to be increased annually was a course of desperation.

Dr. Carson, whose admission to the Legislature will be discussed later, argued vehemently against increased taxation until all Crown revenues collected in the Colony were placed at the disposal of the Assembly, and his argument was justifiable. Nevertheless, funds were immediately necessary, and to wait for the British Treasury Office, notoriously deliberate in their actions when only routine matters were concerned, to decide on the issue would have been senseless. Eventually a compromise was reached.

It was decided that an "ad valorem" duty would be imposed during the winter after all supplies had been purchased so that it would be operative for the spring trade. Meanwhile

1. C.O 194/88 p. 11R Cochrane/Stamley 7 July, 1834

a loan be raised by means of treasury bonds to meet the pressing needs of the present. A set of resolutions were adopted and a new address prepared for submission to His Majesty. The resolutions were to the effect that a loan of £5,000 be raised and that expenditures be still further reduced. This had appeared an impossibility but after much discussion it was decided that Civil Servants who had grown old in the Imperial service were Imperial responsibilities, and the responsibility for their pensions was repudiated. At the same time it was resolved that the reserved salaries should be reduced from £6,550 to £4,000, this latter sum to be secured by an act of the Colonial Legislature. Furthermore it was felt that the costs of collection were extremely high, averaging about 25% or a total of £4,000 for the collection of £16,000. The resolution was to the effect that £2,350 was a sufficient sum and the Assembly was willing to set aside this amount. The address could not conclude, ofcourse, without the perennial request for transfer of rents from crown lands, ship's rooms, "et cetera", though the Colonial Office must have been growing weary of hearing this petition, that is if petitions were "heard".¹

By the time the petition reached the Colonial Office the Earl of Aberdeen had assumed the seals of office and Cochrane had been replaced in Newfoundland by Prescott. Aberdeen requested the advice of the ex-Governor respecting conditions in Newfoundland and the degree to which the petition reflected actual circumstances. True to form, Cochrane supported the Assembly whole-heartedly. He fully concurred with the claim

1. C.O 194/88. p.130 ff Petition of Assembly to King.
20 September 1834

that further taxation would merely increase an already intolerable burden and suggested that an annual grant of £5,000 be made for a fixed number of years. He further maintained that the Colonial attitude towards the Civil List was remarkably mild when compared with that of other colonies. Aberdeen, acting on Cochrane's advice, was able to secure a grant of £5,000 for one year but made no decision regarding the Civil List.

Meanwhile the Assembly, pessimistically inclined because of past experience, in its new session in 1835 imposed a general "ad valorem" duty on all imports other than those connected directly with the fishery. In addition, and in accordance with the resolutions passed at the special session of September, 1834, and which had been embodied in the petition to the Colonial Office, expenditures were reduced from £33,058 to £26,226.

The Imperial Government did not accept the Colonial idea as it affected Civil Service pensions; for, said they, it would be an anomalous situation had they passed over to the Colony all revenues without having at the same time transferred all expenditures as well. In rebutting this statement the Assembly was treading solid ground, for the claim that all Imperial revenues had been turned over to the Colonial Legislature was one that could not be supported in fact. From a total of approximately £15,000, £4,000 was allowed for collection, £6,550 was reserved for the Civil List and about £2,000 representing rents from crown land, ship's rooms, and other miscellaneous sources, had never been transferred at all.

The Colony had, therefore, been given the use of a mere £2,500, an insignificant amount when one considers the tremendous amount of work needing to be done.

Much correspondence followed, as neither government was willing to assume the expense of the pensions, but in the end the Imperial Government, when confronted with the prospect of loyal men, grown old in the Service, being faced with actual hunger, they relented and issued warrants for the temporary supply of gratuities.

So the first general Assembly of Newfoundland drew towards an end without its having done any of those things which had been so confidently expected of it by its supporters. Continually hampered by a lack of funds, faced with successive fishery and crop failures, the first Assembly was a victim of circumstances.

That these circumstances resulted because of inherent weaknesses is apparent. No government can operate successfully unless its financial position is sound whereas the Newfoundland economy, subject to so many variables as it was, was anything but sound. Moreover, the hope of stability based on Imperial Assistance was quickly dissipated. Then, too, the financial question had brought about the first clash between Assembly and Council, which was the opening gun in a battle that lasted until the Constitution was suspended.

CHAPTER FIVE

A B Y - E L E C T I O N A N D A R I O T

In an attempt to clarify a somewhat complicated picture, an attempt has been made in the last chapter, to set down the financial affairs of the First Assembly as separate from the political background. Actually, of course, other events were taking place concurrent with the events related above and which are worthy of our attention.

Perhaps the most significant incident occurred in connection with a by-election held in St. John's in the autumn of 1833. The election became necessary when William Thomas, one of the members for St. John's, was promoted to the Council.

Two candidates presented themselves to the electors, Dr. William Carson, who had been unsuccessful in the first general election, and Timothy Hogan, an Irish Catholic and a merchant of the town.

The cause of Dr. Carson was again espoused by Bishop Fleming and this time, apparently, he did not intend to back up a step even though his own flock split on the issue. The Catholic congregation was instructed in clear and distinct terms to vote for Carson, and Hogan's shop was threatened with a boycott if he persisted in his opposition to the Bishop's will. Hogan, on the eve of the election, withdrew from the uneven contest.

In announcing his withdrawal to "the independent electors of the district of St. John's" Hogan states, "In the hour of victory I am constrained to retire from the conflict"¹. The
1. C.O 194/87 p.128. Hogan/electors.

responsibility for his action he placed squarely on the shoulders of "a reverend gentle man" who had proclaimed that it would promote the interests of religion to elect Carson: and who had "thundered forth prophetic anathemas that he would cause grass to grow before the doors of those who would vote contrary"¹.

It is rather difficult to determine the manner in which religion would be served by Carson's election unless Cochrane was correct in assuming that the Bishop's object from the inception of the Representative Government was to gain political ascendancy². This may very well have been the case, for the Catholic Emancipation Act was not so far removed as to permit the cooling of the first excitement that naturally came with the acquisition of political powers so long denied. It is not unreasonable to assume that the Catholic population, led by somewhat radical clergy, should attempt to gain that control which their numbers seemed to warrant.

Carson's affiliation with the Catholic group is quite understandable. He was liberal in sympathy and certainly had no community of feeling with the "Conservative" party represented by the Governor and Council with whom he was at odds. The poor Catholics who formed the majority of the population of St. John's were solidly liberal and since they could not be openly led by their priesthood it was a natural thing to choose a man like Carson, who was an orator, popular with the people as a whole and an avowed enemy of the official party. Nor was it less natural that Carson should take advantage of willing followers and a ready-made propaganda machine to place him

1. C.O 194/88. p. 128. Hogan/electors.

2. C.O 194/88. p. 69. Cochrane/Stamley, 28 July 1834

in the position he desired to attain.

At any rate what had been a peaceable community with no suggestion of religious strife suddenly became a veritable hotbed for the growth of political and sectarian antagonisms.

The absence of previous religious ill-feeling was largely due to the efforts of Bishop Scallan who "endeared himself not only to Catholics but also to Protestants, and with them [Protestants] and with the mercantile classes and Government people ... was an especial favourite"¹. Indeed Bishop Scallan was "censured for being too yielding in his endeavour to please and propitiate his Protestant friends"², but the strong hand of Bishop Fleming and the missionary zeal of the nine priests he had recruited from Ireland early in his episcopate soon made Roman Catholics conscious of the obligations and restrictions their religion imposed on them.

Bishop Fleming did not, of course, seek to rouse religious strife but rather to lead his flock back to the path of religious duty from which they had strayed.

In the light of the enthusiasm with which Irishmen everywhere greeted the Catholic Emancipation Act of 1829 ³ one can hardly be surprised, much less shocked, by the fact that the Bishop and his clergy should encourage their people to take the utmost advantage of the changed circumstances.

Neither Officials nor Conservatives, (Catholic or Protestant) took kindly to the change in the "status quo" and there were as many eulogies for Bishop Scallan as diatribes against Bishop Fleming.

1. Howley, Very Rev. M.F. Ecclesiastical History of Newfoundland
Boston. 1888. p. 245

2. Ibid

3. Howley. p.258

In return Governor Cochrane came in for much criticism in the liberal party organ, "The Patriot", a newspaper reputedly sponsored by Carson. One series of letters signed "Junius" in particular irked the Governor since they contained accusations which were obviously intended to fan the flames of religious enmity which had been kindled. Among other things they accused Cochrane of refusing to employ Catholic servants, whereas he actually employed seven out of a staff of thirteen. On the grounds offered by this accusation he ordered Attorney General Simms to start legal proceedings against the proprietor and the printer of "The Patriot", charging them both with libel.

Before the case came to court, however, Rev. Troy, the chaplain to Bishop Fleming, came forward and admitted authorship. While forced to take his word for it, Cochrane refused to believe that he actually had written the letters and explained to Lord Stanley that while they expressed the viewpoint of both Bishop Fleming and his chaplain they actually were written by J. V. Nugent, an ex-schoolmaster from Waterford, who had been forced to leave Ireland because of "his violence in politics"¹.

Cochrane did not believe that the letters indicated that the Bishop was personally inimical to him, but rather that they were part of a system intended to increase the political influence of the Catholic party by anonymously undermining public support for the head of the Government, who by virtue of his position would find it exceedingly difficult to defend himself.²

We must not fail to note here though, that Cochrane

1. C.O 194/88 p.70. Cochrane/Stamley. 28 July 1834
2. C.O 194/88 p.68R Cochrane/Stamley. 28 July 1834

had been put on the defensive by those who were supplying copies of The Patriot to the Colonial Office, together with other information that might hasten the removal of the Governor from office, which was the avowed intention of Carson as expressed in The Patriot. We must not expect, therefore, that Cochrane would do other than urge his own cause or, which is the same thing, blacken the cause of his opponents. Consequently it is necessary to exercise caution in forming conclusions when we have no impartial witnesses.

Having issued this warning we can now continue. The Conservative group among the Catholics was not yet resigned to acceptance of their Bishop's political affiliations. Those whom Cochrane delights to call "the respectable and intelligent class" were "disgusted and as far as they ... [dared] expressed themselves so"¹. This group in the autumn of 1832 had succeeded in having Kough elected instead of Carson, but in the face of more extreme measures allowed the by-election to go as Dr. Fleming wished.

The Conservative press of which The Public Ledger was most important attacked the Bishop and Catholic priesthood vehemently, and according to Cochrane the people were urged by the Bishop and Clergy to retaliate by a display of physical force². The result was that on December 25, 1833, riots broke out in St. John's, and the mob attacked the house of the editor who had led the verbal attack with the intention of burning the house and destroying his press.

Throughout the day violence was threatened. Since it was customary to get drunk as quickly as possible on Christmas

1. Ibid. p. 69

2. C.O 194/87 p. 133R Cochrane/Stanley May 1. 1834

Day, the more properly to celebrate the occasion, rum was much in evidence and we suspect played no small part in the subsequent events. As the crowd became more and more pugnacious and began to acquire the aspect of a mob, the magistrates determined that there was no alternative but to call out the militia. The Governor was informed of their intent and he caused evidence of the day's events to be collected and brought to him. The events described were so alarming that he completely agreed with the magistrates' decision and ordered out the troops.¹

The soldiers were instructed to make every effort to refrain from the use of violence and from the evidence available they apparently exercised considerable restraint. As a last resort, however, in self-protection they used their bayonets and several people were injured.

This incident did nothing to calm the troubled waters but rather added to the turmoil. On December 27 a meeting was called at the Orphan Asylum to discuss the happenings of Christmas Day. The meeting, led by Carson, Morris and Kent, viewed "with great indignation the introduction of the military under circumstances deeply irritating² and resolved to solicit from the Governor an enquiry into the matter and further resolved that Bishop Fleming and the Catholic clergy deserved the full "confidence of the people ... for their intrepid and conscientious discharge of their ... duties ... unawed by the frown of the great, or the malignity of the base"³. It was further suggested that Dr. Fleming be accorded thanks for having calmed the incensed crowd and that those who had been injured

1. C.O 194/87 p.125 Crowdy/Carson January 8, 1834
2. C.O 194/87 p.121 Resolution of meeting held December 27, 1833
3. C.O 194/87 p.121 Resolution of meeting held December 27, 1833

should receive "the mead of sympathy and the redress of law".

Upon receiving a copy of the resolutions His Excellency instructed Mr. Secretary Crowdy to reply to Dr. Carson who was chairman of the Committee appointed to bear the resolutions to the Governor, that according to the information at his disposal the meeting had not been called in "the usual manner" so that many people had been unaware of its being held, and finally that a majority of the "wealth and respectability" of the town did not concur in the sentiments expressed in the resolutions.¹ At the same time Cochrane did suggest that those who had been bayoneted could take legal proceedings against the magistrates so that the whole affair could be thoroughly and openly investigated and the truth established clearly and beyond doubt. No such action was taken, which indicates that those who had suffered injury were not at all convinced that the part they had played would have reflected credit on them.

Though the disturbances had been quelled, there was every indication that the fires still smouldered, and Cochrane felt alarm lest some more serious outbreak should occur. The maximum number of soldiers that could be mustered in Newfoundland at the time was 151, which meant an effective force of far less than that number. In the event of a serious outbreak the garrison would be wholly inadequate, so Cochrane requested aid from His Excellency Major General Sir Archibald Campbell in Nova Scotia. He replied that a disturbance had broken out in Canso County so that at the moment it was impossible to detach any men to send to Newfoundland. Consequently the garrison remained undermanned and Cochrane continued in fear and trepidation.

1. C.O 194/87. p.124. Crowdy/Carson December 1833

Meanwhile the Secretary of State for the Colonies had approached Lord Palmerston with a request that a British envoy abroad approach the Vatican with a view to having the clergy's behaviour in Newfoundland made "more exemplary and more like their behaviour elsewhere in British Colonies"¹.

Back in Newfoundland Bishop Fleming himself called on Cochrane to discuss the affair and after the meeting published a circular letter² which was distributed to all his flock and which assured them that the Governor had expressed "in the strongest terms of disapprobation" an antipathy toward those who "wantonly prostitute the press to base and abusive purposes" and further had assured him that the introduction of the military on Christmas Day was an act in which he had had no participation whatsoever.

The appearance of this letter was instantly followed by a letter from Mr. Secretary Crowdy to the Bishop, which declared that the nature of some of His Excellency's observations appeared to have been "entirely misconceived". To set the record straight Crowdy then proceeded to outline the substance of the interview.

According to Crowdy, Cochrane had expressed regret that there should be any public dissension and particularly regretted the mischievous attempts to associate his name with party squabbles. It was his duty to administer justice with an even hand, regardless of party, and consequently he had never countenanced "ex parte" statements from any party. That the name of the Bishop and priesthood should have been vilified in the public journals was a matter much to be regretted, but at the same time no abuse could justify one's taking the law

1. C.O 194/85. p.366. Memorandum to Palmerston. 11 July 1833
2. C.O 194/88. p. 71 Bishop Fleming/Parishioners. 27 Dec. 1833

into one's own hands. The only interpretation that can be put on this statement is that Cochrane openly put the onus of responsibility for the riots on the shoulders of the clergy.

With regard to the other matter mentioned in the Bishop's letter, that is the introduction of the military to quell the disturbances, Cochrane stated that of himself he had not been able to judge competently the necessity of such action. When, therefore, a private citizen had applied for a guard he had been refused. However, the complexion of the case had changed when the magistrates had unanimously agreed that the urgency of the situation required forceful and immediate action. Having apprised himself, as far as was possible, of the facts, he had concurred with the magistrates' opinion and the soldiers had been ordered out. Moreover the evidence at his disposal led him to believe that far from being wanton in their actions, the soldiers had behaved in an exemplary fashion, though the provocation they had endured would have warranted far more drastic action.

So Carson was elected and was admitted to the Assembly in December 1833, but the furor which accompanied his return was but the beginning of Civil strife, of riot and outrage, of bloodshed and arson; but more of that hereafter, for the present one example will suffice.

The paper which had led the attack on the Roman Catholic Bishop and clergy was "The Public Ledger", a conservative organ and much in favour with the Governors. It was the editor of this paper, Mr. Harry Winton, who had been threatened on Christmas Day but who had escaped because of the intervention of

the troops. On May 19, 1835, he was not so lucky, however, for on that occasion while riding with a companion from Carbonear to Harbour Grace, he was waylaid by a band of ruffians and treated most barbarously. After being beaten severely, he was firmly held while his ears were cut off.¹ The assailants were disguised and therefore were not recognized, and though a reward of £500 was offered for information leading to the arrest and conviction of the guilty persons, they were never found.² That even such a tremendous sum did not tempt the poverty stricken residents of the area is some indication of the bitter racial and religious antagonism that existed. This antagonism was to persist unabated throughout the entire second Assembly and finally largely contribute to the suspension of Representative Institutions.

The selection of the incidents portrayed in this Chapter for special attention is not the result of whim or fancy but rather because they represent another link in the chain of causation which it is to be hoped is now taking form. The leader of the Liberal cause, Dr. William Carson, has now been elected and the process of his election has produced the first open demonstration of religious strife. But it is not altogether a case of Protestant against Catholic for Carson, a Protestant, is supported by Bishop Fleming while Hogan, a Roman Catholic is opposed by his Bishop. Rather it is the alignment of liberal sentiment, represented largely by Irish Catholics, and led by Carson and Dr. Fleming, against the mercantile and official group typified in the Council. There are Catholics in the mercantile

1. C.O 194/90. p. 185 ff Brenton/Crowdy May 19, 1835
2. C.O 194/90. p. 199 Prescott/Aberdeen May 22, 1835

group just as the liberal cause has Protestant supporters.
The religious strife is a natural by product of the economic
"war to the knife" that is now fully joined.

CHAPTER SIX

THE FIRST FOUR YEARS

Up to this point emphasis has been laid on the major weaknesses, political and social, that were deterrents to good government in Newfoundland and also on weaknesses in the constitution imposed in 1832, that further jeopardized the possibility of a successful administration. That is the major theme of this work. But whereas preceding chapters have dealt with special incidents from the first four years of representative government that illustrate the theme, this chapter will attempt to fill in the background for these same four years. The aim is not, however, to catalogue in minute detail the affairs of the first Assembly, but rather, by a process of selection to establish the tenor of events without beclouding major issues with a mass of minutiae.

It has been stated on several occasions that the first Assembly did not fulfil the function for which it was intended. This does not mean that the Assembly did nothing, it merely indicates that they were unable to accomplish much that required the expenditure of money, for as has been shown, money was in very short supply. In other respects the Assembly was most active and set to work early in the first session to attempt a cure for some of the ills besetting the Colony.

Early in January, 1833, petitions began to pour in from the congregation of Wesleyan Methodists; from the minister, church and congregation of the non-conformist body of Christians in St. John's; from Right Reverend Michael Fleming; from the town of Harbour Grace; from the town of Carbonear; from the north shore

of Conception Bay;¹ all begging that the act to regulate the celebration of marriages in Newfoundland, which had been passed in 1817 and which prohibited the performance of marriage ceremonies by other than ministers of the established church or priests of the Roman Catholic Church and which in its operation had "infringed greatly on the liberties and privileges" of many people who until 1817 had enjoyed such "liberties and privileges ... from time immemorial"², should be repealed and that both Methodist and non-conformist clergy should be permitted to perform the marriage ceremony.

There was no one in the Colony unaware of the inequity (and perhaps even iniquity) of the marriage act, for in Newfoundland the isolation of many communities, the transportation difficulties that presented themselves, and the scarcity of clergymen, militated against its enforcement even if the matter of conscience were not involved³. Realizing this the Assembly brought in a bill to repeal the act which was sanctioned on July 9, 1833.

This act made valid all marriages performed in Newfoundland within a certain period and gave the right of performing marriage ceremonies to all Christian ministers resident in Newfoundland. Moreover, since money settlements in Newfoundland were so far removed from any resident minister as to make regular visitation almost impossible, the Governor was empowered to grant marriage licences to teachers, preachers, magistrates, and laymen,

1. Journals of Assembly, January 30, 1833

2. Ibid

3. Pedley. p.377

so as to meet the peculiar wants of the country".¹

The question of quarantine was one that also brought much discussion². It was not unusual for ships from foreign ports to bring with them epidemics of small-pox and cholera, and without suitable port and quarantine regulations these diseases sometimes spread with alarming rapidity. A small-pox vaccine was available but large numbers of people superstitiously resisted immunization, and in any event the number of doctors available was far too small to admit a large scale vaccination program, except in St. John's and a few of the larger centres. An act was finally passed subjecting all vessels having cleared from foreign ports to a period of quarantine, and this did much to reduce the number and frequency of epidemics.

Another matter over which the Assembly expressed some concern was the storage of gunpowder in St. John's and the larger Conception Bay towns. Regulations existing were so lax as to be of no practical use so an act was passed laying down a set of rules which, if enforced, would provide a much greater measure of public safety than heretofore had existed³.

Meanwhile a fairly extensive fire in St. John's in the summer of 1833 led the Assembly to discuss the feasibility of fire companies for St. John's and the larger towns. An act was passed but it remained inoperative because of the lack of finances⁴. Some effort was made to improve the unsightly condition of the town by the passage of the Nuisance Act, but the helter-skelter way in which the town had grown did not admit of much improvement.

1. Ibid

2. Journals of Assembly, January 26, 1833

3. Ibid

4. Journals of Assembly, July 8, 1833. Message of Governor Cochrane

An act for increasing representation to the Assembly was disallowed by the Imperial Government on the advice of James Stephen who felt that as yet sufficient evidence could not have been obtained by which it could be determined whether the system of Representative Government would be beneficial or otherwise. Until such time as experience would show that the system had a reasonable chance of success, things would have to remain as they were.¹

Another act suspended for the signification of His Majesty's pleasure was one declaring all land in the Colony to be chattels². This established or rather recognized the law of the equal distribution of immovable property amongst the children of a person dying intestate. As such it superceded in Newfoundland the law of primogeniture, which was a sensible course and not objectionable to the law officers of the Crown. What they did object to was a stipulation that the executor should be forbidden to alienate any party of his testator's land for more than a year without the sanction of the Supreme Court of Newfoundland. The practical result of this legislation would be to precipitate a lawsuit whenever a man died intestate, thus increasing beyond the limits of necessity or convenience the proceedings of the courts and the expense of administering the estates of deceased persons.

Many matters of importance which did not result in legislation were, of course, discussed in the Assembly. The state of the fisheries, for instance, received considerable attention. This was almost inevitable since Newfoundland and

1. C.O 194/88. p. 166...James Stephen's comments on the 26 acts passed by the 3rd session of the Newfoundland Legislature.

2. Ibid

fisheries were synonomous, and since the first two years of the Legislature were years in which the fisheries failed completely. There wasn't much any governing body could do if the fish failed to put in an appearance along the coast, but there were other factors operating to Newfoundland's disadvantage. Principal among these factors was the deterioration of markets, caused by depression in the countries which had formerly bought our fish together with higher import duties imposed by these same countries and increasing Norwegian competition.¹

The export of fish to Spain had dropped from 400,000 quintals in 1813 to 100,000 quintals in 1833, the direct result of the raising of the duty on dried codfish from 3/6d per quintal to 14/- per quintal². Moreover and in addition to the Norwegian competition the Newfoundland fishermen were hard put to hold their own on their home ground. The British naval force, which used to patrol the coast during the fishing season, was gradually being withdrawn while at the same time France, who had concurrent fishing rights on the Newfoundland coast, kept a large naval force in these waters, which not only served to protect the interests of their fishermen but even extended their rights far beyond the legal limit³. It was reported in 1833 that foreign ships were fishing on non-treaty shores, openly breaking the law because they were aware that no British naval force existed to enforce it. There were even cases reported which told that the French had chased British fishermen from the grounds on which they had every right to be and to which the French had no sort of claim at all.⁴

1. Journals of Assembly. May 17, 1834. Petition to King. p.272 ff
2. C.O 194/87. p.272 ff. Memorial of Chamber of Commerce of St. John's
3. C.O 194/87. p.175. Petition of Assembly to King.
4. Journals of Assembly. May 6, 1834. Petition of Chamber of Commerce of St. John's

The Newfoundland fishermen, unable to retaliate during the fishing season, waited until the French had gone home in the autumn and got revenge by raiding boats and supplies left behind. Governor Cochrane, somewhat upset by French complaints, asked the Colonial Office to give the French permission to keep a small boat's crew here all winter for the purpose of protecting their property. In view of the complications that had already been brought into being by varying interpretations of the treaties that had given the French fishing rights on the Newfoundland coast, the Colonial Office did not take kindly to a suggestion which could but aggravate the situation. Thrown upon his own devices, therefore, Cochrane issued a Proclamation which forewarned "all such evil-minded persons" that should they be apprehended in the act of raiding French supplies, they would be treated in the most vigorous manner the law would allow, and furthermore, to more effectively bring them to justice, the French authorities would be given permission to take and send to St. John's for trial all persons detected committing such offences.¹

This last proviso met with considerable opposition in the Assembly and indeed among the public generally; for it meant that the French were not only being given the full protection of the law and the courts without contributing to the public coffers, but were actually made agents of the law; a unilateral arrangement with the advantage all on the side of the French. Had the French fleet purchased its supplies in Newfoundland, thus indirectly contributing to the public revenues, there might be some slight justification for this arrangement. But such was not the case

1. C.O 194/87. p. 38 R. Proclamation of Governor Cochrane.

for sufficient stocks of provisions were brought from France to ensure complete self-sufficiency during the fishing season.¹

On the whole the French were in an enviable position, at least in the eyes of Newfoundland fishermen. The home government paid them a bounty amounting in the aggregate to £150,000 annually, which represented an amount very nearly equal to the market value of the fish. This kind of subsidization made marketing a great problem for Newfoundland fishermen. Nor was this the only disadvantage under which they laboured. The bounties made it possible for the French to have better found boats plus better equipment and more of it. This meant that whereas the Newfoundland fishermen perforce headed for home when bad weather blew up, the French with their larger ships, big anchors, strong cables and good rigging were able to remain on the fishing grounds and ride out the storms. Moreover, the French were by this time using the "bultow" or trawl, as it has since come to be called in Newfoundland, whereas the local fishermen were still using the hand line, a much less efficient method of catching fish. Newfoundlanders did not as yet use "bultows" partly because they were loath to forsake the traditional way and partly because of the expense involved.

The French fleet at this time consisted of approximately 300 ships, and since each ship using trawls occupied a circle with a radius of at least one mile and since they were able to hold the ground in all weather, local boats found themselves shut out from large areas of the best fishing grounds. At the same time the shore fishermen from Cape Bonavista northward found the best harbours occupied by the French, who with their superior

1. C.O 194/87. p. 90. Petition of Assembly to the King.

equipment and naval protection were in almost complete control.

The end result was that fishermen who had been accustomed to frequent the north-east coast, especially those who in the spring prosecuted the seal hunt, were driven to the Labrador coast. This meant a much longer trip, a shorter fishing season, and an inferior product that brought a smaller price on the world markets.

Only on the south coast did the residents not have any quarrel with the French. On August 31, 1836, Captain Bennett of H.M.S. "Rainbow" reported to the Governor that he had found practically every south coast fisherman actively engaged in either the sale of bait to the French fleet or the smuggling trade. Though efforts were made to stop the bait traffic, they were unsuccessful since the fishermen declared that if they escaped with one cargo out of three they would still make a handsome profit¹. The commander of the sloop, "Racer", suggested that to stop French depredations in Fortune Bay, boats might be stationed at Lamaline, Point May Pond, Dantzic Point, Grand Bank and St. Lawrence. Though this plan was put into partial operation, it failed in its desired object because the French ceased their depredations and allowed the Newfoundland fishermen to bring the bait to St. Pierre.

As for smuggling, Captain Bennett says that the whole south coast was involved. When he visited St. Pierre early in 1836 eleven boats were there discharging wood and game and taking in exchange tea, sugar, brandy and clothing. For were the French alone involved in the smuggling business. Vessels from Quebec, Halifax, and other Canadian and American ports commonly came to

1. Journals of Assembly 1837. Appendix. Capt. Bennett/Prescott
31 August 1836

small harbours on the south coast and exchanged their cargoes of rum, flour, bread and clothing for fish. This illicit trade meant considerable loss of revenue to the Colony, but the necessary law enforcement agency which would have at least reduced the trade did not exist. Consequently in 1837 Captain Bennett reported to Governor Prescott that during that year the smuggling trade with St. Pierre had quadrupled.¹

In addition to bait fish, local fishermen offered the French wood in exchange for their tax free goods. This wood was widely used for fuel, but the French themselves were also obtaining wood for shipbuilding partly through trade and partly through their own endeavours. Captain Bennett reports that at Ingarachoir Bay there were five or six hundred French who "pay no taxes but cut and export wood for shipbuilding as well as fuel".

Meanwhile other matters that had come up for discussion and legislation in the Assembly included roads², education, weights and measures, and justice. A road bill had been passed but in the early years of the Assembly finances had not been available for its implementation. This was a matter regretted in every throne speech, for everyone recognized the importance of adequate means of communication to the development of any area. By 1836, however, improving economic conditions and increasing revenues had made possible the improvement of the road to Portugal Cove, and the construction of roads to Topsail, Petty Harbour, Outer Cove and Quidi Vidi.

An education act had also been passed. This provided that there should be a school board in each district. The board

1. Ibid

2. Reports of Road surveys, construction, costs, etc. may be found in the Appendices to the Journals of the Assembly.

was to consist of thirteen members chosen to be representative of the various denominations and who would frame by-laws, subject to the veto power of the Governor, for the administration of education in the separate districts. Here, too, lack of adequate finances hampered the operation of the act, though there is no guarantee that it could have succeeded as long as each denomination jealously watched its numbers in order that it might take advantage of numerical superiority to influence the appointment of teachers, the selection of texts, and other matters of a nature which might be calculated to help propagate the desired doctrine¹. Such an attitude militated against the success of the bill to such an extent that in the throne speech which opened the second general Assembly, Governor Prescott was forced to admit that the functioning of the school boards was "cordial and complete" in but few places.

The administration of justice in the Colony also provided the Assembly with much raw material for discussion, but the discussion led to little positive action during the life of the first Assembly.

Governor Cochrane had been more than a little worried by the state of the law in Newfoundland. He refers to the jurisprudence and judicature of the country as the "two most important subjects that could come before you [the Assembly]"² and he was not overstating the case.

The applicability of British laws to the Colony was a constant source of argument, for opinions varied widely as to what portion of the laws of the parent state were operative in

1. Journals of Assembly, 1837

2. Journals of the Assembly. June 12, 1834.

Newfoundland. The result was that serious crimes were committed with impunity. This situation could have been remedied by legislative enactment but that in itself would not have solved the problem completely. A legal code is not of itself of any practical use. It must be acted upon by a competent law enforcement agency and a learned and independent judicature. We know that the former did not exist and certain events of the period would cast grave doubts on the existence of the latter, particularly with regard to the "learned" aspect.

In Newfoundland it was widely accepted that the Judicature Act of 1826¹ had failed "to attain the great object of legislation - that of bringing justice home and with moderate expense to the poor man's door, and it is therefore to be lamented that one of the great objects for which a local legislature was sought ... and obtained had yet to be accomplished".²

Actually, the only action which the Assembly took prior to 1837 was to abolish the Labrador Court, and this was a measure of economic expediency rather than one designed to assist the fishermen in the attainment of cheap justice. Nevertheless there was much that could have been done. The act which had abolished the surrogates had set up no "on the spot" law enforcement agency, with the result that crime flourished while the circuit courts that had been established could do nothing about criminals who never appeared before the bar because the machinery was lacking wherewith they might be apprehended.

A report presented to the Assembly in 1835 by a committee appointed for the purpose indicates that at that time there were three stipendary magistrates in the Central Court

1. 5th George IV, Cap. 62

2. Journals of Assembly. June 12, 1834

District of St. John's, and three located at Harbour Grace and Carbonear. Besides these there were none in the Colony except a few volunteers. These volunteers were mostly merchants, and their private affairs naturally took precedence over their magisterial duties.¹

The state of the Constabulary was not more prepossessing. Of a total of £772 being spent in the outports, £512 was being spent in Conception Bay, so that apart from a few of the larger centres on the east coast, the Island was not policed. The wonder is that there was not more crime than there appeared to be.

Meanwhile, other matters moved on apace. The Revenue Bill fiasco of the first session of the Assembly had led to the replacement of Chief Justice Tucker by a gentleman whose impact on Newfoundland was to be even greater than that of his predecessor..He was Henry John Boulton, who arrived from Upper Canada in the autumn of 1833 and assumed office shortly thereafter. As Chief Judge he became, ex officio, President of the Council and it was in this capacity that he first demonstrated the value he placed on his own opinion and the bull-headed obstinacy that turned the country against him and led to his dismissal.

Shortly after the opening of the third session of the first Assembly, Governor Cochrane was appalled to learn that without reference to His Majesty's instructions and the usages of Councils in other colonies, the Newfoundland Council had changed "the appellation of the senior member to that of speaker, secondly had ...[changed]... the quorum from three ... to five and thirdly ...[had]... made it essential that the speaker should

1. Journals of Assembly, February 10, 1835.

be one of it and moreover ... [had] ... made the situation of speaker elective".¹

The stolid Governor was completely flabbergasted that the Council should have the presumption to so unceremoniously cashier those instructions to which they owed their existence. But as a burnt child dreads the fire, Cochrane withdrew from a skirmish with Chief Justice Boulton, remembering vividly the not far distant Tucker affair, and contented himself with informing the Secretary of State for the Colonies² of what had occurred.

The Governor had not, as yet, been officially informed of the changes that had taken place, "Usually reliable sources" had given him the facts he had, and had also told him that the changes had had their origin with the Chief Justice. Sir Thomas, therefore, wrote that worthy requesting information, but the reply he received was no help at all. It merely said that since the enquiry had reference only to the privileges of the Upper Branch of the Legislature, neither the Chief Justice nor any other member of that branch was warranted to offer any explanation. Simply put, it was a polite "mind your own business".³

The Governor was not inclined to give up so easily, and addressed another letter of enquiry directly to the Council, but this attempt met no greater success than had the former one. He was politely informed that one of the necessary privileges of the Council as a co-ordinate branch of the Legislature was that of freedom from all interrogation as to the reasons or motives which might have led the House to the adoption of any particular

1. C.O 194/88 p.140.Cochrane/Spring Rice. 22 Sept. 1834.
2. Thomas Spring Rice, Secretary January to June 1834. Later Baron Monteagle.
3. C.O 194/88. p. 150. Boulton/Crowdy. 29 August 1834.

course of proceedings, such freedom being an absolute necessity if its character were to be maintained or its functions efficiently discharged.¹

Having been denied an official explanation, Cochrane now proceeded to gather the facts unofficially, and finally arrived at reasonably accurate conclusions as to what had occurred. Upon assuming the chair at the opening of the Third Session, Chief Justice Boulton had offered to the Council some new rules for its guidance. These rules included the establishment of a new quorum of four members plus the "speaker" and a proviso that the position of "speaker" ~~should be elective~~. He suggested that the Council begin its operation by putting the new rule, relative to the "speaker", into action at once. The Council, however, declined to take advantage of the new democracy thrust upon them and the Chief Justice continued to occupy the chair.²

The consequential fact in the whole argument seems to be that the Council, or at least the President of the Council, felt that it had the right to elect a chairman and change his title to speaker. This was more than the Assembly could do, for they had first to be directed to elect a speaker, and upon his election had to await his being approved before he could assume office.

The Governor had no serious objection to the changes themselves except for the change that would make the speaker permanent. The end result of this measure would be that the Council would be unable to meet when the speaker was not in attendance and should the Chief Justice be chosen as speaker

1. Ibid. p. 154

2. C.O 194/90 p.79 ff. Address of Council to Governor and enclosed rules of Council. 30 March 1835.

he would perforce be absent from the capital for long periods while the Supreme Court was on circuit.

Apart from this, the objections raised were objections to the method by which the changes were being sought. The increased quorum was a wise measure since the size of Council had been increased from six to ten, but Sir Thomas felt that changes should come about as a result of instruction from His Majesty rather than from internal action.

What Boulton probably had in mind was to make the Council of Newfoundland like the Councils of the Canadas with which he was familiar, but which bore no resemblance to any other Colonial Council since they received their origin in the Constitutional Act of 1791, which formed them in the avowed imitation of the House of Lords, and with the intent that their function should be exclusively legislative.

On the other hand, the Council as it existed in Jamaica and other West Indian Colonies originated in Royal Commissions of which the Commission establishing Representative Government in Newfoundland was a literal transcript. These Councils were designed to fulfill no other function than that of advising the Governor as to the acceptability of laws passed by the House of Assembly, or on any other question on which he might have occasion to consult them. The time was not remote when Governors had actually sat with the Council on all occasions, those connected with the enactment of laws not excepted. The recently introduced, though well-established usage of the 1830's was to observe the distinction between the meetings held for legislative purposes and those held to advise the Governor.

Still, there were not two Councils but one, and the Colonial Office pointed out that the Newfoundland Council had no claim to the title of Legislative Council. The claim of right in the matter of electing a speaker was equally inadmissible and was not, indeed, even analogous with usage in the House of Lords¹.

Meanwhile the Assembly was claiming for itself rights and privileges which did not legitimately belong to Colonial Governments. In certain enactments it had referred to "parliament" assembled. The offending Acts were disallowed and the Secretary of State wrote to Governor Prescott. "The style of parliament is adopted and followed in a manner for which no precedent is to be found in any Colonial legislature deriving its authority from the King's Commission and General Instructions It is evident that the adoption of this very unusual style has been dictated by a wish to claim for the Council and Assembly powers analogous to those of the House of Peers and Commons of the United Kingdom It is unnecessary to deny or admit the existence of such an analogy. If really existing it must of course be subject to many qualifications, and His Majesty cannot acquiesce in this deliberate and solemn use of a title which would imply the contrary".²

Lord Goderich also denied the existence of any analogy when he stated that "in instituting a legislature in Newfoundland the intention never was entertained of laying the foundation of estates analogous to those which constitute the Imperial Parliament but simply tribunals having correlative jurisdiction and correspondent forms with the British Transatlantic Colonies"³.

Nevertheless when the Assembly overstepped the bounds set by the Colonial Office, the analogy to British parliamentary

1. C.O 194/90. p. 77. Aberdeen/Cochrane. 21 October. 1834
2. Secretary of State for Colonies/Prescott. 12 April 1835
printed in Journals of Assembly 1836
3. Ibid

institutions was appealed. The occasion was the selection of the officers of the Assembly in 1836. At that time the Assembly declared that it had the right to appoint its own officers, but Governor Prescott refused to accept the address in reply to the Speech from the Throne while the Assembly had its own officers, and wrote Baron Glenelg for advice. He replied that the only precedent that could be followed was "that which is afforded by the practice of Parliament". Prescott was therefore ordered to insist on the right of making appointments since the Sergeant at Arms, the Usher of the Black Rod, and Clerk of Parliament were all appointees of the Crown.

The Assembly, upon receiving this reply, resolved "nomine contradicente" that the appointments they had made should be confirmed; for, said they, the Colonial Office had gone to great lengths, when it suited their convenience, to deny the analogy to the British Parliament but now were advancing the opposite argument as a measure of expediency. Nevertheless the Governor still refused to receive the address in reply from the whole house, and not until a special committee was appointed to bear the address did he relent. The upshot was that the Colonial Office, having consulted usages in other North American Colonies, gave in and the Newfoundland Assembly continued to select its own officers.

The Governor was now Sir Henry Prescott who had replaced Sir Thomas John Cochrane in 1834. On June 17th, 1833, Cochrane had written Lord Stanley requesting an extension of his Governorship even though he had already served two terms of four years. After waiting the time usually allowed for replies from the Colonial Office, and having received no reply, he communicated with a relative,

Sir Thomas Troubridge, who informed him that "your pretensions to a prolongation of the term of your Government had been submitted to Lord Ripon"¹ who he felt could hardly do less than corroborate the arguments Cochrane had used in support of his claim².

The assumption was that the original plan which called for Cochrane's replacement at the end of his second term, had been scrapped and that he was to be left in Newfoundland. So certain of this was he, that he purchased supplies for the winter and on September 24th began a tour of inspection. On his return to St. John's he found a letter from Spring Rice awaiting him. The letter advised him that he was being replaced and left him no alternative but to prepare for immediate departure as soon as his successor arrived³. The lateness of the season indicated the need for haste. This necessity for haste Cochrane felt would work to his disadvantage since he was forced to sell his horse and carriage, food supplies and coal quickly and consequently at a loss.

These, however, were not the prime considerations to his objection to replacement. Under normal conditions he would have accepted it as unfortunate but unavoidable. But conditions were not normal. Dr. Carson had stated in the "Patriot" that within a twelvemonth the paper would have served as the instrument that effected Cochrane's removal from office. It was a serious blow to the Governor's pride, therefore, when to all outward appearances the prophecy was fulfilled. He was well aware that a copy of the "Patriot" was being sent regularly to the Colonial Office, and could not help wondering if the circumstances of his removal were merely coincidental with Carson's prediction or

1. Formerly Viscount Goderich

2. C.O 194/88 p.156. Cochrane/Spring Rice. 12 October 1834

3. Ibid p.156R

whether there was a more direct connection¹. It might very well have been that Dr. Carson timed his prediction to coincide with the end of the Governor's term. Actually Cochrane had lost much popularity with the liberal party and was worried lest the representations of that group had influenced the Colonial Office to such an extent as to affect his possible future preferment.

In reality he had not been a bad Governor. Though not brilliant he had at least been sincere in his desire to promote the best interests of the Colony. Though originally opposed to Representative Institutions for Newfoundland, once they had been established he had done his utmost to see that they worked successfully. Prior to 1832 there had not been a single instance when he had been called upon to render an explanation for any action to the Colonial Office. Only one complaint and that a minor one had been submitted during Lord Stanley's term of office. Cochrane felt that this charge had been answered satisfactorily and in view of Lord Goderich's statement in 1831 that "he ... was not to contemplate an early removal"² was at a loss to understand his replacement.

While the Governor was unwilling to award Dr. Carson the merit of success in having him ejected, yet that was the obvious inference drawn by the public. Cochrane, therefore, felt that an explanation from the Colonial Office was in order, and requested one from Lord Stanley who replied "that no unfavourable interpretation can fairly be put upon your retirement ... when compared with what precedes it"³.

1. Ibid p.159

2. C.O 194/88 p.161R. Cochrane/Spring Rice, 12 October, 1834

3. C.O 194/88 p.158R. Cochrane/Spring Rice, 12 October, 1834

This could not be interpreted as a satisfactory explanation by any stretch of the imagination, so the issue was left unsettled and Cochrane continued to feel that somewhere in the background operated a power which was prejudicial to his interests. What that power was (he refused to admit its being Dr. Carson) he could not discover. Though four complaints were submitted to the Colonial Office in 1834, he felt that none of these could have any bearing on the case since they had all been sent in the time of Spring Rice who had followed Lord Stanley at the Colonial Office. In any event he dismissed the complaints as insignificant since they had emanated from the "profligate Commander Pearl and the equally worthless Dr. Carson"¹. Though aware of Dr. Carson's inimical attitude towards him, Cochrane was not prepared to believe that Lord Stanley would have given any credence to his arguments. So firm was his conviction that Carson was nothing but a troublemaker, whose sole interest was to upset good government and spread dissension in the Colony, that he could not imagine anyone in an official position believing other than the way he did. This lack of imagination was a serious matter as concerned with his own peace of mind, for the violent oratory and brilliant epithetical journalism of Dr. Carson was designed to influence less obtuse men than those to whom it was primarily directed. At any rate, the decision to recall Cochrane was not rescinded and he was relieved by Captain Prescott.

An unfortunate demonstration at the dock as Governor Cochrane was taking his departure² left no doubt of his unpopularity with the "liberal" segment of the population. This

1. Ibid p. 159R

2. Public Ledger. November 4, 1834

was an indication of the "anti-government" feeling that had been mounting under pressure from Carson, Kent, and other leaders of the liberal cause and which had been accentuated by the events of December 1833.¹ Captain Prescott inherited a worrisome situation, especially since the time for a new election was rapidly approaching.

The Assembly had passed an act limiting the duration of the Assembly and in fact establishing the Assembly as a quadrennial one. The original act had been suspended because the Assembly had referred to themselves as a parliament, but once that detail had been corrected there was no further obstacle to its passage. In the normal course of events the first quadrennial period would end in 1836 but Captain Prescott feared that the temper of the people was not at this time likely to be conducive to a quiet election. In his private thoughts he might have felt that the possibility of a too "liberal" Assembly being elected was too great. At any rate he thought it expedient that there would not be any necessity for dissolution before 1840. In the meantime it might be that a quiet period would be found when an election could be conducted peaceably.

Lord Aberdeen misunderstood the suggestion and thought Prescott was suggesting a postponement of the election until 1837. He could not see the efficacy of such a measure and condemned the suggestion. Baron Glenelg, however, agreed with Prescott and gave him permission to assent to the bill in whichever form it came. Actually the Assembly was dissolved on the 10th of April, 1836, and preparations made for a new election. The quadrennial legislature was to date from the beginning of the term of the second general Assembly.

1. For Cochrane's own statement on this subject see The Newfoundlander November 6, 1834

In conformance with the expressed aim of this chapter much detail has been omitted. But enough has been included to show a rather "conservative" Assembly making some effort, despite handicaps, to fulfil the function for which it had been created. Despite its "conservatism", however, the Assembly has already expressed its independent spirit, and both Assembly and Council have laid claim to rights and privileges analogous to those of Parliament, which claim is later to be blamed in large part for the failure of the Constitution to function. Moreover, increasing liberal agitation, which so far has brought about the recall of Governor Cochrane and has given Governor Prescott worries about the coming election, indicates that the next Assembly may not be so conservative as the first, and that the time of peace and co-operation is drawing to an end.

CHAPTER SEVEN

X THE ELECTION OF 1836

Newfoundland deputies of the second general Assembly writing to Lord Glenelg in 1838 declared that "the former House of Assembly had rendered itself obnoxious to public odium by the character of the enactments which were there carried"¹. They cited a law "compelling the poor man to work on the roads gratuitously that the wealthy may ride comfortably while the rich man himself was almost exonerated from charge"²; a law enabling judges who were not in the confidence of the public to transport from their country the people of Newfoundland for offences punishable in England only with fines and imprisonment³; a law forbidding the poor man to keep his dog to provide him in winter with fuel⁴; and a law incorporating as a Bar a few unqualified merchants thereby shutting up the avenues of justice"⁵. The deputies therefore stated that the election of 1836 was to decide "whether the wealth of the merchants supported by the power and the influence of the executive ... or the power of the people, should prevail". This chapter will give the answer to that question.

Captain Prescott's plan of having the quadrennial Act worded in such a way as to enable him to postpone dissolution until the time seemed propitious for a peaceful general election did not mature. He now had no alternative but to issue writs for a new election, which he did, setting the date of election at September 13, 1836.

1. Despatches from the Colonial Office 1825-38. Newfoundland Deputies/Glenelg. 9 July 1838
2. 4 William 4. Session 2. C 6.
3. 4 William 4. Session 2 C 5.
4. 3 William 4. C 8.
5. 4 William 4. Session 2 C 23.

The omens were not auspicious. The violence of the 1833 by-election had been but one indication of growing hostility, both sectarian and social. In a great many cases religion and social position were equated. /Dr. Carson,✓ the "liberal" leader expressed vehement objection to the fact that the entire Council was Episcopalian¹, while that denomination also had a stronghold on the Supreme Court and the legal profession. / John V. Nugent ✓ attempted on several occasions to secure admission to the bar only to be refused by the Chief Justice². The grounds for refusal could have been no other than that he professed the Roman Catholic faith, for he was a trained lawyer which was somewhat of a rarity³ in Newfoundland at the time.

Doctor Carson's violent tirades, designed to promote the cause of "liberty and equality" certainly did nothing to soothe the public temper. Verbally, he castigated the Governor and Councillors, the Chief Justice and the Archdeacon⁴ in terms which today would almost certainly be libellous. With the oratorical assistance of Morris and Kent and the help of the facile pen of Nugent, he kept continually before the liberal part of the populace the fact that they were numerically the largest group in the Colony. Consequently, they deserved the largest representation in the Assembly and Government. If the justice of this claim was not recognized then they had no choice but to exercise that power which superior numbers gave them and thus forcibly if necessary, assume their rightful positions.

Meanwhile the conservative group were not neglecting to publicize their views. The "Ledger", edited by Mr. Winton, who

1. Church of England.

2. Petition of Nugent. Journal of Assembly February 19, 1836

3. Ibid

4. See Carson on Archdeacon Wix in Public Ledger, September 4, 1832

had good reason to feel bitter, denounced in violent terms the Roman Catholic clergy and their aspirations to power¹.

The battle lines were being drawn; particularly in the districts of St. John's and Conception Bay. For should one party be able to get all the seats from these two districts it would have gone a long way towards control of the House. Moreover, in these districts both major denominations were represented in large numbers while the proportion of merchants to total population was higher than in the other districts.

When the day of election arrived it was at Harbour Grace in the electorate district of Conception Bay that the most serious events occurred. Fairly early in the day the "Conservative" candidates, Messers Prowse and Ridley, arrived at the hustings, raised their flag, and proceeded to prepare their "tallies". Before the actual voting commenced, however, a parade of about five hundred men arrived from Carbonear. The "liberal" candidates led the parade and its members wore conspicuously either a sash or hat-band of green². As this parade advanced on the hustings the cry of "Down with the Tories" was raised. Ridley's flags were torn down and replaced with those of his opponents, but as yet no violence was done though the mood of the crowd was threatening.

Finally, when Ridley's first "tally" advanced to the poll the assembly erupted into violence. The first voter was beaten severely, stones flew and pickets which had been torn from fences were used as cudgels. Though there was no loss of life, blood flowed freely and the "Tories" were forced from the field.³

1. Public Ledger. October 5, 1832. Editorial.
2. Duplicate Despatches. 1836-37. Attorney General's report on election. February 2, 1837. Depositions of witnesses testimony of J&P's etc.
3. C.O 194/95. p.209, Donson & Starke/Crowdy. Deposition of Kough, Gill & Greve. Nov. 17, 1836.

As long as voting continued no one was admitted to the polls by the mob unless he wore his green ribbon¹. Before the day ended Ridley withdrew from the contest and on the 3rd day Prowse retired also and the poll at Harbour Grace was declared in favour of Messers Brown, Power, McCarthy and Godfrey.²

The violence did not end with the day. Arrests were made and depositions were sought from eye witnesses. Prospective witnesses were visited by the mob, treated brutally and threatened with dire consequences should they appear in court. Eventually they were persuaded to sign affidavits but only when they had been assured that their names would not be published.³

Meanwhile the five hundred "brave lads" from Carbonear and vicinity had offered to march around the Bay and as far as St. John's, giving their party the same type of support as had been given it in Harbour Grace. Fortunately for the peace and well-being of the polling stations enroute their assistance was not required.

The ringleaders who had been arrested were, despite rumblings and threats, brought to St. John's for trial. They appeared before Chief Justice Boulton and received stiff sentences; perhaps too stiff.⁴

At the same time, a mass meeting of "liberals" in the Waterford Valley on a pleasant Sunday afternoon led to more arrests. Dr. Carson, Mr. Kent, and Mr. Morris, among others, addressed the gathering, which from contemporary, but admittedly biased, accounts did not in any way become unruly. Nevertheless, according to Judge

1. Ibid p. 210

2. C.O 194/95. p. 214 ff Starke/Crowdy 17 November 1836

3. C.O 194/95 p.222 Stark/Crowdy 18 November 1836

4. See Appendix to Journals of Assembly 1837 for results of trials.

Boulton the gathering had profaned the Lord's Day and was guilty of a tumultuous assembly. According to one witness of the trials the only piece of concrete evidence presented in court seems to have been that Mr. Power said "Bah" on the public street¹.

This is not to say that peace and harmony reigned in St. John's. Indeed there was much ill-will and occasionally this exploded into violence. There was still a group within the Roman Catholic Church who, more conservative than their fellows, were persecuted by their church and co-religionists. They were tagged with the alternate epithets of "mad-dog" or "Orange Catholic", were boycotted in their places of business, condemned from the altar, driven with their families from church, in effect excommunicated, reviled in public and stoned in the privacy of their homes². The act which condemned these people to such indignity and actual hardship was subscription to the "Public Ledger" which had been held up to the Catholic population as the epitome of evil.

The Conservative candidates for the district of St. John's, Patrick Kough, Nicholas Gill, and James Grieve declared in a deposition that between the dates of nomination and election "violent means were resorted to by their opponents to terrify and intimidate the peaceable and orderly electors" who were "frequently and grossly insulted, their persons attacked and brutally ill-treated, their lives threatened and their property jeopardized and destroyed"³. On polling day "the most violent measures were adopted to intimidate and prevent them from coming to the poll"⁴ while the special police sworn in for the occasion,

1. Duplicate Dispatches - 1836-37. cf. Journals of Assembly, 1837 appendix

2. C.O 194/95 p.267. cf Case of William McLean Little.

3. C.O 194/95 p.266. Deposition of Kough, Gill and Grieve

4. Ibid. p. 268

threw up their staves and gave up the fight.¹

In describing the same incident the liberal press said that the "miserable quill drivers of the Tory counting houses, who had been sworn in as special constables, and who amused themselves by tapping people on the head, were squeezed almost as flat as pancakes ... while others who made themselves over officious were maltreated by the electors"². While facetiously admitting the violence the Patriot had justified it on the grounds that the special police were "Tory" agents. Indeed preparations had been made by the leaders of the popular party to counteract the appointment of special police. Dr. Carson, on hearing of the appointments, said that he had "ordered the servants at my farm ... to prepare 1000 pickets" and he felt that "1000 men with these pickets will be able to face 250 special constables"³. The preparations were not in vain for with the aid of "no less than 400 ruffians from that notoriously infamous place, Carbonear" ⁴ the Tories were completely discomfited and their candidates forced to withdraw. ⁵

The popular party was jubilant and Dr. Carson declared that the people had finally triumphed and elected a representative Assembly, unlike the first which had consisted of "the representatives of the alien adventurers"⁶. On the same occasion Dr. Carson took occasion to mention the official view that the liberal cause was a wholly Roman Catholic movement directed by priests of that Church. He pointed to the fact that the recent

1. Ibid p. 270 cf. Deposition of police: Blaikie & Carter/Crowdy
14 November 1836

2. The Newfoundland Patriot November 19, 1836

3. C.O 194/95 p.296. Deposition 18

4. Public Ledger November 25, 1836

5. C.O 194/95 p.271. Deposition of Kough, Gill & Grieve

6. The Newfoundland Patriot December 3, 1836

census had shown that in Conception Bay electoral district Protestant voters outnumbered Catholics by a margin of 500 and that in that district a Protestant had headed the poll¹. Indeed evidence that the antagonisms were not all based on religion can be seen in the report of a meeting held on Saddle Hill, midway between Harbour Grace and Carbonear, on February 9, 1832². That meeting was attended by large numbers, estimated at between 2000 and 3000 persons who appeared "to be acting under a systematic organization as evinced by their notices and threats against the lives and property of persons not complying with their views respecting the abolition of the barter system hitherto practiced by the Mercantile body"³.

It is noteworthy as well that the result of this meeting was the partial destruction of the schooner "Perseverance" belonging to Messrs. Thomas Ridley and Company of Harbour Grace. ⁴ Apparently Mr. Ridley had not been over popular with the electorate even prior to 1836.

Nevertheless, the Conservative view was that the Catholic church appeared to be overstepping the bounds of reason in its effort to have the political cause it sponsored prevail. In fact, in 1838 we find a Father Browne writing to the Colonial Secretary that because of "a non-observance of a certain portion of the discipline and laws that regulate the Romish church he

Bishop Fleming and four others of his clergy are declared by an express canon removed from that Church and are not at present within its pale, or members of it"⁵. The author of the letter

1. Ibid
2. Minutes of Executive Council February 18, 1832
3. Ibid
4. Ibid
5. Duplicate Dispatches, 1838..Browne/Crowdy. January 9, 1838.

containing the above excerpt bears the same name as one of Bishop Scallan's¹ priests who was stationed at Ferryland and of whom Bishop Howley says "... he was not very satisfactory".² Whether he wrote it or not is, however, a moot point but the author at least appears to be someone whose opinion Crowdy trusted.

Whatever the power behind the "liberal" party, whether anti-merchant, anti-Protestant, or both, the election result was a smashing victory for the popular cause. But Chief Justice Boulton, high Tory that he was, was not inclined to accept defeat without a last ditch stand. In investigating the circumstances surrounding the riots at Harbour Grace, he happened to discover a loophole which enabled him to declare the whole election illegal since the writs issued by the Governor had not borne the Great Seal and were therefore null and invalid. In the circumstances the only course of action possible was the issuance of new writs and the holding of a new election.

The opening date of the Assembly was prorogued until Baron Glenelg could be consulted. He felt that the matter could safely have been ignored but since the Chief Justice had chosen to make an issue of it the Colonial Office could do nothing but admit the legality of his opinion. A choice presented itself. The British Parliament could be asked to pass an act validating the writs or alternatively new writs bearing the Great Seal could be issued and a new election held.³ The latter course was adopted since the Imperial Parliament was not in session and the winter would have elapsed before action from that quarter could have been expected.

1. Third R. C. Bishop of Newfoundland 1817-1830
2. Howley p.263
3. Journals of Assembly, 1837. Appendix. Glenelg/Prescott.

If Boulton had hoped to change the balance of the Assembly to favour the mercantile group by forcing a new election, he was mistaken. What actually happened was that the "conservatives" knew they were fighting for a lost cause on the Avalon Peninsula and gave up without a struggle.

The opening of the new Assembly did not end the controversy concerning the election writs. Early in the session the Assembly raised the question of the validity of acts passed by the former Assembly since it had been elected in a manner not strictly legal.¹ To this query Captain Prescott replied that he had probably been mistaken in thinking that the writs for 1832 had been unsealed, and in any case "the point is ... probably immaterial"².

The Assembly could not see that it was an "immaterial" question since it involved the legality of all existing legislative enactments, the revenues already collected, "the piscatory, commercial, agricultural, and educational interests of Newfoundland".

When this point of view had been made known to the Governor, the Colonial Secretary wrote the Assembly and informed them that there was still some doubt as to whether the Seal had been used or not. Originally Seals had been attached to the 1832 writs but they were deemed unnecessary and removed. However some returning officers recollected that all the seals had not been removed; hence the doubt. It is obvious that the Governor was attempting to evade the issue for it would have been quite simple to have the writs, which were on file, examined. The Assembly now set up a committee to do just that and they reached

1. Journals of Assembly. July 14, 1837
2. Journals of Assembly. July 17, 1837
3. Ibid. July 18, 1837.

the conclusion that the Seals had never been attached, for though the corners of some of the writs had been cut off, it appeared that the area removed would not have been large enough to accommodate the Seal.¹

After all the fuss, nobody thought it expedient to test the legality of any of the laws enacted by the first Assembly and the issue was permitted to drop.

Chief Justice Boulton had been growing less popular with the greater part of the population almost daily since his arrival in 1833. The election riots and demonstrations and the arrests and trials that followed made him particularly obnoxious to the Catholic party. His trial of Father Duffy for inciting the voters of St. Mary's to riot, the heavy fines imposed on the leaders of the Harbour Grace riots, his trial of Patrick Morris and his fining of Mr. Power for saying "Bah !" all combined to make him the most unpopular man in the Colony. Charges of making his office of Chief Judge "ancillary to party vengeance" were laid against him, perhaps not without some justification².

In his defence, however, it must be said that he did not lay the blame for the riots, which he considered no worse than many which had occurred at British elections, at the doorstep of the Catholic clergy or people. Rather he blamed the stipendary police constables who depended on the good will of the Assembly from year to year to retain their jobs. Since this was the case the police did not wish to offend any member of the Assembly by interfering in the process by which he got himself elected, and as a consequence acted with such timidity throughout the election

1. Journals of Assembly August 9, 1837

2. The proceedings of a Committee of the Assembly appointed to investigate the administration of Justice in Newfoundland are printed in the Appendix to the Journals of the Assembly 1837.

as to be completely ineffectual.

Dr. Carson either did not hear or was not impressed with this opinion, for we find him writing in the "Patriot" that "no English hunter clears a three-barred gate with more facility than you [Judge Boulton] set aside any legal objections that stand in the way of your passions, your prejudices, or your ambitions".

It is fairly obvious at this point that a battle is in the making. The Assembly returned is dominated by the Carson led "liberal" Catholic party, the Council is Tory to a man and is led by the redoubtable Boulton. Preliminary skirmishes have been fought but the "war" will last for the next four years, and its cessation will see the suspension of the "Old Representative System" in Newfoundland.

The answer to the question posed at the beginning of this Chapter is apparent. "The power of the people" has prevailed. But the victory may be pyrrhic, for its attainment has roused such bitter antagonism based on party, class, race and religion, that under the system of Government that obtains deadlock is almost inevitable.

CHAPTER EIGHT

THE SECOND GENERAL ASSEMBLY

To pursue the dramatic analogy, the climax has now been attained. The denouement can lead to but one conclusion. The players remain true to the roles in which they have been cast and the nature of these roles admit no compromise between the disputants. "The power of the people" has prevailed at the polls, but "the wealth of the merchants supported by the power and influence of the Executive" is still strongly entrenched. These opposites must clash, and it is the purpose of this chapter to point out the salient points of the ensuing five year struggle which ended in stalemate, necessitating the suspension of the old constitution and the introduction of a new.

Having discussed at length the matter of the unsealed writs the Assembly turned its attention to a much more serious matter. The events of the past months seemed to indicate that an investigation of the administration of justice in Newfoundland was necessary. What was actually intended was an investigation into the actions of Chief Justice Boulton. /

Henry John Boulton had not been a good choice as Chief Justice of a colony where class hatreds were so deeply felt and sectarian battle had been joined.

He was of a stern, uncompromising disposition, despising expediency, fond of innovation and desirous of putting all departments of government into what he considered good order. On the bench he was "cold". Politically he was a high Tory. All in all he possessed many characteristics that lent themselves to a genuine hatred of his person by all but the wealthy Protestant

merchants. Even Captain Prescott who admired the 'coldness' with which he handled his cases¹ felt that it would be to the advantage of the Colony to have him removed from office².

In order to facilitate the collection of evidence, the Assembly asked the Government to provide for them returns from the various officers of government sworn under affidavit³ respecting actions taken by them during the elections. Governor Prescott replied that he could not require public officers to make returns under oath and was forced to deny their request. The Assembly would not accept this refusal since, they said, the Governor had already on a previous occasion provided a sworn statement from a government official and moreover this was the customary procedure in New Brunswick. Nevertheless Prescott again refused and the Assembly had to be content with unsworn statements.

The first piece of evidence the Assembly found which seriously compromised Boulton was in connection with the empanelling of juries. The Judicature Act of 1826 upon which was founded the Royal Charter establishing the Supreme and Circuit Courts of Newfoundland, empowered the judges to make rules of proceeding which would have the force of law provided that they were not put in operation until they had been publicly promulgated for three calendar months.

Chief Justice Tucker had originally made rules for empanelling juries under which alphabetical lists of those eligible to serve were kept. As a jury was needed it was simply taken from the list in order as the names appeared. This rule had later been changed so that juries were selected by ballot.

1. C.O 194/90. p. 236. Prescott/Grant. May 29, 1835.

2. Ibid.

3. Journals of Assembly. July 6, 1837.

As soon as Judge Boulton had arrived he had changed the rules respecting the method of balloting. These rules had not been promulgated for three months and what is more had been drawn up and put into effect before Chief Justice Boulton had been officially sworn into office. In other words, they would have been illegal even if the rules of promulgation had been observed.

Not only was the matter of selection of juries called into question, but also the list from which selection might be made. The Grand Jury List was almost exclusively Protestant, containing "scarcely six, and certainly not ten Catholics"¹. The list was comprised of merchants of all degrees and of their agents and managers resident in St. John's, as well as the honorary magistrates of the town. The special juries were selected from the same class. The petty juries were summoned from other householders of the town, of whom "probably seven tenths are were found to be Irish and Catholic". Court rules gave the attorneys for both defence and prosecution the right to strike from the list of possible jurors those to whom they could raise some objection². With so few Catholics on the Grand Jury List, the practical result of this regulation was to make it possible to strike from the list of jurors every Catholic, and there is evidence to suggest that the Attorney General did indeed take such action. There is no wonder that 5,000 "inhabitants of the District of St. John's" and 8,864 "residents of Newfoundland" should petition that "the fountains of justice be purified".

Chief Justice Boulton's love of innovation led to other measures which lost him popularity with the fishermen. Before he assumed office the laws of attachment prohibited the seizure,

1. Duplicate Dispatches: Report of James Simms on elections,
2 Feb. 1837
2. Court rules are printed in Journals of Assembly 1837

during the fishing season, of equipment necessary to the prosecution of the fisheries. Moreover, by custom, the current supplier had had a preferable claim on the proceeds of the fishing voyage after the servants' wages had been paid. The new form of writ introduced by Judge Boulton scrapped these customary laws so that old creditors often came down on a fisherman in the middle of the season leaving him without the means of continuing the voyage, putting him and his family in actual hardship and leaving his current supplier to absorb a considerable loss.

Furthermore, Boulton changed the laws which had made it possible for a servant to "follow the fish and oil" into the hands of the receiver in order to get his wages. All these changes were made despite well established precedents to the contrary.

It was unfortunate that the Chief Justice should have been ex-officio President of the Council. As Governor Cochrane had suggested, involvement in the politics of the Colony left the Judge open to charges of partizan behaviour on the bench. This was especially true in Boulton's case, since his political principles were in direct opposition to those of the predominating party in the Assembly.

The conviction for libel of the editor of the "Patriot" who had merely printed verbatim a speech that Patrick Morris made in the Assembly, and the imposition of exorbitantly heavy fines on those participating in the election riots, served to make more impressive the evidence which the Assembly was piling up against Boulton¹. Finally the Colonial Office could not avoid taking active notice of the Chief Justice's unpopularity. The decision which had convicted Mr. Parsons, the editor of the "Patriot", was reversed

1. Journals of Assembly 1837. Appendix.

and the sentences imposed on the rioters were commuted. Boulton was ordered to appear before the Privy Council to defend himself.

A committee of the Assembly followed Boulton to London in order to be at hand to answer counter charges which they felt might be made. The hearings were somewhat prolonged, and resulted in the Chief Justice being removed from his position in Newfoundland. In giving its judgement the judicial committee of the Privy Council stated that it had not "found any ground for imputing to the Chief Justice any corrupt motive or intentional deviation from his duty as a judge" and, moreover, expressed "disapprobation at the language and conduct adopted towards the Chief Justice as being unjust towards him personally, and inconsistent with the respect due to the high office he was filling"¹. Nevertheless the Privy Council felt that it would be "inexpedient that he [Judge Boulton] should be continued in the office of Chief Justice of Newfoundland" since he "allowed himself to participate in the strong feelings which appear unfortunately to have influenced the different parties of the community (although we do not find that his judicial decisions have been affected thereby)"².

It was unfortunate that Boulton, a staunch Tory, should have been placed in a position both judicial and political, an anomalous situation that Governors Cochrane and Prescott had both asked the Colonial Office to rectify.

Though Boulton had been exonerated of the major charges brought against him the liberals were jubilant that he had been removed from the Bench in Newfoundland. The announcement of this fact besides being indicative of jubilation is an interesting commentary on the nature of the propaganda of the day. The

1. Quoted in Pedley pp 401 - 02.

2. Ibid

announcement read: "Victims of judicial tyranny, persecuted priests, and people! All Newfoundland, lift up your hearts in thankfulness to God! Boulton is convicted! condemned!! sentenced!!! He has been found guilty upon the principal charges, guilty of abrogating the laws and customs of the country and of being a political partizan and has been removed from the justice seat of Newfoundland forever".¹

1437? That the Assembly was still in difficulty financially is apparent from the fact that Mr. Nugent, one of the committee with no private means, now had to seek a loan from the Colonial Office to pay his passage home. The Colonial Office could not oblige him but fortunately for him Bishop Fleming was in London enroute to the Vatican to answer charges brought against him by the Newfoundland Government. He was able to loan Nugent the necessary sum on charge to the Assembly.

The charges against Bishop Fleming, all stemming from his alleged interference in Newfoundland politics had been submitted to the Vatican by the Austrian Embassy in Rome and by the Vicar Apostolic in London,² in both cases an application from the Colonial Office who based their charges on the despatches of Governors Cochrane and Prescott.

Meanwhile, in Newfoundland, the popular temper was still uncertain. The arrest of Parsons had brought a storm of protest. The Constitutional Society led by Kent, Carson, Morris and Nugent had met and protested vigorously. An anonymous notice appeared on the Court House threatening Boulton and Garrott, the High Sherrif, with "worse than Harry Winton got"³ and men were heard openly threatening to pull down "the bloody building" and

1. Ibid. pp. 402-3

2. Howley. p.265 n 1

3. C.O 194/90. p.185. Brenton/Crowdy

liberate Parsons. So seriously did Governor Prescott take these threats that he quietly ordered out the guard.

The unhappy divisions that existed within the populace were merely reflections of the deep division between the Assembly and the Council. Early in the first session of the second Assembly they had assumed the appearance of hostile camps, each unwilling to compromise, each striving for complete domination of public affairs by the party it represented. The issue that provided the "causus belli" was finance.

Early in the session of 1837 the Assembly had proposed a bill for supplying money for roads and bridges. The Council had returned the bill to the Assembly with suggested amendments. This action was interpreted by the Assembly as a violation of its privileges, since they maintained the Council had no right to interfere in any way with a money bill. The Council, while willing to admit that money bills should originate in the Assembly, were in no way prepared to admit that they did not have the right to amend such a bill.

The method by which Council and Assembly were supposed to resolve their differences was through a series of conferences. When one house or the other disagreed with some action taken by the other, it would appoint a number of "managers" and call for a conference. The other house would thereupon appoint a number of "conferees", and the conference would be held in a special room provided for that purpose. Both conferees and managers would be given full instructions as to the stand they would take, so that the conference would actually consist of an exchange of "notes".

The Assembly claimed that when the first conference on the road bill was held the Council had admitted in its instructions to its conferees that it had no power to amend money bills but could rather, call a conference at which it would suggest amendments that the Assembly could make. This statement was later denied and the Journals of the Council "doctored" to destroy the evidence proving that the statement had been made at all. Whether this accusation is true or not, it does show the spirit of mistrust that existed between the two houses of the Legislature.

During the course of the next months the Assembly sent up the Supply Bill, to which they had attached the Road Bill, on thirty-one occasions and on as many occasions did the Council amend it. Each Amendment was speedily given "the six-months' hoist" by the Assembly. Finally the Council refused to receive resolutions of the Assembly on the subject. On November 15, John Nugent carried a set of resolutions to the Bar of the Council Chamber but Chief Justice Boulton refused to receive them. Thereupon Nugent threw them into the Chamber and Judge Boulton cried "Kick it Out! Kick it Out!".

During this same period, July to November, 1837, three revenue bills, four road bills, and two supply bills had all been lost because the Council had refused to accept them without amendment and the Assembly had refused to pass amendments made by the Council. Of a total of thirty-two bills presented by the Assembly, only ten got the approval of the Council. Prorogation was delayed by the Governor who hoped that a supply bill could be passed, but agreement could not be reached and finally on November 18, 1837, the house was prorogued.

The Assembly, meanwhile, had petitioned the King to make clear the exact position of Assembly and Council and their relative powers. Baron Glenelg replied that though the Newfoundland Legislature was modelled on the Imperial Legislature, a distinction existed with regard to money grants.

In the House of Commons no grant of money could be initiated except by the Crown, but this provision did not extend to British North American Colonies. In these colonies, supplies were granted either in series of bills on a year by year basis each of which went to the Council for approval; or by means of a series of resolutions in each of which separately the concurrence of the Council was obtained before it was included in an appropriation act. Thus Assemblies were restricted as Commons was not.¹

Glenelg felt that if the Assembly should establish and exercise the "doubtful right" of deciding the exact amount and object of expenditure without intervention, then the Council would only be able to reject all votes collectively. This put the Governor and Council in the position of having to accept what they believed to be injurious to the Colony or upset the internal economy of the country for a whole year by insisting on amendments which the Assembly would refuse to accept.

In principle, therefore, the Council's stand had been upheld and their position strengthened, but in the present instance the Colonial Secretary could see no just reason why the Supply Bill for 1837 had been rejected by the Council².

The second session of the second Assembly began peaceably

1. Appendix to Journals of Assembly, 1838. Glenelg/Prescott
1st February, 1838
2. Appendix to Journals of Assembly, 1837. Glenelg/Prescott
1st February, 1838

enough, but the embers were soon fanned to flame once more. Dr. Edward Kielly met Mr. John Kent on the street, "insulted" him and pulled his nose¹. Instead of treating the matter as a case of simple assault to be tried in Magistrates' Court, Mr. Kent looked upon it as a breach of the privileges of the Assembly, and had Dr. Kielly brought before the bar of the Assembly and ordered to apologise². The Doctor refused and was by the speaker's warrant arrested and jailed.³

Assistant Judge Lilly immediately issued a writ of "habeas corpus" and had Kielly brought before him. He discharged Kielly stating that the process by which he was held in custody was void.⁴

The Assembly, greatly incensed that its authority should be flouted, issued speaker's warrants against Kielly, Judge Lilly, and the High Sherrif, Garrett. Garrett and Lilly were arrested⁵. Governor Prescott now entered the picture and stated that he would immediately prorogue the Assembly and thus release those who had been imprisoned by warrant of the Assembly.⁶

The Assembly now prepared an address to Lord Durham⁷ stating that they were led to believe that the executive government wished to deprive them of a power possessed by the most inferior courts in the land, that was the power of punishing for contempt. After a period of seven days the Assembly was re-opened on August 20, and at once the Speaker, Dr. Carson and Mr. Kent were served with writs at the suit of Dr. Kielly for £3,000 each.

1. Journals of Assembly August 6, 1838
2. Journals of Assembly August 7, 1838
3. Ibid. August 8, 1838
4. Ibid. August 11, 1838
5. Journals of Assembly August 13, 1838
6. Ibid.
7. Ibid.

Mr. Bryan Robinson, Kielly's attorney, compared the privileges of the Assembly to those of the Mechanics' Society, which statement the Assembly regarded as another breach of privilege. Fortunately for Robinson he was Master-in-Chancery and thus as an officer of the Council was immune from action by the Assembly.

Eventually the celebrated case of Kielly versus Carson reached the Privy Council and the judgement handed down by Chief Baron Parke established for all time the law respecting powers of Colonial Assemblies.

In his judgement he stated in part, "The House of Assembly of Newfoundland is a local Legislature with every power reasonably necessary for the proper exercise of their functions and duties; but they have not, what they erroneously supposed themselves to possess, the same exclusive privileges which the ancient law of England has annexed to the House of Parliament"!

This should have made clear to the Assembly the fact that the analogy to the British Parliament was a very superficial one but they were not convinced and continued to 'kick against the pricks'.

In its indictment of the Executive Government contained in its address to Lord Durham, the Assembly had declared that at that time the Treasurer of the Island was absent on leave; Mr. Brenton, the Assistant Judge, was absent on leave; the Chief Justice was absent to defend himself before the Privy Council; and the Collector of Customs had been absent for the previous two years.

In view of these circumstances the Supply Bill for 1838 allocated only £50 for the Collector of Customs. The Governor felt that his salary should be at least 6% of the money collected,

or for that year £1,297. 17s Od. Lord Glenelg, when asked to rule on the subject, directed the Governor not to assent to a bill which did not provide "ample remuneration" for the Collector of Customs.

Assembly investigations had meanwhile found the Treasurer's reports inadequate. Instances of fraud were found, the High Sherrif particularly, was guilty on this count. At the same time trouble was still being experienced in getting a supply bill passed, but finally in October, 1838, such a bill received the assent of the Council. Included in this bill was provision for raising a loan of £10,500 to be used for the construction of roads, bridges and other public works.

The fourth session of the Assembly met on May 17, 1839. One of the first pieces of business was to prepare a resolution stating that James Power, one of the members for Conception Bay, had accepted an office of emolument under the Crown and was therefore ineligible to sit in the house and that consequently a by-election should be held. The Governor appealed to the law officers of the Crown who referred to James Stephen's opinion which had been given when a similar case had occurred during the First Assembly. He had written at that time¹ that claims based on 6 Anne c.7 were invalid since that statute did not extend to the colonies. Moreover, the Statute of Anne, nor the principle upon which it rested had never been incorporated into the Colonial code of any British settlement possessing a legislative assembly. Even in Lower Canada this had only been made law by a Colonial Act. The law officers now reaffirmed Mr. Power's right to hold his seat and agreed with Stephen that

1. C.O 194/87. p.115. Memorandum of James Stephen. 23rd September 1834

"the legal doctrines maintained by the petitioners Assembly are misstated and erroneous".

Throughout the remainder of this session which continued until October 12, 1839, the only events worthy of record are those connected with the Supply and Contingency Bills. The old argument centering around the right of the Council to amend was resumed and the usual procedure was followed. "The usual procedure" was for the Assembly to pass the bill and send it to the Council. The Council would amend the bill and return it to the Assembly. The Assembly would pass a motion that the amendment be read "this day six-months". A new bill, in practice the same as the original, would be prepared and the whole thing gone through again.

The constant bickering within the Legislature was mirrored in the press. Each side from time to time firing a verbal broadside at the other. When commenting on the fact that the Assembly had refused to pass an amendment to the Contingency Bill for 1839, the "Ledger" printed this opinion of the Assembly. "We believe that 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"¹. While this is a somewhat exaggerated statement it is true that the Assembly refused to effect any sort of compromise with the Council and in an attempt to place all power in their own hands were rapidly forcing a position which would leave the Colony in the same state as had obtained before 1832.

1. The Public Ledger, October 11, 1839.

The fifth session, which opened on January 3, 1840, brought another point of contention to the fore. In preparing its "Poor Bill" the Assembly had insisted on naming the Commissioners who would administer it. The Council insisted that the Commissioners should be executive appointees. The Marquis of Normanby, Secretary of State for the Colonies, replied to a dispatch of Prescott on this subject that "It might be difficult to lay down the general proposition that Commissioners for a public service, and the officers acting under them, should always be appointed by the Executive Government, and never by an act of the Legislature. But ... experience demonstrates ... that the appointment of such functionaries by legislative bodies acting under no effective responsibility, is amongst the most fertile sources of abuse and misapplication of public revenues"¹.

As far as the Assembly was concerned this dispatch proved nothing. It could not be interpreted in such a way as to suggest that their action had been unconstitutional. "It cannot be unconstitutional", they said, "that the three branches of the Legislature [should] have a concurrent voice in the nomination of unpaid Commissioners, nor can it be regarded for a moment as more 'constitutional' that one of these branches should be permitted to exercise powers that ought to belong to the three"².

An Education Act which the Assembly was attempting to get past the Council also was causing considerable controversy. The hurdle that could not be cleared was whether the Bible should be permitted in the schools or not. The St. John's School Board had passed a by-law which stated that "no books shall be used in

1. Journals of Assembly 1840-41. p.39. Normanby/Prescott
4 June 1839
2. Instructions to Conferees. Journals of Assembly. p. 44.
24 January, 1840

any school established by this Board except the Irish National School Books"¹. In St. John's, therefore, where there was a large Catholic majority there was no problem, but if the Assembly legislated, it did so for the whole Colony and many areas with exclusively Protestant populations desired the Bible as one of the books specified as school books. Thomas suggested in the Council that provision could be made in the act whereby Roman Catholic children could not be compelled to use any book objected to by their clergy or guardians, or else that separate schools be established. He felt that "it would be too bad if the country were to be deprived of such a measure for the maintenance of a principle that, after all, was not of the least possible consequence". But compromise could not be reached and the Bill was thrown out.

In addition to these troubles revenue bills were still being bandied back and forth. For the two sessions of 1839 and 1840 no contingency bills were passed since the Council insisted that the Assembly was being extravagant and demanded amendments. To the Assembly the only hope lay in getting representation on the Council and it pleaded for a constitutional change that would make this possible. Dr. Carson in 1840 said "that until an extensive change is effected in the Executive Government of Newfoundland it is vain to expect a cordial co-operation for the public good from the three branches of the Legislature"².

As the fifth session drew to a close, the Assembly stated their intention of appointing a committee of correspondence to keep in touch with the Governor during the recess, but Lord John Russell instructed Captain Prescott not to recognize such

1. Journals of Assembly 1840. p. 28.

2. Journals of Assembly. January 31, 1840. p.54. Carson/Russell
30 January 1840

a committee under any circumstances¹.

The Colonial Office also gave its opinion that the Council "had in no degree, exceeded its constitutional powers in the differences which ... occurred between it and the House of Assembly". At the same time the Governor, though aware that the Council had the right to act as they had been doing, could not interfere "without unlawfully suspending the lawful control of the Council in its Legislative capacity".

In the speech with which he closed the fifth session of the second Assembly on April 29, 1840, Governor Prescott expressed disappointment that a session which had been so prolonged had accomplished so little. He was thinking particularly of the fact that the contingencies of the previous two years had not been paid nor had the funds been made available for their payment. The pretence that the Newfoundland Legislature was anything but a clearing house for religious and social animosities could not be kept up much longer.

During the recess Patrick Morris was elevated to the Council. This left a vacancy and in a fairly quiet by-election Laurence O'Brien was returned in his place. Meanwhile Godfrey, one of the Conception Bay members, died and shortly before the House opened for its final session on January 2, 1841, a writ was issued for an election to replace the deceased member. The attempted election was an abortive affair for true to form voters of Harbour Grace and Carbonear rioted. The contest was between Mr. Edmond Hanrahan of Carbonear, "under the influence of the Romanist clergy" and Mr. James L. Prendergast of Harbour

1. Journals of Assembly. 1840. p. 205. Russell/Prescott.
5 December 1839.

Grace¹. Both men were Roman Catholics and the heat of the campaign surprised some officials who declared that a change had taken place "in the opinions and feelings of the people since 1836, particularly as regards the Catholic portion of the community for they have on this occasion, to a great extent, acted independently of the supposed all powerful influence of their clergy"².

Nevertheless, the clergy played an active part in Hanrahan's campaign and the Patriot, "ever ... overready to appreciate their (the clergy's) good qualities and hide their indefensible ones"³ bitterly attacked "several of the Catholic clergy" for the part they played in "rousing the worst of human nature's passions".

Rev. Father Walsh, of Carbonear, who had attempted by means of "Christian-like admonitions" to calm the incensed electorate had been "removed from his parish ... and his place supplied ... by a clergyman whose speeches were couched in language the most exciting"⁴. Of his successor, Father Cummings, the Patriot says, it is not known whether he acted "on his own responsibility, or under authority higher than himself ... but it is only a fair inference to draw that if the Rev. Mr. Walsh was silenced for the honest and discreet avowal of his opinions, the proceedings of the Rev. Father Cummings were certainly directed by instructions from the same mysterious authority!"⁵.

Continuing the Patriot echoes the note struck by Sir Thomas Cochrane in 1833 and declares that "the subversion of the

1. Duplicate Despatches to Colonial Office (G 10,6) 1840 Danson/Crowdy. 6 November 1840
2. Duplicate Despatches to Colonial Office (G 10,6) 1840 Pinsent/Crowdy. 21 November 1840
3. The Newfoundland Patriot. December 12, 1840
4. Ibid
5. Ibid

freedom of election is the sole aim of him [Father Cummings] and his directors - . Doubts were entertained here at the late election as to the object pursued in the ill-advised course taken by the clergy on that occasion, for they then excused themselves under the plea that the candidate they opposed was a Protestant!... What the excuse can be for their interference in the Conception Bay election, honest men must exercise their ingenuity to define - for there, no "enemy" nor heretic was in the question - both professed the same creed. Hence the conclusion, that the unrestrained exercise of the power to place whom they please in the Legislature is the open and obvious design of those clerical politicians"¹. It might be argued that the motive of the clergy was the advancement of the down-trodden people in their pastoral charge, and hence their action should be justified. But however worthy the motive, the mixture of religion with politics is usually inexpedient and what cannot be excused is the rousing of passions which cannot be controlled, be the orator ever so anxious to prevent the natural outcome of his inflammatory orations. To once again quote the Patriot, "the vilest ruffians could excite to bloodshed and murder; but those who assume to be the leaders of the people must not only be the magicians to excite exasperated feelings, they must also be the wizards to allay, calm down and control!"².

But if the clergy used their influence to have the candidate they favoured returned to the Assembly we can be equally sure that the mercantile interests exercised their not inconsiderable influence for a similar purpose. Mr. Tom

1. Ibid.
2. Ibid.

Fitzgibbon Moore, the flamboyant member of the second Assembly for Trinity Bay put the case clearly when he stated that "the Catholic priests ... threaten eternal damnation to all who shall refuse to vote as they direct, and the merchants on the other hand threaten starvation to all those who refused to vote as they pleased, and between damnation and starvation the unfortunate voter had to make his election"¹.

As a result of the riots Governor Prescott advised the Assembly that unless they passed an Election Act that showed promise of being able to curb the actions of the mob he would not undertake the responsibility of issuing writs for a new election which would result in confusion and bloodshed².

The final session of the second Assembly followed the same general pattern as had been earlier established. The Council insisted on their right to amend money bills, the Assembly refused to pass such amendments. The Education Act was tossed back and forth. The Council threw out bills to establish an academy of higher education, to construct roads, to provide for the selection of juries, to provide for election by ballot, to provide for the disposal of Crownlands, as well as others which like those mentioned were designed to increase the privileges of the lower classes of society and concomitantly decrease those of the wealthy mercantile group. That the lower classes were mostly Roman Catholic and the merchant class largely Protestant increased the bitterness of the situation greatly.

The Assembly had been pressing for membership on the Council throughout the past four years. Their only hope, they

1. The Newfoundland Patriot January 6, 1841.
2. Journals of Assembly 1841. Prescott/Assembly. 2 January, 1841.

felt, was to get such membership and outvote the Tory appointees. The Governor now renewed his request for an Executive Council separate and distinct from the Legislative Council. Lord John Russell did not feel, however, that this would be a permanent solution and replied to Prescott's request, "There are several other questions relating to the affairs of Newfoundland which must precede the subject of the establishment of an Executive Council in the consideration of Her Majesty's Government"¹.

Her Majesty's Government had indeed come to the conclusion that Newfoundland affairs had reached a state where positive Imperial action was required. A committee of the House of Commons was appointed to inquire into the state of the Newfoundland Constitution and to make recommendations for the resolution of difficulties presenting themselves². Delegates from both Assembly and Council were appointed to go to London to assist the committee. As Governor Prescott said in closing the Legislature on April 26, 1841, "such a proceeding has become indispensably necessary to the tranquility and welfare of the Colony".

This was the last occasion on which Governor Prescott addressed the Newfoundland Assembly for he was replaced that same summer by Sir John Harvey, a gentleman of much charm and tact particularly chosen to oil the troubled waters of the Newfoundland political scene.

By the autumn, Governor Harvey was able to report to the Colonial Office that "no material degree of political excitement appears at present anywhere to exist, but, on the contrary, an

1. Journals of Assembly. April 26, 1841, p.220 Russell/Prescott 31 March 1841.
2. Journals of Assembly. April 26, 1841.

apparent approximation towards a general disposition to bury past occurrences in oblivion¹. This apparently happy state of affairs was attributed by the Governor to "the apparent suspension of the representative constitution ... upon the grounds of their gross abuse of the electoral franchise"². This suspension, Harvey continues, "has ... produced such a moral effect as would exert a salutary influence in repressing any undue violence in future elections, in the event of Her Majesty's Government deciding on authorizing me to convene another Assembly"³

Despite his firm belief that no right-thinking person would be willing to lose those benefits conferred by representative institutions simply because the "first few years of the experiment" had not worked with the "degree of harmony which is so desirable, but which has not always been exhibited in other colonies, after a much longer trial"⁴. Governor Harvey did not feel that the 1832 constitution should be reintroduced but rather that there should be modifications which were "desirable, if not absolutely indispensable".

The modifications which Harvey suggested were firstly to impose property or income qualifications on prospective members of the Assembly so as to ensure the election of persons "above the class of common labourers". He felt that an income of £100 or property valued at £500 would be sufficient guarantee that men of the "right class" would in future be elected to the Assembly. Secondly, he thought that the number of members should be doubled; thirdly, that elections should be held throughout the colony simultaneously, fourthly that voters should be required to

1. Accounts and Papers 1842.(362) XXVIII. p. 143 ff.
Harvey/Russell, October 6, 1841.

2. Ibid.

3. Ibid.

4. Ibid.

have resided in Newfoundland for at least two years prior to the date of election and finally that the Legislative and Executive Councils should be separated and the Legislative Council increased in numbers so that "the several interests of the Colony (and these ... not limited to its trade and fisheries) might thus be duly represented in ... its proper constitutional character, as a separate branch of the legislature, independent alike of the throne and the people"¹.

Meanwhile the Whig Ministry of Lord Melbourne was replaced in September, 1841, by the Conservative Government of Sir Robert Peel and to Lord Stanley as Secretary of State for the Colonies fell the task of amending the Newfoundland constitution. In reply to Governor Harvey's despatch of October 6, which had been addressed to Lord John Russell, he set forth his views with respect to the failure of the first attempt at representative government in Newfoundland. The reasons for failure were, he thought, threefold:

- ① The interference of the Roman Catholic priesthood in the elections which had led to religious animosities.
2. "Undefined and exaggerated" notions which the two houses and particularly the House of Assembly held with respect to their peculiar rights and privileges.
- ✓ 3. Conflicting interests of two great parties, the resident and the mercantile²

With respect to the first of these Stanley doubted "the efficacy of any legislative remedy, consistent with the maintenance of ... free institutions"³ which he was unwilling to

1. Ibid

2. Accounts and Papers. 1842 (362) XXVIII. p. 146 Stanley/Harvey 19 November 1841.

3. Ibid.

withdraw unless under "more serious" circumstances than had so far presented themselves. He felt that to raise the qualifications for electors would disenfranchise so many people as to make the idea impractical but nevertheless threw out the suggestion of a £5 or £10 household franchise and in this connection asked the Governor for a detailed report on the possibilities of such an innovation together with the ratio of the population to the electorate if such alterations were made. He agreed with the necessity of imposing some qualification on members.

With regard to the second and third stumbling blocks, Lord Stanley felt that he had the solution. The amalgamation of the Assembly and Legislative Council in one chamber with a ratio of two to three in favour of the elected representatives would destroy forever the fancied analogy to the Imperial Parliament. While the conflict between Mercantile and resident groups was to be expected; and while the resident interest would undoubtedly predominate in the Assembly; and since their object would undoubtedly be to spend large sums of money, obtained by taxation upon British Merchants and British trade, on the improvement of internal communications and the increase of local advantages; it would be the duty of the Governor to hold the balance even and to see that the praiseworthy object of the Assembly should be kept within reasonable bounds. This could readily be done if in the new constitution the power of originating all money bills were reserved to the Crown.

Governor Harvey agreed with Lord Stanley's suggestions and having, by means of a questionnaire discreetly distributed, made enquiries regarding voters qualifications, members

qualifications and redistribution of electoral districts arrived at the foregone conclusion that any imposition of a property qualification on electors would disenfranchise so many people as to make the act politically inexpedient but that some restriction should be placed on the men to be elected. It was also generally felt that the number of representatives should be increased.

The upshot of the whole affair was a Bill presented to Parliament in May, 1842, slightly amended in committee and accepted in its amended form in August of the same year.

The Bill¹ abolished the Legislative Council as such and stated that in future Crown appointed legislators would sit in the same chamber as the elected members and would form two fifths of the combined chamber². The qualifications for elected members was set at £100 per annum income or real property of £500³. This provision was exactly that which had been recommended by Governor Harvey and other recommendations of his were also followed, namely, a two years' residence requirement for voters,⁴ simultaneous elections throughout the Colony⁵, and a distinct executive council⁶. Furthermore money bills were to be initiated by the Crown⁷. The Bill was to be effective until September 1, 1846, unless Parliament otherwise directed⁸, so that the system was to be in the nature of an experiment.

It is not within the scope of this work to discuss the functioning of the new constitution but it is interesting to note

1. 5 & 6 Vict. Printed in Public Bills 1842. p. 319
2. Section 6.
3. Section 1.
4. Section 2.
5. Section 4.
6. Section 5.
7. Section 3.
8. Section 8.

that the wheel had now come full circle. That system which had been planned for Newfoundland by Lord Goderich and James Stephen and which Sir Thomas Cochrane had tried unsuccessfully to introduce during the first days of the first Assembly in January, 1833, had now become by Imperial Statute the constitution of Newfoundland.

The final curtain has rung down, not amid the applause accorded a success but in the silence of disappointed hopes. The ending was not unforeseen. To surmount the difficulties that presented themselves and reach a happy consummation would have required actors of consummate skill, unerring judgement, christian forbearance and infinite tact but unfortunately those who participated in the drama were only human.

CHAPTER NINE

E P I L O G U E

The first attempt to govern Newfoundland by representative institutions had ended in failure. The Assembly and Council had kept up a running battle through two quadrennial terms. The battle had ended in stalemate. The Colony had, meanwhile, divided itself into hostile camps, Protestant against Catholic, merchant against fisherman. Elections had ended in riots, accompanied by arson and bloodshed. Meanwhile the Colony suffered. The great benefits so confidently expected by the petitioners of 1830 and 1831 had not materialized. "Fishermen and domestic servants", to the horror of all "respectable" people, had been elected to the Assembly.¹ Revenues were insufficient to do what was needful and the Assembly and Council had been unable to agree on how to spend what little money was available. The Governor had refused to issue writs for a new election since he feared another outbreak of violence. Finally the Imperial Parliament had decided to take a hand and had set up a parliamentary committee to investigate the whole affair and to suggest a possible solution.

Many factors must be considered in attempting to answer the question of why Newfoundland affairs had come to such a pass. Certainly the blame cannot be attached to any one person or circumstance or to any single group of people or circumstances. The chain of causation had many links, each inseparable from its fellows.

To begin with Newfoundland was not ready for Representative Government. Even in settled colonies of the

1. C.O 194/111. Prescott/Russell. 9 June 1841.

regular type, the old style of Representative Government had never been very successful; and Newfoundland was not a regular settled colony. In fact it was unique. The policy which for three hundred years denied the existence of a Colony in Newfoundland prevented the establishment of governmental forms that would have grown with the population and become part of the tradition of the Island. Instead, the illegality of settlement, the constant necessity to hide from the law, the fear of government as typified in Fishing Admirals and Naval Courts with their harsh punishments, tended to foster an antipathy towards law and Government that could not be easily removed.

To add to the difficulty the nature of settlement had resulted in hundreds of small communities scattered along thousands of miles of coastline. Their isolation was, in many cases, almost complete. There was a lack of communication except by sea. Illiteracy was very common, indeed with the exception of the merchants there was in many settlements only an accidental occurrence of a literate person.

To illiteracy was added poverty. Since fishing was the only industry and since it was subject to so many variables the standard of living varied too; from the subsistence level, which was the customary state, to comparative prosperity, to actual famine. The basis of the whole economy was the credit system, which may have been the only workable system under the circumstances but which nevertheless destroyed whatever chance may have existed of a friendly understanding between fishermen and mercantile interests.

Those who had opposed the introduction of Representative

Government to Newfoundland had done so because of these facts. The people had had no political experience and actually distrusted government. The high incidence of illiteracy almost precluded the possibility of finding suitable representatives among the fishermen, while an Assembly composed of the merchant class could not expect to find favour with those economic slaves who had no reason to believe that this class would legislate to help any but themselves. Moreover, the poverty of the Island would make it very difficult to raise by taxation enough money to carry on the government of the Colony without attempting to provide roads, bridges, lighthouses, and other public services so long neglected and so much needed.

If Newfoundland were to be treated as other settled colonies had been in the first years of their existence, that is, aided by generous grants from the Imperial treasury, a better chance of success would have existed, but unfortunately a condition had been placed on Newfoundland's getting Representative Government. The condition was that the British Parliament be not required to provide another farthing for the support of Newfoundland. So anxious was the Imperial Parliament to get rid of what they considered a financial encumbrance that they treated Newfoundland as if it had indeed been "Britain's oldest colony" instead of an area where legal settlement had been recognized only a few short years before, and where no effort had been made to develop the Colony along the lines taken in other areas.

If all this was so, one might legitimately wonder where the support for Representative Government came from. The answer

is, if the petitions presented to the British Government are any indication, from the Avalon Peninsula. There were good reasons why this should be so. The Avalon Peninsula was the most densely populated part of the Colony and its population contained a greater proportion of educated people than did other sections of the Island. Moreover, there were several newspapers being published and these could be used to propagate liberal views and arouse public opinion within the radius of their circulation.

Furthermore, the Avalon Peninsula was the area which in the first years of the nineteenth century had received the greatest number of immigrants. The immigrants had brought with them from Ireland their own political views, were dissatisfied with conditions as they found them in Newfoundland and had positive leadership from their clergy. Also the Catholic Emancipation Act had been so recently passed as to make the Catholics all the more desirous of getting a measure of that political control which had been so long denied them.

But it was not only the desire for participation in government that prompted the Irish to press for Representative institutions. It was that, but it was also a desire to enter the charmed circle of "government job-holders". The Irish immigrants were the poorest of the poor and when they arrived in Newfoundland were forced to accept the only jobs available, which meant in most cases to become servants. It is not difficult to imagine that there would be longing glances cast towards the positions held almost exclusively by Anglicans. The Council, the Supreme Court, the bar were all Anglican preserves, as were such positions as Collector of Customs and Colonial Treasurer.

As A.R.M. Lower points out in his Colony to Nation "privilege in politics can never be separated from economic privilege", so that "a government job meant dignity, security, and social status". The Newfoundland Irish could not be blamed for attempting to obtain the political power and the consequent economic privilege concomitant with their numerical superiority.

Though the Irish did bring with them memories of bitter persecution and extreme bigotry it would be too simple a solution to say that the continuing contention that brought the second Assembly to an inglorious ending was wholly religious in character. Religion certainly entered the picture but that was only natural since the privileged class was all of one religious faith and the class aspiring to privilege was of another, but it was economics and not doctrine that was at the root of the trouble.

The conflicting interests of merchant and fisherman, of Catholic servant and Protestant office holder provides the key to the solution, but does not give the entire answer. The brand of leadership that the discontented classes got contributed much to the violence of the struggle. The inflammatory journalism of Dr. Carson was not designed to calm a group so volatile as the Irish, while the hotheadedness of Kent and the radicalism of Nugent combined with the promptings of the Catholic clergy to make an explosive situation. The ill-educated and politically immature Assembly led by such men as Carson, Kent and Nugent would not "give an inch" to their "oppressors" in the Upper Chamber while the Council was equally adamant in refusing to compromise with a bunch of "lowlife, lawless scoundrels".

The refusal to compromise is partly attributable to the exaggerated notions which the two houses entertained of their peculiar rights and privileges. They claimed that the Newfoundland legislature was a literal transcript of the British Parliament, not only in form but also with respect to privileges. In an act of 1834 the Assembly had referred to themselves as "Parliament". The act had been disallowed because the Colonial Office had felt that the adoption of such a title was an indication that the Assembly wished to claim powers analagous to those of the House of Commons. Such an analogy would be subject to so many qualifications as to destroy it, so the title was forbidden to the Assembly. The Council, meanwhile, had similarly adopted a title which was not theirs by right. They referred to themselves as the Legislative Council, but were informed by the Colonial Office that they had no legitimate claim to such a title and in fact would not be recognized by the Governor under such an appellation. The case of Kielly versus Carson finally settled the issue but before it was settled it caused much unnecessary debate.

Actually, Jamaica had claimed parliamentary privileges for its Assembly as early as 1700, but the idea had been steadily contested by the Board of Trade. In fact the Colonial Constitutions could never be exact duplicates of the British model since they were unable to develop a cabinet system. The Governor's functions, as head of the local administration, "were always overshadowed by his duties as representative of an external authority". The appointed Governor was not responsible to the Assembly nor could he control it. The Council could never become a cabinet because

elected members could not be appointed to it without resigning their seats in the Assembly. "An immoveable executive confronted a potentially irresistible legislature"¹. In most colonies, however, the Assembly had "by a steady process of aggression ... subverted the rigid Colonial Constitution ... and by winning control of finance usurped most of the powers of government"². It was this battle for financial control, which had been won by Assemblies elsewhere, that contributed to the break-down of the system in Newfoundland.

Though the reasons already advanced were primarily responsible for the deadlock that brought about the suspension of the constitution in 1841, there are other superficial factors that were taken seriously by some officials at the Colonial Office. Lord Stanley felt that the qualifications for members of the Assembly had been set too low. This meant that practical illiterates were admitted to the Assembly, and such men were ruled by their passions and not their reason. Similarly qualifications for electors were so low that it was inevitable that the "wrong" type of men would be returned in some instances. A problem here presented itself, for the absence of a middle class in Newfoundland made it difficult to increase the qualifications without disenfranchising large numbers of voters, while to set the qualifications for members very high would bring about an Assembly of merchants which would almost certainly antagonize the rest of the Colony.

But a change in the franchise could not help matters. The emphasis that the officials placed on the illiteracy of the

1. Cambridge History of British Empire, Vol 11, p. 146. Quoted in Wight, M.L., The Development of the Legislative Council, p.32.
2. Wight, p.32.

populace is misleading. Admittedly the Assembly sometimes acted rashly but this can be attributed to political inexperience rather than ignorance, and while there was always the danger that a self-centered demagogue would be elected by naive electors, the risk was not so great as to warrant a reactionary revision of regulations.

The action of those who created election riots cannot be condoned and the Assembly members who upheld them are open to censure as well, but it was the Council backed by the Colonial Office that provided the real stumbling block.

In summary it might be said that the granting of Representative Government to Newfoundland was perhaps inevitable, since it was part of the general movement toward democratic institutions throughout the western world, but it was not a measure of expediency. The nature of the economy made financial self-sufficiency almost impossible, while the nature of settlement eliminated the possibility of a cohesive community so necessary to the success of Representative Government. The inevitable conflict between supplier and supplied, between officials and aspirants to officialdom, was heightened by the introduction of religious bigotry; and though the battle for financial control had been won by most colonial Assemblies, the Colonial Office refused to accept the principle in Newfoundland and upheld the Council as being within its constitutional rights when it demanded the right to amend money bills. To Council and government officials alike, the Assembly was an institution to be despised. Its members were ignorant and vulgar, economically subservient. Cordial co-operation was practically impossible.

Though the riots of 1840 had ostensibly been the reason for suspension, actually they were not. The riots were but manifestations of deep rooted ills. An unsound economy, limited resources, lack of unity, isolation, religious intolerance, and poverty were some of those ills that could have taken all the energies of both houses of the legislature to overcome. But the Assembly, though anxious to attack those evils that plagued the Colony, were stopped by the strongly entrenched holders of privilege. The changing concept of Empire and the political climate of England which practically eliminated the possibility of economic aid, combined to produce an unsympathetic Imperial Government from which no help could be expected.

Under those circumstances it was inevitable that the system introduced against the better judgement of James Stephen and other enlightened officials should fail. The only excuse for its existence was the advancement of the democratic ideal, and that alone was not enough to ensure its success. Indeed it was within that ideal that the seeds of failure were sown, for it was the Assembly's aspiration to broaden democracy that produced the opposition that brought about its collapse.

APPENDIX A

THE FIRST ASSEMBLY

<u>DISTRICTS</u>	<u>MEMBERS</u>
St. John's	John Kent William Thomas Patrick Kough
By-election 1833	William Carson
Conception Bay	Robert Pack Peter Brown Charles Cozens James Power
Fogo	Thomas Bennett
Trinity Bay	John Bingley Garland
Ferryland	Robert Carter
Placentia & St. Mary's	Roger Forstat Sweetman John Willis Martin
Burin	William Hooper
Fortune Bay	Newman Wright Hoyles
Bonavista	William Brown

Speaker - John Bingley Garland

APPENDIX B.

THE SECOND ASSEMBLY

<u>DISTRICTS</u>	<u>MEMBERS</u>
St. John's	Messers Kent Carson Morris
by-election 1840	O'Brien
Conception Bay	Brown Power McCarthy Godfrey
Ferryland	Winser
Placentia & St. Mary's	Nugent Doyle
Burin	Butler
Fortune Bay	Row
Trinity Bay	Moore
Bonavista Bay	Emerson
Fogo	Dwyer

Speaker - Dr. William Carson

APPENDIX C.

SECRETARIES OF STATE FOR WAR AND THE COLONIES

- November 22, 1830 - Frederick John Robinson, Viscount Goderich,
later Earl of Ripon.
- April 3, 1833 - Edward George, Lord Stanley, later Earl of
Derby.
- January, 1834 - Thomas Spring Rice, later Baron Monteagle.
- June 5, 1834 - George Hamilton Gordon, Earl of Aberdeen.
- April 18, 1835 - Charles Grant, Baron Glenelg.
- February 20, 1839 - Constantine Henry Phipps, Marquis of Normanby.
- March 10, 1841 - Edward George, Lord Stanley, later Earl of
Derby.

APPENDIX D.

UNDER SECRETARIES FOR WAR AND THE COLONIES

1830	- Henry Grey, Viscount Howick, later Earl Grey.
1833	- John Shaw-Lefevre (later Sir).
1834	- Sir George Grey
January 1835	- William Ewart Gladstone
April 1835	- Sir George Grey
February 1839	- Henry Labouchere, Baron Taunton
August 1839	- Robert Vernon Smith, later Lord Lyveden.
1841	- George William Hope

PERMANENT UNDER SECRETARIES FOR WAR AND THE COLONIES

1825	- Robert William Hay
1836	- James Stephen (later Sir)

APPENDIX E.

POLLING STATIONS

<u>DISTRICTS</u>	<u>POLLING STATIONS</u>
St. John's	St. John's
	Torbay
	Portugal Cove
Conception Bay	Western Bay
	Carbonear
	Harbour Grace
	Port de Grave
	Brigus
	Harbour Main
Fogo	Burnt Island
	Fogo
	Twillingate
Bonavista	Cape Freels
	Green's Pond
	Kings Cove
	Kiels
	Bonavista
Trinity Bay	Catalina
	Trinity
	New Harbour
	Heart's Content
	Hants Harbour
	Old Perlican
Ferryland	Bay Bulls
	Cape Broyle
	Ferryland
	Renews
Placentia & St. Mary's	Trepassey
	St. Mary's
	Great Placentia
	Little Placentia
	Barren Island
	Merashen
	Paradise
	Oderin
Burin	Burin
	St. Lawrence
	Lamaline
	Fortune
Fortune Bay	Garnish
	Grand Jarvis
	Harbour Mille
	Belleoram
	St. John's Harbour
	Harbour Breton
	Hermitage Cove
	Bonne Bay

B I B L I O G R A P H Y

INTRODUCTION

The Cambridge History of the British Empire says, "There is no comprehensive and scholarly history of the colony." The colony referred to is, of course, Newfoundland, and unfortunately this quotation states the simple truth. Most of the works on the history of Newfoundland are merely compilations from earlier writers. There is very little attempt at criticism and a minimum of reference to original sources. All too often "histories" have been written as instruments of propaganda, biased to serve one side or the other in the many controversies that are a part of our story. The net result has been a perpetuation of innumerable mythological ideas and much fallacious reasoning.

Prowse, long accepted as the authority on Newfoundland history, did, in fact, thoroughly document his work, but his references are very inaccurate and modern scholars are in complete agreement that his historical judgement was extremely faulty.

This, of course, does not prove, or even attempt to prove, that nothing of value has been written. Much factual information has been collected and recorded, while contemporary accounts give valuable insight into social conditions as they were. In the main, however, a lack of scholarship is apparent and with a few exceptions, the works on Newfoundland, whatever their literary value, are most certainly lacking from the historical point of view. The exceptions, among them Lounsbury and Innis on the fisheries, McLintock on constitutional

development, and more recently Thompson on the French Shore issue, unfortunately do not offer anything to the student of political development following the introduction of Representative Government.

The obvious conclusion is, of course, that one must turn to original sources. Luckily, here there is no lack. The original correspondence of the Secretary of State, contained in the Colonial Office Records, series 194, is voluminous and of itself provides fascinating reading on practically every aspect of Newfoundland history. The Cochrane papers, too, are extremely interesting, and (most important for Newfoundland students) both the Cochrane papers and the Colonial Office Records, series 194, are on microfilm and available at the Memorial University of Newfoundland Library. The acquisition of these microfilmed records, together with the establishment of a Newfoundland Archives at the University has at last made the study of Newfoundland history possible, without its involving a trip across the Atlantic Ocean.

Bearing in mind the foregoing, it will be apparent that the major sources for this bibliography are manuscript. Though the number of secondary works I list may far outnumber the manuscript sources, it would be well to remember that in importance the latter far outweigh the former. Secondary sources listed are in the main valuable, only so far as they provide a background, or set the stage as it were, for the history which is contained in the manuscripts for him who is willing "to read, mark, learn, inwardly digest", and interpret.

The chief difficulty the reader will face in his study of the period under consideration will be one of selection and evaluation. Statesmen and politicians of the 1830's were most prolific in their writings and by this time governments had come to realize the importance of preserving official documents for the edification of posterity. It is obvious, of course, that much of little interest to the ordinary reader is to be found in the mass of documentation available, and there is no "open sesame" to the information the reader seeks. In some instances thorough cataloguing and indexing has been done, but this is the exception rather than the rule. The general procedure is to read, slowly at first, but more proficiently as time goes on, always hoping to come across a document of interest, and being successful often enough to keep this hope sustained.

This bibliography is not intended to be exhaustive. The secondary sources I have selected were chosen because they each contribute something toward an understanding of conditions that existed prior to 1832, both here in Newfoundland and in the Colonial Office in London. I would therefore suggest that anyone who planned to use this reading list should familiarize himself thoroughly with the secondary works before attempting the manuscript material.

GENERAL BIBLIOGRAPHIES

Cambridge History of the British Empire. Volume VI., Canada and Newfoundland. J. Holland Rose, A. P. Newton, E. A. Benians, general editors, Cambridge, Cambridge University Press, 1930.

The bibliography contained in this work is probably the best that has yet been compiled. It lists manuscript materials as well as printed works and although not exhaustive, it does list everything of importance that was known to be in existence at the time of publication.

McLintock, Alexander H. The Establishment of Constitutional Government in Newfoundland, 1783-1832; a study of retarded colonization, London, Longmans Green, 1941.

The principal value of McIntock's bibliography is in his thorough coverage of documentary sources.

Royal Empire Society. Subject catalogue of the library of the Royal Empire Society, formerly the Royal Colonial Institute, London, the Society, 1930.

An extremely valuable source.

ORIGINAL SOURCES

Colonial Office Records, series 194. Original correspondence of the Board of Trade and the Secretary of State. (Microfilm copy at the Memorial University of Newfoundland)

This is by far the most valuable source of material available to the student of Newfoundland history. Besides the official correspondence between the Colonial Office and the Governor of Newfoundland, it contains inter-departmental memoranda, reports on the fisheries on an annual basis, petitions, extracts from local newspapers and various other miscellaneous material of considerable interest. C.O. 194 (as it is commonly called) consists of 169 volumes. The material relevant to the period covered by this bibliography is contained in 30 volumes, beginning at volume 85.

Cochrane Papers. Correspondence and papers private and official of ... Admiral Sir Thomas John Cochrane ... Governor of Newfoundland 1825-1834. Microfilm copy of extracts relating to Newfoundland.

Duplicate Despatches of the Colonial Secretary. 1832-41.
At the Memorial University of Newfoundland.

Governor's Office. Despatches from the Colonial Office. 1832-41
Originals at Memorial University.

Governor's Office. Secret and Confidential Despatches from the Colonial Office. Originals at the Memorial University of Newfoundland.

Newfoundland. House of Assembly, Journals, 1833-41

Newfoundland. Council. Journals, 1833-41.

Newfoundland. Executive Council. Minutes. 1833-41

Privy Council. Judicial Committee. In the matter of the boundary between the Dominion of Canada and the colony of Newfoundland in the Labrador peninsula, London, printed by W. Clowes & Sons, Ltd., 1927.

This consists of 12 volumes and contains an extremely valuable collection of printed documents.

NEWSPAPERS

The Newfoundland Gazette, 1832-1841¹.

The oldest Newfoundland newspaper, that has always been the medium for the publication of official government announcements. Originally it combined this function with the function of an ordinary newspaper. Like all the other papers that I will list, it does not prove to be a very lucrative source of historical data. Though none of the papers can be considered exactly reliable, they do serve to give different slants of opinion.

The Newfoundland Ledger and General Advertizer, 1832-1841¹.

The publication that was always favoured by the Governors. A conservative paper, and sometimes of interest, definitely biased. The denominational slant was Church of England.

The Newfoundlander, 1832-41¹.

Conservative but not as outspoken as the Ledger or Patriot.

The Patriot, 1834-1841¹.

Organ of Dr. William Carson, hence "liberal" in sympathy.

The denominational slant was Roman Catholic.

1. These dates do not indicate the entire period of publication, but rather the years in which they would contain material pertinent to our topic.

GENERAL HISTORIES AND OTHER WORKS OF HISTORICAL INTEREST.

Archibald, Edith J., Life and Letters of Sir Edward Mortimer Archibald. Toronto, Morang, 1924.

The biography of a notable civil servant who did yeoman service in Newfoundland. The chapter that deals with his service in Newfoundland, though not very detailed, gives an interesting view of the administrative problems of the newly constituted Government.

Bonnycastle, Sir Richard Henry, Newfoundland in 1842. London. Colburn, 1842.

Of considerable value for an understanding of social conditions that prevailed in Newfoundland during the years under consideration.

Cambridge History of the British Empire. Volume VI., Canada and Newfoundland. J. Holland Rose, A. P. Newton, E. A. Benians, general editors. Cambridge, Cambridge University Press, 1930.

Very brief and of little value to the person doing a detailed study.

Harvey, Rev. Moses. Newfoundland at the Beginning of the Twentieth Century. New York, The South Publishing Company, 1902.

Of some small value as a guide to social conditions.

Harvey, Rev. Moses. A Short History of Newfoundland. London, Collins, 1890.

Very general and of very little value to the historian.

Hatton, Joseph and Harvey, Moses. Newfoundland, the Oldest British Colony. Its history, its present condition, and its prospect in the future. London, Chapman and Hall, 1883.

Typical of the history written about Newfoundland in this period. No evidence of original research, but a reasonably good compilation from earlier works.

Howley, Very Rev. M. F.. Ecclesiastical History of Newfoundland. Boston, Doyle and Whittle, 1888.

The chapters devoted to Bishops Scallon and Fleming are of particular interest.

Jukes, J. B. Excursions in and about Newfoundland during the Years 1839 and 1840. London, 1842.

Valuable because of its interesting comments on social conditions.

MacKay, Robert Alexander. (ed.) Newfoundland: Economic, Diplomatic, and Strategic Studies. Toronto, Oxford University Press, 1946.

Only superficial attention to the period under consideration.

McLintock, Alexander II. The Establishment of Constitutional Government in Newfoundland, 1783-1832, a study of retarded colonization. London, Longmans, Green, 1941.

McLintock is a modern scholar who made full use of the Library of the Public Records Office, the British Museum, and other sources of original documents. His work is well documented and scholarly. As an introduction to our topic it is by far the best secondary source available, though he does on occasion make sweeping generalizations.

Morgan, Moses Osbourne. "Financial Affairs of the First Newfoundland Assembly". Newfoundland Quarterly, 53:2, June, 1954.

The financial affairs of the first Assembly were extremely complex, and this well written, well documented article is of tremendous assistance to the student of that period.

Morrell, William Parker. British Colonial Policy in the Age of Peel and Russell. Oxford, Clarendon Press, 1930.

This book is undoubtedly the best in its field and an essential prerequisite to the study of what happened in 1832 and thereafter.

Pedley, Charles. The History of Newfoundland from the Earliest Times to the year 1860. London, Longmans, 1863.

A good compilation from earlier sources.

Prowse, D. W. A History of Newfoundland from the English, Colonial and Foreign Records. London, Macmillan, 1895.

For many years this was the standard work on Newfoundland history. It is most comprehensive and well documented. It is considered, however, to be a very poor history, since Prowse allowed his personal bias to affect his historical judgement to such an extent that practically all his conclusions are unreliable. His references are also very imperfect.

Rogers, J. D. A Historical Geography of the British Colonies, Volume V, part IV. Oxford, Clarendon Press, 1911.

A most scholarly work, but so condensed as to be of little use to the student making a detailed study.

Royal Commission. Report on Newfoundland, 1933

London, H.M. Stationery Office, 1933.

(Parliament Papers by command - cmd.4480)

Though this report deals specifically with the 20th century, it does give a good analysis of past events and discusses factors which were at work in Newfoundland in 1832 as well as in 1933.

Thompson, F. F. The French Shore Problem in Newfoundland,

unpublished manuscript. Oxford, 1953.

A scholarly work of great interest. While not dealing specifically with our topic, it does nevertheless contain worthwhile background material. This is an abridgement of:

Thompson, F. F. Background to the Newfoundland Clauses of the Anglo-French Agreement of 1904.

^{D. Phil.}
Unpublished Ph.D thesis, Oxford, 1953.

Wight, Martin. The Development of the Legislative Council

1606-1945. London, Faber and Faber, Limited, 1946.

An excellent treatment of a complex subject. The style is quite lucid.

Wix, Edward. Six Months of a Newfoundland Missionary's Journal, From February to August, 1835.

London, Smith, Elder, and Company, 1836.

Interesting from the social view.

Young, D. MacM. "The Origin and Development of the British Colonial Office to 1830". An unpublished Ph.D. thesis, University of London, 1955.

A scholarly work on a previously unexplored subject. Most helpful to an understanding of Colonial Office Records.

Naval Commission. Report on Newfoundland, 1933.

London, H.M. Stationery Office, 1933.

(Parliamentary Papers by command - cmd. 4480)

Though this report deals specifically with the 20th century, it does give a good analysis of past events and discusses factors which were at work in Newfoundland in 1892 as well as in 1933.

Thompson, R. F. The French Shore Problem in Newfoundland.

Unpublished manuscript. Oxford, 1953.

A scholarly work of great interest. While not dealing specifically with our topic, it does nevertheless contain worthwhile background material. This is an abridgement of:

Thompson, R. F. Background to the Newfoundland Question of 1904.

Unpublished manuscript of 1904.

Unpublished thesis, Oxford, 1953.

Wright, Martin. The Development of the Legislative Council.

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Wix, Edward. Six Months of a Newfoundland Missionary's Journal.

From February to August, 1832.

London, Smith, Elder, and Company, 1836.

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Young, D. MacL. "The Origin and Development of the British

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1800-1845. London, Faber and Faber, Limited, 1946.

Wright, Martin. The Development of the Legislative Council

Unpublished Ph.D. thesis, Oxford, 1953.

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London, H.M. Stationery Office, 1933.

Report on Newfoundland, 1933.

