
COPY of a REPRESENTATION of
the Lords of the Committee of Privy
Council for Trade and Foreign Planta-
tions, on the Subject of establishing a
Court of Civil Jurisdiction in the
Island of *Newfoundland*; dated 10th
May 1790.

May it please Your MAJESTY,

THE Merchants and Traders of Dartmouth, Exeter, Topsham, and Teignmouth, carrying on the Fishery and Trade at Newfoundland, have presented to this Committee a Memorial, complaining that a Court was established last Season in the Island of Newfoundland, by Vice Admiral Milbanke, Your Majesty's Governor of the said Island, called a Court of Common Pleas, consisting of Four Commissioners; and that this Court so established was kept open Daily, to the constant Interruption of the Fishery and Trade, by continually issuing Orders; by calling away the Agents and Servants of the Memorialists and others, on every frivolous Occasion, to serve on Juries; and by listening to every trivial and vague Complaint; by sending arbitrary and immediate Orders to attend the said Court, from any distant Part of the Island, with Threats to fine those who did not attend, without Regard to the Neglect of their Business, Personal Hazard, or any other Consideration; all which Proceedings must necessarily be prejudicial to a Fishery which totally depends on Personal Attention and Industry: And the Memorialists further complain, that the said Court demanded exorbitant Fees.

The Lords of the Committee thought it their Duty, immediately, to send a Copy of the said Memorial to Vice Admiral Milbanke, calling upon him to inform the Committee how far the Facts stated in the said Memorial were well founded; and in case the said Court was a new Establishment, to assign his Reasons for having formed such Establishment; but if it was only an Alteration of a former Establishment to assign the Reasons which had induced him to make such Alterations; and further to certify to the Committee whether any, and what Fees were taken by the Judges, or other Officers of the said Court.

Admiral Milbanke's Reasons for forming the said Court will be found at Length in his Report hereunto annexed, which he transmitted to this Com-

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mittee

mittee in a Letter, dated 11th February last: And in a Letter, dated the 20th of the same Month, he justified the Proceedings of the said Court by alledging, that from the 4th September, when the Court first began to sit, to the Admiral's Departure for England on the 26th October, there were only Four Courts, neither of which lasted more than Five Hours; whereas the Court of Session, in which such Causes are said to have been formerly tried in the said Island, never sat less than Twice a Week, seldom got through more than Three Causes in a Day, and those in such a Manner as frequently to occasion their being tried Two or Three Times over. That One Judge of the new established Court sat however every Day, in order to save Trouble to the Plaintiffs, who had thus an Opportunity at all Times to present Petitions, and make the proper Affidavits for commencing Suits, after which there was no further Trouble given than such as must have attended every Suit in the most trifling Cause in a Court of Conscience. That by comparing the Court established by him with the former Court of Session, or that of Vice Admiralty, it will be found that the new Court is formed on simple Principles, and cannot fail to distribute equal and immediate Justice to all, without Respect to Persons—That the Two former Courts hereinbefore mentioned are without Form or Order, and if not glaringly partial, only harass, perplex, and waste the Time of many Individuals, instead of doing their Business for them—That the Attendance upon Juries in the new Court is not greater than heretofore; for that the Court of Session never proceeded on any Cause of Consequence without a Jury; and that even the Vice Admiralty Court, in consequence of Complaints from the Merchants, during Vice Admiral Campbell's Government had frequently summoned Juries.—That of Twenty-eight Causes completely disposed of by the new Court, the least of them was for upwards of £. 5, most of them for more than £. 10, and some for near £. 200; and out of the Whole only Two Verdicts were given against the Plaintiffs.—That, except in One Instance, no Person was sent for to attend this Court from out of the District of St. John's; and that, in that One Case the Defendant might have avoided the Inconvenience, which was wholly occasioned by his Obstinacy.—That the Fees taken in the new Court were considerably less than those taken in the Court of Session, and not a Quarter of the Sum charged by the Court of Vice Admiralty.—That the Court of Session has always conducted their Business in a very irregular and bad Manner, owing to the Justices being kept in continual Dread by the Merchants, who frequently threaten to prosecute them for their Decisions.—That the Court of Vice Admiralty had likewise been complained of by the Merchants as a great Grievance; and the same Merchants now wish to represent the new Court as likely to ruin the Fishery; so that whatever Judicature may be established in the Island, it is likely to meet with Opposition from the Memorialists, who aim at sacrificing the real Interests of the Fishery to their private Views.—For further Particulars the Committee presume to refer to the before-mentioned Letter of Admiral Milbanke, dated the 20th February last.

The Committee having maturely considered the Reasons assigned by Your Majesty's Governor for establishing the said Court of Common Pleas, and the several Facts alledged by him in Justification of the Proceedings of the said Court, thought it right to examine the said Governor, *viva voce*; in which

which Examination he gave an Account, as will be found in the Paper hereunto annexed, marked (A) of the several Courts, Civil and Criminal, which have hitherto subsisted in the Island of Newfoundland, and of their Manner of proceeding.

After a full Consideration of what is before stated, the Committee were of Opinion, that a proper Court of Civil Jurisdiction should be established in the Island of Newfoundland, specially constituted for the Purpose of trying such Questions as are not now provided for by any Act of Parliament; they therefore thought it right to take the Opinion of Your Majesty's Attorney and Solicitor General, upon the following Questions; viz.

1. Whether the Court of Common Pleas, erected by Vice Admiral Milbanke last Year, in the Island of Newfoundland, is founded in any Authority legally given to the Governor of Newfoundland by Your Majesty's Commission, or can be supported or justified by Law?

2. Whether in any Act of Parliament, or in Your Majesty's Commission, appointing the Governor of Newfoundland, there is given any Power for erecting any Court of Civil Jurisdiction in the Island of Newfoundland, or for authorizing any of the Courts of that Island to try Civil Causes there, except in the special Cases mentioned in the Acts 10 and 11 W. III. Ch. 25. Sect. 13; 14, 15; 15 Geo. III. Ch. 31. Sect. 18 and 34; 26 Geo. III. Ch. 26. Sect. . . . And whether, in case no such Power has hitherto been given, Your Majesty may not, by a Commission under the Great Seal, erect a Court of Civil Jurisdiction in the Island of Newfoundland, specially constituted for the Purpose of trying all Questions that may arise between one Fisherman and another, or between the Fishermen and their Hirers or Employers, or between the said Fishermen and the Merchants of whom they purchase what is necessary for their Subsistence and Comfort during the Continuance of the Fishing Season?

3. What the Nature and Constitution of a Civil Court, erected for the Purposes before mentioned, should be?

The Committee accompanied the said Questions with the following Observations, respecting the Policy which has always been observed by the Government of this Country, in carrying on the Trade and Fishery at Newfoundland; viz.

Mr. Attorney and Solicitor General are desired to take Notice, that the Government of this Country, having always considered the Trade of Newfoundland merely as a Fishery, to be carried on solely by the Subjects of His Majesty's European Dominions, it has always been the Wish of Government to bring back the Fishermen at the End of every Season to the Ports of the said Dominions, and to prevent their establishing themselves as a Colony in Newfoundland. When this View no Civil Commission was given to the Governor, who goes out Annually, till about the Year , and no Court was established for trying Crimes of any Sort till about the Year but all Criminals were to be brought Home to Great Britain, to be tried under the Authority of the Act of 10th and 11th W. III. Ch. 25. That of late

late Years a greater Number of His Majesty's Subjects continue to reside at Newfoundland during the Winter, after the Fishing Season is at an End, than formerly. That the Committee of Privy Council see this Circumstance with Regret, thinking it contrary to ancient Policy, and the true Interests of this Country, and wish to prevent it as much as possible. The Attorney and Solicitor General are desired also to take Notice, that much the greater Number of the Fishermen are extremely poor and ignorant, and thereby very much exposed to be defrauded by those with whom they deal.

In Return to which Questions Your Majesty's Attorney and Solicitor General, in their Report, which is hereunto annexed, have answered to this Effect:

That the Court of Common Pleas erected last Year by Your Majesty's Governor is not founded on any Authority legally given to the said Governor, and cannot be supported or justified by Law.

That they do not find that any Court of Judicature is established in the Island of Newfoundland, excepting in the Special Cases mentioned in the Acts of Parliament 10th and 11th W. III. Ch. 25; and 15th and 26th of Your Majesty, Ch. 31 and 26: And that as Your Majesty is not precluded, by any Provision in the Acts before mentioned, nor by any other Acts with which they are acquainted, from so doing, Your Majesty may, by virtue of Your Royal Prerogative, by Commission under the Great Seal, establish a Court of Civil Judicature in Newfoundland for the Purpose of hearing and determining all Questions that may arise of the Nature hereinbefore mentioned.

And they further report, that after paying due Attention to the peculiar Policy of this Kingdom, with respect to the Territory of Newfoundland, which has always been directed to discourage the Subjects of these Kingdoms from establishing themselves in that Island, and to encourage the Return of the Fishermen and Seamen to these Kingdoms, they had prepared, conformably to the Directions of the Committee, a general Outline of a Court of Civil Judicature, in Cases not yet provided for by any Act of Parliament; which is as follows, viz.

That Your Majesty, by Your Royal Letters Patent, should direct and appoint, that there should be within the Island of Newfoundland a Court, to be called the Court of Civil Jurisdiction; and that an English Barrister, of not less than Five Years standing, together with Two fit and proper Persons, to be appointed by the Governor for the Time being, should preside in such Court.

That such Court should have full Power and Authority to hear and determine, in a summary Way, all Pleas concerning Debts, Accounts, or other Contracts, and all other Personal Pleas whatever, excepting such as may now be heard and determined by any Jurisdiction established in the said Island by any Act or Acts of Parliament.

That such Court should have Power to grant Probates of Wills, and Letters of Administration; and that in the Cases above mentioned, the
Court

Court should proceed by Complaint in Writing; Summons of the Defendant in Cases where the Matter in Question is under such Value, as to Your Majesty's Wisdom may seem best adapted to the Circumstances of the Island; and by Arrest of the Defendant, in Cases where the Sum demanded shall exceed that Amount; such Court having Power to take Bail for the Defendant's Appearance and Performance of such Judgment, as the Court shall pronounce: And that such Court should have Power to execute the Judgment so given, and enforce the Payment of the Costs of Suit, by Warrant of Execution, by Sale of the Defendant's Goods and Chattels, rendering to him the Overplus, and to imprison the Defendant until such Judgment shall be satisfied.

That it may be proper, if the Party against whom Judgment may be given shall think himself aggrieved, that a Power should be given to such Party to appeal to Your Majesty in Your Privy Council, within a limited Time, upon giving proper Security, in Cases where the Matter in Dispute shall exceed the Value of £1000 and that the Court below should have Power to proceed in a summary Way, by Foreign Attachment of Goods, Debts, and Effects of Debtors, in the Possession of other Persons residing in the Island of Newfoundland.

That it would be most conformable to the Policy which has been observed by this Kingdom with respect to the Territory of Newfoundland, that the Court hereinbefore described should hold its Session from the 1st Day of June to the 1st Day of December in each and every Year, and should take Cognizance of no other Suits than such wherein the Cause of Action has arisen within Two Years previous to the Commencement of such Suit.

And the Committee having taken the before-mentioned Plan of a Court of Civil Judicature into Consideration, humbly offer it as their Opinion to Your Majesty, That it may be adviseable for Your Majesty, by Your Royal Letters Patent, under the Great Seal of Great Britain, to erect a Court of Civil Jurisdiction within the Island of Newfoundland, according to the Plan before mentioned, with the following Alterations and Additions :

FIRST, That the Person appointed to preside in this Court be either an English Barrister of Five Years standing, as advised by Your Majesty's Attorney and Solicitor General, or some other Person who, all Circumstances considered, may be thought equally well qualified for this Station.

SECONDLY, That in case the Judge recommended to be so appointed should die during the Fishing Season, the Governor should appoint a Person, then resident in the Island, to act in his Place during the Remainder of such Fishing Season.

THIRDLY, That the said Judge be paid a proper Salary for the Discharge of the Duties of his Office.

FOURTHLY, That he be exprefsly enjoined in his Commiffion not to take any Fee or Gratuity whatever for any Judgment given or Buſineſs done in the ſaid Court, upon Pain of loſing his Office.

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FIFTHLY,

FIFTHLY, That the Governor do appoint the Persons who are to be Assessors to the said Judge out of Persons who have no Concern in carrying on the said Fishery.

SIXTHLY, That every Judgment passed by such Judge should be with the Concurrence of at least One of the said Assessors.

SEVENTHLY, That no Person should be arrested for a Debt of less than Five Pounds.

EIGHTHLY, That an Appeal be allowed from the said Court to Your Majesty in Council, in any Action where the Sum recovered exceeds £. 100 Sterling, provided such Appeal be made within 14 Days after Sentence.

Besides the foregoing Alterations and Additions to the Plan for establishing a Court of Civil Judicature proposed by Your Majesty's Attorney and Solicitor General, the Committee take Leave humbly to recommend to Your Majesty, that the said Judge be instructed to conduct the Business of the said Court, during the Height of the Fishing Season, in such Manner as to interrupt as little as possible the carrying on of the said Fishery.

That it be recommended to Your Majesty's Governor, and the said Judge, to allow for the ensuing Season to the Assessors and Officers of the said Court such Fees only as are reasonable and moderate.

And that they prepare, and be ready, when they return from Newfoundland at the End of the present Season, to lay before Your Majesty, for Your Majesty's Approbation, a Table of such moderate Fees as they may judge proper to be established in future.

And that in order to afford Time to the said Judge to finish the Business of the Court in the Interval after the Height of the Fishing Season is over, and before the Departure of the Governor, the said Governor be instructed to continue on the Coast longer than has hitherto been practised, and as long as the Season will permit, consistent with the Safety of Your Majesty's Ships and Vessels.

Admiral

Admiral Milbanke's Report upon the Judicature of Newfoundland.

To the Lords of the Committee of Privy Council for Trade, &c.

London, 31st December 1789.

My LORDS,

HAVING in a particular Manner directed my Attention this Year to the Judicatures as well as to the Trade and Fishery of Newfoundland, and arranged my Observations thereon in such Order as will, I think, enable your Lordships to judge precisely of the State of that Island, I feel it incumbent on me, as Governor, and in Obedience to His Majesty's Instructions to me upon that Head, to submit them to your Lordships Consideration, and at the same Time to beg your Lordships Permission to suggest such Alterations as appear to be necessary for rendering the former more effectual, and the latter much more beneficial than at present they seem to me to be. I was led to be more minute than perhaps I otherwise should have been, in my Enquiries into the several Particulars to which my Observations have Reference, from an Opinion of the Law Officers of the Crown *, which was transmitted to me by the Lords Commissioners of the Admiralty a Day or Two before I sailed from Spithead, and to which I beg Leave to request your Lordships Attention. It was taken at my Desire upon a Case stated by the Solicitor of the Admiralty (in Consequence of a Prosecution threatened to be commenced against Captain Pellew, One of the late Governor's Surrogates) to know how far the Governor of Newfoundland was authorized to sit as a Judge in the Courts of that Island, and whether the Warrant of Surrogacy †, by which Captain Pellew had acted, and which it had been the Custom to give to all the Captains of the Ships of War upon the Newfoundland Station, was consistent with the King's Commission to the Governor, or with the Acts of Parliament relating to the Trade and Fishery. It was evident to me from this Opinion, that the Authority exercised by the Governor in Character of a Judge was not founded in Law, and therefore that it would be imprudent of me to risque my Reputation and Fortune in Defence of a Custom, which, if not a bad one, had never been legally sanctioned, and within my own Knowledge had subjected One of my Predecessors to a Prosecution at Exeter ‡, which by the Advice of his Counsel he was fain to compromise rather than bring the Matter to Issue. Thus to be informed of what I

* Appendix, N^o 1.

† Appendix, N^o 2.

‡ Admiral Edwards.

ought

ought *not* to do, was a very agreeable Circumstance to me as a young Governor; and to inform myself of what I *ought* to do, I thought it was indispensably my Duty to leave no Means untried. The next and best Information, after that which I had received from the Opinion above-mentioned, was, I thought, to be obtained from the King's Commission and Instructions to me. Those I consulted with Attention; and upon the several Clauses and Articles thereof made the following Observations:

THE COMMISSION,

dated 2d June 1789,

Constitutes and appoints me Governor and Commander in Chief in and over the Island of Newfoundland, and the Islands of Madelaine, in the Gulph of Saint Lawrence, and of all the Forts and Garrisons erected or established therein; and directs all Officers Civil and Military to be obedient, aiding, and assisting to me in the Execution of my Office. - - - - -

Which, of course, gives me the chief Command over all the Troops, and Inhabitants of those Islands.

With full Power and Authority to appoint Judges. - - - - -

This clearly is intended for a Convenience to the Merchants, Traders, and Inhabitants of Newfoundland, that they may, in all Civil Actions, have Recourse to a legal Trial upon the Spot, and not be reduced to the disagreeable Alternative, either of foregoing their just Claims, or being obliged to prosecute them in England at a very considerable and unnecessary Expence; but the Governors, instead of appointing Judges, have most of them sat in the Courts, and determined such Causes themselves, thereby assuming a Power not vested in them by the King's Commission, and depriving the Parties of the great Privilege of Trial by Jury. Upon looking into the Records, I find that Governor Campbell is the first who seems regularly to have deviated from the Path of his Predecessors, and to have confined himself, in his Judicial Proceedings, to the Disputes
between

between Masters of Fishing Ships, Boat Keepers, and Inhabitants, respecting the Right and Property of Fishing Rooms, and between Masters and Servants respecting the Wages of the latter, in which he acted conformably to the 10th and 11th of William III. and the ancient and established Custom of the Fishery; though in the latter Case his Proceedings seem repugnant to the 18th Section of 31st Chap. 15th George III. of which I shall speak hereafter. Governor Elliot followed the Steps of Governor Campbell, and like him referred disputed Accounts Current, and all Causes which the Appointment of Judges is intended to provide for the Settlement of, to the Court of Session: In this they came nearer to the Meaning of the King's Commission than any of their Predecessors had done; but they (Admirals Campbell and Elliot) still neglected to appoint the Justices of the Peace (of whom the Court of Session is composed) Judges by a Special Commission; and as the Powers of a Justice of the Peace are limited by Statute, and the Causes tried at the above-mentioned Court of Session frequently did not come within those Limits, the Proceedings of that Court, though Right in Point of Form, viz. Empannelling Juries, &c. were in such Cases illegal. The Magistrates themselves felt this Want of legal Authority; and it was no uncommon Thing for them to reject altogether such Causes as they thought would subject them to be called to Account by either of the Parties. This of course rendered it impossible in some, and difficult in all Cases, for the Poor to obtain Redress of the Rich, who seldom complied voluntarily with a Decree of the Court, and never without doubting its Legality, and threatening (in case of forcible Means being used) to prosecute the Justices whenever they should have an Opportunity of doing it in England. Disrespect to the Court, as might be expected, was the natural Consequence of such Proceed-

ings, which placed the lower Order of People in a Situation so different from that in which their Fellow Subjects are placed in this Country, and in every other Part of His Majesty's Dominions (where there is assured to all a certain Means of obtaining Justice); and when One considers that there are upwards of Twenty thousand Winter Inhabitants upon the Island, it is a Matter of Astonishment that they should have been kept in good Order so long, and can only be accounted for by supposing that, illegal as was the Mode, it had been followed systematically, and might probably have continued many Years longer unobjected to, if the Fishery itself had not undergone a very material Change. When these Laws or Rules were established, they formed a Kind of equitable Code, and were very well adapted for the Purpose of settling the Disputes of the Fishermen of those Days, who were upon a Footing one with another, and equally interested in their being duly observed. But the present adventuring Merchants (of which there are many from this Country, who are rather Buyers than Catchers of Fish) having been used to the Courts in England, soon found the Means, as it was their Interest, to obstruct the summary Proceedings of the Courts of Newfoundland, and with little Difficulty alarmed the Minds of the Magistrates who, after hearing of the Prosecution against Captain Pellew, were afraid to go on in the usual Way; and when I arrived at St. John's, I found every Thing standing still. This of course subjected me to numerous Applications from all Descriptions of Persons; and, the Season being far advanced, made it absolutely necessary for me immediately to adopt some Mode of Redress for them, in order to avert the Consequences naturally to be dreaded from a Stoppage of the ordinary Course of Justice. What that Mode should be was a Matter of no trifling Consideration with me, though the Opinion

nion which I had received from the Admiralty (and in the Possession of which I thought myself very fortunate at this particular Juncture) was so far a Guide as to lead me clear of the Error of sitting as a Judge myself; and the Court of Vice Admiralty, from its arbitrary Proceedings and the Exorbitancy of its Fees, being held in Abhorrence by the whole Island, I had no other Way of preventing the Danger which seemed to threaten, than by appointing proper Judges *; and I have the greatest Satisfaction in observing that the Good resulting from it very far exceeded my most sanguine Expectations; for either it was in reality the best Step that could be taken, or (which answered the same Purpose, at least for the Time being) the Business of the Court was so admirably conducted by the Gentlemen who were appointed Judges, that during my short Stay there they decided in the most formal † Manner near Thirty Causes, without meeting with the smallest Obstruction to their Proceedings, nor was I once applied to by the Sheriff for Assistance to carry the Décrees of the Court into Execution. In short, it appeared to be so consonant with the Wishes of the People, and is so well adapted to the Sort of Business which must necessarily be brought before it, that I may venture to say it is the best Kind of Judicature that can be established for their Use; and I would earnestly recommend (to prevent a Possibility of mistaking the Meaning of the King's Commission for the future) the Introduction of the Words *to hear Pleas*, after “with full Power and Authority to appoint Judges.”

And in Cases requisite, Commissioners of Oyer and Terminer, for the hearing and determining all Criminal Causes (Treason excepted) according to Law. - - -

Distinctly means a Commission for the Trial of Felons only, which has always

* Appendix, N° 3.

† Appendix, N° 4.

been

been issued Once a Year, and the Business of the Court conducted according to the Forms used in the Criminal Courts of England*. But I humbly beg to be informed by what Authority the King grants this Power to the Governor during the Existence of the 13th Section of the 10th and 11th of William III. wherein it is expressed, "That all Felonies committed in Newfoundland, or the Islands adjacent, shall be tried in some County in England." I am led to make this Enquiry, from a Report that many People there doubt the Legality of their being obliged, and did some Years ago actually refuse to serve as Commissioners and Jurymen. If such a Circumstance should occur again, it would be the Means of placing the Governor (whose Endeavours upon all Occasions to see the Laws carried punctually into Execution, meet with but too much Opposition from the Merchants and Inhabitants) in a very disagreeable Situation. And as, in my Opinion, it is oftentimes more easy, and always much better to prevent an Evil than to remedy it, after it has taken Root, I would beg Leave to suggest either a Repeal of the above-mentioned Clause, or the making such Mention of it in the King's Instructions to the Governor, as should leave no Room for Doubt in the Minds of those who are under his Government.

Justices of the Peace (and other necessary Officers and Ministers) for the better Administration of Justice, and keeping the Peace and Quiet of the Island. - - - -

This is to be a common Commission of the Peace, and, as well as the Commission of Oyer and Terminer, has been regularly issued by the Governors of Newfoundland†; therefore why the Appointment of Judges (which is also directed by the same Commission) should never

* Proceedings transmitted Annually to the Secretary of State's Office.

† The Justices have new Commissions upon the Arrival of every new Governor.

have

have taken place before, cannot be easily accounted for, though every Person, I believe, who knows any Thing of the Country, and particularly those who of late have witnessed the Confusion arising from the Want of some permanent Establishment, will readily agree with me as to the Propriety of the Measure. I should not think it necessary to say any Thing more upon this Subject, but that I am fearful lest some of the former Governors, instead of attributing this Deviation from the old Plan to a proper Motive, should construe it a Reflection upon themselves, and by endeavouring to justify what they have done as Judges, incline the Merchants and Inhabitants to throw Difficulties in the Way of the Court, simply because it is a new One (though they acknowledge its Utility, and have been the Means of bringing about the Alteration by their Objections to the old One); which induces me to proceed a little farther in order to shew more clearly the Ground upon which I have acted.

Which Justices of the Peace, so appointed by me, are to hold and keep General Quarter Sessions of the Peace in such Places as I shall think fit, according to the Custom of that Part of Great Britain called England. - - - - -

Surely, from the Wording of this Clause, it cannot be supposed that I am to sit as One of the Bench; for in no Part of England is it the Custom for the King (in whose Place I look upon myself to stand in Newfoundland) to preside at the Quarter or other Sessions held by the Magistrates in their respective Counties; and as by the Words of the Authority for appointing Judges; viz. "You have full Power and Authority to appoint," the King could not mean that I should appoint myself—I am at a Loss to conceive from whence sprung the Idea of the Governor's having Power to hear and determine Causes, which according to the Law of England

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(and that I take to be the Law of Newfoundland) can only be determined by Jury. The Warrant of Surrogacy (before alluded to) given by former Governors to the Captains of the Ships of War, appears equally if not more extravagant; for without the smallest Authority for giving any such Warrant, each says, "I do hereby appoint you *A. B.* to be my Deputy or Surrogate, with full Power and Authority to assemble Courts within the District of

" to enquire into all such Complaints as shall be brought before you, except such as are excepted in the Instructions annexed, and to hear and determine the same to all Intents and Purposes as I myself might or could do by virtue of the Power vested in me." The Questions naturally to be asked are, What were the Powers by which these Governors would themselves have heard and determined? And in what Causes? The Answers to both must be, None—for no such Authority is to be found in their Commissions, Instructions, or any of the Acts of Parliament.—And I was so firmly persuaded that the Cases excepted in the Instructions alluded to by the Warrant of Surrogacy (*viz.* disputed Accounts Current, &c.) were the very Cases (if any ought to be submitted to their Judgments) which the Captains of the Ships of War might properly be authorized to try, that I appointed them Judges in their respective Districts; and, so far from having any Cause to repent of the Measure, I can with Pleasure declare, that the Appointments were attended with the greatest good Consequences, and evidently shewed me, that if they had been made some Years ago, it would have been of infinite Service to the Fishery, particularly at St. John's. They prevented numberless Complaints being brought thither from the Outports, and thereby afforded me an Opportunity of attending to the material Parts of my Duty:—Such as regulating the Buildings in the Town, and Inclosures
about

about the Harbour, examining into the Conduct of the Magistrates, the general Abuses of the Fishery, &c. which it seems the Governors hitherto have not had Time to think much about. As to the Authority by this Warrant given to enquire into and settle the Disputes of the Fishery, it appears not only superfluous but presumptuous ; for

(Provided neither I, nor the Justices of the Peace so appointed by me, do any Thing by virtue of this Commission contrary or repugnant to the Act of the 10th and 11th W^m III. or the 15th of Geo. III. nor any Way obstruct the Powers thereby given to the Admirals of the Harbours, and the Captains of the Ships of War.) - - -

By this Clause it appears, that instead of having Power to delegate any such Authority, I cannot myself, but as Commander in Chief of the Squadron, interfere in Matters relating to the Fishery; and I am strictly forbid to obstruct those Powers (which former Governors have pretended to grant) already vested in the Admirals of Harbours and the Captains of Ships of War by the afore-mentioned Act of Parliament.

With Power and Authority, when I shall see Cause, or judge any Offenders for Criminal Offences, or for any Fines or Forfeitures due unto the King, fit Objects of His Majesty's Mercy, to pardon all such Offenders, and remit all such Offences, Fines, and Forfeitures, wilful Murder only excepted; in which Case I have likewise Power, upon extraordinary Occasions, to grant Reprieves to the Offenders until and to the Intent His Majesty's Royal Pleasure may be known therein. - - -

Here is also a Delegation of Royal Authority, which I think places me above all Judges in Newfoundland, and of course by Implication (as I am not Chancellor of the Island) incapacitates me for acting as a Judge of any Description myself.

Thus

Thus far, my Lords, the Commission speaks as to the Powers which are to be exercised by me, as Governor of Newfoundland; but as it may be urged by those who favour the Opinion of its being proper that I should sit as a Judge, that, although I do not derive the Power of doing so from the Commission, yet it may probably be conveyed to me through some other Channel, I will beg Leave (for the Supposition of an Argument of this Sort being used is not at all extravagant, as may be gathered from the Reasoning of the Law Officers in the Case of Captain Pellew) to trespass farther upon your Lordships Patience, by submitting to your Consideration the several Clauses of the different Acts of Parliament, relating to the Judicatures within my Government; from which, however, I rather think that your Lordships will be of Opinion, that instead of encouraging any such Idea, they negatively forbid the Assumption of the Power, by directing in what Manner the Differences and Controversies therein mentioned shall be heard and determined.

*Act 10th and 11th H^m III.
Chap. 25th, Section 13th. And
whereas several Persons, who have
been guilty of Thefts, Robberies,
Murders, and other Felonies, upon
the Land in Newfoundland, and
the Islands thereunto adjacent, have
many Times escaped unpunished,
because the Trial of such Offenders
hath heretofore been ordered and
adjudged in no other Court of Jus-
tice but before the Lord High
Constable and Earl Marshall of
England: For Reformation thereof,
and for the more speedy and ef-
fectual Punishment of such Offen-
ders for the Time to come, Be it
Enacted by the Authority aforesaid,
That all Robberies, Murders, and
Felonies, and all other Capital
Crimes whatsoever, which at any
Time or Times after the said 25th
Day of March shall be done and
committed upon the Land in New-
foundland, or in any of the Islands
thereunto belonging, shall and may
be enquired of, tried, heard, deter-
mined, and adjudged, in any Shire
or County of England, by virtue
of the King's Commission, or Com-
missions of Oyer and Terminer, and
Gaol Delivery, or any of them, ac-
cording to the Laws of this Land,
used for the Punishment of such
Robberies, Murders, Felonies, and*

other

other Capital Crimes done and committed within this Realm. - -

This Clause, as I observed before, has created in my Mind a Doubt respecting the Authority for issuing a Commission of Oyer and Terminer in Newfoundland; and it is not a little increased by the 3d Article of the King's Instructions to me, which directs that the Murderers of Indians shall be sent to England for Trial in Terms of the Act. This however is a Point of Law, which I do not pretend to be a Judge of, and only take the Liberty of mentioning it to your Lordships, that something may be done to reconcile to vulgar Minds the seeming Contradiction there is between the Commission and the Act of Parliament.

10th and 11th W^m III. Chap. 25th, Sect. 15th. And be it Enacted, That in case any Difference or Controversy shall arise in Newfoundland, or the Islands thereto adjoining, between the Masters of Fishing Ships and Inhabitants there, or any Bye Boat Keeper, for or concerning the Right and Property of Fishing Rooms, Stages, Flakes, &c. in the several Harbours or Coves, the said Differences shall be judged and determined by the Fishing Admirals in the several Harbours and Coves; and in case any of the said Masters of Fishing Ships, Bye Boat Keepers, or Inhabitants, shall think themselves aggrieved by such Judgment or Determination, and shall appeal to the Commander of any of His Majesty's Ships of War appointed as Convoy for Newfoundland, the said Commander is hereby authorized and empowered to determine the same in pursuance to the Regulations of this Act. - - -

By this Clause I think it appears, that the Governor, if he is Commander in Chief of the Squadron, but not otherwise, has the same Power to enquire into and settle the Disputes of the Fishery, as

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the Captains of the Ships of War have, and no more. And here it is necessary for me to observe, that a very great Alteration having taken Place in the Mode of carrying on the Fishery since the passing of this Act, an Alteration in the Act itself is become requisite. From the Powers hereby given to the Fishing Admirals, it is to be presumed, that the Fishery was then carried on with Boats, and that those Admirals were always upon the Spot, and easily applied to in Cases of Dispute about Fishing Room; but now it is otherwise. The Fishery is in a great Measure carried on with Bankers, whose Masters are the Fishing Admirals, and instead of being always upon the Spot to settle Differences and Disputes, they are not to be met with above Thrice in the Season, and then for little more than Twenty-four Hours at a Time, which is so necessarily taken up with their own, that they cannot possibly attend to the Business of the Public; therefore, unless the Captains of the Ships of War (which is not legally to be done as the Law now stands) will take upon themselves to decide in the First Instance, the Disputes must in general remain unsettled, to the great Injury of the Fishery, and Encouragement of unlawful and arbitrary Proceedings. I think that the Whole of the Act is founded in Wisdom, and am by no Means an Advocate for taking from the Fishing Admirals any of the Powers and Privileges thereby granted to them; but as the Legislature in making them Judges certainly intended that they should be of Use to the Community, and thought them equal to the Task of deciding in such Cases, without providing for or supposing they would be absent from the Places where their Presence should be deemed necessary, I am of Opinion that the Words "or in their Absence, and in case of Appeal from their Decision," should be added to the Clause, which would authorize the Captains of the Ships of War to try Causes

Causes of Fishing Property in the First Instance, as well as by Appeal; the latter of which can seldom be done now for Want of the Decision of the Fishing Admiral to appeal from.

15th Geo. III. Chap. 31st,
Sect. 17th. And be it Enacted by
the Authority aforesaid, That in
case any Seaman or Fisherman shall
desert, &c. it shall and may be
lawful for the Governor of New-
foundland, or his Surrogates, or
the Commissary of the Vice Ad-
miralty Court for the Time being,
or for any Justice of the Peace in
Newfoundland, to issue his or their
Warrant or Warrants to appre-
hend every such Deserter, and to
commit him to Prison, there to re-
main until the next Court of Session
which shall be holden in pursuance
of the Commission of the said Go-
vernor, &c. - - - - -

It is very clear, I think, that the Go-
vernor is not to sit in *this* Court, for it
is to be holden in pursuance of his Com-
mission to other People.

15th Geo. III. Chap. 31st,
Sect. 18th. And be it Enacted by
the Authority aforesaid, That all
Disputes which shall arise concern-
ing the Wages of every and any
such Seaman or Fisherman, and
all Offences which shall be com-
mitted by every Hirer or Employer
of such Seaman or Fisherman against
this Act, shall and may be enquired
into, heard, and determined, and
the Penalties and Forfeitures there-
by incurred shall and may be reco-
vered in the Court of Session here-
inbefore mentioned. - - - - -

From the Wording of this Clause, it
would seem, that even Disputes concern-
ing the Wages of Seamen and Fishermen
should be determined only in the Court
of Session; and that the Authority exer-
cised in such Cases by the Admirals and
Captains of Ships of War, from a Cus-
tom

tom (originating, I believe, with, the Fishery, and uniformly practised to this Day) was from the Establishment of that Court to be exercised no more. If I am right in my Conjecture, an Alteration in the Act cannot be made too soon, for I will venture to pronounce, that were it to be understood that Servants could recover their Wages only through the Court of Session, not One out of Ten who now Annually get at least Half of what they agree for, would ever recover a Six Pence, and of Course, instead of returning to Great Britain or Ireland, must necessarily stay in the Country. Such is the Inclination of Employers to cheat their Servants, and such the Fear of the Magistrates to offend the Merchants, who take Care to trouble the Court upon these Occasions with many unnecessary Witnesses, that it seldom happens they can get through more than Three or Four Causes in a Day: Whereas the Proceedings before the Admiral, and the Captains of the Ships of War, are very summary (the Decision Nine Times out of Twelve depending upon the 14th Section of this Act) and vastly well calculated for the Encouragement of Passage Vessels, who would many of them, if Wages were to be recovered only in the Court of Session, be obliged to wait till after Christmas for Passengers. Indeed I very much doubt, whether Sir Hugh Palliser (who I understand was principally concerned in framing the Act) ever intended by this Clause of it to take from the Admiral, and the Captains of the Ships of War, the Authority which had been so long and necessarily exercised by them, and am rather inclined to believe he only meant to make it a Court of Ease to himself, and the Officers under his Command. And so far from thinking it ought to be understood in any other Light, I am free to declare, that if the latter Part of the Clause, which gave the same Power to the Court of Vice Admiralty had never been repealed, it would have been for the Benefit of the Fishery; for I believe every
 Person

Person who is acquainted with it will agree with me in Opinion, that after the Fishing Season is over the greatest Obstruction to the Servants leaving the Country is the Difficulty of recovering their Wages; and that if Fifty Courts instead of One could be established for this particular Purpose, there would not be too many.

26th Geo. III. Chap. 26th.
Seet. . And whereas by the said Act, made in the 15th Year of His present Majesty's Reign, it is directed, &c. And whereas the said Penalties have been found insufficient; Be it Enacted, That where any such Seaman or Fisherman shall wilfully absent himself from his Duty or Employ, without the Consent of his Hirer or Employer, or shall wilfully neglect or refuse to work for the Space of One Day, he shall, for every Day he shall so absent himself, or wilfully neglect or refuse to work, forfeit any Number of Days Pay not exceeding Five, as the Governor or his Surrogates may think just and reasonable. - - - - -

This Clause, again, if my Opinion of the Want of Power in the Governor be well founded, places both the Court and the Governor in very awkward Situations, as it makes him Arbitrator in One Part of the Cause (viz. when the Master attempts to mulct his Servant more than Two Days Pay for One Day's Neglect) without extending to him the Power of trying the Cause itself; and the Court of Session, though impowered to try the Cause, is confined in its Authority respecting those Mulcts to the Number of Days Pay specified in the 17th Section, 31st Chap. 45th Geo. III.

Thus, my Lords, I hope I have proved to your Lordships Satisfaction that I derive no judicial Authority, as Governor of Newfoundland, from the King's Commission, nor any of the Acts of Parliament; and as to the Instructions, there is nothing in them which can be construed as meaning to convey to me any such Power; on the contrary, the latter Part of the 24th Article directs me to report "What I shall have done in pursuance of my Authority of appointing Judges; what Proceedings have been had before the said Judges; what Obstructions or Difficulties they or I may have met with (if any) in putting the said Power in Execution, and which Way I conceive His Majesty may contribute to render it more useful and beneficial to all His Subjects residing in, or resorting to, the Islands under my Government:" from which I think is to be inferred, that the Appointment of Judges was a proper Measure; and whether the Form in which I have made the Appointment be right or wrong, I feel myself justifiable in saying that the Motive was good, and am bound in Duty to report it as an useful and beneficial Establishment. To sum up the Whole, my Lords, the State of the Case is as follows:

By the Commission of Oyer and Terminer the Trial of Felons is provided for.

The Commission of the Peace authorizes the Justices to hold their Quarter and other Sessions regularly.

The Court of Session, by Act of Parliament, and the Admiral and Captains of the Ships of War, from a Custom of the Fishery (practised long before the Appointment of a Governor, or the Existence of any Act of Parliament for its Regulation) take Cognizance of all Disputes between Masters and their Servants respecting Wages.

The Act of 10th and 11th of William III. (allowing that the suggested Alteration, Page 8th, be made) provides amply for the Settlement of Disputes respecting the Right and Property of Fishing Rooms.

And the Court of Vice Admiralty secures a speedy Determination in all Maritime Causes.

But if the Court of Pleas is not continued, a very material Part of the Business of the Island must be (as it has hitherto been) either totally neglected, or settled by Persons not legally authorized to act in the Premises; therefore, as I have every Reason to be satisfied of the Usefulness of the Establishment, I once more recommend its being put upon a permanent Footing. Let this be done, and I will undertake to say, that Newfoundland shall be managed with more Ease, and at an infinite less Expence to Government, than any One Part of His Majesty's Foreign Dominions, where there is a regular Establishment of Law Officers.

The Court of Vice Admiralty—for want of something of this Kind being done sooner, has assumed an universal Jurisdiction in the Island, and deems itself competent to try Causes of any and every Description whatsoever. The irregular and arbitrary Proceedings of

of that Court may in some Measure be judged of from the Case of Budden and C^o. * ; and I am sorry to observe, that a Case nearly similar occurred last Season at Trepassey, where a reputable Boat Keeper sustained a Loss of many Hundred Pounds, nay, was completely ruined, by his Property being attached in the Height of the Fishery, and the Matter not brought to Trial until it was too late to send the Fish to Market.

In short, my Lords, from the little I have seen of the Court of Vice Admiralty, I cannot help saying, it wears more the Appearance of an Inquisition than a Court of Justice; and although the present Judge may be a very worthy Man in private Life, yet his Ignorance of the Duties of his Office, and above all, his being a Merchant, engaged in an extensive Trade in Newfoundland, renders him, in my Opinion, a very unfit Person to be placed in such a Situation: And as I have no View in making this Report but the Good of the Island which His Majesty has been graciously pleased to intrust to my Government, and can freely and conscientiously acquit myself of Prejudice upon the Occasion, I feel no Uneasiness in complying with my Duty, which compels me to represent to your Lordships, that it is absolutely necessary Mr. Canter should be obliged either to decline all farther Business as a Merchant, or to resign his Commission as a Judge.

With regard to any other Regulations for the present, I have only to observe to your Lordships, that a Chief Magistrate, with a Salary, is certainly much wanted at St. John's. He would be the Means of regulating the Police, and of establishing an uniform Mode of Government throughout the Island, which is now subject to Change and Confusion upon the Arrival of every new Governor: But whether this, or any other Part of my Plan, be thought worthy of your Lordships Countenance and Protection, I shall hope at least, and flatter myself, that your Lordships will free me in your Opinion of all intentional Neglect, and not deem me unmindful of the Trust reposed in me, for that I have not taken upon myself the Office of a Judge, nor appointed Surrogates in the usual Manner.

Now, my Lords, I will take the Liberty of troubling you with a few Observations upon the Acts of Parliament, as they relate to the Trade and Fishery: First, the 10th and 11th of William the Third, I have already observed, was admirably adapted to the Fishery of those Days; and if any Means could be devised for carrying into Execution that Part of it which relates to the Boat Keepers and Inhabitants employing Green Men, I think, even now, it is the best Plan upon which the Fishery can be carried on with real Advantage to this Country; for *the making of Seamen I hold to be the First and principal Object of the Fishery*. I am aware that Alterations are not always to be deemed Reforms, and I am also sensible that I should bring the whole Trade upon my Back, if I was to propose (as One) that every Person employing a Fishing Shallop in Newfoundland should be obliged to take out a Licence for each Boat (to be delivered to him gratis, upon his making Oath that she is fitted and manned in Terms of the Act

of Parliament) and to have them all numbered ; but I am convinced that such a Plan is practicable ; and as the Fishery is much more in Want of *Improvement* than *Encouragement*, I will venture to tell your Lordships that something of the Kind ought to be thought of.

10th and 11th W^m III. Ch.
25. Sect. 12. *And be it Enacted,*
That no Person whatsoever shall
at any Time, after the said 25th
Day of March, rbind any of the
Trees there standing or growing
upon any Occasion whatsoever, nor
shall by any Ways or Means what-
soever set fire to any of the Woods
of the said Country, or do or cause
to be done any Damage, Detriment,
or Destruction to the same, for
any Use or Uses whatsoever, ex-
cept only for the necessary Fuel for
the Inhabitants, and for the build-
ing and necessary Repairs of Houses,
Ships, Boats, and Train Vats,
and of the Stages, Cook Rooms,
Beaches, and other Places for
taking Bait, and fishing, and for
drying, curing, and buybanding
of Fish. - - - - -

It is astonishing to me how any Governor, after reading this Clause, should imagine himself vested with Power to grant Land to Persons in Newfoundland : — The Act itself, One would suppose, is the completest Instruction that could be given for the Preservation of the Woods in that Island ; but it has hitherto been so little understood, or rather so totally disregarded, that several of the Governors have made very large Grants to Persons who founded their Claims to such Indulgencies upon the most glaring Violation of the Act ; and instead of being prosecuted for a Breach of the Law, have been put into Possession of large Tracts of Land, expressly for the Reasons which ought to have subjected them to Imprisonment, or Banishment from the Country, viz. For cutting and burning down (to clear the Ground) all the Trees and necessary Stuff for the Fishery, which were standing and growing

growing thereon*: The Inclosures about St. John's are particularly detrimental to the Fishery, and have gradually removed the small Wood, fit for Dunnage and other necessary Purposes, to the Distance of between Two and Three Miles from the Harbour, which within the Memory of many of the present Inhabitants was to be had without going a Quarter of that Distance for it; I do not see how the Matter can be altogether remedied, as many of the Plantations have been alienated for valuable Considerations, and the present Possessors plead their Faith in the Governor's Grants in Justification of their Purchases; but as there are Scores of Acres inclosed, which are intended to be cleared, only as it may suit the Convenience of the Possessor, it may be proper, and I think is highly necessary, for me to exercise the Authority given to me by the 7th Article of the King's Instructions, which at least enables me to stop the Progress of this Evil, and will no Doubt justify me in taking down the Fences, if by so doing I can in any Manner benefit the Fishery—At any Rate I mean to take such Steps, and to give such Directions, as shall for the future insure a punctual Compliance with the Act of Parliament, without which the Port of St. John's will in a few Years be obliged to send to other Parts of the Island for almost every Sort of Stuff they may want for the Use of their Flakes and Stages. Another very material Injury is sustained by the Fishery of that Port from the Number of Inhabitants, and the immense Quantity of Fuel which is Annually cut down for their Use. This I think would, in a great Measure, be remedied by allowing a small Bounty upon Coals imported there from this Country; and at the same Time it might be the Means of preventing many Men from wintering in the Island, who for

* The Preamble in general to Petitions to the Governor for Grants of Lands.

Want of Employment (which the cutting of Wood affords them at present) would be obliged to return to Great Britain or Ireland. I have already taken Steps to prevent their being entertained as Dieters*; and if the same be approved and punctually followed by future Governors, there can be no Doubt that in the Course of Time the Island will be considerably thinned of Inhabitants.

10th and 11th W^m III. Ch.
25. Sect. 7. *Provided always, That all such Persons as since the 25th Day of March 1685 have built, cut out, or made (or at any Time hereafter shall build, cut out, or make) any Houses, Stages, Cook Rooms, Trainfats, or other Conveniences for fishing, that did not belong to Fishing Ships since the Year 1685, shall and may peaceably and quietly enjoy the same to his or their own Use, without any Disturbance, of or from any Person or Persons whatsoever.* - - -

This Clause, I think, in some Measure, establishes a Right of Property in the Possessor to the Room which he shall have cut out of the Woods, and built upon expressly for the Purpose of carrying on the Fishery; and I have no Doubt that he can bequeath his Interest therein to any other Person, who, while he continues to occupy it for that, and for no other Purpose whatsoever, cannot be disturbed in the quiet and peaceable Enjoyment thereof.

15 Geo. III. Ch. 31.
Sect. 2. *And be it Enacted by the Authority aforesaid, That for the better Accommodation of Persons belonging to Vessels in the Newfoundland Fishery, it shall and may be lawful for the Masters and Crews of any Vessels fitted out and employed in that Fishery, in pursuance of this or any other Act, to occupy and use, for the Purpose of*

* Appendix, N^o 6.

curing, salting, drying, and busbanding of Fish, any vacant or void Space whatever on any Part of Newfoundland which is not then occupied and used for the Fishery, without any Let, Disturbance, or Hindrance from any Person or Persons whatsoever, although such unoccupied Places may not before have been reputed Ships Rooms; and all such unoccupied Places shall from henceforth be deemed and taken to be Ships Rooms, any Custom or Usage to the contrary notwithstanding. - - - - -

This again operates strongly against the foregoing Opinion; for here, instead of a Protection for the Property which by cutting out of the Woods, and building Fishing Conveniences upon, an Adventurer shall have made valuable, he is by the Words "and all such unoccupied Places shall from henceforth be deemed "and taken to be Ships Rooms" directed to quit it at the End of the Fishing Season; for as a Ship's Room it can only be enjoyed during the present Season, and may be taken from him by the first arriving Ship the next Year. It is hardly to be believed that this could have been the Intent of the Legislature, or that any Thing more was meant by the Clause than a Protection for the ancient Ships Rooms (deemed so in 1685) and the making an Addition thereto by the Forfeiture of such other Rooms, or Parts thereof, as should be deserted and suffered to go to Decay by their Owners. But in the Endeavour to reconcile this seeming Difference between the Two Acts, the 7th Article of the King's Instructions, I think, goes a little too far in authorizing the Governor, after the first Possessor shall have deserted a Place, to put and *keep* in Possession the next arriving Ship from Europe, as it will certainly by some be construed as an Interest on the Part of Government to establish a fixed Right of Property in the Fishery; whereas, if the First Possessor

for only was to have assured to him the Protection hereby ordered, without being allowed to alienate his Interest therein, it would be a sufficient Encouragement for Adventurers to cut out and make Fishing Conveniences upon the unoccupied Parts of Newfoundland; and as the common Events of Trade must in a Course of Years bring many of those Places into the Stock of public Fishing Rooms, it would then be the Means of inducing many Vessels to go out upon the old Plan, viz. with Men and Necessaries to catch Fish, and having completed their Voyages, to return again with their Men at the End of the Season.

15 Geo. III. Ch. 31. Sect. 17.
And be it further Enacted by the Authority aforesaid, That in case any such Seaman or Fisherman shall at any Time wilfully absent himself from his Duty or Employ without Leave of his Hirer or Employer, or shall wilfully neglect or refuse to work according to the true Intent and Meaning of such Contract or Agreement, he shall for every Day he shall so absent himself, or neglect or refuse to work as aforesaid, forfeit Two Days Pay to such Hirer or Employer; and if any such Seaman or Fisherman shall wilfully absent himself from his said Duty or Employ for the Space of Five Days, without such Leave as aforesaid, he shall be deemed a Deserter, and shall forfeit to such Hirer or Employer all such Wages as shall be due to him at the Time of such Desertion. - - - - -

This Clause leaves too great an Opening for a wicked and designing Employer to connive at his Servant's Neglect, which, with a little Management, he (the Master) may turn to his own Advantage. As a Proof of the Justness of my Observation, I need only relate a Circumstance which occurred (and is upon Record) in the Year 1788: A capital House at St. John's,

John's, amongst other Servants, employed one whose Name was Redmond. The Tenor of his Shipping Paper was in the usual Form, with this Addition, " That if he caught 7,000 Fish he was " (over and above his Wages) to have a " Quintal of dried Fish as a Reward " for his Diligence." The Man went regularly to Sea during the Fishing Season, and actually caught 9000 Fish; but so far from receiving the promised Reward, he had nearly been deprived of all his Wages (upon the Letter of the Act of Parliament) in the following Manner: From the extraordinary Exertions of the Fishermen, the Vessel which Redmond was in had taken as many Fish by the Middle of September as the Agent of the House knew what to do with; therefore he laid her up, instead of sending her another Trip (which she might have made) to the Banks, and of course it became his Interest to get rid of the Fishermen, in order to save their Provisions. Redmond was suffered to go about the Town for several Days, and on his Return to his Duty, or rather on returning to his Master, who had little or no Duty for him to do, he was not only refused his Victuals, but for presuming to complain thereof to the Governor, he was prosecuted as a Deserter in the Court of Session, and notwithstanding he had caught nearly a Third more Fish than he was expected to catch by the Tenor of his Agreement, he must (if Sunday had not intervened, and reduced the Time of his Absence to less than Five working Days) have forfeited all his Wages. Had this Man absented himself in the Height of the Fishery, his Master would have spared neither Trouble nor Expence to have had him found out, and brought back to his Duty; and as I look upon the Forfeiture to be intended as much for the Purpose of preventing the Offence as for punishing the Offender, or recompensing the Master for the Loss sustained by his Servant's Desertion, I think it would be but prudent to take Care that Employers on their Part should

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not have any Inducement to encourage (or connive at) the Commission of a Crime, by which the Fishery at large must be materially injured; and therefore I beg Leave to recommend that the following Addition be made to the Clause: *Provided it shall be made appear to the said Court, that such Hirer or Employer did, within Twenty-four Hours after such Seaman or Fisherman was missing from his Employ, make Application to a Magistrate for a Warrant and Assistance to apprehend and bring him back to his Duty.* This would effectually prevent all Connivance at Desertion, for it is not possible for any Man to secrete himself Two Days together in any Town of Newfoundland, if Pains are taken to find him out.

24 Geo. III. Ch. 26. Sect. 6.
And whereas the said Penalties have been found insufficient, Be it further Enacted, That when any such Seaman or Fisherman shall so wilfully absent himself from his Duty or Employ, without the Leave or Consent of his Hirer or Employer, or shall wilfully neglect or refuse to work for the Space of One Day, he shall for every Day he shall so absent himself, or wilfully neglect or refuse to work, forfeit any Number of Days Pay not exceeding Five, as the said Governor or his Surrogates may think just and reasonable. - - - - -

This Clause (which is in Fact a Part of the last-mentioned One, and subject to the like evil Consequences) ought in my Opinion never to have been passed. Neglect of Duty is less to be complained of in the Newfoundland Fishery than in any other Trade employing an equal Number of Hands; and when it is considered that the Government (as far as relates to the Seamen and Fishermen) is nearly a Military one, and that upon Complaint being made by the Master, his Servant is immediately brought to Punishment (which though not sanctioned by Law, has been always practised, and with good Effect)

Effect) it would be absurd to suppose, that the Dread of losing a small Part of their Wages would operate more powerfully upon their Minds than the Fear of being flogged. The Merchants did not themselves expect that the Alteration would occasion any Decrease of Neglect—but, to use their own Expression, “ it would make it *worth their while* to charge for it.” And the Event proves either that it has been productive of an Increase, instead of a Decrease of Neglect, or of a Degree of Iniquity (amongst the Boat Keepers particularly) which the Act, in its original Form, did not encourage the Practice of. Numberless Complaints are now Annually made by Servants, whose Masters (making themselves Judges in their own Causes) have, under Pretence of Neglect of Duty, changed Five Days for One (for in no Instance does it appear that the Fault in the Master’s Opinion is deserving of a milder Punishment) to the whole Amount of the Wages agreed for, sometimes not even excepting the Passage Money. This must ever occasion an infinite deal of Trouble to the Admiral and the Captains of the Ships of War, and at a Time too when no Difficulties should be thrown in the Way of expediting the Departure of the Passage Vessels; besides, it bids fair to infringe that Part of the Act which secures to the Servants a Moiety at least of their Wages; and if that should ever be effected, it would leave them in a very wretched State indeed; as it is, I think this Clause places them in an improper Situation, by almost imposing on them the Task of proving their Innocence for the Recovery of their Wages, and that too after a considerable Lapse of Time—for the Complaint, instead of being made by the Master, comes per Force from the Servant, who does not know the Necessity of making it, ’till the Stoppage for Neglect points it out to him at the End of the Season; though perhaps the Neglect with which he is charged, may be said to have happened at the Beginning of it.

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The Master (if the Servant refuses to take his Wages thus reduced, and applies to the Admiral, or a Captain of One of the Ships of War, for Redress) comes prepared with Notes of Time, Place, &c. and his Clerk, Cooper, Master of Voyage, or Boatmaster, as Witnesses of the Facts; and the poor Servant, with the rest of the Crew, can only say, that to the best of their Knowledge he never did neglect his Duty; but as to any Legal Proof of his Innocence (though it should be firmly established upon their Minds) it is next to impossible to obtain it from them.—The Act therefore, if not repealed, should at least be qualified, by obliging every Master *within 24 Hours, having an Opportunity so to do (or as soon as conveniently may be) to make his Complaint to the Admiral, or a Captain of One of His Majesty's Ships of War, or to a Magistrate, that the Matter might be enquired into immediately, and the Servant have an Opportunity of making his Defence.* This is essentially necessary, not only on Account of the Servant, but for the Convenience of the Person who is to judge the Cause, as it is proper he should be informed of the State of the Weather at the Time the Offence was committed, and a Variety of other Circumstances on which the Extent of the Fine ought to and must depend, and which cannot be ascertained at any distant Period.

25 Geo. III. Ch. 31. Sect. 13.
Be it Enacted, &c. That the Person so hiring or employing such Seamen or Fishermen shall be at Liberty, and he is hereby authorized, required, and directed to reserve, retain, and deduct, out of the Wages of every Person so hired or employed, a Sum of Money equal to the then current Price of a Man's Passage Home, not exceeding 40 Shillings for each Man; which Money such Hirer or Employer shall pay, or cause to be paid, to the Master of

a Passage

a Passage or other Ship, who shall undertake to carry such Seaman or Fisherman to the Country whereto he belongs, and shall also convey such Seaman and Fisherman to and on Board such Passage or other Ship, taking the Master's Receipt for the Money, &c. - - - - -

The Intent of this Clause is very good, but for Want of an Obligation on the Part of somebody to provide a Passage for the Servant, and an Authority to compel him to embark on Board the Vessel which shall be provided for him, it fails considerably in its Effect. From the Words, "shall convey such Seaman" or Fisherman to and on Board such "Passage or other Ship," one would imagine that the Employer was to engage a Passage for, in the Vessel to which he was to convey his Servant; but it is not so understood in Newfoundland, and if it was, and the Servant should refuse to go, I do not see (as the Law now stands) by what Authority he could be compelled to it. The Consequence is, that many Hundreds of these poor Creatures, too unthinking to seek for a Passage while they have a Farthing of their Wages remaining, are Annually left in the Country, and their Forty Shillings either forfeited to their Employers (many of whom never lose Sight of the Advantage which the Act has given them over their Servants in this Particular) or spent in Riot and Debauchery, both equally subversive of the good Intent of the Legislature, whose only Aim in authorizing the Stoppage, was to secure the Return of the Seamen and Fishermen at the End of the Season.

I am sensible, my Lords, of the Difference which there is between perceiving a Defect, and being able to point out the Means by which it can be remedied; and have therefore no Doubt that the following, which at present strikes me as a proper Plan to be adopted, will meet with many Objections. It is however to be observed, that, as the Stoppage is already authorized by Law, this Plan, while it relieves the Employer from the Trouble of carrying his Servant on Board a Passage Vessel, imposes no new Hardship on the Servant himself, who, on the contrary, will receive

N^o 5.

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great

great Benefit from the Alteration in the Mode of applying the Forty Shillings deducted from his Wages.

The Chief Magistrate of St. John's (supposing such a Person to be appointed) should be Receiver General of Passage Money in Newfoundland, and have Authority to appoint Deputies at the Out Ports.

Every Employer, instead of paying the Servants Passage Money (as is now directed) to the Master of a Passage Vessel, should pay it into the Hands of the Receiver of the Port where such Employer resides, who is to give a Receipt in the following Words :

N^o Newfoundland, of 1790.
*Received of A. B. the Sum of Forty Shillings Passage Money for
 his Servant C. D.*
Signed E. F.
Receiver of Passage Money for the Port of

Which Receipt the Employer should deliver to his Servant on the Day of his Discharge, and take from him (in Addition to the Receipt for the Balance of his Account) a Memorandum as follows :

Newfoundland, 1790.
Received of A. B. a Passage Note, N^o Signed by E. F.
Receiver of Passage Money for the Port of in lieu of
Forty Shillings, stopped by the said A. B. out of my Wages for the
Fishing Season of this Year.

The Receiver's Receipt is to be delivered by the Servant to the Master of such Passage Vessel as shall undertake to carry him home ; and the Master of every Passage Vessel, when he has completed his Complement of Passengers, is to call at the Receiver's Office for Payment of such Passage Notes as he may have in his Possession belonging to Passengers actually on Board his Vessel, of whose Names he is also to deliver in a List upon Oath ; and, having received Payment, he should be obliged to sail (Wind and Weather permitting) within Twelve Hours after, under a Penalty of £.

Any Seaman or Fisherman having taken a Passage (of which the Delivery of the Receiver's Passage Note should be a Proof) and afterwards should refuse or neglect to depart in such Vessel, should be deemed a Vagrant, and the Magistrates should cause him to be apprehended and punished, and send him away in the First Vessel for Great Britain or Ireland.

The Master of Passage Vessels at One Port taking the Receiver's Passage Notes of another Port, are to be paid by the Receiver of the Port at which they shall take on Board their Passengers. This will be the Means of securing Passages for many
 Seamen

Seamen and Fishermen who come from Places where there are no Passage Vessels to embark, at St. John's and other principal Ports, and are mostly obliged to put up with the Loss of their Passage Money, owing to the remote Situation of their Employers, who having stopped it, according to the Words of the Act of Parliament, cannot possibly be applied to for it till the following Season, when perhaps the Servant does not return to the Fishery, or if he should, he is most likely engaged to serve in a different Part of the Island.

The Passage Money of all Winter Men (as well those who deem themselves Natives of Newfoundland, as those who go out from England or Ireland) should be forfeited to the Public, and appropriated to the Purpose of sending home such Seamen and Fishermen as may not have been employed during the Fishing Season, or by any other Means shall be unable to provide themselves with Passages. This will answer Two good Purposes; it will prevent many English and Irish Servants from wintering in the Country, who have no particular Inclination to stay, but frequently do it for the Pleasure of spending their Forty Shillings, which they would in general rather do, than employ it to carry themselves home; and in a few Years it will create a Fund more than sufficient to provide Passages for all unemployed Seamen and Fishermen, and for defraying the Expences of Receivers, &c. which till then should be defrayed out of the Duties collected for the Royal Hospital at Greenwich; in order to repay which, the Receiver General of Passage Money should every Year be obliged to pass an Account, and pay such Balance as may be remaining in his Hands to the Use of the said Hospital.

The Deputy Receivers should account with the Receiver General every Year, which would reimburse the latter for such Passage Notes of the Receivers of the Out Ports as he may have taken up at St. John's, and enable him to pay the Deputy Receivers for such Notes as they may have taken up for one another.

The Receivers to be allowed $2\frac{1}{2}$ per Cent. for such Monies as shall be received by them, and the Receiver General £. 25 per Annum for a Clerk, which is absolutely necessary at St. John's.

In order to render the foregoing perfectly useful, my Lords, I would beg Leave to propose that the Governor, in general Terms, should be authorized to compel Seamen and Fishermen to quit the Island, and return Home at the End of every Season. This, perhaps, is already to be inferred from the Preamble and Spirit of the 15 Geo. III. Ch. 31.; but it would be putting the Matter past all Doubt, if it was to be mentioned in any future Act of Parliament, or even pointedly in the King's Instructions. The Mode must necessarily be left to the Governor's Discretion; and, amongst other Regulations, I should myself make the following:

Every

Every Merchant and Inhabitant of Newfoundland, intending to keep Winter Servants, should deliver to me at St. John's, or to the Bench of Justices at the Out Ports (on or before the Day of October in every Year) the Names of such Men as they shall have engaged as Winter Men, to each of whom should be given a Shipping Paper, without which every Seaman or Fisherman (excepting a certain Description of Inhabitants) should be deemed a Nuisance, and liable to be sent Home; and any Person convicted of giving a Shipping Paper to any Seaman or Fisherman, for the Purpose only of keeping him in the Country, without having Occasion for or employing him as a Winter Servant, should forfeit £. 10 for every such Offence.

There is but One Thing more which I have to trouble your Lordships with for the present, and that relates to the Custom House Fees demanded of Vessels, which, in my Opinion, fairly come under the Description, and are (or ought to be) entitled to all the Privileges of Fishing Ships.

15 Geo. III. Ch. 31. Sect. 7.
And be it Enacted, &c. That all Vessels fitted and cleared out as Fishing Ships in pursuance of this Act, or the Act of the 10th. and 11th W^m III. and which shall be actually employed in the Fishery, shall not be liable to any Restraint or Regulation with respect to Days or Hours of working, nor to make any Entry at the Custom House at Newfoundland, except a Report to be made by the Master on his First Arrival there, and at his last clearing out from thence; and that a Fee, not exceeding Two Shillings and Six Pence, shall and may be taken by the Officers of the Customs at Newfoundland for each such Report; and that no other Fee shall be taken or demanded by any Officer of the Customs there, upon any other Pretence whatsoever, relative to the said Fishery. - - - - -

Hence it would appear that a Ship clearing from England agreeably to this Act, and the Act of 10 and 11 W^m III. should, on her Arrival at Newfoundland, be obliged only to make a Report, and pay a Fee of *Two Shillings and Six Pence*; and when she leaves the Island, if she has nothing

nothing on Board but Fish or Oil (*by the 8 Sect.*) she should be permitted to depart, upon going through the same Form, and paying the like Fee, and that too at any Time of the Day—instead of which a Master cannot get his Business done at the Custom House at Newfoundland but at particular Hours, nor will the Officers there allow any Ship to come under the Description, or be entitled to the Privileges of a Fishing Ship, unless she actually goes out upon the Banks to catch Fish. And although she goes to the Country every Way qualified, according to the above-mentioned Acts of Parliament, and employs her Crew in Boats and other necessary Branches of the Fishery, and upon leaving the Island has nothing on Board but Fish or Oil, yet she is not permitted to enter at her coming, nor to sail when she is ready, without going through all the Forms of the Custom House, and paying the same Fees as are paid by Merchant Ships at Halifax.

This I think a very great Hardship upon the Trade, and militates strongly against the Encouragement held out for employing Green Men; but as the Merchants have not thought fit to complain of it to me, I only mention it here, that your Lordships may be prepared, in case it should be introduced through some other Channel. Many other Circumstances will, no Doubt, occur during the Remainder of my Station which I shall likewise think it my Duty to submit to your Lordships Consideration; and I have only to intreat, that your Lordships will do me the Justice to believe, however trifling some Parts of my Report may appear, that I am induced to trouble you with it, from no other Motive than a Zeal for the Public Service, and a Conviction that it is my Duty to give your Lordships every Information in my Power.

I have the Honour to be, &c. &c. &c.

(Signed) M^K MILBANK E.

Letter from Admiral Milbanke.

WILLIAM FAWKENER, Esq.

London, 20th February 1790.

SIR,

I Am honoured with your Letters of the 10th and 18th Instant, inclosing Memorials from the Merchants and Traders of Dartmouth, Exeter, Topsham, and Teignmouth, carrying on the Fishery and Trade in Newfoundland, complaining of the Inconveniences they suffer from the Establishment of a Court of Common Pleas in that Island, and desiring to be acquainted, for the Information of the Lords of the Committee of Privy Council for Trade and Foreign Plantations, to whom the said Memorials were presented, how far the Facts stated therein are well founded? Whether the Court complained of is a new One, and what were the Reasons which induced me to form it? or, if it be only an Alteration of a former Establishment, what were the Reasons that induced me to make the Alteration? and whether any, and what Fees, are taken by the Judges or other Officers of the said Court? In Answer to the First Question, I might in general Terms say, that the Whole is a Misrepresentation of Circumstances, lightly considered, and hastily asserted by Persons who have never bestowed One serious Thought upon the Subject; but as a Declaration of that Sort would involve me in an Altercation with the Gentlemen who have acted thus, without affording their Lordships that Information which they are desirous of obtaining, and which I think it is my Duty to furnish them with, to the utmost of my Power, I shall descend to Particulars, and by answering separately the several Charges contained in the Memorials, endeavour to shew, that the Business has been taken up improperly by the Memorialists, and either from Design or Ignorance stated in such a Manner as is only calculated to mislead; for notwithstanding there is a Possibility of the Forms of the Court now and then operating as an Inconvenience to some of the Persons directed to attend it (and where is there a Court not liable to the same Objection?) yet it is an useful, and, for the Reasons already stated in my Report of the 31st of December last, I may venture to say, a very proper Establishment: But to the Point, Sir.

“ Which Court was kept open Daily, to the constant Interruption of the Fishery and Trade.”

From the Day of my Arrival at St. John's, on the 4th of September, to the Day of my Departure for England, the 26th of October, there were only Four Courts held, neither of which lasted more than Five Hours; and in that short Space of Time Twenty-eight Causes were completely determined agreeable

agreeable to the Form which accompanied my said Report to their Lordships, whereas the Court of Session, in which such Causes were formerly tried, never sat less than Twice a Week, seldom got through more than Three Causes in a Day, and those in such a Manner as frequently to occasion their being tried Two or Three Times over.—That One of the Judges sat for an Hour every Day at the Court House, is certainly true, but in Candour, the Memorialists should have stated what he sat there for, and then their Lordships would have been informed, that it was not to *occasion*, but to *save*, unnecessary Trouble to the Merchants and their Agents. His Business was to receive the Plaintiff's Petition, and administer to him the proper Affidavit for commencing his Suit, which could not possibly take up more than Five Minutes of his Time, and having gone through that Form, he had nothing farther to do till the Day of Trial; which being formally notified to him, as well as to the Defendant, by the Sheriff, and a List of Causes in their Order for Trial being hung up in the Court House, and Witnesses regularly summoned to attend, there was no Inconvenience sustained by the Parties that would not have attended a Suit for the most trifling Sum in a Court of Conscience. Contrast this with the former Mode, and the Thing speaks for itself. For Want of a public Office to carry Complaints to, and a Person to attend at that Office, properly qualified to receive them, and to make the necessary Preparations for bringing the Causes to a Hearing, it was no uncommon Circumstance for a Man (particularly if he was a poor one) to waste several Days in merely finding out where he was to go to for Redress. If he applied to the Governor, he was referred to the Magistrates—If the Magistrate he happened to go to was engaged, he was desired to go to another, and by him to attend at the Court House the next Court Day, when, instead of having his Cause tried, it was more than probable he only learned that the Bench were of Opinion he had better carry it into the Court of Vice Admiralty, and there having fixed it, he might be obliged to give Attendance, not only for Days but for Months (which to my Knowledge was the Case with some last Year) and not be able to get the Matter properly settled after all. If Judgment was given against a Boat Keeper in Favour of a Merchant (which too often happened, without even calling upon the poor Fellow to make his Defence) his Effects, to a much greater Amount than the Sum sued for, were immediately seized and sold, and the Judgment fulfilled without any Sort of Account being rendered to him, either of the Produce or Appropriation of his Property, or of the Charges of the Court, which in general were proportioned to the Money in the Hands of the Register, who seldom returned any Part of what he got Possession of in that Way; but if Judgment was given against a Merchant in Favour of a Boat Keeper, either in the Admiralty Court, or the Court of Session, the Case was very much altered; for it took up more Time in the Execution—if executed at all—than the previous Proceedings, Trial, Execution of the Judgment, and Return of the Writ altogether now take up in the Court of Common Pleas. To be brief—the last is formed upon simple Principles, and cannot fail to distribute equal and immediate Justice to all without Respect to Persons. The Two former (however capable of being made useful) are without Form or Order, and, if not glaringly partial, only harass, perplex, and waste the Time of many Individuals, instead of doing their Business for them.

“ Continually

*“ Continually issuing Orders, calling away the Agents and
 “ Servants of your Memorialists and others, on every
 “ frivolous Occasion, to serve as Juries.”*

I think I have heard—but of that their Lordships will be able to inform themselves from their Minutes—that during Admiral Campbell’s Government, the Merchants of Poole and Dartmouth made strong Remonstrances against the Court of Vice Admiralty, for, that it was arbitrary in its Proceedings, and by deciding upon their Property, without allowing them the Privilege of Trial by Jury—or something to that Effect—the Trade and Fishery were in Danger of being ruined. Since that Time too, it is a well-known Fact, that neither the Admiralty Court, nor the Court of Session, in Causes of any Consequence, have proceeded without a Jury ; so that it would seem, it is not so much to the Jury, as to the Manner of forming it, which the Memorialists have an Objection. Where a Cause is depending between a Merchant and a Boat Keeper, they think it right (nay, have constantly insisted on it) that a Jury of Merchants should be summoned to try it ; which Summons might properly be styled a Request of the Merchant ; but an indiscriminate Jury of Merchants and Boat Keepers, which would afford some Chance of an equitable Verdict, they cannot be brought to approve of ; and they think it a Hardship (because their own particular Interests are not to be forwarded by it) that their Agents and Servants should be troubled upon any such (as they are pleased to term them) frivolous Occasions. To be plain, Sir, I give it as my Opinion, that the Memorialists will never feel satisfied, until a Court shall be established for them, by which they may be permitted, whenever they think proper, to tear to Pieces the Boat Keepers and other poor People, with Impunity.

“ Attending to every trivial and vague Complaint.”

During my Stay in Newfoundland (as I observed before) there were Twenty-eight Causes completely disposed of by the Court ; the least of them was for upwards of Five Pounds, most were for more than Ten, and some for near Two hundred—and out of the Whole only *Two* Verdicts were given against the Plaintiffs. I might with great Justice apply a very harsh Expression to this Part of the Memorials, but as the Whole of them plainly shew, that the Facts have been taken for granted by the Memorialists, who have never been at the Trouble to enquire into the Truth of them, I should be sorry to appear angry with Gentlemen who could so far forget their own Consequence, as wantonly to commit themselves upon a Subject of so serious a Nature ; and will therefore proceed in my Answer with the Temper it requires.

“ Demanding exorbitant Fees.”

The following is a Table of the Fees taken at the Court of Common Pleas, regulated according to the Amount of the Sum sued for.

Filing

N. 5.

(L)

How

From

		£. 2 a. 10	£. 10 a. 30	£. 30 a. 60	£. 60 a. 100	£. 100 a. 200	£. 200 a. 400 ^d
Filing Petition	—	— 2 6	— 2 6	— 2 6	— 2 6	— 2 6	— 2 6
Affidavit	— —	— 2 6	— 2 6	— 2 6	— 2 6	— 2 6	— 2 6
Writ of Attachments	—	— 5 —	— 5 —	— 5 —	— 5 —	— 5 —	— 5 —
Serving Ditto	— —	— 5 —	— 7 6	— 10 6	— 15 —	1 1 —	2 2 —
Copy of Petition	—	— 1 —	— 1 —	— 1 —	— 1 —	— 1 —	— 1 —
Clerk of the Court	—	— 4 6	— 4 6	— 6 —	— 10 —	1 1 —	2 2 —
Expence of Trial	—	— 10 6	— 16 —	1 2 —	1 16 —	2 5 —	3 3 —
Writ of Execution	—	—	— 4 6	— 7 6	— 10 —	— 15 —	1 1 —
£.		1 11 —	2 3 6	2 17 —	4 2 —	5 13 —	8 19 —

(41)

How far they may be deserving of the Appellation bestowed on them by the Memorialists, I leave to their Lordships Judgment; contenting myself with making this Remark, That they are considerably less than the Fees taken by the Court of Session, and do not amount to a Quarter of the Sum charged in the like Cases by the Court of Vice Admiralty; which I fortunately have in my Power to satisfy their Lordships of, by introducing here a Copy of a Bill of Costs furnished me last Summer from that Court, in consequence of a Complaint of One of the Parties to the Suit.

Michael Hanlan's Goods seized, at the Suit of John Power, by Order			
of the Court of Vice Admiralty, and sold for			
	—	—	£. 5 7 10
Expence of Sale	—	—	— 3 10
Paid into the Hands of the Register	—	—	£. 5 4 —

Charges.

Admiralty Warrant	—	—	—	£. 1 1 —
Two Affidavits	—	—	—	— 10 —
Decree of the Court	—	—	—	2 12 6
Marshall for having Charge of the Goods				
9 Days	—	—	—	2 5 —
				6 8 6
Balance, Dr	—	—	—	£. 1 4 6

And, if I mistake not, I have heard, that when a Jury is summoned to try a Cause in the Court of Admiralty, a Guinea for each Juror is charged in Addition.

*“ Sending arbitrary Orders to attend the Court from any distant
 “ Part of the Island, with Threats to fine those who did not
 “ immediately attend.”*

One great Object proposed by this Establishment, particularly by making the Captains of the Ships of War a Part of it, was to prevent Persons being sent for from Out Ports to St. John's; and the First Resolution entered into by the Judges was to that Effect; therefore I can take upon me to say, that except in One Instance (and there I think a Peculiarity of Circumstances justified a Deviation from the general Rule) not a single Order was sent to any Person out of the District; and even in the Case alluded to, the Defendant, if he pleased, might have avoided the Inconvenience which his Obstinacy occasioned. It was an Action brought by one Fowlow, of Ferryland, Boat Keeper, against a Mr. Thomson, of St. John's, Merchant, who having received all the Fish caught by Fowlow and his Two Sons, in the Year 1787, and afterwards seized his Boat and other Effects, refused to account for the same. By a Letter from Captain Pellew, the late Governor's

nor's Surrogate for the District of Ferryland, it appeared that great Pains had been taken to bring the Matter to a Hearing, but in vain, as Mr. Thomson evaded it by pleading the Hardship of being obliged to attend the Court at Ferryland; and that it would be equally so, to compel his Agent and Servants to come from thence (where he was carrying on a Fishery) to attend the Court at St. John's. This, however, was a Kind of Reasoning which the Court of Pleas were not disposed to admit of; and upon Fowlow's entering his Action therein, the Judges summoned the Agent, and One or Two Servants belonging to Thomson, from Ferryland, which enabled them finally to settle the Business at St. John's. With regard to the Threats complained of, I have only to say, that I believe they were the same in all Cases, and are to be found in every Subpœna served upon a Witness.

Thus, Sir, I think I have fully and dispassionately answered every Part of the Memorials; and though I look upon them to be illiberal Attacks upon my Conduct, yet I must confess I am not sorry for their having been made, as they will at any Rate shew the Necessity of doing something or other to prevent similar Complaints for the future: And as their Lordships may be induced immediately to take the Matter into Consideration, I beg Leave to remind them of the following Circumstances:—That for a great Number of Years (I cannot say how many) it has been customary to try Civil Actions in Newfoundland—That till the Year 1781 the Governor was supposed to be competent thereto, but since the Prosecution commenced by the *Merchants* against Admiral Edwards at Exeter, no such Authority has been exercised by him—That the Surrogates were permitted to act for a few Years longer; but the Case of Hutchings (a *Merchant*) against Captain Pellew, finally settled the Matter with regard to them—That the Court of Session for Seven Years did the Business which the Governor used to do, though in a very irregular and bad Manner, owing to the Justices being kept in continual Dread by the *Merchants*, who were always threatening to prosecute them for their Decisions—That the Court of Vice Admiralty, also, has frequently been complained of by the *Merchants*, as a great Grievance; and they would now wish to make it appear that the Court of Common Pleas must inevitably ruin their Fishery.—From all which I think is to be inferred, that, let what will be done to establish a proper Judicature in the Island, it cannot fail to meet with the Disapprobation of the Memorialists, whose Representations, in general, are ill-founded, but on this Subject, in particular, they are so very inconsistent, and betray such a Want of Knowledge even of their own Interest, or (which is much worse) such a determined Resolution to sacrifice the real Interest of the Fishery to their private Views, that, I am free to declare, it is hardly worth while to pay Attention to any Thing they may choose to say upon it.

As to repealing of all the Acts since the 10th and 11th of William III. I must own it strikes me as a Measure much easier to propose than to prove the Propriety of; and however I may (from a known Want of Experience in the Mysteries of the Trade) be thought incapable of arguing against it, I should feel myself highly culpable, and very deficient indeed in my Duty, if I did not (to prevent so great a Misfortune happening to the

the Country) undertake positively to assert, that the Prosperity of the Fishery, inasmuch as the Return of the Seamen and Fishermen every Year to Great Britain and Ireland is to be deemed a principal Object of it, depends entirely upon the 13th, 14th, 15th, and 16th Sections of 31st, Cap. 15, Geo. III. being punctually complied with.

The other Questions are already answered in my afore-mentioned Report to the Lords of the Committee; to whom I should suppose it appears, that the Court of Common Pleas in Newfoundland is not altogether a new, but rather an Alteration of a former Establishment.

With the foregoing, I beg you will be pleased to communicate to their Lordships the inclosed Letter from Mr. Gibbs, a principal Merchant of Fermute, which it seems was the Occasion of Captain Waller's Order (complained of in the Dartmouth Memorial) upon the Subject of registering and numbering the Boats within the District of Ferryland.

I have the Honour to be,

S I R,

Your most obedient humble Servant,

(Signed) M^K MILBANK E.

Office of Committee of
Privy Council for Trade,
Whitehall, 11th March 1793.

A true Copy.

GEO. CHALMERS,
C^W C^K Com. C^I Trade.

(N^o 5.)

COPY of a REPRESENTATION
of the Lords of the Committee of Privy
Council for Trade and Foreign Plantations,
on the Subject of establishing a Court of
Civil Jurisdiction in the Island of *New-*
foundland; dated 10th May 1790. —
COPY of a REPORT of Admiral
Milbanke, upon the Judicature of the Island
of *Newfoundland*; dated 31st December
1789. — And, COPY of a LETTER
from Admiral Milbanke; dated 20th Fe-
bruary 1790.

Ordered to be printed 11th March 1793.
