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W. S. MacNutt

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W. S. MacNUTT

Fanning's Regime on Prince Edward Island

For lieutenant-governors of the colonial period Prince Edward Island was notoriously a bed of thorns. The second of the line, Edmund Fanning, bore the discomfort for seventeen years with a degree of dignity and a faint aura of aplomb. Lord Selkirk's report that he permitted all to do as they pleased is probably acceptable.¹ Yet in Fanning's defence it can be stated that, merely by surviving the predicament created by the land grants of 1767, he accomplished all that could be expected of him. Only the Colonial Office could solve its own problem and he had sense enough not to attempt to do so himself. As a trimmer and a time-server, governing a remote colony while his superiors in London were fighting a great war, he kept remarkably free from trouble though troubles surrounded him. During his regime the land question assumed fixed form and the dilemma for the government that had made it became more clearly defined.

Arriving in Charlottetown late in 1786, Fanning was highly experienced for dealing with the incipient colonial society that awaited him. A scion of an old Connecticut family, a New Yorker by birth who had endured the slings and arrows of Governor Tryon's enemies, a veteran of the sanguinary politics of the South where he had served as a judge in North Carolina, he had, at the age of forty-eight, a notable career already behind him. Feared for his cruelty to his foes in the American war, he was honoured by friends for bravery and efficiency. While waiting for "something better" he had gleaned the reward of the lieutenant-governorship of Nova Scotia in 1783, a sinecure that was supplemented by grants of land in Annapolis and Cumberland counties. From his estate at Point Pleasant in Halifax, a retreat from which he had rendered many good services to brother Loyalists, he was rather suddenly projected to the Island of St. John where a good style of life was not realizable in "a small, unfinished, comfortless, rented cottage."²

1 Patrick C. T. White, *Lord Selkirk's Diary, 1803-1804* (Toronto, The Champlain Society, 1958), p. 6.

2 Fanning to Nepean, 16 November 1786, C.O. 226/10. All Colonial Office references are to the original documents held in the Public Record Office in London.

The delaying action of Walter Patterson, who contested Fanning's authority by citing ambiguities in the dispatch of Lord Sydney, was appropriate introduction to a rustic capital that for years had been rent by all kinds of strife. Patterson's subsequent imprisonment for debt and death in Newgate are grimly corroborative of the opinion of Chief Justice Smith that he had behaved "like a fool" in resisting the instruction of the Colonial Secretary.³ He left behind him a coterie of clients and beneficiaries who had contributed to his foolhardiness and regarded the new lieutenant-governor as an avowed enemy. Among them were Phillips Callbeck, the attorney-general, Thomas Wright, the surveyor-general, and John Patterson, who remained as agent to his brother. It was natural, therefore, for Fanning to turn to Patterson's enemies. Quickly and easily he gravitated towards those whom the former lieutenant-governor had humiliated and embittered, hoping, in the long term, to break down an embattled opposition by judicious employment of patronage. Of this he had little, but not very much was required in a small society. There is the later remark of the ebullient Irish chief justice, Robert Thorp, that "a pipe of port or of Madeira might have settled the whole business."⁴

Friends were ready and waiting in what had long been known as "the party" of the chief justice, Peter Stewart, who had come to the Island in 1775. At first a writer in the Court of Sessions at Edinburgh, later bankrupted by the herring fishery of Argyll, he had been shipwrecked on the coast at the time of his arrival, the first of a series of misfortunes that brought him close to ruin. A salary that might have kept him in comfort was applied to speculation in the lands of the Island. At a time when there was a belief in vogue that the colony would be surrendered to France, he had purchased half of Lot 18 and had acquired opprobrium as a land-grabber. But he had refused to cooperate with the lieutenant-governor in the dubious escheats and sales of 1781. To Patterson non-cooperation was an act of war. Stewart had been suspended from office and his public griefs were intensified by the private indignity of losing his third wife to the blandishments of the lieutenant-governor. In electoral and other forms of retaliation upon Patterson, the aging chief justice was ably seconded by two sons and a son-in-law. John Stewart, to be immortalized in the history of Island politics by the soubriquet of Hellfire Jack, was on half-pay from the Army and a regular visitor to London. Charles Stewart, of high repute for industry, was clerk of the Supreme Court and acting clerk of the Council. William Townshend, the collector of customs, had good connections in London and ambitions as a landed proprietor. All three were mobilizers of public opinion who could command followings.

This Stewart family connection was the nucleus of a party on the spot whose interests made them inimical to the absentee proprietors in Britain. They favoured the acquisition of a class of landowners, resident or absentee, who

3 L. F. S. Upton, *The Diary of William Smith* (Toronto, The Champlain Society, 1965), II, p. 165.

4 White, p. 11.

would pay quitrents and create revenue, and free the land by sale to an industrious yeomanry whose industry would create commerce from which all could thrive. As their confidence mounted following the removal of Patterson, their programme emerged from behind closed doors to an overt propaganda. While almost half of the lots granted in 1767 were barren of settlement it could reasonably be argued that process of escheat should be set in motion. They took good care to distinguish between proprietors who had made honest effort to perform conditions of grant and those who had not. John Stewart was long in the good graces of Montgomery, Chief Baron of Scotland.⁵ As Fanning fell into the arms of the Stewart party, it was continually reinforced by men of speculative instincts in Charlottetown, agents who collected rents in hay, oats, potatoes and turnips, and converted the goods in kind to cash at discounts of thirty percent. Finding markets for hay and oats was usually as difficult as collecting rents from tenants but this class of middlemen slowly increased with growth of population. The system of land tenure harboured a group of astute businessmen as well as a hardy and disgruntled tenantry. "It is well known that land agents derive the greatest personal benefits from the large proprietary grants."⁶

Yet in 1787 the issue of escheat could not publicly be broached. The fate of Patterson had followed from his abortive attempt at escheat in 1781. The unconcealed opposition of Patterson's adherents, whose attempts to acquire land for themselves had been so brash and ill-advised, forced Fanning to lean on the opposing faction whose objectives were similar but whose tactics were considerably more patient and politic. The first trial of strength was the general election of the early summer of 1787. The entire province was one constituency of eighteen seats and a poll was taken for one day each at Princetown, Charlottetown and Georgetown. Electors were obliged to choose between two lists of candidates, that of Captain Alexander Fletcher, a strong supporter of Patterson, and "the Richmond Bay list" of John Stewart. On July 17 the sheriff reported to the Council that the Fletcher list had won by a majority of 69 but that the polling had been accompanied by violence and interference from the officers of the garrison to whom Patterson, during his term, had given many favours. The Council, minus Callbeck, Wright and Captain George Burns, whom Fanning had suspended for refusing to accept his authority, agreed on the following day that the election was improper and that a more elaborate scheme of representation should be offered, with four members from each county and two from each county town. The sheriff's return was rejected and writs for a new election issued, against a petition of 113 signatures, described by Fanning as those of the lower order of inhabitants, servants and Roman

5 Fanning to Dundas, 20 September 1793, C.O. 226/14.

6 Resolution of Assembly, 25 April 1840, *Public Documents on Prince Edward Island* (Charlottetown, 1841).

Catholics who had no vote.⁷ The Stewarts and William Townshend mounted their horses with the gratifying result of an overwhelming defeat for the Patterson party, as it was still called.

With a house of assembly he could easily abide, Fanning quickly adopted a course of reconciliation. At Quebec Lord Dorchester lent a helping hand by removing from Charlottetown the company of troops whose officers had heavily contributed to the opposition.⁸ As early as November, 1787, he felt strong enough to reinstate the dissident members of Council.⁹ Inwardly he had a contempt for both parties. "You can have no idea of the rancour and acrimony with which these parties have hitherto exposed and opposed one another." Things were improving but, he added in a private letter to Evan Nepean, a very few would never be reconciled.¹⁰

Except for ultimate reward for hard manual labour, the Island of St. John had little to offer in 1787, but Fanning was able to recruit additions to the corps of officials on whom he depended. The Atlantic Provinces had a surplus of Loyalists who were experienced in council and the insular enclave of the lieutenant-governor appeared attractive to disappointed landholders of Shelburne who were seeking greener pastures. Robert Gray, a captain of Fanning's regiment on half-pay, came to Charlottetown, was promptly appointed assistant judge without salary, treasurer and private secretary, filling several other temporary offices as well. The grant of two town lots and two twelve-acre pasture lots in the Royalty were more enticing than a thousand acres of land in and about Shelburne.¹¹ A former store-keeper's assistant in Virginia, Gray had served by Fanning's side through the entire American war. He was to share the confidence of the lieutenant-governor more than any man on the Island.¹² Joseph Robinson, lieutenant-colonel of a regiment of South Carolina Loyalists, arrived to buy a farm and join the Council. Having lost a valuable library of Latin, Greek and Hebrew literature to the rebels by confiscation, he was presumably a highly educated man. He became the second assistant judge in 1790.¹³ Though a protege of Fanning, he was capable of a volition that was probably embarrassing at a later stage. Thirdly came Joseph Aplin, the able attorney who had so conspicuously served the royal cause in Rhode Island in 1776 and been disappointed by legal prospects in Nova Scotia. Painfully and industri-

7 Council Minutes, 17, 18 July, 20 August 1787, C.O. 226/11.

8 Dorchester to Fanning, 14 June 1787, C.O. 226/11.

9 Fanning to Sydney, 1 November 1787, C.O. 226/12.

10 Fanning to Nepean, private, 30 April 1788, C.O. 226/12.

11 "Loyalists and Land Settlement in Nova Scotia," P.A.N.S. *Report*, 1937, p. 86.

12 Fanning to Sydney, 26 November 1787, C.O. 226/12; Fanning to Grenville, 25 November 1789, C.O. 226/13.

13 Council Minutes, 21 June 1790, C.O. 226/13. For Robinson's background see his memorial to the Loyalist Commissioners, A.O. 13/92.

ously Aplin attempted to fill the void of legal knowledge on the Island and became attorney-general in 1790 on the death of Phillips Callbeck.¹⁴

As Fanning consolidated his authority only a ragtaggle opposition remained. It made its last bid to regain power, according to the complacent account of John Stewart, in 1790.¹⁵ It centered upon the animosity to the regime of John Cambridge who had come to the Island in 1784 and, as the proprietor of Lots 63 and 64, had contributed immensely to material progress. Described by his enemies as "an obscure chairmaker of St. Martin's Lane" and as "a rapacious creditor", he had built two brigs and a schooner that sailed to Lisbon and London. Employing a large force of workmen at Murray Harbour, he had cut a road for ten miles through the woods to Charlottetown but had been refused governmental assistance. He was a Quaker and, like the Quakers of "the old thirteen", was sharp in business practice and relentlessly demanding of what he considered to be his rights. The leading spirit in charges against Fanning and his officials, he presented to the Colonial Office an accumulation of grievances, many of which had originated in Patterson's time. His business had been damaged by permission to Loyalist merchants to import goods free of duty. The debris of the land sales of 1781 had never been cleared away and Fanning was held responsible for continued possession by beneficiaries of the controversial proceedings. In his private dealings Cambridge had been in violent altercation with almost all in office. His great cry was that justice could not be obtained in the courts of law.¹⁶

His very articulate seconder was John Hill, proprietor of Lots 5 and 6. In the elections of 1787 and 1790, Hill opposed the Stewart party and was paying a heavy penalty for having done so. In the conduct of his lumbering and fishing business at Cascumpec he faced the revengeful exactions of Townshend, the Customs Collector, who had unsuccessfully attempted to acquire his electoral support. According to Hill's narrative, Townshend had promised to promote his trade and interests if he would cooperate, had warned that the party of his father-in-law had gained control of the house of assembly "and that they were determined to carry things with a high hand towards such as opposed their friends and interests." Cambridge, Townshend threatened, would be so greatly harassed that he would be compelled to leave the Island. The warning continued that the Governor was with their party and that the courts of law would be employed to punish all dissidents. The sinister quality of this threat of tyranny and oppression was perhaps lightened by Townshend's demand for "unreasonable favours", a London wherry for employment on the shoals of the coastline, a pair of water-boots, some wine.¹⁷

14 Fanning to Grenville, 30 November 1789, C.O. 226/13; Grenville to Fanning, 4 August 1790, *ibid.*

15 John Stewart, *An Account of Prince Edward Island* (London, 1806), p. 241.

16 Council Minutes, 12, 16 March 1789, 26 April, 25 May, 3 July, 1790, C.O. 226/13.

17 Abstract of Charges against William Townshend, C.O. 226/13.

Formerly a blacksmith of Topsham in Surrey, Hill was another example of how men of comparatively lowly origin could attain proprietorial rank on the Island of St. John during the American Revolution. For refusing to support the Stewart ascendancy he was obliged to travel many times to Charlottetown to register his vessels and gain clearances for them. Costly and vexatious delays imposed by Townshend impeded the progress of his enterprises.

In seeking local support for his allegations, Cambridge employed John Clark, a Loyalist immigrant usually described as "a house-carpenter", who rode through the island in search of signatures to a petition, notably failing to succeed except among the French inhabitants of Grand Rustico.¹⁸ James Curtis, an older resident who had arrived as a footman to Phillips Callbeck in 1770 and had risen to office under Patterson, carried the petition to London. An enemy to Fanning, he had been discharged from the treasurership when accused of misappropriating stores for the Loyalists, of destroying vouchers and forging signatures.¹⁹ From the official clique at Charlottetown he had withdrawn to Rustico where he served as a ship chandler. When Bishop Inglis visited the Island in 1789 he made his presence felt by propagating the rumour that tithes for the support of the Church of England were about to be imposed. Presbyterians and dissenters were so aroused that the legislature passed a version of the Nova Scotian act of 1759 and fears were quickly laid to rest.²⁰

Curtis gained few adherents in London. The Committee of the Privy Council had already decreed the dismissal from the Council of Callbeck, Wright and Burns but for conduct recorded in Patterson's time.²¹ No case could be made against Fanning, Chief Justice Stewart and others designated in the complaints. Of eighteen London signatures to the petition twelve were withdrawn. Hill and Cambridge were the only proprietors whose names appeared on the document. Shakily presented and ably rebutted by Robert Gray whom Fanning had sent to London, the charges carried no conviction. The reorganization of the Charlottetown Common and the division of much of the Royalty into twelve-acre lots, alleged to be instruments of Fanning's favouritism, excited no comment from the Lords of the Committee. By moving the Common northward and enlarging its dimensions the lieutenant-governor had been able to grant a twelve-acre lot to almost every man who asked for one. He did not want the Common of Charlottetown to be like that of Halifax, a wasteland occupied by wild beasts.²²

18 Fanning to Dundas, 9 January 1792, C.O. 226/14.

19 Fanning to Sydney, 17 September 1787, C.O. 226/11.

20 Fanning to Grenville, 21 April 1790, C.O. 226/13; Fanning to Dundas, 20 September 1793, C.O. 226/14.

21 Dundas to Fanning, 16 September 1791, C.O. 226/13.

22 Fanning to Dundas, 9 January 1792, C.O. 226/14. A plan of the new Common, showing the lots, granted and ungranted, accompanies this letter.

This rout of the remaining opposition placed the Stewart party firmly in the ascendancy, attracted new supporters, and gave impetus to an offensive against absentee proprietorship that was yet incipient. Ostensibly the party had a strong grip on public opinion. The house of assembly was pleased by improvement in material progress and, following the announcement from London, ordered that "the false and malicious words of Mr. Cambridge" be burnt under the gallows by the sergeant-at-arms.²³ Cambridge was prosecuted and served a brief term in prison for his leading part in presenting the complaints. During the investigation addresses of support had been showered upon Fanning, from the Loyalist communities of Vernon River and Cherry Valley, from Hillsborough River and St. Peter's, from the Grand Jury of Charlottetown. Impressive lists of signatures are testimony to his personal popularity as well as to the zeal of his friends.²⁴

II

Quiet years followed. Legislative sessions were notable for harmony, not like those of New Brunswick as Daniel Lyman pleasantly remarked in 1797.²⁵ Yet the lieutenant-governor was slowly being projected towards the edge of a precipice on which a half-score of his successors were uneasily to recline. John Stewart, Receiver-General of Quitrents, was eager to put the programme of his office in motion. Since 1790, when he had assumed the duty, the British Government had ordered that collection of quitrents should be held in abeyance and, while most of the proprietors were exposed to penalties of escheat and sale, Stewart was not the kind of man who could endure restraint. An increasingly disaffected tenantry, forced to pay rent to absent and unburdened proprietors, awaited leadership to destroy the bonds of what was beginning to be called servitude and slavery. How clear the contradiction that land in British North America was held directly from the Crown — except on the Island of St. John, the victim of imperial eccentricity in 1767.

Chief Justice Stewart, who had escaped complicity in Patterson's reckless attempt of 1781, has been credited with the role of original conspirator in the movement for escheat during Fanning's regime. Joseph Robinson more openly propagated the discourse of rebellion against antiquated and restrictive conditions of tenure. The proprietors should be dispossessed, he reasoned, on the ground that the original instructions had enjoined that the Island should be settled by German Protestants. He took up the cry that the best progress in New Brunswick had been made on escheated lands and that the same results would follow on the Island if officers of government would do their duty.²⁶

23 Journal, 15 November 1792, C.O. 226/14.

24 Miscellaneous Papers, C.O. 226/14.

25 Lyman to Fanning, 25 August 1797, C.O. 226/16.

26 These statements come from hostile sources. Yet all the evidence combines to substantiate truth in the allegations.

Fanning was accused of encouraging the agitation. A more likely interpretation is that he drifted with the tide. Opportunities of private profit were presenting themselves. When the assets of Walter Patterson came into liquidation he purchased three lots of approximately 60,000 acres, all of dubious title, for little over £100. Escheat promised high profit to those with ready cash. Yet, while he functioned as agent to Chief Baron Montgomery, Lord Townshend, Robert Shuttleworth, the celebrated voyager, and other influential proprietors, he could not outwardly champion the cause adopted by his provincial supporters. While collecting rents from two hundred thousand acres, beef, eggs and milk came to his household free of charge. By opposing escheat he could imperil his popularity and sacrifice the esteem of those on whom he depended for local support. The former judge, attorney-general and surveyor-general, skilled in the techniques of land conveyance, followed a careful path amid a battle-ground in which two opponents were his friends and admirers. His role was one of masterly indecision.

But the strain on Fanning's discretion became wearisome as the cry for escheat became more strident. The Stewarts were joined by his former opponents and opinion on the Island coalesced to a degree that approached unanimity. Forgiveness and forgetfulness were salient features of his *politique*. John Clark was allowed the concession of the rich Fort farm, repossessed from Patterson by the Crown on orders from the Duke of Kent. Cambridge, still a power in commerce, came to grace and favour. Curtis, the one-time footman, was elected to the assembly in 1797 and immediately, according to a hostile and sardonic account, the lieutenant-governor and his lady could be seen trotting over the stumps and through the bushes to visit the honourable member. In 1800 Curtis became a judge, the cordial associate of the chief justice who a few years before had represented him to the government in the blackest of terms. "The night before receiving his commission he slept in the cow-house of a brother member who said he hoped they would on the next night provide a better lodging for His Lordship."²⁷

New men rose to prominence on the swell of the agitation for escheat that by 1797 reached the dimensions of an uproar. Commissioning of the St. John's Volunteers gave Fanning a military establishment that could provide financial competence for useful civilians. Charles Stewart, the workhorse of the Council, was given captain's pay. A young Englishman who had come to Charlottetown by way of Shelburne, Robert Hodgson, suddenly became the leading tribune of escheat. Another "house-carpenter", he had entered the mercantile line with Ralph Brecken, the leading trader of Charlottetown after the French war brought direct importation from Europe to a close and the overseas trade of the Island into subordination of Halifax. His zeal for commerce was superseded by a talent for political activity when he entered the house of assembly and became principal spokesman for the struggling tenantry. Inarticulate anger

²⁷ Macdonald to Sullivan, 23 April 1802, C.O. 226/18.

was translated to a plan for practical action as Ensign Hodgson traversed the colony to gather signatures to a petition for escheat. Peter MacGowan, second lawyer of the Island who had migrated from London, another one-time opponent of Fanning and member of the House of Assembly, performed the more clerical functions of the plan to appeal to the British Government. Like Ensign Hodgson, Ensign MacGowan was allegedly an instrument of the Stewarts.²⁸

Rank in the militia became profuse at Charlottetown. "A stranger might suppose at first blush he had got into the Head Quarters of all the British forces." The companies of St. John's Volunteers of one hundred men each, it was bitterly stated, consisted of "black, half-blind and limping" personnel, drifters illegally brought in from Newfoundland and "a parcel of fishermen from Lower Canada."²⁹

Excitement attained a crescendo as 1797 opened. Hoping for a slackening of tension, Fanning failed to call the legislature to Charlottetown for its normal winter session. Almost to a man the members of the assembly presented a petition for a meeting "to consider the State of the Island."³⁰ Not until July 12 did he grant them opportunity. On the 14th three petitions were read and on the 17th, with Curtis as chairman of the committee, the house called for the documentation of proprietorship and settlement. Fanning presented the dismal record of proprietorial failure. With John Stewart as Speaker of the House and Peter Stewart as President of the Council there was no difficulty in passing resolutions, ten in number, calling for compliance with conditions of grant or escheat of the neglected estates.³¹ Fear of a general exodus of the irate tenantry gave spur to the proceedings. Providing a pattern to the indignant population, Joseph Robinson refused to pay rent to Chief Baron Montgomery, preferring to await the pleasure of the King-in-Council. Feeling throughout the colony took a dangerous turn at Malpeque and Grand Rustico where, in the autumn, the inhabitants refused to obey the requirements of the militia act unless given lands "on the same terms as in Nova Scotia." Armed parties from Charlottetown forced compliance with the musters.³²

III

Local opposition to the representatives of the people came from a single source but it was of a fearsome breed. The Macdonald of Glenaladale had come to the Island in 1772 and had populated Lot 36 with a colony of High-

28 Macdonald's letter and Council Minutes, 20 July 1797, C.O. 226/15.

29 *Ibid.*

30 Petition, 23 March 1797, C.O. 226/18.

31 The resolutions are printed in Stewart, *An Account of Prince Edward Island*, pp. 220-25. It is noteworthy that the framers attempted to divide proprietorial opposition by exempting Chief Baron Montgomery, John Cambridge and John Hill from penalties of escheat.

32 Fanning to Portland, 30 September 1797, with enclosures, C.O. 226/15.

landers. He could claim that his efforts had resulted in the arrival of very nearly half of the immigrants who had appeared since the cession of the Island to Britain. Just as he was about to disperse his people to permanent locations from a central base, the American war had opened. Abruptly he repaired to Halifax, responded to the call for Scottish immigrants to the 84th Regiment, and served the eight years of the war.³³ Its conclusion found him an embittered man. His brother had been killed, his colony had withered to a shell, his tenants had been seduced away by the lure of free land elsewhere or by the wiles of other entrepreneurs on the Island. As a captain on half-pay he returned to his estate at Tracadie in 1787, disappointed of preferment and with the redoubtable task of rebuilding his fortunes. He was the only proprietor permanently resident on the Island who had complied with conditions of grant.

As the contagion of refusal to pay rent spread to his own tenants and at the height of the excitement, Captain John Macdonald paid one of his rare visits to Charlottetown. Wherever he went hard language followed. A challenge from John Stewart resulted in a haphazard armed encounter in the streets of the town. The Macdonald had vainly waited for his opponent and, as he was about to enter his sleigh on return to Tracadie, weighed down by two watch coats as protection against the cold, Stewart unexpectedly appeared and insulted him in the presence of spectators. The Speaker of the House was armed with "a prodigious long cut-and-thrust sword" to oppose a fourteen-inch dirk but his furious onset failed to penetrate the defence. The affair was halted by spectators.³⁴

Macdonald was convinced that Fanning was giving encouragement to "a levelling party" indoctrinated with "French principles" that was preparing to ruin the proprietors. "The Head Quarters of the party are near your own. I am told you boast of hearing everything immediately that passes, observing that some tell you from friendship, some from spite." Scornfully he accused the lieutenant-governor of standing between two fires, of refusing to declare himself. Those who governed the colony had connived, alleged the Macdonald, at the teaching that the system of proprietorship was "a slavery marked out and intended for the present inhabitants and their rising future posterity forever."³⁵ His demand for the prosecution of Hodgson for seditious

33 Many reputable sources testify to the worth of Macdonald as an officer in the Revolutionary War. One account states that he was responsible for the capture of an American privateer in a port adjacent to Halifax while its crew was plundering ashore. He later returned to the scene with a larger party and captured the crew.

34 Council Minutes, 20 July 1797, C.O. 226/15.

35 Council Minutes, 2 May 1797, with Macdonald's undated letter, C.O. 226/15. The allegation of communist doctrine was sustained in proprietorial circles until the time of the Land Purchase Act of 1875. See James F. Montgomery, *An Experiment in Communism and Its Results* (Charlottetown, 1875).

publication was rejected by Aplin, the attorney-general, who argued that "all things that are lawful are not expedient." Public opinion would be opposed to prosecution and the attorney-general did not care "to see Mr. Hodgson so great a man among us as the contemplated prosecution would be sure to make him."³⁶

Fanning took issue with Macdonald on but one allegation, that of the presence of "a levelling party" on the Island of St. John. Demanding names and evidences, he summoned the chieftain to a meeting of Council on May 9. Highland pride dictated a refusal. Fear of being taken "clandestinely", dislike of appearing before "a subservient circle", "deflexion in the eyes", were the reasons given. Having spent £7,000 on improvements with an annual return of less than £40 per annum in rent, the hot-tempered Glenaladale avowed an intention of abandoning the Island to the demagogues, the depressors and depopulators of his colony.³⁷

Nonchalantly the lieutenant-governor passed the refusal to the house of assembly. A second summons went to Tracadie but the messenger received a gruff reception, being told that he should be confined in the cellar of Macdonald's home until a justice of the peace should arrive to flog him half-way back to Charlottetown. Receiving no proof of the existence of "a levelling party", the house condemned Macdonald for "a torrent of falsehoods."³⁸ Substantially in agreement, the Duke of Portland would place no truth in the allegations of the laird of Lot 36, promising at the same time to present to the Privy Council the popular demand for action against delinquent proprietors.³⁹

The Royal Instructions enjoined that no act of the Island legislature affecting property could acquire the force of law until confirmed in London. Macdonald's valorous, if indiscreet, attack on the colonial government was forlorn and unnecessary. The rights of property could safely be entrusted to the conscience of Downing Street. Yet he won an important adherent to his cause. For years the attorney-general had chafed at the Stewart domination, had uneasily participated in processes at law that gave edge to the supremacy of a political party. According to the enemies of the establishment, Peter Stewart, chief justice until his retirement in 1800, was not merely partial but also untrained in the law and imbecilic because of age. Joseph Aplin shared this view. In 1797 he wrote Fanning that he wanted employment elsewhere, that he was weary of the Island and its quarrels though there was nothing worth quarreling about. He could no longer abide a milieu of implacable enmities.⁴⁰ The out-

36 Aplin to Macdonald, 25 March 1797, C.O. 226/15.

37 This voluminous correspondence with minutes of Council and journals of the House of Assembly was enclosed in Fanning to Portland, 30 September 1797, C.O. 226/15.

38 Journals, 15, 17, 19, 22 July 1797, C.O. 226/15.

39 Portland to Fanning, 8 February 1798, C.O. 226/15.

40 Council Minutes, 6 February 1798, with Aplin's letter of 8 March 1797, C.O. 226/15.

right legislative attack of the summer on the proprietors broke his resolution to continue in harness with the Stewart party and in January of 1798 he resigned his seat on the Council. Those closest to Fanning, he alleged, regarded him with malice and envy.⁴¹

Aplin's bolt from the shelter of the regime produced more than minor sensation. The implications became apparent as he was sponsored by Macdonald and openly commenced to assert that government on the Island would soon cease and annexation to Nova Scotia be proclaimed. In official circles this was tantamount to treason. The security and credibility of the escheat party appeared to hang in the balance for there was enough in the wind in 1798 to give conviction to prophecy of this kind. The cause of *Nova Scotia irridenta* had been brought to the heart of London officialdom. Halifax was the commercial metropolis of the Atlantic region. Its merchants controlled the trade of eastern New Brunswick as well as of the Islands of St. John and Cape Breton. Political annexation could consolidate their commercial ascendancy and their thinking was becoming more expansive as wartime prosperity magnified their profits. Governor Wentworth's influence at Whitehall gave him a prestige far above that of the administrators of the three junior provinces.⁴² Those hostile to Fanning declared that the Stewart party feared reannexation to Nova Scotia more than anything else.⁴³ Threats of action from Whitehall were unnerving in the first six months of 1798.

Yet nothing more strongly suggests that Whitehall possessed a high degree of confidence in Fanning's regime than the immediate opinion of the Duke of Portland that Aplin should vacate the attorney-generalship and go to London to explain himself.⁴⁴ The departure from Charlottetown was perilous. When salary payments ceased, Aplin was sued for debt, took refuge with Macdonald at Tracadie and escaped from the Island by way of Georgetown where, removed from the power of his enemies, he wrote a letter of defiance to Fanning. He was in doubt upon a problem on which there may still be speculation, whether Fanning was "the tame dupe" of the Stewart party or whether he had made dupes of them by the use of "misapplied power."⁴⁵ In London he had an audience with Portland but made no progress in bringing to a quietus "the insular administration" he detested.

41 Letter of 3 January 1798, C.O. 226/15.

42 Concerning Halifax's pressure on New Brunswick, see W. S. MacNutt, *New Brunswick; A History, 1784-1867* (Toronto, 1963), p. 129.

43 Aplin to Portland, 1 April 1799, C.O. 226/16. John Hill was a proprietor who urged reannexation as a solution to the land problem, or perhaps as a means of halting the agitation for escheat. See Hill's memorial, undated, C.O. 226/17.

44 Portland to Fanning, 27 July 1798, C.O. 226/15.

45 Aplin to Fanning, 29 October 1798, C.O. 226/17. According to letters from Aplin and other evidence he was sued by John Cambridge, being unable to pay his debts because Fanning had refused to sign certificates for his salary.

Aplin's lonely dissidence gives strong colour to the unanimity of opinion in favour of escheat. Fanning was accused of having united the factions by giving encouragement to the cry. If true, he escaped censure from the Colonial Office. He survived another brief tempest caused by the arrival of John Wentworth, nephew to the lieutenant-governor of Nova Scotia and successor to Aplin. During a six months of residence the new attorney-general conducted an all-out offensive on the Supreme Court, for twenty-five years "a system of violence, oppression, corruption and tyranny." He dismissed Charles Stewart as clerk of the Court, then dismissed Stewart's brother-in-law, compromised on Hodgson, "one of their party", whom he found satisfactory.⁴⁶ Sixty of the two hundred suits before the Court, he declared, involved Peter Stewart and members of his family. Legal business was so profuse that his fees would amount to £1500 per annum but his object, he promised, was to reduce the two hundred to thirty.⁴⁷ On the other hand Fanning accused him of encouraging litigation to the degree of "temporary frenzy", of reviving age-old suits that were dormant.⁴⁸ Having espoused Aplin's cause, Wentworth quickly followed his predecessor into exile. Again the lieutenant-governor prevailed and the attorney-generalship fell to an industrious member of the Stewart party, Peter MacGowan.

IV

Fanning was fortunate for the dilemma posed by the problem of land tenure came to clear relief only at the end of his long administration. During the short interval of peace of 1802-03 a new government in Britain gave studied attention to the Atlantic Provinces. A new Secretary of State, Lord Hobart, seemed determined to clear away all the obstacles that had hampered their growth. Enlightened proposals for the granting of land in New Brunswick and Nova Scotia were accompanied by a plan for the orderly collection of reduced quit-rents on Prince Edward Island. In dispatching his Scottish emigrants of 1803, Lord Selkirk was under a clear impression that it was the policy of the British Government to populate the maritime rather than the inland colonies of America.⁴⁹

46 The office was held by John Budd, long resident in England. Charles Stewart had done the work for fees only.

47 Wentworth's long private letter to John King of 26 September 1800 summarizes his case against the Island administration and puts forward an application for the chief justiceship, about to fall vacant. His appointment to the attorney-generalship was owing to the patronage of the Duke of Kent. See C.O. 226/3.

48 Fanning to Portland, 23 September, 22 November 1800, C.O. 226/16; Fanning to Portland, 12 July 1801, C.O. 226/7. For a hostile opinion see Stewart, *An Account of Prince Edward Island*, p. 247: "Never perhaps was there a more complete instance of popular delusion than this man excited for some weeks."

49 Memo of Selkirk, 26 February 1803, C.O. 226/19.

He was pleased by the moderation of the proposals by which proprietors should be penalized for arrears in quitrents in proportion to the degree in which they had honoured conditions requiring settlement. Though a newcomer like Selkirk considered the prospect a fair one, the landholders of all three provinces could see impending ruin if quitrent, however small, should be required. At London, Baron Montgomery and other notables lobbied against the plan. John Cambridge, although his business had revived, contemplated bankruptcy and the loss of his lands by escheat.⁵⁰

The Stewart party was on the threshold of a resounding triumph. The orderly collection of quitrents and the escheats that could ensue would bring revenue to officialdom and the release of hundreds of thousands of acres of land to an open market. As speaker of the assembly John Stewart had gone to London to present the feelings of an alert public opinion. His case had not been destroyed by the simultaneous appearance of Captain Macdonald who demanded an audience with the Secretary of State to declare that Whitehall did not know the truth about Prince Edward Island. "The parties are without justice and will never obtain justice while Governor Fanning and a Stewart shall be in power there."⁵¹ Opinion on the Island was strongly in accord with the Secretary of State's policy. The draft bill sent out from London was passed by the legislature in November, 1802. As if to test public opinion, Fanning immediately dissolved his thirteen-year old assembly and called an election. The escheat party remained unshaken. Robert Hodgson was probably the most popular man on the Island. The tribune of escheat had a choice of three seats. He won every vote in Georgetown and carried Prince County by a 2 to 1 majority.⁵²

High-mindedly Lord Hobart had plotted out a new dispensation for the Atlantic Provinces but perplexity reigned at Whitehall as all three lieutenant-governors balked at the prospect of putting the Royal Instructions to effect. The aged William Knox, agent to the legislature in London, was peremptory. John Stewart, he urged, should immediately be given authority to proceed against the proprietors.⁵³ Nothing should be left to discretion, said Chief Justice Thorp, as there were landowners in Charlottetown as well as in Britain. He

50 Fanning to Hobart, 21 August 1802, with Cambridge's memorial, C.O. 226/18; William Winchester to Hobart, 19 January 1803, C.O. 226/19.

51 Printed memo of Macdonald, March 1802 and Macdonald to Sullivan, 23 April 1802, C.O. 226/18.

52 Hodgson was soon after disabled by a paralytic stroke. The contemptuous description of "house-carpenter," given to him by Hill and others is neutralized by Fanning's unqualified approval of his work and endorsements for promotion. He apparently came from Sandwich in Kent where his brother, Daniel, could write to Hobart and Charles Jenkinson on his behalf. Abusive descriptions given to other Prince Edward Island luminaries at the time are not sustained by the quality of private letters. If they were "ignorant" they could nevertheless draft able memorials.

53 Knox to Hobart, 26 April 1803, C.O. 226/19.

later modified his opinion, declaring that the escheat act was inadequate because it made no distinction between proprietors who had invested capital and those who had not.⁵⁴ Fanning's indecision reached a point of great strain as John Stewart returned to Charlottetown in November, 1803 with intention to escheat the estates of twenty proprietors. A few months later, when Stewart forwarded the papers of legal process to London, he made the remarkable confession that he did not know what his receiver-general was doing.⁵⁵ Knox had to apologize for the apathetic role of Fanning in the new dispensation. It was owing, he said, to fear of offending the more powerful proprietors.⁵⁶ The Colonial Office endured the same susceptibilities. As Pitt returned to power and as war broke out again, the internal problems of the colonies could again be thrown into the discard. Resolution to hesitate was strengthened by the opinion of Thomas Cochran, erstwhile chief justice, that collection of quitrents would defeat rather than further the aims of government.⁵⁷

It was small wonder that Joseph Frederick Wallet des Barres, who succeeded Fanning in 1805, confessed perplexity. He stood "between two parties" and was at a loss for policy.⁵⁸ As the Stewart party slowly realized that its victory was dissipated amid the haze of official London, as the assembly declared that the good intentions of its statutes of 1803 were "wholly frustrated" by withholding of the Royal Assent, perplexity turned to rage.⁵⁹ Vainly the legislature sought documentation to account for the enigmatic failure of Whitehall to endorse the establishment of an escheat court. Word passed around the Island that Roman Catholic subjects from the Highlands, under belief they would be evicted if escheat should come, had sent petitions to London in support of the proprietors.⁶⁰

"No superabundant head," said Lord Selkirk of Fanning, finding the tone of life in Charlottetown somewhat soporific and the politeness of the lieutenant-governor burdensome.⁶¹ Yet the elderly proconsul of a Lilliputian domain who had suppressed Regulators in Carolina, had served as surrogate of the City of New York, had faced rebel bullets on a score of fields, could be sublimely indifferent to the opinions of novices. He had stated a wish to retire to private life and the Colonial Office had offered generous terms. A pension of £500 was provided in consideration for his services on Prince Edward Island and for the loss of the surveyor-generalship of New York.⁶² He could still ruminate

54 Thorp to Knox, 10 January 1803 and 16 October 1803, with memo attached, C.O. 226/19.

55 Fanning to Hobart, 3 March 1804, C.O. 226/20.

56 Knox to Hobart, 26 April 1803, C.O. 226/19.

57 Cochran to Sullivan, 29 January 1803, C.O. 226/19.

58 DesBarres to Cooke, 4, 5 December 1805, C.O. 226/20.

59 Journal, 20 November 1805, C.O. 226/20.

60 *Public Documents on Prince Edward Island* (Charlottetown, 1841), p. 68.

61 White, p. 6.

62 Sargent to Sullivan, 3 February 1803, C.O. 226/19.

on the loss of immense properties during the American Revolution but his claim for £17,936 had been met by payment of £4,447.⁶³ To compensate, his lands in Nova Scotia and Prince Edward Island awaited his posterity.⁶⁴ For destruction of his property by erection of a battery at Point Pleasant in 1783 he was awarded £500. Honours followed his retirement. Having been promoted major-general in 1793 and lieutenant-general in 1799, he rose to full general on the Army List in 1808. His death in London did not occur until 1818 at the age of 79.

Sustained by long experience of men and manners in America, Fanning had borne his cross with patience. Of tension and complaint his correspondence is almost completely bare. He made the most of small mercies, having married his cook and almost completely dispensed with the need for servants. The clerical work of his office he performed himself with the later assistance of his son. Only once did he evince discontent by giving advice on high policy to the British Government. In 1790, when war with Spain seemed likely, he offered his services for a campaign against the Floridas. He would lead a regiment of British Americans who would gladly return to the warm weather of the south. Emigration, he reasoned, always moved from north to south and the Floridas could be peopled with Loyalists who could barely sustain themselves on the hard soil of Nova Scotia.⁶⁵ Fortunately for British North America war with Spain did not occur and Fanning's projected depopulation did not follow.

His staying power was much superior to that of Chief Justice Thorp who sometimes wished "myself, and all my family with me in the sea." Officers of government, said Thorp, who could not work little farms of their own, could not exist on Prince Edward Island. Servants were unobtainable. A carpenter or a mason cost 7/6 per diem. "Beef, mutton and food cheap if you have money to pay but we have no money. We must go to the stores and pay at three hundred percent." The primitive economy of the Island was functioning on a system of barter and open accounts. The Americans, grumbled Thorp, had a hundred sail off the coast but nobody would bring a fish to Charlottetown because there was no money. He gave some weight to the opinions of Macdonald on the quality of the population and its legislature. There was a levelling, republican spirit abroad. "All is equality, ignorance and inebriation."⁶⁶ A leaking house in which he had no room of his own, a

63 Record of Allowances to Loyalists, A.O. 12/109.

64 Early in his career in Prince Edward Island, Fanning displayed impatience with his minor role. He suffered from a "scorbutic complaint" incident to a cold climate and his later life reveals a profound change of attitude. The fact that he remained as a resident of the colony until 1813 is alone sufficient to indicate that he was reconciled to his exile. His will (P.R.O., Probate 1603) shows that he became still more closely involved in acquisition of real estate between 1805 and 1813.

65 Fanning to Grenville, 20 November 1790, C.O. 226/13.

66 Thorp to Hobart, 26 April 1803, Thorp to Knox, 26 October 1803, C.O. 226/19; Thorp to Cooke, 6 March 1804, C.O. 226/20.

wife who declared she was dying because of the harshness of the climate, seven sick children, soured Thorp's disposition and perhaps distorted his perspective. He was desperate to return to England.

Contemporary critics accused Fanning of indolence and complained of the absence of material progress. Against the background of his times the charges are not sustained by any weight of evidence. The stage was small, the theatre minute, and a great part could command no audience. Although Fanning took great care to preserve his good reputation in London, he was relatively unconcerned with political tensions in the colony. While war raged round the world Prince Edward Island could make no impact on ministerial minds at Whitehall. The greatest of issues on the future of a small colony could arouse but irritation. Fanning knew his London as well as his America.

Although terms of trade were adverse and overseas commerce negligible because of the war, the province was not materially in the doldrums. The migration of the Selkirk settlers was symptomatic of a confidence in the utility of the Island, induced in considerable part by Hobart's declaration of land policy in 1802. In the three years following, one-third of the land area changed ownership, evidence of the willingness of capitalists to hazard something in its future. When Fanning left, the Island population was approaching seven thousand, a rather impressive performance compared with that of New Brunswick where population did little more than stand still for twenty years. In spite of the handicap of enforced tenantry and the widespread feeling of grievance, a farming population had taken firm root on the soil.