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The Land Question on Prince Edward Island and the Quitrent Controversy of 1802-1806

THE ISLAND OF ST. JOHN (renamed Prince Edward Island in 1798) represented an experiment on the part of Great Britain never replicated in other British colonies founded after the middle of the 18th century. Virtually the entire land surface of the Island was granted — by lottery — to private proprietors in 1767, in return for their assumption of responsibility for its settlement and development, as well as the cost of its administration. Divided into 67 lots of roughly 20,000 acres each by surveyor Samuel Holland in 1764-5 (Lot 66 of 6,000 acres was reserved to the Crown), the Island's land was almost completely given away in advance of the establishment of any formal government, a relatively unusual policy even by profligate British colonial standards. In marked contrast to Nova Scotia, which had cost the Crown more than £600,000 to establish, the Island was intended to be completely self-financing from the outset. The private proprietors were to meet two conditions in order to maintain their grants: they were to improve and populate their lots with substantial numbers of foreign-born Protestants or settlers already resident in North America — one person for every 200 acres — and they were to pay a sizeable annual quitrent, ranging from six shillings per 100 acres for good lots to two shillings per 100 acres for poor ones. The obvious expectation was that the profits of settlement would provide the proprietors with revenue to pay the quitrents. While it was not specified in the grants, the general strategy was that the money would come from rental of lands to tenant settlers. Originally attached administratively to Nova Scotia, the Island was permitted a separate government in 1769 on the understanding that the costs of administration would be borne entirely by the proprietors, most of whom had signed a pledge to meet this obligation.

None of these intentions, commitments and promises was ever fulfilled. The proprietors did not produce the requisite number of settlers; most of those who came originated in the British Isles and many lots remained almost totally uninhabited until well into the 19th century. Quitrents to the Crown soon fell badly in arrears and the cost of governing the Island had to be assumed by the Crown during the War of the American Rebellion. From the beginning of actual settlement, criticism of the proprietors was endemic, and the Land Question — as it was soon called — became a central component of intense Island political and social conflict. The Land Question involved the ongoing and constantly changing debate over the nature of the proprietorial system of landholding on the Island. At various times it ranged from a discussion over the terms of the grants, including the payment of quitrents, to criticisms of the forms of the leases given to tenants.¹ In the end, more than an entire

1 For the early background of the Land Question, see my *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island* (Montreal and Kingston, 1987). Perhaps the best brief summary of the lengthy conflict is to be found in Ian Ross Robertson's "Introduction" to his edition of *The Prince Edward Island Land Commission of 1860* (Fredericton, 1988), pp. ix-xxx. Financial support for the research and writing of this article was provided by the Social Sciences and Humanities Research Council of Canada.

century of intermittent but bitter dispute was required to eliminate the proprietorial system from the Island.² The Land Question was hardly a single, static controversy. Its nature changed frequently during the century of conflict. Each period of public debate concluded with the hope of a resolution which did not come. Each failure of resolution more deeply entrenched the problems and further polarized the issues.

A number of scholars, including this author, have remarked on the extent to which the Land Question has dominated the historiography of early Prince Edward Island.³ Such remarks were not intended to suggest that we have fully understood the Land Question, or that further investigation would be of only marginal utility, or that other questions should not be explored. Nevertheless, the Land Question is still the organizing issue for the Island, the issue around which most others revolve in one way or another. Moreover, while there has been a good deal of publication on the Land Question over the last ten years, especially by Ian Robertson, Matthew Hatvany and Rusty Bittermann, most of it concentrates on the later periods. The earlier phases of the issue have become relatively neglected.

One of the the best opportunities for movement toward resolution of the Land Question came at the beginning of the 19th century, when reform of both quitrents and the proprietorial system of the Island consumed a substantial amount of the attention of the Colonial Office in the brief years of peace during the early 19th century.⁴ Although the proprietorial system had been in place for a third of a century, the polarized lines of conflict had not yet become totally entrenched. The labyrinthian tracks of this reform, virtually unmentioned in the substantial literature on the Land Question, illustrate the many difficulties that colonial change emanating from Whitehall faced in this period.⁵ If the reforms had succeeded, the proprietors would have become active developers of the Island, and the principles of escheat and an escheat court would have been established. Ministers did not yet have access to independent sources of information and advice (if they would ever find some), and were forced to make decisions regarding policy for the colonies based on their own assumptions and experience, combined with some distillation of the self-interested

2 Matthew Hatvany, "Tenant, Landlord and Historian: A Thematic Review of the 'Polarization' Process in the Writing of 19th-century Prince Edward Island History", *Acadiensis*, XXVII, 1 (Autumn 1997), pp. 109-32.

3 See especially Hatvany, "Tenant, Landlord and Historian"; M. Brook Taylor, *Promoters, Patriots, and Partisans: Historiography in Nineteenth-Century English Canada* (Toronto, 1989), p. 228; and J.M. Bumsted, "'The Only Island There Is': The Writing of Prince Edward Island History", in Verner Smiththeram, David Milne and Satadal Dasgupta, eds., *The Garden Transformed: Prince Edward Island, 1945-1980* (Charlottetown, 1982), pp. 11-38.

4 Some context for the history of quitrents in North America may be found in Beverly W. Bond, Jr., *The Quit-Rent System in the American Colonies* (New Haven, 1919) and Sung Bok Kim, *Landlord and Tenant in Colonial New York: Manorial Society 1664-1775* (Chapel Hill, 1978). The Island was one of the few jurisdictions in North America where quitrents were taken seriously — or persisted into the 19th century.

5 John Stewart, *An Account of Prince Edward Island, in the Gulph of St. Lawrence, North America* (London, 1806), offers virtually the only detailed discussion of the quitrent composition of 1802. For Stewart (1758-1834), see the sketch by F. L. Pigot in *Dictionary of Canadian Biography*, VI (Toronto, 1987), pp. 735-9. A brief description of the events between 1797 and 1806 is provided by F.W.P. Bolger, ed., *Canada's Smallest Province: A History of Prince Edward Island* (Charlottetown, 1973), pp. 66-80.

views of those currently lobbying on the subject in London. The quitrent reforms and their eventual failure not only demonstrate how hard it was for British policy-makers to make policy for the colonies, but how easy it was for the pesky colonials to manipulate and obfuscate apparently straightforward and clearcut administrative decisions. While this reform may have failed, what happened in the course of the failure was equally important to the future of the Island.

The early 19th century remains a somewhat obscure period in British colonial and imperial history, particularly in the terms of an understanding of the dynamic between a nascent Colonial Office and expanding overseas colonies. Most attention to this period in the scholarly literature has been devoted to analyzing the gradual development of the Colonial Office and its administrative practices. Very little attention has been paid to the policy actually administered, and Helen Taft Manning's *British Colonial Government after the American Revolution, 1782-1820* remains virtually the only authority on this issue.⁶ In this work, Prince Edward Island receives almost no attention, although given its small population the Colonial Office devoted a disproportionate amount of its attention to the colony.⁷ One of the major efforts of the Colonial Office regarding the Island, the quitrent reforms of 1802-3, is dismissed in a few sentences, which are not so much inaccurate as incomplete.⁸ Manning concludes that the outcome of this affair provided "fresh proof of the determination of the British authorities not to allow the noble proprietors to be turned out of their lands whether they paid quitrents or not". Whether this conclusion can be sustained by a full telling of the tale is another matter.

In 1796 a new dimension to the Land Question had been added when Colonel Joseph Robinson produced a brief pamphlet headed *To the Farmers in the Island of St. John, in the Gulf of St. Lawrence*.⁹ The Island's early attacks on the proprietorial system had come through the implementation of quitrent legislation which merely distressed or distrained the land in order to auction it for rent arrears. The legislation did not revest the land with the Crown for redistribution, and selling large quantities of land on the Island was not very productive, as contentious sales of 1781 had demonstrated. Robinson's pamphlet called for the legal resumption by the Crown of the Island's lands on the grounds of non-fulfillment of the terms of the grants, an action commonly known as "escheat". This had been the legal process employed in Nova Scotia to recover enormous land grants in order to provide land for the settlement of the Loyalists. Joseph Robinson was himself a Loyalist, a native of Virginia who had fought for the Crown in South Carolina and had come to the Island in 1789 at the invitation of old friend Lieutenant-Governor Edmund Fanning.¹⁰ Robinson did not attack the principle of the payment of quitrents, however. He merely advocated the revestment of land in the Crown, which would become the landlord.

6 Helen Taft Manning, *British Colonial Government after the American Revolution, 1783-1820* ([1933] Hamden, Conn., 1966).

7 See Appendix VIII in D.M. Young, *The Colonial Office in the Early Nineteenth Century* (London, 1961), pp. 282-3.

8 Manning, *British Colonial Government*, pp. 184-5.

9 A unique copy of this tiny pamphlet, published anonymously without a title page, is to be found in the Public Archives and Record Office of Prince Edward Island [PARO], ms. 2702.

10 For Robinson (d. 1807), see Bumsted, *Land, Settlement and Politics*, pp. 163-4, 182-3.

Small landholders would pay their quitrents to the government instead of to private and absentee landlords. The notion of escheat gained quickly in popularity on an Island characterized by isolation, poverty and an incredibly high level of political consciousness for a place so remote and so impoverished.

The 1797 Assembly adopted a series of detailed resolutions about the quitrents after only two days of discussion. These resolutions had obviously been prepared in advance, probably by Jack Stewart, who was Speaker of the Assembly and receiver-general of quitrents. Son of Chief Justice Peter Stewart, Jack had become receiver-general in 1790, reportedly obtaining the office after buying off a competing candidate, Lieutenant-Governor Fanning's private secretary Robert Gray, with an offer of £80 per year to withdraw his application. There was much talk at the time of how Stewart could afford to pay Gray so much. In response to a query he was alleged to have answered "that the Treasury never called the Receivers of American Quit Rents to Account and he would pocket what he received, that he would sue the Lots of several of the proprietors to a Sale, and keep the proceeds and that Mr. Patterson's fault was having forfeited the Lots in an illegal manner; but he would go legally to work".¹¹ The Assembly resolutions divided into two parts, the first describing the extent of settlement and categorizing the lots on the Island in those terms, the second calling for escheat. Captain John MacDonald was wrong in subsequently dismissing the assembly's actions as little more than "the officers of this Island exciting the People to clamour against the Proprietors with a view of shielding themselves from an inquiry into their own Conduct". But he was more accurate in his assessment that "the Idea of having Land in a place where there is nothing but Land except the Offices of Government to give personal consequence, is so flattering".¹²

The overall strategy of the 1797 assembly called less for an all-out attack on the proprietorial system or on the principle of quitrents than for a more discriminating assessment based on past proprietorial performance. Sensibly, the Assembly did not attempt to insist on the letter of the terms of the original grants, for in a strict interpretation of those conditions — particularly direct assistance to settlers of non-British Protestant origin — probably no lot on the Island had been properly settled. But, at the same time, no British government was likely to support a strict interpretation. Such an approach had never been applied to terms of colonial grants anywhere. Instead, the Assembly sorted out the townships on the basis of the relative extent of their settlement, allowing the proprietors full credit for any population that managed to appear on their lots, whether assisted or not. Thus 23 townships were placed in the first category of totally unsettled, 12 in the second category of virtually unsettled, six in the third category of settled with six to nine families each, and 26 in the final category of "fully settled". No record survives of the process by which the lots were so categorized, although Lieutenant-Governor Fanning would later claim influence in getting several lots of his proprietor-clients placed into the settled category. John Hill would maintain that only 14 of the 26 lots allegedly settled according to the terms of the grants actually were so settled, and that Fanning added Lot 59 (for which he was Marquis Townshend's agent) to the list at the stage of

11 John Hill, "Civil Officers in Prince Edward Island", Colonial Office Papers [CO]/18/434.

12 [MacDonald], "Sentiment respecting the Quitrents".

printing the assembly proceedings. In any event, this approach did not make very fine distinctions, particularly as to the extent of major expenditure on the part of the proprietors.

As a guide either to the actual settlement conditions of the lots or to the activities of their proprietors, the 1797 resolutions were utterly useless. But the categorization of lots in 1797 had not been intended for either historical or even polemical purposes. The one thing that the resolutions of 1797 would ultimately do was provide an acceptable basis for some form of arrangement with the proprietors. It seems likely that this purpose was the one for which they were intended. The resolutions anticipated any proprietor who might want to complain that he or she deserved better because of settlement activity or financial investment, since only those who had truly done nothing would find their lots in categories one and two. Such lands could be required to pay very high quitrents, thus forcing their proprietors to take a serious interest in the lands by paying up the quitrents, or selling them at vastly deflated prices — for who would pay high prices for land owing huge amounts of back quitrents? If the back quitrents were not paid, non-payment became the perfect basis for escheat, simultaneously called for by the 1797 resolutions.

The 1797 Assembly insisted upon escheat, on the grounds that the failure of the proprietors to develop their grants had been ruinous to the Island and its inhabitants. It argued the advantages of land regranted to actual settlers, as had occurred in New Brunswick and Nova Scotia. Thus it called for land on the Island to be properly settled or returned to the Crown, which would grant “small tracts to actual Settlers”. It voted to prepare an address to the British government on the subject. What was perhaps most significant about this was what was not said. No mention was made of the form of tenure for the small grants. Later testimony by Assembly members indicates that little attention had been given to the question of tenure and none to the possibility of freehold. The Assembly was not really demanding some sort of general if limited escheat, as Joseph Robinson had done in his pamphlet. Instead, it was calling for an escheat implicitly based upon selective principles that would target the inactive absentee proprietors and allow their lands — and their lands only — to revert to the Crown. The Assembly (fully supported by the Council, which normally supported the rights of property) had through its resolutions adopted a two-pronged strategy, although not all the members clearly understood the distinction between part one and part two. Some Assembly members may well have regarded escheat as the important matter, and some of the later defences of Jack Stewart and others responded to an Assembly understanding that escheat rather than proprietorial composition was the principal issue.¹³ But the Assembly through its detailed lot-by-lot analysis of settlement (however accurate) had set up the preconditions for a composition of quitrent, while through the demand for escheat it had also generated some radical pressure against which composition could be viewed as a moderate solution.

The potential basis for composition was a considerable improvement over the one

13 Subsequent correspondence by members of this Assembly suggests that escheat was regarded by many as the important part of the package; see, for example, Thomas Wright et al. to William Knox, 24 August 1802, CO 226/18/297-301. Stewart's explanation is in his *An Account of Prince Edward Island*, pp. 229-30.

earlier proposed by James Montgomery in 1791. Baron Montgomery had recommended a flat discharge of all quitrents owing upon payment of a composition of one-fourth to one-fifth of the amount in arrears.¹⁴ The Montgomery scheme had not offered any discrimination between active and inactive proprietors. Thanks to the Assembly resolutions, the Island could continue to encourage active proprietors who would invest much-needed capital, while disposing of the useless absentees and making some lots available for redistribution. The strategy was clever enough, although the British government did not immediately respond to the Assembly's memorial — or to very much else regarding the Island. Most Island business requiring Whitehall action sat on the desk of the colonial secretary. The Island was far away and a marginal colony, the colonial secretaries were dilatory if not indolent and Britain was again back at war against the French.

In April 1798, James Montgomery in a letter to Lieutenant-Governor Fanning offered one proprietor's views on the resolutions of 1797.¹⁵ Montgomery was willing to accept that the inactive proprietors should either fulfill the conditions of their grants or forfeit them, but he had two objections to the Assembly's actions. One was his belief that no British government "in such a war as we are [at] present engaged in", would forfeit lands of proprietors for not encouraging emigration to St. John's Island. But Montgomery's second objection was the more revealing one. He insisted that no settler would rent lands from the proprietors while he could obtain free grants of forfeited land from the Crown, as in Nova Scotia. "The only equitable way of executing that System, in the resolutions", wrote Montgomery, "is not to empower you Sir, to make grants of the Lands for a Quit rent as in Nova Scotia, but to empower you, to grant Leases of the escheated lands for such rent, and upon such conditions, as are usual in the Island, the rents of which to be collected by a Receiver, and likely it might be his Majesty's Receiver; that the rents should be applied, in defraying the expense of Churches, School Houses, Prisons, and other purposes usefull to the Island". Moreover, Montgomery continued, the granting of escheated lands in small tracts to actual settlers begged the question of whence the settlers were to originate. With no means of subsidizing their transportation to the Island, he insisted, the new settlers would only be the children of tenants and servants, tempted to leave their parents and masters by grants of small tracts of land. An adjustment of the arrears, said Montgomery, was the first necessity in dealing with the quitrents, and he recommended a composition for a discharge of all arrears, based in proportion to the amount of the quitrents, followed by a reduction of the future quitrent assessment to that rendered by Nova Scotia.

In 1800 Receiver-general Jack Stewart headed off for London to see if the British government could be moved to action. A year later he was still lobbying. Meanwhile, Fanning reported to the legislature that the Island's agent in London was in ill health, but that aged William Knox had offered to act as agent with his son.¹⁶ Knox (1732-

14 James Montgomery to Henry Dundas, 3 December 1791, H.R. MacMillan Collection, University of British Columbia Special Collections [UBCSC]. In general, see my "Sir James Montgomery and Prince Edward Island, 1767-1803", *Acadiensis*, VII, 2 (Spring 1978), pp. 96-7.

15 James Montgomery to Edmund Fanning, 30 April 1798, H.R. Macmillan Collection, UBCSC.

16 Prince Edward Island, *Journals of the House of Assembly [JHA]*, 22 July 1801.

1810), a Scots-Irishman who was best known as undersecretary of state in the American Department of the British government from 1770 to 1782, was an experienced British imperial bureaucrat.¹⁷ Fanning recommended that Knox be appointed, the more so since he had recently been informed that the Privy Council had declared that in future all acts of the legislature of any colony must receive confirmation from His Majesty within three years or be automatically disallowed. The need for an agent to press bills through the approval process was manifest. The legislature took the point that Knox got things done, quickly passing a bill appointing him (and his son) as the colony's agents. For its part, the Assembly selected its own committee of correspondence to keep in touch with the new agents.¹⁸

The combined pressure of John Stewart and William Knox, along with the signing of a preliminary peace treaty with France late in 1801, finally produced some activity at the Colonial Office. On 1 December 1801 an unsigned memorandum (probably written by Knox) was sent to the Duke of Portland's personal secretary, listing "the following matters respecting the affairs of Prince Edward Island" that had "been long depending at office".¹⁹ It noted four major outstanding items of business. First, there was a petition from the Island legislature (of 1778!) that the 1772 parliamentary grant of £3,000 for the purpose of erecting public buildings be applied to the same, instead of being used (as per Walter Patterson's executive fiat of 1774) to pay back salaries of the officers. Second, there was a bill drafted in 1790 for the enforcement of the future payment of quitrents, consideration of which had been postponed until after the end of the war. Quitrent arrears were now (in 1801) more than £50,000 — and until these arrears, as well as a future rate and a method of enforcement of payment — were decided upon, few proprietors were likely to do anything about their lands. Third, there was the 1797 memorial of the Assembly about settlement and escheat. And fourth, there was the alarming fact that no act of the provincial legislature since 1793 — except for legislation renaming the Island after Prince Edward — had been sent to the government for confirmation, and those with suspending clauses — surely they had suspending clauses? — would soon expire if they had not already done so.

By this point Lord Hobart had succeeded the Duke of Portland as colonial secretary. One of the major proprietors, Sir Cecil Wray, wrote a letter to Hobart in early January of 1802 introducing Captain John Stewart, who "will wait on you — he has received many instructions from the Island respecting it, & can certainly mention many Particulars which I am ignorant of".²⁰ A few days later Hobart had in his hand

17 For Knox's life, consult Leland J. Bellot, *William Knox: The Life and Thought of an Eighteenth-Century Imperialist* (Austin, Tex., 1977). The role of Knox as agent for Prince Edward Island was more considerable than Bellot suggests on pp. 210-11.

18 Prince Edward Island, *JHA*, 22 July 1801. Knox got in trouble with the Island Council in 1806 for corresponding directly with the House of Assembly, since he had been appointed as agent by the legislature and not by the Assembly alone. See Bellot, *William Knox*, p. 211, and CO 226/22/94-5.

19 Memorandum respecting P.E.I., 1 December 1801, CO 226/17/195-6.

20 Sir Cecil Wray to Lord Hobart, 10 January 1802, CO 226/18/163-5. Although he was secretary of state for colonial affairs for many years and held other important portfolios (including the ministry of war 1803-4), Robert Hobart, 4th Baron Hobart and 4th Earl of Buckinghamshire, has never been the subject of a lengthy biographical study, much less a full-scale biography. The intersection of his public career with matters involving British North America may be followed in my *The People's Clearance: Highland Emigrants to British North America, 1770-1815* (Edinburgh, 1982) especially pp. 114-6, 137-8, 157-70, and 179-84.

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another unsigned memorandum on the Island which could only have originated with John Stewart. This document insisted that the proprietors had broken their promises constantly, but now wanted quitrents eliminated entirely, something the Island had never requested.²¹ Indeed, insisted the memorandist, “relinquishing the Quitrents would Generally be looked upon in the Island, as a heavy Misfortune”, because it would leave lands in the possession of absentee landlords with no means of forcing them to action. It would also penalize those proprietors who had invested, because if land were forfeited to the Crown and regranted in small tracts to actual settlers, the proprietors would never have any tenants, “for this plain reason, that no Man will pay Rent for Lands when he can become a proprietor himself, & cultivate his own Lands”. A composition of arrears to satisfy existing claims and a reduction of rate to two shillings per 100 acres “regularly exacted” and producing £1,340 per annum across the entire Island, would work wonders, insisted the author. Most proprietors would soon tire of “keeping their lands in a waste and uncultivated state”. A few days later a petition from Knox to the King enclosing the legislative memorial of 1797 brought to Hobart’s attention, as one of his secretaries put it, the “actual state and cultivation of lands” on Prince Edward Island.²²

At this point it might have been useful if someone had reminded Hobart of Robert Cholmondeley’s 1798 report to the Commissioners of Accounts. Cholmondeley was auditor-general of the plantation revenue, and he noted in this document that no accounts of any kind had been received from America except one from the receiver-general of the Island of St. John, which stated “that the quit-rent received in that colony between 22 September 1780 and 5 November 1789 had amounted to 1,139 pounds, of which 1,016 pounds had been spent chiefly for salaries on the Island, leaving for the crown 122 pounds”. The officers employed in the quitrent service were one auditor-general in England and in each province one deputy auditor and one receiver-general. Their activities had, “except in the Island of St. John’s produced nothing since the separation of the American States”.²³ In short, the quitrent system in Britain’s North American empire had almost totally collapsed, and probably ought to have been totally abandoned in favour of other measures. Certainly many of the proprietors thought the system had for all intents and purposes been abandoned. When John Cambridge in 1796 advertised in England for auction Lot 64 and 12,000 acres of uncultivated lands on Lots 52, 46, 44, 27, 20, and 8, he wrote, “Both the above Lots are to be sold subject to Two small Quit Rents from the time of the original Grants which may never be demanded”.²⁴ The proprietors had hoped that the quitrents would continue to be neglected; however, there were precious few people seriously recommending such a policy in Whitehall in 1802.

The barrage of papers to Lord Hobart continued through the spring of 1802. The London agent for most of the officers on the Prince Edward Island establishment wrote confirming the neglect of the proprietors to promote settlement, instead

21 Memorandum, 14 January 1802, CO 226/18/167-8.

22 William Knox to King in Council, 25 January 1802, CO 226/18/183-5; W. Fawkener to Lord Hobart, 30 January 1802, CO 226/18/179-80.

23 Bond, *The Quit-Rent System*, pp. 423-4n.

24 “Particulars and Conditions of Sale of a Most Valuable Tract of near Thirty-two Thousand Acres of Rich Cleared and Uncleared Land . . .” (1796), PARO.

retaining the land “in a waste and uncultivated state, speculating on the prospects and Industry of the Colony”. The receiver-general of quitrents, he added, had a plan to benefit the Island, encouraging serious proprietors and ridding the Island of speculators. That plan appeared in a memorandum dated 5 April 1802. Noting the quitrent arrears currently stood at £59,162.17, it proposed to reduce them to £18,732 by dividing the townships into five classes, much as the Island legislature had done. Those wholly settled would pay four years of back quitrents, those half settled would pay for five years, those partially settled would pay for nine, those almost totally unsettled would pay for 12, and those completely unsettled would pay for 15. On failure of these payments, the lands would be resumed to the Crown. Classes four and five constituted nearly half of the land of the colony. This plan offered “ample indulgence to the whole Body of Proprietors”. Its adoption required orders to the receiver-general of quitrents, “who is fortunately upon the spot” to demand payment within a limited time; a bill for re-vesting the lands in the crown; and instructions to the Island’s governor regarding proportions and terms of grants to be subsequently made.²⁵ A separate memorandum of “Observations” on this plan emphasized that it “will raise more money and at the same time will throw nearly half of the Lands into the hands of Government”.²⁶ Such results certainly sounded attractive.

The Lords of the Committee of Council for Trade and Foreign Plantations considered the affairs of Prince Edward Island at their meeting of 6 April 1802.²⁷ It heard papers submitted by Lord Hobart, including Stewart’s memorandum of 4 April 1802 and statements of arrears. The committee agreed that it would be “inexpedient, and, in some cases, perhaps unjust, to endeavour now to exact the full Payment of such Arrears”. The Lords instead recommended a “judicious Abatement” and adequate compulsion of the remainder within a limited time. A few days later, one of the Treasury sub-ministers informed Hobart that he had laid before the Lords of the Treasury the “plan of abatement”, virtually identical in broad outline to that proposed in John Stewart’s memorandum of 4 April 1802.²⁸ The details added at the Council meeting of 6 April related only to the deadlines and payment arrangements. Stewart’s various proposals had only emphasized the need to limit the amount of time given to the proprietors for compliance. There is no reason to think that he was in any way responsible for the time frame ultimately adopted, which William Knox later insisted represented Hobart’s own contribution.²⁹ These deadlines were generated on the apparent assumption that serious proprietors, chiefly members of the British landowning classes, could find large sums of money quickly enough if necessary. It is in theory possible that Hobart did not anticipate that very many of the proprietors could come up with the money upon such short notice, and that he was actually engaged in an unstated process of recovering most of the Island’s land for the Crown. Alternatively, Hobart may have hoped that the need to pay up almost immediately would force many proprietors to put their Island property on the market, where it

25 Memorandum, 4 April 1802, CO 226/18/11-17.

26 “Observations upon the Plan for a Composition”, CO 226/19/703-5.

27 Council Minutes, Whitehall, 6 April 1802, CO 226/18/215-17.

28 J.H. Addington to Hobart, 15 April 1802, CO 226/18/219.

29 Knox to Lord Auckland, 22 July 1806, CO 226/20/405-12.

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could be bought up at low prices by individuals eager to invest in colonial land. But no contemporary ever accused Hobart of any such deliberate intentions.

In any event, owners of lots in the first three classes — those fully settled or up to half settled — who were required to pay between four and nine years worth of back quitrents, were allowed one month after due notice to do so. Owners of almost unsettled or totally unsettled lots in classes four and five were allowed more time and the option of installments: 12 years' back quitrents for class four and 15 years' back quitrents for class five payable in two equal installments within four and eight months.³⁰ This proposal, while superficially reasonable, was full of potential inequities. It accepted as given the quitrent scale set in 1767 before the settlement process had really begun. Many proprietors had complained over the years that a number of lots had been over-rated by Samuel Holland's original survey. Moreover, the plan failed utterly to take into account the few resident proprietors who had actually invested their capital in the Island and now had nothing with which to pay the composed arrears. Obviously, the proposers of the plan had not consulted with the proprietors, or given them much notice.

Within days of the Committee of Council meeting, Captain John MacDonald was protesting to one of Hobart's subordinates:

Sir! If what I have just now heard, and has made me run out of breath to the Office, be true respecting the sending out of Mr. Stewart immediately with powers to prosecute for the Quitrents upon the plan, which is said to be adopted; the Island of Prince Edward and several of his Majesty's Meritorious Subjects on it . . . are overset, and completely ruined. . . . Permit me, Sir, to represent in the most respectful though agitated mind — and to pardon my earnestness, because my wife and children will infallibly in six months be without a house to shelter them, or a bed to lie upon in an inhospitable climate and without a bite of bread to eat.³¹

MacDonald had a number of objections to the quitrent plan as he understood it. The government had not given the proprietors notice, he complained, although this was the standard argument of those who opposed all efforts at changing policies. He also wondered what had become of large sums of quitrent money paid between 1777 and 1801. "Captain Stewart has often demanded Quitrents, and it may be a question but some has been paid to him; nor is his own word a safe criterion to the contrary". Stewart was not a "man of truth", MacDonald asserted, adding, "It is too serious a matter to send out this Man in an office of so delicate a nature. He is full of destroying Enmity to one class, and of favor to his own". Captain John suggested that Hobart consult with "his Royal Highness the Duke of Kent and to his Royal Highness' Suite, what opinion they may have imbibed of the Insular Administration from their Communications with them and of our Receiver General of Quitrents from their Knowledge of them". Jack Stewart had been well-advised to get his version of the courtmartial in first, for Captain John always revelled in the *ad hominum* attack on

30 CO 226/18/223.

31 John MacDonald to John Sullivan, 23 April 1802, CO 226/18/231-2.

another man's weaknesses. Some of Captain John's pointed questions about the collection and disposition of quitrent payments between the start of the American War and the proposed composition were never properly answered, however.

The major complaint of the doughty old Highlander was that the plan as rumoured favoured those "least meritorious", while a "proportionate heavy hand" fell on those few who had exhausted themselves and their fortunes in founding the colony. This last point had some real validity for the handful of resident proprietors like MacDonald who had invested energy and capital and were still struggling without lucrative offices to survive on the Island, especially in the context of composition. Even those proprietors in this category — surely the ones who deserved generous treatment if anyone did — were expected to pay four years' back quitrents within one month notice. As John Hill had already pointed out, there was precious little "circulating species" on the Island. To expect a proprietor like MacDonald to find relatively large sums of cash to pay back quitrents, even if he were being let off relatively lightly, was quite unreasonable. Hobart's sub-minister, John Sullivan, received Captain John politely, listened to the story the old man poured out, and responded that "no Man on earth" could seriously believe that the governor, Council, and elected representatives of an entire province could act as MacDonald had described. MacDonald could only advise him to read the report of the 1789 Privy Council on the criminating complaint — "and that too when the Governor and Council were in other respects far more honourable than at present" — which he subsequently forwarded and which was put carefully in the files.³²

As was usually the case with colonial matters, and invariably so when Prince Edward Island was involved, the decision by the Lords of Committee in April of 1802 resolved nothing. It only opened another act of the ongoing drama. If John Sullivan could scarcely credit the convoluted tale that Captain MacDonald had breathlessly poured out to him in Whitehall on 22 April, one wonders what he could have made of the next round of complex events in the Island quitrent affair. That round began in July of 1802. At that point, the receiver-general of Island quitrents informed Lord Hobart that he had given the British proprietors their notice, and was ready to depart for the colony "to carry into effect the plan which your Lordship has proposed for the settlement of a business which has been so long depending". In this letter and an accompanying memorandum, John Stewart emphasized that he was not satisfied with the salary of £50 per annum that had been allocated to his position more than 30 years earlier.³³ The original incumbent (Mr. Nesbitt) had held two other offices. Stewart had in 1793 got Lord Frederick Campbell, through whose interests he had originally received the appointment, to speak to William Pitt about the salary. It was agreed that the matter would be settled when quitrent payments were eventually resumed, as was now happening. In the course of his efforts at settlement of the affair, he had crossed the Atlantic four times and had spent long periods "in attendance" in London, both at great expense. As with the salary, Stewart had been assured that his outlays would be recompensed when the matter was finally settled.

32 MacDonald may have around this time also submitted his essay on quitrents previously noted.

33 John Stewart to Hobart, 24 July 1802, CO 226/18/273-5; undated memorandum [in Stewart's hand], CO 226/18/271.

While John Stewart prepared to sail to Charlottetown, Lord Hobart faced the proprietorial response to the notices of arrears that had been sent out. Within days of receipt, John Hill, John MacDonald and William Bowley — all old enemies of the current administration of the Island and men who claimed with some legitimacy that Island chicanery had ruined their substantial investments there — were petitioning the Treasury for relief from the composition.³⁴ Hobart swiftly considered these petitions, his sub-minister reporting to the Treasury that “it appears to be totally unnecessary to advert to the circumstances in general detailed in these papers which principally refer to transactions of an old date and to certain irregular proceedings which took place long ago and created much confusion in the Colony”.³⁵ This decision to forget the past was probably a wise one, and was certainly in keeping with the spirit of the composition. The only question was whether there should be further reduction for these petitioners, Hobart thought, and he was not disposed to much generosity here. He recommended that the only indulgence granted be a further extension of time to pay, and then only to those individuals who had actually settled on the Island or who had suffered particular difficulty or hardship.

From Lord Hobart’s perspective, the composition policy had been set. It had only to be implemented. He wrote Lieutenant-Governor Fanning to that effect on 6 August 1802.³⁶ A composition had been determined, and arrears were to be paid within one month of notice, Hobart reported. The receiver-general of quitrents had met with the English proprietors and would shortly leave for the Island. A colonial act for revesting (i.e., returning land to the Crown) was required, and also one which provided a proper method for collecting, receiving and accounting for quitrents, “whereby all Frauds, Concealment, irregularity or Neglect therein may be prevented”. It was His Majesty’s pleasure that Fanning recommend a bill “in the strongest manner”, and Hobart enclosed a draft of a number of clauses that had been part of one “prepared a considerable time ago under the direction of His Majesty’s Law Officers with a view of being sent out to the Colony to be passed into a Law, and they appear to be perfectly applicable on the present occasion”. Thus earlier legislation which had been hanging around the office for years would not be wasted. As to escheat procedures, the practice in Nova Scotia would be sufficient precedent. Fanning should consult with his counterpart in Nova Scotia for details, applying the same line of proceeding and reporting back to London. Full instructions for dealing with the lands returned to the Crown would be sent shortly. In this crucial dispatch, however, Hobart omitted to emphasize the need for a suspending clause in the legislation passed, appending this requirement only to a subsequent letter written to Fanning on 5 October 1802.³⁷

Although Lord Hobart was sanguine, the proprietors were not yet beaten. On 1 September 1802, Charles Price wrote a letter to Hobart introducing John Hill as a “Gentleman” and respectable merchant of the city with interests in the Labrador and Newfoundland trade, who had matters “of consequence” to lay before the colonial secretary and upon whose information he could rely.³⁸ In early September, John

34 N. Vansittart to Sullivan, 4 August and 7 August 1802, CO 226/18/281, 289.

35 Sullivan to N. Vansittart, 13 August 1802, CO 226/18/293-5.

36 Hobart to Fanning, 6 August 1802, CO 226/18/47-55.

37 Fanning to Hobart, 3 May 1803, CO 226/19/251-2.

38 Charles Price to Hobart, 1 September 1802, CO 226/18/305.

Stewart was still in London. He forwarded to the Treasury the first account of monies received for the composition, a total of £863. Most proprietors, he maintained, were delaying payment until the memorials of John Hill and John MacDonald were acted upon. Were these two granted indulgence, Stewart added, there would be further applications for similar treatment. A prompt determination was essential.³⁹ Although these proprietors were looking for special treatment, they had a case to argue, particularly in the context of the principles of the composition, which were supposedly to reward activity and investment while penalizing inactive speculation. Hill and his colleagues wanted the Treasury, in practice, to make further distinctions in class one (lots fully settled) beyond those made by the Island Assembly in 1797. The Assembly had not discriminated between real involvement and fortuitous settlement, or between active resident proprietors and lucky absentees.

At about the same time that this same group of proprietors tried to negotiate further discriminations in the composition, the Island Assembly's Committee of Correspondence wrote to agent William Knox, warning him that the composition (about which they seemed well-informed) would be remonstrated against by the proprietors.⁴⁰ Their comments suggest that the leaders of the Assembly had a somewhat different perception of the meaning of composition than did those in London, for the letter not only stressed proprietorial obstructionism but the need to regrant lands revested in the Crown in small tracts to actual settlers, in order that the Island grow and prosper. Nowhere in the Colonial Office discussions had small grants to settlers been mentioned. Hobart's comments to Fanning about the Nova Scotia model might have implied small grants, but the context of the comments was one of revesting, not subsequently regranting.

It is not clear that John Hill actually managed to see Hobart, a man notoriously unsympathetic to visits and memorials from colonials and others demanding changes in his policies and judgments. But Hobart did allow a sub-minister to talk with Hill, who was sufficiently persuasive to lead John Sullivan to agree to look at Hill's "Narrative" when it was recopied. In the meantime, Nicholas Vansittart at the Treasury gave Hill the impression that the revamping process would be entirely suspended until his entire statement respecting the Island had been fully considered, suggesting that something Hill had said struck a resonant chord somewhere in the corridors of Whitehall. Hill had asked for the same consideration for William Bowley and MacDonald as for himself.⁴¹ Hill's "Narrative relative to Prince Edward's Island" may have become required reading in some official circles in the autumn of 1802; at least, it was filed in full in the Colonial Office papers for that year, as was John MacDonald's "Sentiment respecting the Quit Rents of Prince Edward's Island". Captain John had raised a number of points that could profitably have been discussed earlier by the British government. One main theme was that 30 years of history could not easily be swept away. Starting afresh was no simple matter. He noted that the existing law in force regarding quitrents was the one passed on the Island in 1773, which required a distress of improvements made by purchaser or tenant before

39 Stewart to Vansittart, 4 September 1802, CO 226/18/313-18.

40 Thomas Wright et al. to Knox, 24 August 1802, CO 226/18/297-301.

41 John Hill to Sir, 14 October 1802, CO 226/18/321-4.

16 *Acadiensis*

forfeiture. Following this procedure would “occasion the ruin of every Settler in the Colony”, so a new mode of forfeiture had to be sanctioned. As for as disposition of lands after the reversion to the Crown, he observed that the Island Assembly wanted lands granted in lots of two to 300 acres, with grantees paying their quitrents directly to the Crown. He doubted whether the colony itself could afford to pay £100 of quitrents, and insisted that quitrents had been part of the impossible terms that the British government had set upon the proprietors and the land from the beginning. MacDonald implied a need to separate the quitrent question from the proprietorial system, which would become part of the standard proprietorial argument in later years. In his conclusion, MacDonald could not resist arguing that granting the land in large lots without quitrent obligations was an experiment that had not been fairly tried. He wanted to keep the proprietors, the Island’s best source of capital, and scrap the quitrents.

On Prince Edward Island, Lieutenant-Governor Fanning had responded with alacrity to Hobart’s dispatch directing him about the quitrent composition. The legislature was summoned into session in early November of 1802. Fanning told it that the British government had acted in a “manner highly favorable” to the late petition regarding the unsettled land. In order to make the action effective, it was necessary to pass legislation for quitrent collection and revestment of delinquent property, and Fanning had been ordered to pass a bill received from Lord Hobart, which he laid before them. The Assembly provided its own information in the form of letters between its Committee of Correspondence and William Knox, and the bill was passed in both houses without a division. The legislators were so pleased that they voted to have Knox’s portrait painted “by some Eminent Artist in London”, ultimately to be hung in the first public building “hereafter erected” in the colony, presumably to be built with quitrent funds.⁴² Later in the session, proprietor John Cambridge petitioned the Assembly for a remission of quitrent on Lots 63 and 64. Cambridge was another resident proprietor who had actually invested money and encouraged settlement. The Assembly agreed to recommend his case to the British government, thus suggesting both that it was prepared to be more lenient to resident proprietors than Lord Hobart and that it was not necessarily advocating a wholesale escheat.

Before the legislature had completed its sitting, Fanning had reported on the quitrent legislation to Lord Hobart, using as messenger Thomas Cochrane, the outgoing chief justice who was returning to England. The quitrent bill had been passed virtually as transmitted, he reported, except that the name of the legal officer had been changed from provost marshal to sheriff (reflecting Island usage) and one blank had been filled in as to the deadline for payment of arrears by absent proprietors.⁴³ The blank had been replaced with August 1803, hardly enough lead time

42 “Journal of Council”, 11 November 1802, CO 226/18/25-50. The legislation passed, “An Act for repealing an Act, intituled ‘An Act for the effectual recovery of certain of His Majesty’s Quit Rents in the Island of St. John, and for the enforcing in future a due and regular payment of the Quit Rents, payable to His Majesty, His Heirs and Successors’”, 41 George III, cap. II, was included in the 1814 consolidation of Island laws, annotated: “it does not appear that this Act has received the Royal Allowance”. See *Acts of the General Assembly of Prince Edward Island* (Charlotte Town, 1814), p. 10.

43 Fanning to Hobart, 10 November 1802, CO 226/19/407-8.

should anything go amiss in the state of transatlantic communication of the time. Fanning had apparently not yet received Hobart's instructions about a suspending clause — although all Island legislation should have included one as a matter of course. The draft bill forwarded by Hobart had not contained such a clause, partly because it had been produced in 1790 (before the Colonial Office had begun requiring suspending clauses of colonial legislation), partly because the version sent had not been intended to be as definitive as Fanning was prepared to assume.

The bill, entitled “An Act for repealing an Act intituled ‘An Act for the effectual Recovery of certain of His Majesty’s Quit Rents in the Island of Saint John’, and for the enforcing in future a due and regular Payment of the Quit Rents payable to His Majesty, His Heirs and Successors” (43 George III, cap. 2), began with a preamble about the prospective composition, which rendered the repeal of 13 George III, c. 13 expedient. It allowed the receiver-general of the quitrents or his deputy to distress and distrain for quitrent arrears according to laws and practice of Great Britain and not repugnant to local statutes for the recovery of rents. Only if the distress upon the lots was insufficient to pay the arrears, would the lots be proclaimed delinquent. Then judgment against the lots could be obtained after 30 days from the Supreme Court and sold after proclamation a month later. The legislation provided for partial owners of undivided lots to pay their share of the quitrents and have their holdings surveyed, as well as protecting tenants from distraint of their goods and chattels if they had paid their rents at the time of the distress and could provide evidence of payment. Tenants who paid quitrents on behalf of their landlords could hold the land as a security for the money they had advanced. The subsequent annotation in the printed consolidated statutes noted, “It appears by Governor Smith’s Proclamation, of 3d February, 1818, that this Act has received the Royal Allowance”. Lord Glenelg, the colonial secretary, on the other hand, wrote Lieutenant-Governor John Harvey in 1836 that the act had never been confirmed by His Majesty.⁴⁴ In any case, the legislation said nothing about quitrent arrears on township lots, and provided no protection against distress and distraint for squatters or for tenants who were not up-to-date with their rentals. It appears doubtful that this legislation would have been popular in the countryside if its terms had ever been enforced. On the other hand, the act did provide for escheat under certain conditions and might have served as a useful precedent on which to build for the future.

While Hobart's reminder about the suspending clause was wending its way to Charlottetown, Fanning's letter about the bill without the clause (but also without the bill itself) was in Cochrane's hands on its way to London. Thomas Cochrane, newly arrived from the Island at the end of 1802, read the Hill and MacDonald submissions for John Sullivan, pronouncing them “judicious” and “deserving of attention”.⁴⁵ Why the British government was now consulting about the quitrents remains a bit of a

44 George R. Young, *A Statement of the “Escheat Question” In the Island of Prince Edward; together with the Causes of the Late Agitation, and the Remedies Proposed* (London, 1838), p. 11. This statement enabled Glenelg, who was digging in his heels on escheat at the Colonial Office, implicitly to treat the legislation of 1803 as something produced on Island initiative rather than at the instructions of the Colonial Secretary himself.

45 Thomas Cochrane to John Sullivan, n.d., CO 226/19/423-39 and 29 January 1803, CO 226/19/411-19.

18 *Acadiensis*

mystery, but Cochrane insisted that any exaction of quitrent arrears, even under the composition, would tend to “defeat, than to promote, the end which Government has in view”. The situation on the Island was different from Nova Scotia because the proprietors had agreed to support the government, but he never thought it desirable to force proprietors to pay quitrents or comply with the terms of their grants. The object of government was not revenue but settlement, and there was no specie on the Island with which to pay quitrents. The legislature had followed Hobart’s directions, however, and deserved to be rewarded. The danger from land ownership by the lower orders was far less than that from the absence of settlers resulting from inaction by the absentee proprietors, the former chief justice insisted, and whatever lands reverted to the Crown should be granted in small portions. In a separate report, Cochrane stressed that the very existence of proprietors hindered settlement, since emigrants “have always had an aversion from fixing as Tenants upon the Lands of others”. But he strongly recommended relief to resident proprietors, since they were the ones who had invested and “produced almost the only good effects it [the Island] has yet felt”.

Fanning followed his initial letter to Lord Hobart with another of 8 January 1803, enclosing a copy of the bill and explaining that he had not sent it earlier because Cochrane’s ship had sailed before it could be engrossed. The lieutenant-governor recognized that the delay had rendered the 1 August 1803 deadline impossible, and simply suggested that the British could extend the payment date. He did not mention the missing suspending clause. Newly-arrived Chief Justice Robert Thorpe offered a different version of Fanning’s behaviour when he wrote to a friend in Ireland early in 1803, “to my great amazement the Bill which Lord Hobart sent out for settling the Land & getting the Quit Rent was not sent back altho’ passed on the 10th Novemb’r nor wou’d it have been sent untill May (which wou’d have made at least a years delay & newly defeated all his lordships good intentions) but I roused the people to a subscription & at the expense of forty shillings we are sending an express over the Ice”.⁴⁶ Only by this means would the “English Proprietors . . . have Notice” of Island actions, Thorpe observed. He attributed the delay to local skulduggery, claiming “The higher powers here are so implicated in the bill, by holding large tracts of land that nothing beneficial will be done, unless Lord Hobart is very preemptory & leaves nothing to discretion”. Thorpe also introduced a new item into the quitrent equation. He insisted the bill was very imperfect, because it focussed exclusively on the large proprietors (chiefly absentee) rather than on small proprietors (chiefly local residents) who held town and pasture lots, especially in Charlottetown and the other shire towns of the Island. These landholders were equally delinquent in their quitrents.

The quitrent bill forwarded by Lord Hobart had dealt only with the problem of delinquent quitrents, and separate legislation was required to revest the land in the Crown. This legislation, based on the practice of Nova Scotia’s Court of Escheat, was considered by the new Assembly of 1803. It permitted the governor and Council to appoint a commissioner of escheats, with the power to summon witnesses and to investigate whether conditions of the grants had been fulfilled. It allowed interested parties 12 months to deny formally the commissioner’s findings in the Chancery Court of the Island. It then provided for the forfeiture of the land for failure to comply

46 Robert Thorpe to Sir George Shee, 10 January 1803, CO 226/19/403-6.

with the original terms of the grants, a procedure which made every proprietorial lot on the Island eligible for forfeiture. It also provided a table of fees totalling £20 to cover the cost of the escheat process. The original copy of the act does not contain a suspending clause, and bears Fanning's signature under the phrase "I do assent to the Enacting of this Law", dated 2 April 1803.⁴⁷ Although the Council also passed a bill entitled "an Act for quieting in their possessions active proprietors and actual settlers", this bill was not accepted by the Assembly.

On 3 May 1803, at the time of the breakup of the winter ice on Northumberland Strait, Lieutenant-Governor Fanning wrote two letters to Lord Hobart. The first enclosed the act for effectually revesting the lands. The establishment of a Court of Escheat, Fanning insisted, had resulted in "great public Expectation", and he hoped it would meet with His Majesty's approval.⁴⁸ Well might Fanning plead for approval, since in the other letter he wrote that he had received on 1 March a duplicate of Hobart's letter about the suspending clause, the original "having miscarried as I presume by the Shipwreck of a Vessel coming from Halifax to this Island late last Autumn". The quitrent bill had been passed and forwarded before he had received the directive. Fanning knew full well that all colonial legislation required a suspending clause, but he argued that since the bill had been "framed and transmitted to me in the form in which I supposed it was meant to have been passed here without alteration", he had assumed that such a clause was not in this case necessary. Of course the bill had not been passed without alteration. The one small change in the draft had produced an impossible deadline. Fanning wrote that he recognized this point, and had already suggested that the British defer the date. Moreover, Fanning might have added but did not, the revesting bill did not contain a suspending clause either, and he had already assented to it. He concluded by hoping that the omission of the suspending clause was not "of material consequence".⁴⁹

Convinced he had done his duty, Fanning could rest content on the Land Question in the spring of 1803. He had assented (however improperly) to two closely related pieces of legislation on the matter. The Committee of Correspondence of his Assembly was much less sanguine, writing William Knox that Fanning would not act without direct orders because he was overcautious about offending the proprietors, an attitude which the colony's agent duly reported to Lord Hobart.⁵⁰ At the same time, two successive chief justices were scathing in their denunciations of the political and legal defects of the legislation. The new chief justice, Robert Thorpe, was even less enthusiastic than Thomas Cochrane had been. Thorpe agreed with Cochrane that a principal defect of the quitrent bill was that it did not include the town lots, but he also maintained to Lord Hobart that the legislation was "useless, inadequate, & unjust". He not only complained about the failure to include the town lots, but found the bills unjust because they did not distinguish between the activity or the proprietor or

47 "An Act for effectually revesting in His Majesty, His Heirs and Successors, all such Lands as are, or may be, liable to forfeiture within this Island", 43 George III, cap. 1. The statute consolidation of 1814 noted that this act had never received the royal allowance.

48 Fanning to Hobart, 3 May 1803, CO 226/19/251-2.

49 Fanning to Hobart, 3 May 1803, CO 226/19/255-7.

50 Peter Magowan et al. to Knox, 5 January 1803, CO 226/19/509-11; Knox to Hobart, 26 April 1803, CO 226/19/505-7.

eliminate useless conditions.⁵¹ Whatever the merits of the legislation, however, the Island had acted on quitrents and escheat, and the question of policy was returned to the Colonial Office for disposition.

New contenders for special consideration among the proprietors made their appearance in 1803. As John Stewart had predicted, a failure to reject the first requests for concessions outright merely encouraged others. John Cambridge had the support of the Island legislature in his attempt to remit arrears. His wife, visiting England for her health, submitted his case.⁵² Mary Burns, widow of proprietor George Burns, insisted that she had spent her youth and paternal fortune helping her husband settle his lots, and now 16,000 acres on Lots 38 and 39 were all the property she had left to support “herself, Children, and grand children”. She could pay no arrears because she possessed nothing and had no income from the land.⁵³ Both Burns and Cambridge had been active proprietors, resident on the Island. Stephen Sullivan, absentee proprietor of a number of Island lots and a principal inactive landholder, offered a novel argument for exemption. He claimed that he did not until 1795 get proper patent to his lots, and at that time the grants allowed quitrent relief for the first five years. Sullivan claimed that he therefore owed no arrears whatever. Receiver-General Stewart was beside himself in objection to this position. Sullivan’s father had signed the petition of 1768 for a separate government, Stewart maintained, and was thus committed to quitrent payments.⁵⁴ Sullivan subsequently offered to surrender some land in return for abatements on the remainder.⁵⁵ A new player was the Earl of Selkirk, who proposed to buy land on the Island to settle a large contingent of Highland Scots previously destined for Upper Canada. He wanted guarantees that he could compose at the most favoured rate regardless of the actual state of settlement or arrears on the lots he purchased.⁵⁶ Baron James Montgomery’s sons petitioned for partial abatement on the grounds of previous activity.⁵⁷ As John Stewart had predicted, a failure to be firm on the first requests merely encouraged others. So long as these and other cases remained open, Stewart maintained, quitrent collections would be slow.⁵⁸

While Lord Hobart tried to pick his way through the special cases, John Stewart decided to return to Prince Edward Island.⁵⁹ Hobart had written Fanning that the legislation forwarded from the Island was under consideration at the Privy Council.⁶⁰ Exactly what this meant was not clear. Were both bills waiting for royal approval? Did only the revesting act require assent? The receiver-general arrived on the Island in October, and immediately started court proceedings against 20 proprietors for

51 Robert Thorpe to Hobart, 4 April 1803, CO 226/19/456.

52 Mary Cambridge to Hobart, 4 April 1803, CO 226/19/465-6.

53 Petition of Mary Burns, CO 226/19/53. Burns did not note that she had attempted in 1801 to collect rentals from a number of Island tenants in the courts, winning all her cases. Apparently the legal victories had not much helped.

54 Report from the Receiver General of Quitrents of P.E.I., 7 April 1803, CO 226/19/553.

55 John Sargent to Sullivan, 20 June 1803, CO 226/19/545.

56 Lord Selkirk to Hobart, 26 February 1803, CO 226/19/461-3.

57 Vansittart to Sullivan, 31 May 1803, CO 226/19/537.

58 Stewart’s accounts to 24 February 1803 showed that he had as of that date collected £1,723 of composed quitrents. CO 226/19/457.

59 Stewart to Hodgson, 7 August 1803, CO 226/19/585-6.

60 Hobart to Fanning, n.d., but summer 1803, CO 226/19/347-8.

arrears of rent under the terms of the new quitrent legislation. Stewart apparently hoped that some show of legal force might lead a few proprietors to pay something. The 1802 act did not re-vest the land with the Crown for redistribution, and selling or auctioning large quantities of land on the Island would not be very productive. If many townships were put up for sale at once, observed Robert Thorpe, the price would be depressed and buyers would collude to obtain them for a trifle. Thorpe might have instanced 1781, although he did not mention it, when he commented, “you will retain the old Proprietors, or get New Ones, but do nothing as [to] the settling the Island”.⁶¹ Stewart would eventually complete the legal process against 16 delinquent lots, but could then proceed no further since the re-vesting legislation never received royal approval. The Treasury wisely stayed action on sale of the lots.

When Edmund Fanning wrote to William Knox at the end of 1803, he reported that he had been told by John Stewart “that all Colonial Business in Lord Hobart’s Office is suspended by the War — and was I to proceed, in time of War, without any pointed & positive Instructions from His Majesty’s Ministry I might draw upon myself that powerful Resentment of the whole Body of the Proprietors which brought upon my Predecessor his Dismissal”.⁶² There were many inaccuracies in Fanning’s understanding of the situation, but the basic point remained. Hobart had not finished dealing with the implementation of the quitrent composition when war broke out. Little more could be done until he shepherded the Island legislation through its legal channels and decided the collateral questions, particularly the exemptions. Since Hobart was secretary of state for war as well as for the colonies, he was unlikely to deal with Prince Edward Island’s quitrent problems in the immediate future. War had once again interrupted any settlement of the Land Question on the Island.

If Fanning were dejected at the end of 1803, he roused himself to frantic anxiety in early 1804, writing to Hobart in desperation that process had begun in the Supreme Court against a number of delinquent lots. He enclosed a copy of the court order so that Hobart was apprised “of a Measure which in its Operation must materially affect & endanger the Interest of many of the Proprietors, and consequently may possibly, and I think not improbably, come forward at some future Day in the Shape of Complaints against the due & impartial administration of Justice in this Island”.⁶³ Fanning insisted that he had not been informed by the receiver-general about the prosecutions involved and would not have concurred in them because of the problem of the suspending clause. He himself would have recommended a further easing of arrears. Hobart had already decided to replace Fanning by appointing J.F.W. DesBarres — an octogenarian 20 years his senior — to replace him.

While Fanning and the Island awaited the arrival of DesBarres, John Stewart in August of 1804 again reported to the British Treasury on the state of Island quitrent collection. By this time Lord Camden had replaced Lord Hobart as colonial secretary. Stewart reported that he had received £3,940.16.8 in quitrent arrears on the scale of the 1802 composition, and another £1,161 in full quitrents due since 1801. He expected another 19 lots and half-lots to compose for £1,994.10 in the course of the

61 Thorpe to Sir, 16 October 1803, CO 226/19/589-96.

62 Fanning to Knox, 16 November 1803, CO 226/19/601-4.

63 Fanning to Hobart, 3 March 1804, CO 226/20/5-7.

year, and had taken action for quitrent arrears of £7,229 against 16 lots and half-lots in the Island supreme court.⁶⁴ He also listed 12 lots and half-lots owing £3,588 in back quitrents, whose proprietors had applications pending before the Privy Council for special consideration.⁶⁵ As well, he held receipts for £530 from Baron Montgomery and £591.10 from the original owners of the lots purchased by Alexander Ellice, paid to his predecessor and not accounted for in the reports. In his general account, Stewart reported £4,651.16.8 collected, and £2,217.18.3 paid out, some for back salaries of officers on the Island.⁶⁶ Most of the back salaries were owed to members of Stewart's own family. Stewart had also paid £1,330 to himself in back salary and expenses.⁶⁷ As of 1804, the chief beneficiaries of quitrent composition had been a few ancient Island officers related to John Stewart, and John Stewart himself. No land had yet been revested in the Crown.

J.F.W. DesBarres did not arrive on the Island until 1 July 1805.⁶⁸ He had managed to delay his departure until the spring of 1805, ostensibly in order to examine the official documents dealing with the Island as a necessary preliminary to preparing a major report for reforming it.⁶⁹ The notion of such a report coincided with a submission from a number of leading proprietors protesting the revestment bill of 1803. The proprietors wanted this legislation set aside until DesBarres had reported whether the proposed mode of forfeiture would benefit the Island.⁷⁰ Since the revesting bill could not work with the quitrent act of 1773 but only in tandem with the quitrent act of 1802, which had been passed without a proper suspending clause — the omission of which still had not been dealt with by the British legal authorities — deferring the acceptance of the act made a certain sense. Six months after his arrival, DesBarres wrote to yet another colonial secretary, Lord Castlereagh, that his report was still not finished, because public affairs on the Island “seem more and more to have been in a strange and incompatible state from the beginning, and the different points of which have in the progress of above thirty years induced such farther confusion and intricacy, pervading the whole, as to render them extremely difficult to be unravelled”.⁷¹ In the end, the report was never submitted.

In 1805 a number of proprietors offered a new set of arguments to Lord Camden regarding the quitrents. They pointed out that under the composition of 1802 Island

64 “Account of Quit Rent received on account of the Composition”, CO 226/20/267; “Account of Quit Rents of Prince Edward Island received by John Stewart, which have become due since May 1801”, CO 226/20/271.

65 “Accounts of lots or townships on PEI, on which the Composition for all arrears of quit rents due up to May 1801 will be paid in the course of this year”, CO 226/20/275; “Account of lots or townships in PEI against which Proceedings are now carrying on in the Supreme Court of the Island”, CO 226/20/279.

66 Robert Thorpe had complained that Stewart, when on the Island, had insisted that he had no money to pay back salaries. Robert Thorpe to Sir, 6 March 1804, CO 226/20/239-243.

67 “An Account specifying the arrears due”, CO 226/20/287-8; “Quit Rents of PEI, General Account”, CO 226/20/297-300.

68 For DesBarres (ca. 1721-1824), consult G.N.D. Evans, *Uncommon Obdurate: The Several Public Careers of J.F.W. Desbarres* (Toronto and Salem, 1969), and Robert Morgan, “Joseph Frederick Wallet DesBarres, III”, *DCB*, VI (Toronto, 1987), pp. 192-7.

69 DesBarres to Edward Cook, 12 September 1804, CO 226/20/397-300.

70 Ibid.

71 DesBarres to Castlereagh, 4 December 1805, CO 226/20/205.

quitrents were still higher than elsewhere in British North America and required further reduction. They wanted new patents which did not contain unfulfillable conditions, particularly urgent since the revestment bill of 1803 provided for commissioners to forfeit land for non-fulfillment. Royal assent should be withheld for this act, they insisted. There was a carrot for the Island in this submission, however, since its authors also recommended that the ongoing quitrent collections and some of the arrears be applied for ten years to local development — particularly of religion, schools, public buildings, roads, bridges, and piers — the funds to be managed by the governor in council.⁷² A report about this time from Receiver-General Stewart showed a favourable balance of £2,038.0.4. Stewart observed that the applications for remission or adjustment of composition still had not been dealt with, having apparently been reported upon by the secretary of state's office but not acted upon by the Treasury.⁷³

In November of 1805 the first Assembly met by Lieutenant-Governor DesBarres passed another series of resolutions which produced yet another memorial to the Crown on the ongoing Land Question. These resolutions observed that two land acts had been passed by the Island legislature in conformity with instructions from England, but neither seemed yet in force. The Assembly insisted that it had good reason to believe His Majesty had assented to the revesting act, and that royal allowance "hath been withheld by means of unfounded representations of interested individuals in England". It suspected the quitrent act had experienced a similar fate.⁷⁴ In its subsequent memorial, the Assembly added that judgment had been obtained against lots in the Supreme Court, but "whether through the same Injurious Interest or from what other cause your Petitioners know not no Sale or further Proceeding hath been made".⁷⁵ An answering petition defending the proprietors was produced almost immediately by a small group of proprietors resident on the Island.⁷⁶

As he transmitted these conflicting resolutions to London, DesBarres could hardly resist characterizing the contending parties: "The one part seems to contend for a democratical institution, the other for an aristocratical one, surely some measure may be devised & adopted for keeping, in perfect consonance with our excellent constitution, a due proportion of aristocracy and of democracy in this Island, without any preponderance of either".⁷⁷ But despite declared his intention to walk the tightrope, DesBarres concluded this letter by observing that as the enforcement of the legislation mentioned by the assembly would annihilate all existing titles, it might be a better idea to regrant to energetic proprietors enough lands to enable them to carry out improvements.

The petitions from the Island produced another brief flurry of activity in the corridors of Whitehall early in 1806. William Knox forced the Privy Council to investigate what had become of the Island revesting act and colonial policy generally

72 Proprietors to Camden, 13 April 1805, CO 226/20/395-404.

73 "Abstract of Quit Rents of PEI to May 1804", CO 226/20/411-12.

74 Prince Edward Island, *JHA*, 20 November 1805, CO 226/20/161-181.

75 Petition of the House of Assembly, 26 November 1805, CO 226/20/197-203.

76 Memorial of Proprietors, 4 December 1805, CO 226/20/223-6.

77 DesBarres to Edward Cook, 5 December 1805, CO 226/20/223-6.

about both the Island and its quitrents.⁷⁸ Knox himself wrote to yet another colonial secretary, Lord Auckland, patiently explaining and interpreting past policy developments.⁷⁹ Curiously, Knox did not support escheat in this discussion, saying only that he had always favoured a composition for quitrents, but at a lower rate than Lord Hobart. He also advocated the virtual elimination of the obligation for small landholders, however. Hobart had refused to reduce the arrears below £9,000, insisting on continuing the quitrents at a very high rate. Knox then summarized the situation in 1806. Because of the continued high rates, few proprietors had compounded for their arrears. The receiver-general had prosecuted some delinquent lots and obtained judgment against them, but execution had been stayed by order of the Treasury. The act passed by the legislature of the island enforcing payment of the arrears set the scale of payment too high and few wished to purchase portions of any of the lots subject to such levies. The great object of this entire exercise over quitrents, Knox insisted, was not the extortion “of large sums from the proprietors or selling their lots by public auction to be monopolized by such as are able to purchase at the very low prices they would for go where there would be so few bidders” — he did not even consider the possibility of a general escheat — but rather speedy settlement and improvement of the Island. Island residents were eager for escheats and advantageous purchases, he admitted, but such a result would not improve the land. His intention, Knox maintained, was always to force the proprietors to parcel out their lands, and he had always recognized that escheat for noncompliance was “adding distress to misfortune”. He was not unhappy that the escheating act had been lost — his version was that it had expired three years after passage on the Island when it was not approved in London — and thought the existing quitrent act (of 1773) was sufficient to compel settlement. He personally recommended a lower quitrent which could serve as the basis of Island development. Whether the 1802 Assembly would have thought this submission appropriate for the legislature’s agent is another matter.

When a few months later in 1806 John Stewart finally published in London his *An Account of Prince Edward Island, in the Gulph of St. Lawrence, North America*, he was able to sound fairly complacent about the Land Question.⁸⁰ The needs were for reconciliation of the proprietors and accurate information for potential settlers and investors. Thus Stewart did not prolong the attack on the proprietors he suggested in his Preface when he wrote of the Island that “any disappointment which has been experienced in regard to its colonization and settlement, is fairly to be charged to the neglect of many of those into whose hands the property of the lands unfortunately fell, and not to any defect in the climate or soil”.⁸¹ Indeed, readers searching for any account of the troubled political history of the Island would have been much better served by John Hill’s unpublished 1801 history, partisan as it was, which sat in manuscript in the files of Whitehall.⁸² Stewart naturally provided an interpretation of

78 W. Fawkenner to Sir George Shee, 21 May 1806, CO 226/20/323-4.

79 Knox to Lord Auckland, 22 July 1806, CO 226/20/405-12.

80 See the useful and perceptive account in M. Brook Taylor, *Promoters*, pp. 26-38.

81 John Stewart, *An Account*, p. iii.

82 For John Hill (1754-1841), see my sketch in *DCB*, VII (Toronto, 1988), pp. 406-8. Hill’s critique, really a narrative history of the Island since its British takeover from the French complete with editorial apparatus, was submitted to the colonial authorities as “Narrative relative to Prince Edward’s

the quitrent composition, a subject that took up a disproportionate amount of space in his account and was fraught with special pleading and potential controversy that could be appreciated only in the context of the events behind the scenes from 1802 to 1804. Indeed, a defence of composition — both as a protection for active proprietors and as a means of encouraging further settlement — was really the principal theme of the political section of the work, as more than one of the subsequent annotators appreciated.

As Brook Taylor has so well pointed out, Stewart's account did its best to be all things to all people, simultaneously allowing its author to pose as "a champion of escheat to the tenants on the island, a moderate island ally to the powerful proprietors in Great Britain, an informed public official to the British government".⁸³ At least some of his subsequent Island readers were prepared to identify his sympathies with the proprietors. But John Stewart certainly in his book left the impression that something significant had happened about the quitrents. In one sense, the amount of time and energy spent upon them by himself and others warranted more than what showed on the scorecard in 1806. After all was said and done, the two pieces of legislation ordered by Lord Hobart in 1802 had both been allowed to die without being assented to by the Crown. A number of lots were in the hands of the Island Supreme Court, and so long as they remained there they would engender as little or less development upon them as had been the case when they were in the hands of inactive proprietors. Many other lots held by absentee landowners had changed hands, with perhaps as much as one-third of the property on the Island acquiring new ownership under the threat of composition. More Island residents acquired land in the shuffle after 1802, which was probably partly what John Stewart had intended. Most of the new owners after 1802 were no more eager to invest in the development of the Island than were the old ones, however. Certainly resident proprietors had no capital to invest. Lord Selkirk had been brought into the picture as one of the few active developers.⁸⁴ Selkirk's appearance on the scene was important, partly because he did undertake development, partly because he was willing to sell land rather than simply lease it. Through his example of selling land on credit in small parcels Selkirk did to some limited extent alter landholding patterns on the Island. But the larger example of Selkirk was of an energetic absentee proprietor who had invested much capital but was totally unable to control the rapacity of Island residents and agents.⁸⁵ The collection of arrears by composition had generated a few thousand pounds, much of which went into Receiver general Stewart's pocket in back salary and expenses. Stewart was also rewarded for his efforts with the office of paymaster general of Newfoundland.

Apart from the obvious gains for John Stewart and the transfer of much property from the hands of one set of inactive absentee landlords to another set of inactive but

Island"; see CO 226/18/325-445. This work needs desperately to be published as a contemporary alternative to John Stewart's early history of the Island.

83 Taylor, *Promoters*, p. 37.

84 "Settlement by Chance: Lord Selkirk and Prince Edward Island", *Canadian Historical Review*, LIX, 2 (1978), pp. 171-88.

85 See my "Lord Selkirk of Prince Edward Island", *Island Magazine*, 5 (Fall-Winter 1978), pp. 3-8.

more often resident ones — which were of great importance to the dynamic of the Island — the resumption of regular quitrent collection on Prince Edward Island was the major positive result of the composition of 1802. The generation of schemes for the disposition of the regular revenue from the quitrents for a time replaced demands for escheat as the favourite Island pastime. To look well ahead, the fact that the Island actually collected quitrents — alone in the British Empire — contributed to the Land Question as it would develop under Lieutenant-Governor Charles Douglass Smith from 1815 to 1825 and later in the days of the Escheat Party in the 1830s.⁸⁶ If the quitrent composition of 1802 had not preserved the collection of quitrents, the entire later history of the Land Question would have been quite different. Under DesBarres, a substantial increase in petitions and memorials from Island officeholders looking for back pay took place, several of them instancing the new quitrent fund as a place from which their request could be honoured. In 1806 Lieutenant-Governor Desbarres ordered another election, this one producing an Assembly that showed little interest in escheat, and much concern for public improvements. In a joint petition to the Crown dated 13 December 1806, the Assembly and Council not only requested that the quit rent income be transferred to the control of the Island legislature, but actually recommended a lower rate to help struggling resident proprietors.⁸⁷ The Assembly then went even further, and strongly supported the complete remission of arrears for Captain John MacDonald.⁸⁸

Those connected to the office of the colonial secretary or the Treasury might well have remarked both how events had come full circle and how difficult it was to come to terms with the Island's Land Question. A major British initiative to resolve that question had stuttered and failed. No one person or action was to blame in the complex sequence of events that produced failure, and certainly to put the principal responsibility on the shoulders of the British colonial authorities would be most unfair. Instead, a combination of factors, including distance between London and the Island, the resumption of war between France and Britain, the growing incompetence of Edmund Fanning and the apparently irreconcilable differences between proprietors and local politicians, provided too many obstacles to be overcome. The self-serving machinations of John Stewart, if not critical, were certainly important as well. In the course of the failure, of course, the Island's Land Question was further complicated, and the proprietors further entrenched. By a sort of Murphy's Law, reform which fails often succeeds mainly in muddying the waters and making subsequent change much more difficult. Having won this crucial round by default, the proprietors would soon be in a position to argue for the unobstructed rights of property. The Land Question was well on its way to becoming an entrenched problem.

86 For the quitrents under Smith, see my "One and A Half, Maybe Two, Cheers for Charles Douglas Smith", *Island Magazine*, 40 (Fall-Winter 1996), pp. 28-35; for the quitrents in the Escheat Party period, consult, for example, Young, *A Statement of the "Escheat Question"* (1838).

87 Petition of Council and House of Assembly, 13 December 1806, CO 226/20/107-13.

88 House of Assembly to DesBarres, 15 December 1806, *ibid.*