

# THE NEW-BRUNSWICK ROYAL GAZETTE.



[Volume XI.]

TUESDAY, 27th JULY, 1824.

[Number 22.]

## The Gazette.

BY His Honor JOHN MURRAY BLISS,  
Esq. Vice-President and Commander  
in Chief of the Province of New-Brunswick, &c. &c. &c.

(L. S.)

J. M. BLISS.

### A PROCLAMATION.

WHEREAS the General Assembly of this Province stands prorogued to Wednesday the Second day of June next; I have thought fit further to prorogue the said General Assembly, and the same is hereby prorogued to the First Wednesday in September next ensuing.

GIVEN under my Hand and Seal at Fredericton, the Thirtieth day of May, in the Year of our Lord, One Thousand Eight Hundred and Twenty-four, and in the Fifth Year of His Majesty's Reign.

By His Honor's Command  
W. M. F. ODELL.

ST. JOHN, July 15.

### IMPORTANT TRIAL.

A cause of the greatest importance as it affected the Mercantile and Maritime interests of this City and Province and the peculiar interests of the parties concerned, was tried last week in the Court of Vice Admiralty for this Province, before His Honor Judge PETERS. The Promovent was AARON UPTON, of St. Stephens, County of Charlotte, who arrested the Brigantine *Æolus*, and sought to recover the possession of her from JACOB TEDFORD and others, of Yarmouth, Nova-Scotia, the Impugnans.

Monday evening being the day appointed for a hearing of the cause, the Court opened at 12 o'clock, and the pleadings were read by the Registrar, when after a short discussion respecting the right of opening the cause, which was claimed by Mr. KINNEAR, Proctor for the Impugnans, the difficulty was got over by the Promovent's Proctors Messrs. CHIPMAN and PARKER, waving their right. The former gentleman opened the case for the Impugnans by making some general observations as to the great importance of the cause, and the effect the decision would undoubtedly have as to the titles of hundreds of Vessels owned under similar circumstances in this Province. He then went on to state their case, which we give briefly as follows:—

That the brig *Æolus*, belonging to the Promovent, on her voyage from the West Indies to St. Stephen, was wrecked on the wild and rocky shore of Nova Scotia, about six or seven miles from Yarmouth; that she was thrown among the rocks and ledges, by which she was surrounded on every quarter but that towards the sea; and her situation was considered so hopeless, that it was not doubted if a gale or north wind had arisen, she would, in a short interval, have been battered to pieces on the rocks, and the scattered parts of the wreck lined the shore. Thus situated, the Master, BARNARD CONNOR, employed BENJAMIN BENGAY, Esq. a most respectable gentleman of Yarmouth, of excellent character, as Agent for all concerned, to sell the Hull and Materials—this was accordingly done as soon as possible after a regular and fair survey; and the purchasers were Mr. TEDFORD and the other Impugnans. The net proceeds, and upwards of one hundred Doubloons, the produce of the West-India voyage, were afterwards paid by the Master to the Promovent, who upon receiving the Protest and other papers, abandoned to the Underwriters at Boston and obtained his Insurance, which the Promovent's Counsel admitted before going to trial. Mr. TEDFORD and the other purchasers, contrary to every expectation succeeded after great hazard and much expense in getting her off, and afterwards repaired her and made her sea worthy, at the total cost of upwards of £800. Having no Bill of Sale from any one they could not

get a Register *de novo* from the Collector at Shelburne, and he directed them to get one from Mr. UPTON, the Promovent. Mr. TEDFORD went to St. Stephen, where he resided, for one, but Mr. UPTON said he must write to the Boston Underwriters for their consent, before he could give one. He then came to this place and got one from HENRY WRIGHT, Esq. Collector of this Port. Upon this Register the Vessel has been navigated ever since the Summer of 1823, and was once before the present seizure, at St. Stephen, without being interfered with. The Promovent now arrests her just as she was near being loaded and ready for sea. The arrest took place on or about the 5th of May last, and the vessel has been lying in the Schoodiac River ever since, with her load on board.

The above statement being corroborated by the evidence adduced on the part of the Impugnans and Mr. TEDFORD's oath, the counsel then proceeded to make four points in the cause, and to rest his case thereon:—1st, That a Master of a vessel has power to sell the ship entrusted to his care in cases of extreme necessity, acting with pure good faith, and that being a wreck there was no necessity of a bill of Sale.—2d That the abandonment, transferred the property to the underwriters by operation of Law; and that on both these points, the case was not within the Registry Act.—3d. In case of this Court being against the Impugnans in these two points, and the Judge should have doubts as to the legal title either way, that this being a point of more universal justice, it would restore the property to the Impugnans, and leave the Promovent to his remedy by common Law.—4th, That in case the Court should be against the Impugnans on all these points, that the Court would refer the matter to the Registrar and merchants to ascertain the amariation, report thereon and do such justice as the Judge should deem expedient. Upon these points the Impugnans Counsel, went into a long argument, citing many authorities and concluded at 3 o'clock. Mr. CHIPMAN on the following day argued the points in the order in which the opposing counsel had done, and was followed by Mr. PARKER, who concluded shortly before four o'clock. On the third day Mr. KINNEAR concluded for the Impugnans in a lengthy and very able speech. The Judge assigned Monday following to decree, and on the morning of that day the Court again opened, and His Honor proceeded to deliver his decree, which was done in a highly impressive, able and eloquent manner, decreeing on the first point that the Law was sufficiently clear that a Master had power to sell under the case stated in the first point; and that the facts of this case fully bore it out, but would not pronounce whether such a case was within the registry act; as he was clearly for the Impugnans on the second point, that the abandonment did divest the property out of the Promovents by operation of Law and was not affected by the Registry Acts; and therefore he decreed that the vessel should be restored to the Impugnans, with Costs.

This decision caused the most universal satisfaction among all present in Court, and indeed throughout the City; for it was generally believed that at least the Impugnans had acquired a most just and equitable title to this Vessel by a fair and honorable purchase, and had indeed would it have been to have taken it from them by an extreme point of Law.

### PRUNING TREES.

Extract of a letter from Mr. Kenrick, of Newton, to the Vice President of the Massachusetts Agricultural Society.

"I have for a number of years deferred pruning my trees till June. And I am satisfied that the only proper time for pruning is while the bark will peel; in June or

July. I have made many experiments, and find where limbs have been taken off, either in Autumn, Winter, or early in the Spring it has invariably proved injurious—much of the sap has exuded, rottenness ensued, & soon penetrated to the heart. I have no doubt but most of the decayed hollow, and rotten apple-trees so commonly to be seen, were occasioned by unseasonable and improper pruning. I have also found that the stumps of limbs amputated in June or July, will be almost immediately enriched with a ring of new wood, and in a short time, in proportion to the thickness of the tree, and size of the limbs, be completely healed over.

I well remember a fine thifty orchard of apple-trees of grafted fruit, in the south of Newton, more than 50 years ago, so productive as to excite envy among the neighbours (for that passion existed then.) Mr. Ward the owner, always pruned his orchard pretty thoroughly in March, and I remember to have heard him say—"it would ruin apple-trees to prune them in the summer." This fine orchard soon went to decay, and for more than twenty years past there has been scarcely a remnant of a tree on the ground.

### ARMY AND MILITARY MATTERS.

In consequence of the disastrous accounts which have been received of the defeat of our troops under Sir C. M'Carthy, orders have been issued from the Horse Guards for the Officers and men of the Royal African Corps, now in England, to hold themselves in readiness to embark for the Gold Coast. The following Officers of that Corps, with about 100 men, will embark on board the *Thetis*, which ship had arrived at Spithead:—Lieut. Col. Grant; Captains Drew, Dawson and Campbell; Lis. Clement and Cartwright; Ensigns Goodwin, White-Foss, O'Halloran Lizar, U-niacke and Ring, Seven-Officers of the 2d West India Regiment, will also embark on board the *Thetis* for the same destination—viz. Majors Jolly and Nicholls Capt. Winter, Ensigns Kettlewell, Dichinson, Sutherland and Macpherson.

Mr. Elliot arrived in town on Saturday night from Madrid, with despatches from Mr. Canning to report communicates the unqualified refusal of the Spanish Government to entertain, in any shape whatever, the question of a recognition of the independence of its Colonies in South or North America.

BOSTON, JULY 10.

FROM GIBRALTAR.—We have Gibraltar files to the last of May.

GIBRALTAR, MAY 26.

### PORTUGUESE AFFAIRS.

Our readers have been made acquainted with the official particulars of the extraordinary events which lately occurred in Lisbon, from the mad freaks of the spoiled son of the King, Prince Miguel; and those of the flight of the King on board the British man of war *Windsor Castle*, followed by all the Foreign Ministers accredited at his Court. Also, that the King, as soon as he found himself in safety, disavowed all the proceedings which were sanctioned by his name during his duress, and issued several Proclamations, giving a history of the violent and unlawful measures which had taken place denouncing the conduct of his son, which he attributed to the influence of the wicked suggestions and treacherous advice, operating on his youthful and inexperienced mind; depriving him of the command of his troops, and inviting him to repair on board the British man of war immediately. It appears that the Prince obeyed the invitation, as he addressed the following humble note to the King; and on the 19th May sailed for England:—

### LETTER OF THE PRINCE.

MY KING, FATHER AND LORD—  
To love and to serve Y. M. has been, ever since I have known myself, the chief business of my life, the sole object of my ambition. If, in some instances, I have given you undoubted proofs of my fidelity, Your Majesty's paternal heart will perhaps accept them as a sufficient atonement for the involuntary errors into which I have lately been betrayed by a want of experience and reflection, the appanage of youth. Apprehensive lest my presence in Portugal under the existing circumstances, may afford pretence to ill-intentioned men for renewing attempts and intrigues alien from the pure sentiments which I have just and most truly expressed, I beg, that Y. M. will be pleased to give me leave to travel for some time in Europe, with the certainty that, while I am putting up the most fervent prayers for the continuance of the prosperity and tranquility of Your Majesty's reign, I shall ever be ready, as I am in duty bound, to shed the last drop of my blood, in testimony of my faithfulness.

I have the honor to be Sir, your dutiful Son, and late loyal subject.

MIGUEL.

On board the *Windsor Castle*,  
In the Tagus, May 12, 1824.

### ROYAL LETTER—IN REPLY.

To my beloved and highly valued Son, the Infant Don Miguel.

I send my greetings—as to one whom I dearly love and highly value.—In answer to the letter which you have this day addressed to me, I have only to tell you, that my breast harbours no other sentiment towards you than the paternal love which I bear you, and which makes me to forget your involuntary errors, while I only remember the important service which you last year rendered to the throne and to the nation. And, being sensible that the fulfilling of the wish you express will be very beneficial to you, I agree to grant you the permission you solicit to travel for some time in Europe, in the confident hope that, in future, I shall have every reason to be satisfied with your conduct—which I deemed it expedient to communicate to you, that you might understand it so.

Written on board the British ship *Windsor Castle*, lying in the Tagus, this 12th day of May, 1824.

Later accounts give the particulars of the landing of the King in his capital, and the perfect restoration of peace and confidence.

The following is mentioned as the scheme taken by his Portuguese Majesty to get under the protection of the British Navy:— He expressed a desire to dine on the 9th May at the palace of Caxias, on the Tagus, and invited Don Miguel to be there. Having embarked at Belem, his Majesty appeared to desire to see the English man of war, the *Windsor Castle*. On arriving on board, he issued an order, which was immediately executed for the arrest of the Infante. [It appears that the Prince was afterwards liberated, and ordered to travel for his improvement; and that on the day preceding the day of his departure, addressed to the King, the repentant letter given above.]

LISBON, May 14.—Yesterday the Infant Don Miguel sailed for England in the *Perla* frigate.

Yesterday his Majesty entered his 57th year; and the day was celebrated with the most lively demonstrations of attachment and love. In the evening the city was brilliantly illuminated.

LONDON, MAY 29.

Three of the gentlemen proposed to be restored to the Scotch Peerage, took the oaths of allegiance, &c. on Wednesday at