

THE NEW-BRUNSWICK ROYAL GAZETTE.

[Volume II.]

TUESDAY, 22d OCTOBER, 1816.

[Number 33.]

THE GAZETTE.

BY HIS HONOR
MAJOR GENERAL
GEORGE STRACEY SMYTH,
(L. S.) President, and Commander in Chief of the
Province of New-Brunswick, &c. &c. &c.
G. S. SMYTH.

A PROCLAMATION.

WHEREAS by Act of Parliament passed in the Forty-eighth Year of His present Majesty's Reign, Power is given to the Governor, Lieutenant Governor, or Commander in Chief of this Province, with the advice and consent of His Majesty's Council, to allow the importation of certain enumerated articles from the United States of America into this Province, for the purpose of re-exporting the same—I have therefore thought fit with the advice and consent of His Majesty's Council, to publish this Proclamation, hereby authorising and empowering British Subjects, for the space of six months from the date hereof, to import and bring into this Province from the United States of America, in British built Ships or Vessels, owned and navigated according to Law; Scantling, Planks, Staves, Heading-Boards, Shingles, Hoops or Squared Timber of any sort; Horses, Neat-Cattle, Sheep, Hogs, Poultry, or Live Stock of any sort; Bread, Biscuit, Flour, Peas, Beans, Potatoes, Wheat, Rice, Oats, Barley, or Grain of any sort; and British Subjects during the same period, are hereby authorised and empowered to Export in British Ships, owned and navigated as aforesaid, all or any of the said herein before enumerated articles, to any other of His Majesty's Colonies or Plantations.

GIVEN under my Hand and Seal the eighteenth day of JUNE, in the Year of our Lord one thousand eight hundred and sixteen, and in the fifty-sixth year of His Majesty's Reign.

By His Honor's Command,

WM. F. ODELL.

BY HIS HONOR,
HARRIS WILLIAM HAILES, Esquire,
(L. S.) President and Commander in Chief of the Province of New-Brunswick, &c. &c. &c.
H. W. HAILES.

A PROCLAMATION.

WHEREAS a General Assembly of this Province has been summoned to meet at Fredericton on the third Tuesday of this instant, October, I have thought fit, by and with the advice of His Majesty's Council, to prorogue the said General Assembly, and the same is hereby prorogued to the second Tuesday in December next ensuing; whereof all Persons whom it may concern will take due notice, and govern themselves accordingly.

GIVEN under my hand and Seal at Fredericton, the second day of October, in the year of our Lord one thousand eight hundred and sixteen, and in the fifty-sixth Year of His Majesty's Reign.

By His Honor's Command,

WM. F. ODELL.

NOTICE.

THE Subscribers request all persons indebted to them on accounts prior to the 1st of January last, to call and settle their balances without delay.

FRASER, DONALDSON, & Co.
Fredericton, 24th Sept. 1816.

LAND FOR SALE.

A HANDSOME Tract of Wood-land, called Lot No. 12, in the Grant to RICHARD WALKER and Associates, containing by estimation, two hundred Acres more or less, situate at Point Mispeck, in the County of Saint John, is now offered for Sale.—An indisputable title will be given to the purchaser. For particulars please apply to

CHARLES BRANNEN, senr. Fredericton.

or to

BERNARD KIERNAN, Saint John.
Fredericton, 5th July, 1816.

FREDERICTON LIBRARY.

A SHARE in this LIBRARY to be disposed of. Inquire at this Office.

25th May, 1816.

STRAY OXEN.

TWO OXEN were found on the property of the Subscriber the 20th August last—the owner may have them again by proving property and paying expenses.

ANTHONY MANUEL.

Quebec, 12th Sept. 1816.

LONDON, August 16.

SURREY.—*The King v. Lord Cochrane.*

On Saturday, this cause came on at Guildford, before Mr. Justice Burrough, and a Jury composed of the following Gentlemen:—

William Hayden, Esq.
Nicholas Vincent, Esq.

Messrs. James Rogers
Samuel Mumford
Thomas Searle
John Hall
John Palmer
John Hart
Richard Turner
George Burchell
Richard Hatfield
James Stevenson.

The cause was appointed to be tried by a Special Jury, but the two first in the above list being the only persons present of the Special Jurors, the other ten were added from the common Jury.

Mr. Marryat stated the circumstances of the fraud upon the Stock Exchange, which led to the prosecution of Lord Cochrane, and the judicial sentence which was passed on that occasion. By that sentence the Noble Lord had two duties to perform;—one was, his remaining in prison for twelve months; the next, his not quitting that confinement until he had paid a fine of £1000 to the King. Neither of these duties he had performed, for he escaped before the term had transpired, and also before he had paid his fine. The prosecution was, therefore, brought by the Marshal, not only to vindicate himself from any privy to the Noble Lord's escape, but also to punish him, by way of example, for the breach of law which he has committed. In what manner the escape had been effected was only known to the defendant. It was sufficient to state that Lord Cochrane, was, for the last time, seen in prison on the 6th of March; that he was found to have escaped a day or two after, and that he was not re-apprehended until the 21st of the same month. This re-apprehension took place in the House of Commons. The Marshal, on receiving information, proceeded thither with his assistants, and arrested the prisoner; for whose detention he had previously offered a reward of £300. As he observed the defendant was unassisted by Counsel, he would be very explanatory on the point of law, connected with this prosecution. The indictment was founded on the principle, that all the King's subjects were imperatively bound by the judicial sentence of the law. He next applied this principle to the particular case; and explained the penal consequences which attached to such an offence. It did not become him to anticipate the line of defence. The defendant's being at large while his sentence remained in full force, was a matter of easy proof, on which the Jury would have to found its verdict. It would, in the event of conviction, then remain for another tribunal to apportion the punishment.

The first witness called was Mr. Richard Gude. (Here, at the desire of Lord Cochrane, all the witnesses were ordered to withdraw until the proper time of examination in turn arrived.)—Mr. Gude's evidence went to prove the record of Lord Cochrane's conviction and sentence.

T. Gibbons, Tipstaff to the Chief Justice of the King's Bench, had seen Lord Cochrane on the 21st of March, 1815, in the House of Commons; he took him then into custody, assisted by Mr. Jones, the Marshal, Mr. Lavender, Mr. Pace, and Mr. Pool, and carried his Lordship back to the King's Bench Prison, where he delivered him into the custody of the Marshal.

Cross-examined by Lord Cochrane.—Witness had first conducted his Lordship to the King's Bench prison, as he was in the habit of doing other prisoners convicted in the Court. He had not delivered his Lordship to the Marshal personally, but had consigned him to the turnkey, believing that to be the proper course. Knew nothing of the commission or authority of turnkeys; only saw the persons to whom he delivered his Lordship, acting as such by opening and shutting the gates &c. Did not know, and disbelieved that others, as well as the turnkeys, had the run of the keys. The Marshal would, he was sure, dismiss any such persons. He repeated he did not think it necessary to deliver a prisoner into the immediate hands of the Marshal on his committal.

Re-examined by Mr. Adolphus.—Was certain that the person at the door was one of the turnkeys, and witness saw his Lordship lodged in the body of the prison.

B. E. Brooshoft was clerk to Mr. Jones, Marshal of the King's Bench; recollected his Lordship's escape from prison early in March. Saw him next on the 21st of that month in the House of Commons. He believed there was no other Member present at that moment; Mr. Jones, and some other persons, assisted at his re-apprehension. The House was certainly not within the rules of the King's Bench. Witness saw his Lordship subsequently in prison, and waited upon him on the 3d of July to arrange the payment of his fine. Went to the Crown Office with his Lordship's Secretary, and saw the fine regularly paid.

Cross-examined by Lord Cochrane.—Mr. Jones was the Marshal; never saw his commission to fill that office; knew nothing about that.

Lord Cochrane observed, there was no proof of Mr. Jones being the Marshal.

The Court observed, that if he exercised the duties of the office, there was no other proof necessary.

Lord Cochrane—"I submit that when he holds an office without exercising the duties that attach to it, he cannot be said to have a right possession of it."

The Court—"But he does not, *ipso facto*, forfeit the office by such conduct. Negligence in this discharge of his duty may be a ground for his removal, but while he remains he must be understood to hold the office."

Lord Cochrane—"But I can prove that he does not exercise the duties of the office."

The Court—"If he be in possession of the office, that is all the nature of the case requires."

The witness, in answer to a question from the Court, stated, that he knew the Marshal to exercise the necessary duties.

Lord Cochrane here begged permission to refer to an official document of the House of Commons, to shew the nature of this office. The terms of the extract were—"To hold, exercise, and enjoy the office of Marshal during good behaviour, and also that he should reside within the prison or the rules thereof." Now, the fact was, that he neither resided in the prison, nor sometimes in the county in which it was situated. He had for years ceased to dwell in the house where he ought.

The Court—"But he still retains the office."

Lord Cochrane here disclaimed any wish to give unnecessary trouble.

The Court replied, that no apology was necessary, it was competent for his Lordship to proceed with any matter which he thought material for his defence.

Lord Cochrane proceeded to read passages from the Report of the House of Commons on the subject of the King's Bench prison. This report stated, that Mr. Brooshoft was, in fact, keeper of the prison, though he had no legal appointment, and consequently no legal authority. He quoted further, those parts of the Report which referred to the Marshal's perquisites of £3590 a year, and his not inspecting the prison as he ought to have done, &c.

The Court—"All that may form grounds for his removal, but we have nothing now to do with it. It is only on the present occasion necessary to show that he filled the office."

Lord Cochrane—"Can I inquire into the terms of that part of the indictment which states that I went forth from prison by force of arms?"—The Court—"That is merely the technical form."

Lord Cochrane—"Is the day of my alledged escape material as set forth?"—The Court—"No, any day before the expiration of sentence would suffice."

Lord Cochrane then resumed the examination of Mr. Brooshoft.—The witness never knew Crown Prisoners to receive the benefit of the rules. He recollected, however, that Sir W. Manners was under the sentence of the Court of King's Bench in that prison, and that he had been for a part of that time without the walls. Sir W. had not been prosecuted for exceeding his limits.

The Court—"Had he committed an escape?"—Witness answered in the negative.

Lord Cochrane then stated, that his only object was to shew what was the practice of the Marshal, who allowed some prisoners to go out, and adopted a different mode of treatment for others.

The Court—"We have nothing to do with that."

Lord Cochrane—"Did Mr. Bowes or Mr. Hunt reside within the walls?"—The Court—"We cannot go into the history of every prisoner; and allow me again to say, that we are not trying the conduct of the Marshal."