Innishannon, next adjoining the last mentioned Lot, granted by the Crown to the said Henry Smith, containing three hundred acres, more or less: Also, all other the Real Estate of the said Henry Smith, situate within my bailiwick: the same having been seized and taken by me to satisfy an Execution issued out of the Supreme Court of this Province, at the suit of John Pollok and others against the said Henry Smith.

Bathurst, 3d May, 1845. HENRY W. BALDWIN, SHERIFF.

☞The Sale of the above property is postponed until Monday the second day of March next, (1846,) then to take place at the Court House in Bathurst, between the hours of twelve and five o'clock in the afternoon.

HENRY W. BALDWIN, SHERIFF.

Bathurst, 29th October, 1845.

County of Westmorland.

To be sold at Public Auction, on Saturday the first day of August next, at the Court House in Dorchester, in the County of Westmorland, between the hours of twelve and five o'clock in the afternoon:

ALL the right, title, interest, property, claim and demand, whether at Law or in Equity, of James Smith, to a certain Lot of Land situate in the Parish of Botsford, in said County, granted by the Crown to the said James Smith, bounded Southerly by a Lot granted to one Thomas Oulton; Northerly in part by Land granted to Joseph Simpson; the said Lot of Land so granted to said James Smith, containing three hundred acres, more or less: The same having been taken and to be sold as aforesaid by virtue of an Execution issued out of the Supreme Court, at the suit of James Ayer against the said James Smith.

Dorchester, January 10, 1846. W. P. SAYRE, SHERIFF.

Provincial Legislature.

EXTRACT FROM HOUSE OF ASSEMBLY JOURNALS.

KING'S COLLEGE.

(Copy)

[No. 342.] *Downing Street, 12th November*, 1845.

SIR,—Referring to the correspondence which has already taken place betweeu us on the subject of the Act of the last Session of the Legislature of New Brunswick, to amend the Charter of King's College, I have now to convey to you the necessary instructions for your guidance in that case.

On the authority of the Solicitor General of the Province, and of the Great American Jurist, Mr. Story, you suggest a preliminary doubt, which, if well founded, must supersede all further discussion of this Act. It is the doubt whether the Local Legislature possesses any Constitutional right to alter a Royal Charter, without the express consent of the corporate body, and whether such an Act, if passed, would have the authority of Law.

In applying the decision of Mr. Story (whatever that decision may be) to the case of a British Colony, there must obviously be great room for error, unless the most exact attention be given to the inherent distinctions between the Constitutions of various States united together in one Federal Government, and those of our own Provinces united together as members of one extended Empire. That Colonial Laws, repugnant to the Law of England, are null and void, has indeed been repeatedly and very recently enacted by Parliament. But with that exception it has not occurred to me to hear of any cases in which the Courts of any British Colony could lawfully refuse to enforce obedience to the Acts of the Local Legislature.

I do not, however, propose to pursue further this abstract enquiry, since the question to which it refers does not really arise in the present case. It is not the fact, that the Charter of King's College is a Royal Charter, in the proper sense of that term. It was not granted by the Crown in the unaided exercise of the Royal Prerogative, but on the authority of the Provincial Act of 1823, (4 Geo. 4, cap. 3,) which enabled the Trustees of the College to surrender their Charter to His late Majesty King George the Fourth, on condition that His Majesty would grant another Charter for the re-incorporation of the College, the terms of which new Charter were partly prescribed by the Act of 1823, and were partly left by that Act to the discretion of the Crown. The question in debate is, therefore, not whether the local Legislature have power to alter a Royal Charter proceeding from the Royal grace and favour, but whether they have power to alter a Charter, the promulgation of which was expressly authorized by themselves, and which, without their authority, could not have been so promulgated.

Neither is King's College exclusively a Royal Endowment. For the General Assembly, first in 1823, and again in 1829, granted large funds for the support of it, and for the erection of the buildings in which the College is held. After the acceptance of such Grants, the Crown cannot claim the same unlimited rights as might perhaps have been asserted if the Royal bounty had been the only source of the Collegiate property. The Legislature and the Crown are, at least, Joint Founders, and as no Legislative Act on this (or indeed on any subject,) can be passed without the consent of the Crown, so can no Royal Grant, changing the basis of this Institution, be properly issued without the concurrence of the Legislative Council and Assembly. Between those Houses and the Crown a virtual, if not a formal, compact, must be held to result from the Acts, which they have thus already done in concert and concurrence with each other. In such a state of things, it would be at once impolitic and unjust to insist on, or even to propound extreme, and at best but questionable rights.

It follows, that if the Act transmitted to me for the Queen's assent were otherwise unobjectionable, Her Majesty would be advised to assent to it, without raising any objections to that form of proceeding. But it can hardly be said to be exempt from serious objections, since it is certain, that the changes introduced by it are highly offensive to one considerable class of Her Majesty's subjects in New Brunswick, and that the class so offended are precisely those for whose more especial advantage the College was originally founded. Even they, however, have most distinctly recorded their opinion that the Charter requires some great amendments, and that, in its present form, it has failed to produce any advantage commensurate with the expenditure incurred for its support. It has not, indeed, been merely unsuccesful; it has been productive of much positive evil; it has formed a monument but too impressive of the futility of a great project which had aimed at the highest public good, a monument dissuading and discouraging similar undertakings. However just may be the objections to the changes actually proposed in the Charter, it is therefore impossible to deny that numerous and great amendments of it are indispensable.

I have no hesitation in acknowledging my own inability to suggest what those amendments should be. Even if the College were to be established in England, for the education of young men for the highest pursuits of life amongst themselves, I should not scruple to avow the incapacity of Her Majesty's Executive Government to prescribe the right course of Academical instruction and discipline to be observed in it. To form a correct estimate of such questions, a far deeper familiarity with them is necessary than is to be acquired during a pupilage in early life at one of our Universities. The science of Education, especially in its higher walks, must be learnt like other sciences by patient study and long experience. All our Collegiate Institutions in England have been originally founded or progressively moulded by learned and scholastic men. We have no such Institution deriving its internal economy from an Act of Parliament. The failure of a College regulated by an Act of the Provincial Legislature is no just subject of surprise.

The great requisite in the present case, appears to be, that the alterations to be made should be maturely weighed and recommended by men possessing an intimate acquaintance both with the theory and the practice of educating in Religion, in Literature, and in Science, those youths who from their birth, their fortune, or their natural talents, are probably destined for the public service as Legislators, Divines, Jurists, or Physicians, or as Magistrates, or as Merchants on an extensive scale. To obtain such advice, it would be necessary that a Commission should be constituted, and that it should be armed with all powers requisite for conducting and defraying the expense of the necessary enquiries. It should be composed of men unanimous in the desire to promote public education amongst the wealthier classes of society on Christian principles. Their range of enquiry should be as unlimited as is the object itself. Yet there is happily one principle on which amidst all the discussions before me, a general agreement prevails, and by that principle therefore the Commissioners ought to be bound. It is that King's College should be open so far as its advantages, emoluments, and honors are concerned, to every denomination of christians, but that according to the original design, the public worship performed within its walls should be that of the Church of England, and that the Chair of Theology should be occupied by a Clerk in Holy Orders of that Church, of which of course therefore all Graduates in Divinity must be members. These reservations in favor of the Church of England are made in no spirit to which the members of any other Church could even plausibly object. They proceed on no claim of ascendancy or superiority. Their object is simply to retain for the Anglican Church the advantage actually enjoyed by every other body of Christians in New Brunswick, of having one place of public education in which young men may be trained up as Ministers of the Gospel.

On this head I perceive indeed but one question on which any doubt has been thrown:—It relates to the Religious test to be taken by Graduates in Divinity. The Act before me proposes to substitute for the tests taken at Oxford, a declaration of belief in the Holy Scriptures, and in the doctrine of the Trinity. Now, if it were proposed that Theological Degrees should be granted Christians of every denomination, I could understand the motive which might suggest such an innovation. But when it is agreed that the Graduates are to be Members of the Church of England, the imposition on them of a test at once so new and so indefinite, is recommended by no reason which I can either discover or conjecture. Whatever opinions may be entertained regarding the Oxford tests by those who dissent from the Church of England, it would seem entirely at variance with the spirit of Religious liberty to forbid the imposition of those tests by those and on those who concur in holding them sacred.

If the Council and Assembly will concur in providing for the appointments of such a Commission as I have suggested, and for defraying the necessary expenses of it, I trust that no insuperable difficulty would arise in the choice of competent Commissioners. Aided by their Report, a law might be framed either for altering the Constitution of the College in accordance with it, or for enabling the Crown to issue a Charter for that purpose. The whole of this question might thus be drawn from debate in a popular Assembly, to a more tranquil, and for this purpose, a more competent tribunal. Without the excitement of those feelings which must animate and occasionally discompose the deliberations of the Representative Branch of the Legislature, it would, I trust, be settled on such a