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## Quit-Rents in New Brunswick

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## QUIT-RENTS IN NEW BRUNSWICK

By JOSEPH E. HOWE

New Brunswick has been called a Loyalist and a loyal province. In colonial days its differences with the Colonial Office and with colonial officials were prosecuted, on the whole, with great moderation. The quit-rent question, probably, came the nearest to imperilling the usual excellent relations with the motherland.

Quit-rents have been a fruitful source of discord in British colonial history. Prof. Charles M. Andrews considers them a cause of the American Revolution. In pre-revolutionary days, they were imposed and collected, with more or less success, from Georgia to New York. In New England they were practically a dead letter, save perhaps at times in New Hampshire and what is now the state of Maine. They appeared in the land granting instructions to the early governors of Nova Scotia. Lapsing at the separation of the thirteen colonies from England, they continued in those remaining for over half a century.

The quit-rent was an English practice transplanted to America. In feudal England a villein owed various services and payments in kind to his lord. These were gradually exchanged or commuted for a fixed annual money payment, a change in process during and subsequent to the time of Edward III. The change was probably not due to but was hastened by the Black Death and the Peasants' Revolt. By this money payment the holder of land was quit or freed from other feudal obligations. Being an established feature of the English land system, this payment was naturally required in the English colonies in America.

The quit-rent charge in the colonies was never a large one. In Nova Scotia as elsewhere, it was usually but two shillings for every hundred acres. This was not usually required at the time of the grant, but after a term of years—two, three, five, and in many cases even ten. The longer allowance was extended as a special favor to the early New England settlers, to the Loyalists, and to disbanded officers and men of the army and navy. It was to be paid at midsummer day to the Receiver-General or to his deputy. There was but little land granting before the coming of the New Englanders in 1760 and the years following. A report<sup>1</sup> of the Receiver-General in 1768 shows that he had received £27.12.0½, while the sum due at the previous midsummer was placed at £123.11.8. His successors had even less success. When Governor Parr was writing about a new appointment in 1783,<sup>2</sup> he informed Lord North that no quit-rent had been collected since 1772. Thus the collection of this due met with little success in the days when the country north of the Bay of Fundy was still a part of Nova Scotia.

The land granting instructions<sup>3</sup> to Thomas Carleton, the first Governor of New Brunswick, were similar to those already in existence in Nova Scotia. Quit-rents, to the ordinary settler, and few could be classed as ordinary, were to be, "two shillings sterling for every hundred acres to commence at the expiration of Two Years from the Date of such Grant, and to be paid yearly and every year, or, in default of such payment the

<sup>1</sup> Public Archives of Canada: *N.S. State Papers*, A 82, pp. 194-196.

<sup>2</sup> Haliburton, *Nova Scotia*, p. 263.

<sup>3</sup> The Carleton Instructions of 1784 are printed in the *Collections of the N.B. Historical Society*, Number 6.

Grant to be void." To Loyalists and to reduced officers and men of the British land forces who had served in the Revolutionary war, special terms were given. They were to receive grants free of all fee or reward, with exemption from quit-rents for ten years. In all grants there was a clause providing for escheat or annulment for non-performance of the conditions, one of which was the neglect to pay these rents as they fell due.

For some years after 1784 we hear nothing of quit-rent collection in New Brunswick. Edward Winslow, one of the official class, asked for the position of Receiver-General in 1798, if the quit-rents were to be collected. Carleton, writing in regard to a revenue from the Crown lands, suggested them as a possibility. It would be dangerous to leave them longer, he wrote,<sup>4</sup> or the right to collect might be questioned. The Secretary of State having colonial matters in charge replied that the affair required more consideration than his present information afforded in regard to the tempers, sentiments, and expectations of the province.<sup>5</sup> Carleton then suggested the remission of all arrears and a definite time set to begin collection. No action, however, resulted from this correspondence.

New instructions,<sup>6</sup> prepared for Carleton in 1802, provided for the collection of the quit-rents with the aid of an act of the provincial legislature. Carleton represented<sup>7</sup> that it was doubtful if such an act could be obtained, and that collection had better be entirely under order and royal regulation. The Colonial Office modified the instructions, leaving the Lieutenant-Governor free to adopt any method he might think best. It was suggested from Downing Street that a cessation of land granting might well procure a suitable bill, if one were desired. Carleton replied<sup>8</sup> that his council and he considered a bill unnecessary and undesirable, that any request for one would be interpreted as a lack of legal authority. The modified instructions did not reach New Brunswick until the summer of 1803. They were designed to produce a revenue from the Crown lands. The quit-rent was more than doubled, being placed at one-half pence sterling per acre, to begin at the midsummer following the date of the grant. Another revenue feature was the payment of five shillings sterling for every fifty acres granted. This latter provision had sometimes been termed the purchase price.

The 1802 instructions were a failure from both settlement and revenue standpoints. Very little land was taken up under them,<sup>9</sup> although there had been a restriction upon land granting since 1790. The purchase price, which must be paid before the grant could issue, was doubtless the chief deterrent. The greatly increased quit-rent was not collected nor was there any attempt to collect it. The machinery to do so had not been provided. Carleton by this time had become hostile to them. In 1805, he suggested to the Colonial Secretary the advisability of dropping all conditions, including quit-rents, from the land grants.<sup>10</sup> They could never amount to much, he assured the Treasury;<sup>11</sup> they were not in use in the United States; and they "must discourage settlement." He believed that a man who settled on the wilderness land in New Brunswick earned his allotment by facing the difficulties. New instructions, providing for land grants on easier terms, were sent out in 1807. The "purchase price" was required only on amounts over 200 acres and the quit-rent was restored to the former rate,

<sup>4</sup> *N.B. Despatches*, Carleton to Portland, June 6, 1798.

<sup>5</sup> *N.B. Despatches*, Portland to Carleton, July 27, 1798.

<sup>6</sup> Copies of these and other early Instructions to N.B. Governors are at the Archives in Ottawa.

<sup>7</sup> Carleton to Hobart, *C. O. Transcripts for N.B.*, A 14, p. 191.

<sup>8</sup> *N.B. Despatches*, Carleton to Hobart, 6 Nov., 1802.

<sup>9</sup> 52,954 acres. From Attorney-General's report of April 13, 1833, in Assembly Journal of that year.

<sup>10</sup> *C. O. Transcripts*, N.B., A 15, pp. 286-288.

<sup>11</sup> *C. O. Transcripts*, N.B., A 16, p. 364.

two shillings for every hundred acres. It was to be collected from two years after the date of the grant, instead of immediately. Under these terms there was a great increase in land granting. But the quit-rents were as yet neither collected nor demanded. Lists of the grants issued, showing the amount of the rents liable, were regularly forwarded to the Colonial Secretary. The perusal of these may have prompted the despatch from Lord Bathurst in 1816,<sup>12</sup> asking Lieut.-Governor Smyth for a report on the quit-rents actually collected during the year preceding and directing collection of all as they fell due. As before, however, no steps were taken to collect.

A new land grant policy was initiated in British North America in 1827. The existing "Free Grants System" was supplemented and finally displaced by a "Sales System." Due to a misunderstanding, it was introduced prematurely in Upper Canada in 1826. The instructions for New Brunswick were dated March 1, 1827, and were published in the province in the ensuing May.

Under the sales system real quit-rents were dropped, though for some years a merely nominal or peppercorn quit-rent appeared in the grant forms. The lands were to be sold at public auction for cash, or payable in four annual instalments, the first at the time of purchase. A special provision was to be made for the poor settler. He might acquire land up to 200 acres, at any time, by agreeing to pay what was called a quit rent of 5 per cent of the upset price.<sup>13</sup> When able, the poor settler was expected to pay the whole price, and then he would escape the annual 5 per cent and receive the title of his holding. Though called a quit-rent, this payment was more like the interest on a debt. It did not work well. People quite able to pay posed as poor settlers, many neglecting to pay more than the initial 5 per cent required before possession. Some cut the timber from their lots and either abandoned them or practically became squatters. In a few years, this so-called—mis-called—quit-rent feature was cancelled.

The instructions of 1827 initiating the sales system<sup>14</sup> were sent to New Brunswick in the form of an ordinary despatch or letter from the Colonial Secretary, not as an order under the royal sign manual. The form, later, became important. Several clauses dealt with the collection and redemption of the long neglected quit-rents. These clauses read as follows:—

"16th.—You will give Public Notice that you have received Instructions to apply to all persons holding Lands from the Crown, in perpetuity upon the payment of Quit Rents, as well as to all persons holding Lands upon Lease for a term of years, for the payment of the Rents which may be due from them respectively, to commence from the first of January, 1827, and you will at any time within seven years from the date hereof, sell to the proprietor at twenty years' purchase, any Lands held in free and common Soccage (but to no other person whatever) any Quit Rent which may be payable by them respectively, provided that all arrears up to the end of the year preceding the time of Purchase be previously paid."

"17th.—If these Quit Rents are not purchased by the Proprietor within the period of seven years from the date hereof, further Instructions will be given in regard to the sale by Auction or otherwise, as may then be deemed expedient."

These instructions, coming over forty years after the erection of the province, was the first intimation to the landowner that a new and to him unexpected tax was to be required. That some alarm was evidenced or expected may be inferred from a long article in the New Brunswick *Royal*

<sup>12</sup> *C. O. Transcripts, N.B.*, A 25, p. 14.

<sup>13</sup> The minimum price that would be accepted.

<sup>14</sup> These are printed in the appendix of the *N.B. Assembly Journal* for 1833.

*Gazette*.<sup>15</sup> This article appeared in the issue of May 29, 1827, soon after the instructions had been made public, and it was a strong and spirited defense of quit-rents. Some of the arguments advanced were: They had been inserted in every grant as one of the conditions; they were formerly collected in Nova Scotia; they had always been collected in Jamaica; they had been exacted in Prince Edward Island; they were part of a general plan applying to British North America and parts of Australia; they were to be spent in the province where collected; they were calculated to force out non-resident landowners. The smallness of the sum was considered, but four shillings a year for the holder of a 200-acre estate—"Let its imposition keep him," the article ran, "but one afternoon from tipping at the neighbouring tavern, and he will more than save the money." Dealing with the view that the claim had expired from having lain dormant so long, the writer broke out into classic phrase: "Do not these violent councillors know that it is a maxim of British law, that the right of the king never can die—'nullum tempus occurrit regi'—that in this case the right is reserved in plain terms, 'litteris scriptis,' conceded by the party in the acceptance of the grant . . . . . This discontinuance is not a ground for cavil but for gratitude,—cause rather for thanks than of complaint. It was a boon conferred by His Majesty."

A special notice in regard to the collection of the quit-rents and the opportunity to purchase or redeem them outright was printed in the *Royal Gazette*. It will be noted that they were to be collected as they fell due beginning with 1827 and that former payments were forgiven. A Receiver of quit-rents was also appointed. Actual collection, however, was halted for five years longer. The new system had not been at the wish of either the people or the Government of New Brunswick, and was unpopular with both. It had been foisted upon them. The Commissioner of Crown Lands, formerly a clerk in the Colonial Office, had also, in the view of the old Loyalist families, been foisted upon the province. When Sir Howard Douglas, the Lieutenant-Governor, required the provincial law officers to prepare certain forms, one a quit-rent redemption receipt, for the use of the Commissioner, Thomas Baillie, legal difficulties were raised.<sup>16</sup> It was doubtful if the 1827 instructions, in the form of a letter from the Colonial Secretary, could give the powers it purported to. Such great authority, they felt, could only come from the Crown, under the sign manual, as had been the custom. And, grants prior to 1803 had directed the payment of quit-rents to the Receiver-General, and it was a question if payment could legally be made to any other official. The Crown Lands, at the time, were under the management of the Commissioner of Crown Lands and Forests, and the 1827 instructions had been sent to him. Douglas advised the Colonial Office of the great unwillingness of the people to pay the rent, and stated that he did not consider it expedient to take further action until the legal difficulties were resolved.<sup>16a</sup> The Colonial Secretary expressed his surprise<sup>17</sup> and intimated that he could not authorize Douglas to depart from the instructions. He could see no just cause for dissatisfaction with the quit-rents. Since they had been collected in Prince Edward Island it would be a grievance if they were to be taken only there. The payments were on a very moderate scale and were redeemable on easy terms. Douglas<sup>18</sup> courteously but firmly reaffirmed his position, insisting that the landowners would not make payment until the legal points were

<sup>15</sup> Issue of May 29, 1827, republished from the *Novascotian*.

<sup>16</sup> *N.B. Despatches*, Douglas to Huskisson, March 17, 1828.

<sup>16a</sup> *Ibid.*

<sup>17</sup> *N.B. Despatches*, Huskisson to Douglas, May 8, 1828.

<sup>18</sup> *N.B. Despatches*, Douglas to Murray, Oct. 8, 1828.

settled, and even then there would be a great unwillingness to pay them to the Commissioner of Crown Lands.

The quit-rent question now rested until 1829. Late in this year the Colonial Secretary, Sir George Murray, suggested a new solution. He proposed to the Assemblies of the various provinces that they buy or commute these payments for an annual grant. The sum suggested for New Brunswick was £1,500, this to be spent in the province as His Majesty might direct.<sup>19</sup> The Assembly did not accept but addressed the Crown, praying that the claim might be cancelled outright.<sup>20</sup>

"The House of Assembly, while they acknowledge the legal claim vested in Your Majesty by the reservation made in the various grants to Your Majesty's loyal subjects, of Quit Rents, beg leave most humbly to represent to Your Majesty, that in consequence of no demands having been heretofore made upon this Colony on account of such claims, it was universally believed that the reservations were made for no other purpose than as a proper acknowledgement of the Sovereignty of Your Majesty to the lands granted, and that therefore but few exceptions for dues to Your Majesty, have ever been made in the numerous transfers of property which have taken place in the Province since its settlement."

"Without adverting to the difficulty and almost the impossibility of enforcing a collection of the Quit-Rents due Your Majesty in an infant colony where all are poor; the great dissatisfaction that it would create among all classes of Your Majesty's subjects, impressed as they were with a firm belief . . . that no demand ever would be made, and the immense expences that would be incurred by the Crown in attempting to make any collection, the House of Assembly most earnestly implore Your Majesty . . . to relieve Your Majesty's subjects in this Province from the operation of the Quit Rents. . . ."

This address was passed and forwarded to Downing Street in 1830, and no answer has been found. Late in 1831, Sir Archibald Campbell assumed the administration of the province, and once more the question was reopened. Sir Archibald stated as his belief that collection was feasible<sup>21</sup> and recommended that back payments be cancelled. Baillie, then in England, assured Lord Goderich (Colonial Secretary) that there would be no difficulty, but that commutation at a reasonable figure would be the best possible plan. Instructions were sent,<sup>22</sup> this time in the customary form under the sign manual. Authority was given to sell the rents, before June 24, 1836 to the proprietor of the land; after that date, to anyone. A Board of Commissioners was appointed to look after their sale and collection and it directed the monies to be paid to the Receiver-General. The machinery was now provided and the proper notices appeared in the *Royal Gazette* and other papers in February, 1832. At last, over fifty years after they were first nominally due, and five years after the first official and formal instruction to collect, this long delayed claim was about to be enforced. For the ensuing three years the quit-rent question was to be the most engrossing one in New Brunswick politics.

When it was evident that collection was near, signs of discontent increased. The *Mirimichi Gleaner*, which claimed to be the first paper to oppose the "odious and obnoxious tax," prophesied<sup>23</sup> that the collection would "raise more ill blood . . . towards the Government than any other measure that could be adopted." Midsummer of 1832 found few ready to meet the payments expected. In December the Attorney-General began to use the legal machinery. The procedure was to hold an inquiry in the Court of Chancery. After establishing that the quit-rent, the pay-

<sup>19</sup> *N.B. Despatches*, Murray to Campbell, Sept. 2, 1829. Printed in *N.B. Assembly Journal* for 1830 under date Jan. 22.

<sup>20</sup> This Address is printed in the *N.B. Ass. Journal* for 1830, under the date Feb. 27.

<sup>21</sup> *N.B. Despatches*, Campbell to Goderich, Oct. 6, 1831.

<sup>22</sup> *N.B. Despatches*, Goderich to Campbell, Dec. 10, 1831.

<sup>23</sup> Issue of May 29, 1832. This paper, the *St. John Courier*, and other papers of the period are at the St. John Public Library.

ment of which was one of the conditions in the grant, had been refused, the grant might be declared escheated. This increased the excitement. In one inquiry, a Fredericton jury tried to bring in a special verdict<sup>24</sup> to the effect that though the letter of the grant had not, yet the true intention of the same had been performed. At the end of the year Sir Archibald reported<sup>25</sup> over £635 currency collected, and that "demagogues were not found wanting to influence the public mind against the measure."

In 1833 the Assembly was engaged in a larger, if less contentious matter, an effort to acquire control of all the Crown revenues in the province. It requested a suspension of proceedings until it could address and receive a reply from the Crown. Sir Archibald would not accede unless the Assembly would pay the amount due for 1833 and also the arrears for the year preceding. The House spent several days in heated debate. A few members, notably Charles Simonds, were inclined to question the right of the Crown, but the great majority held quite different views. The prevailing opinion was that the quit-rents were legal, but to collect was both impolitic and unnecessary. The tendency of certain members and of the papers of the province to oppose their exaction on constitutional grounds was regretted, and discouraged as calculated to lead to litigation and even to rebellion. The attitude of the Assembly on the matter was stated in one of eight resolutions voicing the grievances of the day. The one in question read: "Resolved . . . that the recent determination of His Majesty's Government to enforce the payment of the Quit Rents is deeply to be regretted, as their collection will cause great confusion, litigation, distress and dissatisfaction throughout the country, without producing any adequate benefit to His Majesty or the Province." These eight resolutions were embodied in an address to the Crown, in which the Assembly prayed for the control and management of the Crown lands and revenues in return for a civil list. A deputation of two from the House, Charles Simonds and Edward B. Chandler, was chosen to present this to the Colonial Secretary.<sup>26</sup>

This deputation was well received, and it was proposed that His Majesty's government would surrender the net proceeds of the casual and territorial revenues to the New Brunswick legislature in return for an annual civil list of £14,000. This involved the relinquishment of the quit-rents. A despatch dated 30 Sept., 1833, carried the news officially to Sir Archibald Campbell. This despatch and the deputation report were submitted to the New Brunswick Assembly at the next session, in 1834. Though it was felt that the civil list was unduly high, the proposal was accepted, and a bill ordered to carry it into effect. On the day following, another and later despatch,<sup>27</sup> or rather an extract, was laid before the House, explaining that the payments from the New Brunswick Land Company were not to be included in the revenue offered to the Assembly. This was a serious matter as the company had purchased a tract of half a million acres of Crown land and a large sum of money was involved. The Assembly felt that a Colonial Secretary had violated a solemn agreement. The civil list bill was dropped and another address forwarded to England asking that the September despatch be considered definitive.

During the session of 1833, the Government of New Brunswick had pushed quit-rent collection, doubtless to induce the Assembly to come to terms. The day following the passage of the eight resolutions, legal pro-

<sup>24</sup> The *St. John Courier* of Jan. 26, 1833.

<sup>25</sup> *N.B. Despatches*, Campbell to Goderich, Jan. 5, 1833.

<sup>26</sup> E. G. Stanley.

<sup>27</sup> *N.B. Despatches*, Stanley to Campbell, Jan. 4, 1834.

ceedings against delinquents were resumed. In June, the Attorney-General published a list of the lots escheated and warned the occupiers to vacate them. During the months of June and July, over £600 was obtained. Late in July, however, collection was halted once more. A despatch from the Colonial Office, dated June 1, directed a cessation of collection for the time being on the ground that it had been discontinued in Nova Scotia. The collection, though threatened later, was never resumed.

The failure of the civil list in 1834 brought the quit-rent question to the fore once more. In December, the Colonial Secretary (Aberdeen) directed the two Campbells, Sir Archibald in New Brunswick and Sir Colin in Nova Scotia, to concert measures for renewed action. In its session early in 1835 the New Brunswick Assembly, after an acrimonious debate, refused commutation by a vote of 9 to 21. Their position was weakened, however, by the passage of such a measure in Nova Scotia. In a summer session, made necessary by the loss of the supply bill in spring, a bill offering £1,200 per annum in lieu of the quit-rents, this sum to be spent on the roads and bridges, was passed in Assembly and gladly accepted in England. Though this sum was less than that proposed by Sir George Murray in 1829, it was on the basis of the Nova Scotia settlement, about half the gross rental. Sir Archibald advised<sup>28</sup> acceptance, for the sake of the tranquillity of the province, and reported great joy on the passage of the bill there. The people had celebrated the event with bonfires.

The total amount of quit-rents paid in New Brunswick, including redemptions, was £1,413.3.5 $\frac{1}{4}$ .<sup>29</sup> The cost of collection was very large, nearly as much as the sum obtained.<sup>30</sup> This sum was returned to the payers at the request of Downing Street. Thirty-five lots, aggregating 7,157 acres, had been escheated, but no one was ever actually dispossessed. Thus the hardships inflicted were potential rather than actual. The Colonial Office, in this as in many another instance, was like the well known dog whose "bark was worse than his bite."

It seems remarkable that so unpopular a payment should have been required. Experience with it in the thirteen revolted colonies might have been a warning. It might have been established, had it been required from the beginning, or even when Carleton first suggested it. Against this view is the poor showing in the early days of settlement in Nova Scotia. There is no doubt that the long immunity in New Brunswick had led land-owners to regard it as a mere formality. Its unpopularity was not due to its amount, only four shillings on a 200-acre farm. It really was expensive, however, because it was payable at the seat of government. This, considering the difficulties of travel then, involved great loss of time and far more expense than the payment itself. It was a direct tax, an unusual and unpopular kind in those days. It was to be paid in specie and this was scarce, almost non-existent in some of the more remote farming communities. It could produce but little revenue, £2,500 annually being the gross expected, and the people felt that it served to augment the remuneration of the already too well-paid official class. The commutation act was but a Pyrrhic victory for the Colonial Office, the condition attached preventing the £1,200 from being used for the New Brunswick civil list. And, two years later, when the Crown revenues were surrendered to the Assembly, the payment of the £1,200 became unnecessary.

<sup>28</sup> *N.B. Despatches*, Campbell to Glenelg, 28 June, 1835.

<sup>29</sup> *N.B. Despatches*, Campbell to Glenelg, 25 Jan., 1836.

<sup>30</sup> *N.B. Despatches*, Glenelg to Campbell, 3 April, 1836. Campbell had recommended it in his despatch of 25 Jan., 1836.