

## **The Origins of the Land Question on Prince Edward Island, 1767-1805**

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## The Origins of the Land Question on Prince Edward Island, 1767-1805

The early history of the Island of St. John (or Prince Edward Island as it was called after 1798) retains a certain potential fascination for students of British North America, not least because the land-holding and administrative arrangements on the Island represented an experiment on the part of the mother country never replicated in other British colonies founded after 1750. As is well known, the land of the Island of St. John was totally 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 through the payment of substantial quitrents to the British Crown.<sup>1</sup> 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 completely alienated in advance of the establishment of any formal government, a relatively uncommon practice in British colonial policy. In marked contrast to Nova Scotia, which had cost the Crown over £600,000 to establish, the Island was intended to be completely self-financing from the outset. The private proprietors were required 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 hundred acres for good lots to two shillings per hundred acres for poor ones.<sup>2</sup> The obvious expectation was that the profits of settlement would provide the proprietors with revenue to pay the quitrents, and while it was not specified in the grants, the general concept was that the money would come from rental of lands to tenants/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 born entirely by the proprietors, most of whom had signed a pledge to meet this obligation.<sup>3</sup>

These intentions, commitments, and promises were never fulfilled. The proprietors did not produce the required number of settlers and many lots remained almost totally uninhabited. Quitrents to the Crown soon fell badly

1 The proceedings surrounding the lottery may be followed in documents reprinted in *Public Archives of Canada Sessional Paper Number 18* (Ottawa, 1906), pp. 3-22.

2 *Ibid.*, pp. 7-9.

3 "Court of St. James, 28 June 1769", Colonial Office [CO] 226/1, pp. 1-11, Public Record Office, London.

into arrears and the cost of governing the Island had to be assumed by the Crown during the War of the American Revolution. From the beginning of actual settlement, criticism of the proprietors was endemic, particularly on the Island itself, and the issue of escheat (the revocation of the original grants by the Crown for non-fulfillment of terms) ultimately became a central component of intense Island political and social conflict. By the mid-nineteenth century, conflict on the Island between the large proprietors and the tenants had become bitter and occasionally violent. Each side in this dispute had its own version of the early history of the Island, and subsequent historical accounts of the early days have invariably been strongly coloured by the partisan debates of the nineteenth century, which tended to assume that the land question on Prince Edward Island had remained virtually unaltered from the first granting of the Island in 1767.<sup>4</sup> This assumption was particularly powerful among the proponents of land reform who tended to view the previous history of the Island as a consistent one with clear-cut issues, and certainly clear-cut villains and heroes. The “bad guys” were obviously the proprietors, most of whom had remained inactive absentees since the 1767 lottery, and the British government which had consistently supported the property rights of the initial grantees and their heirs despite valiant efforts by the “good guys” — a series of Island administrations beginning with that of Walter Patterson, actively supported by the popularly-elected House of Assembly — to reform the landholding system.

The concern of this paper is not to deal with the issues of the land question as they ultimately emerged, but to raise the entire question of historical continuity and the prevailing assumption that the land question was the same from the outset of British settlement. The thesis is relatively simple and straightforward. During the first two gubernatorial administrations on the Island, that of Walter

4 For contemporary arguments, see Sir C.P. Lucas, ed., *Lord Durham's Report on the Affairs of British North America* (Oxford, 1912), II, pp. 198 ff.; George 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); *Remarks upon that Portion of the Earl of Durham's Report Relating to Prince Edward Island, by a Proprietor* (London, 1839); “Report of the Commissioners”, 1861, in *Prince Edward Island Assembly Journals, 1862*, Appendix O. The major historical works about the Island include Duncan Campbell, *History of Prince Edward Island* (Charlottetown, 1875); A.B. Warburton, *A History of Prince Edward Island* (St. John, N.B. 1923); Frank MacKinnon, *The Government of Prince Edward Island* (Toronto, 1951), especially pp. 105-19; Andrew Hill Clark, *Three Centuries and the Island: A Historical Geography of Settlement and Agriculture in Prince Edward Island, Canada* (Toronto, 1959); F.W.P. Bolger, ed., *Canada's Smallest Province: A History of P.E.I.* (Charlottetown, 1973), especially pp. 37-134. The best published study of the popular escheat movement is I.R. Robertson, “Highlanders, Irishmen, and the Land Question in Nineteenth-Century Prince Edward Island” in L.M. Cullen and T.C. Smout, eds., *Comparative Aspects of Scottish and Irish Economic and Social History 1600-1900* (Edinburgh, n.d., but 1977), pp. 227-40. I am indebted for discussions over the years with Robertson, Harry Holman, and Harry Baglole for much of the analysis which follows, especially to the last for letting me examine an unpublished paper with a title very similar to that of this paper.

Patterson from 1770 to 1787 and of Edmund Fanning from 1787 to 1805, the land question was not really a popular issue at all, but one created by contending factions of elites (chiefly officials and would-be officials) for their own political, economic, and social advantage. Their ambition was, as Captain John MacDonald put it to the Earl of Selkirk in 1810, one of taking down “the actual Proprietors and of placing themselves in their stead”.<sup>5</sup> The land question during these administrations did not revolve around the form of tenure so much as over who were to be the Island’s large land-holders. Although the rallying cry changed from “distrain” to “escheat”, the principal confrontation was between the absentee proprietors (generally supported by the British government) and resident proprietors, most of whom were leading officials of the Island government.

The major question of who were to be the holders of those 66 20,000 acres lots was based upon three closely-related ambitions shared by nearly all leading Island figures during the period 1770-1805: the desire for at least effective control and preferably ownership of the Island’s land and natural resources; the demand for remunerative public employment; and the hope for an enhanced social status. A truism of the development of new settlement colonies is that those who people them seek to better themselves economically and socially. Like most wilderness settlements, early Prince Edward Island attracted men on the make, many of them prepared to devote much energy to improving their position in life. The Island inevitably drew its fair share of individuals whose previous careers had been marked mainly by an absence of success — scapegrace younger sons of gentry families in England, Ireland and Scotland; lower-level military officers whose careers had become arrested for one reason or another; professional men often forced to leave their previous employment under a cloud; bankrupt or near-bankrupt merchants — who saw the Island as a chance to start afresh. But in several critical respects the Island was markedly different from other settlement colonies in British North America.

The assumptions with which the Island’s development had been set under way were far more overtly class-conscious than in most other places on the American continent. Although Lord Egmont’s proposals for replicating a feudal society on the Island had been ostensibly rejected by the British government, much of the personnel of the Island’s first government and many of the implicit principles upon which the Island was being organized were closely connected to Egmont’s scheme.<sup>6</sup> Both the British government and the proprietors assumed that the Island would have a landed interest of “gentlemen”, dominating a population composed principally of tenant farmers, and the Island’s geographical isolation

5 John MacDonald to Selkirk, 23 April 1810, Selkirk Papers, vol. 56, pp. 14981-15005. Public Archives of Canada [PAC].

6 See my “British Colonial Policy and the Island of St. John, 1763-1767”, *Acadiensis*, IX (Autumn 1979), pp. 1-18.

encouraged a self-deceiving and exalted view of one's own importance, while failing to provide an economic base upon which such pretensions could be truly founded. The Island in its early years was desperately short of both cash and credit, and in order to maintain the lifestyle of a gentleman — the model for the Island's elite — it was absolutely essential to acquire some sort of dependable income. As Governor Patterson put it in 1773 when complaining about the failure of the payment of official salaries, the officers of the Island were deprived by their status of the "advantages of peasants" and were "obliged to support the Appearances of Gentlemen without the means".<sup>7</sup> Father James MacDonald wrote a few years later that "it is impossible for any man to live in this part of the world without some employment or other; unless a man should have a yearly income".<sup>8</sup> And, he added, only three gentlemen on the Island enjoyed one.

Virtually the only place one could turn for a regular income in an isolated wilderness settlement was to the government, and thus the press for places among those with social pretensions was intense, exacerbated naturally by the relatively small number of decent appointments and the relatively large number of aspiring candidates. Even if one acquired a place with a salary, there was the problem of actually receiving that salary in spendable form, for salaries (particularly in the first years) had to come from revenue, and the only major source of revenue before 1777 was the quitrents. The failure of the proprietors to provide the necessary funds for the payment of official salaries inevitably led to resentment on the part of the Island's officers, as well as to pressure exerted upon the proprietors either to fulfill their commitments or to turn the lands over to others.

To the official resentment over the inadequacy of the quitrent collection to finance the Island's officers was added yet another distinctive feature of the Island's early development: the fact that all the land had been allocated in advance of settlement. In most colonies, ambitious first-owners could expect to acquire large quantities of underdeveloped land at minimal cost, and land, it must be remembered, was both the most promising form of potential wealth and the visible mark of status in all colonial societies. In theory a divergence between first-comers and landholders ought not to have arisen on the Island, for the intention of the British government in allocating the land in 1767 had been that most of the original grantees would move to the Island in order to develop their holdings. As residents they would administer the government. Indeed, most of the first official appointments were made to proprietors. Had the original proprietors become residents and political leaders, most of the subsequent conflict over landholding during the first decades of settlement would never have occurred. What did occur was the extraordinarily rapid emergence of an

7 Walter Patterson to the Earl of Dartmouth, 17 February 1773, CO 226/5, pp. 103-10.

8 James MacDonald to George Hay, 4 November 1776, Blairs Letters, Scottish Catholic Archives, Edinburgh.

officeholding group on the Island who were not proprietors, who resented the proprietors for their failure to provide financially for the Island's political establishment, and who understandably thought that as Island residents *they* should be its principal landholders.

The quest for land, place, and social status under peculiar conditions thus set the stage for the intense political conflicts of the Island's early years. From the outset the Island had more place seekers than places, a distinct shortage of alternate routes to success than through public involvement leading to public emolument, and most important of all, the curious situation of an absence of wilderness land to be aggrandized by the ambitious in a country totally unsettled and underdeveloped. When one adds the hothouse environment of a tiny elite community centred in Charlottetown, where the leading inhabitants soon intermarried and everyone knew everybody else's business, political conflict and factionalization was bound to be not only inevitable but fierce. Moreover, it was bound to turn, in the last analysis, around the issue of land. The peculiar conditions of the Island produced a circular effect upon its development. The Island's officials and leading citizens bitterly resented the proprietors for their failure to fulfill the terms of their grants, at the same time that their own economic and social needs led to a rapacious devouring of any capital invested by a proprietor seeking to comply with the conditions.<sup>9</sup> By the beginning of the nineteenth century, the experiences of a number of proprietors who had attempted to be active on the Island had graphically demonstrated the perils of involvement and investment. The wisest Island proprietor was he who did nothing and hoped his holdings would appreciate in value.

At the same time that the proprietors were being attacked by the officeholders, the documentable rapacity of the Island's officials vis-a-vis the proprietors was one of the principal factors behind the refusal of the British government to penalize the proprietors for their failures. Much was and still is made of the connections into government enjoyed by the absentees, but one of the main values of those connections was to assure that the authorities in London bothered to find out what was going on in the Gulf of St. Lawrence. The British government was not likely to attack private property, but the proprietors did not have to invent arguments to defend it; the behaviour of the Island's office-holders spoke for itself. The amount of time the Colonial Office and the Privy Council spent upon investigations into the events on the Island of St. John/Prince Edward Island between 1770 and 1805 bore absolutely no relationship to the size or importance of the colony, and invariably what the succession of lengthy hearings held in London demonstrated was the bad conduct of the Island's officials. Whenever distraint or escheat was mentioned or discussed in Britain, the proprietors were able to point to what had happened whenever one

9 See my "Sir James Montgomery and Prince Edward Island, 1767-1803", *Acadiensis*, VIII (Spring 1978), pp. 76-102.

of their number had actually attempted to honour his commitments. In this limited sense there is a true continuity between the early disputes over land and the land question of the nineteenth century. The proprietorial system survived well beyond any legitimate claim it could make to existence largely because its first enemies and critics had been so obviously self-seeking and rapacious (not to mention clumsy) in their attacks upon it. Had the disputes of the first years genuinely been matters of principle or genuinely revolved around the later issues of the form of tenure, the landholding system of Prince Edward Island might have been reformed far earlier and much more justly.

The land question on the Island from 1767 to 1805 did not emerge full-blown at the outset, and only gradually developed along lines which have any relationship with the later period. The first phase, from the initial allocation of the lots until 1780, was one of experimentation, rapid changes in the administrative arrangements for the Island, and substantial dislocation brought about by the warfare of the American rebellion. Uncertainty was the key in this initial period. Although the officers on the Island attempted to put pressure upon the proprietors to fulfill their obligations, their major concern was with their own salaries, which before 1777 could be paid only from the quitrent collections. The second phase, beginning in 1780 and lasting until the mid-1790s, was a period of blatant local land grabbing. In terms of the proprietorial grants the catchword was "distrain", the legal procedure so clumsily employed by the officers in 1781 to bring about a major transfer of land from absentee proprietors to resident ones (i.e., themselves). This action led to Walter Patterson's audacious attempts to defy both the proprietors and the British authorities over the transfers, a policy which brought Island development to a halt in a decade of peace when more could have been expected. Patterson's actions were the critical turning point in the early history of the land question (and arguably of the Island itself), because they effectively prevented any resumption of normal Island progress within the existing landholding arrangements without proposing any constructive alternative.

Not until the mid-1790s did the Island begin to recover from the Patterson ruckus, for his successor Edmund Fanning was forced to defend his behaviour (and that of his leading colleagues) against charges brought before the Privy Council in 1792 by proprietorial supporters of Patterson. The final period, from 1796 to 1805, saw the gradual consolidation of the land question and its many ramifications into the critical Island political issue — especially at election time — and the emergence of escheat as a preferable slogan to distrain. Yet one need not be overly cynical to recognize that there was more rhetoric than substance behind the early escheat movement, and that its leaders had merely found less public and obvious ways of advancing their landholding ambitions on the Island. Significantly enough, the land reformers under Fanning became the pro-proprietorial party under DesBarres, fending off a new thrust by a faction of recent arrivals and resident outsiders who were organized into the so-called

“Loyal Electors”. But while the land question underwent many permutations in the first forty years of Island development under the British, it was in 1805 — and beyond — one debated by the Island’s elite for their own purposes rather than a genuinely grass-roots issue.

In the first phase emphasis must be placed upon experimentation and rapid shifts in administrative arrangements. It is clear that the proprietors pressed for a separate government in 1769 to keep the rapacious Nova Scotians out, and that many of them expected to be able gradually to ease the new colony onto the British civil list. Solemn promises to finance the Island’s establishment solely from the quitrents and never to seek government assistance were not to be taken entirely seriously, as the proposed budget which the proprietors advanced in 1769 plainly demonstrates, since it included no provisions for any public improvements whatsoever.<sup>10</sup> Some proprietors may genuinely have expected that the vast economic potential of the Island as reported by Samuel Holland would make rapid settlement possible, leading to self-financing with an Island assembly voting the necessary funds for local improvements. At best, one suspects, the proprietors hoped for settlement and self-financing simultaneously. A flourishing Island providing its own funds would encourage the British to take over most of the proprietorial obligations. In 1777, of course, the British government did place the Island’s political establishment on the civil list, and this action ought to have contributed to a British re-evaluation of the role of proprietors at the end of the American War. That it did not was the result of the impetuosity, impatience, and stubbornness of the Island factions.

Because the quitrents had to supply official salaries before 1777, and could do so only if regularly paid and efficiently collected, it is not surprising that the governor and his council (who were the very officials looking for the money) became very concerned over quitrent arrears from a very early stage. In 1771 the first quitrent legislation was adopted on the Island by the governor and council, providing a model which served as the basis for subsequent legislation well into the 1780s. Under this ordinance the lots in arrears of quitrent could be distrained by Island judicial procedure and sold on the Island.<sup>11</sup> The British government, however, refused to regard ordinances passed only by governor and council as having any legal force, and given the relatively inconsequential nature of other early ordinances, it would hardly be far-fetched to see the immediate Island response — to embody an assembly as quickly as possible — as mainly connected to the quitrent problem. In any event, an assembly was called in 1773, although Patterson himself acknowledged that he was hard-pressed to find enough “respectable” citizens to sit in it.<sup>12</sup> One of the assembly’s first actions

10 “Court of St. James, 28 June 1769”. CO 226/1, pp. 1-11.

11 “An Ordinance and Act of Council for the effectual recovery of certain of His Majesty’s Quit Rents in the Island of Saint John”, CO 225/4, pp. 161-5.

12 Patterson to Dartmouth, 17 February 1773, CO 226/5, pp. 87-9.



was to readopt the 1771 quitrent ordinance, and with some minor revisions in 1774, it was given the royal assent two years later. The Board of Trade, which vetted colonial legislation at this time, curiously failed to recognize the many disadvantages to those not resident upon the Island in the procedures for distraint and sale.<sup>13</sup>

Whatever the real intentions of the proprietors toward settlement and quitrents, the coming of the American Revolution disrupted any orderly progress on either front. Obviously settlement by rebellious Americans could not be encouraged, and the quasi-legal immigration of Scots and Irish which had been the main source of population was halted for the duration. Proprietors in Britain quickly put the Island out of their minds, rousing themselves only for a successful petition to place the Island's establishment upon the civil list.<sup>14</sup> This accomplished, they sat back to await the resolution of Britain's American problems. Meanwhile, those who remained in residence on the Island, struggled to survive. The local breakthrough came when Phillips Callbeck, acting governor from 1775 to 1779 while Patterson was in England, discovered the ease with which both the government and the proprietors could be exploited, thanks to the isolation of the Island and the confusion of the war.<sup>15</sup> This lesson would not be lost upon Walter Patterson when he returned to the Island in 1780.

Patterson's return in June of 1780 can be taken as the beginning of the second phase of the land question, in which land grabbing was naked and clumsy. Curiously enough, the first serious efforts in this direction were opposed by Patterson, when Lieutenant Governor Thomas Desbrisay and his fellow councillors took advantage of Patterson's absence in Halifax to strip the royalty of Charlottetown clean of desirable town and pasture lots, chiefly by granting them to themselves and garrison soldiers from whom the land was quickly purchased. Patterson was angered by this effort, although Desbrisay expostulated to the Colonial Secretary, "for Gods Sake what business is it of Mr. Paterson's if I procure honestly other people's Grants of Land to make a livelihood for my dear Children!"<sup>16</sup> Only a few days after Patterson exposed the culprits, the council decided to implement a treasury minute of 1776 authorizing legal action against delinquent proprietors based on the 1774 legislation, although that minute had obviously been prepared before anyone knew that the war with the Americans would last so long.<sup>17</sup> It is difficult to acquit Patterson of some forward planning in this action, since he had two months earlier (and before the Charlottetown lots business) appointed his brother-in-law as

13 "Report of Richard Jackson, 23 March 1774", CO 226/1 pp. 175-81.

14 Petition of Proprietors of St. John's Island to the King in Council, CO 226/1, pp. 207-14.

15 For Callbeck, see the sketch by Harry Holman in *Dictionary of Canadian Biography*, IV (Toronto, 1979), pp. 128-9.

16 Thomas Desbrisay to Lord George Germain, 23 November 1780, CO 226/7, pp. 219-23.

17 Executive Council Minutes, 26 November 1780, CO 229/1, p. 185.

Receiver of Quitrents and his private secretary as Deputy Receiver. Although it can never be proved, Patterson and Callbeck had probably made a deal shortly after the governor's return to the Island, in which Patterson promised not to examine too closely into Callbeck's wartime financial dealings with the British government and the Attorney General agreed to show Patterson how policy could be managed to the governor's advantage. In any event, it is difficult to isolate the critical point in the long fiasco which ensued, for everything seemed to follow cumulatively from the decision to auction (quite illegally) a number of proprietorial lots in November of 1781, a sale in which Patterson was virtually the only purchaser. The council had failed to allow time to notify the proprietors, and in the end had distrained most of the Island's land in the local Supreme Court without bothering to observe the terms of the legislation.<sup>18</sup> The auction was attended only by a small cadre of Island officials, for it was publicized only on the Island if at all, and of the 220,000 acres sold, Patterson (who was pointedly not present) ended up with 170,000 acres, bought by his private secretary in his own name and those of Irish friends.<sup>19</sup> Naturally the proprietors complained, and without realizing the extent of improper procedure or gubernatorial self-interest, the British government in 1783 attempted to reverse the sales as impolitic. Lord North sent a revised quitrent act to Patterson with instructions to place it before his assembly and an implicit order to see it passed.<sup>20</sup>

The refusal of Patterson to place the 1783 draft bill before the assembly — he suppressed it for nearly a year — was probably the critical step in the second phase. Indeed, it could well be argued that this action was the real turning point in the Island's history, for the bill was a good one. It would have brought quitrent arrears up-to-date as of 1783, giving the proprietors a fresh start in a time of peace, while providing legislation fully sanctioned by the British government for distraining lots of delinquent proprietors for local purchase. Moreover, it would have preserved most of the lots auctioned in 1781 in the hands of their resident buyers, since any proprietor who wished his land restored had to repurchase the lot and pay for any improvements, a trouble most proprietors probably would not have taken.<sup>21</sup> Why Patterson refused to accept this solution is not at all clear, although he undoubtedly recognized full well that the sales had been

18 *Ibid.*, 19 February 1781, CO 229/1, p. 190; Copy of Memorial from Chief Justice Peter Stewart, St. John's Island, 30 May 1789, Public Archives of Prince Edward Island, [PAPEI], 2652/4.

19 "Account of Sales of Sundry Townships and half Townships sold by Public Auction at the Suit of His Majesty for non payment of Quit Rents due to the 1st of May 1781", Selkirk Papers, vol. 56, pp. 15049-50.

20 Lord North to Patterson, 24 July 1783, CO 226/8, p. 60.

21 "An Act for Repealing an Act...and for the enforcing in future a due and regular payment of the Quit Rents", CO 226/3, pp. 62-71.

far less proper than the ministry realised, and was afraid of exposure. As well, one can imagine Phillips Callbeck at hand, advising against making needless concessions. Finally, Patterson's judgment may well have been clouded by the open eruption of a smouldering feud with Peter Stewart, caused partly by the governor's successful seduction of the Chief Justice's wife, Sarah.<sup>22</sup> Whatever his motivation, Patterson's decision to sit on the legislation rather firmly arrested any proprietorial investment in the Island. During the 1780s and early 1790s, the proprietors were far more concerned with their titles than with the development of their estates.

Patterson desperately tried to cover up and obstruct the attempts of the British government to resolve the quitrent disputes to everyone's satisfaction.<sup>23</sup> The settlement of Loyalists, whom both Patterson and the proprietors had been for several years attempting to lure to the Island, became part of the governor's strategy of obfuscation and preservation of the 1781 sales, rather than a constructive effort to re-establish some forward momentum to settlement. Instead of placing the Loyalists on uncontested property, those who arrived were given their land grants on Patterson's own purchases, with predictable results. The question of Loyalist titles remained a contentious one well into the nineteenth century, constituting yet another legacy of Patterson's policy.<sup>24</sup> Moreover, the Loyalist claims were only a small part of the larger issue of titles — both for proprietor and ordinary settler — created by the sales of 1781 and the subsequent moves of Patterson and a rump council. Finally, the factionalization of the later Patterson years prevented any serious housecleaning of the shady figures and incompetents who had opposed him for their own purposes. The Stewart/Desbrisay family alliance was scarcely composed of men whose probity was beyond dispute. But inevitably Patterson's successor Fanning was forced to turn to the alliance for political allies in order to establish his own position. The attempt in 1792 by a small group of Patterson die-hards among the proprietors to charge Fanning and the Stewart crowd with malfeasance failed dismally because it was too obviously politically inspired — and by a very dubious group.<sup>25</sup> Nevertheless, it seems likely that many of the charges, particularly

22 Peter Stewart to James Montgomery, 27 April 1783, GD 293/2/79, p. 46, Scottish Record Office [SRO], Edinburgh. David Lawson to James Montgomery, 31 May 1784, GD 293/2/78, p. 61, SRO.

23 They may be followed in Bolger, *Canada's Smallest Province*, pp. 57-65, a narrative sympathetic to Patterson, or in Harry Baglole, "Walter Patterson", *DCB*, IV, pp. 605-11.

24 The only detailed study of the early Loyalist question — getting nearly everything wrong — is Wilbur H. Sieburt and Florence E. Gilliam, "The Loyalists in Prince Edward Island", *Royal Society of Canada Transactions*, 3rd ser., IV, Sec. II (1910), pp. 109-17. This subject is much in need of further analysis.

25 *Report of the Right Honourable the Lords of the Committee of His Majesty's Most Honourable Privy Council on Certain Complaints against Lieutenant Governor Fanning, and other Officers of His Majesty's Government in the Island of St. John* (n.p., n.d., but London, 1792.)

those brought against Chief Justice Peter Stewart and his son-in-law William Townshend, represented legitimate grievances which were too readily dismissed by the British government.<sup>26</sup> Independent evidence does suggest that Stewart operated the Island's Supreme Court as a virtual family fiefdom, and that justice, especially for small landholders and tenants, was not readily obtainable there.<sup>27</sup>

Although it took Fanning and his associates some years to get established — the confusion caused by Patterson's refusal to be replaced was succeeded by the proceedings against the officers of 1792 — the new Lieutenant Governor and his allies were just as rapacious as Patterson and his supporters. The difference was that they were smoother ("audacious open tyranny" had been replaced by "deep far fetched despicable Yankey cunning" was the way John MacDonald trenchantly put it) and they were able to operate behind the scenes in the administrative, political, and legal chaos which Patterson had left in his wake.<sup>28</sup> Fanning himself purchased 60,000 acres of Patterson's land for less than £100, chiefly because his cronies privately fixed the bidding on the lots to prevent the price being raised.<sup>29</sup> The Lieutenant Governor and his colleagues found it more profitable to become the agents of the absentee proprietors than to take on the quitrent obligations themselves, and a good deal of asset-stripping went on, particularly after timbering became profitable at the beginning of the nineteenth century.<sup>30</sup> Supporters of Patterson and opponents of the government found themselves at considerable legal disadvantage on the Island.<sup>31</sup> The enemies of "Hellfire Jack" Stewart maintained that Stewart had become Receiver of the Island quitrents by buying off a rival candidate with an annual annuity of £80. When asked how he could afford to make such an offer, Stewart allegedly replied that "the Treasury never called the Receivers of American Quit Rents to Account and he would pocket what he received". Stewart added that Patterson's fault was "having forfeited the lots in an illegal manner; but he [Stewart] would go legally to work".<sup>32</sup>

26 Townshend's weak defence, dated 1791, is in PAC, MG23 E6. See also my forthcoming biographical sketches of Fanning, Stewart, and Attorney General Joseph Aplin (three of the officers involved) in the *DCB*.

27 "Sir James Montgomery and PEI", pp. 90 ff.

28 John MacDonald to Helen MacDonald, 7 July 1790, Acc. 2664, PAPEI.

29 James Douglas to James Montgomery, 15 September 1800, GD 293/2/19, p. 10, SRO.

30 Fanning, for example, was agent for James Montgomery, Viscount Townshend, and Robert Shuttleworth. Along with his own holdings, he was in charge of over 200,000 acres of Island property. See W.S. MacNutt, "Fanning's Regime on Prince Edward Island", *Acadiensis*, 1 (Autumn 1971), pp. 37-53.

31 See, for example, James Douglas to James Montgomery, 26 November 1797, GD 293/2/19, p. 9, SRO.

32 "John Stewart" in biographical appendix of Island officers attached to John Hill's 1801 "A Detail of Various Transactions at Prince Edward Island", CO 226/18, p. 433; see also John MacDonald to Helen MacDonaald, 7 July 1790, Acc. 2664, PAPEI.

Regardless of whether it is entirely fair to attribute to self-interest the 1795 Act to make seven years possession of land under a deed an indefragible title to the land, one chief beneficiary of the legislation was Edmund Fanning.<sup>33</sup>

Beginning in 1796, with the publication of Colonel Joseph Robinson's "To the Farmers in the Island of St. John, in the Gulf of St. Lawrence", the rallying cry of the government and the "reformers" was the establishment of a separate Court of Escheat on the Island.<sup>34</sup> Robinson's pamphlet is an extremely rare one, known usually only through hostile comments about it in the papers of the Colonial Office. Both his tone and argument are really far less radical than the criticisms of the pamphlet would suggest. Although he called for an end to the proprietorial system, Robinson was opposed neither to quitrents nor tenancy. What he advocated was a return of the land to the Crown, which would then act directly as the landlord of the small holder on the Island. Although many of the anguished screams and charges of proprietors and their allies ought not to be taken seriously, several of the points which the opponents of escheat made in the 1790s were valid. Several local observers detected behind Robinson's pamphlet and the subsequent political campaigning based upon it the fine hand of Edmund Fanning and the Stewarts, who as the local administration would in effect become the landlord if Robinson's recommendations were implemented.<sup>35</sup> Walter Patterson had sought to transfer some of the lots from one set of proprietors to another, but Edmund Fanning was far more subtle. In effect the Island's officials would collectively become THE PROPRIETOR. Moreover, there was the very real question of who would staff the proposed Court of Escheat and whether justice would be any more obtainable there than in the existing courts of the Island. At the same time that the agitation for an Escheat Court reached its height, between 1796 and 1803, the administration of justice on the Island reached a new low. The two trends were not entirely unconnected. The Chief Justice employed his office to prevent legal action being taken against him and his relatives by a number of creditors and small tenants, and there occurred a rapid turnover of Attorneys General, several of whom left the Island vowing never to return. Scotland's former Lord Advocate James Montgomery threatened to bring his own litigations against Stewart to London, where, he wrote to Fanning, "They will exhibit a Picture, if the same System is continued, that never before Appeared in any English judicature". Stewart's actions, added Montgomery in a nice piece of pawky Scots understatement, were "not a good Idea in a Chief Justice".<sup>36</sup>

When Attorney General John Wentworth, appointed by London to replace

33 35 George III, c.2, "An Act for Confirming Titles and Quieting Possessions".

34 A copy of this pamphlet has recently been acquired by the PAPEI.

35 These charges were advanced by James Douglas, John MacDonald, and Joseph Aplin on numerous occasions.

36 James Montgomery to Edmund Fanning, 18 September 1801, GD 293/2/17, p. 12, SRO.

Joseph Aplin (who in turn had been dismissed by Fanning for open criticism of the government), proved slow to take up his place, Fanning wrote to the Colonial Secretary seeking permission to appoint his own local candidate, Peter Magowan. Wentworth finally appeared on the Island in May 1800, and as the only alternative practising attorney to Magowan, immediately acquired all of the cases involving the Stewart family, a total of over 60 actions.<sup>37</sup> Many of these cases were defenses of the possessions of small property holders (a number of them Acadians), who were being evicted from their lands by Captain John Stewart and his brother-in-law William Townshend.<sup>38</sup> Not surprisingly, when Fanning received a warrant to appoint Magowan, granted on the assumption that something had happened to Wentworth, he immediately accused Wentworth of malpractice (a similar technique had been employed several times in the past against vocal Island lawyers), and replaced him.<sup>39</sup> Wentworth went home, wrote James Douglas to William Montgomery, “with such an Account of the Misconduct here that would quite surprize you”, leaving but one lawyer on the Island.<sup>40</sup> Given the legal administration of the colony, it is difficult to conceive that the establishment of a local Court of Escheat would act to the benefit of the average small tenant.

In short, the famous legislative report of 1797 on the state of settlement on the Island, accompanied by a petition for a Court of Escheat, was designed less to achieve an equitable settlement of the land question (even in terms of the local population) than for other and deeper reasons, probably principally to enable John Stewart to renegotiate terms with the proprietors and extinguish as many old claims as possible, which Stewart did in London in 1802 and 1803. Satisfied with this settlement, the Fanning/Stewart party became pro-proprietorial, continuing to accumulate land and agencies for absentee proprietors throughout the first decades of the nineteenth century. Whether the appointment of Frederick DesBarres as Lieutenant Governor and the subsequent establishment of the Loyal Electors represented a genuine new hope for Island residents is doubtful, but as of the retirement of Edmund Fanning, the land question had become so hopelessly entangled with Island politics and official self-interest that a very new broom would be required to sweep the decks of nearly forty years of official obfuscation, maladministration, and chicanery. Proprietor John Hill was quite accurate in 1801 when he wrote, “No Man in his senses will trust his property in

37 James Douglas to James Montgomery, 15 September 1800, GD 293/2/19, p. 10, SRO. According to Douglas, Wentworth was attorney in over 200 actions.

38 *Ibid.* Some substantiation of these charges is provided by the incomplete Supreme Court Docket Book, 1801-1804, RG 6, PAPEI, which for Hilary Term 1801 lists over ten actions involving Stewarts in which Wentworth was plaintiff's attorney, and a number of actions for ejection by Stewart.

39 See my forthcoming sketches of Magowan and Wentworth for the *DCB*.

40 James Douglas to William Montgomery, 26 November 1800, GD 293/2/19, p. 1, SRO.

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a place that either does not afford the institutions necessary for protection, or where those institutions are used as the means of destruction".<sup>41</sup> Yet Hill did not take the next logical step: if proprietorial property was useless, why hold onto it? But even if he and his fellow proprietors had returned their lots to the Crown, there exists precious little evidence to suggest that the ordinary Island inhabitant would, in 1805 at least, have been appreciably better off.

41 John Hill, "A Detail of Various Transactions", CO 226/18, p. 282.