

**DUTY AND DEPENDENCY: THE LIFE AND CAREER OF  
EDWARD JAMES JARVIS, 1788-1852**

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## ABSTRACT

Edward Jarvis was a colonial judge during the late Georgian and early Victorian periods whose career encompassed more than one jurisdiction within the British Empire.

Following several years of study at the Inns of Court in London, he secured positions as a judge in the colonies of New Brunswick and Malta before being appointed Chief Justice of Prince Edward Island in 1828, a position he held until his death in 1852.

Throughout Jarvis's life duty and dependency were constant themes. He was one of a group of second-generation Loyalists who began their careers in the colony of New Brunswick, and brought many of his generation's beliefs regarding law and empire to his judicial roles, whether confronting piracy in Malta in the early 1820s or land protests in Prince Edward Island during the 1830s. In his rulings he sought to administer colonial law in a fair and impartial manner, thereby consolidating the property regime in the latter colony. His role as Chief Justice, however, meant that he was dependent upon the British Government for his livelihood, a situation that ultimately became untenable when the granting of responsible government led to a substantial cut in his salary in his final years.

Both duty and dependency were part of Jarvis's personal as well as professional life: as household patriarch he supported his family and other dependents, who in turn gave him emotional support, loyalty, and deference. The private world of family enabled him to function in the "public" sphere, but also brought bereavement and practical challenges. This study suggests that, while Jarvis did carry out his professional function of upholding British law, particularly property law in the face of a popular protest movement, it came at a cost, both financial and personal, not evident in the public record.

## RÉSUMÉ

Edward Jarvis est un juge colonial de la fin de l'époque géorgienne et du début de l'époque victorienne dont la carrière s'étend sur plus d'une juridiction de l'Empire britannique. Après plusieurs années d'études aux *Inns of Court* de Londres, il obtient des postes de juge dans les colonies du Nouveau-Brunswick et de Malte avant d'être nommé juge en chef de l'Île-du-Prince-Édouard en 1828, poste qu'il occupe jusqu'à sa mort en 1852.

Tout au long de la vie de Jarvis, le devoir et la dépendance ont été des thèmes constants. Il fait partie d'un groupe de loyalistes de la deuxième génération qui ont commencé leur carrière dans la colonie du Nouveau-Brunswick. Il a apporté à ses fonctions judiciaires de nombreuses convictions de sa génération concernant la loi et l'empire, qu'il s'agisse de lutter contre la piraterie à Malte au début des années 1820 ou contre les protestations foncières sur l'Île-du-Prince-Édouard au cours des années 1830. Il s'est efforcé, dans ses décisions, d'administrer le droit colonial de manière équitable et impartiale, consolidant ainsi le régime de la propriété dans cette dernière colonie. Son rôle de juge en chef signifiait cependant qu'il dépendait du gouvernement britannique pour sa subsistance, une situation qui est devenue intenable lorsque l'octroi d'un gouvernement responsable a entraîné une réduction substantielle de son salaire dans les dernières années de sa vie.

Le devoir et la dépendance faisaient partie de la vie personnelle et professionnelle de Jarvis : en tant que patriarche, il subvenait aux besoins de sa famille et des autres personnes à sa charge, qui à leur tour lui apportaient un soutien affectif, de la loyauté et de la déférence. L'univers privé de la famille lui a permis de fonctionner dans la sphère

« publique », mais a également entraîné des deuils et des défis pratiques. Cette étude suggère que, bien que Jarvis ait rempli sa fonction professionnelle de défenseur du droit britannique, en particulier du droit de la propriété, face à un mouvement de protestation populaire, cela a eu un coût, à la fois financier et personnel, qui n'apparaît pas dans le dossier public.

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## INTRODUCTION

Many it is true have gone back to the States, some from one cause some from another, but generally speaking those that have gone back were a set of poor wretches that had they staid here must have been supported by the Publick at least every winter. Very few people of any consequence have left us and so far from the country's being in decline the farmers have made very considerable improvements upon this River...I am in great hopes this in a short time will be a Country of Plenty tho a cold one.

–Munson Jarvis to William Jarvis, October 25, 1787<sup>1</sup>

Apart from his time as the leading jurist of Prince Edward Island some decades before Confederation, Edward James Jarvis does not immediately appear to be a promising subject of historical inquiry. His twenty-four-year tenure as Chief Justice, during which he brought about his much-vaunted amelioration of the Island judiciary, was largely free of the controversy that dogged some of the many judges who dispensed colonial law throughout the British Empire during the first half of the nineteenth century. Yet it was precisely such colonial officials and administrators who kept the imperial machine functioning, through careers that, for many, spanned several imperial postings. More recent histories of the British Empire have coined the term “imperial lives”; David Lambert and Alan Lester suggest that tracing the lives of such men over time and space is a way to think about empire that “moves beyond dualisms of centre and periphery, global and local, and contributes to an understanding of trans-imperial (and extra-imperial) networks.”<sup>2</sup> They use the term “imperial careers” to refer to Britons who worked in more than one outpost of empire, a term that could also apply to colonial subjects such as Edward, who “dwelt for extended periods in one colony before moving on to dwell in

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<sup>1</sup> Jarvis Papers, New Brunswick Museum Archives.

<sup>2</sup> David Lambert and Alan Lester, “Imperial spaces, imperial subjects,” in Lambert and Lester, eds. *Colonial Lives Across the British Empire: Imperial Careering in the Long Nineteenth Century* (Cambridge, UK: Cambridge University Press, 2006), 24.

others.”<sup>3</sup> A myriad of such lives upheld the legal, political, economic, and administrative functioning of empire.

From a legal history perspective Edward’s tenure is of particular significance in that he presided over the Prince Edward Island judiciary at a time when an island-wide protest movement threatened the system of landlordism that characterized the colony, challenging notions of proprietorship and class privilege. Two additional factors justify the singling out of Edward Jarvis as worthy of deeper historical scrutiny: the vast archive of historical material documenting both his legal career and his private family life, and the importance of shedding light on the second generation of Loyalists who became office holders in British North America during the first half of the nineteenth century.

Underpinning this study of Edward Jarvis’s life is the question of how the exile, loss, and hardship experienced by the first generation of Loyalists affected the second generation: what role did Edward’s status as a second-generation Loyalist who came of age in the second British empire play in his life, and how did influence his role implementing British law? Looking through the lens of the history of settler colonialism, what role did Edward play as leading jurist of a British North American colony in consolidating the imposition of British property-owning norms on Indigenous lands? Moreover, how did the foundational aspects of colonial society – class, race, gender – intersect in the life of a second-generation Loyalist settler to influence his perspective on law in its many facets, particularly as it dealt with property?

Apart from his obvious role in dispensing law in the various colonial jurisdictions in which he served, Edward’s life as a Victorian male is of interest to family historians. Drawing upon the past several decades of feminist scholarship on the ways gender is

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<sup>3</sup> Lambert and Lester, “Imperial Spaces,” 1.

constructed for men as well as women, what light can be shed on the relationship between Edward's professional and private lives and how they affected each other? Did his public and private selves complement each other? As well, what role did the material world in which the Jarvis family lived – one that linked social behaviour as well as the consumption of goods and commodities with notions of gentility that conferred class status – play in Edward's day-to-day life?

An examination of both Edward's public and private roles suggests two recurring themes: duty and dependency. A conscientious man who believed in the prevailing British ideals of empire, citizenship, and family, Edward sought to carry out what he believed to be his duty in all facets of his life. Yet he was dogged throughout his life by another of its features: dependency. At a time when the Colonial Office controlled access to the higher echelons of the legal profession throughout the empire and "at pleasure" appointments were the norm, no judge could feel truly secure. As will be seen, both politics and London's cost-cutting measures resulted in Edward's losing judicial positions, and culminated in a significant reduction in salary at the end of his life owing to the granting of responsible government to the colony of Prince Edward Island in 1851.

After studying at the Inns of Court early in the century, Edward established his own practice in Saint John, and was subsequently awarded a position as a judge in the highest court in the colony of New Brunswick. He then lost the judgeship, setting in motion a quest for a compensatory position that took him first to Malta and then to Prince Edward Island. Through an astute use of patronage he was able to secure himself two desirable positions, but the challenge it took to do so underscored his dependency on the Colonial Office. Never fully secure in the two judicial positions he attained after leaving

New Brunswick, Edward at times sought to prove his worth to the colonial regimes he served by affirming his training, skills, and commitment to the law. Poor health, including worsening eyesight throughout the 1840s, and personal tragedy further exacerbated the challenges he faced in carrying out his judicial role.

Edward's private family life, which for the most part complemented the demands of his public, professional life, was similarly characterized by both duty and dependency. As the patriarchal head of a family Edward was expected to fulfill the traditional male role of breadwinner, but he in turn was dependent on his wife, his children, and the family's servants to live the lifestyle expected of a member of the British North American elite. As discussed in Chapter 5, both practically and emotionally Edward's needs were met by the family unit that depended on each person fulfilling his or her gender- and class-based role. However Edward's health problems, and those of his wife Anna Maria, made it difficult at times for them to fulfill their roles, and Edward would eventually become a widower owing to Anna Maria's poor health. Her death notwithstanding, Edward did his best until the end of his life to fulfill what he believed to be his duty to his family, despite ongoing financial challenges. While for the most part his duty to the British government and his duty to his family were complementary, however, on at least one significant occasion they came into direct conflict.

Records of Edward's professional role as a lawyer and judge in three colonial postings exist in numerous archives and government holdings which are drawn upon here. These are complemented by the collection of Edward Jarvis's own papers held at Library and Archives Canada and the substantial amount of family and business correspondence held in the New Brunswick Museum Archives, as well as in archival

collections in Charlottetown and Fredericton. For the Jarvis family, the written word was the principal means by which family members recorded their doings and corresponded with each other, often over vast distances that spanned intercolonial and international borders. While the Jarvis family were not among the highest echelons of the elite, they were nonetheless privileged to be literate and therefore to be able to leave written records of themselves as so many Indigenous, Black, and poor people living in the lands claimed by the British North American colonies could not. The large number of Jarvis family letters that have survived shows the degree to which missives from absent loved ones were treasured; written letters provided one of the few means of sharing family news, recording births and deaths, and renewing or sustaining family relationships and networks of patronage.

There was another function of the written word for settlers, however, particularly men of the professional elite: writing served not only a practical function but an ideological one as well. Going back to the seventeenth century, Jill Lepore suggests that it was through language and written record that the New England colonists were able to fix the historical record of King Philip's War in a way that preserved their own virtue in a triangular identity, with the "savagery" of the "Indians" and the cruelty of the Spaniards the other two sides of the triangle.<sup>4</sup> Lepore posits that the act of writing defined the early New England colonists, becoming an essential part of their identity as settlers living on dispossessed Indigenous lands and justifying their pursuit of profit that became inseparable from the slave trade. Edward Jarvis, a second-generation Loyalist whose ancestors had for four generations settled in Long Island and Connecticut, inherited this

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<sup>4</sup> Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity* (New York: Random House, 1998), xiv.

legacy of colonial privilege. Edward identified as a man of literacy and learning who used writing to give shape and meaning to his experiences and to maintain family relationships, friendships, and professional ties. In saving his correspondence and other documents, both professional and personal, he sought to preserve his place in the historical record of empire.<sup>5</sup>

That Edward saved so many of his letters and documents, even ones recording the minutiae of his professional and personal life, shows his own sense of his place in a particular historical moment, one given import by the recurring themes of law and property. As will be seen in Chapter 1, Edward's career achievements grew from his father Munson's life, one defined not only by Loyalism but also by Munson's business savvy as a merchant plying a cross-Atlantic trade. Munson's success, which enabled him to bankroll his son's prospective career, came in part from the seventeenth-century Navigation Acts, but also from the flouting of them through his US connections. The Acts were rooted in mercantilist protectionism and embodied capitalist principles of profit, interest, and credit that were enshrined in law that Munson's son Edward would enforce as a jurist throughout his career.

Edward Jarvis's life and career are also worthy of study in that they shed light on the world of a small group of second-generation Loyalist jurists who qualified as

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<sup>5</sup> Historians are continually broadening their use of primary historical sources to include a range of materials that convey information from past generations. For example Tiya Miles' book *All That She Carried: The Journey of Ashley's Sack, a Black Family Keepsake* (New York: Random House, 2021) shows how the history of enslaved Africans can be traced through artifacts. For Indigenous history, "written" historical documentation is now considered to encompass a variety of methods of transferring information between generations. As Brendan Edwards suggests, through the use of complex sign systems such as Mi'kmaw hieroglyphics or Algonkian syllabics, or such media as petroglyphs, pictographs, wampum, and birch bark scrolls, Indigenous people "employed their own means of disseminating and perpetuating knowledge through written formats that in many cases supplemented oral traditions." Brendan Frederick R. Edwards, *Paper Talk: A History of Libraries, Print Culture, and Aboriginal Peoples in Canada before 1960* (Lanham, MD: The Scarecrow Press, 2005), 57.

attorneys in New Brunswick early in the nineteenth century. Philip Girard believes the lives of colonial judges are of interest as windows on the age in which they lived: their careers had a fluidity that meant that “their contributions to our history are more likely to be, broadly speaking, as much in the political and social spheres as in the purely legal.”<sup>6</sup> Looking at both the ways that Edward Jarvis was typical of this generation and the ways he was perhaps less so, much can be learned about the experience of trans-colonial judges and how they formed, and were formed by, the changing and growing empire. This endeavour is facilitated by broadening the lens to Edward’s family life: as Emma Rothschild suggests, family history is a way of connecting the microhistories of individuals and families to the larger scenes of which they were a part, of framing “the domesticity of empire” within broader “macrohistorical” inquiries.<sup>7</sup>

The situating of the Jarvis family’s lives as settlers on land dispossessed from Algonquian tribes in Connecticut and, post-revolution, on the territory of the Mi’kmaq and Wolastoqiyik peoples in the maritime British North American colonies, is an important reframing of Loyalist narratives that in decades past (and not so long ago in the case of one popular historian) trumpeted the Loyalists’ role in overcoming the hardship of exile to forge a new society that would one day become Canada.<sup>8</sup> Chapter 4 looks at how Chief Justice Jarvis’s privileging of British colonial law, particularly property law, contributed to the concurrent weakening of Mi’kmaw land practices and Mi’kmaw law, a

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<sup>6</sup> Philip Girard, “Judging Lives: Judicial Biography from Hale to Holmes,” *Australian Journal of Legal History* 7 (2003): 89-90.

<sup>7</sup> Emma Rothschild, *The Inner Life of Empires: An Eighteenth-Century History* (Princeton and Oxford: Princeton University Press, 2011), 2, 6.

<sup>8</sup> Peter C. Newman writes that the Loyalists sailing from New York for British North America in 1783 encountered “that largely barren land that would become Canada” over which they would triumph and endure in his 2016 book *Hostages to Fortune: The United Empire Loyalists and the Making of Canada* (New York and London: Simon & Shuster), 7.

trend that is being challenged more and more today throughout Mikmaki.<sup>9</sup> Edward Jarvis's career and family life played out against the colonialist legal and political frameworks establishing and justifying the ongoing dispossession of Indigenous peoples and their subsequent impoverishment and marginalization.

The history of the Jarvis family as exploiters of enslaved Black labour, both prior to the American revolution and, for Munson and at least one of his siblings, after their exile to British North America, sheds light on the history of slavery in Canada as a whole. Harvey Amani Whitfield has confirmed the importance of studying the families of those who enslaved African men and women.<sup>10</sup> While as a second-generation Loyalist Edward Jarvis was not himself an enslaver, he was tasked with enforcing British colonial law that first legitimated, and then brought an end to, the institution of slavery within the empire, and which continued to perpetuate the unequal status of Black people. While the empire outlawed the trade in enslaved Africans in 1807, during Edward's tenure in Malta in the 1820s he would be confronted with the problem of those enslaved by "Barbary" corsairs in the Mediterranean. As Chapter 2 outlines, in Malta Edward would help to establish British colonial law in a jurisdiction with critical geopolitical significance, embellishing its ancient Law of Rohan with what were seen to be improvements. These improvements reflected the British view of themselves and their law as superior, and sought to privilege British Admiralty law as the basis for international naval law.

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<sup>9</sup> See James (Sakej) Youngblood Henderson, "First Nations Legal Inheritances in Canada: The Mi'kmaq Model," in DeLloyd J. Guth and W. Wesley Pue, eds. *Canada's Legal Inheritances* (Winnipeg: University of Manitoba, 2001), 1-31; L. Jane McMillan, *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaq Quest for Justice* (Vancouver: University of British Columbia Press, 2018). Present-day initiatives by the Mi'kmaq Confederacy of PEI are beginning to integrate aspects of Mi'kmaq law with settler colonial law. <https://mcpei.ca/eagle-feather-affirmations-introduced-to-prince-edward-island-court-system/>

<sup>10</sup> Talk, University of Toronto, March 4, 2020.

This study, then, places Edward Jarvis's life and career within the broader themes of colonization, law, and empire. While Edward was considered elite in terms of his profession and his income, the reality of his lived experience was more chequered than such categories suggest. In the context of the British North American colonies in the early nineteenth century, a career in law by necessity meant a position of dependency on the British government, which paid judges' salaries and which determined the recipients of much sought-after postings. The lack of responsible government in the British North American colonies during the first half of the nineteenth century continued this dependency, in particular in the legal profession and in colonial administration where the internecine squabbling over official positions meant a desperate scramble for lawyers and other office seekers to outdo their fellow candidates and gain favour from London. Edward was also affected throughout his life by British cost cutting and penny pinching. As Chapter 3 outlines, with his salary as Chief Justice being reduced with the granting of responsible government to Prince Edward Island, Edward would spend the last years of his life drawing upon his old patronage ties to try to improve his own and his grown children's situations. Nor could relative wealth and privilege shield him from personal loss, and he would die a two-time widower, unhappily isolated from most of his family members and facing ongoing health and financial challenges.

A deeper inquiry into Edward Jarvis's life and career is thus ultimately illuminating in that the façade of a highly paid law-and-order judge and apologist for empire hid a more complicated reality. While Edward did commit his career to reinforcing hierarchies of property owning and while he benefitted from the power he derived from his class, race, and gender, he faced numerous personal challenges which

affected his ability to carry out his judicial role. While he committed his life to the furtherance of the British colonial law and carried out his judicial role to the best of his abilities, his loyalty was not always reciprocated by the Colonial Office which throughout his career sought to reduce expenditures on the colonies. His commitment to duty, as both a jurist and a family man, could not shield him from the political and economic vicissitudes of Imperial rule nor the movement of history that saw self-government come to the colonies. Vulnerable in his dependency and without an adequate source of independent income, Edward would be left scrambling at the end of his life to fulfill his duty as a father to prepare the way for the third generation.

## CHAPTER 1

### **“The beardless boy”: Origins, early career, and disappointment, New Brunswick, 1809-1823**

I daily experience...difficulty in my persevering attendance at Downing St. where I find that every vacancy in any office (however unimportant) produces a host of applicants...I am considered by every body as one of fortune’s prime favorites, in having received an offer of a situation under Government at Malta, which would be acceptable to many Barristers in this Country of great standing at the Bar & high connections.

–Edward Jarvis to Ralph Jarvis, August 3, 1823<sup>1</sup>

In November 1783 a ship filled with a small number of the 50,000 Loyalists who were to flee the former Thirteen Colonies set sail for a settlement on the Bay of Fundy, then part of the British North American colony of Nova Scotia.<sup>2</sup> On it was Munson Jarvis from Stamford, Connecticut, his wife Mary Arnold, his son Ralph Munson and, possibly, two enslaved African women. Munson, having been “condemned and advertised as inimical to the Liberty of America and an Obstinate Adherent to the Ministerial Cause” by a revolutionary committee, and having fought for several years alongside the British, was forced into exile following the British defeat.<sup>3</sup> Munson, however, was undaunted despite setting out into the unknown, albeit still within the bosom of the British Empire, to begin anew at the relatively advanced age of forty-one. Although he and his fellow “Tories”

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<sup>1</sup> Jarvis Papers, New Brunswick Museum Archives.

<sup>2</sup> Maya Jasanoff estimates the total Loyalist emigration from revolutionary America at 60,000, but this is disputed by Philip Ranlet who argues the number was closer to 50,000. Of the 30,000 Loyalist exiles fleeing to Nova Scotia more than ten per cent were free Black men, women, and children. Maya Jasanoff, *Liberty’s Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011), 357; Philip Ranlet, “How Many American Loyalists Left the United States?” *The Historian* 76, no. 2 (2014): DOI: [10.1111/hisn.12034](https://doi.org/10.1111/hisn.12034), 306; James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870* (Toronto: University of Toronto Press, 1992), 12.

<sup>3</sup> C.M. Wallace, “JARVIS, MUNSON,” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed April 25, 2016, [http://www.biographi.ca/en/bio/jarvis\\_munson\\_6E.html](http://www.biographi.ca/en/bio/jarvis_munson_6E.html)

abhorred the republican rebellion that had gripped their Whig compatriots through seven years of civil war, he was to bring with him on the voyage north attitudes towards law, property, and government that would form the basis of the new British North American colony of New Brunswick and would be instilled in his four children, the youngest of whom, Edward James, would commit his life to the practice of British colonial law. Four of Munson's siblings would also go into exile; in all four of the Jarvis siblings would become part of the Loyalist diaspora that would reconfigure the British Empire after the American Revolution; one would return to Connecticut. Five, along with their mother, remained in Stamford. Samuel, Munson's father, did not survive the revolution.

Thus for Edward Jarvis, a second-generation Loyalist, his father's midlife was marked by the themes of duty and dependency. While Munson, like most Loyalists, had many reasons for remaining loyal to the British Crown, among them his deep Anglican faith and an antipathy to revolution and to what he saw as a mobocracy as evidenced by many of the patriot excesses against those espousing the "ministerial cause," his sense of loyalty to Britain would mean that he had a duty to fight with its army during the war. His resulting exile, however, along with that of his fellow Loyalists, meant that he became dependent on Britain and its largesse following the war. While Munson would make a success of his new life in Saint John, success that would enable Edward to rise to the top of the legal profession, the reality of the relationship between London and British North America meant that Edward, throughout his career, would never be able to fully free himself from dependency on the British government. In his role as Chief Justice, moreover, he would be diligent in carrying out what he saw to be his duty administering colonial law, while in his personal life "duty" would have its own exigences.

### **Origins: Loyalist persecution, war, and exile**

Munson was born in Stamford, Connecticut, the oldest of ten siblings.<sup>4</sup> His grandfather, “Captain” Samuel Jarvis, was born of William and Esther Jarvis in Huntington, Long Island, in 1698 and died in Norwalk, Connecticut September 27, 1779.<sup>5</sup> Captain Samuel married Naomi Brush (1701-1756), both moving to Norwalk.<sup>6</sup> Samuel, Munson’s father, the eldest of their 11 children, was born December 27, 1720; he was married December 18, 1741 to Martha Seymour (1726-December 1, 1803) and was town clerk of Stamford from 1760-1775.<sup>7</sup> Munson’s siblings, Samuel, Polly, Martha, Sarah, John, William, Hannah, Lavinia, and Seymour were born between 1745 and 1765.<sup>8</sup> Captain Samuel had “conformed to the Church of England” and the Church was to figure prominently in the lives of the Connecticut Jarvises; his son Abraham became the second Bishop of Connecticut in 1796.<sup>9</sup> The Jarvis family was for the most part loyal to the British Crown; Captain Samuel and Naomi Brush’s third son Stephen of Danbury, Connecticut, had a son Stephen who fought with the Queen’s Rangers. Following the war Stephen lived in Fredericton, New Brunswick from 1795 to 1809 and in York, Upper Canada in 1809 where his cousin William, Munson’s brother, had become Secretary of the province.<sup>10</sup>

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<sup>4</sup> Eleven were born altogether but one, Seymour, born in 1754, died tragically at the age of 10.

<sup>5</sup> The origin of Captain Samuel’s rank is unknown. It may have been his rank in the local militia unit, “but it is possible he was a seafaring man.” The Ven. William O. Raymond, *Family History* (1893). See [Loyalist Trails 2010-03 – UELAC](#)

<sup>6</sup> Naomi was the daughter of Samuel Griffin and Elizabeth Platt (1665-1740) from Huntington, Suffolk, NY. Herbert F. Seversmith, *Colonial Families of Long Island, New York and Connecticut* (Washington: n.p., 1939), 1,629.

<sup>7</sup> *The Jarvis Family; or, The Descendants of The First Settlers of the Name in Massachusetts and Long Island, and Those Who Have More Recently Settled in Other Parts of the United States and British America* (Hartford, CT: Press of The Case, Lockwood & Brainard Company, 1879), 16.

<sup>8</sup> Seymour, born in 1765, was named after his deceased brother, a naming convention customary in eighteenth-century Anglo-America. Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London: Penguin, 1979), 257.

<sup>9</sup> *The Jarvis Family*, 19.

<sup>10</sup> *The Jarvis Family*, 36-40. The book notes (39) that in 1895, having briefly returned to Connecticut, Stephen and his family “landed at Fredericton with only one half-guinea in his purse.” He purchased a

With the outbreak of the Revolutionary War Connecticut quickly became “a bastion of New England Whiggism,” and Loyalists, or “Tories,” there faced public chastisement, long inquisitorial sessions, house arrest, boycotts, the monitoring of mail, open harassment, and worse.<sup>11</sup> Some who fell afoul of the general Revolutionary fervour faced destruction and loss of property as well as violence such as being tarred and feathered, ridden on a pole, beaten, or whipped.<sup>12</sup> Public shaming and ostracism from the community also occurred, both of which threatened a man’s reputation and by extension his ability to obtain credit or earn a livelihood.<sup>13</sup> Vigilante or mob actions took place, and laws targeting Tories were passed at the both the state and local level, such as a 1775 Connecticut act entitled, “an act for restraining and punishing persons inimical to the liberties of this and other of the united colonies.”<sup>14</sup>

For many Tories the uncurbed excesses that occurred reinforced their view that while certain British policies were problematic, what they experienced as mob-led violence was not acceptable. While Tory motives to remain loyal ranged from allegiance to the king, to a desire to maintain the known order, to a belief that the colonies were better off as part of the empire, notes Maya Jasanoff, the “extent and depth” of Loyalism belies the term “revolution.” It was in fact a civil war, “routinely described as such by contemporaries on both side of the Atlantic” and by a growing number of historians

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“small stock of goods from his uncle, which he took to Fredericton.” His son William Botsford Jarvis (1799-1864) would later become High Sheriff of York, Upper Canada.

<sup>11</sup> David H. Villers, “‘King Mob’ and the Rule of Law: Revolutionary Justice and the Suppression of Loyalism in Connecticut, 1774-1783,” in Robert M. Calhoon, Timothy M. Barnes, and George A. Rawlyk, *Loyalists and Community in North America* (Westport, CT: Greenwood Press, 1994), 17-18.

<sup>12</sup> Benjamin H. Irvin, “Tar, Feathers, and the Enemies of American Liberties, 1768-1776,” *New England Quarterly* 76, no. 2 (2003): 230-38.

<sup>13</sup> Holger Hoock, *Scars of Independence: America’s Violent Birth* (New York: Crown, 2017), 32.

<sup>14</sup> G.A. Gilbert, “The Connecticut Loyalists,” *American Historical Review*, 4, no. 3 (January 1899): 282. Hartford officials invoked the October 1776 Treason Act to hang Tory Moses Dunbar, the gallows “left standing to intimidate other Tories.” Villers, 22; Gilbert, 276.

today, one that polarized communities, destroyed friendships, and divided families.<sup>15</sup> As in all wars there was an economic as well as an ideological factor, as Wallace Brown suggests: Trade with the British armed forces in the years before 1775 “made many merchants, especially in New York, Loyalists during the years that followed.”<sup>16</sup>

The Stamford Jarvis family members were considered Loyalists, and a number of them fought for the British.<sup>17</sup> While most survived the war, the conflict would take the life of Edward Jarvis’s grandfather, Samuel. At the start of the war he, along with Munson, William, and John, was put into a boat and conveyed to Long Island by rebels, where he was forced to wade waist-deep to the shore. He would die of the effects of this experience a year later in New York, which was garrisoned by imperial forces and became the British headquarters from 1776 to November 1783.<sup>18</sup> He died aged sixty-two, on February 25, 1783 and was interred in Trinity Churchyard.<sup>19</sup>

The signing of the Treaty of Paris on September 3, 1783 ended the war and by November 25 the last Loyalist had left New York City. Munson, Samuel, Polly, and John and their families, who had waited out the peace negotiations there or on Long Island,

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<sup>15</sup> Jasanoff, *Liberty’s Exiles*, 9. Robert M. Calhoon suggests using the term “internal war” to understand the later stages of the war from the Loyalist perspective. Calhoon, “Civil, Revolutionary, or Partisan: The Loyalists and the Nature of the War for Independence,” in Calhoon, ed. *The Loyalist Perception and Other Essays* (Columbia, SC: University of South Carolina Press, 1989), 148. Alan Taylor uses the term civil war in Taylor, *American Revolutions: A Continental History, 1750-1804* (New York: W.W. Norton, 2016), 4.

<sup>16</sup> Wallace Brown, *The Good Americans: The Loyalists in the American Revolution* (New York: Morrow, 1969), 51.

<sup>17</sup> Munson’s brother John was less enthusiastic about the Loyalist cause, but neutrality was not an option given the polarized atmosphere of the war, particularly for more prominent families such as the Jarvises. *The Jarvis Family*, 51.

<sup>18</sup> Lorenzo Sabine, *Biographical Sketches of Loyalists of the American Revolution with An Historical Essay, Vol I* (Baltimore: Genealogical Publishing Co., Inc., 1979), 571. *The Jarvis Book* (16) notes that Samuel, Munson, William, and John were seized by British soldiers, “in the month of August, on a clear night, and taken to Long Island in an open boat, to a family named Coles, where they were treated kindly.” It is unlikely four staunch Tories would have been seized by British soldiers; the “Rebel version” given by Thomas B. Allen seems more likely, that a mob broke into the Jarvis home late at night and “stripped every Jarvis naked, dragged them all into a boat, sailed it across the Sound, and forced them to wade to the British shore.” Allen, *Tories: Fighting for the King in America’s First Civil War* (New York: Harper, 2010), xvi.

<sup>19</sup> Raymond, “Samuel Jarvis, Jr. (1720-1783),” *Family History*. Raymond notes that the Barbour Collection of Connecticut Town Records lists Samuel Jarvis as having died September 1, 1780.

were among the 30,000 Loyalists, including enslaved Black people and several thousand Black Loyalists who had fought for the Crown, who escaped to Nova Scotia.<sup>20</sup> William, a fourth brother who had fought with John Graves Simcoe, ended up in London and would eventually be awarded the position of provincial Secretary in York, the new capital of the British North American colony of Upper Canada.<sup>21</sup> The Loyalists arriving in Nova Scotia were so numerous a new colony, New Brunswick, was formed for them on June 18, 1784 from part of Nova Scotia's territory. Regular British soldiers, the militia, and the provincial military were settled along the Saint John River, with the military Loyalists giving the new colony the motto *Spem Reduxit*, Latin for "Hope Restored."<sup>22</sup> Munson, Polly, and John would remain in New Brunswick for the rest of their lives, while Samuel would return to Stamford after a brief interlude.

### **New Brunswick: Fur, timber, trade, and dispossession**

The influx of Loyalist settlers brought renewed settlement and economic exploitation to the area, processes that had begun decades earlier. In 1764 William Hazen, a merchant

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<sup>20</sup> Esther Clark Wright lists eight Jarvises in her list of New Brunswick Loyalists: Hannah, John, Munson, Nathaniel, Ralph, Samuel, Stephen, and William. Ralph, Edward's older brother, born in 1776, would have been seven at the time of sailing. I do not know of Nathaniel's connection to the Jarvis siblings. Esther Clark Wright, *The Loyalists of New Brunswick* (Hantsport, NS: Lancelot Press, 1955), 295. Polly's husband Fyler Dibble is listed in Wright as an attorney but not Polly herself. Wright, 276. (Both Dibble and Dibblee appear in the records.) Similarly the name of Mary, Edward's mother, does not appear.

<sup>21</sup> As noted above more than 50,000 Americans, roughly 20 per cent of the population, went into exile, representing "a fair cross-section of the population of the American colonies from which they were drawn." Many exiled families were headed by women; fifteen per cent of those presenting claims for compensation to the British government after the war were women. J.M. Bumsted, "1763-1783: Resettlement and Rebellion," in Phillip A. Buckner and John G. Reid, eds. *The Atlantic Region to Confederation: A History* (Toronto and Fredericton, NB: University of Toronto Press and Acadiensis Press, 1994), 179.

<sup>22</sup> Robert L. Dallison, *Hope Restored: The American Revolution and the Founding of New Brunswick* (Fredericton, NB: Goose Lane Editions and the NB Military Heritage Project, 2003), 27-8. Bumsted estimates that probably half of the total usually regarded as Loyalists were in fact disbanded soldiers, noting the British force was a "polyglot mixture" of Loyalists, German mercenaries, British regulars (including Highland Scots and Irish), and men recruited from the northern colonies, including Newfoundland. Bumsted, "The Cultural Landscape of Early Canada," in Buckner, ed., *Canada and the British Empire* (Oxford: Oxford University Press, 2008), 382.

from Massachusetts, joined with James White and two cousins, James and Richard Simonds, and others to establish a business enterprise in what was to become Saint John, New Brunswick. Keeping two partners in Massachusetts, the company exported furs to British merchants, fish to West Indian planters, and feathers to coastal traders, and supplied the garrison at Fort Frederick with lime and lumber, as well as importing manufactured goods and provisions for the settlers and the garrison, and for trade with the Wolastoqiyik (Maliseet).<sup>23</sup> The company kept up a profitable West Indies trade until the advent of the American Revolution in 1775. In 1781 a new partnership with Hazen, White, and Michael Franklin gained government masting contracts. With the arrival of the Loyalists in 1783, Hazen became a Loyalist agent; he was the only pre-Loyalist to sit on the Council when New Brunswick was created as a colony in 1784, with the company resuming the coastal and West Indian trade routes.<sup>24</sup> One of Hazen's sons, Robert, would marry Edward Jarvis's sister Mary. Hazen also appears to have conducted business with Samuel Jarvis after his return to the United States: in September 1791 Samuel wrote to Hazen from Boston requesting an advance of £300, adding that if it were not forthcoming, "he would be under the disagreeable necessity of returning to Saint John."<sup>25</sup>

The fur trade in the eastern British North American colonies carried on by Hazen, White, and Simmonds had begun before Cartier.<sup>26</sup> The St. John River basin was "the richest area for furs in all Acadia," with much of the trade going to Boston; in 1775, however, after a parliamentary statute forbade all trade with the rebel colonies, furs were

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<sup>23</sup> Rod Campbell, "HAZEN, WILLIAM," in *Dictionary of Canadian Biography*, vol. 5, University of Toronto/Université Laval, 2003–, accessed January 25, 2022

[http://www.biographi.ca/en/bio/hazen\\_william\\_5E.html](http://www.biographi.ca/en/bio/hazen_william_5E.html)

<sup>24</sup> Hazen, White Company: 1785-1829, <https://loyalist.lib.unb.ca/node/4511>

<sup>25</sup> W.S. MacNutt, *New Brunswick, A History: 1784-1867* (Toronto: MacMillan of Canada, 1963), 86.

<sup>26</sup> Harold A. Innis, *The Fur Trade in Canada: An Introduction to Canadian Economic History, Revised Edition* (Toronto: University of Toronto Press, 1970), 10.

shipped to London.<sup>27</sup> The arrival of the New England planters in Acadia in the 1760s as well as the Loyalist refugee influx of the mid-1780s brought in rivals to the Mi'kmaq and the Wolastoqiyik in trapping and shooting commercial skins. While the export of some species, such as bear, beaver, deer, and elk declined significantly after 1815, others, such as fox, marten, and mink, rose into the 1850s.<sup>28</sup>

With the gradual decline of the fur trade in the maritime colonies “its capitalistic beginnings were shifted to the development of new lines of trade,” particularly lumber.<sup>29</sup> Wood, notes Graeme Wynn, was New Brunswick’s staple in the classic sense of the term: “[ton timber], lumber, and ships were the currencies in which the province’s international traders made their remittances,” and rising British demand for colonial timber led to economic expansion throughout the colony.<sup>30</sup> Those engaged in lumbering included both staple and local traders: Béatrice Craig observes that in Madawaska sawmill owners were either Anglo-Protestant men from outside the valley “with contacts in Saint John and access to capital,” who catered primarily to the staple trade in timber, lumber, and shingles, or local, mostly French millers serving their own communities.<sup>31</sup>

In 1809 temporary war duties levied by Britain and revisions to tariffs increased the charges on foreign timber, and by 1811 the differential in favour of British North American wood exceeded the added cost of transatlantic freight, advantaging the colonial

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<sup>27</sup> Julian Gwyn, “The Mi'kmaq, Poor Settlers, and the Nova Scotia Fur Trade 1783-1853,” *Journal of the Canadian Historical Association* 14 (2003): 69, 73. As Gwyn notes, that the St. John River trade before 1775 was funnelled through Boston meant that “Maleseet [Wolastoqiyik], not Mi'kmaq controlled the fur trade.” Gwyn, 71.

<sup>28</sup> Gwyn, “The Mi'kmaq, Poor Settlers, and the Nova Scotia Fur Trade,” 73, 83.

<sup>29</sup> Innis, *The Fur Trade in Canada*, 393.

<sup>30</sup> Graeme Wynn, *Timber Colony: A historical geography of early nineteenth century New Brunswick* (Toronto: University of Toronto Press, 1981), 43-44. In 1785 a thousand tons of timber and 2 million feet of lumber was shipped from the Bay of Fundy, with only double the amount being exported by the turn of the century; shingles, staves, and other wood products were also exported. Wynn, 20.

<sup>31</sup> Béatrice Craig, *Backwoods Consumers and Homespun Capitalists: The Rise of a Market Culture in Eastern Canada* (Toronto: University of Toronto Press, 2009), 99.

market.<sup>32</sup> The timber trade, writes T.W. Acheson, became the colony's "great engine of progress."<sup>33</sup> It required the capacity to collect debts and enforce debtors laws even in remote areas, and sought severe penalties for those stealing timber, or supplying lumber, timber, fish, and flour of inferior quality; imprisonment for debt was defended by merchants as a means to "assure British creditors of the colony's stability and its willingness to protect the interest of investors."<sup>34</sup> Edward's father Munson, who would become a merchant specializing in hardware but who also dealt in furs and timber, was one of the many successors of Hazen, White, and Simmonds who helped build the economic foundation of the new colony. Saint John was to become the leading urban-mercantile centre in the region, having been incorporated in 1785 and being the first to establish corporate institutions for finance, insurance, resource development, and trade.<sup>35</sup>

In Atlantic Canada the merchant capitalist was very often both trader and shipowner, carrying out importing, wholesaling, and retailing.<sup>36</sup> The growth of shipbuilding and the role of Saint John as an entrepot exporting timber from Saint John valley while also importing manufactured goods from Britain and the United States meant that between 1839 and 1855 it would become the most productive shipbuilding centre in British North America.<sup>37</sup> While Munson was not a shipbuilder, he and his two older sons, Ralph and William, owned a ship, purchasing the brig *Lively* in 1783, and

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<sup>32</sup> Alan MacEachern, *The Miramichi Fire: A History* (Montreal and Kingston: McGill-Queen's University Press, 2020), 25.

<sup>33</sup> T.W. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto: University of Toronto Press, 1985), 57-8.

<sup>34</sup> Acheson, *Saint John*, 58-9.

<sup>35</sup> Judith Fingard, "The 1820s: Peace, Privilege, and the Promise of Progress," in Buckner and Reid, eds., *The Atlantic Region to Confederation*, 279.

<sup>36</sup> Eric W. Sager with Gerald E. Panting, *Maritime Capital: The Shipping Industry in Atlantic Canada, 1820-1914* (Montreal and Kingston: McGill-Queen's University Press, 1990), 48.

<sup>37</sup> Gilbert A. Stelter and Alan F.J. Artibise, "Cities in the Wilderness: Canadian Urban History Before 1850," in Stelter and Artibise, eds., *The Canadian City: Essays in Urban History* (Toronto: McClelland and Stewart Ltd., 1977), 12.

engaged in trade with both the US and Britain.<sup>38</sup> As shall be seen, at the end of the eighteenth century Munson was involved in both the timber and fur trades with his brothers and cousin as trading partners.

The economic success of the new colony of New Brunswick was premised upon the dispossession of the Wolastoqiyik (Maliseet), Mi'kmaq, and Passamaquoddy peoples of their land. With the arrival of 13,500 Loyalists – nearly 10,000 of whom settled in the Saint John River Valley – the impact on the Wolastoqiyik was immediate and devastating.<sup>39</sup> On top of the loss of their lands the Wolastoqiyik saw the collapse of the former economic equilibrium by which they had exchanged furs for trade goods such as ammunition, food, medicine and clothing. However the colonial government did not concern itself with their survival, “viewing their determination to preserve their traditional way of life with contempt and their demand for a resumption of the traditional system of presents as mere begging.”<sup>40</sup> While contingency funds were granted to some Wolastoqiyik and Mi'kmaq during the war of 1812 to guarantee their neutrality, and the Lieutenant Governor, Sir Howard Douglas, managed to persuade the assembly to vote £200 for the Wolastoqiyik on three occasions, overall, notes L.F.S. Upton, “[i]nertia remained the rule in Indian affairs.”<sup>41</sup> Ultimately, as a result of the encroachment of

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<sup>38</sup> Munson is not listed as a shipbuilder in *Saint John Ships and Their Builders* so seems to have been a merchant and ship owner but not a builder. William, Edward's brother, owned the ship *Mary Caroline*, 736 tons, from 1837-1853. Esther Clark Wright, *Saint John Ships and Their Builders* (Wolfville, NS: n. p., 1976), 72.

<sup>39</sup> W.S. MacNutt, *The Making of the Maritime Provinces 1713-1784* (Ottawa: The Canadian Historical Association, 1970), 18.

<sup>40</sup> Ann Gorman Condon, “1783-1800: Loyalist Arrival, Acadian Return, Imperial Reform,” in Buckner and Reid, eds., *The Atlantic Region to Confederation*, 201.

201. Records for Simonds, Hazen, and White for ten years leading up to the American Revolution during which time they traded with the Wolastoqiyik show the firm exported forty thousand beaver skins, as well as skins of muskrat, marten, otter, fox, moose, and deer. Brian Cuthbertson, *Stubborn Resistance: New Brunswick Maliseet and Mi'kmaq in Defense of their Lands* (Halifax, NS: Nimbus Publishing, 2015), 3.

<sup>41</sup> L.F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver, BC: University of British Columbia Press, 1979), 100-101.

Loyalist settlement, the New Brunswick Wolastoqiyik experienced “rapid, unprecedented damage and constraint.”<sup>42</sup>

### **Saint John: Building a new life in a new colony**

The town of Parrtown, later to become Saint John, was established at the mouth of the Saint John River on the Bay of Fundy. Wasting no time establishing his family, Munson, having received lot no. 87 in Parrtown, acquired lot no. 17 on April 20, 1787. Astutely assessing the economic needs of the nascent colony, he opened a hardware establishment. In setting up his business he was no doubt aided by the £250 he received from the Loyalist Claims Commission.<sup>43</sup> While it was a far cry from the £600 value he had assigned his property losses as a result of his support of the British Crown, it was more than many received, with William noting in a letter to Munson from London that the dividends paid to claimants were so small that “some have run mad with despair and disappointment.”<sup>44</sup> Munson replied that “the allowance made in General is so very trivial that were it not from mere necessity, Many would reject & Despise it altogether.”<sup>45</sup>

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<sup>42</sup> John G. Reid, “Empire, the Maritime Colonies, and the Supplanting of Mi’kma’ki/Wulstukwik, 1780-1820,” *Acadiensis* 38, no. 2 (Summer/Autumn 2009): 96. The Wolastoqiyik were not the only ones displaced by Loyalist settlement: Acadians who had survived the earlier deportations were given “summary treatment,” and in some cases Loyalists “tore down and burnt their fences,” with many ending up in the Madawaska valley whereupon the government “took not the slightest interest in their welfare.” S.F. Wise, “The 1790s,” in J.M. Careless, ed., *Colonists and Canadiens, 1760-1867* (Toronto: Macmillan, 1971), 89.

<sup>43</sup> C.M. Wallace, “JARVIS, MUNSON.”

<sup>44</sup> William Jarvis to Munson Jarvis, July 9, 1787, Jarvis Papers, NB Museum Archives.

C.M. Wallace, “JARVIS, MUNSON,” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed April 25, 2016, [http://www.biographi.ca/en/bio/jarvis\\_munson\\_6E.html](http://www.biographi.ca/en/bio/jarvis_munson_6E.html)

<sup>45</sup> Munson Jarvis to William Jarvis, October 26, 1787, Jarvis Papers, NB Museum Archives. In fact, as Howard Temperley notes, “formidable sums” reached the colonies from the British Treasury, channeled “through a relatively small number of Loyalists who thereby attained, if they did not already possess it, an elite status.” Temperley, “Frontierism, Capital, and the American Loyalists in Canada,” *American Studies* 13, no. 1 (1979), 24. Temperley estimates that close to half a million pounds was granted to individual North American residents during the first decade of Loyalist settlement, money that played a crucial role in maintaining British rule in North America (26).

Munson was one of the signatories at the incorporation of the City of Saint John in 1785, sitting first as a gentleman assistant then as an alderman for Dukes Ward on the Common Council from its inception on May 18, 1785 until April 20, 1790.<sup>46</sup> Munson ran successfully in a by-election in 1804 for the provincial House of Assembly and was a founder, vestryman, and later warden of Trinity Anglican Church, clearly becoming established in the civic, religious, and economic realms of the city; as C.M. Wallace notes, although he was not a member of the Loyalist elite, “he was far removed from the destitute.”<sup>47</sup>

Munson had been a silversmith in Stamford – two silver mugs owned by the Congregational Church in Green Farms, Connecticut bearing the mark “MJ” are thought to have been made by him.<sup>48</sup> Munson’s father had been a blacksmith, and the inventory of his tools shows Munson practised both silversmithing and blacksmithing.<sup>49</sup> The latter trade would prove useful for his new-found business in Saint John. A 1784 contract lists several dozen tools Munson agreed to lend out, including an anvil, a vice, a “beek Iron,” two “hand hammers,” one Iron Bitstock and bit, “1 Ribet Tool,” four pairs of tongs, one Standing Drill and bit, two files, one “pollisher,” a rasp, a burnisher, one large hand vice, 27 punches, one wire plate, one drawing knife, “1 p<sup>r</sup> Scales & 16 lb of Weights,” one pair

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<sup>46</sup> *Canada’s First City: Saint John, The Charter of 1785 and Common Council Proceedings under Mayor G.G. Ludlow, 1785-1795* (Saint John, NB: Lingley Printing Co. Ltd., 1962), 59. Munson was repaid £8.15.10 in April of 1790, £13.19.10 a year later, and £9.10 in December of 1792, showing he had the wherewithal to advance such sums to the city (150, 168, 189).

<sup>47</sup> C.M. Wallace, “JARVIS, MUNSON.”

<sup>48</sup> John E. Langdon, *American Silversmiths in British North America, 1776-1800* (Toronto: Stinehour Press, 1970), 56.

<sup>49</sup> Ernest M. Currier, *Marks of Early American Silversmiths* (Harrison, NY: Robert Alan Green, 1970), 79. George Curtis concurs that Munson practised both trades, writing that “It is probable that he worked in both silver and iron.” George Munson Curtis, *Early Silver of Connecticut and Its Makers* (Meriden, CT: International Silver Co., 1913), 102.

of pincers, and “1 p<sup>r</sup> plyers” to one Aaron Olmsted, to “work at the Smiths business.”<sup>50</sup> By 1787 Munson had vastly expanded his business; he was sending “Nails, Glass, Ayle and Paint” to Fredericton and receiving skins in return.<sup>51</sup>

Munson’s business partner in Fredericton was his cousin Stephen; he sent skins he received from Stephen to his brother William who was then in London, and William sent manufactured goods to Saint John in return. Munson then sent the manufactured goods, such as tools, and commodities such as tea, to Stephen. William had joined John Graves Simcoe’s Queen’s Rangers in 1777; he returned to Connecticut following the war but after experiencing retaliatory violence left for England, becoming Munson’s purchasing agent and shipper.<sup>52</sup> Recognizing the potential of the new commercial route between New Brunswick, Britain, and the rest of the Second British Empire, William wrote to Munson that “there certainly must be a very great profit made upon this circuitous trade...while the Navigation Act is in force the American trade is so cramped that they are starving almost which will render our plan three times as profitable as it would otherwise be.”<sup>53</sup>

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<sup>50</sup> LAC, MG 24, B 13, 1641-1642. Olmsted pledged return to Munson “one half of the Net profits of said business after all Charges are taken out”; no penalty was specified if he failed to meet the terms of the contract. Such contracts were no doubt common: Craig notes that John Emmerson, a rural merchant in the Madawaska valley during the 1840s and 50s, rented sugar kettles out (for boiling maple syrup), as well as selling tools and metalware. Craig, *Backwoods Consumers and Homespun Capitalists*, 210-11.

<sup>51</sup> C.M. Wallace, “JARVIS, MUNSON.”

<sup>52</sup> Robert J. Burns, “JARVIS, WILLIAM,” in *Dictionary of Canadian Biography*, vol. 5, University of Toronto/ Université Laval, 2003–, accessed Feb. 15, 2022 [http://www.biographi.ca/en/bio/jarvis\\_william\\_5E.html](http://www.biographi.ca/en/bio/jarvis_william_5E.html). While in London William married Hannah Owen Peters, daughter of the Rev. Dr. Samuel Peters, a Loyalist from Hebron, Connecticut, in 1785. William and Hannah would subsequently leave London for Upper Canada, where William was appointed Secretary and Registrar of the Province in 1792.

<sup>53</sup> William Jarvis to Munson Jarvis, August 20, 1787, Jarvis Papers. NB Museum Archives. Goods shipped by William included “Iron Bars, Iron Pots and Kettles, Knitting Pins, Steel Compasses, brass Curtain rings, fire shovels and tongs, Pewter ware, tea pots, Paint, Rope and Twine, Nails, Playing Cards, Lead Shot, Casks and Chamber Pots.” Robert S. Allen, “Mr. Secretary Jarvis: William Jarvis of Connecticut and York,” in Phyllis R. Blakeley and John N. Grant, eds. *Eleven Exiles: Accounts of Loyalists in the American Revolution*, (Toronto and Charlottetown: Dundurn Press, 1982), 297-8.

By 1790 Munson was writing to William that “our exports of fish Lumber & Vessels is very Considerable each of which employs a very Great number of People.”<sup>54</sup>

William would eventually leave London for Upper Canada; Samuel, who had initially settled in Kingston, New Brunswick, returned to Stamford, where he became a business contact for Munson and, as has been seen, for William Hazen. The other two siblings who had gone into exile, Polly and John, settled in Kingston as well, where both faced challenges. John, unlike his father and three older brothers, was not an ardent Loyalist.<sup>55</sup> Despite offering his allegiance to the new republic, he was forced to leave Stamford with the Loyalist refugees, ending up in Kingston with his wife Sally and daughter Harriet where Munson bought him a house, commenting in a letter to another family member that “liquor has got to be his master.”<sup>56</sup> His addiction notwithstanding, John lived the rest of his life in Kingston until the ripe old age of 93.<sup>57</sup>

Like John’s, Polly’s life was upended by the Revolution; her husband Fyler Dibblee, a Yale-educated lawyer who was Captain of the 1<sup>st</sup> Militia Company of Stamford and served as the town’s representative to the Connecticut general assembly, was forced to flee to Long Island in 1776 to escape a violent patriot mob.<sup>58</sup> Polly and their five children left their £500 home to join him the following spring, when the family

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<sup>54</sup> Munson Jarvis to William Jarvis, July 7, 1790, Jarvis Papers, NB Museum Archives, quoted in Ann Condon, *The Envy of the American States: The Loyalist Dream for New Brunswick* (Fredericton, NB: New Ireland Press, 1984), 149. Condon (125) mistakenly identifies Caroline Jarvis, the daughter of Loyalist George Leonard, as being married to Edward; she was in fact married to Edward’s older brother Ralph.

<sup>55</sup> Seymour, the youngest brother, born December 22, 1765, would have been only ten years old at the war’s onset. Of the four remaining sisters Sarah, Hannah, and Lavinia stayed in Stamford; Martha died in 1784 in Halifax, having married a Mr. King. *The Jarvis Family*, 17.

<sup>56</sup> Stephen Davidson, “Damaged Loyalists: Alcoholism,” *Loyalist Trails* 2007-32: August 19, 2007 (UEALC Newsletter): 1-2.

<sup>57</sup> *The Jarvis Family*, 17.

<sup>58</sup> *The Jarvis Family*, 29-30.

was forced to flee to New York City.<sup>59</sup> The family was made homeless and forced to flee several times, and in 1778 Fyler was imprisoned for six months. In 1783 Fyler, Polly, their children, and two Black servants sailed for Paratown where, despite their eldest son Walter marrying the daughter of an Anglican clergyman, Fyler struggled during their first winter – there was little call for his services as an attorney and he was indebted both to Munson and a fellow Loyalist. On the evening of May 6, 1784, faced with the prospect of debtor’s prison, Fyler retired behind a curtain while Polly and the family were at dinner, took out a razor, and ended his life.<sup>60</sup> Polly, now a newly widowed mother of five, was supported financially by Munson, a creditor having claimed the Dibblees’ property and their house having burned down in a fire. William, who was in London as has been seen, was able to secure her £350 from the Loyalist Claims Commission.<sup>61</sup>

While Polly tragically lost her husband she had brothers to turn to, which many Loyalist widows did not, being forced to manage on their own and being deprived of information about pensions and claims that would have been shared amongst the men. As Mary Beth Norton writes, Loyalist women in general fared much worse than male Loyalists, some being reduced to such a state of desperation that they were forced to sell or pawn their clothes to feed themselves and their children.<sup>62</sup> In June 1784 Mary Robie, exiled to Halifax with her parents and sister, commenting on the distress of exile she saw displayed by those experiencing poverty and physical suffering upon their arrival in the colony of Nova Scotia, wrote in her diary: “If I look round me, what thousands may I see

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<sup>59</sup> Davidson, “A Calamitous Situation: The life of Polly Dibblee, Loyalist,” *The New Brunswick Reader* (September 9, 2006): 7.

<sup>60</sup> Brown, *The Good Americans*, 141. Bell suggests Dibblee was also accused of embezzling public stores. David Bell, *Loyalist Rebellion in New Brunswick: A Defining Conflict for Canada’s Political Culture* (Halifax, NS: Formac Publishing Co., 2013), 63.

<sup>61</sup> Brown, *The Good Americans*, 141.

<sup>62</sup> Mary Beth Norton, “Eighteenth-Century American Women in Peace and War: The Case of the Loyalists,” *William and Mary Quarterly* 33, no. 3 (1976): 402.

more wretched than myself.”<sup>63</sup> While Halifax at least was a garrison town and so somewhat built up, in Parrtown some new arrivals had to sleep in tents, covered with spruce boughs, as Mary Barbara Fisher recounts: mothers “clasped their infants to their bosoms and tried by the warmth of their own bodies to protect them from the bitter cold. How we lived through that awful winter I hardly know.”<sup>64</sup> Sadly, some died of exposure.

### **A new colony: High ideals and jostling for preferment**

Munson, however calamitous the events had been that had overturned his life and ruptured his family, had little time for regrets. He was clear in his disdain for the events surrounding his exile from Connecticut, writing in a letter to Dr. Samuel Peters, his brother’s future father-in-law, in 1788, the year of Edward’s birth:

Although we poor Tories (as they were pleased to call us), mourn our sad fate, and undoubtedly shall during this generation, and look upon it, the late rebellion, as one of the blackest scenes of iniquity that ever was transacted. We have fought the good fight (temporal), if we have not overcome the thirteen United States, yet we overcome one of the great (I won’t say good) allies, the devil and all his works.<sup>65</sup>

Nor did Munson entertain thoughts of moving elsewhere in the British empire, as many did. Although D.G. Bell suggests that his comment to William, quoted in the introduction, that those who returned to the US were “a set of poor wretches that had they staid here must have been supported by the publick at least every winter” and that “very few people of any consequence” had left is “too defensive to be reassuring,” it was the view of many Loyalists who had made their homes in the new colony.<sup>66</sup>

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<sup>63</sup> Mary Robie, diary, June 4-5, 1784, quoted in G. Patrick O’Brien, “‘Gilded Misery’: The Robie Women in Loyalist Exile and Repatriation, 1775-1790,” *Acadiensis* 49, no. 1 (Spring/printemps 2020): 41.

<sup>64</sup> Mary Barbara Fisher, “The Gloomy Prospect,” in Mary Alice Downie and Barbara Robertson, eds. *Early Voices: Portraits of Canada by Women Writers, 1639-1914* (Toronto: Dundurn, 2010), 35.

<sup>65</sup> Munson Jarvis to Dr. Samuel Peters, July 3, 1788, quoted in *The Jarvis Family*, 29.

<sup>66</sup> Munson Jarvis to William Jarvis, October 25, 1787, quoted in D.G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics, 1783-1786* (Fredericton, NB: New Ireland Press, 1983), 33. See, for

The Loyalists who did stay were given New Brunswick as their own colony, separated from Nova Scotia in 1784. As Ann Gorman Condon writes, the Loyalists who were given the colony of New Brunswick to build from the ground up wanted to reshape its society “to reflect the values for which they had suffered expulsion from America and to assuage their nostalgia for their old homeland.”<sup>67</sup> Although from different states – New York, New Jersey, Pennsylvania, Massachusetts, and Connecticut – the New Brunswick Loyalists had spent several years together in wartime New York, giving them a common vision for the new colony. Unfortunately, the number of positions available to the surfeit of office-seekers in what they hoped to make “the most gentlemanlike” society in North America meant that there were not enough to go around, and the new colony was soon marked by infighting.<sup>68</sup> Like all Loyalists, Munson sought the best future for his offspring, which meant lucrative high-placed positions for his sons and a prosperous, respectable marriage for his daughter. Successful as a merchant, he eventually went into business with Edward’s brothers, Ralph Munson (1776-1853) and William (1787-1856), a partnership that would dissolve in 1812.<sup>69</sup> Ralph made an advantageous marriage with Caroline Leonard (1782-1854), the daughter of George Leonard, a prominent Loyalist of the colony and their sister Mary, as noted, married Robert Hazen, their son, Robert Fraser (1803-1874), becoming an attorney and protégé of Edward.

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example, a letter by New Brunswick Loyalist Edward Winslow to the *Royal Gazette* in 1802 lambasting “a few giddy, eccentric, and discontented characters” who, forgetting what the British government had done for them, “have sold the lands that were granted them, and meanly skulked into the United States” as well as those who relocated to Upper Canada. Quoted in Upton, *The United Empire Loyalists: Men and Myths* (Toronto: Copp Clark, 1967), 83.

<sup>67</sup> Condon, “Loyalist Arrival,” 186.

<sup>68</sup> Condon, “Loyalist Arrival,” 191.

<sup>69</sup> Ralph Munson joined Munson in the firm of Munson Jarvis and Son, which was ended in 1810, and Ralph and William joined him in Munson Jarvis and Company, which dissolved in 1812. At his death in 1825 Munson seems to have been in partnership with William only. C.M. Wallace, “JARVIS, MUNSON.”

Unlike his brothers, Edward would seek to climb the professional ladder and aspired to law. Among the Loyalists and pre-Loyalists in the new colony there were seven judges and at least eighteen other lawyers, of whom Edward's unfortunate Uncle Fyler would have been one.<sup>70</sup> Part of the governing elite's vindication in making the New Brunswick "the envy of the American states" would be through cultivating "those 'principles of subordination and obedience to the laws' for which they saw themselves as having been martyred in the Revolution."<sup>71</sup> However the surfeit of lawyers and judges in a newly-created nascent colony meant that there were not enough positions for those who needed them. "In the Lilliputian world of New Brunswick, where a genteel future for the young depended not so much on inherited wealth as access to public resources," notes D.G. Bell, "the problem for those who aspired to a gentlemanly place in the legal profession was particularly acute."<sup>72</sup> Moreover, as Bell also notes, no lawyer at the bar at the beginning of the century in New Brunswick could rely solely on his profession to support himself and his family, leading to men holding multiple offices, holding onto offices despite age and infirmity, or taking on posts that could not be simultaneously carried out.<sup>73</sup> Loyalist elites, however, were able to reconcile their high standards of public service with such seeming lapses, regarding nepotism and plural officeholding as "legitimate rewards for public service, not as corrupt practices."<sup>74</sup>

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<sup>70</sup> Bell, "Paths to the Law in the Maritimes, 1810-1825: The Bliss Brothers and their Circle," *Nova Scotia Historical Review* 8, no. 2 (1988): 8.

<sup>71</sup> Bell, *Legal Education in New Brunswick: A History* (Fredericton, NB: University of New Brunswick, 1992), 2.

<sup>72</sup> Bell, "Paths to the Law in the Maritimes," 6.

<sup>73</sup> Johnathan Bliss, for example, sought to be mayor of the City of Saint John despite being the Attorney General in Fredericton, 113 km away, and Edward Winslow, the worst offender, sought, or was appointed to, secretary of the province, member of the Council, commanding officer of a regiment of New Brunswick Fencibles, justice of the peace, collector of the customs, deputy surveyor of the King's Woods, and justice of the Supreme Court, among other public posts. Condon, *The Envy of the American States*, 180-1.

<sup>74</sup> Condon, *The Envy of the American States*, 27.

When it came to the second generation, the colony's judges were, of course, anxious to establish their sons in the legal profession which meant a legal education, one having "as much to do with forming a polished gentleman as a learned lawyer."<sup>75</sup> Lawyers were "gentlemen by birth [who] could compose Latin verse on demand"; in most cases an individual's status as a barrister or advocate meant that he was by definition a gentleman.<sup>76</sup> Aspiring lawyers would be assumed to be versed in history, religion, philosophy, and politics. "When the dominant ideals of the legal profession were those of the lawyer-statesman and the gentleman-scholar," notes Philip Girard, referring to attorneys in the neighbouring colony of Nova Scotia, "a broad approach to legal culture and to legal formation was obligatory."<sup>77</sup>

In New Brunswick, the profession of lawyer was in many cases passed from father to son. Bell states that the bleak prospects in the colony led so many lawyers to leave the province that "the only young men who could aspire to become lawyers within the province were those whose professional path was eased by some family influence – typically that of a lawyer father." He writes that of the 51 men – lawyers and judges – who comprised the legal profession between 1785 and 1820, there were eleven father/son combinations, including four cases of two brothers at the bar and one instance of three brothers.<sup>78</sup> Edward Jarvis was, along with Henry and Blowers Bliss, John Simcoe Saunders, and Ward Chipman, Jr., one of the sons who would become the second generation of office holders in New Brunswick. While he did not have the advantage of a

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<sup>75</sup> Bell, *Legal Education in New Brunswick*, 1.

<sup>76</sup> Bell, *Legal Education in New Brunswick*, 12; John McLaren, *Dewigged, Bothered, and Bewildered: British Colonial Judges on Trial, 1800-1900* (Toronto: University of Toronto Press/Osgoode Society for Canadian Legal History), 49.

<sup>77</sup> Philip Girard, *Lawyers and Legal Culture in British North America: Beamish Murdoch of Halifax* (Toronto: The Osgoode Society, 2011), 32-33.

<sup>78</sup> Bell, *Legal Education in New Brunswick*, 8.

father who was a judge and had an office and a law library to leave to him, he did have a father whose success as a merchant helped finance his education.

### **A gentleman's education: King's College, Nova Scotia**

Fittingly for an aspiring attorney and second-generation Loyalist, Edward attended King's College in Windsor, Nova Scotia, a university founded in 1789 by Charles Inglis, the first bishop of Nova Scotia. The university was the oldest university in what would become Canada, educating many who would serve in high positions in both church and state.<sup>79</sup> In an effusive 1809 letter home Edward noted that the differences between Britain and the US were “amicably settled,” discussed a mare that he hoped to sell in Halifax (“she is certainly an excellent beast”), and asked if his family had seen a play in which he had previously been involved in Saint John; he also discussed leaving his furniture behind when he returned to Saint John, as “the freight would be more than its worth.”<sup>80</sup> He wrote that he was “very busy in preparing for examinations” as he was “not prepared as I could wish to be.” The examinations at the school were “severe, strict and minute”; in keeping with the times corporal punishment – caning – was a method of instilling obedience and discipline.<sup>81</sup> Edward kept up correspondence with several of his fellow

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<sup>79</sup> The site of the town of Windsor, 60 km northwest of Halifax, was a popular retreat for the “codfish gentry of Halifax,” as Mary Byers and Margaret McBurney write, “a rarified atmosphere in which, presumably, it was assumed that the boys would be hard pressed to find distractions.” Byers and McBurney, *Atlantic Hearth: Early Homes and Families of Nova Scotia* (Toronto: University of Toronto Press, 1994), 222. King's College was moved Halifax in 1923 after a 1920 fire and the original site is now a national historic site of Canada. See [https://www.pc.gc.ca/apps/dfhd/page\\_nhs\\_eng.aspx?id=319](https://www.pc.gc.ca/apps/dfhd/page_nhs_eng.aspx?id=319)

<sup>80</sup> Edward Jarvis to Munson Jarvis, May 6, 1809, Jarvis Papers, NB Museum Archives.

<sup>81</sup> Byers and Margaret, *Atlantic Hearth*, 224-5. Reverend William Cochran, ordained by Inglis despite a lack of theological training, became principal in 1790 and was said to be “liberal with the cane,” in one case making two students fast for 23 hours for drinking tea without leave at a master's home.

students following his graduation, including Anthony Barclay and J.W. Nutting, the latter corresponding with Jarvis for several years after they had both left the college.<sup>82</sup>

King's College was more than just a place for Edward, a young aspiring attorney, to obtain his bachelor's degree. It was also a place where he would become – or continue to be – imbued with certain “gentlemanly” ideas that reflected hierarchical notions of class, race, and gender. The very founding of the college was conceived by the Nova Scotia assembly in Loyalist terms, as a college that would prevent

the Youth of this Country (now panting after Knowledge) from rushing into the various Seminaries, already established in the United States of America, by which means their Attachment to their native Country may be in Danger of being weakened, and Principles imbibed unfriendly to the British Constitution.<sup>83</sup>

Inglis was a man perfectly suited to the task, a Loyalist who had fled New York for England in 1783 where, like Edward's uncle William, he spent several years “jockeying with fellow refugees for pensions and preferments.”<sup>84</sup> Before his exile as a Loyalist Inglis, like many Loyalist clergymen (most were Anglican, or Episcopalian), wrote pamphlets and preached sermons exhorting obedience to England and the monarchy, declaring that most American colonists were Englishmen by birth and by affirmation and therefore subject to the British Parliament and the King. Inglis and his fellow Loyalist clergymen sought biblical backing for their arguments, in particular 1 Peter 2:13-17 and

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<sup>82</sup> James Walton Nutting was admitted to the Nova Scotia bar in 1810 and appointed to the position of prothonotary of the Supreme Court and clerk of the crown in 1834, a position he held until his death in 1870. Breaking with Inglis's church, Nutting helped start what would become the First Baptist Church in Halifax in 1827. Wendy L. Thorpe, “NUTTING, JAMES WALTON,” in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed January 4, 2024, [http://www.biographi.ca/en/bio/nutting\\_james\\_walton\\_9E.html](http://www.biographi.ca/en/bio/nutting_james_walton_9E.html).

<sup>83</sup> Committee convened by the Nova Scotia Assembly to recommend the foundation of an Anglican college in the colony, quoted in Judith Fingard, *The Anglican Design in Loyalist Nova Scotia, 1783-1816* (London: The Society for Promoting Christian Knowledge, 1972), 150.

<sup>84</sup> Inglis was appointed in 1787, serving also as Bishop for Newfoundland, St. John's Island (later the colony of Prince Edward Island), Lower Canada, and Bermuda. At that time Nova Scotia included what would later become the colony of New Brunswick. Judith Fingard, “INGLIS, CHARLES,” in *Dictionary of Canadian Biography*, vol. 5, University of Toronto/Université Laval, 2003–, accessed November 4, 2023, [http://www.biographi.ca/en/bio/inglis\\_charles\\_5E.html](http://www.biographi.ca/en/bio/inglis_charles_5E.html).

Romans 13:1-7, both of which expounded on the duty of Christians to submit to authority, even to bad rulers.<sup>85</sup>

Inglis was not a shoo-in for the position of bishop of Nova Scotia, however; the choice was unpopular with the colonial clergy. One of the main contenders was Samuel Peters, Edward's Uncle William's father-in-law, who waged a pamphlet war against Inglis from London, denouncing the Irish-born Inglis as "an insincere Loyalist, a disreputable clergyman, and an unscrupulous member of the Fifty-Five Associated Loyalists."<sup>86</sup> Once appointed Bishop Inglis sought to create a strong Anglican and exclusionist college, but was forced to some degree to compromise with to his two fellow governors, Alexander Croke and Chief Justice Sampson Salter Blowers. Their statutes, Inglis contended, were "calculated for a school of law rather than of theology" – not surprising for two men of the legal profession.<sup>87</sup> Inglis, however, was able to ensure at least some measures to keep out dissenters and potentially convert non-Anglican students: in 1806 a measure was confirmed that required a subscription to the Thirty-nine Articles of the Church of England as a condition for the awarding of degrees.<sup>88</sup>

In a letter to Edward, who had just returned to Saint John, in September of 1810, Inglis discusses minor financial matters, the performance of his fellow students, and the

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<sup>85</sup> Gregg L. Frazer, *God against the Revolution: The Loyalist Clergy's Case against the American Revolution* (Lawrence, Kansas: University Press of Kansas, 2018), 52. Inglis used Nero as an example of a poor leader who nonetheless had to be followed: "The personal Character of the Magistrate was not to interfere with the Civil Duty of the Subject: Even when bad, it did not dissolve the Obligation of the latter." As Frazer notes the implication for Inglis's audience would of course be that "as bad as George III might be, he is not nearly as bad as Nero – and not even Nero's 'vicious character' excused rebellion."

<sup>86</sup> Fingard, *The Anglican Design in Loyalist Nova Scotia*, 22. "The 55" were a group of Loyalists who petitioned Sir Guy Carleton, the Lieutenant Governor, unsuccessfully for 2,000-acre tracts of land. Wright, *Loyalists of New Brunswick*, 175.

<sup>87</sup> Fingard, *The Anglican Design in Loyalist Nova Scotia*, 153.

<sup>88</sup> Inglis's view of dissenters stemmed no doubt from Episcopalian antipathy to the religious revival, led by Calvinist Jonathan Edwards and Wesleyan George Whitfield, that had swept the American colonies beginning in 1734, an upheaval which "disturbed and alarmed many a conservative." Louis B. Wright, *The Colonial Civilization of North America 1607-1763* (London: Eyre & Spottiswode, 1949), 267-8.

material for a course he will be instructing.<sup>89</sup> Inglis makes negative comments about “P,” presumably Charles Porter, the president from 1805-1836. The tone is collegial, resembling more that of fellow faculty member than a teacher, one assuming shared values, beliefs, and priorities. Judith Fingard describes Inglis as “bewigged” and “dapper in attire,” enjoying “books and rural pastimes,” having secured an estate and 12,000 acres of land in the Annapolis valley. His episcopacy, “an anti-climax to a controversial career,” reflected his “satisfaction at drawing a handsome salary in return for minimal exertion and as a reward for past rather than present services to the British empire.”<sup>90</sup>

Inglis, then, an early authority figure in Edward’s life, was a conservative Anglican Loyalist and wealthy landowner. Later John Coffin, another wealthy Loyalist landowner reaping the rewards of loyalty in British North America, would figure prominently in Edward’s life. As will be seen, in his judicial career, particularly as Chief Justice of Prince Edward Island, Edward would uphold the rights of large property owners; his early connection with Inglis and Coffin was undoubtedly one of the reasons he identified with such men. Both men also reaped the benefits of their Loyalty, expecting the British government to provide for their privileged way of life. In the case of Inglis, moreover, Edward would reveal later in his career, unsurprisingly perhaps, views similar to those expressed by Inglis in his sermons and pamphlets during the American Revolution regarding duty to authority. Inglis’s views on rebellion, in particular, would be echoed in Edward’s rulings against those challenging the authority of the state.

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<sup>89</sup> Charles Inglis to Edward Jarvis, September 29, 1810, LAC, MG 24, B 13, 711-714. Inglis mentions that “Bliss” received a scholarship, a reference to William Blowers Bliss, the son of Jonathan Bliss, a Saint John Loyalist judge. William Blowers received his BA from King’s College in 1813 and his MA in 1816; his brother Henry, who would remain friends with Edward until the late 1830s despite his residence in London, received his BA from King’s College in 1816.

<sup>90</sup> Fingard, “INGLIS, CHARLES,” [http://www.biographi.ca/en/bio/inglis\\_charles\\_5E.html](http://www.biographi.ca/en/bio/inglis_charles_5E.html).

Loyalist clergy frequently attributed the American rebellion to troublemakers. As Gregg Frazer writes, they believed that Americans had enjoyed a nearly idyllic life, but “rebelled against their mother” on the basis of relatively minor grievances, most of which had been repealed. The reason they did this, the Loyalist ministers believed, was simple: “the people of America were deluded and led astray by rabble-rousing troublemakers who had rebellion and independence in mind from the beginning.”<sup>91</sup> In other words, though the British government had made errors, it was troublemakers who had convinced colonists that these mistakes constituted real oppression. As will be seen, as Chief Justice Edward, when faced with land protests, similarly blamed the unrest on outside agitators rather than on the British government’s prioritizing of the rights of landowners.

More generally, that clerics such as Charles Inglis figured prominently in young Edward’s education meant that he was influenced by those representing a crucial pillar of the colonial state at a critical time in his early formation. Denis McKim identifies Inglis as one of several Anglican clerics in British North America who portrayed themselves as “bulwarks of order and loyalty in a dangerously democratic North American context.”<sup>92</sup> Imperial authorities, suggests McKim, saw Anglican establishments as mechanisms through which “an appreciation for loyalty and passivity could be installed in colonists’ minds by clerics acting as auxiliaries of the state”; this became the case particularly after the American Revolutionary War, which those in power on both sides of the Atlantic attributed to the prevalence in colonial society of “such subversive – and, as they saw it,

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<sup>91</sup> Frazer, *God against the Revolution*, 144-145.

<sup>92</sup> Denis McKim, “Anxious Anglicans, Complicated Catholics, and Disruptive Dissenters: Christianity and the Search for Social Order in the Age of Revolution,” in Elizabeth Mancke, Jerry Bannister, Denis McKim, and Scott W. See, eds. *Violence, Order, and Unrest: A History of British North America, 1749-1867* (Toronto and Buffalo: University of Toronto Press, 2019), 54. McKim includes in this group Lower Canada’s Jacob Mountain and John Strachan of Upper Canada; the latter would play a similar ideological role in the life of Edward’s cousin, William’s son Samuel Peters Jarvis, who would embrace conservatism in his career and politics.

mutually reinforcing – phenomena as Dissenting Protestantism and political radicalism.”<sup>93</sup> Thus even before heading to the metropole to complete his legal studies Edward had been immersed in a social and political milieu in both Saint John and Windsor that equated the state, the Church, order, loyalty, and hierarchy, and saw as anathema forces of religious dissent and political radicalism, a belief he would bring to bear twenty years later in his role as chief jurist of Prince Edward Island.

Another aspect of a gentleman’s education that Edward would have undergone at King’s College was financial. Away from home and paying for lodgings, meals, books, and travel, young men learned, as Sarah Pearsall puts it, to be men of credit. In this period parents who were separated from sons sought to instill habits that would establish them as men of credit: to achieve this many fathers deployed “strategies of monitoring and advice giving, in both verbal and written form.”<sup>94</sup> Edward’s father was a merchant whose business depended upon bills of exchange, one of the most common instruments for circulating capital at the turn of the century, and one that required the exercise of judgement.<sup>95</sup> In an 1803 letter to Edward at King’s College, his father wrote that a Mr. Deschamps would have control over Edward’s money and would give him his pocket money when necessary.<sup>96</sup> Munson told Edward to be moderate in his expenditures: “I don’t wish to confine you to too small a sum neither do I wish you to be extravagant.” The growing use of bills of credit in British North America meant that all men were required to be “men of credit” for most financial transactions. His father’s advice

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<sup>93</sup> McKim, “Anxious Anglicans,” 57.

<sup>94</sup> Sarah M.S. Pearsall, *Atlantic Families: Lives and Letters in the Later Eighteenth Century* (Oxford, UK: Oxford University Press, 2008), 124.

<sup>95</sup> Pearsall, *Atlantic Families*, 120.

<sup>96</sup> Munson Jarvis to Edward Jarvis, November 18, 1803, LAC, MG 24, B13, 645.

notwithstanding, however, the untimely use of credit would cause Edward problems in the future.

### **London and the Inns of Court**

After receiving his BA from King's College in 1809, Edward was admitted to the New Brunswick bar as an attorney at law on October 12, 1811, and became a notary public in Saint John on February 22, 1812.<sup>97</sup> He articulated with Ward Chipman, a prominent Loyalist attorney. He was one of as many as thirteen out of the sixteen New Brunswick students admitted as attorneys between the opening of the Supreme Court in 1785 and Chipman's translation to the bench who served their clerkship with Chipman in Saint John.<sup>98</sup> After practising as an attorney in Saint John for a short period Edward left in 1813 for London to pursue his legal studies at the Inns of Court, where he was admitted to the bar at the Inner Temple; his fellow second-generation Loyalist compatriots Ward Chipman's son, Ward Chipman Jr., and John Simcoe Saunders were also studying there. Henry Bliss would attend the Inns of Court several years later.<sup>99</sup>

As Bell notes, by the early nineteenth century the Inns had "long ceased to offer a programme of study to be followed or examined on" and attendance there meant little in terms of legal education, but the resulting call to the English bar was "a credential of

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<sup>97</sup> J.M. Bumsted and H.T. Holman, "JARVIS, EDWARD JAMES," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, accessed December 16, 2022, [http://www.biographi.ca/en/bio/jarvis\\_edward\\_james\\_8E.html](http://www.biographi.ca/en/bio/jarvis_edward_james_8E.html).

<sup>98</sup> Bell, "Paths to the Law in the Maritimes," 14. Bell himself puts the number at ten, but quotes Joseph W. Lawrence, who estimates thirteen students. Lawrence, *Judges of New Brunswick and Their Times* (Fredericton, NB: Acadiensis, 1985), 203.

<sup>99</sup> These, along with Henry's brother William Blowers, were the five New Brunswickers documented by Bell who attended the Inns of Court during the 1810s and 1820s; a similar number attended from Nova Scotia. See Bell, *Legal Education in New Brunswick*, 9.

gentlemanly status recognized throughout the Empire.”<sup>100</sup> Any legal training could be gained only through tutoring. On October 26, 1813, Edward noted in his journal that he had engaged Joseph Chitty as his tutor: “I gave Chitty my note of hand for fifty guineas, payable in six months with interest, and this day commenced my year with him.”<sup>101</sup> The fifty guineas was on top of fifty guineas for his Chambers in the Inner Temple for one year, 9½ guineas to “Mrs. Nixon ye laundress,” and “the porter at one guinea a quarter.”<sup>102</sup> At that time £100 was worth C\$14,655, a formidable sum; it appears that Munson advanced at least some of the money to Edward as part of his inheritance, meaning that Edward was investing in his own career. In a “Schedule of Annual Expenditures” written in 1813 Edward included, besides those for chambers, a laundress, and a porter, amounts for dinners and breakfasts, letters, candles, and coals, noting a £10 washing bill, £30 for tailoring, £7 for a shoemaker, and £3 for a hatter.<sup>103</sup>

Edward had initially lodged with Ward Chipman Jr. in Bloomsbury for five months of what Bell describes as a phenomenon experienced by most of the young colonials in London – months of “disoriented dissipation, during which the young man sampled the delights of the great world around him but accomplished little in the legal line.”<sup>104</sup> Acknowledging the five wasted months, Edward noted in his journal that

In such a place as London, it requires no small portion of time to get the head settled and the mind composed – to abstract the attention from external objects and fix it upon the

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<sup>100</sup> Bell, *Legal Education in New Brunswick*, 9.

<sup>101</sup> Fifty guineas was the standard fee for a legal apprenticeship in New Brunswick, which involved the student paying a member of the bar to act as his scribe and errand boy. Bell, “Paths to the Law in the Maritimes,” 12. Joseph Chitty (1776-1841) was a legal writer who practised as a special pleader under the English bar for some years before being called to the bar himself at the Middle Temple on June 28, 1816. He trained many eminent lawyers and wrote a series of standard practitioners’ books. John Andrew Hamilton, “Chitty, Joseph,” *Oxford Dictionary of National Biography*, 1885-1900, Vol 10.

<sup>102</sup> From journal kept by Edward Jarvis beginning in 1813 documenting the period of his studies in London, quoted in Lawrence, *The Judges of New Brunswick and Their Times*, 277-79.

<sup>103</sup> Edward Jarvis, “Schedule of Annual Expenditures,” October 1813, LAC, MG 24, B 13, 1649-1650.

<sup>104</sup> Bell, “Paths to the Law in the Maritimes,” 23.

object of professional pursuits alone – to gain that most desirable and necessary qualification for a lawyer, a habit of abstraction and attention, regardless of the confusion surrounding on every side. This is... a work of time and of perseverance, and even when in some measure acquired, to persist, to shun the temptations spread around to ensnare the weak and timid or unwary requires a degree of fortitude as well as circumspection, not always easy to attain or to preserve....<sup>105</sup>

Edward was conscious that he was investing in his career and had assumed the role of the eager (if somewhat apprehensive) young law student. The camaraderie he experienced with Chipman and Saunders, as well as their shared sense of destiny as future gentlemen elites, was a positive aspect of his time in London, something he had also experienced at King's College. The contacts he made in his formative years would be prized connections throughout his professional life, an essential part of the most important tool for a young professional gentleman in the British Empire during the 1820s and 30s: patronage.

In September of 1814 Edward took a trip to France. As Michèle Cohen notes, during the eighteenth century it had become the practice for young elite men to complete their education by travelling to France and Italy; in France they could “perfect their manners and conversation by socializing with the *Beau Monde*.”<sup>106</sup> While Edward's trip seems to have been a sightseeing tour spent mostly in the company of his four somewhat older British travel companions, a Colonel L., a Mrs. Welthaus, and the Rev. Mr. Ridley and his wife, he would nonetheless have seen his trip as part of his gentlemanly education and a natural offshoot of his cosmopolitan outlook. In his diary entry for September 19<sup>th</sup> Edward recounted witnessing a grand military review in Paris, including a procession that included the King's carriage passing under the Arc de Triomphe, noting that “the warlike

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<sup>105</sup> Edward Jarvis, journal, 1813, quoted in Lawrence, *The Judges of New Brunswick*, 276-77.

<sup>106</sup> Michèle Cohen, “‘Manners’ Make the Man: Politeness, Chivalry, and the Construction of Masculinity, 1750-1830,” *Journal of British Studies* 44, no. 2 (April 2005): 322.

sounds of the trumpets had a very fine effect.”<sup>107</sup> Edward followed the procession to the Champ de Mars, at the head of which was the military academy at which, Edward noted, “Bonaparte received his education.”

Commenting on the ubiquitous presence of soldiers in France Edward writes that “Indeed, to an Englishman, it is almost ridiculous to see how far this is carried, not a public fountain in the streets, not a market, a bath, scarcely a building, but what has its military sentinels. The government pervades all, & is visibly seen in all.”<sup>108</sup> The pervasive military presence is hardly surprising given that Napoleon had been banished to Elba earlier that year. Edward was also unaware that his future brother-in-law had recently been in France; Edward Boyd, the brother of Anna Maria Boyd, whom Edward would marry in 1817, was a soldier in the British army. In a letter to his sister from Toulouse dated March 20, 1814, Edward Boyd writes of being exposed to “a tremendous fire of round shot, grape & musquetry”: “I expect that we shall be at it again in a day or two to kick the Enemy out of Toulouse.”<sup>109</sup> Boyd condemned the behaviour of the French officers in Spain and Portugal, who were “at the head of the plundering & murdering instead of restraining it.” Like his future brother-in-law, Boyd unsurprisingly compared the French unfavourably to the British; the following year he would become injured and family letters would subsequently be full of references to “poor Edward’s ankle.”<sup>110</sup>

Overall, Edward Jarvis’s time at the Inns of Court was a means of consolidating his status as a young aspiring gentleman of empire, through education, social contacts,

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<sup>107</sup> Edward Jarvis, “Journal,” 14, Prince Edward Island Public Archives and Record Office. Louis XVIII lived in England for much of the Napoleonic Wars, returning to France after Napoleon’s 1814 abdication.

<sup>108</sup> Edward Jarvis, “Journal,” 15.

<sup>109</sup> Edward Boyd to Anna Maria Boyd, March 20, 1814, Jarvis papers, NB Museum Archives. A letter from Edward to his and Maria’s brother John dated December 15, 1815 reveals that Edward was at that time outside of Paris.

<sup>110</sup> Edward Boyd eventually recovered from his injury, moving to Van Diemen’s Land during the 1820s.

and cultural aspirations, building upon the foundation that had been laid at Trinity College. As noted, as a law student Edward purchased clothes, shoes, hats, books, and other items from London merchants; he also rented furnished lodgings which reflected a specific socio-economic level. A list of items contained in the Hall Staircase four-room chambers let to Edward by a fellow student at the Inns of Court in July of 1813 gives a sense of the living situation a law student in London at that time aspired to. Some of the objects itemized in the list included carpets, pictures, a stove, “a Mahogany Pembroke Table,” “Chairs with horse hair bottoms,” “A pr. Candlesticks,” “A Pair Snuffers & Tray,” “1 Cane bottomed Chair,” and lastly “A Tea Kettle & a Slop Pail” (there was no kitchen or bathroom).<sup>111</sup> While in London Edward was asked to purchase and ship items back to Saint John by friends and family, such as items of clothing, fabrics and household goods, all in the latest style.<sup>112</sup> Edward also had a small portrait painted of himself as a student, something that seemed to be common for those with the means to pay for it, yet another indication that he saw himself as a young gentleman with a successful professional career ahead of him.

### **Saint John and Fredericton: Loyalism and patronage**

Soon after his return from London, on April 20, 1817, Edward married Anna Maria Boyd. There are no existing letters indicating when or how they met: the Boyd family was from Nova Scotia but at the time of the marriage were based in Saint John. Edward and Maria’s daughter Mary Jane was born September 8, 1821, and a son, Munson, was

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<sup>111</sup> Inventory, signed by John Hill and Edward Jarvis, July 19, 1813, LAC, MG 24, B 13, 647. A mahogany Pembroke table is a small four-legged table originating in the Georgian period with two drop leaves and a drawer.

<sup>112</sup> Mary Hazen to Edward Jarvis, May 5, 1814, LAC, MG 24, B 13, 766-769.

born May 15, 1823.<sup>113</sup> Edward continued to establish his legal career in Saint John; in April of 1821 he acted as attorney in the case of a warrant issued for one William Whitty for non-payment of a debt.<sup>114</sup> In January of 1822 he was appointed Clerk of the New Brunswick Assembly.<sup>115</sup> Shortly afterwards he was given a seat on the first board of commissioners of the city's marine hospital, where he served with Dr. Alexander Boyle, his wife's brother-in-law.<sup>116</sup> He also served as a Master in Chancery and Surrogate Judge of the Court of Vice Admiralty, and on the National School Board of Saint John.<sup>117</sup> From 1819 to 1822 Edward purchased several plots of land, presumably as investments and to earn income through rental properties.<sup>118</sup>

Establishing his career in New Brunswick, Edward was one of a number of second-generation Loyalists vying for positions. Discussing the transfer of power from the colony's first Loyalist generation to the second, Bell identifies an "interplay of influence, nepotism and imperial connection" as the fundamental dynamic.<sup>119</sup> Edward, whose father was not a lawyer or a judge but a merchant, was forced to rely solely on the patronage of the professional and personal contacts he made at the start of his career and through his education. For colonial lawyers seeking to further their careers, patronage meant that someone of substance such as an aristocrat, judge, academic or educator "was willing to vouch for the talent, experience, and morals of an applicant for preferment to

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<sup>113</sup> *The Jarvis Family*, 60.

<sup>114</sup> April 21, 1821, LAC, MG 24, B 13, 239-241.

<sup>115</sup> Lawrence, *Judges of New Brunswick*, 272.

<sup>116</sup> Bumsted and Holman, "JARVIS, EDWARD JAMES."

<sup>117</sup> In 1819 Jarvis defended Madras schools, an institution of the Church of England, as not being restricted to children attending the Anglican Church. The schools, originally set up for the poor in eighteenth-century England, were enthusiastically endorsed by Lieutenant-Governor Smyth, who sent his own son to the Central School. Katherine F.C. MacNaughton, *The Development of the Theory and Practice of Education in New Brunswick 1784-1900* (Fredericton, NB: University of New Brunswick, 1946), 66-8.

<sup>118</sup> LAC, MG 24, B 13, 1666-1669, 1670-1673, 1674-1677, 1684-1687.

<sup>119</sup> Bell, "Paths to the Law in the Maritimes," 8.

the colonial bench.”<sup>120</sup> For aspiring lawyers in the British North American colonies during the first part of the nineteenth century, establishing and maintaining connections with colonial officials, judges, other lawyers, and fellow students, in London if possible as well as in the colonies themselves, was an essential corollary to their legal studies.

The first generation of Loyalists, having lost their homes, businesses, kinship ties, and in some cases family members through their loyalty to the British Crown, felt towards it a sense of both dependency and entitlement whereby their sacrifice was seen as “a debt outstanding upon the British government.”<sup>121</sup> Patronage, in these circumstances, was considered a legitimate means for Loyalists to seek what they believed to be rightfully theirs. In the decades leading up to the 1830s, those seeking official positions within the empire drew on what Zoe Laidlaw terms colonial networks, connections based on personal relationships, friendship, family and kinship ties, business, or governmental office that were central to the operation of imperial and colonial rule: “the expansion and cultivation of useful connections...was a business taken seriously and pursued avidly by all involved.”<sup>122</sup> Throughout his life Edward would draw on personal and professional ties to improve his own prospects and those of his family.

### **The early 1820s: Political infighting, the lost judgeship, and the Colonial Office**

In 1822, while practising law in Saint John, Edward was appointed clerk of the House of Assembly by Lieutenant Governor George Stacy Smyth following the death of George

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<sup>120</sup> McLaren, *Dewigged, Bothered, and Bewildered*, 49.

<sup>121</sup> Neil MacKinnon, “The Nova Scotia Loyalists: A Traumatic Community,” in Robert M. Calhoon, Timothy M. Barnes, and George A. Rawlyk, *Loyalists and Community in North America* (Westport, CN: Greenwood Press, 1994), 202.

<sup>122</sup> Zoe Laidlaw, *Colonial Connections 1815-1845: Patronage, the Information Revolution and Colonial Government* (Manchester, UK: Manchester University Press, 2005), 16, 35.

Ludlow Wetmore.<sup>123</sup> In October of 1822, Smyth appointed Edward to an assistant judgeship in the Supreme Court left vacant when John Saunders replaced Jonathan Bliss as chief justice, and made Edward a member of Council. This was unprecedented for someone of Edward's age and experience and was, the *Telegraph-journal* noted, "quite a bombshell to the legal fraternity."<sup>124</sup> J.W. Lawrence writes that "to no one, more than to [Edward] himself, was the selection of Governor Smyth a surprise."<sup>125</sup> Edward had been "commonly considered a supporter of Chipman's interest" – Chipman was leader of the house of assembly – but such was no longer the case: "'The beardless boy' [Edward] ... had been preferred to many a veteran of the bar, especially to William Botsford, the Speaker of the house of assembly and Chipman's brother-in-law."<sup>126</sup> Solicitor General William Botsford, backed by among others Nova Scotia Lieutenant Governor James Kempt, felt he should have been awarded the position; the colonial authorities in London agreed and overturned Edward's appointment, giving the office to Botsford.

It is difficult to imagine the shock and disappointment thirty-three-year-old Edward must have felt at losing the judgeship, the position he would have most coveted. He immediately left for London to seek compensation. As Phillip A. Buckner notes,

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<sup>123</sup> Wetmore was killed in a duel by George Street on October 2, 1821; both were young lawyers. Bell writes that the duel was evidence of the decline in the force of the informal control mechanisms within the bar and led to the formation of the New Brunswick Law Society in 1825. In 1845 Jarvis's nephew, Edward Lutwich, his brother Ralph's son, challenged a fellow Saint John practitioner to a duel as a result of words spoken in court; that the man felt able to decline Jarvis's challenge was a "quiet victory for professional values." Bell, *Legal Education in New Brunswick*, 13, 17. Edward Jarvis's cousin Samuel Peters Jarvis, also a young lawyer at the time, killed John Rideout in an infamous duel in York, Upper Canada in 1817. Needless to say lawyers settling legal matters on "the field of honour" was "not the best of images." *Manners, Morals, and Mayhem: A Look at the First 200 Years of Law and Society in New Brunswick* (Fredericton, NB: Public Legal Information Services, Inc., 1985), 89.

<sup>124</sup> Observer, "Linking the Past with the Present," *Telegraph-journal*, Saint John, NB, n.d.

<sup>125</sup> Lawrence, *The First Courts and Early Judges of New Brunswick: A Paper Read Before the New Brunswick Historical Society November 25, 1874* (Saint John, NB: J & A McMillan, 1875), 24.

<sup>126</sup> MacNutt, *New Brunswick, A History*, 188-9. The term "beardless boy," obviously a reference to Edward's age and relative inexperience, was used by Daved Owen, who advocated the appointment of Samuel Denny Street. Public Record Office, Colonial Office, 188/28, Owen to Wilmot Horton, October 30, 1822, quoted by MacNutt, 189.

office-holding was generally considered a form of property and permanent officials could not be suspended or dismissed unless they gave exceptionally good cause.<sup>127</sup> Edward appears to have left for London in May of 1823; a letter from Ward Chipman Sr, dated May 15, 1823 grants him a leave of absence from the Executive Council.<sup>128</sup> Edward asked Chitty, his former tutor at the Inns of Court, to intervene with the Colonial Office to restore the position it had taken away, although it is not clear whether Chitty attempted to do so.<sup>129</sup> Edward also sought the backing of his friend and former fellow student New Brunswicker Henry Bliss, who wrote him a reference in which he stressed Edward's character as "a gentleman, and a man of honour" as well as his professional achievements.<sup>130</sup> Bliss had recently been dismissed from his office as clerk of the pleas for the Supreme Court of New Brunswick, ironically by Smyth, and was in London with the same goal as Edward where he had already secured the support of Lord Bathurst, the Colonial Secretary.<sup>131</sup> Bliss's reference is of interest in that it attests to Edward's character as much as his professional accomplishments; already Edward was drawing on each of the contacts he had made up until that point, in this case to gather testimonials from those who could attest to his abilities and character to demonstrate his suitability for the judgeship.

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<sup>127</sup> Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport, CT: Greenwood Press, 1985), 55.

<sup>128</sup> Ward Chipman Sr. to Edward Jarvis, May 15, 1823, LAC, MG 24, B13, 336.

<sup>129</sup> Edward Jarvis to Joseph Chitty, April 16, 1823, LAC, MG 24, B13, 260-263.

<sup>130</sup> Henry Bliss to Edward Jarvis, LAC, MG 24, B13, 247-248 (the document is undated but is clearly from the period in question).

<sup>131</sup> W.A. Spray, "BLISS, HENRY," in *Dictionary of Canadian Biography*, vol. 10, University of Toronto/ Université Laval, 2003–, accessed Nov. 16, 2019, [http://www.biographi.ca/en/bio/bliss\\_henry\\_10E.html](http://www.biographi.ca/en/bio/bliss_henry_10E.html). In 1824 Bathurst ordered that Bliss be reinstated. Bliss did not return to New Brunswick, however, but was admitted to the English bar and became a queen's counsel, acting as agent for New Brunswick in London. He maintained a connection with Edward, for example making enquires regarding a petition against Edward in 1837 when he was Chief Justice of Prince Edward Island. As provincial agent Bliss argued in favour of preferential duties for the colony's timber: see MacEachern, *The Miramichi Fire*, 25, 27, 37-8.

Edward himself wrote to Lord Bathurst enumerating the reasons he should be given back the lost judgeship. Edward noted that he had been sworn into office November 9 of the previous year and had become a member of New Brunswick's colonial council. He had also resigned as Recorder of the City of Saint John and as Clerk of the House of Assembly, "besides [ending] a very good professional practice, of all of which I am now deprived should Mr. Botsford's nomination be confirmed," and had moved from Saint John to Fredericton.<sup>132</sup> Edward then laid out his qualifications for the post, writing that he had received "a classical Education at a British Chartered University in the Province of Nova Scotia," practiced at the New Brunswick bar, and spent eleven terms at the Inner Temple:

This unusually expensive preparation for the Bar in this country (and which I was led to expect would give some priority of claim) exhausted the little patrimony to which I might become entitled, and the unexpected nomination of M<sup>r</sup>. Botsford to supersede my appointment has left me destitute of other means of support for my family than to recommence the very uncertain practice of my profession.

Edward thus emphasized his British schooling, his financial investment – the use of his inheritance – and the impact on his family should he not regain the position.

Edward then mentioned that Botsford had been educated and had practised in the United States (in contrast to his own British education). His evocation of republicanism seems calculated, although Botsford was a Loyalist from Connecticut:

I cannot, in justice to myself, refrain from informing Your Lordship that M<sup>r</sup> Botsford's previous education was under a Republican Government in the United States of America, and his professional education for the Bar merely such as this new country could afford. And although he has for some years filled the honourable office of His Majesty's Solicitor General, yet that he has always resided in a remote part of the Province, and was never in the habit of being called upon by the Government in his public capacity.

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<sup>132</sup>Edward Jarvis to Lord Bathurst, July 7, 1823, LAC, MG 24, B13, 252-255.

Edward then added that Botsford was Chipman's brother-in-law and "the Uncle of Ward Chipman Junior Esquire," in other words hinting at nepotism.<sup>133</sup> His arguments, however, were of no avail, as the decision in Botsford's favour was not overturned.

Arriving in London in the summer of 1823 Edward seems to have secured Bathurst's patronage, and used both this connection and the assumption that he was owed a debt by the British government for the loss of the judgeship to seek a compensatory position. In a letter to his brother Ralph in August of 1823 Jarvis writes that, despite the fierce competition for every job posting, he had made a favourable impression on Lord Bathurst, to whom he had "fortunately gained access through the Marquis of Camden, who was General Smyth's friend & relation."<sup>134</sup> The post Edward eventually received not only showed Lord Bathurst's "earnest wish" to do something for Edward, but was also "a very flattering testimony of his confidence." This was a classic example of patronage: Jarvis was able to "gain access" to Lord Bathurst through a network of relationships to which he had access through his connection to Lieutenant Governor Smyth. Access alone, however, was not enough: Edward also had to make a favorable impression on Lord Bathurst, which he seemingly did.

Competing with numerous other British and colonial judges in search of appointments, Edward sought through sheer determination and a constant presence at the Colonial Office to gain a position. Clearly his physical presence at Downing Street, combined with persistence and the right connections, was the formula that worked.

Regarding his persistence, his sister-in-law Caroline, who was in London staying with

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<sup>133</sup> The loss of the judgeship created a deep rift between Edward and Chipman, his former mentor, whom Edward characterized as controlling the New Brunswick judiciary. After his departure for London Edward would not practice law again in the colony of New Brunswick for the rest of his life.

<sup>134</sup> Edward Jarvis to Ralph M. Jarvis, August 3, 1823, Jarvis Papers, NB Museum Archives.

acquaintances at the time, commented to her sister in a letter that the only way for Edward to get anything done for himself was “by constantly dinning in his Lordship’s ears.”<sup>135</sup> Writing to his father back in August 1823, commenting on the offer of the position in Malta, Edward wrote that, with all of the “fair prospects” he had in view,

[I]t would therefore be madness for me to return home at once and relinquish all, for there is nothing more true than “out of sight out of mind” with these great folks, whose time & attention are so fully occupied with the object before them that they pay slight attention to written communications, unless under very peculiar circumstances; and I am well convinced that my personal interview with Lord Bathurst has been more advantageous to me than anything I could have written, even backed by the interest of those in power in NB, which I well know it would not have been.<sup>136</sup>

Edward’s main hesitation in accepting the position in Malta he was ultimately offered was that it would mean being far away from his parents in Saint John. He believed his prospects in New Brunswick were limited, however, owing to his having gone against Chipman by being appointed by Smyth to the New Brunswick bench. He wrote that Chipman “would have had full scope in exercising upon me his vindictive disposition had I remained in the Province, for I know well that my opposition to his politics was an offense which he can never forgive,” ending by calling him “arbitrary and implacable.”

In a letter to his brother William in October Edward once again mentioned his fear of Chipman’s retaliation: “Under the present system in New Brunswick with a determined spirit of hostility against me by those in power, proceeding from a very illiberal jealousy, I should not be able to get on – and even in my professional practice, should be borne down with very heavy hand...”<sup>137</sup> Even with Lord Bathurst’s favour, he believed, “I know too well the art of persevering malice of your great man [Chipman] to think that I could succeed in anything against his efforts. It would beside lead to a system

<sup>135</sup> Caroline Jarvis to Amelia Boyd, August 3, 1823, Jarvis Papers, NB Museum Archives.

<sup>136</sup> Edward Jarvis to Munson Jarvis, August 19, 1823, Jarvis Papers, NB Museum Archives.

<sup>137</sup> Edward Jarvis to William Jarvis, October 3, 1823, Jarvis Papers, NB Museum Archives.

of opposition and hostility which I dislike very much.”<sup>138</sup> In a letter to his parents the same month he continued in much the same vein, stating that Smyth’s befriending of him “produced jealousy which would long help to oppress and keep me down.” He continued:

I will go to Malta without any jealousy to contend with or powerful foes. I trust I shall make every man my friend. As Crown Advocate & president of the Commercial courts & as political adviser in immediate communication with His Majesty’s Government in England I shall have much influence & probably may yet be able to do much good for the rising branches of my own as well as my brother’s & sister’s families.<sup>139</sup>

It is difficult to know to what degree Chipman did in fact have it in for Edward and to what degree it was paranoia on Edward’s part. In any case Chipman’s influence over the New Brunswick judiciary, omnipotent or otherwise, would last mere months longer; he died February 9, 1824.<sup>140</sup>

Edward appears to have envisioned his time in Malta as one free of division and backbiting, in contrast to his recent experience in New Brunswick. It also would provide him with an opportunity to “do much good” for his family, as he could use his position to procure favours for them. Even in London, however, Edward saw the factionalism that had been rife in his home colony. In a letter to his nephew Robert he wrote of Chipman’s “extraordinary perseverance & success at the Colonial Office & other places,” adding,

Mr. Wilmot Horton the Under Secretary is evidently strong in Chipman’s interest, as well as the clerks who have the management of the business of the office. Mr. Horton is a Member of Parliament, consequently has great influence, he is in fact the person who superintends the business of the office. Had I not persisted in procuring an interview with Lord B. in the very first instance I am well assured all my exertions would have been in vain.<sup>141</sup>

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<sup>138</sup> Edward Jarvis to William Jarvis, October 3, 1823, Jarvis Papers, NB Museum Archives.

<sup>139</sup> Edward Jarvis to Munson and Mary Jarvis, October 27, 1823, Jarvis Papers, NB Museum Archives.

<sup>140</sup> Not only had Edward, as noted, articulated under Chipman, he was in fact related to him by marriage: Chipman’s wife, Elizabeth Hazen, was sister to Robert Hazen, who had married Edward’s sister Mary. Phillip Buckner, “CHIPMAN, WARD (1754-1824),” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed November 4, 2023, [http://www.biographi.ca/en/bio/chipman\\_ward\\_1754\\_1824\\_6E.html](http://www.biographi.ca/en/bio/chipman_ward_1754_1824_6E.html).

<sup>141</sup> Edward Jarvis to Robert Hazen, September 7, 1823, Jarvis Papers, NB Museum Archives.

Seemingly the factions prevailing in New Brunswick were replicated in London. It was not surprising Chipman had his own “interest” there, having lived in London between 1793 and 1794 and having secured the patronage of Guy Carleton. It does seem that Chipman wielded a great deal of power in New Brunswick; upon securing the leadership of the Council in 1823 he had appointed “a host of his relatives to minor offices, thus incurring the anger of those who had supported Smyth and expected preferment.”<sup>142</sup> As Bell writes, while it was the norm for judicial Administrators to seize opportunities “to confer all manner of public favours on sons, sons-in-law and other dependents, many of them lawyers,” in Ward Chipman’s case it had been taken to “notorious heights.”<sup>143</sup>

While in London Edward met with Lord Douglas, the new Lt. Governor. During his time in England Edward was supported by John Coffin, a wealthy New Brunswick Loyalist who had a country estate in Somerset, where Edward’s sister-in-law Caroline was staying. Douglas had a previous connection with the Boyd family, having apparently been given medical treatment by Caroline’s father, Edward’s father-in-law, in Windsor years earlier, which Maria mentioned in a letter to Edward’s mother in December 1823:

Sir Howard & Lady Douglas called yesterday...Sir Howard remembers Major Hazen in the West Indies. He enquired what family he had left which gave Edward an opportunity of recommending Robert to his notice, he also recollects my late Father’s family at Windsor. He very obligingly sent Ed. a letter of introduction to Sir Frederic Hankey at Malta.<sup>144</sup>

Edward’s brother-in-law John, a doctor married to his wife’s sister Cornelia, found a position in Saint John following the arrival of the lieutenant governor and his wife, suggesting the service that the senior Boyd had carried out for Douglas in the past was

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<sup>142</sup> Buckner, “CHIPMAN, WARD (1754-1824).”

<sup>143</sup> Bell, *Legal Education*, 10.

<sup>144</sup> Anna Maria Jarvis to Mrs. Mary Jarvis, December 14, 1823, Jarvis Papers, NB Museum Archives.

the source of patronage. Douglas's connection with the Boyd family was an example of the way patronage created links and reinforced ties throughout the empire.

### **Conclusion**

The end of 1823, then, saw Edward Jarvis set to embark upon the next stage of his career, having built a solid foundation in colonial law through instruction firstly at a British university in a British colony and, secondly, at the Inns of Court in London. It was not only his legal education, however, that built this foundation. As has been seen, a legal education for a colonial judge in the early nineteenth century meant being a gentleman, a moniker with implications regarding class, race, and gender. Edward had access to an elite education through his Loyalist father's position as a merchant in the Saint John, a city his father himself had helped found. Edward's father Munson was able to take advantage of the trade networks that had existed before the coming of the Loyalists, first for furs and then for timber, to reinvent himself as a merchant and prosper through trade and the growth of the colony. The trade carried out through British North America was predicated on the dispossession of the Indigenous territory upon which each colony was founded. In the case of New Brunswick, the Wolastoqiyik and Mi'kmaq peoples were displaced to allow settlers to settle and timber to be extracted, eroding the existing trading relationships that had endured for centuries and impoverishing the Indigenous communities. Munson profited from the new colony's expanding networks of credit and exchange, and he also was able to establish mercantile ties with his brothers in both London and Connecticut, to increase his own and his family's fortunes.

Edward would profit from his father's wealth, using it to finance his legal education and the beginnings of his career as a judge. As well as learning about the law,

Edward would use his education to cement his position as a gentleman with the social and cultural capital to aspire to be an elite member of British North American society. Edward would bring his formation in New Brunswick, Nova Scotia, and London to the next post of empire to which his career led him, Malta. Here, he would help reinforce British naval supremacy in the Mediterranean, a necessary foundation of Britain's imperial rule. Edward would be well suited to the task, not only through his knowledge of and belief in British law, but also through his family legacy of loyalty and duty to the British Crown, one that had led his parents, aunt, and three uncles into exile and cost his grandfather and his Uncle Fyler their lives. This legacy gave rise to a sense of entitlement and dependence on the British government, as well as a complex identity with regard to Britain, one which will be explored more fully in the following chapters. In setting off for Malta, Edward was well suited to take advantage of the numerous advantages that had brought him thus far, including the benefit of patronage, which he used to gain redress for the loss of a plum legal position in the New Brunswick Supreme Court and to further his career prospects.

On the eve of his departure for Malta, Douglas, the future Lieutenant Governor of New Brunswick, extended his patronage to Edward in the form of an introductory letter to Sir Frederick Hankey, the Chief Secretary to the Governor in Malta. This smoothing of the path for the Jarvis family exemplified the forging of networks and the passing on of privilege within elite groups across the different outposts of empire. While Edward was not able to benefit from his newfound ties to the Douglas family in Saint John, thanks in large part to Lord Bathurst's patronage and his own efforts, Edward's self-imposed exile from Saint John would further his career, leading to the post in Malta and ultimately

securing him the position of Chief Justice of Prince Edward Island. While it would represent a major progression in his career, however, Edward's time in Malta would come to illustrate not only the benefits of solid legal qualifications and broad imperial connections, but also their limitations.

## CHAPTER 2

### **Admiralty law in the Mediterranean: Malta, 1824-1827**

It will not fail to have been observed, that a considerable time elapsed between the arrest of Captain Mussu [for piracy] and his being brought to trial at Malta. This delay was occasioned by the existing Law and practice on the Island, relative to offences committed on the High Seas; but the Lieut. Governor having recently referred the consideration of such Law and practice to the Chief Law Officer, the latter has suggested some amendments, which it is hoped will render future proceedings in like cases as expeditious as is consistent with the purposes of justice.

–Chief Justice of Malta John Stoddart  
Memorandum on the Greek Piracies, 1827<sup>1</sup>

In February of 1824 Edward Jarvis, accompanied by his wife Maria, their two young children Jane and Munson, Maria's sister Caroline, and a French nurse, arrived in Malta, a small island in the Mediterranean Sea south of Sicily. Edward's position was that of King's Assessor, which entailed advising the government on legal matters. Given the geopolitical realities within the Mediterranean, legal matters under Edward's jurisdiction would involve war, piracy, slavery, trade, and the role of the British navy in the region. Personally, as well as professionally, Jarvis's time in Malta would be significant, seeing the growth of his family with the birth of two of his sons. This, along with the balls, soirées, and other events that were part of the social calendar of the elite of the island and its natural beauty and temperate weather, would make the future Chief Justice's four years in Malta some of the happiest in his life.

During his time in Malta Edward would not be granted the position of Chief Justice, but he would have worked closely with Sir John Stoddart, who held the role from

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<sup>1</sup> John Stoddart, *Memorandum: On the Greek Piracies*, Malta, December 8, 1827, TNA, CO 158/58, Vol. 4.

1826 to 1838.<sup>2</sup> Examining the issues confronting the colonial authorities in the region during the period with some of the more prominent legal cases adjudicated by the Maltese Supreme Court, along with Edward's surviving correspondence, gives a general, if not comprehensive, picture of his role in Malta. During his time in the colony Edward would be advisor to the British government on legal matters surrounding admiralty law in a context of legal pluralism and an evolving colonial administration. Edward's duty was to confer with London to ascertain its position on such issues, while also advising it on colonial law and its application to the particular circumstances of the colony during the 1820s. While he was in his element carrying out this duty in Malta, however, Edward's dependency on London and its eventual unwillingness to fund his judicial position meant that he was forced to leave the colony after four short years to seek another position in yet another outpost of empire.

### **The Road to King's Assessor**

In September 1823 Edward wrote to his nephew from London that he had been offered the position of King's Assessor, or Crown Advocate, which entailed the duties of

Attorney General, the political advisor of the King's representative, a Judge of the Commercial Court &c. & yet by no means a laborious office. The present Chief Justice of Malta (to which it is a sure step) held it, & since his promotion, it has been vacant, about four years, & seems to be revived for me.<sup>3</sup>

Edward attributed the granting of the post to the "very strong" favourable impression he had made on Lord Bathurst after arriving in London seeking redress for the lost New Brunswick judgeship earlier that year. Edward believed he had prevailed against what he perceived as a partisan current in the Colonial Office, led by Wilmot Horton, that was

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<sup>2</sup> Stoddart's predecessor was Waller Rodwell Wright.

<sup>3</sup> Edward Jarvis to Robert F. Hazen, September 7, 1823, Jarvis Papers, NB Museum Archives.

“strong in [New Brunswick Chief Justice] Chipman’s interest”; Edward believed Chipman was negatively biased towards him over his having been awarded the judgeship. He was very pleased at landing the Malta post, finding, after “diligent and particular enquires” that Malta was “a most desirable residence” with “a most delightful climate” and “provisions of all kinds abundant and cheap.” Noting that the expense of maintaining a family there was about £500 per annum “to live in such style as my situation would render necessary,” Edward indicated that he had requested the same salary as the Chief Justice, “about £800 or £1000 per annum.” Edward regretted that he had not been called to the English Bar, “as it is only Barristers who are sent abroad in such very high & responsible situations & generally Barristers of three years standing”; he would in fact be called to the bar before his departure.<sup>4</sup>

Edward was relieved to have been offered a post after his intense lobbying of the colonial office, as it meant that he would not have to return to New Brunswick and the hostility he imagined he would face there, and so would be able to “relinquish a Society which has become to me from a variety of circumstances, peculiarly unpleasant.” The downside, however, was that he and Maria would be leaving behind their families, and, what was “the most distressing part” for Edward, leaving “in their old age my parents, whose few remaining years it would have given me much consolation to have comforted by my presence. My duty to my family, however, demands this sacrifice...”<sup>5</sup> In fact Edward’s father Munson would pass away during his time in Malta, in 1825.<sup>6</sup> His tenure

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<sup>4</sup> Edward Jarvis to Munson Jarvis, August 19, 1823, Jarvis Papers, NB Museum. Edward also mentioned he had been paying dues at the Temple ever since he had left England after his studies there “& which must continue, until either I am called to the Bar or cease to be a member of the Temple.”

<sup>5</sup> Edward Jarvis to Robert Hazen, September 7, 1823, Jarvis Papers, NB Museum Archives.

<sup>6</sup> Robert, in a letter dated October 12, told Edward of his father’s death on October 7 at “the advanced age of 83 years” at which time “his mind was almost gone, worn out by old age.” LAC, MG24 B13, 931-934b.

in the post lasted only until the beginning of 1828, when owing to budgetary considerations he was let go, the position being folded into the Chief Justice's responsibilities. In 1823, however, Edward saw the post of King's Assessor as a potential steppingstone to that of leading jurist in the colony, although he wrote to his brother William in October of that year that he intended to remain in Malta only a year or two: "I think the high situation which is granted me there, will enable me to obtain some good one in exchange in the North American Colonies should I prefer it."<sup>7</sup> The Malta position was for Edward, then, both a prized achievement in itself and a next step in his career, which he saw unfolding within the British empire but for which his preference, for family reasons, was to remain in British North America.

The road to Malta, however, had not been without its bumps. Explaining to his brother-in-law John Boyd in 1826 why he had been unable to use his patronage to procure the position of Superintendent of Quarantine for a relative of Boyd's, Edward wrote that Bathurst was "of opinion he has done rather too much for me already."<sup>8</sup> This was presumably a reference to the circumstances under which Edward and his family left England in late December of 1823. Edward had orders to sail for Malta in the Packet leaving December 2<sup>nd</sup>, having received a letter from the Under Secretary of State saying that he was to proceed immediately to Malta, as Sir Thomas Maitland, then the Lieutenant Governor of Malta, "was in want of [his] advice and assistance." He received permission to remain a few weeks in London to be called to the Bar and found out that Maria and their children had already set sail for England. He reluctantly decided he would have to leave London before their arrival and "make arrangements with some of

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<sup>7</sup> Edward Jarvis to William Jarvis, October 3, 1823, Jarvis Papers, NB Museum.

<sup>8</sup> Edward Jarvis to John Boyd, January 19, 1826, Jarvis Papers, NB Museum.

[his friends in London] to receive and provide for them,” Bathurst having granted a postponement only until November 15<sup>th</sup>.<sup>9</sup> Maria and the children did in fact arrive before Edward’s departure and travelled to Malta with him. An apparent casualty of the episode, besides Edward’s extreme anxiety evident in the letters exchanged between him, Caroline, and the Coffin family with whom Caroline was staying, was, at least in Edward’s view, Lord Bathurst’s favour. Edward also appeared to believe some members of the Colonial Office entertained less than benevolent feelings towards him, noting that he did not think the Secretary, Wilmot Horton, was “too well disposed” towards him.<sup>10</sup>

### **Malta and Britain’s role in the Mediterranean**

Edward arrived in Malta during a tumultuous time in the Mediterranean. In 1815 Britain had emerged triumphant from the Napoleonic Wars, its “colossal” navy and “quite considerable” army financed by rapidly expanding industrialization and foreign trade and a sophisticated financial system, and the weakening of the French, Dutch, and Spanish, leaving it the only true world power.<sup>11</sup> In the seventeenth century Britain established a legal framework controlling its transoceanic trade, to secure new bases to consolidate its grip upon the North Sea and the Mediterranean. By the early nineteenth century, it also wished to open up new markets for the products of its booming factories, particularly textiles, and thus acquired islands and settlements including Heligoland, Malta, and the Ionian Islands from the Vienna settlements of 1814-15.<sup>12</sup> After 1815 the size of the

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<sup>9</sup> Caroline Jarvis to Mrs. Jane Boyd, December 7, 1823, Jarvis Papers, NB Museum Archives.

<sup>10</sup> Edward Jarvis to Munson and Mary Jarvis, October 27, 1823, Jarvis Papers, NB Museum Archives.

<sup>11</sup> Paul M. Kennedy, *The Rise and Fall of British Naval Mastery* (London: Penguin, 1976), 145, 150.

<sup>12</sup> Kennedy, 154. Tangier, acquired to give the Royal Navy a base from which to monitor the French and Spanish fleets as well as be prepared should either amass their fleets, became the prototype for a “succession of similar and more enduring Mediterranean strongholds” including Gibraltar, Malta, Cyprus,

British fleet was reduced and most of the ships of the line were kept in reserve; smaller warships, particularly frigates, were used against smugglers, pirates, and slavers, helping to foster combat experience and seamanship and further British interests.<sup>13</sup> Naval action, most often small scale, was at times aimed at achieving strategic goals, but for the most part it protected commerce, including carrying specie for merchants.<sup>14</sup>

C.A. Bayly posits that Britain's growing domination of the Mediterranean during the nineteenth century was part of the apogee of the second British Empire following its defeat during the Revolutionary War. He terms the British colonial regime established to protect trade during the early nineteenth century "viceregal despotism": while there was some liberalisation of trade and weakening of the protectionist Corn Laws, he suggests, the main thrust of policy was "an increase in state regulation with an eye to cutting costs and avoiding conflict."<sup>15</sup> Malta, where the British replaced the paternalistic regime of the Noble Order of the Knights of St. John, exemplified the viceregal style of government, epitomizing Britain's goal of anglicizing the Mediterranean Islands under their control while granting few freedoms.<sup>16</sup> Facing a popular movement seeking the reimplementation of a traditional Maltese legislative body, in 1812 the British sent a Commission of Inquiry to examine the Island's civil and judicial affairs and advise the Colonial Office on the best form of government, which subsequently found the people of Malta "singularly unfitted to enjoy any portion of political power."<sup>17</sup>

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and the Ionian Islands. Linda Colley, *Captives: Britain, Empire, and the World, 1600-1850* (New York: Anchor Books, 2002), 34-5.

<sup>13</sup> Jeremy Black, *The British Seaborne Empire* (New Haven: Yale University Press, 2004), 215.

<sup>14</sup> Black, *The British Seaborne Empire*, 215.

<sup>15</sup> C.A. Bayly, *Imperial Meridian: The British Empire and the World, 1780-1830* (London: Longman, 1989), 193.

<sup>16</sup> Bayly, *Imperial Meridian*, 197.

<sup>17</sup> Bayly, *Imperial Meridian*, 197-8. Colonial authorities accepted that ideal – that is, British – forms of governance were not able to be reproduced in the colonial setting and that, in the words of James Stephen,

### Sir Thomas Maitland

In 1813 Malta, which had become a British protectorate following the capitulation of French forces there in 1800, became a Crown colony. Sir Thomas Maitland, who had served as Governor of Ceylon from 1805 to 1811, was appointed Governor; he would also become commander of the Mediterranean fleet and Lord High Commissioner of the Ionian Islands.<sup>18</sup> In 1815 Lord Bathurst, who had taken over from Liverpool as Secretary for War and the Colonies, appointed Maitland to implement the reforms set out by the 1812 Commission, charging him to “proclaim the inhabitants of Malta British subjects entitled to [British] protection”; within a year Maitland had carried out a host of reforms which transformed Malta “into a model of paternalistic autocracy.”<sup>19</sup> Upon his arrival in Malta in October of 1813 Maitland found the Island in a “state of chaos,” the plague and resulting shipping stoppages having turned Valletta into “a great dungeon.”<sup>20</sup>

Maitland’s first priority was to deal with the plague. In 1814 he visited Napoleon, then imprisoned on the island of Elba, to ask his advice on how to confront the disease. Napoleon told him that segregation, by force if necessary, between the healthy and the sick populations was the best way to tackle it, a strategy then carried out by Maitland with his characteristic ruthless efficiency.<sup>21</sup> While the plague was dealt with successfully

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their replication of the Westminster norm was “formal and nominal, rather than real.” The commission of inquiry into Malta echoed this paternalistic sentiment: “To graduate our ideas of the perfection of Government by the approximation it bears towards our own, is a mode of reasoning as unjust, as it is erroneous; but it is an error, into which Englishmen are too apt to fall” (Report of Commission of Enquiry into the Affairs of Malta, 1812, TNA, CO 158/19, 12), quoted in Peter Burroughs, “Imperial Institutions and the Government of Empire,” in Andrew Porter, ed. *The Oxford History of the British Empire, Vol. III* (Oxford: Oxford University Press, 1999), 175.

<sup>18</sup> Neville Thompson, *Earl Bathurst and the British Empire* (Barnsley, Yorkshire: Leo Cooper, 1999), 129. Bathurst combined the British governments of Malta, the Ionian Islands, and the North African consuls.

<sup>19</sup> Thompson, *Earl Bathurst*, 130.

<sup>20</sup> C. Willis Dixon, *The Colonial Administrations of Sir Thomas Maitland* (London: Frank Cass & Co., 1968), 131.

<sup>21</sup> Sakis Gekas, *Xenocracy: State, Class, and Colonialism in the Ionian Islands, 1815-1864* (New York and Oxford: Berghahn Books, 2017), 37, 42.

in Malta, however, quarantine protocols in the Mediterranean would continue to be a fact of life at least a decade later: in an 1826 letter to his brother Edward mentions that he was hoping to take a trip to Italy “as the quarantine with Sicily & Italy is now taken off.”<sup>22</sup>

Having brought the plague under control, the energetic and forceful Maitland then turned his organizing zeal to the Island’s administration.<sup>23</sup> Ignoring the 1812 Commission’s recommendation that some say in a governing council be given to the Maltese themselves, Maitland proceeded to rule as a benevolent despot.<sup>24</sup> By then the armorial bearings and other emblems of the Order of Knights of St. John had been removed from all public buildings and replaced by the British Royal Arms.<sup>25</sup> Not quite as easily replaced, however, were the Island’s revenues: the French had confiscated the Knights’ assets when they abolished the Order in 1792, reducing revenue to Malta by as much as two thirds, “effectively rendering the government bankrupt.”<sup>26</sup> The Knights were not allowed to claim property in the Island, though some received pensions; overall the list of pensions cost the Government six thousand two hundred scudi a year.<sup>27</sup> Even with Maitland’s efforts at belt tightening a commission was still appointed in 1822 to investigate government expenditures, but, given Maitland’s strict control over all departments of government, “with the best will possible, the commission was only able to

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<sup>22</sup> Edward Jarvis to William Jarvis, November 16, 1826, Jarvis Papers, NB Museum Archives.

<sup>23</sup> Maitland’s career followed “the typical circuit of colonial officials” in that he served as governor of more than one colony; in 1797 he negotiated on behalf of the British Government with Toussaint L’Ouverture in their withdrawal from San Domingo after its successful revolution. Dixon, *Sir Thomas Maitland*, 8-11.

<sup>24</sup> Dixon, *Sir Thomas Maitland*, 138-9. The earlier administration of Sir Alexander Ball had reached a crisis point in 1805-6, according to Barry Hough and Howard Davis, one precipitated by the new system of colonial rule in which the governor or civil commissioner ruled based on instructions from London. In the case of Malta, however, ministers were not adequately informed of the situation on the ground leading to “a possibly negligent assessment of the Maltese revenues.” Hough and Davis, “The ‘Wicked Machinery of Government’: Malta and the Problems of Continuity under the New Model Administration,” *The Journal of Imperial and Commonwealth History* 37, no. 4 (December 2009): 561.

<sup>25</sup> Robert Holland, *Blue-Water Empire: The British in the Mediterranean since 1800* (London: Allen Lane, 2012), 28.

<sup>26</sup> Hough and Davis, “Wicked Machinery,” 561.

<sup>27</sup> Dixon, *Sir Thomas Maitland*, 142.

recommend some trifling reductions.”<sup>28</sup> Thus the theme that was to recur throughout Edward’s career preceded his tenure as King’s Assessor in Malta: the continual attempt by the British government to reduce the financial burden of the colonies.

Under the reforms of “King Tom,” as Maitland was known, Maltese village leaders were replaced with lieutenant governors, the British element in the administration was expanded, and “as was the case throughout the colonial world after 1793, Indigenous peoples were excluded from all but the lowliest offices of state.”<sup>29</sup> This was particularly the case in the judiciary, where native Maltese were “even more rigorously debarred,” leading to “unfettered proconsular patronage” and thereby a succession of “well-born young gentleman, whose sole duty seems to be to loll on [Maltese] verandas.”<sup>30</sup> The Maltese, not surprisingly, were unhappy with the lack of representative bodies. While they had chosen the British as the lesser of several evils, including the French and the Knights, to run the island, the price they had to pay – the revision of their laws and secular institutions and exclusion from full political participation in the Island’s governance – for protection within the British Empire was a steep one.

Edward’s time in Malta would certainly not be spent lolling on verandas. As an imperial jurist, he would participate in the judicial reform of the Island instigated by Maitland to bring its legal practices more in line with British colonial law, while building up his trans-imperial career credentials. Edward met with Maitland before departing London for the Mediterranean, writing to his nephew that Maitland gave him “a gracious reception & much information”: “He is a singular character & is known by the name of

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<sup>28</sup> Dixon, *Sir Thomas Maitland*, 143-4.

<sup>29</sup> Bayly, *Imperial Meridian*, 198.

<sup>30</sup> Bayly, *Imperial Meridian*, 199.

King Tom. The British Government place the most unbounded confidence in him.”<sup>31</sup>

Maitland had reserved a house for the Jarvis family three months before their arrival; it was near the sea, with “a fine healthy sea breeze” and from where they could “see all the ships as they come in and go out” from the harbour.<sup>32</sup> However Maitland died on January 17, days before their arrival, of a “massive stroke”; he was replaced by the 1<sup>st</sup> Marquess of Hastings.<sup>33</sup> His reforming zeal and boundless energy did not appear to have endeared him to the Maltese; in a letter to his brother in June of 1824 describing the celebration of Hastings’ arrival Edward commented that Maitland was “extremely unpopular among them.”<sup>34</sup> C. Willis Dixon speculates that what Maitland sought to bring to the colonies he ruled, “the machinery of administration and the establishment of justice which could be regarded as adequate by an Englishman in 1806,” necessitated a particular economic foundation, and simply proved too expensive when transferred to certain colonies, something that could perhaps also be said of Prince Edward Island, the next Island colony in which Edward would land.<sup>35</sup>

## **Judicial reform**

The Commission of 1812 kept in mind Malta was a “military post of the first importance,” and thus made far-reaching criticisms of both the laws of Malta themselves

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<sup>31</sup> Edward Jarvis to Robert Hazen, September 7, 1823. Maitland was certainly well compensated, receiving £5,000 as governor of Malta, £3,500 as commander-in-chief in the Mediterranean, £1,000 as lord high commissioner of the Ionian Islands, and a £1,000 pension as governor of Ceylon. Gekas, *Xenocracy*, 58.

<sup>32</sup> Caroline Boyd to Isabella Jane Boyd, March 1, 1824, Jarvis Papers, NB Museum Archives.

<sup>33</sup> Holland, *Blue-Water Empire*, 41. Maitland’s death meant a delay in Edward receiving his salary, and he was temporarily in the lurch financially, although the Colonial Office had advanced him £150 for expenses. He wrote to Robert asking him to send the income from his properties in Saint John to Bainbridge in London, with whom he had an outstanding balance, so that he would not be “obliged to remit ... from Malta, which [he] must do at a great loss.” Edward Jarvis to Robert Hazen, January 14, 1824, Jarvis Papers, NB Museum Archives

<sup>34</sup> Edward Jarvis to William Jarvis, June 9, 1824, Jarvis Papers, NB Museum Archives. Hastings died November 28, 1826. He was replaced by Major-General Alexander George Woodford from November 26, 1826 to February 15, 1827, followed by Major-General Sir Frederick Cavendish Ponsonby who remained in the post until 1835.

<sup>35</sup> Dixon, *Sir Thomas Maitland*, 259.

and the administration of the laws.<sup>36</sup> It recommended that judges be given fixed salaries and that their fees should be received on behalf of the Government rather than personally, that the Governor have the power to displace judges, and that evidence and proceedings should take place in open court in a timely manner with limits on appeals.<sup>37</sup> Maltese law was based on the code of Rohan promulgated by the Knights Hospitaller, supplemented by Roman laws, the recorded opinions of foreign juriconsults, and various notices and proclamations by British Governors, but the Commissioners had suggested its modification rather than outright abolition, the latter being seen as too drastic.<sup>38</sup> The laws regarding torture, slavery, and infidels were held in abeyance or abolished, with service in the galleys being replaced by hard labour.<sup>39</sup>

Maitland, taking up some of the Commission's suggestions, "carried out his own plan" of judicial reform. It included a panel of twenty-four British and Maltese merchants for the Commercial Court, who would sit in rotation as consuls of the court, to decide questions of mercantile usage.<sup>40</sup> He stipulated that six judges be appointed by the Governor, two of whom would sit in the Criminal Court, from which there could be no appeal, and three in the Civil Court, from which appeal lay to the High Court of Appeals. Judges were to be required to take the oath of allegiance as prescribed in the Quebec Act.<sup>41</sup> Maitland also implemented the recommendation of a pay raise for judges which would allow their income to equal that which they had received from fees.<sup>42</sup> The High

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<sup>36</sup> Desmond Gregory, *Malta, Britain, and the European Powers, 1793-1815* (Cranbury, NJ: Associated University Press, 1996), 181.

<sup>37</sup> Dixon, *Sir Thomas Maitland*, 145.

<sup>38</sup> Gregory, *Malta*, 184.

<sup>39</sup> Maitland went to England in 1820 to discuss a code of laws, but the outbreak of the Greek Revolution forced him to return to the Mediterranean. Dixon, *Sir Thomas Maitland*, 150-51.

<sup>40</sup> Dixon, *Sir Thomas Maitland*, 146.

<sup>41</sup> Dixon, *Sir Thomas Maitland*, 148.

<sup>42</sup> Hough and Davis, "Wicked Machinery," 565.

Court of Appeals, under the direction of the President, an English lawyer, had one hall for cases from the Commercial Court and one for appeals from the Civil Courts.<sup>43</sup>

Although Maitland had introduced juries into Ceylon during his tenure there he opposed them in the case of Malta and the Ionian Islands, believing the inhabitants of Malta were “not yet politically mature enough for such a reform.”<sup>44</sup> The Commission had advised against trial by jury, as Malta was a small society, bribery and “moral laxity” were too prevalent, and the Maltese were “too emotional” to deliver balanced judgments on crimes. In other aspects, however, Maitland’s reforms corresponded to those in he had carried out in Ceylon, where he strove to secure “an efficient and impartial administration of justice...imposing as little a burden of expense on the Government as possible.”<sup>45</sup> This followed a pattern in which governors who dwelt in multiple colonies during their careers made comparisons and connections between those colonies, “fruitfully imagining the lessons that could be learned and transferred between differently constituted colonial places.”<sup>46</sup> In the 1820s an “information revolution” saw colonial governments sending annual statistical registers of production and commerce and other statistics and figures to aid in colonial governance, thereby helping to mould disparate societies and economies “into the model the Colonial Office had designed for the administration of the colonies.”<sup>47</sup> Britain’s approach to Malta upon its becoming a colony fit this pattern, as it sought to bring both its administration and judiciary more in line with standard practice.

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<sup>43</sup> Dixon, *Sir Thomas Maitland*, 149.

<sup>44</sup> Gekas, *Xenocracy*, 87. The one exception was for trials for piracy cases.

<sup>45</sup> Dixon, *Sir Thomas Maitland*, 101.

<sup>46</sup> Lambert and Lester, *Colonial Lives*, 11.

<sup>47</sup> Gekas, *Xenocracy*, 107. Colonial office records show that in 1824 a not inconsiderable number of documents were exchanged between Malta and the colonial office: 254 letters totalling 486 pages were received from the colony and 170 letters totalling 261 pages were dispatched to it. D.M. Young, *The Colonial Office in the Early Nineteenth Century*, Appendix IV (London: Longmans, 1961), 275.

Another judicial reform instituted by Maitland was that Italian was made the language of Maltese courts. In 1800 Italian was the language of the intellectual and higher business classes, and Maltese, or Malti, a Semitic spoken-only language stemming from North African Arab dialects, was used by everyone else.<sup>48</sup> The British attempted, with limited success, to promote the use of English which was considered a Protestant language.<sup>49</sup> Caroline, in a March 1824 letter to her sister Isabella, noted that she, Maria, and Edward were all taking lessons in Italian, although Edward had already taken lessons in London and could, Caroline reported, “speak and write it very well.”<sup>50</sup> The existence of three languages on the Island gave rise to judicial challenges: Chief Justice Stoddart, speaking of a piracy trial in which the proceedings had to be interpreted in English, Maltese, and Italian, observed that “This so much prolonged the Trials that the Court (with only a short Interval for refreshing exhausted Nature) not unfrequently sat till Midnight; sometimes the Jury remained Impanelled Two, Three or even Four Days...”<sup>51</sup>

The above judicial reforms notwithstanding, the necessity of revising the Maltese Codes was reiterated by Sir John Richardson in 1826 in his *Report on the Laws of Malta*. He recommended re-enacting the whole body of the Criminal Code, abolishing any reference to foreign authorities as a basis for judgment.<sup>52</sup> Richardson began preparing a draft revision which he was unable to complete owing to ill health, suggesting it be

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<sup>48</sup> Uwe Jens Rudolph and Warren G. Berg, *Historical Dictionary of Malta* (Lanham, MD, and Plymouth, UK: Scarecrow Press, 2010), 140, 155.

<sup>49</sup> Maitland’s 1820 regulation imposing an English language qualification for advocates and attorneys was relaxed in 1827 by then Governor Sir Frederick Ponsonby on the basis that it was unjust to deprive them of their livelihood when the Government had done little to promote the English language. H.I. Lee, “The Revision of the Codes of Law,” Part II of “British Policy towards the Religion, ancient Laws and Customs in Malta 1824-1851,” *Journal of the Malta Historical Society* 4 (1964): 4 (Source: Melita Historica).

<sup>50</sup> Caroline Boyd to Isabella Jane Boyd, March 1, 1824, Jarvis Papers, NB Museum Archives. In a letter to his brother Edward writes of his daughter Mary that she “talks a little English, a little Italian & a little French.” Edward Jarvis to William Jarvis, June 9, 1824, Jarvis Papers, NB Museum Archives.

<sup>51</sup> Sir John Stoddart, Memorial, Claim for Compensation, *The Sessional Papers Printed by Order of the House of Lords*, Session 1839, Vol. VII, Appendix, 554.

<sup>52</sup> Sir John Richardson, *Report of the Laws of Malta*, 19 August 1826, CO 158/54.

committed to the English lawyers holding office in Malta, which would presumably include Edward; these would be assisted by “such Maltese judges as the Governor considered advisable to consult.” The Criminal Code would not be revised until 1830, however, when Governor Sir Frederick Ponsonby followed up on Richardson’s report.<sup>53</sup>

Edward, then, was given the role of advising the British government on law in a recently acquired colony a decade after substantial reforms had been made to its judicial system. Because bringing the Maltese judiciary into full conformity with colonial law based on British common law would have been too drastic a change, modifications were made to laws based on the Code of Rohan to bring them closer to current colonial legal practice. In this context, for Edward, carrying out his professional role would have meant drawing upon whatever background he had in civil law. Writing to Robert, who himself would shortly gain the title of “Esquire & Attorney at Law,” Edward told his nephew that it would have been better to sell his law books in Saint John rather than sending them to Malta: “A library of English law is not much use here. My studies are now to begin *de novo*, & Brown’s Civil Law is the foundation to begin upon.”<sup>54</sup> For four years he would contend not only with civil law but with Admiralty law regarding war, piracy, and slavery, in a pluralistic legal system carried out daily in three different languages.

### **Piracy, corsairs, and law**

While piracy was a problem that plagued ships everywhere, of particular concern to Britain during the eighteenth century was piracy from what was known as the Barbary States. With the dominance of the Ottoman empire, Muslim corsairs gained access to the

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<sup>53</sup> Lee, “The Revision of the Codes of Law,” 1-2. A Maltese lawyer, Ignazio G. Bonavita, compiled the survey of the Criminal Laws upon which Richardson had based his report.

<sup>54</sup> Edward Jarvis to Robert Hazen, March 21, 1824, Jarvis Papers, NB Museum Archives.

Mediterranean and the Atlantic through Tripoli, Tunisia, and Algiers, preying on European shipping and exposed shorelines. Despite being condemned as pirates, however, these “Barbary” corsairs were not independent agents operating outside of their home communities’ laws so much as “a vital and officially recognized part of their revenue-raising machinery.”<sup>55</sup> As Molly Greene suggests, into the eighteenth century the line in the Mediterranean between legitimated trade and something closer to piracy “continued to be a vague one.”<sup>56</sup> As the 1700s went on, however, the British government began to distinguish between privateering and piracy, revising the law relating to the latter so that it could be brought to bear anywhere in the empire, and Vice-Admiralty courts were established in the colonies, including Malta, with powers to act against pirates.<sup>57</sup> Seven naval warrant officers, sitting as a court, could hold a trial for piracy, and ships and goods captured from pirates were treated as prize.<sup>58</sup>

Prize, in admiralty law, was vessels and cargo captured when enemy ships were seized as a prize of war; the capturing force would commonly be allotted a share of the worth of the captured prize, and nations often granted letters of marque entitling private parties to capture enemy ships. Courts would determine the status of the condemned property and the manner in which it was to be disposed of. The possibility of securing

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<sup>55</sup> Colley, *Captives*, 44-45. Moroccans, Algerians, Tunisians, and Tripolitans were all referred to simply as Barbary or Turkish pirates. Colley points out that while Muslim privateers targeted mainly Christian shipping, European Christians also targeted Muslim vessels.

<sup>56</sup> Molly Greene, *Catholic Pirates and Greek Merchants: A Maritime History of the Mediterranean* (Princeton: Princeton University Press, 2010), 230. Some historians consider piracy to be “an autonomous, democratic, multiracial order at sea” arising from a wider proletarian hostility to “the forces of power, profit, and order” of empire; many pirates were disaffected seamen, fed up with the brutal servitude of life in the navy or on commercial ships. Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000), 171, 328.

<sup>57</sup> Robert C. Ritchie, “Government Measures against Piracy and Privateering in the Atlantic Area, 1750-1850,” in David J. Starkey, E.S. van Eyck van Heslinga, and J.A. de Moor, eds. *Pirates and Privateers: New Perspectives on the War on Trade in the Eighteenth and Nineteenth Centuries* (Exeter, Devon: University of Exeter Press, 1997), 11-12.

<sup>58</sup> Ritchie, “Piracy and Privateering,” 12.

prize was an incentive for the newly expanded navy to hunt for pirates. The Piracy Act of 1825 encouraged British naval vessels “to attack and destroy any Ships, Vessels or Boats, manned by Pirates or persons engaged in Acts of Piracy,” promising crews £20 for “each and every such piratical Person, either taken and secured or killed” and £5 for every other man “not taken or killed.”<sup>59</sup>

Before 1800 Malta was a base for the Knights of the Order of St. John of Jerusalem, also known as the Knights Hospitaller, a military and nursing order created during the Crusades with charters from the Pope to engage in constant warfare against the Infidel, who were given the island of Malta in 1531 by the Emperor Charles V.<sup>60</sup> The Knights established a Corso, with licenses to sail as a corsair issued by Rome, and privateering became the most important occupation of the people after agriculture.<sup>61</sup> As Greene notes, just as Algiers and Tunis symbolized Barbary corsairing, Malta “was without a doubt the benchmark for Christian corsairing,” and the Knights proclaimed the island as “the new center of the ongoing crusade against Islam, now expressed as maritime raids along the North African coastline and deep into the heart of the Levant *a danno di infideli*.”<sup>62</sup> Fellow Christians were off limits for corsairing, however, and problems arose when Greek ships were targeted. Greeks were fellow Christians but, as subjects of the Ottoman Empire, they at times sailed under the Turkish flag. This led to the establishment in 1605 of a Tribunal, the Magistrato degli Armamenti, which had

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<sup>59</sup> Piratical Ships Act 1825 (6 Geo. 4 c. 30). This Act meant, however, that naval claims to have killed pirates and destroyed pirate ships were rarely tested in court, until in 1850 the new Piracy Act required that every claim for head money be adjudicated by an admiralty court. Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800-1850* (Cambridge, MA and London: Harvard University Press, 2016), 139, 145.

<sup>60</sup> Peter Earle, *Corsairs of Malta and Barbary* (London: Sidgwick & Jackson, 1970), 99-101.

<sup>61</sup> Earle, *Corsairs of Malta and Barbary*, 99-100.

<sup>62</sup> Greene, *Catholic Pirates and Greek Merchants*, 95.

jurisdiction over corsairs flying the flag of Rome and whose decisions could be appealed to Rome, in which courts Greeks who had been attacked by Maltese corsairs could sue.<sup>63</sup>

The Maltese Corso ended with the French occupation of the island in 1798, during which Napoleon abolished it, freeing 2,000 enslaved Turkish and North Africans.<sup>64</sup> Paul Curran sees the corsair courts of the seventeenth and eighteenth centuries as the precursor to the modern Maltese legal system, noting that “many illustrious Maltese lawyers” practised in the court including Ignazio Bonavita, who compiled a survey of the criminal laws upon which Sir John Richardson based his 1826 report.<sup>65</sup> The Magistrato, Curran suggests, was “a true and proper prize court administering the law of nations as then already acknowledged by enlightened international legal opinion, and especially as recognised by the relevant provisions of the Code de Rohan.”<sup>66</sup> As Malta transitioned away from corsairing, then, the foundation of existing law remained. Edward was part of Malta’s judiciary during the Island’s transition away from its reliance on a Corso and on the Knights, but the outbreak of the Greek War of Independence during the 1820s ensured that piracy would continue to touch the Island and make British Admiralty law front and centre of its concerns.

### **The limits of Admiralty law**

British imperial policy in the Mediterranean was shaped not only by the need to regulate piracy in the region but also by economic rivalry among the European powers. Following the loss of a third of the merchant fleet to the US following the revolutionary war Britain

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<sup>63</sup> Paul Caruana Curran, *The Maltese Corsair Courts* (University of Malta, 1975), 1, [https://www.um.edu.mt/library/oar/bitstream/123456789/62542/1/The\\_Maltese\\_corsair\\_courts.pdf](https://www.um.edu.mt/library/oar/bitstream/123456789/62542/1/The_Maltese_corsair_courts.pdf).

<sup>64</sup> Earle, *Corsairs of Malta and Barbary*, 269-70.

<sup>65</sup> See fn 53 above.

<sup>66</sup> Curran, *The Maltese Corsair Courts*, 10.

stepped up shipbuilding, taking advantage of the curtailment of other European navies during the French Revolutionary and Napoleonic Wars, as well as the Navigation Acts which restricted imperial trade to British ships.<sup>67</sup> British squadrons soon controlled most major sea routes, enforcing their own interpretation of the law of the sea and trying to squeeze out smaller sea-borne states having “the temerity to try and enforce exclusion zones.”<sup>68</sup> During the nineteenth century Britain negotiated a network of treaties that would in effect build an international ban against slave trading and piracy. Such international piracy law that emerged in the nineteenth-century global order, however, was a hybrid creation, a “crude assemblage” that was “regional and global, municipal and international, simultaneously beholden to and exempt from imperial sway.”<sup>69</sup>

During the 1820s the jurisdiction of Admiralty Courts was at times contested. Piracy was an exception to the rule that admiralty jurisdiction did not extend to acts done on foreign ships: the pirate was regarded as *hostis humani generis*, “the common enemy of all nations and subject to the jurisdiction of all equally.”<sup>70</sup> Even in the case of piracy, however, British Admiralty jurisdiction could only impose itself so far. In September 1824 Sir Frederick Adam, Maitland’s successor as Lord High Commissioner for the Ionian Islands, demanded that the Greek government of Corfu extradite Greeks involved in an act of piracy and a murder involving a Maltese vessel and crew in the Bay of Calamata on southern Greece’s Peloponnese Peninsula, in order to bring to justice those who had

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<sup>67</sup> Black, *The British Seaborne Empire*, 202. The protection provided by the Acts lessened, particularly after 1815, however, when shipping opened up as merchants sought to win concessions. The Acts were finally repealed in 1849.

<sup>68</sup> Bayley, *Imperial Meridian*, 226.

<sup>69</sup> Benton and Ford, *Rage for Order*, 120, 147.

<sup>70</sup> M.J. Prichard, “Crime at Sea: Admiralty Sessions and the Background to Later Colonial Jurisdiction,” in Peter Waite, Sandra Oxner, and Thomas Barnes, eds., *Law in a Colonial Society: The Nova Scotia Experience* (Toronto: The Carswell Company Ltd., 1984), 55.

committed “this most atrocious deed.”<sup>71</sup> Adam threatened that the alleged pirates, whose vessel belonged to the Bey of Maina, would be forcibly extradited:

If [you] shall remain supine or not afford every assistance in your power, the stain of so atrocious a Crime, will remain upon you, besides which His Majesty’s Squadron will be under the necessity of obtaining by force the persons of the Criminals, should you refuse, or not effectually take measures for arresting them.

Sir John Pechell, Captain of the Royal Squadron, however, wrote to Vice Admiral Sir

Harry Neale about a conversation he had had with a Greek government official who

“distinctly said [the Greeks] would never give up the individual in question, but that the Government would do its utmost to apprehend and punish them according to the laws of Greece.”<sup>72</sup>

The Greek War of Independence, which began in 1821 in Morea, had seen the capture of Turkish warships by Greek vessels; that act had led to the 1822 massacre by the Turks at Chios. In retaliation, the Greeks massacred the Muslims and Jews of Tripoli; as the war went on the Greeks considered any ship trading with Turkey an enemy and Greek armed ships exhibited a growing tendency “to forsake regular warfare for barely disguised piracy.”<sup>73</sup> As the *Malta Government Gazette* observed, “Such is the state of Greece, such are the governors and the governed, that robbery and piracy are getting to a pitch that leaves no tranquility, no security to commerce.”<sup>74</sup> In 1823 the Admiralty, trying to enforce neutrality in the Ionian Sea, had agreed to recognize the Greek insurgents officially and formed a treaty “to control and if possibly prevent acts of piracy in Ionian

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<sup>71</sup> Frederick Adam to the Government of Greece (copy), September 1, 1824, LAC, MG 24, B13, 908-910.

<sup>72</sup> Sir John Pechell to Vice Admiral Sir Harry Neale (copy), September 15, 1824, LAC, MG 24, B13, 912. Copies of both Adam’s and Pechell’s letters were in Edward Jarvis’s possession.

<sup>73</sup> David Abulafia, *The Great Sea: A Human History of the Mediterranean* (London: Penguin, 2011), 538-9; R.C. Anderson, *Naval Wars in the Levant 1559-1853* (Princeton: Princeton University Press, 1952), 508. In 1827 a fleet of British, Russian, and French ships would defeat an Ottoman fleet made up of Turkish, Egyptian, and Tunisian vessels at Navarino, ultimately leading to a treaty in which the independence of southern Greece, under loose Ottoman suzerainty, was recognized in 1828.

<sup>74</sup> “Depredations of the Greek Pirates,” *Malta Government Gazette* no. 763, quoted from the *Moniteur*, November 2, 1825, TNA.

waters.”<sup>75</sup> On 1 February 1828 Commodore Sir Thomas Staines entered the harbour of Grabusa and commenced firing and, encountering no military opposition, destroyed or captured eleven “piratical vessels.” Nevertheless, the absurdity of the British “trying to police the seas with regard to Greek activities against the Ottoman Empire, while at the same time diplomatically supporting the efforts of the Greek authorities to achieve their independence of Turkish rule, was clear.”<sup>76</sup>

### **The *La Speranza* trial**

In May of 1824 Greek nationals accused of murdering the crew of a Maltese brig, *La Speranza*, off Calamata in the Morea, were tried in Valetta. The trial occurred soon after Edward’s arrival in Malta. As he told his nephew:

I am writing now in haste, for I have my hands full of public business – chiefly relating to a most horrid case of piracy lately committed at the Ionian Islands, where every individual on board was murdered by pirates. By the King’s commission constituting the piracy Court in this island I shall sit as Judge with the Marquis, & shall have the chief management in judging this shocking business.<sup>77</sup>

The Greek seamen appeared to have been persuaded to take over the brig, eventually killing the captain and crew, and taking money, gold, and items of clothing before scuttling the ship. The trial caused quite a stir in Valetta and was attended by the local British and Maltese high society including Caroline, who described the courtroom scenes in a letter to her siblings back in Saint John. Five men were convicted of piracy and condemned to death, but Hastings commuted the sentence upon the jury’s recommendation of mercy, on the grounds that the condemned “seemed to have been

<sup>75</sup> Gekas, *Xenocracy*, 73. The Duke of Wellington signed a Protocol in 1826 urging the Sultan to recognize Greece as “a self-governing, though still tributary, part of his dominions.” Anderson, *Naval Wars*, 509.

<sup>76</sup> Alfred P. Rubin, “British Practice in the Nineteenth Century: Eurocentrism and British Imperial Law,” *International Law Studies*, Vol. 63, *The Law of Piracy* (2019): 218.

<sup>77</sup> Edward Jarvis to Robert Hazen, May 28, 1824, Jarvis Papers, NB Museum Archives. The trial was in fact conducted by Sir Waller Rodwell Wright. Giovanni Bonello, *Pirates in the Early British Era: The Malta Connections* (Valletta, Malta: The Malta Historical Society, 2010), 13.

rather blind instruments” in the hands of the Greek revolutionaries.<sup>78</sup> Three were sentenced to transportation for life and two to fourteen years, “to such place as His Majesty may direct.” Caroline wrote that

When the sentence of death was passed on those miserable men, they were almost distracted, they burst into tears, and called for a Confessor, as their idea was that they [were] immediately to be led to the gallows, this being the custom of the Greeks. As they were condemned on the Thursday before Good Friday, they petitioned the Marquis that the execution might not take place till after Easter Sunday. The circumstances attending the trial and the result were such that the whole of the Court was very much affected.

A sixth defendant who appeared to have taken a more active role had committed suicide in jail the previous August.

Caroline’s account indicated what she believed led the Lieutenant Governor to grant the jury’s recommendation of mercy. Prior to the passage of the Piracy Act in 1700 piracy trials had been required to be held in London, but the new Act allowed for immediate trials wherever admirals had “Power, Authority or Jurisdiction.”<sup>79</sup> The Act also added the offence of accessory to piracy, which included anyone who might “knowingly or willingly” assist in an act of piracy. Such persons would be “deemed and adjudged to be accessory to such piracy” and, according to the 1536 statute, receive the same penalty of death as pirates. The sixth pirate, Salvatore Fernandez, had perhaps been unaware of the consequences of being adjudged an accessory, stating in a sworn confession on July 7, 1824 that he had been an unwilling participant, despite having been found with clothing belonging to some of the murdered crew members, and having taken

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<sup>78</sup> Caroline Boyd to Mary, Jane, and William Boyd, April 8, 1825, Jarvis Papers NB Museum Archives.

<sup>79</sup> William III, 1698-99, An Act for the more effectual suppression of Piracy, Statutes of the Realm, Vol. 7: 1695-1701 (1820), 590-94; <https://www.british-history.ac.uk/statutes-realm/vol7/pp590-594>. The Statute allowed for acts of piracy to be “examined, inquired of, tried, heard and determined and adjudged in any place at sea, or upon the land, in any of his Majesty’s islands, plantations, colonies, dominions, forts, or factories.”

the brig's papers including its passport, patent, and muster roll to his home.<sup>80</sup> When a ship's boy, Spiro Calavritino, agreed to turn King's evidence, Fernandez hanged himself in prison. The *Malta Government Gazette* recounted the melancholy details:

By his own confession he was deeply concerned in this most atrocious transaction, and in fact property has been lately identified in his possession by the wife and relations of one of the unfortunate crew who was murdered. This it is supposed caused him to make away with himself, which he succeeded in doing by making a rope of the ticking of his bed: – he was found in the morning perfectly lifeless.<sup>81</sup>

Fernandez was Maltese by birth, but “had been established some time at Calamata.” His account of the events condemned what took place, putting them in the context of the ongoing war with the Turks but nonetheless painting a grim picture of the brutal killings.

Since the defendants would presumably have spoken Greek there would have been a total of four languages in the court: Greek, Italian, English, and Maltese. The proceedings would have been further drawn out by the interest the case would have aroused among the local community, as Chief Justice Stoddart acknowledged: “Cases exciting so much Interest, so new, and so serious in their Results, could not, consistent with the public Feeling, have been dispatched without affording every Latitude to the Defence.”<sup>82</sup> The knowledge that death potentially awaited those receiving a guilty verdict would have added to the frissons of excitement, anticipation, or dread that undoubtedly rippled through the spectators at regular intervals throughout the trial.<sup>83</sup>

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<sup>80</sup> Charles Swan, *Journal of a Voyage up the Mediterranean, 1826*, Vol II (London: n.p., 1826), 305.

<sup>81</sup> [Untitled article], *Malta Government Gazette*, no. 699, August 11, 1824, TNA.

<sup>82</sup> Sir John Stoddart, Memorandum on the Greek Pirates, January 9, 1828.

<sup>83</sup> Eight British pirates of the brig *William* were found guilty in 1820 after robbing the brig *Helena* off the coast of Gibraltar and leaving the ship to sink with the crew on board who in fact survived. Maitland commuted two of the sentences; the other six men were hanged on board their ship after which their bodies were hung in gibbets erected at the bastions of Fort Ricasoli in the harbour at Valetta. *Trial of Charles Christopher Delano, & other, the Crew of the Brig William, of Liverpool, for Piracy* (London: John Murray, Albermarle Street, 1820). Presumably the gibbets were still in the harbour when the Jarvis family arrived in Valetta in 1824.

The *La Speranza* trial notwithstanding, piracy reached unprecedented levels in the months before the battle of Navarino. In May of 1827 Greek raiders off Serifos attacked the *Robert*, a British schooner temporarily becalmed on its way from Smyrna to Liverpool, taking its cargo of dry goods, sugar, and hops, as well as the crews' shoes, shirts, cabin furniture and equipment, leaving the decks "in a most confused state."<sup>84</sup> Some pirate bands that had ceased operations against the Ottomans switched to plundering Greeks and foreigners at sea, joined by unemployed crews from the shipping islands, "for whom piracy was the most lucrative work available," with the problem being exacerbated by the Greek administrations' handing out numerous privateering licences.<sup>85</sup>

The Provisional Government's handing out of commissions to Greek vessels was brought up following an 1828 trial for piracy that was the subject of numerous long-winded letters from Chief Justice Stoddart to the Lieutenant Governor.<sup>86</sup> Nine Greeks were charged with "piratically boarding & plundering a Maltese vessel"; the trial was held February 21, 1828, with the Grand Jury being sworn in and returning a True Bill, the prisoners arraigned and pleading Not Guilty, a Petty Jury being sworn in, and two Crown witnesses being examined and cross-examined all on the first day.<sup>87</sup> Two days later, one of the prisoners was acquitted owing to a lack of evidence. In his charge to the Grand Jury, Stoddart was careful to distinguish between those who boarded and plundered ships merely for personal gain, "when the act is done *animo furandi*, i.e. only with an intention

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<sup>84</sup> Mark Mazower, *The Greek Revolution: 1821 and the Making of Modern Europe* (New York: Penguin, 2021), 428.

<sup>85</sup> Mazower, *The Greek Revolution*, 428-9.

<sup>86</sup> Sir John Stoddart to Major-General Sir Frederick Ponsonby, December 6, 1827, TNA, CO 158/8.

<sup>87</sup> Letter from Edward Codrington, John Stoddart, Seymour Bathurst, Fred Spencer, and Peter Richards to W. Huskisson, Secretary of State for Colonial Affairs, March 31, 1828, TNA, CO 158/8. Edward was not a judge in the case, having been let go by the Colonial Office as of January 1, 1828.

of committing robbery,” and those who, as subjects of a Sovereign at war with another, acted *animo bellum gerendi*, “i.e. with the intent of carrying on lawful war against a public enemy.”<sup>88</sup> In the case of the Greek war of independence, however, where the sovereign authority was not always fixed or evident, the distinction between the two motives was often unclear, causing problems for those like Stoddart – and Edward – who were charged with administering Admiralty law.

### **The jury question**

Mark Hanna argues that up until the end of the eighteenth century, piracy played a role in British commercial and imperial expansion. Popular support for piracy in the seventeenth century was rooted in long-standing traditions and mores and based on local concerns centred on the need to acquire bullion, the desire to purchase slaves to produce commodities for export, and the demand for East India goods and other status items.<sup>89</sup>

Hanna posits that in the 1690s England established itself as “a coherent, functioning, and integrated maritime empire.”<sup>90</sup> Once colonists were reassured antipiracy measures would not infringe upon their liberties they began to support them, leading to a “free floating” piracy that could not sustain itself. This did not mean, however, that all colonies supported the Admiralty Courts, as was the case in 1772 in the Thirteen Colonies, which challenged the vice-admiralty court trying Ansell Nickerson for its lack of jury.

Nickerson’s counsel charged that accused pirates up until then had been “deprived of the

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<sup>88</sup> Translation of the Charge delivered in Italian to the Grand Jury of Malta, by Sir John Stoddart, as President of the Court of Piracy, April 30, 1827, Valetta, Malta, TNA, CO 158/58.

<sup>89</sup> Mark G. Hanna, *Pirate Nests and the Rise of the British Empire, 1570-1740* (New Delhi: Dev Publishers & Distributors, 2019), 418.

<sup>90</sup> Hanna, *Pirate Nests*, 420.

rights of Englishmen, a trial by jury.”<sup>91</sup> The potential taking of a man’s life without a jury of his peers was seen as an abrogation of colonists’ rights and privileges.

In a letter to Lt. Governor Ponsonby in March of 1828 Chief Justice Stoddart identified trial by jury as the main aspect of the British legal system needed “for the better administration of criminal justice in these islands.”<sup>92</sup> Stoddart asked whether trial by jury, “under some modification or other,” could be introduced in Malta, stating that

It is certain that all Englishmen must prefer it, in almost any shape, to a trial by Judges who decide on the fact and the law together; more especially when those Judges (as is the case at Malta) though highly respected persons otherwise, are (with the exception of Dr. I.G. Benavit who was nominated by Your Excellency) wholly ignorant of the English language, & of course, both in theory & practice, strangers to the liberal principles of the English Law. Stoddart believed along with (the late) Sir Thomas Maitland, Sir John Richardson, “& other enlightened persons who have turned their thoughts to this subject” that it would be “highly desirable” to introduce into Malta “some institution of the nature of a Jury Trial,” especially in criminal matters.<sup>93</sup> Stoddart recommended beginning on a small scale, “perhaps to capital cases only,” noting that he had had consultations with the Maltese judges and Crown advocates, “who unanimously agree in approving the mode I have recommended.”<sup>94</sup>

Trial by jury, along with public trials and prosecutions that could be brought forward by anyone, were features of criminal justice considered to be the right of all

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<sup>91</sup> John Adams and Josiah Quincy, Jr., quoted in Hanna, *Pirate Nests*, 423. Adams and Quincy, Nickerson’s counsel, succeeded in securing an acquittal.

<sup>92</sup> Sir John Stoddart to Major-General Sir Frederick Ponsonby, March 22, 1828, TNA, CO 158/58.

<sup>93</sup> Edward is not named by Stoddart presumably because he had received notice from Hankey’s office in December that “owing to certain reductions in the Establishment of this Island” his position was being cut and his job as Assessor would end January 1, 1828. Edward, however, would certainly have agreed with Stoddart’s suggestions. William Sim to Edward Jarvis, December 6, 1827, MG 24, B 13, LAC, 963-4.

<sup>94</sup> Stoddart would in subsequent years receive complaints of his performance and come into conflict with fellow members on the Bench, and in 1838 Royal Commissioners recommended the office of Chief Justice be abolished; from then onwards all the Judges in Malta were Maltese. Biographical note compiled by Dr. Albert Granado, 1. Stoddart’s appointment had been, as was the norm for colonial judges, “at pleasure,” and so he had no security of tenure, as would also be the case with Edward’s Chief Justiceship.

citizens of the empire, and ones that distinguished English public law from its continental counterparts.<sup>95</sup> While in Malta after 1815 juries were, as noted, only used for trials of piracy cases, Stoddart, and the others he named, believed that the use of jury trials needed to be expanded within the Island's judiciary. Stoddart identified a particular downside of the lack of a jury, that the judge in a criminal trial would be deprived of "that aid, which Jurors, whose sole attention is directed to the facts of the case, cannot but give towards its just decision." As Philip Girard et al note, what distinguished the roots of British legal tradition from, for example, the French legal process is that the jury system "entailed a rigorous separation of facts and law that was not present in the French legal process."<sup>96</sup> As will be seen, a libel trial presided over by Edward in his first year as Chief Justice of Prince Edward Island would illustrate the most important principle of all regarding liberty of the press in British North America, "that in the end the jury was responsible for both law and fact in libel cases, however double-edged that principle was."<sup>97</sup>

### **Slavery in the Mediterranean**

As noted above, a Maltese Corso existed up until 1798. While the taking of captives in the Mediterranean is often termed "white" slavery, referring to those enslaved from northwestern Europe, Muslims, Eastern Christians, and Arabic Jews were also targeted. The Knights routinely preyed on Muslim vessels, seizing their crews and passengers and selling them in the open market; by 1720 there were an estimated 10,000 enslaved

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<sup>95</sup> Philip Girard, Jim Phillips, and R. Blake Brown, *A History of Law in Canada Vol. I: Beginnings to 1866* (Toronto: University of Toronto Press, 2018), 276.

<sup>96</sup> Girard et al, *A History of Law in Canada Vol. I*, 65.

<sup>97</sup> J.M. Bumsted, "Liberty of the Press in Early Prince Edward Island, 1823-9," in F. Murray Greenwood and Barry Wright, eds. *Canadian State Trials: Law, Politics, and Security Measures, 1608-1837* (Toronto: University of Toronto Press, 1996), 541.

Muslims in Malta.<sup>98</sup> The so-called Barbary States of north Africa had regarded slavery as a normal component of their economy as had the Europeans, with the difference that their slaves tended to be white rather than Black and would be worked in their home territories rather than in overseas possessions.<sup>99</sup> Lurid tales of Europeans enslaved in North Africa brought about pressure to end further abductions. The Congress of Vienna in 1814-15 marked a turning point for confronting the problem of captive Europeans (“white slaves”) held by Barbary corsairs from North Africa, and in September 1815 Bathurst was to oversee the assembling of a powerful fleet to sail against Algiers under Lord Exmouth.<sup>100</sup>

In 1807 the Abolition Act was passed by Parliament, in part owing to “the success of the old navigation system and the pursuit of blue-water British war aims,” banning British ships from carrying enslaved people and forbidding slave trading in Britain’s ports.<sup>101</sup> The act did not end the transatlantic slave trade, but empowered a squadron of Royal Navy ships to hunt for slavers in the Atlantic, both in the Caribbean and off the coast of West Africa.<sup>102</sup> The Continental Blockade from 1807-11 and then the campaign against slavery allowed the British to register and control the trade of the “native” competitors.<sup>103</sup> From 1817 onward a system of treaties established “a very light skein of

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<sup>98</sup> Colley, *Captives*, 45. Nabil Matar argues, in fact, that from the late seventeenth century on, owing to advances in European navigational technology compared to those of the Ottoman regencies and Morocco, the number of Arabic-speaking Muslim, Christian, and Jewish captives in European hands “far exceeded” European captives in North Africa. Matar, “Two Arabic accounts of captivity in Malta,” in Mario Klarer, ed., *Piracy and Captivity in the Mediterranean, 1550-1810* (London: Routledge, 2019), 259. Matar (260) notes the carving, done in 1806, of two hand-tied men in the Maltese Church in Vienna as evidence of the practices of the Maltese Corso.

<sup>99</sup> Tom Pocock, *Breaking the Chains: The Royal Navy’s War on White Slavery* (Annapolis, Maryland: Naval Institute Press, 2006), 10.

<sup>100</sup> Holland, *Blue-Water Empire*, 30-31.

<sup>101</sup> Christer Petley, “The Royal Navy, the British Atlantic Empire and the Abolition of the Slave Trade,” in John McAleer and Petley, eds., *The Royal Navy and the British Atlantic World, c. 1750-1820* (London: Palgrave Macmillan, 2016), 116.

<sup>102</sup> Padraic X. Scanlan, *Slave Empire: How Slavery Built Modern Britain* (London: Little, Brown, 2020), 14.

<sup>103</sup> Bayley, *Imperial Meridian*, 226-7.

jurisdiction” as Britain negotiated bilateral agreements with European and diasporic states that “re-established a very modest iteration of wartime search and seizure law.”<sup>104</sup>

The early modern laws of wartime search and seizure, from which derived the British navy jurisdiction to seize foreign slave ships, had been the closest thing to a body of international legal norms.<sup>105</sup> During the Napoleonic Wars foreign slave ships caught by the navy were condemned for sale like any other wartime prize, with profits from the sale of ships and human cargo being distributed among crews and colonial court officials. While the wartime powers assumed by the British navy greatly expanded the jurisdiction of British admiralty courts, however, argue Lauren Benton and Lisa Ford, “they did not disrupt the notion that slaves were human property or suggest that trafficking in slaves was a universal crime.”<sup>106</sup> The admiralty-based system did not portend “humanitarian” law reform, focusing on the adjudication of property rights rather than the protection of enslaved people who had been rescued.<sup>107</sup>

Because slave trade policing was linked to bilateral treaties, British officials were frequently unclear whether the British navy could board or seize ships flying the flags of nontreaty partners.<sup>108</sup> Aside from the anti-slavery treaties negotiated following the outlawing of the slave trade in 1807, the British had treaties with various Mediterranean countries, causing some jurisdictional confusion. In May of 1825 Edward questioned why a group of enslaved people, possibly Greek, were not taken off a ship that passed through British jurisdiction. Fred Hankey addressed Edward’s letter “where you express doubt

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<sup>104</sup> Benton and Ford, *Rage for Order*, 123.

<sup>105</sup> Benton and Ford, *Rage for Order*, 122.

<sup>106</sup> Benton and Ford, *Rage for Order*, 122.

<sup>107</sup> The 1807 Act was not a charter for emancipation: enslaved people held captive on slave ships could be conscripted as soldiers or sailors or apprenticed as labourers. Scanlan contends that following the Act the control and white supremacy of the era of African slavery was subsequently channeled “towards a new project of ‘civilisation’ and economic transformation” by the British. Scanlan, *Slave Empire*, 182.

<sup>108</sup> Benton and Ford, *Rage for Order*, 123.

why the Consul at Tripoli should ‘have suffered the slaves to proceed to Tunis without at least first making an effort for their release’.”<sup>109</sup> The document referred to “a communication from Mr. [Hanmer] Warrington, Consul General at Tripoli – in reference to *La Madonna Meridia* a vessel under the Ionian flag carrying some Greek Slaves from Bengasi to Tripoli.”<sup>110</sup> Hankey referred Edward to Maitland’s 1823 Proclamation made at Valetta and recorded as an Act of Parliament, in which he made explicit “the anxiety of Her Majesty’s Government to annihilate *in toto* the disgraceful traffic in slaves.”<sup>111</sup> The Proclamation decreed that all slavery offences committed within Maltese harbours or ports, or upon the high seas, or any parts within the jurisdiction of the Admiralty, would be tried before the Court established in Malta for the trial of piratical offences. In the case of those who had been enslaved “during the present unhappy and sanguinary contest in Greece” who were transported in British or Maltese vessels, even the carrying of a single enslaved person made a vessel “amenable to the general laws for the abolition of the Slave Trade.”<sup>112</sup> It is difficult to make out Hankey’s response owing to legibility, but clearly jurisdiction over slavery in the Mediterranean was an ongoing question.

### **The Role of King’s Assessor**

In the fall of 1826 Sir John Stoddart was appointed President of the Courts in Malta.

Edward wrote to William that he himself had hoped for the position, but that Stoddart

Has been well known in England for several years as the editor of the *New Times*, a violent party paper in favour of the Government. The Ministers thought they were in duty bound to reward their Champion, & the King has Knighted him & sent him here...to be our President & Judge of Admiralty. I did not wish His Majesty to Knight

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<sup>109</sup> Frederick Hankey to Edward Jarvis, May 12, 1825, LAC, MG 24, B13, 921.

<sup>110</sup> Envelope with inscription, LAC, MG 24, B13, 922a.

<sup>111</sup> Sir Thomas Maitland, Proclamation, March 21, 1823, Valetta, TNA, CO 162/5.

<sup>112</sup> Hankey to Jarvis, May 12, 1825, LAC, MG 24, B13, 921. The letter is unfortunately largely illegible.

me, but I should have thanked him for the appointment, & the Salary of £1500 – and I had a very good right to expect it. However as it is not so, it is quite certain it never will be – & I have probably become a fixture for life with my £800 per annum.<sup>113</sup> In fact Edward’ position of King’s Assessor would be cut at the end of the following year, forcing him to return to London to seek yet another posting from the Colonial Office elsewhere in the empire. Edward would comment in another letter that he had “a great deal of personal communication” with the Governor, the Marquis of Hastings, up until his death in 1826, giving some indication of his place in the colonial hierarchy, but overall it is difficult to get an exact idea of what his role as King’s Assessor entailed.<sup>114</sup> As a member of the British elite on the Island Edward would have carried out various other roles with leading members of the colonial administration, the judiciary, the military, the clergy, and the Maltese social, political, and mercantile elite. In September of 1824 the *Malta Government Gazette* listed Edward as Vice-President of the Board of the House of Industry at Floriana, a town just outside Valletta – presumably the local workhouse.<sup>115</sup> The board also included Frederick Hankey, the Chief Secretary to Government, and other leading personages on the Island.

The *Malta Government Gazette* of July 28, 1824 reported that “His Excellency the Governor [Hastings] has been pleased to appoint Edward James Jarvis, Esq. Assessor

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<sup>113</sup> Edward Jarvis to William Jarvis, November 16, 1826, Jarvis Papers, NB Museum Archives. Stoddart had held the position now held by Jarvis from 1803 to 1807. He was made a judge of the Vice-Admiralty Court July 5, 1826, and promoted to Chief Justice March 26, 1827. Albert Ganado, “Sir John Stoddart,” [www.judiciary.mt/en/Documents/bio/Sir%20John%20Stoddart.pdf](http://www.judiciary.mt/en/Documents/bio/Sir%20John%20Stoddart.pdf). The role of King’s Assessor seems to have then been given to Stoddart once again after Edward was cut from the post, as Stoddart is recorded as carrying out the role from January 1, 1826 to July 4, 1832. It is not clear what Edward’s working relationship with Stoddart was like, given that he himself had hoped for the Chief Justiceship, but there appears to have been no undue rancour on Edward’s part. Stoddart, later in his tenure, was said to have had conflicts with fellow members on the Bench “and covertly espoused the cause of the Maltese liberals.” During Maitland’s time as Governor while in Malta he had lived at the Auberge d’Allemagne rent free with a salary of £1,500 per annum. The six Maltese judges, in contrast, earned only £428.12s each.

<sup>114</sup> Edward Jarvis to William Jarvis, November 16, 1826, Jarvis Papers, NB Museum Archives. Hastings died November 25, 1826.

<sup>115</sup> *Malta Government Gazette*, no. 703, September 8, 1824, TNA, CO 162/3. Edward had also been involved in poor relief in Saint John.

to Government, to be one of the Commissioners in Matters of Bankruptcy.”<sup>116</sup> With the number of merchants, both British and Maltese, on the Island, and its location in the middle of so many shipping routes, bankruptcies would have been a fairly regular occurrence. The *Malta Government Gazette* for December 8, 1824, for example, featured a typical notice of bankruptcy that read “Whereas a Commission of Bankruptcy is awarded and issued forth against Alexandro Rizzo, Merchant Dealer and Chapman, and he being declared a Bankrupt, did surrender himself to the Commissioners.” The notice then went on to name public meetings over three days at the Bankruptcy Court during which creditors could lay their claims, meetings that were presumably presided over by Edward.<sup>117</sup> A proclamation by Hankey in February of 1827 decreed that “No person shall henceforward be kept in prison for debt, on any one suit, more than 2 years, from the date of the arrest.”<sup>118</sup> While the new law was clearly aimed at curbing abuses against debtors, it indicates that imprisonment for debt still took place in the colony. It may have been Edward’s role to sentence debtors to prison terms of two years or under, perhaps calling to mind his Uncle Fyler, who had committed suicide forty years earlier in Saint John when faced with the prospect of debtors’ prison.

Malta’s use as a naval base for the British Fleet had brought prosperity to the Island along with a growing entrepot trade, but the latter all but disappeared following the 1813 plague when it was placed in quarantine for a full 14 years, a “disaster” for the economy.<sup>119</sup> The steady stream of bankruptcies reported by the *Malta Government*

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<sup>116</sup> *Malta Government Gazette*, no. 696, July 28, 1824, 4013, TNA, CO 162/3.

<sup>117</sup> *Malta Government Gazette*, no. 716, December 8, 1824, TNA, CO 162/3. A proclamation by Hastings of July of 1824 stipulated that Creditors could sign a Certificate attesting to the honesty of the Bankrupt during bankruptcy proceedings. *Malta Government Gazette*, no. 694, July 14, 1824, TNA, CO 162/3.

<sup>118</sup> Proclamation No. 11, February 20, 1827. TNA, CO 162/5.

<sup>119</sup> Peter Elliott, *The Cross and the Ensign: A Naval History of Malta, 1798-1979* (London: Harper Collins, 1980), 74.

*Gazette* attested to the struggles of Maltese merchants to survive – there were accusations that other jurisdictions had unfairly used the Maltese quarantine restrictions to gain advantage for trade under other flags.<sup>120</sup> An attempt to stimulate cotton production on Malta and Gozo after 1802 was “virtually snuffed out” by 1825 when cheap Egyptian cotton produced under Muhammad Ali’s rule flooded the market, Malta’s once flourishing trade having already been damaged by the international cholera epidemic of the early 1820s.<sup>121</sup> This contributed to the worsening financial problems of the colonial administration “already struggling under a swollen bill for expatriate salaries and a diminution of standards of living among the islanders” and intensified conflicts between the colonial administrators and the islanders.<sup>122</sup> The adult males of the Maltese professional and landed classes competed for salaried positions of which there were “never enough...to go round,” causing the Maltese to feel “intense hatred” towards the British who appropriated the best jobs, according to one British resident.<sup>123</sup> While the Battle of Navarino brought some relief, the Greek situation had damaged trade, leading another British resident to describe rural Malta in 1828 as “crowds of human beings...some in a state of absolute nudity, with all the others in rags, pouring in from the country to implore a single morsel of bread...”<sup>124</sup>

Another hint of the nature of Edward’s role comes in a letter written by his sister-in-law Caroline to her sister Mary: Caroline wrote that Edward was swearing in Major-

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<sup>120</sup> TNA, CO 158.

<sup>121</sup> The wartime closure of the export markets for thread of France and Spain, and the import of cheap cotton cloth from England, also hurt Malta’s cotton growing, spinning, and weaving industry, although in wartime farmers could switch to growing cereals which “commanded a high enough price.” Gregory, *Malta*, 281.

<sup>122</sup> Bayly, *Imperial Meridian*, 240. The British introduced the potato as a more efficient crop than wheat to alleviate the widespread malnutrition on the island, although wheat continued to be imported from Odessa and other Mediterranean ports. Randolph and Berg, *Historical Dictionary of Malta*, 23.

<sup>123</sup> Holland, *Blue-Water Empire*, 50. Maitland in particular “ruthlessly employed” patronage (37).

<sup>124</sup> Quoted in Holland, *Blue-Water Empire*, 50.

General Sir Frederick Cavendish Ponsonby, who became Governor February 15, 1827, succeeding Major-General Alexander George Woodford, Acting Governor following Hastings' death. This role would normally have been carried out by the Chief Justice, but Stoddart must have been unavailable; that Jarvis filled Stoddart's place speaks to his high station in the pecking order, in which he presumably stood ahead of the local Maltese judges. Even Jarvis's short tenure as King's Assessor was longer than that of at least two governors: the colony saw four governors come and go during his tenure from January 1824 to December 1827. Jarvis's role as King's Assessor would have provided some continuity, but it was a role that, ultimately, the British government decided in the name of economy it could do without.

### **Colonial society in Malta**

While it is difficult to get a picture of the entirety of Edward's responsibilities as King's Assessor in Malta, the correspondence he, Maria, and Caroline conducted during their four years on the Island provides a rich picture of aspects of daily life within colonial society. The Jarvises would have been considered a part of the colonial elite, made up of British and colonial administrators and other officials, with whom they would have socialized. There was also a significant group within Maltese society who made up the professional classes and the nobility, who were literate, often educated abroad, and politically au courant.<sup>125</sup> Members of this group would have attended the luncheons, suppers, balls, and other events put on by the Governor and his wife as well as other high-ranking colonial officials. Yet while a British officer stationed in Malta in 1802 found the Maltese to be "extremely sociable" and attended operas, assemblies, and other

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<sup>125</sup> Gregory, *Malta, Britain, and the European Powers, 1793-1815*, 33-4.

social events, another officer visiting in 1809 discovered “little mixing between British and Maltese.”<sup>126</sup>

It is difficult to assess the degree to which the Jarvis family encountered the Maltese people in their day-to-day activities. Edward would of course encounter a wider range of islanders through his legal roles; the family’s servants would also have been ordinary Maltese. Under the circumstances, it is not difficult to imagine that hierarchies and prejudices present in the wider empire were reproduced in 1820s Malta. According to another British observer in 1810, English residents considered the Maltese to be “ferocious, ignorant, lazy, passionate, revengeful and if married, jealous beyond conception.”<sup>127</sup> A British minister living in Palermo, Sicily, in 1801 called them “a most troublesome, litigious and capricious people.”<sup>128</sup> Such perspectives of the British colonizers of Malta appear in some of the Jarvis family correspondence: implicit beliefs that colonization brought the light of British civilization to the wider expanses of the empire. Those with such views typically assessed British colonial possessions and the people who inhabited them from a specific position based on race, class, gender, and a range of other attributes, criteria which invariably found the recipients of their assumed beneficial presence did not meet their imposed standards.

Perceived markers such as a certain standard of cleanliness, equated with virtue, were yardsticks by which non-British cultures could be measured and more often than not found wanting. In Malta Caroline commented on the cleanliness of the streets:

The City of Valetta is built on a hill, and every street has a flight of steps on each side [which] are all paved in the middle and some of them with lava from Mount Etna. They are in general very narrow and are kept remarkably clean and are swept every morning,

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<sup>126</sup> Gregory, *Malta*, 32.

<sup>127</sup> Charles Meryon, quoted in Gregory, *Malta*, 33.

<sup>128</sup> Arthur Paget, quoted in Gregory, *Malta*, 33.

by the convicts. We passed some of them one day at this employment. They had chains on their legs and a Sentry standing by them with a drawn bayonet.<sup>129</sup> In this case Caroline seemed to equate cleanliness with the washing away of sins implied by the convicts' washing of the streets. Regarding the general cleanliness of the Maltese people, however, she appeared to have the opposite view in a subsequent paragraph:

The water is conveyed to [houses in Malta] by pipes from a distance of eight or nine miles. This is absolutely necessary to prevent the plague for the Maltese are not very neat, indeed, quite the reverse. You cannot walk out without risk of bringing home more live stock than is agreeable and often see them sitting at their doors relieving each other of lively companions.<sup>130</sup>

Caroline was thus suggesting the Maltese were dirty and lacking in personal hygiene.

While the plague, as noted, was an ongoing concern, her comments served as a distancing mechanism to distinguish herself from the ordinary Maltese people. This "othering" is in keeping with hegemonic European culture, as Edward Said suggests, that sees European identity as a superior one in comparison with all the non-European peoples and cultures.<sup>131</sup> For Caroline this identity manifested itself as ambivalence that was reflected in her contradictory statements.

Caroline made clear her disdain for the Maltese convicts, whom she considered beneath contempt, but even the Maltese elite, with whom the Jarvises socialized during Edward's tenure on the island, were not quite at the level of the British.<sup>132</sup> Jeremy Black writes that the process of finding non-British people did not meet British standards of civilized behaviour was reinforced by Britain's advances in technology and science during the period of imperial expansion. Aside from the assessment of the inherent characteristics of other peoples, he writes, "a belief in progress, and in the association of

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<sup>129</sup> Caroline Boyd to Edward Boyd, March 30, 1824, Jarvis Papers, NB Museum Archives.

<sup>130</sup> By "live stock" and "lively companions" Caroline was presumably alluding to lice or fleas.

<sup>131</sup> Edward W. Said, *Orientalism* (New York: Random House, 1979), 7.

<sup>132</sup> Caroline wrote that despite the chains on their legs and the sentry guarding the convicts, "one of them looked very impudent and beckoned to us, and another stopped to beg. We of course did not give them anything supposing them to be very undeserving, but made the best of our way out of hearing."

reason with European, if not British, culture necessarily encouraged a hierarchy dominated by the British, and thus a treatment of others as inferior and in need of enlightenment.”<sup>133</sup> The British concept of civilization undergirded European ideas of cultural, religious, and racial superiority, legitimizing colonization and the exploitation of non-European peoples.<sup>134</sup> Such attitudes were found amongst the colonial elite in Malta. According to John Galt, who visited Malta in 1809, most resident English treated the Maltese with contempt, and were jealous of the way the administration went out of its way to conciliate the natives, “a story that repeated itself mutatis mutanda in all British possessions in the course of the following century-and-a-half.”<sup>135</sup>

As part of the British elite in Malta, the Jarvises would have been invited to the balls, dinner parties, and other amusements that the governor and other leading figures of the British administration organized with some regularity. They would have followed the diplomatic protocol and social norms relevant to their situation, such as Maria and Caroline wearing black dresses following Maitland’s death upon their arrival on the Island.<sup>136</sup> Both through his job and socially Jarvis would have interacted closely with the new governor, as he wrote in a letter of November 1826 to his brother: “I have always been on the best terms with His Lordship & having necessarily a great deal of personal communication with him have found him so uniformly kind & obliging that it will be a very rare circumstance if he should be succeeded by his equal.”<sup>137</sup> Hastings died on

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<sup>133</sup> Black, *The British Seaborne Empire*, 183.

<sup>134</sup> Michael Kwass, *The Consumer Revolution, 1650-1800* (Cambridge: Cambridge University Press, 2022), 22.

<sup>135</sup> Gregory, *Malta, Britain, and the European Powers, 1793-1815*, 32.

<sup>136</sup> Caroline Boyd to Isabella Boyd, March 1, 1824, Jarvis Papers, NB Museum Archives. Caroline wrote to Isabella that after the month-long mourning period had ended the following month had been “very gay” and that they had been to “several Balls and Dinner parties,” although initially she was relieved to be wearing mourning as their trunks did not reach Malta until several months after their arrival on the Island.

<sup>137</sup> Edward Jarvis to William Jarvis, November 16, 1826, Jarvis Papers, NB Museum Archives.

November 28, 1826; in a letter to her mother Maria described in detail the pomp and circumstance surrounding the funeral, noting that Edward was one of the pall bearers.<sup>138</sup>

Writing to her and Maria's brother John, Caroline lamented the absence of the Marchioness and her daughters from the social scene of the Island, writing that they would be a sad loss to Malta as "the Society here is one that requires a head, and the Marchioness tho' kind & condescending was a person that all looked up to."<sup>139</sup>

The Jarvises could not, however, ultimately be a full part of elite colonial society. Lacking reliable independent sources of wealth, Edward struggled to meet the social and cultural norms of elite society in Malta that required a substantial outlay of funds. In a letter to his mother in June of 1827, Edward explained that his salary was not sufficient to cover his family's expenses because, upon arriving on the Island, he was obliged to buy new furniture and books, an outlay of more than £1000 sterling, while not receiving any compensation for the furniture and books he had had to leave behind in Saint John.<sup>140</sup> Edward assured his mother he was not in debt, but was as yet unable to pay the debts he had incurred three years earlier in England.<sup>141</sup> The situation was further exacerbated by the fact that Edward's father's estate had not yet been settled, tying up the money he was bequeathed in Munson's will. The result was that he could not pay off his earlier debts, which, he wrote, "prey upon me like a nightmare."

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<sup>138</sup> Anna Maria Jarvis to Mrs. Jane Boyd, December 20, 1826, Jarvis Papers, NB Museum Archives.

<sup>139</sup> Caroline Boyd to John Boyd, November 18, 1826, Jarvis Papers, NB Museum Archives.

<sup>140</sup> Edward Jarvis to Mary Jarvis, June 16, 1827, LAC, MG 24, B13, 959-62. Edward had asked Robert Hazen, his nephew who was overseeing his financial affairs in Saint John while Edward was in Malta, to sell both his books and furniture, but Hazen appear to have gotten very little for them. Discussing the furniture in a letter, Robert informed his uncle that he "may deem it a remarkable occurrence if a full price is obtained for any of the articles." Robert Hazen to Edward Jarvis, November 21, 1823.

<sup>141</sup> To pay off Bainbridge and Brown in London, Edward was forced to borrow £300 from Henry Bliss. Edward Jarvis to Robert Hazen, June 20, 1824, Jarvis Papers, NB Museum Archives.

Edward wrote to his mother that one of the ways he was able to keep out of debt was by not giving the dinner parties which he and Maria, as members of the Malta elite, were expected to host. As he wrote,

So little are we accustomed to live stylish that we have given but one evening party since we have been in Malta, & that was about two months since. It cost in the whole, fifteen pounds – We have given so few dinner parties (about three a year at the most) that we are almost out of society.

Edward mentioned Sir Frederick Hankey had recently given an evening party at the cost of £100 for the supper alone and another £100 for “the other expenses.” Similarly Maria, in a letter to her own mother six months earlier, wrote,

We live frugally & see but little company, not more than three or four dinners in the year...and the consequent result is are not often invited out. I suppose that we are styled miserly, the more so from occupying a large & commodious house & in every way fitted up to entertain...but our removal from New Brunswick was attended with such great & heavy expenses that Mr. Jarvis has been obliged to remit money home, & on our arrival here we had to commence house keeping a second time, for we had neither beds, bed linen, or house linen.<sup>142</sup>

Maria expressed the hope that they would soon be able to start saving out of Edward’s salary of eight hundred per annum “a small sum for our Children’s future comfort,” but this was not to be. A year after Maria’s letter Edward’s position was terminated and the family headed back to London.

### **Return to London**

Edward seems to have anticipated the termination of his position as King’s Assessor, writing to his mother in the above letter that he had the intention of going to London partly to meet Robert, to try to settle his affairs in New Brunswick, and “partly to secure, if possible, some situation in New Brunswick or Nova Scotia.”<sup>143</sup> Edward continued,

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<sup>142</sup> Anna Maria Jarvis to Mrs. Jane Boyd, December 20, 1826, Jarvis Papers, NB Museum Archives.

<sup>143</sup> Edward Jarvis to Mary Jarvis, June 16, 1827, LAC, MG 24, B13, 959-62. It is not clear whether Edward did in fact go to London; the letter to his mother is the only surviving letter of his for 1827.

“since the Marquess’s death & the arrival here of John Stoddart, I think it more than probable, from the turn affairs have taken, that my situation may be entirely done away with.”<sup>144</sup> He was concerned that “I may be offered a situation in some unhealthy climate, or some other [position] which I would not wish to accept. I should therefore be compelled to return to professional practice.” If any vacancy in New Brunswick or Nova Scotia “or even Canada” occurred, however, Edward continued, “it would be so long before I could hear of it, that it would probably be filled up before my application could reach England.” Also, noted Edward, now that Bathurst had been replaced by a new Colonial Secretary, “nothing could be done unless I were on the spot in England to explain matters to him, as I have no friends there of any influence to speak for me.” Not only was his primary source of patronage gone, Edward continued, but “my pecuniary circumstances are such that if I should lose my situation here, I should not be able to maintain myself in England one month, to look out for an appointment.”

When word finally came, in December of 1827, that his position had been axed, Edward was given a pension of £200, a quarter of his previous salary. After receiving what a contemporary referred to as his “late abrupt and unjust dismissal from Office at Malta,” he immediately wrote back asking to leave in January, and that the cost of conveying his family to England be defrayed.<sup>145</sup> Upon arrival in London in early spring of 1828 Edward immediately sought the pension from the Maltese government.<sup>146</sup> Once again he was forced to frequent the Colonial Office in search of a new colonial

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<sup>144</sup> As early as March of 1825 Edward wrote to his parents that it was “by no means improbable” that his position as King’s Assessor would be eliminated by the Colonial Office, “from the state of the finances in this Island, and from the peculiar nature of my office (particularly after the death of Sir Thomas Maitland who had created the office & alone knew its value & true nature).” Edward Jarvis to Munson and Mary Jarvis, March 16, 1825, Jarvis Papers, NB Museum Archives.

<sup>145</sup> Edward Jarvis to William Sim, draft, December 7, 1828, LAC, MG 24, B 13, 965-966.

<sup>146</sup> Edward Jarvis to Major W. de Roos, August 28, 1828, LAC, MG 24, B 13, 987-989.

posting: in May Caroline wrote to her mother that “Nothing has as yet been done for Mr. Jarvis at the Colonial Office although he has paid them repeated visits.”<sup>147</sup> The family does not appear to have stayed with the Coffin family as in 1823, but took “a small Cottage at Hampstead in the Vale of [Heath]” where Edward would visit between stays in London; two of his old New Brunswick fellow students from the Inns of Court, John Simcoe Saunders and Henry Bliss, appear to have visited.<sup>148</sup> Edward received the post of Chief Justice of Prince Edward Island that summer.

Edward’s pension from the Maltese government appears to have taken some time to materialize, no doubt causing him much additional stress. He would have been acutely conscious of the need to repay Bliss for the £300 he had borrowed. In a July 23, 1828 letter to Bliss from Hampstead – he obviously had not left for British North America yet – Edward specified the amount he still owed Bliss, £267.11, which he promised to pay through Bainbridge, his agent, when his pension became payable.<sup>149</sup> The pension must have come through shortly afterwards, however, as Edward appears to have purchased numerous items of silverware from Grayhurst, Harvey & Co. before leaving London.<sup>150</sup> Presumably having started to receive the pension and having secured his next judicial posting, Edward now felt confident that he would soon pay off the remainder of the debt that had accrued before his departure for Malta. While Edward would make a good salary

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<sup>147</sup> Caroline Boyd to Mrs. Jane Boyd, May 15, 1828, Jarvis Papers, NB Museum Archives.

<sup>148</sup> Caroline Boyd to Mrs. Jane Boyd, June 4, 1828, Jarvis Papers, NB Museum Archives.

<sup>149</sup> Edward Jarvis to Henry Bliss, July 23, 1828, Jarvis Papers, NB Museum Archives. The original amount was £300, to which £53.18.4 interest was added when Jarvis appears to have made a payment of £100 in December of 1827. Jarvis then paid £231.13.1 in March of 1828, with £4.1.8 being added to the balance for a final balance of £267.11. In the letter Jarvis accuses Bliss of charging him interest for the full amount including the month following which he had made the £100 payment; Jarvis also refused to pay a £2 fee to Bainbridge Bliss seems to have charged him, as Bliss appears to have been charged 4% by Bainbridge for the £300 which he then lent to Jarvis at 5%.

<sup>150</sup> Receipt for £61.19.6 from Grayhurst, Harvey & Co., London, August 26, 1828, Jarvis Papers, NB Museum Archives. The purchases included silverware and other items for an elite dining room.

as Chief Justice of Prince Edward Island, however, his financial worries would return in the last decade of his life and the “nightmare” of debt would blight his final years.

### **Conclusion**

Edward Jarvis, in carrying out his role as King’s Assessor in Malta, was acting within a judiciary that had recently been reformed to fit more closely to British colonial legal norms. While numerous reforms were made, Malta’s judicial system was not completely overhauled, meaning that Edward had to adjust to a civil law system that was essentially legal pluralism. Upon attaining the position of Chief Justice of Prince Edward Island Edward would seek to bring its judiciary up to the prevailing standards of British colonial law; it is interesting to look ahead to some of his reforms in the light of his experience in Malta. For example, a criticism of Prince Edward Island’s judiciary Edward would make throughout most of his tenure was the Island’s need for more than one paid judge; it is not difficult to see that, having been part of a judiciary with six appointed judges, he would have become accustomed to consulting with other judges on points of law.

While Thomas Maitland’s reforms to the Maltese judiciary in many cases reflected a bias towards the “ideal” of British common law, some of them were simply much needed updates that other jurisdictions also faced. Torture and the punishment of slavery or sending convicted prisoners to the galleys, while they may have offended British sensibilities, were simply holdovers of practices that most countries had used – even Britain, while it had abolished the slave trade, had yet to abolish slavery itself within the Empire. Otherwise, Maitland’s legal reforms appeared to be based on the prevailing assumption that British law was more “civilized” than Maltese law, and that

the Maltese were too “emotional” or “irrational” to, for example, carry out jury duty for most crimes. There were, however, educated Maltese lawyers who did administer law along with Edward and his fellow colonial judges, belying British assumptions about the capacity of the Maltese to maintain the rule of law amongst themselves. Moreover, as Edward would discover upon arrival in the colony of Prince Edward Island, that colony’s judiciary was rife with nefarious practices such as using the courts to settle personal scores and harass personal enemies, hardly a bastion of rationality and disinterest.

Such assumptions about the non-British residents of British colonies would follow Edward to Prince Edward Island where the law of the Indigenous people there, the Mi’kmaq, was seen not merely as inferior but as non-existent. Under Maitland’s reforms the Maltese were denied jury trials, apart from those for piracy; the Mi’kmaq of Prince Edward Island would be similarly prevented from being jurors. As will be seen, colonial Prince Edward Island was an outlier amongst its fellow British North American colonies in having no property qualification for jurors; in this sense the juries there, as they did in the piracy trials in Malta, provided a means by which local concerns and values could be reflected in the judicial process. As will be seen, the jury in a murder trial over which Edward presided as Chief Justice of Prince Edward Island declined to send a smuggler accused of murder to the gallows; similarly, the jury of a sensational piracy case in Malta did not wish the perpetrators to face the ultimate penalty, recommending mercy which was granted by the Lieutenant Governor who ultimately commuted the sentences.

While Edward would no doubt be glad to be back on the terra firma of British common law upon taking up his position as Chief Justice of Prince Edward Island, it must also have been a difficult adjustment in many respects. The sheer size of the colony

would have been a dramatic contrast – the population of Malta was an estimated 119,736 people in 1826, compared to approximately 24,600 people in Prince Edward Island during the same period.<sup>151</sup> This, combined with the parsimoniousness of the British government when faced with any proposed expenditure on the latter colony’s judiciary, meant that Edward was not given the resources to bring it fully up to the standard he wished. While Malta was seen to be a priority given its location in the Mediterranean and the geopolitics at the time, Prince Edward Island was very much not considered a priority – this despite a rural land protest movement occurring during Edward’s tenure that threatened British landowners’ property rights. The themes of duty and dependency would figure largely in Edward’s third and final imperial judicial posting: while the Colonial Office would assume, correctly, that Edward would do his duty and uphold British property law in the face of demands for land reform in the Island colony, it would do nothing to alleviate his precarious financial position caused largely by his dependency on its capricious and ever-dwindling benevolence.

There is little doubt that Edward’s years in Malta were some of the happiest of his life. Not only were two of his children, Henry and George, born there (in 1825 and 1827 respectively), he was able to live in a historic – if hot at times – city surrounded by natural beauty and a bounteous supply of local agricultural products with a vibrant cultural and social life. The plague had been vanquished over a decade ago under the zealous, if autocratic, rule of “King Tom” and two other scourges of the Mediterranean seas, white slavery and Barbary corsairs, were the target of an ever-growing body of

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<sup>151</sup> National Statistics Office, Malta, [www.nso.gov.mt/history-of-the-census/](http://www.nso.gov.mt/history-of-the-census/) ; Statistics Canada <https://www150.statcan.gc.ca/n1/pub/98-187-x/4064809-eng.htm>. It is not clear whether the population figure for Prince Edward Island includes the Island’s Mi’kmaq population, the Epekwitk. See Chapter 4 for a more detailed discussion of the population of the Epekwitk/PEI Mi’kmaq.

British maritime law, of which Edward was a key administrator. Edward's feelings upon departing the island, however, would have no doubt been mixed: during his time there he had lost his father, felt isolated by the dearth of news from New Brunswick, and been forced to rely on his nephew, Robert, to conduct his business there. Edward would come to characterize his acceptance of the Chief Justiceship of Prince Edward Island as something of a sacrifice, an acceptance of a lesser position than was his due to allow him to be closer to his extended family.<sup>152</sup> The position in Malta had forced Edward to forego his filial duty and leave his parents behind, owing to his duty to support his own family; his dependency on London now meant he had once again to forgo the colony of his birth and begin anew.

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<sup>152</sup> Edward Jarvis, Memorial to Lord Grey, Principal Secretary of State for the Colonies, protesting the proposed reduction in his salary, April 1849, LAC, MG 24 B 13, 415-18. Edward claimed he had accepted a lower salary, £500 per annum, than he believed was his due.

## CHAPTER 3

### **Professional challenges, family losses, and the dawn of responsible government: Prince Edward Island, 1828-1852**

A rascally heap of sand, rock, and swamp called Prince Edward Island, in the horrible Gulf of Saint Lawrence.

– William Cobbett<sup>1</sup>

I have no better news to communicate concerning my poor husband's health – He was able to get through with the business of the George Town Court with the assistance of the Prothonotary Clerk. I wish Edward could have gone to England last autumn to consult with an Oculist, as well as for other reasons important to himself, which I referred to in my letter to [Dr. John Boyle]. I think one of the two eldest boys will accompany him, it being quite impossible for him to travel alone.

– Anna Maria Jarvis to Caroline Jarvis, April 5, 1841<sup>2</sup>

Edward Jarvis was sworn in as Chief Justice of Prince Edward Island August 30, 1828. It would be the third colony in which he would serve as a jurist, making him one of the many jurists and colonial administrators who found positions in more than one outpost of empire. Bell places Edward among a group of seven sons of Saint John Loyalists who went on to have legal careers which Bell characterizes as having “an intercolonial – even imperial – fluidity not seen again until the early decades of Confederation.”<sup>3</sup> Edward and his fellow second-generation Loyalists would have seen themselves as British subjects for whom England was “home” – although British-born Britons no doubt considered them “colonials,” albeit with British legal training – and would have seen every colony, as well as the metropole itself, as a potential site for career advancement.

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<sup>1</sup> Cobbett, *The Emigrant's Guide*, 1829-1830, quoted in Charles J. McMillan, *Eminent Islanders: Prince Edward Island: From French Colony to the Cradle of Confederation* (Bloomington, IN: AuthorHouse, 2007), 120.

<sup>2</sup> Anna Maria Jarvis to Caroline Jarvis, April 5, 1841, Jarvis Papers, NB Museum Archives.

<sup>3</sup> Bell, “Paths to Law in the Maritimes,” 7, 8.

Upon his arrival in Charlottetown Edward would encounter a legal system that contrasted unfavourably with that of his native colony. As Bell and other historians have pointed out, in its first decades the colony of New Brunswick profited from – or suffered from, depending upon one’s point of view – a surfeit of lawyers, men who developed a “closely-knit law profession” in the colony that, as has been seen, was educating a native profession by the early nineteenth century and that would provide several judges, including Edward himself, for the other British North American colonies.<sup>4</sup> The solid grounding in law that Edward received from his native colony, his training at the Inns of Court, and his subsequent work in Fredericton and Malta, ensured that, from 1828 onwards, Prince Edward Island had a professionally trained and experienced lead jurist. The extent to which the improvements in the colony’s legal system during Edward’s tenure were due to Edward himself is examined below, but there is general agreement that much of the turnaround in the state of the judiciary upon his ascension to the position of Chief Justice can be attributed to his influence.

Despite Edward’s best efforts, however, the evolution of the judiciary notwithstanding, some problems persisted. What Edward saw as the woefully inadequate staffing of the judiciary and what he experienced as an ever-expanding workload left him feeling increasingly overburdened. While Edward, as he had in his two previous jurisdictions, applied himself diligently to the performance of his duty as chief jurist on the Island in implementing colonial law, he also experienced the reality of the colony’s

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<sup>4</sup> Louis A. Knafla and Terry L. Chapman, “Criminal Justice in Canada: A Comparative Study of the Maritimes and Lower Canada, 1760-1812,” *Osgoode Hall Law Journal* 21, no. 2 (September 1983): 251. As Knafla and Chapman indicate, the judges responsible for the administration of the criminal law in New Brunswick were some of the most well-educated and trained members of the law profession in North America; almost all of them were Harvard graduates and some had studied law at the Inns of Court in addition to engaging in legal practice in New England. Edward’s uncle Fyler Dibblee, who as noted in Chapter 1 sadly took his own life during the first winter in Saint John, had been a Yale-educated lawyer.

ultimate dependence on Westminster and, more worryingly, his own dependence on the goodwill of the Colonial Office resulting from his “at pleasure” appointment. The threat of debt, an ever-present concern, was greatly exacerbated by the reduction in his salary that coincided with the granting of responsible government to the Island. While Edward’s training, beliefs, and temperament ensured that he would continue to perform his professional duty in administering law in the Island colony, the stress he felt over his workload, his finances, his health, and his family life would come to a head in the last decade of his life, perhaps contributing to his death at the relatively young age of 62.

### **Securing the chief justiceship of Prince Edward Island**

On March 24, 1828, Edward wrote to his mother from London that he had asked his nephew Robert to let him know of “any good situation being vacant in New Brunswick, Nova Scotia, or even in Canada, & though it should not be connected with the law, but some other, such as Surveyor General [etc. etc.]”<sup>5</sup> He thus appears to have been willing to consider “any good situation,” whether a judgeship or not, anywhere in British North America, perhaps owing to both the scarcity of judicial positions within the Empire and the difficulty of procuring them. He lamented to his mother that “the great difficulty is to know when & where there may be a vacancy – People who know those things are generally interested to keep them secret for their own purposes.” In his letter he went on,

The only thing known to be vacant at present is offered to me, that is, Attorney General of Van Diemen’s land, with a salary of £900 a year – But that is half the world over, & if I go there I must bid adieu to New Brunswick for ever. My means for remaining in England are extremely limited, & can only last a few months – after that time I am afraid lest I should be driven to accept some situation which I would not otherwise do, in order to get an immediate provision – But I will continue to hope for the best.

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<sup>5</sup> Edward Jarvis to Mary Jarvis, March 24, 1828, LAC, MG 24, B 13, 972-5.

Although Edward was concerned that immediate financial need would force him to accept a less desirable post, he did refuse the attorney generalship in the faraway colony of Van Diemen's Land, suggesting that he still felt able at that point to keep his options open. His job search in England in 1828, however, differed from that of five years earlier in that the Colonial Office no longer "owed" him for the lost judgeship – although they had axed his position as King's Assessor which presumably entailed some obligation – and he no longer had the patronage of Lord Bathurst to draw on. While he seems to have anticipated the termination of his position in Malta some time before it occurred, he had no doubt been unable to put aside much to tide him over a period of unemployment.

In June of 1828 Edward wrote to his brother William telling him he had sought, without success, the attorney generalship of New Brunswick. The position had gone to Charles Jeffrey Peters who, like Edward, was the son of a Loyalist who had settled in Saint John.<sup>6</sup> Edward attributed the awarding of the position to Peters to his proximity to the Lieutenant Governor, Sir Howard Douglas, whom Edward had met before his posting in Malta. He told William, "I am afraid the Peters faction are too much in Sir Howard's favor to do anything against them." Edward blamed William Huskisson, then Secretary of State for War and the Colonies, for his failure to land the attorney generalship:

Had the Duke of Wellington dismissed old Huskisson out of the Ministry a few weeks sooner, I have no doubt I should have been your Atty. Genl. instead of C.J.P... Huskisson treated me extremely ill, & he has met with his just deserts in being turned out of the Ministry in the manner it was done by the Duke.<sup>7</sup>

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<sup>6</sup> Charles Jeffrey Peters (1773-1848) arrived in Nova Scotia from Hempstead, NY, with his father, James Peters, in 1783. After studying with Ward Chipman as Edward would do some years later, Peters became common clerk of Saint John in 1799, a position Edward would subsequently hold. Peters was named judge in the vice admiralty court in 1809 and King's Counsel in 1823. James Peters was one of "the 55," a group of 55 Loyalist leaders who sent a petition to the colonial government asking that they be given the same 5000-acre grant of Nova Scotia wilderness allotted to British army officers after the Seven Years' war. Wright, *The Loyalists of New Brunswick*, 177.

<sup>7</sup> Edward Jarvis to William Jarvis, June 25, 1828, Jarvis Papers, NB Museum Archives. Huskisson resigned his office in May 1828 following a difference with his colleagues regarding the disfranchisement of the

While Edward secured the patronage of Sir George Murray, Huskisson's successor at the Colonial Office whom Edward believed was "disposed to do what he can for me," he was clearly very disappointed, perhaps even somewhat bitter, not to get the attorney generalship which would have allowed him to return to Saint John.

Even after securing the Chief Justiceship of Prince Edward Island Edward still appears to have been weighing his options. On August 11 Caroline wrote to her sister Amelia in Saint John that

In consequence of seeing by the Papers that there has been a disturbance in Canada among the Judges and that one of them has been suspended, Mr. J. has gone this morning to Downing Street to lay in his claims in case of a vacancy. He would prefer this to the Chief Justiceship of Prince Edward Island which he applied for some time ago. This you see is the very great advantage which he has by being in England, as the chances are that if the persons who hold these situations are still permitted to do so, that something may occur in the course of a few months that will be equally, if not more desirable, and he will at least have the option of asking for it.<sup>8</sup> The suspended judge was John Walpole Willis, who had aroused the "bitter enmity" of the leading members of the conservative elite and the colonial executive of Upper Canada by his criticisms of and refusal to sit on the Court of King's Bench, resulting in his removal from the Bench by the provincial Council on June 27.<sup>9</sup> It is somewhat perplexing that Edward considered a judgeship in Upper Canada preferable to the Chief Justiceship of Prince Edward; this was perhaps because the island colony was such a backwater,

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parliament constituency of East Retford. Hugh Chisholm, ed. "Huskisson, William," *Encyclopedia Britannica* Vol. 14, 11th ed. (Cambridge University Press, 1911), 4. Soon thereafter Huskisson was to become the world's first widely reported railway passenger casualty: in September 1830 he was run over and fatally wounded by Robert Stephenson's new locomotive *Rocket* during the opening of the Liverpool and Manchester Railway. L.T.C. Rolt, *George and Robert Stephenson: The Railway Revolution* (Harmondsworth, Middlesex: Penguin, 1960), 197-200.

<sup>8</sup> Caroline Boyd to Amelia Boyd, August 11, 1828, Jarvis Papers, NB Museum Archives.

<sup>9</sup> McLaren, *Dewigged, Bothered, and Bewildered*, 80-82. Willis arrived in London August 7<sup>th</sup> and began a three-year campaign to win reinstatement in Upper Canada, which ultimately saw him land the position of First Vice-President of the Court of Civil and Criminal Justice in British Guiana. Janine Rizzetti, "The Troubled Colonial Career of Justice John Walpole Willis." PhD, La Trobe University, 2015, 53-66.

and/or that a judge's salary in Upper Canada would be greater than that of Chief Justice of the smaller colony.

Saint John was the home of Edward's mother, his brother William, and his sister Mary and her son Robert, who had recently married and begun his own family, and who had acted as Edward's legal representative during his time in Malta. Edward's oldest brother Ralph, his wife Caroline (nee Leonard), and their numerous children, as well as his cousins, his Aunt Polly's children and his Uncle John's daughter, also resided in the colony in the Kingston area.<sup>10</sup> His wife's mother and siblings, including four of her five sisters with whom she kept in contact with regular letters, also lived in Saint John.<sup>11</sup>

Clearly, in terms of family, Saint John was preferable to Prince Edward Island.

Professionally, however, Edward's five-year absence from New Brunswick would have caused him to lose many of his earlier professional connections, and his rift with Ward Chipman Senior had no doubt resulted in a number of burned bridges, notwithstanding the judge's death in 1824.<sup>12</sup>

### **Back to British North America: The colony of Prince Edward Island**

While the Jarvises would no doubt have found the relatively subdued life in

Charlottetown a comedown after their experiences of living in Saint John, London, and

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<sup>10</sup> I am unclear whether Ralph and his family still lived in Saint John. An 1841 letter from Ralph to Edward originated in Pictou. There appeared to have been some conflict, or at least tension, between Edward and Ralph, in part owing to the length of time it took to settle their father Munson's estate following his death in 1825. Ralph Jarvis to Edward Jarvis, December 15, 1841, LAC, MG 24, B 13, 1384-1391.

<sup>11</sup> Anna Maria's brother Edward was by then headed for Van Diemen's Land with his new wife.

<sup>12</sup> Edward's friendship with Ward Chipman Jr. does not appear to have survived the loss of Edward's judgeship in 1823, although the two families were in fact related by marriage through Edward's sister's husband Robert Hazen, whose sister had been married to Chipman Sr. It is also probable that most of the first-generation Loyalists who had originally held most of the administrative and judicial offices in the colony had, like Chipman Sr., either died or retired, and, as Bell has noted, passed their offices to their sons when able to do so. Bell, "Paths to the Law in the Maritimes," 31.

Valetta, particularly with regard to its lack of a social and cultural scene, in other aspects they would have felt at home. While not a port city to the extent that the other three cities were, Charlottetown was on a major waterway and would come to develop a thriving shipbuilding industry. Shipbuilding was something that Edward would be very familiar with having grown up on the South Wharf in Saint John, and having a father and brother who were shipowners. Shipbuilding would become a significant part of Prince Edward Island's economy during the third decade of the nineteenth century: tonnage of vessels built on the Island rose from 5,700 in 1833 to a high of 13,400 in 1840.<sup>13</sup> The significance of timber, logged on lands traditionally held by the Mi'kmaq, to the Island economy was also a reality that Edward would be familiar with from his father's dealings as a merchant in New Brunswick.

An 1831 proposal in the British House of Commons to reduce the duty on Baltic timber, while ultimately defeated, caused consternation on the Island and resulted in the Assembly and Legislative Council petitioning the King in February 1836, outlining the importance of both the timber industry and shipbuilding to the colony's economy.<sup>14</sup> Edward would no doubt have followed these events carefully: the merchants of Saint John, who would have included his brother William, mobilized their lobby in London against any alteration in the timber duty. Edward's old friend Henry Bliss, New Brunswick's agent in Great Britain, who had written a treatise on the colony's timber trade in 1831, would have been lobbying hard on its behalf five years later.<sup>15</sup>

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<sup>13</sup> Nicolas J. de Jong and Marven E. Moore, *Shipbuilding on Prince Edward Island: Enterprise in a Maritime Setting, 1787-1920* (Ottawa, ON: Canadian Museum of Civilization, 1994), History Division Mercury Series Paper 46, 56.

<sup>14</sup> De Jong and Moore, *Shipbuilding*, 56-7.

<sup>15</sup> Alan MacEachern, *The Miramichi Fire: A History* (Montreal and Kingston: McGill-Queen's University Press, 2020), 36.

In Prince Edward Island at the beginning of the decade sailing ships were the most valuable export of the colony, valued at £66,000, with lumber and lumber products worth about £7,500, potatoes about £4,500, and oats about £1,500.<sup>16</sup> As the economy and the city of Charlottetown grew during the 1830s, tastes became more sophisticated. By the end of the decade several shops advertising luxury goods were operating, including one with “Ladies’ dresses of the latest fashion,” prints, shawls, ribbons, bonnets, parasols, saddles, and furniture; another advertised “ready-made winter clothing, muslins, gauze handkerchiefs, veils, table linen, rosewood workboxes, tea caddies, writing desks and toys.”<sup>17</sup> Despite such shops, however, the Jarvis family still found the quality and selection of goods inferior to that of London or even Saint John. In a letter to her sister in 1837 Maria complained that her spectacles had broken and she was unable to replace them: “In this stupid place there are none for sale & I am puzzled to know how I am to get such articles to suit my eyes by sending to foreign parts for them.”<sup>18</sup>

Another aspect of life in Charlottetown that echoed the Jarvis family’s experience in Malta was the advent of epidemics. As noted in Malta the governor, Thomas Maitland, had halted an outbreak of the plague in 1813-14; while it prevailed other countries in the Mediterranean had excluded Maltese shipping from their ports.<sup>19</sup> Two years before the Jarvis family’s arrival in Charlottetown an outbreak of typhus on the mainland forced the colonial government to close the harbour to all infected vessels.<sup>20</sup> The ad hoc quarantine regulations were made into law, forcing vessels from infected ports to stop for inspection

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<sup>16</sup> Basil Greenhill and Ann Giffard, *Westcountrymen in Prince Edward’s Isle* (Toronto and Buffalo: University of Toronto Press, 1967), 93.

<sup>17</sup> Greenhill and Giffard, *Westcountrymen*, 134.

<sup>18</sup> Maria Jarvis to Caroline Jarvis, February 13, 1837, Jarvis Papers, NB Museum Archives.

<sup>19</sup> Dixon, *Sir Thomas Maitland*, 131.

<sup>20</sup> Douglas Baldwin, “Pigs, Epidemics, and Hospitals: The Struggle for Public Health Services,” in Baldwin and Thomas Spira, eds., *Gaslights, Epidemics and Vagabond Cows: Charlottetown in the Victorian Era* (Charlottetown, PE: Ragweed Press, 1988), 53.

at various designated harbours located around the Island, emulating the practice in Britain's Mediterranean colonies earlier in the century. In 1832 Edward, elected to the Board of Health as Chief Justice, wrote to William about the board meeting upon the occasion of an alarm being sounded against cholera, noting that these were "pretty frequent" and telling him that Charlottetown was "the only public meeting place at which people are at all on the alert – they are too indolent to attend any occasion where they do not particularly consider their lives in jeopardy."<sup>21</sup>

As Douglas Baldwin writes, public health measures during this period were minimal or nonexistent, resulting in a high risk for disease. Besides refuse littering the streets, "human excretion was dumped into holes sunk to the water table, or soaked through the ground to contaminate shallow wells. Poorly drained roads, outdoor privies, bogs, cesspools, slaughterhouses, and roaming farm animals added to the city's stench and filth."<sup>22</sup> The resulting diseases included cholera, typhoid, smallpox, diphtheria, and tuberculosis. Well into the nineteenth century pigs were seen rooting through garbage in the streets, or in the offal piles generated by the city's slaughterhouses and tanneries.<sup>23</sup> Not until after Edward's death when the city was incorporated in 1855 did the city council serve as Charlottetown's board of health, with authority over concerns including

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<sup>21</sup> Edward Jarvis to William Jarvis, September 20, 1832, PAPEI, Jarvis papers, quoted in Douglas Baldwin, "The Struggle for Public Health Services," 53.

<sup>22</sup> Baldwin, "The Struggle for Public Health Services," 52.

<sup>23</sup> Baldwin, *Prince Edward Island: An Illustrated History* (Halifax, NS: Nimbus, 2009), 77. Pigsties continued to be a health concern for the city into the twentieth century; an 1888 Parliamentary Report noted that "a great number of poor people are in the habit of keeping pigs, which add considerably to their yearly income." In Charlottetown the problem persisted as, in contrast to other urban centres which had adopted zoning regulations, poor people and the wealthy lived in the same districts. *Parliamentary Reporter* (1888), quoted in Baldwin, "The Struggle for Public Health Services," 68.

“privies, hospitals, pigsties, overcrowded tenements, to slaughterhouses, and even the lieutenant-governor’s polluted fishpond.”<sup>24</sup>

In the 1820s the population of Prince Edward Island reached about 15,000 people; during the early 1830s it rose to 33,000, 65 percent of whom were either tenants or squatters.<sup>25</sup> Landlords owned about 90 percent of the colony’s farmland, with six families controlling over one-third of the Island.<sup>26</sup> Up until the incorporation of Charlottetown there were military barracks in the city; Prince Edward Island was named after Prince Edward, Duke of Kent and father of Queen Victoria, and commander-in-chief of His Majesty’s troops in British North America, who had ordered the building of new forts to defend Charlottetown Harbour.<sup>27</sup> The city was designed in rectangular blocks, with Queen Square, a space for public buildings in the centre, including St. Paul’s Church, a Round Market, and a courthouse.<sup>28</sup> The legislature met initially at the Crossed Keys Tavern in Charlottetown, with the Provincial Legislature building being completed in 1847.<sup>29</sup> The infrastructure for the colony’s legal system, sorely lacking at the start of the century, would also see major improvements during Edward’s tenure.

### **Problems with PEI’s legal system 1769-1828**

Upon his arrival in Prince Edward Island Edward encountered a judiciary facing numerous challenges. Once established, each colony set a reception date after which

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<sup>24</sup> Baldwin, “The Struggle for Public Health Services,” 58.

<sup>25</sup> Baldwin, *Land of the Red Soil: A Popular History of Prince Edward Island* (Charlottetown, PE: Ragweed, 2000), 67.

<sup>26</sup> Baldwin, *Land of the Red Soil*, 77.

<sup>27</sup> Julie V. Watson, *Historic Charlottetown* (Halifax, NS: Nimbus Publishing, 2007), 11. The act changing the name of the Island of St. John (originally Île St. Jean) was passed in 1798.

<sup>28</sup> Watson, *Historic Charlottetown*, 30, 33. Known as the Colonial Building, the legislature is today known as Province House.

<sup>29</sup> Baldwin, *Prince Edward Island: An Illustrated History*, 81.

statutes passed in England no longer automatically became law in the colony; no statute was passed in Prince Edward Island fixing a date of reception, but most historians give the date of the first meeting of the House of Assembly in 1773.<sup>30</sup> After reception in a colony the “hard law” – all English statutes passed prior to that date – would be in force, although “in practice matters were considerably more fluid.”<sup>31</sup> English law and legal institutions were transplanted into colonial jurisdictions whether or not there were trained personnel or legal infrastructure such as courts, lawbooks, or educational facilities; in the case of Prince Edward Island at the turn of the century the absence of trained personnel was the biggest problem.

While late eighteenth-century New Brunswick, along with Nova Scotia and Upper and Lower Canada, had professionally trained justices in their superior courts with “relatively open access to the sources of English law,” the “poor cousins” of Prince Edward Island, Cape Breton, and Newfoundland, in contrast, more often had justices recruited from the English and Irish bars, some inexperienced, who worked with assistant judges and with limited finances to support the justice infrastructures with “tenuous” access to the sources of law.<sup>32</sup> The Island’s first Chief Justice barely received enough

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<sup>30</sup> J.M. Bumsted, “Politics and the Administration of Justice on Early PEI, 1769-1805,” in Christopher English, ed., *Essays in the History of Canadian Law*, Vol IX (University of Toronto Press, 2005), 51. The year 1763, the date of the Royal Proclamation annexing the Island to Nova Scotia, is considered by some to be the date of introduction of English law into PEI; 1749, the date of commission for the Nova Scotia legislative assembly and 1758, the date of reception for Nova Scotia, have also been proffered as possible dates. Margaret McCallum, “Problems in Determining the Date of Reception in Prince Edward Island,” *University of New Brunswick Law Journal* 55 (2006): 9.

<sup>31</sup> Philip Girard, “British Justice, English Law, and Canadian Legal Culture,” in *Canada and the British Empire* (Oxford University Press, 2008), 265. Regarding “soft law” or “lived law” Girard suggests that the combination of ideas known as “British justice” remained “a potent element” in the legal cultures of the British North American colonies, made up of a set of values, assumptions, and practices that became part of the social order through community, church and family authority even when formal legal institutions were underdeveloped.

<sup>32</sup> McLaren, *Dewigged, Bothered, & Bewildered*, 37. Until 1832, in Newfoundland law was based on admiralty law administered by admirals of the British navy. Jerry Bannister, *The Rule of the Admirals*:

from the imperial government to survive: John Duport died in penury in 1774 after three years without a decent home, salary, or court-house, his complaint to the colonial office that his “shell of a House” kept out neither wind nor wet weather and his pleas for a new posting going unheeded.<sup>33</sup> In 1777 a civil list, paid by the British government, was opened to pay the salaries of government officials.<sup>34</sup> This did not, however, resolve the problem of lack of trained personnel – Peter Stewart, Chief Justice from 1775 to 1800, was trained in Scottish law, while Thomas Tremlett (1813-24) had no legal training.<sup>35</sup>

Basic legal infrastructure was also lacking: sentences often could not be carried out because there was no jail in which to imprison offenders.<sup>36</sup> During Stewart’s tenure the jail was a locked room in Gaoler Samuel Bagnall’s house or Attorney General Phillip Callbeck’s house in Charlottetown. At the time of Tremlett’s departure in 1824 “the Jail was a ruin, a disgrace to any community, and, therefore, not entitled to be called a public building.”<sup>37</sup> In 1830 the log jail on Pownal Square was replaced by a larger structure known as Harvey’s Brig, a “grim-looking abode” enclosed within a great high fence, and an act allowing for bail was passed subject to “good and sufficient security against escape.”<sup>38</sup> Owing to its small size the Island constituted a single county, and until 1848

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*Law, Custom, and Naval Government in Newfoundland, 1699-1832* (Toronto: University of Toronto Press, 2003).

<sup>33</sup> Frank MacKinnon, *The Government of Prince Edward Island* (University of Toronto Press, 1951), 56.

<sup>34</sup> Jim Hornby, *In the Shadow of the Gallows: Criminal Law and Capital Punishment in Prince Edward Island, 1769-1941* (Charlottetown, PEI: Institute of Island Studies, 1998), 9. The annual grant was for £30,000. Bumsted, “Land, Settlement, and Politics,” 71.

<sup>35</sup> MacKinnon, *The Government of Prince Edward Island*, 57. Scottish law was based not on common law but on a combination of uncodified Roman law and local custom. The 1707 Act of Union had preserved its existing court and legal system.

<sup>36</sup> MacKinnon, *The Government of Prince Edward Island*, 57. Some sentences were commuted owing to the lack of a hangman. Elizabeth Mukely, sentenced to death for theft in 1778, and Elisha Reynolds, found guilty of the same offense in 1781, both escaped the noose as no hangman could be found, in Mukely’s case despite a £5 fee being offered. Hornby, *In the Shadow of the Gallows*, 25-27.

<sup>37</sup> Hornby, *In the Shadow of the Gallows*, 16.

<sup>38</sup> Lorne C. Callbeck, *The Cradle of Confederation* (Fredericton, NB: Brunswick Press, 1964), 102-3.

the Supreme Court consisted of a single paid judge.<sup>39</sup> There was neither a Court of General Sessions of the Peace for lesser criminal matters nor an Inferior Court of Common Pleas for small money claims, although justices of the peace could try petty breaches of the peace either singly or in groups.<sup>40</sup> A circuit system was not implemented until 1835.<sup>41</sup>

The biggest problem with the Island's judiciary prior to Edward's tenure, apart from the lack of qualified personnel, was the politicization of chief justices. According to Bell many of them, including Stewart, Tremlett, and Caesar Colclough (1807-1813), "squandered their modest usefulness by miring themselves in local politics."<sup>42</sup> Robert Thorpe (1802-1805) was "particularly egregious" in his meddling, and "could not resist expatiating on [politics] and propagating his own remedies at the drop of a hat."<sup>43</sup> The problem of overly political chief justices was compounded as they also sat in on sessions of the Legislative Council, a practice that lasted until 1838, almost halfway through Edward's tenure.<sup>44</sup> Well into the 1820s the "open and partisan involvement" of the judiciary in political activities was "a notorious fact of life in the colony" and

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<sup>39</sup> Girard, Phillips, and Brown, *A History of Law in Canada, Vol I*, 239. At times a second unsalaried judge also served. The single paid judge was, of course, Edward, who complained of the need for a second judge years before one was finally appointed.

<sup>40</sup> Bell, "Maritime Legal Institutions under the *Ancien Régime*, 1710-1850," *Manitoba Law Journal* 23 (1995): 114-5. Two or more justices of the peace sitting together had the powers of a magistrate, to detain in jail if one was available, issue arrest warrants or admit to bail until trial in the Supreme Court. They could also levy small fines or commit a drunkard to the stocks, as well as hold summary trials on minor monetary disputes and cases of assault, trespass, theft, drunkenness, disorderly conduct, and selling liquor without a license. Hornby, *In the Shadow of the Gallows*, 11.

<sup>41</sup> Bell, "Maritime Legal Institutions," 109. Nova Scotia's Supreme Court, by comparison, first went on circuit in 1775. Phillips and Girard, "Courts, Communities, and Communication: The Nova Scotia Supreme Court on Circuit, 1816-50," in Hamar Foster, Benjamin L. Berger, and A.R. Buck, *The Grand Experiment: Law and Legal Culture in British Settler Societies* (Toronto and Vancouver: UBC Press, 2008), 117.

<sup>42</sup> Bell, "Maritime Legal Institutions," 122.

<sup>43</sup> McLaren, *Dewigged, Bothered, & Bewildered*, 62.

<sup>44</sup> Edward initially attended both the Executive and Legislative Councils where he was seen to be "a moderating and conciliating force." J. M. Bumsted and H. T. Holman, "JARVIS, EDWARD JAMES," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, accessed December 16, 2022, [http://www.biographi.ca/en/bio/jarvis\\_edward\\_james\\_8E.html](http://www.biographi.ca/en/bio/jarvis_edward_james_8E.html). This was in contrast to, for example, Chief Justice Henry John Boulton in neighbouring Newfoundland, whose presence on the council during the 1830s was "a constant source of friction with the assembly" and who was dismissed by the Colonial Secretary in 1838. Girard, Phillips, and Brown, *A History of Law in Canada, Vol. I*, 386.

correspondence between the Island and the Colonial Office was “filled with complaints regarding the behaviour of those on the bench.”<sup>45</sup> Island governors used the court to harass political enemies, elevating institutional abuses into a realm of judicial chaos and scandal “that never before appeared in any English judicature.”<sup>46</sup>

### **Improvements to the judiciary**

Edward’s 24-year tenure as Chief Justice has been characterized by legal historians as bringing calm and stability to the Island’s judiciary and elevating it “to conventional judicial and professional respectability.”<sup>47</sup> J.M. Bumsted and H.T. Holman write in the *Dictionary of Canadian Biography* that Edward “put himself above politics” and “did know something about the law.”<sup>48</sup> Frank MacKinnon states, “It was not until Chief Justice Jarvis arrived in 1828 that the Supreme Court settled down to a quiet routine under a satisfactory chief,” while Jim Hornby writes that Edward “brought a higher standard of training and professionalism to the Supreme Court.”<sup>49</sup> It might be argued that his predecessors had set such a low bar – pun not intended! – that even meeting the basic requirements of the job constituted a substantial improvement: Edward’s predecessor, S.G.W. Archibald, appointed in 1824, lived and practised law in Nova Scotia and carried out his legal duties in Prince Edward Island in the summer only, so merely by being resident in Charlottetown Edward represented a vast improvement. Apart from the

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<sup>45</sup> H.T. Holman, “The Bar of Prince Edward Island 1769-1852,” *University of New Brunswick Law Journal* 4 (1992), 198.

<sup>46</sup> Bell, “Maritime Legal Institutions,” 122; J.M. Bumsted, “Origins of the Prince Edward Island Land Question,” *Acadiensis* 11 (1981) 43 at 54.

<sup>47</sup> Bell, “Maritime Legal Institutions,” 123.

<sup>48</sup> Bumsted and Holman, “JARVIS, EDWARD.”

<sup>49</sup> MacKinnon, *The Government of Prince Edward Island*, 57; Hornby, *In the Shadow of the Gallows*, 92.

obvious improvements of his Island residency and his legal training, however, can Edward be given credit for vastly improving the judiciary with its longstanding ills?

Edward sought to professionalize the judiciary and conduct his court “in a strict and professional manner” by, among other measures, ending the lax enforcement of legal qualifications and the tolerance of subpar members of the Island’s bar.<sup>50</sup> In 1832 he added to legislation passed in 1817 requiring four years of articles with an Island barrister, attorney, or solicitor or evidence of having been called or qualified to be called to the bar in Great Britain or Ireland or the colonies, as well being twenty-one years of age and undergoing examination before the court.<sup>51</sup> He also enacted a general rule of court that no person could be admitted to the bar without first having produced a certificate of good moral character, a requirement included in an 1836 act.<sup>52</sup> His efforts to impose more stringent standards were partly based on his opinion that members of the bar were “much given to habits of intemperance”; in 1835, as shall be seen, he would suspend a lawyer for shielding himself from creditors by repeatedly invoking the practitioners’ exemption from arrest for debt.<sup>53</sup> Gradually the size and quality of the bar increased, although this was partly the result of the arrival of legal personnel trained in Great Britain or in other colonies, including many from the Irish and Scots bars.<sup>54</sup>

Edward also sought to enforce the correct court practices and procedures. Bringing the Island judiciary up to the high standard to which he believed it should aspire meant bringing it in line with British practice: as former Supreme Court of Prince Edward Island Chief Justice Charles R. McQuaid writes, Edward was “determined to bring [the

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<sup>50</sup> Bumsted and Holman, *Dictionary*, 429.

<sup>51</sup> Holman, “The Bar of Prince Edward Island,” 204.

<sup>52</sup> Holman, “The Bar of Prince Edward Island,” 204.

<sup>53</sup> Bell, “Maritime Legal Institutions,” 127.

<sup>54</sup> Holman, “The Bar of Prince Edward Island,” 205.

judicial process] back to the fold of the English tradition, from which he felt it had drifted up to and particularly during the Archibald years.”<sup>55</sup> In his address at the opening of the Hilary Term, his first as Chief Justice of the Island in 1829, Edward made clear his intention that thereafter the Island’s judiciary would “on all occasions assimilate as closely as circumstances would permit, the practises of the English Court,” in particular the timely filing of documents required for judicial process.<sup>56</sup> In an 1830 missive entitled “Rules of Court,” for example, he directed that “the practice of His Majesty’s Court of King’s Bench at Westminster be adopted as the Rule of [the Prince Edward Island] Court, as far as practicable & consistent,” laying out the detailed procedure to be followed to file Rules in Replevin and Rules in Summary Actions.<sup>57</sup>

Some of the improvements to the Island’s legal system following Edward’s advent as Chief Justice were part of the process of professionalization taking place in British North America in other areas, such as policing; by mid-century most urban centres had uniformed, salaried, and permanent police forces.<sup>58</sup> Until a police force was formally created in 1855 with the incorporation of Charlottetown, law enforcement on the Island was carried out principally by justices of the peace who operated on a fee basis, and part-time constables appointed by the Supreme Court on the recommendation of the county general, who arrested law-breakers, served warrants, and attended in court.<sup>59</sup> Some

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<sup>55</sup> The Honourable Charles R. McQuaid, *The Evolution of the Courts in Prince Edward Island* (Charlottetown, PE: Supreme Court of Prince Edward Island, 1997), 160.

<sup>56</sup> Transcript of Edward Jarvis’s speech at the opening of the Hilary term, Charlottetown, Prince Edward Island, February 24, 1829, LAC, MG 24, B 13, 993-1005.

<sup>57</sup> “Rules of Court,” RG 6.1, Series 13 (Prothonotary records), Subseries 7, Vol. 4, Prince Edward Island Public Archives and Record Office.

<sup>58</sup> Girard, Phillips, and Brown, *A History of Law in Canada* vol 1, 560.

<sup>59</sup> The constables were paid by a fee system, as was the keeper of the county jail, the latter receiving 1 shilling 2 pence for each debtor or disturber of the peace. Many constables were artisans or small businessmen; in 1854 John Hamilton Gray, a future premier, brought a trespasser before a magistrate “only to have the court proceedings accelerated at the request of the constable, a baker who had a batch of bread

improvements reflected legislation in England. The Prisoner's Counsel Act, passed in 1836 following its passage earlier that year in England, gave those accused of felonies the right to delegate their defence to professional counsel.<sup>60</sup> Some anomalies in the judiciary reflected unique circumstances on the Island: in the case of juries, unlike in other colonial jurisdictions where a property qualification was required, any adult male resident could qualify for jury duty as long as a twelve-month residency requirement was met.<sup>61</sup> Prince Edward Island was also one of four British North American colonies to pass legislation greatly reducing the number of offences for which capital punishment could be the penalty; the use of stocks and the pillory declined, although use of the pillory on the Island was made as late as 1876 in conflict with the criminal law of Canada.<sup>62</sup>

Divorce was another area in which legislation was passed, coming under provincial jurisdiction during the 1830s. The legislation was based on Nova Scotia law that had broadened the definition of grounds from mere cruelty from English law, and the New Brunswick "Act for Regulating Marriage and Divorce, and for Preventing and Punishing Incest, Adultery, and Fornication" passed in 1791.<sup>63</sup> "An Act for establishing a Court of Divorce, and for preventing and punishing Incest, Adultery and Fornication" was passed in the House of Assembly in 1833 and, after revision by the Council, was sent

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baking in the oven." Greg Marquis, "Enforcing the Law: The Charlottetown Police Force," in Baldwin and Spira, *Gaslights, Epidemics and Vagabond Cows*, 87-8; Allan Greer, "The Birth of the Police in Canada," in Greer and Ian Radforth, eds. *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992), 17.

<sup>60</sup> Cerian Charlotte Griffiths, "The Prisoners' Counsel Act 1836: Doctrine, Advocacy and the Criminal Trial," *Law, Crime and History* 4, no. 2 (June 2014): 29.

<sup>61</sup> Statutes of Prince Edward Island, An Act for the More Easy and Effectual Trial of Criminal Offenders, 1773, c. VII.

<sup>62</sup> Girard, Phillips, and Brown, *History of Law in Canada, Vol I*, 544.

<sup>63</sup> Wendy Owen and J.M. Bumsted, "Divorce in a Small Province: A History of Divorce on Prince Edward Island from 1833," *Acadiensis* 20, no. 2 (Spring/printemps 1991): 88.

off for royal assent, which was not granted. An amended bill was resubmitted in 1835 and confirmed by the Crown in 1836, thus establishing a divorce court on the Island.<sup>64</sup>

The evolution of the judiciary under Edward's tenure is further evident in two libel cases, *Lane v. Haszard* (1823) and *Palmer v. Haszard* (1829). In the former case Master-in-Chancery Ambrose Lane brought a civil charge of contempt of court against *Prince Edward Island Register* editor James Douglass for publishing without editorial comment a petition to the Crown of voters from Queen's County calling for the recall of Lieutenant Governor Charles Douglass Smith. The petition accused Lane of levying illegal fees in his official court capacity. Upon his arrival on the Island Smith, following his predecessors' practice taken from eighteenth-century American colonial tradition, had used the Island's chancery court as a counterweight to the Supreme Court, and it was at this court, presided over by Smith himself, that the 1823 trial took place.<sup>65</sup> J.M. Bumsted notes that while Lane's attorney, James Bardin Palmer, cited precedent in eighteenth-century English case law, Charles Binns, the defense counsel, offered more recent English law, summarizing "a progressive view of the current English law on liberty of the press."<sup>66</sup> Following a tumultuous final session attended by numerous unruly spectators and interrupted by "huzzas, acclamations, and clapping of hands," the matter was referred to England; in his response James Stephen Jr. pointed out that Smith's choosing to "act as Judge in his own cause" did not seem "consistent with the decorum of the Chancellor's high station."<sup>67</sup>

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<sup>64</sup> Owen and Bumsted, "Divorce," 90. The amended version of the bill omitted clauses preventing an adulterous spouse from remarrying after divorce, and dealing with the punishment of sexual digressions.

<sup>65</sup> J.M. Bumsted, "Liberty of the Press in Early Prince Edward Island, 1823-9," in F. Murray Greenwood and Barry Wright, eds., *Canadian State Trials: Law, Politics, and Security Measures, 1608-1837* (Toronto: University of Toronto Press, 1996), 527. Lane happened to be Smith's son in law.

<sup>66</sup> Bumsted, "Liberty of the Press," 532, 534.

<sup>67</sup> Bumsted, "Liberty of the Press," 532-3, 536.

In contrast, *Palmer v. Haszard* was adjudicated in the Supreme Court, a year into Edward's tenure as Chief Justice. Claiming £5000 in damages, Palmer brought a civil suit for libel against Haszard for printing a speech from the Island's House of Assembly after it had refused to allow Palmer to take his seat after a byelection, deeming him "unworthy and unfit" to be admitted to the House.<sup>68</sup> In his own defense Palmer argued that publication of debates could do no harm in England, where Parliamentarians were educated men, but in the colonies illiterate men could make abusive speeches of all kinds. Edward, in his summation, cited Blackstone, saying that publishing of injurious material was liable to prosecution for libel, but if the jury believed the article in question "was a fair report of a debate in the House of Assembly, and that there was no express malice on the part of the Defendant, although legal malice was implied, that would weigh with the jury in mitigation of damages."<sup>69</sup> The jury found the defendant guilty with damages of one shilling, a verdict that left open the question of whether the publishing of true accounts in newspapers constituted libel. The plaintiff moved for a new trial to clarify the issue but Edward, recognizing that on the Island the venue could not be moved to find another jury, denied the motion, declaring "he must take the country as he found it."<sup>70</sup>

Bumsted concludes that in the 1829 trial the Chief Justice "emphasized the extent to which colonial jurisdictions could ignore the latest English precedents, as well as the variations possible from one colony to another," and it became clear colonial knowledge of the current state of the English common law on the subject of liberty of the press was substantial. The trial was also evidence that "in the end the jury was responsible for both

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<sup>68</sup> Bumsted, "Liberty of the Press," 539. The case was heard in July 1829 with a special jury.

<sup>69</sup> Edward Jarvis, quoted in Bumsted, "Liberty of the Press," 540.

<sup>70</sup> Bumsted, "Liberty of the Press," 541.

law and fact in libel cases, however double-edged that principle was.”<sup>71</sup> The earlier trial also illustrated that prior to Edward’s arrival the small size of the colony’s population meant that “all parties involved in a court case – plaintiff, defendant, judge, lawyers, sheriff, jury, and witnesses – knew everyone else.”<sup>72</sup> Smith, who would be recalled by London in 1824, had hired Palmer despite disbaring him several years earlier.<sup>73</sup> Palmer, whose public life “may have overshadowed the very real contributions he made to the law on Prince Edward Island,” died in 1833. Twenty years later, a year after Edward’s death, his daughter Amelia would marry Palmer’s youngest son Charles.<sup>74</sup>

Overall, during the course of Edward’s tenure as Chief Justice, the Island’s judiciary saw increasing maturation and expansion, some of which was a reflection of the colony’s growth. Other developments, such as the increasing professionalization of the judicial system, reflected changes in the other British North American colonies. Many of the positive changes are, however, attributable to Edward’s own performance. Unlike the Island’s previous chief justices Edward strove to keep out of politics, and he made a conscious effort to bring the bar to a higher standard and combat bad behaviour amongst attorneys such as intemperance. At the same time, while Edward presided over the gradual improvement in the accessibility and practice of law on the Island, he does not appear to have challenged one of the basic precepts of colonial law: its defense of

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<sup>71</sup> Bumsted, “Liberty of the Press,” 541-2.

<sup>72</sup> J.M. Bumsted, “Politics and the Administration of Justice,” 50.

<sup>73</sup> Smith’s hiring of Palmer to bring charges against Haszard did not signal a reconciliation between the two so much as it did “the extent of Smith’s isolation in the community.” Holman, “PALMER, JAMES BARDIN,” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed March 11, 2024, [http://www.biographi.ca/en/bio/palmer\\_james\\_bardin\\_6E.html](http://www.biographi.ca/en/bio/palmer_james_bardin_6E.html).

<sup>74</sup> Holman, “PALMER, JAMES BARDIN.” Palmer was a strong advocate for establishing circuit courts on the Island, which, as has been seen, were implemented in 1835. Edward Palmer, an older brother of Charles, would become one of the Fathers of Confederation, despite his initial opposition to Confederation. Bolger, “The Coy Maiden Resists, 1867-1872,” in Bolger, ed., *Canada’s Smallest Province: A History of Prince Edward Island* (Charlottetown, PE: The Prince Edward Island Centennial Commission, 1973), 205.

property owners. When it came to the land question, Edward, far from “courting reform in a counter-revolutionary empire,” sided firmly with the proprietors, something that will be examined in detail in Chapter 4.<sup>75</sup>

### **The pursuit of justice**

At his first session of the Prince Edward Island Supreme Court in Charlottetown at the start of the Hilary Term on February 17, 1829, Edward Jarvis put two larceny cases before the Grand Jury. One was a charge against a man for stealing a barrel of fish; the other was “a case of a very melancholy nature,” a charge against Matilda Stowe, “a child of about eleven years of age,” for stealing and then pawning “some muslin goods.”<sup>76</sup> The Chief Justice clarified that while in British law there was “no particular age at which a child is considered capable of sufficiently distinguishing between right and wrong, so as to be responsible for the criminality of his actions,” no child under seven years could be guilty of felony. However if the Court believed

that such child, between 7 and 14 years of age can discern between good and evil, he may be convicted, and even suffer death; and there are instances on record where this has taken place in England, upon children of nine years of age, and upwards; therefore Gentlemen, if in this case a bill should be preferred before you, it will depend entirely upon your opinion of the degree of intelligence this child may possess, whether you will find the bill or not – supposing at the same time there should be sufficient evidence, in your estimation, to put the accused upon her trial for the offence.

In the end the jury did not find a true bill, but it is of note that the law allowed the eventuality, despite the tempering of the Bloody Code that had occurred in recent decades. Edward, following the letter of the law, left it up to a group of 17 adult male

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<sup>75</sup> The phrase is John McLaren’s, used to refer to judges who tried to use their position to seek political or economic reforms. See McLaren, *Dewigged, Bothered and Bewildered*, chapter 4.

<sup>76</sup> “Prince Edward Island, Charlotte-Town, Supreme Court,” February 24, 1829, LAC, MG 24, B 13, 1000.

jurists to determine whether a child would be tried, and possibly face death, for stealing some items of cloth.<sup>77</sup>

Of this harsh approach former SCPEI Chief Justice Charles R. McQuaid writes that Edward “had little patience with a crime prevalent in the Colony, that of Larceny, and with the manner in which juries looked upon it regardless of whether it was committed by an adult or by a child.”<sup>78</sup> Shortly after the above case two boys, one 14 and the other 12, pled guilty to petty larceny, and were sentenced to 39 lashes on three succeeding market days, a total of 117 lashes.<sup>79</sup> As McQuaid notes such punishments, unthinkable today, reflected the sentiment of the time. An editorial in the *Island Register* noted with approval that the Lieutenant Governor had rejected a petition by some Islanders to remit the remainder of the older boys’ sentence, and opined,

This was not a case which called for mercy, – and with all due deference to those weak, but perhaps well meaning persons who signed the Petition – we cannot help but thinking that tenderness for individuals is, not infrequently, cruelty to Society. The punishment which follows every violation of the law should be sharp and sure, – to produce the proper effect.<sup>80</sup>

Seemingly while some “compassionate, but inconsiderate” Islanders favoured leniency, many embraced the harsh penalties meted out according to the dictates of British law.

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<sup>77</sup> *An Act to provide for the punishment of offences against the person and property*, which repealed a 1792 act, did not significantly change the law of capital crimes, which consisted of treason, murder, sexual offences, robbery, and arson; robbery and rape remained punishable by death until 1861. Hornby, *In the Shadow of the Gallows*, 59. In 1805 sixteen-year-old Mary Cummins was granted a Royal Pardon after receiving a death sentence for Felony Burglary of “a pitiful collections of goods, including fifty-one playing cards”; Matilda, if convicted, could have possibly faced branding on the hand with the letter “t” for thief. Hornby, 29.

<sup>78</sup> McQuaid, *The Evolution of the Courts in Prince Edward Island*, 160.

<sup>79</sup> McQuaid, *The Evolution of the Courts in Prince Edward Island*, 161. Thirty-nine was the standard number of lashes for petty theft; as McQuaid notes these would be *public* whippings. The two boys, Michael White and William Stowe, were charged with break and entry, and the theft of two hams, two loaves of bread and a quantity of raisins, the combined value of which was 15 shillings. The older boy’s young brother was brought before the Court two weeks later charged with petty larceny; on conviction he was spared a public whipping, but confined to jail for an undetermined duration. He was eight years old, the age at the time of Edward’s oldest daughter Jane.

<sup>80</sup> *Island Register*, April 13, 1830.

The Chief Justice gave a similarly harsh sentence to Christopher Lawson in 1842: he was convicted in the Supreme Court of three counts of larceny, receiving three months in jail, a further six months with hard labour, and 39 lashes.<sup>81</sup> Public whipping, abolished in England in 1817, persisted on the Island after mid-century. On December 6, 1844, at St. Eleanors, Prince County, Jeremiah Maher received 39 lashes from Sheriff James Warburton while tied to a gate in front of the Courthouse.<sup>82</sup> An 1836 provision allowing whipping as an additional punishment was augmented in 1861 when the death penalty was removed as the punishment for robbery and rape; the Island shares with Newfoundland “the perhaps dubious distinction of being the only British North American colonies to still use judicially ordered corporal punishment at Confederation.”<sup>83</sup>

Even without knowing that Matilda Stowe’s case did not go to trial we can be certain that she was not hanged, for no hangings took place during Edward’s tenure as Chief Justice.<sup>84</sup> At a murder trial in 1839 Mi’kmaw Tom Williams was charged with shooting Joe Louis, another Mi’kmaw: the jury found him guilty but recommended mercy. Citing the defendant’s age and the lack of precedent – no “Indian” had been hanged in British North America in recent memory that he was aware of – Edward recommended to Sir Charles FitzRoy, the Lieutenant Governor, that Williams’ sentence be commuted, as indeed happened. Referring to Williams Edward characterized him as being “alive to the savage virtue of revenge,” sentiments echoed by both FitzRoy and

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<sup>81</sup> Hornby, *In the Shadow of the Gallows*, 21.

<sup>82</sup> Hornby, *In the Shadow of the Gallows*, 21.

<sup>83</sup> Girard et al, *A History of Law in Canada Vol. 1*, 546-7, 550. In contrast, sentences of whippings were rare in Nova Scotia after the 1820s and in Upper Canada after the mid-1830s.

<sup>84</sup> A total of eleven hangings took place on Prince Edward Island between 1792 and 1941, the date of the last hanging on the Island. In 1869 George Dowey was publicly hanged two months after the February 11<sup>th</sup> hanging of Patrick Whelan in Ottawa, making his the last public execution in Canada. Dowey’s hanging was botched, turning many Island residents against capital punishment. Dowey was defended by Charles Palmer, Edward’s daughter Amelia’s husband; in 1888 Palmer would pass sentence of death upon William Millman, the next man to be hanged on the Island. Hornby, *In the Shadow of the Gallows*, 2, 67, 75.

Lord Glenelg, the Colonial Secretary.<sup>85</sup> The Mi'kmaq were seen to have no systemized law, but instead a primitive blood feud code, and colonial law took precedence.<sup>86</sup> In British North America, as Sidney Harring points out, Indigenous peoples such as the Mi'kmaq did not have access to local courts to protect their lands, yet were subject to colonial law when they committed serious crimes. At the same time, for most criminal matters the Mi'kmaq were under-represented in the official records, suggesting a kind of reverse discrimination: "in intra-Indian criminal matters short of murder, colonial authorities did not ordinarily prosecute."<sup>87</sup>

Five years later Edward presided over a murder trial in which the jury found manslaughter, a verdict with which he very much disagreed. Hornby calls the 1844 trial of William Hiscox for the murder of George Tanton "probably the most controversial *failure* to hang a man in Island history."<sup>88</sup> Hiscox had been smuggling oysters in a small schooner in Bedeque harbour, in violation of a law which limited the quantity to 10 bushels for export.<sup>89</sup> John Morris, a magistrate, attempted a summary arrest accompanied by several neighbours, which failed; in the course of a second attempt Hiscox fired a musket loaded with duck shot upon the party, hitting George Tanton and Isaac Scales.

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<sup>85</sup> FitzRoy wrote to Glenelg, who agreed that Williams should not hang, and ruled out transportation; the colonial council settled on banishment, a punishment based on settler colonial boundaries. For a full analysis of the reasons for the commutation of Williams' sentence and a reflection on the impact of British colonial law on the practice of Mi'kmaq law within the colony of Prince Edward Island, see Anna Jarvis, "Murder, Manslaughter, or Justified Retribution? Tom Williams, Mi'kmaq Law, and Colonial Justice on Prince Edward Island, 1839," *Acadiensis*, 51, no. 1 (2022), 39-65.

<sup>86</sup> Edward Jarvis to Charles FitzRoy, March 26, 1839, LAC, MG 11 CO 226, 204.

<sup>87</sup> Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998), 183-4. L.F.S. Upton notes that in the colony of Nova Scotia, at a time when, as in Prince Edward Island, 39 lashes remained the standard rural punishment for most offences against property, no Mi'kmaq was flogged. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver, BC: University of British Columbia Press, 1979), 148.

<sup>88</sup> Hornby, *In the Shadow of the Gallows*, 60.

<sup>89</sup> The following details of the case are taken from an article written by Tanton's grandson, John P. Tanton, "The Smuggler's Revenge: Death of George Stanton and Trial of Hiscox in 1844," published in the *Charlottetown Guardian* September 2, 1905. Tanton's article was based on current newspaper accounts of the trial.

Tanton would later die, leaving a wife and nine children, and Scales was disabled for life. A special commission of Oyer and Terminer, presided over by Edward and two other judges, was held on December 3<sup>rd</sup> in Georgetown.<sup>90</sup> Against the Crown's seemingly incontrovertible case defense counsel Charles Binns argued that the action of the magistrate was illegal, and that before the warrant was issued the evidence of the party informing should have been taken on oath, among other points.

The jury's manslaughter verdict "was received with the utmost astonishment throughout the colony."<sup>91</sup> Edward's address before sentencing was "tantamount to a charge of perjury...a severe castigation to those in the jury box." He told Hiscox he had had "a lenient jury to deal with," but was guilty of "a cold blooded premeditated murder":

Let it not, however, be for one moment thought that I am desirous of seeking your blood, far from it as regards my own feelings, but as regards the course of public justice and the outraged laws of the country, I cannot but deplore the verdict, and I tremble for its results. May Heaven avert the fatal consequence but too likely to ensue. I have said you committed a cold blooded murder in strict conformity with your repeated threats. You recklessly took the deadly aim, which in one fatal moment made a widow and a large family of helpless children destitute orphans. It is easy to see how Hiscox, a Nova Scotian resisting summary justice while smuggling on the Island's waters, would provoke the ire of the Chief Justice. Moreover, Edward had become a widower himself only three years earlier and would consider Hiscox's killing of Tanton, the father of nine, particularly egregious. As it was, he could do nothing but sentence Hiscox to three years solitary confinement with hard labour, the maximum sentence available for manslaughter since 1836.<sup>92</sup>

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<sup>90</sup> The counsel for the Crown were the Hon. Robert Hudson, Attorney General, and the Hon. James H. Peters; Charles Binns, Sr. and Charles Young, the attorney who had represented Mi'kmaw Tom Williams in his 1839 trial, represented the defense.

<sup>91</sup> Tanton, "The Smuggler's Revenge," *Charlottetown Guardian*, December 9, 1905 (conclusion).

<sup>92</sup> S.P.E.I. 1836, c. 22, s. 4.

The Hiscox trial fits a pattern identified by Martin Wiener that saw increasing judge-jury contestation in nineteenth-century England, as a result of murder trials taking “center stage in the public theater of criminal justice” with expanding newspaper coverage and the growing use of legal counsel for the defense.<sup>93</sup> In the first half of the century, as the abolition of the Bloody Code decreased the number of capital crimes, in murder trials the jury increasingly tended to find the lesser charge of manslaughter and thereby avoid the possibility the defendant would hang. The jury’s use of discretion in this way, however, became “a source of strained relations with the judge.” The Hiscox trial is also evidence of what Wiener sees as a further development, that of defence counsel giving jurors information, about both the facts of the case and the law, that they might not get from judges “and that judges might prefer they did not get at all.”<sup>94</sup>

### **The Monckton case**

Edward’s dependency on the Colonial Office, one of the problems faced by colonial judges during the nineteenth century, meant that dismissal, as noted, was an ever-present possibility. Edward seemed at times to believe that his position was not fully secure, and on occasion sought to reassure the colonial authorities of his competence and dedication to duty. How warranted, in fact, was Edward’s concern regarding the tenuousness of his position as Chief Justice? Was it simply a result of his own anxiety and insecurity, or was there real reason to fear he could lose his job? While he seems to have enjoyed good relationships with each of the ten Lieutenant Governors who served on the Island during

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<sup>93</sup> Martin J. Wiener, “Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England,” *Law and History Review* 17, no. 3 (Fall 1999): 272.

<sup>94</sup> Wiener, “Judges v. Jurors,” 274.

his tenure, he also appeared to feel the need in more than one instance to confirm his good standing with the Colonial Office. While no Island judge had been suspended from office for some decades, and those who were had been removed “for politics rather than for their undoubted incompetence,” Maritime judges could, in theory, be removed from office by the Crown, and also faced the possibility of impeachment by the Assembly.<sup>95</sup>

In the early nineteenth century superior court judges held their appointment “at pleasure,” meaning that they could be dismissed by the Crown, at will, if they “incurred the displeasure of the executive,” although they did retain the right of appeal to the Privy Council in London.<sup>96</sup> At pleasure appointments, no longer made in Britain, were considered necessary by London to ensure that colonial judges were compliant to government wishes. Prince Edward Island’s judges would be “at pleasure” until 1873.<sup>97</sup> As McLaren writes, from London’s standpoint it was vital that judges, as important players in colonial administration, met the obligations of loyalty to monarch, empire, and the colonial state: “Appointing them ‘at pleasure’ was one way of impressing on them that they needed to behave themselves.”<sup>98</sup> Speaking before a parliamentary select committee in 1828, James Stephen Jr., longtime counsel to the Colonial Office, reiterated the need for “at pleasure” appointments to ensure judicial loyalty to colonial administrations. The British judges who supplemented the colonial bench were, he argued, younger and less experienced and therefore in more danger of taking sides in the “violent feuds and parties” that might beset the colonial societies in question.<sup>99</sup>

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<sup>95</sup> Bell, “Maritime Legal Institutions,” 118-9, 119 fn 57.

<sup>96</sup> Girard, Phillips, and Brown, *A History of Law in Canada*, Vol. I, 387.

<sup>97</sup> Girard, Phillips, and Brown, *A History of Law in Canada*, Vol. I, 388.

<sup>98</sup> McLaren, *Dewigged, Bothered, and Bewildered*, 29.

<sup>99</sup> Jim Phillips, “Judicial Independence in British North America, 1825-67: Constitutional Principles, Colonial Finances, and the Perils of Democracy,” *Law and History Review* 34, no. 3 (August 2016): 692.

Edward, then, despite his dedication to colonial law and his ideological alignment with the Imperial government, could not feel completely secure in his Chief Justiceship. As with all colonial judges, he would have recognized the advisability of toeing the line and not creating waves that might incur London's displeasure or wrath. He would have been aware that his fellow Chief Justice in Newfoundland, Henry John Boulton, who presided over a Legislative Council in which there was "an embarrassing legislative stalemate and a toxic environment in which principled argument was interpreted as malevolence," and whom the Colonial Office viewed as "the main lightning rod within the colonial administration," was the subject of a report on his conduct by a committee of the Legislature that was tabled on October 10, 1837.<sup>100</sup> The committee noted "much indiscretion in the conduct of the Chief Justice" and recommended he be dismissed, which he subsequently was by Lord Glenelg.<sup>101</sup>

Clearly, given his conscientious commitment to duty, his belief in the sanctity of British colonial law, and his conscious effort to distance himself from politics and give rulings he believed to be fair and impartial, there was little risk of Edward incurring the wrath of the Colonial Office as an activist judge. In 1835 he did, however, receive what could be regarded as a rebuke from London when his suspension of an attorney practising on the Island, William Charles Monckton, from the bar was overturned by the Privy Council. Monckton had been arrested for debt in September, and Edward had allowed him to invoke his privilege as a barrister and solicitor of the court to be discharged.

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<sup>100</sup> McLaren, *Dewigged, Bothered, & Bewildered*, 114-6. As McLaren notes, one of the controversies Boulton faced early in his career was his acting as a second for Edward's cousin, Samuel Peters Jarvis, in a duel in Upper Canada in which John Ridout was mortally wounded. Boulton "survived the potential ignominy of prosecution as an accessory to Jarvis' acquittal for murder" to become solicitor general.

<sup>101</sup> Hereward and Elinor Senior, "BOULTON, HENRY JOHN," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed October 29, 2023, [http://www.biographi.ca/en/bio/boulton\\_henry\\_john\\_9E.html](http://www.biographi.ca/en/bio/boulton_henry_john_9E.html)

Monckton was once again arrested for debt in November and released by Edward, who the following day made an *ex parte* order suspending him from practice. In a letter to the Colonial Office Edward put forward his side.

Edward claimed that Monckton had fraudulently used his status as an attorney to shield himself from creditors. He claimed that for some time Monckton had had “only one or two causes” in which he “pretend[ed] to act as an attorney,” and that Monckton

Suffer[ed] his name to remain as such merely for the purpose of taking an undue advantage of his professional character, to protect himself against the just claims of his creditors, and not for the benefit of his clients, which conduct I deem highly derogatory to the profession of an attorney, unjust and fraudulent.<sup>102</sup>

Edward also claimed that Monckton was intemperate and did not meet the requirement of good moral character that he himself had set for the Island’s attorneys. In a draft letter to the Colonial Office he charged that Monckton had shown

instances of dissolute conduct, and a constant habit of intoxication during all hours of the day, and of such gross violation of all decorum as in one instance in particular to have assaulted a Magistrate in the public streets for having previously in his magisterial capacity given a judgment against him, for which act he (Mr. M) was indicted before the Supreme Court and upon conviction was sentenced to pay a fine of £20.<sup>103</sup>

Edward also claimed that Monckton was about to leave the Island, “that his personal property was all sold and he had the proceeds in his possession,” that he was not part of any ongoing suits, and that “he could command no professional business in consequence of his intemperate and (disorderly) character and conduct.”

Laying out the case Edward seemed particularly concerned to dispel any impression that he had let any personal animosity towards Monckton colour his legal decision, writing

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<sup>102</sup> *In Re Monckton* (1837), 1 Moor 454.

<sup>103</sup> Edward Jarvis, draft letter regarding the Monckton case, ca. 1835 (n.d.), LAC, MG 24 B 13, 1858-1863.

As to malice or ill will on my part. I can show that I had no cause whatsoever to feel any towards Mr. M – I never had any personal difference of opinion with him – on the contrary, until he gave himself up so totally to habits of intemperance and disorderly conduct he was a frequent guest at my table, and little [gestures] of friendship passed between his mother and my family up to the very period of this unpleasant business – <sup>104</sup>

Throughout the thirteen years he had presided over the Supreme Court, Edward insisted, his character had been “wholly foreign to that of a disposition to severity, to oppress, or to indulge any feeling of ill will or revenge, but on the contrary [his failing had] been too great leniency and a too ready forgiveness of injuries when received.” Had Monckton made the slightest effort to alter his behaviour, Edward declared, “I would (the object having been accomplished) at once have rescinded my own order and restored him.”

FitzRoy, transmitting Edward’s letter of concern, echoed “the general complaint he makes of the disgraceful intemperance which notoriously characterizes many of the Bar in the Island.”<sup>105</sup> Monckton, however, appealed to the King-in-Council as the order of the court was not the subject of a writ of error; Lord Wynford ruled that Edward’s suspension of Monckton was excessive and ordered the suspension rescinded.<sup>106</sup> Edward, in a letter to FitzRoy addressing the overturning of his decision, wrote that his concern was not that his decision had been overturned but that “his authority to improve the general character of the bar had been weakened.”<sup>107</sup> While FitzRoy appears to have supported Edward’s actions, Edward still felt the need to tell Glenelg, in a dispatch on December 6, 1838, that in giving his explanations he was not trying to get the Privy Council to reconsider its decision regarding Monckton, “but had merely wished to prove

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<sup>104</sup> Edward Jarvis, draft letter, ca. 1835 (n.d.), LAC, MG 24 B 13, 1858-1863.

<sup>105</sup> Lt. Governor C.A. FitzRoy, quoted in Holman, “The Bar of Prince Edward Island,” 211.

<sup>106</sup> Holman, “The Bar of Prince Edward Island,” 210-11.

<sup>107</sup> Jarvis to FitzRoy, September 27, 1837, TNA, CO 226/54/238.

his own integrity.”<sup>108</sup> James Stephen, responding on behalf of the Colonial Office, wrote back to Edward that he regretted he “should have thought that his integrity was questioned.”<sup>109</sup>

While the incident passed – Monckton returned to the Island and took up a “much diminished practice” but appears to have left the colony by 1840 – it had clearly given Edward cause for concern regarding his standing with the Colonial Office.<sup>110</sup> Certainly, it must have been somewhat galling for him to have his decision overturned at such a high level. Bell, however, puts a positive spin on Monckton’s appeal to the Privy Council for restoration, suggesting that it “gave Jarvis occasion to make explicit his determination to raise the Island’s bar into conventional respectability.”<sup>111</sup> Moreover Bell characterizes Edward’s actions as helping to put Prince Edward Island “in the colonial vanguard,” writing that while in New Brunswick, for example, no lawyer was disciplined before 1850, four Prince Edward Island lawyers, including Monckton, were struck from the rolls or suspended from practice between 1791 and 1835, in most cases being “occasioned by collision with a judge.”<sup>112</sup>

There was also the question of damages – Monckton appears to have wanted to sue Edward for the harm that the suspension had caused his professional career. As Edward noted, however, Monckton had suffered no damages because of him. He had no professional practice to lose, and the expenses he incurred on his appeal to the Privy Council were wholly unnecessary – He petitioned I believe for costs against me, but altho’ I was (unheard?) this part of the petition was refused. I should also be very unable to pay damages, were it possible any could be given against me. I possess but little

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<sup>108</sup> *Calendar of State Papers, PEI, 1765-1840* (Finding Aid), Prince Edward Island Public Archives and Record Office, January 25, 1838.

<sup>109</sup> James Stephen to Edward Jarvis, [ca 1835]. TNA, CO 226.

<sup>110</sup> Holman, “The Bar of Prince Edward Island,” [confirm pg. no.]

<sup>111</sup> Bell, *Maritime Legal Institutions*, 127.

<sup>112</sup> Bell, *Maritime Legal Institutions*, 127.

property and no other source of income whatever than my small salary of £700 a year for the support and education of my family.<sup>113</sup>

In his letter regarding the Monckton case Edward outlines his qualifications for the Chief Justiceship and lists his professional credentials, stating that he had taken the position of Chief Justice of the Island because he could not wait for a more lucrative one, but that he would have been qualified to do so. This conformed to a pattern throughout his career of writing at times lengthy explanatory letters to the Colonial Office to affirm his standing in London's eyes. This speaks to a basic insecurity that appears to have plagued him throughout his career – while some colonial judges might have railed at perceived unfairness or challenged decisions made in London, Edward, aware of his dependency and precarious financial position, instead sought to confirm his value to the Colonial Office and remind them of what he perceived to be its obligation towards him.

The following year Edward would once again have occasion to feel insecure about his tenure after hearing rumours about his being replaced. In a letter to the Colonial Secretary, noting that he had “observed in the English papers that a gentleman had been appointed to the situation of Ch. Justice of this Island,” Edward sought reassurance that the rumours were unfounded.<sup>114</sup> In his letter Edward defended his conduct as Chief Justice, pointing out that he had sought neither additional salary or promotion elsewhere, despite “the official burthen imposed on [him]” quadrupling during the 17 years he had been in office. Regarding the appointment of an assistant judge Edward declared:

Such an appointment would be a great boon conferred upon the Island – for although my whole time and best energies have been and ever will be devoted to the discharge of my duties yet I conceive it quite impossible that any one man can unassisted administer effectively justice for so large a population as this Island now contains –

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<sup>113</sup> Edward Jarvis, draft letter regarding the Monckton case, LAC, MG 24 B 13, 1858-1863.

<sup>114</sup> Edward Jarvis to R.W. Hay, January 18, 1836, LAC, MG 24, B 13, 1244-7.

Edward's "burthen," however, would not be addressed for another twelve years, when an assistant judge was added in 1848. While Edward's fear that he was being removed as Chief Justice was in this case misplaced, his letter outlining his performance suggests that he continued to feel a degree of insecurity regarding his position.

While Edward's fears of being fired for professional misconduct appear to have been misplaced, however, he was not completely wrong in worrying that the Colonial Office might find grounds to remove him from office. The colonial administration did appear to have concerns that problems with his eyesight were affecting his ability to do his job. Lieutenant Governor FitzRoy had informed the Colonial Office of "the precarious state of the Chief Justice's eyesight," although he did not follow through on his recommendation that Edward retire and a successor be appointed.<sup>115</sup> In 1841 the Journals of the House recorded that "It appears that the Chief Justice has been afflicted with a complaint of his eyes, occasioning indistinct vision, and that, in consequence thereof, has been visiting the neighboring Provinces with a view to consulting experienced oculists."<sup>116</sup> Edward's vision stabilized following his second marriage in 1843 but then began to deteriorate once again, a factor, believes McQuaid, in the appointment several years later of an Assistant Judge.<sup>117</sup> The subject of Edward's eyesight came up once again in discussions of his salary during the debates surrounding the Civil List in relation to responsible government, with one member opining that "the Chief Justice, having admitted his inability to discharge the duties of his office, and

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<sup>115</sup> Quoted in McQuaid, *The Evolution of the Courts in PEI*, 164.

<sup>116</sup> *Journal of the House of Assembly*, 1841, Prince Edward Island Public Archives and Record Office.

<sup>117</sup> McQuaid, *The Evolution of the Courts in PEI*, 164. Hornby puts forward another possible reason for the appointment of an assistant judge: a cost-saving measure. He notes that a commentator stated following the appointment of a third judge in 1869, that the appointments were agreed to "not so much to strengthen the Supreme Court, as to postpone the establishment of courts of inferior jurisdiction." Hornby, *In the Shadow of the Gallows*, 11.

having been relieved from their actual discharge by the appointment of an Assistant Judge, was entitled to no salary at all.”<sup>118</sup>

### **Responsible government and a reduction in salary**

While duty and dependency may have characterized Edward’s relationship to the colonial authorities in London, a corresponding level of the former was not necessarily displayed by them towards the multitude of colonial jurists, administrators, and officials who, like Edward, ensured the smooth functioning of the empire. The attitude of the British government towards the British North American colonies reflected at varying times irritation, indifference, a need to cater to domestic politics and/or public opinion within the metropole, and, above all, a reluctance to spend. As Peter Burroughs states, inefficacy, more often than not the result of distance, poor communication, and bureaucratic inefficiency, could also be said to characterize the Colonial Office. Contemporary criticism of the Colonial Office’s arbitrary and irresponsible rule fell “wide of the mark,” he notes, because they “grossly exaggerate[d]” the department’s administrative effectiveness. In reality, “At the mercy of events and pressures from overseas, [the Colonial Office] characteristically resorted to piecemeal expedients to meet immediate difficulties as they arose.”<sup>119</sup> While in many instances the Imperial Government was “content to continue to muddle along in its approach to colonial rule,” however, the rebellions in the Canadas during the late 1830s, with their potential to repeat

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<sup>118</sup> McQuaid, *The Evolution of the Courts in PEI*, 167.

<sup>119</sup> Peter Burroughs, *The Canadian Crisis and British Colonial Policy 1828-1841* (Toronto: Macmillan of Canada, 1972), 17.

the loss of the American colonies half a century earlier, evinced greater concern in London and occasioned the sending of Lord Durham to British North America in 1838.<sup>120</sup>

Durham, believing that the colonists' desire for internal self government could be reconciled with the preservation of imperial unity, recommended responsible government for the British North American colonies, a proposal that was "generally welcomed by reformers and denounced by conservatives."<sup>121</sup> London, however, "indifferent at best towards the colonies, and...often distracted by English concerns of changing circumstance, including religious upheavals and political revolts on the Continent," was in no hurry to grant responsible government.<sup>122</sup> In Prince Edward Island the British government was particularly opposed to the introduction of responsible government given that its absentee landlords were unrepresented in the colonial legislature and that any possibility of expropriation of their estates would produce a dangerous precedent, particularly in Ireland.<sup>123</sup> By February 1850, however, despite the protestations of the Lieutenant Governor, Sir Donald Campbell, that the land question precluded the possibility of responsible government, London conceded. When Campbell offered the reform majority only three seats on the Executive Council, however, the Assembly refused supplies, and Campbell prorogued the House.<sup>124</sup>

In June Campbell's negotiations with the reformers over the provision to be made to compensate officials, including the Chief Justice, broke down. Campbell died in October of 1850 and the new Lieutenant Governor, Sir Alexander Bannerman, was sent

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<sup>120</sup> McMillan, *Eminent Islanders*, 115.

<sup>121</sup> Burroughs, *The Canadian Crisis*, 105.

<sup>122</sup> McMillan, *Eminent Islanders*, 121.

<sup>123</sup> Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport, CT: Greenwood Press, 1985), 317. As Buckner points out, the Island was also considered too small to be given the same form of government as the mainland colonies.

<sup>124</sup> Buckner, *The Transition to Responsible Government*, 320.

with explicit instructions to concede responsible government if the Assembly agreed to compensate officers who were dismissed and to provide a permanent salary for the Chief Justice.<sup>125</sup> It took three weeks of negotiations before the reformers agreed to a civil list bill that compensated the officials who were to be dismissed. Thus, with responsible government finally established in 1851, the *ancien régime* in the maritime British North American colonies “came to its bedraggled end.”<sup>126</sup> Notably, Bannerman, while the negotiations were underway, had been instructed to impress upon the Legislature “the necessity of abstaining from the introduction...of any provisions which may infringe upon the rights of property” – a condition he was able to fulfil given that the reformers had temporarily paused the agitation for an escheat of land held under questionable title – and had even been authorized by London to use force if necessary to maintain the property rights of the landlords.<sup>127</sup>

Under the terms of the transition to responsible government revenues such as quit rents would go to the colonial assembly instead of the Crown, with the local government assuming full responsibility for the Civil List, which covered the salaries of certain Crown officials including the Chief Justice. For Edward, this meant his salary, which had been reduced to £700, would thereafter be paid in currency rather than pounds sterling, a significant drop in income; the Act To Provide for the Payment of the Civil List passed in 1849 without his knowledge or consent.<sup>128</sup> In April 1849 Edward sent a memorial to Lord Grey, the Colonial Secretary, protesting the change. He pointed out that instead of

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<sup>125</sup> Buckner, *The Transition to Responsible Government*, 320.

<sup>126</sup> Bell, “Maritime Legal Institutions,” 131. Nova Scotia and New Brunswick received responsible government in 1848.

<sup>127</sup> Buckner, *The Transition to Responsible Government*, 230 and Robertson, *The Tenant League*, 31. The movement for escheat on the Island is examined in Chapter 4.

<sup>128</sup> McQuaid, *The Evolution of the Courts in PEI*, 165.

receiving the value of £700 sterling, equivalent to £1050 currency, he would receive only £466.13.4 sterling, the value of the proposed £700, a reduction of one third.<sup>129</sup> Moreover, Edward complained, he had been forced to give up the allowance of £100 per annum he had been granted fifteen years previously to the newly hired assistant judge.

Edward pointed out that after his position in Malta was abolished he had been able to find a suitable colonial vacancy and had accepted his current position to support his family. He had not sought a more lucrative appointment elsewhere, but “continued to reside [on the Island] in the faithful discharge of the duties of his office to the best of his ability, for upwards of 20 years, upon the same salary – although those duties...increased, with the proportionate increase of the population of the Island, to near threefold.” In other words, Edward had put his duty to the Imperial government before his own interests, and was now calling on London to recognize his loyalty. In a letter to his son Munson, then in London studying at the Inns of Court, Edward commented on the “shameful treatment” of Samuel Fairbanks, a fellow student of his from Trinity College decades previously, who similarly had received short shrift from Grey during the transition of Nova Scotia to responsible government: “Lord Grey...confesses that his policy is to yield every thing to the popular voice in the Colonies, offering no resistance but his personal advice – which they care about as much for as they would for the cackling of a goose.”<sup>130</sup>

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<sup>129</sup> Memorial of Chief Justice Edward Jarvis to Lord Grey, Principal Secretary of State for the Colonies, April 1849, LAC, MG 24, B 13, 415. Edward had previously encountered the downsides of the discrepancy between sterling and local in Malta, where his salary had been payable in currency, as he complained in a letter to his nephew. Edward Jarvis to Robert Hazen, May 28, 1824, NB Museum Archives.

<sup>130</sup> Edward Jarvis to Munson Jarvis, May 3, 1849, LAC, MG 24, B 13, 1483. Fairbanks became provincial treasurer in 1845, but lost the position in 1848 with the advent of responsible government and petitioned the Colonial Office for redress. John G. Leefe, “FAIRBANKS, SAMUEL PRESCOTT,” in *Dictionary of Canadian Biography*, vol. 11, University of Toronto/Université Laval, 2003–, accessed March 3, 2024, [http://www.biographi.ca/en/bio/fairbanks\\_samuel\\_prescott\\_11E.html](http://www.biographi.ca/en/bio/fairbanks_samuel_prescott_11E.html)

In the same letter Edward wrote that “the times are so portentous, and my means are becoming so restricted & inefficient, that I think my dear Son I must send you home.” In 1847 Munson had signed an articling contract with James H. Peters, who would become the Supreme Court assistant judge the following year, to the tune of £100 which, on top of Munson’s travel and tuition costs, would have drawn heavily on his father’s resources.<sup>131</sup> While Edward felt that it was in fact not a bad thing that Munson lose no time in returning to the Island to get himself established professionally – “I have no doubt you will have a good deal of rivalry to contend with here, and I think the sooner you enter the lists the better” – he hoped to avoid calling Henry home from his medical studies in Edinburgh, believing that “it would be very desirable for him to finish in Paris.”

That he was in the midst of launching his sons’ careers meant Edward’s salary reduction was particularly ill timed. A provision had been made for a one-time compensatory payment of £500, but he had not yet received it. Writing in 1850 to the editor of the *Royal Gazette* he felt compelled to counter the claims of an anonymous letter writer that he had agreed in writing to the salary reduction and the gratuity.<sup>132</sup> Edward wrote that he had given his *conditional* assent to the proposal so as not to impede “the successful termination of a treaty which appeared to affect the well-being of the Colony,” meaning Campbell’s attempts to work out the terms of responsible government with the reform members. The moment he learned that the negotiations were at an end, Edward wrote, he confirmed his dissent from the proposed arrangement, as his assent had

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<sup>131</sup> PEI Public Record Office and Archives, RG 6.1, Series 19, Bar admittances, File 36, October 5, 1847. Peters had served as Counsel for the Crown in the Hiscox trial; he was “by no means a senior barrister,” arriving in the colony only in 1838 after having been admitted to the bars of Nova Scotia and his native New Brunswick, the latter possibly one of reasons Edward had chosen him for Munson to article with. Holman, “The Bar of Prince Edward Island,” 206.

<sup>132</sup> Edward Jarvis, *Royal Gazette*, May 6, 1850.

hinged upon the success of the deal between the two parties and the immediate payment of the gratuity, neither of which had occurred. Edward noted that not only had his salary been reduced by 40 per cent, it had also been withheld for almost a year, “just at an unfortunate juncture of time when the great expense attendant on the professional education of two of my sons in England, and one at Windsor, drew to an unusual extent upon my pecuniary resources.” It must have felt particularly irritating to Edward to have been maligned in the *Gazette* on top of everything else, and he felt he had to respond.<sup>133</sup>

### **Financial challenges, health concerns, and personal loss**

Edward’s worries stemming from the excessive demands upon his “pecuniary resources” during the last two years of his life were the culmination of a lifetime in which finances had often been a concern. Besides his salary he had outside sources of income, including rental properties in Saint John, as well as other property and investments. Edward also appears to have been involved in a land speculation enterprise, Canada Land.<sup>134</sup> He also was a beneficiary of his father Munson’s will, although it is not clear how much money was eventually forthcoming, given that Munson had added a codicil reducing the amount bequeathed shortly before his death following a fire. Also, it appears that Munson’s estate remained unsettled as late as 1849, three years before Edward’s death.<sup>135</sup> The economic slump of the 1820s along with pure bad luck and timing also reduced Edward’s extra income. As noted earlier, in his letter regarding the Monckton case Edward declared he possessed “but little property,” although he appears to have sold 1,250 acres of land to

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<sup>133</sup> The £500 was eventually paid. An Act to commute Crown Revenues of Prince Edward Island, and to provide for the Civil List thereof, as well as for certain Compensations therein mentioned. SPEI, 1851, Chapter III, 738.

<sup>134</sup> Bittermann, *Rural Protest*, 96.

<sup>135</sup> Ralph Jarvis to Robert Hazen, 7 January, 1849, Jarvis Papers, New Brunswick Museum Archives.

Reverend John Packer, a Barbadian, in 1837.<sup>136</sup> Added to the numerous expenses arising from his role as Chief Justice, these circumstances meant that he was, particularly as time went on, walking a financial tightrope.

As will be examined more fully in Chapter 5, while Edward's role as Chief Justice did not officially specify that he spend money on the accoutrements of an elite lifestyle, there was an implicit assumption that a man in his position would meet certain social and cultural norms. These norms meant emulating the British upper class and trying to create a way of life based on notions of taste, style, gentility, and respectability, and using words, possessions, dress, and deportment to confer status and cultural capital thereby reinforcing distinctions of class, gender, and race. Edward's most expensive purchase during the 1830s was his house, but servants, clothes, furnishings, and entertainments would all have cost money. In 1841, in a letter to his nephew, Edward begged Robert to help him find a way to alleviate "a load of debt from which I do not know how to relieve myself."<sup>137</sup> Blaming his depressed state of mind for preventing him from "paying attention to those matters of moment which would otherwise claimed my notice" Edward proposed several possible ways Robert could raise money for him, including collecting "some three or four years rent due" on some of his properties.

While Edward would eventually be forced to move and rent out the house, at the time of his letter he was still in shock and mourning following the death of his wife, Anna Maria, several months earlier. Her death would be followed several years later by that of his second wife, Elizabeth Gray; both losses would take a major toll on Edward. His

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<sup>136</sup> Nathaniel T.W. Carrington, "Carrington's Journal: The 1837 Visit of a Barbados Planter," ed. James C. Brandow, *The Island* 11 (Spring/Summer 1982): 15. It is possible that the land purchase was related to the Canada Land Company.

<sup>137</sup> Edward Jarvis to Robert Hazen, November 22, 1841, Jarvis Papers, NB Museum Archives.

physical health was also of concern, and among other things it meant that Edward found his job increasingly onerous. Despite the presence of two unpaid assistant judges, he complained bitterly about his heavy workload, in 1830 describing a “very laborious sitting of the court” during which “for ten successive days [he] did not get home till 8 in the evening & one day not until midnight.”<sup>138</sup> The Circuit Courts established in Georgetown and St. Eleanor’s would undoubtedly have been an unwelcome addition to his responsibilities. Edward would complain of being on circuit that he was obliged to travel extensively, having to “sit for days on end, often in excessive heat, and without relief,” no doubt adding to his health woes.<sup>139</sup> Some eight years into Edward’s tenure Maria noted that “since the beginning of November last year there [have] been eight Courts held on the Island and Edward has charged seven Grand Juries, whereas when he came first here there were also but three courts held during the year.”<sup>140</sup>

Overall it is difficult to determine the extent to which extent Edward’s complaints of an increasingly unreasonable workload were justified. In an 1841 letter to FitzRoy he gave his reasons for the need for an assistant judge, writing that he refrained from calling upon the services of the two unpaid assistant judges, for while the “two gentlemen do indeed, at all times when called upon, evince the utmost readiness to lend their aid...the Members of the Bar...shew an unwillingness to try their causes before Judges whose attention has not been particularly directed to legal studies.”<sup>141</sup> It was mostly owing to the increasing duties of the Supreme Court, however, that assistant judges were needed:

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<sup>138</sup> Bumsted and Holman, “JARVIS, EDWARD” and MacKinnon, 59.

<sup>139</sup> Bumsted and Holman, “JARVIS, EDWARD.”

<sup>140</sup> Anna Maria Jarvis, quoted in “JARVIS, EDWARD.”

<sup>141</sup> Edward Jarvis to Lt. Governor FitzRoy, March 19, 1841, Journal of the House of Assembly of Prince Edward Island, 4<sup>th</sup> Session of the 15<sup>th</sup> General Assembly, Appendix N.

During the time of my presiding upon the Bench in the Island, its population has nearly, if not quite, doubled in numbers. For a great part of that time there were but three Terms of the Supreme Court in the year; they have gradually increased to four Terms in the year at Charlottetown, besides four additional Circuit Courts in the two Counties, and the business of the Courts has naturally increased nearly fourfold, yet the judiciary remains in the same state as at the first civil establishment on the Island, if we except a somewhat increased jurisdiction in the Magistrates.

Edward compared the situation to that of neighbouring colonies, all of which, “long before they numbered a population equal to that of this Island,” had “a Chief Justice and three efficient Puisne Judges, besides inferior Courts of Judicature; the Island is the solitary exception to that system.”

Edward pointed out the illogicality of the “frequent and almost absurd appeals from my own decisions to myself,” and noted that “much time would be saved and business would in general be greatly expedited” if there were “another legal mind with whom the Chief Justice could consul; for want of which I have found it necessary, on several occasions...to consult with the Chief Justice of a neighbouring Province.” In response to Edward’s concerns a committee was appointed to inquire into the state of the Supreme Court. It found that during the three years preceding there had been 112 decisions recorded out of 293 causes, “of which a great proportion were decisions of summary causes by default, and on appeals – perhaps about one fifth on verdicts.”<sup>142</sup> The committee added the number of days in the three county courts and estimated that on average the Chief Justice presided in Court 53 days per year, and, during the last three years, “of hearing Counsel 12 days at Chambers, *so far as your Committee could ascertain*, besides three days before Puisne Judges” [emphasis in original]. The committee noted that the Chief Justice had travelled to neighbouring provinces both to consult with oculists regarding his worsening eyesight and to consult with fellow judges.

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<sup>142</sup> Journal of the House of Assembly of Prince Edward Island, 4<sup>th</sup> Session of the 15<sup>th</sup> General Assembly, April 24, 1841, Appendix T.

It also noted that no term had been held at Georgetown in July of 1839, concluding “on requiring the Prothonotary to state the reason thereof...that gentleman answered ‘that the Chief Justice was not there to open the Court’.”

Overall, it does seem that, for a variety of reasons, Edward at times fell short of the full execution of his duties. For reasons of mental and physical health he found aspects of his role challenging; after his wife Maria’s death in 1841 he was forced to ask the Colonial Office for time off from his job.<sup>143</sup> Moreover, as will be seen in Chapter 5, Edward’s role as a husband and father at times impacted his professional commitments. His financial challenges, always there to some extent, became particularly acute in the last few years of his life: this in turn impacted the support he was able to offer his sons in launching their careers, and meant that he spent much of time during his final years engaging in a back-and-forth exchange with the Colonial Office. At this point the Empire, the entity within which he undertook to perform his duty to the best of his ability, far from recognizing his devotion to that duty, divested itself of him and the fiscal dependence that he represented.

## **Conclusion**

Overall, Edward Jarvis’s tenure as Chief Justice of the colony of Prince Edward Island reflected his qualities as jurist: his deep knowledge and respect for colonial law, his thoroughness, and his conscientiousness. He set a high standard for the Island’s judiciary, which in practice meant adhering as closely as possible to British law, albeit with occasional concessions to Island realities. He placed great importance on following proper legal procedures, but also on setting a high moral standard for those administering

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<sup>143</sup> R. Vernon Smith to Edward Jarvis, August 16, 1841, LAC, MG 24, B 13, 1373-1375.

law. Arriving in a jurisdiction where the involvement of judges in Island politics had too often been the norm, he distinguished himself by “putting himself above politics” and seeking to be “disinterested” in his rulings. While many of the improvements to the Island judiciary were the result of changes happening in all of the British North American colonies, such as the growth in the number and frequency of county courts being held and the professionalization of law enforcement, others were a direct result of his priorities and personality.

For most of his time serving as Chief Justice Edward insisted on the need for an assistant judge, a request not conceded by the colonial office until twenty years into his tenure. While this can in part be attributed to the extreme reluctance of the British government to spend a penny more on the colony than was absolutely necessary, there does seem to have been some question about the validity of Edward’s claims of overwork. His worsening eyesight, as well as his overall physical and mental health, did at times affect his ability to do his job, and meant that he increasingly faced the prospect of dismissal. Yet it would be impossible to accuse him of laziness or indifference – on the contrary, it was perhaps his most positive qualities, his thoroughness and his conscientiousness in carrying out his duty in administering the law of the Island, that caused him problems. His papers show that he at times went into great detail when writing out arguments or providing background on a case. Furthermore, he seemed to have written drafts for many of his letters to the Colonial Office and other colonial officials, a boon to today’s legal historians but at the time no doubt a time-consuming and tedious task that would have caused additional strain on his eyesight.

It is noteworthy, however, that although questions do appear to have been raised about Edward's physical capacity to do his job, in particular as a result of his declining eyesight, there is nothing in the records to indicate that his professional competency was ever challenged. Nor does there appear to have ever been any question of Edward's loyalty and commitment to the Empire – in fact, as shall be seen in the subsequent chapter, Edward was commended on his upholding of British colonial law, particularly when confronted with a threat to the law of property on the Island. While on one occasion, as has been seen with the Monckton case, one of Edward's legal decisions was revoked by the Privy Council, the rebuke, while it appeared to have caused Edward no small anxiety over his standing with the Colonial Office, never turned into a real test of his chief justiceship, particularly since he had the Lieutenant Governor behind him.

The records, then, show both sides: Edward Jarvis was a competent judge committed to his duties as a jurist and to the practice and furtherance of colonial law in general and a believer in Empire, but he also had faults and human frailties that at times impeded him in his professional work. What is clear throughout his career as a judge, however, is that he felt beholden to London for his livelihood, and frustrated when its penny-pinching led to what he saw as a less-than-optimal outcome for the judiciary. In his 1841 letter to FitzRoy, when stating the benefits of having “another legal mind with whom the Chief Justice could consult,” he gives as a reason for this that he had found it necessary to consult with other judges in the neighbouring colonies, adding, “and many other cogent reasons might be offered, which are obvious to those versed in legal pursuits.”<sup>144</sup> This plea, unheeded by London as so many others were, sums up much of

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<sup>144</sup> Edward Jarvis to Lt. Governor FitzRoy, March 19, 1841, *Journal of the House of Assembly of Prince Edward Island*, 4<sup>th</sup> Session of the 15<sup>th</sup> General Assembly, Appendix N.

Edward's legal role: an ongoing but for the most part unsuccessful attempt to convince colonial authorities of the importance of various judicial improvements and the necessity of increasing expenditure to finance them. Yet while Edward, in accepting the primacy of British colonial law, sought to perform his duty in implementing that law despite his ongoing dependency, both personal and professional, on the Colonial Office, the ground shifted beneath him. The pressure of reform and London's desire to divest itself of colonial expenditures eventually prevailed, leaving Edward, a relic of an earlier Loyalism, behind in the final years of his life.

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## CHAPTER 4

### Landlordism and tenant protests: The land question

In the old fashioned times the lands were considered to be for the use of the people, to give them employment and subsistence, to raise and maintain a hardy race for the support and defense of the country – but, according to the improved system, the land is not for the use of the people, but for the proprietor...and when the present inhabitants are removed, there will be no more complaints against proprietors, because the people who were deceived and deprived of the lands they have taken out of the wilderness will be either buried or removed.

–William Cooper, *Legislative and Other Proceedings on the Expediency of Appointing a Court of Escheats in Prince Edward Island*, Charlottetown, 1836<sup>1</sup>

It might yet be that the late season of scarcity should prove a real blessing, by inducing small farmers and others, many of whom had hitherto been thriftless and improvident, to husband their resources, and gradually practice a system of economy and good management...The grievances of these persons are, of yet, only imaginary; but they may rest assured, that should they persist in their mistaken course, their grievances will become real, and the result be, the utter ruin of themselves and their families.

– Chief Justice Edward Jarvis, 1837, Speech at Georgetown addressing land protests<sup>2</sup>

While most legal matters Edward Jarvis would preside over as Chief Justice of Prince Edward Island would be common to all of the British North American colonies, there was one issue that distinguished the colony and dominated its life and politics: the land question. The land question meant that, unlike most other British settler colonial societies, land cultivated by non-Indigenous settlers was not held in freehold; the only other British colony in which landlordism was the principal form of property owning was Ireland. During Edward's tenure, a land protest movement demanding a general escheat

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<sup>1</sup> Quoted in Rusty Bittermann, *Sailor's Hope: The Life and Times of William Cooper, Agrarian Radical in an Age of Revolutions* (Montreal & Kingston: McGill-Queen's University Press, 2010), 86-87.

<sup>2</sup> Edward Jarvis, speech at the opening of the Georgetown session, *Royal Gazette*, March 21, 1837.

of the Island gained traction in the colony's House of Assembly, emboldening both tenants and squatters to challenge the property-owning hierarchy through protests, rent strikes, and other actions. This meant that questions of law and landowning were at the forefront of Islanders' consciousness, revealing underlying assumptions about land ownership and land rights embedded in British colonial law.

As discussed in the previous chapter Edward, conscientious in fulfilling his duty as a colonial judge, enforced the law in what he believed to be a thorough and impartial manner, aspiring to meet the highest standard of British law. This meant that he invariably sided with the absentee and resident landowners who, according to some Islanders, were failing to meet the terms on which they had been granted the land. Yet while in many ways Edward did have common interest with the landowning elite of the Island, in other ways the interests defining the various social and economic groupings on the Island were not so clear cut. In the same way, ideas that underlay the dispossession of Mi'kmaq land and yet denied tenants a stake in the Island land they worked were not as straightforward as they might at first glance appear, and were even at times contradictory.

Edward Jarvis is portrayed by historians of the land protest movement, particularly Rusty Bittermann, as an unapologetic and unwavering enforcer of British colonial law that enshrined the landowners' rights on the Island throughout the decades of agitation for land reform. This perspective is largely true: it was perhaps in his rantings against the protestors that Edward's most virulent conservative views were expressed. A more nuanced exploration of Edward's position vis-à-vis the wealthy elite landowners, however, suggests that equation of the Chief Justice's interests with those of only one group may not entirely give the full picture of Island society and Edward's place within

it. As with any colonial judge, his rulings stemmed from training and experience, political realities, personal beliefs, and personality, and, in Edward's case, the ever-present themes of duty and dependency.

### **Origins of the land question**

On October 7, 1763, following the formal peace treaty between Britain and France, the Island of St. John, as it was then called, was annexed to Nova Scotia by a Royal Proclamation.<sup>3</sup> In 1767, ignoring the rights of the local Mi'kmaq, a land survey divided the Island into 67 lots which were then granted to absentee landowners in Britain.<sup>4</sup> The alienation of the entire island at once was seen as a way to develop the new colony without drawing on British revenues, what Jim Hornby terms "an experiment in user-pay colonization."<sup>5</sup> This process set it apart from the landholding patterns of the other British North American colonies and became an ongoing source of conflict and division: the majority of absentee landlords were land speculators who did not fulfill the condition of the grants by which they were given the land.<sup>6</sup> Lord Durham reported on "the evil effects of that hour [when the land was granted to absentee landlords]" in an 1838 letter to Lord Glenelg:

The great bulk of the Island is still possessed by absentees, who hold it as a sort of reversionary interest, which requires no present attention...in the meantime, the inhabitants of the Island are subjected to the greatest inconvenience, nay, the most

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<sup>3</sup> The Island became a separate colony on June 28, 1769.

<sup>4</sup> Most Acadians living on the Island were deported in 1758; the British estimated approximately 150 "Indians" (Mi'kmaq) remained in the northwest region. Earle Lockerby, *Deportation of the Prince Edward Island Acadians* (Halifax, NS: Nimbus, 2008), 60.

<sup>5</sup> Hornby, *In the Shadow of the Gallows*, 8.

<sup>6</sup> The absentee landowners, most of whom were based in London, consisted of distinguished military and naval career men, important politicians, merchants, and civil servants. The conditions upon which they were granted the land were the payment of quit rents and the settling of their lots with tenant farmers. F.W.P. Bolger, "The Beginnings of Independence, 1767-1787," in Bolger, ed., *Canada's Smallest Province: A History of PEI* (Prince Edward Island Centennial Commission, 1973), 38, 43-6.

serious injury...The absent Proprietors neither improve the land, nor will let others improve it. They retain the land, and keep it in a state of wilderness.<sup>7</sup>

Twelve years after Durham's report 49 lots still did not have a single settler: A British army officer travelling on the Island earlier in the century noted many of them remained in "their primitive wild & desert state," some "as thickly covered with woods as grounds which had never been cleared."<sup>8</sup> Settlers could acquire lands for farming only by renting or buying from landlords who would sell, or by squatting. With land clearing taking decades and farm-making "an arduous, lifelong task," squatters risked spending years making improvements for which they would have no title.<sup>9</sup>

J.M. Bumsted argues that the problem with the anachronistic system of landlordism imposed on the Island was not so much the allocation of Island land to absentee proprietors with the expectation they would develop the wilderness with their own resources as it was the wedding of such a system of land allocation to the premature granting of a colonial government.<sup>10</sup> A separate British colonial administration was established for the Island in 1769, and a legislative assembly in 1773, a move, according to Bumsted, precipitated by the need of the Island's office holders to put pressure on the proprietors regarding the payment of quit rents. Seeking to protect the vested interests of the absentee landlords against the current of local politics, Britain withheld the introduction of responsible government until 1851. Its actions led to ongoing squabbles

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<sup>7</sup> Lord Durham, quoted in Basil Greenhill and Ann Giffard, *Westcountrymen in Prince Edward's Isle: A Fragment of the Great Migration* (Toronto: University of Toronto Press, 1967), 35. Durham, however, did not go as far as recommending the British government turn over the land to the people who tilled it. Errol Sharpe, *A People's History of Prince Edward Island* (Toronto: Steel Rail, 1976), 83.

<sup>8</sup> Edward Walsh, "Some Notices of the Island," in H.T. Holman, "An Account of Prince Edward's Island, 1803," *The Island* 15 (Spring/Summer 1984): 13.

<sup>9</sup> Rusty Bittermann and Margaret McCallum, *Lady Landlords of Prince Edward Island* (Montreal and Kingston: McGill-Queen's University Press, 2008), 10.

<sup>10</sup> J.M. Bumsted, *Land, Settlement and Politics on Eighteenth-Century Prince Edward Island* (Montreal and Kingston: McGill-Queen's University Press, 1987), 197-8.

between members of the Island's government and London as well as to "continuous conflict" between the Assembly, the Lt. Governors, and the Colonial Office and between proprietors and settlers that continued until the end of proprietorial system in 1875.<sup>11</sup>

### **The dispossession of the Epekwitk/PEI Mi'kmaq**

The granting of Island land to absentee landowners meant the dispossession of the Epekwitk people, the Mi'kmaq residing on what is now Prince Edward Island. The Mi'kmaq are part of the Wabanaki Confederacy of the four principal Eastern Algonquian nations and whose traditional territory includes the Island.<sup>12</sup> The Mi'kmaq lived by fishing, trapping, and hunting: "the seasonal movements of the band within its district corresponded with the natural shifts in the availability of fish, fowl and mammals."<sup>13</sup> Observers during the late eighteenth and early nineteenth centuries noted that the Epekwitk/PEI Mi'kmaq depended on fish and wildlife as a source of food and income. Edward Walsh, the British army officer visiting the Island mentioned above, noted that the residents of Charlottetown "chiefly depend for supplies of Fish, Fowl & Vegetables on the MicMacs."<sup>14</sup> Salmon was a particularly important part of the diet of the Epekwitk/PEI Mi'kmaq. John Stewart, upon visiting the Island early in the nineteenth century, remarked salmon was "found in all our rivers" and that they "may be seen leaping out of the water frequently in the months of June and July."<sup>15</sup>

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<sup>11</sup> Greenhill et al, *Westcountrymen*, 37.

<sup>12</sup> The other three nations are the Wolastoqiyik (Maliseet), of what is now New Brunswick, the Paskotomuhkati (Passamaquoddy), whose traditional territory straddles New Brunswick and the state of Maine, and the Panawahpskek (Penobscot), who are situated in present-day Maine.

<sup>13</sup> Stephen E. Patterson, "Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction," *Acadiensis*, 23, no. 1 (Autumn 1993): 27.

<sup>14</sup> Walsh, "Some Notices of the Island," 13.

<sup>15</sup> John Stewart, *An Account of Prince Edward Island in the Gulph (sic) of St. Lawrence, North America* (London: W. Winchester and Son, Strand 1806), 84-5.

It is difficult to know how many Mi'kmaq there were on the Island during the first half of the nineteenth century. Walsh estimated the Epekwitk/PEI Mi'kmaq to be “reduced to 150 Souls” during his 1803 sojourn, noting they had been “most unjustly dispossessed” of lands they had been inhabiting in the north of the Island.<sup>16</sup> While a few white settlers such as Thomas Irwin during the 1830s and, later, Silas Rand, sought measures through the Assembly or by other means to improve the situation of the Mi'kmaq, most Islanders “considered Indian poverty to be natural, and quite openly expected the Micmac to become extinct.”<sup>17</sup> In 1838 Lieutenant Governor FitzRoy would inform the Colonial Office that “with few exceptions [the Epekwitk/PEI Mi'kmaq] are sunk to the most abject and degraded state to which I can conceive it possible for human beings to arrive.”<sup>18</sup>

Bishop Denant, visiting the Island in 1803, mentions eighteen Mi'kmaw families at Lennox Island and thirteen at Malpeque.<sup>19</sup> Officially, however, the Epekwitk/PEI Mi'kmaq were seen to reside only on Lennox Island. A report later in the century on the land question declared that

The Indian claims are limited to Lennox Island, and to grass lands around it, and as it appears by evidence that the Indians have been in uninterrupted occupancy of this property for more than half a century, and have built a chapel and several houses upon the same, the undersigned are of the opinion that their title should be confirmed, and that this very small portion of the wide territory their forefathers formerly owned, should be left in the undisturbed possession of this last remnant of the race.<sup>20</sup>

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<sup>16</sup> Walsh, “Some notices of the Island,” 13.

<sup>17</sup> Andrew MacEachern, “Theophilus Stewart and the Plight of the Micmac,” *The Island* 28 (Fall/Winter 1990), 4.

<sup>18</sup> Sir Charles FitzRoy, quoted in MacEachern, “Theophilus Stewart,” 3. FitzRoy’s comments reflected the very real privation of the Epekwitk/PEI Mi'kmaq, but also his bias that Indigenous people were, as a whole, uncivilized; given the contrast between the settler way of life and that of the mobile Mi'kmaq who lived in wigwams, by definition they would be seen to live in a “degraded state.”

<sup>19</sup> Reverend John C. MacMillan, *The Early History of the Catholic Church in Prince Edward Island* (Québec: Evenement Printing Company, 1905), 125.

<sup>20</sup> John Hamilton Gray, Joseph Howe and J.W. Ritchie to Lieutenant Governor Dundas, July 18, 1861, *Journal of the House of Assembly of Prince Edward Island* (1862), Appendix O.

Lennox Island was sold to the British Aborigines Protection Society in 1855 and purchased by the government in 1870; it was finally granted to the Mi'kmaq in 1905. In 1859, another block of land was set aside for the Mi'kmaq near Morell, as the result of a local landowner deeding land to the Mi'kmaq.<sup>21</sup>

L.F.S. Upton estimates there were about 300 Mi'kmaq on the Island in the early nineteenth century.<sup>22</sup> A 1798 Island census did not take the Epekwitk/ PEI Mi'kmaq into account, “with the exception of one or two individuals.”<sup>23</sup> Oliver Thomas LeBone, a Mi'kmaw chief, stated in an 1838 petition that the population totalled 500 people, but had been reduced from their “once numerous” numbers.<sup>24</sup> A census taken in 1848 found 144 Epekwitk/PEI Mi'kmaq in Prince County, 76 in Queen's County, and 110 in King's County, for a total of 330.<sup>25</sup> In 1855 the numbers were not substantially higher.

Their small numbers notwithstanding, the Epekwitk/PEI Mi'kmaq would in theory have been signatories to the eighteenth-century treaties between the Mi'kmaq and the British, signed in 1725-1726, 1752, and 1760. The 1726 treaty included two parts: the articles of peace and agreement signed by the Mi'kmaq, and the reciprocal promises made to the Mi'kmaq and signed by colonial officials.<sup>26</sup> In 1752, just before relinquishing

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<sup>21</sup> L.F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver, BC: University of British Columbia Press, 1979), 118.

<sup>22</sup> Upton, “Thomas Irwin: Champion of the Micmacs,” *The Island*, no. 3 (Fall/Winter 1977), 13.

<sup>23</sup> Earle Lockerby, “Counting People: 18<sup>th</sup> Century British Censuses in St. John's Island,” *The Island* 55 (Spring/Summer 2004): 15.

<sup>24</sup> Petition of Oliver Thomas LeBone, Chieftan of the MicMac tribe of the Indian Inhabitants of Prince Edward Island, May 1838, TNA, CO 226/56, 228-9. LeBone wrote that the Mi'kmaq have been “deprived of their hunting Grounds without receiving any remuneration for the loss they sustained – by which privation and want has reduced our once numerous Tribe in this Island to a skeleton of Five Hundred Individuals.” He asked for “a Grant of Land [on the Island] on which our People could permanently reside without fear of molestation.”

<sup>25</sup> “Abstract of the Census of the Population and Other Statistical Returns of Prince Edward Island Taken in the Year 1848,” in *Journal of the House of Assembly of Prince Edward Island, Third Session of the Seventeenth General Assembly* (Charlottetown: John Ings, Islander Office, Water Street 1849) Appendix Y.

<sup>26</sup> William Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002), 28.

the governorship of Nova Scotia to Peregrine Thomas Hopson, Edward Cornwallis issued a proclamation repealing his 1749 injunction against the Mi'kmaq and sought signatories for a Treaty. Although it was not signed by all bands, Hopson and his Council “intended it should be a model for treaties to be signed with all the other Micmac people.”<sup>27</sup>

The Micmac War, or Anglo-Micmac War, had begun in 1744 and “eventually blended into” the Seven Years’ War which broke out in 1754, ending in 1760 when the Mi'kmaq finally agreed to treaty terms, “after several earlier failed attempts.”<sup>28</sup> According to Stephen Patterson this was a time of fluidity regarding Mi'kmaq-British relationships: “This was a conflict of diverse peoples in a frontier setting where authority was far from omnipresent.”<sup>29</sup> John Reid concurs, writing that in Nova Scotia “the events of the 1750s and early 1760s – the expulsion of the Acadians, the British military victories of 1758-60, and the treaties of 1760-61 – set the stage for a ten-year era during which Aboriginal and British pacification strategies competed.”<sup>30</sup> This was followed by a partial reconciliation which came to an end with the arrival of the Loyalists in 1783. The 1760-61 Treaty signed between the British and the Mi'kmaq was to protect hunting, fishing, and trading rights, and involved no surrender of land or sovereignty.<sup>31</sup>

While not all of the treaties concluded between the Crown and the Mi'kmaq were signed by the Epekwitk/PEI Mi'kmaq, there is some evidence they were signatories to the 1760 treaty. In his petition LeBone stated that previously the Mi'kmaq had been

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<sup>27</sup> Patterson, “1744-1763: Colonial Wars and Aboriginal Peoples,” in Buckner and Reid, eds., *The Atlantic Region to Confederation*, 134.

<sup>28</sup> Patterson, “Indian-White Relations,” 31.

<sup>29</sup> Patterson, “Indian-White Relations,” 23.

<sup>30</sup> John G. Reid, “Pax Britannica or Pax Indigena? Planter Nova Scotia (1760-1782) and Competing Strategies of Pacification,” *Canadian Historical Review* 85, no. 4 (December 2004), 673.

<sup>31</sup> Pamela Palmater, “My Tribe, My Heirs and Their Heirs Forever: Living Mi'kmaw Treaties,” in Marie Battiste, ed., *Living Treaties: Narrating Mi'kmaw Treaty Relations* (Sydney, NS: Cape Breton University Press, 2018), 34. The meaning of the provisions of the eighteenth-century treaties has been debated in the Supreme Court of Canada in *R. v. Marshall* (1993) and in other court cases.

owners of the Island. And fully enjoyed their acquired resources thereof, until they were visited by people of the French nation, who taught them Religion and the duties of civilized life; after which, by a treaty entered into by that nation with your Majesty's Government, our people became British subjects.<sup>32</sup>

In alluding to “a civilized life” Chief LeBone framed his request in terms to which the British monarch would respond. While the Epekwitk/PEI Mi'kmaq were prepared to adapt their mobile way of life to farm if necessary, however, this did not mean that they had adopted colonial views towards property ownership and abandoned their traditional approach to communal land stewardship as the basis of their law and society.<sup>33</sup> Colonial beliefs regarding landholding were “the product of an agrarian way of life with all its attendant customs, legal principles and spatial concepts, of what land, land holding and property were,” a framework in which it was “difficult, if not impossible, to find a place for indigenous approaches to land.”<sup>34</sup> Their failure to adapt their relationship to the land to one that conformed to the prevailing landowning norms put the Epekwitk/PEI Mi'kmaq at odds with the settler community and was used to justify their dispossession.

### **The legal justification of dispossession**

British policy during the first half of the nineteenth century was not only to reproduce British forms of government in the colonies, it was also to develop settler societies based on laws regarding property. Metropolitan administrators, as Zoë Laidlaw argues, believed that “property in the colonies, as in Britain, should be protected, and that its possession

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<sup>32</sup> Oliver LeBone, petition, to the Queen's Most Excellent Majesty, May 1838.

<sup>33</sup> Mi'kmaw landholding practices are embodied in *netukulimk*, the practice of responsible resource stewardship and the foundation for Mi'kmaw law and social order. See Tuma Young, “L'nuwita'simk: A Foundational Worldview for a L'nuwey Justice System,” *Indigenous Law Journal* 13, no. 1 (January 2016): 75-102. Yet most colonial jurists and officials, including Edward, believed the Mi'kmaq to have no system of landholding or body of law comparable to European law, characterizing the Mi'kmaw approach to justice as a mere primitive blood feud code. See Jarvis, “Murder, Manslaughter, or Justified Retribution?”

<sup>34</sup> Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (New York and Cambridge: Cambridge University Press, 2018), 48.

should form the basis of political power.”<sup>35</sup> Property rights were enshrined in British law: the basic purpose of the English justice system, the preservation of order and the protection of property, “also became the *raison d’être* of the colonial justice system in [all of the] colonies of British North America.”<sup>36</sup> The establishment of the Second British Empire in British North America following the American Revolution saw the imposition of colonial law with its specific views regarding land and property.

At mid-century at least two lawyers from Atlantic British North America used Indigenous peoples’ relationship to the land as a justification for their dispossession. One of these was Edward’s nephew William Munson Jarvis, his brother William’s son.<sup>37</sup> Writing a decade after Edward’s death William Munson, in a study entitled “The Title to the Soil and Early History of the Territory of New Brunswick,” sought legal justification for the way in which aboriginal interest in land was extinguished prior to British settlement.<sup>38</sup> Echoing Beamish Murdoch, a prominent Nova Scotia lawyer, William argued that there could be no dispossession because Aboriginal peoples lacked property rights to begin with.<sup>39</sup> William wrote that in the era of discovery Nova Scotia was “occupied only by wandering tribes, whose small numbers, roving dispositions, and

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<sup>35</sup> Laidlaw, *Colonial Connections*, 7.

<sup>36</sup> David Murray, “Law and British Culture in the Creation of British North America,” in Phillip Buckner and R. Douglas Francis, eds., *Canada and the British World: Culture, Migration, and Identity* (Vancouver and Toronto: University of British Columbia Press, 2006), 68.

<sup>37</sup> William Munson (born in 1838 in Saint John) was the only son of Edward Jarvis’s brother William and Caroline Boyd, his wife’s sister, who had conducted a sibling marriage later in life. William would only have been 14 years old upon Jarvis’s death; he was admitted to the bar in Saint John in 1863.

<sup>38</sup> Bell, “Was Amerindian Dispossession Lawful? The Response of 19<sup>th</sup>-Century Maritime Intellectuals,” *Dalhousie Law Journal* 23, no. 1 (Spring 2000): 173n11. Bell estimates the essay to have been composed between 1866 and 1869, but it appears not to have been published.

<sup>39</sup> Bell, “Was Amerindian Dispossession Lawful?”, 175. As Girard notes, while Murdoch would come to advocate more respectful and humane treatment of the Mi’kmaq, he initially considered them beyond the pale as they “had [no] idea of property (of an exclusive nature) in the soil, before their intercourse with Europeans.” Girard, *Lawyers and Legal Culture in British North America: Beamish Murdoch of Halifax* (Toronto: University of Toronto Press, 2011), 169, 181.

unfitness for the duties and employments of more civilized life, rendered hopeless the improvement of the soil.”<sup>40</sup>

William also identified the lack of the concept of property itself along British lines as the deciding factor. If Indigenous people had no idea of property, then they had no property; if they had no property, then there could have been no dispossession, so the question of the lawfulness of that dispossession did not arise.<sup>41</sup> Thus ideas about property and material improvement motivated and informed the legal and political processes by which colonizers determined Indigenous rights. This meant that in British colonies the dispossession of Indigenous peoples, and sometimes even the uprooting of white grazers, “advanced under that most revered regimental pennant of colonizers, ‘Improvement’.”<sup>42</sup> The notion of “improvement” came from John Locke, who was secretary to the proprietors of the Carolina Colony; it “provided justification and impetus to English expansion like no other.”<sup>43</sup> As Lisa Ford writes, Locke identified Indigenous North Americans as creatures of nature who held no property rights: “property in land came only from improvement.”<sup>44</sup>

### **The Escheat movement**

In response to the lack of freehold tenure on the Island, in the decades following the 1767 lottery the white settlers who worked the land increasingly sought to challenge the titles of those absentee landowners they claimed were not fulfilling the terms upon which they

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<sup>40</sup> William Munson Jarvis, “The Title to the Soil and Early History of the Territory of New Brunswick,” Jarvis Papers, box 23, folder 3, NB Museum Archives.

<sup>41</sup> Bell, “Was Amerindian Dispossession Lawful?”, 176.

<sup>42</sup> John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal and Kingston: McGill-Queens University Press, 2003), 82.

<sup>43</sup> Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge, MA: Harvard University Press, 2010), 15.

<sup>44</sup> Ford, *Settler Sovereignty*, 15.

had been granted the land. These were to encourage settlement through road building and other structural developments, and to pay quit rents. While some of the absentee landowners employed land agents to manage their estates, others did not. Tenants who nonetheless settled on such properties risked carrying out years of backbreaking work clearing land without a legal entitlement should the landowner or his agent appear. As Ian Ross Robertson writes, “the uncertainty and insecurity inherent in the situation set many nerves on edge.”<sup>45</sup> Agitation on the part of tenants and squatters increased throughout the early nineteenth century, culminating in the Escheat movement that took hold during the 1830s. It called for courts of escheat that would return the negligent proprietors’ lands to the Crown, which would then regrant the land in freehold tenure to the actual occupiers.<sup>46</sup> The movement won a major victory in the general election for the House of Assembly in 1838 under its leader, William Cooper. In 1839 Cooper, armed with tenants’ petitions as well as those of the Mi’kmaq, travelled to London to meet with the Colonial Office, but officials there refused to grant him an audience.<sup>47</sup>

As Robertson suggests, the reason the British Government refused to entertain the Escheators’ request for an Island-wide court of escheat was respect for property rights: with many government members owning private estates with tenants paying rent to them, the dispossession of Island proprietors could raise uncomfortable questions close to home.<sup>48</sup> In a political system based on custom, precedent, and convention, notes Robertson, the dangers could not be overlooked of creating precedents within the empire.

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<sup>45</sup> Ian Ross Robertson, *The Tenant League of Prince Edward Island 1864-1867* (Toronto: University of Toronto Press, 1996), 19.

<sup>46</sup> Robertson, *The Tenant League of Prince Edward Island*, 25.

<sup>47</sup> Bittermann, “Mi’kmaq Land Claims and the Escheat Movement in Prince Edward Island,” *UNB Law Journal/Revue de droit de UN-B* 55 (2006): 175.

<sup>48</sup> Robertson, *The Tenant League of Prince Edward Island*, 26.

As Lord Palmerston declared, “We must not be led...by the unprincipled Scramblers of the Island...to establish a principle of authorised spoliation even in a remote corner of the Queen’s Dominions.”<sup>49</sup> As described in detail by Bittermann, the Escheat movement also ran up against the capacity of the Island landowners to use their economic and political power to organize and lobby on their own behalf and to monopolize the ear of the Colonial Office.<sup>50</sup> However Cooper himself was not a straightforward figure, having previously worked as a land agent and, it was discovered later, having purchased several farms on one of the Island lots.<sup>51</sup>

The arguments used by the Escheators to press their claims shed light on notions of land owning that underpinned British law and custom. As Bittermann notes, while Chief LeBone’s petition to the Queen framed Mi’kmaw claims in terms of aboriginal property rights, previous appeals, and need, the claims advanced by Escheat leaders on behalf of the Island settlers from the British Isles were based on a labour theory of value. Escheators held the view that landlords had weak property claims as their deeds were void because they had not fulfilled the conditions on which the land was granted, while settlers “had stronger claims on the basis of the value their labour was creating with farm-making.”<sup>52</sup> A major argument made by opponents of the proprietorial system was what Margaret McCallum labels “producer ideology”: that those who invested the capital and labour necessary to transform the wilderness into productive farmland and communities

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<sup>49</sup> Henry John Temple, 3<sup>rd</sup> Viscount Palmerston, quoted in Robertson, *Tenant League*, 27.

<sup>50</sup> See chapter 6, “Organizing Proprietors, 1831-1834,” in Rusty Bittermann, *Rural Protest*, 110-135.

<sup>51</sup> Robertson, *The Tenant League of Prince Edward Island*, 29.

<sup>52</sup> Bittermann, “Mi’kmaq Land Claims and the Escheat Movement,” 175. As Bittermann also notes, the claims of Acadian settlers were framed differently from those of both the Mi’kmaq and the Escheators.

were entitled to keep the product of their investment and, conversely, those who did nothing with their property lost their rights as property owners.<sup>53</sup>

In contrast, the proprietors evoked what McCallum terms “the sacred rights of property.” As McCallum argues, these rights necessitated state power to enforce, demonstrating that property is never truly private, making the state a “third actor” in the “property” equation, “expressing its collective judgement through the voice of the courts.”<sup>54</sup> Escheators contrasted proprietors’ claims that compulsory sale legislation was an invasion of their property rights by arguing that when particular property rights are immoral, unjust, or an impediment to the welfare of the public, the public can rescind those rights, an argument which finally won the day following the 1875 land commission heralding the end of landlordism on the Island.<sup>55</sup> Until then, however, the British government stood behind the proprietors.

Another argument used by those opposed to the proprietorial system was the “thaumaturgic power of property ownership”: this stemmed from the belief that mere leaseholders could not attain the material prosperity and civic virtue that came from acquiring and maintaining a freehold property.<sup>56</sup> This belief was based on the notion, held widely among rural dwellers in the nineteenth century, that their highest aspiration was to gain control over their labour and its product and acquire independence through a land-based livelihood. As Bittermann suggests, “The belief that such goals of autonomy and independence might best be achieved by securing a land-based livelihood was both

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<sup>53</sup> Margaret E. McCallum, “The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island,” in G. Blaine Baker and Jim Phillips, eds., *Essays in the History of Canadian Law: In Honour of R.C.B. Risk* (Toronto: University of Toronto Press, 1999), 367.

<sup>54</sup> McCallum, “The Sacred Rights of Property,” 379-80.

<sup>55</sup> McCallum, “The Sacred Rights of Property,” 380, 382.

<sup>56</sup> McCallum, “The Sacred Rights of Property,” 367.

widespread and persistent even among those deeply embedded in an industrial labour force.”<sup>57</sup> The literature of rural improvement touted autonomy in agriculture as essential to national interest; the future lay in “building the political fabric on the foundation of the plough.”<sup>58</sup> Thus ideas about land, agriculture, improvement, independence, law, and the state were contested by different groups within society in the struggle over land at the beginning of the nineteenth century, ideas that were either rejected or adopted by those seeking to maintain or reform the landholding system on Prince Edward Island.

### **The Chief Justice and the Escheat movement**

On July 6, 1833, Edward handed out jail terms of several months to five tenants of the 10,000-acre Cundall estate. Three weeks earlier an angry crowd had confronted land agent William Mumford as he attempted to serve writs against a dozen or so tenants for non-payment of rent, demanding that the agent show the title under which the landlord was asserting his claims. Edward, declaring that “all combinations to obstruct or defeat the course of public justice were highly illegal,” seemed to threaten a charge of treason.<sup>59</sup> As Bittermann writes, Edward was “anything but sympathetic with the land reform cause.”<sup>60</sup> In the case of the Cundall estate, however, as Bittermann acknowledges, there was in fact some question over the validity of Cundall’s title, something the Chief Justice

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<sup>57</sup> Bittermann, “Farm Households and Wage Labour in the Northeastern Maritimes in the Early 19<sup>th</sup> Century,” in Daniel Samson, ed. *Contested Countryside: Rural Workers and Modern Society in Atlantic Canada, 1800-1950* (Fredericton, NB: Acadiensis Press, 1994), 67. Bittermann notes that during the 1820s and 1830s a significant number of farmers from northern Nova Scotia and Prince Edward Island worked as wage labourers in the timber camps and shipyards of the Miramichi (51).

<sup>58</sup> John Young, *Letters of Agricola* (1818), 460, quoted in Samson, *The Spirit of Industry and Improvement: Liberal Government and Rural-Industrial Society, Nova Scotia, 1790-1862* (Montreal and Kingston: McGill-Queen’s University Press, 2008), 64.

<sup>59</sup> Edward Jarvis, quoted in Bittermann, *Rural Protest*, 93.

<sup>60</sup> Bittermann, *Sailor’s Hope: The Life and Times of William Cooper*, 82.

would have taken into account.<sup>61</sup> Island tenants at that time could face claims by landlords who had had questionable titles, who had not paid their quit rents, or who had never even set foot on the Island; it was also possible for them to be approached by multiple claimants to their rents.<sup>62</sup> In sentencing the defendants, Edward would have been aware that there was both popular and elite support for escheat, the former by those assuming the reclaimed estates of defaulting proprietors would be regranted to the occupiers, the latter hoping it would open up Crown lands for purchase.<sup>63</sup>

Nonetheless Edward portrayed the tenants as misguided dupes, claiming they were being misled by “designing and evil disposed persons,” thereby implying that outside agitators had used the tenants to foment rebellion.<sup>64</sup> Edward chose to view the land-reform movement as an illegal rebellion potentially threatening to overturn the state rather than a tenant-instigated push to change the oppressive and unjust system of landlordism. Rather than recognizing Escheat leader William Cooper, with whom he would be familiar from his position in Council, as the political face of a wider movement, Edward chose to portray the tenants as led – or, in his view, misled – by middle-class reformers such as Cooper.

In 1837, at a time when the reform movement in the two Canadas was erupting into open revolt, Edward gave a charge to the Grand Jury during the opening of the

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<sup>61</sup> Bittermann, *Rural Protest*, 98. While William Cundall administered part of the estate, title of part was also claimed by his brother-in-law, Rev. Louis Jansen, on behalf of his sister Sarah, both of whom lived in the US; Jansen had subsequently conveyed Sarah’s sixth of the estate to Thomas Billing, who married Theresa Cundall, thereby acquiring another sixth of the estate, but never paid for the first sixth. Katherine Dewar, “A Tale of Two Families: The Campbells, the Cundalls and the New London “Riot” of 1833,” *The Island* 64 (Fall/Winter 2008): 15.

<sup>62</sup> Bittermann, *Rural Protest*, 94.

<sup>63</sup> McCallum, “The Sacred Rights of Property,” 362.

<sup>64</sup> Edward Jarvis, quoted in Bittermann, 93. As Bittermann notes, “hidden hand” explanations of revolt and resistance were pervasive among those in authority in the eighteenth and nineteenth centuries, as outlined by George Rudé in *The Crowd in History*. Bittermann, *Rural Protest*, 302 fn 34.

Supreme Court at Georgetown reflecting his views on the Escheat movement, views that certainly echoed those of the Lieutenant Governor and the Colonial Office. Following the speech the Lieutenant Governor wrote to Edward thanking him for the “excellent advice” given in his speech and for “the manly support which you have so publicly given to my views and exhortations on the same subject.”<sup>65</sup> The contents of his speech were reported in the *Royal Gazette* at length; it stated that the Chief Justice, after noting the county appeared to be suffering much less distress from the previous season’s crop failure than in many other parts of the Island, declared that the Legislature had recently made provision for the purchase and distribution of seed grain “for the benefit of the necessitous.”<sup>66</sup> Edward then suggested that the season of scarcity might in fact prove to be a blessing, by inducing small farmers and others, many of whom had hitherto been “thriftless and improvident,” to practice “a system of economy and good management,” which evidently was “much required among many settlers in the Island.” Referring to the Escheat protests, Edward said that he “regretted extremely to learn, that meetings of a dangerous tendency continued still to be held, where resolutions were passed subversive of law and order, and inconsistent with the wellbeing of society.”

Edward then broached the subject of loyalty. Petitions submitted by Escheators to the government always began by professing loyalty to the Crown, which Edward acknowledged, but declared that a spirit of true loyalty “would be much more indisputably evinced, by an adherence to and a firm support of the laws, than by adopting measures having a direct tendency to resist and defeat them.” It was hoped, Edward went on, that the steps taken by the

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<sup>65</sup> Sir John Harvey to Edward Jarvis, March 22, 1837, LAC, MG 24, B 13, 51-53.

<sup>66</sup> Edward Jarvis, speech at the opening of the Georgetown session, *Royal Gazette*, March 21, 1837.

able and enlightened Administrator of the Government, together with the sentiments of the House of Assembly – the representatives of the people at large – so decidedly expressed, and so resolutely acted upon, would have opened the eyes of these deluded people, and have brought them to a sense of reason; and it is yet to be earnestly desired, that when they observe the strong disapprobation of their unwarrantable proceedings declared by every member of the community who is a friend to good order...they will become sensible that they are the misguided victims of artful demagogues.

In other words, Edward suggested that the measures taken by the Assembly represented the will of the people and the only reasonable course of action. This argument belied the fact that, despite the existence of universal male suffrage on the Island, some Islanders did not necessarily consider the House of Assembly truly representative of the “people at large.” While Escheators secured a majority in 1838, the proprietors, as noted, were able to use their close ties to the Colonial office to thwart any progress they might have made towards escheating Island properties.

Edward then went on to say that the grievances of the Escheat protestors were, as yet, “only imaginary,” but that they would become real if they persisted in their “mistaken course.” Edward was denying the concerns of the tenants and refusing to acknowledge the legitimacy of their grievances. He was also blaming them for the problems he did acknowledge, for being “thriftless and improvident,” suggesting the simplistic solution that they merely needed to practice “a system of economy and good management.” Edward’s overall message was that the tenants had no legitimate issues: if there was a wider reason for crop failures, the “representative” legislative body had the situation well in hand, so there was no reason for complaint. However, how representative Island politics were is an open question. As Bumsted notes, despite a relatively liberal franchise throughout the colonial period, they were “never totally democratic in nature.” This was not only because of the undue influence of those

supporting the proprietorial system who sought to thwart the extension of political power to those who favoured land reform, but also because of “the elitist nature of the politics of the colonial era.”<sup>67</sup>

In his comments to the Grand Jury preceding the New London trial, Edward suggested that the appropriate course of action for tenants, if they had a legitimate grievance concerning the demand for rents, was to take the case to court.<sup>68</sup> As Bittermann points out, however, this was unrealistic for most of the Islands’ tenants. A court of escheat would determine whether landlords’ titles were void owing to their failure to fulfill the conditions laid out in the grants, yet the Colonial Office had denied the colony that forum where those claims could be adjudicated.<sup>69</sup> As Bittermann further states, at common law tenants could not contest the titles of their landlords. Proof that a tenant had acknowledged a landlord, he notes, was sufficient to establish proprietorial claims against a tenant, and proprietorial title could not be challenged to dispute a proprietor’s action to collect rents, greatly limiting the usefulness of the courts as a forum for considering tenant grievances. Moreover, since landlords did not have to register their titles on the Island, tenants there, “even if they had the time, skills, and resources to investigate the titles of landlords before they paid rents and/or acquired leases,” were faced with costly searches of public registries in Nova Scotia and Prince Edward Island, as well as of private collections of title deeds in Britain and elsewhere.<sup>70</sup> Edward’s suggestion, then, that tenants seek legal recourse for their grievances, appears disingenuous at best. While rigorously upholding a “disinterested” administering of the law, he appeared willfully

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<sup>67</sup> Bumsted, “Parliamentary Privilege and Electoral Disputes on Colonial Prince Edward Island, Part One,” *The Island* (Fall/Winter 1989): 25.

<sup>68</sup> *Royal Gazette*, 2 July 1833.

<sup>69</sup> Bittermann, *Rural Protest*, 94.

<sup>70</sup> Bittermann, *Rural Protest*, 94.

blind to the “interested” nature of the law itself, and to the inherent privilege and bias underlying the colony’s property regime.

For Edward, law represented the highest interests of society, and therefore those who broke the law, even in an honest attempt to change it for the better, were unequivocally harming society. Thus there was no reason that all Island residents would not wish to live in a manner that demonstrated an “adherence to and a firm support of the laws.” Moreover, no positive result could possibly come from tenants’ challenging of the law, given that in his belief the unrest was fomented by outside agitators. It is difficult to know whether Edward truly believed that the rebellious tenants were ignorant of their own interests, but he did firmly believe that the hierarchical society of the colony, and of British North America more generally, modelled on that of Britain, was an ideal that those at all levels would, and should, be happy to uphold.

In attributing the protests to outside agitators Edward was seemingly unable, or at least unwilling, to recognize the frustration of tenants who were forced to pay rent while working the land, while absentee landlords who did hold title were permitted to renege on the few obligations they had, in particular paying their quit rents, with impunity. As three members of a Land Commission established in 1860 reported, “almost every man in America considers it a personal degradation to pay rent...The tenantry of Prince Edward Island share the common sentiment of the continent which surrounds them. The prejudice in favour of a freehold tenure is beyond the power of reason.”<sup>71</sup> Rather than recognizing the natural desire of those lower down the hierarchy to agitate for a more even distribution of power and resources, Edward portrayed such desires as unnatural and

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<sup>71</sup> “Report of the Land Commissioners...Relative to the Rights of Landowners and Tenants,” *Assembly Journals*, 1875, Appendix E.

misguided. It is easy to discern Edward's Loyalist leanings in his speech although, ironically, as David Weale and Harry Baglole point out, for several generations Loyalists and their descendants would comprise the vanguard of the land reform movement. While some Loyalists did manage to obtain clear titles, others did not, aware that in Nova Scotia more than a million acres of proprietor-owned land had been escheated and regranted free of charge to Loyalist settlers: "thus it was certainly no accident that the demand for Escheat began to be heard much more frequently in the Island after 1784."<sup>72</sup>

With all of the Island's land having been allocated to absentee landowners in 1767, Loyalists had not received grants upon arriving in the colony, and failed to enforce their claims thereafter. A Loyalist Bill was disallowed by the British authorities in October 1839, and subsequent recommendations of the Land Commission of 1860 were ignored.<sup>73</sup> Despite his own Loyalist background, however, Edward appears have had little sympathy for his fellow second-generation Loyalists who were Escheators. While his father had risen to prominence as a merchant, as a young man Edward identified with landowners. As has been seen, he was like a son to John Coffin, who through his position as one of the Loyalist land agents acquired a 6,000-acre estate at the confluence of the Nerepis and Saint John rivers.<sup>74</sup> The father of Edward's fellow student at the Inns of

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<sup>72</sup> David Weale and Harry Baglole, *The Island and Confederation: The End of an Era* (Williams & Crue Ltd., 1973), 54.

<sup>73</sup> Bumsted, "The Loyalist Question on Prince Edward Island 1783-1861," *The Island* 25 (Spring/Summer 1989), 26. Regarding the Loyalist claims, an 1833 bill seeking to confirm existing grants and deeds and proposing unoccupied land be given to those without grants or land, only passed in 1839. It was then forwarded to London with Attorney General Robert Hodgson's opinion that the Loyalists' claim to have been "defrauded, disappointed and oppressed" rested on "conjecture and surmise." The Loyalist Bill was disallowed by the British authorities in October 1839, the same time they refused to meet with William Cooper's delegation for Escheat in London.

<sup>74</sup> Robert S. Elliot, "COFFIN, JOHN (d. 1838)," in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, accessed November 15, 2022, [http://www.biographi.ca/en/bio/saunders\\_john\\_6E.html](http://www.biographi.ca/en/bio/saunders_john_6E.html). Even after moving to England in 1817 Coffin retained his seat on the New Brunswick Council, which he held until 1828, despite being largely absent; in the meantime he owned the estate in Somerset that Caroline had stayed in and Edward had visited in 1823.

Court and fellow Saint John resident John Simcoe Saunders, John Saunders, owned a 5,000-acre baronial estate along the Saint John River that remained upon his death “a waste howling wilderness.”<sup>75</sup> Moreover, Charles Inglis, Edward's former schoolmaster, had owned vast lands. Edward seems to have absorbed and identified with the interests of landowners, those who owned vast stretches of land but did not work it themselves (or work it at all). Edward, however, seems to have owned relatively small properties, and failed to even retain Mount Edward, the estate he established for his family, in later years, although in renting out the house along with other properties in Saint John and elsewhere he was in fact a landlord himself.

On top of Edward's identification with wealthy proprietors, a bond reinforced through professional and personal connections, his lack of sympathy for the tenant cause would have been further evidenced, as Bittermann has pointed out, by advertisements in the *Royal Gazette* showing him to be the Island agent for the British American Land Company.<sup>76</sup> Escheat, and the judicial response to it, made clear the class barriers to the law for those outside the proprietors' circle and their supporters. Those embracing Escheat would have been, as were the majority of British North American settlers, impoverished farmers, poor wage labourers, or indentured servants.<sup>77</sup> As tenants, such settlers faced barriers to using the courts, as noted above, such as the length and costs of legal action. Additionally, those who were Acadian, Highland Scots, or Irish would have

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<sup>75</sup> W.A. Spray, “SAUNDERS, JOHN,” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed November 15, 2022, [http://www.biographi.ca/en/bio/saunders\\_john\\_6E.html](http://www.biographi.ca/en/bio/saunders_john_6E.html).

<sup>76</sup> *Royal Gazette*, 17 July 1832. Membership in the British America Land Company put Edward's interests even more firmly on the side of the landowners. Established in Quebec in 1832, it received its charter in 1834. The company used shares sold in England to purchase large areas of Canadian land at low prices, with the promise of building roads, mills, and towns, and appears to have had various branches. <https://historyarchive.org/works/creators/new-brunswick-and-nova-scotia-land-company>

<sup>77</sup> Black, *The British Seaborne Empire*, 79-80.

found the language of the courts and of the law books to be a foreign language.<sup>78</sup> Edward, steeped throughout his education and career in the law and its corresponding gentlemanly ideals, would have been oblivious to such obstacles, or at the very least would have seen them as inconsequential. At the 1839 murder trial of Mi'kmaw Tom Williams in Georgetown presided over by Edward, a translator was not provided for the defendant, despite questions regarding his ability to understand the English proceedings in court.<sup>79</sup>

In the end Edward, faced with the Escheat protests, upheld British colonial law. His defence of landowners meant that he eschewed support even for his fellow second-generation Loyalists calling for courts of escheat, an indication of how far he had moved up the economic and social ladder compared to his father Munson. One of those sentenced for the New London “riot,” John Burke, was a blacksmith; Burke had been in possession of a gun which he had brandished when confronted by Cundall and Mumford, but which he declared in court had been left with him for repairs as it was missing its lock.<sup>80</sup> Doubtless few, if any, people in the courtroom would have been aware that Edward’s grandfather had been a blacksmith, that his father had run a hardware business in Saint John and had been a silversmith and blacksmith in Connecticut before the Revolutionary War, and that his Uncle John, then living in Kingston, New Brunswick, was listed among the Connecticut Loyalists as a blacksmith.<sup>81</sup>

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<sup>78</sup> Bittermann, *Rural Protest*, 96.

<sup>79</sup> These questions were not raised at trial but in a letter to the *Colonial Herald* by a settler who was a supporter of the Island Mi'kmaq, Thomas Irwin. Irwin, who could speak Mi'kmaw and who had spoken with Williams, wrote that the defendant spoke “very incoherent and almost unintelligible English” and was thus at a disadvantage during the trial. See Jarvis, “Murder, Manslaughter, or Justified Retribution?”, 58.

<sup>80</sup> Dewar, “A Tale of Two Families,” 16-7.

<sup>81</sup> Wright, *The Loyalists of New Brunswick*. 295; Sharon Dubeau, *New Brunswick Loyalists: A Bicentennial Tribute* (Agincourt, ON: Generation Press, 1983), 78-9. John and a Mr. Wetmore were the resident blacksmiths of Kingston. Doris Calder, *All Our Born Days: A Lively History of New Brunswick's Kingston Peninsula* (Sackville, NB: Percheron Press, 1984), 82.

### **The meaning of loyalty**

It was not just his identification with landowners, however, that lay behind Edward's vociferous denunciation of the Escheat protestors. As noted above, Edward attacked the Escheators for their lack of loyalty to the Island's society and polity. For him, colonists were British subjects and owed their loyalty to Britain, and by extension the colony's social, political, and economic structures. In sentencing those tried for the New London "riot" Edward gave a harsher sentence to one of the defendants, Archibald Campbell, the son of an influential member of the Island's ruling elite who owned land and had been a member of the House of Assembly for twenty years, "seeing him both as one who had turned against his own class, and who had also refused to bend to the will of the court."<sup>82</sup> While the tenants could be considered to be led by "designing and evil disposed persons" outside their class seeking to achieve their political ends, those of more privileged status who betrayed their economic and social class within Island society had no excuse. These men were guilty of a much greater sin: failing to display loyalty and eschewing the class hierarchy that so strictly defined and limited the colony's white settlers, a sin Edward no doubt believed Cooper, the leader of the Escheat party, to be guilty of as well.<sup>83</sup>

In making this distinction Edward echoed his fellow second-generation Loyalist John Beverley Robinson, who served as Chief Justice of Upper Canada from 1829 to 1863. In his sentencing speech at the trial of Samuel Lount and Peter Matthews following their conviction for treason in 1838, Robinson used a similar criterion to justify their

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<sup>82</sup> Dewar, "A Tale of Two Families," 11, 17.

<sup>83</sup> In 1819, soon after arriving on the Island, Cooper had become the agent of Lord Townshend; part of his remuneration was use of a 500-acre property. Cooper also became involved in shipbuilding. Bittermann, *Sailor's Hope: The Life and Times of William Cooper*, 51, 64.

execution while at the same time reinforcing and legitimizing the colonial state.<sup>84</sup> Lount and Matthews, Robinson reasoned, had both benefitted from the state and from their class and had, most importantly, acquired property, thereby entering into a social contract with the government in power according to Lockean principles whereby anyone who owned property “does thereby give his tacit consent and is as far forth obliged to obedience to the laws of that government...”<sup>85</sup> In his widely disseminated address Robinson reinforced the notion of tacit consent and the right to emigrate that in turn repudiated political opposition: “because the government had protected property, provided the concomitant need for an ordered legal system, and fostered material prosperity, there existed no legitimate grievances against the colonial state.”<sup>86</sup>

In British North America elite second-generation Loyalists used their positions to enforce conformity, drawing on specific concepts of social order and monarchism that saw the United States as a foil to their own colonies.<sup>87</sup> The spectre of American republicanism was used to shore up political structures and justify the suppression of challenges to the status quo in British North America, including the use of conservative political violence. This was the case particularly in Upper Canada; Carol Wilton notes that between 1818 and 1841 there were thirty episodes of conservative political violence in the colony. The most infamous of these was the 1826 Types Riot, in which a group of lawyers and law students from well-placed York families broke the printing press of William Lyon Mackenzie, a formerly Scottish newspaper editor who had challenged the

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<sup>84</sup> Jerry Bannister, “The Loyalist Order Framework in Canadian History, 1750-1840,” in Jean-Francois Constant and Michel Ducharme, eds., *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009), 116.

<sup>85</sup> Locke, *Second Treatise*, quoted in Bannister, 121-22, n146.

<sup>86</sup> Chief Justice John Beverley Robinson, quoted in Bannister, “The Loyalist Order Framework,” 122.

<sup>87</sup> Bannister, “The Loyalist Order Framework,” 104.

colony's leaders.<sup>88</sup> One of the riot's ringleaders was Edward's cousin Samuel Peters Jarvis, the son of his father's younger brother William.<sup>89</sup>

The impunity with which Samuel destroyed Mackenzie's property demonstrates the way second-generation Loyalists benefitted from a climate in which violence by specific groups was, if not condoned, at least tacitly approved, while violence or potential violence among less well-placed British North American settlers was routinely subject to severe penalty. Robinson, who was at that time attorney general, neither disciplined the lawyers and law students among the rioters nor prosecuted them in the criminal courts, and most went on to enjoy distinguished careers in the provincial administration.<sup>90</sup> While Edward would certainly not have condoned his cousin's destruction of the printing press, he would have shared Samuel's disdain for reformers and his concern regarding the threat they posed to the existing order. As Cecilia Morgan writes, for the male members of the elite Family Compact of Upper Canada, notions of "independent manliness" that prompted the Types Riot were tied to the sanctity of the family that they had to protect, "to moral obligations and responsibilities needed in order to guard against the kind of chaos represented by reform."<sup>91</sup> Such sentiments would have echoed the beliefs of all the elites of the British North American colonies at the time.

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<sup>88</sup> Carol Wilton, "'Lawless Law': Conservative Political Violence in Upper Canada, 1818-41," *Law and History Review* 13, no. 1 (Spring 1995): 117.

<sup>89</sup> There is no evidence that the two cousins, both lawyers, ever met. Samuel Peters, a member of the Family Compact of Upper Canada, had fought in the war of 1812; the myth that the American invasion of 1812 had been repulsed primarily by the Loyalist militia forces "furnished the moral justification for the control of the province by a narrow elite of Loyalist families." Gwynne Dyer and Tina Viljoen, *The Defence of Canada: In the Arms of the Empire, 1760-1939* (Toronto: McClelland & Stewart, 1990), 87.

<sup>90</sup> Wilton, "Lawless Law," 112. Samuel Peters became deputy provincial secretary and registrar and later chief superintendent of Indian affairs for Upper Canada.

<sup>91</sup> Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996), 76.

Moreover, while Edward would not have supported the unruliness of the Types Riot, he clearly condoned the use of state violence and the unequal and harsh enforcement of the law to uphold the economic and social order. In January 1839 he imposed harsh sentences of six and four months on two men involved in rent resistance on the Selkirk estate, despite neither using violence against bailiffs attempting to distrain on neighbouring farms.<sup>92</sup> The following year, instructing the jury at the trial of seven men who had supported a tenant farmer, James Douglas, who had been held at gunpoint by a party of eight or nine heavily armed men headed by the local sheriff who seized Douglas's livestock, Edward told them that rent resistance was "a crime in which the strong arm of the law must nip in the bud."<sup>93</sup> Moreover, simple presence in a crowd intending to impede the sheriff from distraining Douglas's goods was a criminal offence whether or not the defendants had assaulted the sheriff. Faced with such laws, it is small wonder that the outraged people of the district concluded that "there was no justice in the Country."<sup>94</sup>

### **The violence of the state**

The ultimate recourse of the state to protect proprietors' interests was, of course, the use of military force, "the gold standard for open violence everywhere."<sup>95</sup> Such use of troops reflected the true nature of what C.A. Bayly calls the fiscal-military state, which underlay the British empire but was covered by the "myth of civilian control," the latter reinforced

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<sup>92</sup> Bittermann, *Rural Protest*, 252.

<sup>93</sup> Bittermann, *Rural Protest*, 254.

<sup>94</sup> *Royal Gazette*, last July issue and August 4, 1840.

<sup>95</sup> E.A. Heaman, "Space, Race, and Violence: The Beginnings of 'Civilization' in Canada," in Elizabeth Mancke, Jerry Bannister, Denis McKim, and Scott W. See, eds., *Violence, Order, and Unrest: A History of British North America, 1749-1876* (Toronto: University of Toronto Press, 2019), 140. Heaman cites as an example British soldiers being deployed in 1826 against the Lancashire weavers' "rising" that saw ten people killed and scores injured, but examples abound throughout the Empire during the century.

during the 1830s.<sup>96</sup> As Scott W. See points out, from the late eighteenth century to Confederation all of the British North American colonies adapted and refined laws that “defined rout and riot, crafted guidance for the civil and military authorities to disperse crowds and defuse the possible outbreak of collective violence, and codified the penalties for engaging in riotous behaviour.”<sup>97</sup> In the Canadas in 1850, an act amending the criminal law defined “riot” as an event “where three or more being in unlawful assembly, shall without authority of law, join in doing or actually beginning to do an act with tumult and violence, and striking terror or alarm, or tending to strike terror or alarm, into others,” a definition taken from British penal codes.<sup>98</sup> Throughout the nineteenth century, when faced with threats to state power colonial governments did not hesitate to enforce the “deep legal commitments” of the state to private property and freedom of contract.<sup>99</sup>

As McCallum writes, in Prince Edward Island during the 1830s troops were not used “in aid of the civil power,” but an armed force of civilians was organized by the sheriff. She also notes that “the imperial government made sure that Islanders were informed of the harsh punishments meted out to participants in the Rebellions in Upper and Lower Canada, including hanging and transportation to Australia.”<sup>100</sup> In a letter to his nephew in August of 1843 Edward described the sending of troops into eastern King’s County by Lieutenant Governor Huntley to quell tenant unrest, contrasting it with the New Brunswick government’s “unfortunate” failure to send the troops to address the

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<sup>96</sup> Bayly, “The First Age of Global Imperialism, c. 1760-1830,” in Peter Burroughs and A.J. Stockwell, eds., *Managing the Business of Empire: Essays in Honour of David Fieldhouse* (London and Portland, OR: Frank Cass, 1998), 40.

<sup>97</sup> See, “Aspirations and Limitations: ‘Peace, Order, and Good Government’ and the Language of Violence and Disorder in British North America,” in Mancke et al, *Violence, Order, and Unrest*, 21.

<sup>98</sup> See, “Aspirations and Limitations,” 21-22.

<sup>99</sup> The term “deep law” is used by R.W. Kostal, “Conservative Insurrection: Great Strikes and Deep Law in Cleveland, Ohio, and London, Ontario, 1898-1899,” in G. Blaine Baker and Jim Phillips, *Essays in the History of Canadian Law in Honour of R.C.B. Risk* (Toronto: University of Toronto Press, 1999), 312.

<sup>100</sup> McCallum, “The Sacred Rights of Property,” 394n81.

“state of rebellion” then currently occurring in Miramichi as a result of the Fighting Elections Campaign.<sup>101</sup> He wrote,

there was a commotion in this country two or three months since – about two thousand men armed with scythes, pitchforks, etc. threatened fire & destruction – Sir Henry sent the troops, about 60 of the Rifles – they scoured the country but not an enemy was to be found – like the King of France’s forty thousand men “they marched up the hill, and then marched down again.” The mob had forcibly ejected a tenant & burnt the house – the Grand Jury thought it all right & would not find a Bill – this is an approach to Lynch law. The steam however appears to be [heft] up – human passions must have their safety valve of escape.<sup>102</sup>

Not surprisingly, Edward approved of the use of the military to enforce civil order, but here he shows a sense of detachment, illustrated by his use of sarcasm and his citing of a nursery rhyme to make a cynical comment on the government’s actions.<sup>103</sup>

British troops garrisoned most of the major centres of British North America. In New Brunswick, the military based itself in Fredericton, with detachments of men stationed in Saint John and Saint Andrews.<sup>104</sup> Troops were sent to quell social unrest in Miramichi in the summer of 1822, and two years later Governor Howard Douglas would complain that with civil authorities unable to maintain law and order, he was constantly required to deploy a military force there to keep the peace.<sup>105</sup> As Alan Greer notes, however, while the military constituted a potent and effective coercive force, it was a singularly blunt instrument. When deployed to deal with urban unrest, “since there was

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<sup>101</sup> The government did in fact send in troops. J. Brent Wilson, “Military Aid to the Civil Authority in mid-19<sup>th</sup> Century New Brunswick,” *Canadian Military History* 17, no. 2 (2008): 34.

<sup>102</sup> Edward Jarvis to Robert Hazen, August 2, 1843, Jarvis Papers, NB Museum Archives.

<sup>103</sup> Today the rhyme has as its protagonist “The Grand Old Duke of York,” Frederick Augustus, duke of York and Albany (1763-1827). The Duke, the second son of King George III and younger brother of George IV, was a British field commander in two unsuccessful campaigns of the French Revolutionary Wars. As noted in Chapter 1, a ball celebrating Frederick’s withdrawal from the siege of Dunkirk in 1793 was held during Edward’s visit to the city in 1814.

<sup>104</sup> Peck, *The Bitter with the Sweet: New Brunswick 1604-1984*, 84. Governor Thomas Carleton, who stipulated that two of the six regiments under the control of the Halifax command should be stationed in New Brunswick, chose Fredericton as it was within easy reach of the coast and of the American frontier, “yet far removed from facilities that would enable the troops to desert.” MacNutt, *New Brunswick*, 48, 57.

<sup>105</sup> MacEachern, *The Miramichi Fire*, 44. The troops remained for seven years, despite the limited forces based in Halifax. David Facey-Crowther, “The British Army and Aid to the Civil Power in British North America, 1832-1871,” *Journal of the Society for Army Historical Research* 93 (2015): 312.

not much soldiers could do with rioters other than shoot them (as they did during the Montreal election riot of 1832), officers were understandably reluctant to come to the aid of the ‘civil power’.”<sup>106</sup> On October 7, 1865, thirteen years after Edward’s death, military troops would be used to support the Queens County sheriff against members of the Tenant League, a later incarnation of the Escheat movement. As the *Islander* noted with seeming approval, anyone foolish enough to resist the sheriff accompanied by troops would be subject to “the use of the bayonet or minnie ball.”<sup>107</sup>

Overall, Edward’s adherence to landowning interests in his rulings on the Island land protests represents a backward-looking, conservative view of the law’s role with regard to property owning. While Edward, by seeking to remain “disinterested” when administering the law, in fact reinforced the colonial landowning regime, one of his predecessors, in contrast, had (albeit crossing the line by offering political advice to London) challenged the distribution of land on the Island. At the turn of the century Robert Thorpe urged the Crown to crack down on negligent landowners through invoking a writ of *scire facias* to induce owners to pay their quit rents or lose their land.<sup>108</sup> While Thorpe was hardly a William Cooper fighting for tenants’ rights – he viewed the “lower orders” as “licentious, slothful, inebriated, and disaffected” – he did see the status quo as untenable.<sup>109</sup> Nor does Edward entirely fit the profile, however, of “ultra-conservative

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<sup>106</sup> Allan Greer, “The Birth of the Police in Canada,” in Greer and Radforth, eds., *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992), 19.

<sup>107</sup> *Islander*, October 13, 1865, quoted in Robertson, *The Tenant League*, 228-9. The *minie* bullet, or Minnie ball, invented in France in 1849, had characteristics designed to improve the range and accuracy of the rifle musket. It was used by British and French forces during the Crimean War in the 1850s and by both sides during the US Civil War. See <https://gettysburgcompiler.org/2019/04/30/small-but-deadly-the-minie-ball/>

<sup>108</sup> McLaren, *Dewigged, Bothered, and Bewildered*, 58-9.

<sup>109</sup> Thorpe’s desire to challenge the abuses of landlordism through escheat and other legal measures stemmed in part from his Irish heritage, but while his criticisms had merit, his “excessive judgmentalism” and “propensity to whine about his personal circumstances” brought him little support. His three-year

judge” illustrated by McLaren’s profiles of colonial judges. While Edward’s views on escheat paralleled those of London and the Island landowners, he prided himself on administering the law of the colony in what he believed to be an impartial manner, thereby carrying out what he saw to be his ultimate duty as a jurist.

### **Race, class, gender, and the landowning ideal**

It is evident that class, a prevalent force in colonial society, played a pivotal role in determining whose property rights were ultimately upheld in colonial law. Wealthy Island proprietors were able to monopolize London’s ear for decades during the early to mid-nineteenth century, while landless tenants trying to gain freehold plots for themselves faced the impossible task of trying to challenge the proprietors’ title in court. The contrast in the degree to which colonial law represented the landowners’ property rights versus those of the tenants belied the idea that all were British subjects with the rights of British citizens under the jurisdiction of British law. Elizabeth Mancke et al write that while in principle laws and jurisprudence encompassed all peoples residing in British North America, in practice British justice was “highly contested and variably applied.”<sup>110</sup> Within the Empire, communities “with perceived deficiencies in terms of property ownership and agricultural improvements,” such as those of Indigenous peoples or fishing outposts, “were denied the full array of constitutional rights and protections,” although those who objected to imperial policies regarding land distribution, such as the

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tenure ended in 1805, whereupon he left for Upper Canada and, “true to form...quickly became embroiled in Upper Canadian politics.” McLaren, *Dewigged, Bothered, and Bewildered*, 59, 62, 65.

<sup>110</sup> Mancke et al, “Introduction,” in Mancke et al, eds., *Violence, Order, and Unrest*, 10.

Escheators and the Mi'kmaq on Prince Edward Island, as has been seen, fought to attain justice both locally and from the Crown itself.<sup>111</sup>

Another group given short shrift by colonial law was Black people. As was the case in the other British North American maritime colonies, New England planters and Loyalists brought enslaved Africans with them to Prince Edward Island. Free Black Loyalists were amongst the Loyalists who fled New York in 1783, a group that included Edward's father Munson, although it is unclear how many, if any, Black Loyalists settled on the Island. In 1781 the Island legislature legalized slavery by passing *An Act, declaring that Baptism of SLAVES shall not exempt them from BONDAGE*.<sup>112</sup> As Hornby notes, the Act opened the way for slave-holding, the colour line, "and the full range of human rights abuses found in slave societies of this period."<sup>113</sup> However, slavery slowly died out during the 1820s as it was replaced by various forms of limited-term servitude; Prince Edward Island repealed its slavery act in 1825.<sup>114</sup> Even after slavery was abolished on the Island, however, Blacks' status and progress remained limited. African-Islanders continued to work as labourers, and to be "largely invisible in the colony's public affairs."<sup>115</sup> In 1831, despite the findings of a coroner's jury assembled at Malpeque that the death of 18-year-old James MacDonald was caused by "a series of ill treatment," his master, George Thompson, was not charged with murder. As Hornby suggests, "we may

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<sup>111</sup> Mancke et al, "Introduction," 10.

<sup>112</sup> *An Act, declaring that Baptism of SLAVES shall not exempt them from BONDAGE*, 1781, c.15m, Public Archives and Records Office of Prince Edward Island, Charlottetown, PE.

<sup>113</sup> Hornby, *Black Islanders: Prince Edward Island's Historical Black Community* (Charlottetown, PE: Institute of Island Studies, 1991): 5.

<sup>114</sup> Harvey Amani Whitfield, *North to Bondage: Loyalist Slavery in the Maritimes* (Vancouver and Toronto: UBC Press, 2016), 86.

<sup>115</sup> Hornby, *Black Islanders*, 11. Hornby notes that Black Islanders would not be recognized by the census for another 100 years.

suspect that an all-white jury, as every Island jury was at the time, would find it difficult to convict a fellow settler of murdering a black servant.”<sup>116</sup>

Black Islanders’ unequal access to justice under colonial law extended to property owning as well. In the early nineteenth century a neighbourhood named “the Bog,” a damp area on Charlottetown’s western edge, became the de facto Black area of the town. In 1812 one of its residents, Samuel Martin, petitioned the Island’s Executive Council for a “Piece of Vacant Land near Governor’s Creek,” a boggy and vacant area that did not have its own lot number.<sup>117</sup> A year later a competing petition was filed by James Bagnall, stating he had been granted the land by Council in 1807; Martin once again requested the land, “stating his having erected a House thereon and cultivated and improved the said ground.”<sup>118</sup> Although proof of Bagnall’s grant was not found in the Council minutes and Bagnall refused to provide the proof he had of it, he was determined to have “the most preferable claim to said Land.” In October Sam once again petitioned for the piece of vacant land upon which he had made improvements, but the Council ultimately found for Bagnall. As Hornby writes Martin did not appear to have an equal chance in the competition, given the Minute references to “Mr.” Bagnall compared with “Saml Martin a Black Man.”<sup>119</sup>

Besides race and class, gender factored into notions of landholding and property rights. As has been seen, those agitating for land reform on the Island equated autonomy with a land-based livelihood, and an independent yeomanry working the soil was seen to

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<sup>116</sup> Hornby, *Black Islanders*, 33.

<sup>117</sup> Hornby, *Black Islanders*, 47. The land was in the fourth hundred of Charlottetown lots, bounded on the northwest by Government Pond, on the north by FitzRoy Street, on the east by town lot 55, and on the south by town lots 15, 16, and 17.

<sup>118</sup> Hornby, *Black Islanders*, 48.

<sup>119</sup> Hornby, *Black Islanders*, 48. Martin was in the end somewhat successful in his application, however: as Hornby notes he appears to have remained on the land adjacent to Governor’s Pond for the rest of his life.

be the basis of the polity of the colonial state. Beginning in the eighteenth century, according to Catherine Hall, independence became a quality increasingly associated with masculinity: “a man’s individuality, his male identity, was closely tied to independence.”<sup>120</sup> This belief was tied to the rise of the middle class in Britain, a time when professionals, manufacturers, merchants, and farmers increasingly sought independence from the paternalistic relation they had had with the aristocracy and gentry. This coincided with the individual subject who became central to political thought and action, but whose individuality was based upon difference and on “others.”<sup>121</sup> These “others” were the dependents who were represented by the male head of the household – women, children, and servants – an ideal very much adhered to by Edward Jarvis’s family and one that will be explored more fully in Chapter 5. In reality, as Hall points, “this independent man was himself dependent on those around him,” including “his wife who managed the household and ensured his comfort [and] his servants who did the work within the household,” a reality which, as will be seen, was very much the case with Edward.<sup>122</sup>

### **Dependency, debt, and debtors’ prison**

Despite Edward’s public status as an independent Victorian male, then, in reality he was dependent on those around him, as well as being dependent on the British Crown for his livelihood. The problem with the latter form of dependency was not only that it meant he had to constantly worry about the possibility of cuts to the Colonial Office’s budget and

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<sup>120</sup> Catherine Hall, *White, Male and Middle Class: Explorations in Feminism and in History* (New York: Routledge, 1988), 257.

<sup>121</sup> Hall, *White, Male and Middle Class*, 256-7.

<sup>122</sup> Hall, *White, Male and Middle Class*, 258.

the resulting scramble to outdo other candidates in using patronage to find a new position, it also meant that he could potentially lose his professional employment as a jurist and face the possibility of ruin. As Sarah Pearsall writes, in Anglo-America during the later eighteenth century ruin was defined by gender. While for women ruin implied sexual violation, for men it meant “grave financial loss bringing poverty and disgrace,” which could push them into a state of dependence: “In that case, they might be not much better off than their wives, their children, or their servants.”<sup>123</sup>

The shame of dependency was not the only stigma awaiting men who faced the prospect of financial ruin. Debtors’ prison was another very real penalty during the nineteenth century, as it had been for Edward’s uncle in the eighteenth century. In Prince Edward Island debtors were imprisoned in debtors’ wards for shorter or longer periods in the jail in Pownal Square. Conditions varied; magistrates visiting the Georgetown jail on July 22, 1838 found that John M’Isaac, a debtor, confined under a Capias Execution, was found to be without means to support himself in prison, “and it was deemed necessary that the Prison allowance should be furnished to him, with the addition of porridge for breakfast, which the jailer was directed to supply.”<sup>124</sup> Five days earlier the magistrates had found the jail “clean and the walls whitewashed, and one person, John Murphy, in confinement for small Debt.”<sup>125</sup> However during a visit four months later the magistrates found Murphy to be “exceedingly ill and exhausted from a severe cough and fever,” for which they directed that “Medical aid be obtained, and that proper care and nourishment

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<sup>123</sup> Sarah M.S. Pearsall, *Atlantic Families: Lives and Letters in the Later Eighteenth Century* (Oxford, UK: Oxford University Press, 2008), 121.

<sup>124</sup> Thomas Owen and William MacKay, “Report of the Visiting Magistrates of Georgetown Jail,” August 31, 1838, JHA-PEI, 1839: Appendix C, no. 5.

<sup>125</sup> Owen and MacKay, “Report,” August 31, 1838.

be provided for him as speedily as possible.”<sup>126</sup> Murphy had also been receiving jail allowance, presumably unable to provide for his own upkeep.

Imprisonment for debt existed in other British North America colonies: in Upper Canada over 2,300 debtors, almost half the prison population, were in prison in 1836.<sup>127</sup> The “ever-present reality” of debt was a result of colonial economies that relied heavily on credit “in an era when capital was lacking or not liquid, specie in short supply, and the margin between economic success and failure narrow.”<sup>128</sup> Arresting debtors was done not to punish default but to prevent them from absconding or concealing assets. As Jeffrey McNairn writes, with no bankruptcy law by which assets might be inventoried and with certain types of property immune to seizure, imprisonment for debt was “the only means to compel debtors to account for all assets that might be used to satisfy a creditor.”<sup>129</sup> Ameliorating statutes were passed in the British North American colonies during the decades leading up to Confederation, but imprisonment for debt was not entirely abolished anywhere until after 1867.<sup>130</sup> It was not until 1879 that an Act abolishing imprisonment for debt was passed by Prince Edward Island’s House of Assembly.<sup>131</sup>

As has been seen, imprisonment for debt had an unfortunate precedent in Edward’s life: the threat of debtors’ prison had driven his uncle, Fyler Dibblee, to suicide

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<sup>126</sup> Owen and MacKay, “Report of the Undersigned Magistrates, appointed to visit the Jail at Georgetown, in King’s County,” November 30, 1838, JHA-PEI, 1839: Appendix C, no. 6.

<sup>127</sup> Peter Oliver, *Terror to Evil Doers: Prisons and Punishment in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998), 48. Similar figures were found in Prince Edward Island for 1841: Magistrates reported that 70 prisoners had been admitted for “Crimes and Misdemeanors” while 55 were debtors. William Macintosh and H.M. Holl, “Report of the Visiting Magistrates of Charlottetown Jail, for the Year ending 31<sup>st</sup> December 1841,” to Lieutenant Governor Henry Vere Huntley, January 1, 1842, JHA-PEI, 1842, Appendix E, 43.

<sup>128</sup> Girard et al, *A History of Law in Canada Vol. 1*, 646.

<sup>129</sup> Jeffrey L. McNairn, “‘The common sympathies of our nature’: Moral Sentiments, Emotional Economies, and Imprisonment for Debt in Upper Canada,” *Histoire sociale/Social History*, 49, no. 98 (Mai/May 2016): 52.

<sup>130</sup> Girard et al, *A History of Law in Canada Vol. 1*, 652-3.

<sup>131</sup> Lorne C. Callbeck, *The Cradle of Confederation* (Fredericton, NB: Brunswick Press, 1964), 102-3.

during his first winter in Parrtown in 1784. Edward, however, seems to have kept on top of his debts for the most part through deferring payments with the expectation of future income. While numerous politely worded merchants' requests for payments can be found in his papers, these were no doubt the norm for much of the elite of the period, and his creditors seem to all have been satisfied. Edward himself, though, seemed to have trouble collecting on money owed to him through his nephew Robert, his intermediary in Saint John. Edward's action against Monckton was for shielding himself from creditors by fraudulently claiming to be an attorney. His calling the Island's tenants "thriftless and improvident" suggests he saw his own constant attempts to balance his income and expenditures in a different light.

### **Escheat, the Lockean ideal, and the dispossession of the Epekwitk/PEI Mi'kmaq**

The link between independent landowning and masculinity in nineteenth-century Prince Edward Island was one of the ways that landowning and property rights were imbued with notions of class, race, and gender. Beliefs about landowning and its relationship to citizenship, and the state's responsibility to protect the rights of different groups of citizens, were widely debated topics during the political struggle for escheat. However beyond the competing interests of tenants versus landlords, Bittermann and McCallum argue, the struggle for Escheat masked a more fundamental schism on the Island. Escheators and the proprietors represented two differing views regarding land use on the Island, the former espousing the idea that land use should promote a just social order, the latter seeing land as a means for economic development. The Escheat movement "clashed with a vision of progress that subordinated claims of justice and democracy to the pursuit

of economic growth and improvement and assigned to the state the role of protecting individual accumulation and providing necessary infrastructure.”<sup>132</sup> In upholding the law that enshrined the rights of property owners, Edward was siding with the forces of economic development that saw land as a commodity, a vision he himself embodied in his own landowning and renting practices.

Of course neither the proprietors nor the tenant farmers/would-be freeholders recognized a third way of envisioning the land, the way of the Epekwitk/PEI Mi’kmaq, the original inhabitants, who saw stewardship of the land as the basis of their laws and social structures, and who steadfastly rejected the institution of private property. Their mobile, seasonal way of life, however, did not adhere to settler colonial notions of “improvement,” consistent with ideas about progress, civilization, and subjecthood. Certainly Edward, along with most of the settler community, would have agreed with his nephew’s proposition, written fourteen years after his death, that “Indians” lacked property rights and that this absence arose from their failure to “improve” the land.

Neither the proprietors nor the tenants, however, seemed aware of the fundamental contradiction inherent in the Island’s land policy. The Epekwitk/PEI Mi’kmaq’s choice to not cultivate the land up to that point justified the dispossession of it in 1767, yet the proprietors who failed to ensure settlement of their lots and used the land as a commodity for speculation were not subject to legal processes that would result in their estates being escheated. Thus while the Lockean ideal of “improvement” was used to justify the dispossession of Epekwitk/PEI Mi’kmaq land, it did not confer proprietary

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<sup>132</sup> Bittermann and McCallum, “When Private Rights Become Public Wrongs: Property and the State in Prince Edward Island in the 1830s,” in John McLaren, A.R. Buck, and Nancy E. Wright, *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: University of British Columbia Press, 2005), 162.

rights to the tenant agitators: the immediate needs of the empire to defend property owners, even absent ones, trumped the concerns of non-property-owning settlers, denying them courts of escheat that would grant them free title.

Edward, in identifying with the wealthy landowners and upholding the rights of the absentee proprietors, was implicitly condoning such a ranking of priorities. It is probably safe to conclude that neither he nor any of the colonial officials upholding the rights of the Island's proprietors saw the ironic contradiction at the heart of British policy towards the Escheators. In the end, in the British empire of the early to mid-nineteenth century, the need to structure power around landholding for economic prosperity for a minority of property owners and quell tenant agitation in a colony where tenants predominated took precedence over a commitment to Lockean ideology. Edward Jarvis, second-generation Loyalist dependent on the Crown, law-and-order judge and believer in his duty to empire that he was, spent his tenure as Chief Justice of that colony ensuring that it did.

## **Conclusion**

In his book *Eminent Islanders*, Charles J. McMillan asks, regarding the land question, what if? What if the lottery winners of 1767 had, in fact, met the two conditions they had agreed to in writing, i.e. to populate their land with (desirable) settlers at roughly one settler per 200 acres, and to collect annual quitrents at a rate of two shillings for poor land and six shillings for good land?<sup>133</sup> McMillan estimates the initial administrative costs for the Island to have been about £1400 per year; even the outright sale of 1400 acres of land at £10 per acre per year, he suggests, with a small portion going to finance the local

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<sup>133</sup> McMillan, *Eminent Islanders*, 372-3.

government, would have increased the economic value of the rest of the land remaining for sale or lease.<sup>134</sup> Of course most of the original grantees, as has been seen, refused to meet the terms of their grants, and newer landowners, particularly the Island's shipbuilders, "preferred the narrow definition of property rights without accepting their own liabilities." Because of this failure, for over 100 years "the ensuing political battles, including the need for responsible government, scarred the landscape with fights to correct past misjudgments."<sup>135</sup> It was within this scarred landscape that Edward Jarvis fulfilled his role of upholding the proprietors' rights, despite their failure to adhere to the terms to which they had agreed upon when granted their lands.

An even more intriguing "what if" is imagining what the colony of Prince Edward Island could have been had the British Government adhered more closely to the terms of the 1763 Royal Proclamation and dealt more justly with the Epekwitk/PEI Mi'kmaq, the original inhabitants of the Island. Also, had the Island's Acadians not been deported in 1758, the colony originally known as Île St. Jean would have had a far greater French-speaking population than was the case. As it was, the Epekwitk/PEI Mi'kmaq were dispossessed, Acadians were deported, and the Island's largely Anglophone tenantry had to wait until the creation of the Tenants' League and the colony's joining Confederation to see true land reform. Yet, as McCallum and others point out, the years of agitation for Escheat were not fruitless. The state was, however grudgingly, increasingly forced to address the grievances raised by the Island's tenant farmers and other segments of Island society who were unhappy with a status quo that, as they saw it, held back economic progress for all Islanders.

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<sup>134</sup> McMillan, *Eminent Islanders*, 373.

<sup>135</sup> McMillan, *Eminent Islanders*, 373-4.

As McCallum states, the Escheat movement also went some way to consolidating ideas regarding “improvement” and who had the right to use the land in ways that confirmed notions that were the foundation of British property law.<sup>136</sup> While Edward would penalize the Escheat agitators, he would have agreed, fundamentally, with the principle of private title to land, even as he castigated those who actually worked the land for being lazy and improvident. Edward, along with so many others, failed to see not only the injustice, but the fundamental contradiction, at the heart of the dispossession of the Mi’kmaq’s territory: its justification based on the original inhabitants’ failure to till the land. While the proprietors were finally abandoned with the ascension of the Island to Confederation, the notion of inherent inalienable property rights of landowners was upheld by the colonial courts for over 100 years. Ironically, had Edward used his power as a council member and jurist to enact measures to hold the landowners to account in the payment of their quit rents, it would have given the colony greater financial resources to draw upon, perhaps thereby necessitating a less severe reduction in his own salary with the advent of responsible government and making his final years a little easier. As has been seen, however, as someone committed to his duty to enforce colonial law, Edward continued to do so diligently until his death, despite the increasing costs of his concomitant dependency on the Empire and his eventual abandonment by London.

For Edward both duty and dependency were bound up with another term: loyalty. Loyalty, for him, meant a responsibility on the part of those who benefitted from the state’s benevolence to support the state by not rebelling or taking action against the state. It seems plausible to suggest that these views were a natural evolution for him given his status as a second-generation Loyalist whose forebears had rejected the upending of law

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<sup>136</sup> McCallum, “The Sacred Rights of Property,” 375.

and order epitomized by the American Revolutionary War. To Edward, the state was the natural guardian of citizens' rights, and those engaging in protest or, worse still, violence, to challenge the status quo were guilty of serious crimes which might even amount to treason. At the same time, in the end Edward himself was not rewarded for his loyalty in the conscientious performance of his duty by the colonial authorities who ultimately did not protect his interests. In the years following the Chief Justice's death the contradiction between the British government's upholding of property rights, the demand of the Island's settlers, and the irresistible tide of reform that had led to responsible government, would become too great to contain and the landholding regime that defined the colony would finally crumble.

## CHAPTER 5

### **The gendered household: Separate spheres, family relationships, and gentility**

This is a most lovely day and we are all well – sitting with the windows open. Nothing new has occurred excepting that I have refused one invitation to a dance for this evening. We have a large dinner party at home tomorrow, dine out the next day, perhaps go to the opera the following evening which will end this week. On Monday we are engaged for a Ball, Tuesday our Opera Night, on Wednesday another Ball. This will give you some idea of the gaiety of Malta, but I assure you it is only beginning.

– Caroline Boyd, December 13, 1824<sup>1</sup>

There have not been any parties since Lent, not even a Ball on her Majesty's Marriage with Prince Albert. Mamma has all the inclination to give the young people a dance, but her health will not admit her to make the exertion. Several of the young Ladies have offered to come and assist me in making Blancmanges, Jellies, &c. &c. as they as well as those at Government House are very anxious that we should give a Ball. I think that if we young ladies got together there would be more play than work done.

– Mary Jane Jarvis, May 4, 1840<sup>2</sup>

In a letter to her sister Caroline in February of 1837 Anna Maria Jarvis, wife of Chief Justice Edward James Jarvis, described the lavish ball they had hosted in their recently completed Charlottetown home, at which there were eighty-one people including their children: “The dancing was kept up with great animation until nearly four o'clock in the morning & every one expressed themselves delighted with their entertainment.”<sup>3</sup> While the ball, according to Maria's description, appeared to have been a success, her letter also outlines the challenges she had faced organizing the ball while completing the furnishing and decorating of their new home. Her letter reveals an aspect of Edward's professional career – the social functions expected of a man of his status – that depended upon his wife Maria's unpaid labour. Maria would also be expected to run the household, while

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<sup>1</sup> Caroline Boyd to Mary Boyd, December 13, 1824, Jarvis Papers, NB Museum Archives.

<sup>2</sup> Mary Jane Jarvis to Caroline Jarvis, May 4, 1840, Jarvis Papers, NB Museum Archives.

<sup>3</sup> Anna Maria Jarvis to Caroline Jarvis, February 13, 1837, Jarvis Papers, NB Museum Archives. Caroline had recently married Edward's brother William in Saint John and the two had a young son, also named William. This is the William Munson Jarvis mentioned in Chapter 4.

maintaining a particular lifestyle based on conspicuous consumption and upholding current notions of gender, class, race, and gentility. Maria's role in the Jarvis family home points to the significance of family and household in both Edward's personal and public life.

Edward's status as an early Victorian British North American gentleman meant that he was assumed to be the head of a household consisting of a husband and wife, children, servants, and at times guests or other family members. Moreover, the family's status as one of the most prominent families of Charlottetown brought with it social obligations that the Jarvises, having just spent four years rubbing shoulders with elite families in both London and Malta, took seriously. These social requirements necessitated Maria fulfilling her role as head of the household, with children and servants providing their labour. They meant owning a house of a certain style and size; to this end Edward built what he planned as his children's ancestral home, where he could also host the grand social occasions he deemed to be part of his elite status and professional standing. The social requirements also depended in large part on Maria's experience and hard work.

While Edward's role as husband and father was an essential part of his status as an elite male in British North America and allowed him to fulfill his social obligations as Chief Justice, it was at times at odds with his professional duty. The commitment to duty that defined Edward's approach to his professional role also applied to family. On at least one significant occasion, as shall be seen, the practical demands of Edward's profession and his responsibility to his family came into direct conflict, and he ultimately chose the latter over the former. In addition, Edward often couched discussions of his career in

terms of his need to support his family. The distant and impersonal Colonial Office, however, preoccupied with mitigating the financial burden of the colonies to the metropole, had little sympathy for judges' personal lives: when, after Maria's death, Edward was unable to work owing to his enduring grief and depression, he was granted a mere month's leave. The void left by Maria's death – a second marriage notwithstanding – coupled with ongoing financial issues that came to a head with the significant reduction in his salary in 1851, meant that Edward's final years would to a large extent be fraught with loneliness, stress, and anxiety. The challenges of his dependency on the British government coupled with his commitment to duty would become particularly acute.

### **The family as a foundation of empire**

Recent historians of the family have argued that the family itself operated as a key site of imperial processes, “a social and economic unit at the heart of colonial life, and a building block for imperial relationships and identities.”<sup>4</sup> Historians increasingly demonstrate that family lives formed a crucial part of colonial culture, and that “imperial processes and power struggles were often constituted in and through the family.”<sup>5</sup>

Throughout Edward Jarvis's imperial career, his family played a critical role both in being the place where he played the role of husband, father, and patriarch, and in enacting and reproducing notions of gender, class, and race. These power relationships reflected what Adele Perry calls the “mutual imbrications” of “personal” and “political” in colonial

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<sup>4</sup> Esme Cleall, Laura Ishiguro, and Emily J. Manktelow, “Imperial Relations: Histories of family in the British Empire,” *Journal of Colonialism and Colonial History* 14, no. 1 (Spring 2013): 3.

<sup>5</sup> Cleall et al, “Imperial Relations,” 3.

history.<sup>6</sup> Perry writes that the patriarchal, domestic family became both a potent metaphor for a virtuous political life and “a remarkably powerful presence in ordinary people’s lives” in the Loyalist communities in the Canadas and the Maritimes.<sup>7</sup> Households headed by patriarchs, suggests Elizabeth Elbourne, were local centres of power as well as “nodes of imperial power.”<sup>8</sup> The concept of family combined inequalities of power with belonging within a family, which gave rise to unequal power relations and hierarchies of gender and race in colonies such as Jamaica: “Just as men and women, parents and children, were equal, unequal and different, so white people and black could also be contained within this embracing framework.”<sup>9</sup>

Rothschild, writing about the Johnstone family’s life across the British empire during the eighteenth century, sees it as a microhistory that sheds light on the wider empire, a story of “the multiple or multiplier effects of empire” in which individuals were connected “by information and expectations” to events in other parts of the empire.<sup>10</sup> The family was a site in which relationships of power within the empire were replicated and reproduced, as well as the site through which imperial lives were mediated and given meaning. Families disseminated an ideology of gender that was foundational to the cultural and political project of state and empire-building, as Philippa Levine states. During the eighteenth century, when the British fiscal-military state was created, far-flung networks of power and kinship meant that “many Scots, Protestant Irish,

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<sup>6</sup> Adele Perry, “Historiography that Breaks Your Heart: Van Kirk and the writing of feminist history,” in Robin Jarvis Brownlie and Valerie J. Korinek, eds., *Finding a Way to the Heart: Feminist writings on Aboriginal and women’s history in Canada* (Winnipeg, MB: 2012), 92, quoted in Cleall et al, “Imperial Relations,” 4.

<sup>7</sup> Adele Perry, “Women, Gender, and Empire,” in Buckner, ed. *Canada and the British Empire*, 225.

<sup>8</sup> Elizabeth Elbourne, *Empire, Kinship and Violence: Family Histories, Indigenous Rights, and the Making of Settler Colonialism, 1770-1842* (Cambridge, UK: Cambridge University Press, 2023), 13.

<sup>9</sup> Hall, *Civilizing Subjects: Metropole and Colony in the English Imagination 1830-1867* (Cambridge, UK: Polity, 2002), 189.

<sup>10</sup> Rothschild, *The Inner Life of Empires*, 2.

Americans, Africans, Asians, and Amerindians (men and women) began to identify with a culture ‘both distinctly British and distinctly imperial’.”<sup>11</sup> Phillip Buckner defines Britishness as a commitment to certain institutions, particularly the monarchy and the parliamentary system, and a sense of values including the rule of law, the freedom of the individual, the sanctity of private property, and “some vague and rather ill-defined notions about duty and fair play,” noting however that it was a flexible identity “compatible with a range of other non-British identities.”<sup>12</sup> These institutions both rested on and were reinforced by the institution of the family, most certainly a central part of Britishness.

The family was also a metaphor for the imperial family, with Queen Victoria the “monarch-as-mother” and the colonies as children, a configuration that, Perry notes, presented the Empire as simultaneously communal and hierarchical.<sup>13</sup> The familial image of Empire, she suggests, was played out in the ritual and ceremonies that featured officials’ families and wives: “the balls, openings, and galas organized and attended by officials’ wives were not an incidental part in Empire’s public trappings...Ritualized female display marked the forming of nations just as it did the maintenance of Empire.”<sup>14</sup> As has been seen the Jarvis family attended balls and soirees in Malta, but were unable to host such events themselves owing to the cost. The Loyalist community in Saint John and elsewhere in British North America held balls and soirees in its pursuit of gentility. As

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<sup>11</sup> Philippa Levine, “Introduction: Why Gender and Empire?”, in Levine, ed., *Gender and Empire* (Oxford: Oxford University Press, 2004), 17.

<sup>12</sup> Buckner, “Introduction,” in Buckner, ed. *Canada and the British Empire* (Oxford: Oxford University Press, 2008), 6.

<sup>13</sup> Perry, “Women, Gender, and Empire,” 228.

<sup>14</sup> Perry, “Women, Gender, and Empire,” 228.

mentioned at the beginning of this chapter, the Jarvis family held a ball upon moving into their new ancestral home, one involving a significant outlay of time, energy, and money.

The family, then, was a metaphor for empire, a site for the reproduction of its citizens and of hierarchies of class, race, and gender, and a space for ritualized female display. English writer Anthony Trollope saw the family, along with labour, as a civilizing force, a means to impart British civilization to its colonial possessions. For him, like most middle-class men of the mid-Victorian period, “familial and domestic order was at the heart of social order. A good society was one in which the classes, the ‘races’ and the sexes knew their place and stayed in it.”<sup>15</sup> Similarly Lord Shaftesbury declared that the strength of “the people” rested upon “the purity and firmness of the domestic system...At home the principles of subordination are first implanted and the man is trained to be a good citizen.”<sup>16</sup> Edward’s family, then, would be seen to be fulfilling a number of functions related to empire, both within the outpost of empire in which they became colonizers, and within British North America.

### **Letter-writing and family relationships**

As an imperial family that became part of the Loyalist diaspora following the American Revolutionary War, the Jarvises depended on written correspondence to stay connected with each other. For the first generation of Jarvis Loyalists, five of whom were exiled to British North America and five of whom remained in the United States, letter writing was

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<sup>15</sup> Hall, “Going a-Trolloping: imperial man travels the Empire,” in Clare Midgley, ed., *Gender and imperialism* (Manchester and New York: Manchester University Press, 1998), 191.

<sup>16</sup> Anthony Ashley Cooper, 7<sup>th</sup> earl of Shaftesbury, quoted in Anthony S. Wohl, “Introduction,” in Wohl, ed., *The Victorian Family: Structure and Stresses* (New York: St. Martin’s Press, 1978), 9.

a way to try to keep tenuous family bonds alive.<sup>17</sup> Without the security of a nation to provide a foundation for identity and societal norms, faced with an ever-expanding imperial structure that encompassed a wide variety of colonial realities, first and second-generation Loyalists seem to have sought stability and security within family structures. The military and the Anglican church would also have been constant factors in Loyalists' lives.<sup>18</sup> For the second generation who travelled to various outposts of Empire, maintaining family ties through letter-writing was critical. Through letters, the Jarvis and Boyd families maintained ties to home that provided emotional connection and support and affirmed identity and belonging. For both Loyalist generations letters acted as material and emotional links to distant relatives, “‘charged with maintaining the fractured family group’ and reworking senses of self through continued claims to affection, obligation, and relationship.”<sup>19</sup> As Jane Errington suggests, letters were a way to make sense of the world, and the very act of writing was an affirmation of the importance of sustaining ties to “home” and community.<sup>20</sup>

Writing to absent loved ones was a conscious attempt to maintain or resume relationships “across time and space.”<sup>21</sup> Faced with separation and exile, Munson and his siblings, both those who left for British North America and those who stayed behind, sought to preserve and nourish precious family ties across transnational borders; the second generation sought to maintain ties to family in Saint John while travelling within

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<sup>17</sup> As noted in Chapter 1, Samuel returned to Stamford, CT after a brief period in Kingston, NB.

<sup>18</sup> For some Loyalists Masonic Lodges were another source of connection – Edward’s second son, Henry, appears to have participated in Masonic activities. See Henry Fitzgerald Jarvis fonds, LAC. MG 24, K 57.

<sup>19</sup> Ishiguro, “‘How I wish I might be near’: Distance and the Epistolary Family in Late-Nineteenth-Century Condolence Letters,” in Karen Dubinsky, Adele Perry, and Henry Yu, *Within and Without the Nation: Canadian History as Transnational History* (Toronto: University of Toronto Press, 2015), 215.

<sup>20</sup> Errington, *Emigrant Worlds and Transatlantic Communities: Migration to Upper Canada in the First Half of the Nineteenth Century* (Montreal and Kingston: McGill-Queens University Press, 2007), 8.

<sup>21</sup> David Gerber, *Authors of Their Lives: The Personal Correspondence of British Immigrants to North America in the Nineteenth Century* (New York: New York University Press, 2006), 93.

the empire or once established in another colony. While for the first-generation Jarvis Loyalist siblings Munson was the “hub” figure who kept the wider family connected through written correspondence, for the second generation of Munson’s children and their spouses, Edward’s sister-in-law Caroline appears to have fulfilled this role, writing dozens of long letters from Malta to her siblings back in Saint John. Upon Edward’s family’s return to British North America she kept up regular correspondence with those of her siblings who were not in Saint John, including her sister Maria up until Maria’s death.<sup>22</sup> As with the first, the second Loyalist generation did their best to maintain strong bonds despite at times lengthy separation over long distances. As Errington notes, family relationships maintained through correspondence, however sparse or infrequent, rested on “an assumption of a shared relationship that continued even without the usual face to face contact and everyday conversations and experiences.”<sup>23</sup>

Conducting relationships through correspondence, was, however, a constant challenge. The mail, or “the Packet” as it was called throughout the empire, was unreliable; letters were frequently delayed or lost, leaving would-be recipients waiting for months or even years for news and contributing to feelings of isolation and disconnection. In November 1826 Edward complained to his brother William that a letter he had received by the last packet had been dated June 22, appearing to have been “lying some time in England, which is too often the case. I am afraid our letters from hence are also detained there much longer than they need be.”<sup>24</sup> William wrote to Edward in 1827 that “Your brother Ralph wrote you a long time since and sent the paper and Book you

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<sup>22</sup> As noted, Caroline Boyd would marry Edward’s brother William in 1837.

<sup>23</sup> Errington, “Webs of Affection and Obligation: Glimpse into Families and Nineteenth Century Transatlantic Communities,” *Journal of the CHA/Revue de la SHC*, New Series 19, no. 1/Nouvelle série, 19, n° 1, (2008): 8.

<sup>24</sup> NBM Archives, Jarvis papers, Edward Jarvis to William Jarvis, November 16, 1826.

requested which must have miscarried otherwise you would have recd. them in February.”<sup>25</sup> A year-round packet was not granted for Halifax until 1824; Malta became connected to Great Britain through the monthly packet in 1819.<sup>26</sup> In 1826 steam technology was introduced, and in 1827 the postal service became a monopoly charging tariffs for letters and parcels.<sup>27</sup> Despite this, letters and packages could, and did, go astray.

The Jarvis family’s written correspondence sustained relationships with family members back in Saint John as well as ties to home in general. Hunger for news from home is evident in an 1824 letter from Edward to his nephew from Malta:

News I can send you none – public you will receive from England as soon as we do, & private or local will only be talking about things & persons which you are not acquainted with & therefore cannot be very interesting to you. On the contrary every minute article of intelligence from you would be gratifying to us. Could you not throw a bundle of your newspapers on board some vessel under cover to Bainbridge? They would perhaps find their way to us & would be a great treat.<sup>28</sup>

Keeping informed of what was happening back in Saint John fixed the Jarvis family within a particular place within empire, providing continuity while navigating new identities in a new colony. Without doubt, though, Edward’s plea for “every minute article of intelligence” was not heeded anywhere near to the degree he would have liked. Caroline also pleaded for news of home from her brother William, urging him to follow her “praiseworthy example” and write to her about life at home:

I know how it is with you – things occur and you think them too trifling to mention, but as we are acquainted with all the people in Nova Scotia and New Brunswick, if not personally, by name, of course we take an interest in what concerns them...If it was not that Mr. Bainbridge occasionally informs Mr. Jarvis of what he hears concerning St.

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<sup>25</sup> William Jarvis to Edward Jarvis, March 29, 1827, Jarvis Papers, NB Museum.

<sup>26</sup> Gekas, *Xenocracy*, 157.

<sup>27</sup> J.C. Arnell, *Atlantic Mails: A history of the mail service between Great Britain and Canada to 1889* (Ottawa: National Postal Museum, 1980), 59.

<sup>28</sup> Edward Jarvis to Robert Hazen, October 22, 1824, Jarvis Papers, NB Museum Archives.

John we should think that you had been swallowed up by an Earthquake, or some other dreadful calamity had befallen you.<sup>29</sup>

While Caroline was to some extent exaggerating the information vacuum in Malta, the frustration of not knowing what was happening with family, friends, and acquaintances back in Saint John was very real.

While the family in Malta stressed to loved ones back in Saint John how much they treasured even “mundane” news from home, they were, of course, anxious to know of larger events. The *Malta Government Gazette* provided news stories from colonies throughout the empire, as well as reporting on local goings on, something that would have reinforced the cultural cohesion families such as the Jarvises felt while living in a new colony. One major story that Edward would have read about in the *Malta Government Gazette* would have been the 1825 fire in Miramichi. In January of 1826 Edward wrote to his brother-in-law John Boyd asking for news about the fire:

What a dreadful visitation you have had at Miramichi & Fredericton! We have had no intelligence but from the public prints, but the mere recital is enough to horrify one’s feelings. I saw the first accounts in a Paris paper so long ago as November, & but just more than a month after the catastrophes. Since that we have seen it in the English prints in a variety of shapes. We feel anxious to get some letters, & learn more particularly who are the sufferers & the amount of loss.<sup>30</sup>

Presumably Edward had not yet received a letter from Robert, dated October 25, 1825, recounting news of the fire as well as of the relief efforts in Saint John and elsewhere:

In this place £5000 was subscribed – and express was sent by the Governor to Canada for 1500 barrels of flour & a number of barrels (99) of beef, to be paid for out of the King’s Casual revenue in the Province, alias, the duty or timber licenses for which poor Gen. Smythe had so many & so great squabbles with certain of the [people?] in our Province – At Halifax I hear about £3000 have been subscribed – two vessels loaded with provisions and old Clothing have gone from there to Miramichi.<sup>31</sup>

That the timber duties, one of the factors which had led to Smyth’s unpopularity and, indirectly, to Edward’s gaining the judgeship in the New Brunswick Supreme Court

<sup>29</sup> Caroline Boyd to William Boyd, February 1, 1825, Jarvis Papers, NB Museum Archives.

<sup>30</sup> Edward Jarvis to John Boyd, January 19, 1826, Jarvis Papers, NB Museum Archives.

<sup>31</sup> Robert Hazen to Edward Jarvis, October 25, 1825, Jarvis Papers, NB Museum Archives.

which he then lost, were funding the fire relief efforts, is something Edward may have noted with some irony.

A lack of letters was often a source of stress or even anger. As Sarah Pearsall writes, “Enormous, stomach-churning anxiety surrounded the *non*-receipt of letters.”<sup>32</sup> A dearth of letters from home could trigger feelings of rejection and abandonment leading to anger at those far away. Caroline, in the letter to her brother William cited above, appears to have written to her youngest brother out of desperation, her feelings of neglect coming out as anger, writing, “As I have written to my dear Mother and all my Brothers and Sisters excepting yourself, without receiving an answer to one of my epistles, I am determined to try what better success I shall have with you.”<sup>33</sup> Her feelings having dissipated during the writing of letter she expressed contrition for her opening words, concluding, “I must again my dear William beg you to forgive this scolding epistle and assure you that I do not feel at all satisfied with myself in having written it, but promise you never to do so again.” When studying at the Inns of Court Edward had similarly felt abandoned and forgotten, expressing his anger in an 1816 letter to his father:

The paucity of intelligence from my own home prevents me filling up a letter with any thing in the shape of answer. Why I have remained six months without receiving a line from my family lies beyond the depth of my penetration to discover. I dare say there are good reasons, and time will bring them to light.<sup>34</sup> Edward’s feelings of isolation, despite his rational awareness that there were probably good reasons for the lack of letters, show the very real need to maintain connections with family and home on the part of those travelling to other parts of the Empire. As shall be seen later in the chapter, a dearth of letters could also mean that vital information was not passed along, as would be the case with Edward in London eight years later.

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<sup>32</sup> Pearsall, *Atlantic Families*, 37.

<sup>33</sup> Caroline Boyd to William Boyd, February 1, 1925, Jarvis Papers, NB Museum Archives.

<sup>34</sup> Edward Jarvis to Munson Jarvis, January 4, 1816, Jarvis Papers, NB Museum Archives.

In 1829 when Edward himself failed to write, he was charged with neglecting his filial obligations. Writing to Edward, who had recently established himself and his family in Charlottetown, William admonished his brother that their mother had

written you several letters since we recd. any from you, and she is much astonished and hurt to think you will not write to her. She is now, and has for some time past been very unwell and confined to her room, and I fear her anxiety and disappointment at not receiving any letters from you will at her advanced time of life increase her illness.<sup>35</sup> Edward would have been settling into his role as Chief Justice in Charlottetown, and

Anna Maria was pregnant with a daughter who would be born five months later on August 30, only to die the following year. However, William, a bachelor at the time, was suggesting that Edward's failure to write could be responsible for worsening their mother's already frail health. Seemingly not even carrying out the responsibilities of the highest jurist in the colony of Prince Edward Island was an excuse for the Chief Justice to neglect his filial duties.<sup>36</sup>

Emotion-laden family dynamics notwithstanding, written correspondence provided a critical means of maintaining family bonds across the expanse of empire. As Pearsall notes, the ability to connect with each other was a measure of elite family's privilege; access to postal services and letters represented very real economic, political, and social power for those who were literate and had the resources to maintain correspondence with kin, friends, agents, patrons, and professional colleagues.<sup>37</sup> Letters, along with written materials such as the *Malta Government Gazette*, provided a web of information and interconnection for second-generation Loyalists families such as the Jarvises and the Boyds as they navigated the far reaches of empire. For the first

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<sup>35</sup> William Jarvis to Edward Jarvis, March 29, 1829, Jarvis Papers, NB Museum Archives.

<sup>36</sup> Edward would have not been able to blame the lack of a mail service for his failure to write: A weekly packet was established between Charlottetown and Pictou, NS in 1825. Alison Ann Heckbert, "Carrying the Mails, 1763-1861," *The Island* 27 (Spring/Summer 1990): 23.

<sup>37</sup> Pearsall, *Atlantic Families*, 42.

generation of Loyalists, written correspondence helped maintain family ties that had been so violently and abruptly severed by the Revolutionary War. Pearsall suggests that letters, “neither private nor public, circulating within families and households but necessarily travelling outside of them,” are liminal phenomena, allowing family life to continue, even across the Atlantic.<sup>38</sup> For Edward and his family in Malta, and for Edward travelling in London or isolated in Charlottetown during his final years, the importance of letters as a means of preserving treasured family bonds cannot be overstated.

### **Gender roles**

When colonial administrators and settlers arrived in the colonies many, convinced of British superiority, sought to extend British values in their societies, one of the most powerful of which, according to Levine, was that men and women inhabited separate public and private worlds.<sup>39</sup> The gendered belief that men were best suited to the public and women to the private sphere became influential, she notes, during the period in which imperial expansion was high on the British political agenda. The principle of “separate spheres,” while not reflecting the reality of men’s and women’s lives, was, nonetheless, “powerful as an ideal and as an organizing social principle.”<sup>40</sup> Emerging at the turn of the nineteenth century, the ideology of separate spheres became institutionalized as “the culturally and socially hegemonic form of gender relations.”<sup>41</sup> This prescriptive ideal helped determine men’s and women’s roles both in the home and society; for the Jarvis

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<sup>38</sup> Pearsall, *Atlantic Families*, 54.

<sup>39</sup> Levine, *The British Empire: Sunrise to Sunset* (London and New York: Routledge, 2013), 156.

<sup>40</sup> Levine, *The British Empire*, 156.

<sup>41</sup> Rosie Spooner, “‘Prime Minister in the Home Department’: Female Gendered Identity in Colonial Upper Canada,” in Rosie Dias and Kate Smith, *British Women and Cultural Practices of Empire, 1770-1940* (New York: Bloomsbury, 2019), 196.

family, it no doubt influenced the division of labour within the home as well as how “home” itself was viewed by family members.

As we have seen, throughout his life Edward upheld a view of landholding that favoured landed interests and resisted political and social transformation. The changes that would come to British North America in the form of responsible government would herald what Ian McKay has labelled the “liberal order,” one that saw the economic success of the (male) individual become the primary goal of the Canadian state.<sup>42</sup> Mona Gleason and Perry stress the importance of addressing where women’s history fits in McKay’s structure: to understand women’s place in nineteenth-century British North America, they argue, “we need to acknowledge how that world simultaneously excluded women from formal power, depended on them all the same, and provided occasional opportunities for them to voice their grievance.”<sup>43</sup> The relegation of women to the private sphere, at least in theory, in colonial society belied their centrality to its very functioning.

Women in early nineteenth-century Prince Edward Island carried out a variety of roles. Some landholders were women, and women were active in the Escheat movement.<sup>44</sup> Of the latter, Bittermann writes that they assumed prominent roles in physically resisting the enforcement of landlords’ claims in the countryside, roles that “had roots in, and were extensions of, the conditions of their daily lives.”<sup>45</sup> As

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<sup>42</sup> Ian McKay, “The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History,” *Canadian Historical Review* 81 (2000): 617-45.

<sup>43</sup> Mona Gleason and Adele Perry, “Introduction,” in Gleason and Perry, eds., *Rethinking Canada: The Promise of Women’s History*, 5<sup>th</sup> ed. (Don Mills, ON: Oxford University Press, 2006), 62.

<sup>44</sup> Bittermann and McCallum note that, of the fifty-seven estates purchased by the government between 1875 and 1880, more than one quarter were owned by women. Bittermann and McCallum, *Lady Landlords of Prince Edward Island: Imperial Dreams and the Defence of Property* (Montreal and Kingston: McGill-Queen’s University Press, 2008), 8.

<sup>45</sup> Bitterman, “Women and the Escheat Movement: The Politics of Everyday Life on Prince Edward Island,” in Janet Guildford and Suzanne Morton, eds., *Separate Spheres: Women’s Worlds in the 19<sup>th</sup>-Century Maritimes* (Fredericton, NB: Acadiensis Press, 1994), 27.

Bittermann points out, being perceived as the weaker sex and the guardians of domesticity, ironically, may have permitted women more latitude than men in their use of violence.<sup>46</sup> In a colony where 85 percent of the population lived in the countryside, most women would have been farmers' or tradesmen's wives, expected to assist in the fields, in addition to working in the dairy, the poultry yard, and the garden; preserving meat, fruit and vegetables; baking bread; and cooking a variety of foods, either on an open fire, or increasingly on or in a wood-burning stove.<sup>47</sup> Urban wives could, and often did, take in boarders, and women could also make an economic contribution through midwifery or school teaching.<sup>48</sup> Of the women who listed an occupation in their wills in a study on inheritance law done by Michele Stairs, thirty-five percent were servants and seven percent were housekeepers, followed by dressmakers, seamstresses, and nurses.<sup>49</sup>

Gender intersected with both class and race: Epekwitk/PEI Mi'kmaw women faced the dispossession of their lands and the resulting poverty, leaving many to survive by selling baskets, beadwork, and embroidered and quillwork crafts.<sup>50</sup> While slavery no longer existed on the Island by the time the Jarvis family arrived, Black women faced

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<sup>46</sup> Bittermann, "Women and the Escheat Movement," 63-4, 69. Isabella MacDonald and another woman, indicted for assaulting Constable Donald McVarish with a board when he tried to seize goods of Flora Townshend's tenants for back payment of rent in September of 1833, neither served a prison term nor paid a fine; in contrast, all three men involved in the incident served prison terms.

<sup>47</sup> Errington, *Wives and Mothers, School Mistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal and Kingston: McGill-Queens University Press, 1995), 92. The latter description applied to settler women who lived in the bush, such as Susannah Moodie and Catherine Parr Trail in Upper Canada, where Edward's cousin's Samuel Peters's family, in contrast, lived in the town of York; their lives would have resembled those of the Charlottetown Jarvises more than those of Trail and Moodie.

<sup>48</sup> Beth Light and Alison Prentice, "The Work of Wives," in Light and Prentice, eds., *Pioneer and Gentlewomen of British North America, 1713-1867* (Toronto: New Hogtown Press, 1980), 134.

<sup>49</sup> Michele Stairs, "'The Duty of Every Man': Intestacy Law and Family-Inheritance Practice in Prince Edward Island, 1828-1905," in Christopher English, ed., *Essays in the History of Canadian Law, Vol. IX* (Toronto: University of Toronto Press, 2005), 218.

<sup>50</sup> Margaret Conrad, Toni Laidlaw, and Donna Smyth, *No Place Like Home: Diaries and Letters of Nova Scotia Women 1771-1938* (Halifax, NS: Formac Publishing Company Ltd., 1988), 11. Early in the nineteenth century quillwork began to be exported to the US, Britain, the West Indies, and the rest of British North America from the Maritime provinces. Ruth Holmes Whitehead, *Elitekey: Micmac Material Culture from 1600 AD to the Present* (Halifax: The Nova Scotia Museum, 1980), 38.

discrimination and poverty, the latter stemming in part from the colonial government's failure to make dispossessed Epekwitk/PEI Mi'kmaw lands available to Black settlers. Lower-class white settler women, such as those immigrating from Ireland and Scotland, would in many cases turn to a traditional source of employment available to all working women: domestic service. For all classes of women, however, the domestic work of women was essential to the functioning and survival of British North American households, despite being usually unpaid and for the most part "unrecognized or explicitly acknowledged by their husbands, fathers, brothers, or society at large."<sup>51</sup>

When the Jarvis family moved to Mount Edward upon its completion in 1836, their household consisted of Edward and Maria, their children Mary, 15, Munson 13, Henry 11, William, 9, and Amelia, 5, and a number of servants. They were also often visiting guests, either family members or members of other families who were part of their social circle. Maria would have been primarily responsible for mothering duties and for overseeing the servants regarding food purchasing and preparation, as well as cleaning and other household tasks. In Britain upper-class women had housekeepers to whom they would give their orders, which the housekeeper in turn transmitted to the various domestics; in contrast the middle-class woman had a one-to-one relationship with one or two maids whom she had to tell what to do.<sup>52</sup> While the Jarvises were among the elite of Charlottetown, Maria would have followed the latter practice with their servants. In the letter above regarding her preparations for the ball, Maria mentioned overseeing the slaughter of hogs and cutting the hams and shoulders herself, writing, "I assisted in the salting & packing down, had sausage meat made and had to go to town to make

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<sup>51</sup> Errington, *Wives and Mothers, School Mistresses and Scullery Maids*, 86.

<sup>52</sup> Patricia Branca, *Silent Sisterhood: Middle-Class Women in the Victorian Home* (London: Croom Helm, 1975), 56.

purchases three times. I hired a woman to assist me to prepare the supper & she with the rest of the servants did their duty most faithfully to the last...”<sup>53</sup> Thus Maria both managed the female servants and worked side-by-side with them, performing challenging physical labour that would also require knowledge and experience.

Carrying out such demanding domestic tasks would not be done by the wealthiest elite women. Leonore Davidoff suggests that while ensuring order and cleanliness was seen to be the purvey of women, and women were associated with messy aspects of life such as birth and death, assigning more distasteful tasks to servants allowed genteel Victorian women to distance themselves from “polluting” aspects of life: “women who had servants were perceived as more pure, more feminine, more ladylike. The servant (and the servant class as a whole) absorbed dirt and lowliness into their own bodies.”<sup>54</sup> A mistress’s role was to supervise others, usually female servants, and she would typically not perform menial household tasks deemed their responsibility, but in the case of lesser gentry wives would do many tasks themselves.<sup>55</sup> The Jarvis family employed at least four servants, one outside and three inside. Bumsted notes they were “well-treated and well-trusted” for the principal ones remained with the family for years, but they were “a continual concern”; in 1837 their manservant, Lee, left suddenly when Edward refused to raise his wages.<sup>56</sup> There is little mention of the Jarvis servants in the surviving

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<sup>53</sup> Anna Maria Jarvis to Caroline Jarvis, February 13, 1837, Jarvis Papers, NB Museum Archives.

<sup>54</sup> Davidoff, *Worlds Between: Historical Perspectives on Gender and Class* (Cambridge, UK: Polity Press, 1995), 5.

<sup>55</sup> The Jarvis family were not sufficiently wealthy to have the number of servants in Charlottetown that they had in Malta, where Maria had had more leisure. Moreover, servants in British North America had more options and thus were relatively more expensive than those in England. Social mobility was greater in the former in the latter, a reality that, as has been seen in Chapter 1, allowed Edward’s father to prosper.

<sup>56</sup> Bumsted, “The Household and Family of Edward Jarvis,” 26. Lee also suffered from a “frequent repetition of inebriety”; he was eventually rehired, but left to become a small merchant in New London in 1841. See Mary Jane Jarvis to Caroline Jarvis, 1842, Jarvis Papers, NB Museum Archives.

documentation; in a letter to his father travelling from London in 1816 Edward mentions he has his “servant man” with him, whom he calls one of his “hard bargains.”<sup>57</sup>

In the family’s Prince Edward Island home, then, Maria supervised some tasks while doing others herself or with the help of a servant. Sewing and mending would have been another of her responsibilities: in her letter she mentions making and putting up curtains and blinds, the latter task with assistance, most likely from either a servant or one of her daughters. She also furnished and decorated the rooms and oversaw the hanging of mirrors, a monumental set of tasks.<sup>58</sup> Social functions such as calling on neighbours and writing thank-you notes would also have been her responsibility, as well as writing letters to family members to maintain connections with kin. As well as running the household and parenting, she also had responsibilities as a wife, which chiefly involved being a comfort and support to Edward and ensuring the sanctity of the domestic environment. Maria also appears to have assisted Edward with his professional role, reading to him during his periods of failing eyesight. In a letter to her sister Caroline some months before her death Maria noted she had to attend carefully to her health for the sake of her “dear husband, from whose side I am seldom absent. While I write he is sitting by me. We all take our turn of reading to him...”<sup>59</sup>

Like most British North American women Maria gave birth. Even for elite women the birth of a child was a potentially dangerous time for both mother and baby: while mid-nineteenth-century Canadian maternal mortality rates are difficult to estimate,

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<sup>57</sup> Edward Jarvis to Munson Jarvis, April 23, 1816, Jarvis papers, NB Museum Archives.

<sup>58</sup> Decorating appears to have been done by some privileged women, even when it involved physical tasks and the use of ladders: Juliana Horatia Ewings, living in Fredericton at the time of Confederation, described putting up wallpaper herself: “indeed it is not a difficult art when the rooms are low.” Juliana Horatia Ewings to Horatia Katherine Frances, October 12, 1868, *Canada Home: Juliana Horatia Ewing’s Fredericton Letters, 1867-1869*, ed. Margaret Howard Blom and Thomas E. Blom (Vancouver, BC: University of British Columbia Press, 1983), 218.

<sup>59</sup> Anna Maria Jarvis to Caroline Jarvis, April 5, 1841, LAC, MG 24, B 13, 1356-1359.

Wendy Mitchinson suggests a figure of just over 5 deaths per 1000 deliveries, roughly the rate of mid-century Britain.<sup>60</sup> Elizabeth Grey, whom Edward married in 1843, died in 1847 giving birth to their second child.<sup>61</sup> While Maria survived childbirth, three of the eight children she bore did not survive infancy.<sup>62</sup> Deaths of babies and children were a common fact of colonial life, and “cousins, siblings, relatives and friends seemed to die off with unnerving regularity.”<sup>63</sup> As Davidoff argues, while historians in the past assumed that high death rates during the Victorian period meant that parents were wary of investing too much emotion in their children, as evidenced by the practice of giving replacement children the same name as their predecessor, each death was in fact “an occasion for intense anguish, no matter how many living children remained.”<sup>64</sup> Pat Jalland concurs, claiming there is no evidence that parents in the early Victorian period invested less affection in their children and felt less distress at their deaths than Edwardian parents, despite lower expectations of their survival.<sup>65</sup> Certainly there is no reason to assume that Edward and Maria were *not* devastated by the deaths of their infant children, even though no surviving letters mention the deaths.

For at least one of her children Maria employed a wetnurse. In an 1828 letter to her mother Maria mentions a Maltese nurse caring for Henry who had recently been born (it seems to be a different one than the one hired in Marseilles), commenting

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<sup>60</sup> Wendy Mitchinson, *The Nature of Their Bodies: Women and Their Doctors in Victorian Canada* (Toronto: University of Toronto Press, 1991), 227. In comparison, the 2018 Canadian maternal mortality rate was 8.3 deaths per 100,000 live births. <https://www150.statcan.gc.ca/n1/daily-quotidien/191126/dq191126c-eng.htm>.

<sup>61</sup> Infant mortality in British North America was 184.1 per 1,000. Conrad et al, *No Place Like Home*, 14.

<sup>62</sup> *The Jarvis Family*, 60.

<sup>63</sup> Margaret Conrad, *Recording Angels: The Private Chronicles of Women from the Maritime Provinces of Canada, 1750-1950* (Ottawa, ON: Canadian Research Institute for the Advancement of Women, 1982), 10.

<sup>64</sup> Davidoff, *Thicker Than Water: Siblings and their Relations, 1780-1920* (Oxford: Oxford University Press, 2012), 315. Edward named his second child Edward after the first Edward died in infancy in 1919. Born in 1820, the second Edward also died in infancy. Anna Maria, born in 1829, died the following year.

<sup>65</sup> Pat Jalland, *Death in the Victorian Family* (Oxford: Oxford University Press, 1996), 121.

The Maltese are generally most excellent nurses as far as milk goes. Master Babe is a lively plump little fellow & looks just as the others used to do, only that his nose is not quite so grand as Munson's. Since the commencement of his fourth month he has had three nurses besides myself, one for a week, who had not a sufficiency of milk, another four weeks who was obliged to leave me because her children were ill and the last nearly two months, who proves to be the best of all and I hope will remain with him as long as he requires the breast which will be till about this time next year.<sup>66</sup>

It seems that Maria shared the breastfeeding of her child with Maltese servants or local women, presumably because she had insufficient breastmilk, was unwell, and/or felt the need to share the burden of nursing an infant. The hiring of wetnurses seemed not to have been uncommon in British North America. Errington, for example, notes that advertisements for "healthy young" and "good clean" wetnurses appeared in local newspapers in Upper Canada during the period, in cases of maternal illness, insufficient milk, or after a mother had died in childbirth.<sup>67</sup>

As an early Victorian husband and father Edward would also have been subject to gendered roles. He was responsible for supporting the family financially as the breadwinner, for securing a home within which he was the patriarch, and for looking out for his children's futures – professional careers for his sons, "good" marriages for his daughters. He had to maintain both professional and family connections, sustaining patronage ties both for himself and his children. He paid bills and oversaw collecting rents for properties owned by the family; on at least two occasions he took tenants to court when they failed to pay.<sup>68</sup> As a parent Edward appears to have been at times indulgent, although Bumsted believes he ruled with "an iron fist in a velvet glove."<sup>69</sup> The boys, Munson, Henry, and William, spent much of their adolescence away at school on

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<sup>66</sup> Anna Maria Jarvis to Mrs. Jane Boyd, November 16, 1825, Jarvis Papers, NB Museum Archives.

<sup>67</sup> Errington, *Wives and Mothers, School Mistresses and Scullery Maids*, 68.

<sup>68</sup> *Edward Jarvis v. Sarah Ann Wallace* (1936); *Edward Jarvis v. John MacDonald* (1851), RG6 SC Case Papers, PEI Public Records Office and Provincial Archives.

<sup>69</sup> J.M. Bumsted, "The Household and Family of Edward Jarvis," 23.

the mainland; Munson would follow his father into law, Henry would go into medicine, and William would enter the Church.<sup>70</sup> The girls would also leave home to spend time in Saint John with their Aunt Caroline and Uncle William in their later teens.

Some of the roles Edward carried out might be more readily associated with women's roles, such as ordering groceries: in 1829 he ordered bread, flour, quinces, pears, rice, "two bushels best winter pippins," and preserved ginger from the merchants Thomas Irwin and Co. in London, to be sent to Pictou, Nova Scotia.<sup>71</sup> Edward was also aware of fashion, writing to his nephew from London in 1823 that he was sending him four shirt collars: "I sent them of different kinds, such as are most fashionable."<sup>72</sup> Eight years earlier, sending his brother William a watch from London, he wrote: "When I first ordered the watch, being uncertain what the chain & seals might come to, I chose one at 25 guineas, of a very neat and fashionable construction, & which has been much admired."<sup>73</sup> Edward also had some knowledge of women's fashions; while at the Inns of Court in London he sent home "Ladies Wearing apparel" and in 1823 wrote to Caroline, his sister-in-law, regarding a dress and other items she had had made by a Miss Sherwood. Edward copied out the bill, which included the dress, lace, silk trimming, gauze, ribbon, buttons, and other accoutrements, noting that the seamstress had promised "the pink dress should not exceed six guineas" but had charged £6.16.6.<sup>74</sup> Edward was also concerned about etiquette. In the same letter he referred to Mrs. Smith, the wife of

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<sup>70</sup> David Roberts describes the features most common to the early Victorian paterfamilias as "remoteness, sovereignty, and benevolence." Edward's travelling to England, and on circuit after 1835, meant that he would have been a remote father at certain times; teenage boys leaving home to attend school, as Edward himself had done, had long been customary and would also have made Edward a more remote father. Roberts, "The Paterfamilias of the Victorian Governing Classes," in Wohl, *The Victorian Family*, 59, 61.

<sup>71</sup> Edward Jarvis to Thomas Irwin & Co., October 7, 1829, LAC, MG 24, B 13.

<sup>72</sup> Edward Jarvis to Robert Hazen, September 7, 1823, Jarvis Papers, NB Museum Archives.

<sup>73</sup> Edward Jarvis to Munson Jarvis, April 23, 1816, Jarvis Papers, NB Museum Archives; Edward Jarvis to William Jarvis, May 9, 1815, Jarvis Papers, NB Museum Archives.

<sup>74</sup> Edward Jarvis to Caroline Jarvis, September 19, 1823, Jarvis Papers, NB Museum Archives.

the brother of the former Lieutenant Governor of New Brunswick, with whom he and Caroline had stayed in London, who “seemed rather cool at our neglect in not calling before we left town. I attempted to apologize for you but I saw the apology was not accepted.”

Edward did believe the running of the household was a woman’s role, as he wrote to William in 1835: “the best thing is undoubtedly for a man to take a wife to look after his domestic establishment.”<sup>75</sup> He clearly, however, also valued the emotional relationship upon which marriage was based. He justified his remarriage after Maria’s death on such grounds, claiming “Such is my social (should say uxorious) nature that without the fond & endearing affections of a wife to hang upon I should be comparatively miserable.”<sup>76</sup> By the eighteenth century prescriptive literature – if not actual marriages – began to move towards companionate marriage, or the “domesticated sentimental family.”<sup>77</sup> Constance Backhouse argues that the British patriarchal model of marriage, where “traditional notions of hierarchy had long influenced relations between husbands and wives,” was in contrast to the companionate model that took hold in North America, where “more fluid concepts of human relations permitted a more equal allocation of power.”<sup>78</sup> Backhouse notes, however, that while nineteenth-century Canadian legislators were prepared to lay the groundwork for a companionate model of marriage, “the judiciary eagerly embraced the patriarchal model.”<sup>79</sup>

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<sup>75</sup> Edward Jarvis to William Jarvis, August 4, 1835, Jarvis Papers, NB Museum Archives.

<sup>76</sup> Edward Jarvis to Robert Hazen, August 2, 1843, Jarvis Papers, NB Museum Archives.

<sup>77</sup> A. James Hammerton, *Cruelty and Companionship: Conflict in nineteenth-century married life* (London and New York: Routledge, 1992), 75.

<sup>78</sup> Constance Backhouse, “‘Pure Patriarchy’: Nineteenth-Century Canadian Marriage,” *McGill Law Journal/Revue de droit de McGill* (1986): 282.

<sup>79</sup> Backhouse, “Pure Patriarchy,” 283.

As a member of the judiciary Edward would therefore have been expected to lean more towards a hierarchal marriage, one casting him in the role of benevolent dictator. While Edward did at times exert patriarchal dominance, however, his marriage to Maria does appear to have been a happy one. Both spouses accepted the roles assigned them even if, as Maria's letter about the ball indicates, the performance of her role came at the expense of her own health. Edward also struggled at times to fulfill his role as head of the household: he was never quite able to establish a truly firm financial footing for himself and his family which, as will be seen, would diminish his parental authority. Maria and Edward's prescribed gender roles were complimentary if not equal, and Edward clearly derived much benefit from marriage. In a letter to Robert following Maria's death Edward touched on his remarriage to her friend Elizabeth Grey, writing:

Indeed, independent of my loneliness when Mary shall have left me, my inability to read makes a constant companion indispensable to me. It will be the means of my returning again to the world, which I had nearly given up, & which I think I should have altogether renounced if I had continued in my solitary state.<sup>80</sup>

Marriage then, for Edward, fulfilled a variety of emotional and practical functions, some of which would be carried out by his daughters and sisters-in-law after his wives' deaths.

### **The domestic idyll**

Beginning in the eighteenth century Britain saw a growing emphasis within the middle class on the home as a moral force, a notion linked to temperance and the religious revival of the late eighteenth and early nineteenth centuries.<sup>81</sup> Advice manuals, tracts, poems, and other literature of the period waxed lyrical about the centrality of home, as this example from 1841 shows: "Household authority is the natural source of much

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<sup>80</sup> Edward Jarvis to Robert Hazen, August 2, 1843, Jarvis Papers, NB Museum Archives.

<sup>81</sup> Davidoff, *Worlds Between*, 50.

national peace: its decline is one of the causes of the reckless turbulence of the people.”<sup>82</sup>

Home was seen as a living entity and compared to the functional organs of a body: the male head of this natural hierarchy “like a country squire, took care of and protected his dependents.”<sup>83</sup> While the male head was accorded the full privileges of citizenship, his dependents were expected to provide him with love, obedience, and service. As John Tosh describes, the Victorian ideal of the middle-class home saw it as a place where the husband could seek his hard-gained repose and where his needs took priority; men expected from their wives “a clean and well-ordered house, an inviting fireside, an appetizing table, and soothing attentions in the sick room...Comfort without exertion was the key.”<sup>84</sup> Within the Jarvis family Edward’s needs frequently took priority, particularly over those of his wife and daughters.

The domestic ideal required a domicile. In the nineteenth century “home” for the upper strata of British society was linked to ideas of an organic community in the countryside: “If home was potentially the one place of peace, then the home in a rural setting was particularly attractive.”<sup>85</sup> A certain kind of home within a certain kind of setting both established and reflected status and moral respectability. For those at the upper-income level, “the house’s carefully guarded entrances with drives, gates, and hedges, its attended portals and elaborate rituals of entrance created a sense of security as well as preserving its inmates’ ranks from pollution by inferiors.”<sup>86</sup> The British upper-class ideal of the secluded estate seems to have influenced Edward as he sought to

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<sup>82</sup> A mother and mistress of a family, *Home Discipline; or, Thoughts on the Origin and Exercise of Domestic Authority* (London, 1841), 106, quoted in Davidoff, *Worlds Between*, 50.

<sup>83</sup> Davidoff, *Worlds Between*, 51.

<sup>84</sup> John Tosh, *A Man’s Place: Masculinity and the Middle-Class Home in Victorian England* (New Haven and London: Yale University Press, 1999), 54, 56.

<sup>85</sup> Davidoff and Hall, *Family Fortunes: Men and Women of the English Middle Class 1780-1850* (New York: Routledge, 2019), 178.

<sup>86</sup> Davidoff, *Worlds Between*, 51.

establish a family home in Charlottetown. While in England before leaving for Malta he had stayed in John Coffin's Somerset estate, which he described in a letter to his nephew as "a beautiful place, about 12 miles from Bath. The house is very capacious, handsomely furnished, with about 40 acres of land beautifully laid out and cultivated, for which he gives £150 per annum a rent which would be remarkably low in New Brunswick."<sup>87</sup> A large home situated on an expanse of land was to Edward both natural and desirable. Writing of his travels to Calais during his trip to France in 1814 he commented that he had "scarcely seen anything that deserves the name of a gentleman's country house."<sup>88</sup>

Estates, however, were expensive. As Edward had found when establishing his household in Valletta, even furnishings and household linens could require significant financial outlay. While he was, as has been seen in Chapter 2, able to secure a desirable place of residence there thanks to Sir Thomas Maitland, it still had been more than his stretched budget at the time would allow. In an 1824 letter to his father he wrote,

My situation at Malta will of necessity require an establishment of some consequence & it has happened rather unfortunate that my property in New Brunswick could not be converted into money to meet my demands in Malta. Now is the time that I must endeavour to avoid getting too deeply involved. Hereafter my salary will exceed my expenditure & if I can get over the difficulty of forming the first establishment, I have no fears but I shall get on very well.<sup>89</sup>

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<sup>87</sup> Edward Jarvis to Robert Hazen, September 7, 1823, NB Museum Archives. Like Charles Inglis, Coffin appears to have been something of a father figure to Edward. Also like Inglis, Coffin, a Loyalist, regarded the money he received from the colonial government as his due. He was a member of the board of the New England Company, which had as its aim to anglicize and protestantize the Mi'kmaq and Wolastoqiyik youth of New Brunswick by providing vocational training, but which instead exploited the "apprentices" while providing little education. Coffin, who received £125 per year for his efforts, "did not hesitate to regard the Company's funds as another source of English compensation for the deprivations of the loyalists." Judith Fingard, "The New England Company and the New Brunswick Indians, 1786-1826: A Comment on the Colonial Perversion of British Benevolence," *Acadiensis* 1, no. 2 (1972): 39. In 1783 Coffin had purchased a 6,000-acre estate on the Saint John River which he named "Alwington Manor" after the ancestral home of the Coffin family in Somerset. Howard Temperley, *Gubbins' New Brunswick Journals 1811 & 1813* (Fredericton, NB: New Brunswick Heritage Publications, 1980), 12.

<sup>88</sup> Edward Jarvis, *Paris trip*, journal entry dated September 11<sup>th</sup>, 1814, Prince Edward Island Archives and Public Record Office.

<sup>89</sup> Edward Jarvis to Munson Jarvis, January 10, 1824, Jarvis Papers, NB Museum Archives.

Acquiring “an establishment of some consequence” was seen by Edward as ancillary to his holding office and his subsequent social standing, but his posting in Malta would be a foreshadowing of the financial challenges to come.

The purchase of Mount Edward would create ongoing financial difficulties for Edward and Maria: Condon attributes Edward’s debt-ridden status to his and Maria’s having attempted to recreate the “elaborate” social life of Malta’s ruling class by expending “both their health and their limited fortune building a grand house...and giving heroic entertainments in order to expose the local population to the best British standards.”<sup>90</sup> Writing to William in 1833, Edward declared that he had purchased a farm near town for £500 stg and that he would be depending upon his share of Munson’s estate to finance it: “I shall import from England my materials – nails, locks, hinges, etc. brick – English or local Lime is difficult to be had here.”<sup>91</sup> Construction of the house took two years and cost more than one hundred per cent upon the original estimates and contracts.<sup>92</sup> After Maria’s death the house became a repository of Edward’s positive memories of her, causing him to hold onto the house even as it continued to be a financial burden, although he was eventually forced to move and rent it out.<sup>93</sup> It was rented to a retired British soldier, William Swabey, a friend of Lieutenant Governor FitzRoy.

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<sup>90</sup> Condon, “The Family in Exile: Loyalist Social Values After the Revolution,” in Margaret Conrad, ed., *Intimate Relations: Family and Community in Planter Nova Scotia, 1759-1800* (Fredericton, NB: Acadiensis Press, 1995), 50.

<sup>91</sup> Edward Jarvis to William Jarvis, August 19, 1833, NB Museum Archives.

<sup>92</sup> Bumsted, “The Household and Family of Edward Jarvis,” 22. The house still stands in Charlottetown today, although it has been converted into apartments. Edward chose to use brick, which was not the norm on the Island. Sir George Seymour noted in 1840 that whereas elite houses were made of brick, “the only ones I observed in Charlotte Town & the Church and Public buildings are of wood.” Seymour, “Prince Edward Island in 1840,” ed. Douglas Sobey, *The Island* (Spring/Summer 2004): 4.

<sup>93</sup> Edward Jarvis to Caroline Jarvis, November 16, 1844, NB Museum Archives. Later his daughter Amelia would live there with her husband. <https://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=5330>

Swabey's daughter described it as "a very fine English red brick house...The shrubberies were lovely & the house handsome & English quite. I loved it."<sup>94</sup>

The financial challenges posed by the building of Mount Edward, however, came not only from the house itself but from related purchases. As has been seen in August of 1828, having secured the position of Chief Justice of Prince Edward Island, Edward ordered numerous items from Grayhurst, Harvey & Co. Goldsmiths, Jewellers & Watchmakers. These included knives and forks, "Plated Table Candlesticks with silver edges," snuffer trays, bottle stands, and "Salt Ladles gilt bowls" with crests engraved.<sup>95</sup> While it is perhaps no surprise that the son of a silversmith would wish to buy silverware for his planned stately home, implicit in Edward's purchases was the assumption that purchasing the latest style of home furnishings was essential, a belief that gained force during the early Georgian period where consumption was linked to novelty and fashion. As Michael Kwass suggests, the terms "new" and "modern" became common during this period, and in newspapers and bills of trade "shopkeepers increasingly emphasized all kinds of wares as 'new and elegant,' 'in the newest taste,' 'à la mode' (in style), 'new fashioned,' and 'modern.'<sup>96</sup> For the Jarvis family, home was a site in which to emulate the British upper classes in their taste in clothing and furnishings, in order to display the cultural capital that would ensure their standing at the top of Charlottetown society.

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<sup>94</sup> Emily Bowman, letter to her nephew Harold, quoted in "'Not the least Colonial': Two memoirs of Early Charlottetown," *The Island* 58 (Fall/Winter 2005): 12.

<sup>95</sup> See p. 92, fn 150. The total of £61.19.6 included charges for a packing case, "Plate Entry Shipping Charges," and export duty. Receipt, August 26, 1828, Jarvis Papers, NB Museum Archives. Shipping, duty, taxes, insurance, and losses from converting currency to sterling or from damage to the shipped goods could add significant sums to any items shipped from London, as the building of the house itself demonstrated.

<sup>96</sup> Micaheal Kwass, *The Consumer Revolution, 1650-1800* (Cambridge, UK: Cambridge University Press, 2022), 105-6.

## Gentility

In early to mid-nineteenth-century British North America, socio-economic status was determined primarily by race, class, and gender. However in fashion, modes of speech, manners, and other aspects of daily life one quality was sought overall, that of *gentility*. Demonstrated through genteel manners, behaviour, or appearance, as well as through a lifestyle that displayed one's wealth and refined taste, gentility was fully attainable only by the privileged. In British colonies, gentility meant emulating the British upper class in its manners and consumption. Elizabeth Mancke sees consuming behaviours as “cultural practices or languages involving human creativity as well as material activities,” writing,

Signalling respectability and social hierarchy around a tea table, or the desirability of goods by association with patriotism, virtue and status, or political agency and shared identity by using particular products, were integral to the whole process of consumption with its global and colonial dimensions.<sup>97</sup>

The consumption of certain goods by elite colonial society reinforced notions of taste, style, decorum, and, ultimately, Britishness, setting standards by which the different outposts of empire would be judged and which would confer class and race privilege.

The capacity to discern the various facets of colonial life that constituted true gentility was a valued form of cultural capital which, along with financial capital, determined the gradations of gentility.<sup>98</sup> Dianne Lawrence argues that across the British Empire, even more than in Britain, gentility had value and purpose, and that in colonial sites it was women who had to “establish a cultural aesthetic, to lay down markers in new or uncertain landscapes.”<sup>99</sup> Elizabeth Langland contends that women were produced by

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<sup>97</sup> Elizabeth Mancke, *The Fault Lines of Empire: Political Differentiation in Massachusetts and Nova Scotia, ca. 1760-1830* (New York and London: Routledge, 2005), 159.

<sup>98</sup> Dianne Lawrence, *Genteel women: Empire and domestic material culture, 1840-1910* (Manchester: Manchester University Press, 2012), 5.

<sup>99</sup> Lawrence, *Genteel women*, 5.

domestic discourses of gentility “even as they reproduced them to consolidate middle-class control,” suggesting that their actions towards class hegemony were less the product of conscious deliberation and calculation than “the result of an unconscious disposition (inscribed even in the body through speech and bearing) to act in certain ways.”<sup>100</sup> In British North America this “unconscious disposition to act in certain ways” manifested itself in specific aspects of colonial society such as social etiquette, entertainment, clothing, and appearance, and the consumption of material goods.

Bonnie Huskins, in her study of gentility among the Loyalists of Shelburne, Nova Scotia at the end of the eighteenth century, sees the town, established by members of the Loyalist diaspora during the 1780s, as a microcosm of Loyalist identity formation within the British Atlantic world. She identifies two interconnected tropes that characterized the negotiation of Loyalist identity in the town: a narrative of war, exile, and hardship, and “the creation and proliferation of genteel culture in a frontier environment.”<sup>101</sup> Gentility, Huskins contends, refers to a “set of manners” that outlined how people should behave in “polite society” that began in Italy in the fifteenth and sixteenth centuries and spread to the Americas, so that by the time of the American Revolution it was “incumbent” on all who considered themselves gentlefolk to “live by a genteel code.”<sup>102</sup> Gentility was associated with European cultural mores, and cosmopolitanism was construed in opposition to local – that is, American – identities and concerns.<sup>103</sup> As Huskins notes, however, the majority of Loyalists who resettled in Shelburne were not seaboard elites

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<sup>100</sup> Elizabeth Langland, *Nobody's Angels: Middle-Class Women and Domestic Ideology in Victorian Culture* (Ithaca and London: Cornell University Press, 1995), 10, 11.

<sup>101</sup> Bonnie Huskins, “‘Shelburnian Manners’: Gentility and the Loyalists of Shelburne, Nova Scotia,” *Early American Studies* (Winter 2015): 153.

<sup>102</sup> Huskins, “Shelburnian Manners,” 154.

<sup>103</sup> Huskins, “Shelburnian Manners,” 156.

“but modest artisans, mechanics, and farmers who nonetheless viewed themselves as genteel.”<sup>104</sup> Genteel status thus shifted from something inherited to something acquired, which in Shelburne and throughout the Maritime colonies was initially displayed through balls, assemblies, and dinner parties, set “among the tents, trees, stumps, rocks, and piles of still-uncleared brush.”<sup>105</sup>

New Brunswick’s social and cultural landscape was similarly imbued with the notion of gentility. Many of the colony’s Loyalist leaders had legitimate pretensions to gentility, although the majority of these lived in Fredericton overlooking the Saint John River, in houses “stocked with mahogany furniture that had either been brought up from their former homes or purchased from England.”<sup>106</sup> In early Saint John there was no market for craftsmen such as the silversmith Edward’s father had been, or for artists, cabinetmakers, or glassmakers. People who could afford to buy table silver, fine furniture, good glassware, or ceramics, all essential to a genteel lifestyle, ordered them from England or the American seaboard colonies.<sup>107</sup>

The Jarvis family was able to access consumer items from London in part through commissions, requesting that a friend or family member travelling there buy items and ship them to Saint John. As noted, during his sojourns in London Edward received numerous commissions, such as a request from his sister in 1816 for a long list of items including “A white Satin gown genteelly and fashionably made and trimmed by no means extravagantly. A yard and a half of the satin to alter the gown in case it should not

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<sup>104</sup> Huskins, “Shelburnian Manners,” 157.

<sup>105</sup> Huskins, “Shelburnian Manners,” 161.

<sup>106</sup> Condon, *The Loyalist Dream for New Brunswick*, 175.

<sup>107</sup> Donald Blake Webster, *Georgian Canada: Conflict and Culture, 1745-1820* (Toronto: Royal Ontario Museum, 1984), 146.

suit.”<sup>108</sup> Mary also asked for two morning caps, a straw bonnet “neatly trimmed,” “A Full dress cap or Turban to correspond with the crimson gown,” and two corsets, “the price not to exceed forty shillings.” Other items included a dress, a cloth pelisse, jewellery, white satin slippers, and walking shoes. Edward’s mother, in the same letter, requested a pair of bronze candlesticks, “Two plated dish stands and two glass trifle or Floating Island Dishes to place on them,” “A border for the Hall oil floor cloth,” “A Bell Rope or Riband to correspond with the blue Curtains,” and “A sufficient quantity of the bright, light, blue moreen to cover a large sofa or if two small sofas for Drawing Rooms are more stylish send more of this stuff to cover the two.”

Munson, Edward’s father, had also acquired items from London, in his case through his brother William who was in London for several years following the war, including a tea urn and coffee pot, carpets, and other items. While Munson would not have been considered part of the elite back in Stamford – as a silversmith he would have been considered an artisan – in Saint John he and other early Loyalist merchants “were readily accepted as part of the patrician elite.”<sup>109</sup> T.W. Acheson writes that the Jarvises “provided leadership in the principal élite activities, such as the subscription assemblies, associated with the Loyalist patricians and the officers of the British regiments in garrison.”<sup>110</sup> Edward’s brother-in-law Edward Boyd, as noted a commissioned officer who had fought in the Napoleonic wars, would have taken part in the latter

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<sup>108</sup> Memorandum of articles to be purchased by Mr. E.J. Jarvis for Mrs. R. Hazen. Mary Hazen to Edward Jarvis, 1816. When in London in 1823 Caroline sent her family a bonnet, dresses, and necklaces for her mother and sisters, books and a collar for her brothers, and other items. She was, however, unable to find “a glass for the Mustard Pot,” a quest mentioned in several letters between Saint John and London. Caroline Boyd to Edward Boyd, August 20, 1823, Jarvis Papers, NB Museum Archives.

<sup>109</sup> Acheson, *Saint John*, 51.

<sup>110</sup> Acheson, *Saint John*, 51.

entertainments. In a letter to Caroline, then in Malta, in February of 1824, her brother John wrote,

Edward's leg is nearly well and he begins now to partake of the amusements of the day of which we have an abundance. The officers of the Garrison have formed a Sleighing and Skating Club...The Club gave a Picnic and Dance at Frog Pond on the 19<sup>th</sup> and on the 23<sup>rd</sup> the 52<sup>nd</sup> Rgt. Gave a most splendid Ball and Supper at Mason's Hall...Those of the Detachment at Fredericton came down...This being Headquarters of the Regt. We have the band, which is delightful. The officers are fine young dashing men, no nonsense about them. Several of them are old Peninsular acquaintances and school fellows of Edward's which makes it pleasant for him.<sup>111</sup>

John also writes that Caroline, the wife of Edward's older brother Ralph, "gave a ball and supper on the 30<sup>th</sup> in in her usual good style." Caroline was the daughter of George Leonard, a prominent Loyalist. As noted in Chapter 1, Edward's sister had married into the Hazen family, consolidating the group of families that dominated the Saint John elite.

Writing of hospitality in Georgian England, Amanda Vickery notes that genteel families, whether landowners, employers, or members of the elite, carried out roles that involved encounters which took place in the home: hospitality was "crucial to the maintenance of social credit and political power...as mistress of ceremony, the elite hostess might wield considerable practical power from the head of her dining-table."<sup>112</sup> Huskins attributes the eventual failure of the town of Shelburne to the poor judgement of Loyalist newcomers who expended their "limited wealth...upon the appurtenances of wealth, great houses, and stores, before it could be judged whether an economy would rise to support them."<sup>113</sup> Loyalists spent on their houses, she notes, as their homes were "the most forthright statement of a person's cultural condition" and, as such, private

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<sup>111</sup> John Boyd to Caroline Boyd, February 3, 1824, Jarvis Papers, NB Museum Archives.

<sup>112</sup> Amanda Vickery, *The Gentleman's Daughter: Women's Lives in Georgian England* (New Haven and London: Yale University Press, 1998), 9.

<sup>113</sup> Huskins, "Shelburnian Manners," 169.

homes were frequently used to host genteel entertainments.<sup>114</sup> As well as entertaining, Loyalists spent money on mahogany furniture, silverware, fine china, and tea accoutrements such as silver teaspoons, teapots, tea cannisters, teakettles, and, of course, tea itself. Loyalists in other Nova Scotian communities and in New Brunswick also “spent significant portions of their income on fashionable clothing, elegant furniture, fine wine, and other embodiments of polite society.”<sup>115</sup> While Huskins is describing the first Loyalist generation, the second generation also prized gentility, even if, as in Edward and Maria’s case, a lack of funds in Malta and Maria’s poor health in Charlottetown prevented them from hosting “genteel entertainments” to the degree they would have wished.

### **Bereavement**

On August 21, 1841 a tragic event took place: Maria died. Not only her death, but also the circumstances under which it occurred, would profoundly affect Edward for the rest of his life. He had travelled to England to seek treatment for his failing eyesight, but had been unable to have Maria travel with him owing to the prohibitive cost. Edward arrived home from his trip to find the blinds closed and the household in mourning, only to discover that his wife had died in his absence. Travelling from England, he had been unable to receive letters informing him of her death. While there had been indications that Maria was unwell, she seems to have hidden the true extent of her health concerns from Edward, no doubt wishing to shield him from worry and concern. Six months before

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<sup>114</sup> Huskins, “Shelburnian Manners,” 170.

<sup>115</sup> Huskins, “Shelburnian Manners,” 171.

her death, however, Maria wrote to Carolyn that she had been diagnosed with “an organic disease of the heart” and advised not to overexert herself.<sup>116</sup>

It is difficult to imagine the degree of shock Edward would have felt arriving home expecting to see Maria after several months in England, only to find she had died in his absence. In an October letter Munson, Edward’s son, wrote to Caroline that his father was fatigued following his return from the St. Eleanor’s circuit, adding, “I am afraid it will be a long time before he will be reconciled to the severe shock he encountered on his arrival.”<sup>117</sup> Claire Bidwell Smith describes feelings that are common following the death of a loved one such as guilt at not being there at the time of death or saying good-bye properly, or taking the person for granted, feelings Edward likely would have experienced following Maria’s death.<sup>118</sup> Jalland states that sudden deaths often leave the bereaved feeling “guilty and angry, full of regrets, as well as shocked and sad.”<sup>119</sup> Moreover, the sudden death of a loved one can often lead to anxiety, which, if left untreated, can be ongoing. There are indications that Edward suffered from at least some degree of anxiety, a condition that would not have been recognized, let alone treated, by those around him or by Edward himself.<sup>120</sup>

Edward’s grief would have been all the more difficult to bear given that Victorian men were increasingly expected to behave in a restrained manner in describing their feelings of loss upon the death of a loved one.<sup>121</sup> Men were expected to find solace in their work: In 1862 in Upper Canada, Chief Justice Robert Harrison noted in his diary

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<sup>116</sup> Anna Maria Jarvis to Caroline Jarvis, April 5, 1841, Jarvis Papers, NB Museum Archives.

<sup>117</sup> Munson Jarvis to Caroline Jarvis, October 19, 1841.

<sup>118</sup> Claire Bidwell Smith, *Anxiety: The Missing Stage of Grief; A Revolutionary Approach to Understanding and Healing the Impact of Loss* (New York: Hachette, 2018), 87-8.

<sup>119</sup> Jalland, *Death in the Victorian Family*, 66.

<sup>120</sup> Smith, *Anxiety*, 85.

<sup>121</sup> Jalland, *Death in the Victorian Family*, 252.

that on the day of his infant daughter's death he was "obliged to go to the office" where he appeared at police court for a man facing "a charge of nuisance in keeping cows etc."<sup>122</sup> Edward, however, was unable to simply move on from his bereavement. Writing to Caroline five months after Maria's death about the impending death of Jane Boyd, Maria and Caroline's mother, he appeared to be suffering from depression:

My own mind continues in the unconquerably sad & depressed state that the approach to death appears to me rather desirable than otherwise. We are rapidly hastening to that final consummation of all things, one & all of us, & why wish to delay what must speedily come, & when it comes will bring with it relief from anxiety, care & sorrow. I see death around me on all sides...It may be truly said 'in the midst of life we are in death.' I shall be anxious to hear from you again – indeed I wish I could hear oftener, for I am here alone as it were, with my children, without a relative on either side whose society would be so soothing in these days of gloom & despondency. Edward's "gloom & despondency" were exacerbated by the isolation he felt in the backwater of Charlottetown, where there were no Boyd or Jarvis family members. While Edward would marry Elizabeth Gray, a friend of Maria's, two years later, after her subsequent death in childbirth he seems to have given in even more to despair, suggesting that he continued living only for the sake of his children and that, were it not for them, he would have preferred to join Maria in the hereafter.

### **The daughters' burden**

Following Maria's death a large part of her domestic role fell to her two daughters. Mary Jane, the oldest daughter, inherited the job of running the household, as well as being a support to Edward and overseeing her younger sister Amelia's education.<sup>123</sup> In 1842, referring to houseguests invited by her father, Mary Jane wrote "I was very sorry for it as it will give me much more to do...but I did not like to say so to Papa as he seemed to

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<sup>122</sup> Robert A. Harrison, *The Conventional Man: The Diaries of Ontario Chief Justice Robert A. Harrison*, ed. Peter Oliver (Toronto: University of Toronto Press, 2003), 202.

<sup>123</sup> Mary Jane Jarvis to Caroline Jarvis, May 4, 1840, Jarvis Papers, NB Museum Archives.

wish to have them.”<sup>124</sup> Particularly in isolated Prince Edward Island, seeing family members or friends more often than not meant entertaining them for long house visits that inevitably added to the housekeeping burden. In her letter about the ball quoted above Maria wrote to Caroline that “The Miss Grays came to us on New Year’s Day & remained nearly four weeks” – this on top of moving into a new home and preparing for the ball.<sup>125</sup> As Bumsted notes, however, temporary and permanent houseguests, both kin and friends, were “standard practice” among Victorians throughout Anglo-America.<sup>126</sup> After Maria’s death Edward no doubt embraced any opportunity to connect with friends or family, but he seems to have had limited awareness of the extra workload they placed upon his daughter when staying for prolonged visits in their home.

In the same letter to her aunt Mary Jane mentioned her concerns regarding her father; discussing her own upcoming visit to Saint John she wrote,

Much as I wish to see you all it grieves me to leave him, the only consolation I have in doing so is that he will be engaged in Court for a fortnight and after a week’s rest he will be going to the George Town Court which will give him occupation, and I most sincerely trust divert his mind from his sorrows.<sup>127</sup>

In an earlier letter Mary Jane also expressed her concerns about her father regarding both his physical health and his emotional state, the former declining significantly:

My dearest Papa seems to me so altered I do everything in my power to comfort him, but all appears in vain. I hope he will go to St. John this summer, as I sincerely trust that change of scene may do everything for him. He has been laid up for nearly a fortnight from severe rheumatism in his right arm & shoulder. He was bled last Saturday till he nearly fainted. He did not recover his sight & hearing for over an hour after. Poor Papa began to say something to me, and his mind wandered. I was alone with him & became quite alarmed, but I thought I would wait a little before I called for assistance & he became gradually better.<sup>128</sup>

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<sup>124</sup> Mary Jane Jarvis to Caroline Jarvis, June 23, 1842, Jarvis Papers, NB Museum Archives.

<sup>125</sup> Anna Maria Jarvis to Caroline Jarvis, February 13, 1837. Jarvis Papers, NB Museum Archives. The “Miss Grays” appeared to be two sisters belonging to a family that were close friends of the Jarvisses.

<sup>126</sup> Bumsted, “The Household and Family of Edward Jarvis,” 23.

<sup>127</sup> Mary Jane Jarvis to Caroline Jarvis, June 23, 1842, Jarvis Papers, NB Museum Archives.

<sup>128</sup> Mary Jane Jarvis to Caroline Jarvis, May 26, 1842, Jarvis Papers, NB Museum Archives.

Mary Jane clearly felt responsible for her father, and seems to have carried a large part of the burden of caring for him, particularly as the extended family was in Saint John and her brothers were educated out of province. This would conform to the Victorian ideal of what a daughter should be, one illustrated in novels and moral tales: “the good daughter would always put the claims of home and her obligations to her father first, before any outside concerns,” particularly if the family was in a time of hardship.<sup>129</sup>

Like her mother, who exerted herself to meet the demands of running the household, Mary Jane prioritized Edward’s health above her own, telling her aunt,

I hope most sincerely that Papa will be well enough to go to the St. Eleanors Court next Monday week. The Attorney General would (I think) give his small eyes to go instead. I do not like that man. Papa told you how much I suffered from pain in my side. He is very anxious that I should go to St. John with Mrs. Smith in June, but I cannot make up my mind to leave him. I feel that if I staid here I should never get well. I wish much to be under my dear Uncle’s [Dr. Boyle’s] care. The ointment which Dr. Poole gave me for my side has not been much benefit. I sometimes feel so ill that I cannot work or read.<sup>130</sup> Here we see Mary Jane wrestling with her responsibility towards her father and concerns about her own health. Her mentioning of Edward’s upcoming circuit court session echoes her own mother’s awareness of, and prioritizing of, Edward’s career. While it makes sense that the career of the household head, who provided the financial foundation for the family, came first, Mary Jane’s concern for Edward’s health came at the cost of her own.

Hinting that she is soon to be married, Mary Jane also mentions the servants:

I shall not say any more until I see you, which I hope will be soon, & yet that cannot be unless I make up my mind to leave my dear Papa. I should not be very much missed as Emily is very clever in housekeeping. We are fortunate in having good servants. The House-maid has lived with us twelve years, and the other two five. Tho’ left to do just as they please when I am sick, yet everything goes on as smoothly as when I am about.

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<sup>129</sup> Deborah Gorham, *The Victorian Girl and the Feminine Ideal* (Bloomington: Indian University Press, 1982), 38-9.

<sup>130</sup> Mary Jane Jarvis to Caroline Jarvis, May 26, 1842, Jarvis Papers, NB Museum Archives. Her uncle John Boyle, married to her mother’s sister Cornelia, was a doctor in Saint John.

This passage suggests Mary Jane considered herself to be in charge of the domestic management of the household after her mother's death, although she was fortunate in that their servants seemed to need a minimum of oversight. On September 5, 1843 Mary Jane married Frederick Starr, giving birth to a daughter, Maria Gore, the following August.

Edward's younger daughter Amelia would also be roped into running the household after her stepmother's death, although her aunt Jane, her mother's younger sister, came from Saint John to help out, a necessity since Amelia's half-siblings, Edward's children with his second wife, were still little. Amelia, however, like her older sister, escaped the oppressive atmosphere and the heavy responsibilities of Mount Edward to visit her aunt and other relatives in Saint John; both sisters, then, were forced to balance family demands based on gender with personal needs, with neither giving in fully to the pressure to be there for Edward. While Bumsted avers that "there is no evidence in the Jarvis Papers of a direct act of defiance of male wishes by a female," in fact Edward's authority to dictate his adult children's actions does appear to have waned during the final decade of his life.<sup>131</sup> Not only did Amelia choose a suitor Edward considered unsuitable, Henry opted for a Scottish bride not approved of by his father. Condon suggests Edward's diminished parental influence in his later years arose from "the links between financial power and patriarchal authority," noting that Edward confessed to Caroline in 1849 that even though he disapproved of Henry's fiancé, he was so short of funds he felt he could not comment on his children's choice of marriage partners.<sup>132</sup> In the case of the Jarvis family, at least, Edward's inability to dictate his

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<sup>131</sup> Bumsted, "The Household and Family of Edward Jarvis," 27.

<sup>132</sup> Condon, "The Family in Exile," 50-1. Edward Jarvis to Caroline Jarvis, September 21, 1849, Jarvis Papers, NB Museum Archives.

children's social lives illustrates the degree to which patriarchal authority and economic status were intertwined.

After first Maria's and then his second wife Elizabeth's death, with Munson, Henry, and William studying in London, Edinburgh, and Nova Scotia respectively, and Mary's marriage, Edward seems to have felt increasingly isolated in Charlottetown. In letters to William and Caroline he complained frequently of being cut off from family:

Henry will take this letter and in parting with him I need not say what my feelings are. Except perhaps during a short time next summer, years will probably pass before I shall have him with me again – if indeed I should survive ever to see that day. My children are leaving me one by one, & each successive departure revives the bitterness of feeling for my one, great, & indelibly impressed bereavement. But it is the course of nature that children must separate from the parent, & when their own future welfare in society makes this imperative it must be borne with.<sup>133</sup>

While philosophical about his children's need to leave the family home, however,

Edward had also expected his daughters to fulfill their designated role. But both Mary Jane and Amelia, while they did take on that role after their mother's death, eschewed it as well, first through staying with their aunt and uncle in Saint John, and later by marrying and setting up their own households.

### **Family before profession?**

While for the most part the needs of his family were subsumed to the exigencies of his public role, on at least one occasion Edward chose to put his family before his professional duty. In December of 1823 he was in London, preparing to go to Malta as he had been instructed to do by the Colonial Office to take up his role as King's Assessor. He received word, however, that Maria and their two small children, Mary and Munson, had sailed from Saint John for London to join him. Edward had orders to sail for Malta in

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<sup>133</sup> Edward Jarvis to Caroline Jarvis, November 16, 1844, Jarvis Papers, NB Museum Archives.

the Packet leaving December 2<sup>nd</sup>, but wanted to postpone his departure until Maria and the children arrived in London so that he could travel to Malta with them. Lord Bathurst granted a postponement until the 15<sup>th</sup>, but Edward felt nonetheless pressured to leave and take up his new role in Malta.<sup>134</sup> To provide an excuse to remain in London and mollify the Colonial Office he had himself called to the Bar in the interim, but struggled to decide whether or not to leave. Having no idea when Maria and the children would arrive, he did not know how long he would have to postpone leaving for Malta should he decide to stay in London to wait for them, or the degree to which he was putting his new judicial position in Malta in jeopardy by doing so.

As the days passed without word of Maria's arrival Edward became increasingly agitated, his emotion spilling over into his correspondence with Caroline and with Ann Coffin, with whom Caroline was staying. To Caroline on October 30<sup>th</sup> he wrote,

I am afraid to go to Downing Street to make enquiries about preparations for my departure [to Malta], lest they should send me off without a moment's delay – I am now remaining on the plea of being called to the Bar, for they will not allow the expected arrival of my family to be any excuse. I also incur the risk of Sir Thomas Maitland's displeasure for remaining at all & as I am wholly dependent on him, it forms no small part of my accumulated causes of anxiety.<sup>135</sup>  
In a letter to his brother Edward also expressed his frustration that a family friend had written from Saint John without mentioning Maria and the children:

Hamilton says nothing of my wife and children. Had they left St. John's? Were they to leave St. John? Why had I not got a line from anyone? ... Two lines would have relieved my mind from the most distressing anxiety. Next week I expect to go to Malta, perhaps I must go as uncertain as I now am. If so, I shall be almost in a state of mental distraction. All this might have been saved by ten minutes trouble. There may be a good cause for it all, but I cannot help saying it appeared to me to be a cruel and unpardonable neglect.<sup>136</sup>  
Maria and the children did in fact arrive in time and were able to travel to Malta with

Edward and with Caroline. Edward, however, believed the incident cost him the high

<sup>134</sup> Caroline Jarvis to Mrs. Jane Boyd, December 7, 1823, Jarvis Papers, NB Museum Archives.

<sup>135</sup> Edward Jarvis to Caroline Jarvis, October 30, 1823, Jarvis Papers, NB Museum Archives.

<sup>136</sup> Edward Jarvis to William Jarvis, November 13, 1823, Jarvis Papers, NB Museum Archives.

favour in which he was held by Bathurst, a development which he alluded to in a letter to his brother-in-law John.<sup>137</sup> John had himself been in the dark regarding his sister's movements, musing to Caroline that she may have gone alone to Malta at the same time Maria was on a ship in the Mediterranean with Edward and the children.<sup>138</sup>

Before Maria and the children's actual arrival in England Edward's distress at not knowing exactly where they were was further increased by the news that a ship had been wrecked at the mouth of the Thames. Rushing to the scene of the shipwreck, Edward no doubt went through paroxysms of fear and anxiety until learning, to his enormous relief, that Maria and the children were safe. Commenting on Edward's attempts to find Maria and the children Ann Coffin wrote to Caroline in London from Stowey House, "What dismay poor Mr. Jarvis must have experienced in his fruitless search for his wife. Poor man, I trust perspective of future felicity has already obliterated past unhappiness."<sup>139</sup>

Maria described the ordeal of her arrival in Britain, at Sheerness, to her mother, writing,

We were unfortunately cast on the shore...in a most tremendous gale of wind, indeed I think it might be called a hurricane. It was the fourth we had to encounter after we made soundings. When I heard the last cable part you may well conceive the anxiety I felt for my poor little pets. I instantly arose up & dressed myself and with delay made the nurse maid take one child & I took the other (both out of their beds asleep), dressed, fed, and made them comfortable to be put into a boat at a moment's notice. However in about an hour we drifted on to a sand bank where we remained until 9 o'clock a.m. Capt. Binnie accompanied us to Sheerness from whence I wrote to Edward. He, dear fellow, having received notice of our arrival in the River, had gone down to Gravesend in the hope of meeting us & did not return for some hours after my letter reached London, previously to which Mr. J. Bainbridge despatched a confidential servant to see me up to town.<sup>140</sup> Maria further wrote that Mary had been "very ill" on the passage but that Munson

"thrived amazingly" and was fond of his nurse, who "took the kindest care of him."<sup>141</sup>

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<sup>137</sup> Edward Jarvis to John Boyd, January 19, 1826, Jarvis Papers, NB Museum Archives.

<sup>138</sup> John Boyd to Caroline Boyd, February 3, 1824, Jarvis Papers, NB Museum Archives.

<sup>139</sup> Ann Coffin to Caroline Boyd, December 10, 1823, Jarvis Papers, NB Museum Archives.

<sup>140</sup> Maria Jarvis to Mrs. Jane Boyd, December 10, 1823, Jarvis Papers, NB Museum Archives.

<sup>141</sup> Maria Jarvis to Mrs. Jane Boyd, December 10, 1823, Jarvis Papers, NB Museum Archives.

It is not clear what happened to the nursemaid upon their arrival in London; perhaps she returned to Saint John. Maria wrote to her brother John that prior to their leaving for Malta they “had not a servant of any description”:

The nurse I hired in London to accompany us to Malta (to whom we had engaged to give 24 Guineas a year) promised to join us at Dover but disappointed us. I have hired a young woman to hold the child the few days we remain here. She cannot speak one word of English, still she amuses the children exceedingly well & is a great relief to me.<sup>142</sup>

The nurse would have represented a further expense for Edward.<sup>143</sup> After several days’ packing in London Edward, Maria, Caroline, and the children left for the continent en route to Malta, the emotional rollercoaster Edward had just endured no doubt forgotten. The episode, however, revealed the degree to which Edward’s duty as a family man was intertwined with his professional responsibilities. In attempting to be there for his family Edward had, in fact, put his professional wellbeing in jeopardy. While the gamble he took in risking the disapproval and even dismissal from the Colonial Office by delaying his departure to Malta to wait for his family paid off, it could easily have resulted in far more negative consequences, a fact of which he was no doubt acutely aware. The incident showed that Edward felt a duty not only to his profession and to the British government, but also to his family, and that, in one instance at least, he had put his family ahead of the Colonial Office’s exhortations, although not without considerable doubt and anxiety.

### **Fatherhood and patronage**

While in the case of his departure for Malta Edward found that his duty to his family came into conflict with his duty to the Colonial Office, for the most part he was able to

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<sup>142</sup> Maria Jarvis to John Boyd, December 24, 1823, NB Museum Archives, Jarvis Papers.

<sup>143</sup> The woman seems not to have stayed with the family, for Edward wrote to Robert from Marseilles “We have engaged a French girl to go with us for a nurse.” Edward Jarvis to Robert Hazen, January 14, 1824, Jarvis Papers, NB Museum Archives.

dovetail the interests of his profession and his family. As well as supporting his family financially through professional posts which he procured through an astute use of patronage, Edward sought to use his posts to further his family members' interests. In October of 1823 he wrote to his father about his prospects in Malta:

As Crown Advocate & president of the Commercial courts & as political advisor in immediate communication with His Majesty's Government in England I shall have much influence & probably may yet be able to do much good for the rising branches of my own as well as my brother's & sister's families.

While, as has been seen, Edward was unable to even hang on to his own position as King's Assessor beyond the four-year mark, he saw his good fortune in securing it as an opportunity to extend patronage to family members. He was, however unable to procure a position for his brother-in-law, John Boyle, who had – quite unreasonably by all accounts – expected Edward to secure the position of Superintendent of Quarantine in Malta for him.<sup>144</sup> Once his children reached adulthood, Edward regularly sought to use his position and the contacts it afforded to advance his sons' careers, as well as to help his grown children procure advantageous marriages. In the latter case, though, he failed to influence his offspring in their matrimonial choices to the degree he would have liked.

Near the end of his life and facing the reduction in his salary following the granting of responsible government to Prince Edward Island, Edward sought patronage for his son Munson, who was studying law in London, and for Henry Fitzgerald, who had been forced to leave his medical studies in Edinburgh. In 1850 Edward wrote to Sir John

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<sup>144</sup> Edward Jarvis to John Boyd, January 19, 1826, Jarvis Papers, NB Museum Archives. Boyle, who was married to Maria's sister Cornelia, expected Edward to use his connection to Lord Bathurst to procure the position for him. As Edward explained to Boyd, Bathurst had given him the Malta position because he "thought he had done me an injustice personally, & therefore gave me as a compensation my present appointment – but a step farther he would not go... Were I to presume upon his liberality to me, I should be checked & justly checked for an impertinent officiousness." Edward was indignant at Boyle's unreasonable expectation of him and at his failure to appreciate the actual limits of patronage. The incident appears to have caused a rift between the two sisters' families, particularly as Boyle and Cornelia and their children moved to Scotland shortly thereafter.

Harvey, who had served as lieutenant governor of Prince Edward Island from 1836 to 1837 and was then lieutenant governor of Nova Scotia, asking him to help Henry attain a candidacy for the Medical Department of the Army.<sup>145</sup> Harvey responded by forwarding Edward's letter to Sir James McGrigor, a Scottish physician and military surgeon who was widely considered to be responsible for founding the Royal Army Medical Corps.

Harvey then forwarded Sir James's letter to Edward. McGrigor wrote:

I have had the pleasure of receiving your letter of the 27<sup>th</sup> October in favor of the Son of the Chief Justice of Prince Edward Island. For him as for any one in whom you may take an interest I would have the greatest pleasure in doing the utmost in my power but I regret to say that from the age to which Mr. Jarvis has arrived viz 25 years and the great number of highly qualified Candidates on the Register before him which would take 2 or 3 years to dispose of he would be disqualified for the services as being beyond age, viz 25 years.<sup>146</sup>

McGrigor's letter shows the limits of patronage: few were better placed than him to help Henry, but even so nothing could be done, despite his father's best efforts, to get him in.

There is no doubt that, despite the sudden drop in his income, Edward tried to make the best of the situation for both his older sons: a letter to Munson discussing his imminent departure from the Inns of Court is filled with practical advice and a determination that Munson nonetheless move forward with his career.<sup>147</sup> Still, it must have been a hard pill to swallow for Edward that he had not been able to fulfill his patriarchal role of providing for his sons' careers to the degree he would have wished. It must have been with some irony that he received a letter from C.H. Smith, an Englishman who had been Naval Officer of Her Majesty's Dockyard in Malta during Edward's time there, asking for his advice regarding what in England was "now more than ever difficult

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<sup>145</sup> Edward Jarvis to Sir John Harvey, October 18, 1850, LAC MG 24, B 13, 1502-1505.

<sup>146</sup> Sir James Grigor to Sir John Harvey, November 18, 1850, LAC, MG 24, B 13, 1514-1516.

<sup>147</sup> Edward Jarvis to Munson Jarvis, May 3, 1849, LAC, MG 24, B 13, 1488.

to acquire, a competent and respectable livelihood” for his son Valentine on the Island.<sup>148</sup>

Edward took the time to respond to the man who, like him, was trying to do the best for his sons; in doing so, he may have debated whether to tell Smith that his own sons had recently had to cut short their professional studies. While all three of his sons went on to have successful careers in their respective professions, Edward had come up against the reality that not every fatherly effort, however assiduously pursued, was successful.<sup>149</sup>

While patronage was largely used to further the careers of elite men, it also functioned to cement social and family ties for both men and women and extend privilege in general to networks that spanned the globe. Overall, it could be argued, Chief Justice Edward Jarvis owed much of the success of his career to his capacity to establish and take advantage of relationships of patronage to further his own interests. Dependent as he was on the Imperial government, the securing of sought-after positions within the judiciary required the deft mining of professional and personal contacts in his own “interest.” Edward also used both professional and personal relationships whenever possible to further his own and his family members’ interests, while at the same time maintaining connections that represented social, emotional, and kinship ties. In turn, Edward bestowed patronage on others, using his privileged access to a certain stratum of colonial society to benefit those he deemed worthy to be included in the networks of which he was

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<sup>148</sup> C.H. Smith to Edward Jarvis, March 14, 1849, LAC, MG 24, B 13, 1479-1482. Smith, two of whose sons already had positions in Jamaica and Australia, wrote that he was sure Jarvis would understand “the natural anxiety of a father for the welfare of an excellent and most deserving son.” Edward mentioned Smith’s request to Munson who was then in London, saying Smith and his wife were “very genteel and agreeable persons,” but that his son’s prospects on the Island were “very bad,” concluding that “times must indeed be bad elsewhere when they come to this miserable Island.” Edward Jarvis to Munson Jarvis, May 3, 1849, MG 24, B 13, LAC, 1488.

<sup>149</sup> Munson had a successful career as a lawyer on the Island, while Henry Fitzgerald established a medical practice in Summerside. Edward’s son by his second wife, Edward Worrell, also did well for himself – he was a beneficiary of the will of Edward Worrell who was a friend of the Gray family, that of his mother Elizabeth Gray, Edward Jarvis’s second wife. The Worrells were an elite landowning family on the Island. Bittermann and McCallum, “The Pursuit of Gentility in an Age of Revolution: The Family of Jonathan Worrell,” *Acadiensis* 43, no. 2 (Summer/Autumn 2014): 46.

a part. The history of patronage in Edward's career sheds light not only on a family's history in various outposts of empire, it also shows how access to class privilege was maintained and passed on, perpetuating the economic and social hierarchies that so marked colonial society during the early Victorian period.

### **Conclusion**

Duty and dependency were themes of both Edward's public professional life and of his private family life. Family and family relationships were vital to Edward's professional career and to his status as a Georgian and later Victorian male, as well as to his emotional and psychological wellbeing. When his wife Maria tragically and unexpectedly died, Edward was never able to fully recover his emotional equilibrium. For Edward, as well as the emotional and psychological impact of Maria's death, there were very real practical implications of widowerhood. As has been seen, he was forced to rely on his daughters and sisters-in-law to fulfill Maria's roles. He also felt compelled to enter into a second marriage, a measure that led to further bereavement.

The realities of elite women's gender roles in British North America meant that, up to the time of her death, Edward's wife Maria faced challenges carrying out all that was expected of her. Her role was made even more burdensome by the pressure she clearly felt to meet standards of gentility expected of those in the Jarvis family's position, particularly given their less-than-ideal financial situation. In Maria's letter to Caroline of 1837 outlining the work she had carried out in preparation for the ball, while she appears to take pride in pulling it off successfully, she also suggests the toll it had taken on her, writing that while "the whole thing went off with style & astonished many present," she

“was too much fatigued in mind and body to enjoy it.”<sup>150</sup> Maria’s account of the “herculean series of preparatory labours” she faced in hosting the ball so soon after the family’s move to Mount Edward demonstrates the extent to which the social standing of the Chief Justice depended on the labours of his wife and servants.<sup>151</sup>

Edward also faced challenges fulfilling his role of breadwinner and head of the household. Preoccupied with his profession and concerned about his health, particularly his eyesight, he would not have questioned the Victorian convention that saw his role as central to the family unit. Upper-middle-class gender roles dictated that Maria not share her worries over her own health; as Tosh writes, the Victorian husband’s lightening of his burdens by his wife amidst the comforts of the domestic hearth “was not the cue for her to bring up her domestic worries, which could only disturb his hard-gained repose...the wife’s obligation to minister to [her husband’s needs] was the quid pro quo for the material sustenance and protection she received from him.”<sup>152</sup> As has been seen Maria shared her own health concerns with her sister, not with Edward, who, working at his profession, potentially facing debt, and bent on fulfilling his fatherly obligation to secure patronage for his soon-to-be adult children, no doubt downplayed his wife’s ongoing health issues. Edward’s daughter Mary Jane would follow the same pattern as her mother, focusing on her father’s health at the expense of her own. She herself, despite escaping her father’s home to marry and give birth to a daughter, would die on March 24, 1848. Her death, combined with his salary reduction following the advent of responsible

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<sup>150</sup> Anna Maria Jarvis to Caroline Jarvis, February 13, 1837, Jarvis Papers, NB Museum Archives.

<sup>151</sup> Bumsted, “The Household and Family of Edward Jarvis,” 27.

<sup>152</sup> Tosh, *A Man’s Place*, 54.

government of the Island, seemed to take away what little will Edward had left to live, and he would join Maria in eternal rest shortly thereafter.<sup>153</sup>

Until the end, however, despite feelings of loneliness and isolation and, at times, self pity, Edward sought to do the best for his by then grown children. Feeling let down and abandoned by the Imperial government to which he had dedicated his life – feelings first-generation Loyalists felt following the British defeat in the revolutionary war and their subsequent exile – and dependent upon the Island’s government, he nonetheless fought for what he believed he was owed and for the wellbeing of his family. While his commitment to fulfilling the role of Chief Justice in all its facets, a role that he believed included the obligation to meet demanding social mores, took a toll upon his wife, twenty years earlier Edward put his duty to her and their children before the demands of the Colonial Office. His actions demonstrate that, for him, “duty” was a term he applied not only to his public, professional self, but to his private one as well. His private world, moreover, supported and reinforced his professional status, and his emotional relationships helped sustain him in carrying out his public role. Edward was, in the end, unable to maintain a clear delineation, that dictated by the notion of “separate spheres,” between his public and private selves. Following Maria’s death, clearly suffering from depression, he sought a month’s leave from his duties as Chief Justice. A late picture of Edward shows, upon close observation, a deep sadness in his eyes, suggesting that the personal toll both duty and dependency took throughout his life was a steep one.

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<sup>153</sup> There is not a great deal of information available on Edward’s death. It is not clear which of his children, apart from Edward Worrell, who would have been six in 1852, were living at home at the time of his death. Edward’s health conditions, and perhaps stress and grief, no doubt contributed to his dying at the relatively young age of 63. His father Munson, in contrast, lived until the age of 83.

## CONCLUSION

Edward James Jarvis died May 9, 1852. He would have approved of the comments made about him in his obituary in the *Royal Gazette*, which read:

Died: Suddenly at Spring Park, Prince Edward Island, on Monday last, the Honorable Edward James Jarvis, for many years Chief Justice of that Island; aged 63 years. The deceased was universally respected for his upright character and astuteness as a Judge; for the urbanity of his manners as a Citizen; and for the mildness of his disposition as a husband and a parent. He has left four sons and one daughter, with a numerous circle of relatives and friends, to mourn their sudden bereavement.<sup>1</sup>

It would no doubt have provided Edward with some measure of satisfaction to be praised not only for his capacity as a jurist but also for his character and his manners: to him such acknowledgment would have meant that he had succeeded not only professionally but also socially and personally. As has been seen for Edward, educated in the early nineteenth century, being a judge was inseparable from being a gentleman, a designation which included possessing an upright moral character and carrying out a professional role with distinction and honour. For Edward, his status as a gentleman and the leading jurist on the Island also meant taking a prominent role in the social life of Charlottetown and setting the standard for gentility in dress, manners, and deportment.

This study has sought to assess Edward Jarvis's professional legacy, in particular his improvements to the Prince Edward Island judiciary. An indication of the judiciary's evolution during his tenure is that his successor, Robert Hodgson, was the first chief justice from within the colony's legal establishment to take his seat on the bench.<sup>2</sup> Under Edward's lead the Island's partisan, conflict-ridden judiciary came to match more closely

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<sup>1</sup> *Royal Gazette*, May 10, 1853.

<sup>2</sup> Holman, "The Bar of Prince Edward Island," 206.

the level of jurisprudence in British North American as a whole. While some of this evolution, such as the establishment of circuit courts, reflected the growing size of the colony, the high standards of the bar and the separation of the judiciary from Island politics can be attributed to Edward's beliefs regarding the nature of his duty as chief justice. In other aspects Edward's tenure represented less of an evolution: during the twenty-four years of his tenure the judiciary, along with the colonial administration, resisted the call for escheat by the Island's tenantry, keeping alive the archaic institution of landlordism.

Edward's comment, quoted earlier, that his "whole time and best energies have been and ever will be devoted to the discharge of [his] duties," sums up his entire career. Edward's conscientiousness was one of his most notable qualities as a jurist, as was his desire to administer the law professionally and impartially. In the polarized atmosphere that characterized Prince Edward Island's politics and judiciary at the start of Edward's tenure as chief justice, this alone set him apart. Bumsted and Holman conclude that Edward's relative lack of involvement in Island politics, particularly in his latter years, probably worked to his advantage: "Although there were those who would have preferred a Supreme Court with a higher profile, most political factions on the Island were content to allow Jarvis to continue."<sup>3</sup> In trying to navigate the turbulent waters of the colony's transition to responsible government and their devastating financial impact on him, however, Edward was forced to defend himself publicly against charges of greed and duplicity. Throughout his career he felt the need to remind Lieutenant Governors and Colonial Secretaries of his credentials, and offer up evidence of his aptitudes, commitment, and loyalty, as well as the sacrifices he believed the latter had cost him.

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<sup>3</sup> Bumsted and Holman, "JARVIS, EDWARD."

This study has also sought to assess Edward's life and career as a second-generation Loyalist. Condon, examining letters of second-generation Loyalists in the New Brunswick and Nova Scotia archives, concludes that Loyalist children were "deeply affected by their parents' history, and the most talented devoted a significant portion of their lives to redeeming their parents' fate by achieving great distinction in their professional lives."<sup>4</sup> Besides Edward, she gives as an example Henry Bliss. Bliss, as has been seen, acted as New Brunswick's provincial agent in London; he also wrote at least seven historical dramas in iambic pentameter "exalting Loyalist principles." These were found to be "anachronistic to English tastes," yet Bliss continued to write them, "in order to affirm the parental code and his own unrealized sense of destiny."<sup>5</sup> While Bliss, as a playwright, may have been conscious of his destiny as the son of Loyalists, however, I have come across no instances of Edward identifying, at least in writing, as a second-generation Loyalist.

In the many letters and other documents written by Edward held in at least four archives that I have read over the course of my research, not once does he mention Loyalism or his family's origins in the Thirteen Colonies and its subsequent exile. As a young man he did visit his father's hometown of Stamford, where he met with the uncles and aunts who had remained behind when his father, his Aunt Polly, and his Uncle John fled to British North America.<sup>6</sup> Edward was aware, therefore, that his father had left Stamford and his family behind to forge (pun not intended!) a new life in British North America. In the several letters that have survived written to Edward by one of his cousins

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<sup>4</sup> Condon, "The Family in Exile," 49.

<sup>5</sup> Condon, "The Family in Exile," 50

<sup>6</sup> As noted in Chapter 1, three of Edward's aunts, Sarah, Hannah, and Lavinia, and his Uncle Seymour, remained in Connecticut after the Revolutionary War. Samuel spent a short time in New Brunswick before returning to Stamford, and William, after several years in London, ended up in Upper Canada.

in Stamford, the youngest daughter of his Uncle Samuel, however, there is no mention of the events that led to their living on either side of the international border.<sup>7</sup> Moreover, Edward as Chief Justice, as has been seen, had little, if any, sympathy for his fellow second-generation Loyalists on Prince Edward Island, their opposition to the landowning regime no doubt preventing his identifying with them.

That Edward did not for the most part appear overtly conscious of his status as a second-generation Loyalist and that he did not publicly or privately identify himself as one did not, of course, mean that he was not affected by that status. As has been shown, Edward grew up in a staunchly Loyalist town that had been incorporated in 1785, two years after the majority of its residents had fled the Thirteen Colonies. As a young man he was educated in a school run by first-generation Loyalists including Charles Inglis, a man who had preached against the American patriots' rejection of King George III and who had later been handsomely rewarded for his loyalty to the Crown. Edward was also like a son to another Loyalist, John Coffin, who, like Inglis, owned a large tract of land and was a frequent recipient of Imperial government largesse.

Thus, whatever influence Edward's status as a second-generation Loyalist had on him came more from his early formation and later experiences than from any self-aware ideology or agenda. That he did not adopt Loyalism as part of his identity was no doubt in part because a coherent and compelling historical narrative had not yet been constructed around Loyalism during the early part of the nineteenth century although, as noted in Chapter 5, Huskins identifies a narrative of "war, exile, and hardship" among Shelburne Loyalists. As Bumsted suggests, one of the reasons for this lack was that at the

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<sup>7</sup> Harriette Dobson Jarvis to Edward Jarvis, March 3, 1812; May 23, 1814; December 18, 1814; LAC MG 24 B 13, 723-726; 751-754; 770-773.

time there was “[as] yet no Canada requiring a national history.” While Loyalists were included in historical accounts of the provinces of British North America, it was usually as early and influential settlers, but “with little aura surrounding them.”<sup>8</sup> Yet Loyalism was the origin of one of the foundations of Edward’s life, as it was for most second-generation Loyalists: a life-long identification with Empire and with the metropole, Britain, in particular. As Maya Jasanoff and others have recounted, the Loyalist exile meant the reinvigoration of the British Empire, which thenceforth constituted Loyalists’ identity and became the focus of their ambition.<sup>9</sup> As one observer noted at the time, “the great number of loyalists that removed from the revolted states to Canada, New Brunswick, and Nova Scotia, have been succeeded by a population that is firmly attached to the Crown and laws of the Empire.”<sup>10</sup>

Although he was not consciously trying to redeem his family’s history as a second-generation Loyalist, then, Edward was very much affected by this history. As this study has shown, in carrying out colonial law to the “letter of the law” Edward reinforced the property norms enshrined by that law, and sought to protect them against a tide of reformism. The first generation of Loyalists had been animated by a rejection of republicanism along with a belief in a gradual evolution towards change rather than the overthrowing of the existing order, not disputes about the primacy of property, which at that time included human property.<sup>11</sup> In this sense, Edward’s early formation and

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<sup>8</sup> Bumsted, *Understanding the Loyalists* (Sackville, NB: Centre for Canadian Studies, 1986), 11. The lack of significance attributed to the Loyalist experience would, of course, change as the century wore on, culminating with the centennial celebrations in 1883, when Loyalists became “not only the basis of a distinctive Anglo-Canadian nationalism, but of a new identity with heavy racial and class overtones” (13).

<sup>9</sup> Jasanoff, *Liberty’s Exiles*, 9-14.

<sup>10</sup> Abraham Gesner, *New Brunswick, With Notes for Emigrants*, quoted in Reid, *Myth, Symbol, and Colonial Encounter*, 28.

<sup>11</sup> Munson, Edward’s father, enslaved at least two Black people in the late eighteenth century. Lawrence, *The Judges of New Brunswick and Their Times*, 270.

acceptance of Loyalist ideals meant that he was well suited to his role as the leading jurist of a colony in which protest was swiftly crushed in favour of the status quo and landowners' rights trumped those of tenants, squatters, and the Island's original inhabitants.

While Edward's strict adherence to English law enabled him to effectively carry out his role as Chief Justice, however, his grounding in Loyalist values meant that, over the course of his career, he was slowly overtaken by the course of events. His commitment to duty put him at times on the wrong side of history, and his concomitant dependency left him ultimately vulnerable during the last years of his life. While he carried out his duty to the Empire that had defined and shaped his life, over the decades the ideological and political ground slowly shifted, threatening to leave him marooned in the past. Like Henry Bliss with his historical dramas in iambic pentameter, Edward must have found himself towards the end of his life in some ways a relic of an earlier age, still playing the game while the rules subtly changed. Although the foundation of British law, "the sacred rights of property," remained as a pillar of British North American society, the dominance of the first Loyalist generation's beliefs lessened over the years, an evolution symbolized by London's abandonment of the Island proprietors twenty years after Edward's death.

While my own reading of Edward Jarvis's letters and legal writings and of the Jarvis family letters does not bear out Condon's suggestion that Edward consciously sought to redeem his father's loss and exile, however, it is certainly true that he, like his fellow second-generation Loyalists, did achieve great distinction in his professional life. Edward had farther to climb than the Bliss brothers, whose father's wealth and status as a

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judge helped ensure their success, particularly in the nepotistic atmosphere of New Brunswick during the early part of the nineteenth century. Yet while Edward was able to overcome this hurdle to rise to the top of his profession within the Empire, he was unable to rest comfortably at the summit. The insufficiency of his own independent means combined with the parsimony of the Imperial government meant that finances became a frequent concern for him. Despite this, he was able to use his situation and his less-than-optimal means to launch his grown children in their lives and careers, his doubts about the suitability of their spouses notwithstanding, and thus ensure that the third generation would continue the trajectory of upward mobility.

Another characterization Condon makes of the second generation of Loyalists is that family was the most important institution in their lives.<sup>12</sup> This was certainly true for Edward, as has been shown. Family played an essential role in his life: not only with regard to his being a husband and father, but also to his being a son, a brother, and an uncle. These latter relationships sustained him particularly when he travelled within the Empire, first to the metropole, then to the Mediterranean. While the maintaining of close relationships in his life was fraught with the difficulties engendered by distance and a reliance on letters, it was clearly a priority for Edward. This is shown not only by his prolific letter writing, but also by the fact that he saved the letters he received as well as copies of letters he sent. He also used correspondence to maintain connections with friends and professional contacts, the latter part of the extensive networks of patronage of which he sought to take advantage throughout his career.

As seen in Chapter 5, feminist scholarship on the family and on gender relations enables us to shed a great deal of light on the role that family played not only in Edward's

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<sup>12</sup> Condon, "The Family in Exile," 47.

personal life, but in his life in general. While the notion of “separate spheres” and gender-determined roles does provide great insight into the private lives of Edward and his wife and children, problematizing this notion in the case of Edward’s career evinces the nature of the relationship between public and private in the case of this particular early Victorian male. Edward, while he did prioritize his professional career, he did not, in every instance, do so over his family. Upon his departure for Malta in 1823, pressured by the Colonial Office to immediately take up his judicial role in the colony, such was his concern for his family he flouted his orders to depart, albeit with considerable unease. For the most part, however, family served the function of helping Edward fulfil his public role by ensuring the smooth running of the household and providing emotional and even practical support, as was the case with his wife and daughters reading for him so that he was able to carry out his professional duties.

This study, then, has sought to expand the definition of traditional legal biography. It has sought to provide a window on a particular place in a particular moment in time, using the lenses of the history of settler colonialism, the history of empire, and family history, as well as the history of the law. All of these perspectives are, I believe, necessary to fully appreciate who Edward Jarvis was. While a fuller historical psychological assessment is beyond the scope of this paper, I have suggested the possibility that Edward was profoundly affected by the death of his first wife – not simply the fact of her death, but its suddenness and his absence when it occurred. It is possible that Edward was also affected psychologically by his parents’ experience as exiles and refugees – new scholarship has for some time been delving into the intergenerational trauma experienced by Indigenous people as a result of colonization and

Black people as a result of enslavement. The trauma of exile experienced by Loyalists in 1783, whether settlers, Black enslaved or free people, or Indigenous allies, and its effects on the second generation, is a fruitful area for further study to which I hope this present study can make a useful contribution.

The job of historians is not only to provide a window that will give the context of their subjects' lives and thereby present a fuller picture. It is also to resist easy generalizations and taken-for-granted binaries, and this is what I have sought to do with my subject. The themes of duty and dependency woven throughout this analysis help, I believe, to show how dichotomies existed but also hid contradictions. For Edward "duty" had meaning on both a professional and a personal level. He saw it as his duty to do his job administering law, and also considered himself to have a duty to all of his family members. Particularly after his loss of the judgeship of the New Brunswick Supreme Court at the beginning of his career, he believed the Imperial government had a duty towards him to restore his lost property. This echoed the first generation of Loyalists' belief that the British government owed them a debt resulting from their sacrifices during the Revolutionary War.

Dependency is a similarly nuanced notion: Edward, a highly positioned judge, was, in the decades before the granting of responsible government to British North America, dependent on the British government. This did not only have practical applications in that he was dependent for his livelihood, and his ability to provide for his family, on an imperial administration far away in London, one whose top priority was reducing expenditure on the colonies. Dependency, in a colony where ideas about independence were conflated with landowning, was seen in gender terms. Edward, as a

Victorian male, was assumed by definition to be independent, but at the same time his family members were dependent on him to provide for them. This at times led to debt, a not infrequent presence in Edward's life, one exacerbated by the gap between his social and lifestyle aspirations and his ready income.

Seeing Edward's life and career in terms of dependency allows, I believe, a broader grasp of the reality of Chief Justices during the colonial period. Seen to be at the top of the heap in colonial society, second in status only to the Lieutenant Governor, Edward nonetheless was, at some level, just a cog in the imperial machine, one subject to the vulnerabilities of that role. Even as Chief Justice he did not have security of tenure – as has been seen, colonial justices could be booted out, transferred to much less desirable posts, or suffer various indignities if they did not toe the imperial line. While Edward has for the most part been dismissed as a colonial oppressor, and while he did have some power over his fellow citizens, he too was vulnerable to the actions of higher authorities without being consulted, which is a form of oppression. Throughout his imperial career he was dependent upon imperial patronage over which he had no control. Despite doing his best to toe the line and play by the rules he was, in the end, more or less abandoned by the empire he had sought so loyally to serve.

Edward's ultimate dependency aside, however, historians' characterization of him as an enforcer of British property law at a time when it was being widely contested in the colony of Prince Edward Island is largely true. In seeking to meet the highest standards of British law and improve the practice of law in both Malta and British North America Edward was unable, or chose not to, recognize the "interested" nature of the law itself. True to his Loyalist background, he opposed popular protest and believed that all should

adhere to the law without question. As Chief Justice he followed the at times harsh dictates of the law, although in one murder trial over which he presided he was thwarted by a sympathetic jury, and in another he himself, following the jury's recommendation, sought to commute his own sentence of death upon an Epekwitk/PEI Mi'kmaw defendant. His role, though, included meting out some of the remaining few vestiges of the Bloody Code, in which he was, however, at one with the majority of Island residents. Yet Edward's frequent imposition of harsh judicial measures belied a man who sought to do the best for his family members throughout his life, who spent his final years extending himself and calling upon networks of patronage to ensure his children's futures, and who never got over his wife's death. Caught between duty and dependency, he sought to meet one while negotiating the other. Yet as the political and economic landscape changed around him, one of the fundamentals of colonial law – the protection of property – remained paramount.

On July 30, 1860, eight years after Edward's death, the Prince of Wales, the future Edward VII, disembarked from the Royal Squadron in Halifax, Nova Scotia. Mounted on a "fine high-mettled charger," the Prince rode in a procession through streets thronged by thousands in drizzling rain.<sup>13</sup> In August he visited Prince Edward Island where a grand ball – one which Edward most certainly would have attended had he been alive – was held in the Provincial Building in Charlottetown, a town named after the wife of George III. The origins of the Island's name were acknowledged at the ball with the words, "Thy grandsire's name distinguishes this isle; We love thy mother's sway and

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<sup>13</sup> Wynn, "Ideology, Society, and State in the Maritime Colonies of British North America, 1840-1860," in Greer and Radforth, *Colonial Leviathan*, 304-5.

court her smile.”<sup>14</sup> In Saint John, 5,000 flower-bedecked school children sang “God Save the Queen” with extra verses, ending:

Hail, Prince of Brunswick’s line,  
 New Brunswick shall be thine;  
 Firm has she been  
 Still loyal, true, and brave  
 Here England’s flag shall wave  
 And Britons pray to save  
 A nation’s heir.<sup>15</sup>

What Edward would have made of such sentiments is impossible to know, but it bears speculating whether his feelings regarding the British Crown had changed at the end of a life dedicated to upholding the laws of its empire. His father Munson had endured great hardship to remain loyal to the Crown but had ultimately profited; Edward had both profited and paid a certain price for his own loyalty. Whether in the end he believed the price worth paying, whether in balance duty and dependency left him on the credit or debit side of the ledger, must remain a matter of pure conjecture.

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<sup>14</sup> While in Charlottetown the Prince of Wales was met by a delegation of Mi’kmaq requesting assistance for establishing themselves as farmers. Reid, *Myth, Symbol, and Colonial Encounter*, 83.

<sup>15</sup> Wynn, “Ideology, Society, and State,” 306.

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# APPENDIX: The Jarvis Family

