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# THE CONFLICT BETWEEN SIR JOHN HARVEY AND CHIEF JUSTICE JOHN GERVASE HUTCHINSON BOURNE

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Newfoundland in the 1840's presented a remarkably suitable challenge for the political talents of Sir John Harvey. The colony had been granted a representative assembly in 1832. But relations between the council and assembly were so lacking in harmony, elections so turbulent, the interests of the Newfoundland settlers so difficult to reconcile with those of the English merchant groups, Catholics so conscious of their newly found liberties, and so amazingly skilled in the exercise of political powers which had been withheld from them for centuries, that the constitution had to be suspended in 1841. Captain Prescott, the last of the naval governors, left the scene in that year, embittered by a losing fight with the Protestant-led Catholic party whose spiritual leader, Bishop Fleming, was—to put it mildly—not wholly unskilled in the art of politics.

Onto these slippery rocks of Newfoundland politics stepped Sir John Harvey in the year 1841. He was fresh from an unsuccessful encounter with Governor General Lord Sydenham over the handling of the War of Pork and Beans between New Brunswick and Maine. Until this clash with Sydenham, Sir John had managed the politics of New Brunswick rather admirably, smoothing over with practical solutions the difficulties between the business interests of Saint John and the government group at Fredericton, difficulties which had caused the retirement of his predecessor, Sir Archibald Campbell. Never a man for theorizing, Harvey, for the most part, relied on a simple formula: accomplish as much as possible in the council chamber, and bring the unfinished problems into the warmer social atmosphere of the dining-table and drawing-room. He was himself a man of great charm, unflinching courtesy and unshakable goodwill; and he had unlimited confidence in his ability to effect harmony amongst others.

As he restored order in New Brunswick after the fall of Campbell, so also did he bring harmony to Newfoundland after the retirement of Prescott; and later he would in 1846 assume successfully the governorship of Nova Scotia where his predecessor, Lord Falkland, had terminated an unhappy administration in total failure.

There is an interesting relationship between Harvey's social approach to politics and the incident which constitutes the main theme of this paper.

All references are to the Colonial Office Series 194, in the Public Record Office, London, England, and are hereafter referred to by volume number only.

His great faith in social conviviality taxed his inadequate financial resources rather severely. Always impecunious, he habitually felt the financial pinch. Goaded by unpleasant necessity, he appealed to Mr. James Crowdy, the Colonial Secretary of Newfoundland, shortly after his arrival. Unfortunately this transaction between Harvey and Crowdy provided the Chief Justice, Mr. J. G. H. Bourne, with a basis for charges so serious that Sir John Harvey's half-century of public service was almost terminated in disgrace. Bourne charged Harvey with partiality toward Mr. Bryan Robinson, the most prominent of the barristers at St. John's, in the row between Bourne and Robinson. Eventually the Chief Justice suffered the fate he had planned for Harvey, and followed his own predecessor, Chief Justice Boulton, into involuntary retirement.

#### ROBINSON vs. BOURNE

The Governor and the Chief Justice might have avoided conflict with one another were it not for the bad relations which prevailed between the Chief Justice and Bryan Robinson. There is good reason to believe that Bourne on occasion showed prejudice against Robinson; there is little doubt that he was frequently discourteous toward the barrister, and often lashed out wrathfully at him in court.

In February, 1843, Robinson finally submitted his charges against Bourne.<sup>1</sup> They were sent through the Governor to the Colonial Office. The lengthy list of the Chief Justice's alleged misdemeanors began with the charge of wife-beating. Indeed there is good evidence that Mr. Bourne had indulged in this domestic diversion.<sup>2</sup> To conceal this matter the Chief Justice, according to Robinson, had arranged through the services of Mr. John V. Nugent, barrister, to purchase the silence of a certain Mr. Beck who had not only witnessed this unfortunate incident, but had even been treated rather roughly himself when he attempted to rescue Mrs. Bourne from the wrath of her husband. Robinson charged, among other things, that Bourne repeatedly favored the son of Mr. Beck when that son defended himself against libel charges with Nugent acting as his counsel. The 49-page document charged the Chief Justice with prejudice and personal motive in the exercise of his office, and abusive treatment of barristers, jurors and witnesses to effect an outcome suited to these prejudices and personal motives. There were charges of caprice, bad temper, and downright ignorance of the law and procedure. For the most part these charges were met rather ably by Mr. Bourne and his supporters. Indeed he might well have won the day against Robinson had the Chief Justice but avoided involving the Governor in the conflict.

<sup>1</sup> 119, Robinson to Stanley, 21 Feb., 1843.

<sup>2</sup> 119, Bourne to Stanley, 16 Mar., 1843. Bourne does not deny the charge, but merely its connection with the other charges made by Robinson. 119, Prescott to Stanley, May, 1843. The ex-governor here clearly implies the truth of the charge.

This phase of the trouble started when Harvey announced his intention of promoting Robinson to the Executive Council along with four others. Bourne promptly protested that this mark of favor bestowed on Robinson would be misconstrued as support of the barrister in his case against the Chief Justice. The Governor agreed to withhold the promotion, but claimed later that he entered this agreement only on the understanding that Bourne would allow him to proceed with the appointment once it had been made clear to the public and to the Colonial Office that Bourne had, in the interests of the political welfare of the community, allowed the Governor so to proceed. Mr. Bourne denied that he had entered any such agreement, and refused to countenance Robinson's promotion. Harvey used Sir Richard Bonnycastle, an officer in the Corps of Royal Engineers, as the intermediary, and entrusted him with a confidential memorandum in which he warned Bourne against his advisers, and strongly suggested that he should no longer consult them, for Harvey was convinced that a Presbyterian element was pushing Bourne in his resistance to Robinson, a staunch Anglican, and he so hinted in the memorandum.<sup>3</sup> Sensing the damaging political force of the memorandum Bourne demanded a copy of it, but was refused. Harvey now pointed out that the Chief Justice must bear the responsibility for any harm which would befall the colony politically through the postponement of the appointment of the five members to the Council. To appoint the other four Harvey considered would be an unmerited slight to Mr. Robinson. The Governor terminated the correspondence with the Chief Justice in mid-March, and submitted the full story to the Colonial Office in early April, 1843.<sup>4</sup>

Lord Stanley replied<sup>5</sup> that the case was one for the Judicial Committee of the Privy Council, and that Robinson could petition the Queen in Council with charges of Judicial misconduct against Bourne. Stanley, however, urged that the matter should be settled informally. On July 3 Robinson, while not retracting any charges, announced that he would not press them.<sup>6</sup> He was rather discouraged by the prospect of heavy expenses involved in a public inquiry initiated at his own instigation.

#### CORRUPTION OR CALUMNY?

Chief Justice Bourne was now in a fighting mood, and on the 9th of December he opened his attack on Governor Harvey by delivering to him for transmission to Secretary Stanley a 71-page letter.<sup>7</sup> It charged the Governor with political corruption. It was loaded with denunciation

<sup>3</sup> 116, Memorandum from Harvey to Bonnycastle, 9 Mar., 1843, enclosed with Harvey to Stanley, 5 Apr., 1843.

<sup>4</sup> 116, Harvey to Stanley, 5 Apr., 1843.

<sup>5</sup> 116, Stanley to Harvey, 3 June, 1843.

<sup>6</sup> 119, Robinson to H. J. Harvey, 3 July, 1843.

<sup>7</sup> 119, Enclosed with Harvey to Stanley, 18 Dec., 1843.

of Harvey and his relations with Robinson and Colonial Secretary James P. Crowdy; it suggested that many lesser persons also were involved. Bourne raised, in the words of James Stephen, "a question, the decision of which must, probably, involve consequences of the most serious nature either to the Accuser or the Accused."<sup>8</sup>

With the shift in the field of battle, and with the Governor now involved as Bourne's principal target, and with either the Chief Justice doomed for calumny or the Governor for corruption, the charges deserve examination. The accusations and their answers bring out the painful financial poverty of Sir John Harvey.

The principal charge raised by Bourne was that Harvey, being in great financial distress, received assistance from Mr. Crowdy and Mr. Robinson, in consideration of which he procured for them financial advantages and honours not due them, but given simply because they had accommodated Sir John Harvey with funds. This was the pattern as the Chief Justice described it. Robinson had been commended to the political patronage of Harvey by Lord Bloomfield, and this at a time when Bloomfield was a creditor of Harvey's. Bloomfield had indeed, at that same time, drawn a bill on Harvey, which bill was presented at Government House by none other than Mr. Robinson acting on behalf of the Bank of British North America.<sup>9</sup> According to Bourne's charges, Harvey had insisted that he be accommodated at the bank in his private needs because the government funds were being handled by the bank. Bourne, understandably, did not agree that public funds could fittingly be urged as security for the Governor's private borrowing. The Honourable James Tobin, continued Bourne, then offered to pay the bill for Harvey. The Governor, however, declined the offer, and accepted instead an even larger sum from Mr. Crowdy. To cover up this transaction, Bourne charged, Harvey had paid off the whole bank debt with his quarter-salary and his son's salary as private secretary. Meanwhile Mr. Crowdy's loan went to the paying of other obligations and current expenses. Bourne, while refraining from specific charges, did not hesitate to suggest that many others were also involved in Harvey's accommodation, and that they also had shared in "these reciprocities".

The Chief Justice then concentrated his attack on the Colonial Secretary. "Mr. Crowdy", he charged, "by aid of the Governor's arrangements & his support, having succeeded in obtaining the Speakership, had then three salaries." As Colonial Secretary he received £500; as Clerk of the Council £200; and as Speaker of the Assembly £200. To this sum of £900 were added two more items: compensation to clerk of the late

<sup>8</sup> 119, Memorandum from Stephen to Stanley, attached to Harvey to Stanley 18 Dec., 1843.

<sup>9</sup> 119, Statement enclosed with Harvey to Stanley, 28 Dec., 1843.

Legislative Council for loss of emolument during suspension of his office <sup>10</sup> £100; and for the administration of the Road Bill £140. Thus the total of Mr. Crowdy's salary, exclusive of fees, would be £1,140. To aggravate the situation, charged Bourne, Mr. Crowdy had assigned the Road Office duties to his insane son. In this way there had been created a position for the feeble-minded offspring of the Colonial Secretary. Bourne also charged that the Governor had asked the Assembly to vote payment to Bryan Robinson for his services in reporting upon the proposed amendments to the Criminal Law.

Harvey's answer <sup>11</sup> to these charges was a flat denial that he was, or had ever been, under any financial obligation to Crowdy, Robinson, or anyone else, either in Newfoundland or in any other colony. He explained that a large amount of personal property, which he brought to Newfoundland with him, provided more than ample security for any loan which he needed.

Harvey declared that Robinson had been recommended for a seat in the Executive Council "on the grounds of his talents, influence, and disposition to serve the government." Harvey did not deny that Lord Bloomfield had written him early after his assumption of the government of Newfoundland, asking him to consider Robinson favorably for promotion. But then Bloomfield was "the most attached member of the Lake family", and Harvey was married to the daughter of Lord Lake. The Governor could hardly be expected to neglect Robinson's claims merely because he had been kindly recommended by Bloomfield. On the question of Crowdy's appointment as Speaker, Harvey answered that he had raised objection at the time on the basis that the Speakership was not usually given to a Colonial Secretary. But he had yielded to the general demand for the appointment, and the course of events had amply demonstrated the wisdom of his acquiescence.

The answering of the charge that Crowdy had enjoyed further and undeserved largesse from the public purse, Sir John left to Mr. Crowdy. The Secretary replied <sup>12</sup> that his income during the preceding year had reached £900, with an additional £20 in fees. This salary came from the first three sources enumerated by Bourne in his charges: the Colonial Secretaryship, the clerkship of the Council, and the Speakership of the Assembly. Crowdy noted that even with the arduous duties which these three offices imposed on him, he was still receiving £300 less than the Chief Justice. Bourne had claimed that Crowdy received an additional £100 for loss of emolument during the suspension of his office as clerk of the Legislative Council. This sum had been paid to the deputy clerk, not to Mr. Crowdy; a letter from the Treasurer was supplied in proof.

<sup>10</sup> Actually suspended with the Legislative Council and the rest of the Newfoundland constitution between 1841 and 1843.

<sup>11</sup> 119, Enclosed with Harvey to Stanley, 18 Dec., 1843.

<sup>12</sup> 119, Crowdy to Harvey, 22 Dec., 1843.

To the charge that he got another £140 from the Road Bill the Secretary replied that this sum was to be spread over a period of two or three years. To date, the Act had been in effect for seven months; £25 only had been paid in fees. It were well also to remember, observed Crowdy, that a similar grant had been made by the Assembly in 1841 at the recommendation of Captain Prescott; and none claimed that Prescott was beholden to Mr. Crowdy!

Crowdy also explained about the appointment of his son, supposedly insane, to a position of emolument. The young man had been appointed to a clerkship in the Colonial Secretary's office by Captain Prescott. After a year and a half of entirely satisfactory service he had gone to South America where fortune rather failed him. True, he was somewhat unsettled in mind for some time after his return; but he had fully regained his mental health, and was so certified medically before being appointed to the position which Bourne now begrudged him. Dr. Carson's certificate<sup>13</sup> to this effect was enclosed, and Crowdy's own assurance that his son was serving satisfactorily and faithfully in the capacity created by the Road Bill.

Crowdy then took up the matter of Harvey's loan, and its possible relation with his appointment to the speakership. "The necessary amount", he stated, "was raised on a footing which involved no obligation on either side, for ample security was given, and the usual rate of interest paid. I may add as illustration of the truth of the Chief Justice's insinuation as to the Speakership that this transaction occurred more than two months *after* my elevation to that office."

Bryan Robinson supplied his own explanation or answer to Bourne.<sup>14</sup> As for pecuniary obligation to the Governor, Robinson declared in a letter to Harvey, "I never lent you one farthing, you never asked me to do so . . . nor am I cognizant of any information, the knowledge of which might be supposed to give me any hold on Your Excellency. The whole assertion is a fiction." As to the charge that Robinson had received special pay for his services in connection with the revision of the Criminal Law, Robinson pointed out, first of all, that Bourne's direct quotation from Harvey's message to the Assembly recommending this payment, is simply not in the message. Harvey had recommended payment for all the commissioners, and not for Robinson alone; and that payment was for work which had been assigned by Captain Prescott, and accepted only after the question of remuneration had been agreed on.

#### COAL AND CANDLES

Bourne touched Harvey's pocket directly when he accused the Governor of concealing from the Secretary for the Colonies that a special

<sup>13</sup> 119, Carson to Crowdy, 12 Dec., 1843.

<sup>14</sup> 119, Robinson to Harvey, 23 Dec., 1843.

grant had been passed by the Assembly giving Harvey more coal-and-candle money.<sup>15</sup> This item was granted after Harvey failed to get his salary increased, and was passed "under very peculiar circumstances, and in a very peculiar manner," and since Harvey's name did not appear in connection with it, Bourne suspected that the Secretary for the Colonies would have no way of knowing that "it was a personal Grant to him for his [Harvey's] *private* lights and fires, as it is included under the general head of 'Fuel and Light for *Public Buildings*'". Bourne insisted that this demand had created a sensation in and out of the House. "The most lengthy and strenuous defender of the Governor's Coal-and-Candle money", he declared, "... was Mr. Robinson."

Bourne coupled with the coal-and-candle charges some others of rather irrelevant character: that one of Harvey's sons was being paid as an aide-de-camp; that another was being paid as private secretary, although he had left the colony for Jamaica; and that his gate-keeper received £26.

Harvey replied<sup>16</sup> that he could, first of all, discern little connection between his private secretary, his aide-de-camp, his gate-keeper, his coal and candle problems, and the general issue in dispute between himself and the Chief Justice and Mr. Robinson. Harvey insisted that a private secretary and an aide-de-camp were proper and necessary appendages of his rank and position. He answered that his son Henry had gone to Jamaica on a limited leave of absence which had been reported to the Colonial Office, and after making due arrangement for the care of his duties in his absence. "The allowance of Fuel and Light for this enormous Public Building . . . are," said the Governor, "less than adequate to the purposes for which they are respectively intended." On the charge of being a defender of the coal-and-candle increases for Harvey's house Robinson answered:<sup>17</sup> "And I shall be so again if necessary. But if I possessed the pecuniary hold over Your Excellency to which Mr. Bourne alluded, why need I propitiate Your Excellency's favour? As this paragraph would covertly insinuate."

When James Stephen had examined the charges and replies, he advised Lord Stanley<sup>18</sup> that "there is on either side a certain amount of evidence", but that Sir John Harvey's contradiction was "less peremptory and precise than, under all the circumstances, might seem to have been natural and desirable." Lord Stanley agreed, and wrote Harvey requiring explanations of points on which Stephen and Stanley were dissatisfied.<sup>19</sup> His letter began by admitting his reluctance to believe charges so improbable

<sup>15</sup> 119, Enclosed with Harvey to Stanley, 18 Dec., 1843.

<sup>16</sup> 119, Enclosed with Harvey to Stanley, 18 Dec., 1843.

<sup>17</sup> 119, Robinson to Harvey, 23 Dec., 1843.

<sup>18</sup> 119, Memorandum from Stephen to Stanley, attached to Harvey to Stanley, 18 Dec., 1843.

<sup>19</sup> 119, Stanley to Harvey, 26 Jan., 1844.



as those made by the Chief Justice; but he pointed out that it would be impossible to declare the charges calumnious or lightly hazarded until such time as Harvey had explained a number of them which he had overlooked.

#### HARVEY'S DIFFICULTY WITH DEBT

Before this letter reached Newfoundland Harvey had already sent off a fuller statement explaining his financial situation, and actually answering the questions which he had not yet received from Stanley.<sup>20</sup> He began the explanation of his finances by recalling a letter which his predecessor, Captain Prescott, had written in 1838, and which Harvey considered accurately descriptive of his own case. Prescott had put it this way, "In a pecuniary point of view I should consider it a misfortune to a moneyless officer to be nominated to this Government. He must, of course, run in debt for his equipment and ensure his life for the security of his agent; and the interest of his debt and the premium of his insurance would be deductions from his salary."

Harvey then proceeds to tell his own sorry story. When in 1838 he was appointed to Prince Edward Island he was £1500 in debt because his £1200 a year during his eight years' stay in Ireland had been inadequate, there being no allowance with it for travelling expenses; and in Ireland as Inspector-General of Police he had to travel extensively. So Sir John had to borrow £2500, and to cover this loan he had to insure his life; and all of his unattached pay as general officer had to be assigned to the payment of the insurance premium and the interest on the loan. At the end of four years' administration in New Brunswick he had incurred another £1000 of debt. "This", he now wrote, "will show that during my service in Ireland and the Colonies up to the period of my appointment in Newfoundland, I had incurred a debt of £5000 for which I am paying interest and premium of insurance (amounting to nearly 12 per cent) constituting a deduction from my official income of nearly £600 per annum." Sir John was clearly a splendid venture for his agents.

Harvey then proceeds to describe his financial situation in New Brunswick. On his arrival he was offered accomodation by a bank which required nothing in the way of favors, and only the insurance of his personal effects for security. Thus his four years in New Brunswick were free from financial embarrassment.

On his arrival in Newfoundland the local branch of the Bank of British North America had offered him financial accomodation, but refused to accept his personal effects as collateral. "I have since seen reason", he declared, "to fear that this refusal on the part of the establishment proceeded from a less creditable cause, viz. for the purpose of retaining

<sup>20</sup> 119, Statement enclosed with Harvey to Stanley, 28 Dec., 1843.

in its own hands the power of acting towards me in the manner which it has since done, viz. of suddenly suspending the accomodation which they had themselves offered and calling upon me peremptorily for the immediate repayment of their advance or to find security in England." Harvey confessed great indignation at his treatment by the bank, especially since he attributed that treatment "to Party and Political causes." "A comparative stranger as I was in a foreign country", he wrote,

I knew not those whose services I could with more propriety have availed myself of, in the agency of this purely business transaction than the officer attached confidentially to my civil government. Mr. Crowdy willingly afforded me his services, but beyond that was no party to the loan, for which I pay the legal rate of interest; and the repayment of the principal by convenient periodical instalments is secured upon personal property in this House of at least twice the value. Thus have I relieved myself of a debt to an establishment whose conduct towards me I can never regard as otherwise than most discourteous.

Finally, Harvey explained his financial relations with Lord Bloomfield. When leaving Ireland in 1836, Harvey had negotiated a loan to cover his debt of £1500, and Bloomfield kindly co-signed it. "In consequence of an accidental omission [by Harvey] . . . to make the usual half-yearly remittance" Bloomfield had been called on for the required £100. Harvey had then asked Bloomfield to draw on him for the £100. Any further financial transaction with Lord Bloomfield or any other obligation toward his friend, Harvey flatly denied. This statement, mailed before the arrival of Stanley's demand for it, helped to clear up Harvey's standing with the Colonial Office.

In the following February (1844) Harvey replied to questions raised by Stanley but not answered in the above statement.<sup>21</sup> Crowdy and Robinson also supplied further explanations.<sup>22</sup> In his letter Harvey pointed out that James Tobin was a director of the bank which had so abruptly cut off Harvey's credit, and that accordingly he had declined any assistance from Tobin. Sir John had not in any way required any personal consideration for any public monies deposited in the Bank of British North America; he had merely continued the custom of his predecessor who had also deposited the public monies with the same firm. His personal arrangement with them had been simply that they would receive his salary in quarters, and they would currently honour any cheques which he wrote against his account. It was this arrangement which was terminated so abruptly by the bank. Nor did Harvey deny that he had quickly wiped off his indebtedness at the bank by giving in his quarter salary and his son's, and then looking after other expenses from the loan given him by Crowdy. But the motive here had not been concealment of

<sup>21</sup> 120, Harvey to Stanley, 21 Feb., 1844.

<sup>22</sup> 120, Crowdy to Stanley, 23 Feb., 1844; 120, Robinson to Stanley, 24 Feb., 1844.

any kind, but merely the understandable desire to terminate quickly and with an air of independence his relations with that bank.

As for reciprocities to those who had lent funds to Crowdy, or reciprocities to anyone else, Harvey flatly denied the charge, and felt that the denial should suffice until Bourne had supplied something better than the expression of sheer suspicion.

Once more he returned to the Assembly's increased allowance for fuel and light for the public buildings. In increasing the provision for the Governor's residence they were merely following a precedent which had been set in New Brunswick, and imitating the practice prevalent in Newfoundland before the granting of representative government. The houses in both New Brunswick and Newfoundland were so large and so damp that their very preservation required the maintenance of fires even during the summer months. If governors were required to live in such enormous mansions, it was but fair that their salaries should not suffer for it. The grant was intended to be permanent; and it passed the Assembly with a huge majority.

As for concealing advantages derived from Assembly votes, Harvey had simply not derived any advantages, except the above-mentioned. Accordingly there was little point in discussing motives for concealment. Mr. Crowdy had, and would again, adequately explain any benefits which he had obtained. Crowdy's new statement was largely a clear recapitulation of information which he had formerly supplied; likewise with Robinson's statement.

Lord Stanley's decision arrived in early June of 1844.<sup>23</sup> The principal part of that decision was the granting of a "six months' leave of absence" to the Chief Justice. In other words Bourne was relieved of his office. Sir John Harvey did not escape without some words of caution about certain aspects of his administration. However, the old veteran was, two years later, promoted to the administration of Nova Scotia where at a ripe old age he ended with honour and distinction his career of sixty years in the public service.

<sup>23</sup> 120, Stanley to Harvey, 5 May, 1844.