

Laurence Kavanagh

BY

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Cape Breton Island and St. John (now Prince Edward) Island came under the dominion of the United Kingdom, practically as a result of the capture of Louisbourg in 1758, formally by the Treaty of Paris in 1763.

Cape Breton having been annexed to Nova Scotia by Royal proclamation on Oct. 7, 1763, the Governor in opening the Legislative Assembly, on March 24 following, stated that he should consider what profits and advantages might thence be derived for the Province in general, as soon as he should receive his Majesty's instructions and know his further pleasure regarding the acquisition. No steps, however, were taken for giving the Island a vote in the Legislature until Dec. 10, 1765, when it was ordered that the Island of Cape Breton be erected into a distinct County to be known by the name of the County of Cape Breton, comprehending the islands of Madame and Scatarie and all the islands within three leagues and that a writ be issued for choosing two representatives; and farther that the free-holders should be at liberty to choose non-residents. This was a very necessary proviso since, in July previously, the Attorney General had been ordered by Governor Wilmot « to make enquiries whether there was a sufficient number of men to make a jury, to be summoned to Louisburg for the purpose of trying a man who had been charged with having committed a murder there ». Two representatives, John Grant, Esq., and Mr. Gregory Townsend, were elected. These proceeded to Halifax to take their seats in the Assembly on June 3, 1766. It was found, however, by a committee of the House that they were not qualified because those who elected them had no power to do so. The Assembly had imposed taxes on the people of Cape Breton Island who had no voice in making the laws of the land for which they fought and on which they made their homes. It was found that those who had elected them had no title to the land other than « licence of occupation ». Till April 2, 1770, when it was decided that Cape Breton Island be represented by the members of Halifax County, the people had no representatives because there were no freeholders to elect them.

The British Government steadily refrained from making land grants in Cape Breton. In 1766-68 a careful survey of the island was effected by Capt. Samuel Holland, but, contrary to expectation, this was not followed by any land-granting policy. The Government even refused to issue licenses for the mining of coal, except for the use of the military forces. Large quantities of coal were carried off by unauthorised persons, and in 1770 a detachment of troops sent by the Governor seized 500 chaldrons so mined and brought them to Halifax for the use of the troops. But settlers slowly drifted in, some with licenses of occupation, the majority as squatters. Since 1772 sturdy Highland Scotch Catholics driven from

their homes in Scotland, especially from the Island of Uist, had settled in Prince Edward Island, choosing this Province as the more desirable place of settlement. However, after a few years they began to move to Nova Scotia and to settle along the coast of Inverness and about the shores of the Bras d'or Lakes. Major Francis Legge, who became Acting Governor of Nova Scotia in 1774, was of the opinion that Nova Scotia was the only settled Province on the sea coast that had preserved itself free from the madness and contagion which had overspread all of His Majesty's other Colonies. Determined to make himself thoroughly acquainted with the state of the country entrusted to his care and of maintaining it in firm allegiance to his Sovereign, as well as for the purpose of finding out how many men were capable of bearing arms in their country's defence, Governor Legge ordered the census to be taken. Just then the arrival from the French Islands of Magdalene and St. Pierre of a number of Acadians who had « squatted » at Isle Madame and St. John Island at this critical period caused him some apprehension. He feared that, in case of war with France, they would – regardless of the oath of allegiance which they had taken – join with the Indians, supply them with arms and ammunition and attack the English settlers. If there was any real cause for apprehension it is evident that, with slight external aid, the Island of Cape Breton might easily have been restored, once more, to France, since the French and Indians greatly outnumbered the English inhabitants.

The population of the Island of Cape Breton on Oct. 10th, 1774, consisted of:

Persons of French origin	502
Indians	230
Persons of English origin	<u>509</u>
Total.....	1241
Catholics, including the Indians, numbered 914, and Protestants 324.	

Governor Legge says of the inhabitants, «They were a lawless rabble, and often interrupted the Chief Magistrate Mr. Cottnam in the execution of his duty; they had no grants (which was not their fault) and many of them had no fishing licenses. »

In 1776 great dissatisfaction was caused by the Island of Cape Breton being obliged to supply 200 men for the light infantry company out of a population of 1011 exclusive of Indians, while Nova Scotia proper was asked to give only 800 out of a population of 20,000. Beamish Murdock in his *History of Nova Scotia* says that not only were the people of Cape Breton obliged to give five times as many men for military purposes as the mainland but they were supposed to supply the fuel for the troops at Halifax. Moreover, the Legislature refused to sanction the cutting of wood to be used by those engaged in fishing. On page 363 of his *History* Murdock says « certainly this was a strange proof of the 'tenderness' entertained by His Majesty for his subjects in Cape Breton. »

On March 17, 1776, a large number of Loyalists came to the mainland of

Nova Scotia, where they got free grants of land. Commenting on this, Richard Brown, in his *History of the Island of Cape Breton*, says that none of the first group came to Cape Breton Island. As far as can be ascertained the United Empire Loyalists were but few in number in Cape Breton Island when the first Catholic Scotch settlers came in the 18th century. It was the Hon. Thomas Townsend, when raised to the peerage under the title of Lord *Sydney* and appointed Secretary of State for the Colonies in 1784, that recommended the separation of the Island of Cape Breton from the mainland of Nova Scotia. It was to be relieved from all interference of the Assembly of Nova Scotia, to have its own Government, and Governor Parr was instructed not to assent to any law that would affect Cape Breton Island. J. F. W. Desbarres was appointed, on September 8, 1784, as the first Lieutenant Governor of Cape Breton Island. It was only then that the granting of land in full title was allowed in the island.

Abraham Cuyler, Esq., former mayor of Albany, residing in London in 1784, laid a memorial before the King stating that he and others were deprived of their property on account of their loyalty to their country and were desirous of coming to Cape Breton. The memorial was favorably received and a number of people styling themselves « Associated Loyalists » sailed in three vessels for Cape Breton, in charge of Colonel Peters, Captain Jonathan Jones and Mr. Robertson, late officers in the Corps of Royal Rangers, and associates of Mr. Cuyler, and arrived at the end of October. About 140 persons, furnished with clothing and provisions from the British Government, and under the charge of Captain Jones and Mr. Alexander Haire, came to Cape Breton by these vessels. During 1785 about 800 persons arrived and settled comfortably on this free land provided by the British Government. Brown observes that «Governor Desbarres' head was turned by the rush of immigrants and the extensive building of storehouses and barracks, and he fancied that Cape Breton was about to eclipse all the neighboring colonies. » From the very beginning Governor Desbarres seemed to think that the people of Nova Scotia were jealous of Cape Breton and looked with dissatisfaction at its growing importance. On August 17, 1785, he wrote to the Under Secretary of State, saying, « New settlers are coming in fast; the New England people do not like the settling of the Island of Cape Breton at all; they know it will be the loss of every advantage they derive from the fisheries. Nova Scotia is jealous and doesn't wish, with thorough sincerity, the success of this Government, lest its growing importance and value should raise it to the first rank among His Majesty's and the National favorites. »

In 1785 the value of the fish alone shipped from Sydney, Louisburg, St. Peters and Arichat was 40,000 pounds Sterling. In addition to this, great quantities were exported from Lingan, St. Ann's, Port Hood, Gabarus and L'Ardoise (Arichat). It would seem that, throughout the time Cape Breton was a separate colony, it was one continued struggle for existence on the part of the inhabitants. This was due to the ambitious designs of the governors to make the island an important part of His Majesty's Empire and the jealousy of the rest of the adjoining sections of what is now the Maritime Provinces. In 1787 Governor

Desbarres was recalled and Governor McCormick was appointed. Governor Desbarres returned to Halifax, where he died at the ripe old age of 103. According to reports made by Governor McCormick 179 grants were issued to settlers in the Island of Cape Breton from 1784 to 1793, of which 31 were to Loyalists and 7 were to disbanded soldiers. During the year 1795 three hundred and sixty of the Acadians, who had left Cape Breton for the Islands of Miquelon and Magdalene, returned – settling in Little Bras d'or and on Isle Madame. On Dec. 24, 1801, there were in the Sydney district 801 inhabitants; in Louisburg district 192; Arichat district (including the N. W. shore) 1520. In 1802 the first ship bringing Highland Scottish immigrants directly to Cape Breton arrived at Sydney. This immigration grew rapidly and by 1817 had reached its highest peak: it is generally estimated that between 1802 and 1828 there were no fewer than 25,000 of these people settled in Cape Breton. In 1814 Governor Ainslie was appointed to take charge of the administration of the province. In the same year an overland postal communication was established with Halifax by dispatching an Indian once a month during the winter, when Sydney Harbor was closed by ice. It became clear to the Home Government at London that it was time to annex Cape Breton to Nova Scotia; the first intelligence of this reached Sydney in August, 1820. The population at that time was between 8,000 and 9,000 and it was rapidly increasing by immigration. On October 9th the Royal proclamation declared Cape Breton Island a part of Nova Scotia, and soon after writs were issued for the election of two members for the County of Cape Breton.

During the French regime Louisburg had been a large and thriving town, a great military fortress, and an important naval and shipping base. After the capture by the British in 1758 the entire French population was removed, the fortifications were destroyed, and a large part of the buildings were allowed to fall into ruin. Nevertheless, it remained the most important centre in the island, and the presence of a small garrison of about 300 men ensured that a considerable body of civilian tradespeople would congregate there to supply the needs of the military. However, the growing disturbances in the American colonies to the southward, forerunning the American Revolution, called for the concentration of a large part of the British forces in America at Boston and the abandonment of outlying posts. In 1768 the garrison left Louisburg and its fortunes rapidly declined. When, after Cape Breton became a separate province in 1784, Lieutenant-Governor Desbarres selected Sydney as the seat of government, the fate of Louisburg was sealed and it quickly became the tiny fishing village it has ever since remained.

It is said that soon after the capture of Louisburg by the British a certain Moris Kavanagh, with his sons Laurence, Moris and Edward, all natives of

Ireland, arrived there from Newfoundland. The others drop out of the story,¹ but Laurence soon became one of the leading citizens of Cape Breton. He had, we are told, the support of merchants in London and consequently enjoyed a favored position in Louisburg. In 1768, according to official reports, he occupied one of the French houses at Louisburg without legal authority, but he and a certain James Gething held, by license, five hundred acres at Little St. Peter's, where they had built a house, storehouses, stages and flakes, and had a large quantity of cattle. During his last days at Louisburg Laurence Kavanagh became involved in difficulties with some of the local officials, as is shown by the following extracts from the minutes of the Executive Council of Nova Scotia:

29 November, 1773 : « The Governor laid before the Council Several Charges and Informations taken on Oath before George Dawson, One of His Majesty's Justices of the Peace, against Lawrence Kavanagh Merchant at Louisbourg, setting forth that he had at several times pulled down the Publick buildings there, and taken away Boards, Timber, Iron, Lead and other Materials, and Carried them to his own Dwelling, and converted them to his own use.

And the said Lawrence Kavanagh, having been called on to Answer the said Charges in his Defence, said, that he had removed the several materials as set forth in the several Charges, but that he had converted them to the use of repairing several of the Publick buildings which were then in a ruinous condition.

And the Governor ordered the aforesaid several charges and Informations to be referred to the Attorney General for his Opinion thereon. »

8 December, 1773 : « (The Governor laid before the Council the memorial of Lawrence Kavanagh, Merch^t. and Trader at Louisbourg, complaining and setting forth that Lieutenant Dawson, of his Majesty's Navy, and Commander of an Armed Vessel stationed at and about Louisbourg, and had unjustifiably press'd seamen belonging to Vessels Wherein he Was concerned, and had at other times under pretence of his power as a Custom House Officer stopped and Detained his Fishing and Trading Vessels, and as a justice of the Peace that he had lately Solicited the Deposition of several Persons to the Testimony of many false and Scandalous Assertions tending to Caluminate the Memorialist and hurt his Reputation.

And several papers in support of said Charge having been produced by the Memorialist it was Ordered that said Memorial and Papers, should be laid before Admiral Montague. »

7 November, 1774: « On Complaint made by M^r. Cottnam the Chief Magistrate of Louisbourg that several building materials had been moved from Louisbourg to St. Peters on the Isle of Breton by M^r. Lawrence Kavanagh also referring for further information to M^r. Hunter Commanding of His Majesty's Arm'd Vessel The Gaspee, together with a Copy of a deposition to the Fact.

Order'd that the same be referr'd to the Attorney General to Report thereon.

The minutes contain no further allusion to any of these charges and

¹ According to one tradition, the name of one of the brothers was Thomas, and he and his descendants lived at Bay St. Lawrence.

counter-charges, perhaps evidence that they were of insignificant character. The Cape Breton historian Richard Brown remarks that it was well known that the building materials regarding which complaint was made were mere rubbish not worth looking after. But it seems probable that the last entry does give the approximate date of the final removal of Kavanagh from Louisburg.

After moving to St. Peter's Lawrence Kavanagh occupied extensive lands at St. Peter's Bay, River Toulouse, Grande Greve and Bourgeois. He died at St. Peter's and was buried at Point Greve. His wife is said to have been Felicité Le Jeune, widow of the barrack master of the French garrison of Louisburg, who was killed during the siege of 1758. It is believed that all Kavanagh's children were born at Louisburg, and that almost all his immediate descendants were buried at River Bourgeois.

In the autumn of 1799 we find Laurence Kavanagh, Sr., entertaining Dr. MacGregor, a Presbyterian of East River, Pictou County. Of Mr. Kavanagh at this period Brown says:

« His house was open – without exception – to travellers of the highest and lowest degree. Having dragged their boat (with the aid of Mr. Kavanagh's oxen) across the narrow isthmus which separates St. Peter's Bay from the Bras d'or Lakes, the worthy Doctor and his adventurous crew embarked on the waters of the lake, which was then surrounded by an unbroken forest, unrelieved by the hut of a solitary settler, to the head of East Bay where, after hauling up their boat on the beach and concealing from thieves the sail and oars, (a very unnecessary precaution at that time) they composed themselves to sleep in the open air ».

From some old Court Records preserved in the office of the County Clerk at Sydney there can be extracted the following amusing story concerning Laurence Kavanagh. Apparently he was having trouble with one Francis Murphy and a lawsuit was threatened. Kavanagh took time by the forelock and employed and paid every lawyer in Cape Breton to act for him. A petition was presented to the Court asking that one of these lawyers, William Campbell by name, (who afterwards became Chief Justice of Upper Canada), be permitted to return his fee, so that he might act for Murphy. Some authorities claim that the Court granted the petition while others say that, since there was no lawyer to prosecute Kavanagh, he escaped all court action.

Laurence Kavanagh, Junior, carried on his father's business at St. Peter's. An old ledger of his, bearing dates 1819-1825, still exists. Some extracts from it are given in Appendix I. He, like his father, was held in high esteem in the community, and was not only appointed one of the justices of the peace, but, as Custos Rotulorum, the head of that body for the whole county of Cape Breton.

When Cape Breton was reannexed to Nova Scotia in 1820 and writs were issued for the election of two members to represent the island in the Legislative Assembly at Halifax, the members returned were Richard John Uniacke, Jr., and Laurence Kavanagh, Jr. Uniacke is mentioned among those who, according to

the Journals of the Assembly, took their seats on 12 December, 1820, but Laurence Kavanagh does not appear. He was a Catholic, and could not take the declaration against transubstantiation still prescribed for all members of British and colonial legislatures. The Governor had long been ordered, by his commission and instructions, of which those in force in 1820 are given in Appendix II, to require various oaths and declarations from members elected before allowing them to take their seats. The majority of these oaths and declarations were designed to secure abjuration of all claims of the Catholic descendants of James II to the throne, and some of them must have seemed silly or impertinent. The one which essentially was contrary of Catholic faith was that prescribed by the British statute 25 Charles II, cap. 2, « An Act for preventing Dangers which may happen from Popish Recusants, » sect. 9:

« I, *A. B. do* declare, That I do believe that there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration there of by any Person whatsoever. »²

The penal code of Nova Scotia itself, apart from these imperial regulations, had consisted chiefly of the following acts of the Nova Scotia Legislature:

32 Geo. II, cap. 2 (1758) prevented Catholics from acquiring title to land.

32 Geo. II, cap. 5 (1758) prohibited the presence in the province of Catholic priests and the performance of Catholic services.

6 Geo. III, cap. 7 (1766) prevented Catholics from teaching school.

² The Governor's commission and instructions as they stood in 1820 indicate that this was the full declaration as required at the time, but there is evidence that there was uncertainty in the matter, and that it was frequently assumed, and perhaps acted on, that the declaration imposed by the statute 30 Chas. II, cap. 2, on all members of Parliament (in England) was to be imposed in Nova Scotia. This consisted of the above clause, with some verbal expansion, and the following addition:

« And that the Invocation or Adoration of the Virgin Mary or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous. And I do solemnly in the Presence of God profess, testify and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me, as they are commonly understood by English Protestants, without any Evasion, Equivocation or mental Reservation whatsoever, and without any Dispensation already granted me for this Purpose by the Pope, or any other Authority or Person whatsoever, or without any Hope of any such Dispensation from any Person or Authority whatsoever, or without thinking that I am or can be acquitted before God or Man, or absolved of this Declaration or any Part there. of, although the Pope, or any other Person or Persons, or Power whatsoever, should dispense with or annul the same, or declare that it was null or void from the Beginning. »

In 1783, by 23 Geo. III, cap. 9, the penalties imposed on Catholics by the first two of these acts were abolished, but they were still required to take an elaborate oath renouncing all claims of the Pope to temporal power and to the so-called dispensing power. In 1786, by 26 Geo. III, cap. 1, the prohibition on Catholic schools was repealed, though here too there was a caveat, that such schools must not admit Protestant children under fourteen years of age.

However, Kavanagh's absence may have been due to the fact that Edmund Murray Dodd, an unsuccessful candidate in the Cape Breton election, had, on 19 Dec., 1820, presented to the Assembly a petition against his return, on the ground of irregularities, and that this petition was not dismissed until 13 Feb., 1821.

The British Government had probably received some report of the election of a Catholic in Nova Scotia in the 1820 elections, for on 21 August, 1821, Henry Goulburn, Under Secretary of State for the Colonies, wrote privately to the Lieutenant Governor, Sir James Kempt, asking for information regarding provincial laws bearing on the admission of Catholics to the Legislature. Kempt sent a reply, also private, on 15 November, stating that there were no such laws, that the case of Kavanagh, whose character he praised highly, was the first to occur, that his own present intention was to adhere strictly to the royal instructions until he should be directed otherwise, that he expected that the Council would recommend to him that Kavanagh be allowed to take his seat if he would take the oath prescribed by the provincial act of 1783 and that he would wish to be informed of the sentiments on the subject of Earl Bathurst the Colonial Secretary.

Just at this time Goulburn became Secretary for Ireland, so Bathurst himself, on 21 December, wrote an answer, « private & confidential », approving of Kempt's resolution, but saying that if the Council appealed to the King, he himself would be prepared to advise that Kavanagh be admitted on taking the provincial oath of 1783.

When the Legislature met at Halifax in 1822 Laurence Kavanagh came to that city and let it be known that he was prepared to subscribe to all oaths and declarations required except that against transubstantiation. Lieutenant Governor Kempt in turn passed out the word that he could not dispense with that declaration. Thereupon a bill was introduced into the Assembly, on 14 February, 1822, providing that any Catholic then elected or thereafter to be elected to represent Cape Breton should be allowed to sit on taking the oath of 1783. This bill, however, was given a three months' hoist on the ground that it was « of too partial a Nature ». Then, on 25 February, it was attempted to effect the same object by resolution, that Kavanagh be permitted to take his seat « until His Majesty's pleasure shall be known ». This resolution in turn was defeated. Thereupon, on 9 March, the Council adopted a resolution suggesting to the Lieutenant Governor the expediency of ascertaining whether the King might not deem it proper to modify his instructions so as to admit Catholics to the Legislature, the Bar, and all offices under Government.

Earl Bathurst returned an answer, informing Kempt that His Majesty approved of the admission of Kavanagh to the House after his taking the oaths, omitting the declaration against transubstantiation. A message from the Lieutenant Governor, received by the Assembly on 2 April, gave this information. A long discussion, extending into the following day, followed, apparently not on the justice or expediency of the change – this seems to have been accepted by almost all – but as to what was the proper form of action to be taken by the Assembly. Finally a motion, suggested by the Speaker, Simon Bradstreet Robie, but moved by Kavanagh's fellow-member from Cape Breton, Richard John Uniacke, Jr., was adopted, expressing the House's gratitude to the King, and its determination to admit Kavanagh and any other elected Catholics, on the conditions now appointed by His Majesty, and directing that a committee wait upon the Lieutenant Governor with the resolution. Thereupon Laurence Kavanagh entered the House, took the so-called « state oaths » and occupied his seat. Thus, « Catholic Emancipation » was effected in Nova Scotia six years before Daniel O'Connell achieved it in the United Kingdom.

In the years immediately following Laurence Kavanagh's admission to the Legislature the remaining tags and bobtails of the old penal code in Nova Scotia were wiped out. In 1826, by 7 Geo. IV, cap. 18, the special oath imposed in 1783 was abandoned, and in 1827, by 8 Geo. IV, cap. 33, that full liberty of conscience which the provincial parliament had from the first guaranteed to Protestant Dissenters was declared to be extended to Roman Catholics, and the proviso excluding Protestant children from Catholic schools was repealed.

In strictness, the despatch of Earl Bathurst had authorized only the admission of Laurence Kavanagh to the Legislative Assembly, but that body had interpreted it as permitting the admission for the future of all properly qualified Catholics without their taking the test declaration. But even this broad interpretation still left Non-Catholics under the obligation, and left doubts regarding other positions in the province for which in times past the declaration had been exacted. Consequently in this session of the provincial legislature of 1827 the Rev. John Carrol and other Catholics presented a petition asking the House of Representatives to address the King requesting relief. (The petition is said to have been in the handwriting of Laurence O'Connor Doyle, soon to become a figure of importance in the public life of Nova Scotia.) The appointment of a committee to prepare such an address was moved by R. J. Uniacke, Jr., and seconded by T. C. Haliburton, one of the members for the County of Annapolis, known to fame as the author of « Sam Slick », etc., and carried unanimously. Beamish Murdock, who was a member of the House at the time, declared that the speech of Haliburton « was the most splendid piece of declamation, that it has ever been my fortune to listen to. » He gives a synopsis of the speech, and also the texts of the petition and the address to the King, in his *History*, volume III. After the passage of the Catholic Emancipation Act in Britain, the Governor's commission and instructions were so altered as to permit the substitution of the oath prescribed therein for the oaths and declarations

hitherto required.

The ready and happy solution of the crisis provoked by the election of Laurence Kavanagh doubtless resulted in part from the good relations that existed between the Irish Catholic people of Nova Scotia and their Non-Catholic fellow-citizens. One instrument in the promotion of these good relations was the Charitable Irish Society, founded at Halifax by the leading Irishmen of the city in 1786. It was organized primarily for the purpose of aiding immigrants and others who were in need and to lighten the burden of all who were in distress. Although membership in the society was limited to descendants of Irishmen, its benefactions were as wide as the globe. Every application for relief was dealt with generously, irrespective of religion or nationality. Every year from 1786 the Society held a banquet on March 17th to which were invited the leaders of Halifax and its surroundings. At these banquets speeches were made by members of the House of Assembly and of the Legislative Council. From these conferences came information as to what the Irish were doing to inspire charity and to uplift humanity. It was learned that benefactions were generously given to God's poor, the distressed immigrant, the afflicted stranger of every religion and every nationality. In the intimate atmosphere of the banquetting hall, these legislators came to know the real character and genius of their Irish and Catholic fellow-citizens, their loyalty to civil authority as well as their devotion to Christian charity.

Laurence Kavanagh continued to represent Cape Breton in the House of Assembly until 1840, being elected for the last time in 1831. He was constantly active in promoting the welfare of the people of his constituency, particularly in education. In Appendix IV is given a report on the schools of the island which he prepared for the provincial government in 1824.

There are conflicting reports as to the identity of the wife of Laurence Kavanagh, Jr. But according to statements received from several descendants she was Catherine Murphy, niece of Bishop MacEachern of Prince Edward Island. As both of her parents died when she was quite young, she was brought up by her uncle; and he officiated at the marriage between her and Kavanagh. She was born, it is reported, in 1800 and died in 1881. There were four sons and four daughters; Laurence, 3rd, who became light-house keeper at Louisburg; Edward, believed to have died young; Maurice James, who took some part in local politics; Wallace, who was for a time lock-master of St. Peter's Canal; Margaret, unmarried; Catherine, who married Robert Martin of Sydney (said to be a cousin, a son of Bridget Kavanagh and grandson of Edward Kavanagh, brother of Laurence, Senior); Frances, who married Lieut. Henry Driscoll, R.N.; and Anne, who became the wife of Louis Tremaine, of Port Hood, who later was a judge at Sydney.

APPENDIX I
EXTRACTS FROM A LEDGER KEPT AT ST. PETER'S BY
LAURENCE KAVANAGH, JR., 1819-1823.

Pp. 163-4 :

		Contra		Cr.
1819				
Mar 13	By sundries 40/3/. 4500 mackerel @ 10/		£24 10	3
Oct 16	" 3½ days work in schooner mackerel — boards		3 5	0
Nov 22	" 742 fall Mackerel @ 20/		7 7	11
1820				
Apr 22	" 9 doz. Rabbit skins @ 10 ^d 1 Musquash @ 9 ^d 2 minks @ 9 ^d		0 9	9
Sept 16	" 8 Quintals fish — Salt mackerel		12 6	0
Dec 23	" 2 Musquash @ 9 ^d sundries @ 10/		1 11	6
	5½ Quint fish @ 11/		3 0	6
1821				
Mar 19	" 13 fish barrels (delivered to Tenause Burette		3 5	0
"	By balance due Laurence Kavanagh per note of this date		21 6	10
			<hr/>	
			77 12	9
1822				
Apr 15	By 4 quint. fish @ 13/12 quint West India fish @ 9/ By your Note for Balance		8 0	0
			17 14	5
			<hr/>	
			25 14	5
Dr. Angus MacDonald (Malcom).				
1823				
Sept 7	To Amount brought from Folio 268		£56 0	3½
9	To 1 gal rum 8/ (13) 1 gal molasses 3/ Oct 6 Sundries 12/4½ (11) Ditto 8/		1 11	4½
Oct 14	" 1 quart rum 2/ Sundries 5/6 Ditto 2/9 Ditto 4/6		0 14	9
Nov 19	" 1 quart molasses 1/ Sundries 4/3 Dec. 6 Ditto 9/. Dec 19 Ditto 3/		0 17	3
Dec 30	" 4 qts Rye flour 4d		0 1	4
1825				
Aug 20	" Rent of a cow for 2 seasons 40/		4 0	0
1826	" Interest on £24 17 4 for 3 years		4 5	0
1825				
Jan 5	" your note per opposite Calico to your son Donald- Angus on 7 th Sept 1824 3/ " hauling timber omitted 11¼ tons in 1823 11 tons in 1824 @ 4/		£28 7	3
			3	
			4 9	
			<hr/>	
			£32 19	3

APPENDIX II
OFFICIAL DOCUMENTS RELATING TO CATHOLIC
EMANCIPATION IN NOVA SCOTIA

COMMISSION TO THE EARL OF DALHOUSIE TO BE GOVERNOR IN CHIEF
OF NOVA SCOTIA, 26 APRIL, 1820³

(London : Public Record Office : Patent Roll 4220, 1 Geo. 4 Part 3. N^o. 4, 1820 April
26; transcript in Public Archives of Canada.)

Earl of Dalhousie
Governor of Nova Scotia

George the ffourth by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the ffaith To Our right trusty and right welbeloved Cousin and Councillor George Earl of Dalhousie ... Greeting Know you that we reposing especial trust and confidence in the prudence courage and loyalty of you the said George Earl of Dalhousie of Our especial grace certain Knowledge and mere motion have thought fit to constitute and appoint And do by these Presents constitute and appoint you the said George Earl of Dalhousie to be Our Captain General and Governor in Chief in and over our Province of Nova Scotia and in and over our Island of Prince Edward (formerly Saint John) in America the Territory so placed under your Government being bounded on the westward by a line drawn from Cape Sable across the entrance to the centre of the Bay of ffundy on the Northward by a line drawn along the center of the said Bay to the mouth of the Musquat River by the said River to its source and from thence by a due east line across the Isthmus into the Bay of Verte on the eastward by the said Bay and the Gulph of Saint Lawrence to the Cape or Promontory called Cape Breton in the Island of that name including the said Island which we do hereby expressly direct and declare shall in future form part of Our said Province of Nova Scotia And our will and Pleasure is that you the said George Earl of Dalhousie after the publication of these Our Letters Patents do take the Oaths appointed to be taken by an Act passed in the first year of the reign of King George the ffi rst intituled « An Act for the further Security of his Majestys person and Government and the Succession of the Crown in the heirs of the late Princess Sophia being Protestants and for extinguishing the hopes of the pretended Prince of Wales and his open and secret abettors as altered and explained by an Act passed in the Sixth year of the reign of Our dearest ffather his late Majesty King George the Third intituled « An Act for altering the Oath of Abjuration and the Assurance and for Amending so much of an Act of the Seventh year of her late Majesty Queen Anne intituled « An Act for the improvement of the Union of the two Kingdoms as after the time therein limited requires the delivery of certain lists and copies therein mentioned to persons indicted of High Treason or Misprision of Treason » [6 Geo. III c. 53], As also that you make and subscribe the declaration mentioned in an Act of Parliament made in the twenty fifth year of the reign of King Charles the Second intituled « An Act for preventing dangers which may happen from Popish recusants » [25 Chas. II c. 2] And that you likewise take the

³ In the absence of the Governor in Chief the Lieutenant Governor (who at this time was Sir James Kempt) administered the government under his superior's commission and instructions.

usual Oath for the due execution of the Office and trust of Our Captain General and Governor in Chief of our said Province and Island and for the due and impartial Administration of Justice and further that you take the Oath required to be taken by Governors of Plantations to do their utmost that the several laws relating to Trade and the Plantations be observed ... And we do hereby give and grant unto you full power and Authority with the advice and consent of our said respective Councils from time to time as need shall require to summon and call General Assemblies of the freeholders and Planters within your Government in such manner and form as has been already appointed and used or according to such further powers instructions and Authorities as shall at any time hereafter be granted or appointed you under Our signet and sign Manual Or by Our Order in Our Privy Council And our will and pleasure is that the persons thereupon duly elected by the Major part of the freeholders of the respective Counties and places and so returned shall before their Sitting take the Oaths mentioned in the first recited Act of Parliam. ment altered as above and also make and subscribe the aforementioned declaration which Oaths and declaration you shall commissionate fit persons under Our seals of Nova Scotia and Prince Edward respectively to tender and administer unto them and until the same shall be so taken and subscribed no person shall be capable of sitting though elected

INSTRUCTIONS TO THE EARL OF DALHOUSIE AS GOVERNOR IN CHIEF OF NOVA SCOTIA, 27 APRIL, 1820

(London : Public Record Office, Bound Comm^{ms}. p. 694, 1820 April 27; transcript in Public Archives of Canada)

George R.

Instructions to Our Right Trusty and Right Well beloved Cousin and Councillor George Earl of Dalhousie . . . Our Captain General and Governor in Chief in and over Our Province of Nova Scotia

.....

3^d. You shall also administer or cause to be administered the oaths above mentioned in our said Commission to the Members and Officers of the Council and Assembly and to all Judges Justices and other Persons that hold any office or Place of Trust or Profit in our said Province and you shall cause them to make and Subscribe the afore. said declaration without the doing of all which you are not to admit any Person what soever into any Public Office nor Suffer those who may already have been admitted to continue therein.

.....

SIR JAMES KEMPT, LIEUTENANT GOVERNOR, TO HENRY GOULBURN, UNDER SECRETARY OF STATE FOR THE COLONIES

(London, Public Record Office: C.O. 217-140, pp. 221-4; transcript in Public Archives of Canada)

Private

Halifax Nova Scotia

15 Novem^r 1821.

My Dear Sir;

With reference to your private Note of the 21st of August⁴ which did not reach me `till the 6." inst; I hasten to inform you in answer to your enquiries, that there are no laws in this Province imposing restrictions upon the admission of Roman Catholics to either House of the Legislature, but that as far as I can learn no Catholic has, in point of fact, ever Sat as a Member either of the Council or the Assembly.

The Kings Commission & Instructions direct that all Members of either House of the Legislature shall take the *State Oaths prescribed therein* previous to admission; & no Member has ever been permitted to *take his Seat* either in the Council or the Assembly without having the State Oaths administered to him by Commissioners duly Appointed for that purpose.

Such has been the practice in this Province up to the present day. – The only instance indeed of a Roman Catholic being *Elected* a Member of the Assembly occurred last year upon the reannexion of Cape Breton to Nova Scotia. – A great portion of the Inhabitants of the Southern District of that Island are descendants of the Original French Settlers, and a M^r Kavanagh a Roman Catholic Gentleman of considerable influence among them and of the highest Character and respectability was returned one of the representatives for Cap Breton. But he did not make his Appearance here during the last Session of the General Assembly, and I therefore do not know whether he will take the State Oaths prescribed in the Royal Instructions.

In the Year 1783 an Act was passed by the Legislature of this Province, & approved of by His Majesty, to relieve Persons professing the Popish Religion from certain penalties and disabilities imposed upon them by the former acts passed in the 32^d of George the 2nd.

Under this Act two or three Catholics of great respectability have been admitted into the Commission of the Peace upon their taking the *Oath* of office prescribed in the *said Act* a copy of which is herewith inclosed for y^r. information.

Upon going to Cape Breton I found the Custos Rotulorum of that Island a Roman Catholic (M^r Kavanagh th same Gentleman who has been returned to the Assembly) and I judged it expedient to reappoint him to that Situation in the New Commission of the Peace which I issued for that County.

I cannot learn whether M^r Kavanagh intends coming up here to take his Seat in the Assembly in its next Session. Should he do so, I shall direct the Commissioners to administer to him the State Oaths prescribed in the Royal Instruction. – if he objects to take the same – The Majority of the Council will advise me, I believe to admit him upon his taking the *Oath* prescribed in the *Provincial Act herewith inclosed*, reporting to His Majesty's Government that I have done so, until I receive instructions from home – but, I have not yet made up my mind upon the Subject – A great proportion of the Inhabitants of Cape Breton are Catholics it is true, and it appears but just & fair that they should have a representative of their own Body in the Assembly. M^r Kavanagh is one of the most *loyal* and respectable of the whole community and I do not think any evil can arise from his Admission into the House; but notwithstanding this conviction, a constitutional point being in question, I shall probably deem it my duty *literally to follow the Kings Instructions*, it being, I feel, the *safest* and best course for me to take upon every occasion.

Pray take an early opportunity of talking over this matter with Lord Bathurst, and advise me *Confidentially* if you please of his Lordships Sentiments thereon. Our

⁴ There does not seem to be a copy in Canada. The draft in London is in the Public Record Office, C. O. 218-29

Legislature will meet early in February next and I hope to receive before then an Answer from His Majesty's Government to the representation I forward from the House of Assembly regarding the Custom House on the 10th of March last. Every thing in the Province continues to go on quietly and well, – I went over almost every part of it last Summer and did not receive a Single Complaint of any Kind.

Ever My dear Sir
Most faithfully Y^{rs}
James Kempt

Henry Goulburn Esq^r.
M. P.

THE EARL BATHURST, SECRETARY OF STATE FOR THE
COLONIES, TO SIR JAMES KEMPT

(London, Public Record Office: C.O. 217 - 140, pp. 231.4; transcript in Public Archives of Canada)

Private & Confidential.

D. S. Dec. 21 1821.

My dear Sir

M^r Goulburn having been appointed the Secretary for Ireland I have read the letter which you addressed to him on the subject of the Oath to be administered on taking a Seat in the Legislative Assembly to which Oath you imagine M^r Kavanagh will object, being a Roman Catholic – You also state that no Roman Catholic has hitherto been elected^r that this Gentleman is chosen by the electors of Cape Breton, the Southern part of which is settled chiefly by Roman Catholics, that he is a most loyal and respectable individual and that you had (very properly) continued him Custos Rotulorum in Cape Breton. You further say that you believe it to be the disposition of your Council to advise you to dispense with this Gentleman taking the Oath prescribed by the Royal Instruction, provided he takes that which the Law of the Settlement imposes on Magistrates but you are not inclined to comply with this proposition should it be offered to you, conceiving it to be more safe to abide by the Letter of your Instructions.

In this you judge with your usual prudence. It is never wise in a Governor to act contrary to his Instructions, unless the waiting for further Instructions will be productive of great and immediate embarrassment to the State.

The waiting for Instructions on this occasion cannot come under that description. It cannot be of any essential consequence if M^r Kavanagh should be obliged to postpone taking his Seat for a few Months longer, seeing that he has voluntarily postponed doing so for twelve Months or more already: and if it should be the opinion of His Majesty's Government that no relaxation in the Instruction should be admitted, your having already allowed it would have placed yourself as well as the Government under great embarrassment.

With respect to the merits of the question itself, I had much rather that the case should not arise; but if M^r Kavanagh should present himself, and on his objecting to the Oath required by the Instruction, the Council should be of opinion that it is desirable that it should be dispensed with, you will consent to submit their wishes to His Majesty's Government, and wait His Majesty's Pleasure. I should not recommend even so much encouragement to be given to this proposition, if I were not prepared to advise His

Majesty (on the receipt of such an application) to dispense with the Oath in the instance of M^r Kavanagh on condition of his taking the Oath prescribed by the Act of 1783 a Copy of which you transmitted to me.

I have the Honor to be &c.
Bathurst

Lt. General
Sir^Js Kempt G.C.B.

EXTRACTS FROM THE JOURNALS OF THE HOUSE OF
ASSEMBLY OF NOVA SCOTIA, 1822

Page 125:

Thursday, 14 February, 1822.

Mr. Uniacke, pursuant to leave given, presented a Bill, in addition to an Act, passed in the last Session of the General Assembly, entitled, An Act to extend the Laws and Ordinances of the Province of Nova-Scotia, to the Island of Cape Breton; and the same was read a first time.

Resolved That the Bill be read a second time.

Pages 130-1

Friday, 22 February, 1822

Pursuant to order, a Bill in addition to an Act, passed in the last Session of the General Assembly entitled, An Act to extend the Laws and Ordinances of the Province of Nova-Scotia to the Island of Cape Breton, was read a second time; and thereupon,

Mr. W. H. Roach [William Henry Roach, representative for town of Digby] moved that the further consideration of the said Bill be postponed to this day three months, which, being seconded and put, and the House dividing thereon, there appeared for the motion Twenty-one; against it Ten :... so it passed in the affirmative.

Pp. 137-8

25 February, 1822.

Mr. Archibald [Samuel George William Archibald, one of the members for Halifax County] moved that the house do come to the following Resolution, viz.

Whereas His Majesty has been graciously pleased to reannex the Island of Cape-Breton to the Province of Nova-Scotia, and to allow the Inhabitants of that Island, to elect two Members to represent them in the General Assembly of this Province; and whereas, the Inhabitants of the said Island, being principally of the Roman Catholic Religion, have returned two Members to represent them in the Assembly, one of whom, namely, Lawrence Kavanagh, Esq. is of that Religion, and although he is willing to take and subscribe all the State Oaths, he cannot conscientiously subscribe the Declaration

against Transubstantiation: and whereas, it will be highly injurious to the Inhabitants of that Island, if the said Lawrence Kavanagh shall be refused a Seat in this Assembly, thereupon, it is Resolved,

That this House will permit the said Lawrence Kavanagh, upon taking and subscribing all the State Oaths, to take his Seat in this Assembly without subscribing the said Declaration, and to retain the same until His Majesty's pleasure shall be known thereon, providing that His Excellency the Lieutenant Governor shall approve hereof, and not otherwise: which being seconded and put, and the House dividing thereon, there appeared, for the motion, thirteen; against it seventeen ...

So it passed in the negative.

KEMPT TO BATHURST

(London : Public Record Office : C.O. 217.141, pp. 9.12; transcript in Public Archives of Canada)

N^o. 2.
R 22^d April.

Halifax Nova Scotia
20th. March 1822.

My Lord:

I have the Honor herewith to lay before Your Lordship an Address which I lately received from His Majesty's Council of this Province, praying, for the reasons therein stated, that I would bring Under the Consideration of His Majestys Government the expediency of admitting Roman Catholics who are willing to take the State Oaths into the Provincial Legislature, and to practice at the Bar, without making the declaration against Popery and transubstantiation as required by His Majestys Instructions.

In bringing this Subject before Your Lordship I think it my duty to state the circumstances which have given rise to the agitation of this delicate question at the present moment.

Upon the recent reannexation of the Island of Cape Breton to the Province of Nova Scotia, A Roman Catholic Gentleman of undoubted Loyalty and great respectability was elected to represent that County in the House of Assembly; and he came up on the recent meeting of the Legislature with the intention of taking his Seat. He had fully determined it would appear to take all the State Oaths required by the Royal Instructions; and he conceived that I would under all the circumstances of his case dispense with his Making the declaration against Popery and Transubstantiation, as is also therein required. I had however made up my mind in the event of his presenting himself not to admit of any relaxation in the Instructions until I received the Kings pleasure thereon, and I caused this to be intimated to him.

The Question however was brought before the House of Assembly and a bill with a Suspending clause passed that branch of the Legislature opening the door to the *general* admission of Catholics into the Legislature upon taking the State Oaths, but dispensing with their subscribing to the declaration against transubstantiation – To this Bill the Council objected, conceiving that a more respectful and better course would be to ascertain previous to any Provincial Enactment upon this subject whether His Majesty would be graciously pleased to consent to such a Regulation. To accomplish this the Address which I have now the Honor of transmitting was presented to me.

It may be necessary for me further to add, that I agree in the opinion expressed by His Majesty's Council that no Evil is to be apprehended in this Province from the admission of Catholics into the Legislature, provided that they take all the State Oaths prescribed in the Royal Instructions except the declaration against transubstantiation.

I have the Honor to be
My Lord
Your Lordships
Most Obedient and
Most Humble Servant
James Kempt

The Earl Bathurst K. G.
&c - &c - &c

ENCLOSURE
(Ibid., pp. 13-15)

To His Excellency Lieutenant General Sir James Kempt
Knight Grand Cross of the Most Honorable Military
Order of the Bath – Lieutenant Governor and
Commander in Chief in and over His Majesty's Province
of Nova Scotia and its Dependencies
&ca &ca &ca

May it please Your Excellency

His Majesty's Council beg leave to submit to Your Excellency's consideration some inconveniences which have occurred in this Province of late, arising out of His Majesty's instructions to Your Excellency by which persons professing the Roman Catholic Religion are excluded from sitting in the Legislature or holding any post under Government, as they cannot conscientiously make the declaration against Popery and transubstantiation.

His Majesty's Council are convinced that in the early settlement of this Province it was necessary to confine all such situations and offices to Protestants – in order to secure the exclusion of the French Inhabitants from power, who at that time gave too many proofs of their hostility to His Majesty's Government, but the Situation of the Country is now widely different, a large portion of it, which was then a wilderness has been peopled by Emigrants from Scotland and Ireland, many of whom profess the Roman Catholic Religion, and the Island of Cape Breton which has recently been reannexed by His Majesty to this Province is chiefly settled by persons of that persuasion, who have actually elected a Roman Catholic to represent them in the General Assembly.

As the principles of Religious toleration which prevail so extensively in this Province have been very instrumental in advancing its population and prosperity, His Majesty's Council beg leave to suggest to Your Excellency the Expediency of submitting this subject to the consideration of His Majesty's Government, in order to ascertain whether His Majesty may not deem it proper to qualify His Instructions upon this head in such manner as to admit Roman Catholics who are willing to take the State Oaths, into the Legislature, to practice at the Bar, and to hold offices under government without making the declaration against Popery and transubstantiation. His Majesty's Council are of

opinion that in the present situation of the Country such a regulation would not be productive of any evil, but would give great satisfaction to a large portion of His Majesty's Subjects in this Province

In behalf of the Council
S. F. Blowers Prest.

Council Chamber
Halifax the 9th. of March 1822.

ENCLOSURE
(Ibid., pp. 17-24)

This Bill was introduced by M^r Kavanagh's friends, but did not pass the House of Assembly, being considered of too partial a nature.

An Act in addition to an Act passed in the last Session of the General Assembly entitled an Act to extend the Laws and Ordinances of the Province of Nova Scotia to the Island of Cape Breton.

Whereas by His Majesty's Commission and instructions to the Governor General and commander in Chief of the North American Provinces he is directed to cause the Members of His Majesty's Council and the Members of the Assembly of this Province to take and subscribe the State Oaths and Declaration; And Whereas since the issuing of the said Commission and Instructions his Majesty has been pleased to annex the Island of Cape Breton to the Province of Nova Scotia to constitute and form a County of the said Province with the privilege of Electing two Representatives to serve for the said Island in the General Assembly of the said Province, And Where. as the greater part of the Inhabitants of the said Island profess the Roman Catholic Religion and Laurence Kavanagh Esq^r. one of the persons Elected to represent the said County is of that Religion and is willing to take all the State Oaths but cannot conscientiously make and Subscribe the Declaration against transubstantiation;

And Whereas His Majesty's most gracious intention in annexing the said Island to this Province cannot be carried into full and complete effect if the said Instructions shall be considered to extend to the Representatives Elected by the People of the said Island: in Order therefor to remove all doubts relating thereto.

Be it enacted by the Lieutenant Governor Council and Assembly that in case any person already elected or who may hereafter be duly elected to represent the said County in the General Assembly of this Province shall profess the Roman Catholic Religion he shall be entitled to sit and vote in the said Assembly upon taking the following oath.

I A. B. sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King George the fourth and him will defend to the utmost of my power Against all conspiracies and attempts whatsoever that shall be made against his Person Crown or Dignity, and I will do my utmost endeavours to disclose and make known to his Majesty his heirs and Successors all treasons and traitorous conspiracies which may be formed against him or them; and I do faithfully promise to maintain support and defend to the utmost of my power the Succession of the Crown in his Majesty's family against any person or persons whatsoever, hereby utterly renouncing and abjuring any obedience or allegiance unto the person taking upon himself the Stile and title of Prince of Wales in the life time of his father and who since his death is said to have assumed the stile and title of King of Great Britain by the name of Charles the Third and to any other person claiming or pretending a right to the Crown of these Realms: and I do swear that

I do reject and detest as an un-Christian and impious position that it is lawful to murder or destroy any person or persons whatsoever for or under pretence of their being Hereticks, and also that unchristian and impious principle that no faith is to be kept with Hereticks. I further declare that it is no article of my faith and that I do renounce reject and abjure the opinion that princes excommunicated by the Pope and Council or by any authority of the See of Rome or by any Authority whatsoever may be deposed or murdered by their Subjects or any other person whatsoever; and I do declare that I do not believe that the Pope of Rome or any other foreign Prince Prelate State or Potentate hath or ought to have any temporal or civil jurisdiction power superiority or pre-eminence directly or indirectly within this Realm: and I do solemnly in the presence of God, profess testify and declare that I do make this declaration and every part thereof in the plain and ordinary sense of the words of this Oath without any evasion equivocation or mental reservation whatsoever and without any dispensation already granted by the Pope or any Authority of the See of Rome or any person whatsoever or without thinking that I am or can be acquitted before God or Man or absolved of this declaration or any part thereof although the Pope or any other persons or Authority whatsoever shall dispense with or Annul the same or declare that it was null and void. – Unless his Majesty shall signify to the Governor Lieutenant Governor or Commander in Chief of this Province his Royal intention to carry the Said Instructions into Effect as respects the Representatives of the said Island of Cape Breton.

[*Endorsed:*] Bill in addition to
an Act passed in the last
Session of the General
Assembly entitled an act
to extend the Laws and
Ordinances of the Province
of Nova Scotia to the
Island of Cape Breton.

Read 1st time 14th Feb^y 1822
2^d do. 22^d Feb^y 1822

Consideration deferred for three Months the Measure being deemed of too partial a Nature in the H. of Assembly

BATHURST TO KEMPT
(Public Archives of Nova Scotia : Vol. 64, doc. 46)

Downing Street
8th May 1822

Sir

I have received and laid before The King your dispatch of the 20th March, and your separate letter of the same date stating the circumstances which had occurred in consequence of the return of a Roman Catholic Member to the House of Assembly in Nova Scotia and the difficulties which had arisen in this case in consequence of the Oaths required to be taken by The King's Instructions. His Majesty approves of the course which you have taken and of the moderation with which the question appears to have been

discussed and I am commanded to convey to you His Majesty's Authority to admit Mr. Kavanagh to take his Seat in the Assembly on taking the State Oaths and to dispense with his making the declaration against Popery and Transubstantiation.

I have the Honor to be
Sir,

your most obedient
Humble Servant
[signed] Bathurst

EXTRACTS FROM THE JOURNALS OF THE HOUSE OF
ASSEMBLY OF NOVA SCOTIA, 1823

Pages 288-9:

Wednesday, 2d April, 1823.

Mr. Deputy-Secretary Hill acquainted the House, that he had a Message from His Excellency the Lieutenant-Governor to the House, signed by His Excellency, and he presented the said Message to the House; and the said Message was read by Mr. Speaker, all the Members being uncovered, and was as followeth:

JAMES KEMPT

His Excellency deemed it his duty, at the closing of the last Session of the General Assembly, to state, for His Majesty's information, the circumstances which occurred in the case of the Catholic Member, returned for the County of Cape-Breton, in consequence of the Oaths required to be taken by the Royal Instructions, he has received a Dispatch from His Majesty's Principal Secretary of State for the Colonies, signifying His Majesty's approbation of the moderation with which the question had been discussed, and conveying to His Excellency His Majesty's authority to admit Mr. Kavanagh to take his seat in the House of Assembly, on his taking the State Oaths, and to dispense with his making the declaration against Popery and Transubstantiation.

Ordered, That the Message do lie on the Table, to be perused by the Members of the House.

Pp. 292-3:
3 April, 1823.

On motion, the Message of His Excellency the Lieutenant-Governor, on the subject of admitting Lawrence Kavanagh, Esq. elected to represent the County of Cape-Breton, to take his seat in the House of Assembly, was read by the Clerk; and thereupon,

Mr. Ritchie [Thomas Ritchie, one of the members for Annapolis] moved, that the House do come to the following Resolution, viz.

Resolved, That a Committee be appointed to wait upon His Excellency the Lieutenant-Governor, and request he will be pleased to lay before the House so much as he thinks proper of the Dispatch, received by him from His Majesty's Principal Secretary

of State for the Colonies, respecting the admitting of Mr. Kavanagh to take his seat in the House of Assembly, upon his taking the State Oaths, and dispensing with the Declaration against Popery and Transubstantiation. And also, that His Excellency the Lieutenant-Governor will be pleased to direct the proper Officers to lay before the House such extracts from His Majesty's Commission and Instructions to the Governor-General, as regards the calling of the General Assembly of this Province, and the Oaths and Declaration the Members of the House are required to take: which, being seconded, thereupon,

Mr. Uniacke moved an amendment to the foregoing motion, as follows:

Leave out the whole of the words from the word « Resolution » and insert, in place thereof, the words following, viz. « That a Commissioner may Attend this House, for the purpose of administering to Lawrence Kavanagh Esq. the Representative for the County of Cape-Breton, the Oaths, agreeably to the Message of the Lieutenant. Governor: » which, being seconded and put, and the House dividing thereon, there appeared, for the amendment eighteen; against it eighteen:..

So Mr. Speaker [Simon Bradstreet Robie, one of the members for Halifax County] gave his casting Vote against the amendment.

Mr. Uniacke then moved a further amendment to the original motion, as followeth, viz. Leave out the whole of the same, and Insert in place thereof the following words: « His Majesty having been graciously pleased to give his consent that Lawrence Kavanagh, Esq. elected to represent the County of Cape-Breton, being a Gentleman professing the Roman Catholic Religion, should be permitted to take his seat in this House, without making the Declaration against Popery and Transubstantiation:

Resolved, That this House, grateful to His Majesty for relieving His Majesty's Roman Catholic subjects from the disability they were heretofore under from sitting in this House, do admit the said Lawrence Kavanagh to take his seat; and will, in future, permit Roman Catholics, who may be duly elected, and shall be qualified to hold a seat in this House to take such seat, without making a Declaration against Popery and Transubstantiation, and that a Committee be appointed to wait upon His Excellency the Lieutenant-Governor, and communicate to him this Resolution of this House: which, being seconded and put, and the House dividing thereon, there appeared, for the further amendment twenty-one; against it fifteen:..

So it passed in the affirmative.. .

Lawrence Kavanagh Esq. returned duly elected as a Member for the County of Cape-Breton, took his seat, having previously taken the State Oaths at the Table of the House, in the presence of the Honorable James Stewart, one of the Commissioners appointed by His Excellency the Lieutenant-Governor.

APPENDIX III

REPORT ON DEBATE PRECEDING THE ADMISSION OF LAURENCE KAVANAGH TO THE HOUSE OF ASSEMBLY

(From the *Acadian Recorder*,
Saturday, April 5, 1823)

A question in which the inhabitants of this province are deeply concerned was agitated this week in the house of assembly. On Wednesday morning Lawrence Kavanagh, Esq. the ROMAN CATHOLIC representative for Cape Breton appeared, and took possession of his seat as a member of the legislative body. A message was received

from his Excellency the Lieutenant Governor on the subject, when an animated debate ensued on the legality and expedience of his admission. As we have had not yet enjoyed an opportunity of perusing the documents, we are obliged to speak in general terms of the message and of the dispatch from his majesty's ministers on which it was founded. - Messrs. Blair, Marshall and Ritchie deprecated so fundamental a change in the constitution of the colony, until the house were satisfied after the most grave deliberation, of the authority by which it was introduced, and of its wisdom and fitness as a practical measure. The former gentleman moved on Wednesday that the question and all papers connected with it be referred to a committee of privileges, who might ascertain and report on the facts. This motion was earnestly opposed by Messrs Archibald, Uniacke, J. J. Chipman and other gentlemen on that side, who represented in strong language, while referring to the proceedings of last session, the inconsistency with which certain members of the house were acting - the inconvenience and danger of delay- and the propriety of admitting Mr. Kavanagh at once to that seat which the consent of his majesty now permitted him to fill, and which his personal character and information fitted him to adorn. On Thursday, therefore, Mr. Uniacke moved that the commissioner be requested to attend and administer to Mr. Kavanagh the state oaths, without requiring him to make or subscribe the declaration against popery and transubstantiation. This was an amendment on a previous motion made by Mr. Ritchie; the object of which was that a committee be nominated to wait on his Excellency, and request him to furnish copies of such parts of the dispatch transmitted by his Majesty's Secretary of State as he might think proper; and also of such clauses in his instructions from the king and in the commission of the Governor General as related to the convening and holding of general assemblies. After a debate of considerable length, the question was put on Mr. Uniacke's amendment, when there appeared for and against it the equal number of 18. Mr. Speaker then remarked that he was under the disagreeable necessity of deciding by his casting vote on a motion and amendment, neither of which be approved. Anticipating, he said, the possibility of some such difficulty occurring, he had expressed on paper, in the form of a resolution, that vote to which he was disposed to give his sanction and assent. He then read the resolution which allowed the admission not only of the member from Cape Breton but of all Catholics who might be hereafter duly elected. We shall insert it in our next.

With the idea he continued, that this resolution would be moved as a second amendment on Mr. Ritchie's original motion, he would most certainly disagree to Mr. Uniacke's. The latter gentleman then rose and moved the resolution suggested from the chair, which being *seconded*; and the Speaker having requested and obtained permission from the house to offer his sentiments, he entered on a concise, but very clear and masterly view of the whole question. He maintained that the disability which prevented Roman Catholics from assuming a seat in that house must have arisen from one of four sources; from the common law, which British subjects brought with them to the colonies as their birth right, and which was in full operation so far as it suited their local situation and circumstances or from an act of the Imperial Parliament - or of our own Legislature - or lastly from his Majesty's instructions and commission under the great seal to his representatives. As it was manifest that the disability could not be traced to the common law; it followed that its sole origin and foundation was the will of his Majesty as set forth in his instructions. Such being the fact, could it be said that the King, when he conceived the restriction no longer advisable from the change of opinion or the mollifying influence of time, had it not in his power to relax or withdraw it? Could this be termed an infringement of our rights or privileges - of that constitution under which

we were trained and had prospered. In his apprehension, so far from being a violation or abridgement, it was more properly an extension of those privileges which the inhabitants of this colony possessed. A case from Cowper's Reports had been cited by Mr. Ritchie he must confess that he was surprised to hear it urged as if in point – for to him it appeared not to have the slightest bearing upon the present question. In that instance an impost had been levied in Grenada by the sole authority of the King, after a constitution had been granted to that island and a legislative assembly allowed. But here there was no tax imposed no hardship enforced – it was a benefit conferred, and that in consequence of our own proceedings during the last session of assembly – and therefore the case could not be viewed, with any show of reason, in that dubious and suspicious light, which the analogy contended for would seem to imply.

Such are the heads, so far as we recollect, of the argument delivered by the Honourable Speaker. Some objections were started by Mr. Marshall and Mr. Ritchie on the form of the amendment; but these being overruled and some few explanations exchanged on both sides, it was put to the vote and carried by a majority of six, the voters being 21 to 15. – Thus was determined this great question; and in our view the result is honourable to the liberality and good sense of our House of Assembly. Mr. Kavanagh was immediately after called in and took the state oath before the Hon. Judge Stewart who attended as commissioner. We shall publish in our next a list of the members who voted on Mr. Uniacke's amendment – there being 18 on each side. – The majority on Mr. Robie's was composed of the same 18 who voted for Mr. Uniacke's, with the addition of three names-- by deducting which three, there was left the final minority of 15.

APPENDIX IV

REPORT BY LAURENCE KAVANAGH ON EDUCATIONAL CONDITIONS IN CAPE BRETON, 1824

(Journal of Education, Nova Scotia, Sept., 1935, pp. 527-8)

There is no Regular School in the County of Cape Breton that I know of, except one at Sydney & one at Arichat, but I am not competent to say the number of Children that attend the former, nor the allowance paid the Master for Tuition.

The Master of the School at Arichat is a John Walsh, he is a Sober, moral Man, and bears a good Character; he has from 30 to 40 Children at his School, some he teaches free, owing to the Poverty of th^r Parents, he is badly paid – from 3/ to 7/6 Pr Quarter, and that not in Cash, his income may amount from 25£ to 30£. In my opinion he is deserving of a Salary from Government of £20.

At Petit Degras, Arichat, and Little Arichat, there are at least 150 children remaining without instruction; owing to the Poverty of thr. Parents, 30/ Pr. Ann. would be a fair allowance for a teacher who has twenty to thirty Scholars, with an allowance of £15 or £20 frm. the Province.

At the Gut of Canso I am informed there are two nominal Schools. 10 or 12 families Join and Contribute to maintain a Teacher in the best manner they Can agree, a Regular School is much wanted, I dare say there are 100 children frm. Ship Harbor to Long Point, but thr. Parents, generally speaking, are not in good Circumstances.

From Long Point to Grand Juduque there are about 100 Children, but no Regular School has been kept there, traveling Teachers go to the different Settlements and agree on the best terms they can for the Winter Season; Grand Juduque is a large Settlement the

Inhabitants are Farmers, and most of them in good Circumstances, a Regular School is much wanted there –

At Port Hood there ought to be a School; in that vicinity to little Juduque there are a Considerable number of Children, and most of the Inhabitants are in good Circumstances.

A School should be also Establish'd at Mabou, it is one of the most populous Settlements, in Cape Breton, the Inhabitants there are all Farmers in good Circumstances.

Margeree & Chetican, are also Settlements. I know there are many Children at these places, the Inhabitants are in good Circumstances, most of them are Employ'd, farming and fishing.

Baddeck, Wadmatcook Island Boulderrie, & St. Arms, I am not competent to say what number of Children – from the Population in that Quarter I dare say there are 200, & I am informed traveling Teachers are occasionally Employ'd.

The Strait of Barra leading to the Grand Lake is the Oldest Settlement in the Bras D'Or in that vicinity, there may be 70 to 80 Children fit to be School'd – for many years a traveling Teacher has been employ'd, who is paid in Produce with a Small proportion of Cash.

From St. Peter's to the head of the East Arm there are about 140 families – probably as many Children fit for Schooling, the Settlers are generally poor, occasionally a traveling Teacher is employ'd.

St. Georges Channel, from Cape George to the Islands at Maniguwash, (Malagawtch) there are about 100 families, (very poor) who have a number of Children – in that Quarter a Kind of Teacher is employ'd but very badly paid.

St. Esprit to Grand River, there may be fifty families, perhaps as many Children fit for Schooling, a poor Class of People, however they Keep a Kind of Teacher.

In the Neighbourhood of L'Ardoise there are Sixty families, at least 70 Children fit for Schooling, out of which 8 or 10 are instructed by a Canadian Teacher in the winter Season, L'Ardoise is a fishing Settlement and the Inhabitants are very poor, the Teacher is so badly paid, he is oblig'd to turn Fisherman in the Summer season.

At the River Bourgois, there are thirty families, and about 40 Children fit for Schooling, the people are poor & not in Circumstances to support a Teacher.

At upper and lower Discoose to Grand Dique, about 40 families (*very* poor) there are in these Settlements, 30 Children fit for Schooling, a Kind of a French Teacher is occasionally Employ'd in the winter Season.

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Information has been obtained from official records in the County clerk's Office at Sydney, the Public Archives of Nova Scotia at Halifax, the Public Archives of Canada at Ottawa, and the Public Record Office, London; from various private papers; and from oral tradition. Acknowledgment is made of help kindly given by the Rev. Leo J. Keats, St. Peter's, Richmond County, Cape Breton; Professor D. C. Harvey, Public Archivist of Nova Scotia; Dr. James F. Kenney, Public Archives of Canada; and others, including descendants of Laurence Kavanagh and persons who knew the family.

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