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## GAOLS IN NEW BRUNSWICK

Under the Proclamation of 1763, the territory west of the Saint Croix and south of the Restigouch became part of Nova Scotia. This territory contained a few Acadians and a few New England planters, who had been enticed northward by Governor Lawrence's invitation in 1759, and had settled along the Saint John valley. At the west side of Saint John harbour, Fort Frederick had been built in 1758. At the mouth of the river, on the site of La Tour fort at Portland Point, across from Fort Frederick, an association of traders and merchants established seasonal businesses, part of the great trading ring associated with Joshua Mauger. "The carpenters, coopers, and tanners they brought to Portland Point ... composed the first permanent settlement at what is today Saint John."<sup>3</sup> In 1763 a second permanent settlement was established by New England ex-officers further up the river (but below present-day Fredericton) at Maugerville. Although it was little more than twenty miles of river-front, the New Englanders at Maugerville developed a corporate spirit. MacNutt states:

Barely literate justices of the peace, commissioned by the distant regime at Halifax, kept public order in a manner that was highly discretionary but nevertheless effective. But the chief bond for this remote community was its church covenant 'of imputed righteousness and inherent grace'. The Puritan conscience and the moral law that accompanied it were of greater importance than the civil law of Nova Scotia.<sup>4</sup>

By 1764, the area about the present port of Saint John, New Brunswick, had a population of 400.<sup>5</sup> Except for a small clearing around Fort Howe (built in 1777 at the start

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<sup>3</sup> W. Stewart MacNutt, *New Brunswick: A History: 1784-1867*. Toronto: Macmillan, 1963, p. 3.

<sup>4</sup> MacNutt, 1963, p. 4.

<sup>5</sup> N. A. *Saint John and its Business: A History of Saint John and a Statement in General Terms of its Various Kinds of*

of the American Revolution), most of the site of the present city and Portland was a dense forest. By 1775, it has been estimated, there were between 1,200 and 1,500 settlers along the Saint John valley, and about 30 additional families at Passamaquoddy.<sup>6</sup> A Court of Common Pleas may have been held at Saint John since 1776.<sup>7</sup> The population of the region changed drastically in 1783 with the arrival of the Loyalists. That year, New Brunswick population swelled to 11,457. The Loyalists settled on both sides of the Saint John River, Parrtown on the east and Carleton on the west. In 1785, these two settlements were incorporated in 1785 into the City of Saint John.

The loyalists brought with them some of the democratic, if not republican, ideals of the thirteen colonies. General Carleton counselled the British government that Britain should not impose taxes or vexatious customs tolls. "Greater care should be given to official appointments, especially those of judges." Although the loyalists favoured popularly elected legislatures, Carleton advised that these bodies "should be neutralized by the strengthening of royal governors and appointed councils."<sup>8</sup> Furthermore, the Church of England should be strengthened to enable it "to do its work of fostering loyalty.... If the population of Nova Scotia were to be nurtured on principals of attachment to the Crown, a bishopric and a college would have to be created."<sup>9</sup>

The loyalists, who settled along the Saint John and other parts of Nova Scotia, sought elections to a new House of Assembly and urged the creation of "county and municipal organizations that would make them less dependent on Halifax for the management of their own affairs."<sup>10</sup> They agitated for separation from Nova Scotia and the ruling clique, a "'nest of pickaroons' whose loyalty was tarnished with ill-gotten gains."<sup>11</sup>

The new arrivals, 14,000 in number, were generally short of both education and wealth, although for "a time there was a surplus of educated gentlemen in search of official positions". They were mostly from New York and the middle colonies. From the outset divisions, particularly of a class character, beset them. Loyalist patricians, who hoped to establish a land- holding aristocracy, acted as land agents and secured the best titles, were opposed by more "plebian" elements (MacNutt's term). The Loyalist "patricians" were in the vanguard for the establishment of a new province, although this

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*Businesses Successfully Prosecuted*, (Saint John: H. Chubb and Co., 1875), p. 14.

<sup>6</sup> Brebner, *Neutral Yankees of Nova Scotia*, p. 99.

<sup>7</sup> (MacNutt, 1963, p. 15).

<sup>8</sup> MacNutt, 1963, p. 22.

<sup>9</sup> MacNutt, 1963, p. 23[?].

<sup>10</sup> MacNutt, 1963, p. 27.

<sup>11</sup> MacNutt, 1963, p. 29.

had a wide appeal among the loyalists, and had gained places on the magistracy.<sup>12</sup> Agitation for partition occurred primarily in London, and the first formal proposal came from the Privy Council.<sup>13</sup> The framework of government was to be modelled on Nova Scotia, with no strengthening of the governor's prerogative.<sup>14</sup> Democratic sentiment was expressed in the decision to exempt the province from taxes except those empowered by their own legislatures.<sup>15</sup>

There was also to be a close connection between church and state:

The lack of an episcopacy in the thirteen colonies had been responsible for the levelling, democratic opinions that had moved the Americans to overt rebellion. Episcopacy in the new empire could support loyalty and confound the religious enthusiasms that had made the right of private judgment in matters of faith the instrument of political schism. The parish church, decently administered by a clergyman of the Church of England, could be a rallying point for subjects of the King in the depths of the forest primeval.<sup>16</sup>

What was required was an "episcopate with a school and college".<sup>17</sup> At the time, there was only an episcopate in Halifax and a college at Windsor.

In 1784 the province was separated from Nova Scotia under Governor Thomas Carleton,<sup>18</sup> a military man whose knowledge of and interest in civil affairs was limited. He arrived in the province accompanied by the government of New Brunswick, which consisted of the office-seekers who had gone to London.<sup>19</sup> The new province was dominated by a handful of prominent families, chiefly by the Ludlows. Jonathan Odell came as Provincial Secretary. Gorge Duncan Ludlow, formerly a judge of the Supreme Court of New York, came as Chief Justice. Along with his brother Gabriel Ludlow, the two

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<sup>12</sup> MacNutt, 1963, p. 38.

<sup>13</sup> MacNutt, 1963, p. 44.

<sup>14</sup> MacNutt, 1963, p. 45.

<sup>15</sup> MacNutt, 1963, p. 46.

<sup>16</sup> MacNutt, 1963, p. 46.

<sup>17</sup> MacNutt, 1963, p. 89.

<sup>18</sup> *Saint John and its Business* pp. 18-21. The Council consisted of Duncan Ludlow, John Putnam, Abijah Willard, Gabriel Ludlow, Issac Allan, William Kazan, and Jonathan Odell. Gilfred Studholm and Edward Winslow were added later. Joshua Upham and Daniel Bliss joined in 1786. Gabriel Ludlow became Mayor of Saint John, Ebenezer Halley was High Constable, and William Oliver the first Sheriff (p. 24).

<sup>19</sup> MacNutt, 1963, pp. 48-49.

men were chief councillors in the Executive Council, Gabriel became Mayor of Saint John in 1785, (the year the city received its Royal Charter)<sup>20</sup> and George, besides being Chief Justice, was the first President of the Council in 1786. Ward Chipman was Solicitor General, and Jonathan Bliss, a patron of another than Carleton, arrived from England as Attorney General. "The offices of assistant judges were poorer prizes." No provision had been made for their salaries and Carleton had to obtain "an addition to the parliamentary estimate in order to pay their small salaries of £200.". The assistant judges were James Putnam, "an eminent lawyer of Massachusetts", Issac Allen and Joshua Upham. The last two were better known as military leaders and lacked legal training. "Other leading Loyalists, without benefit of permanent offices that yielded incomes, received seats on the council" of twelve. They included Abijah Willard, Edward Winslow, Beverley Robinson, Gilfred Studholm, and William Hazen. Only Hazen was representative of the older inhabitants of the province, although MacNutt noted that he did not emerge as champion of the people. The original New Englanders, outnumbered ten to one, remained a recognizable minority, which was out of favour with the government.<sup>21</sup>

Carleton's instructions included an injunction that he call elections for an assembly as soon as it was expedient, but with the support of his council, he delayed. During his first year of rule "Carleton established the rudiments of a system of local government that derived its authority from governor and council", thereby eschewing the examples of New England, "where popular control was exercised over local affairs" and of Nova Scotia "where powers of self-government in the townships had been strenuously sought by New England immigrants". New Brunswick was divided into seven counties and "parishes" were created where settlement had occurred. MacNutt suggests that Carleton's hope was

that the magistrates of New Brunswick, drawing their commissions directly from the governor, not only dispensing justice in the inferior courts but performing the executive work of their parishes, serving without reward because they were independent, would emulate the English Justices of the Peace.<sup>22</sup>

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<sup>20</sup> M. H. Perley, *Hand-Book of Information for Emigrants to New Brunswick*, (London: Edward Stanford, 1857), p. 60. Saint John had seven wards, five in the east and two west of the harbour in Carleton. There was a Mayor, and a Recorder, as well as an Alderman and Councillor from each Ward. *Ibid.*

<sup>21</sup> MacNutt, 1963, pp. 50-51.

<sup>22</sup> MacNutt, 1963, pp. 55-57.

Unlike the orderly development of townships in New England, "that thrust responsibility as well as privileges upon individuals", in New Brunswick: "There was nothing to compell a man to live in proximity to and in emulation of his neighbours."<sup>23</sup>

Local government in the province was devolved to local Justices, who met in general sessions of the peace to conduct trials and manage county business. During the first Session, the Justices were to appoint a number of officers, inspectors and assessors for the county, including two or more constables, town clerks, and Overseers of the Poor.<sup>24</sup> The Overseers of the Poor were to lay before the Justices in the first Sessions "the state and condition of the poor in their several districts." A majority of Overseers, with the consent of two or more Justices, were empowered to enquire after idle and disorderly persons with no visible means of support who were likely to become chargeable to the Town or Parish "and to oblige such person or persons to labour for any substantial person, who may be willing to employ him or her; and if such poor person or persons have children in a suffering condition", the Overseers were further empowered "to bind such poor children Apprentices" until they were 20 years old if males, or 18 years of age if females. Furthermore, for those poor who were unable to earn a living but were supported at the public expense, the Overseers could "hire or purchase a house, for the reception of such poor, and to purchase materials to employ such of them as are able to labour". They could also come to an agreement with some person residing in the town or parish to take poor persons into their house, "at a yearly allowance, and employ such poor, in any labour they are able to do". So "that Public charities may not be abused, the said Overseers are hereby directed to act with impartiality, and to put the said poor in the hands of the person, who shall offer to keep them for the least expense, having at the same time a regard to the character of the person who offers, so that the poor may not be inhumanly treated, nor the Public abused."<sup>25</sup> MacNutt says:

In every parish the number of inhabitants was manageable but the area of territory under the jurisdiction of the magistrates was great. The isolated way of life bred a spirit of individualism that ignored the rights of property....

The magistrates who were appointed by the provincial government to do the judicial and administrative work of the counties and parishes possessed little knowledge of the law, nor had they any other intellectual

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<sup>23</sup> MacNutt, 1963, pp. 88.

<sup>24</sup> *Statutes of New Brunswick*, XXVI George III, Cap. XXVIII, p. 47.

<sup>25</sup> *Statutes of New Brunswick*, XXVI George III, Cap. XLIII (1786), pp. 58-59.

qualifications for the development of progressive local institutions. Like the gentlemen of England who performed the labours of quarter-sessions, whom they were supposed to resemble, they held great landed estates. But they had no financial independence and, judging from the volume of complaints against their conduct and the frequent replacements made in their ranks in later years, the vast majority were incapable of separating their private advantage from the public interest.<sup>26</sup>

Baehre noted that *The Charter of the City of Saint John* was legislated in 1785, giving the city "full power and authority, to erect one or more bridewell or bridewells, house or houses of correction, and work house or work houses, and also one or more common stocks". Full authority was granted to the governing bodies of the city "to take up and arrest ... all and any rogues, vagabonds, stragglers, idle and suspicious and disorderly persons, to work on the streets or highways, or to remain and work such work, and so long (not to exceed forty days) or else to bridewell or to house of correction, there to receive such punishment, not extending to the loss of life or limb, or to the said common stocks" as city officials "shall see fit".<sup>27</sup>

These words were echoed in a statute in the following year, titled "An Act for preventing idleness and disorders, and for punishing rogues, vagabonds, and other idle and disorderly persons". Under the Act, an "idle and disorderly" person was defined as persons who "live idle, and refuse to work for the usual wages", who "beg alms" as well as "all idle and wandering persons". On receiving information about such persons, a J.P. may issue a warrant to a constable to bring them before the Justice to be examined. If found "idle and disorderly" under the Act on their own confession or on the oath of one or more credible witnesses, or refusing to be examined in returning untrue answers, such persons could be committed by the Justice to Prison or the House of Correction "there to be kept to hard labour for any term not exceeding one month." Constables who refused or neglected to perform their duty could be fined ten shillings.<sup>28</sup>

The New Brunswick Supreme Court opened for the first time on 1 February 1785. On the third of February, the first grand jury found a true bill against Nancy Mosley for the murder of John Mosley. The "prisoner was arraigned, tried, and found guilty of

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<sup>26</sup> MacNutt, 1963, pp. 88-89.

<sup>27</sup> Baehre, 1985, p. 7; Source: The Charter of the City of Saint John, Appendix, *Journals of the House of Assembly of New Brunswick* (1785), p. 13.

<sup>28</sup> *Statutes of New Brunswick, XXVI George III, Cap. XXVI* (1786), pp. 46-47 in *Statutes of New Brunswick, 1786-1836*.

manslaughter the same day" by a petit jury. On the fifth, Mosley, "who pryaed the benefit of clergy, was sentenced to be branded on the left thumb with the letter M, and discharged."<sup>29</sup> Peter Korman, guilty of highway robbery, and Michael Mings, a mulatto found guilty of robbery, were not as fortunate. Both were hanged on "gallows hill", a "height of land over-looking the Mill Road to the eastward of Fort Howe."<sup>30</sup> The blockhouse at Fort Howe was, at the time, the only building suitable for use as a gaol.<sup>31</sup>

In Saint John, where there was considerable opposition to Carleton's government (for example, from the Loyalist agents), MacNutt says he "resorted to the device of a city corporation" in order "to impose a greater degree of discipline upon the inhabitants..., many of whom were transients". Under the Charter of the City of Saint John, local magistrates would have authority to make regulations and by-laws." A mayor and a recorder, appointed by the provincial government, were the chief executive and judicial officers." Gabriel Ludlow was appointed Mayor, and Ward Chipman, recorder.<sup>32</sup>

The salient feature of the charter was a provision for a court of justice in which the mayor and recorder should preside upon suits less than fifty pounds and over forty shillings. 'This institution appears so greatly preferable to the disorderly meetings before a single justice, at which the colonists have hitherto been accustomed to attend, that I am in hopes that it will prevent a wish for their being re-established.' The competence of the court considerably exceeded that of other inferior courts that had been established in the counties.<sup>33</sup>

Elections for this parliament were held in October 1785 and were accompanied by great riots in Saint John where a violent party spirit developed, led by Elias Hardy (who was eventually elected from Northumberland). The government slate included "placemen" such as Bliss and Chipman. On November 9, troops from Fort Howe arrived to quell a disturbance consequent upon the removal of a polling station from the lower to the upper cove by Sheriff William Oliver. The Lower Court leaders were arrested. "Half a dozen of their leaders were arraigned before the magistrates and turned over to the Supreme Court, which, in the spring, fined them heavily as well as sentencing them to

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<sup>29</sup> *Saint John and its Business*, p. 22.

<sup>30</sup> *Saint John and its Business*, p. 23.

<sup>31</sup> *Saint John and its Business*, p. 24.

<sup>32</sup> MacNutt, 1963, pp. 58-59.

<sup>33</sup> MacNutt, 1963, pp. 59.

extended terms in prison." Nevertheless, the Lower Covers won the election. This result was overturned. Upon the demand for a scrutiny, none of the Lower Cove leaders appeared and consequently Sheriff Oliver declared in favour of the government party.<sup>34</sup>

With respect to laws, Carleton recommended that the New Brunswick legislature should adopt the laws of Nova Scotia with regard to crimes and misdemeanours; "they are for the most part, if not altogether, extracted from the Statute Law of England, and will become our best security for the quiet and permanent enjoyment of private liberty and property." Similarly, he recommended adopting the laws, which related to the execution of civil and criminal justice, suggesting that the House consult with the Justices when reviewing or forming these laws.<sup>35</sup> Chief Justice Putnam and Odeele, Provincial Secretary, were appointed a standing committee of Council to examine the Criminal code of laws as well as laws relating to the execution of justice, and report to the Council. Subsequently, Justice Allen and Winslow were added to the Standing Committee.<sup>36</sup> The criminal law was entirely overhauled in 1831, following several acts passed in England for improving the administration of criminal justice in England. Scores of Acts were repealed, and the Province moved to adopt these reforms.<sup>37</sup> In 1788 the parliament met in Fredericton for the first time.<sup>38</sup> "Instead of unity and obedience the great political fact was dissent."<sup>39</sup>

The first Courts were held in Saint John's first frame house, located on Germain Street (between Queens and Rock). Originally an Episcopalian place of worship, Council meetings were also held there until 1798.<sup>40</sup> The Court House on King Street was completed in 1828. Two other prominent institutions in 19th century Saint John were the Wiggins Male Orphan Institution on St. James Street (built at a cost of \$40,000) and the Alms House on Courtney Bay. Both were constructed of brick by the same firm.<sup>41</sup>

Under an Act of 1786, the various Counties of New Brunswick were authorized to assess County rates by the Justices in the Sessions. In particular, in counties "where no gaols or court houses are already erected" Justices were authorized to make assessments for the purpose of building a Public Gaol and a public Court House. Constables were to

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<sup>34</sup> MacNutt, 1963, pp. 61.

<sup>35</sup> *New Brunswick Journal of the Legislative Council*, 9 January 1786, pp. 2-3; address of Governor Carleton.

<sup>36</sup> *Journal of the Legislative Council of New Brunswick*, 12 January 1786, p. 5; 19 January 1786, p. 7.

<sup>37</sup> Statutes of New Brunswick, 1 William IV Cap. XIV (1831).

<sup>38</sup> *Saint John and its Business*, pp. 25-26.

<sup>39</sup> MacNutt, 1963, pp. 63.

<sup>40</sup> *Saint John and its Business*, p. 20.

<sup>41</sup> *Saint John and its Business*, 166. There is a picture of Wiggins Orphan Asylum on p. 175. of Charles H. Lugin, "New Brunswick: Its Resources, Progress and Advantages (Government of New Brunswick, 1886); also a picture of the City Building in Saint John on p. 191.

demand and levy rates, which were to be paid to a County Treasurer. As usual, if the constables refused or neglected their duty, they could be committed to gaol "there to remain without bail or mainprize, until" they caused the rates to be levied and rendered true accounts.<sup>42</sup> Since most counties did not have gaols, a further Act in 1787 authorized Justices in counties in which "no sufficient gaols are erected, to send persons charged with Grand Larceny and other offences of a higher nature of the gaol of the City and County of Saint John."<sup>43</sup>

By 1800, however, this blanket authorization for Justices in the Counties to raise rates for gaols and court houses was supplemented by specific Acts empowering Justices to assess for this purpose. For example, in 1801 an Act allowed for the erecting of a Court House and gaol in the County of Westmorland; in 1807 Acts authorized the setting or rates to build gaols in Kings County and York County.<sup>44</sup>

The Blockhouse at Fort Howe was, "for want of a more suitable building, used as a gaol."<sup>45</sup> "There was no money for local rates. The celebrated case of the jail of Charlotte County, in which wealthy men advanced the costs to the county and had to wait thirty years for returns, was hardly characteristic. Most of the counties had no jails at all."<sup>46</sup>

In 1784, George Ludlow was appointed Chief Justice, along with Councillors James Putnam, Issac Allan and Joshua Upham as Assistant Judges. For a considerable time, MacNutt observed, these justices did not reside in Saint John. Three settled near Fredericton, "supplementing their salaries by farming, [and] refusing to go on circuit because no funds were available for the payment of expenses". They attended council and performed legislative and administrative roles. Legal business was conducted in Fredericton.<sup>47</sup> The refusal to go on circuit "made the court highly vulnerable to attack. Justice was not cheap." In 1803[?] two bills from the House of Assembly became law

that enabled the justices of the peace in the counties to preside in suits for the recovery of debts up to five pounds instead of one pound as formerly. They moved an enormous amount of legal business from the Supreme

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<sup>42</sup> *Statutes of New Brunswick*, XXVI George III, Cap. XLII (1786), pp. 54-56. In 1789 this Act was amended to allow Justices to assess rates for the purpose of purchasing an existing building for a gaol or court house. A limit of 300 pounds was placed on such rates. *Ibid.*, 29 George III, Cap. 2 (1789), pp. 77-78.

<sup>43</sup> *Statutes of New Brunswick*, 27 George III, Cap. 10 (1787), p. 70.

<sup>44</sup> *Statutes of New Brunswick*, 41 George III, Cap. 6 (1801), p. 137; *Ibid.* XLVII George III, Cap V and Cap. XI (1807), pp. 159, 162.

<sup>45</sup> *Saint John and its Business*, p. 24.

<sup>46</sup> MacNutt, 1963, pp. 89.

<sup>47</sup> MacNutt, 1963, pp. 99.

Court to the parishes, magnifying the dignity and consequence of the justices of the inferior courts. The professional lawyers of the province suffered a damaging blow to their practices.<sup>48</sup>

Chipman argued that the Assembly leaders were magistrates or judges of these courts, and consequently were motivated by self-interest.

The Supreme Court met for the first time on 1 February 1785. On the 3rd a Grand Jury found a true bill against Nancy Mosley for the murder of John Mosley. On the same day she was arraigned, tried and found guilty of manslaughter by a petit jury. On the fifth, Mosley "who prayed the benefit of clergy, was sentenced to be branded on the left thumb with the letter M, and discharged."<sup>49</sup> In the same session, Michael and Abraham Mings, mulattoes, were found guilty of burglary, and on the 4th, Peter Korman and William Thatcher were found guilty of highway robbery and grand larceny respectively. On the 5th, capital sentences were pronounced on all four and scheduled for Friday, the 11th. Thatcher and Abraham Mings were afterwards pardoned, under the condition that they leave the province. For the other two, they were hanged on "gallows hill", a height of land overlooking the Mill Pond to the eastward of Fort Howe.<sup>50</sup> Reverend Millidge described the gallows as "a substantial timber structure" which served as a permanent "institution of the state. Criminals were hung in chains and their bodies were left to decay or be eaten by crows."<sup>51</sup>

To compound problems of scarcity of labour and emigration from the province, the decade between 1793 and 1803 was one of "adverse fortunes", as it was one of military-inspired growth for Halifax. The "aristocracy" of New Brunswick, MacNutt points out, were not especially wealthy and had no means to develop the province. By 1803 the population of the province was under 24,000. The early years of the nineteenth century, however, were marked by a turn-around of economic fortunes: "commerce throve", wrote. After 1806 economic activity intensified and New Brunswick entered a period "of unprecedented prosperity" which "effectively established the character of the colony for fifty years following."<sup>52</sup>

Baehre describes the early 19th century jails in New Brunswick by citing the

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<sup>48</sup> MacNutt, 1963, pp. 115-116.

<sup>49</sup> *Saint John and its Business*, p. 23.

<sup>50</sup> *Saint John and its Business*, p. 23.

<sup>51</sup> J. W. Millidge, "Reminiscences of Saint John from 1845 to 1860", *Collection of the New Brunswick Historical Society*, Vol. 4, No. 10 (Saint John: Barnes and Co., 1919), p. 135.

<sup>52</sup> MacNutt, 1963, pp. 94, 98, 118, 136, 144.

account of an "infamous criminal" confined in jail at Kingston, N.B. in 1814. The jail was "twenty-two feet by sixteen; stone and lime walls three feet thick on the sides, the fourth side having been the partition wall between the prison rooms.... The door was of two inch plank doubled and lined with sheet iron, with three iron bar hinges.... There was one window through the stone wall, grates within and without, and enclosed with glass on the outside, so that no communication could be had with the interior undiscovered..."

"At this county jail the keeper 'from his infirm state of health,' never left the house which was attached to the gaol day or night. The prisoner was given a bunk, straw, and blankets. If dangerous, as the mysterious stranger was, a leg iron was fastened to the jail floor. Nevertheless, this man managed to escape."<sup>53</sup>

In 1819, 3,200 disbanded soldiers settled at Saint John and, although many emigrated, over the next few years, large numbers came during a period of great prosperity and abnormal growth.<sup>54</sup> By 1824, Saint John and Portland reported a population of about 12,000.

American liberty and equality were rampant in Charlotte County, said an anonymous writer to the Colonial Office, and there was 'a most lawless, outrageous rebellious spirit' against the magistracy and the established church".<sup>55</sup> During this period, the Baptist denomination captured many adherents in the province, principally among the poorer settlers. According to the Marriage Act of 1787, with the exception of remote parts of the province where Justices of the Peace were authorized to conduct marriages, the Church of England was given a primacy for the institution of marriage. A "Baptist preacher languished in a New Brunswick prison for a year because he ventured to perform the marriage ceremony. Walter Bates, the sheriff of Kings, declared that on more than one occasion 'the false preachers' had been his guests in his jail at Kingston."<sup>56</sup>

In 1851, the Government of New Brunswick consisted of a Lieutenant Governor, an Executive Council of nine, an (Upper) Legislative Council of 21, appointed by the Crown, and an elected House of Assembly with 41 members. Saint John County elected four representatives, and Saint John City elected two.<sup>57</sup>

There was a Supreme Court, consisting of a Chief Justice and four Assistant Judges, which met in Fredericton four times per year as well as doing a circuit to each of the

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<sup>53</sup> Baehre, 1985, p. 8. Baehre cites: Walter Bates, *The Mysterious Stranger* (Woodstock, N.B.: Non-Entity Press, 1979), pp. 61-62.

<sup>54</sup> *Saint John and its Business*, p. 32.

<sup>55</sup> MacNutt, 1963: 165.

<sup>56</sup> MacNutt, 1963, pp. 91, 166.

<sup>57</sup> M. H. Perley, *Hand-Book of Information for Emigrants to New Brunswick*, (London: Edward Stanford, 1857), p. 75.

County Assizes. Each County also had a Court of Probate presided over by a Surrogate Judge appointed by the Lieutenant Governor and held once a month except once a week in Saint John. Inferior Courts of Common Pleas and General Sessions of the Peace were held in each County four times a year. They consisted of three or more Judges the senior of which acted as Chairman of Magistrates at the General Sessions. These Inferior Courts could hear civil cases if the amount were greater than five pounds (excluding property) and criminal cases such as larceny and minor offences not punishable by capital punishment. Justices Courts are held in the residence of the Justice of the Peace in counties, whenever necessary or convenient. Two justices preside and decide in cases of petty theft, and assault and battery not accompanied by wounding or aggravated circumstances. In addition to these, there was also a Court of Vice Admiralty, a Court for the trial and punishment of Piracy, and Courts of Marriage and Divorce.<sup>58</sup> On 6 March 1832, a Commission on Judicial Institutions in the Province was empowered to inquire "into the forms and matters of proceedings in all the Judicial institutions of the Province whether regulated by Common or Civil law."<sup>59</sup>

The Sessions, also, in counties not yet incorporated, appoint County and Parish Officers and audit their accounts, levy rates and taxes, and exercise a general supervision over Parish and County business. In the counties, which are now incorporated, a warden performs these duties and councillors elected by the ratepayers in each parish; and doubtless, other counties will soon avail themselves of the privilege of being incorporated under the provision of the Municipal Act.<sup>60</sup>

Despite this formal structure of justice, it was a pioneering province grown used to laxity. The Acadians had taken root on the Northern and Eastern shores. Government, MacNutt notes, was remote, and the Acadians squatted on lands "in the happy consciousness that something like their traditionally free form of existence had been restored.... Life and property were precarious for no system of preserving public order had been established".<sup>61</sup> Twenty years later the Sheriff on the Mirimichi, Benjamin Marston, for example, wrote as follows to the Secretary of the Province in 1785:

The judicial authority delegated here is insufficient for the wants of the county....I have no Gaol, 'tis impossible to hold any one to special Bail or to commence any criminal process or oblige any one to give security to keep

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<sup>58</sup> M. H. Perley, *Hand-Book of Information for Emigrants to New Brunswick*, pp. 76-77.

<sup>59</sup> PANB RS 325 "Records of the Commission on Judicial Institutions of the Province".

<sup>60</sup> M. H. Perley, *Hand-Book of Information for Emigrants to New Brunswick*, p. 77.

<sup>61</sup> MacNutt, 1963, pp. 6-7.

the Peace. This makes a military post here necessary. A Guard House would answer that purpose until a more proper provision would be made; and another good end would be answered by it, that is when people once saw a power in the hand of the legal authority ready and able to enforce obedience to the laws, the Spirit of Refractoriness and Contumacy would of course subside and decency and good order would succeed.<sup>62</sup>

Not surprisingly, a different story is told in an essay designed to lure immigrants to the province. According to James Edgar:

Peace, law order, justice and good feelings reign supreme. There is no war of sects and classes, no proscription, no sectional contest. The extremes of poverty are almost unknown, except with those who from some cause or other are incapacitated from work; and the parochial authorities care them for. Great crimes are very infrequent and in the rural districts are almost unknown. The settler goes to bed with his windows unfastened and his door unlocked, without the slightest fear of the midnight thief. Except in the cities, and a few places of lesser size, robbery is comparatively unknown.<sup>63</sup>

Even if we ignore the difference of three quarters of a century, which separates these two extracts, they are not as contradictory as they may seem. The Sheriff was expressing an interest in the maintenance of order in a rough frontier. The Mirimichi is rough even today. But that is a different thing from "great crimes" or "midnight robbery" which could still be comparatively rare even if we take into consideration the propaganda intention of Edgar's essay.

Even Edgar, however, could not ignore the greater likelihood of crimes in the cities and larger towns. Some historians have linked the propensity for crime with economic difficulties. For example, Reverend Millidge linked the depression of 1857 with an increase in robberies and burglaries.<sup>64</sup> A similar observation has been made about the "hungry forties", a time of "commercial failures, business stagnation, hard times, lack of employment, distress and widespread pauperism in the city." In 1839, 335 families and 556

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<sup>62</sup> Benjamin Marston to Jonathan Odell, 4 August 1785, *Collection of the New Brunswick Historical Society*, Vol. 3, No. 9, (Saint John: Barnes and Co., 1914), p. 335.

<sup>63</sup> James Edgar, *New Brunswick as a Home for Emigrants*, (Saint John: Barnes and Co., 1860), p. 3.

<sup>64</sup> J. W. Millidge, "Reminiscences of Saint John from 1845 to 1860", *Collection of the New Brunswick Historical Society*, Vol. 4, No. 10 (Saint John: Barnes and Co., 1919), p. 133.

individuals received relief. In 1841, one-sixth of the population were "practically paupers". "[L]eading business men proposed that people should leave the city to avert starvation."<sup>65</sup>  
As W. C. Milner reported,

The brutality of that period almost exceeds belief, so foreign is it to the humanity of modern conventions.

In 1828 Patrick Burger eighteen years old was sentenced to death and executed for entering the houses of John B. Smith, Ginger Beer manufacturer, corner of Union Street and Drury Lane and stealing a quarter of a dollar.

The Reverend Mr. Milton wrote to the Countess of Huntington respecting the trial, condemnation and execution of two men by the names of Clark and Fitzgerald for burglary. They were kept in irons in jail until their execution. Their cell from his description was filthy and old.<sup>66</sup>

W. C. Milner also had the following to say about the treatment of debtors:

In the early forties the unfortunate debtor was thrust without ceremony into jail with the depraved of all classes -- thieves, burglars, murderers. Those who were decent and innocent would soon become degraded under such influences. The cruelty of the laws against debtors up to 1858, was a reproach on the sense of humanity of our people. A creditor could keep a debtor in jail or on the limits for an indefinite time by paying a dollar and a half a week towards his board. There was scarcely a jail in the province about which aimlessly there did not loiter, either inside or outside, a contingent of hopeless and helpless debtors....[A]n old timer tells the story of a visit he made to the jail-keeper at Dorchester. Arriving there he found two men outside the jail playing checkers, and a number of others intently watching the progress of the game. On enquiring he found the jailor absent. Enquiring of the jailors wife for the officer who looked after the prisoners when the jailer was away, she replied, pointing to the men outside, "There they are; they look out for themselves. They will not escape; they cannot be

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<sup>65</sup> W. C. Milner, "Saint John in the Forties", *Collection of the New Brunswick Historical Society*, reprinted from *Acadiensis*, Vol. 1 (1901), pp. 3-4.

<sup>66</sup> W. C. Milner, Saint John in the Forties. 39-1 Milner Papers, New Brunswick Museum.

driven away.<sup>67</sup>

According to Milner: "The forties ushered in a period of commercial failures, business stagnation, hard times, lack of employment, distress and widespread pauperism in this city." These were attributed to disastrous fires in 1837 and 1839, a depression in England, which affected shipbuilding and lumber exports, and the arrival of 8,000 emigrants from the old country. Most of these new settlers moved on to the United States.<sup>68</sup> In 1840 the population of the province was 156,163, up from 119,457 in 1834 (an increase of 36,756), and from 74,176 in 1824. The population of Saint John in 1840 was 19,281, almost five times the population of Fredericton, the next largest town (4,002). Saint John County had a population of 32,951.<sup>69</sup>

The troubles of the forties, however, provide a misleading impression of the cause of the building of the Saint John House of Corrections, later the Provincial Penitentiary. The agitation for this construction preceded the building by several years. Construction began on the Provincial Penitentiary in St. John, New Brunswick, in 1838. This institution was to become one of three penitentiaries in the Dominion of Canada at the time of Confederation.

Between 1836 and 1850, New Brunswick history is marked by a period of institutional construction, of which the Provincial Penitentiary is only one example. In the same legislative session, which authorized the construction of the House of Corrections, an Act was passed to provide an Alms House for Saint John. In 1840, another in the city centre replaced the dilapidated Gaol. "In the 1840's all provincial sheriffs were requested to report" to the government "on the state of their respective jails." These were forwarded by the Lieutenant-Governor to England and they were assessed by the "the Inspector of Prisons in England". These reports "revealed the provincial jail system to lack virtually every element essential to the reformation of inmates like classification, religious instruction, proper provisions of food and clothing, and so on."<sup>70</sup>

The Report of the City and County Gaol in Saint John "showed the following:<sup>71</sup>

"No allowance of Clothing or Bedding---no yard---no stated

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<sup>67</sup> Millidge, "Reminiscences", p. 135.

<sup>68</sup> W. C. Milner, "St. John in the Forties", p. 1. F39-1 Milner Papers, New Brunswick Museum.

<sup>69</sup> W. C. Milner, "St. John in the Forties", p. 6. F39-1 Milner Papers, New Brunswick Museum.

<sup>70</sup> Baehre 1985, p. 8. Baehre cites: Public Archives of New Brunswick, microfilm reel F-1508-09, Colonial Office Papers, Series C.O. 188, Despatch No. 46, 1 Aug. 1841; Report from Inspector of Prisons in England, 23 September 1841 (JHA-NB) (1942), p. 52.

<sup>71</sup> Baehre 1985, p. 8.

attendance of Clergyman--no Bibles nor Prayer Books---no place set apart for the sick---convicted Prisoners not prohibited from receiving visits---a Fee of five shillings for each Debtor--Rooms in basement damp and very injurious to health--The Principal Story---Rooms not properly ventilated considered injurious in summer to health of the Prisoners when confined for any length of time. The dilapidation of the building great."<sup>72</sup>

## York County Gaol

The earliest records of a gaol in York County are from 1791. Two prisoners are listed as being confined in His Majesty's Gaol at Fredericton in a Return of 4 October.<sup>73</sup> In 1807, the Justices were authorized by an Act of the Legislature, to assess rates for the purpose of completing a gaol in York County.<sup>74</sup> This gaol was located on King Street, on Lot # 159 between Northumberland Street and Westmorland Street in Fredericton.<sup>75</sup>

Although there was a county gaol, the House of Assembly was advised that "great inconvenience arises from the want of houses correction within the counties of York and Charlotte, wherein persons convicted of certain offences, and rogues and vagrants, might be confined and kept at hard labour, instead of being imprisoned in the County Gaols". There were, however, "alms houses and work houses erected and built within the Parish of Fredericton and Saint Andrews, part of which might be beneficially appropriated as houses of correction." Consequently, the Justices were empowered by an Act, with "consent of the Commissioners of said Alms Houses and Work Houses for the time being, to establish" therein houses of correction for the two counties.<sup>76</sup>

George Dibblee, the Clerk of Sessions for York County, wrote to R. F. Hazen of Saint John in 1839:

"The Justices of York are about to build a new Gaol for the County, and are very desirous of procuring a variety of plans, etc., and with ... thereto, they have, at the suggestion of Mr. Johnston and ... to apply to you on their behalf

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<sup>72</sup>Baehre 1985, p. 9. Baehre cites: Summary of the Reports on the County Gaols in the Province of New Brunswick, Report From Inspectors of Prisons in England, 23 September 1841, IHA-NB (1842), pp. 52-53.

<sup>73</sup>P.A.N.B. RS 387 York County Gaol, A. Annual Returns. The two prisoners were William Mullins, confined 11 August 1791 on suspicion of felony, and John Murray, confined 2 October 1791 for theft.

<sup>74</sup>*Statutes of Nova Scotia, XLVII George III, Cap. XI* (1807), p. 162.

<sup>75</sup>"A plan of the Jail and adjoining lots Directed to be furnished by his Excellency the Lt. Governor", 1821, P.A.N.B., RS 387, York County Gaol.

<sup>76</sup>*Statutes of New Brunswick, X and XI Geo. IV* (1830) Cap. XX. p. 480.

and beg that you will be so obliging as to direct to be sent here, for their inspection, a variety of plans of such buildings now amongst the jails of your corporation as it is stated -- and from which it is expected many useful hints may be obtained."<sup>77</sup>

According to a Gaol Return dated 31 December 1840, in that year 52 men and 11 women were committed to the gaol. As of Michaelmas, 1840, for misdemeanours, 2 tried criminals were confined (one male and one female), and one untried male (all white). In addition, there were seven male debtors (one of whom was "Black or Coloured"). This was the maximum number of prisoners at any one time during the year. Only the female prisoner had been committed before, one time. The only classification in the gaol was the separation of debtors from criminals and males from females.

According to the Return, no prisoners were employed at hard labour or otherwise and the gaol had no workrooms or airing yard. The gaol consisted of four rooms for the accommodation of prisoners and did not have a chapel nor a room for a surgeon. No punishments had been inflicted, although there were two dark cells below ground. In 1840 there were no cases of sickness or death. Prisoners were unrestricted in visits or with regard to receipt of food or clothing from family or friends.

The York County Gaol was described as a County Gaol under the superintendence of the High Sheriff who was appointed by a Gaol Committee of Magistrates. The Sheriff appointed one gaoler who lived in the prison and superintended the gaol. The gaol had no particular code of rules.

The prisoners were allowed two pounds of bread per day, which cost about three shillings a week. The county furnished no bedding. A chaplain attended only when requested and the prisoners received no instruction. A ground plan (1840) of the York County Gaol was included with the Gaol return. (See Figure ?, "Ground Plan of the Gaol for York County, 1840").

Sheriff Miller noted on this 1840 Return, however, that the Justices had entered into a contract to build a new gaol.<sup>78</sup>

The Assembly had made provision in 1837 for the construction of a new Gaol in Fredericton.<sup>79</sup> The gaol was occupied in July 1842.<sup>80</sup> The new gaol was a substantial

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<sup>77</sup>George Dibblee to R. F. Hazen, 21 January 1839. Box 1 F3 # 1 R. F. Hazen papers, New Brunswick Museum.

<sup>78</sup>"Return of the Gaols and Houses of Correction...", York County Gaol, 31 December 1840, P.A.N.B., RS 387, York County Gaol.

<sup>79</sup>*Statutes of New Brunswick, 7 William IV*, Cap. 28 (1837), p. 85.

<sup>80</sup>York County Gaol "Return" for Sept. 30 1846. P.A.N.N. RS 387, York County Gaol.

building, so substantial that the Justices were soon petitioning for provincial assistance. According to their petition, the Justices claimed to have "selected and purchased an area of land in a most eligible situation in Fredericton", and entered into a contract for the construction of the gaol "of a character and description which... has been highly approved of.... [I]n adopting the plan of so very large, commodious and expensive a building [your Petitioners] did not confine their views to the wants and exigencies of the County of York. But considering this the Capital of the Province wherein the Legislature, the High Court of Chancery and Supreme Courts respectively assemble, where State prisoners and all others of a character different from the criminal or debtor should have suitable accommodations." As a consequence of these considerations, the Justices "felt impelled to incur a responsibility far exceeding the ability of the County of York to discharge." The building was described as of "ample dimensions, the exterior walls composed of solid blocks of granite with the exception of one side and covered with tin". Expensive material was used and "very superior internal accommodations and arrangements adopted". As a result, the building cost 6,500 pounds. The County had raised 1,750 pounds. Therefore the Justices requested authorization to make a further assessment of 1,000 pounds, and an additional grant.<sup>81</sup>

In the basement of this new gaol were six strong cells for the reception of prisoners, two kitchen rooms, one for prisoners and the other for the keeper, and a keeper's store room. On the second story there were four strong rooms for confining prisoners, both debtors and orderly prisoners. There was a large room for the use of the Keeper and another large room for a public office. On the third story there were, again, four rooms for confining prisoners, a fifth room for prisoners, and a small room for the keeper's bedroom.<sup>82</sup>

The Annual Return for 1846 claimed that the gaol could accommodate 14 prisoners in separate cells, six of which were below ground and four of which were dark. In addition, 50 prisoners could be accommodated in cases where more than one prisoner sleeps in a cell. "The limits of the gaol will admit no classification other than the separation

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<sup>81</sup> Petition from Justices, County of York, to Governor Colebrooke, 23 February 1842, P.A.N.B., RS 387, York Count Gaol.

<sup>82</sup> Special Session of Peace, York County, 24 October 1842. A Committee of Justices was appointed at the June 1842 Sessions to "apportion and set apart the different rooms and apartments", including those for the keeper and for the prisoners. This description is their account. The Special Session was occasioned by the insistence by the Sheriff that he had the right to occupy the large room on the third story which, the Justices assert in this document, was meant for use by the prisoners. The Sheriff had insisted that, by virtue of his appointment, he had the right "to have suitable apartments in the gaol for his office". The Justices, in reply, request that he be removed from the room.

of debtors and criminals, male and female." There was still no workroom in the new gaol, but there was a large airing yard. The County now supplied bedding.<sup>83</sup> The rooms in the gaol were at least 14 by 16 feet and 11 feet high. The cells in the basement were granite and brick and "never a debtor and seldom a criminal sees the inside of one of them unless for extremely bad conduct, such as attempting to break out or destroying the building".<sup>84</sup>

Complaints against the York County gaol were made in 1853 following a visit and report from Justice Bustin. Sheriff Wolhampton [?] was compelled to reply to the provincial Secretary concerning them. One criticism concerned the absence of any means for giving prisoners fresh air and exercise. The Sheriff replied that the only exercise is afforded in the prisoners' rooms. "There is no place attached to the gaol in which prisoners can have air and exercise without danger of escape and this is to be regretted." However, the Sheriff went on, during the previous 27 years, while Brannen was gaoler, only one person had died in the gaol, "and that one was taken from his bed to prison, afflicted with delerium tremens, where he died two days afterwards." In addition, no one had been "relieved from prison by a medical officer's recommendation in consequence of his health having suffered from confinement."<sup>85</sup>

A second complaint also involved a "horrid effluvia emanating from the hole in the door" of one cell. This was caused, the Sheriff explained, when an inmate, who was suffering from delerium tremens, "emptied the contents of his water closet in the centre of the room". Sheriff Wolhampton concluded that the complaints made by Justice Bustin could be remedied by further expenses from the Sessions for an airing yard, water closets, and for providing a chapel and a chaplain.<sup>86</sup>

In the course of the year 1846, 60 males and one female had been confined. Generally, the number of prisoners tended to grow. For example, in 1849, there were 82 inmates (3 women); in 1850, 59 prisoners (2 women); in 1857, 111 (including 24 women); and in 1866, 131 (11 of whom were women).<sup>87</sup>

According to a Return of Prisoners in the York County Gaol for the quarter ending 30 June 1843, no prisoners were under 15 years of age. There were 13 male and one female debtor confined, and 15 male and eight female criminals imprisoned. Among the male criminals, one was confined for murder (since 14 January 1842, Patrick Leary, who was discharged over to John Robinson, Master of the ship Normanture, 23 May 1843), seven

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<sup>83</sup> P.A.N.B., RS ??? York County Gaol, 1846 Annual Return.

<sup>84</sup> Sheriff Wolhampton to Prov. Secretary Tilley, 11 October 1853, P.A.N.B. RS ??? York County Gaol.

<sup>85</sup> Sheriff Wolhampton to Prov. Secretary Tilley, 11 October 1853, P.A.N.B. RS ??? York County Gaol.

<sup>86</sup> Sheriff Wolhampton to Prov. Secretary Tilley, 11 October 1853, P.A.N.B. RS ??? York County Gaol.

<sup>87</sup> York County Gaol, Annual Returns for 1849, 1850, 1857 and 1866. P.A.N.B. RS 387, York County Gaol.

deserters (six of whom were transported on 5 May 1843, the seventh discharged over to the 52nd Regiment), and three for larceny (all sentenced to one month hard labour and released together). Another male prisoner was in gaol for assault on his wife. After one day the matter was settled and he was discharged. In addition, eight (including three females) had been committed for drunkenness, and three females had been sentenced for vagrancy (for from 7 to 17 days).<sup>88</sup> Examining the Gaol returns for 1840, 1843, and 1846, there were no punishments, deaths or cases of sickness reported.

In 1862 the Government of New Brunswick again sent a questionnaire to the Sheriffs relating to the conditions of the gaols. The Sheriff reported that the Gaol of the County of York was situated on one acre of land. There was still no regular code of rules. There was a small yard attached to the gaol as well as a small piece of ground planted by the Gaoler, who continued living in the gaol. The gaoler was Charles Brannen, appointed on 8 October 1828. He still did not have any assistants. The gaol continued to be administered by a gaol committee of the Municipality of York. Visits to the gaol were described as "irregular and no record of visits made". Debtors continued to be confined (and segregated from criminals), although at the time of the return there were no debtors confined. "No punishments of an unusual and extraordinary nature have been inflicted in the gaol during the last five years for any offence whatever."<sup>89</sup>

#### York County Jail, c. 2000

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<sup>88</sup> "Return of Prisoners in the County Gaol of York During the Quarter ending June 30th 1843", P.A.N.B., RS 387, York County Gaol.

<sup>89</sup> Sheriff W. Leary "York: Sheriff's Return to Queries Relating to Prisons and Prisoners, 1862". P. A. N. B., RS 387, York County Gaol.



### The Saint John Gaol

The "responsibility for establishing a county correctional facility was passed to the counties by Thomas Carleton the first Lt. Governor of New Brunswick, as specified in his royal instructions issued by King George III, 1784."<sup>90</sup>

The first gaol was built in Saint John about 1785. In 1810, the Justices of the County and City of Saint John were authorized to "levy an assessment for the purpose of repairing and adding to the Gaol" in that city.<sup>91</sup> In 1831, Joseph Morse, a prisoner in the jail, wrote the following letter:

Dear Sir

I now wright to you for advise & what course you have me to pursue. I am now in gaol that place that of so many years derived to this sacrifice to my self whether it would not be better to give up the little I possess than to contend with a number of suits that might come against me if fortunate of

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<sup>90</sup> P.A.N.B. RS 383, Saint John County Jail records.

<sup>91</sup> Statutes of New Brunswick, L George III Cap. XI (1810), p. 175.

getting out of this place by calling my creditors together the judges demand is one hundred on the house for owner & whether it would do to say to him that would you give it ... any other person it ought to be for more than I owe my furniture is not much value but my little ... shall be at your demand. I am here on Turnbull's[?] execution ... without a dollar in my pocket or in my family but I could make out the debt all but five pounds.<sup>92</sup>

In 1836, an Act was passed by the House of Assembly "to authorize the Justices of the Peace" in Saint John City and County "to erect a building" in Saint John "for a Common Gaol and House of Correction, and to raise a sum of money for erecting and completing the same." The sum was not to exceed 4,000 pounds. The Justices were empowered to borrow 3,000 pounds and to assess in order to pay this debt.<sup>93</sup>

In his Return of 1840, Sheriff J. White described the institution as a "common gaol a portion of the building is appropriated as a House of Correction." As was normally the case, the care and management of the gaol was assigned to a Gaoler who was appointed by the Sheriff and who, in turn, appointed one Turn-Key. The Gaol was under the authority of a committee appointed by the Sessions. "There are no rules and regulations more than a verbal order from the magistrates."

According to the Sheriff's description, there were only five rooms above ground and two cells for criminals. No cells were exclusively appropriated for sleeping; the prisoners slept in the rooms in which they were confined. The gaol could accommodate about 25 or 30 inmates conveniently, although from 70 to 80 persons had been confined at one time. The only classification was to separate the criminals and the debtors and the males from the females. The gaoler took fees only from debtors upon their discharge." These fees amounted to 8 shillings, of which 4 went to the Sheriff and 4 to the gaoler. "Debtors discharged by the Judges order under the Insolvent Debtors Act pay no fees." There was "one dark cell below ground which has not been used for years for the purpose of confinement." "Solitary confinement is only occasionally resorted to by the Gaoler for a few hours when prisoners conduct themselves improperly. No whipping has ever been inflicted. And irons never but for very extraordinary and outrageous conduct.

There was no allowance for clothing or bedding, although in extreme cases some may be provided "only when ordered by the Magistrates at Quarter Sessions." However, prisoners were not prohibited from receiving items of clothing or food from family and friends, or from receiving visits or letters. Since a secure wall did not surround the gaol,

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<sup>92</sup> Joseph Morse, 17 December 1831. F16 #27 Box 3 R. F. Hazen Papers, New Brunswick Museum.

<sup>93</sup> Statutes of New Brunswick, 6 William IV, Cap. L (1836).

the prisoners did not receive exercise. The criminals were at times employed at picking oakum "the rooms being too confined to admit of any other employment. During the summer season they are employed in breaking stone in the Gaol Yard for the purpose of macadamizing the streets." Debtors and non-convicted prisoners could not be employed. "The prisoners are not allowed any remuneration for their labours. No allowance is made for payment of officers" or "funds for the maintenance of the prison."

There was no chapel or surgery in the prison or suitable apartment for a surgeon or religious services. Such services, when they were performed at all, were held in the hall or in one of the prison rooms. When rooms were vacant the sick were removed to them. There was no provision for the attendance of a chaplain, or for instructing prisoners, or for supplying them with Bibles. The Rector of the Parish, or minister of any other denomination, would attend if requested. There was, however, an allowance made for medical assistance for the prisoners. The most prevalent disease was reported to be "billious fever".

Sheriff White added the following commentary:

"All the rooms in the basement story are damp and very injurious to the health of the prisoners in consequence of which the prisoners are kept on the principal story whenever the rooms are not occupied by debtors. The principal story rooms are considered... dry and warm. From the construction of the rooms they are not properly ventilated and considered injurious in summer to the health of the prisoners when confined for any length of time. The rooms on the upper story are appropriately principally for debtors and ventilated but are not considered properly secure against escape.... The number of persons confined average 30 persons per diem. No extension can be made for the better accommodation of the prisoners without an addition to the building, which is very desirable and would add much to the comfort of the prisoners confined. The Gaol was erected about 54 years ago. The greater part of the building is wood consequently the dilapidation great."<sup>94</sup>

Debtors were commonly confined in this gaol. For example, Samuel McNichol was confined in the gaol for a debt of £5-5-0 for "eleven days without friends, or any means of support." He wrote to R. F. Hazen, the mayor of Saint John, for intervention on his behalf, and on the behalf of a young man from Dieppe Harbour, "in good health but detained

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<sup>94</sup> Return of the Gaol of the City and County of Saint John, 31 December 1840, PAND, RS 383.

here from obtaining any means of sustenance, or of paying the debt or jail fees".<sup>95</sup>Hazen also received the following letter in 1838:

Sir

I desire to inform you as the Chief Magistrate of this City, that I John Smith was confined in this Jail on the 13th of Feb. last, for a debt of £3-13-9; for which I was sentenced to confinement for sixty days, which term expired on the 15th Inst.; but am still detained for eight shillings Jail fees, and am now destitute of the means to purchase breads and have been destitute of bread about 17 days during my confinement; and had not other prisoners kept me alive from time to time, I must have perished with hunger.

The Jailor gave me a small loaf a few days, but stopped it for my asking only a sufficient supply of water. Are we to remain beyond (even) the sentence & starve to death; or force our way from these walls of starvation; or will you do anything to relieve us, from cruelty, oppression and death? I wait in starvation for your interposition as the Chief magistrate.

Yours respectfully, John Smith<sup>96</sup>

Five months following his last report, Sheriff White wrote in a similar vein to Provincial Secretary Odele, replying to a letter of 3 May requesting a report on the conditions of the present gaol. In addition to the ill health of the inmates, White added: "it is also from age and the imperfect nature of its construction and materials so entirely insecure that in spite of all ordinary and preventive precautions escape from it can be a matter of no difficulty whatever."

White added, however, that a contract had "been entered into between Robert Barbour and Ewen Cameron to erect a new stone gaol in the City of Saint John. Dimensions 70 feet in length 56 feet in width and 30 feet in height the building to be free stone front and to be roofed in by the first day of September 1841 and to be fully completed by the first day of November following."<sup>97</sup> The basement story was to be nine feet high, the first story 11 feet and the second story 10 feet high. The doors were to be of iron, including the three cell doors. Otherwise, doors in the basement were of wood. The building was to be heated by a hot air furnace.<sup>98</sup>

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<sup>95</sup> 2-15 Box 1 R. F. Hazen papers, New Brunswick Museum.

<sup>96</sup> John Smith to R. F. Hazen, 17 April 1838. 2-15 Box 1 R. F. Hazen papers, New Brunswick Museum.

<sup>97</sup> Sheriff White to Provincial Secretary Odele, 7 May 1841, PANB RS 383.

<sup>98</sup> Contract between Robert Barbour and Ewen Cameron and the Committee of the Court of Sessions to erect

Sheriff White noted, as well, that there was no arrangement for the classification of the prisoners in the new gaol, other than to keep the prisoners and the debtors separate, nor any mode of employment. White reported that: "After six criminals have been convicted and sentence passed they have been kept at hard labour in breaking stone, but since the erection of the Penitentiary the prisoners so sentenced have been sent there to perform their labour in accordance to the sentence of that Court."<sup>99</sup>

In 1841, the *Novascotian* referred to a description of the Saint John jail that appeared in a "penney paper" published by Sewell; "The starvation, filth, want of accommodation and of ventilation stated respecting the debtor's department, would be a disgrace to Central Africa. We must suppose that there is exaggeration in such a statement, connected with our sister city. We believe that we manage such things much better in Halifax. Prisoners get out occasionally, it is true, but they are used like human beings while in."<sup>100</sup>

Despite this new construction, the Gaol Report of 1846 is very similar to the report of 1840. However, the new gaol had seven rooms on the first floor and nine rooms above. In place of the one dark cell, which was unusable, the new gaol had three cells "for the purpose of confining refractory prisoners". No secure wall surrounded the prison, nor was there any work for the inmates.<sup>101</sup> In 1855 the Annual Return noted that the prison was still badly ventilated,<sup>102</sup> and "the mode of heating in winter dangerous". Again, the building was declared to be "injurious to the health of the prisoners, especially in the criminal department." In that year the prison was described as having four rooms and three cells for solitary confinement on the "ground floor", and eleven rooms on the first floor upstairs.<sup>103</sup> The Sheriff in 1859 commented that: "The Gaol is as clean and as well ventilated as the style of the building will admit."<sup>104</sup>

The Governor's Enquiry about prisons in New Brunswick was spurred by developments involving the Committee on Prison Discipline in England, raising concerns about remedying the "evils and difficulties" of prisons. One of the difficulties in working within the framework of the suggestions from the British Committee on Prison Discipline,

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building for 4,740 pounds. PANB RS 383.

<sup>99</sup> J. White to Odele, Provincial Secretary, 22 August 1841, PANB RS 383. White added that the "building about to be erected for a Gaol, is under the immediate superintendence of a committee chosen by the Magistrates in General Sessions". The committee consisted of George Lockhart, William Leavitt, Daniel Ensley and James Gallagher. The plans were drawn by John Cunningham "according to specification". *Ibid.*

<sup>100</sup> *Novascotian*, 30 September 1841.

<sup>101</sup> Gaol Report, City and County of Saint John, 31 December 1846, PANB, RG 383 B. Annual Returns.

<sup>102</sup> Annual Return, Gaol of County and City of Saint John, 1855, PANB RS 383 B.

<sup>103</sup> Gaols and Prisons, Saint John Gaol, 31 December 1855, PAND RS 383.

<sup>104</sup> Gaols and Prisons, 1859, PANB RS 383.

noted by Sheriff White, was that the Committee made no distinction between prisoners and debtors, referring only to Houses of Corrections. White suggested to Governor Colebrooke that there was a need for rules to be drawn up by the Commissioners as to the treatment of debtors. "At present there are none, which throws at times a heavy and burthensome responsibility on myself, Keepers and subordinate officers." Most criminals were by then (1842) sent to the Penitentiary. "Criminals are sent to the jail for close confinement only, all others committed to hard labour are sent to the penitentiary."<sup>105</sup>

One of the issues that had surfaced concerned the appointment of Keepers and Gaolers, which, at the time, rested with the Sheriff. Sheriff White commented that this was proper "for this cogent reason, that if a debtor should escape from confinement, I am responsible, as High Sheriff, for the escapee." Therefore it would not be just to, on the one hand, take away his right to make the appointments, while on the other hand leaving him liable. "If however the Board of Commissioners should feel disposed to undertake the responsibility of the safe custody of debtors confined, I would gladly yield up to them the appointments, as it is one of great responsibility, with very little pecuniary profit attached.... As regards the appointment of a Matron, that would fall clearly within the duty of Commissioner, who would regulate her duties, and the amount of remuneration. The present matron received nothing, though her duties are of an irksome and disagreeable nature."<sup>106</sup>

Although there was no allowance for clothing and bedding in the gaol, prisoners could apply to the Overseers of the Poor and obtain these items. There was no yard and the gaol was reported to be damp and unhealthy although this evil would be remedied, White indicated, in a new gaol. No clergy visited the gaol, White noted, although he suggested that the Commissioners making a small allowance for the service, and for Bibles and Prayer Books, which were also not available, could remedy this. There was also no place reserved for the sick. However, White reported that "diseased and invalid persons are sent to the Cholera Hospital, which is thought more advisable than to have a regular visiting surgeon."<sup>107</sup>

The purpose of the query concerned the construction of regulations for the gaol. According to Sheriff White, many of the observations and suggestions of the Inspectors of

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<sup>105</sup> White to Colebrooke, 23 July 1842, PANB RS 345 Records of Lt. Gov. William Colebrooke, 1841-1848. Correspondence.

<sup>106</sup> J. White to Colebrooke, 23 July 1842, PANB RS 345 Records of Lt. Gov. William Colebrooke, 1841-1848. Correspondence.

<sup>107</sup> White to Colebrooke, 23 July 1842, PANB RS 345 Records of Lt. Gov. William Colebrooke, 1841-1848. Correspondence.

Prisons in England "might be advantageously applied" in New Brunswick. He suggested that two Commissioners should be appointed from the Board to be visitors of each jail. They should inspect at least three times in each quarter, examine the state of the building, and make judgements about necessary alterations and repairs.<sup>108</sup>

White recommended that rules about discipline should include a strict prohibition on the practice of allowing persons to visit convicted prisoners at any time. Rather, hours should be stated "instead of the current practice of visiting from sun-rise to sun-set." He believed that spirits should not be allowed in the gaol "as experience proved that it is when under the influence of these drugs, that the criminals behave the worst." Fines should be imposed on persons smuggling such items into the gaol. Power should be granted to the Keeper of Gaoler to place any criminal or debtor "who behaved himself or herself outrageously in close and solitary confinement."<sup>109</sup>

White noted also the problem of the nuisance created from want of water closets. "The practice is now, to commit women of bad fame to the Jail instead of the Penitentiary for the purpose of carrying away and emptying the 'night tubs'. This work they frequently complain of very strongly, and I do not know whether strictly speaking, they ought to be compelled to do it. It would be much better for the Commissioners to hire and pay Coloured persons to perform such a filthy business."<sup>110</sup>

At a meeting of Sessions in 1855 it was decided to remove from the gaol to the Provincial Penitentiary those sentenced to imprisonment with hard labour "whose term of imprisonment will expire in ten days, except such as the Sheriff may require to labour in the jail." The Sheriff indicated that there were 21 sentenced to hard labour. The transfer was done in part to "establish the authority of the Sessions in the matter".<sup>111</sup>

The Governor again made a general query concerning gaol conditions in 1862. The Gaol was located on Great George Street, on one city block. The prisoners charged with crimes had no air or exercise outside of the room in which they were confined. There was no garden or yard attached for the prisoners. They subsisted on 1 1/4 pounds of bread, 1/2 pound of beef, 1/4 ounce of tea, 1 gill of molasses and 2 ounces of barley or rice daily. The debtors were confined to the upper story, and had the use of the whole "flat" from 6 a.m.

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<sup>108</sup> White to Colebrooke, 23 July 1842, PANB RS 345 Records of Lt. Gov. William Colebrooke, 1841-1848. Correspondence.

<sup>109</sup> White to Colebrooke, 23 July 1842, PANB RS 345 Records of Lt. Gov. William Colebrooke, 1841-1848. Correspondence.

<sup>110</sup> White to Colebrooke, 23 July 1842, PANB RS 345 Records of Lt. Gov. William Colebrooke, 1841-1848. Correspondence.

<sup>111</sup> Annual Return, Gaol of the County and City of Saint John, 1855, PANB RS 383 B. "Saint John Gaol Records".

to 8 p.m., after which they were locked in their rooms. The criminals were confined in rooms on the first floor.

The gaoler lived in the gaol. He had the use of some outhouses on parts of the lot, which were not occupied by the gaol. The gaoler had been appointed in 1851 (Creighton) and his daughter was his only assistant.<sup>112</sup> In 1866, two officers were appointed to the gaol, one man and one woman, both of whom were residents of the Gaol.<sup>113</sup>

"The Grand Jury attending at the Court of Sessions in March of each year report to the Court the state of the Gaol", which was always open to inspection by any Justice and the Grand Jury.

With respect to punishment, the Sheriff said that he could only report on the last three years. During that time, in December 1860 a prisoner, under sentence of death, attacked the keeper and was placed "four hours in cell confinement. In August 1861 a soldier was treated in like manner for attacking Mr. Creighton. Whenever debtors disobey the rules they are kept in their rooms and not allowed the use of the hall until they are willing to comply there with, which has happened three times in three years."<sup>114</sup>

## County Gaols

In 1786, Governor Carleton had divided the province into eight counties (see Appendix, "New Brunswick Counties"). In 1786, an Act was passed authorizing the appointment of town and parish officers in the counties. Local government was run by Justices at the various Sessions, who were authorized by a legislative Act to appoint Overseers of the Poor, Town Clerks, and two or more Constables, among a number of other government assessors and inspectors.<sup>115</sup> Some counties possessed gaols and court houses in 1786, but in that year an Act for assessing and collecting county rates was passed authorizing the Justices of the Peace, at the meeting of the Sessions, to impose a sum "apportioned by Assessors" and collected by the Constables, to build a public gaol and court house in a county where no such buildings existed. Similarly, the Justices could levy a rate for repairing the gaol or courthouse. The Act specified that, should the Constable neglect or refuse to collect these rates, he should be committed to gaol "there to remain without bail or mainprize, until he or they shall have caused such rates or assessments to

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<sup>112</sup> Saint John Sheriff's Return to Governor's Query Relating to prison and Prisoners, 1862, PANB RS 383

<sup>113</sup> Gaols and Prisons, Saint John, 1866. PANB RS 383.

<sup>114</sup> Saint John Sheriff's Return to Governor's Query Relating to prison and Prisoners, 1862, PANB RS 383.

<sup>115</sup> *Statutes of New Brunswick, XXVI Geo III Cap. XXVIII* (1786).

be levied and true accounts levied."<sup>116</sup> If the county did not yet possess a gaol, the Justices were to send persons charged with grand larceny "and other offences of a higher nature" to the Saint John Gaol.<sup>117</sup> In 1810, the House was obliged to make legal the transportation of prisoners through an adjacent county. The public road from Saint John to the Parish of St. Martin's ran through King's County. Under the previous law, no prisoner arrested in St. Martin's could legally be conveyed by this road and, therefore, the journey had to be undertaken by water, which was declared to be more dangerous, inconvenient and expensive.<sup>118</sup>

In 1801, the legislature authorized the construction of a gaol in Westmorland County.<sup>119</sup> In 1807, a similar act authorized the Justices in King's County to do the same.<sup>120</sup> In 1812, similar authorizations were made for Northumberland; for Charlotte (a sum for finishing the gaol and court house "lately erected").<sup>121</sup>

Lock-up houses "or house of correction" were authorized for the communities of Cambellton and Dalhousie for temporary holding of prisoners until they could be sent to the County Gaol. The great distances in the county necessitated this. Two years later a similar provision was made for Grand Manan in the County of Charlotte.<sup>122</sup>

In 1831 the Justices at the Sessions were authorized to "make orders, rules and regulations for setting and keeping to hard labour all persons who may be adjudged to hard labour for any offence.. and for securing, governing and managing such persons while employed at such hard labour." The Justices were to prescribe specific work anywhere in the County, inside or outside a prison or house of correction. Overseers were to be appointed. The money earned was to go to the prisoner's upkeep. Any "overplus" was to be handed over to the County Treasurer. Those who refused to work or were guilty of "misbehaviour or disorderly conduct could be whipped to a maximum of 39 stripes."<sup>123</sup>

"When Hampton became the new shire town in 1870, replacing Kingston, the gaol building was dismantled and moved, stone by stone, across the ice of the Kennebecasis River to Hampton and reconstructed in its current location."<sup>124</sup>

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<sup>116</sup> *Statutes of New Brunswick*, XXVI Geo. III Cap. XLII, pp. 54-56 (1786).

<sup>117</sup> *Statutes of New Brunswick*, 27 George III (1787) Cap. 10, p. 70.

<sup>118</sup> *Statutes of New Brunswick*, L George III Cap. 1 (1810), p. 170.

<sup>119</sup> *Statutes of New Brunswick*, 41 George III Cap. 6 (1801), p. 137.

<sup>120</sup> *Statutes of New Brunswick*, XLVII Geo III Cap. V (1807).

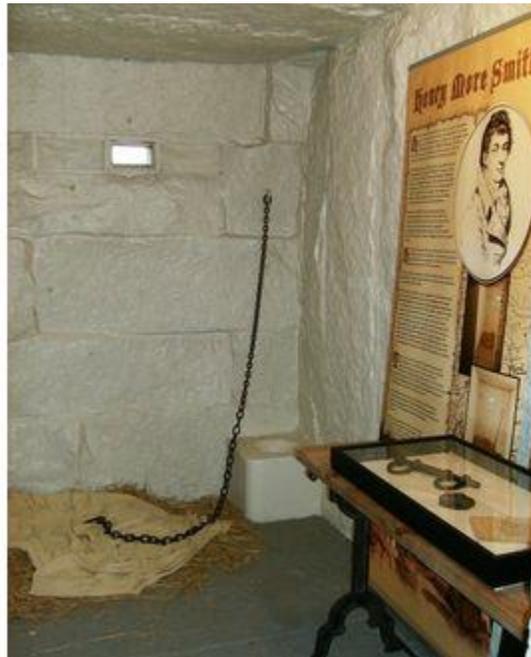
<sup>121</sup> *Statutes of New Brunswick*, 52 Geo III Cap. 9 (1812), p. 196; *Ibid.*, Cap. 10.

<sup>122</sup> *Statutes of New Brunswick*, 3 William IV (1833) Cap. IX, pp. 593-594; *Ibid.*, 5 William IV, Cap. XX (1835).

<sup>123</sup> *Statutes of New Brunswick*, 1 William IV Cap. XVIII (1831), pp. 523-524.

<sup>124</sup> <http://www.tourismnewbrunswick.ca/Products/H/Hampton-Gaol-Jail.aspx>. 19 August 2016.

Kings County Jail, Hampton NB<sup>125</sup>



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<sup>125</sup> <http://www.tourismnewbrunswick.ca/Products/H/Hampton-Gaol-Jail.aspx>. 19 August 2016.

## Charlotte County Gaol: St. Andrews

According to McGahan, St. Andrews was first settled in 1775 and established as a viable community in 1783 with the arrival of the loyalists. Between 1823 and 1835, British and Irish immigrants arrived in large numbers, many "with few resources" creating "a substantial burden on the community." The Overseers of the Poor received provincial grants to assist the indigent in the Town's Poor House.<sup>126</sup>

St. Andrews was markedly unequal. In 1831 half of the town's wealth was in the hands of six per cent of the population. Magistrates or Justices of the Peace, largely drawn from the town elite, handled the administration of criminal justice. They exercised wide judicial and administrative functions, and met at least twice annually in Courts of Sessions of the Peace.

Below the Justices, McGahan says, "were the Sheriff, Deputy Sheriff, and Constables. Elisha Andrews, Colin Campbell and Thomas Jones successively served as [/] High Sheriff, at an annual salary of [£]50 from County funds." Sheriffs were charged "with overseeing the general administration of justice"; constables had specific duties, such as issuing warrants and "transport[ing] the prisoners to the Shire town for trial there or to the Supreme Court in Fredericton."<sup>127</sup>

During the 1830s, mischief and damage were persistent complaints, attributed to idle young men. In 1834, a Night Watch was established temporarily in the face of house breaking, robberies and arson. This represented "a temporary response to what was perceived as the 'extreme criminality' of specific 'perpetrators.'" In 1837 the Magistrates again adopted a Night Watch, paying two constables [£]14 each for three months work as Watchmen.<sup>128</sup>

"Reflecting the population transiency and economic instability of the time, robbery, arson, assault, illegitimacy, disorderly conduct, were not [/] uncommon." Offenders "were sentenced to public flogging and/or internment in jail." The Editor of the *Standard* took exception to flogging as un-Christian and recommended instead "hard labour on our

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<sup>126</sup> Peter McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", pp. 11-27 in McGahan, *Crime and Policing in Maritime Canada: Chapters from the Urban Records*, Fredericton: Goose Lane Editions Ltd., 1998, p. 11.

<sup>127</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 12-13.

<sup>128</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 13-14.

streets or roads."<sup>129</sup> Transient offenders were escorted to the ferry.<sup>130</sup>

The main place of imprisonment was in the County Jail in St. Andrews, although lock-up houses existed in St. George and St. Stephen. McGahan notes that about one third of prisoners were confined for debt. The average stay between 1831 and 1834 was for about four and a half weeks.<sup>131</sup>

The jail existing in the 1820s was deemed in need of replacement by the magistrates who, in 1830, petitioned the Assembly to allow a county-wide assessment for construction of a new jail. The Sessions of April 1831 assessed the County [£]358-15-0. A Gaol Committee was struck, including the Clerk of the Court, the Sheriff and the "Town's most prominent physician" and chose a site "at the top of the hill near the Barracks". A contract was entered into with Donald D. Morrison to construct a building "65 feet in length, 33 feet in width, and 17 feet from the top of the lower floor to the Plate", based on a plan by James Chandler. In 1832 the decision was made to change the location to "two lots of a plain near the residence of Rev. Alley". [/] Morrison was to be allowed [£]3,000, plus an additional [£]250 if necessary. The Gaol Committee was extremely negligent in the building of the jail, and numerous irregularities were uncovered in 1836 by an Investigatory Committee appointed by the Magistrates". For example, McGahan notes that Morrison did not use mortar, but only "stone and rubble", since it was not specified that mortar was required. McGahan illustrates the workmanship by relating an anecdote provided by the gaoler to the 1836 investigatory committee:

On one occasion when a prisoner was confined in one of the Cells the Gaoler thrust a piece of iron hoop thro the wall and struck the unconscious prisoner in the side. It need hardly be said that the cells in such a state were not habitable in the winter....<sup>132</sup>

"Nor did the contractor fulfil the more explicit terms of the agreement. Drains to remove waste from each cell were not provided. The eaves were left open `so that in winter the attic was filled with drift snow and the Chimneys appear to have bend effectively built by two of them been turned into one in the attic and which are not duly

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<sup>129</sup> McGahan cites: *St. Andrews Standard*, 9 October 1840.

<sup>130</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 14-15.

<sup>131</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 22.

<sup>132</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 222-23. McGahan cites: NBPA, RS-148-K-1-41e.

supported in the parts which slope from the perpendicular....' No cross walls under the building were inserted, nor were gutters placed around the eaves. The contractor likewise failed to provide for the saving or collecting of pure water on the premises. Nevertheless, in 1833 the Gaol Committee accepted the work despite its poor workmanship without having carefully reviewed with the contractor whether all the terms of the agreement had been met."<sup>133</sup>

The County ended up with a [pounds]1,200 debt and petitioned the government for assistance on the grounds that the County was adjacent to the United States and therefore many transients "of questionable character ... often times find their way to our gaol and therefore it requires [/] to be commodious and strong...."<sup>134</sup> The County was subsequently also assessed to pay for this debt, for improvements, as well as make-shift necessities, such as conveying "the filth from the debtor rooms and cells" because of the lack of a drain. The Gaolers "description of the Gaol in 1837 succinctly portrays the conditions with which the inmates had to contend."<sup>135</sup>

The gaol could accommodate 4 debtors and 10 criminals in separate rooms or cells, or a maximum of 37 in congregate confinement, although only two of the cells were habitable, according to the Sheriff. The Justices restricted the prisoners to two pounds of bread and water daily, a straw mattress, pillow and blanket. The prisoners, at times, "cleaned the Gaol yard, sawed wood for their own use, and did other maintenance jobs." By the late 1830s, no Gaol Committee of Justices had been appointed. At the discretion of the Sheriff, the prisoners could receive food by purchase or supply from outsiders; they could be allowed to associate or be kept in solitary. The Sheriff suggested to the magistrates that prisoners should uniformly be provided bread and water and kept in solitary, a situation that would make his job more straightforward.<sup>136</sup>

In his 1836 report, the Gaoler complained that the tubs from the debtor's rooms and cells had to be carried daily through the House lobby and kitchen. Water had to be hauled daily from the neighbouring pumps. The Gaoler maintained three stoves upstairs in the prison rooms and one large one in the Criminal's Hall based on being advanced credit. However, he received re-payment from the County irregularly and incompletely.<sup>137</sup>

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<sup>133</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 23.

<sup>134</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 23-4. McGahan cites: NBPA, RS-148-K-1-21.

<sup>135</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 24. McGahan cites: NBPA, Colonial Office, Blue Books of Statistics, Charlotte County, 1837.

<sup>136</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 24-5. McGahan cites: NBPA, RS-148-B-1-19c.

<sup>137</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", 25. McGahan cites: NBPA, RS-148-

The gaoler was paid [£] 75 per annum, plus an additional [£]20 in fees. From this money the gaoler had to pay wages to three persons regularly employed, as well as hired labourers. In 1841 the April Sessions agreed that the gaoler should be paid punctually, even if sums had to be borrowed for the purpose. Reverend Alley protested the use of a common tub by as many as five convicts and recommended that times be allotted so that prisoners might, under supervision, use a water closet in the Hall. In 1838 the Sessions "agreed to establish a Committee to procure plans and estimates for sufficient drains and sewers to carry filth from the Gaol and provide for a supply of water".<sup>138</sup>

### St. Andrews County Jail



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K-1-40.

<sup>138</sup> McGahan, "Crime, Temperance, and Justice: St. Andrews of the 1830s", McGahan cites: NBPA, RS-148-K-1-41d.



### The Saint John Alms House

According to Rigby, Saint John's original City Charter authorized the construction of an Alms House (1785). The first building used as an Alms House, a converted windmill located on Kings Square, was purchased by the city in 1800.<sup>139</sup> Later, the Admiral Beatty Hotel occupied the site. This first House was destroyed by fire in 1819. Between 1819 and 1821 the House of Assembly authorized the usual assessments of the inhabitants for constructing a new House.<sup>140</sup> The second Alms House was built on the corner of King Street and Carmarthen [?] Streets. Saint John's poor were supported by a Dog Tax, passed in 1801, according to which a maximum tax of 5 shillings was placed on each dog in the city, and the revenue used to support the poor.<sup>141</sup> The Alms House served as a way station for poor immigrants to New Brunswick, but the building was inadequate for this purpose in the 1830s, prompting the Justices in Saint John to petition for support for constructing a new Alms House.

During the Winter 1838 session of the House of Assembly, a petition was put

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<sup>139</sup> Ann B. Rigby, *A Guide to the Manuscript Collection in the Provincial Archives of New Brunswick* (Fredericton, 1977, p. 115.

<sup>140</sup> *Statutes of New Brunswick*, 59 George III, Cap. 3 (1819), p. 246; 60 George III, Cap. 14 (1820), p. 260; and 2 George IV, Cap. 1 (1821), p. 270.

<sup>141</sup> P.A.N.B. MS 249, Saint John Alms House.

forward by Woodward on behalf of the Justices of the City and County of Saint John requesting an Act "for the erection of an Alms House, Work House and Public Infirmary", to include authorizing an assessment of the inhabitants, and a grant-in-aid from the legislature. The Justices made reference to the mode of supporting the poor in the County of York, which was "found by experience to be less expensive than the general system pursued throughout the Province, and to be productive of industrious, sober, and moral habits among that class of people."<sup>142</sup> Two other petitions presented by Saint John representative Partelow, however, opposed this petition. One was from two J.P.'s and 137 residents of the Parish of Saint Martin's, requesting that that parish be exempt from any legislation authorizing the construction of an Alms House. The second petition, from three Justices and 34 inhabitants, made a similar plea for the Parish of Lancaster.<sup>143</sup> Despite these interventions, however, the Bill was passed.<sup>144</sup> Under the terms of the Bill, inhabitants of the City of Saint John as well as the parishes of Portland, Saint Martin's and Lancaster were to be assessed.

The Act established a Commission of five to seven members, two of whom were to be J.P.s, for "superintending and managing" the building. The Commissioners were "to provide such materials... as they shall judge necessary for the setting to work and employing such poor persons, of what age or sex soever they be, who may apply for relief and shall be capable of work." The Commissioners could "compel such idle or poor people, begging or seeking relief, as do not betake themselves to some lawful employment", or who seek alms from the city or are in need or relief, "to dwell, inhabit and to work in the said Alms House and Work House, and to do all such work as they shall think them able and fit for." They could also bind out poor children as apprentices. Furthermore, the Commissioners were empowered to enact rules and regulations, to be approved by the Justices in Sessions, "and to inflict such correction and punishment, by solitary confinement and otherwise... on any person... who shall be set to work and shall not conform to such rules, orders and regulations to be made as aforesaid, or shall misbehave in the same." Inmates of the existing Alms House were to be sent to the new one, "except the sick and diseased" who were to remain in the building, which would then become a Public Infirmary "for the reception of the poor who are sick or diseased." The Commissioners were also to oversee the Infirmary, make necessary regulations, and empowered "to compel the due and proper observance thereof".<sup>145</sup>

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<sup>142</sup> *Statutes of New Brunswick, I Victoria, Cap. XVII, 1838, p. 67 in Acts, New Brunswick, 1837-1841.*

<sup>143</sup> *Journals of the House of Assembly, New Brunswick, 1838, pp. 78-79.*

<sup>144</sup> *Statutes of New Brunswick, I Victoria, Cap. 17, 1838, pp. 67-69.*

<sup>145</sup> *Statutes of New Brunswick, I Victoria, Cap. XVII, 1838, pp. 67-69.*

The new Alms House, which was finished in 1842, was built on the eastern shores of Courtenay Bay near the site of the Provincial Penitentiary (begun in 1838). "The first keeper was Mr. William Craig, and his wife served in the position of Matron. The Craigs held their post for seven years. Robert Reed who in turn was succeeded by William Cunningham who held the post from 1851 to 1884 succeeded Mr. Craig.<sup>146</sup> The Keeper and Matron were responsible for the day-to-day authority in the House. According to Rigby: "The work required of the inmates included care of the almshouse, garden, livestock, the making of clothes and the use of other skills possessed by the inmates. The almshouse had its own infirmary, its own cemetery, and a school was maintained within the walls for the children."<sup>147</sup> "Inmates worked at carding and spinning wool and at knitting it into socks. Others were employed in making and repairing boots and shoes." By 1892, fifteen acres of land had been cleared for crops, which were raised by the inmates.<sup>148</sup>

According to Rigby: "Money assessed for the support of the poor was paid to the Chairman of the Commissioners who was also responsible for disbursements. In 1883 a shortage of several thousands of dollars was discovered which had gone undetected for several years; thereafter all assessment was paid to the County Treasurer."<sup>149</sup>

"Near the main building stood an Emigrant Hospital and at the time of the epidemic of Ship Fever many sick were placed there.... The emigrant hospital was burned in 1853 along with several sheds connected with the home, but the main building escaped the fire." Between 1846 and 1848, the Alms House operated as a fever hospital.<sup>150</sup>

In 1910 the Alms House became known as the Saint John Municipal Home. It was very active during the 1930s, as a consequence of the depression. In the 1960s under Premier Robichaud, a Department of Social Services was set up in the province and, in about 1965, the Municipal Home was closed.<sup>151</sup>

## Appendix 1

### Gaol Return Form

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<sup>146</sup> P.A.N.B., MS 249 Saint John Alms House.

<sup>147</sup> Rigby, *Manuscript Collection P.A.N.B.*, p. 115.

<sup>148</sup> P.A.N.B. Ms 249, Saint John Alms House.

<sup>149</sup> Rigby, *Manuscript Collection P.A.N.B.*, p. 115.

<sup>150</sup> P.A.N.B., MS249, Saint John Alms House; reference is made to A. D. Gibbon, No. 14, *Collections of the New Brunswick Historical Society*.

<sup>151</sup> "History of the Municipal Home", P.A.N.B., MS 249. The first admission register, 1843-1849, is housed in the New Brunswick Museum in Saint John.

## I Gaol Return

Name of the prison and where situated.

1. Number of prisoners capable of being contained in separate cells.
2. Number of prisoners capable of being contained where more than one prisoner sleeps in a cell.
3. Number of Prisoners in confinement at Michaelmas 183\_  
Felons and Misdemeanours: Tried and Untried; (White or Black/Coloured; Male or Female)  
Debtors: (White or Blacks/Coloured; male or Female)
4. Total Number of Prisoners in Confinement at Michaelmas 183\_  
(Whites or Black/Coloured persons; male or Female)
5. Greatest number of prisoners confined at any one time in the year.  
(Whites or Blacks/Coloured persons; Male or Female)
6. Total Number of Persons Committed in the course of the year
7. Number of prisoners who have been committed before  
(once, twice, 3 or more; male or female)
8. Number of prisoners employed in the course of the year  
At hard labour in the prison (male or female)  
At hard labour out of the prison (male or female)  
At employment not hard labour (male or female)  
Not employed (male or female)
9. Punishments for offences within the prison during the year  
Whipping, irons, solitary confinement, other punishments; (male or female)
10. Cases of sickness  
Greatest number of sick at one time; Total cases of sickness during the year.

(Whites, Blacks/Coloured persons; male or female)

11. Deaths during the year

(Whites, Blacks/Coloured persons; male or female)

II Questions

1. General description of the prison, whether common gaol, house of correction, or otherwise? (To be accompanied by a ground plan of the building, etc.).
2. Under whose jurisdiction and superintendence; and what measures are adopted for securing the visitation of the prison by the local magistrate or other authorities? (A copy of the rules and regulations to be forwarded with the Return).
3. Number of officers and how appointed? Do all the officers reside in the prison? Are female prisoners attended to by female officer?
4. Number of classes, divisions, or wards, day-rooms, work-rooms, and airing-yards (with reference to plan); and whether the same can be extended or increased).
5. Number of sleeping cells, solitary or dark cells, etc., and if they are below ground?
6. Dietary or weekly allowance and weekly cost per head, for the different descriptions of prisoners.
7. Allowance of clothing and bedding and cost per head?
8. Hours of labour and exercise?
9. Description of employment and hard labour?
10. Amount of earnings and how applied; in what proportion to the prisoners, to the officers, or to the fund for the maintenance for the prison?
11. Whether the classification directed by the Colonial Act has been observed; if not, for what reasons; and what measures have been taken to remedy this defect?

12. Are convicted prisoners prohibited from receiving visits, or letters, or any articles of food or clothing from their relatives or friends; if not, under what restrictions?
13. Is there a chapel in the prison, or suitable apartment for the performance of religious services? How are the prisoners separated therein?
14. What duties are performed by the chaplain? What provision is made for the instruction of the prisoners; and are they supplied with Bibles and other suitable books?
15. Are dissenting ministers allowed to have access to the prisoners; and if so, at what times, and under what restrictions?
16. What duties are performed by the surgeon? Are separate buildings or apartments provided for the sick?
17. What diseases have been most prevalent during the year? (in reference to columns 10 and 11, return No. 1).
18. Reasons for non-employment of prisoners (in reference to column 8)?
19. Reasons for punishments, by whipping, irons, solitary confinement, or otherwise?
20. Is there any insane person in confinement? State his or her name and age, and for what reason committed? How long has he or she been in confinement; and is such person separated from the other prisoners?
21. Are any, and what fees demanded of debtors, or any other prisoners, either at their admission to, or discharge from, the gaol?
22. General observations.

## Appendix 2

### New Brunswick Counties

1786 Charlotte

King's

Northumberland

Kent (1827)

Gloucester (1827)

Restigouche (1838)

Queen's

Saint John

Sunbury

Westmorland

Albert (1845)

York

Carleton (1832) 11 Feb 1847 – Bill to authorize erection of new gaol in Carleton.<sup>152</sup> The Carleton gaol was destroyed by fire.<sup>153</sup> The House requested copies of correspondence between the Lt. Governor and the J.P.s of Carlton “relative to Prisoners now confined in the Gaol or Lock-Up House”.<sup>154</sup> The House debated giving the county leaver to raise an assessment for the gaol.<sup>155</sup>

Victoria (1850)

Madawaska (1873)

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<sup>152</sup> *JHA-NB*, 1847, p. 70.

<sup>153</sup> *JHA-NB*, 1847, p. 87.

<sup>154</sup> *JHA-NB*, 1847, p. 88.

<sup>155</sup> *JHA-NB*, 1847, p. 89.