

## Legislative Council Chamber,

APRIL 23, 1868.

RESOLVED, That it be recommended to the Government to cause the following Report to be printed once in the *Royal Gazette* newspaper of this Island, and that its further consideration be deferred until next Session.

JOHN BALL, C. L. C.

Your Committee, to whom was referred two petitions touching the right of collecting Sea Weed on the shores of this Island, the one in favor of the shores being thrown open to the public, the other from persons for the most part residing on the shore farms, claiming a "just and legal" right to "the sea weed cast up and lodged under" their shores.

As the question raised by the Petitioners involves so materially the rights of property, and there does not appear to your committee to have been in this country any judicial decision on the pure question of the right of the public to this production of the sea, in cases where the article is lodged, clearly and obviously, between, high and low water mark, and being claimed by a stranger, but resisted by the owner of the adjoining land, merely on the grounds of the sea weed being lodged on the shore which fronts or adjoins his land, therefore, your committee have thought it best to examine into and declare, as far as they feel themselves competent to do so, the law bearing on the case under consideration, which, they conceive, is as follows:

By the common law of England, the sea shore is defined to be that space of the land which, covered with water at high tides, is dry at low tides, and, therefore, bounded landwards by high-water mark, and outward by low-water mark. In this definition, high-water mark does not mean the high-water of spring tides; it means the line or mark denoted by an average of the neap or ordinary high tides taken throughout the year, when they are not affected by the full or change of the moon. This definition applies to the shore of an arm of the sea, that is, where the tide flows and reflows, as well as to the shore of the sea or Gulf itself. The question raised as to the right to sea weed and kelp, relates to these substances when left by the action of the sea on the sea-shore as thus defined. This right must, therefore, in a great measure, if not wholly, depend on the ownership of the sea-shore. Now, by the law of England, the right of property in the soil of the sea shore is vested in the Sovereign, not for his private or exclusive use, but to be held and protected for the use and benefit of the public, in such manner as the law of nature, adopted by the common law of England, admits of. As the policy of the common law is to assign to all property capable of occupancy a legal and certain proprietor, it makes those things which, from their nature, cannot be *exclusively* occupied and enjoyed, the property of the Sovereign. "To the King of England is, therefore, not only assigned the sovereign dominion of the sea adjoining the coasts, and over the arms of the sea, but in him is also vested the right of property in the soil thereof;" but still, the legal maxim is, *Rex in ea habet proprietatem, sed populus habet usam ibidem necessarium*; the king has the property, but the people have the use necessary.

Should the King, therefore, by virtue of his prerogative, make a grant of the sea shore, the grantee would have to take it subject to the rights of the public, as previously held by the King. In England, the sea shore is frequently held by the Lord of a manor, as part of the grant of the manor, and when held by a proprietor deriving title under grant, or other legally authorized title, such proprietor is bound to permit the sea-shore to be used by the public for all the purposes, and just as they could use it while it was held by the sovereign;—for instance, the free navigation of the water flowing over it wherever the tide admits; the landing thereon with vessels and boats to discharge their cargoes and goods, and to convey them to any right of way connected therewith; the searching for and carrying away live shell-fish, or other fish, dead or alive, that may be found thereon, that is, where no other person had, by lawful grant or prescription, an exclusive right to take the same fish for his own use.

Touching the right to sea weed and kelp lodged on the sea-shore, substances of this nature do not appear to be placed on the same footing as shell-fish, and the instances on record where the right to *these productions*—i. e., sea weed, kelp, &c., has been disputed, are very rare. In no case that your Committee can find has it been decided, by any judicial tribunal, that the public have a right to them.

Your Committee are aware that, in the year 1829, upon an appeal to the Judicial Committee of the Privy Council in England, from the Island of Jersey, (the case of *Benest vs. Pipon*), a question was decided relative to the right to sea weed, or, as it is in that Colony termed, *vraic*. It was growing seaweed, and cut and carried away from certain rocks dry at low water. The rocks were claimed as part of the estate of the party *Pipon*, alleged to have been held by him and his ancestors from time immemorial, and the *vraic*, or sea weed, was claimed by the party *Benest*, under an alleged right to take it as belonging to the inhabitants of the Island in common. In this case, although it was laid down by the Privy Council that the common law of England was in force in Jersey, yet it appeared that *Pipon* partially failed in the proof of the exclusive right he set up, and there were some local acts or ordinances of Jersey which gave the inhabitants a right to take the sea weed under certain rules, and the decision of the Privy Council was, in that case, adverse to *Pipon*.

In the year 1833, however, a case was brought in the Court of King's Bench in Ireland, wherein it was decided that, at common law, the public had not the right of taking sea weed from the sea shore, where it was opposed by the person owning the adjoining estate. In this Colony, it would appear to your Committee, the right to the sea shore will be found in the sovereign, except such parts of it as may be included within the boundaries of the Townships of land as granted originally to the proprietors of lands. Those Townships which have their front on the sea coast will not likely include the sea-shore, while some Townships, as would appear by the map of the Island, include within their boundaries navigable rivers and arms of the sea; in these the sea shore would, as a consequence, be vested in their proprietors by the original grants. As nearly all of the grants of the Townships are registered in this Island their descriptions and limits can be easily ascertained. Assuming that the Townships generally do not include the sea-shore as part of the grant to the proprietors, and that this part of the Island remains in the Sovereign, the right to sea weed lodged between high and low water mark would depend on the common law of England, which, as your Committee have observed does not admit of it, when thus lodged, being taken up by the public, and rather leaves it to be inferred that the article would belong to the owner of the adjoining land.

In the United States of America, the question of ownership to sea weed cast on the sea-shore has frequently been tried by a judicial tribunal, and by the American construction of the common law of England, it has been adjudged, in several States, to belong to the owner of the adjoining land. This has been decided on the principle of the law of *Alluvion*, or imperceptible increase to the land adjoining the sea-shore, produced by the action of the sea slowly and gradually washing up sand, earth, &c., and thereby increasing the adjoining land, which land, gained by such slow and imperceptible increase, becomes the estate of the owner of that to which it attaches itself, thereby deeming the sea weed to be one of those increments which belong to the adjoining land, and cannot be taken or appropriated by strangers.

Your Committee would, therefore, recommend that no further action be taken on the matter this session, beyond getting a copy of this Report published in the *Royal Gazette*.

## Executors' Notice.

ALL persons having claims against the Estate of the late James McCormack, of Georgetown, are requested to furnish the same, duly attested, within Three Months from date, and those indebted to the said Estate are hereby requested to make immediate payment to either of the Executors.

MICHAEL HESSION,  
GEORGE MOAR,  
RONALD McCORMACK.

Georgetown, March 12, 1868.