

No. 8.

REPORT FROM COMMITTEE OF NOVA SCOTIA
ON THE
SUBJECT OF FISHERIES.

THE FISHERIES—(EXTRACTED FROM THE JOURNALS OF NOVA SCOTIA, 1837.)

THE Committee appointed to take into consideration the subject of the Fisheries, and the infringement of existing Treaties by the citizens of other Nations, report as follows.

That, anxious to obtain the most full and satisfactory testimony on which to found their report, they submitted interrogatories to the most intelligent commercial men engaged in the fisheries throughout the Province, and have accumulated a mass of evidence removing all doubt on the subjects referred to them, and exhibiting a melancholy picture of the evil consequences flowing from the indiscreet negotiation between Great Britain and the United States of America; and the flagrant violations of subsisting treaties by the citizens of the latter, and the necessity of promptly repelling such invasion of our inherent rights.

The Committee, in order to place the subject fully before the House, and to adapt the testimony received, refer to the treaties, and a succinct historical sketch of the fisheries prior to their adoption, to guide to the course most for the benefit and interest of the inhabitants of this Colony. The cod fishery of Newfoundland and Canso, on the Peninsula of Nova Scotia, commenced soon after the discovery of the former by Sebastian Cabot, in the reign of Henry the Seventh, 1497: all nations resorted to the banks and coasts of that island until the reign of Elizabeth, when Sir Humphrey Gilbert took possession, and claimed sovereignty under the right of original discovery. Newfoundland acknowledged that right; the French Government disputed the claim to the fishery of Canso, until Nova Scotia was ceded by treaty in 1749 and Cape Breton conquered in 1758; from which period British subjects pursued the fisheries on Brown's bank and the banks of Nova Scotia *exclusively*, and on the banks of Newfoundland in *common* with the subjects of every European nation; the Colonists also, with British subjects only, resorted at pleasure to every part of Newfoundland and to the Labrador coasts, after the expulsion of the French from Canada in 1759—to which Government Labrador then belonged; leaving the French accommodated with the islands of Saint Pierre and Miquelon, and the northwest side of Newfoundland. At the Peace of 1783, a treaty was entered into between the United States and Great Britain, by the third article of which the people of the former obtained the right "to take fish on the Grand bank and all other banks of Newfoundland in the Gulf of Saint Lawrence, and all other places in the sea where the inhabitants of both countries had been used to fish before, and the *liberty* to fish on such part of the coast of Newfoundland as British fishermen used (but not to dry or cure fish there), and on the coasts, bays and creeks of all other British dominions in America." American fishermen also obtained *liberty* to dry and cure fish in any unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands and Labrador; but as soon as any of them were settled this liberty was to cease, unless continued by agreement with the inhabitants.

By this inconsiderate article of the treaty (to speak of it in the mildest terms), a source was opened from which flowed a torrent of misfortune to the inhabitants of this Province; by it the harbors of the Atlantic Colonies were thrown open to the vessels of the United States, and the native fishermen subjected to a hostile rivalry, with which they were
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unable to compete, and from which no prospect was afforded of escape, while liberties of no ordinary character were ceded to the United States, affording profitable fields for commerce, and fostering a race of seamen conducive to national wealth in peace, and to defence and glory in war. Writhing under difficulties thus heaped on them, the Colonists, by the declaration of war in 1812, were unexpectedly relieved, and exerted themselves to retain their restored rights; fishing vessels of the United States were ordered off by British naval forces, or captured and condemned, on the ground that the treaty no longer existed, maintaining that the treaty of 1783, not having been confirmed by the treaty of Ghent, was annulled by the war of 1812; at this period warm and energetic remonstrances went from the Colonies, soliciting the protection of their rights, and on the subject of the fisheries Nova Scotia was foremost. By memorial on 8th October, 1813, she intreated His Majesty's Ministers to guard against the hateful article of the treaty of 1783, and to exclude the French, American and Foreign Fishermen from the narrow seas and waters of these northern Colonies, stating that her inhabitants procured a living by their industry on those waters, which unquestionably belonged to Britain; she urged that if American citizens were to obtain the right of entering the gulfs, bays, harbors or creeks of these Colonies, that there would be no security against illicit trade, and the numerous evils inevitably attending such intercourse; that the sentiments, habits and manners, both political and moral, of the lower order of Americans, were dangerous and contaminating; that it was the first and most fervent wish of these Colonies to be completely *British*, their surest defence and greatest blessing, and that the intercourse permitted by that fatal article of the definitive treaty was detrimental and ruinous. Seizures were made by the British cruisers on the station, and the judgment in the case of the Nabby hereto annexed, marked No. 1, exhibits the view then entertained by Colonists of their rights of fishery, and the advantages resulting from the war of 1812. The United States dissented from the doctrine maintained by Great Britain, and after protracted negotiation and various proposals, the convention of 1813, under which the inhabitants of this Colony have been a second time stripped of their national rights, was agreed on; and, disregarding the voice of the people, the Minister of that day consented that the United States should have forever in common with British subjects the liberty to fish on the southern coasts of Newfoundland from Cape Rae to the Ramau islands, on the western and northern coasts of Newfoundland, and from that Cape to the Querpon islands, on the shores of the Magdalen islands, and on the coasts, bays, harbors and creeks from Mount Jolie, on the southern coast of Labrador, to and through the Straits of Belisle, and thence indefinitely along the coast northerly, but without prejudice to the exclusive rights of the Hudson Bay Company, and that the American fishermen should also have liberty forever to dry and cure fish in any of the unsettled bays, harbours and creeks of the southern coast of Newfoundland, as above described, and of the coast of Labrador, subject after settlement to agreement with the proprietors of the soil. In consequence of the above stipulation the United States renounced forever the liberty of fishing within three marine miles of any other part of the British coasts of America, or of curing or drying on them; but American fishermen were to be permitted to enter bays or harbors on the prohibited coasts for shelter, repairing damages, and purchasing wood, and obtaining water, and for no other purpose whatever, subject to restrictions necessary to prevent abuses. Thus, in the face of the decisions of our Courts, of petitions from Nova Scotia, Newfoundland, and the merchants of London interested in the Colonies, the foregoing fatal treaty was proposed, agreed on, and completed with such marked secrecy, that none were apprised of its terms until it appeared in the public prints, and the people of this Province deprived of their most valuable birthright—the *Fisheries*.

The advantages conferred on the citizens of the United States of America by the foregoing policy, was received by them not as a boon but a right. Although the war of 1812 had abrogated the treaty of 1783, the Minister Plenipotentiary of the United States, who negotiated and settled the new convention, to use his own language, said—“It was by *our* act that the United States *renounced* the right to the Fisheries not guaranteed to them by the convention. We deemed it proper under a three fold view.—1st, to exclude the implication of the fisheries secured to us being a *new* grant.—2d, to place the rights secured and renounced on the same footing of permanence.—3d, that it might expressly appear that our renunciation was limited to *three* miles from the coasts.

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This last point we deemed of the more consequence from our fishermen having informed us that the whole fishing ground on the coast of Nova Scotia extended to a greater distance than three miles from the land—whereas on the coast of Labrador it was universally close in with the shore. To the saving of the exclusive rights of the Hudson's Bay Company we did not object; the charter of that Company had been granted in 1670, and the people of the United States had never enjoyed rights in that Bay which could trench upon those of the Company. Finally, it is to be remarked that the liberty of drying and curing on certain parts of the coasts of Newfoundland, as secured in the article, had not been allotted to the United States, even under the old treaty of 1783." When the convention was made public, the article on the fisheries was assailed by complaints from all quarters, and none more loud or just than from Nova Scotia; galled by the recollection of the treaty of Paris in 1814, the Colonists felt that Great Britain, when flushed with conquest and wearing the laurels of victory, had yielded to the intrigues of the vanquished, and alienated the rights of her subjects, they felt the utter hopelessness of breaking the treaty; that the fate of the fishery was sealed, and were lulled into submission by the intimation of Ministry that bounties would be granted upon their fish to compensate for the disadvantages inevitably imposed. In Nova Scotia the information produced gloom, distrust and despair; they were, however, still composed by the assurances of Government that their remaining rights should be protected, that the naval force would repel infringers of the treaty, and the flag of England would insure safety to the industrious class engaged in the laborious pursuit of the fishery; and the Colonists were assured that the vigilance of the naval force would shut out the dangerous rivalry of foreigners, at least in the fishery, within three marine miles of the coast of Nova Scotia. How far their anticipations and hopes have been realized, the annexed mass of testimony proves.

The Committee further report, that the construction of distinguished lawyers and the legitimate construction of the convention is, that the citizens of the United States cannot conduct their fishery within three marine miles of the headlands of the coast of Nova Scotia, and have no liberty to enter the bays, harbors or creeks thereof, except for shelter, and to purchase wood or obtain water, and only then on proof of having left their own ports sufficiently supplied for the voyage; yet, on inquiry and hearing evidence, it is proved beyond all doubt by witnesses of unquestionable character, that the fishing vessels of that country resort to our shores with as little concern as they quit their own—that, contrary to the terms of the convention, they purchase bait from the inhabitants, and in many instances set their own nets within the harbors of the Province, and on various occasions have, by force, coerced the inhabitants to submit to their encroachment, and they land on the Magdalen islands, and pursue the fishery therefrom as unrestricted as British subjects, although the convention cedes no such right. The consequences following in the train of these open violations of a solemn treaty, are illicit trade—destruction of the fishery by the means of conducting it—interruption of that mutual confidence which ought always to exist between the merchants and fishermen of a country, inducing the former to supply and the latter to make payments with punctuality; and finally the luring from our shores, by means of bounties, the youth of our country to their employment, reducing our population and impoverishing our Province, while they add strength and vigor to their own; for proof of which your Committee refer to the documents hereto annexed, and numbered from 1 to 3.

The Committee further report that the mode of taking fish by the Americans, particularly mackerel, has a tendency to impair and will ultimately destroy the fishery: they approach within the prescribed limits, and by the use of bait tole the fish into deep water, and then take them by jigs, a system destructive to the fishery, by wounding more fish than are taken, which afterwards linger and die, and by detaining them so late by offering food, that the mackerel return to the westward, an immense distance from land, and beyond the reach of net or shore fishermen.

The Committee have also inquired into the encouragement given by the Americans to their fishery, and find that they fit out their vessels on shares; that the Government allows four dollars per ton to all vessels between thirty and ninety tons in the cod fishery, provided they are engaged one hundred and twenty days in the voyage, and dress and cure the fish they land; the one half is usually given to the crew, and the other retained by the owners, and thus a direct bounty is offered to the youth of the Colonies to join them

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them to the extent of the bounty on the fish which passes for American, and the duty imposed on foreign fish; to illustrate which, the Committee suppose a native fisherman, owner of ten quintals of round or undressed fish, joining the people of the United States, he obtains a bounty, enters them in the United States duty free, and avails himself of a good market: if he adheres to Nova Scotia he obtains no bounty, is compelled to bear the fluctuations of market, or if he seeks the United States is met by a heavy duty, in addition to which the outfit from that country is generally more economical.

Your Committee further report, that by the convention of 1818 and the 59th George 3d, all vessels not navigated according to the laws of Great Britain, found fishing, or to have been fishing, or preparing to fish, within certain distances of any coasts, bays, creeks or harbors whatever, in any part of His Majesty's dominions in America, not included within the limits specified in the first article of said convention, are liable to seizure; and therefore, they are of opinion, that by restricting the fishing vessels of the United States to a distance of three marine miles from the head lands of Nova Scotia, they, as a matter of course, close the Gut of Canso against them, under the terms of the treaty, it being impossible for vessels fitted out and appalled for fishing to pass that Strait without infringing the spirit and letter of the convention.

The Committee further report that the present situation of the fisheries of Nova Scotia is appalling: close to inexhaustible sources of wealth to which the attention of thousands has been devoted for nearly a century, and from which most munificent returns have been received for the labor bestowed, the whole is paralyzed by the interference of other nations, and people must abandon the net and shore fishery hitherto pursued—follow the example of their rivals, and adopt a mischievous and ultimately destructive system, or call on the Government to enforce the treaty by which so much has been ceded and so little retained, and even that now invaded with impunity; this latter alternative the Committee strongly urge on the House, and while they reflect on the policy of Great Britain to preserve a monopoly to the tonnage of her country in all maritime adventures, that her insular situation requires nurseries for seamen to preserve the dominion of the ocean—that a tacit recognition of our claims for rigid protection was evinced at the execution of the convention—they hope that instructions will be given to guard the few remaining rights the people of Nova Scotia still possess.

Finally, the Committee report that the youth of the Province are daily quitting the fishing stations, and seeking employment on board United States vessels, conducting them to the best fishing grounds, carrying on trade and traffic for their new employers with the inhabitants, and injuring their native country by defrauding its revenue, diminishing the operative class, and leaving the aged and infirm to burthen the community they have forsaken and deserted.

The Committee recommend, that a strong remonstrance should be made to His Majesty's Government by address from the Legislature, or through His Excellency the Lieutenant Governor, calling the attention of the Government to the state of our fisheries, and soliciting His Majesty to order one or more steam boats, or a few fast sailing schooners on this station, to be employed in repelling by force those invaders of our rights—and to prevent delay, that a grant should pass to induce by bounty the inhabitants to fit out small vessels to be used as preventive force under the Provincial statutes; the Committee being of opinion that unless prompt and efficient measures are adopted and continued, that it would be more for the interest of the Colonists to admit Americans to settle on the shores of Nova Scotia, erect fishing establishments, and conduct the fishery therefrom, for then equality would be preserved, and the people retained in the Province with the product of their labor.

JAMES B. UNIACKE, *Chairman.*

House of Assembly, 10th April, 1837.

No. 1.

Judgment delivered in the Court of Vice Admiralty, at Halifax, in Nova Scotia, on the twenty fourth day of August, 1818, in the case of the Schooner Nabby, Thomas Standley, Master—by CROFTON UNIACKE, Esquire, Judge of that Court.

This vessel was seized by His Majesty's ship Saracen, John Gore, Esquire, Commander, and has been brought into this Court for adjudication. An allegation has been filed

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filed on behalf of His Majesty, containing several charges, and a claim has been made by Thomas Standley, the master, a citizen of the United States of America, on behalf of himself, Joseph Standley, and Samuel Hadlock, also citizens of the United States, as the owners of this vessel.

In considering the case which is submitted to the Court in this allegation and claim, it will be found to rest upon two grounds, which have been brought forward and supported with great learning and ability on the part of the prosecution.

First—It is contended that this vessel having been taken while engaged in the fishery on the coasts of Nova Scotia, has violated the territorial rights of Great Britain, and should therefore be condemned. And secondly—that having entered one of the harbors of this Province without any justifiable cause, she has infringed the laws of trade and navigation, which prohibit foreigners from trading with the Colonies, and has therefore incurred the penalties of those laws.

The Court is called upon in this case, during a period of profound peace, to enter into the consideration of a subject which involves the interests of a foreign nation, and to apply in their utmost strictness those general principles of abstract and universal law which are appealed to in questions between contending nations. It is presented to the Court in its most grand and imposing aspect, not as a collateral point growing out of private interests and arising out of considerations of municipal law, but as a direct and solemn question, in which the high and important rights of one nation are to be defined and supported, and the claims and privileges of another to be confirmed or annihilated. The violated rights of Great Britain are represented as seeking, in the dignity of insulted greatness, the protection of its sacred tribunals, and as claiming in the time of peace from public justice that defence which they have ever found in war beneath the arms of their brave defenders. Certain acts of the citizens of the United States are held up to the Court as the infringement of territorial rights, made under the pretext of privileges become obsolete and now unacknowledged; and the confiscation of property is demanded as the just and unavoidable penalty of the offence.

In this view of the subject it becomes one of the highest importance, and it will require the most serious attention on the part of the Court, neither to shrink from its duties from an apprehension of consequences, nor to exert its authority beyond its proper limits, from the influence of feelings which the subject may be supposed to excite. As it is the clear duty of the Court to take cognizance of all questions legally within its jurisdiction, and to administer the law to contending parties, so it is highly improper in it to entertain and determine those which belong to other tribunals, or which are not within the settled limits of its own authority.

The jurisdiction of the Court of Admiralty in former times was a subject of much controversy, and many very violent and unbecoming contentions have at different periods existed, as to the nature of the subjects to which its authority extended. Those discussions, which have so repeatedly laid open the subject to the investigation of the most able lawyers, have removed many of the errors which once prevailed, and little doubt can now be entertained as to the subjects of its ordinary jurisdiction. It will be necessary, however, for the satisfaction of those who have urged the Court to take cognizance of this subject, and to proceed to adjudication on the merits of this case, to consider, in the fullest manner, whether the Court of Vice Admiralty has within its ordinary jurisdiction any power to proceed to the adjudication of foreign vessels charged with the violation of territorial rights.

The Court of Admiralty takes cognizance of matters arising either within its *civil* or its *prize* jurisdiction. The Instance Court embraces all matters of a private nature, arising out of maritime affairs, but does not extend to subjects which grow out of a state of war, nor can it sustain questions in which the political interests of nations are involved. Without determining the precise boundaries of the Instance Court, which in many cases may, even at this day, be difficult to ascertain, as respects subjects of a private nature, it is sufficient in this case to shew, that the subject now submitted to it does not come within its jurisdiction. By the special provisions of an Act of Parliament, the important interests of trade and navigation are placed within its jurisdiction, and full power is given to confiscate the property of individuals found violating any of the positive regulations of British trade. Under those laws the interests of foreigners may be involved, and their property condemned, but all such cases are confined to private

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private interests, and the offences, as well as the consequent penalties, are expressly settled and defined by those very laws, with the violation of which they may be charged. This vessel has been seized by one of His Majesty's ships, under an order from the Lords Commissioners of the Admiralty, for fishing within the territory of Great Britain, and I am not informed of any municipal law which gives the Court cognizance of such a subject, or which could justify it in confiscating property so employed. It has been urged, that an order from the Lords Commissioners of the Admiralty having been given to the Commander in Chief of the North American squadron, to seize and detain all vessels found fishing within the British territory, this Court is bound to give effect to it by condemning this vessel and her appurtenances; but, however high the authority may be, from which such order may have emanated, and however strictly bound the Commander in Chief may be to carry it into execution, this Court must wait until its powers, as to matters of prize, are called forth in the regular and legal manner. That those powers are inherent in its commission, there can be no doubt, and it may be proper for me to state in what manner they are brought into full operation. In the first place, a commission, under the great seal of the United Kingdom, goes directed to the Lords Commissioners of the Admiralty, authorizing the seizure and detention of the vessels of any country, saving such exceptions as may afterwards be declared; and authorizing the same to be brought to judgment in any of the Courts of Admiralty within the dominions, which shall be duly commissioned; and the Lords Commissioners of the Admiralty are thereby authorized and enjoined to will and require the High Court of Admiralty of England, and also the several Courts of Admiralty within the dominions, which shall be duly commissioned, to take cognizance of, and judicially proceed upon all ships, vessels, and goods, as shall be seized and detained, and to adjudge and condemn the same, saving such exceptions as may be at any time after declared. In consequence of this commission, a warrant issues under the seal of the office of Admiralty, with a copy of such commission usually annexed, requiring His Majesty's Vice Admiralty Court at Halifax, (or whatever place it may be) to take cognizance of, and judicially to proceed upon all ships and goods that are or shall be taken within the limits of said Court, and to hear and determine the same; and according to the course of Admiralty and law of nations, to adjudge and condemn the same, saving always such exceptions as His Majesty may at any time be pleased to declare.

Thus the Court of Admiralty becomes fully authorised to take cognizance of and to proceed judicially upon all vessels seized *jure belli*, or under any orders His Majesty's Government may have deemed it expedient to issue. But until the Court receives authority to act through the regular and legal channel, it cannot undertake to administer the law as applicable to prize, and to settle the conflicting interests of nations. This Court cannot penetrate into the secrets of the British Cabinet, or ascertain what the political views of His Majesty's Government may be on this subject, but as no regular steps have been adopted to give the Court a power to proceed to adjudication, and to condemn these vessels, it might be inferred, that it was not the intention to confiscate them at present, but merely to detain them until further instructions should be given. It must be well known to those who administer the British Government, advised as they are by the most learned civilians of the age, that the Court of Vice Admiralty has not power in the exercise of its ordinary jurisdiction to take cognizance of subjects of such a nature. Uninfluenced, therefore, by any considerations arising from the necessity or expediency of what has been proposed, and paying every respect to the order which has been produced, this Court will endeavour to perform its duty with firmness, within the proper limits prescribed to its jurisdiction, but will not allow itself to be led by any plausible view of the subject, into a vague, irregular, and unjustifiable exercise of its power.

That these opinions are not merely the result of my own unassisted deliberations, but that they are supported by the decisions of the most learned and able Judges, both of the civil and common Law Courts, I shall proceed in the next place to shew.

The first case I shall notice on this subject, is the *Carlew*, (*Stewart's Report*, 312) in which Sir Alexander Croke, in speaking of vessels detained in consequence of a declaration of war, but before any commission to condemn, uses these words "This then is property which has been seized and detained in consequence of a declaration

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of war made by the United States against Great Britain, but before any orders have been given by His Majesty in Council for general reprisals, and before any commission had been issued to require this Court to *adjudge* and *condemn* such ships, vessels and goods, as shall belong to the United States." Again "Till the British Government has declared the subjects of the United States to be enemies, by its order for general reprisals, and by a *warrant to condemn* their goods, this Court cannot consider them as enemies' property. Even an order from the British Government to *seize and detain* vessels would not have that effect. That might be only provisional, and must depend upon subsequent explanation, having a retroactive power. Seizures made may be declared to have been only on the footing of a temporary sequestration."

How much stronger was that case than the one before the Court. The actual declaration of war, by the Government of the United States was followed immediately by all the violence of war; the treaty of peace between the two countries was violated and broken; the commerce of Great Britain was assailed and interrupted; and all those rights which are most valuable to a nation were infringed in the true spirit of national hostility: yet in that case, the Court could not condemn the property which was very properly seized by His Majesty's ships. In this case it is alleged that the citizens of the United States have violated the rights of Great Britain by entering its territory and fishing therein; and that, therefore, the vessels so found should be condemned. But if they had made an actual attack upon our shores, if they had captured and destroyed the property of British subjects both by sea and land, this Court would not be authorised to condemn until it should be commanded so to do, by the Sovereign, in whom alone such power is reposed by the constitution of our country.

The next case I shall produce in support of my opinion, is that of the *Huldah*. (3d *Rob. Rep.* p. 255.) The ship was carried into Saint Domingo, and proceeded against in the Court of Admiralty. The Court there was properly constituted as a *Civil* Court of Admiralty, and His Majesty's instructions were addressed to it as a *Prize* Court, but by mistake, no *warrant* had been issued to give it a prize jurisdiction against *France and Holland*, although there had been a prize warrant against *Spain*. Sir W. Scott.—“In this case there is no imputation of misconduct; the captors went to a Court which was sitting at Saint Domingo, apparently with competent authority; in that Court he obtained a sentence of condemnation, and distribution has taken place in consequence of it; but that Court having no authority, those proceedings are null and of no legal effect whatsoever.” Now at the time the Court of Admiralty at Saint Domingo was exercising a prize jurisdiction over the ships and goods of two nations, it could not extend that power to property belonging to another nation, although actual hostilities existed, and the vessels and goods of that nation were confiscated in other Courts duly authorised. The Court of Admiralty is not to look at the state of things between Great Britain and another nation, and to infer from the existence of hostilities, or from the orders issued to the naval commanders that its powers are called forth, and are to be exercised to the utmost extent. It does not sit to deliberate on the political relations of States, but to administer the law whenever it shall be so required. That the persons who have presided in the Courts of Vice Admiralty have often ventured beyond the limits of their jurisdiction, and assumed the exercise of powers with which they were not invested it is well known; but this Court will select higher examples for its imitation, and will not easily be led into those gross errors which often prove injurious to the interests of individuals, and always lessen the respect due to the tribunals of justice.

I shall mention one more case on this point which was determined by that eminent Judge, Lord Mansfield, a case in which the jurisdiction of the Court of Admiralty was very fully considered. In the case of *Lindo vs. Rodney*, Lord Mansfield speaking of the distinction of the civil and prize jurisdiction of the Admiralty, says:—“The Court of Admiralty is called the Instance Court, the other the Prize Court. The manner of proceeding is totally different. The whole system of litigation and jurisprudence in the Prize Court is peculiar to itself: it is no more like the Court of Admiralty than it is to any Court in Westminster Hall.”

It is quite unnecessary to go farther into this subject. Here are the decisions of the most learned and eminent Judges, and they fully support the general position which I must assume, that the Court of Admiralty cannot in the exercise of its ordinary jurisdiction

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jurisdiction entertain any question which bears the character of prize. The first ground in this case is clearly of that nature. It is that this vessel has been captured by one of His Majesty's ships of war for the violation of the rights of Great Britain, and that such seizure was made under orders from the Admiralty. The whole question arises out of a proceeding of a *military* and not of a *civil* nature. And this it is that makes the distinction.

But it may be asked whether the orders thus issued to the naval Commander in Chief are to be rendered nugatory, and whether this determination is to operate to counteract the evident wishes and intentions of His Majesty's Government. To this the answer is plain. The Court has the power to take the custody of the vessel and to preserve it in the usual manner until the final determination of Government shall be made known, although it cannot proceed to adjudication upon this question. It can neither condemn nor restore. It is true no positive instructions have been sent to this Court to detain vessels of this description, but sufficient has appeared to it to authorise the regular exercise of its ordinary care in the preservation of the property. That I am correct in this opinion I shall shew by authority directly to the point. Upon the declaration of war by the United States of America, His Majesty's ships captured American vessels and brought them into the custody of this Court. At that time *no order* had been made to seize American property, nor had any instructions whatever been sent to the Court of Admiralty in this Province. Sir Alexander Croke (*Case of the Dart, Stewart's Report, 301*), under such circumstances, said "They may possibly be declared to be enemies in future, but their present situation is *ambiguous*." "Whilst this uncertainty continues, the Court cannot *reject* the claim of the parties or *condemn* their property. Neither in this state of semi-hostilities with the United States would it think itself justified in restoring goods." In the present case the Court is bound to take notice of the orders which have been issued to the Commander in Chief, and to give them an operation to a certain extent. They have been communicated to the Court, and feeling itself influenced by the high respect it will ever have for the distinguished officers to whom His Majesty may confide the command of his fleets, it cannot hesitate to hold the custody of such vessels as may be brought within its care. In another case Sir Alexander Croke recognised the orders which had been issued to *detain* vessels, and gave them the effect that I am willing to allow those to have which have been communicated to me. In the case of the *Zodiac* (*Stewart's Report, 333*), he said "If this was merely a claim as for American property, this Court would certainly not proceed to adjudicate upon it, because in the hostile or at least ambiguous state of the two countries, under His Royal Highness the Prince Regent's orders in Council to detain and bring into port all vessels belonging to the citizens of the United States, without giving any authority to condemn them—no property of that description could either be *condemned or restored*."

I have given to this subject the most serious attention, and have considered fully the ingenious arguments which have been pressed upon the Court by His Majesty's Advocate General; and I am perfectly satisfied that I should not be justified in exercising the powers which it has been contended this Court possesses. Did the case rest therefore entirely upon this ground, it would be my duty to direct it to stand over until further instructions should be given by His Majesty's Government; but another point has been submitted to my consideration which may render such delay unnecessary, and I shall proceed to state the reasons which I deem sufficient to support the judgment about to be pronounced.

The point now presented to the Court arises under the laws of trade and navigation, and it is contended that this vessel, her appurtenances, and every thing laden on board of her, are liable to confiscation, for having illegally imported goods, wares and merchandize into a port of this Province, she being a vessel not owned and navigated as vessels are required to be, to entitle them to the privilege of trading with the Colonies.

Questions arising under the laws made for the regulation of trade and navigation are not only clearly within the jurisdiction of this Court, but require its utmost attention and care, lest the ignorance or the arts of commercial speculators should interfere with the operation of a system framed for the greatest national purposes; and which has been found to realize the best hopes of those enlightened minds by which it was conceived and matured. It would seem unnecessary for me in considering a question,

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confined within the narrow bounds of a few clauses of an Act of Parliament, to take an extensive view of the whole system; but as the Court is under the necessity of seeking the rules which are to govern it, in the construction of this particular act, from an enlarged conception of the general spirit of the whole system, it must take a comprehensive view of the great designs for which it was wisely contrived.

Those laws took their rise in the profound and enlightened views which experience had offered to the acute and reflecting mind of the true basis on which might be erected the fabric of a great nation. And however that system may have been extended and improved by the various alterations and additions which grew out of new relations and more complicated public interests, the same spirit which is manifest in the provisions of the earliest laws may be traced through every succeeding regulation. They rise to the contemplation of the human mind with a regularity at once clear and complicated; and may be considered as a beautiful specimen of positive law, in which the profound and comprehensive speculations of political economy are admirably blended with the useful and practical regulations of mercantile experience. The wisdom of the policy which projected, and of the care which was constantly taken to render this system more perfect, was very soon discovered in the beneficial consequences which resulted to the nation. It was soon found that those admirable regulations were adapted to strengthen and enrich the mother country, while they gave a permanency of character to her distant possessions, which must have been entirely lost in the confusion of a loose and unrestrained commerce. As this system advanced to that perfection in which we now find it, those nations whose interests seem to have been neglected in the promotion of our own, did not fail to discover what they affected to consider a narrow and illiberal feeling, inconsistent with those dignified and generous sentiments which should always govern the policy of nations. But while Great Britain increased in national greatness and commercial prosperity, she viewed the envy and jealousy of other nations merely as a powerful confirmation of the wisdom of her plans.

Those laws form a code which it is the duty of this Court to guard from the slightest violation; their importance cannot be fully estimated, and they, whose minds are too limited to trace the progress of our national prosperity in the rigid execution of them, might be awakened to a sense of their value by the rapid decline of our greatness, which would be the consequence of their relaxation. In viewing the subject in this light, the first object that strikes the mind is the great design of confining to British subjects, as far as it could possibly be effected, the commerce of the British Colonies. For this purpose no goods, wares or merchandize can be imported into or exported from the Colonies, unless in British built vessels, owned by British subjects, and navigated by the master, and three-fourths of the crew subjects of Great Britain, under pain of forfeiture of ship and goods. This part of the law is as clear as the plainest terms can make it, but were the Court to adopt a construction, which should be restrained to the very precise meaning of the words, the spirit of this law as well as of the whole system would be violated. If it should be said that the word *imported* means the actual landing of goods, wares or merchandize, and that no penalty could be inflicted, except in a case where that fact was positively proved; or that if the owner could make out by the evidence of himself and crew, that no articles were landed from the vessel, she ought necessarily to be restored; it would follow that a foreign vessel might enter the harbours of a Colony or Plantation without permission, and remain there until a suitable occasion should offer to land her cargo. But this construction would be evidently in opposition to the true spirit and meaning of this clause, and would render useless and unavailing every provision of the laws of trade and navigation, which are clearly founded in the design to *reserve* the privileges of trade to British subjects, and to *exclude* foreigners from participating therein. I cannot conceive two ideas more inconsistent with each other, than a law positively declaring that foreigners shall not trade with the Colonies, and at the same time a loose permission to enter the harbours of those Colonies, and to continue there while it may suit their own convenience or favour their own views.

It has been contended that the presumption which arises from a vessel's entering an interdicted harbour, namely, that she came there with an intention to trade, may be overcome by shewing circumstances which prove that no such intention existed; and that if for instance, it were made out to the satisfaction of the Court, that the vessel was

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was merely in *ballast*; the presumption of her importing goods, wares and merchandize would be completely destroyed, and she ought to be acquitted. But it should be remembered that the laws which prohibit the importation of goods make the *exportation* equally penal; and if vessels were allowed to enter the harbours of a Colony in *ballast*, what protection could be given to the lawful trade of British subjects? Would not such permission throw open the ports and harbours of this country to the free trade of every American vessel? Under such a vague and preposterous construction of this wholesome and rigid system of laws, it would only be necessary for a foreign vessel to lie at anchor in our harbour until an opportunity offered to ship goods for exportation, which might be done without fear of interruption in almost every harbour of this Province. To prevent the certain consequences of such a construction, it would require every inhabitant of this Province to be a custom house officer, and to be employed day and night in preserving the trade of the country from the monopoly of the enterprising adventurers of the neighbouring country. It is well known that even the most rigid execution of the laws of trade is not sufficient to deter the eager speculator from engaging in the commerce of these Colonies. The contiguity of the harbours of the two countries makes it almost impossible under every restraint that human laws can impose, to prevent a system of smuggling, destructive of the interests of the honest British merchant, and productive of the most pernicious consequences;—in weakening the sense of the moral obligation of the laws, and in tempting the inhabitants of this Colony to blend their interests with those of the depraved and lawless adventurer, rather than to strive by an honest and grateful allegiance to uphold the nation which protects them. Shall this Court then declare by its solemn decisions, that the laws allow such an entry into the harbours of this Province? Shall it say it is prohibited that you should import and export goods, but you may come as harmless and quiet people to view the beauties of the surrounding scenery, and to pass your time in inoffensive indolence.

It has also been advanced as a doctrine to this Court, that although these principles may be applicable to vessels ostensibly equipped for trade, and which are constantly engaged in commerce; yet they ought not to be carried into rigid effect against vessels of a distinct character. And an exception has been made in favor of vessels manifestly fitted out for the fishery, and which could not be supposed to have commercial objects in contemplation. But so far from considering vessels of this description as entitled to any particular favor, or to which a relaxation of the laws might be made without any dangerous consequences, they are to be viewed with more caution by this Court, and to be watched with more jealousy by officers of the customs than those whose character is more open and unequivocal. These vessels it is said leave their own ports without a cargo, ostensibly bound to their fishing stations, and as such cannot be considered as objects of suspicion; but under the sanction of such impolitic liberality, they would no doubt avail themselves of the opportunity afforded to them of landing goods in such ports as they may be allowed to enter. A vessel avowedly engaged in trade, necessarily becomes an object of immediate attention to those who are entrusted with the execution of the laws; but a little, and apparently an insignificant vessel may, from the very character she assumes, be the most dangerous enemy to the system which this Court is bound to protect. To give full efficacy to every regulation which the laws have prescribed for the trade of this Colony is one of its highest duties, and it is essential to the great objects thus entrusted to it, that every barrier which the words and spirit of the laws will permit, should be raised around them, and that a narrow verbal construction should not operate to defeat the evident intention of them. In extending the penalty of those laws to vessels entering the harbours of this Province without a justifiable cause, I find myself supported by the very highest authority; and I shall proceed in the first place, to consider the various cases in which I think this doctrine may be found; and then I shall take a view of the circumstances of the case before me, and of the grounds upon which the claimant has attempted to justify the entry into a harbour of this Province.

The first case I shall notice under this head, is that of the *Eleanor*, Hall, master. (*1st Edward's Reports*, 135.) That vessel was condemned in this Court, while Sir Alexander Croke presided in it, and the case went before Sir William Scott by appeal. The principal ground of condemnation, and upon which, likewise, the sentence was confirmed

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confirmed by the High Court of Admiralty, was, that the vessel having a *foreign character*, entered the port of Halifax in distress. Sir William Scott—"It is I presume an universal rule that the mere act of coming into the port, though without breaking bulk, is *prima facie* evidence of an importation. At the same time this presumption may be rebutted, but it lies on the party to assign the other cause, and if the cause as assigned turns out to be false, the first presumption necessary takes place, and the fraudulent imputation is fastened down upon him." The second case is that of the *Dart*, Ramage, master. (*Stewart's Reports*, page 301.) She was an American vessel, seized by the collector of this port for an importation into this Province contrary to law. Sir Alexander Croke—"Nothing short of a necessity can justify his entering the port of Halifax: it was his own voluntary act. The original voyage might have been completed, which was to Philadelphia; it was matter of choice, of mere prudence to fly from the embargo to Halifax. Entering the port *prima facie* is an importation unless it can be justified. It cannot be explained a way by any *illegal* design: *To take in provisions* not from necessity is an exportation and contrary to law." The third case I shall mention, is that of the *Patty*, a vessel condemned in this port for having entered without a justifiable cause. (*Stewart's Reports*, 299.) Sir Alexander Croke thus expresses himself—"A necessity to justify the breach of a law must be an immediate natural necessity, not a mere remote moral necessity. It must be an imminent danger of perishing." Besides these cases which are as clear and as much to the point as it is possible, it is well known that by the statute law of Great Britain *foreign vessels* are not allowed even to hover about the shores of these Colonies; and that if found within a specified distance after a warning to depart they are liable to confiscation. So far, therefore, from any loose permission to enter the harbours of this Province, *with or without a cargo*, being consistent with the words or spirit of this general system of laws, foreign vessels are not allowed to approach within two leagues of the shores. The hovering Act as it is called, was made to establish a greater degree of strictness in the execution of the laws regulating the plantation trade than had been observed, and strengthens the position which I think it necessary to take in this case.

If we look to the decisions which have been made in cases of blockade, we shall find the principles which are applicable to vessels entering an interdicted port, much more rigid than any this Court has yet advanced for the protection of the colonial trade. The mere circumstance of the vessel's sailing towards the blockaded port with an *intention* to enter it will work the forfeiture: neither is she permitted to enter such port *in ballast*, or for the supply of water. In the case of the *exchange* (*1st Vol. of Edw. Reports*, page 42), Sir William Scott says, "If it were once admitted, that a ship may enter an interdicted port to supply herself with *water*, or on any other pretence, a door would be open to all sorts of frauds, without the possibility of preventing them." In the case of the *Comet*, (*1st. Edward's Reports*, 32,) the same great man observes, "It has not been contended that a ship may enter a blockaded port *even in ballast*; that is a point upon which this Court has already decided, if wrongly, the decision must be corrected elsewhere." Now I consider the ports of this Colony as interdicted, and that according to the true spirit and meaning of the whole system of laws, foreigners cannot enter the same without some reason that may be held sufficient to relax their strictness. It is notorious that the harbours and ports of this Province afford the greatest facility to smugglers; the small number of their inhabitants, and the want of officers of the customs are circumstances which render more caution necessary in this country than might be found requisite in Great Britain. I shall therefore consider myself bound to adopt those principles which are applied to cases of this nature in their utmost rigour, and shall now proceed to consider the facts of this particular case, and to examine whether the causes assigned for entering a harbour in this Province are sufficient for her justification.

It is admitted by the claimant that this vessel entered Pope's harbor in the Province of Nova Scotia, and it will be necessary to consider the facts of the case under two heads; first, as to the cause of her entering that port, and secondly, whether any thing was landed or taken on board while she remained there.

The master of the vessel has given his testimony to both points; to the first he says "They went into Pope's harbor, the weather was thick, and when they made the land they found themselves nearer than they expected, and being scant of water they went into

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into that port for the purpose of getting some, and with no other intention whatever," and yet to the very next question almost he answers "They had abundance of provisions, stores, bait, wood and water for the voyage, at the time they left their own port; and were not apprehensive of any deficiency whatever of any of those articles." This account, as respects the cause of her entering the harbour, is confirmed by another witness, with the addition that there was a deficiency of wood.

To the next point as to what was landed or taken on board; the master declares—"They did not land or put on shore a single article of any kind except the water casks, which they filled. They did not receive on board any articles whatever except two dollars worth of bread, which he bought of one of the inhabitants of Pope's harbor;" again "neither himself or any person on board either bought or sold, bartered or exchanged, any article or articles of any kind or description whatever, except the two dollars worth of bread he has already spoken of." Another person belonging to the vessel, says to this point, that a quantity of wood was taken on board in their own boat: James Whidden, a midshipman of His Majesty's ship Saracen, who has released all his interest in the event of this cause, and comes before the Court both as a competent witness, and as one to whom the highest credit is due, has given his testimony in these words—"That he understood from the crew that they had procured some wood, and that if they should stand in need of it they expected to supply themselves with wood and water from this coast." "They informed him they had been in at Pope's harbor, and sold some boots for which they had not got payment." How such contradictions are to be reconciled I shall not stop to inquire; sufficient appears to the Court to shew that this vessel entered a harbor of this Province, and took certain articles on board; and that, if it were essential to the prosecution in this cause, a traffic to a certain degree was actually carried on. It remains to consider the defence which the claimant has thought proper to set up to justify such proceedings.

A claim has been filed, to which is annexed an answer to the allegation under the oath of the master. In this answer two grounds of defence are taken quite inconsistent with each other. In the first place it is said that actual distress, arising from the want of water, obliged them to enter the harbor, and that they did *not* claim a right to approach the coast or to enter the harbors, bays, rivers or creeks of this Province, under pretence of fishing or for any purpose connected with the fishery. In the second place it is boldly asserted, that as citizens of the United States, they have a right to engage in the fisheries on the coasts and in the harbors of this Province.

The liberality which was always extended, by the eminent Judge who so long presided in this Court, to parties whose interests were committed to its care, and the indulgencies which he granted to practitioners as to the forms of legal proceeding, will not allow me on this occasion to restrict the claimant in making his defence as he may be advised; but I wish it to be understood that the proceedings must not assume a character which can only tend to perplex the Court, and to prevent the only object which parties can be permitted to seek in Courts of Law, the administration of justice through the medium of unperverted truth. And I must confess that this defence presents to the Court a confused picture, in which the interesting colors of distress are awkwardly thrown over the obscure and almost faded outline of rights, once clear and acknowledged. Such as it is; however, I shall consider it, and this foreigner shall not be permitted to say that he was refused to be heard by a British Court on every point he pleased to assume, and in every way in which he thought justice might be attained.

The first ground then is; that this vessel came into a harbor of this Province in distress, and without any pretence or right sought that relief from the inhabitants of this Province which the people of the United States, in a recent instance, had most generously and nobly extended to the inhabitants of a British Colony. And most assuredly if a case of real distress is made out there is an end forever of this question. It must be buried in those feelings which I trust will ever be dear to this Court, and in the exercise of which it would hope to derive more satisfaction than can ever arise from the rigid execution of the laws. Real distress is a passport even through the savage land; it appeals at once to sentiments universally felt; at its approach the rigour of law is softened, and the violence of war becomes composed by the sacred influence of humanity. And where can unaffected calamity seek a refuge if it is denied on a British shore? Intrepid in the defence of its rights and lenient in the exercise of them, Great Britain requires

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not its harbors to be closed against the stranger who seeks a shelter from the tempest, or who asks the supply of those deficiencies which unavoidable necessity may have created. The private contributions of that country have cheered the hearts of the afflicted in almost every land, and its public treasuries have been exhausted in yielding protection to every nation, whose people sought an asylum either in its bravery or its resources. As a British Judge, therefore, I receive with every disposition of kindness this ground of defence; but let it not be a garb assumed by artifice to deceive and mislead. While I am ready to acknowledge the interesting features of distress, I am vigilant to detect the subtle contrivances of art. Now what is the truth of this case. That this vessel was in any serious distress cannot be pretended. That she might have wanted a little water is very possible, but it must be made out to this Court that the deficiency did not arise either from design or from an unjustifiable neglect; and let it have arisen from whatever cause it might, that it was such as to place the crew in imminent danger of perishing. The master says that they *found* themselves nearer to the land than *they expected*, which shews that his distress was not such as to have forced him to seek a harbor. He expresses his distress to arise from his water being scant, but he does not say that any inconvenience had been experienced, or that he could not have prosecuted his voyage. Besides vessels are bound to have a sufficient quantity of water and provisions on board for the voyage in which they are engaged, and it would be absurd to suppose that a scarcity of water, arising out of neglect, or what is more probable, design, can operate to supersede the laws, and throw open British ports to any adventurer who may wish to evade the regulations of British trade and navigation.

The evidence on this and other points is extremely contradictory. One says that vessel could carry on a fishing voyage without going into any harbor, and another says it would be impossible without the privilege of putting into some of the British ports for wood and water, and it is in evidence that they informed the midshipman that they expected to supply themselves with wood and water from the British coasts. One of the witnesses expressly swears that they had a full supply for their voyage, but that *one* of the barrels of water proving bad they put into Pope's harbor to get a fresh supply; also that a ten gallon cask of water was spoiled by being put into an old *gin* cask. Now it would be beneath the dignity of a Court to spend time in commenting on such evidence as this, brought forward to support a point which always requires to be made out in the most satisfactory manner, and in the proof of which such strictness has always been observed. Nothing could have induced me to give the attention I have done to it but a great anxiety that this subject, which has already excited much public interest, should be thoroughly investigated, and that not only the principles of law but the facts of the case should be presented to the world in the clearest point of view.

I shall conclude my observations on this point of the case with the words of a Judge, (*Sir W. Scott*) whose decisions are not only studied by the lawyer, as the sources of profound instruction, but are read with interest by the enlightened and accomplished scholar as the finest exercises of the human intellect. "Where the party justifies the act upon the plea of distress, it must not be a distress which he has created himself by putting on board an insufficient quantity of water or of provisions for such a voyage; for there the distress is only a part of the mechanism of the fraud, and cannot be set in excuse for it; and in the next place the distress must be proved by the claimant in a clear and satisfactory manner. It is evidence which comes from himself, and from persons subject to his power, and probably involved in the fraud, if any fraud there be, and therefore it is liable to be rigidly examined."

The last point which is to be considered by the Court is a right which has been set up by the claimant to enter the ports and harbours of this Province, and there to cure the fish which he may have taken in the course of his fishing voyage. And certainly if such a right exists, the principles of law which I have laid down with so much care will not be applicable to this vessel unless proof shall have been made of an *actual trading*. Because it would not be consistent to permit foreign vessels to enter these harbours for a certain purpose, and then to make that entry a ground upon which to raise the presumption of illicit trade. This right is asserted to belong to the citizens of the United States, under the treaty of peace entered into between His Britannic Majesty and the Government of that country in the year 1783; and it is contended in the first place that a right to take fish on our coast, and in our harbours and bays, and to cure the same

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on the shores of this Province, was *absolutely acknowledged* and *given* by the third article of that treaty; and in the second that admitting the treaty granted only a *privilege* to do so, that such privilege still exists because the treaty itself has not been annulled. This question now presents itself in a way which obliges the Court to enter into the full consideration of the right here asserted; for although it has already determined that it cannot take cognizance of it as a direct charge against this vessel, having no authority so to do, yet as it becomes essential to the determination of the second point in this cause, as it arises incidentally out of the consideration of the municipal laws of the country, and as it must be entertained in order to do justice to the parties whose private interests are involved, it is its duty to sustain it, and to place it in such a point of view as may put an end to those doubts which some have affected to indulge on this subject. It might be sufficient for me to say on this point that His Majesty's Government having determined that the privileges granted to the citizens of the United States by the treaty of 1783, to carry on the fishery upon the coasts of this Province, and to cure fish in the harbours thereof had ceased; and that determination having been made known, it would not be necessary to consider this right as entitled to any attention. But as it will require but little reasoning to show the weakness of such pretensions, I shall take a cursory view of the grounds upon which this extraordinary right seems to have been placed.

It will not be requisite for me in this case to enter into those general considerations of the rights of nations to a dominion of the sea which have occupied the attention of the Gentlemen of the Bar. Very able writers on abstract law have differed, both as respects the right of dominion over particular parts of the sea, and also as to the distance from the shore over which a nation holding the land might exercise the rights of sovereignty. When these important points shall be submitted to the Court in a way which will render it incumbent on it to determine them, it will not shrink from so arduous a task, neither will it despair of placing them on grounds which may find their support in the sound principles of general and universal law; principles which flow from the reflections of enlightened reason, corrected and confirmed by the usages and customs of the civilized world. It will hope that those contradictions which may have been observed in the best writers are to be reconciled by an attention to the characteristic circumstances of the different ages in which they thought and wrote; and by an allowance for the influence which the fluctuating relations, the jarring interests, and the various modifications of the claims and pretensions of nations cannot fail to produce upon the most reflecting mind. Much of that difference found amongst writers of this description may be traced to the prevailing public sentiment, to national prejudices, and even to the eccentricity of individual opinion. But whatever the difficulties are which those great questions might present, they do not meet the Court in this case. It is only necessary, in order to see the simplicity of this point, to read the article of the treaty on which the claim is founded, and to determine whether that treaty exists at the present time. The words of the third article of the treaty are:

“It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand bank and on all other banks of Newfoundland, also in the Gulf of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have *liberty* to take fish of every kind, on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen islands and Labrador, so long as the same shall remain unsettled, but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.”

Now it is impossible to imagine words more clear than those. Two objects seem to have been in view—the first was the fishery on the Grand bank, in the Gulf of Saint Lawrence, and other places in the sea; and the second was the *privilege* which was intended to be granted to the people of the United States to take and cure fish on the coasts, and in the bays, creeks and harbours of the British dominions in North America.

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It would seem that the intention of the British Government at the time was to acknowledge an *absolute right* in the people of America to fish on the Grand bank of Newfoundland, in the Gulf of Saint Lawrence, and other places in the sea; but the Court is not called upon in this case to determine that point. As respects the latter part of this article it would be confounding all ideas of common sense, and throwing obscurity over the ordinary perspicuity of language, to contend that the word *liberty*, here used, can be conceived to convey an *absolute unqualified* right. That it was received as a privilege at the time, and has been exercised as such until the late war cannot be doubted. By accepting such privilege that Government acknowledged the right to exist in Great Britain, and the only question left for the slightest consideration is whether that treaty is now in force or not?

It has been ingeniously argued on the part of the claimant in this cause that the treaty of 1783 is now in force, because the late war being for a cause entirely new and distinct from the subjects of contention which were terminated by that treaty, the declaration of war by the United States was not a violation of any of its articles. And the words of some eminent writers would seem to support such a doctrine; but a little attention to this subject will explain the grounds upon which the true and sound doctrine firmly rests. Grotius, book 3, cap. 20, section 27, has these words "It is also a daily dispute when a peace may be said to be broken, which the Greeks call *Paruspondema*: for it is not directly the same thing to give a *new* occasion of war and to break a peace. But there is a great difference between them as well in regard to the penalty which the breaker incurs as with respect to the liberty of the injured party to disengage his word in the other articles of the treaty."

In a note however to these words the principles as received in modern times, and the reason upon which they are founded, are clearly laid down and explained. "When a new occasion of war is given in this manner the treaty of peace is thereby broken indirectly; and with regard to the effect, if satisfaction for the offence be refused. For then the offended having a right to take arms in order to do himself justice, and to treat the offender as an enemy against whom every thing is lawful, he may also undoubtedly dispense with observing the conditions of the peace, though the treaty has not been formally broken with regard to its tenor. This distinction can scarce be of use in these days, because treaties of peace are conceived in such a manner that they include an engagement to live in amity for the future in all respects, so that the least occasion of war how *new* soever it be may be deemed an infringement of the most important articles of the treaty. It will be found that the treaty of 1783 contained an engagement that there should be a firm and *perpetual* peace between the two countries, and that such engagement was violated by the declaration of the late war no human being can be permitted to doubt. I am therefore bound to declare that the treaty of 1783 and all the privileges depending thereon have ceased.

I have now fully considered the grounds of defence in this case, and as I do not perceive either truth in the distress or strength in the right set up by the claimant, I feel myself compelled to pronounce this vessel and the goods laden on board of her to be liable to confiscation for a violation of the laws of trade and navigation.

In pronouncing this judgment, I derive a consolation from the reflection that my errors may be corrected by an appeal to one of the most upright and learned Judges the world ever saw. From the decisions of that tribunal I have humbly endeavoured to draw the principles which should govern me; and I trust that when the solemn scrutiny to which this decree is open shall be made, it will be found that while my labours were directed by a sacred regard to the interests of an obscure and indigent foreigner, I did not forget the rights and claims of every British subject, nor relax by a feeble construction that noble system of laws upon which the wisdom of ages had reared our national prosperity and greatness.

No. 2.

The following circular with the subjoined interrogatories was addressed to various persons thought most competent to afford information on the subject of the inquiry by the Committee:—

SIR—The Committee appointed by the House of Assembly to define the true meaning of
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of the treaties now in force regulating the fisheries of Nova Scotia, to inquire into the state of that branch of industry, and to take evidence relating thereto, being desirous to obtain every information previous to their report on these important subjects, respectfully request answers to the following queries, marking your reply to each question with the number to which it refers; and stating also whether your opinion is founded on facts within your own knowledge, or is the result of general knowledge and experience acquired in the course of business. The Committee being desirous of reporting speedily, request answers as soon as possible. It would add to the weight of the evidence if the facts should be verified on oath.

Your obedient servant,

JAMES B. UNIACKE, *Chairman.*

Assembly Room, Provincial Building, 20th February, 1837.

No. 1. What is your profession? Have you any knowledge of the fisheries and commerce of this Province, and how long have you been engaged therein?

2. Have the fisheries and commerce of this Province been injured by the operation of the definitive treaty of peace concluded in 1783, between His Majesty and the United States of America? Specify particularly how and in what manner that treaty has been prejudicial to the commercial interests of this country?

3. Set forth how and in what manner the fishery carried on from the United States operates to the disadvantage of the British fisheries in North America.

4. Have you any and what knowledge of the fisheries appertaining to that part of the coasts of Newfoundland, the Straits of Belleisle, Labrador shore and Magdalen islands, upon which a right to take and cure fish under certain restrictions has been ceded to the people of the United States under the convention concluded at London, October 20th, 1818, between His Majesty and the United States' Government? State your knowledge, how obtained or acquired, and make an estimate of the value between the fishery granted by the convention to the United States and that still retained by Great Britain in North America, comparing them.

5. Have the citizens of the United States violated the terms of the convention by encroaching on the fishing grounds, still exclusively retained by Great Britain? Describe how, when, and in what manner.

6. Do the American fishermen catch bait on the shores of this Province and purchase bait from the inhabitants, and what is the effect thereof?

7. Do the people of the United States frequent the shores of Nova Scotia and conduct their fishery within three marine miles thereof? Do they interfere with the net fishery on the shores? Do they by artificial means raise shoals or schools of fish within three marine miles of the shores of the Province by means of bait prepared for the purpose, or by any other means, and lure them beyond three marine miles into deep water, and what is the operation of such system on the shore fishery?

8. Do the people of the United States enter the harbours, bays and creeks of Nova Scotia, trade with the inhabitants and barter goods and merchandize for fish, and do they by such means supply the inhabitants with contraband and foreign commodities, and smuggle to a great extent? Answer fully to this query, and how the Provincial revenue is affected thereby.

9. Is there any and what net fishery, and to what extent carried on from this Province beyond the limits of three marine miles from the shore? Is not a fishery of some importance prosecuted on the shores of islands belonging to Nova Scotia within and beyond three marine miles of the shores thereof; and when the Americans come within the head-lands, keeping three marine miles from the shores in the bays and harbours, are they not in the midst of the net fishery?

10. Do the Americans and the people of Nova Scotia differ in the construction of the treaty of 1818? The latter asserting that the former have no right to approach the shores of Nova Scotia nearer than three marine miles from the most projecting headlands, and then only for shelter, and to purchase wood and water; provided they have sailed from their own country fully and efficiently equipped for the voyage—and the former claiming and exercising much more extensive rights.

11. Has the permission granted to the American fishermen to take fish within three marine miles of the shores of this Province, and their system of jigging and catching

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catching them, operated in any respect, and how to the prejudice of the British fishery?

12. Does the American Government or the Government of any particular State, allow any and what bounty to encourage the cod, salmon, mackerel and herring fisheries? Is such bounty allowed on salt, tonnage or catch?—Does the American Government impose any and what duty on the productions of the British fisheries, when imported into the United States?

13. Where are the best markets for the produce of the British Fisheries? Does the United States afford a good market for the same?

14. Do you consider that American fishermen have a right to pass through the Gut of Canso under the convention of 1818? Can they so pass without being within three marine miles of the shore, and approaching the most important fishing stations of that part of the Province?

15. Can you speak as to the value of the salmon fishery on the coast of Labrador, and to what extent trade is carried on with the natives of that country in furs, skins, feathers, oil or any other commodities. Please to set forth particularly what you know on these subjects.

16. Describe how the fisheries on the coast of Labrador is carried on, whether in boats or decked vessels, and at what distance from the land.

17. Do you know whether American or British fishing vessels are outfitted and navigated at the cheapest rate? State the comparative expenses, so as to shew in what manner the advantages appertain to either side.

18. Have you known any and what instances in which British fishermen have been forcibly prevented by the American fishermen, or citizens of other nations, from carrying on their fishery? State what you know as to any violence offered to British subjects on their own shores, or at sea, by those people.

19. Are you aware of any means by which the American fishermen can be prevented from usurping rights and privileges on the British shores, differing from those ceded to them by the convention of 1818? Set forth particularly what system will be most efficient—would the employment of steam boats or fast sailing cutters be useful, and which of the two in your judgment would be preferable?

20. Have the British fisheries and commerce suffered more from the convention of 1818, than under the treaty of 1783? Can you make any comparative statement of the difference in operation?

21. Turn your attention generally to the subject of this inquiry, and state any matter relative thereto, which may not have been set forth, and particularly explained in your answer to the foregoing queries; and state your opinion of the evil resulting already, and the consequences to be apprehended, if some prompt measures are not adopted to protect the inhabitants of the Colonies in the enjoyment of their natural and inherent right of fishery.

22. If the British Government does not enforce the convention of 1818, would it not be more beneficial to the inhabitants of Nova Scotia to permit the Americans to reside and form establishments in the Province, and conduct the fishery from the shores thereof—they reciprocating such privileges, and allowing the produce of the British fisheries to be imported into the United States duty free?

To which interrogatories the following answers were received from various persons to whom such circulars were addressed.

1. A merchant.

2. By what is called lee bowing—viz. running to leeward of the British vessels who are in the midst of a school of fish—causing the windward vessel the search for another with the uncertainty of finding and raising it; also by throwing overboard the gurry of their large fish. Where the Americans do not fish within the prescribed limits, they keep the gurry of some days fishing on board, until there is what is called a slack in fishing, by storms, &c., then they run in shore and throw it overboard; sometimes this is where the boat fishing is carried on. It immediately follows that at this place no fish is taken for some time afterwards. Also by running along shore at night, and taking whatever fish are in the nets of the inhabitants, who are thereby deprived of bait for boat fishing next day.

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5 and 6. Answered above.

7. Large number of American fishermen were in Saint Mary's Bay last season for many weeks—was said at the time that they were sailing as Grand Manan fishermen; and where they did not resort to this disguise they were commanded *pro tem* by persons hired from the shores along the Bay.

13. The Mediterranean and West Indies.—In 1836 the United States was a good market for pickled fish.

17. British vessels were in 1836 fitted out at least expense—hired wages and salted provisions and salt were much less in the western part of Nova Scotia than in the United States.

19. Seizure (by any person having authority so to do) where the treaty is violated would have the effect of keeping American fishermen within their prescribed limits. The seizures made by His Majesty's sloop Wye, in the year '18, in the Bay of Fundy, had the effect of driving them off for many years succeeding.

22. A doubtful measure, and requires so much consideration that I am at present unable to answer it.

JAMES H. F. RANDOLPH.

1. I have been engaged in ship building, navigation, fisheries and commerce for some thirty years.

2. The treaty of 1783 has been highly prejudicial to the fisheries and commerce of this Province generally. The Americans throw over their garbage, to the destruction of our fisheries in the Bay of Fundy. They come in of nights, set their nets outside ours, watch them by night, take bait themselves, and prevent the fish coming into our nets, and barter their notions with our shosmen and boat fishers for their fish. They claim a right to come in of Saturday night and remain till Monday morning, which gives them two nights to take bait—agree with the inhabitants to set their nets on shares, and communicate respective wants and wishes by the sounding of horns. These fishermen have occasionally been detected with pretty good assortments of dry goods and groceries; and they doubtless carry on smuggling in a greater or less degree in every part of British America to which they are admitted.

3. See No. 2.

4. Have been master of my own vessel on the coast of Labrador, where the Americans, by having first arrived and taken possession of the best fishing harbours to the exclusion of our vessels, of course had a very decided advantage over our vessels. And in comparing their bills of *outfits* with mine they appeared to have the advantage by about *one third*.

5. The citizens of the United States are continually violating the terms of the convention of 1818, by their encroachments on the fishing grounds still exclusively retained by Great Britain.

6. The Americans have no hesitation either in taking bait with their own nets on our shores and in our harbours by night. In fact in our more obscure harbours where the inhabitants are unable to protect their nets, the Americans take them up and set their own in defiance, stoning them and their houses; strong complaints of such conduct have been forwarded to the Provincial Secretary by the inhabitants of Petite Passage, through the Colonial officer (Mr. Morton), Digby.

7. The people of the United States do frequent the shores and harbours of Nova Scotia, and fish within *one* mile of the shores—having their nets for bait fastened to their fishing boats. For the two last seasons schools of mackerel have run in quite to head of Saint Mary's Bay, some thirty or forty miles within the headlands—it being from one to three miles wide—and the Americans pursued and took them in defiance of our fishermen and inhabitants, and loaded several vessels with them.

8. The American fishermen occasionally bring quantities of dry goods and groceries to the injury of our commerce and revenue. The Colonial officer, Digby, has made a number of seizures.

9. We have no net fishery in this part of the Province beyond our harbours.

10. People of Nova Scotia differ very widely from the Americans as to the treaty of 1818, as even the best disposed of the latter claim a right to approach our shores and set their nets for bait, &c.; enter our harbours and procure bait in a friendly way of whomsoever they may be able to obtain it; neither do the Americans calculate their

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three marine miles as being beyond a line from the *head* lands—but as *beyond* a line *curving* and *corresponding* with the shores, and the Americans are also in the habit of evading that treaty, and of coming into our harbours whenever they please, and for whatever purpose they please, by just allowing their water to *leak* out.

11. Great and many are the complaints against the Americans' practice of jiggling fish, as in consequence many are wounded and die, and the shoals are broken and dispersed, and even the treaty itself, however strictly fulfilled, would be quite ruinous enough to our fisheries.

12. The American Government give a bounty both on tonnage and catch, and impose a duty on our fish.

13. The last season the United States offered a good market for our fish. Should generally suppose that South America and the Mediterranean would afford a better.

14. Cannot conceive that the Americans have a right to pass to Gut Canso, as they cannot do so without infringing the treaty in a greater or less degree.

15. Cannot speak with accuracy as to the salmon fishing on the coast of Labrador.

16. The cod fishery at Labrador is carried on in boats at from one to ten miles from where the vessels anchor, and at from ten rods to a mile from the shore, as the caplin bait may abound and press on the shores.

17. The American vessels are certainly fitted out at less expense than ours.

18. Violence has occasionally been offered by the Americans to our people, more particularly at the Petite Passage, Digby Neck, reference to No. 6.

19. Certainly should consider a steamer by far the most eligible and efficient means of protecting our fisheries and commerce from the encroachments of foreigners of every description.

20. I humbly conceive our fisheries have suffered more from the convention of 1818 than the original treaty 1783; both however are unpardonably bad; in fact how can available treaties ever be made with those *fish hawks*. They are perfectly acquainted with the resorts of all the fishing tribes, and know when and where to pick for them—and in point of position enjoy such decided advantages; for while our baymen have to sail round the compass to make Canso, they just start from their different ports with flowing sheets, and make a straight course of it. They just follow the different schools into the bay, set their nets along the shore from the entrance to Scotch Bay, cross Digby Neck in a sociable way, walk over to Saint Mary's, and take bait out of the wears when wanted.

21. If some prompt and speedy measures are not resorted to for the protection of our natural and inherent rights of fishing, it requires not the gift of prophecy to foresee the utter destruction of that valuable branch of our commercial wealth and Provincial revenue.

22. It would require a wiser head and an abler pen to suggest the best means of adjusting the many difficult questions of the fisheries with our American neighbors, as all the grounds for the protection of our natural and inherent rights which the British Government have hitherto attempted to set up in our behalf have proved perfectly futile and unavailable. What then can be done? If a door is once opened for their *free* admission, should we not speedily be crowded to suffocation—and could that door ever be shut again—and where would it end—and what would be the consequences; we would all very sincerely and ardently wish to promote the present cordial good feelings—still to purchase their friendship at the expense of our own existence would be paying dear indeed. Should the case be clearly and kindly stated to the American Government, and their assistance respectfully requested in aid of our *prudent* but *firm* and *persevering* determination to protect those native and inherent rights, perhaps it might prove effectual.

I have the honor to be, Sir,

Your most obedient and humble servant,

THOMAS SMALL

Answers to sundry questions of the Committee of the House of Assembly for inquiring into the state of the fisheries, and the encroachments thereon by the Americans and others—
by JOHN BARSS, of Liverpool.

Answer to first question. I am by profession a merchant, and have been engaged in and connected with the fisheries and commerce of the Province upwards of five and twenty

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twenty years, and will answer as far as my experience to such questions as I am best acquainted with.

Question No. 3. The mackerel fishery carried on from the United States in the Bay Chaleur, where the fish resort for the purpose of spawning, is destructive to the net and seine fishery on the shores of Nova Scotia; for the fish being detained in the bay by the food thrown to them from the vessels till the season of their feeding on the shore of Nova Scotia is past, they pass to the westward at a distance from the shore too great to permit their being taken with nets.

Question No. 5. The statement given by Charles Steward, and enclosed with this, will shew that the citizens of the United States do encroach on the fishing grounds on the shores of Prince Edward Island and Cape Breton, where the mackerel are principally taken by them.

Question No. 6. Several of the American fishermen are in the habit of frequenting the harbour of Liverpool in the fishing season for the purpose of procuring bait, which they purchase from the people, and pay for in pork, bread and other articles—as early in the season they cannot procure bait on the fish banks, but must resort to the harbours for it.

Question No. 12. The American Government allows four dollars per ton bounty on vessels employed in the cod fishery, but none on the mackerel fishery, or any other that I am aware of.

Question No. 16. The fishery on the coast of Labrador is carried on in boats, the vessels lying at anchor in the harbours. The fish are chiefly taken near the shore, say within a mile. The French vessels lying on the north side of Newfoundland have shallops which they send to the Labrador coast, but chiefly fish in deep water in the straits where they catch the largest fish.

Question No. 19. To prevent the American fishermen from usurping rights and privileges on the British shores, differing from those ceded to them by the convention of 1818, I would not employ steam boats or cutters, or any vessel conspicuous enough to alarm them, but would rather place proper officers and men on board jebucto boats or schooners, such as are employed in the fisheries, and disguise both vessels and crews as fishermen, that they might sail among them without being known, and should a few of them be caught violating the treaty and condemned, it would doubtless have the effect of deterring them at least for some time.

Question No. 22. I am decidedly of opinion that it would be of advantage to the Province to permit the Americans to reside and form establishments in the Province, and conduct the fisheries from the shores thereof, they reciprocating such privileges, and allowing the produce of the British fisheries to be imported into the United States duty free.

The above are all the questions that I can answer by this opportunity, as owing to the non-arrival of the mail last week, I did not receive the circular till yesterday morning, but should any thing upon the subject occur to me upon further consideration, I will communicate it by next post.

In the mean time,

I remain your obedient servant,

Liverpool, 11th March, 1837.

JOHN BARSS.

W. B. Taylor, Esquire, M. P. Halifax.

Halifax, N. S. 23d February, 1837.

SIR—We have received your circular of 20th instant, addressed to us, as Chairman of a Committee from the House of Assembly, appointed to inquire into the state, &c. of the fisheries of the Province. We have to regret that our information upon these subjects is so limited as to enable us to give answers to but few of the questions put to us; we deem it, however, our duty if we can afford the Committee any information to do so, and accordingly very respectfully offer the following answers.

We are, Sir, your most obedient servants,

D. & E. STARR & Co.

James B. Uniacke, Esquire.

No. 1. We have been engaged in mercantile pursuits since the year 1825—in the fisheries to a very limited extent, but principally in the export of fish to distant or foreign markets.

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3. It is evident to us that the fishery carried on by the Americans operates much to the disadvantage of our fishermen, but their ill success we cannot impute entirely to that cause—there is more exertion and enterprise on the part of the Americans; they are upon our fishing grounds, and sometimes with full fares, before all of ours have left their harbours; they have a double advantage in the bounty granted by their Government, and the duties levied upon foreign caught fish. We think the boat fishery suffers much from the Americans, but our entire want of knowledge of facts precludes us giving any satisfactory proof upon the subject.

8. The people of the United States do frequent the harbours, bays, &c. of Nova Scotia—they purchase fish and oil from our inhabitants, and pay for the same in tea, tobacco, shoes, and such articles as they require, and sometimes with what they don't, and occasionally give money, amongst which it sometimes happens that counterfeit dollars and spurious notes are detected, *and this fish and oil is taken into their ports as caught by themselves, and consequently free of duty.* Such a traffic deprives the revenue of a large amount of duty, the Province of a valuable export, and the merchant who has supplied those people with their outfits of his payment—the earnings of the fishermen are squandered in useless traffic, his credit is destroyed, and his time completely lost to the country; whereas if a stop was put to their trading in our harbours a much greater source of valuable export would be brought to the capital, and the credit and the means of our fishermen would annually increase.

12. The American Government allows a bounty upon the cod fishery, but upon reference to their Act of 19th June, 1813, which we believe has not since been altered, we cannot find that any such support is afforded to salmon, mackerel or herring fishery, but upon the export of pickled fish cured with foreign salt a debenture of twenty five cents per barrel is allowed. The bounty on the cod fishery is upon the tonnage of vessels; viz.: from five to thirty tons, employed four months in the fishery, three and a half dollars per ton; and over thirty tons, for the same period, four dollars per ton; and over thirty tons, with a crew of not less than ten persons, employed three and a half months, three and a half dollars per ton. No vessel can pursue the fishery without a license, and cannot obtain a greater bounty than three hundred and sixty dollars. The duties imposed by the American Government are upon cod or any kind of dried fish, one dollar per 112lbs.; salmon (smoked); one dollar ditto; salmon in barrels, two dollars each; mackerel, one and a half dollar ditto; all other kinds of pickled fish, one dollar per barrel.

13. We consider South America and the West Indies to be the best markets for our fish. The American markets do occasionally offer some encouragement for pickled fish, and it appears to us the day is not far distant when they, with Upper Canada, will require all the pickled and even a great part of the dry that we can take, were the American duties taken off or even reduced; a very small reduction in their prices would be caused thereby, and the value of fish caught by our people much enhanced. Could such a measure be effected, it would be the best bounty our fishermen could receive, the encouragement to fit out a greater number of vessels could be increased to such an extent that we could still give supplies to those places to which our trade is now principally, indeed almost exclusively directed, besides the large proportion of the catch which would naturally find its way to the United States.

17. At present our vessels for the fishery can be fitted equally as cheap as the Americans, which hitherto has not been the case; pork, bread and flour being quite as low here as in the United States; the American pays a duty upon his salt of two cents per 56lb, and upon his fishing nets and lines five cents per lb, consequently in those duties he contributes largely towards the bounty he receives, which, in reality, to a large extent is only a debenture. Upon those articles our fishermen pay no duty, and therefore so far they both may be nearly equal, but the duty upon foreign fish is the bounty and encouragement received by the Americans.

We think the employment of fast sailing cutters would be very effective, and the most economical for protecting our fisheries, and protecting the encroachments of the Americans; steam would perhaps be the most effectual, but the expense too great—the cost of four vessels for the fishing season would be fully made up by the surplus revenue, directly and indirectly obtained. Those vessels of fifty tons, manned with twelve persons each, employed seven months in the year, would be furnished at an expense not over £2,500 for the season.

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21. It appears to us that, through the British Government, negotiations might be made with the United States to induce them to take off the present duties. In the State of Massachusetts, from which the fishery is principally conducted, a strong feeling has long been evinced by the mercantile part of the population that they should not exist; and we understood, three years ago, that representations upon the subject, were made to Congress. At present twenty one of their States at least, in the consumption of fish, are taxed for the support of the fisheries, wholly enjoyed by the New England States; the consumption of the article has increased so rapidly, that the price is too high to make it any longer an article of export; consequently American vessels which formerly loaded at their own ports, are now sent to Newfoundland and Nova Scotia for cargoes. Unless some measures are adopted by the Province or British Government for the better protection of our fisheries, they soon will be completely usurped by the Americans, their numbers on our coasts, and in our harbours and bays, every year, are increasing to an alarming extent, and in the summer season, the Gulf of Saint Lawrence literally swarms with them.

22. It will never answer to allow the Americans to bring their vessels and supplies, and erect temporary establishments in our harbours, for the fishing season, and when that is over to remove with their fish to the United States; such a measure would to a certainty stamp our ruin. We however think as permanent settlers it would be highly advantageous for us to allow them to cure—it would bring industry, enterprise and wealth, to the country, but while the present duties exist they will never remove to our shores to be saddled with them; but if they could be got rid of, and it appears to us they are the great evil, and the principal barrier we have to contend with, there would be nothing to prevent our harbours being rapidly settled with Americans; they would be nearer the fishing grounds, and be enabled to obtain their fishing supplies quite as cheap as in the United States.

No. 1. Merchants and ship owners—possess some general knowledge of the commerce of the Province, having been engaged therein twenty five years.

2 and 3. By the third article of the treaty of 1783, the people of the United States were allowed to take fish on the banks of Newfoundland, in the Gulf of Saint Lawrence, and at all other places *on the sea* where the inhabitants of both countries used previously to fish: also on such part of the coast of Newfoundland as British fishermen shall use, and on the coast of all other of His Majesty's dominions in America. The permission to *dry and cure fish* by American fishermen was confined to the unsettled bays, harbours and creeks of Nova Scotia, Magdalen islands, and Labrador, or if settled, then by agreement with the inhabitants. The very extensive privilege thus conceded to the United States, together with the frequent relaxations of the navigation system of Great Britain, between the years 1794 and 1806, by which American vessels were permitted to carry to the West Indies fish and other Colonial products on the most favorable terms, while British vessels were subject to increased insurances and wages, impressments and other disadvantages, incident to a state of war, were, for the time being, highly injurious to the fisheries and commerce of this Province, and proportionably advantageous to those of our rivals. The renewal of those privileges, under certain limitations, and the grant of additional ones by the convention of 1818, with the aid of extravagant bounties from their Government, has enabled the Americans to increase their fisheries to an immense extent, and they have in consequence materially interfered with British caught fish in the markets of Europe, and almost wholly supplanted it in those of the West Indies not under the British Crown.

4. We are not as well acquainted with the extent and value of the fisheries on the north coasts of Newfoundland, Labrador, &c. as many of our neighbors. We believe the Americans have resorted thither in great numbers, and that the concessions made to them have been found of immense advantage to their fisheries.

5. It is alleged that the Americans carry on an extensive net fishery in the harbours at the Magdalen islands, contrary to the express terms of the convention, and that they have actually prevented British subjects from participating therein.

6 and 7. Not being directly engaged in the business of supplying fishermen and traders, we are unable to give that circumstantial information in reply to this and the two following questions, which may be afforded by many of our neighbors; but we

cannot afford to do so.

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are informed that about 70 sail of vessels resort to those Islands every spring to prosecute the herring fishery.

8. Our fishermen and traders complain that the whole of the eastern coast of this Province, and much of the western is lined with American fishing vessels in the summer season. That they do not confine themselves to the fishing ground allotted to them beyond three marine miles from the shore, but come into the harbours and supply the inhabitants extensively with foreign goods, only admissible into free ports on payment of duty, taking in return green fish, oil, mackerel, and other produce of our fisheries, to the serious injury of the honest trader and of the Provincial revenue.

9. The mackerel fishery, which is one of great value to the Province, is carried on principally within the limits of three marine miles from the shore; but there is reason to fear that this important branch of our industry has already suffered materially from the interference of the Americans, and their practice of throwing the offal from their vessels into the sea.

10. Whatever difference of opinion may exist as to their right, under the terms of the convention, we believe the Americans have freely used the privilege of coming to any part of our shores not within three marine miles from *land* (whether head land or bay) to fish, and are in the habit of entering our harbours, not only for shelter, but for other purposes, as mentioned in answer No. 8.

11. See answers to Nos. 5, 6 and 7.

12. We do not possess particular information respecting the bounties given in the United States. We believe the general government grants a bounty of 28 cents per barrel on the export of pickled fish, cured with foreign salt, being equivalent to the duty paid on such salt in the United States. In Massachusetts, a bounty of four dollars per ton is allowed (we believe by the State) on all vessels of a certain size, employed in the cod fishery during six months of the year. We are not aware whether the same is given by the other Eastern States.

13. The principal markets for dry fish, British caught and cured, are the British West India possessions, Spain, Portugal, the Italian States, and the empire of Brazil. Our pickled fish are consumed chiefly in the West Indies, the Canadas and New Brunswick. A large proportion of the salmon is shipped to the United States, and latterly mackerel have also been exported thither to some extent. Great Britain herself takes nearly the whole of the oil.

14. It may be doubtful, we think, whether American fishermen are actually precluded by the terms of the convention of 1818, from passing through the Gut of Canso, the distance of three marine miles, being the limit within which they are not allowed to *fish*; but if these waters be exclusively Nova Scotian, the Provincial authorities are perhaps competent to enforce such restrictions, with consent of the Parent Government, as will effectually prevent that passage being used by them.

15. The salmon fishery on the coast of Labrador is a very valuable one; it is carried on partially from this Province, but chiefly from Newfoundland, Canada, and the United States. The trade with the natives in furs, &c. is but little known here.

16. The fishery extends from the distance of a half a mile to between three and four miles from the shore: it is carried on by vessels of from sixty to one hundred tons burthen and upwards, which lie at anchor in the harbours, and send out their boats and crews to the fishing grounds.

17. The cost of outfit for a fishing voyage varies every year. In general the Americans have the advantage over the British; their provisions, canvas and some other articles required, being cheaper than ours, while iron, cordage, lines, &c. are procured at lower prices in the Colonies. At the present time there is but little difference in the price of provisions in the two countries, but heretofore they have been from fifteen to twenty per cent. cheaper in the United States. We are not possessed of sufficient data to enable us to make an exact comparison of the cost of outfit here and in the United States.

18. There have been numerous complaints made of the interference of the Americans and French with our fisheries at the Magdalen islands, on the coasts of Labrador and Newfoundland, and for some recent acts of violence committed by subjects of both these nations—we beg to refer particularly to a pamphlet submitted by Mr. George Handley,
of

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of this town, to the Honorable the House of Assembly during the present Session. It appears to have been the opinion of the naval officers employed to protect our fisheries—that the Americans are entitled by the convention of 1818 to fish in the *harbours* of the Magdalen islands, but it will be seen by reference to that document that no such right was ever intended to be conceded to them—the terms employed being “on the *shores* of the Magdalen islands,” and also on the “coasts, bays, harbours and creeks,” of the coast of Labrador.

19. We are of opinion that small armed vessels, well manned, and calculated to sail fast, would be the most efficient for the protection of the fisheries and prevention of smuggling on our shores. The knowledge that a few such vessels were actually employed would go far to prevent the encroachments and illicit traffic now complained of. We consider that any sum of money which could be spared for this service would be more advantageously employed in sailing vessels than steam boats, owing to the great expense attending the latter.

20. The advantages gained by the Americans under the convention of 1818 are greater we conceive than those conceded by the treaty of 1783; but we cannot undertake to make a comparative estimate of the actual difference. We would observe that the fishery in the Gulf of Saint Lawrence, which was allowed to the Americans by the treaty, is not specified in the convention, but is probably conceded under the general permission to fish any where, not within three marine miles of the shore.

21. We consider that the protection and encouragement of our fisheries is at this moment a question of vital importance to the interests of this Colony. For several years past the price of codfish in this port has been so high as to occasion a large import from Newfoundland to supply the additional demand, created by vessels not owned in the Province resorting here for cargoes; and such must continue to be the case until more efficient means are adopted to increase the catch of this staple export, and protect the rights of our fishermen. We think the employment of additional capital in the cod and mackerel fisheries, by parties living in convenient places for conducting them, an essential point; and that larger vessels, suitable for the bank fishery, should be more generally employed. It is notorious that our fishermen on the shore do not follow the business with that energy which is requisite to ensure success, but by dividing their time between coasting, farming and fishing, they fail in producing any good result. To induce capitalists to embark in the business, it is of the first importance to restrain foreigners from fishing within the limits of treaties, and thus secure an undoubted and undivided right to the inshore fisheries to British subjects.

22. We do not conceive that it would be possible to enter into any arrangement of the kind here suggested, without conceding much greater advantages to the Americans than any equivalent they have to give in return; former experience teaches us that their diplomatists understand the art of making commercial conventions and treaties much better than ours; but as respects this proposal, it requires but little foresight to discover that they would gain upon us immeasurably by it, if adopted as the basis of a new arrangement. If we allow them the right of fishing on our shores the numbers will of course be much greater than now, while they are regarded as intruders; and undoubtedly a very large proportion of our fishermen will be employed in American vessels, the produce of whose labor will be transferred to the United States. And what are we to get in return? They have no shore fishery of any value to offer us a share of, and as to their market for codfish it is seldom higher than our own, after deducting freight from this Province to their ports. A removal of the foreign duty on this article in the United States would therefore be of no advantage to us, and as respects pickled fish it would only be the best qualities, such as salmon and No. 1 and 2 mackerel, which would be enhanced in value *materially* by free admission into their ports. It cannot, however, be contended that these articles are now too low to remunerate the fishermen, and it is a well known fact that had the catch been quadrupled the last two years advantageous prices would have been obtained for the whole; but if as a commercial speculation, the bargain would be a bad one for us, its consequences in a political point of view would be still more disastrous, and we cannot believe that such a proposal would be listened to for a moment on the other side of the Atlantic.

JOSEPH ALLISON & Co. Solicitors

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New Glasgow, 11th March, 1837.

DEAR SIR—In answer to your letter of the 20th February, I beg leave to transmit the following remarks:—

No. 1. I am a Farmer, but have partially engaged in trading to Chebucto Bay for the last fourteen years.

2. Not competent to give an answer.

3. They pick up the fish, and materially shorten the catch.

4. The Americans are in the habit of harbouring in the harbours of the Magdalen islands, in May, and taking large quantities of herrings in seines, in larger quantities than they are enabled to cure, which must be very injurious to the fisheries.

5. They do, by fishing within one mile, at Point Misco, Bay de Chaleur, Prince Edward's Island, and the Magdalens', in 1836, and past years, hooking mackerel and codfish.

6. They do purchase bait from the inhabitants in exchange for tobacco, tea, &c., by which contraband trade is encouraged, to the injury of the honest trader.

7. They do, and raise schools of fish near within one mile of the shore by throwing over ground bait, and the driving them off into deep water, by which means the shore fisherman is deprived of his natural privilege.

8. They do regularly attend at the fishing establishments in Chebucto bay, and purchase fish for cash and other commodities.

9. Am not aware of any net fishery beyond three miles. When passing through Little Canso they materially affect the net fishery.

10. We are aware they wood and water in the harbours adjacent to the fishing ground.

11. By coming as near as one mile from the shore, and drawing schools of fish, and decoying them to deep water by means of ground bait.

12. It is generally understood they have a bounty, but I am not sufficiently acquainted to go into details.

13. I am aware the market in the States is good, but the restrictions to British bottoms affect the market.

14. Do not know the convention of 1818. They cannot pass without approaching within half a mile of the shore.

15. They do trade, but cannot say to what extent.

16. Chiefly in boats, at various distances.

17. Cannot say particularly.

18. They have been known sometimes to interfere with our fisheries.

19. A small armed vessel disguised, so as to appear as much as possible to resemble a trader, would in my opinion suit best.

20. Cannot say.

21. If the fishing decreases at the same rate for the four succeeding years as it has done for the past, the fishing will not be worth attending to.

22. Keep the Americans from the fishing ground if possible.

James B. Unincke, Esquire.

WILLIAM M'LEAN.

Pictou, March 14, 1837.

SIR—Immediately upon receiving the circular letter of the Committee of the Honorable the House of Assembly, whereof you are Chairman, I set about making all inquiries necessary to enable me to answer a few of the questions put. I now beg leave to forward two affidavits of individuals well worthy of credit, calculated to satisfy the Committee in a great measure in reply to queries 5, 7, 8, 9 and 11. From knowledge obtained during 16 years, and in my capacity of inspector of fish for the last eight years, and frequent communications with many persons engaged in the fisheries of this Province, I am enabled to state that there exists a very general dissatisfaction on their part, at the manner in which the fishing grounds are constantly invaded by the subjects of the United States, and from knowledge generally obtained, I am enabled to state that our fellow subjects are virtually excluded from any thing like a fair participation in a fishing which by right belongs to them. Americans are a bold, daring, and enterprising people, and unhesitatingly lay hold of every possible commercial advantage that presents itself, and while on this account they are not the most scrupulous observers of the rights of their neighbors, they are for the same reason most

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most punctiliously jealous of their own. They are moreover a nation of *capitalists*, and spare no expense in the prosecution of their object—their fishing vessels being of the most approved description, manned by men individually having an interest in the adventure, and who consequently pursue the fishing with the most unabating zeal. Our fishermen on the contrary are very poor—our vessels not calculated for the business—add to this they cannot move on our own fishing ground without being interrupted and jostled by these foreigners—on every tack insulted, brow beat, and their property destroyed within hail of our very shores—and it is no matter of surprise that our fishermen exclaim in bitterness of spirit that it is unfortunate for them to have been born under the British flag, a flag that protects the oppressed around the globe (them excepted). It is grievous to a loyal subject to perceive the tone of alienated feeling that now prevails among the hardy fishermen of our shores in consequence of daily and repeated violation of their rights by the haughty citizens of the neighboring republic, the infringement of rights solely and wholly theirs, and which affords this enterprising people a source of incalculable wealth. Whoever refers to the well known fact that our waters are completely studded with their vessels, ably, diligently, and successfully fishing during the whole season, will readily admit the correctness of the foregoing assertions—ninety of their vessels were at one time to be seen fishing from an island at the mouth of the harbour of this port, and consequently within our head lands.

In order that I might be enabled to give every possible information to your honorable Committee on this most important subject, I called a meeting of our merchants and others interested in the commerce of the Province, which took place in the Court house. I have now the honor to state their satisfaction at the earnest and comprehensive manner in which the Committee has taken up the subject, and that it is an earnest of your determination that the aggression complained of will not be any longer submitted to. The gentlemen present seemed unanimously impressed with a very strong and unpleasant conviction that no sufficient protection was afforded to our fisheries by the British Government, whose ships of war might as well remain on the other side of the Atlantic for all the service they have ever been to the fisheries of Nova Scotia. It was suggested in adverting to your 19th query, that if the question of right were properly described and settled between the two Governments, there would probably be no occasion of an armed defence of our rights, but if so, cutters supplied with sweeps would be the most efficient description of vessels for the purpose.

Respecting query the 22d—It was the unanimous opinion of the meeting that it is incumbent on the British Government to insist on a strict compliance with the treaties on the part of the United States of America; but it was also fully admitted when these treaties were respected, there could be no just reason why natives of America or any other country should not be allowed all the privileges of British subjects, they becoming *bona fide* residents of the Province, purchasing lands and investing capital among us, but on no other condition; as granting them the privilege of fishing on any other terms would but open the door for the evasion of the treaties, when all the benefits of fishing would be altogether in their favour, while the superiority of the American markets is admitted, to open it to us would do no more than open the door to competition between our fishermen and theirs, which it is to be feared, instead of improving our condition might possibly make it worse, as we are not, and little likelihood for a considerable time of being, able to enter into a successful competition. My remarks have been drawn out to a greater length than I could have wished, but hoping they may not be considered impertinent,

I have the honor to subscribe myself, Sir, your most obedient servant,

A. D. GORDON.

To James B. Uniacke, Esquire, Chairman.

SIR—In answer to your letter of the 20th February, and in compliance with the request of the Committee, to inquire into the state of the fisheries, I hereby reply to the queries therein, as far as my knowledge extends; where I have expressed my opinion, it is the result of general knowledge and experience acquired in the course of business. What I have stated positively, are facts within my own knowledge.

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As regards treaties, not having them at hand to refer to, I have refrained giving an opinion upon the operation of them.

Your obedient servant,

GILBERT R. TUCKER.

Montegan, Clare, 11th March, 1837.

No. 1. I am a trader, have been in the habit of supplying fishermen in open boats, along the shore of the bays, and Cape Saint Mary's, eight years—I have been accustomed to the trade of the lower part of the County of Annapolis from my infancy; what knowledge I have of the fisheries and commerce of this Province, have been principally acquired by those means.

2. I am not prepared to say what effect the operation of the treaty of peace of 1783, had upon the fisheries or trade of this country, as I do not know what privileges were ceded or gained by it on either side; I think it has operated injuriously, inasmuch as the Americans have been made bold to approach our shores, interfering in our fisheries, injuring our trade and revenue, by bartering goods with the inhabitants for fish.

3. The fisheries carried on from the United States operate to injure our fisheries, because they encroach on our fishing grounds, scatter the fish, and drive them away by their carelessness in throwing overboard the cleanings of their fish.

4. I am not acquainted with the fisheries of those places, cannot give the information required.

5. I am not informed, consequently cannot give the necessary information.

6. The Americans catch bait, and purchase from the inhabitants on the shores of this Province; the consequence is, they pursue their fisheries more successfully in our waters by getting plenty of fresh bait, without loss of time; the effects are injurious to our fisheries, the Americans purchasing bait from the inhabitants many times for a *baubee*, when at the same time, there were among themselves who would lose a day or more fishing, for want of bait; injuring trade by disposing of their goods at a lower rate than can be afforded by the fair trader, and defrauding the revenue by smuggling.

7. Americans do frequent the shores of Nova Scotia, and fish within three miles thereof. I believe they interfere in the net fishery; by means of bait for the purpose, they raise shoals of fish within three miles of the shores; they also cure them within that distance, and beyond, in deep water. I do not know what effect it has on the shore fisheries.

8. To this I answer they do; the revenue is injured in proportion to the goods so smuggled.

9. I believe the net fishery is not carried on to any extent beyond three miles from the shores, except on the shores of islands; I am not acquainted with the net fishery, therefore cannot give the information required.

10. The people of Nova Scotia, I believe, assert generally that the Americans have no right to come within three miles of the shores, except for wood and water, or to shelter. I have known the Americans, when caught encroaching beyond such privilege, to plead ignorance, or a different construction of the treaty.

11. I believe their system of jigging and catching mackerel fish has operated injuriously on the mackerel fishery, by destroying a great many they do not take, and leaving a great many wounded, that die, and drive, or cause the other fish to leave the ground.

12. The American Government allows a bounty to encourage their fisheries; I do not know what bounty on each, nor do I know whether on salt, tonnage or catch; I believe on each and all. They impose on the produce of the British fisheries, five shillings per barrel on pickled fish, though I believe on mackerel it varies, according to quality.

13. I believe the West Indies afford the best market for the produce of the British fisheries. The United States would, I think, afford a better market, could they be taken free of duty.

14. I do not know the rights of Americans, according to the convention of 1818; I believe they cannot pass through the Gut of Canso without being within three miles of the shore, and approaching important fishing stations of that part of the Province.

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15. I can give no information on that subject, from a want of knowledge.

16. I am not sufficiently informed.

17. American fishing vessels are outfitted at cheaper rates than British; the difference consists chiefly in the price of provisions, which is the principal item in the bill of outfits; other necessaries being equally as low, or even lower than can be procured by our fishermen. I give it as my opinion, however, that the greatest reason why our fisheries are not as productive as the American, arises from the difference in the way they are fitted out and owned; the greater part of our fishing vessels are owned by poor men, they get their outfits on credit, at the highest possible rate—their hands are generally hired; his own spirits are dull from a knowledge of the disadvantageous circumstances under which he has to labour; his hands have the same feelings, in some measure, with the additional one, of the uncertainty of being paid; thence their want of energy and the unprofitableness of our fishing. The American merchant owns the vessel, fits her out at the cheapest rate, ships his hands on shares, from the skipper to the cook, according to what catches. An ambitious spirit is thus excited among them; this and the liberal encouragement from their Government causes more active enterprising men to embark in the fisheries; consequently they are generally more successful, and their fisheries more productive; perhaps the encouragement from Government more than any thing else causes those good effects.

18. I have no knowledge of any instances of that kind; I believe there has been numbers, but not in this part of the Province.

19. I think the employment of a steam boat would be the most efficient means to prevent American fishermen approaching our shores; they would scarcely venture in our harbours, and run the risk of being caught in a "flat calm," if they knew a steam boat was in quest of them.

20. I have stated in my answers the principal evils, in my opinion, resulting from the Americans approaching our shores.

21. I think it would be attended with beneficial effect to the inhabitants of this Province, to permit the Americans to form fishing establishments in the Province, and conduct the fisheries from the shores thereof; provided all our fishermen could have all the privileges of and be placed on an equal footing in every respect with themselves; provided also, they did not (like birds of passage) leave us in the winter, and return in summer.

I passed over the 20th question by mistake; I can give no satisfaction, however, respecting it.

Digby, 9th March, 1837.

SIR—Below you have answers to such numbers as came within my knowledge:

1. Ship Master—have been engaged several seasons in the Labrador cod fishery, and several years in the Bay of Fundy mackerel fishery, and also in the West India trade from this Province.

2. The fishermen from the United States are encouraged by a bounty, which excites energy in them, and enables them to compete with us at any market more favorable for them. I consider a bounty on tonnage preferable to any other way.

3. The American fishermen do catch bait in the harbours of the bay of Fundy, and sometimes, to the annoyance of the inhabitants, they also purchase bait.

4. The whole of this section is incontrovertible. The last season many American vessels were in Saint Mary's Bay for the purpose of taking mackerel, when, instead of catching them with the hook, used gaffs or jiggs—whereby three fourths of the fish were destroyed, to the great disadvantage of the fishermen of this district. They are also in the habit of throwing out bait to induce the fish from the shore, to avail themselves of the limits by treaty. This practice certainly must effect the shore fishery.

5. The whole of this, I am sorry to say, is too true, and this being the case, must appear evident the Provincial revenue is affected.

6. Is fully answered in No. 7.

7. Refer to No. 3.

8. No vessel can pass through the Gut of Canso without being within one mile of the shore.

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16. Vessels prosecuting the Labrador fishery, take with them boats, according to their size or tonnage, and the fish taken in them, sometimes near the shore, and at other times two miles off.

19. I am fully of opinion that a cutter about forty tons, with two good boats, would effectually protect the western coast of Nova Scotia and the Bay of Fundy, from encroachment, and in a great measure prevent smuggling.

21. The evils resulting are so general, that it would be difficult to separate them in severalties, as their encroachment upon the shores of Nova Scotia cannot be any way beneficial to the inhabitants—as will be answered in No. 22.

22. I am firm in the opinion, that if Government does not protect the fishery, that it would be more beneficial to the inhabitants to admit the Americans—the reciprocating such privilege, and allowing the produce of the British fisheries to be imported into the American States duty free. But, in such event, I should be fearful that it would tend to introduce republicanism into the Province.

The different queries have been so copiously put, I am not prepared to make any further comment.

I have the honor to be,
Your most obedient servant,

JAMES F. TOBIN.

To James B. Uniacke, Esquire.

Prospect, 15th March, 1837.

SIR—I have forwarded all the information I could rely on, in answer to the queries sent through your circular on the subject of fisheries, and I am convinced there are many more instances of their encroachments on our shores, from what I can ascertain.

I remain yours, &c.

THOMAS TOBIN.

James B. Uniacke, Esquire.

No. 1. I have been for the last four years engaged in the fishery at Upper Prospect, and employ from 18 to 25 men in the cod, herring and mackerel fishery, on the western shore. I have previously supplied fishermen, east and west, upwards of ten years.

3. I have been informed from different sources, by persons I can rely on, that American fishermen from the State of Maine, every spring, call into Pennant bay, opposite Sambro light, and purchase gaspereaux for bait, whence they proceed to Pope's, Liscomb's and Big Dover harbours, where, at the respective grounds of each place, they fish their nets, purchase bait, and make their voyages. The spring of 1835 there was upwards of 50 sail of American fishermen in and about Liscombe's, and by their baiting the fish at those places, has been a severe injury to our fishermen depending on the Sambro bank. If the Americans can be prevented from setting nets or purchasing bait in the above places, our fishermen would be enabled to trail the fish in shore.

7. A person from our shore who was fishing at Cape Breton last season, has informed me that it was a common thing for the Americans to stand into some point of head land on that shore (it is a well known fact to seine masters that the mackerel generally show most about such places, seldom further than half a mile from the beach, and in many instances not fifty yards); when there was no appearance of interruption they would commence throwing over ground mackerel bait, and when the mackerel would show on the surface to immediately stand off under easy sail, towing the shoals of fish with them; the boats from other Americans in waiting make fast to the decoyer, in many instances upwards of 20, for the more boats the surer the work; they rise in such immense quantities that they frequently use the jiggers, a most destructive machine, in place of the hook, consequently nearly one fourth of the fish are wounded and lost; by such means the fish are carried out of their natural course, and when they congregate again they never make the western shore, but is supposed to stand off to the southward.

8. The following circumstances came under my own observation: the fall of 1835 there was a number of American vessels in and about Upper and Lower Prospect, Blind bay, Margaret's bay, and in fact up to the Cape, endeavoring to purchase mackerel; one of them was lying in Blind bay, and purchased, as I ascertained on my getting there, between 80 and 100 barrels of round mackerel, for which they paid fourteen shillings per barrel; they took them in the hold and on deck. I had occasion to go up there
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the same morning on business in my sail boat, the fishermen on seeing my boat, of their own fear, induced the American to make sail, and as I proceeded up, they came out dressing their fish; by such means they avoid paying the duty, and obtain the bounty, for I understood from an American that they merely swear that they the crew dressed and cured them; the same week others were into different harbours endeavoring to purchase pickled codfish by the cwt.; one of them succeeded in getting, I am convinced, 80 barrels, they having their own packages. I understood they paid specie for their purchases, although I ascertained they had goods on board; many persons here thought my opposition to them was in consequence of having similar articles for sale. I certainly conceive it very hard that strangers, particularly Americans, should carry away the fish that was due me for supplies. Two gentlemen from Halifax was here purchasing fish, and observed the Americans in and about the harbours.

22. In reply to query No. 22; there is not a fisherman, I am confident, between Cape Sable and Cape Canso but would oppose the settlement of Americans among us; if once allowed to get a footing they would in a few days ultimately destroy the fishery on the shore; as it is we are not able to contend with them. In the first place they have a better class of vessels, supplied fully forty per cent. less, they receive a bounty on tonnage and catch, in addition they are more expert fishermen, and in most instances nearly every man in a crew is related by family more or less, also having shares in vessel and voyage, which naturally makes them take a deeper interest than the servants of Nova Scotia planters. In general the men that compose their crews are from Newfoundland and elsewhere; they after serving a year or two, and realizing a little money, proceed on to the United States, consequently two thirds of our crews are entire strangers every year; as respects the natives, as soon as they become of age they procure a whaler, and commence business on their own account. I am of opinion, with all the information I have procured from the old fishermen, if the Americans can be compelled to keep actually three marine miles off the head lands, without in any manner of getting within the bays, keeping actually head lands inside of them proper the distance, that our mackerel fishery would not be injured, for the mackerel on their return in the fall from the eastward naturally keep the shore close aboard to avoid the large fish.

ANSWER TO QUERIES.

William Irish—

No. 1. Trader—have some knowledge of the fisheries and commerce of this Province—have been engaged therein about seventeen years.

Thomas Mudie—

1. Trader—have considerable knowledge of the fisheries and commerce of this Province, but principally of Cape Breton—have been engaged therein three or four years.

Charles F. Harrington—

1. Attorney at Law—have from a long residence in this part of the Province some knowledge of the fisheries and commerce, chiefly from travelling and accidental intercourse; have been but little engaged therein.

William Irish, Thomas Mudie, Charles F. Harrington—

2. The operation of the treaty of 1783 is undoubtedly injurious to these Colonies and the British trade in general, inasmuch as the inhabitants of the United States have the same rights in most respects by that treaty as they before had as colonists of the British empire, and now by their numbers, skill, resources and commercial privileges at home and in foreign countries, are enabled to exclude the fish of British subjects from the benefits of a foreign market, and do by the immense quantities of fish by them taken on the shores of British North America, and forced into all the foreign markets, greatly reduce the price of fish, and otherwise greatly injure the fisheries and commerce of this Province by their competition.

William Irish, Charles F. Harrington—

3. By interfering with and greatly lessening the quantity of fish heretofore caught by our fishermen; by supplying the inhabitants of the United States exclusively and extensively; and by the sale of great quantities in the British West Indies, in almost all the British foreign possessions, and principally in South America, thereby being enabled

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enabled to purchase returns and preserve their commercial relations in many of those countries with an article of demand which their own country cannot supply.

4. Unanswered.

Thomas Mudie, Charles F. Harrington—

5. The Americans have grossly and continually violated the terms of the convention of 1818 by coming into our bays and harbours, and within the limits prescribed, and there trading illicitly with the inhabitants, especially during the last year. In settling and anchoring in those bays and harbours, in all times and all weathers, for those and other unlawful purposes; and in engaging sailors and fishermen from among the inhabitants, in enticing these away to the States in great numbers, and in procuring outfits for their voyages.

Thomas Mudie, Charles F. Harrington—

6. The United States' fishermen do catch bait on the shores of this Province, and of Cape Breton, the consequence is, it enables them to interfere with and interrupt the catch of our fishermen, to trade with the natives, and to fish, and to infringe more easily and frequently the treaty and convention.

Thomas Mudie—

7. They do, your certifier hath seen them repeatedly on the shores of Nova Scotia and Cape Breton, within three marine miles of the shore fishing, to the number of sixty vessels at a time, and in his opinion, they were not more than one mile and a half from the shore, particularly at Cape George, Port Hood, Mabou, and Broad Cove; they do raise fish within three miles of our shores by fish, principally mackerel, ground up in mills, using every fifth and sometimes every third barrel in this manner, by which means they entice the fish beyond three miles from the shore, and by glutting them with food detain them there, so that the fishermen along shore, is very much injured thereby.

William Irish—

The American States' fishermen meet the schools of fish in our bays, and off our coasts, along the Gut of Canso, onward, and to Prince Edward's Island, within three miles of the shore, and entice them off the shore by their bait, and break them by their catch, so that they are greatly diminished, never again unite, and at length abandon the shores.

William Irish, Charles F. Harrington.

8. They do enter the harbours, bays, and creeks of Nova Scotia, barter extensively with the inhabitants and supply them with various articles, such as boots, shoes, flour, bread, cider, &c. clandestinely, and smuggle to a great extent, so that the Provincial revenue is much injured thereby.

William Irish, Charles F. Harrington.

9. The net fishery is not carried on beyond three marine miles from the shore, except upon the Ledger and Headland; the net fishery of great importance, and prosecuted most extensively and generally by the inhabitants around the shores of Nova Scotia and the islands; when the Americans come within three miles of the shore, they are frequently in the midst of the net fishery.

Charles F. Harrington—

I have seen the American vessels running over the nets along the shore.

10. This question contains its own answer.

11. It is not known by us that the inhabitants of the United States have ever been permitted by treaty or otherwise to fish within three marine miles of the shore.

Thomas Mudie, William Irish—

The system of jigging is very destructive to the fish, by wounding and destroying great numbers uncaught.

William Irish, Charles F. Harrington—

12. The Americans allow a bounty of 20s. per ton, it is principally upon the tonnage; they impose a high duty on British fish, as by reference to their tariff will be fully seen.

William

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William Irish—

13. The best market for British fish are the West Indies, South America, Europe; and the United States of late years for mackerel; Canada for herring.

William Irish, Charles F. Harrington, Thomas Mudie—

14. The Americans cannot pass through the Gut of Canso without coming within three miles of the shore: we consider it contrary to the convention of 1818 to do so; the most important fishing stations are from Canso Point up through Chedabucto bay, and the Gut of Canso northwards.

15. Unanswered.

16. Unanswered.

William Irish, Charles F. Harrington, Thomas Mudie—

17. We think the fishermen of the United States fit out much cheaper than our fishermen, but cannot state the difference or speak decisively.

18. Not well informed.

William Irish, Charles F. Harrington—

19. We do think that a steam vessel or two would be much more efficient in preventing the fishermen of the United States from infringing the treaty of 1783, and the convention of 1818, than the mode heretofore used.

William Irish, Charles F. Harrington, Thomas Mudie—

20. Not having the treaty and convention to refer to, we cannot well answer this question—but can say, that since the convention of 1818, and particularly within the last four years, the Americans have compassed and lined our whole shores with their numerous fishing craft, and continually interfered with, and injured the fishery of our inhabitants.

William Irish, Charles F. Harrington—

21. We have given some consideration to the importance of those inquiries, and from the opinions of several intelligent men in this community consulted on this occasion, and from our own conviction, we do say that, as the fish are an article of universal demand—as they bound exclusively on our own coasts—as many towns and portions of this Province and Cape Breton now solely exist by the fishery—and as the prosperity of this Province must much depend upon a cautious and skilful management of those fisheries, the Americans and all foreigners should not on any account be permitted to participate therein. And further, we do think it most unreasonable that the United States, an independent nation, should now enjoy and use privileges and advantages that properly belong to and spring out of the soil, right and sovereignty of the British empire. That the fisheries must be considered as belonging to the territory of Nova Scotia. That the Americans have prohibited their own fishermen from pursuing that course of fishery on their own coast, which they follow on the coasts of this Province, and have prevented all foreigners from using any privileges of fishery on their own coasts, while they themselves enjoy and exercise most extensive ones on the shores of these colonies. And lastly, we say that the evil produced from the several causes referred to above, has been great and extensive in Nova Scotia, by depressing and preventing the commerce of the country, and in cutting off a principal source of wealth to the inhabitants.

William Irish, Charles F. Harrington—

22. As we think it very difficult, if not impossible for the British Government to enforce the convention of 1818, we say that to render the fisheries at all beneficial to Nova Scotia, the Americans must either be totally prevented from any fishing on our coast, or must be permitted to enter our country freely with their capital—to form permanent establishments for the conduct of the fisheries, and to consider Nova Scotia as a fixed residence, “they reciprocating such privileges and allowing the produce of the British fisheries to be imported into the United States duty free.” But if they shall be allowed to make temporary stations on our coast for the purpose merely of meeting the run of the fish in their season, to bring their laborers, outfits and necessaries from home, and to return thither at the approach of winter, they will much injure the Province; as witness the Jersey merchants who have

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carried on their trade in that manner, residing in the old country and acting here through their agents.

WILLIAM IRISH,
CHARLES F. HARRINGTON,
THOMAS MUDIE.

Antigonishe, March 14th, 1837.

SIR—We, the undersigned, residents and inhabitants of Brier Island, in the County of Annapolis, and Province of Nova Scotia, beg to call your attention to injuries which your petitioners are subject to, by the American fishermen encroaching within limits, often running near the shores on the fishing ground of your petitioners, and there discharge the garbage of their fish, which if allowed to continue a few years will destroy our shore fishery. Several fares are annually made in Saint Mary's Bay in the months of April and May, within a mile or two of our shores; they also, in common with your petitioners, set their nets when there is scarcely a sufficiency of herrings for bait for your petitioners; they having taken these liberties for a few years past, now claim them, or knowing your petitioners having not any way of protecting themselves, take every advantage they please.

Your petitioners having heard that letters have been transmitted to the Magistrates of this place on the subject of fishery, beg to say that Charles Jones, Esquire, one of the Magistrates of this place, is at this time absent. Elisha Payson, Esquire, our other Magistrate, who, your petitioners have been informed, has written you on the subject of fishery, stating if the American fishermen were allowed to fish in common with the inhabitants of this island, and erect fishing establishments on our shores, by allowing the inhabitants to carry their fish to the American ports, duty free, would result to our advantage.

If these statements have been made by Elisha Payson, Esquire, your petitioners beg to say they have never been consulted upon the subject, neither are they knowing to the tenor of your letter upon the subject, which leaves them quite unable to answer the questions required of them.

Should such privileges be allowed, the Americans would entirely destroy the fishery of the inhabitants at this section of the Province, and benefit but one individual on this island, or hereabouts, which is Elisha Payson, Esquire, who is Collector of "impost and excise, also of light duties."

Your petitioners furthermore beg to say, that the prices which have been paid at Halifax and Saint John, New Brunswick, this few years past, for dried and pickled fish, considering the reasonable terms they procure their supplies at these places, afford them much better markets for their returns than the United States.

Trusting that a cutter or some armed vessel will be stationed in the early part of April to protect the fisheries at this quarter, as the Americans approach our shores about that time, make one fare, and off before the man of war has arrived here for years past.

And your petitioners as in duty bound will every pray.

Edward A. Jones, Lacey Denton, William Rice, Benjamin Henry Ruggles, Daniel Bayly, James M. Haycock, James Buckman, James Ring, William Thurber, William M. Desmand, Arthur Collins, John Slocumb, G. B. Smith, Ethel Davis, Franklin Patten, William T. Potter, Hubbard Davis, Edward J. Potter, Charles J. Potter, Thomas P. Haycock, Josiah Cann, Samuel Denton, David Welch, Isaac Dakin, Gilbert Welch, John M'Kay, James Welch, Moses Morrell, John Dogherty, Stephen Buckman, William Boyly, Joseph Morrill, James S. Denton, Abraham Titus, Charles P. Morrell, Charles Carroll, Edward Morrell, Daniel Welch, William Morrell, Samuel Young, Tomas Hains, Benjamin Horton, John Hains, Charles Hains, Joseph Crocker, Israel Outhouse, Peter Outhouse, Anthony Brookford, James German, Thomas Wescoat, George Denton.

James B. Uuiacke, Esquire, Chairman of the Committee to inquire into the state of the fisheries of this Province.

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Rugged Islands, March 13, 1837.

SIR—

No. 1. Our professions were formerly fishermen, but now engaged as fish merchants, and have some knowledge of the fisheries and commerce of this Province.

2. The treaty made in 1783, has been prejudicial to the commercial interests of this country, by allowing the Americans to take fish on the shores and banks of Nova Scotia, and carry the same to markets which could be supplied by the people of this Province.

5. The Americans have encroached on the fishing grounds retained by Great Britain, by taking fish within the limits which has been principally done in the Bay Chaleur, (so called) near the shores of Cape Breton, Prince Edward's Island, Nova Scotia, &c.; the fact is well established by our fishermen, that in the Bay Chaleur last season, 100 to 200 sail of Americans at a time, were taking mackerel with the hook or jig, and within a few rods of the shore of Prince Edward's Island, thereby not only destroying the mackerel fishery, but destroying the voyages of codfish, as bait could not be obtained where mackerel catchers were, they being so much better prepared than the cod fishers, and the mackerel were found in greatest plenty near the shore.

6. As far as we know, the American fishermen do not take bait on the southern part of the coast of Nova Scotia, within the limits of the treaty, but frequently purchase bait from the inhabitants, and thereby are enabled to take large quantities of codfish, and making their privilege equal to our fishermen.

8. The people of the United States do enter our harbours in great numbers, but do not barter with the inhabitants to any extent, so far as comes to our knowledge.

19. We are aware that there are means to prevent foreigners from usurping rights and privileges on the British shores: our opinion is, that the only efficient means would be to fit out schooners, about 50 or 60 tons, painted and fitted like the American fishing vessels, as decoys, the same to be armed, &c., and to cruize along the shores most infested with foreigners, to be piloted by some experienced man, that could pass for a fisherman, and get any information wanted, without being known as an armed vessel, except when required. We do not think steam boats or any other vessels showing her true intention would be of any service. We will state one instance, which you may depend on as correct, that occurred last season, (in August,)—there were about 200 sail of American mackerel catchers on the east side of Prince Edward's Island, as near the shore as they could go with safety, say a $\frac{1}{2}$ to $\frac{1}{3}$ a mile, and were busily employed in taking mackerel, some laying to, others at anchor—at about noon, an armed brig was discovered coming down upon them, and before she came up with them they were outside the limits, and although many of them were boarded, yet none was detained, but were sent to sea; the brig remained in sight of our informants all night, and left the next day, and was not out of sight to leeward before the Americans were coming in sight to windward, and before night they all resumed their former stations. Had this been a decoy vessel, she could have detected the whole in the very act of taking fish within the limits; and when it was once known that there were decoys cruizing amongst them, they would not venture within the limits.

21. We think the fisheries of this Province are already greatly injured by encroachment of foreigners; the Bay Chaleur in particular by the American mackerel catchers—and some prompt measures are required to secure the employment of the right of fisheries to the people of this Province.

Yours &c.

LOCKE & CHURCHILL.

James B. Uniacke, Esquire, Chairman of the Committee
regulating the fisheries of Nova Scotia.

Answers to queries contained in a Circular, signed by James B. Uniacke, Esquire, Chairman of a Committee appointed by the House of Assembly to inquire into the fisheries of Nova Scotia, dated Assembly Room, Provincial Building, 20th February, 1837.

No. 1. Engaged in supplying the fisheries of Cape Breton over ten years.

2. It is so long since I have seen the treaty alluded to in the query, that I have little knowledge of it; but so far as Great Britain ever having granted to the United States

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States the privilege of fishing on the shores of Newfoundland and Nova Scotia, I cannot but think it has been prejudicial to the commercial interests of this country.

3. I can only state that I have frequently heard our fishermen say that the number of American vessels employed in the bank fishing from Cape Sable to Cape North, as well as their dressing the fish on those banks, is the means of keeping the fish off the shore, and causes the scarcity so long complained of.

4. I have not sufficient knowledge of the fishery here alluded to, to answer this query.

5. No doubt but the American fishermen frequently encroach on our fishing grounds, but such has never come under my view, and I can therefore say little about it.

6. It is said they do, and if so, the disadvantage to the fishery is too apparent to require much comment.

7. It is said the American fishermen, under pretence of supplying themselves with wood and water, frequently put into harbours on the shores of Nova Scotia; in doing which, there is no doubt but they supply themselves with bait, and catch fish within the limits—that they interfere with our net fishery, there can be no doubt, by the manner they use of raising shoals of mackerel with bait prepared for the purpose, and by their mode of catching them with a hook—in doing which I consider they *destroy, annually*, a greater quantity of fish than they take.

8. It is generally reported, and I believe it to be correct, that the people of the United States do, in their fishing vessels, enter many of the harbours and bays of Nova Scotia, and supply the inhabitants with many foreign contraband articles, thereby affecting the revenue of the Province, but to what extent I cannot say.

9. I am not aware that there is any net fishery carried on beyond the limits of three marine miles in this Province, but if so, there is no doubt but that the Americans often interfered with that description of our fishery.

12. I am told the American Government allows a tonnage bounty of twenty shillings to all their vessels employed in the cod fishery. The bounty they allow on other descriptions of fish I am not aware of; and there can be no doubt but fish of all descriptions, the catch of British subjects, when taken into their markets pay a high duty.

13. The best foreign markets for the produce of the British fisheries, are well known to persons engaged in that trade, and I believe the United States is a good market for all descriptions of pickled fish, but not for cod, as the duty is too high.

14. I do not think that American fishermen can pass through the Gut of Canso without being within three marine miles of the shore, and approaching the most important fishing stations of that part of the Province.

15. I cannot speak with any certainty as to the value of the salmon fishery on the coast of Labrador, nor to what extent trade is carried on in that Country in the articles of furs, feathers, oil, &c., but believe it to be very great.

16. I have always understood that the fishery on the Coast of Labrador and Newfoundland, is carried on by the British in various sized open boats, and not far from the land,

17. From conversation I have had with Americans at different times, I have always understood that their vessels are fitted out and navigated, both in the merchant service and fishery, at a much cheaper rate than the British, but I cannot state the comparative difference.

19. I have often thought it surprising that out of the large naval force employed on the North American station, that three or four smart sailing gun brigs or schooners have not been appointed to visit the principal fishing harbours on the coast, by which means there can be no doubt but the Americans would be deterred from taking the liberties they now do, and the fishery be protected; if such means are not adopted by Government, fast sailing cutters I should think would be preferable to steamers.

22. If our present grievances respecting the fisheries are properly made known to the British Government, there can hardly be a doubt but means will be adopted to redress them; and I cannot think it would be more beneficial to the inhabitants of Nova Scotia to permit the Americans to reside and form establishments in the Province, and conduct the fisheries from the shores thereof; nor do I think the Government would even agree to any such proposal.

C. M'ALPINE.

Little

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Little Arichat, 20th March, 1837.

GENTLEMEN—In answer to some of the queries in your circular, respecting the fisheries of Nova Scotia, I forward the following statement:—

Question 1st. I have been engaged in the fisheries of this Province for the last twelve years as a merchant.

Question 3d. The fisheries carried on from the United States operate to the disadvantage of the British fisheries in North America, generally, by enabling the citizens of those States to supply themselves with fish caught in a great measure on our grounds, thereby depriving British North America of almost the sole profit of furnishing them with that article—the Americans having very little good fisheries exclusively their own.

Questions 5th and 7th. They have in many instances. Last autumn they caught much fall mackerel in Antigonish bay, near the head of it, and within the limits. In Port Hood, also on the Western coast of Capé Breton—which harbour they make a place of general resort during the fall fishery—as many as sixty and upwards of their fishing vessels are sometimes anchored at one time, and have been known to be actually engaged in jigging mackerel in the harbour. A seizure took place there last year of American barrels, salt, &c., to a considerable extent—the articles were found landed on shore. It is also quite a common practice for them to anchor along the western coast of Cape Breton, and with a spring on their cables, jig mackerel within the limits. They likewise run in close to those shores and heave too, so that they may drift off (the fish trim the shores in the fall), and by baiting, catching, and scattering the bodies of mackerel, do very serious injury to our fisheries; for it is evident that by such practices the schools of fish frequenting our shores are thinned, annoyed, dispersed, and often turned out of their former course; and hence it is a received opinion among our fishermen, that these are the main causes of the failure of mackerel at our fishing stations for some years. Last season the fish were remarked to be very abundant in the Gulf, but would not take the bait on the jigging hook as freely as in former years.

Question 8th. Yes, to a great extent; as however it would be considered invidious to mention names and particulars, I will merely observe, that in April, 1836, business led me to the Gut of Canso—upon observing large quantities of corded firewood on the shores, I wished to purchase, but found it very difficult to do so. I had for answer, it was hauled out and prepared for the Americans—Captain so and so was to call for it, and had promised to bring such and such articles, and in fact, as they expected their American merchants daily, and had promised them their custom, it was not fair to sell the article to another; and this traffic is not confined to a few articles, nor to the Gut of Canso. The Provincial revenue is of course affected by these contraband commodities, as they prevent sales of similar merchandize which would pay duty.

Question 11th. From the American system of catching mackerel, even when prosecuted within their own limits, much injury has been done to the British fishery. In jigging, it is necessary to raise the fish to the surface with bait, &c., and keep them there as long as possible; the jigging and baiting then goes on, and the fish are carried along with the drifting vessel—it may be very far out of their accustomed course. Now considering that this operation is performed by several hundreds of vessels, scattered in all directions throughout the Gulf, and at the same time, its influence on the shoals of fish passing within its sphere must be extensive, as it combines catching, wounding, feeding and decoying the fish from the beginning of July till well through October—that such a system operates powerfully to the prejudice of the British fishery, is to me at least, too plain to admit a doubt.

Question 12th. The American empty barrels which I have seen, intended for the mackerel fishery, were branded with the words "*For Bounty.*" Our fish imported into the United States pay a duty of one dollar per barrel on herring—one dollar and a half per barrel on mackerel, &c. &c.

Question 14th. Our Government have answered this query in the affirmative. The narrowest part of the Gut of Canso, viz.:—The north west entrance from M'Millan's point to Cape Porcupine is usually reckoned a good mile across.

Question 19th. Fast sailing cutters, by all means, if well manned, and furnished with good

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good and sufficient boats: say, one stationed in the Gulf, to cruise about east point of Prince Edward Island, Antigonish bay, and along the western and north west coast of Cape Breton. Another from north west entrance of Gut of Canso, eastward along Manchester bay, and as far as Cape Canso; a third from Cape Canso to Halifax; and fourth from Halifax, westward. Some such system as the above it is believed by many would not only guard our coasts from foreign encroachments, but also put an end to smuggling among ourselves. An officer residing on shore has very little power over vessels anchored along a coast, or even in a harbour, where the inhabitants are few in number and far apart—his authority is often put at defiance. From it also a very salutary check would be imposed on the lawless multitudes which assemble from all quarters during the fishing months at our best station.

Question 21st. In turning my attention generally to this subject, much appears to demand our serious and immediate consideration. By existing treaties the Americans are already admitted into the *heart* of our fisheries—for although a boundary line of three miles in breadth encircles our shores, yet this is so difficult to be pointed out on the fickle element upon which it is drawn, that it is not easy to determine in very many instances, when our rights are invaded; and this will be at all times a ready excuse to the aggressor. To this original evil, therefore, we must submit; but let us improve and protect to the utmost of our power those resources which remain. The system of jigging has been introduced by our enterprising neighbors, and I am astonished that they have not commenced a net fishery within their own limits; it would be doing no more than is done on the coasts of Scotland. We know not indeed what improvements or new inventions may be introduced. The eagerness with which they rush to our shores and fishing grounds the moment the breaking up of the ice allows an entrance into the Gulf, and their increasing numbers every returning year, assures us that their energies are vigorously and steadily directed towards this branch of industry and of national aggrandizement; and these are sufficient causes, if not to awaken our fears, at all events to call upon us to provide in time if we can.

Question 22d. As to whether the British Government will or will not enforce the convention of 1818, surely we are not driven to the necessity of giving up our remaining rights of fishery for nothing; for unless the Americans had fishing stations of equal value, with those we possess, and would permit us to form establishments in them, and conduct the fisheries from the shores thereof, they cannot reciprocate equal privileges with us in those matters. The mere removal of the duty on fish would not be an equivalent. It is not to a foreign power, nor in many instances, even to our Parent State, that we must look for assistance; it is to ourselves. If the Americans put a duty on our fish, why do we add further duty by an expensive and useless system of inspection. If the American fishermen receive bounties to encourage them to prosecute the jigging of mackerel, &c. with advantage—why do we not also extend encouragement according to our means. We have the example of the Mother Country in this, and in the manner in which she fostered her herring fisheries by bounties, &c.

Thus, Gentlemen, it would appear, that besides foreign grievances, many of which are perhaps beyond our control, there are other evils, and their remedies too, which exist among ourselves. So little encouragement is there given to our fishermen that they are even anxious to hire on board of American vessels bound into the Gulf, and those being very often our best fishermen they are readily engaged; and this practice is becoming so general in Manchester bay, the Gut of Canso, and the western coast of Cape Breton, that it is a matter of serious consideration. Towards the latter part of June last, I had much difficulty in getting a crew of eight good fishermen to man a vessel for a mackerel jigging voyage; though I searched the Gut of Canso from one end to the other, most of the best fishermen were either already gone with the Americans, or engaged and waiting their arrival. Another evil, and that also of a serious nature, resulting from this practice is, that it ultimately tends to draw off our shore population to the United States. When a voyage is made the American skipper has seldom money to pay the wages, and if the goods he may have on board do not answer, (for to part with fish is out of the question, and *barefaced smuggling*,) our hired fishermen, particularly if he is a young man, rather than leave his wages unpaid, and wait their uncertain remittance, concludes to proceed with the vessel, and a winter's residence in the States generally terminates in his becoming an American citizen, and paves the way for others of his family and former companions to follow. To

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To apply remedies to all we complain of is not in our power, but surely something can be done to ameliorate existing grievances when they cannot be removed. Wherever our fisheries are worth the looking after, see that order and the protection of persons and property is maintained. This will gradually introduce capital and permanent establishments, and discourage the vagrant life which is too prevalent throughout our best fishing stations. Extend encouragement to bring into vigorous operation the jigging or catching of mackerel in the Gulf or at sea, in decked vessels only, and owned in the Province. Do away with the inspection law: the article will not bear the expense, and always has and must be sold by sample from the nature of materials which compose our barrels, and they cannot admit of any sudden or extensive alteration. We ought, however, to encourage the manufacture of *hard wood barrels*, by a bounty per barrel on pickled fish put up in them for exportation only. This would gradually introduce a better description of that article, and thus raise the character of our pickled fish. Barrels made of pine, or what is usually termed soft wood, are not capable of preserving fish for any length of time; and while we have comparatively abundance of hard wood, pine is becoming scarce, and of inferior quality, in many parts of the Province.

You will please to observe that I have principally confined myself to matters relating to pickled fisheries. As regards the cod fisheries, whether a tonnage bounty, or one on the quintal, or on salt, are questions which have frequently occupied the attention of the Legislature. To me it appears that a tonnage bounty, restricted to Labrador and other deep sea voyages, would be most beneficial. And as respects the interference of foreign nations with this branch of our fisheries, it is chiefly limited to the Magdalen islands and Labrador, with which places I have not much intercourse.

Your obedient servant,

WILLIAM CRICHTON.

No. 1. I am a merchant—have some knowledge of the fisheries and commerce of this Province—have been engaged in them for the last fifteen years.

2. I consider that the fisheries and commerce of this Province have been greatly injured by the operation of the treaty to which this query refers. That treaty by giving to the fishermen of the United States the right of fishing on the coast and within the waters appertaining to the remaining British Provinces, conferred on the former a privilege, which had it been retained exclusively, as of right it ought to have been for British colonists, would long ere this have induced many persons of capital and enterprise, and many experienced fishermen from the United States and other countries to have settled on the shores, bays and harbours of these Provinces; that they might be enabled to participate in these fisheries and in the advantages which our proximity of situation affords. In addition to this had American fishermen been precluded from our fisheries, their limits and the products of their fisheries would have been vastly curtailed, and the demand for our fish in their extensive markets, as well as in those of other nations which they at present contribute to supply, would have been immensely more favorable to our fisheries and commerce, as well as to that of the adjacent British Provinces, than it has been under the operations of that unfortunate treaty.

But had that treaty in exchange for the invaluable privilege which it conferred on the fisheries and commerce of the United States at the expense of these Colonies—had the treaty secured to the latter the only equivalent at all commensurate to their conceded rights, namely the right of sending to their markets in our own vessels free from all discriminating duties or charges the products of our fisheries, our coal and iron mines, plaister and grindstone quarries, &c. &c., this would have restored to us some of the advantages of which we had been deprived by the then recent dismemberment of the revolted Colonies, and as they had by the treaty fully acquired their former rights in the fisheries, we ought in justice to have had our former commercial privileges in referenceto that country secured to us. The proximity of the American Atlantic States to this Province—their comparatively wealthy population and the extensive markets which they afford for all, and the only market for many of our products—possessing also those articles which are of indispensable necessity to us, and for which vast sums in specie have been every year taken from this Province, the advantages

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advantages of a free and unrestricted intercourse with that country would have been of incalculable advantage to this Province, in a commercial and maritime point of view—our coasting and carrying trade, and with it ship building, would have been immeasurably increased, and have given extensive and profitable employments to an augmented maritime population, many of whom are now forced to seek for subsistence in other and more favored countries.

3. The fishery carried on from the United States operates to the disadvantage of the British fisheries in North America in a variety of forms. The immense quantities of fish of every kind taken by the Americans in the vicinity of these Provinces, while it lessens the quantity and interferes with the operations of our fishermen, enables them to supply their own extensive markets and to send large quantities to foreign markets upon terms extremely injurious to the interests of British fishermen.

4. I have not sufficient knowledge of the Newfoundland, Labrador, and other fisheries mentioned in this query, to enable me to answer it to any good purpose.

It is a notorious fact that the citizens of the United States have in innumerable instances violated the terms of the convention of 1818, by encroaching on the fishing ground still exclusively retained by Great Britain.

I cannot state instances from personal knowledge, but the facts are too obvious, to admit of doubt or contradiction; for several years past immense quantities of mackerel have every season been taken by American fishermen on the shores of Nova Scotia, New Brunswick, Cape Breton and Prince Edward Island, within the limits from which they are excluded by that convention. Great numbers of them resort every spring to the Magdalen islands, and vast quantities of herring are there taken by them, either within or at the entrance of the harbours, within which their vessels anchor and remain during the whole fishing season or until their cargoes are completed. To this fact I have been eye witness, having myself made a voyage to those islands in 1833, and remained there two weeks during the herring season, at which time upwards of twenty American vessels were fully laden with fish taken in the harbours or at their immediate entrance.

In many instances they also take codfish within three miles from the coast, but in this respect their encroachments are much less notorious and less the subject of complaint than the mackerel and herring fisheries.

No. 6. It is probable that American fishermen do in some instances catch bait on our shores or purchase it from the inhabitants, but I have heard of none such in this quarter.

No. 7. The first part of this query is answered by No. 5. I do not know that American fishermen interfere with the net fishery on our shores in any other way than by the effects which the quantities of mackerel and herring taken by them as stated in No. 5. But the great and continued decrease in the quantity of net fish taken on the shores and at our principal fishing stations since the American mackerel fisheries have been prosecuted to any considerable extent in the Gulf of Saint Lawrence and manner within stated, leaves no doubt on my mind that the net and seine fishery on our shores have been extensively injured by the American fishermen, and that their encroachments upon the limits assigned to them have been much more injurious to our fisheries than had they been strictly confined to these limits. This is the almost unanimous opinion of all those conversant in the fisheries on our shores. I believe it possible that the Americans may in some instances have raised schools of fish near the shore and land them into deep water, but in general they take them without scruple wherever they can raise them. I have no personal knowledge on the subject, but state this as the general opinion in this quarter.

8. As far as my knowledge and information extends, smuggling and bartering goods and merchandize for fish, between the people of the United States and the inhabitants of this country has been carried on to a very small extent. I have understood that this illicit traffic has been much more extensive in other parts of the Province. I know that considerable quantity of mackerel have been sold at Fox Island within the last two years, to the Americans for cash.

9. I do not know of any net fishery carried on from this Province or from any islands, bays, or harbours belonging to it, beyond three maritime miles from the shores thereof.

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10. I cannot give any satisfactory answer to this query, having never heard any opinion on the subject.

11. The permission granted to American fishermen to take fish at the distance of three marine miles from the shores of this Province, and their system of jigging and catching them, even had they confined themselves to their assigned limits, would no doubt have been greatly prejudicial to the British fisheries, by lessening the quantity, and thereby subjecting our fishermen to greater loss of time and expense in making their fares, and to a much greater chance of failures, by occupying the fishing shoals or banks in the vicinity of the harbours to the great detriment of the inhabitants and of the boat fishery, which to many of them is the only source of employment and subsistence, and thereby discouraging and retarding the settlements of our shores and harbours, by throwing the offal and garbage of their fish overboard on the fishing ground, particularly the offal and bones of codfish, which are said to be extremely destructive to the fisheries, by disturbing and breaking the schools of mackerel, and causing them to deviate from their wonted course, and thereby greatly injuring our net fisheries, and by supplying their own and foreign markets to a great extent with American fish caught in British waters, to the great loss and injury of British and Colonial fishermen and merchants.

12. I have understood that liberal bounties are allowed by the American Government to encourage the fisheries, but to what description of fish or in what manner it is allowed I cannot answer, neither do I know precisely the amount of duty enforced by that Government on the product of the British fisheries when imported into the United States; but I have understood that the latter has been so heavy as until lately to have nearly prevented British fish from going to American markets, and in fact has deterred many American fishermen from becoming residents in this Province, who, had the markets of that country been unrestricted to persons residing in this, would have settled on our shores, and become useful inhabitants of this country.

13. I have reason to believe that were it not for the heavy duty enforced by the American Government on the product of our fisheries, that country would afford the best as well as the nearest and most advantageous markets for our pickled fish. I cannot at present say what foreign markets are the best for cod and scale fish.

14. I apprehend that the American fishermen have the same right by the convention to pass through the Gut of Canso that they have to sail along our coasts within three marine miles from the shores. They cannot pass through the Gut without being within much less than three miles from the shore, that strait not much exceeding one mile in breadth, in any part thereof.

15 and 16. I am unable to say any thing on the subjects embraced by these queries.

17. I should think at present that British fishing vessels might be fitted out fully as cheap as American in consequence of the high price of provisions in that country.

18. I have not known any instances of the kind mentioned in the query.

19. I am of opinion that until some effective system be adopted for the encouragement of our own fishermen, either by bounties given in such way as will be obviously for their advantage, or by such a system of trade as will enable them to purchase their supplies, and sell their fish upon nearly as favorable terms to the resident merchant or colonial trade as to the American fisheries, it will be extremely difficult to interest our resident fishing population generally in any measure that will tend to banish the latter from our shores; as long as our fishermen can gain more by dealing with the American fishermen, as long as they are dependent upon American fishing vessels for their only or principal source of probable employment, so long will they encourage their approach to our shores, and so long will preventive measures of every kind be more or less frustrated. If bounties were allowed by our Government to encourage the fitting out of vessels to be employed in the fisheries, either on the tonnage or the catch, and if our trade with the United States were less restricted, it would remove much of the feeling engendered by the comparative protection and encouragement given by the American Government to the interests of their fishermen, while ours have been in a great measure unprotected, and left to their own limited and curtailed resources. I think small armed steam boats manned with crews interested in the protection of the fisheries, and encouraged by a liberal share of the prizes that might be made, would be much the most efficient mode of guarding the fisheries on our coasts.

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20. In answer to this query I can only speak in reference to the trade and fisheries in this part of the Province. There can be no doubt that these have suffered much more from foreign interference since the date of the convention of 1818 than at any previous period, but this I apprehend has arisen from the early and continued, and on our part unresisted, violations of the terms of that convention; had these terms, however far they come short of what was due to the natural and inherent rights of British colonists, been strictly enforced, they would in my humble opinion have proved more beneficial to our fisheries and commerce than the most unlimited right conceded by the first treaty.

21. Some of the evils which have already resulted from the operation of the treaties to which these queries have before had reference, and from the want of adequate encouragement and protection to our fisheries, have been stated in the foregoing answers.

To these may be added, that by these treaties and their effects this Province with the other maritime British Provinces in North America have been deprived of a large and invaluable share of the rights appertaining to their natural situation, and which the circumstances otherwise imposed upon them at that period required to have been reserved to their exclusive benefit, as far as related to foreign participation. The injuries inflicted upon our maritime and commercial population by the almost unlimited encroachments of foreigners upon their reserved rights, and in consequence of the feeble and unavailing protection hitherto afforded them, have already operated to induce a belief that our fisheries have been abandoned to foreign aggression, and that the only remaining chance of deriving any substantial benefit from them is to take refuge under the more liberal, and as respects their claims, more just policy of another country. These sentiments so unfavorable to the interests of this Province have already induced numbers of our fishermen from this quarter to embark in the American fisheries—and nothing short of the most prompt and vigorous measures of protection and encouragement will restore the general confidence in the wisdom and justice of our Government in this respect, and prevent a great portion of our young and active fishermen from leaving the country.

22. I do not hesitate to answer this query in the affirmative, and would observe further that if the American Government would consent to allow the products of our fisheries to be sent to their markets in British or colonial vessels duty free, it would in my humble opinion be advantageous to this Province to permit their fishermen to reside and form establishments in it, and conduct their fisheries from its shores. I believe the principal hindrance at present to their settling in this Province is the duties to which in that case their fish would be liable at the American markets, and if these were removed and permission granted by our Government, there is little doubt that our numerous harbours, many of which are at present unsettled and waste, would be filled with an active and enterprising population. I apprehend the Province would gain by such a measure even at the expense of abandoning the convention of 1818.

FRANCIS COOK.

Guysborough, 17th March, 1837.

Mr. Philip Carten, of Liverpool, Nova Scotia, to the eighth Query.

Was at Prospect October 1835; had proceeded there with money and some goods to purchase mackerel. Whilst there an American schooner came to lower Prospect, having on board gin, boots and shoes, apples, soap, with other articles, and opened a regular trade with the fishermen, and sold the above goods, taking in return mackerel. A schooner between 80 and 90 tons took away as much of the goods and money they also brought could procure. Went across the land to a place called Tunis Bay, where they were in the habit of hauling seines; there he found two more American vessels; the people on board purchased the mackerel—Mr. Carten could not obtain any, though the money was offered and other articles at as low a rate as the foreigners. There was a vessel there likewise belonging to Yarmouth, chartered by merchants of Saint John, New Brunswick, and she had a large and valuable cargo on board for the purpose of purchasing mackerel, consisting of flour, soap, dry goods, tea, and other articles, which he offered to sell on as reasonable terms as Americans—say flour at seven dollars, and other articles equally low. Could not obtain any mackerel whatever until the foreigners were supplied. Apparent could purchase or procure no mackerel, but what he caught in his own nets. Captain of New Brunswick vessel went on shore, offered his goods, &c.

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as above to the people, but received for answer he could not get any mackerel until Americans were supplied. Feeling indignant at the preference given to foreigners, told them they had no business there, that if they did not immediately clear out of the harbour, that he would immediately proceed to Halifax, and bring down a sufficient guard to seize their vessels; also stated to the people that they were injuring themselves, and robbing the country of its living, taking away the trade from the coopers and employment from the coasters, and even from their own neighbors who could all be employed in curing the article which they were relinquishing to foreigners as they took them out of the seines, and without any labor expended on them. The Americans felt alarmed, but remained until they got their loads; that when they were loaded there were two others came down from Blind Bay, where they had been for the purpose of purchasing mackerel, to Tunis bay, but whether they succeeded in getting loads or not, cannot say; afterwards several other American vessels came to same place—they were not enabled to buy any fish, no seines being hauled; that they went and bought the fish in bulk from those who had previously caught them; they bought them for 17s. 6d. for the two hundred pounds, though at the same time the persons they bought them of might by incurring the expense of a barrel, 2s. 6d., and half bushel salt, 10d., and the labor within themselves, have sent them to Halifax, and obtained from five dollars twenty five cents to five dollars fifty cents per barrel.

Brier Island, March 13.

SIR—In reply to yours of the 20th February.

No. 1. I have been upwards of 40 years on Brier Island; and have been engaged in fishing business and in the exportation of fish to foreign markets.

2. As my information extends no farther than the Bay of Fundy, I cannot correctly answer this query; there is but a small number of Americans that fish in the Bay of Fundy.

3. The only disadvantage in my opinion is that the fishermen of the United States being prohibited from the privileges of the shore fisheries, that many of them run in shore and heave over the offal of their fish to the disadvantage of the boat fishery.

4. Know nothing of that coast.

5. The fishermen from the westward of Mount Desert in general are quite punctual to the treaty, but from Machias, Eastport, and near the lines, there are many who pay no regard to the treaty whatever, and take fish within half a mile of shore. Last season there were a number of vessels from near the lines that took considerable mackerel in St. Mary's Bay, where it does not exceed three miles in width.

6. In harbour they do not set their nets, but in the out coves and creeks on this coast I am informed they do, and that the inhabitants in many places set their nets and furnish them with bait.

7. They frequent the shores, and many of them fish within three miles; I have never known them to raise schools of fish within their limits and entice them upon their own privileges.

8. I have not heard of any fishermen from the United States to trade or barter goods with the inhabitants upon this coast, but I am informed they do to a considerable extent in the eastern part of this Province.

9. There is no net fishery carried on in this Bay beyond the limits of three miles except the island of Grand Manan.

10. I have never known of any difference between the inhabitants of those islands and the fishermen of the United States. I have collected light duty for three years past, and find that they are all informed of the treaty by the Collectors of their own parts, I have made it my duty to caution them on the subject, they appear to be willing to submit to the treaty with the exception of a few, as before stated from near the lines, which are manned chiefly with the people of our own Province.

11. As to the cod fishery carried on by the Americans in the Bay of Fundy I do not think an injury, excepting that they do sometimes heave the offal over on the small boat fishery.

12. The Government of the United States give four dollars per ton on the cod and mackerel fishery, the duty on mackerel and herrings of the British fishery is something like 1 dollar 40 cents, to 1 dollar 50 cents, on codfish 1 dollar.

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13. The United States is the best market for mackerel, herrings, pollock and large codfish.

13. Cannot say.

15. do. do.

16. do. do.

17. The Americans fit out the cheapest; they receive a bounty of four dollars per ton and have far the best market, by which means they can pay their men more wages than we can.

18. I have never heard of any insults offered to our people in this part of the Province.

19. I think that an armed force would not be of much service in the Bay of Fundy.

20. It has ever been my opinion that the treaty of 1783 is the best; were the Americans allowed full privileges with our own people they would protect the fisheries.

21. It is my opinion if the Government of the United States would allow the produce of the British fisheries to be imported in the United States under the same restrictions as their own fishermen, then it would be best to allow them the same privileges with ourselves on our coasts. It would encourage our citizens to fit out larger vessels in the fishery business, and in the winter season would give them employ to take their fish to the southern States, which is the best market. Our young men would then be able to stay at home and fish instead of going to the Americans for employ; there is hundreds of our people who go to the United States during the fishing season for employ, because they can get more wages; this is for want of a market in our own country. In the southern States for the last two years mackerel No. 1 has been 12 dollars, No. 2 from 10 to 11.

ELISHA PAYSON.

James B. Unincke, Esquire.

Answers to questions proposed by the Committee of the House of Assembly relative to the treaties between Great Britain and the United States.

Question 1. Fishing is our profession.

3. The Americans by fishing in great numbers on the coast, break the schools of fish before they get in shore, consequently preventing our fishermen from procuring them; as a proof of the above statement, fish were much plentier and could be taken much nearer the shore during the years of the American war.

4. We have followed the Labrador fishery from seven to seventeen years; until late years the Americans have frequented the Labrador shore in great numbers, and continued the fisheries there as long as it would pay them; they have also been in the habit of seining codfish there, thereby injuring the fishery by taking many small fish that otherwise would not be taken; it also has a tendency to drive the schools away. The fishery retained by Great Britain (except the Newfoundland fishery), bears no comparison with that granted to the United States.

5. We do not know that the Americans have violated the treaty by encroaching on the fishing grounds, and as regards the cod fishery we do not think that they wish to come any nearer the shore than they are allowed by treaty. Our open boats seldom fish as near as three miles from the shore, and very often five leagues in the summer season.

12. The American Government allow a bounty on the tonnage of vessels below ninety tons of four dollars per ton. They impose a heavy duty on the productions of the British fisheries when imported into the United States.

16. The cod fishery on the Labrador is carried on altogether in boats from very near the shore (say one hundred yards) to three miles distance from the land.

17. We do not think that there is much difference at present between the outfitting of American and British fishermen.

18. The French pretend to a right of fishing at Belleisle island, in the Strait of Belleisle, and we have been forcibly prevented from fishing there by them, thereby preventing us from obtaining a load in those years of scarcity, which we might easily have done had we not have been so prevented. The French also fish on the coast of Labrador.

21. If the Americans are not prevented from fishing on our shores and the coast of Labrador

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Labrador we have no doubt but a stop will be put to the fisheries in a few years, or at least so far injured as not to be worth following.

22. We do not think that it would answer any good purpose to allow the Americans to settle on our shores, and prosecute the fisheries therefrom; on the contrary we think it would be injurious to us in every shape.

Signed William Cunningham, James Kenny, Jethro Covell, Henry Brown, Joseph Kendrick, and Alexander Nickerson.

Barrington, 22d March, 1837.

Barrington, 22d March, 1837.

SIR—I received per post, your printed circular of 22d ultimo, requesting answers to several queries relative to the treaties now in force regulating the fisheries of Nova Scotia. It would require some time to procure the necessary information on every question; the want of copies of the several treaties prevent our answering as fully to each question as we would wish. I have however obtained answers to some of the queries, which I beg leave to enclose for the information of the Committee appointed by the House of Assembly, and as I procure further information will forward it on; I also enclose a letter from Mr. Snow, of Port Latour, which may give some information on the subject required; all the persons except two who have signed the enclosed paper are or have been masters of Labrador fishing vessels: numbers might be procured to subscribe their names to the same, but I did not think it necessary. There are others who will be able to give answers to some of the questions that those persons could not subscribe to.

I am your obedient servant,

WILLIAM B. SARGENT.

James B. Uniacke, Esquire, Halifax.

No. 3.

The following affidavits were received from various parts of the Province of Nova Scotia, in answer to the Circular No. 2.

Personally appeared John Graham, of Guysborough, in the County of Guysborough, mariner, and maketh oath, that in the month of May last he went on herring fishing voyage from Guysborough to the Magdalen Islands, on board the schooner Glasgow, owned by himself. He was also master of the said schooner, arrived there on the 3d of May; at that time there were upwards of 40 sail of American vessels there, and a few days afterwards their numbers was increased to about 90 sail. Deponent remained there upwards of three weeks; during all that time the Americans fished and set their nets in the harbour; deponent believes there were more than 300 nets belonging to the Americans fished in harbour Le Bear, and the other harbours on these islands, and about 30 seines; nearly all their vessels lay in the harbours during the fishing season. There were but very few British or Colonial vessels, deponent thinks not more than nine or ten at all the islands; a great proportion of the American vessels made good voyages, some of them had as many as 700 barrels, and most of them from 300 to 400 barrels of herrings. Deponent has reason to believe that from 40 to 50,000 barrels were taken by the Americans at these islands last spring; some of their vessels made two voyages during the herring season; a great proportion of the fish taken by them at these islands were either within or at the immediate entrance of the harbours; and deponent further saith, that he verily believes that the immense quantities of herring taken by the Americans at these islands these few years past have already greatly injured the herring fisheries on our coasts, and if continued will ultimately ruin them.

Deponent made a voyage to Quebec last summer, and both in going and returning he saw many American vessels fishing near the shores of Prince Edward Island, New Brunswick and Cape Breton, many of them within half a mile of the shore. He saw about thirty sail fishing near the east point of Prince Edward Island at one time, within three miles of the shore, some of them within half a mile. Deponent believes and is assured that the extensive encroachments of American fishermen on our fishing grounds, and particularly on the shores and harbours in the Gulf of Saint Lawrence,

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is greatly injurious to the mackerel and other fisheries of Chedabucto bay, and on the coast and harbours of this Province generally, and if continued to the extent that they have been for several years past will in the end prove utterly ruinous to these fisheries.

JOHN GRAHAM.

Sworn to before me at Guysborough, this 10th day of March, 1837.
WENTWORTH TAYLOR, Justice Peace.

Personally appeared Thomas Peart, of Guysborough, in the County of Guysborough, yeoman, and maketh oath, that he has for many years been employed in the fisheries at Fox Island, and in Chedabucto bay. He feels certain that the failure of these fisheries for the last four years has in a great measure been owing to the great quantity of fish taken by the Americans in the Gulf of Saint Lawrence. He thinks so because in former years the mackerel fishery at Fox Island rarely if ever failed for two successive years, and for every year in which they failed there were generally three or four years in which they were abundant, but in the last five years they have been extremely scarce every year. Deponent believes that if the Americans were strictly confined to the limits of the existing treaties, in taking fish, they could not materially injure our shore fisheries.

THOMAS PEART.

Sworn to before me this 10th March, 1837.
WENTWORTH TAYLOR, Justice Peace.

Personally appeared John M'Pherson, of Manchester, in the County of Guysborough, yeoman, who being duly sworn, maketh oath and saith, that he was employed during the months of July and August last for seven weeks, on a cod fishing voyage, on board of an American schooner called the Melvina, of Duxbury, in the Gulf of Saint Lawrence. That during the said voyage, the said vessel generally kept from twelve to fifteen miles from the shore, excepting two days in which they fished for mackerel at the east point of Prince Edward Island, within one and a half miles of the shore; that during the said two days and while fishing for mackerel as aforesaid, deponent saw about one hundred and seventy five sail of American vessels, all fishing for mackerel within the distance of a mile and a half from the shore on the northern side of the aforesaid east point—they were all fishing with lines, and all within an extent not exceeding two miles. Deponent understood that the American vessels usually fished for mackerel near the shores, and near to each other, that they might keep the fish in a body and near the surface. He has also understood from various persons who have been on mackerel voyages with the Americans, and from what he saw himself during his said voyage, that were these vessels kept at the distance of nine miles from the shores they could neither make profitable mackerel voyages or greatly injure the run of the mackerel on these shores; and deponent further saith, that he has been for many years engaged in the mackerel and other shore fisheries in Chedabucto bay, and has not the least doubt that the continued failure of these fisheries for several years past has been in a great measure owing to the quantity taken by American vessels in our waters, and contrary to the stipulations of the treaties which have reference to these fisheries.

JOHN M'PHERSON.

Sworn to before me at Guysborough, this 7th day of March, 1837.
WENTWORTH TAYLOR, Justice Peace.

Personally appeared Richard Reeves, a resident inhabitant of the Gut of Canso, in the County of Guysborough, and being duly sworn, deposeth and saith, that he has for many years been conversant with and engaged in the mackerel and herring fisheries at Chedabucto bay, and verily believes that the continued failure of these fisheries for several years past, has in a great measure been owing to the great quantity of these fish taken by American vessels in the Gulf of Saint Lawrence, and within the distance of nine miles from the shores of Cape Breton and Prince Edward Island, which deponent is informed is the distance limited by the existing treaties, within which foreign vessels are not allowed to take fish on these shores; and deponent further saith, that in his opinion were American vessels confined to the limits of the treaty, or in other words, kept to the distance of nine miles from the shores of this Province, New Brunswick and Prince Edward Island, they could not materially injure the mackerel and herring fisheries of this Province.

RICHARD REEVES.

Sworn to before me at Guysborough, this 6th day of March, 1837.
WENTWORTH TAYLOR, Justice Peace.

Personally

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Personally appeared Robert Irwin, of Harbour au Buchet, in the County of Sydney, yeoman, and maketh oath, that in the month of August last, he went out on a mackerel voyage on board the Commodore, an American schooner from Gloucester, in the State of Massachusetts, was out nine weeks, fished principally on the shores of Cape Breton, between Port Hood and Marguerite, and within one and a half miles of the land, sometimes within half a mile, 225 barrels during the voyage. There were at various times from 40 to 50 American vessels in company on the said shore during the time deponent was there, all fishing within three miles of the shore, and for the most part much nearer than three miles. Their mode of fishing is by grivelling or mixing herring or mackerel, either salt or fresh, or mackerel offal, and mixing it with water, and throwing it overboard with a ladle; when the school is thus raised they either lay the vessel to and drift, or if the weather is fine, they come to anchor and fish with jigs, or when the fish will not bite, as is sometimes the case, with gaffs. This they do as long as the fish remains; to keep them on the surface they continue throwing bait; sometimes 100 barrels are taken in one day, and frequently 20, 30 or 40 barrels to each vessel.

No. 7. Deponent does not know that the Americans interfered with the net fishery of the inhabitants on these shores. Does not know that they raised the fish near the shores and lured them into deep water; as far as he saw they made no scruple of fishing wherever they could raise the mackerel, but deponent thinks it quite practicable for fish to be thus raised and lured from the shores.

11. Thinks that the permission granted to American fishermen to take fish at the distance of three miles from one shore, would even if strictly adhered to on their part be very prejudicial to our net and seine fisheries, by baiting and keeping them off the shores and from pursuing their proper course and in their usual season. The system of gaffing, not jigging, is also injurious, as many fish that escape from the gaff are thereby wounded and destroyed.

Deponent believes that steam vessels would be the most effectual mode of preventing the encroachment of American vessels in the Gulf of Saint Lawrence. If two small armed steamers were kept running alternately from the Gulf along the western shores of Cape Breton to Marguerite, thence to the east point and along the northern shore of Prince Edward Island and the eastern shore of New Brunswick to Cape Gaspe, it would be in their power to give the most efficient protection to these fisheries.

ROBERT IRVIN.

Sworn to before me at Guysborough, this 17th day of March, 1837.
WENTWORTH TAYLOR, Justice Peace.

Personally appeared John M'Kay, of Manchester, in the County of Guysborough, yeoman, and maketh oath, that in the month of May last, he was employed on board of an American schooner called the Armada, of Well Fleet, in the State of Massachusetts, on a voyage to Magdalen Islands; that said vessel remained at said islands for nearly a month, and during all that time lay at anchor in Harbour Mazory; that there were in all about 25 American vessels in said harbour during the time he was there; they all made good voyages, and caught their fish either in the harbours or in their own immediate vicinity. The vessels got on an average 400 barrels each. Deponent firmly believes that the quantity of herrings lately taken at these islands greatly injures the herring fishery at Chedabucto Bay and other parts of this Province.

Deponent further saith that he was also on board the aforesaid vessel on a mackerel voyage in the Gulf of Saint Lawrence for six weeks in July and August last. During said voyage there were taken on board of said vessel about 270 barrels; one third of which were taken near the north cape of Prince Edward Island at the distance from three to six miles from the shore; remainder was taken on the banks at a great distance from the shore; saw a great number of American vessels fishing close into the shores of the said island, and understood that some vessels fished at times in the harbour.

JOHN M'KAY.

Sworn to before me at Guysborough, this 10th day of March, 1837.
WENTWORTH TAYLOR, Justice Peace.

Personally appeared James Howlet, of Manchester, in the County of Guysborough, yeoman, and maketh oath, that in July and August last he was employed on a mackerel voyage

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voyage on board of an American schooner, called the Fairplay, of Eastport. That during the said voyage about 250 barrels were taken on board said vessel. Fished between Margaree island and the shore of Cape Breton for five days. Saw a great number of American vessels fishing within one mile of the shores of Cape Breton and Prince Edward Island. Thinks he saw about sixty sail so fishing. Believes that the quantity taken by American vessels in the Gulf is very injurious to the mackerel fisheries on our shores.

JAMES HOWLET.

County of Pictou, ss. Frederick Green, of the East River of Pictou, in the County of Pictou, mariner, maketh oath and saith, that during the summer of the year 1836 this deponent was engaged by George Hanley, as master of the shallop Kate, on a fishing voyage on the coast of Cape Breton and Prince Edward Island, and the adjacent parts. That in the month of June deponent was stationed between Wolfe island and the main land of Cape Breton, the Straight between the island and the main land being about four miles in width; that at that time there were from ninety to a hundred sail of American vessels at anchor in the said straits fishing mackerel, by jigging them as it is called; that this deponent had his nets set at the stern of the shallop, and fastened to a mooring at some distance astern; that one of the American vessels ran in close upon this deponent, who told the master of the same that he would run foul of his said nets, whereupon the American replied that deponent had no right to set his nets there, and the American kept on his course, and ran through deponent's nets, which caught the rudder of the American vessel, the master of which got out his boat, and cut away deponent's nets, and carried away part of them with him.

That in the month of August following deponent had other nets set, and one morning he found them gone, and is quite positive they could not have gone adrift as they were well secured; that upon going on board one of the Americans he found his nets, and having claimed them was told by the master that he had found them adrift, but deponent is sure they were drawn by the Americans, and designedly taken away.

That deponent continued in the station above mentioned from June till November: during all which time great numbers of American vessels were engaged fishing along the said coasts, and they constantly fished close into the shores, and indeed from the dexterity with which they manage their vessels much closer than this deponent thought it safe to venture.

That when this deponent spoke to any of the Americans about their infraction of the treaty, they insisted that the restrictions therein contained extended only to the fishing of cods, and that they had as much right to fish mackerel there as the subjects of Great Britain.

And deponent further saith, that the nets destroyed as aforesaid were worth sixteen pounds and ten shillings, and cost that price, and he verily believes he would have caught from one hundred and fifty to two hundred pounds worth of mackerel if the same had not been so destroyed, as above sworn to; and that all the fish deponent caught except a few barrels caught before the nets were destroyed, he caught by jigging, to which he was forced to resort in consequence of the loss of the nets, although quite unprepared to fish in that manner.

And deponent lastly saith, that he has been upwards of twenty years engaged in the fishery, and he is quite positive that if the Americans were restrained from fishery within three marine miles of the shores they could not succeed in the mackerel fishery, as they could not raise them in deep water; but at present they catch immense quantities, and completely destroy the net fishery. This deponent has seen upwards of seventy American vessels, who caught in two successive Sundays, upon an average, by their own admission, one hundred and twenty barrels each, making in all in the two days, sixteen thousand eight hundred barrels, worth about thirty thousand pounds.

That when the American carried away the nets as aforesaid, they were set between the shallop and the shore, which was not more than fifty yards distant; and the people who inhabit the shores cannot sometimes set their nets for fear of the Americans carrying them away.

FREDERICK GREEN.

Sworn to before me, this 13th March, 1837.
DAVID CRICHTON, Justice Peace.

Digby,

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Digby, County of Annapolis, March 25, 1837.

We, the undersigned, do hereby certify and make oath, that it pleased Heaven in the course of the month of August last, to send in the narrow and deep bay of Saint Mary's, in Digby aforesaid, immense shoals or schools of mackerel, so that the inhabitants on the shores of said bay could take them in great abundance in their little shore boats, and even when standing on the shores with lines of two or three fathoms long. But unfortunately for the inhabitants those schools of mackerel were followed in by more than thirty sail of American fishermen, who pursued them more than thirty miles up said bay, where they lay at anchor for a fortnight, and where the bay was not more than from three to five miles wide, and by throwing over great quantities of bait enticed the mackerel from the shores of the bay, to the very great injury of the inhabitants, and loaded their vessels in defiance of them.

FREEMAN TERFRY,
RICHARD LEONARD,
ABRAM GAVEL.

Sworn before me the day and date above.
E. MORTON, Justice Peace.

This is to certify unto all whom it may concern, that on or about the months of May or June last, we, the undersigned, did see several vessels (which we have every reason to believe were Americans) fishing within two miles of the shores of Parrsboro', to the great annoyance and injury of His Majesty's subjects by throwing the garbage overboard.

Given under our hands at Parrsboro', this 6th day of March, 1837.

William Hatfield, Junior, John Plushaw, Ralph Pearsons, A. G. Howard, John Morris, John L. Morris, Joshua Hazel, Isaac Hatfield, William Turpel, James Hatfield, James A. Hatfield, John Hatfield, Samuel Maynard.

This is to certify unto all whom it may concern, that on or about the month of May or June 1835, I, the undersigned, did see an American vessel fishing on the coast and within one mile of the shore of Parrsboro', to the great injury and annoyance of His Majesty's most loyal subjects, by throwing garbage overboard.

Given under my hand at Parrsboro', this 7th day of March, 1837.

GEORGE WINTER.

Sworn to before me, at Parrsboro', this 7th day of March, 1837.
JAS. RATCHFORD, Justice Peace.

This is to certify unto all whom it may concern, that on or about the months of May and June last, we, the undersigned did see several vessels, which we do verily believe were American, fishing on our coast, and within one mile of the shore of Parrsboro', to the great injury and annoyance of His Majesty's most loyal subjects, by throwing garbage overboard.

Given under our hands at Parrsboro', this 7th day of March, 1837.

GEORGE WINTER,
WILLIAM BREALEY.

This is to certify unto all whom it may concern, that on or about the months of May and June last, we, the undersigned, did see several vessels (which were American) fishing on our coast, and within one mile of the shore of Parrsboro', to the great injury and annoyance of His Majesty's most loyal subjects, by throwing garbage overboard.

Given under our hands at Parrsboro', this 6th of March, 1837.

JOHN W. MORRIS,
L. M. LOVELY.

Sworn to before me, at Parrsboro', this 6th day of March, 1837.
JAS. RATCHFORD, Justice Peace.

Henry Cowley, of Canso, in the County of Guysborough, merchant, maketh oath and saith, that he has been engaged in fishing and trading in fish in the said County for the last six years, and during that period he has repeatedly seen American fishermen introduce articles of American manufacture into the said County in exchange for fish, and repeatedly violate the terms of the treaty now existing between Great Britain and the United States, both in Chedabucto bay, Antigonish bay, as well as on the shores of

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Prince Edward Island, and Cape Breton; that deponent has repeatedly known the skippers of American vessels to land one or more of their crew, with supplies and money, to purchase fish from the inhabitants of Chedabucto bay, and also to procure fish by nets, which are taken on board the vessels when on their homeward voyage from the fishing grounds; that during the years 1834, 1835, and 1836, American vessels have traded from Canso to Crow harbour, almost within sight of the Custom house, without any measures having been taken to check a traffic so ruinous to the revenue of the Province; that in each of the above named years deponent has counted from 30 to 60 sail of American vessels between the east point of Prince Edward Island and Saint Peter's bay, fishing within one mile of the shores, and which vessels, on the approach of stormy weather, frequently run into the harbours of said island, and within deponent's knowledge, trade with the inhabitants; that it is very common to see from 50 to 60 sail of American vessels engaged in the cod fishery at one time, in the harbours of Souris and Three Rivers, in said island, where they set their bait nets, and if they are not well fished, do not scruple to rob those belonging to the inhabitants, and assault the owners if interfered with; that from 50 to 60 sail of similar vessels proceed to the Magdalen islands, and there in direct opposition to the wishes of the inhabitants, take from 15 to 20,000 barrels of herring, interfering with British subjects, and in some cases preventing them from setting nets, except in such places as the Americans point out; which outrages they are enabled to commit with impunity from their overwhelming numbers; that deponent has held repeated conversations with the commanders of American fishing vessels, who invariably allow that after the month of July, when mackerel keep the shores of Prince Edward Island, not one vessel in a hundred could procure a fare if confined to the limits defined by treaty; and who at the same time boast, that if permitted to visit the fishing grounds, to which they now resort, for four or five years, that they will render them as unproductive in mackerel as their own coasts now are, from their immense numbers, and destructive method of fishing.

HENRY COWLEY.

Sworn before me, at Arichat, this — day of March, 1837.
JOHN JEAN, Justice Peace.

William Dunbar, of Pictou, in the County of Pictou, yeoman, maketh oath that this deponent hath been for a period of nine years attending the fisheries on the coast of Labrador and the shores of this Province, and was during the last summer so employed on the shores of the same; that during the month of August whilst this deponent was so employed attending the fisheries, he saw from about 60 to 70 sail of American vessels lying at anchor from Mabou to Margaree islands, within from one half mile to two miles from the shore, and were busily engaged catching fish by jigging them; that during a whole fortnight whilst this deponent was there they continued so engaged; that owing to so many American vessels frequenting the said fisheries the net fishery is completely stopped and ruined; that when the Americans are fearful of being detected within the three marine miles of the shore they prepare a quantity of bait, which in abundance is thrown overboard so as to entice the fish; that when the schoal or school of fish discover it, they follow the vessels until they reach off from the shore the three miles, when they are immediately taken, and thus great injury is done to the fishermen and others concerned in the fisheries; that the Americans do, during the fishing season enter the harbours and bays on the coast of Nova Scotia, and trade with the inhabitants for fish, and this deponent knows of his own knowledge of their trading in this way during the last two years, particularly at Canso and the Gut of Canso, where they bartered tobacco, tea, shoes, boots, cottons, and other dry goods in payment for fish, and this system of smuggling is carried on during the whole fishing season.

That from so many Americans being employed during the last summer's fishery, at Port Hood, this deponent was afraid to set his nets, and was obliged to return to the Gut of Canso; that deponent with great difficulty got even into Port Hood, and in doing so came in contact with one of the said American vessels, there being at this time sixty seven sail of American vessels, which number this deponent distinctly counted.

That almost every night during the fishing season the said Americans anchor in the harbours on this coast.

WILLIAM DUNBAR.

Sworn to, at Pictou, this 11th day of March, 1837, before me.
DAVID CRICHTON, Justice Peace.

Charles

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Charles Stewart, a native of Liverpool, Nova Scotia, states that he was employed the past season on board an American vessel fitted out from Cape Ann, for the purpose of taking mackerel in the Bay Chaleur; that they fished partly on the north side of Prince Edward's Island, and partly off Chestigo, in the island of Cape Breton; that a great part of the fish was taken by the said vessel within three miles of the shores, and some of them not more than a quarter of a mile off; that the best fishing is near the shore, of which the Americans are aware, and take advantage thereof when no British vessels are near them; that the mackerel are drawn towards the vessel by throwing overboard bait, consisting of fish and fish offals, ground in a mill fitted for the purpose, and they are then taken partly by the hook and partly with gaffs.

That American vessels for the Mackerel fishery are fitted out in what is called a half lay, that is, the men have half the fish caught, and that the natives of this Province are induced to sail in American vessels because the value of the fish is so much greater in the American markets than in Nova Scotia—that their profits are thereby greatly increased.

CHARLES STEWART.

Liverpool, 11th March, 1837.

This statement may be relied on as strictly correct, although not sworn to. J. B.

I, Jacob Titus, do certify, that the American fishermen have trespassed on our fishing ground, within one and a half miles from the shore, and have carried off loads of fish; and further, that they have cast their offals overboard within a half mile of the shore, which is very injurious to our fishing; also, that they set their nets on our shores, entering our harbours this last year and obtaining great quantities of mackerel.

JACOB TITUS.

Digby Neck, March 20, 1837.

Sworn before me, E. MORTON, Justice Peace.