

No. 6.

(See Page 373.)

COPY.

No. 45.

Downing Street, 9th April, 1841.

MY LORD,—

I have the honor to transmit, herewith, to your Lordship, the Copy of a Letter from the Under Secretary of State for Foreign Affairs, enclosing the copy of a note from the Minister at this Court from the United States of America, complaining of the proceedings of the Provincial Authorities in Nova Scotia towards the vessels and citizens of that Republic, engaged in fishing on the Coasts of the Province.

I have to request that you will make immediate enquiry into the allegations contained in Mr. Stevenson's note, and that you will furnish me with a detailed report on the subject, for the information of Her Majesty's Government.

I have, &c.

(Signed)

J. RUSSELL.

The Right Honorable Viscount Falkland, &c, &c. &c.

COPY.

Foreign Office, 2nd April, 1841.

SIR—

I am directed by Viscount Palmerston to transmit to you, herewith, for the consideration of Lord John Russell, a copy of a note from Mr. Stevenson, Minister from the United States of America, relative to certain proceedings of the Colonial Authorities of Nova Scotia, towards the vessels and citizens of the United States, engaged in fishing on the neighbouring Coasts of Nova Scotia.

I have, &c.

(Signed)

LEVESON.

James Stephen, Esq., &c. &c.

COPY.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has the honour to acquaint Lord Viscount Palmerston, Her Majesty's Principal Secretary of State for Foreign Affairs, that he has been instructed to bring to the notice of Her Majesty's Government, without delay, certain proceedings of the Colonial authorities of Nova Scotia, in relation to the seizure and interruption of the vessels and citizens of the United States, engaged in intercourse with the Ports of Nova Scotia, and the prosecution of the Fisheries on its neighbouring Coasts, and which, in the opinion of the American Government, demand the prompt interposition of Her Majesty's Government. For this purpose the undersigned takes leave to submit to Lord Palmerston the following representation :

By the 1st article of the Convention between Great Britain and the United States, signed at London, on the 20th October, 1818, it is provided—

1st. That the inhabitants of the United States shall have for ever, in common with the subjects of Great Britain, the liberty to take fish of every kind on that part of the Southern Coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quiron Islands,

Islands, on the shores of the Magdalen Islands; and also, on the Coasts, Bays, Harbours, and Creeks, from Mount Joly, on the Southern Coast of Labrador, to and through the Straits of Belleisle, and thence northwardly, indefinitely along the Coast, without prejudice, however, to the exclusive rights of the Hudson Bay Company.

2nd. That the American Fishermen shall also have liberty, forever, to dry and cure Fish in any part of the unsettled Bays, Harbours, and Creeks, of the Southern portion of the Coast of Newfoundland, before described, and of the Coast of Labrador; the United States renouncing any liberty before enjoyed by their citizens to take the Fish within three marine miles of any Coasts, Bays, Creeks, or Harbours of the British Dominions in America, not included within the above limits, i. e. Newfoundland and Labrador.

3rd. That American Fishermen shall also be admitted to enter such Bays or Harbours for the purpose of shelter, and of repairing damages therein, and also, of purchasing wood, and obtaining water, under such restrictions only *as might be necessary, to prevent their taking, drying, or curing Fish therein, or abusing the privileges reserved to them.* Such are the stipulations of the Treaty, and they are believed to be too plain and explicit to leave room for doubt or misapprehension, or render the discussion of the respective rights of the two countries at this time necessary. Indeed it does not appear that any conflicting questions of right between them have as yet arisen out of the differences of opinion regarding the true intent and meaning of the Treaty. It appears, however, that in the actual application of the provisions of the Convention (committed on the part of Great Britain to the hands of subordinate Agents, subject to and controlled by Local Legislation) difficulties growing out of individual acts have unfortunately sprung up from time to time, amongst the most important of which have been recent seizures of American vessels for supposed violations of the Treaty. These have been made, it is believed, under colour of a Provincial Law of the 6th Wm. 4, chap. 8, 1836, passed doubtless with a view to restrict rigorously, if not intended to aim a fatal blow at the Fisheries of the United States on the Coast of Newfoundland. It also appears, from information recently received by the Government of the United States, that the Provincial authorities assume a right to exclude the vessels of the United States from all their Bays (even including those of Fundy and Chaleurs) and likewise to prohibit their approach within three miles of a line *drawn from headland to headland, instead of from the indents of the shores of the Provinces!* They also assert the right of excluding them from British Ports, unless in actual distress, warning them to depart or get under weigh and leave harbour whenever the Provincial Custom House or British Naval Officer shall suppose that they have remained a reasonable time, and this without a full examination of the circumstances under which they may have entered the Port. Now the Fishermen of the United States believe (and it would seem they are right in their opinion, if uniform practice is any evidence of correct construction) that they can with propriety take fish any where on the Coasts of the British Provinces, *if not nearer than three marine miles to land*, and have the right to resort to their Ports for shelter, wood and water, nor has this claim, it is believed, ever been seriously disputed, based, as it is, on the plain and obvious terms of the Convention. Indeed the main object of the Treaty was not only to secure to American Fishermen in the pursuit of their employment the right of fishing, but likewise to insure to him as large a proportion of the conveniences afforded by the neighbouring Coasts of British Settlements, as might be reconcilable with the just rights and interests of British subjects, and the due administration of Her Majesty's Dominions. The construction therefore which has been attempted to be put upon the stipulations of the Treaty by the Authorities of Nova Scotia, is directly in conflict with their object, and entirely subversive of the rights and interests of the citizens of the United States. It is one, moreover, which would lead to the abandonment to a great extent of a highly important branch of American industry, which could not for a moment be admitted by the Government of the United States. The undersigned has also been instructed to acquaint Lord Palmerston that the American Government has received information, that in the House of Assembly of Nova Scotia, during the Session of 1839—40, an Address to Her Majesty was voted, suggesting the extension to adjoining British Colonies of rules and regulations

lations relating to the Fisheries, similar to those in actual operation in that Province, and which have proved so onerous to the Fishermen of the United States; and that efforts, it is understood, are still making to induce the other Colonies to unite with Nova Scotia in this restrictive system. Some of the provisions of her code are of the most extraordinary character. Amongst these is one which declares that any Foreign vessel *preparing* to fish within three miles of the Coast of any of Her Majesty's Dominions in America, shall, together with the cargo, be forfeited; that, in all cases of seizure, the owner or claimant of the vessel, &c., shall be held to prove his innocence, or pay treble costs; that he shall be forced to try his action within three months, and give one month's notice at least to the Seizing Officer, containing every thing intended to be proved against him, before any suit can be instituted; and also, prove that the notice has been given. The Seizing Officer, moreover, is almost wholly irresponsible, inasmuch as he is liable to no prosecution, if the Judge certifies that there was probable cause; and the Plaintiff, if successful in his suit, is only to be entitled to *two-pence damages, without costs, and the Defendant fined not more than one shilling*. In short, some of these rules and regulations are violations of well established principles of the Common Law of England, and of the principles of the just Laws of all civilized Nations, and would seem to have been designed to enable Her Majesty's Authorities to seize and confiscate, with impunity, American vessels, and embezzle, indiscriminately, the property of American citizens, employed in the Fisheries on the Coasts of the British provinces. It may be proper also, on this occasion, to bring to the notice of Her Majesty's Government the assertion of the Provincial Legislature, "*that the Gut or Strait of Canso is a narrow strip of water, completely within, and dividing several counties of the Province,*" and that the use of it by the vessels and citizens of the United States is in violation of the Treaty of 1818. This strait separates Nova Scotia from the Island of Cape Breton, which was not annexed to the Province until the year 1820. Prior to that, in 1818, Cape Breton was enjoying a government of its own, entirely distinct from Nova Scotia, the strait forming the line of demarkation between them, and being then, as now, a thoroughfare for vessels passing into and out of the Gulf of St. Lawrence. The union of the two Colonies cannot therefore be admitted as vesting in the Province the right to close a passage which has been freely and indisputably used by the citizens of the United States since the year 1783. It is impossible, moreover, to conceive, how the use, on the part of the United States, of the right of passage, common, it is believed, to all other Nations, can, in any manner, conflict with the letter or spirit of the existing Treaty stipulations. The undersigned would therefore fain hope that Her Majesty's Government will be disposed to meet, as far as practicable, the wishes of the American Government in the accomplishing, in the fullest and most liberal manner, the objects which both governments had in view in entering into the conventional arrangement of 1818. He has accordingly been instructed to bring the whole subject under the consideration of Her Majesty's Government, and to remonstrate on the part of this Government against the illegal and vexatious proceedings of the authorities of Nova Scotia against the citizens of the United States engaged in the Fisheries, and to request that measures may be forthwith adopted by Her Majesty's Government to remedy the evils arising out of the misconstruction, on the part of the Provincial Authorities, of their conventional engagements, and prevent the possibility of the recurrence of similar acts.

The undersigned renews to Lord Palmerson, &c. &c.

(Signed)

A. STEVENSON.

32, Upper Grovesnor Street, 27th March, 1841.

No. 69.

Government House, Halifax, 23th April, 1841.

MY LORD,—

I transmit a copy of a Report of a Committee on the Fisheries of Nova Scotia, which Report has been adopted by the House of Assembly, and to which I have been requested to call your Lordship's attention.

The greatest anxiety is felt by the inhabitants of this Province that the Convention with the Americans, signed at London on the 20th of October, 1818, should be strictly enforced; and it is hoped that the consideration of the Report may induce your Lordship to exert your influence in such a manner as to lead to the augmentation of the force (a single vessel) now engaged in protecting the Fisheries on the Banks of Newfoundland, and the South shore of Labrador, and the employment in addition of one or two steamers for that purpose.

The people of this Colony have not been wanting in efforts to repress the incursions of the natives of the United States upon their fishing grounds, but have fitted out with good effect some small armed vessels, adapted to follow the trespassers into shoal water, or chase them on the seas (and the expediency of this measure has been corroborated by the testimony of Capt. Milne, R. N., in his Report of the Fisheries of Newfoundland,) but finding their own means inadequate to the suppression of this evil, the Nova Scotians earnestly entreat the further intervention and protection of the Mother Country.

I have the honor to forward, herewith, in accordance with the request made to me in the same Resolutions, a case stated (raising the necessary questions as to the right of Fishery which the people of these Colonies possess) for the purpose of being referred to the Crown Officers in England, in order that the existing Treaties, and the rights of these North American Provinces under them, may be more strictly defined.

I shall feel obliged by your Lordships allowing the opinion of the Crown Officers to be taken on the said case; and I am authorized by the House of Assembly here, to defray any expense that may be incurred in obtaining such opinion.

I have, &c.

(Signed)

FALKLAND.

The Lord John Russel, &c. &c. &c.

Case stated by direction of The Right Honorable Lord Viscount Falkland, Lieutenant-Governor of Nova-Scotia, at the request of the House of Assembly of that Province, for the purpose of obtaining the opinions of the Law Officers of the Crown in England.

At the Peace of 1783, a Treaty was entered into between the United States of America and Great Britain, by 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 St. 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." They also obtained liberty to dry and cure fish in any unsettled Bays, Harbours 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.

The United States declared War against Great Britain in 1812, peace was subsequently proclaimed, and a Convention was entered into between Great Britain and the United States, and signed at London, October 20th, 1818, the first article of which is as follows:

"Whereas, differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry and cure fish on certain Coasts, Bays, Harbours, and

and Creeks, of His Britannic Majesty's Dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States, shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours and Creeks, from Mount Joly on the Southern Coasts of Labrador, to and through the Straights of Belleisle, and thence northwardly indefinitely along the Coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company, and that the American Fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled Bays, Harbours and Creeks of the Southern part of the Coasts of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said Fishermen to dry or cure fish on or within at such portion so settled, without previous agreement for such purpose, with the Inhabitants, Proprietors, or Possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America, not included within the above mentioned limits—provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours, for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

An Act passed in 59th year of the Reign of His late Majesty George 3, chap. 38, entitled, An Act to enable His Majesty to make regulations with respect to the taking and curing Fish on certain parts of the Coasts of Newfoundland and Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America. And in the year 1836, His late Majesty William 4th, in the 6th year of His Reign, by an order in Council, assented to, and made the clauses of, a certain Act of the Assembly of Nova Scotia, the Rules, Regulations, and restrictions, respecting the Fisheries, on the Coasts, Bays, Creeks, or Harbours, of the Province of Nova Scotia, by the first section of which, it is enacted, that any ship, vessel, or boat, which shall be Foreign, and not navigated according to the Laws of Great Britain and Ireland, which shall have been found fishing, or preparing to fish, or to have been fishing, within three marine miles of the Coasts, Bays, Creeks, or harbours of this Province, such ship, vessel, or boat, and their respective cargoes, shall be forfeited. Nova Scotia is indented with Bays, many of which reach from 60 to 100 miles into the interior, such as the Bay of Fundy, Saint Mary's Bay, the Bras d'Or Lake, and Manchester Bay; the land on the shores is entirely British Territory; and Nova Scotia proper, is separated from the Island of Cape Breton by a narrow strait called the Gut of Canso, in some parts not wider than three quarters of a mile. In the Bay of Fundy, St. Mary's Bay, and the Straits of Canso, Americans conduct the Fishery, and their fishing vessels pass also through the Straits of Canso, or anchor there, and not only fish, but by using bait, toll the Mackarel into deep waters, thereby injuring the profitable Seine Fisheries of Fox Island, and Crow Harbour, Arichat, St. Peter's Bay, and other stations in the neighbourhood of Canso, which formerly were the most productive Fisheries of Nova Scotia. They also land on the Magdalen Islands, set nets, and sweep seines in the Spring of the year, at a time when the Herrings resort to those waters to spawn, thereby destroying the spawn and young fish, and consequently ruining the Fishery.

The opinion of the Law Officers of the Crown in England, is requested on the following points:

First.—Whether the Treaty of 1783 was annulled by the war of 1812, and whether citizens of the United States possess any right of fishery in the waters of the Lower Provinces, other than ceded to them by the Convention of 1818, and if so, what right.

Second.—Have American Citizens the right, under that Convention, to enter any of the Bays of Nova Scotia to take fish; if, after they have so entered, they prosecute the Fishery more than three marine miles from the shores of such Bays; or should the prescribed distance of three marine miles be measured from the headlands, at the entrance of such Bays, so as to exclude them.

Third.—Is the distance of three marine miles to be computed from the indents of the Coasts of British America, or from the extreme headlands, and what is to be considered a headland.

Fourth.—Have vessels of the United States of America, fitted out for a Fishery, a right to pass through the Gut or Straits of Canso; which they cannot do, without coming within the prescribed limits, or to anchor there, or to fish there; and is casting bait, to lure fish in the tract of the vessels fishing, within the meaning of the Convention.

Fifth.—Have citizens of the United States of America a right to land on the Magdalen Islands, and conduct the Fishery from the shores thereof, by using nets and seines; or what right of Fishery do they possess on the shores of those Islands, and what is meant by the term shore.

Sixth.—Have Fishermen of the United States the right of entering the Bays or Harbours of the Province of Nova Scotia, for the purpose of purchasing wood, and obtaining water, having provided neither of these articles at the commencement of their voyages, in their own Country; or have they the right only of entering such Bays and Harbours in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles, for the voyage of such fishing craft, has been exhausted or destroyed.

Seventh.—Under existing Treaties, what rights of Fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects.

No. 75.

Government House, Halifax, 8th May, 1841.

MY LORD,—

I have had the honor to receive your Despatch, No. 45, dated 9th April, 1841, transmitting a copy of a letter from the Under Secretary of State for Foreign Affairs, inclosing a copy of a note from the American Minister at the Court of St. James', complaining of certain proceedings of the Colonial Authorities of Nova Scotia, towards the vessels and citizens of the Republic engaged in fishing on the Coasts of the Province, and desiring that I will make immediate enquiry into the allegations made by Mr. Stevenson, and forward to you a detailed report on the subject. I have lost no time in obeying your instructions, and beg to submit the following observations, for your consideration:

Mr. Stevenson commences his representation by citing the first article of the Convention entered into between Great Britain and the United States, on the 20th October, 1818, and signed at London; and having done so, says:

“Such are the stipulations of the Treaty, and they are believed to be too plain and explicit to leave room for misapprehension, or render the discussion of the respective rights of the two Countries at this time necessary; indeed, it does not appear, that any conflicting questions of right between them, have as yet arisen out of the differences of opinion regarding the true intent and meaning of the Treaty; it appears, however, that in the actual application of the provisions of the Convention, (committed on the part of Great Britain to the hands of subordinate Agents, subject to, and controlled by local Legislation) difficulties growing out of individual acts, have unfortunately sprung up from time to time, among the most important of which, have been recent seizures of American vessels, for supposed violations of the Treaty. These have been made, it is believed, under colour of a Provincial Law, of 6, William 4, cap. 8, passed, doubtless, with a view to restrict rigorously, if not intended to aim a fatal blow at the Fisheries of the United States, on the Coast of Newfoundland. It also appears, from information recently received by the Government of the United States, that the Provincial authorities as-

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sume a right to exclude the vessels of the United States from all their Bays, including those of Fundy and Chaleurs, and likewise to prohibit their approach within three miles of a line from headland to headland, instead of from the indents of the Province."

The difficulties which exist, and of which Mr. Stevenson complains, as growing out of individual acts, are created by the difference of the interpretation put by the Nova Scotians and the Americans, upon the true intent and meaning of the Treaty referred to by His Excellency, and the Act of the Imperial Parliament, 59, Geo. 3, cap. 38, founded on that Treaty, and more fully referred to hereafter; and until formal adjudication, resulting from the seizure and prosecution of American vessels for abuse of the privilege ceded to them, shall take place, and consecutive precedents for future guidance, be thereby established, it appears probable that doubts may and will arise as to the interpretation to be borne by the said Treaty.

It is true that some seizures have been made of American Fishing vessels under the Provincial Act 6, Wm. 4, referred to by Mr. Stevenson, but His Excellency has fallen into much misapprehension as regards the character of this law, the extent of its operation, and the nature of the seizures made under it. The Act recites the Convention and the Imperial Statute 59, Geo. 3, cap. 38, before mentioned, and, in describing the encroachments on the Coasts of the Province, which it was its object to prevent, it will be found to be framed in perfect conformity with the letter and spirit of that Statute, while the provisions by which it seeks to effect the object in view are borrowed from Imperial enactments relating to Trade and Navigation. Its operation is limited, as of necessity it must be, to Nova Scotia, and therefore it could not have been passed, as assumed by Mr. Stevenson, with a view to restrict or destroy the Fisheries of the United States on the Coast of Newfoundland, and for the same reason this Act does not affect the Bay of Chaleurs also mentioned by His Excellency.

In point of fact I have not been able to learn that any seizures have been made when the vessels have not been within the distance prescribed by the Statute, or considered so to be: although it is true the Bay of Fundy, as well as smaller Bays on the Coast of Nova Scotia, is thought by the Law Officers in the Province to form part of the exclusive territory of the Crown, under the authority of a principle of the Law of Nations laid down by Grotius, and adopted by English Jurists, vide Chitty's Commercial law, vol. 1, page 90—extracts from which are contained in the paper marked No. 1, herewith transmitted.

The complaint that the Provincial Authorities assume the right to prohibit "the approach of American fishing vessels within three miles of a line drawn from headland to headland, instead of from the indents of the shores of the Provinces," is another exemplification of the difference I have stated to exist in the interpretation put upon the Treaty by the subjects of the two Governments; the following words of the Convention of 1818, cited by Mr. Stevenson, "the United States renouncing any liberty before enjoyed by their citizens to take fish within three marine miles of any Coasts, Bays, Creeks, or Harbors of the British Dominions in America, not included within the above limits, i. e. Newfoundland and Labrador," appearing to the Authorities here to bear them out in the assumption of such right, whereas the citizens of the United States maintain the direct contrary.

On this point the Law Officers of the Crown in the Colony express themselves very strongly, both on the general principle of international law, and the letter and direct spirit of the Convention. They deem it to be a settled rule that the shore of a state lying on the sea is determined by a line drawn from the projecting headlands, not by following the indentations of the coast, vide 1st Chitty 99 and 100, an extract from which is contained in paper marked No. 2, herewith transmitted, and therefore think it a necessary consequence that the three miles fixed upon by the Convention should always be measured from such a line. But they also say the words of the Convention would put an end to the question, could any be raised on the general rule.

The language used in the Convention (1st Article) is "three marine miles of any of the Coasts, Bays, Creeks, or Harbors of His Britannic Majesty's Dominions in America" and

—and it is considered that three miles from a Bay, Creek, or Harbor, must mean three miles from any part of it, and consequently from its entrance or mouth, or in other words from a line drawn from its projecting headlands. The Convention however does not stop here. It provides “that American fishermen may enter such Bays or Harbors for the purpose of shelter, repairing damages, and obtaining wood and water, and for no other purpose whatever. *But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein*, or in any other manner whatever abusing the privileges hereby reserved to them.” This language is considered conclusive against any pretense that American fishermen should have the right to enter any Bays or Harbors in Her Majesty’s North American Colonies, excepting only for shelter, repairing damages, or providing wood and water. Indeed the claim now set up, there is reason to believe, is new, as in point of practice, the American fishermen, when questioned for being within the waters of this Province, have uniformly resorted to the pretext afforded by the Convention, viz. the want of shelter, repairs, or wood and water, and never, it is believed, have asserted the right to fish within the Bays or Harbors of the Coasts.

This question is of extreme importance to Nova Scotia, as from the indented nature of its Coasts, the claim set up by the American Minister, would lead to results most injurious to the Province.

The right to resort to the Ports of Nova Scotia for shelter, wood, and water, which Mr. Stevenson conceives has never been seriously disputed, has always been frankly conceded in cases of real distress and unaffected calamity, but never when such right was supposed to be exercised for the purpose of evading the British Commercial regulations. Thus, in the case of the *Nabby*, seized in 1818, by Her Majesty’s Ship *Saracen*, and prosecuted in the Admiralty Courts of Nova Scotia, it was decided, that vessels are bound to have a sufficient quantity of wood, water, and provisions, on board for the voyage which they are engaged in,—a scarcity of either of these articles arising from design or neglect, not necessarily opening British Ports to any adventurer seeking to contravene the Law.

The American Minister states in his Despatch, that “the Fishermen of the United States believe (and it would seem they are right in their opinion, if uniform practice be evidence of correct construction) that they can, with propriety, take fish any where on the Coasts of the British Provinces, if not nearer than three marine miles to land.”—This, from the general context of Mr. Stevenson’s note, evidently means within three miles of the indents of the shore: the uniform practice alluded to by that gentleman, is a practice which has always been resisted by the Authorities of this Colony, although it is difficult, with an extended Coast, and inadequate means of protection, entirely to suppress it.

Mr. Stevenson goes on to say, that “the construction which has been attempted to be put upon the stipulations of the Treaty by the Authorities of Nova Scotia, is directly in conflict with their object, and entirely subversive of the rights and interests of the citizens of the United States”; again, “that some of the provisions of her code are of the most extraordinary character”; and towards the conclusion of his Despatch, that “some of these rules and regulations are violations of the well established principles of the Common Law of England, and of the principles of the just Laws of all civilized Nations, and would seem to have been designed to enable Her Majesty’s Authorities to seize and confiscate, with impunity, American vessels, and embezzle, indiscriminately, the property of American citizens, employed in the Fisheries on the Coasts of the British Provinces.”—This is very strong language, and if justly applicable at all, is applicable to the Statute 59, Geo. 3d., passed by the Imperial Parliament one year after the signing of the Convention, and with the express design of carrying out its provisions. The words of the above Imperial Statute 59, Geo. 3, c. 38, are—“and that it shall not be lawful for any person or persons, not being natural born subjects of His Majesty, in any Foreign ship, vessel, or boat, nor any person in any ship, vessel, or boat, other than such as shall be navigated according to the Law of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure any fish of any kind whatever, within three marine miles of

of any Coasts, Bays, Creeks, or Harbours whatever, in any part of His Majesty's Dominions in America, not included within the limits specified, and described in the first article of the said Convention; and that if any Foreign ship, vessel, or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish, within such distance of such Coasts, Bays, Creeks, or Harbours, within such parts of His Majesty's Dominions in America, as are out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned, by such and the like ways, means, and methods, and in the same Courts, as ships, vessels, or boats, may be forfeited, seized, prosecuted, and condemned, for any offence against any Laws relating to the Revenue of Customs, or the Laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain and Ireland, provided that nothing in said Act contained shall apply, or be construed to apply, to the ships or subjects of any Prince, Power, or State, in amity with His Majesty, who are entitled by Treaty with His Majesty to any privilege of taking, drying, or curing fish on the Coasts, Bays, Creeks, or Harbours, or within the limits in that Act described."

Thus, the very words "*preparing to fish*," so strongly animadverted on by Mr. Stevenson, are copied from an Imperial Act which has been *twenty three years* in force, and which, inasmuch as it has relation to American interests of the greatest importance, and sprung out of a Convention concluded with a view to the establishment of those interests, could not but be well known to the United States Government.

The 8th section of the 6th, Wm. 4, which provides that the owner of the vessel seized shall be held to prove his innocence, does not involve the payment of treble costs in case of failure; and Mr. Stevenson is, I am assured by the Crown Officers, here in error, with respect to the interpretation he has given to it.

Mr. Stevenson objects to the Seizing Officer being "liable to no prosecution, if the Judge certifies that there is probable cause of seizure"; and complains that the Plaintiff, if successful in his suit, is only entitled to two-pence damages, without costs, and the Defendant can be fined no more than one shilling."

This is an imperfect statement of the clause, inasmuch as the Plaintiff is entitled to recover the value of his goods; but in case probable cause is certified, he can only, in addition, recover two-pence damages.

The Province has, however, transcribed from the Imperial Statute of 6th, Geo. 4, cap. 114, entitled, An Act to regulate the Trade of the British Possessions abroad; and therefore, if it be in reality a violation of the well established principles of the Common Law of England, and of the principles of the just Laws of all civilized Nations, has been long submitted to by British subjects, and could not have been designed by the Assembly of Nova Scotia "to enable Her Majesty's Authorities to seize and confiscate, with impunity, American vessels, and embezzle, indiscriminately, the property of American citizens."

Her Majesty's exclusive property and dominion in the Strait of Canso is deemed maintainable upon the principles of international Law, already referred to, and which, it is considered, will apply equally, whether the shores on each side form parts of the same Province, or of different Provinces belonging to Her Majesty.—This Strait is very narrow, not exceeding, in some parts, one mile in breadth, as may be seen on the Admiralty Chart: and its navigation is not necessary for communication with the space beyond, which may be reached by going round the Island of Cape Breton.

Having noticed successively the allegations of the American Minister, I may be permitted to make one or two remarks on the general tenor of His Excellency's communication, which goes to charge the Legislature of Nova Scotia with a design to subvert the rights and interests of the citizens of the United States, in controvention of the Treaty of 1818.

It appears to me that the Provincial Legislature cannot fairly be accused of any such intention. It is manifest that neither the Statute of the Imperial Parliament nor that of the Colonial Legislature can extend the Terms of the Treaty itself, or render them

more comprehensive. Its true construction, according to the Law of Nations, must govern those to be affected by it, and the Colonists, aware of this, and conceiving themselves wronged by the interpretation given to the Treaty by their neighbours of the United States, have long been, and now are, as my Despatch No. 69, date 28th April, 1841, will have informed your Lordship, anxious to obtain the opinions of the most eminent Jurists on the subject, not seeking for any forced construction of the Treaty to give them privileges not contemplated at its execution, but merely to protect themselves from that which, be they right or wrong, they now deem an infringement of their rights. The whole course of their Legislation, in regard to this matter, appears to prove this. In the Laws they have made for the protection of their Fisheries, which are in no case more extensive than the Imperial Statute 59, Geo. 3, there is not only nothing new, but they have endeavoured, as I have shewn, to adopt on all occasions the principles of Imperial Legislation, and have copied even the words of Imperial Acts.

I have now, I trust, established, that if the interpretation put on the Treaty by the inhabitants of Nova Scotia is an incorrect one, they are sincere in their belief of the justice and truth of that interpretation, and most anxious to have it tested by capable authorities; and further, that if the Laws passed by the Provincial Legislature are really of the oppressive nature they are asserted to be by Mr. Stevenson, they were enacted in the belief that the framers of them were doing nothing more than carrying out the views of the Home Government, as to the mode in which the Colonists should protect their own dearest interests. I inclose a copy of a Proclamation containing the Act of the 6th Wm. 4, of which Mr. Stevenson complains, and any alteration in its provisions, should such be deemed necessary, may be made early in the next Session of the Provincial Parliament.

With regard to the Convention of 1818, it is I think apparent (from the history of the transaction as given by Mr. Rush in his memoirs, chap. 19, page 400) that at the time it was concluded the American Plenipotentiaries, *acting on wrong information derived from their own fishermen*, believed that in renouncing for ever the liberty of fishing within three miles of any part of the coasts of British America, where the right of fishing is not guaranteed to them by the terms of the said Convention, they did *not* in reality relinquish the advantages to be derived from these fisheries, *for they supposed the whole fishing ground on the coast of Nova Scotia to extend to a greater distance than three miles from the land*. The Plenipotentiaries, however, acted on bad information, and were mistaken, beyond three miles from the land, very few, if any, herring or mackerel, the chief objects of pursuit, are to be caught, and the natives of the United States are now consequently disappointed, and discontented, at not continuing to enjoy that which they had, as they conceived, only apparently covenanted to give up. Mr. Rush, in his memoirs, page 400, chap. 19, claims credit for his astuteness in regard to this arrangement, and the introduction into the Treaty of a clause not found in the British contre-project in the following words:—"It was by our act that the United States renounced the right to the fisheries not guaranteed to them by the Convention." That clause did not find a place in the British contre-project, *we* deemed it proper, under a three-fold view, first to exclude the implication of the Fisheries secured to us being a new grant: secondly, to place the rights secured and renounced on the same footing of permanence: thirdly, that it might expressly appear that our renunciation was limited to three miles from the coasts. This last point we deemed of the more consequence from our fishermen having informed us that the whole fishing ground on the coasts of Nova Scotia, extended to a greater distance than three miles from the land, whereas along the Coasts of Labrador it was almost universally close in with the coasts."

Whatever the true construction of the Treaty may be, and I cannot but conceive that that construction must be ascertained, not by negotiation, but in the Courts of Law, Her Majesty's subjects in this Province will willingly abide by it, and in like manner I cannot doubt but that any course Her Majesty's Government may deem it expedient to follow with regard to the above Treaty, will be cheerfully acquiesced in by the People of Nova Scotia, who feel assured that in a matter of such vital importance to their future prosperity, the conduct of the Mother Country will be guided by principles of equity and

a due

a due regard to the interests of her offspring, whenever those interests ought in justice to be upheld.

I have the honor to be, &c.,

(Signed)

FALKLAND.

The Lord John Russell, &c. &c. &c.

No. 90.

Government House, Halifax, 11th July, 1842,

MY LORD—

At the request of the Chairman of the Committee of the House of Assembly of Nova Scotia on the Fisheries, a copy of the Report of which Committee I enclose, I have the honor to call your attention to the subject of my Despatch No 69, date April 28th, 1841, addressed to your Lordship's predecessor. I also send a copy of the case stated, raising certain questions as to the rights of Fishery, which the people of these Colonies possess, which accompanied my former communication on this matter.

I have, &c.

(Signed)

FALKLAND.

The Lord Stanley, &c. &c. &c.

COPY.

No. 86.

Downing Street, 28th November, 1842.

MY LORD,—

I have the honor to acknowledge the receipt of your Lordship's Despatch No. 90, of the 11th of July last, enclosing copies of two Reports made by Committees of the House of Assembly of Nova Scotia, complaining of the encroachments of American Citizens on the Fisheries of British North America, and praying the establishment of a general code of Regulations for their protection—together with a copy of a case prepared by you in April, 1841, to be submitted to Her Majesty's Law Officers, raising certain questions, as to the rights of Fishery conferred by the Treaties on the subject, on British and American Fishermen respectively.

I enclose for your information a copy of the Report, which on the 30th of August, 1841, was received from the Queen's Advocate and Her Majesty's Attorney General, on the case drawn up by your Lordship. Since that date the subject has frequently engaged the attention of myself and my colleagues, with the view of adopting further measures, if necessary, for the protection of British Interest in accordance with the Law as laid down in the enclosed Report. We have, however, on full consideration come to the conclusion as regards the Fisheries of Nova Scotia, that the precautions taken by the Provincial Legislature appear adequate to the purpose, and that being now practically acquiesced in by the Americans, no further measures are required—while with respect to the proposed establishment of a general code of regulations to apply to all the North American Provinces, the very satisfactory Reports lately received from Vice Admiral Sir Charles Adam, of which copies are enclosed for your information, regarding the Fisheries in the Bay of Fundy and Gulf of St. Lawrence, appear to us to render it inexpedient to moot the question.

I have, &c.

(Signed)

STANLEY.

The Right Honorable Viscount Falkland, &c. &c. &c.

Copy.

COPY.

Doctors Commons, 30th August, 1841.

MY LORD—

We are honored with your Lordship's commands, signified in Mr. Backhouse's Letter of the 26th of May, stating that he was directed to transmit to us the accompanying Letter from the Colonial Office, enclosing the copy of a Despatch from the Lieutenant-Governor of Nova Scotia, enclosing an Address to Her Majesty from the House of Assembly of that Province, complaining of the continued encroachments of American Fishermen on the fishing ground of Nova Scotia and the adjoining Colonies, and praying that Her Majesty would establish, by an Order in Council, general regulations for the protection of the Fisheries, according to the code annexed to the address.

Mr. Backhouse is pleased to request that we would take these papers into consideration and report to your Lordship our opinion, whether there is anything in the proposed regulations which would be inconsistent with the stipulations of the Convention of the 28th October, 1818, between Great Britain and the United States of America.

We are also honored with Mr. Backhouse's letter of 19th of April, stating that he was directed to transmit to us a further Letter from the Colonial Office, dated the 16th instant, enclosing the copy of a Despatch from the Lieutenant-Governor of Nova Scotia, covering a copy of an address from the Legislative Council of that Province, objecting to one of the above-mentioned regulations, proposed by the House of Assembly in the Session of 1840, and to request that he would take these papers into consideration, in addition to those referred to in his letter of the 26th March last, and that we would Report to your Lordship at our early convenience our opinion thereupon.

We are also honored with Mr. Backhouse's letter of the 8th June, stating that he was directed to transmit to us the accompanying copy of a letter from the Colonial Office, together with a copy of a Despatch from the Lieutenant-Governor of Nova-Scotia, enclosing a copy of the Report of the House of Assembly, on the subject of the Fisheries of that Province, and also enclosing a case for opinion as to what rights have been ceded to the citizens of the United States of America, and as to what rights have been exclusively reserved to Her Majesty's subjects, and to request that we would take the papers into consideration, and report to your Lordship our opinion upon the several questions stated in case above mentioned.

We are also honored with Mr. Backhouse's letter of the 5th ultimo, stating that he was directed to transmit to us a correspondence, as marked in the margin, which has passed between the Foreign Office and Mr. Stevenson, the American Minister at this Court, and the Colonial Department, on the subject of a remonstrance addressed by Mr. Stevenson against the proceedings of the Authorities of Nova Scotia, towards American fishing vessels encroaching on the Fisheries of that Coast, and to request that he would take these papers into consideration, and report to your Lordship our opinion thereupon.

1st Query.—In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honor to report, that we are of opinion, that the Treaty of 1783 was annulled by the war of 1812; and we are also of opinion, that the rights of Fishery of the citizens of the United States must now be considered as defined and regulated by the Convention of 1818; and with respect to the general question, "*if so, what right,*" we can only refer to the terms of the Convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

2nd Query.—Except within certain defined limits to which the query put to us does not apply, we are of opinion, that by the terms of the Convention, American citizens are excluded from any right of fishing within three miles of the Coast of British America, and that the proscribed distance of three miles is to be measured from the headlands or extreme points of land next the sea of the Coast, or of the entrance of the Bays, and not from the interior of such Bays or Indents of the Coast, and consequently, that no right exists on the part of American citizens to enter the Bays of Nova Scotia, there to take fish, although the fishing being within the Bay may be at a greater distance than three miles

miles

miles from the shore of the Bay, as we are of opinion that the term 'headland' is used in the Treaty to express the part of the land we have before mentioned, excluding the interior of the Bays and the indents of the Coast.

4th Query.—By the Convention of 1818, it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, and within certain defined limits, in common with British subjects; and such Convention does not contain any words negating the right to navigate the passage or Gut of Canso, and therefore it may be conceded that such right of navigation is not taken away by that Convention; but we have now attentively considered the course of navigation to the Gulf, by Cape Breton, and likewise the capacity and situation of the passage of Canso, and of the British Dominions on either side; and we are of opinion, that independently of Treaty, no Foreign Country has the right to use or navigate the passage of Canso; and attending to the terms of the Convention relating to the liberty of Fishery to be enjoyed by the American citizens, we are also of opinion that that Convention did not either expressly, or by necessary implication, concede any such right of using or navigating the passage in question. We are also of opinion, that casting bait to lure fish in the track of any American vessels navigating the passage, would constitute a fishing within the negative terms of the Convention.

5th Query.—With reference to the claim of a right to land on the Magdalen Islands, and to fish from the shores thereof, it must be observed, that by the Convention, the liberty of drying and curing fish (purposes which could only be accomplished by landing) in any of the unsettled Bays, &c. of the Southern part of Newfoundland, and of the Coast of Labrador, is specifically provided for; but such liberty is distinctly negated in any settled Bays, &c., and it must therefore be inferred, that if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore over which such liberty was to be exercised, and whether in settled or unsettled parts, but neither of these important particulars are provided for, even by implication, and that, among other considerations, leads us to the conclusion that American citizens have no right to land, or conduct the Fishery from the shores of the Magdalen Islands. The word 'shore,' does not appear to have been used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would therefore comprise the land covered with water, as far as could be available, for the due enjoyment of the liberty granted.

6th Query.—By the Convention, the liberty of entering the Bays and Harbours of Nova Scotia, for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any condition expressed or implied, limiting the enjoyment to vessels duly provided with those articles at the commencement of their voyage; and we are of opinion that no such condition can be attached to the enjoyment of the liberty.

7th Query.—The rights of Fishery ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the Convention of 1818, the only existing Treaty on this subject between the two Countries, and the material points arising thereon have been specifically answered in our replies to the preceding Queries.

We have, &c.

(Signed)

J. DODSON,
THOS. WILDE.

Viscount Palmerston, K. B., &c. &c. &c.

Extract of a Letter from Vice Admiral Sir Charles Adam, dated at Halifax, 17th October, 1842.

"I inclose, to be laid before the Lords Commissioners of the Admiralty, a Report from Commander Parrey, of the Sappho, and one from Commander Peel, of the Racehorse,

who relieved the first mentioned officer in the protection of the Fisheries in the Gulf of St. Lawrence.

“ I have signified to both these officers my approbation of the manner in which they conducted the service entrusted to them, and of the report they have made.

“ It does not appear that there has been any serious cause of complaint of the fishery vessels, either of the French or of those from the United States of America, and I believe the protection which is afforded by Her Majesty’s Ships usually employed in the Gulf of St. Lawrence has been sufficient.

“ There can be no doubt however that fishermen from the United States frequently occupy the best ground for the Mackerel fishery on the North shore of Prince Edward Island, and I believe it could only be entirely prevented by small vessels under the Revenue Department being employed there, as is the case on the shores of Nova Scotia, but that would involve an expense which I believe the Colony would not readily bear, and even if the fishermen from the United States were entirely prevented from resorting to it, I doubt if the ground would be occupied by fishermen belonging to the Island or the other Colonies.”

Extract from Vice Admiral Sir Charles Adam’s letter, No. 363, dated the 17th October, 1842, at Halifax.

“ I request you will acquaint the Lords Commissioners of the Admiralty that the Pickle Schooner returned from the Bay of Fundy on the 5th instant, where Lieutenant Montresor was employed for a short time for the protection of the Fisheries.

“ I have received a very detailed report of his proceedings and observations, but it is unnecessary to trouble their Lordships further than to say that it does not appear that the Fisheries have been molested in any way during the season, which has just closed, and which like the last has been very favorable.”

No. 7.

(See Page 374.)

The Committee to whom was referred the Petition of Henry Horn, respecting the loss of a Horse, beg leave to report that they have examined his claim, and are of opinion that it cannot be granted, as it would involve a principle that your Committee cannot recognise, neither can they recommend to your Honorable House.

All which is respectfully submitted.

Halifax, Committee Room, 1st February, 1843.

HENRY GATES,
R. McG. DICKEY,
WILLIAM JOHNSON.

No. 8.

(See Page 377.)

1

No. 64.

Downing Street, 19th August, 1842.

MY LORD,—

I transmit to you, herewith, an Act of Parliament, which received the Royal assent on the 16th ultimo, entitled, ‘ An Act to amend the Laws for the regulation of the Trade of the British Possessions abroad,’ and I have to request that you would take the first opportunity

tunity of communicating copies of this Act to the Legislature of the Province under your Government. I also inclose, for your information, the copy of a Despatch, which I have addressed to the Governor of Canada, explaining the policy by which Her Majesty's Government has been governed, in recommending to Parliament the adoption of the important changes in the Law affecting the Trade of the Colonies, which are sanctioned by this Act.

I have, &c.,
(Signed) STANLEY.

The Right Hon. the Viscount Falkland, &c. &c. &c.

COPY.

No. 227.

Downing Street, 17th August, 1842.

SIR—

I transmit to you, herewith, An Act of Parliament, 5 & 6 Victoria, c. 49, which received the assent of the Crown on the 16th ultimo, entitled, "An Act to amend the Laws for the regulation of the Trade of the British Possessions abroad," and I have to request that you will take the first opportunity of communicating copies of this Act to the Provincial Legislature of Canada.

Her Majesty's Government having undertaken, soon after their accession to office, the revision of the Laws by which the Commerce of the United Kingdom is governed, felt it to be their duty to consider with equal care the regulations bearing upon the Trade of the Colonies; and having in view the experience which has now been obtained of the Legislation promoted by the late Mr. Huskisson, and some of his successors in office, and being satisfied with its results, their object has been to give fuller effect to the spirit in which that Legislation was conceived. They have applied themselves, therefore, to remove restrictions upon Colonial Industry—to bring the provisions of the Imperial Law more and more into accordance with the spirit of the declaratory Act of 1778—and to afford new practical recognitions of the principle of equality and impartiality in the dealings of the Imperial Legislature, with the Colonial Possessions of the Crown. The Act now sent to you is the fruit of these endeavours, and I trust that the Legislature and the inhabitants of Canada will find in it enactments calculated to be of essential advantage to their Commerce, and to afford them relief as consumers of imported goods.

I do not propose to recapitulate the substance of the Act in all its provisions, but I wish to call your attention, in the first place, to the repeal of the duties under the Acts 4, Geo. 3, c. 15, 6, Geo. 3, c. 42, 14, Geo. 3, c. 88, on Pimento, Molasses, Wines, and Spirits, respectively.

I trust, that in the repeal of these duties, the Legislature will perceive and appreciate the desire of Her Majesty's Government to maintain the principle of the declaratory Act already alluded to, and confine the enactments of the Imperial Legislature, even as respects the imposition of Impost duties, within the narrowest limits, which are compatible with the due regulation of the Commercial interests of the Empire at large. I am desirous, also, to bring under your notice, a comparison of the table of Prohibitions, Duties, and exemptions, in the 4th and 7th sections, with those of the Possessions Act, applying to the like articles.

You will observe that the advalorem duties on Foreign Glass and Silk, manufactured, are reduced from 20 and 30 per cent, respectively, to 15 per cent.; those on Foreign Linen, Leather, and Paper, manufactures, and on Clocks and Watches, from 30 to 7 per cent.; those on Foreign Cotton Manufactures, Tobacco and Soap, from 20 to 7 per cent.; and those on unenumerated articles, from 15 to 4 per cent.; while Salt Fish of Foreign taking or curing, instead of being prohibited, is admitted at a duty of 2s. per cwt.; Foreign Oil, Blubber, Fins and Skins, also prohibited under the previous Act, are admitted on a duty of 15 per cent. advalorem; Cocoa, that was charged 5s per cwt., is admitted