

feel myself qualified to reply to it in the manner its importance demands, and I venture to request your Lordship will move Lord Aberdeen to allow any negotiation on the various topics to which it relates to remain suspended until I shall have an opportunity (which I hope will occur by the next Packet) of addressing your Lordship in regard to them.

I have, &c.

(Signed)

FALKLAND.

Lord STANLEY, &c. &c. &c.

*Extract of a Despatch from VISCOUNT FALKLAND to LORD STANLEY,
dated 2nd July, 1845. No. 331.*

"I lose no time in replying to your Lordship's Despatch, No. 225, date 19th May, desiring me to inform you whether I have any objections to offer, on Provincial or other grounds, to a further relaxation of the construction of the Treaty of 1818 between Great Britain and the United States.

"In my former correspondence, see No. 15, May 8, 1841, addressed to your Lordship's predecessor, and No. 185, Oct. 17, 1843, addressed to your Lordship, I have very fully explained that as the Advocate of the interests of the Province over the administration of the affairs of which I have now for some time presided, I should deeply lament any relaxation of the construction of the treaty which would admit of American fishing vessels carrying on their operations within three miles of a line drawn from headland to headland of the various bays on the coast of Nova Scotia, nor as Governor of the Colony do I now retract that opinion, but as in matters of this nature much technical knowledge as well as verbal accuracy is required in treating of details, I have directed the Attorney General to prepare a Report on this subject, which I herewith send, recommending it to your Lordship's particular attention, and to which I have only to add that I am convinced such a relaxation of the Treaty of 1818, as is apparently contemplated by Lord Aberdeen, would, if carried into effect, produce very deep rooted dissatisfaction both here and in New Brunswick, and cause much injury to a very large and valuable class of H. M. Subjects."

Halifax, 16th June, 1845.

MY LORD,

Agreeably to your Excellency's desire I have the honor to report such suggestions as appear to arise from the Despatch of the Right Honble the Secretary of State for the Colonies, dated 19th May last, Number 225, and the correspondence accompanying it; of the United States Minister at London and Her Majesty's Government, on the subject of the Fisheries on the coasts of Her Majesty's North American Provinces.

The concession of a right to fish in the Bay of Fundy has been followed by the anticipated consequences. The demand for more extensive surrenders based upon what has been already gained; and it is to be feared that the relaxations now contemplated, if carried into effect, will practically amount to an unrestricted licence to American Fishermen.

When their right to fish within the larger Bays or at the mouths of the smaller inlets shall be established, the ease with which they may run into the shores, whether to fish, or for obtaining bait, or for drawing off the shoals of fish, or for smuggling, and the facility of escape before detection, notwithstanding every guard which it is within the means of the Province to employ, will render very difficult the attempt to prevent violations of the remaining restrictions: while in the case of *seizures* the means of evasion and excuse, which experience has shown to be under any circumstances abundantly ready, will be much enlarged.

An instance has just occurred which illustrates this apprehension, and confirms the observations to the same effect contained in the Report I had the honor to make to Your Excellency on the 17th September last, on the same subject.

An American Fisherman on the 5th of this month was seized in the Bay of Fundy at anchor "inside of the Light House at the entrance of Digby Gut," about a quarter of a mile from the shore—his nets lying on the deck still wet and with the scales of herrings attached to the meshes, and having fresh herrings on board his vessel.

The excuse sworn to is that rough weather had made a harbour necessary, that the nets were wet from being recently washed, but that the fish were caught while the vessel was beyond three miles from the shore.

Hence too will be extended and aggravated all the mischiefs to our Fisheries from the means used by the Americans in fishing, as by jigging, drawing seines across the mouths of the rivers, and other expedients, from the practice of drawing the shoals from the shores by baiting, and above all from their still more pernicious habit of throwing the garbage upon the fishing ground and along the shores.

Every facility afforded the American fisherman to hold frequent, easy and comparatively safe intercourse with the shore, extends another evil perhaps more serious in its results—illicit traffic carried on under cover of Fishing, in which not only the Revenue is defrauded and the fair dealer discountenanced, but the coasts and remote Harbours are filled with noxious and useless articles, as the poisonous rum and gin and manufactured teas, of which already too much is introduced into the country in exchange for the Money and Fish of the settlers; and from this intercourse when habitual and established from year to year, the moral and political sentiments of our population cannot but sustain injury.

In the argument of the American Minister, His Excellency appears to assume that the question turns on the force of the word "Bay," and the peculiar expression of the Treaty in connexion with that word: but although it was obviously the clear intention of its framers to keep the American Fishermen at a distance of three Marine Miles from the "*Bays, Creeks and Harbours,*" there does not therefore arise any just reason to exclude the word "*coasts*" used in the same connexion in the Treaty, from its legitimate force and meaning; and if it be an admitted rule of general Law that the outline of a coast is to be defined not by its indentations, but by a Line extending from its principal head lands, then waters although not known under the designation nor having the general form of a Bay, may yet be within the exclusion designed by the Treaty.

His Excellency the American Minister complains of "*the essential injustice*" of the Law of this Province under which the Fisheries are attempted to be guarded, and is pleased to declare that it "*possesses none of the qualities of the Law of civilized States but its forms.*"

His Excellency in using this language possibly supposed that the Colonial Act had attempted to give a construction to the Treaty of 1818—or had originated the penalty and mode of confiscation which he deprecates.

But had His Excellency examined the Act of the Province he has so strongly stigmatized, he would have discovered that as regards the limits within which Foreign Fishermen are restricted from fishing, the Colonial Legislature has used but the words of the Treaty itself; and a comparison of the Provincial Act with an Act of the Imperial Parliament, the 59 Geo. 3, ch. 38, would have shown him that as regards the description of the offence—the confiscation of the vessel and cargo—and the mode of proceeding, the Legislature of Nova Scotia has in effect only declared what was already and still is the Law of the Realm under Imperial enactments.

Mr. Everett adverts to what he considers "*the extremely objectionable character of the course pursued by the Provincial authorities, in presuming to decide for themselves a question under discussion between the two Governments.*" But it is submitted that if the American Government controverted the construction given to the Treaty, the course pursued on the part of Nova Scotia, which made confiscation dependant on a judicial trial and decision, was neither presumptuous nor inexpedient, nor could the necessity of security for £60, or the risk of costs in case of failure, offer any serious impediment to the defence in a matter which, as Mr. Everett declares, the Government of the United States deems of great national importance. If on the other hand the American Fishermen

men could only seek a relaxation of the construction given to the Treaty in England and Nova Scotia as matter of favor, the "*presumption*" would rather seem to lie on that side which insisted on enjoying the privilege *before* the boon was conferred.

In any view of the matter as the American Fisherman was never meddled with until he had *voluntarily* passed the controverted limit, it is difficult to comprehend why the American Minister's proposition would not stand reversed with more propriety than it exhibits in its present form; for His Excellency's regret might not unreasonably it would seem have been expressed at "*the extremely objectionable course pursued by AMERICAN SUBJECTS 'in presuming to decide for themselves a Question under discussion between the two Governments'*": by fishing upon the disputed grounds and thereby reducing the Provincial authorities to the necessity of vindicating their claim, or seeing it trampled on, before any sanction had been obtained either of legal decision or diplomatic arrangement.

When Mr. Everett says that the necessity of fostering the interests of their Fishermen rests on the highest grounds of national policy, he expresses the sentiment felt in Nova Scotia as regards the Provincial welfare in connexion with this subject. The Americans are fortunate in seeing the principle carried into practice; for the encouragement afforded their Fishermen by the Government of the United States is not small, and its strenuous, persevering and successful efforts to extend their Fishing privileges on Her Majesty's coasts, but too practically evince its desire and ability to promote this element of national and individual prosperity.

As far as I can learn a liberal tonnage bounty is given on their Fishing craft, besides a bounty per barrel on the Pickled Fish. Thus guarding the Fisherman against serious loss in case of the failure of his voyage; and he is I believe further favored by privileges allowed on the importation of salt and other articles, while a market is secured him at home which ensures a profitable reward for the fruit of his labor, by a protecting duty of five shillings per quintal on dry fish, equal to fifty per cent. of its value, and from one to two dollars per barrel on pickled fish, according to the different kinds, equal to at least twenty per cent. of their values.

The duty on American fish imported into the Colonies is much less, and the British Colonial Fisherman is unsustained by bounties: but the chief drawback to his success is the want of certain and stable Markets—those on which he is principally dependant being very limited and fluctuating.

In the contrast therefore drawn by Mr. Everett between the advantages of the Colonial and American Fisherman, the extensive Home Markets of the latter, independently of the encouragement he receives from bounties and other sources, much more than compensates I believe for any local conveniences enjoyed by the former.

The Colonists cannot understand the principle on which *concession* in any form should be granted to the American people in a case avowedly "*touching the highest grounds of national policy*" even although concessions did not involve consequences as it unhappily does in the present case, both immediate and remote, most injurious to British Colonial Interests.

The strong and emphatic language of the Treaty of 1818 is that the United States "re-nounce 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 and 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."

If this national contract does not exclude the Americans from fishing within the *indentations* of our Coasts and from our *Bays and Harbours*, the people of Nova Scotia while it remained in force could not complain of the exercise of the right.

But

But we believe the Treaty does exclude them, and we but ask a judicial enquiry and determination before these valuable privileges are relinquished :

The highest Law opinions in England have justified our belief : Her Majesty's Government in theory avows and maintains it.

The compact too was in its nature reciprocal, and had the Treaty in this particular been (as it was not) hard upon the United States, there may doubtless be found in other parts of it stipulations at least equally unfriendly to British interests.

I repeat my Lord, we cannot understand *why the Americans should not be held to their bargain* ; nor can we perceive the principle of justice or prudence which would relax its terms in favor of a foreign people whose means and advantages already preponderate so greatly, and that too without reciprocal concessions, and at the expense of Her Majesty's Colonial subjects, whose prosperity is deeply involved in the protection and enlargement of this important element of their welfare.

If the present concessions to the United States are hoped to end and quiet the controversy between their Fishermen and this Province, there is too much reason to fear the expectation will end in disappointment.

From the greater encouragement that will be given for violation of the treaty under the modified conditions suggested to be imposed on the American Fisherman, and from the multiplied facilities for evasion and falsehood, increased and not diminished occasions of collision can only be expected ; and it may safely be asserted from a knowledge of the subject and of the parties, that unless the British Government are content to maintain the strict construction of the Treaty as a mere question of past contract and settled right, whatever that construction may be, the encroachments of the American Fishermen will not cease nor disputes end, until they have acquired unrestricted license over the whole shores of Nova Scotia.

It is hoped My Lord, that if an arrangement such as is contemplated should unhappily be made, its terms may clearly express that the American Fishermen are to be excluded from fishing within three miles of the *entrance* of the Bays, Creeks and Inlets into which they are *not* to be permitted to come.

Some doubt on this point rests on the language of Lord Stanley's Despatch, and the making the criterion of the restricted Bays, Creeks and Inlets, to be the width of the double of three marine miles, would strengthen the doubt by raising a presumption that the shores of these Bays, &c., and the shores of the general coast, were to be considered in the same light, and treated on the same footing.

To avoid such a construction no less than to abridge the threatened evil, the suggestion made to Your Lordship by Mr. Stewart, that at least this width should be more than the double of three marine miles—say three or four times more—ought I think to be strongly enforced.

I have the honor to be,

Your Lordship's most obedient Servant,

(Signed)

J. W. JOHNSTON.

Extract of a Despatch from Lord STANLEY to Lord FALKLAND, dated Downing Street, 17th September, 1845. (No. 2476.)

Her Majesty's Government have attentively considered the representations contained in your Despatches Nos. 324 and 331, of 17th June and 2nd July, respecting the policy of granting permission to the Fishermen of the United States to fish in the Bay of Chaleurs and other large Bays of a similar character on the Coasts of New Brunswick and Nova Scotia, and apprehending from your statements that any such general concession would be injurious to the interests of the British North American Provinces, we have abandoned the intention we had entertained upon the subject, and shall adhere to the

strict letter of the Treaties which exist between Great Britain and the United States, relative to the Fisheries in North America, except in so far as they may relate to the Bay of Fundy, which has been thrown open to the Americans under certain restrictions.

In announcing this decision to you, I must at the same time direct your attention to the absolute necessity of a scrupulous observance of those Treaties on the part of the Colonial authorities, and to the danger which cannot fail to arise from any overstrained assumption of the power of excluding the fishermen of the United States from the waters in which they have a right to follow their pursuit.

No. 12.

(See Page 386.)

THE PROVINCE OF NOVA SCOTIA, DR.

For Payments made by the Acting Treasurer, between the 20th day of May and 31st day of December, 1845.

To paid the Honble. the Speaker of Assembly, to pay for Publications Vote, 1844,	1	£15	0	0	
The Clerk of the House of Assembly, to pay Chaplains and Contingencies,	2	143	4	7	
The Honble. M. B. Almon, for payments of Reports of Judicial Committees of Privy Council,	3	11	19	4	
John Cameron, expenses attending Committee of Assembly,	4	6	14	0	
The High Sheriff, County of Pictou, returning a Member,	5	1	10	0	£178 7 11
George Mitchell, claim against New Glasgow Bridge,	6	100	0	0	
John McKay, expenses incurred Building West River Bridge,	7	10	0	0	
Daniel Wier and John Chambers, Commissioners Building St. Croix Bridge,		14	11	0	124 11 0
Peter Crerar, inspecting and making Report of Roads and Bridges, Warrt. Pictou Cy.	1114				12 15 0
Andrew M. Uniacke, for purchase of Seed Potatoes,	9				25 0 0

WITNESSES.

The Honble. the Atty. General for expenses of Poor Witnesses in case of Trial,	10	16	2	6	
Ditto Ditto	11	7	4	6	
Ditto Ditto	12	6	13	0	
Ditto Ditto	13	23	2	6	
John Isinor, for Services as a Witness on a Trial,	14	1	15	0	54 17 6

CRIMINAL PROSECUTIONS.

Lewis M. Wilkins, conducting Criminal Prosecutions,	15	23	17	0	
Ditto Ditto	16	11	18	4	
Ditto Ditto	17	23	1	0	

To

To paid John T. Hill, for	Ditto	18	£5	7	6		
Ditto	Ditto	19	7	5	10		
Ditto	Ditto	20	7	9	6		
Ditto	Ditto	21	7	5	10		
William Sterns,	Ditto	23	2	19	0		
William F. Desbarres,	Ditto	24	4	2	6		
James Turnbull,	Ditto	25	7	3	10		
Ditto	Ditto	26	6	15	0		
Ditto	Ditto	27	7	0	6		
John Creighton,	Ditto	28	10	17	2		
John Whidden,	Ditto	29	17	0	0		
James F. Gray,	Ditto	22	14	15	0	£156	18 0

The Depy. Commissary General, being amount granted for the relief of sufferers by fire at Barbados—\$4000 a 5s. 2½d.	30					1041	15 4
John L. Tremain, as granted to him,	31					100	0 0
The Commissioners for the protection of the Fisheries,	32					500	0 0
Drs. Grigor and Sterling, in aid of Halifax Dispensary,	33					50	0 0
Arch'd Smith, as granted to him,	34					8	0 0
Stephen Knowlton, for building an Oat Mill at Advocate Harbour,	35					10	0 0
Mattee Salone, bounty for killing a Wolf,	36					2	0 0

DRAWBACKS.

Henry Palmer, return duty on a Horse,	37	2	10	0			
Military Messes, Drawback on Wines,	38	217	13	9			
Officers of 46th Regt. ditto.	39	26	3	1			
Rich'd Gohegan, Drawback,	40	9	2	10			
Edward Lawson, ditto:	41	11	4	0			
Patrick Power, ditto.	42	26	6	3			
Frederick R. Starr, ditto:	43	29	7	6			
John N. Nesbett, ditto.	44	13	6	5	335	13	8

SALARIES.

Salaries of Officers of Customs, to 5th July, 1845,	45	1786	4	8			
Ditto to 6th Octr. 1845,	46	1786	4	8			
Salaries of Officers of Government, to 30th June, 1845,	47	1186	5	0			
Ditto to 30th Sept. 1845,	48	1186	5	0			
The Acting Treasurer for his services from 20th May to 30th Sept. 1845,	49	219	4	7			
John Spry Morris, balance due the late Treasurer to 13th May, 1845,	50	70	17	6			
The Collector of Excise to pay Waiters,	51	296	15	0			
Ditto ditto,	52	286	0	0			
Ditto to pay Overseers of Distilleries,	53	140	5	6			
Ditto ditto	54	140	0	6	7098	2	5
Margaret Nickerson, for keeping a House of Entertainment,	55	12	0	0			
Edmund Crowell, ditto	56	20	0	0	32	0	0

To