

Inclosure 2 in No. 1.

The Law Officers of the Crown to the Duke of Newcastle.

My Lord Duke,

Doctors' Commons, August 6, 1853.

WE are honoured with your Grace's commands signified in Mr. Merivale's letter of the 20th of April last, stating that he was directed to transmit to us copy of a despatch, with its inclosure, received from the Lieutenant-Governor of Nova Scotia, and to request that we would jointly report to your Grace whether we agree in the view of the law taken by the Judge of the Admiralty Court at Halifax in the case of the "Creole," and, if not, in what respect we differ from it.

Whether, also, it appears to us that such amendments of the law, as suggested by the Judge in his letter of the 31st March, are called for or advisable?

We are also honoured with Mr. Merivale's letter of the 4th June, stating that, with reference to the Queen's Advocate's letter of the 23rd of April, he was directed by your Grace to transmit to us the copy of a further despatch from the Lieutenant-Governor of Nova Scotia, supplying the documents and other information required to enable us to report our opinion upon the case of the "Creole," seized for the infraction of the Fishery Regulations.

In obedience to your Grace's commands we have taken the papers into consideration, and have the honour to report—

That we do not agree with the view of the law taken by the Judge of the Admiralty Court at Halifax in the case of the "Creole," and that we are of opinion that inasmuch as the "Creole," although originally a British ship, yet had fallen into the hands of foreigners and been altered so as not to correspond with her original certificate, and not re-registered, and inasmuch as she was not navigated according to the British Navigation Laws, she had lost her nationality and become a foreign ship; we are further of opinion that the Colonial Statute on the subject is valid, for reasons hereafter given by us in our answers to the questions, and that the "Creole" was, on these grounds, liable to condemnation and forfeiture.

With respect to the several questions on the case of the "Creole" framed by Mr. Attorney-General Uniacke, appended to his letter to Sir G. Le Marchant sent with the papers, we are of opinion—

1. That with respect to forfeiture under 59 Geo. III, c. 38, although both cases are equally within the mischief which the Act was intended to guard against, yet as the language of the Act is ambiguous, and as the Act is of a highly penal nature, we are of opinion that it will not be advisable to forfeit under it any but foreign vessels.

Even if the Imperial Act, 59 Geo. III, c. 38, should be insufficient to give Her Majesty power to impose all or any of the Rules and Regulations in question (a question which we need not now consider), the authority of the local Legislature appears to us to be sufficient to make them valid in effect, by its express Legislative enactment of them. The authority of the local Legislature extends (like that of the Imperial Parliament) over the space of the three miles upon the high seas next the coast, which is, by the comity of nations, part of the country to which it is adjacent; and we are of opinion that, upon this general principle, and irrespective of the Convention, the Imperial Statute, or the Regulations of the Sovereign in Council, the Colonial Legislature was legally entitled to legislate as it has done relative to the fisheries, and that its enactments are valid and binding.

3. We are of opinion that such a vessel is, under the circumstances stated, liable to forfeiture under the express provisions of the Colonial Statute already referred to.

4. We are of opinion that the effect of the 8th and 9th Vict., c. 89, is controlled by the 12th and 13th Vict., c. 29, s. 17, and that it is no longer necessary that the owner of a vessel shall be resident within the Queen's dominions in order to satisfy the requirements of the British Navigation Laws.

5. The master in all cases, and, besides the master, either three-fourths of the crew, or one seaman to every twenty tons, by 12th and 13th Vict., c. 29, s. 27, must be British subjects.

6. A foreign fishing vessel duly registered and manned as a British vessel may legally prosecute the fishery as suggested, by virtue of 12th and 13th Vict., c. 29.

7. Such a ship will be liable to forfeiture and condemnation if deficient in any requirement absolutely necessary to her nationality, for instance, if she be not registered or navigated as a British ship; but she will not be liable to forfeiture for deficiencies in other points of mere regulation which involve only specific penalties.