

the Collectors at the ports of arrival; but the fact that fish are frozen is not sufficient in itself to make them dutiable, if the other circumstances surrounding the importation are sufficient to establish the fact that they are imported fresh for immediate consumption."

*Hostile Proceedings against United States Fishing-vessels have always been without Warning.*

In the text, and also in the Appendix concerning "warnings," in A.D. 1886, it appears that during the period from A.D. 1836 to A.D. 1839, as well as in A.D. 1886, these severe proceedings were commenced against vessels of the United States in breach of the before-existing practices, for the continuance of which the vessels of the United States might well look, and without that clear and seasonable warning or notice which is to be expected as among friendly nations.

In A.D. 1870, as the following extracts will show, not only was there no warning or notice, but, on the other hand, there was such diplomatic communication from Great Britain as justly entitled the United States to expect the contrary.

We have already referred to the communication of the Minister of Justice of the 8th April, A.D. 1870, a copy of which was sent by Sir Edward Thornton to Mr. Fish of the 14th April, A.D. 1870, and also to the instructions from the Admiralty, communicated by Sir Edward Thornton to Mr. Fish the 26th May, A.D. 1870, as already stated, full copies of which appear in the Appendix.

Whether the United States, in view of these communications, had a right to assume that there would be no hostile proceedings against their vessels for buying bait or supplies, or for anything except fishing, is a matter of deduction; but that there might be no possibility of misunderstanding, Mr. Fish made inquiries of Sir Edward Thornton on the 8th June, A.D. 1870, and Sir Edward Thornton replied, the 11th June, 1870, "Foreign Relations of the United States, 3rd Session, 41st Congress," pp. 420 and 421, his reply containing the following:—

"I had the honour to receive yesterday your note of the 8th instant relative to an apparent discrepancy between the instructions issued by Vice-Admiral Wellesley, enclosed in my note of the 3rd instant, and those given by the Admiralty to him which accompanied my note of the 26th ultimo. You are, however, quite right in not doubting that Admiral Wellesley, on the receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command, so that they may be in conformity with the views of the Admiralty. In confirmation of this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident, and could be clearly proved, that the offence of fishing had been committed and the vessel itself captured within 3 miles of land."

Notwithstanding all this, it appears by the letter of Mr. Hall, dated Charlottetown, 19th August, A.D. 1870, that Her Majesty's steamers "Valorous" and "Plover" had closed up all branches of trade, including landing of mackerel in ports of Prince Edward's Island, ordered off a Gloucester schooner, and would not allow her to take bait or supplies.

On the 25th of the same August the Consul at Halifax wrote to Mr. Fish, p. 423, that it appeared by the "Halifax Morning Chronicle," transshipment in bond from Canadian and other provincial ports of American-caught fish had been prohibited; and on the 5th September, A.D. 1870, the same Consul communicated to Mr. Fish, p. 424, certain correspondence with Her Britannic Majesty's Vice-Admiral, showing that the Dominion authorities had issued orders prohibiting ice, bait, and other supplies being furnished in the colonial ports to American fishermen; and the Consul said this was neither announced nor enforced "until after the commencement of the fishing season and after our fishing-vessels were on their voyages to the fishing grounds."

The Vice-Admiral, in his letter of 3rd September, A.D. 1870, p. 426, seems to have supposed that notice of his orders had been sent to the United States Secretary of State; but it will sufficiently appear from the despatch of Mr. Fish to the Consul-General at Montreal of the 29th October, A.D. 1870, p. 331, that to that time he had not received notice of the new instructions, and had apparently heard of the proceedings, or intended proceedings in accordance with them, only by reports from the Consular officers and from the parties interested. Indeed, so clear is this, that the Secretary proceeds on the following assumption: "These alleged causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels."

Also, the Assistant Secretary of State, in his despatch to the Consul at Halifax, 13th September, A.D. 1870, p. 427, said: "It is understood that the Government of the Dominion of Canada is prohibiting vessels of the United States," &c., showing that even to that date the Department had no positive knowledge, and that their understanding was that the orders came from the Dominion and not from the Imperial authorities.

In the extract made in the text from the Report of the Consul-General of the United States at Montreal of the 3rd November, A.D. 1870, p. 433, he stated that "no adequate nor suitable notice was given to the captains of American fishing-vessels" of this change of policy; and, indeed, taking it altogether, it seems undoubted that, notwithstanding the Imperial authorities at the outset gave the United States diplomatic advices that proceedings would be taken only for actual fishing within 3 miles from the shore, the whole policy was changed, and fishing-vessels of the United States were driven out of Dominion ports without any formal diplomatic notice to the United States thereof, and without any explanation whatsoever to enable either the Department of State or the owners of vessels to understand the meaning and extent of the change.

Subsequently, vessels were seized for mere purchase of supplies, of which one, the "White Fawn," was taken into St. John and acquitted on the ground that there was no Statute authorizing her seizure. Another, the "J. H. Nickerson," was taken into Halifax and condemned, the Court holding the reverse doctrine.