

Appendix.

Extract from an Opinion of Sir J. Dodson and Sir T. Wilde, dated Doctors' Commons, August 30, 1841.

“First Query.—In obedience to your Lordship’s commands we have taken these papers into consideration, and have the honour 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.

“Second and Third Queries.—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 prescribed 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 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.

“Fourth 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.

“Fifth 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