

Inclosure 9 in No. 28.

*Sir W. Colebrooke to Lord Sydenham.*

[See Inclosure 5 in No. 28, p. 146.]

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Inclosure 10 in No. 28.

*Lord Sydenham to Sir W. Colebrooke.*

Sir,

*Government House, Montreal, May 21, 1841.*

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 8th instant.

My official despatch of the 17th instant will have communicated to you my approval of the course pursued by the Warden of the Disputed Territory, in the case of Baker, to which reference is again made by your Excellency in your present letter. The offence committed by that person could not with propriety be passed over. He had already been made amenable to the laws of the province; and even under the limits assigned under Sir John Harvey's Convention, and maintained by him, there can be no doubt that he and those residing near him, fall under the jurisdiction of Her Majesty. In the event, therefore, of attention being given to any complaint he may prefer to the American Government, which I agree with you, however, in thinking unlikely, our answer is easy and direct.

But the case which you put as one of possible occurrence, namely, that of the implication of any of the American posse at Fish River, in similar offences demanding the exercise of his authority over any one of that body by the Warden in like manner, is one of a different character, and of a very delicate nature.

I entertain the most decided opinion, that the Americans ought never to have been permitted by Sir John Harvey to form that establishment which was in direct and open violation of the Convention made by himself; but it has been suffered, and thus the curious anomaly is presented of an armed posse, in the pay and under the authority of a Foreign State, being stationed within a district over which Her Majesty claims and has exercised jurisdiction. Whilst, therefore, it is true that the authority of the Warden extends, even according to the interpretation above referred to, over the fort at Fish River, it would, in my opinion, be extremely imprudent and unwise to call it in question unless we are prepared to carry it to its full extent, which would really be the removal of the American posse altogether. A case might arise of so grave a character, in the shape of insult or injury to Her Majesty's subjects along the St. John's, as would necessitate interference with this force and justify the collision which must attend it, but every endeavour should be used to avoid it, and certainly the offence contemplated as likely to call for it, is one of the last which would be a sufficient motive for what might be attended with such serious consequences.

I would, therefore, request your Excellency to enjoin the strictest caution on the Warden, with regard to his conduct in this respect, and to direct him in the special case in question to abstain from any interference with the American civil posse. Whilst it is incumbent upon him to afford protection to the inhabitants of the settlements in the event of their being aggrieved, and to prevent the assumption and exercise of jurisdiction over them by any American authority, it is no less desirable, under the peculiar state of the question, carefully to avoid any step which may, without grave cause, renew agitation, or, above all, bring on a collision.

I take the opportunity of informing your Excellency that a portion of the