

Further Correspondence respecting North American Fisheries.

No. 1.

Mr. Phelps to the Earl of Iddesleigh.—(Received December 4.)

My Lord,

Legation of the United States, London, December 2, 1886.

REFERRING to the conversation I had the honour to hold with your Lordship on the 30th November, relative to the request of my Government that the owners of the "David J. Adams" may be furnished with a copy of the original Reports, stating the charges on which that vessel was seized by the Canadian authorities, I desire now to place before you in writing, the grounds upon which this request is preferred.

It will be in the recollection of your Lordship, from the previous correspondence relative to the case of the "Adams," that the vessel was first taken possession of for the alleged offence of having purchased a small quantity of bait within the port of Digby, in Nova Scotia, to be used in lawful fishing. That later on, a further charge was made against the vessel, of a violation of some Custom-house Regulation, which it is not claimed, so far as I can learn, was ever before insisted on in a similar case. I think I have made it clear in my note of the 2nd June last, addressed to Lord Rosebery, then Foreign Secretary, that no act of the English or of the Canadian Parliament existed at the time of this seizure, which legally justified it on the ground of the purchase of bait, even if such an act would have been authorized by the Treaty of 1818. And it is a natural and strong inference, as I have in that communication pointed out, that the charge of violation of Custom-house Regulations was an afterthought, brought forward in order to sustain proceedings commenced on a different charge and found untenable.

In the suit that is now going on in the Admiralty Court at Halifax for the purpose of condemning the vessel, still further charges have been added. And the Government of Canada seek to avail themselves of a clause in the Act of the Canadian Parliament of the 22nd May, 1868, which is in these words: "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under this Act. . . . the burden of proving the illegality of the seizure shall be on the owner or claimant."

I cannot quote this provision without saying that it is, in my judgment, in violation of the principles of natural justice, as well as those of the common law. That a man should be charged by police or Executive officers with the commission of an offence, and then be condemned upon trial, unless he can prove himself to be innocent, is a proposition that is incompatible with the fundamental ideas upon which the administration of justice proceeds. But it is sought in the present case to carry the proposition much further, and to hold that the party inculpated must not only prove himself innocent of the offence on which his vessel was seized, but also of all other charges upon which it might have been seized, that may be afterwards brought forward and set up at the trial.

Conceiving that if the clause I have quoted from the Act of 1868 can have effect (if allowed any effect at all) only upon the charge on which the vessel was originally seized, and that seizure for one offence cannot be regarded as *prima facie* evidence of guilt of another, the counsel for the owners of the vessel have applied to the prosecuting officers to be furnished with a copy of the Reports made to the Government of Canada in connection with the seizure of the vessel, either by Captain Scott, the seizing officer, or by the Collector of Customs at Digby, in order that it might be known to the defendant, and be shown on trial, what the charges