

The Legal News.

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THE FISHERY DISPUTE.

As the amount of the Fishery Award under the arbitration provided for by the Treaty of Washington, has been paid by the United States, it is unnecessary to comment at present on the extraordinary position assumed by Mr. Secretary Evarts, in the diplomatic correspondence, in reference to the claim of United States fishermen to privileges from which the Newfoundland fishermen are debarred by local statutes intended to preserve the fisheries from decay. We may, however, reproduce a circular addressed by Mr. Marcy, another United States Secretary, in 1856, to collectors of customs. In this circular, Mr. Marcy shows how he interpreted the language of the Reciprocity Treaty,—language the same as that which is used in the Treaty of Washington, on the point on question. The Reciprocity Treaty enacted that the inhabitants of each country should have "in common" with those of the other, the liberty to fish in the waters of both nations. Thereupon Mr. Marcy wrote as follows :

DEPARTMENT OF STATE,
WASHINGTON, March 28, 1856. }

To Charles H. Peaselee, Esq., Collector of Customs,
Boston :

SIR,—It is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, Executive regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both United States and British fishermen should pay a like respect to such laws and regulations, which are designed to preserve and increase the productiveness of the fisheries on these coasts. Such being the object of these laws and regulations, the observance of them is enjoined upon the citizens of the United States in like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries neither party has yielded its right to civic jurisdiction over a marine league along its

coasts. Its laws are as obligatory upon the citizens or subjects of the other as upon its own. The laws of the British provinces not in conflict with the provisions of the reciprocity treaty would be as binding upon the citizens of the United States within that jurisdiction as upon British subjects. Should they be so framed or executed as to make any discrimination in favor of British fishermen, or to impair the rights secured to American fishermen by that treaty, those injuriously affected by them will appeal to this Government for redress. In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights, or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two governments. You will make this direction known to the masters of such fishing vessels as belong to your port, in such manner as you may deem most desirable.

I am, etc.,

W. L. MARCY.

The above presents a singular contrast with the view set forth by Mr. Evarts when he wrote :—" You will therefore say to Lord Salisbury that this government conceives that the fishery rights of the United States, conceded by the Treaty of Washington, are to be carried on wholly free from the restraints and regulations of the statutes of Newfoundland now set up as an authority over our fishermen, and from any other regulation of fishing now in force, or that may hereafter be enacted by that Government."

PRESCRIPTION OF BILLS AND NOTES.

Writing somewhat hastily last week on the above subject as we were about going to press, we overlooked at the moment the very important case of *Walker & Sweet*, 21 L. C. J. 29. In that case the majority of the Court of Appeal expressly overruled the case of *Fenn & Bowker*, or perhaps it would be more accurate to say, that they held that under the Code the law is not what it was said to be in *Fenn & Bowker*.