

From time to time, seizures were made, but little trouble occurred until the passage by the legislature of Nova Scotia of the 'Hovering Act.' This Act, passed in 1836, provided penalties for hovering within three miles of the coasts or harbours.

Between 1818 and 1854, forty-three vessels were seized. Until 1841, the British construction of the treaty respecting the headland question and the right to purchase bait and supplies, or to tranship cargoes, was practically unopposed by the United States. In 1841, the United States Minister at London complained of the application of the headland rule and of the severity of the Nova Scotia statutes relating to the protection of the fisheries. The Government of Nova Scotia regarded with great anxiety the possibility of any relaxation of the regulations or the abandonment of any of their contentions. They requested that a series of questions respecting the points at issue be submitted to the legal advisers of the Home Government.

The Law Officers of the Crown replied that:

(1) Citizens of the United States had no rights other than those ceded to them by the Convention of 1818.

(2) Except within certain defined limits, they were excluded from fishing within three miles of the coast of British America and that the three miles was to be measured from a line drawn from headland to headland—the "extreme points of land next the sea of the coast or of the entrance of the bays . . . we are of the 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 inlets of the coast."

(3) No foreign country had the right to use or navigate the gut of Canso.

(4) American citizens had "no right to land or conduct the fishery from the shores of the Magdalen islands."

(5) "The liberty of entering the bays and harbours of Nova Scotia, for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any restrictions, expressed or implied."

Of the foregoing, the most prominent point of difference was what is known as the "headland" controversy, referred to in answer II of the Hague Tribunal decision.

By Art. I of the Convention of 1818, the United States renounced the liberty "to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours" not included within certain specified limits. The colonists claimed that United States fishermen were excluded from all bays, such as the bay of Fundy, Chaleur bay,

\*This is an error on the part of the Law Officers. The word 'headland' does not appear in the treaty.