

or that part of the channel, notwithstanding that trade wharves made use of by there is a deeper in this channel as the United States;— Campo-Bello itself, in full the whole of the here, of the Navigation important to herous set up in this the Sloop (which clearance was oblige to lie and take also); taking care Now by a bare infrom one of theseeam or waters beeline; and (if this vious for carrying

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in the Treaty in reasoning made to Lt. Governor New-Brunswick, y worthy of ob- of 1783, the ex- in the limits of cle which assigns o leagues of any ception is valid any part of the ands as now are -Indeed it is up- are or heretofore g in the prece- s Grace was oc- for foreign af- ceived from Mr. LISTON,

LISTON, the American ambassador, "on the subject of a doubt that had been started respecting the boundary of His Majesty's Province of New-Brunswick and the American district of Maine." His Grace in his letter further says, "You will observe that this doubt is stated to have necessarily arisen out of the determination which has taken place respecting the identity of the river St. Croix, intended by the American Treaty of 1783, and that although it *primarily* goes only to a presumed right of water-way or navigation to that moiety of the Saint Croix, the boundary river which is nearest to the American territory, yet that it appears to be ultimately intended to deduce therefrom as a further consequence, a right to the Islands in Passamaquoddy-Bay, lying on the American side of such a water-way or navigation."

THE extract from Mr. LISTON's dispatch, dated Philadelphia, 31st December, 1798, is as follows:—"Your Lordship will have observed in the Speech of the President of the United States, to the two Houses of Congress, a short statement of a fresh doubt that has been started with regard to the boundary between His Majesty's Province of Nova-Scotia and the American district of Maine. This difficulty was originally suggested by the Agent and the Commissioner of the United States appointed under the fifth article of the Treaty of Amity. I find, that the opinion given on this subject by the 3d Commissioner, Judge BENSON, at the conclusion of a paper which he has drawn up and put into the hands of the President and the Secretary of State, with a view of giving a general idea of the whole transaction, is in the following words:—"There is still a question concerning the boundary of the two nations in that quarter, and originating also in the Treaty of Peace, but which, PARTAKING OF THE NATURE OF AN OMITTED CASE, can be settled only by negotiation and compass. The Treaty supposes the St. Croix to issue IMMEDIATELY into the Bay of Fundy, and of course that there would be an entire SEA-BOARD boundary, if it may be so expressed, between the termination of the Southern and the commencement of the Eastern boundary of the United States; and it is also intended that where the Eastern boundary passed through waters that were navigable, both nations should equally participate in the Navigation. The question then is how the boundary in the intermediate space, between where the mouth of the Saint Croix hath been decided to be and the Bay of Fundy, is to be established most consistent with the Treaty; in answer to which it may be suggested that the boundary should be a line, passing through one of the passages between the Bay of Fundy and the Bay of Passamaquoddy; that the West passage being unfit for the purpose, having a bar across it which is dry at low water, the next to it must be taken and the line may be described—BEGINNING IN THE MIDDLE OF THE CHANNEL OF THE RIVER SAINT CROIX AT ITS MOUTH, THENCE DIRECT TO THE MIDDLE OF THE CHANNEL BETWEEN PLEASANT-POINT AND DEER-ISLAND, THENCE THROUGH THE MIDDLE OF THE CHANNEL BETWEEN DEER-ISLAND ON THE EAST AND NORTH, AND MOOSE-ISLAND AND CAMPO-BELLO-ISLAND ON THE WEST AND SOUTH, AND ROUND THE EASTERN POINT OF CAMPO-BELLO-ISLAND TO THE BAY OF FUNDY."

It may not be improper here to repeat, that no doubt ever was entertained, what Islands by the 3d article of the Treaty of Peace belonged to Great-Britain; nor was this any part of the question referred to the decision of the Commissioners under the 5th article of the Treaty of Amity, Commerce and Navigation, it being easy to establish by authentic and unanswerable documents, what Islands at the time of, and before the Treaty of Peace were within the limits of the Province of Nova-Scotia.

THE DUKE OF PORTLAND therefore was justly alarmed to find the right of water-way or navigation described by Judge BENSON, claimed as a right deducible from the Treaty; apprehending that it was intended to deduce therefrom as a further consequence, a right to the Islands in Passamaquoddy-Bay, lying on the American side of such a water-way or navigation.

It is however to be remarked, that Judge BENSON did not extend *his* ideas to the pretensions advanced in the Claim now before the Court. He barely intimates that it was intended by the Treaty of Peace, that where the Eastern boundary of the United States passed through waters that were navigable, both nations should equally participate in the navigation; and surely a right of passage or navigation can never be construed into a right to stop and trade in that passage in direct violation of the laws of that nation through whose territory the right of passage is claimed. This would be contrary to every principle of good faith established among nations.

WHATEVER attempt might be made by the State of Massachusetts (which had always discovered the most anxious desire to extend its territory in that quarter) to deduce a right to the Islands on the American side of the passage or water-way, as a consequence of the right of water-way. It is not to be presumed that Judge BENSON had any idea of such consequence, as he well knew the provisions of the Treaty of Peace in this regard; and he also knew from personal acquaintance with the subject, having been upon the spot as a Commissioner, that Campo-Bello Island, by far the most considerable Island on the American side of the water-way described by him, was in fact held in full possession, property and sovereignty, by Great-Britain.

But I apprehend that it may be clearly demonstrated that there is no such omitted