

straining of the law, or harshness in its application may thus be softened or redressed, and although I was told that little confidence was to be placed in the moderation of Governments, it is obvious that confidence is placed in it by the authorities and by the people of the United States; and it is a fact honorable to both parties, that the naval forces employed on the fishing grounds in the past season, have acted in perfect harmony, and carried out the provisions of the Treaty in good faith. The organs of public opinion, indeed, in the United States, of the highest stamp, have denounced open and deliberate violation of the Treaty in terms as decided as we ourselves could use.

“ These considerations have prepared us for a review of the pleadings and of the evidence taken in this case. The libel contains six articles. The first sets out in the briefest possible terms, the first article already cited of the Treaty of 20th Oct., 1818. The second gives the title of the Imperial Act 59 Geo. 3, chap. 38. The third that of the British North American Act 1867, the 30th and 31st Vic. chap. The fourth, those of the Dominion Acts of 1868 and 1870, the 31st Vic., chap. 61 and the 33 Vic. chap. 15. The fifth alleges that on the 27th of June last, the *Wampatuck*, her master and crew, within the limits reserved in the Treaty, were discovered fishing at Aspy Bay in British waters, within three marine miles of the coast, without license for that purpose, and that the vessel and cargo were thereupon seized by Capt. Tory, being a fishery officer in command of the *Ida E.*, a vessel in the service of the Government of Canada, for a breach of the provisions of the Convention, or of the Statutes in that behalf, and delivered into the custody of the principal officer of Customs at Sydney, Cape Breton. The concluding article prays for a condemnation of the vessel and cargo, as forfeited to the Crown.

“ The responsive allegation admits the Convention, and the several Statutes as pleaded, raising no question thereon. It admits that the *Wampatuck*, being an American vessel, left the port of Plymouth on a fishing voyage to the Grand Bank, beyond the limits of any rights reserved by the Convention of 1818, and alleges that she was not intended to fish on the coasts or in the bays of British North America that on the 27th day of June, while pursuing her said voyage, becoming short of water, she ran into Aspy Bay for the purpose of procuring a supply thereof, and for no other purpose whatsoever; that the master, with two of the crew, rowed ashore to get a supply of water as aforesaid, and directed the crew on board to work the vessel inshore to a convenient distance for watering, and that the master and crew were not discovered fishing within three marine miles of the coast as alleged. The sixth article, repeating the same allegations, proceeds to state further—that ‘as the owners are informed, while the said master was on shore as aforesaid, the steward of the said vessel, and being one of the crew of the same, while the said vessel was lying becalmed in the said bay, did with a fishing line, being part of the tackle of the said vessel, catch seven codfish for the purpose of cooking them, then and there, for the food of the crew of the said vessel, and not for the purpose of curing or preserving them, as part of the cargo of the said vessel; that the said fish were so caught without the knowledge, against the will, and in the absence of the master of the said vessel and part of her crew,’ and for this offence only the vessel and cargo had been seized.

“ I observe that this last allegation was repeated in an affidavit of one of the owners on file, and, as we must infer, was consistent with his belief at the time, and probably led to the claim being put in under the 11th and 12th sections of the Act of 1868. Had the evidence sustained it, the case would have assumed a very different complexion; but, as we shall presently see, it is utterly at variance with the acts and the admissions of the parties on board.

“ It is a remarkable circumstance that neither the master nor crew of the vessel have been examined, nor any evidence adduced on the defence, although a Commission was granted on the 7th September for that purpose. At the hearing, indeed, two papers were tendered by the Defendant’s counsel—one an *ex parte* examination of Forrest E. Rollin, one of the crew, taken on the 27th September, in the State of Maine; the other, a deposition of Daniel Goodwin, the master, made on the 2nd of July—neither of which I could receive by the rules that govern this Court, and neither of which I have read. The latter, indeed, had never been filed, nor had the deponent been subjected to cross-examination.

“ The case, therefore, was heard solely upon the evidence for the prosecution, consisting of the depositions of Captain Tory, Martin Sullivan, his second mate, and five others of the crew of the *Ida E.* From these it appears that the latter entered Aspy Bay about 10 o’clock on the morning of June 27th, and was engaged all day in boarding the vessels lying there; and what seems very strange, but is plainly shown, that her presence and character were known to the master and crew of the *Wampatuck*, and as one would have thought, would have made them cautious in their proceedings. She had entered the Bay on the same morning, and remained hovering about the shore all that day, about 4 or 5 miles from the *Ida E.* Gibson, one of the crew, states that Captain Tory and four of his crew, including the witness, left the *Ida E.*, between 6 and 7 o’clock in the evening to go to the *Wampatuck*, which latter vessel was then about 1½ miles or a little more from the shore. When they reached her they saw several cod-fish about 15 or 20, on deck, very lately caught—some of which were alive, jumping on the deck. They also saw some codfish lines on deck, not wound up, apparently just taken out of the water. Captain Tory states that several of the crew were engaged in fishing codfish—that they saw several codfish unsplit, very recently caught, on her deck, some of which were alive. In his cross-examination he says that he saw three or four men with lines overboard, apparently in the act of fishing, and that there were more than 8 or 10 newly caught fish on the deck,—he judged from 15 to 20. Graham states that they saw several codfish very recently caught, on the deck, some of which were alive,—saw also several codfish lines on deck, and one of the crew of the *Wampatuck* haul a line in—there were 5 or 6 men on board of her at the time. These statements are generally confirmed by the other four witnesses, and being uncon-