

## No. 2.

[Extract from the Halifax Daily Reporter and Times, Dec. 7, 1870]

## In the Vice Admiralty Court at Halifax.

*The "Wampatuck."*—Case No. 254.—Sir William Young, Judge.—6th Dec., 1870.

This is an American fishing vessel of 46 tons burthen, owned at Plymouth, in the State of Massachusetts, and sailing under a fishing license, issued by the Collector there on the 25th of April last. On the 27th of June she was seized by Capt. Tory, of the Dominion cutter *Ida E.*, for a violation of the Dominion Fishery Acts of 1868 and 1870, and her nationality and character appear from her enrolment and other papers delivered up by her master, and on file in this Court. A monition having issued in the usual form on the 27th of July, a libel was filed on the 10th of August, and a claim having been put in by the owners with a bond for costs, as required by the Act, they filed their responsive allegation on the 18th of August. The fish and salt on board at the time of seizure being perishable, were sold under an order of the Court, and the proceeds, with the vessel herself, remain subject to its decree. The evidence was completed early in September, but the case, being the first of the several fishing cases, that has been tried, was not brought before the Court for a hearing till the 26th ult., when it was fully argued, and stands now for judgment. Although it presents few or none of the nicer and more perplexing questions that will arise in the other cases, now also ripe for a hearing, it will be regarded with the deepest interest by the community and the profession, and on that account demands a more cautious and thorough examination than it might require simply on its own merits.

"An attempt was made at the argument to import into it wider and more comprehensive inquiries than properly belong to it. I am here to administer the law as I find it, not to determine its expediency or its justice, still less to inquire into the wisdom of a Treaty deliberately made by the two Governments of Great Britain and the United States, and acknowledged by both. If the people of the United States, inadvertently, as it is alleged, or unwisely (which I by no means admit) renounced their inherent rights, and ought to fall back on the Treaty of 1783, rather than abide by the existing Treaty of 1818, that is a matter for negotiation between the two contracting powers—it belongs to the higher region of international and political action, and not to the humbler, but still the highly responsible and honorable duty now imposed on me, of interpreting and enforcing the law as it is.

"By the first Article of the Treaty of 1818, after certain privileges or rights within certain limits conceded to American fishermen, it is declared, that "the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within the above mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damage therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

"Every word of this Article should be studied and understood by the people of these Provinces. They perfectly appreciate the value of their exclusive right to the inshore fishery, thus formally and clearly recognized, and they must take care temperately but firmly to preserve and guard it. It was argued in this case, that the restriction applied only to fishing vessels; that is, vessels fitted out for the purposes of fishing—that it did not extend to other vessels which might find it convenient or profitable to fish within the limits. But that is not the language of the Treaty nor of the Acts founded on it. The United States renounce the liberty enjoyed or claimed by the inhabitants, not merely by the fishermen thereof, and any vessel, fishing or otherwise, within the limits prescribed by the Treaty, is liable to forfeiture.

"Extreme cases were put to me at the hearing, and I have seen them frequently stated elsewhere, of a trading vessel or an American citizen catching a few fish for food or for pleasure, and the Court was asked whether in such and the like cases it would impose forfeitures or penalties. When such cases arise there will be no difficulty, I think, in dealing with them. Neither the Government nor the Courts of the Dominion would favor a narrow and illiberal construction, or sanction a forfeiture or penalty inconsistent with national comity and usage, and with the plain object and intent of the Treaty. The rights of a people, as of an individual, are never so much respected as when they are exercised in a spirit of fairness and moderation. Besides, by a clause of the Dominion Act of 1868, which is not to be found in the Imperial Act of 1819, nor in our Nova Scotia Act of 1836, which formed the code of rules and regulations under the Treaty of 1818, with the sanction of His Majesty, the Governor-General in Council, in cases of seizure under the Act, may, by order, direct a stay of proceedings; and, in cases of condemnation, may relieve from the penalty, in whole or in part, and on such terms as may be deemed right. Any undue