

conveyed on board that ship. At that meeting the Senior Naval Officer, Capt. Anstruther, read to them the note of ratification of the *Modus Vivendi* and discussed an agreement that he proposed to bring about between the fishermen of the two nations. Subsequent to that meeting he visited the Canadian fishermen who were in the harbor, and afterwards Mr. Alexander, who was on board the U. S. Naval Tug *Potomac*, as the representative of the American fishermen, and drew up a form of agreement to which he obtained the consent of "all the commodores of the American schooners." This agreement was made without consultation with the Governor of this Colony, who, as Commander-in-Chief, is his superior officer, or directly or indirectly with this Government. Under date 26th October, His Excellency the Governor communicated this fact to me, and I immediately entered a protest with His Excellency against the conduct of the Senior Naval Officer. I pointed out to His Excellency the seriousness of the incident that was referred to, inasmuch as no authority was vested in Capt. Anstruther to make any agreement such as he had ventured upon. He had not merely undertaken to interpret laws and treaties, but had assumed to make an arrangement or international agreement, as appeared on reference to the copy of the agreement which accompanied His Excellency's communication. I pointed out further that even if this arrangement could be regarded as declaratory of what is undoubted law, it would still be objectionable and improper when issued by a Naval Officer in his capacity as such, and especially so when proclaimed in a harbor where a Stipendiary Magistrate resides. It would be exceedingly difficult to find any precedent for such a remarkable procedure. The ratification of the *Modus Vivendi* had just been announced to us by His Majesty's Government, it had just been promulgated by the Senior Naval Officer on this station, and no sooner was this done, than without reference to either the Governor or his Ministers a new agreement, or international treaty, or *Modus Vivendi*, was entered into between His Majesty's Senior Naval Officer on this station and the representative of the American fishermen at Bay of Islands. I pointed out to His Excellency the Governor that the agreement was invalid and incapable of enforcement, the Governor in Council, to whom under the law relating to Marine and Fisheries the Legislature had deposed

authority, being the sole constitutional power to regulate and control the fisheries of this Colony. Naval Officers on this station derive all the authority they possess in relation to fishery matters in which American and Newfoundland fishermen are jointly concerned under the Imperial Statute of 1819, 59 George III. Cap., 38, and any Orders-in-Council made thereunder. Neither in that Statute, nor in any Order of which I am aware, are Naval Officers empowered to make such an agreement as Capt. Anstruther enterprised, and which was intended to limit and control the fisheries of this Colony. There was no occurrence or sufficient ground to warrant the Naval Officer's action and adjudication, nor did it appear that there was any desire manifested by Americans to invoke his assistance in the maintenance of their treaty rights. The Senior Naval Officer could not have been unaware that his action was calculated to affect the policy of this Government, and to impair the Government's influence and that of the representative of Justice at Bay of Islands, in the carrying out of law and order on that coast, and it is surprising, therefore, that he should have entered upon such a course of action. This unique piece of naval statecraft fell through, apparently because our astute American friends recognized that it was incapable of enforcement. It might reasonably be supposed that the protest entered by this Government with His Majesty's Government against these proceedings would have prevented a repetition of such conduct, but such was not the case, for a few weeks later we find this same Naval Officer, without reference to His Excellency the Governor of this Colony or his Ministry, addressing a circular letter to American, Canadian and Newfoundland fishermen requesting suggestions from them "as to the best method of settling the fishery dispute between Newfoundland and the United States of America." By this conduct the Senior Naval Officer on this station again trampled upon the rights essential to the security of Colonial liberty and usurped functions that solely attach to responsible ministers of the Crown. It is difficult to conceive of a greater affront being offered to the Governor of this Colony or those who have the honour to be His Majesty's Ministers in this Colony.

The fishery for this season is now ended, and the wrongs that have been inflicted cannot now be remedied, but we can at least hope that the recital of them, the exposure of them, will prevent a repetition.