

From the testimony of the British Custom-House officers it appeared, "that the British vessels in which the Plaster of Paris is imported from the upper parts of the Bay of Fundy, into that part of the British territory bordering upon the United States, regularly enter and clear at the British Custom-House."

When regard to the western passage into Passamaquoddy-Bay, so frequently alluded to, John Mills, a witness produced on the part of the Prosecutor, deposed, "that he is a Branch Pilot for the Port of Saint John and in the Bay of Fundy, and has been so employed nearly since the first erection of this Province of New-Brunswick, and that he is well acquainted with the western passage into Passamaquoddy-Bay, otherwise called St. Andrews Bay, by West Quaddy head so called, and that the said western passage is the passage generally and almost in all instances, made use of by American vessels trading and navigating to and from Moose-Island, the river Cobscook and the river Scoodiac—that the said western passage is much more convenient than the eastern passage for American vessels trading and navigating to and from the places above mentioned, because the said western passage is a much shorter route to the said places than the eastern passage, and also because the American Custom-House is situated on the said passage nearly about the centre of the narrow part of it, and the said Custom-House is very difficult of access to all vessels coming through the eastern passage aforesaid, and it is the opinion of this deponent, that the said American Custom-House is thus situated as aforesaid for the convenience of the American vessels coming through the western passage aforesaid, and that he has very seldom known such American vessels to make use of any other than the western passage aforesaid—that it sometimes happens, when such vessels are bound into the places above mentioned, and have the wind from the Northwest, that they will come through the eastern passage aforesaid, as such Northwest wind is directly a head for them in coming through the said western passage.

"That there are shoal grounds consisting of muske banks extending nearly across the said western passage, but that such shoal grounds do not impede the navigation of vessels in the said passage when the tide is in; that he the deponent as a Branch Pilot as aforesaid, once piloted a ship of about three hundred tons burthen, and drawing as much as fifteen feet of water, as nearly as this deponent can recollect, through the said western passage at high water, and with the wind from the Northwest, such wind being directly fair for vessels going down through the said passage—that he this deponent has been informed by Pilots at St. Andrews, and believes, that they the said Pilots have frequently piloted ships of three and four hundred tons burthen, through the said western passage without danger or difficulty, when the tide was in and the wind fair—that he the deponent does not consider the said western passage as safe and convenient for ships or vessels of any considerable burthen, unless the tide is in and the wind fair—that at half tide with a fair wind, the said western passage is safe and convenient for vessels from seventy to one hundred tons burthen, and that in the channel of the said western passage at high water, there is upwards of twenty feet depth of water—and this deponent further saith, that he has known American vessels frequently to anchor in West Quaddy Bay, so called, and there to wait until the tide should make, and there should be a sufficient depth of water to carry them through the said western passage."

Mr. Mills, upon his cross-examination on the part of the Claimant, says, "that the course of the principal channel from that part of the river St. Croix, (otherwise called the Scoodiac) between Joe's Point near St. Andrews and the opposite shore to the first waters, which are called the Bay of Fundy, is as follows, viz. from Joe's Point aforesaid to Clam Cove head, so called, the Northwestern extremity of Deer-Island, so called, thence between Deer-Island aforesaid, and Moose-Island, so called, thence leaving Marvel-Island, so called, on the larboard hand, between Wind-mill Point, so called, the Northwestern Point of Harbor De Lute, so called, and a small Island called Pope's Folly, thence between Casco Bay Island, so called, and Campo-Bello Island, so called, thence between Head Harbour, so called, the eastern extremity of Campo-Bello Island aforesaid and Spruce-Island, so called, into the Bay of Fundy."

This passage or channel last above described by Mr. Mills, is the same which he calls the eastern passage in his deposition upon the direct interrogatories, and is the same that is described by Judge Benson, and recited in the former part of this argument.

The whole of the testimony in the cause was discussed very much at large, when the argument was concluded with the following animadversions upon the foreign clearance, and the observations subsequent thereto.]

The minutes of that part of this argument, which precedes the introduction of the testimony, were made before I had looked into any part of the testimony, and so extravagant at that time appeared to me, *such a right* as now appears to have been in the contemplation of the Claimant, that barely shewing it to be a *necessary consequence* of the doctrine which I then supposed would be the utmost that would be contended for in the Claimant's defence, was in my mind an irresistible proof of the absurdity of that doctrine; but to my surprise, I now find, that the Claimant's defence rests, in the broad assertion of *that right* as legally vested in him, not only by usage and custom, but even independently of such usage.

Thus