

mitted into the sea—into any of the river, that they have not derive such right in the limits of this Province, between this Province and the Colonies, in order to be presumed, that undetermined, as to Commerce in direct

right of Great-Britain, the possession of the waters governed by the facts used in explanation of the Scoundiac, or the fifth article of the main waters of the Bay of Fundy, and Campo-Bello, and in some places over the islands of His Majesty's dominions of the United Kingdom, over which of no public act is exercised by the a disavowal of the passage or channel as question then, to general Law of Nations by the most a-

nion as far as the least till the con-

ea are, according and they are en- the sovereignty of the part of the re- the whole wa- undivided so- ple has obtained or by the right of it in full pos- shore; in which ers, shall be su- sea, as the conve-

side reach to the happened that the not got posses- sion in complete by Treaty."

the river, if nei- ther were the there at the same time; and in this

, that when two of each will ex- general rule; but of the boundary our of the Ame- part of the Bri- gate the waters e possession, nor did

did they thereby acquire dominion over the whole. The mother country in acknowledging the independence of her revolted colonies, had a right to prescribe their limits; in doing which, she was bound to consult the interest and preservation of that part of her empire, which continued in its allegiance. The Province of Nova-Scotia adhered to the cause of the mother country; the western limits therefore of that Province, it is presumed, were by the Treaty of Peace, made the eastern boundary of the United States; and the exception in the Treaty of such Islands, as before or at the time of the Treaty of Peace, were within the limits of the Province of Nova-Scotia, strengthens this presumption. By these limits therefore, must the United States be governed. That they considered Deer, Marvel, and Campo-Bello Islands as once forming a part of the Province of Nova-Scotia, and that they do now consider them as being within the jurisdiction of this Province of New-Brunswick, is evident, from their allowing His Majesty's subjects to remain in the undisturbed possession of them. To place this question, therefore, on the broadest ground, and in the most favorable point of view for the citizens of the United States, I will consider them, the moment their independence was acknowledged by the mother country, in the character of a sovereign people, and in the possession of the western side of the channel now in dispute; that His Majesty's subjects were in the possession of the eastern side; and that neither possessed an exclusive right to the waters of the same. The application of the general rule of the law of nations to this case then, will lead me to conclude, that the boundary line between this Province and the United States, is a line to be drawn through the middle of the channel that divides them, and to which the jurisdiction of each will extend. I am strongly confirmed in this conclusion by that part of the description of the boundary of the United States, in the second article of the Treaty of Peace, which says "East by a line to be drawn along the middle of the river Saint Croix," &c. The Commissioners, who made the Treaty, appear to have adopted the same rule, that governs the decision of this Court.

It has been urged that the west passage lying between Campo-Bello and Dudley and Frederick Islands, is unfit for the navigation of vessels of any burthen, as a bar extends across it in one place, over which at low water, there are about four feet of water only; and as the principal channel from the Bay of Fundy into the river Saint Croix lies to the Eastward of Campo-Bello, it has from thence been inferred, that the waters to the Westward of such channel, or lying between Campo-Bello and Dudley and Frederick Islands, are wholly within and belong to the United States; or that they are the waters of the river forming the boundary between His Majesty's dominions and the United States, and as such neutral as they are termed, and common to both nations. It appears in evidence, that the west passage is a considerable channel at high water, at which time there are twenty feet of water on the bar; that a ship of 300 tons burthen has passed through it; and that it is the passage principally made use of by the American vessels. But allowing, that the passage to the eastward of Campo-Bello is the principal channel into the Saint Croix, and more fit for navigation than the West passage, and that Great-Britain should admit the American vessels to the free navigation of it; would such admission convey the dominion of the passage to the United States, and with it, a right to the whole of the West passage, and the waters lying between Campo-Bello and Dudley and Frederick Islands? With equal propriety it might be said, that Denmark cedes the dominion of the Sound, by permitting the vessels of other nations to pass through it; or that Turkey yields the sovereignty of the Dardanelles, when she allows the ships of Great-Britain or Russia to pass the same. The West passage is one of the channels into the St. Croix, and is a part of the boundary between this Province and the United States, to the middle of which I conceive that the jurisdiction of each must extend; of course the waters cannot be common for any other purposes, than those of navigation.

I come now to the evidence adduced in this cause, which was very voluminous; and I shall only touch upon those points, which appear the most material.—It appears that about six years ago an agreement was made between the deputy of the Custom-House officers for this port of Saint John, and the American Collector, that the waters between Campo-Bello Island and Dudley Island, or in other words, those waters that lie within two lines commencing at the American Custom-House, (which is situated on the American side of the West passage) the one ranging from thence with the heads or points of land that form Snug Cove on the Campo-Bello shore, the other with the outmost heads or points of land on the American shore, should be considered neutral as they are termed, or common to the vessels of both nations, in which they might load or unload their cargoes, and that this agreement was assented to by the Officers of His Majesty's Customs for this Port, by virtue of which agreement the American vessels have been accustomed to anchor off Snug Cove, and take in their cargoes from British vessels lying in the stream. That previously to the American vessels taking in their cargoes, they obtain a foreign clearance for St. Andrews, a place within the jurisdiction of this Province, from the American Custom-House; and that the British vessels, which arrive at Campo-Bello from the upper parts of the Bay of Fundy, laden with Plaster, report at the British Custom-House kept at Snug Cove by the Clerk of the deputy Collector.

As to the situation of the Sloop at the time she was seized, it appears by the Mate and