

Inclosure 2 in No. 150.

Proposed Despatch to Governor Sir A. Bannerman.

(Confidential.)

Sir,

Downing Street, January , 1863.

I HAVE to acknowledge the receipt of your despatch No. 62 of the 6th of November, inclosing two Reports from Captain Hamilton of Her Majesty's ship "Hydra," dated respectively 30th June and October last, on the Newfoundland fisheries.

The 6th paragraph of the latter of these Reports, respecting an anticipated resistance by the American fishermen on the Labrador coast to the laws of Newfoundland regulating the fisheries, raises an important question respecting the effect of the Reciprocity Treaty upon laws passed by Colonial Legislatures, on which I wish to place you in possession of the views of Her Majesty's Government.

It appears that, by the Treaty between Great Britain and the United States of America, dated October 20, 1818, it was provided *inter alia* that the inhabitants of the United States should for ever have the liberty to take fish on the coast of Newfoundland in common with the subjects of Her Britannic Majesty. This privilege was extended to the coasts of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and the several islands thereto adjacent, by the Reciprocity Treaty of June 1854, and Acts were passed by the different Colonies (by Newfoundland in July 1855, 18 and 19 Vic., c. 2) to give effect to this Treaty and especially to suspend the local laws which were inconsistent with its terms or spirit.

The question arises, whether inhabitants of the United States, fishing in waters within the jurisdiction of the Legislature of Newfoundland, or of any other of the above-mentioned Colonies, are bound to obey and legally punishable for disregarding the laws or regulations enacted by or under the authority of the Provincial Legislatures for the conduct of the fisheries within their respective waters.

It is the opinion of Her Majesty's Government, that inhabitants of the United States fishing in waters within the territorial jurisdiction of the Legislature of Newfoundland, or of any other of the above-mentioned Colonies, are bound to obey such laws and are legally punishable for disregarding them.

The plain object of the Treaties above referred to was to put the inhabitants of the United States, as regards the "liberty to take fish" within certain parts of the British dominions, on the same footing as "subjects of Her Britannic Majesty," "in common" with whom, in the terms of the Treaties, such liberty was to be enjoyed. The enactments subsequently passed did but confirm the Treaties, and provide for the suspension, during the operation of those Treaties, of such laws as were or would be inconsistent with the "terms and spirit" of the Treaties, which "terms and spirit" are in no respect violated by regulations *bonâ fide* made for the government of those engaged in the fishing, and applicable to all British subjects so employed.

I have to explain, at the same time, that this British authority, as regards the inhabitants of the United States, can be exercised within those limits only within which the Treaty rights were conferred; in other words, within which, but for the Treaties, those inhabitants could not have insisted on their right to fish. These limits may be safely taken, on the main ocean, as extending to three miles (or a marine league) from the beach seawards; but there will remain (possibly) the cases of bays and other inlets lying between headlands and other points of the mainland, the whole of which may be territorial and subject to the ordinary municipal jurisdiction to which the mainland owes obedience. What these may be is a question of fact into which I do not enter.

I have only to add my desire that, while asserting the authority of Colonial law in Colonial waters, within the limits of existing Treaties, you will take care to do so in the manner which is likely to be least offensive to the foreigners who may fall within its scope.

I have, &c.

No. 151.

Mr. Hammond to Mr. Elliot.

Sir,

Foreign Office, January 26, 1863.

I HAVE laid before Earl Russell your letter of the 17th instant, inclosing a copy of a Report from the Attorney- and Solicitor-General, as well as the draft of an instruction which the Duke of Newcastle proposes to address confidentially to the Governor of