the loss they have sustained, having rendered themselves obnoxious, having been taken, some *flagrante delicto*, and others under such circumstances that they could have no other intention than that of pursuing their avocations as fishermen, within the lines laid down by treaty as forming boundaries within which pursuit was interdicted to them.

The United States Brief which is now confessed to have been inspired by a misapprehension of the facts, states (p. 9) that the claim to exclude the American fishermen from the great bays, such as Fundy and Chaleurs and also from a distance of three miles, determined by a line drawn from headland to headland across their mouths, was not attempted to be enforced until the years 1838 and 1839, when several of the American fishing vessels were seized by the British Cruisers for fishing in the large bays.

This admission coupled with the complaint of 1824, makes it evident that indisputable portions of the Convention had been violated, since American vessels had been seized in Two-Islands Harbor, Grand Manan. This was, even with the present American interpretation of the Convention of 1818, as to headlands, an evident trespass on prohibited grounds; and the rescue of the vessels seized by the fishermen of Eastport, and other similar instances, should not be mentioned otherwise than as acts of piracy, which a powerful nation may disregard for peace sake, but will resent when treasured injury explodes on other occasions.

It has been the policy of certain American Statesmen to lay the blame of most of their fisheries difficulties on the shoulders of colonists, in order to obtain their easy settlement, at the hands of a distant, and *(quoad lucrum)* disinterested, Imperial and supreme power. From a natural connection between causes and effects, our maritime provinces most in proximity to the United States, had to bear the brunt of a triangular duel, the chief part of which fell to Nova Scotia, who showed herself equal to the occasion. It can be shown that what was styled as almost barbarian legislation, on the part of the Nova Scotia Parliament, exists at this very hour, in the Legislation of the United States. And it is not a reproach that I am casting here against the United States. They have done like other nations, who made effectual provisions, against the violators of their customs, trade or navigation laws, and they could not do less or otherwise than the legislature of Nova Scotia.

The Customs Statute of the Dominion, 31 V. c. 6, (1867) contains similar provisions to those of the Fishing Act of the same Session, ch. 61, ss. 10, 12, 15. and lays upon the owner and claimant of goods seized by Customs officers, the burden of proving the illegality of the seizure: it obliges the claimant of any vessel, goods or things seized, in pursuance of any law relating to the customs, or to trade or navigation, to give security to answer for costs. Other parts provide for all the things contained in the Nova Scotia Statute, so much animadverted upon, as being contrary to common law principles, but which are applicable to British subjects as well as to foreigners. The Imperial Act, 3 & 4 Will. 4 c. 59 ss. 67, 69, 70, 71, consolidated former Acts, dating as far back as when the 13 revolted Colonies were part of the Empire, contains similar provisions as our Dominion Acts concerning Customs and Fisheries, and as the Nova Scotia Statute of 1836. I had intended to cite some words of the American law on the subject, but the volume is not at hand. I supplement the omission by—1. Gallison, p. 191; 2. Gallison, p. 505; 3. Greenleaf, Sect 404, and note 2, p. 360; 5. Wheaton, Sect. 407, p. 461, and Sect. 411, p. 463.

MR DANA:—Mr. Doutre, do you not consider that to the same effect as if the Judge says that the Government must make out a *prima facie* case.

MR. DOUTRE:—I have only read a small portion of the decision; but the seizure constitutes a *prima facie* case.

MR. DANA:—Oh, no.

MR. DOUTRE:—Seizure was made for open violation of the law, and it is for the claimant to show that he did not violate the law.

MR. DANA:—The Decision is that the Government must make out a *prima facie* case.

MR. DOUTRE:—It is impossible for me to satisfy your mind on that point; the report is very long, and if you read it you will be convinced that I am right.

MR. DANA:—It says the Government are obliged by statute to prove a *prima facie* case.

MR. DOUTRE:—These cases are all of a similar character. I admit that the ordinary rules of evidence are here reversed. The reason is that the maintenance of the ordinary rules, concerning evidence, would work great mischief, if applied to such matters as these.

MR. FOSTER:—This is a judgment based on suspicion, in the opinion of the Court, and not on the opinion of the boarding officer.

MR. DOUTRE:—The boarding officer makes the seizure, and reports that he has made it, and unless the defendant comes and shows that the seizure has been illegally made; the Court ratifies the seizure, and condemns the goods or ships seized.

MR. DANA:—Are you speaking of war, now?

MR. DOUTRE:—No, of profound peace.

MR. DANA:—This was in time of war, and in the very case you cite, it is said that the acts must be established by the Government which has to make out a *prima facie* case.

MR. DOUTRE:—I will take the law of the United States on this point as establishing my view. I will now give the reasons why such legislation has been adopted in England, in the United States and in Canada, in an extract taken from a judgment rendered by the distinguished Chief Justice of Nova Scotia, Sir William Young, in Dec. 1870, in *re* Schooner *Minnie*, Court of Vice Admiralty:—

"It must be recollected that Custom House Laws are framed to defeat the infinitely varied, unscrupulous and ingenious devices to defraud the revenue of the country. In no other system is the party accused obliged to prove his innocence—the weight of proof is on him, reversing one of the first principles of criminal law. Why have the Legislatures of Great Britain, of the United States, and of the Dominion alike, sanctioned this departure from the more humane, and, as it would seem at the first blush, the more reasonable rule? From a necessity, demonstrated by experience—the necessity of protecting the fair trader and counter-working and punishing the smuggler."

MR. DANA:—That is a British decision which you have read?

MR. DOUTRE:—Yes; a British Colonial one.

The provisions of the Nova Scotia Statute were intended to apply to a class of cases belonging to something similar to customs regulations, and are inseparable from them, and if ever our American friends desire to enforce on their coasts the three miles limit, which their answer and brief recognize as resting on the unwritten law of nations, they will have to extend to this matter their customs law above cited, as did the Legislature of Nova Scotia.

The learned Agent of the United States went very far from any disputed point to gain sympathy, by a reference to what, in the United States Answer to the case, is called an inhospitable statute. He says:—

"A Nova Scotia statute of 1836, after providing for the forfeiture of the vessel found fishing, or preparing to fish, or to have been fishing within three miles of the coast, bays, creeks or harbors, and providing that the master, or person in command, should not truly answer the questions put to him in such examination by the boarding officer, he should forfeit the sum of one hundred pounds, goes on to provide that if any goods shipped on the vessel were seized for any cause of forfeiture under this Act, and any dispute arises whether they have been lawfully seized, the proof touching the illegality of the seizure shall be on the owner or claimant of the goods, ship, or vessel, but not on the officer or person who shall seize and stop the same."

These are the very expressions which the learned Agent for the United States employed when he animadverted