

Inclosure 1 in No. 150.

The Law Officers of the Crown to the Duke of Newcastle.

My Lord Duke,

Temple, January 6, 1863.

WE are honoured with your Grace's command, signified in Sir Frederic Rogers' letter of the 17th December ultimo, stating that he was directed by your Grace to request that we would favour you with our opinion on the following question:—

That by a Treaty between Great Britain and the United States of America, dated October 20, 1818 (Hertslet, ii, page 392), it was provided, *inter alia*, that the inhabitants of the United States should for ever have the liberty to take fish on the coasts of Newfoundland "in common with the subjects of Her Britannic Majesty."

That this privilege was extended to the coasts of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and the several islands thereto adjacent (Hertslet, ix, page 999); and Acts were passed by the different Colonies (Hertslett, x, pages 648, 649, 651–653) to give effect to this Treaty, and especially to suspend the laws of the different Colonies which were inconsistent with the terms or spirit of the Treaty.

Sir Frederic Rogers was also pleased to state that your Grace desired to be informed 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 authority of the respective Provincial Legislatures for the conduct of the fisheries; and that your Grace presumed that such laws would only extend to waters situate within a marine league of the coasts of the Colony which (in the case of Newfoundland, to which this question especially relates) are defined by the Governor's Commission, from which an extract was annexed.

Sir Frederic Rogers was further pleased to inclose an extract from a Report addressed to Sir A. Bannerman by the officer employed on the coast of Newfoundland, and copies of a letter from Admiral Sir A. Milne, transmitting that Report to the Lords Commissioners of the Admiralty, and of a letter addressed to the Colonial Department by direction of their Lordships. These papers would explain the object with which the present question was asked.

In obedience to your Grace's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, 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 and are legally punishable for disregarding the laws and regulations for the conduct of the fisheries enacted by or under authority of the respective provincial Legislatures. 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 the parts (described) 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, &c., as were, or would be, inconsistent with the "terms and spirit" of the Treaties, which "terms and spirit" are, it appears to us, 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. We think, 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. Beyond this we conceive that the matters to be considered are matters rather of fact than of law.

We have, &c.

(Signed)

W. ATHERTON.

ROUNDELL PALMER.