

3. That the place where the said Sloop was anchored and where she remained and was seized and taken, is the place where vessels of the United States *usually and frequently* anchor and receive cargoes of Plaisir, as he the Respondent did in the said Sloop.

4. That it is the place heretofore pointed out and assented to by the Officers of His Majesty's Customs of the Port of Saint John, as the proper place for the vessels of the United States to anchor and take in their cargoes of Plaisir of Paris.

5. That the waters where the said Sloop anchored and was seized, are, as he is informed and believes, either *wholly within the limits* and boundaries and *belong* to the United States of America, or otherwise are *the waters of the River forming the boundary* between His Majesty's dominions and the said United States, and as such neutral and in common for the vessels of both nations.

6. That *inasmuch* as the principal channel from the Bay of Fundy into the river St. Croix or Scoudiac, commonly so called, is to the Eastward of the said Island of Campo-Bello, and between Deer-Island and Moose-Island, (lying to the Northward thereof) and *forasmuch* as the Eastern boundary of the said United States is "a line to be drawn along the middle of the river Saint Croix, from its mouth in the Bay of Fundy to its source, &c. and that all Islands within twenty leagues of any part of the shores of the said United States, and lying between parallel due East lines to be drawn from the mouth of the said river St. Croix and the mouth of St. Mary's river, are comprehended within the limits and boundaries of the said United States (except such Islands as at the time of or before the Treaty of Peace of 1783, were within the limits of the Province of Nova-Scotia) he believes that the waters on which the said Sloop was anchored and seized and taken as aforesaid, are *wholly within and belong* to the United States,"—but if otherwise—

7. He avers that the anchoring, lying and loading with Plaisir of Paris from on board British vessels in the stream, and at the same place where the said Sloop was seized and taken as aforesaid, has been for a long time sanctioned by the concurrent assent of the Officers of His Majesty's Customs at this Port of Saint John, and at the Port of Passamaquoddy, as a practice not prohibited by any of the existing laws of either of the two Countries.

8. He therefore prays that the said Sloop and Cargo may be adjudged to be restored to him with costs and charges.

Replication. To this answer and Claim a general Replication is filed on the part of the Libellant, and

Rejoinder. A Rejoinder on the part of the Claimant, which puts the cause at issue.

SEVERAL witnesses have been examined on both sides, which perhaps was unnecessary, as it is conceived that it would have been perfectly safe on the part of the Prosecutor, to have proceeded to a hearing of the cause upon the Libel and answer, without controverting the facts stated by the Claimant in his defence, as the law arising upon those facts, it is humbly submitted, will not only justify the seizure, but must work a forfeiture and condemnation of the Sloop and her cargo.

With the leave of the Court then, the merits of the cause shall be discussed upon the facts disclosed in the Claim, before the testimony of the witnesses is taken into consideration.

I will take up the grounds of the Claim in the order in which they naturally present themselves.

Defence. I. The Claimant insists that by the Treaty of Peace between His Majesty and the United States of America, concluded in 1783, the waters on which the Sloop was anchored and seized and taken, as stated in the Claim, are *wholly within and belong* to the United States, for the following reasons:—

1. Because the Eastern boundary of the United States is a line to be drawn along the middle of the river Saint Croix, from its mouth in the Bay of Fundy to its source, &c.

2. Because the principal channel from the Bay of Fundy into the river St. Croix, is to the Eastward of the said Island of Campo-Bello, and between Deer-Island and Moose-Island, lying to the Northward thereof.

3. Because all Islands within 20 leagues of any part of the shores of the United States, and lying between parallel due East lines to be drawn from the mouth of the river Saint Croix and the mouth of Saint Mary's river, are comprehended within the limits and boundaries of the said United States, except such Islands as at the time of or before the Peace of 1783, were within the limits of the Province of Nova-Scotia.

II. The second ground of defence is, that if the waters in question are not *wholly within* and do not *wholly belong* to the United States, they are *the waters of the River forming the boundary between His Majesty's dominions and the said United States*, and as such *neutral and in common* for the vessels of both nations.