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Gl. Brit. Foreign Office

Correspondence in 1776 respecting French Rights of Fishery in Newfoundland under Article XIII of the Treaty of Utrecht.

No. 1.

*Viscount Weymouth to Viscount Stormont.*

(No. 4.)

My Lord,

*St. James', January 26, 1776.*

THE French Ambassador at this Court, as you are already informed, has applied to me expressing great discomfort at the interruption given to their fishery by the residence of a great number of English on those parts of the Island of Newfoundland allotted for the concurrent fishery; stating that these residents occupied all those parts that were intended for the equal advantage of the fishers of both countries. To obviate this cause of complaint, to which his Excellency pretends the orders given to the Naval Officer commanding on that station had procured no remedy, the Ambassador has proposed on behalf of his Court that a certain portion of the Island of Newfoundland should be allotted to the French fishery. That portion to be from the Baie des Trois Isles inclusive, down the western coast, from thence round Cap de Raye and a considerable part of the southern coast towards the Baie de Désespoir, as they have traced it with the pen on a Map entitled "Carte réduite du Golphe de St. Laurent of the year 1754."\* If a concurrent fishery were allowed to them there, it would ere long be a cause of discontent, and an exclusive right, your Excellency must be convinced, cannot by any means be given them.

It may be proper to observe to your Excellency that every legal method is constantly used by His Majesty's Governor of the island to prevent the resident fishery from extending, as it is by its principle opposite to the interest of the nation; but no means can be found effectual to make them remove from thence; and force cannot legally be used, as the XIIIth Article of the Treaty of Utrecht lays no restraint on the residence of the English, though it does on that of the French fishers.

The Court of France would still have cause of complaint if, by the number of settlers, the ground was so fully occupied that the French fishers had not space sufficient for their summer residence, and for carrying on that part of their business that is to be performed on shore; but from the most accurate inquiry the case is otherwise. The real cause of complaint does not depend on us to remove, but on them.

For some years past the Court of France have thought proper to offer bounties to such of their fishers who should explore new places, and they are particularly directed to seek for fish in all the creeks and harbours where the English shall be seen fishing. This occasions uneasiness and heartburnings that the utmost attention of the Naval Commanders cannot suppress. Their success on these occasions is generally short of what they would have had if they had kept to the coast usually frequented by them, but it furnishes them with occasions of complaint; and their want of success is no loss to them, as the deficiency is made up to them equal to the most successful vessel, number of men and tonnage considered. This matter was fully stated to M. de Guerchy in . . . , and hopes were entertained that the Ministry of France would put a stop to a practice that gives them seeming grounds of complaint, and which from the opinion of their oldest and most skilful fishers is prejudicial to their own interest.

A conversation I have just now had with Sir Hugh Pallisser enables me to add some information to my letter, which was nearly written.

The ice is driven from the coast of Labrador, on the breaking of the frost, to that part of the island where the resident fishery is established, and accumulates there in such large quantities that the coast is inaccessible till a month after the other parts are frequented; and the chief use the residents make of it is for the winter fishery.

\* This part of the coast is actually inhabited.

From Baye Blanche northward to Cap de Grat is the coast on which the French have ever carried on their fishery ; and though there is nothing in the Treaties that should prevent our fishers from settling there, the desire of avoiding every interruption to their fishery has caused our Governors to prevent by all possible means any of our people from settling there, and has succeeded except with one against whom there have been no complaints.

The more inquiry is made into this matter the more I am convinced that there is no reasonable cause of complaint, but what arises from the bounties the Court of France gives to those who interfere with our fishers in ports of the coast they were not accustomed to frequent.

I have quoted from their Map ; but it is proper to inform you that it is very erroneous, and there is reason to believe not without intention.

I have, in command from His Majesty, to direct you to explain this matter fully to M. de Vergennes, who perhaps is not as earnest on this point as is represented by the Count de Guines, with whom I have discussed it this morning. At the same time your Excellency is to express His Majesty's most sincere wish to remove every reasonable cause of complaint that the French fishers may at any time have from the inhabitants residing on the coast allotted for the concurrent fishery.

Your Excellency is authorized to assure His Most Christian Majesty's Ministers that the most positive orders shall be given to the Naval Commanders on the Newfoundland Station to pay the strictest attention that the French fishers enjoy to the fullest extent all those rights to which they are entitled by the Treaties of Utrecht and Paris.

I am to desire you would not speak to M. de Vergennes on this subject unless he first starts it, as M. de Guines is to see me again on this point in a day or two.

I am, &c.

(Signed) WEYMOUTH.

No. 2.

*Viscount Weymouth to Viscount Stormont.*

(No. 5.)

My Lord,

*St. James', February 2, 1776.*

MY first conference with M. de Guines broke off that his Excellency might have time to consider the Article of the Peace of Utrecht relative to the fishery at Newfoundland, as he was not apprised that we claim the right of having resident settlements, though the stay of the French fishers on the coast is limited to the season of the fishery. His Excellency pretended that His Majesty's servants had on different occasions acknowledged they had no such right. The fact I could not agree to, but supposing it to be true, no opinion of His Majesty's Ministers could cancel a right clearly allowed by the Treaty as anterior to the period of the Peace of Utrecht we had resident settlements on the island. This appears by a Charter granted in 1610, and by several instances of encouragement given to persons to settle there. Since the interest of the nation has been better understood, such means as could legally be practised have been used to prevent their remaining on the coast during the winter, but force cannot be exerted against these residents.

His Excellency renewed the Conference on Tuesday, and was extremely pressing that some new district or portion of the island should be allowed to the French fishers as a compensation for that part of the coast allotted for the concurrent fishery, which, he pretended, they are deprived of by the prior occupancy of our resident fishermen. He was pressing that a negotiation should be entered into respecting this point. This I thought it my duty to decline, as we could never consent to any proposal they could make on that subject, and that it appears they are not grounded in their complaints. The use is not denied to them of any part of the coast allotted to the concurrent fishery, and though they have no legal claim, a very considerable portion of that coast is enjoyed by them nearly exclusively, as stated in my last letter to your Excellency on this subject.

As I have now heard and replied to everything the French Ambassador can say on this subject, I am to signify to your Excellency His Majesty's pleasure that you enter on this point with M. de Vergennes on the first opportunity.

It may probably happen that he may consider this claim as a new one, and as the forerunner of measures that may be prejudicial to their fisheries. Your Excellency will use the best means in your power to convince him that nothing is intended by it, that it became necessary to assert this in answer to M. de Guines' demand that the inhabitants now settled on the island should be removed, or that an equivalent should be ceded to the French fishers. The answer must necessarily be we have no right or power to remove

them, and no compensation can be demanded where no injury is sustained, since the Treaty is not infringed.

You will assure M. de Vergennes in the strongest terms of His Majesty's earnest and sincere desire that they should enjoy the fishery on the Island of Newfoundland to the fullest extent the Treaty permits. Our Naval Commanders on this principle have used every means in their power that the French should almost exclusively enjoy that part of the island which for many years they have frequented in preference to every other, and from which their own practice proves they never remove but by the allurements of bounties given by the Court of France. You will also observe to his Excellency that during the long peace after the Treaty of Utrecht no difference arose betwixt our fishers and theirs, each keeping to the parts of the coast they had long been in the habit of frequenting, and no bounties then existing for those who should seek success, which they scarce ever find, in parts usually unfrequented by them.

You will please to add that His Majesty would readily have directed me to enter into negotiation with the Count de Guines on this subject if it could possibly have had a successful issue. And you will use such arguments as occur to you to induce the French Ministers to repeal their Regulations for bounties, as it appears they are the real cause of the differences which arise between our fishers and theirs, and which bounties perhaps were originally established to procure, in consequence of the quarrels that would arise, some new division of coast that would be beneficial to them.

The importance of the subject will excuse to your Excellency my repeating in this letter what in a great measure was contained in my last.

I am, &c.  
(Signed) WEYMOUTH.

No. 3.

*Viscount Weymouth to Viscount Stormont.*

(No. 6. Most Secret.)

My Lord,

*St. James', February 2, 1776.*

IN addition to my letter to your Excellency of this day's date, I am to acquaint you that, as it cannot be known how earnest the French Ministers may be in their application on the subject of the fishery at Newfoundland, and that the claim asserted on our part to the French Ambassador may give them much offence, and is not of material importance to this country, since every motive must induce us to restrain the sedentary fishery, it is His Majesty's pleasure that you endeavour, in case it should seem to you essentially necessary, to keep this point for further discussion. But your Excellency will be careful not to give M. de Vergennes any hopes of compensation by a cession on our part of any tract of coast which can never be consented to, but rather you will suggest that means might be used to drive the residents from their present establishments. You will not fail at the same time to state to M. de Vergennes the real injury that might result to the French fishers by exacting such a rigid observance of the Treaty supposing they were founded in their interpretation of it. The means now used to leave them almost exclusively the extent of coast from Baye Blanche to Cap de Grat could no more be practised, and our own fishermen would claim their full right to a concurrent fishery on that part of the island from whence with great diligence our Naval Commanders have restrained them.

His Majesty cannot doubt of your address and discreet management of this matter, which it is much wished you may not be under the necessity of having recourse to.

M. de Guines has just informed me that he is recalled from his Embassy. This may make some alteration in this business, as it seems probable that he was more earnest in it than the French Ministers seem hitherto to have been.

I am, &c.  
(Signed) WEYMOUTH.

No. 4.

*Viscount Weymouth to Viscount Stormont.*

(No. 10.)

My Lord,

*St. James', February 16, 1776.*

YOUR letters to No. 12 have been received and laid before the King.

The recall of M. de Guines is a circumstance likely to have prevented his giving his

Court a full detail of the conference with me relative to the fishery. It is therefore probable no inconvenience will arise from your Excellency having delayed speaking to M. de Vergennes on the subject.

The first impression is often very important, and His Majesty was desirous that M. de Vergennes' mind should be prepared by your Excellency for an argument which M. de Guines seems to think a new one and of the utmost importance to their fishery.

It certainly is very material that the French Ministers should be satisfied, as early as possible, that nothing is couched under the claim of a right to residents on the Island of Newfoundland that can interfere with the liberty allowed them of carrying on their fishery on the coast. The manner and the time must now be left to your Excellency, not doubting that you will avail yourself of your penetration and knowledge of M. de Vergennes' character that no inconvenience may arise from the delay.

I am, &c.  
(Signed) WEYMOUTH.

No. 5.

*Viscount Stormont to Viscount Weymouth.*

(No. 18. Secret.)

My Lord,

*Paris, February 21, 1776.*

AFTER we had finished the Portugal business I mentioned to M. de Vergennes the care Commodore Legge had taken of the French ship stranded at Nova Scotia. He told me that he was already acquainted with the generous humanity with which we had acted upon that unfortunate occasion, and that M. de Guines had received particular orders to express the sense this Court has of that obligation, and to express it in the strongest terms.

I told him, my Lord, in my answer that everything we could do of this kind was not only due to humanity, due to the friendship that reigns between the two Courts, but was no more than a just return for their late behaviour on a similar occasion. After he had repeated his thanks for what Commodore Legge had done, I asked him, my Lord, in a careless manner, if M. de Guines had given him an account of what had passed in his conferences with your Lordship upon the subject of the Newfoundland fishery. He answered with a very grave face, "Hélas, oui, il m'en a rendu compte d'abord . . . ." Your Lordship will permit me to observe here that, as the earliest opportunity I could have had of executing the King's commands was on Tuesday, the 13th instant, I could not have been in time to give the first impression. After a short pause, M. de Vergennes said, "I doubt M. de Guines did not put the thing upon the proper footing; there may be no direct violation of the Treaty, but Treaties between Great Powers that mean to live in friendship are always to be construed in a fair, liberal manner. If we were to interpret the right of fishing which the Treaty of Utrecht gives us into an exclusive right of fishing upon that coast, it would be a strained and false construction. If, on the other hand, you, by settlements which may not be directly contrary to the letter of the Treaty, preclude us from the exercise of the right that is given us, you act unkindly, and in effect take that right away.

"For instance," said he, "you give me this room, and you fill it so full that I cannot turn round in it; would this be a fair and handsome proceeding?" He said this with a smile, and as I was desirous of keeping him in the good humour, to which I was glad to see him returned, I answered that I would *come to his room* before I had done, but could not begin there, and must first take a pretty large compass, for which I begged his patience.

I then, my Lord, told him that I was authorized to give the strongest and most positive assurances that we meant to fulfil all our engagements with them *loyalement*, and with the utmost sincerity and good faith; that His Majesty's naval officers on the Newfoundland Station would receive the most positive orders to prevent every the least molestation of the French fishers, and to pay the strictest attention that they enjoy to the fullest extent all those rights to which they are entitled by the Treaties of Utrecht and Paris; that as to the exchange proposed by M. de Guines, it appeared upon the fullest examination inadmissible, and, besides many other objections, would not remedy the evil complained of, as there would soon be the same concurrent fishery established there, and consequently the same possibility of disputes and jealousies.

That, convinced as we were of the impossibility of agreeing to this exchange, your Lordship could not do otherwise than decline all further negotiation with regard to it, that His Majesty would have ordered such a negotiation if it could have been brought to a

happy issue, but that the appearing to treat about what we could not agree to would not have been "selon notre caractère et la franchise de nos procédés."

M. de Vergennes said that that exchange had been proposed as a proper expedient, that they had proposed it though they knew that what they had offered to give up was by far the best of the two, but that it was proposed as an exchange which he very candidly admitted is a sort of proposal which the person to whom it is made is at full liberty either to accept or refuse. After applauding the justness of his reasoning, I went on to say that M. de Guines had desired that, since the exchange was rejected, our settlers should be removed; to which your Lordship had given this plain and simple answer: We cannot remove them, we have no power, no right to do it, as these settlements are contrary to no Law or Treaty whatever. They preceded the Treaty of Utrecht many years, as is proved by a Charter of the year 1610; no objection was made to them at the time of that Treaty, neither were they objected to when the stipulation for the Newfoundland fishery was renewed by the Treaty of Paris. At the same time that I explained the right of those settlers, I remarked to M. de Vergennes that nothing could be more foreign to our intentions than any wish to increase them; that the "pêche sédentaire" had been formerly encouraged upon false and narrow principles, but that it could not escape a man of his penetration that that was not the fishery for a Great Maritime Power to encourage.

He readily admitted this, and said that it might be advantageous to individuals, but was not beneficial in a great national view. He then observed to me that if no objection had been made formerly to these settlements it was because it was not then an object to France, who had such great and extensive fisheries in the "embouchure de la Rivière St. Laurent, Cap Breton, &c.," but as she had lost so many of those fisheries by the last peace it now behoved her "d'y regarder de plus près," and that she was justly afraid that, by little and little, we should settle the whole coast and leave her no room for the exercise of the right that Treaty had given her, which was just the same thing as taking that right away. I assured him, my Lord, that nothing was farther from our intention, that these settlements would be checked instead of being encouraged, and that, far from wishing them to extend, our Governors had found means to prevent any English, except one person of whom there never has been any complaint, from settling upon that coast which the French fishers used formerly to frequent, viz., from White Bay to Cap de Grat. I observed to him, my Lord, that whilst the French fished there there had not, in a long number of years, been the least dispute, but they had now left that fishery, of which they had had "de fait," though not "de droit," almost the whole enjoyment, and which was highly beneficial to them, and in consequence of those speculative projects which so often fail, had been endeavouring to explore new fisheries for which bounties were given, with orders to fish in every harbour and creek where they saw the English fishing. This naturally bred jealousies and disputes, which are never so well avoided as when that to which there is a common right is occupied separately.

M. de Vergennes interrupted me here to say that I was mistaken as to the nature of those bounties, that there were no orders to fish where they saw the English fish, that the direction to explore new fisheries was general, and that they had, in fact, discovered one upon the coast of Iceland.

Without controverting what he said with regard to the nature of the orders given, I again observed to him that these bounties were certainly the main cause of the disputes that had arisen, that in order to gain the bounty the fishers neglected their old and most beneficial fisheries from White Bay to Cap de Grat, and endeavoured to explore new ones upon the coast where our settlers were. Though it was clear from what Sir Hugh Pallisser said of the vast quantities of ice driven from the coast of Labrador to that part of the island where the resident fishery is established, and which make that coast inaccessible till a month after the others, it was clear, beyond all doubt, that it was not favourable for the summer fishery, and therefore could only be frequented for the sake of the bounties, which made the French fishermen little attentive to losses in which they had no share; if they succeeded, they reaped the whole advantage, if they failed, the loss was amply made up to them.

We then, my Lord, turned to Jeffrey's Map and examined the coast. I observed to M. de Vergennes that the coast on which the French had formerly fished without any dispute was of large extent and fully sufficient for every purpose; that I could safely appeal to the opinion of the ablest French fishermen, who blamed the new fisheries, which however France was, to be sure, at liberty to continue if she pleased, as we certainly should give her no molestation in any part of the coast allotted by Treaty.

Having said all this much more fully than I state it to your Lordship, not to swell this letter to an enormous size, I told him that I was now come back to his room, would borrow his allusion, and say that instead of crowding a small room so as to leave no place

to turn in it, we only occupied a small, and that by no means the best part of a large apartment, where there was sufficient space for both, and where I hoped we should ever be friends.

I then, my Lord, repeated in a more serious manner the same solemn assurances with which I began.

The whole passed with much more good humour than I expected. M. de Vergennes was very fair, candid, and moderate, and I more than once paid him a very just compliment upon the polite, liberal manner in which he treats.

Your Lordship sees that there was no occasion for my making any use of the instructions sent me in your Secret letter No. 6. I would fain flatter myself that I have now executed the King's orders to His Majesty's satisfaction—I am sure I have done it to the utmost of my ability.

I am, &c.  
(Signed) STORMONT.

### No. 6.

*Viscount Weymouth to Viscount Stormont.*

(No. 15.)

My Lord,

*St. James', March 8, 1776.*

HIS Majesty is extremely desirous to give every proper satisfactory proof to the Court of France of the sincerity of his assurances, that he does not intend to suffer the smallest interruption to be given to their enjoyment of the fishery on the coast of Newfoundland to the full extent of what is allowed them by Treaty, at the same time that the rights of his subjects oblige His Majesty to claim the full sovereignty of the island, which, as your Excellency has very properly stated to M. de Vergennes, is only urged in answer to the objections made by M. de Guines to the scdentary fishery, and not with intention to support those resident fishers.

The inclosed instructions to the Governor of Newfoundland, which His Majesty has no doubt will be strictly attended to, are evident marks of his desire that the Treaty should be explained in the most liberal manner, and that every just cause of complaint may be removed.

His Majesty has not limited his attention, on the present occasion, to this object alone, and fearing the Islands of Miquelon and St. Pierre might receive considerable inconvenience from the Act lately passed for prohibiting all intercourse with any of our Colonies in rebellion, has directed that the subjects of France, having establishments on those islands, be permitted to supply themselves from the Island of Newfoundland with every species of lumber that shall be necessary for them.

Your Excellency, in communicating the inclosed instructions to M. de Vergennes, will accompany them with such expressions as shall make that Minister sensible of His Majesty's desire to contribute everything in his power that shall evince his friendly intentions, and maintain the harmony subsisting between the two Courts, so desirable for the happiness of Europe.

I am, &c.  
(Signed) WEYMOUTH.

### Inclosure in No. 6.

*Instructions to the Governor of Newfoundland.*

WHEREAS it hath been represented unto us that, notwithstanding the precise and positive instructions given from time to time to our Governors of Newfoundland for the due execution, in the most liberal construction of the Treaty of Paris, of those stipulations of that Treaty which regard the right of the subjects of France to exercise and enjoy, in common with our subjects, the privileges of drying and curing fish within any parts of the harbour and coasts of that island which lye between Bonavista and Point Riche, yet, nevertheless, our Royal will and intentions, so fully expressed in those instructions, have been defeated, and the subjects of His Most Christian Majesty have been obstructed and molested in the enjoyment of those privileges, by means of sundry claims of our subjects to private property on parts of the said sea-coast, and within the said harbours, set up on various unwarrantable pretences of grants made by our Governors of Newfound-

land, who never derived any authority from us or from our Royal predecessors for making such grants.

It is therefore our express will and command that you do, upon pain of our highest displeasure, use your utmost vigilance and authority to prevent our subjects from taking any exclusive possession whatever, as private property, of any lands, rivers, or islands in the northern parts of Newfoundland between Bonavista and Point Riche, or from making any settlement or forming any establishments there, which may in any degree have the consequence to prejudice the fisheries of the subjects of France as allowed by Treaty, or to render ineffectual those instructions we have already repeatedly given, that in each and every season such ships and vessels of both nations as shall resort to those parts of Newfoundland for carrying on the fishery do choose their stations as they respectively arrive, and that they do occupy such space of the beach as shall be proportioned to the number of those boats, according to antient usage and practice, doing strict justice without partiality to the subjects of both Crowns, according to the letter and spirit of the Treaty of Paris in that respect.

And whereas it hath been further represented unto us that the subjects of France, having establishments on the Islands of St. Pierre and Miquelon, may, by the operation of the Act passed in the present Session of Parliament for prohibiting all trade and intercourse with any of our rebellious Colonies in America therein mentioned, be distressed for want of a supply of lumber and other articles necessary to those establishments, it is therefore our will and pleasure that you do permit and allow the said subjects of France, having establishments on those islands, to supply themselves from our Island of Newfoundland with such articles of lumber of every species as shall be necessary and requisite for building and repairing their houses, wharfs, fishing stages and craft, or other purposes essential to the maintaining and supporting their establishments; taking care, at the same time, that such indulgence be not made a pretext for carrying on any illicit trade in violation of the Laws of our kingdom.

And, lastly, it is our further will and pleasure that you do exhort and command all our subjects so to behave themselves towards the subjects of His Most Christian Majesty as that there may be no cause of complaint, it being our determined resolution to punish with the utmost rigour those who shall seek, by acts of violence or injustice, to disturb that peace and harmony which at present so happily subsists between the two nations.

No. 7.

*Viscount Stormont to Viscount Weymouth.*

(No. 33.)

My Lord,

*Paris, March 20, 1776.*

AGREEABLY to the instructions transmitted to me in your Lordship's letter No. 15, I told M. de Vergennes yesterday that, to give this Court a fresh proof of the scrupulous good faith with which we mean to fulfil all our engagements, and to show in what a fair and liberal manner we interpret the Treaties between us, I was authorized to communicate to him the King's instructions to the naval officers on the Newfoundland Station. I added, my Lord, that he would find from these instructions that we had extended our attention to a case which arises from the present unhappy situation of America, and for which the Treaties have made no provision.

I then, my Lord, gave him the instructions to read. As he understands English, I gave them in the original.

He read them with great attention, asked me to explain a word or two which he did not understand, seemed much pleased, and when he returned me the paper, said that he would not fail to give an exact account to the King his Master, who, he was sure, would receive great satisfaction from this friendly and confidential communication.

He then, my Lord, added a few words about the sedentary fishery, which, he said, was not more prejudicial to the interests of France then [*sic*] to those of Great Britain, properly understood. Without entering into a discussion which I thought it as well to avoid, I only observed to him that the instructions which he had just read sufficiently showed that we had no intention of encouraging the sedentary fishery, and added that none of the arguments I had used to him upon a former occasion were in favour of that fishery, but only in support of our indisputable right to the propriety of the island.

He admitted that the Treaty of Utrecht gave us that right beyond all dispute, and then changed the conversation to other topics, which, with your Lordship's leave, I shall make the subject of a separate letter.

I am, &c.  
(Signed) **STORMONT.**