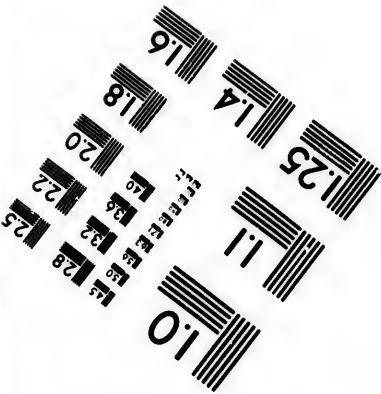
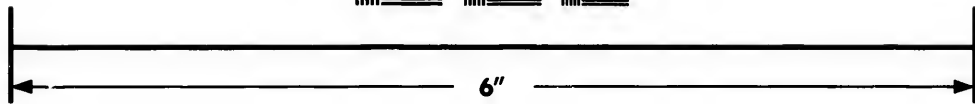
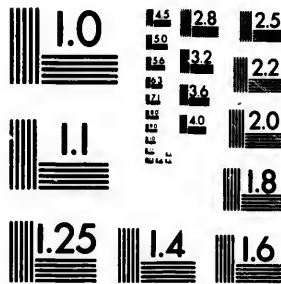


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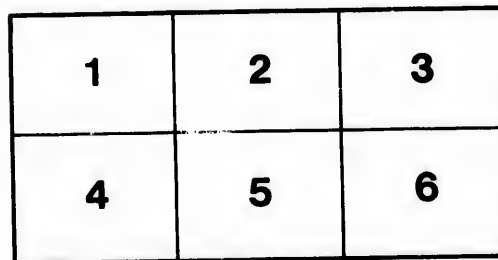
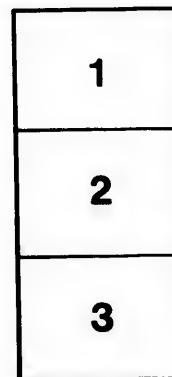
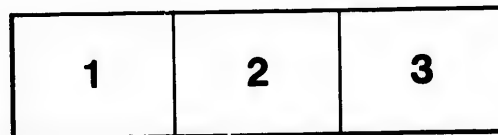
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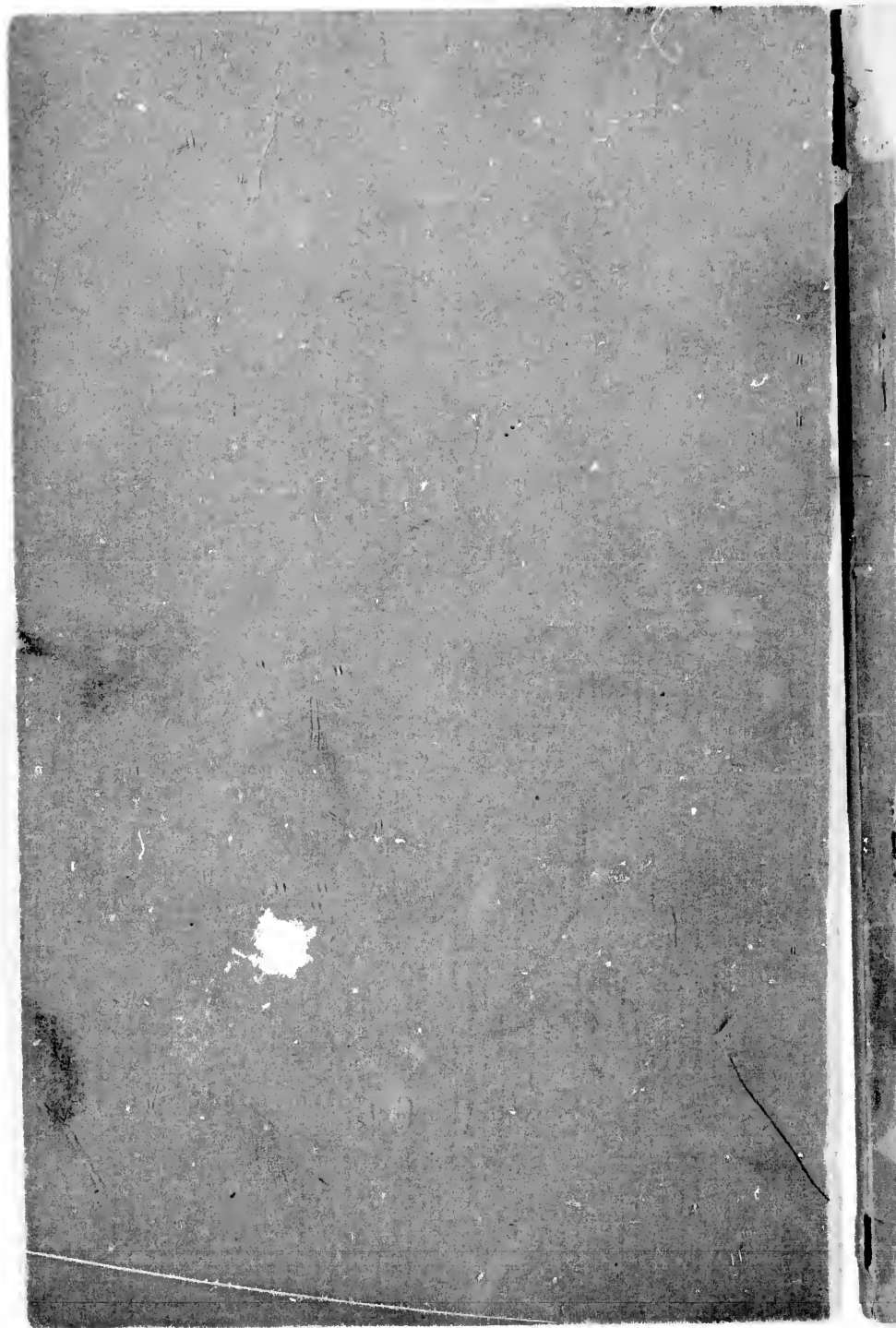
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SELECTED CASES
OF
MAL-TREATMENT OF AMERICAN FISHING VESSELS.

The following are cases and propositions selected as illustrating the various grounds of complaint made by the United States, arising from the conduct of Canadian officials with reference to fishing vessels of the United States, especially in the year A. D. 1886:

THE ELLA M. DOUGHTY.

St. Ann's bay, protected on the south by Cape Dolphin or Dauphin, is situated on the extreme eastern coast of Cape Breton in latitude about $46^{\circ} 30'$ N. and longitude $60^{\circ} 30'$ W. It is connected by a narrow opening with the inner bay known as St. Ann's harbor, which we have here called the inner harbor, because there is also anchorage at the head of the bay.

The axis of the bay and harbor lies northerly or northeast. A very small settlement, known as St. Ann's, exists on the westerly shore of the strait connecting the bay and harbor, and a somewhat larger, though scattered settlement known as English-town, containing in all a population of about four hundred people, is situated on the eastern side of the same strait, extending along the shore of the bay and inner harbor.

The whole eastern coast of Cape Breton, including St. Ann's bay, is crowded with ice fields coming down from the Gulf of St. Lawrence until late in the spring.

What remains of the once famous fortress and city of Louisburg lies on the southern coast of Cape Breton, somewhat to the eastward of south of the bay of St. Ann's, in latitude of about $45^{\circ} 85'$ N., and very close to the sixtieth parallel. Between Louisburg and St. Ann's bay, on the eastern coast of Cape Breton, some thirty miles overland from Louisburg but approachable by water only after difficult passage around Scatari island, Cape Morien and Cape Percy, lie Sydney and its adjacent port of North Sydney. To the southward of Louisburg on each side of the same parallel, but in latitude of about 44° N., lies Sable island; and to the westward of Sable-island the great bank known as Sable Island Bank, commonly called by the fishermen the Western Banks, extending over more than three parallels and almost connecting with other banks, more or less known, until the Georges shoals or banks are reached somewhere near parallel 67° , the principal intermediate banks being La Have, the Roseway and Brown's Bank. The names of each of these are used somewhat carelessly and indiscriminately by fishermen, alike in describing the place for which vessels are fitted away and the place where fishing actually occurs, by reason of the proximity

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of the banks to each other and of the similarity of fishing pursuits on or near each of them.

Northerly and northeasterly of the bay of St. Ann's and of Cape North, which is the extreme northeastern point of Cape Breton, at the very mouth of the Gulf of St. Lawrence and also within the Gulf, lie other banks of lesser extent than those already described, resorted to also for fishing.

Halibut catchers seek all the banks above named and the deep waters bordering on them, trawling for halibut at a depth of two hundred and fifty fathoms, and at even greater depths.

The schooner *Ella M. Doughty*, of the gross tonnage of 75 10-100 tons, U. S. measurement, owned by reputable merchants and other reputable people living at or near Portland in Casco bay, which is situated on the coast of Maine in the latitude of the Western banks and between the seventieth and seventy-first parallels, commanded by Capt. Warren A. Doughty and manned by a crew of eleven fishermen, nearly all residents of Portland or its vicinity, with expensive trawls and other expensive gear for halibut catching, and fully equipped with provisions, bait and other supplies for the ordinary halibut-fishing trip to the eastward on the Western Banks and such other banks as might be visited, estimating a trip to last not over six weeks, sailed from Portland on the twenty-sixth day of April, A. D. 1886, and arrived on or near the Western Banks the twenty-ninth of the same month. Not finding fishing favorable, she soon put away for the neighborhood of banks in the Gulf of St. Lawrence, but was forced by the ice to seek shelter at Louisburg, where the vessel arrived on the first of May. She remained there until the sixth of May; and on that day, the coast being apparently clear of ice, she started again on her voyage, but was forced into North Sydney. There she was notified by the customs authorities to report, which she did, and paid harbor dues. On Monday, the tenth of May, she again sailed for the Gulf, but the next day she was forced by the ice into the bay of St. Ann's. On Wednesday, the twelfth of the same month, she again attempted to work her way through the ice fields, but failed. She made another attempt on Wednesday, the thirteenth of May, but was again forced back into the bay; and this time she hauled into the inner harbor of St. Ann's, where she laid until the next Monday. Meanwhile finding her bait, which consisted of iced fresh herring, deteriorating or in danger of deteriorating by her unexpected detention through stress of ice, Capt. Doughty purchased of the inhabitants of English-town, who were willing enough to sell to him, small supplies of herring taken by them from their weirs on their shores, not ten dollars' worth in all.

The witnesses for the Crown at the trial of the vessel which afterwards took place, as will appear by the printed minutes of the case, produced no evidence of actual fishing or of intention to fish within prohibited limits, or of any act looking to fishing anywhere except the purchase of bait. And they said there was no fishing in the bay of St. Ann's in which a vessel of this class could engage, that the vessel was forced back Thursday evening by ice and wind, that through the rest of the week the wind was to the eastward, which would be against her going out, that there was ice outside, that the ice was pretty heavy and that it would not be safe for her to go out in that kind of ice.

The proofs for the Crown looked to showing that Capt. Doughty was apprehensive he might involve his vessel in trouble by purchasing bait, and that therefore the last bait he purchased, he declined to receive until his vessel was under way. But this does not touch the merits of

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the case; and, moreover, it appears by the letter of the Marquis of Lansdowne to Earl Granville, of May 19, A. D. 1886, published in the Dominion volume of Correspondence Relative to the Fisheries Question of A. D. 1885 to A. D. 1887, page 57, the subcollector telegraphed that: "The captain acknowledged the facts and showed the bait bought, but claimed that he had a permit or license signed by the collector of customs at Portland, to touch and trade at any foreign port."

It appears by the testimony of the subcollector of customs at English-town, that he first saw the *Ella M. Doughty* on the the eleventh day of May coming to anchor outside of the light-house in the bay of St. Ann's that he could see her from his own house and saw her all that afternoon, that he seized her on Monday, the seventeenth of May, that then she was lying on the north side of the inner harbor, and that he saw her every day between Tuesday and the Monday of her seizure.

It is clear from this testimony, that although the vessel was thus under his nose, he made no request she should report at the custom-house and no complaint because she did not report, and took no proceedings against her on that account during the six days she was lying there prior to the day of her seizure.

The subcollector admits that never in his experience of ten or eleven years had fishing vessels been required to report in that bay or harbor.

On the seventeenth of May the subcollector seized the vessel and took possession and control of her.

Precisely what was the original cause of seizure is not clear. The subcollector, McAulay, testified on cross-examination as follows: "I seized this vessel on the charge that she did not report, and that she had bought bait. She was seized on both charges." Being pressed further, he thinks he said in the telegram to the collector regarding the seizure that he had "seized the vessel for buying bait."

Again, in his testimony the following question and answer appeared: "Q. Did you have any instructions in May, 1886, to seize American fishing vessels for not reporting?—A. I do not think I did."

Again he said: "I seized her for trading and not reporting, because I thought she was the first vessel that had made a breach of the law in not reporting. I know that during the last eleven years American vessels came in there and did not report, and I did not seize them. Previous to this they had the privilege of going in and out. Since the expiration of the treaty I have not received any instructions with reference to seizing any American vessels for not reporting."

In the letter from the Marquis of Lansdowne to the Earl Granville, of nineteenth of May, already referred to, he reports: "The *Ella M. Doughty* has been held for not reporting, and an inquiry is now proceeding, whether there has or has not been an infraction of the fishery law of the Dominion."

On the twenty-fifth of May the collector filed in the vice-admiralty court at Halifax, the affidavit necessary to secure a warrant against the vessel, which will be found on p. 109 of the Canadian Correspondence Relative to the Fisheries Question for A. D. 1885-1887. This affidavit is well described by the solicitor for the Crown in his letter of Aug. fifth, A. D. 1886, to the deputy minister of justice at Ottawa, p. 107 of the same book, in which he says: "It is very brief and contains no particulars of fact. The admiralty rules only require that it should state the nature of the claim."

The other papers referred to in that letter were not filed in court, and the owners of the vessel had not in any way the benefit of them.

Pursuant to the rules of the twenty-third day of August, A. D. 1883, touching the practice to be observed in the vice-admiralty courts, this

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affidavit was followed by a writ of summons, rules five to eight each inclusive, and forms numbers four to seven each inclusive.

This writ of summons gave no indication of the demand or offence alleged, except that rule five required it should be endorsed with "a statement of the nature of the claim and of the relief or remedy required, and of the amount claimed, if any." The forms come under the numbers already referred to, and require an endorsement of the briefest and most general character, even more meager, if possible, than the affidavit of the collector according to the description in the letter of the solicitor already referred to.

That this endorsement was no more specific than the affidavit, and gave the master and owners of the vessel no specific information, will be seen by reference to it, as it appears at length in the printed record of the case.

So that to this point there was not on file, either in the vice-admiralty court or elsewhere accessible to the owners of the vessel, any specific statement of the offence with which the vessel was charged.

No. 55 of the series of rules already referred to direct that every action "shall be heard without pleadings, unless the judge shall otherwise order."

In pursuance of this rule and in accordance with the arrangement between counsel, the Crown filed its petition or libel against the vessel during the first week in the month of July next succeeding the seizure. A copy of this petition is found commencing p. 110 of the Canadian Fishery book already referred to.

It was even more indefinite than the affidavit of the collector; because it alleged in several articles every possible offence which could arise under either the Imperial or Dominion acts relative to the fisheries, covering without specification of dates or places or other particulars of facts the entire months of April and May, A. D. 1886.

To this point, therefore, the owners of the vessel had no proper information of the true nature of the claim, and were only told that, under the provisions of the acts to which we will hereafter refer, the burden was on them to acquit their vessel from every possible charge which could possibly be brought against her under any of the above allegations covering the period named.

Meanwhile another provision of law came in to trouble this vessel.

Vessels of the United States engaged in fishing in the northeastern waters ship their men very largely on shares; so that the earnings of the crew depend on their employment and not merely on their being aboard the vessel, as would be if they were shipped on monthly wages. Consequently it is impossible to detain a crew of fishermen in port idle pending slow legal proceedings against a vessel; therefore with reference to vessels of this class, the expedition required from the courts by the old maxim that ships were made to plough the sea, is especially necessary. Delay in the trial of a fishing vessel caught in a port distant from home, is equal to total denial of justice with reference to vessels of not very great value, in which category many of them fall.

Merchant vessels in foreign ports, seized for breach of customs or other laws, are supposed to find consignees or other friends at hand prepared to assist them by procuring counsel, furnishing security for costs and other matters of that nature; but there is no such presumption or fact in favor of fishing vessels.

The Dominion act of May twenty-second, A. D. 1868, 31 Vic., C. 61, "Respecting Fishing by Foreign Vessels," being a statute under which the proceedings against the *Doughty* were taken, provides in its twelfth

section that no person shall "enter a claim to anything seized under the act, until security has been given in a penalty not exceeding two hundred forty dollars to answer and pay costs occasioned by such claim; and that in default of such security the thing seized shall be adjudged forfeited and shall be condemned."

Few fishing vessels carry with them on their voyages that amount of money, or are able to give security promptly for that sum.

The result in the case of this vessel, and also in the case of the *David J. Adams* which will be hereafter referred to, was that before security could be arranged as required by the statute, the crew scattered; in the case of the *Doughty* imposing on the vessel great expense and delay in obtaining the return of the witnesses to Halifax, and in the case of the *Adams*, many of the crew of which were aliens, involving inability to secure all the witnesses at any time, and in each case practically compelling postponement of trial until the pending fishing season was closed.

A prompt trial being therefore impracticable, the cause ran into the usual course of legal proceedings. It is supposable that notwithstanding the absence of specific allegations, the counsel for the vessel relied on the statement made by the subcollector at the time of the seizure that the vessel was seized for purchasing bait, until it came to their ears that a claim was made that the vessel had been actually guilty of fishing. However this may have been, on or about the eighteenth of October, A. D. 1886, defendants filed a motion for a bill of particulars, which was resisted by the Crown and fully argued before the court.

Although under the common practice in the United States a bill of particulars would be ordered as a matter of course, the right to it in the vice admiralty courts of Great Britain seems to be not clearly defined; and the court held the motion under consideration and it never has been decided.

The case was finally brought to trial in June, A. D. 1887, without any bill of particulars, and under the general allegations of the petition which have already been described.

The printed record of the case shows that at the trial the Crown claimed, that under the tenth section of the act of May the twenty-second, A. D. 1868, the burden throughout was on the vessel.

The proctor for the Crown argued as follows:

"Now, suppose that this term 'preparing to fish' has the meaning which is contended for in the answer, and that it means preparing within the three-mile limit, and that they can prepare within the three-mile limit to fish outside of that limit. I ask your lordship to look at this evidence closely, and inasmuch as the burden is placed on the claimant, I ask your lordship to hold that he has not shown that the fishing was to be carried on outside of the three-mile limit.

Now, that provision of the act which places the burden upon the claimant will be found in section 10, chap. 61 of the acts of 1868. What takes place in these cases and all revenue cases is this: The law provides for the master and crew of the vessel to do certain things or the vessel shall be forfeited, and it provides for seizure. The seizure is made and the claimant comes forward and claims the property. It is in the possession of the law, it is forfeited, and he puts forward a claim. The legality of the seizure is then to be tried. Of course the form of the pleadings may be like the ordinary common law actions, as if it was between a plaintiff and defendant, but the question which your lordship is called upon to try is the legality of the seizure. Was it a case where the officer was justified in making a seizure? And under all revenue laws the burden of proving the illegality of the seizure is placed on the claimant; and that is the exact language of this statute."

In other words as already explained, the vessels were charged with every conceivable offense under both the Imperial and the Dominion fishery acts, spread over a period of two months, and asked to prove themselves innocent, notwithstanding by the delays which the course

of proceedings inevitably involved their witnesses were scattered and might have been entirely lost.

It is useless to say with such claims on the part of the Crown, that the depositions of witnesses might have been taken; because in the absence of specific allegations no human ingenuity was equal to anticipating all the contingencies which might prevent justice, unless the witnesses were present in court to meet unexpected suggestions at the trial.

These things are in no way the fault of the courts or of the bar of the Maritime Provinces. No courts are held in higher esteem by the lawyers of New England, and no bars have a more brilliant record for ability, fair dealing and professional courtesy. The result comes from applying to fishing vessels a system which, with less injustice, is frequently applied to merchantmen voluntarily entering the ports where proceeded against.

The result of which the foregoing is only an illustration, is that one of these fishing vessels, wholly unprepared for a contest in a foreign court, proceeding peaceably within the three-mile limit, may be captured, taken into port, held for trial without specific allegations and compelled to acquit herself of a great number of possible charges covering an indefinite period of time, after by force of the nature of proceedings her crew have been scattered.

THE "DAVID J. ADAMS."

The *David J. Adams*, a fishing vessel of about the same tonnage as the *Doughty*, belonging in Gloucester, Massachusetts, having no license to touch and trade but having a license to fish, was seized in Digby Basin a few days earlier than the *Doughty*, on the seventh of May, A. D. 1886.

It cannot be doubted from what appears in the depositions in the case, that she was seized for purchasing bait. Indeed Capt. P. A. Scott, by whose authority she was seized, on the eleventh of May, in his report found on page fifty-one of the Fisheries Correspondence above-named, states in terms that he "seized her for violating the Dominion fishery act." Subsequently a charge of not reporting at the custom-house was superadded, of which the report of Captain Scott makes no mention.

The case of the *Adams* differs from that of the *Doughty* in respect that the *Adams* was not in distress, but made a short run from Eastport across to Digby Basin voluntarily for bait, and was in there parts of two or three days. It is claimed she concealed her name and port; but this is not important, and one of the principal witnesses for the Crown states distinctly the captain told him that she was an American vessel.

In the subsequent proceedings as to pleadings, effort to obtain a bill of particulars and all other matters, the case went *pari passu* with that of the *Doughty*, except only increased difficulty and expense in obtaining witnesses after they were once scattered, by reason of so many of them being aliens and living at remote places.

Both of the cases remain to this time undecided.

It must on the whole be said that the seizures were wholly unexpected by the Government of the United States and by the owners of the vessels concerned, and involved a change of policy of which neither had received actual warning. No known instructions or orders had been issued in accordance with the fourth section of the act of George Third, chapter thirty-eight. Neither that act nor any act of the Dominion gave any clear warning that mere preparation for fishing was an offence, except for fishing within prohibited waters. The note of Her Majesty's

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minister at Washington to Mr. Bayard, of March nineteen, A. D. 1886 (see Dominion Fisheries Correspondence, p. 24) asked only whether Mr. Bayard would give notice that United States fishermen were precluded from "fishing," and called attention to nothing else; and the memorandum passed Mr. Bayard March nineteen by Her Majesty's minister (see same correspondence, pages twenty-three and twenty-four) likewise called attention only "to foreign fishing vessels fishing in the waters of the Dominion."

In the note of Her Majesty's minister to the Marquis of Lansdowne of the nineteenth of March, A. D. 1886, printed in the Dominion Fisheries Correspondence, page twenty-three, he used the following language with reference to an interview with Mr. Bayard, namely: "Suggesting to him at the same time that all danger or friction might perhaps be avoided if it was clearly understood that no American vessel would be allowed to 'fish' in Canadian waters within the three-mile limit without a license."

"Warnings" from the minister of marine and the minister of customs at Ottawa had but little publicity, they were contradictory and misleading, and apparently, as appears by Mr. Bayard's letter of May twenty-nine, A. D. 1886 (see Dominion Fisheries Correspondence, page sixty-four), did not come to the knowledge of the Department of State at Washington until about the date of the letter.

A memorandum about these "warnings" will be found in the appendix attached hereto.

Under these circumstances these seizures in May, A. D. 1886, must well be regarded as a surprise to the owners of the vessels, the authorities of the United States and all its people.

The position of the Government of the United States and that of Canada immediately taken with reference to the question are shown by the following extracts.

Mr. Bayard on the tenth of May, A. D. 1886, wrote to Her Majesty's minister at Washington as follows:

I shall be most happy to come to a distinct and friendly understanding with you, as the representative of Her Britannic Majesty's Government, which will result in such a definition of the rights of American fishing vessels under the treaty of 1818, as shall effectually prevent any encroachment by them upon the territorial waters of the British provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and at the same time prevent that convention from being improperly expanded into an instrument of discord by affecting interests and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with, and perhaps destroy, those reciprocal commercial privileges and facilities between neighboring communities, which contribute so importantly to their peace and happiness.

On the next day, namely, on the eleventh of May, the Marquis of Lansdowne wrote Earl Granville as follows:

As your lordship is no doubt aware, American fishing vessels frequenting the coast of Canada have been in the habit of depending, to a great extent, upon Canadian fishermen for their supplies of bait. It has been usual for such vessels hailing from New England ports, as soon as the supplies with which they had provided themselves on starting for their trip have become exhausted, to renew them in Canadian waters. Such vessels, if compelled, as soon as they ran short of bait, to return from the Canadian banks to an American port would lose a great part of their fishing season and be put to considerable expense and inconvenience.

Without explaining corresponding details in the case of the *Adams*, the seizure of the *Doughty* was at once accompanied by the following penal demands, namely:

First: Demand for forfeiture of the vessel, already referred to, under which she was bailed for three thousand dollars.

Second: Demand for security for costs, two hundred forty dollars.

Third: Payment of penalty claimed for not reporting at the customs, demanded under section twenty-nine of the consolidated customs act of eighteen hundred eighty-three, by which it is provided that the captain "shall forfeit the sum of four hundred dollars and the vessel may be detained until the said fine be paid."

Fourth: The sum of two hundred dollars required to be deposited to pay costs of the proceedings which the Crown might take to determine the penalty of four hundred dollars, which proceedings have never been commenced, although the two hundred dollars is still retained.

Fifth: A suit in behalf of the Crown against the captain for three penalties of two hundred pounds each.

CUSTOMS LAWS.

The consolidated customs act of the Dominion of eighteen hundred eighty-three, section twenty-nine, provides, if the master fails to make report "he shall forfeit the sum of four hundred dollars, and the vessel may be detained until the said fine be paid."

The nature of the report required is shown by section twenty-five of the same act. It requires that vessels entering from "any port or place out of the Dominion of Canada or coastwise," whether "laden or in ballast shall go without delay, when such vessel is anchored or moored, to the custom-house for the port and there make report in writing, stating her name," etc., and "whether she is laden or in ballast," and "if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and when, where, and to whom consigned."

It is plain, that although that section may possibly be broad enough to include fishing vessels, yet whoever drew it did not have them in contemplation. As it is in no way fitted to their peculiar circumstances, he evidently had in mind only merchant vessels.

It will not be questioned that when that act was passed, the practice was in accordance with that theory. Fishing vessels had not previously, when coming in merely for shelter or for making minor purchases, been required to report and enter or clear. To such extent had this become the prevalent practice, that it never occurred to the sub-collector at English-town to request or warn the captain of the *Ella M. Doughty* to report, or to make any complaint that he did not report, although he lay under his eyes within a half or three-fourths of a mile of his residence for the larger part of a week.

In all the cases to which this paper will refer, with one exception, not only was a new policy to enforce the customs law suddenly developed, but it was done with the utmost severity; and vessels were not only not warned nor cautioned of the change, but the fines were insisted on and payment compelled by detention of the vessels.

For the case of the *Rattler* we refer to the memorandum of the proceedings of the privy council found in "the Correspondence Relative to the Fisheries Question in A. D. 1885-1887," p. 136.

The memorandum states, in the first place: "It does not appear at all certain from the statements submitted that this vessel put into Shelburne for a harbor in consequence of stress of weather." It is well enough to dwell on this, because at different times from A. D. 1836 down to the present time (apparently never before A. D. 1836), it has been claimed in Nova Scotia that the expression of the convention of A. D. 1818, "for the purpose of shelter," should be limited to cases of

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harbor sought "in consequence of a stress of weather", that the local authorities had the right to determine whether there was stress and how long the vessel might lie on account of such stress, and that their determination was conclusive.

The memorandum proceeds: "Immediately upon the *Rattler's* coming into port Capt. Quigley sent his chief officer to inform the captain of the *Rattler*, that before sailing he must report his vessel at the custom-house, and left on board the *Rattler* a guard of two men to see that no supplies were landed or taken on board, or men allowed to leave the vessel during her stay in Shelburne harbor"; and the memorandum further observes, as with a claim of right, that "every vessel entering a port in Canada is required immediately to report at the customs, and the strict enforcement of this regulation as regards United States fishing vessels has become a necessity in view of the illegal trade transactions carried on by United States fishing vessels when entering Canadian ports under pretext of their treaty privileges."

It may be said in this connection that the Dominion government has utterly failed to show, that any facts have transpired indicating that United States fishing vessels have engaged in illegal trade since A. D. 1885, or especially that any vessels which have been harassed during the year A. D. 1886 were engaged in such illegal trade or had any disposition to so engage.

Then proceeds the report further, as follows: "Under these circumstances a compliance with the customs act involving only a report of the vessel cannot be held to be a hardship of an unfriendly proceeding."

That might be so in cases where the vessel was in the inner port, and entering at the customs involved only sending a boat ashore; but to discuss whether or not putting a guard of two men aboard a peaceful vessel entering only for shelter, and as to which there was no charge that any supplies had been landed or taken on board and no evidence of intention of doing either, must be regarded as an "unfriendly proceeding," is outside the purposes of this memorandum.

The fact is, Shelburne harbor is a long estuary, and the places to which the *Rattler* and other vessels to which this statement refers resorted for shelter, was in the lower harbor from five to ten miles from the custom-house. If such vessels touching for shelter, it may be at night, the *Marion Grimes* indeed at midnight, intending to leave by day-break for the home port, deeply laden, needing dispatch, are forced to send from five to ten miles to report thus perhaps, involving a loss of fair wind, indefinite delay and the spoiling of the cargo, this must be regarded as a great hardship.

The captain of the *Rattler* described the matter as follows, according to his statement appearing in Executive Document number nineteen, House of Representatives, Forty-ninth Congress, second session, page one hundred ninety:

On Tuesday August 3d (having secured a fare of mackerel and while on our passage home), at 7 p. m. the wind blowing hard, the sea being rough and our vessel deeply loaded, with two large seine-boats on deck, we put into the harbor of Shelburne, N. S. for shelter. Just inside of the harbor we were brought to by a gun fired from the Canadian cruiser *Terror*, Captain Quigley, and came to anchor.

Immediately a boat from the *Terror* came alongside, and its commander, Lieutenant Bennett, asked why we were in the harbor. My reply was, "for shelter." Then taking the name of our vessel, names of owner and captain, where from, where bound and how many fish we had, and forbidding any of the crew to go on shore, he returned to the *Terror* for further instructions.

Boarding us again after a lapse of perhaps forty-five minutes, he put two armed men on board of us, asked for our crew-list and said if I remained until morning I must enter at the custom-house, but if I could sail in the night to tell his men to fire a revolver and a boat would be sent to take them off.

In his report of the thirtieth of September, A. D. 1886, Dominion Fisheries Correspondence, page 130, Capt. Quigley reports the same matter as follows:

In the case of the *Rattler* she came into Shelburne harbor on the evening of the 4th of August at 6 o'clock. She being at some distance from where I was anchored, and it being too rough to send my boat so far, I fired a musket signal for her to round to, which she did and came to an anchor alongside of my vessel.

I then sent the chief officer to board her. He reported she put in for shelter. The captain was then told by the chief officer to report his vessel before he sailed, and that he must not let his men on shore, and that I would leave two men on board to see that he did not otherwise break the law.

Subsequent events are not pursued, as the facts concerning them are disputed.

The case of the *Marion Grimes* is described in the dispatch from Mr. Bayard to Mr. Phelps of the sixth of November, A. D. 1886, Executive Document number nineteen, page one hundred fifty-three.

The statement of the captain is found in the same document, page one hundred sixty-two, as follows:

On the night of Thursday, October 7, the wind blowing almost a gale from the southeast and a heavy sea running, we came to anchor in the entrance of Shelburne harbor about midnight for shelter. We were then fully 10 miles from the custom-house at Shelburne. At 4.30 a. m. of the next day we hoisted our anchor to continue our voyage, the wind having died away almost to a calm. Just as we had got our anchor on the bow an officer and boat's crew from the Canadian cruiser *Terror*, which laid off Sand Point, some 3 miles above us, came on board and told me we must come to anchor at once and go to the custom-house at Shelburne and enter and clear. I at once anchored the vessel and taking my boat and two of my crew started for the custom-house. When we reached the *Terror*, Captain Quigley ordered me to come on board his vessel, leave my boat and men and go with him in his boat to Shelburne. I arrived at the custom-house at about 8.30 a. m. and waited until 9 a. m., when Collector Attwood arrived. I then entered and cleared my vessel and was about to pay the charges and depart, when Captain Quigley entered the office and told the collector he ought not to clear my vessel, as I had attempted to leave the harbor without reporting; and that the case should be laid before the authorities at Ottawa. Collector Attwood then withheld my papers until a decision should be received from Ottawa. I then tried to find the American consul, calling at his office three times during the day, and was unable to find him. But in the afternoon found a Mr. Bitchford in the consul's office, who informed me that my vessel had been fined \$400, and I wired my owners accordingly. At 4 p. m. returned with Captain Quigley on board the *Terror*, and when on board he informed me that my vessel was fined \$400.

The vessel was detained at Shelburne until the twelfth of October, and it is understood, she was finally released on payment of eight dollars for watching.

It is also understood that the facts as stated by the master of the schooner are not disputed.

It is not deemed necessary here to repeat the facts of the violent hauling down of the flag of the *Marion Grimes*, as this was afterwards apologized for by the Dominion authorities.

Subsequent to the claims made against the *Doughty* and the *Adams* for the customs penalties, as already stated, in the early part of May, A. D. 1886, there seems to have been quiet in this matter until early in the following July, when the *City Point*, *G. W. Cushing* and *C. B. Harrington* were almost simultaneously seized at Shelburne.

The *City Point* was seized five miles below the town on her way up for some repairs, the captain having stopped to fill his water-casks as a matter of convenience and two men from the vessel, residents in that locality, having landed.

The *C. B. Harrington* came to anchor about seven miles below the town, sent ashore, inquired whether there was any ice for sale, bought none, was soon after seized by the *Terror* and taken to Shelburne.

The *G. W. Cushing* came to anchor about seven miles below the custom-house, sent ashore to ascertain whether bait could be purchased, finding none put about to sea, again cast anchor in the evening off the outer light-house about ten miles below the town, was captured by the *Terror* and also taken to Shelburne.

No pretense was made that any goods were unlawfully landed from these vessels, or that there was any intention of smuggling. The captain of each of them was acting innocently and in accordance with the long-continued custom on that coast; and yet the owners of each were compelled to pay the fine imposed by the 29th section referred to, and never have been able to secure refunding thereof.

The statutes of Canada with reference to this penalty of four hundred dollars provide that the vessel may be detained until the fine is paid. They give the owner no opportunity for hearing, place his vessel on demurrage until he pays the fine, and provide no specific proceedings for the owner by which he may recover back the fine or ascertain his just liability in reference to it.

It is claimed there were numerous other cases quite as technical and severe as these which have been described; but it is not necessary to detail them, as the seizures already cited are admitted to have been made in pursuance of a policy, and the other cases to a certain extent involve disputed questions of fact.

The same remarks may be made as to those hereafter cited illustrating this rigorous policy of A. D. 1886 in other respects; which policy has since been modified only slightly, if at all. It is enough to say, that as soon as the fishing vessels of the United States fully understood this policy, they avoided so far as possible the ports of Nova Scotia, and abandoned the benefit of the treaty right of shelter in preference to incurring the risk of a harsh application of a system, the complications and limitations of which they could not understand.

LANDING OF CREWS OF FISHING VESSELS PROHIBITED.

The course about this appears in Capt. Quigley's report relative to the *Shilo*, dated September thirtieth, A. D. 1886, Fisheries Correspondence, p. 140, as follows:

In the case of the *Shilo* she came into the harbor about 6 p. m. on the 9th of August, at Liverpool, and a signal was fired in her case the same as the others.

When she anchored I boarded her, and the captain reported he was in for water. I told him it was then too late to report at the customs till morning, and that he must not allow his crew on shore; also that I would leave two men on board to see that he did not otherwise break the law and that my instructions were carried out.

Again on the same page he states the general policy as follows:

In all cases where a vessel puts in for shelter, the captain reports and the rest of his crew are not allowed ashore, as the vessel only puts in for the privilege of a shelter and for no other purpose.

When she puts in for water, after reporting the captain is allowed to take his boats and the men he requires to procure water, and the rest remain on board, after which he is ordered to sea.

In Capt. Quigley's report of the nineteenth of January, A. D. 1887, about the *Jennie Seaverns*, p. 237, he says his instructions to the captain were:

After he reported, no person from his vessel was to go ashore, as he had got all he put in for, namely shelter, and he reported his vessel putting in with that purpose and no other; not for the purpose of letting his crew on shore.

In the affidavit of Capt. Tupper of the *Jennie Seaverns*, p. 236, he says he asked Capt. Quigley for permission to visit some of his rela-

tions who resided at Liverpool, where his vessel had made landfall. He gave an account of a southeast gale and heavy sea, stating to Capt. Quigley that he had not seen them for many years, and that this privilege was denied him. He also says some of his relatives came off to see him, and when Capt. Quigley saw their boat alongside he sent an officer and a boat's crew and ordered them away, and at sundown placed an armed guard aboard his vessel. Capt. Tupper continues, that he had complied with the Canadian laws and had no intention or desire to violate them in any way; and he describes himself, notwithstanding his innocent intention, "as being made a prisoner on board of my own vessel and treated like a suspicious character."

The report of the committee of the Privy Council of March 23, A. D. 1887, p. 234, while it does not contravene the statements of Capt. Tupper, affirms the conduct of Capt. Quigley and concludes that Capt. Tupper had nothing to complain of, as he came in solely for shelter and this was not denied him. The report, however, directs a more moderate course in the future.

It is the purpose of this paper to avoid cases the facts of which are not admitted by the Dominion authorities. Nevertheless, the statement of Capt. John McQuinn is worth quoting, although so far as known it never has been admitted or denied by the local officers. He went into Canso in the *Druid*, having before transferred to her from another vessel a young man who desired to go to his home at Canso. He says: "When I got into Canso I reported. He was in a hurry to get home to college, but they would not allow me to land him. They allowed it first, but fetched him back, and I finally had to take him aboard and bring him home," that is, to Gloucester.

This statement is found in Senate report No. 1683, 49th Congress, 2d session, p. 133.

The controverted statements as to refusals of permission to land in case of sickness are not dwelt on; because in the only case where apparently the facts are not controverted, namely, the *Craig* at Brooklyn, Nova Scotia, the action of Capt. Quigley was overruled in the interests of humanity by his superior officer, Capt. Scott.

REFUSALS OF PETTY AMOUNTS OF PROVISIONS.

The circumstances of these cases so clearly indicate that they were in pursuance of a general policy, only two need be cited.

It appears by the report of the Privy Council of March 31, A. D. 1887, p. 241 of the Dominion Fisheries' Correspondence, that the collector at Port Hood refused the *Mollie Adams* on her homeward voyage on the 25th of October, A. D. 1886, permission to purchase a half barrel of flour; and Mr. Attwood, collector at Shelburne, by his report of Jan. 5, A. D. 1887, p. 235, on the 6th of October declined to permit the *Laura Sayward*, then homeward bound from the banks, to purchase seven pounds of sugar, three pounds of coffee, one barrel of potatoes and two pounds of butter without authority from Ottawa. Between four and five o'clock in the afternoon such authority was telegraphed for, and no reply having been received the next morning at half-past six, the wind being fair with a good breeze, the vessel concluded to wait no longer. The collector adds, Capt. Rowe said he had plenty of flour, fish and other provisions sufficient for the voyage home, that the collector did not consider it a case of actual distress, and that all the vessel really needed was water.

SHIPMENT OF FISH IN BOND.

The twenty-ninth article of the treaty of Washington of A. D. 1871 is understood to still remain in force. Under that article, and even independently of it, the practice of delivering at ports of the United States merchandise intended for points in the Dominion, and at ports in the Dominion of merchandise intended for points in the United States, has long been in the regular course of business; and until A. D. 1886 no discrimination was made in the ports of the Dominion against fishing vessels or their catch. In A. D. 1886 and ever since both the treaty and law, so far as this matter is concerned, remained the same as it was before the United States denounced various articles of the convention. So large was this commerce that it appears by the reports of the consuls of the United States, No. 82, August, A. D., 1887, p. 219, that at Port Mulgrave alone there were transferred during the fishing season of A. D. 1885 to the Intercolonial Railway from United States fishing vessels and carried into United States ports, equal to one hundred forty car-loads or 2,235,600 pounds of fish.

In A. D. 1886 further transshipments of this sort were forbidden, and have never since been allowed, as appears in the report of the Privy Council of Aug. 14, A. D. 1886, p. 118 of the "Correspondence Relative to the Fisheries, A. D. 1885-'7."

The question first arose with reference to the *Novelty*, who offered her cargo of fish at Pictou for transshipment as in the previous course. The report says the *Novelty* was in character and purpose a fishing vessel, and as such came under the provision of the treaty of A. D. 1818; and the report in substance refused to give her the benefit of the unlimited general phraseology of the twenty-ninth article of the treaty of Washington.

POACHING BY AMERICAN VESSELS.

The Dominion authorities, when pressed on account of the measures hereinbefore set out, have attempted divers justifications therefor.

1st. That given by the Marquis of Lansdowne in his dispatch of May 11, A. D. 1886, already cited, namely, that if American vessels are compelled "as soon as they run short of bait to return from Canadian banks to an American port, they would lose a great part of their fishing season and be put to considerable expense and inconvenience."

The truth and force of this proposition are not denied. Its effect, if applied as a general principle to control the relations of Christian nations, is to be judged of.

2nd. That since the denouncing of the treaty of Washington and the consequent loss by the fishermen of the United States of any right to fish within limits prohibited by the treaty of 1818, the rigid enforcement of the customs law is necessary to prevent illegal trading.

No evidence, however, is offered showing a disposition on the part of the United States fishing vessels to indulge in illegal trading, or that if there was such disposition, there had been any increase of it since A. D. 1885, or to overcome the presumption that there is less danger of illegal trading when the United States fishing vessels are excluded from the three mile limit, than when they are freely admitted to it.

3rd. It is said by the Minister of Justice of Canada in his report of July 22, A. D. 1886—see Fisheries Correspondence, p. 150—that "the purpose was to prevent the fisheries from being poached on, and to preserve them to the subjects of His Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to

the coast which can under the law of nations be done by any country, but as a basis of supplies for the pursuit of fishing in the deep sea."

This embraces two propositions, the second of which is the same as that of the Marquis of Lansdowne already cited, and on the first of which the following facts seem pertinent:

In A. D. 1886 the Dominion Government employed as fisheries-police cruisers the schooner *L. Howlett*, schooner *Critic*, schooner *F. E. Conrod*, schooner *Terror*, schooner *Gen. Middleton*, the schooner *Lizzie Lindsay*, steamer *Lansdowne*, steamer *Acadia*, and perhaps others; and it is understood that the fleet in the season of 1887 was even larger. Yet during both seasons only one poacher has been captured, namely, the *Highland Light*, though two other vessels were detected and their boats and seines taken; and it may well be questioned whether the case of the *Highland Light* was one of intentional violation of the limits, although undoubtedly the vessel was liable to forfeiture by the letter of the law and her condemnation was not made the ground of international reclamation.

The fisheries within the prohibited waters are the possessions of the Dominion. These possessions like all other property carry with them the danger of "thieves, moth and rust," against which the Dominion ought to be able to protect itself without violating the rules of good neighborhood, even though to accomplish this involves trouble and expense. It ought not to expect to bear any less burden than other rich inheritors living in Christian communities.

UNFRIENDLY AND EXTRAORDINARY LEGISLATION.

Some features of the peculiarly harsh Dominion and Provincial legislation have already been stated. In addition thereto attention is called to the peculiar provision of the 8th section of the act of A. D. 1868, which permits delivery of the property seized on bail only "with the consent of the person seizing the property;" although there has been no practical difficulty on this score during the last two years.

Attention is also called to the very extraordinary provisions peculiar to this statute concerning remedies against the seizing officer, and particularly the provision which gives the owner of the property in fact but two months within which to bring his suit.

By the 14th section there is an absolute limitation of three months and by the 13th section no action can be brought until one month after notice. All this was undoubtedly intended to practically bar actions for unlawful seizure by non-resident owners; because these provisions, as well as all the other provisions to which attention has hereinbefore been called, find their origin in the Nova Scotia act of March 12, A. D. 1836, passed at a time when methods of communication and delays arising therefrom were such as to inevitably defeat proceedings for unlawful seizures in the remote parts of Nova Scotia, especially near the close of the season.

Attention is also called to the Dominion act approved Dec. 24, A. D. 1856, which was protested against in Mr. Bayard's note to Her Majesty's minister at Washington of May 29, A. D. 1886, already referred to; and is commented on by the note of Mr. Phelps to the Marquis of Salisbury of Jan. 26, A. D. 1887, in the following language:

"Since the receipt of Lord Iddesleigh's note the United States Government has learned with grave regret that Her Majesty's assent has been given to the act of the parliament of Canada, passed at its late session, entitled 'An act further to amend the act respecting fishing by

be done by any country, fishing in the deep sea." of which is the same as cited, and on the first of

employed as fisheries police *Priscilla*, schooner *F. E. Con-*, the schooner *Lizzie Lind-*, perhaps others; and it is 187 was even larger. Yet when captured, namely, they were detected and their boats were whether the case of the violation of the limits, although referred by the letter of the law and the sound of international rec-

are the possessions of the property carry with them against which the Dominion violating the rules of good this involves trouble and any less burden than other cases.

LEGISLATION.

Union and Provincial legis- thereto attention is called of the act of A. D. 1868, seized on bail only "with security;" although there has been during the last two years.

Ordinary provisions peculiar to the seizing officer, and purchase of the property in fact.

Limitation of three months might until one month after to practically bar actions because these provisions, attention has hereinbefore to the act of March 12, A. D. communication and delays to defeat proceedings for Nova Scotia, especially near

not approved Dec. 24, A. D. Lord's note to Her Majesty's 1886, already referred to; reports to the Marquis of Salisbury language:

to the United States Gov- Her Majesty's assent has been passed at its late act respecting fishing by

foreign vessels,' which has been the subject of observation in the previous correspondence on the subject between the Governments of the United States and of Great Britain.

"By the provisions of this act any foreign ship, vessel, or boat, whether engaged in fishing or not, found within any harbor in Canada, or within 3 marine miles of any of the coasts, bays, or creeks of Canada, may be brought into port by any of the officers or persons mentioned in the act, her cargo searched and her master examined upon oath touching the cargo and voyage under a heavy penalty if the questions asked are not truly answered; and if such ship has entered such waters 'for any purpose not permitted by treaty or convention, or by the law of the United Kingdom, or of Canada, for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.'"

The phraseology of this act is so sweeping and general, that its enforcement under high political pressure in Canada would probably involve a conflict with the United States of a serious character.

The Marquis of Lansdowne in his dispatch to Earl Granville of May 19, A. D. 1886, Dominion fisheries correspondence, p. 55, points out the purposes for which this act was intended. The language of the act goes far beyond any of those purposes.

A comparison between this act and Imperial legislation appears in the Appendix.

The United States has not failed at every step to remonstrate urgently against all this unfriendly legislation, which originated as already stated, in Nova Scotia in A. D. 1836.

The diplomatic correspondence shows sufficiently well that the act was not known in the United States until the series of difficulties commenced in A. D. 1839. It appears by the letters of the acting Secretary of State of July 10, A. D. 1839 (Senate Document 1st. session, 32nd Congress, vol. 10, p. 100), that the United States then claimed seizures were being made for causes of a trivial character and with a rigor not called for by circumstances; but the dispatch proceeds to express confidence that justice will ultimately be done the sufferers by colonial courts, which expression subsequent correspondence shows was in ignorance of the peculiar provisions of the statute of A. D. 1836. This became known at Washington a few months afterwards, as appears by the report of Mr. Forsyth's dispatch to Mr. Stevenson of Feb. 20, A. D. 1841, same volume, p. 106, wherein he used the following language:

In short some of these rules and regulations are violations of well-established principles of the common law of England and of the principles of all just powers and of civilized nations, and seem to be expressly designed to enable Her Majesty's authorities with perfect impunity to seize and confiscate American vessels and to embezzle almost indiscriminately the property of our citizens employed in the fisheries on the coasts of the British possessions.

This was communicated to Lord Palmerston by Mr. Stevenson March 27, A. D. 1841, p. 115.

Subsequently Hon. Edward Everett, minister of the United States at London, in his note of Oct. 9, A. D. 1844 to the Earl of Aberdeen, p. 132, reasserts the complaint of Mr. Stevenson and proceeds as follows:

The undersigned again feels it his duty on behalf of his Government formally to protest against an act of this description. American vessels of trifling size and pursuing a branch of industry of the most harmless description, which, however beneficial to themselves, occasions no detriment to others, instead of being turned off the debatable fishing ground—a remedy fully adequate to the alleged evil—are proceeded against as if engaged in the most undoubted infractions of municipal law or the law of nations, captured and sent into port, their crews deprived of their clothing and personal effects, and the vessels subjected to a mode of procedure in the courts which

amounts in many cases to confiscation; and this is done to settle the construction of a treaty.

A course so violent and unnecessarily harsh would be regarded by any government as a just cause of complaint against any other, with whom it might differ in the construction of a national compact. But when it is considered that these are the acts of a provincial government with whom that of the United States has and can have no intercourse, and that they continue and are repeated while the United States and Great Britain, the only parties to the treaty the purport of whose provisions is called in question, are amicably discussing the matter with every wish on both sides to bring it to a reasonable settlement, Lord Aberdeen will perceive that it becomes a subject of complaint of the most serious kind.

It is to be observed that while no man was ever more guarded and precise in his expressions than Mr. Everett, nor more judicial in the performance of the functions of the distinguished offices which he held, he puts forth these quoted expressions, not merely under instructions but as representing his personal sentiments.

The citations made indicate that all this legislation, when initiated, was earnestly protested against by the United States, both in the crisis following the legislation of A. D. 1836 and also in A. D. 1886.

PRACTICAL CONSTRUCTION OF THE TREATY.

In the same volume 10, p. 92, will be found a report from the acting Secretary of State to the President of the United States of August 14, A. D. 1839, containing a summary history of matters affected by the convention of A. D. 1818, from the execution of that treaty to the date of the report. This says: "It does not appear that the stipulations in the article above quoted have, since the date of the convention, been the subject of conflicting questions of right between the two Governments." But it continues that the committing of the execution of the treaty to the hands of subordinate British agents "might naturally be expected to give rise to difficulties growing out of individual acts on either side;" and it concludes that the recent seizures had their origin in such causes.

This report, which seems to be carefully drawn and candidly expressed, bears with it persuasive evidence that down to the period in which it was written, there had been no pre-ensions whatever of the character which were made near that time by the Provincial authorities.

This is made more apparent from the dispatch of Mr. Stevenson to Lord Palmerston of March 27, A. D. 1841 already referred to, wherein it is said, p. 114, as follows: "The fishermen of the United States believe, and it would seem they are right in their opinion if uniform practice is any evidence of correct construction, that they can with propriety take fish anywhere on the coast of the British provinces, if not nearer than three marine miles to land, and have the right to resort to their ports for shelter, wood, and water."

This last expression as to shelter is in reply to the new pretense that such vessels could not resort to Provincial ports for shelter "unless in actual distress."

So again Mr. Everett in his note to Lord Aberdeen of Aug. 10, A. D. 1843, p. 122 referring to the expectation of the President as to an early and equitable adjustment, said as follows:

This expectation is the result of the President's reliance upon the sense of justice of Her Majesty's Government, and of the fact that, from the year 1818, the date of the convention, until some years after the attempts of the Provincial authorities to restrict the rights of American vessels by colonial legislation, a practical construction was given to the first article of the convention in accordance with the obvious purport of its terms, and settling its meaning as understood by the United States.

The same assertion of fact is made in Mr. Upshur's dispatch to Mr. Everett of June 30, A. D. 1843, p. 117, and in Mr. Everett's note to Earl of Aberdeen of May 25, A. D. 1844, pp. 123-7.

It is not understood that the Imperial authorities, in reply to these oft-repeated statements as to the practical construction of the treaty during this period of about twenty years, contested them, their replies being limited to thoroughly reasoned arguments about the meaning of the treaty as drawn from its very terms.

Apparently none of the pretensions which originated at this period from A. D. 1836 to A. D. 1844 came from Great Britain herself; and it is undoubtedly to this fact that the Acting Secretary alluded in the expression which we have quoted from his report of Aug. 14, A. D. 1839. They were all Provincial. Some of them were quite promptly rejected by the Imperial authorities, others never have been fully acquiesced in, and others were acquiesced in only after considerable hesitation and delay.

1st. It was claimed, as is set out in Mr. Stevenson's note to Lord Palmerston of March 27, A. D. 1841, already referred to, that United States vessels were to be excluded from British ports unless "in actual distress," and that the Provincial authorities had a right to warn them to depart or get under way whenever they should suppose they had remained a reasonable time.

2nd. It was also claimed, as appears by the questions submitted at the request of the authorities of Nova Scotia to the law officers of the Crown in A. D. 1841, that fishermen had no right to purchase wood or obtain water, except under the circumstances of having a full supply in their home ports and running short through the contingencies of the sea. The law officers of the Crown summarily rejected this proposition.

3rd. What is known as the "headland" proposition, which was covered by the second of the questions referred to, where the word "headland" was used, leading the distinguished legal advisers in their reply to assume that the word was found in the treaty.

In a note to Phillimore's *International Law*, Vol. I, p. 233, second edition, he says: "The term 'headland,' however, does not occur in the treaty. The law officers probably gave their opinion on a statement of the colonists in which the word did occur."

These early controversies do not seem to contain clear evidence that the precise question was raised which is to-day under discussion, namely, whether by the *terms of the treaty* fishing vessels of the United States waived and abandoned the rights which, in the event of there being no treaty, might come to them in common with merchant vessels, as the relations of Canada and the United States became more and more close, and as views about international exchanges of traffic and hospitality became more and more enlightened.

There seems to be nothing in this early correspondence to indicate that there was any clear claim made by the Provincials, except as to the rights which fishing vessels of the United States were guaranteed by the treaty of A. D. 1818 and as to the limitations which that treaty imposed on those rights. Indeed other considerations and questions could hardly have been expected at that period, as commercial relations between Nova Scotia and the United States had commenced but a few years before, and were even then in an inchoate condition.

There is nothing to show that there was any discussion of the precise proposition whether or not fishing vessels might purchase supplies at Provincial ports the same as merchant vessels might, provided they complied with the customs laws and relied on the same usages as mer-

chant vessels did, and subjected themselves to the same limitations and restrictions.

The attention of Nova Scotia was, however, later called to this precise question in the correspondence between Capt. Daly and the late Provincial secretary, Mr. Howe, as follows:

PROVINCIAL SCHOONER DARING, GUT OF CANSO,
August 28th, 1852.

SIR: On my arrival here this morning from Port Hood I found an American fishing schooner taking on board empty barrels for her fishing voyage, and as the thing is becoming quite a practice, and as the question has been several times asked me if it can be done, to which I declined giving any answer until I have had the opinion of the Government on the subject.

I have been told that more than one American vessel has landed a load of herrings from Magdalen Islands in the strait, and fitted out again for the mackerel fishery.

Our fishermen complain that American vessels, with all their other advantages, should be allowed to fit out so convenient to the fishing ground. As the hook and line fishery has not as yet commenced on Cape Breton shore, I will await your answer in visiting all parts of the strait and Arichat, calling at Plaister Cove on mail day, where you will please direct.

I am, sir, your most obedient servant,
The Honorable JOSEPH HOWE,
Provincial Secretary, Halifax.

JAMES DALY.

PROVINCIAL SECRETARY'S OFFICE,
September 1st, 1852.

SIR: Referring to your letter of the 25th ult., I beg to acquaint you that American vessels which have regularly entered at a port where there is a revenue officer can land fish or purchase barrels; but they have no right to an irregular use of this privilege at places where no officer is stationed.

I am, sir, your obedient servant,

JOSEPH HOWE.

Capt. DALY,
Commanding Schr. Daring.

The secretary in his reply uses only the words, "American vessels;" but, as Capt. Daly was asking specifically about an American fishing schooner, and as there could be no possible doubt that merchant vessels might lawfully do the things in the manner stated in the reply of the secretary, it can not be questioned that he in his reply also intended to cover fishing vessels.

As appears by the Appendix attached hereto relative to "warnings" and circular 371 in A. D. 1886, so in A. D. 1870, four years after the expiration of the first reciprocity treaty, and also after the Dominion Government concluded to refuse licenses to American fishing vessels, the objection made with reference to such vessels was simply that they should be prohibited from fishing.

This appears first in the note of the minister of justice of Canada, dated April 8, A. D. 1870, p. 403, Foreign Relations of the United States, 3d session 41st Congress, wherein he states that "henceforth all foreign fishermen will be prevented from fishing in the waters of Canada;" and this letter was communicated by Sir Edward Thornton to Mr. Fish April 14, A. D. 1870. So in the instructions from the English Admiralty in May, A. D. 1870, appearing pp. 415 and 416, which were communicated on the 26th of May, A. D. 1870 by Sir Edward Thornton to Mr. Fish, the vessels of Great Britain were expressly directed "not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed and the vessel itself captured within three miles of land."

It may, perhaps, be justly said that in giving these instructions and the other instructions which we hereafter copy, the Imperial Government was seeking the friendly side; but nevertheless such instructions in

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connection with the other matters to which this paper calls attention, are certainly confirmatory proof, even if of slight weight.

It seems that, notwithstanding these official communications from Great Britain to the United States, and without notice, the fishing vessels of the United States were later in the season ordered off and prohibited from taking bait and supplies; and in consequence thereof the Assistant Secretary of State, by his circular under date of Sept. 13, A. D. 1870, appearing p. 427, directed an inquiry as to the practice with reference to shipping fish in bond and with reference to obtaining supplies previous to the date of the first reciprocity treaty.

Mr. Jackson, consul at Halifax, in his report of Oct. 3, A. D. 1870, p. 428, replied as follows:

"In no act is there any prohibition against fishing vessels visiting colonial ports for supplies. The silence of all the acts upon this point, and the practice of more than half a century under Imperial laws framed expressly for the purpose of carrying into effect the provisions of the treaty, justify the conclusion that no such prohibition was contemplated. This view of the subject derives additional support from the fact that at the time of the adoption of the treaty the mackerel fishing, as now carried on, was comparatively unknown.

During the intervening years between 1818 and 1870, throughout all the controversies between the United States and Great Britain on the subject of the fisheries, no question, until the present, had arisen in reference to supplies. They were always readily procured in colonial ports, and the trade being profitable to the people of the colonies was facilitated by the local authorities."

And again on p. 431 in the same report he says the proceedings were "contrary to all former practice" and that "these rigorous measures were now for the first time adopted."

The consul-general at Montreal on the 3rd of November, A. D. 1870, p. 433, speaks of these matters as "acts which the captains of American vessels had been permitted to do from time immemorial, as well before as subsequent" to the treaty.

The "Sessional Papers of Canada," volume four, 1871, contain in many places indubitable evidence of the practical construction given to the law and treaty on this point, as follows:

Lieutenant Cochrane said in a letter of September 30, A. D. 1870: "The collector at St. Andrews informed me that the custom-house officers had no orders against allowing American fishing vessels to go in for salt or stores of any description whatever."

The lieutenant-governor of Prince Edward's Island, November 23, 1870, speaking of the American fishing vessels purchasing supplies, said: "The people look forward with satisfaction to reopening their ports next summer to their remunerative and welcome visitors."

Lieutenant Cochrane again wrote November 18, A. D. 1870: "The inhabitants of the Nova Scotia coast, from St. Mary's bay to Cape Sable, I believe prefer the Americans coming in, as they are in the habit of selling them stores, bait and ice."

Commander Bateman wrote November 1, A. D. 1870: "The collectors of customs at the places I have been at, inform me that they have no instructions to prevent American fishing vessels from buying supplies, as ice, bait, etc."

Commander Poland wrote November 18, A. D. 1870 from Charlotte-town: "Every facility is given in the ports of this island to fishermen for obtaining and replenishing their stock of stores and necessaries for fishing."

In the dispatch from Earl Kimberly to Lord Lisgar of March 17, 1871, the following appears:

"I think it right, however, to add that the responsibility of determining what is the true construction of a treaty made by Her Majesty with any foreign power must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of treaty rights may depend not only on the liberal construction of the treaty, but on the moderation and reasonableness with which those rights are asserted."

And in another dispatch from the same to the same of February 16, 1871, appears the following:

"The exclusion of American fishermen from resorting to Canadian ports except for the purpose of shelter and of repairing damages therein, purchasing wood and of obtaining water, might be warranted by the letter of the treaty of 1818 and by the terms of the Imperial act 59, Geo. III, chap. 38; but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States Government, under such restrictions as may be necessary to prevent smuggling and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

BENEFITS WHICH CANADA, AND ESPECIALLY THE MARITIME PROVINCES, ARE RECEIVING FROM THE UNITED STATES IN MATTERS OF FISHERIES.

Bait.—Clams are the best bait for hand-line fishing for cod on the Grand Banks and elsewhere. The maritime provinces have no clams, and the need of the Dominion fishermen for clam bait is greater and the quantities required by them in excess of the need and use of Dominion herring bait by fishing vessels of the United States.

As clam bait is by the tariff customs law of Canada free, it seems to come into the Dominion without much care as to reporting it, and the extent of the transactions is not shown by the Dominion statistics.

The amount of bait exported from only the port of Portland, Maine, direct to ports of Nova Scotia for each of the seasons A. D. 1885, 1886, and A. D. 1887 are shown by the copy of the statement of Josiah Chase, deputy collector of customs at the port of Portland, in the Appendix, and other such exports from the United States to the maritime provinces also appear there.

Free fish.—Canada and Newfoundland enjoyed the privilege of exporting to the United States free of duty in the year ending June 30, 1886 to the value of \$1,065,381, and in the year ending June 30, 1887 to the value of \$1,155,674, according to the statement appearing in the Appendix headed "Imports of fish into the United States free of duty." These amounts exceed the amounts of imports of fish for the corresponding periods subject to duty.

Transshipment in bond.—By the ruling of the Treasury Department of the United States large quantities of Dominion fish in ice and Dominion frozen fish are admitted free of duty into the United States. Accordingly fresh mackerel are caught in the Gulf of St. Lawrence by Dominion fishermen, iced, transferred by them to rail at Port Mulgrave, Picton and other ports on the Gulf of St. Lawrence, and shipped free of duty to Portland, Boston and other points in the United States, notwithstanding the same privilege is refused fishing vessels of the United

States as shown in this statement. Fish are also frozen at various points in the Dominion as far west as the Manitoba lakes and as far east as Margaree river in Cape Breton, shipped by rail and vessel and distributed over the whole eastern section of the United States free of duty, competing with and driving out fish cured by United States fishermen.

An explanation of this appears in the Appendix.

Leniency of customs authorities to Dominion vessels in the ports of the United States.—This is sufficiently made clear and practically illustrated by the copies of statements of Lewis B. Smith, deputy collector, and William O. McCobb, appearing in the Appendix.

General reciprocal benefits.—Substantially all the agricultural products of New Brunswick and Nova Scotia find their market in the United States. It will also be found, notwithstanding there is not any treaty of reciprocity nor reciprocal legislation as between the Dominion and the United States, that nevertheless the total values imported from the Dominion into the United States for the year ending June 30, A. D. 1886, free of duty, was \$12,005,563, as against dutiable merchandise \$25,300,103; and that reverse imports for the same period free of duty were \$15,198,167, against subject to duty \$20,650,876.

These values are in excess of the average free imports under the reciprocity treaty of A. D. 1854.

These figures are not given as attempting to indicate any balance of benefits pro or con, but as showing that there has grown up a practical reciprocity of great value, which will inevitably increase with the continuance of friendly relations and will be destroyed under reverse conditions.

PORT DUES, COMPULSORY PILOTAGE, AND OTHER CHARGES OF LIKE CLASS.

It is understood that light-duties and fees for buoy service have been exacted from vessels putting in for shelter at sundry ports in Nova Scotia.

Hon. M. H. Phelan, consul-general of the U. S. at Halifax, Nova Scotia, wrote, Aug. 26, A. D. 1886, as follows:

The schooner *City Point*, a fishing vessel belonging at Portland, Maine, was driven into Halifax by the late storm, with sails torn and otherwise in need of repairs. She reported at the custom-house, I accompanying the master, and there I paid one dollar for harbor duties, one dollar for signal charges, and fifty cents for making out papers. I duly entered my protest against all these charges.

Before the Committee of the Senate of the United States on Foreign Relations, as appears by Senate Report No. 1683, 49th Cong., 2nd session, p. 109, the fishing schooner *Ontario* put into St. John's, Newfoundland, in June, A. D. 1886, paid light-duties twenty-four cents a ton on eighty-six tons, water rates five cents a ton on eighty six tons, pilotage inward and outward seven dollars and fifty cents, although she neither took nor needed water or pilotage, and it is understood put in for shelter.

It is understood that light-duties are frequently charged United States fishing vessels seeking shelter in the waters of Newfoundland.

Efforts to obtain information as to the various charges made in Dominion ports have not resulted very satisfactorily, and either there is a lack of uniformity in the various ports, or our efforts to obtain information have not been sufficiently thorough.

Mr. Phelan to Mr. Adee.

U. S. CONSULATE-GENERAL,
Halifax, N. S., Nov. 8, 1887. (Received Nov. 12.)

SIR: Referring to my dispatch No. 190, dated September 3d last, on the liability of American fishing vessels for pilotage upon entering a Canadian port for shelter under the treaty of 1818, as stated in that dispatch, I addressed the following communication to the minister of marine and fisheries:

"U. S. CONSULATE-GENERAL,
Halifax, N. S., Sept. 1, 1887.

"Hon. GEORGE E. FOSTER,
Minister Marine and Fisheries, Ottawa:

"SIR: On the 19th ultimo five American fishing vessels entered the outer harbor of Halifax and anchored under Meagher's Beach for shelter. They entered at the Halifax custom-house, and on the following day applied for clearances, which were refused because they had not paid pilotage, amounting to eight dollars for each vessel. The captains say they did not need a pilot; that they came in for shelter only, which was within their treaty rights. An explanation was made to the secretary of the pilots' commission, who replied that all foreign vessels of over eighty tons were liable for pilotage, and that he could not clear the vessels until it was paid. This office could not acquiesce in this ruling, and the following telegram was sent to you:

"Halifax, August 20, 1887.

"Hon. Minister FOSTER, Ottawa:

"Are American fishing vessels anchoring at the outer entrance Halifax harbor for shelter liable for pilotage when use of pilot not required, and when such pilotage not exacted of domestic vessels of same class?

"M. H. PHELAN."

"After waiting a reasonable time for a reply, and not wishing to detain the vessels this consulate-general guaranteed the pilotage if, after an examination, it was found to be conformable to treaty rights. The vessels were accordingly cleared. The pilot commissioners held a meeting and sustained the secretary in his rulings, but suspended further action pending a decision from you. As the question has arisen several times, it should be settled; and with that end in view, I would ask you to pass upon the question submitted in the telegram above.

"I am, sir, your obedient servant,

"M. H. PHELAN,
Consul-General U. S."

To-day I received the following reply:

"MARINE DEPARTMENT,
Ottawa, Nov. 4, 1887.

"SIR: I am directed by the minister of marine and fisheries to acknowledge the receipt of your letters of the 1st and 21st of September last, relative to certain pilotage dues collected from United States fishing vessels in the port of Halifax, and your objections to the payment of the same. From a careful examination of the papers submitted the minister is of the opinion that the pilotage commissioners acted in this case entirely within the scope of their powers as defined by chapter 80, Revised Statutes of Canada, and by rules framed thereunder and approved by order in council.

"As to your contention that United States fishing vessels seeking shelter in Canadian ports under the provisions of the treaty of 1818 can claim exemption from pilotage dues, the minister is of the opinion that all vessels, whether foreign or not, coming within the limits of a pilotage district, and not exempted by the above-mentioned act or by the pilotage commissioners, under regulations approved by Governor-General in council, are liable to a compulsory payment of pilotage dues. The mere fact of the recognition by a treaty of the right of vessels to come into a harbour for shelter is not of itself a ground of exemption from the payment of such dues.

"I am, sir, your most obedient servant,

"JOHN HARDIE,
Deputy Minister of Marine."

The above practically adds a proviso to the treaty of 1818 something like this:
Provided such vessels shall pay pilotage, signal, entrance, harbor, and such other dues as the Canadian Government may think proper to impose.

Canadian vessels of 120 tons and under are exempt from pilotage and all other dues. The pilotage claimed from these vessels is in my hands. I do not think they are liable, and submit the question as to payment to the Department. The right claimed by Canada to impose burdens on our fishing vessels entering her harbors under the treaty, which are denied all commercial privileges, should be settled; and the fact should be made known that Canada has one law for American vessels and another for her own of the same class.

I am, sir, &c.,

M. H. PHELAN.

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APPENDIX.

MEM. CONCERNING "WARNINGS" FROM THE MINISTER OF MARINE AND MINISTER OF FISHERIES AT OTTAWA, IN A. D. 1886.

As appears in the text, the first knowledge of these had by the State Department at Washington was about the 20th of May, A. D. 1886, which was several weeks after the *Adams* and *Doughty* were seized, the *Adams* having been seized on the seventh of May and the *Doughty* on the seventeenth of May.

The following references are to the Dominion volume of "Correspondence Relative to the Fisheries Question, A. D. 1885-1887."

P. 26 it appears the Marquis of Lansdowne wrote Earl Granville on the twenty fifth of March, A. D. 1886, enclosing copy of "warning," which his dispatch says "was published"; but where published, or to what extent, is not known.

He also enclosed instructions which had been issued to the fisheries officers, etc., dated March nineteenth, A. D. 1886; which instructions, as appears by the index of the volume, were confidential. At any rate it is believed that they were not known either to the United States or its vessels.

The "warning" enclosed purports to bear date March 5, A. D. 1886, was signed by the minister of Marine and Fisheries, and warns all foreign vessels not only from fishing but from entering except for the purposes specified in the convention of A. D. 1818.

On the twenty-ninth of May, A. D. 1886, p. 64, Mr. Bayard called the attention of Her Majesty's minister at Washington to a copy of circular No. 371, described below.

June 3, A. D. 1886, p. 66, cables were passed to Earl Roseberry by Mr. Phelps concerning the same matter, and Earl Granville cabled the Marquis of Lansdowne for the purport of circular No. 371.

This cabling seems to have called the attention of the Home government to the "warning" purporting to bear date the sixth of March, for on the fourth of June, p. 66, a cable is sent to the Marquis of Lansdowne criticising it.

This is followed by correspondence which appears pp. 66 and sequence, and resulted in the amended "warning," appearing p. 70. This sets out the provisions of the convention of A. D. 1818, certain provisions of statute law, avoids specific information, and ends merely with the words: "Of all which you will take notice and govern yourself accordingly."

May 7, A. D. 1886, p. 31, the commissioner of Customs also issued a "warning" or circular, known as circular No. 371, and which, probably, was the only circular obtaining general publicity. As this bears date the day the *Adams* was seized, of course it could not have come to her knowledge. This also seems to have been criticised in the correspondence already referred to, and the effect of it in its amended form was

stated by the Marquis of Lansdowne, p. 70, as follows: "Every fishing vessel belonging to the United States found contravening the existing Canadian statutes will, if not departing within twenty-four hours after receiving such warning, be detained under the conditions prescribed."

Subsequently the circular was further amended on or about July 12, A. D. 1886, as appears p. 32; and then for the first time it was made specifically clear, that if a vessel had been fishing or preparing to fish, the twenty-four hours were not to be allowed her, but an officer was to be put aboard at once.

All these circulars use the language of the statute, "preparing to fish within three marine miles of the shore," and not the language now claimed as the construction of the statute, "preparing within three marine miles of the shore to fish." In any event they were contradictory, inconsistent, and misleading.

EXPORTS OF CLAM BAIT TO THE DOMINION.

Statement of clams exported from the port of Portland, Me., to the Dominion of Canada, during the years of 1884, '85, '86, '87.

Date.	Name of vessel.	Pk'gs and contents.	Value.	Whence exported.
1884.				
Mar. 21	Br. ac. Hannah Eldridge ...	398 barrels clams.	\$902	Cape Island, N. S.
April 2	" " Divina	857 " " "	3,942	Lockport, N. S.
" "	" " NovaStella	560 " " "	3,920	" "
June 11	" " Elder	720 " " "	5,040	" "
" "	" " Ocean Bride	630 " " "	4,421	" "
21	" " Annie M. Bell	180 " " "	1,638	Pubnico, "
27	" " Matilda	94 " " "	720	Cape Island, "
1885.				
Mar. 28	" " Ellen Maud	686 " " "	4,459	Lockport, "
" 30	" " Hannah Eldridge	251 " " "	1,403	Barrington, "
April 10	" " Edward T. Russell	835 " " "	5,428	Lockport, "
20	" " Blanche	07 " " "	631	Lunenburg, "
May 29	" " Bridgewater Packet	870 " " "	5,655	Lockport, "
June 1	" " Ocean Bride	640 " " "	3,840	" "
8	" " Royal Charlie	185 " " "	1,110	Barrington, "
1886.				
Mar. 24	" " Alice Louise	223 " " "	1,227	" "
31	" " NovaStella	863 " " "	1,978	Lockport, "
Ap'l 5	" " Ella Maud	717 " " "	3,944	" "
8	" " May	120 " " "	719	Shelburne, "
May 29	" " April	995 " " "	5,320	Lockport, "
June 2	" " Nina Page	230 " " "	1,285	Barrington, "
1887.				
Apr. 4	" " Ella Maud	406 " " "	2,879	Lockport, "
7	" " Clifford	295 " " "	1,823	" "
May 23	" " Ella Maud	544 " " "	2,856	" "
26	" " Minnie May	235 " " "	1,175	Port Medway, "
		11,024 b'r's clams ..	\$65,978	

DISTRICT OF PORTLAND AND FALMOUTH,
PORT OF PORTLAND, MAINE,
October 17th, 1887.

I, Josiah Chase, deputy collector of customs for the port of Portland, Maine, hereby certify that the customs records aforesaid show exportations of clams in barrels from this port to ports in the Dominion of Canada, during the years 1884, 1885, 1886, and 1887, according to the foregoing statements.

JOSIAH CHASE. [SEAL.]
Deputy Collector of Customs.

CUSTOM-HOUSE, BOSTON, MASS.,
Collector's Office, Nov. 2, 1887.

Exportation of clams (bait) from the port of Boston to the Dominion of Canada during
the fiscal years ending June 30, 1885, 1886, 1887, respectively.

JULY 1, 1884, TO JUNE 30, 1885.

Nationality.	Rig.	Name of vessel.	Barrels.	Value.
American	Steamer	Carroll	391	\$2,427
		Worcester	598	4,415
British	Brig	Cllo	97	533
		Clyde	60	456
	Schooner	Cyrene	61	384
		Henrietta	20	125
		Mary E. McDougal	127	782
		Narcissus	50	50
	Rival	105	600	
	Virgilia			
Total			1,015	10,352

JULY 1, 1885, TO JUNE 30, 1886.

American	Steamer	Carroll	315	\$1,781
		Worcester	100	1,051
		Alpha	100	100
British		Dominion	120	305
		Linn O'Dee	100	600
	Brig	Diadem	50	300
		W. E. Stowe	223	1,115
	Schooner	Amenda	60	806
		Bianche O	20	120
		Blizzard	233	1,388
		D. A. Maher	45	250
		Louise	90	450
		Mary Alice	110	550
		Narcissus	224	1,344
	S. G. Irwin	25	125	
Total			1,905	8,789

JULY 1, 1886, TO JUNE 30, 1887.

American	Steamer	Carroll	504	\$2,809
		Worcester	165	1,050
British		Alpha	116	257
		Dominion	65	130
	Brig	Farmouth	164	332
		Cllo	197	1,083
	Schooner	Conductor	256	1,350
		Dexter	30	210
		Donzella	111	668
		Mary C	90	523
		Morris Wilson	85	510
Total			1,783	8,982

RECAPITULATION.

Fiscal years.	American.				British.			
	Steam.		Sail.		Steam.		Sail.	
	Bbls.	Value.	Bbls.	Value.	Bbls.	Value.	Bbls.	Value.
July 1, 1884, to June 30, 1885	989	\$6,842					626	\$3,510
July 1, 1885, to June 30, 1886	505	2,832			2,20	\$905	1,180	6,052
July 1, 1886, to June 30, 1887	669	3,919			345	710	769	4,344
Total	2,163	13,593			565	1,624	2,575	13,906

Grand total: Barrels, 5,303; value, \$20,123.

Respectfully forwarded.

J. M. FISKE,
Special Deputy Collector.

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HOSPITALITIES RECEIVED BY DOMINION VESSELS IN UNITED STATES WATERS.

PORTLAND, MAINE, Oct. 15, 1887.

DEAR SIR: Will you kindly give me answers to the following questions, so far as you can, in your reply following each question with its answer, and merely answering the questions without additional statement? It may be, when I get this, I shall have to trouble you again, but I hope not.

1. How long have you been deputy collector of the port of Portland, Me.?

Answer (1). Twenty-three (23) years last April.

2. Under the laws and regulations, how long may Dominion vessels, whether engaged in the fisheries or otherwise, lie at the port of Portland before being required to report at the custom-house when in only for shelter?

Answer (2). Twenty-four (24) hours.

3. In cases where such vessels do not report within twenty-four hours after arrival what is the practice with reference to obtaining reports from them?

Answer (3). Boarding officer boards all vessels arriving from foreign ports on their arrival or as soon thereafter as possible. He obtains and deposits at custom-house manifest of the vessel. This is accepted as a "report" from the master.

4. During the time you have been deputy collector, whether or not there have been numerous cases of Dominion vessels, including vessels engaged in fishing, in our port which have failed to report though lying more than twenty-four hours after arrival? And, if yes, what penalties have been imposed for such failures during the whole term of your service?

Answer (4). As I remember, there have been many instances of Dominion vessels failing to "report," though lying more than twenty-four hours after arrival, their presence having been overlooked by the boarding officer.

I do not recall from memory a single instance where or when the penalty for such failure was imposed, and find no reference to such payments on the records of this office.

5. In case of such vessels arriving in this port for shelter, are they forbidden or prevented from landing any person aboard of the vessel? And if yes, are they required to report at the custom-house simply on account of such landing? Please explain quite fully the practice about this.

Answer (5). "Such vessels" arriving in this port for shelter are not forbidden or prevented from landing any person from on board except *passengers*. In that case a "report" and a "passenger entry" is required. The "report" in this case is not of a character requiring an "entry" of the vessel. The "passenger entry" is made by the master of the vessel.

6. What has been during that time the practice with reference to purchase of ordinary supplies and fishing supplies by such vessels, and are such vessels required to report at the custom-house merely in consequence of making such purchases?

Answer (6). The practice in the matter of purchase of ordinary supplies and fishing supplies by such vessels has been that there have been no restrictions upon masters or crews within my recollection, relative to such purchases. Vessels would be required to "report" within twenty-four (24) hours in any event, but not "in consequence" of making such purchases.

7. What is the practice with reference to requiring vessels to report who touch in for shelter under Richmond's island, or other places which are within the limits of this port as known to the law, yet are distant five or ten miles from the custom-house itself?

Answer (7). No customs officers are stationed at the points or places named in 7th interrogatory. No reports to my knowledge have been received from vessels seeking shelter under Richmond's island, or at points distant five or six miles from the custom-house.

8. Have you any statistics, either official or unofficial, showing the number of such vessels seeking shelter at this port during any of the last three or four years? If yes, kindly give them to me; if not, kindly advise me, if you can, where I can obtain them.

Answer (8). There have been sixty-nine (69) such vessels seeking shelter within the past three years at this port, which have laid forty-eight (48) hours. Have no record of number of such vessels not making "report" within the period mentioned.

It is possible that the information you desire on this latter subject may be obtained at the office of Chas. P. Ingraham, esq., Commercial wharf.

9. Will you give me, if you can, an official statement of the number of foreign vessels which have arrived at this port during your period of service as deputy collector, including those which have arrived only for shelter and have not reported? And, if you cannot give me an official statement, please, if you can, give me the entire number unofficially, or advise me where I can obtain the information.

Answer (9). The whole number of foreign vessels that have arrived at this port during my period of service as deputy collector, as ascertained by the records of this office,

has been six thousand nine hundred and seventy-four (6,974). There is *not* included in this number vessels arriving only for shelter, except those reported (69) in my answer to 8th interrogatory.

10. Kindly give me the total amount of penalties which have been imposed on all such vessels during your whole period of service for failure to report.

Answer (10). No penalties have been imposed on any such vessel during my whole period of service.

See also second paragraph of my answer to your 4th interrogatory.

11. What fees, if any, are required from vessels arriving at this port for delay in not reporting at the custom-house? And what fees are required from them on reporting?

Answer (11). No fees are required from vessels for delay in not reporting, and none required from them on reporting within twenty-four (24) hours.

12. Are any fees required from vessels remaining less than forty-eight hours? And what fees for those remaining over forty-eight hours?

Answer (12). No fees are required from vessels remaining less than forty-eight (48) hours.
Fees for those remaining over forty-eight hours are as follows, viz: Vessels 100 tons and under, entry, \$1.50; surveyor, \$1.50, if with dutiable cargo; 67c. if with free cargo; vessels over 100 tons, entry, \$2.50; surveyor, \$3, if with dutiable cargo; 67c. if free cargo; tonnage dues, 3c. per ton, to be paid five times in each calendar year, or 15c. per ton for the 12 months.

Very truly, yours,
Mr. Lewis B. SMITH,
Deputy Collector.

Answered from 1 to 12, as above, at custom-house, Portland, Me., Oct. 17, 1887.
LEWIS B. SMITH,
Deputy Collector.

BOOTH BAY, November 4th, 1887.

MY DEAR SIR: In answer to your telegram to Deputy Collector Carlisle, of Booth Bay, Me., I will state that I have been a marine reporter at Booth Bay for a number of years for the Boston Daily Post, of Boston, Mass., to October 24, and at the present time I am not a reporter for the Boston Post.

The number of vessels that has arrived and sailed from this port for the past three years I can give account from three books that I used in taking the names in, and parts of them is lost. The books I have has been in the last three years.

The number of vessels from the coast of New Brunswick, also from the coast of Nova Scotia, by count, is three hundred and fifty.

I have taken them from the books by count as often as they appear from day to day, for I have reported daily. Some of the vessels' names will appear a number of times during the year. The probability is a great many more have put in at night and sailed in the morning before I could report them. I will say all vessels put in for shelter and storms at sea. Also I have learned the facts as above in the course of my duties as a marine reporter.

Yours, truly,

W. O. McCOBB.

CUSTOM-HOUSE, WISCASSET, MAINE,
Collector's Office, Nov. 3, 1887.

DEAR SIR: Twenty British vessels have entered at this port during the past three years.

Very truly, yours,

EDWIN AMSDEN.

WM. E. REED, Esq., *Booth Bay, Me.*

INSTRUCTIONS OF THE ENGLISH ADMIRALTY—SEIZURES NOT TO BE MADE EXCEPT VESSELS ACTUALLY FISHING—MAY 26, 1870.

Mr. Thornton to Mr. Fish.

No. 257.]

WASHINGTON, May 26, 1870. [Received May 27.]

SIR: In compliance with instructions which I have received from the Earl of Clarendon, I have the honor to inclose, for the information of the Government of the United States, copies of letters which have been addressed by the Admiralty to Vice-

Admiral George C. Wellesley, commanding Her Majesty's naval forces on the North America and West Indies stations, and of a letter from the colonial department to the foreign office, from which you will see the nature of the instructions to be given to Her Majesty's and the Canadian officers who will be employed in maintaining order at the fisheries in the neighborhood of the coasts of Canada.

EDW. THORNTON.

Mr. Wolley to Vice-Admiral Wellesley.

ADMIRALTY, April 9, 1870.

SIR: I am commanded by my lords commissioners of the Admiralty to transmit for your information and guidance the inclosed copies of foreign office letters, dated 2nd, 7th, and 9th instant, referring to the resolution of the House of Representatives at Washington in regard to the intention of the Government of the Dominion of Canada to suspend the licenses to foreign vessels for the inshore fisheries on the coasts of the Dominion. My lords desire that you will detach a sufficient force to Canadian waters to protect Canadian fishermen and to maintain order, and you are to instruct the senior officer of such force to co-operate cordially with any United States force sent on the same service.

I am, etc.,

THOMAS WOLLEY.

P. S.—The following telegram has been sent this day to Her Britannic Majesty's consul at New York:

"Please to communicate the following instructions to the senior naval officers at Halifax and Bermuda by first opportunity.

"Admiral Wellesley to make preparations at once for sending vessels to protect Canadian fisheries in concert with United States naval authorities. Instructions sent to Halifax by to-day's post."

Mr. Lushington to Mr. Hammond.

ADMIRALTY, May 9, 1870.

SIR: In reply to your letter of this day requesting that copies of the recent instructions given to Vice-Admiral Wellesley for the protection of the Canadian fisheries may be sent to you for communication to the Government of the United States, I am commanded by my lords commissioners of the Admiralty to transmit to you a copy of a letter addressed to the vice-admiral on the 9th of April, of which you were informed by letter of the same date, and of a letter addressed to him on the 5th instant on a representation from the secretary of state for the colonies.

My lords request that you will lay the same before the Earl of Clarendon.

I am, etc.,

VERNON LUSHINGTON.

Mr. Rogers to the secretary of the Admiralty.

DOWNING STREET, April 30, 1870.

SIR: In Mr. Secretary Cardwell's letter to the lords commissioners of the admiralty of the 12th of April, 1866, it was stated that American vessels should not be seized for violating the Canadian fishing laws "except after wilful and persevering neglect of the warnings which they may have received, and in case it should become necessary to proceed to forfeiture cases should, if possible, be selected for that extreme step in which the offence has been committed within three miles of land."

The Canadian government has recently determined, with the concurrence of Her Majesty's ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given and seizing at once any vessel detected in violating the law.

In view of this change and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed and the vessel itself captured within three miles of land.

I am, &c.,

F. ROGERS.

Mr. Wolley to Vice-Admiral Wellesley.

ADMIRALTY, *May 5, 1870.*

SIR: With reference to my letter of the 9th April last, in regard to the protection of Canadian fisheries, I am commanded by my lords commissioners of the Admiralty to transmit to you, for your information and guidance, the inclosed copy of a letter from the under secretary of state for the colonies, dated 30th ultimo, relative to the recent determination to increase the stringency of the existing practice by dispensing with the warnings hitherto given and seizing at once any vessel detected in violating the law.

My lords desire me to remind you of the extreme importance of commanding officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation that no vessel should be seized unless it is evident and can be clearly proved that the offence of fishing has been committed, and that the vessel is captured within three miles of land.

I am, &c.,

THOMAS WOLLEY.

Mr. Holland to the under secretary of state for foreign affairs.

COLONIAL OFFICE, *May 13, 1870.*

SIR: I am directed by Earl Granville to acknowledge the receipt of your letter of the 9th instant, requesting to be furnished, for communication to the Government of the United States, with copies of the instructions issued to the commanders of the Canadian vessels engaged in the protection of the fisheries.

Lord Granville desires me to state, for the information of Lord Clarendon, that the governor-general of the Dominion has been requested by telegraph to forward to this office any instructions already issued on this subject or that may be issued in consequence of Lord Granville's dispatch to the governor-general, of which a copy is inclosed.

I am, &c.,

H. HOLLAND.

Lord Granville to Sir John Young.

COLONIAL OFFICE, *April 30, 1870.*

SIR: I have the honor to transmit to you the copy of a letter which I have caused to be addressed to the Admiralty respecting the instructions to be given to the officers of Her Majesty's ships employed in the protection of the Canadian fisheries. Her Majesty's Government do not doubt that your ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them.

I have, &c.,

GRANVILLE.

His excellency the Right Honorable Sir JOHN YOUNG, baronet, &c.

IMPORTATIONS OF FROZEN FISH FROM THE DOMINION TO THE UNITED STATES.

The following references and extracts are made from "The reply of the Secretary of the Treasury" to the resolution of the House of Representatives concerning the interpretation of the tariff law relative to duties on fish, Executive Document No. 78, House of Representatives, 49th Congress, 2nd session, pp. 1 to 37 of the appendices.

Lafin & Co., of Chicago, wrote the Secretary of the Treasury Dec. 26, A. D. 1885, that they were called on to pay at Port Huron \$90 duties "on a car-load of frozen smelts from New Brunswick;" that "Manitoba for the past two years has flooded the country with their fresh-water

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frozen fish, duty free," and that at the Sault Saint Marie, Michigan, large quantities of fish were imported, caught by the Canadians at the Lizard's islands, and were shipped to Detroit and as far as Buffalo.

Jan. 30, A. D. 1886, the Assistant Secretary of the Treasury (p. 18) wrote the collector of customs at St. Vincent, Minnesota, referring to the fact that large quantities of fresh fish, caught in the lakes of Manitoba and naturally frozen, are imported into the port named free of duty.

Feb. 9, A. D. 1886, Percy L. Shuman, Chicago (p. 20), wrote to the Secretary of the Treasury explaining at length the imports of frozen smelts from New Brunswick and Nova Scotia.

Feb. 18, A. D. 1886, C. W. Outhit wrote from Halifax, Nova Scotia, to the Secretary of the Treasury that he had made a shipment to Chicago of frozen fish for immediate consumption.

G. L. Young, of St. John, New Brunswick, (p. 29), wrote April 14, A. D. 1886: "Shipped a car load of frozen herring consigned to Chicago."

Oct. 10, A. D. 1886, the collector at Bangor, Maine (p. 35), wrote the Secretary of the Treasury concerning the freezing of salmon at Margaree harbor, Cape Breton, for importation into the United States.

It appears from the correspondence that the opinion of the Department at first changed as to the true construction of the law; but the final conclusion is found in the following extract from the letter of the acting Secretary of the Treasury of Nov. 18, A. D. 1886, to R. J. Godwin & Sons, New York city (p. 37):

"The circumstances surrounding each importation will have to be taken into consideration by the collectors at the ports of arrival; but the fact that fish are frozen is not sufficient in itself to make them dutiable, if the other circumstances surrounding the importation are sufficient to establish the fact that they are imported fresh for immediate consumption."

**HOSTILE PROCEEDINGS AGAINST UNITED STATES FISHING VESSELS
HAVE ALWAYS BEEN WITHOUT WARNING.**

In the text and also in the appendix concerning "warnings," in A. D. 1836, it appears that during the period from A. D. 1836 to A. D. 1839, as well as in A. D. 1886, these severe proceedings were commenced against vessels of the United States in breach of the before-existing practices, for the continuance of which the vessels of the United States might well look, and without that clear and seasonable warning or notice which is to be expected as among friendly nations.

In A. D. 1870, as the following extracts will show, not only was there no warning or notice, but on the other hand there was such diplomatic communications from Great Britain as justly entitled the United States to expect the contrary.

We have already referred to the communication of the minister of justice of April 8, A. D. 1870, a copy of which was sent by Sir Edward Thornton to Mr. Fish April 14, A. D. 1870, and also to the instructions from the Admiralty, communicated by Sir Edward Thornton to Mr. Fish May 26, A. D. 1870, as already stated, full copies of which appear in the appendix.

Whether the United States in view of these communications had a right to assume that there would be no hostile proceedings against their vessels for buying bait or supplies, or for anything except fishing, is a matter of deduction; but that there might be no possibility of misunderstanding Mr. Fish made inquiries of Sir Edward Thornton June 8,

A. D. 1870, and Sir Edward Thornton replied June 11, 1870, "Foreign Relations of the United States, 3d sess. 41st Congress," pp. 420 and 421, his reply containing the following :

"I had the honor to receive yesterday your note of the 8th instant, relative to an apparent discrepancy between the instructions issued by Vice-Admiral Wellesley inclosed in my note of the 3d instant, and those given by the Admiralty to him which accompanied my note of the 26th ultimo. You are, however, quite right in not doubting that Admiral Wellesley, on the receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command so that they may be in conformity with the views of the Admiralty. In confirmation of this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel, unless it were evident and could be clearly proved that the offence of fishing had been committed and the vessel itself captured within three miles of land."

Notwithstanding all this it appears by the letter of Mr. Hall, dated Charlottetown Aug. 19, A. D. 1870, that Her Majesty's steamers *Valorous* and *Plover* had closed up all branches of trade, including landing of mackerel in ports of Prince Edward's Island, ordered off a Gloucester schooner and would not allow her to take bait or supplies.

On the 25th of the same August the consul at Halifax wrote to Mr. Fish, p. 423, that it appeared by the Halifax Morning Chronicle transshipment in bond from Canadian and other provincial ports of American-caught fish had been prohibited; and on the 5th of September, A. D. 1870, the same consul communicated to Mr. Fish, p. 424, certain correspondence with Her Britannic Majesty's vice-admiral, showing that the Dominion authorities had issued orders prohibiting ice, bait, and other supplies being furnished in the colonial ports to American fishermen; and the consul said this was neither announced nor enforced "until after the commencement of the fishing season and after our fishing vessels were on their voyages to the fishing grounds."

The Vice-Admiral in his letter of Sept. 3, A. D. 1870, p. 426, seems to have supposed that notice of his orders had been sent to the United States Secretary of State; but it will sufficiently appear from the dispatch of Mr. Fish to the consul-general at Montreal of Oct. 29, A. D. 1870, p. 331, that to that time he had not received notice of the new instructions and had apparently heard of the proceedings or intended proceedings in accordance with them, only by reports from the consular officers and from the parties interested. Indeed so clear is this, that the Secretary proceeds on the following assumption: "These alleged causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels."

Also the Assistant Secretary of State in his dispatch to the consul at Halifax, Sept. 13, A. D. 1870, p. 427, said: "It is understood that the Government of the Dominion of Canada is prohibiting vessels of the United States," etc.; showing that even to that date the Department had no positive knowledge, and that their understanding was that the orders came from the Dominion and not from the Imperial authorities.

In the extract made in the text from the report of the consul-general of the United States at Montreal of Nov. 3, A. D. 1870, p. 433, he stated that "no adequate nor suitable notice was given to the captains of American fishing vessels" of this change of policy; and, indeed, taking it altogether, it seems undoubted that, notwithstanding the Imperial

authorities at the outset gave the United States diplomatic advices that proceedings would be taken only for actual fishing within three miles from the shore, the whole policy was changed and fishing vessels of the United States were driven out of Dominion ports without any formal diplomatic notice to the United States thereof, and without any explanation whatsoever to enable either the Department of State or the owners of vessels to understand the meaning and extent of the change.

Subsequently vessels were seized for mere purchase of supplies, of which one, the *White Eawn*, was taken into St. John and acquitted on the ground that there was no statute authorizing her seizure. Another, the *J. H. Nickerson*, was taken into Halifax and condemned, the court holding the reverse doctrine.

Imports of fish into the United States free of duty.

Month.	1885-'86.					
	Fresh.				Lobsters, canned and preserved.	All other.
	Salmon.		All other.			
	Pounds.	Dollars.	Pounds.	Dollars.	Dollars.	Dollars.
1885.						
July.....	402,103	38,515	1,552,858	54,103	80,796	15,072
August.....	103,012	11,356	1,074,551	36,410	83,860	2,795
September.....	64,078	6,006	1,732,036	45,146	53,163	281
October.....	34,223	2,340	2,031,370	45,074	23,334	505
November.....	27,312	2,814	1,337,430	33,034	6,002	500
December.....	52,037	6,426	1,872,351	58,940	1,803	343
1886.						
January.....	25,377	3,800	2,055,411	48,704	900	482
February.....	422	40	2,241,201	40,425	5	307
March.....	350	94	1,286,097	27,020	357	807
April.....	1,099	523	572,650	10,432	3,716	13,429
May.....	58,766	8,066	1,623,065	42,500	4,614	15,312
June.....	683,341	65,190	2,352,258	70,602	75,686	10,014
Totals for year.....	1,422,720	144,780	10,732,787	625,795	338,982	67,107
Month.	1886-'87.					
	Fresh.				Lobsters, canned and preserved.	All other.
	Salmon.		All other.			
	Pounds.	Dollars.	Pounds.	Dollars.	Dollars.	Dollars.
1886.						
July.....	242,266	24,157	1,750,934	52,940	94,418	14,017
August.....	90,502	9,740	1,017,258	52,377	92,131	2,072
September.....	42,720	4,248	1,670,527	40,030	38,382	36
October.....	11,250	1,381	1,002,028	50,744	10,201	630
November.....	2,431	370	1,525,621	36,527	7,900	678
December.....	1,170	122	2,055,807	58,496	20,764	721
1887.						
January.....	6,555	664	3,840,186	90,761	28	271
February.....	2,652	268	4,840,853	75,662	3,900	301
March.....	9,043	987	2,443,070	47,880	15,303	788
April.....	3,017	794	633,817	19,538	8,056	1,986
May.....	38,851	5,023	2,070,707	47,190	3,468	23,127
June.....	653,337	58,465	2,070,817	73,855	35,402	19,038
Totals for year.....	1,104,000	100,553	27,301,586	643,113	337,047	68,961

The table shows that the heaviest imports of fresh salmon occur in the summer months; while the imports of all other (fresh) fish are largest at two seasons of the year—summer and winter.

COMPARISON OF IMPERIAL AND DOMINION LEGISLATION, SHOWING UNJUST DISCRIMINATION BY THE LATTER AGAINST THE UNITED STATES.

[Imperial Statutes, 40 and 47 Victoria, Ch. 1. Sea Fisheries Act, 1883.]

Exclusive fishery limits.

7. (1) A foreign sea-fishing boat shall not enter within the exclusive fishery limits of the British Islands, *except for purposes recognized by international law, or by any convention, treaty, or arrangement for the time being in force between Her Majesty and any foreign state, or for any lawful purpose.*

(2) If a foreign sea-fishing boat enters the exclusive fishery limits of the British Islands, (a) the boat shall return outside of the said limits so soon as the purpose for which it entered has been answered; (b) no person on board the boat shall fish or attempt to fish while the boat remains within the said limits; (c) such regulations as Her Majesty may from time to time prescribe by order in council shall be duly observed.

(3) In the event of any contravention of this section on the part of any foreign sea-fishing boat, or of any person belonging thereto, the master or person for the time being in charge of such boat shall be liable on summary conviction to a fine not exceeding in the case of the first offence, ten pounds, and in the case of a second or any subsequent offence, twenty pounds.

[Dominion Statutes, 40 Victoria, Chap. 114.]

An act further to amend the act respecting fishing by foreign vessels.

[Reserved by the governor-general on Wednesday, 2d June, 1886, for the signification of the Queen's pleasure thereon. Royal assent given by Her Majesty in council on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.]

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the act intitled, "An act respecting fishing by foreign vessels," passed in the thirty-first year of Her Majesty's reign, and chaptered sixty-one:

Therefore Her Majesty, by and with the advice and counsel of the Senate and House of Commons of Canada, enacts as follows:

(1) The section substituted by the first section of the act thirty-third Victoria, chapter 15, intitled "An act to amend the act respecting fishing by foreign vessels," for the third section of the hereinbefore recited act, is hereby repealed, and the following section substituted in lieu thereof:

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbor in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of \$400; and if such ship, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel, or boat, under the first section of this act, or (b) has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom, or of Canada, for the time being in force, such ship, vessel, or boat and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited."

(2) The acts mentioned in the schedule hereto are hereby repealed.

(3) This act shall be construed as one with the said "Act respecting fishing by foreign vessels," and the amendments thereto.

HISTORY OF LEGISLATION CONCERNING THE EXTENSION ACROSS THE STATE OF MAINE OF THE CANADIAN PACIFIC RAILWAY.

The legislature of Maine, by the act of Feb. 2, A. D. 1871, entitled "An act to incorporate the Penobscot and Lake Megantic Railroad Company," incorporated certain persons, including Hon. J. H. Pope and Sir A. T. Galt, with the right to construct a railroad in Maine from the line of the European and North American Railway to the St. Francis and Lake Megantic International Railroad, "or to any other railroad which

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obsters. oned and reserved.

Dollars.	Dollars.
83,788	13,072
83,800	2,785
55,163	281
25,334	605
6,092	560
1,863	343

900	482
5	367
357	807
1,716	13,429
1,014	15,512
75,086	19,014
338,982	67,107

obsters. oned and reserved.

Dollars.	Dollars.
94,418	14,017
92,131	2,072
38,382	36
16,291	630
7,909	678
20,764	721

28	271
3,000	301
15,303	788
8,056	1,080
3,408	20,137
35,402	19,038
337,047	68,981

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might be constructed, from Lennoxville in the province of Quebec to the east line of the State of Maine."

By the act approved Feb. 25, A. D. 1881, chapter 65, the same legislature changed the title of the company to "The International Railway Company of Maine," and amended sec. 10 of the act of Feb. 2, A. D. 1871, to read as follows:

"Sect. 10. Said corporation shall have power to make, order, and establish all necessary by-laws and regulations consistent with the constitution and laws of this State for its own government, and for the due and orderly conducting of its affairs and management of its property; and it is also hereby authorized and empowered to make connection with any other railroad corporation; to lease or sell its line of railroad and property, either before or after its completion, to any other railroad company, either domestic or foreign; to take a lease of or buy any other connecting line of railroad and property, whether domestic or foreign, either before or after its completion; or to amalgamate its stock with the stock of any connecting railroad, whether domestic or foreign, in order to form with such railroad a single corporation, upon such terms as may be mutually agreed upon, which lease, sale, purchase, or amalgamation shall be binding upon the parties according to the terms thereof."

By the act approved Feb. 16, A. D. 1885, chapter 401, the charter was amended so as to authorize a change of the route in order to cross Moosehead Lake.

This route being found impracticable, the legislature again, by the act of March 14, A. D. 1887, chap. 256, empowered the company to go to the southward of Moosehead Lake, although by so doing it enabled it to parallel the road of the Bangor and Piscataquis Railroad Company.

The railroad of the European and North American Railway, now the Maine Central Railroad Company, is near the eastern line of the State of Maine, and extends from Bangor, in the State of Maine, to such eastern line, where it connects with the New Brunswick Railway; which latter railway crosses the St. John River by a bridge, reaches St. John in New Brunswick, and thence by the governmental railway connects with Halifax in Nova Scotia and various points on the Gulf of St. Lawrence.

The New Brunswick Railway comprehends substantially all the railway system of New Brunswick, and is one of the subordinate corporations of the Canadian Pacific Railway.

That portion of the European and North American Railway interposing between the International Railway of Maine, authorized by the above charter of Feb. 2, A. D. 1871, and the east line of the State of Maine, is fifty-six miles in length.

The Canadian Pacific Railway has, by contract, the right of joint occupation for running its trains over this piece of railway.

Therefore the act of Feb. 2, A. D. 1871, with its amendments and the other arrangements above described, give a continuous line from Lennoxville or Sherbrooke, in the province of Quebec, across the State of Maine to St. John and Halifax.

The Canadian Pacific Railway, with its new bridge across the St. Lawrence River at Lachine, has an unbroken railway from the Pacific Ocean to Lennoxville and Sherbrooke, and now controls the line from Sherbrooke and Lennoxville to the east line of the State of Maine, and also the above charter of Feb. 2, A. D. 1871 with all its amendments.

This line in Maine is being nominally constructed by the Atlantic and Northwest Railway, one of the subordinate corporations of the Canadian Pacific Railway system, and the same subordinate corporation which constructed the new St. Lawrence bridge at Lachine.

Therefore after this line in Maine is completed, the Canadian Pacific Railway can run its trains across the State of Maine continuously to and from the Pacific Ocean and all intermediate points, to and from tide-waters at St. John and Halifax and various termini on the Gulf of St. Lawrence, so far avoiding delivery or receipt of traffic to or at New York, Boston or Portland, the latter an important seaport in the very State by whose comity it is enabled to extend its line to the maritime provinces of Canada.

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