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CONFIDENTIAL.

CORRESPONDENCE

RESPECTING THE

BRITISH NORTH AMERICAN FISHERIES.

1854-63.



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CONFIDENTIAL.

Correspondence respecting British North American Fisheries :
1854-63.

No. 1.

Mr. Hammond to the Law Officers of the Crown.

Gentlemen,

Foreign Office, April 29, 1854.

I AM directed by the Earl of Clarendon to transmit to you herewith an extract of a despatch from the Lieutenant-Governor of Nova Scotia to Her Majesty's Minister at Washington, dated February 16, 1854, by which you will perceive that the Lieutenant-Governor appears to construe an opinion given by the Law Officers of the Crown on the 6th of August, 1853, of which I also inclose a copy, as entitling the Legislature of Nova Scotia to expect that its concurrence should be asked for, previously to the conclusion of any Convention with the United States, for admitting the fishermen of the United States to fish within three miles of the coast of Nova Scotia.

Lord Clarendon directs me to request that you will inform his Lordship whether that construction is correct; and whether, if Her Majesty were to enter into a Convention with the United States for the purpose above-mentioned, it would be necessary to insert in the Article relating to the fisheries, a provision that its execution must depend on the assent of the local Legislature of Nova Scotia.

I am to add that Lord Clarendon is very anxious to receive your opinion on this point not later than Tuesday next, the 2nd of May.

I am, &c.
(Signed) E. HAMMOND.

Inclosure 1 in No. 1.

The Lieutenant-Governor of Nova Scotia to Mr. Crampton.

(Extract.)

Halifax, February 16, 1854.

THE Law Officers of the Crown in England have recently decided that within three miles of the coast the jurisdiction of the Provincial Governments and Legislatures legally and constitutionally extends.

Whatever may be decided then as respects the "bays," these rights ought not to be varied or compromised but with the consent of the parties concerned, and the equivalents to be given in exchange for rights of property so highly valued should rest upon no vague promises or indeterminate action of any Member of Congress, but should be yielded and secured by the same instrument that made the concession.

Inclosure 2 in No. 1.

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

My Lord Duke,

Doctors' Commons, August 6, 1853.

WE are honoured with your Grace's commands signified in Mr. Merivale's letter of the 20th of April last, stating that he was directed to transmit to us copy of a despatch, with its inclosure, received from the Lieutenant-Governor of Nova Scotia, and to request that we would jointly report to your Grace whether we agree in the view of the law taken by the Judge of the Admiralty Court at Halifax in the case of the "Creole," and, if not, in what respect we differ from it.

Whether, also, it appears to us that such amendments of the law, as suggested by the Judge in his letter of the 31st March, are called for or advisable?

We are also honoured with Mr. Merivale's letter of the 4th June, stating that, with reference to the Queen's Advocate's letter of the 23rd of April, he was directed by your Grace to transmit to us the copy of a further despatch from the Lieutenant-Governor of Nova Scotia, supplying the documents and other information required to enable us to report our opinion upon the case of the "Creole," seized for the infraction of the Fishery Regulations.

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

That we do not agree with the view of the law taken by the Judge of the Admiralty Court at Halifax in the case of the "Creole," and that we are of opinion that inasmuch as the "Creole," although originally a British ship, yet had fallen into the hands of foreigners and been altered so as not to correspond with her original certificate, and not re-registered, and inasmuch as she was not navigated according to the British Navigation Laws, she had lost her nationality and become a foreign ship; we are further of opinion that the Colonial Statute on the subject is valid, for reasons hereafter given by us in our answers to the questions, and that the "Creole" was, on these grounds, liable to condemnation and forfeiture.

With respect to the several questions on the case of the "Creole" framed by Mr. Attorney-General Uniacke, appended to his letter to Sir G. Le Marchant sent with the papers, we are of opinion—

1. That with respect to forfeiture under 59 Geo. III, c. 38, although both cases are equally within the mischief which the Act was intended to guard against, yet as the language of the Act is ambiguous, and as the Act is of a highly penal nature, we are of opinion that it will not be advisable to forfeit under it any but foreign vessels.

Even if the Imperial Act, 59 Geo. III, c. 38, should be insufficient to give Her Majesty power to impose all or any of the Rules and Regulations in question (a question which we need not now consider), the authority of the local Legislature appears to us to be sufficient to make them valid in effect, by its express Legislative enactment of them. The authority of the local Legislature extends (like that of the Imperial Parliament) over the space of the three miles upon the high seas next the coast, which is, by the comity of nations, part of the country to which it is adjacent; and we are of opinion that, upon this general principle, and irrespective of the Convention, the Imperial Statute, or the Regulations of the Sovereign in Council, the Colonial Legislature was legally entitled to legislate as it has done relative to the fisheries, and that its enactments are valid and binding.

3. We are of opinion that such a vessel is, under the circumstances stated, liable to forfeiture under the express provisions of the Colonial Statute already referred to.

4. We are of opinion that the effect of the 8th and 9th Vict., c. 89, is controlled by the 12th and 13th Vict., c. 29, s. 17, and that it is no longer necessary that the owner of a vessel shall be resident within the Queen's dominions in order to satisfy the requirements of the British Navigation Laws.

5. The master in all cases, and, besides the master, either three-fourths of the crew, or one seaman to every twenty tons, by 12th and 13th Vict., c. 29, s. 27, must be British subjects.

6. A foreign fishing vessel duly registered and manned as a British vessel may legally prosecute the fishery as suggested, by virtue of 12th and 13th Vict., c. 29.

7. Such a ship will be liable to forfeiture and condemnation if deficient in any requirement absolutely necessary to her nationality, for instance, if she be not registered or navigated as a British ship; but she will not be liable to forfeiture for deficiencies in other points of mere regulation which involve only specific penalties.

as, for instance, if she has not her tonnage carved on her beam, or her name painted on her stern.

We have, &c.
 (Signed) J. D. HARDING.
 A. E. COCKBURN.
 RICHARD BETHELL.

No. 2.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 2.)

My Lord,

Doctors' Commons, May 2, 1854.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to us therewith an extract of a despatch from the Lieutenant-Governor of Nova Scotia to Her Majesty's Minister at Washington, by which we shall perceive that the Lieutenant-Governor appears to construe an opinion given by the Law Officers of the Crown of the 10th of August, 1853, of which a copy is inclosed, as entitling the Legislature of Nova Scotia to expect that its concurrence should be asked previously to the conclusion of any Convention by Her Majesty and the United States for admitting the fishermen of the United States to fish within three miles of the coast of Nova Scotia.

Mr. Hammond further states, that your Lordship directs him to request that we would inform your Lordship whether that construction is correct, and whether, if Her Majesty were to enter into a Convention with the United States for the purpose above-mentioned, it would be necessary to insert in the Article relating to the fisheries a provision that its execution must depend on the assent of the Local Legislature of Nova Scotia.

In obedience to your Lordship's commands we beg to state—

That the construction which it appears has been put upon our Report of the 10th of August, 1853, by the Lieutenant-Governor of Nova Scotia is not correct, if our opinion has been construed as importing that the authority of the Provincial Legislature of Nova Scotia over the three marine miles adjacent to the coast can either control or exclude the action of the Imperial Legislature.

We are, indeed, of opinion that the proposed Convention, being in derogation of the provisions of the Statute, 59 Geo. III, c. 38, cannot be carried into effect without a Legislative Act; but such Act should proceed from the Imperial Parliament, and not from the Local Legislature.

We have, &c.
 (Signed) J. D. HARDING.
 A. E. COCKBURN.
 RICHARD BETHELL.

No. 3.

The Earl of Clarendon to Lord Elgin.

(No. 1. Secret.)

My Lord,

Foreign Office, May 4, 1854.

YOUR Lordship being about forthwith to resume your duties as Governor-General of Her Majesty's Provinces in North America, Her Majesty's Government conceive that it might be highly beneficial to the public service that you should, on your way to the seat of your Government pay a visit to Washington, where you may have an opportunity of conferring with the Government of the United States on matters in which the interests of the British Provinces are very materially concerned.

Your Lordship is fully informed of the cause of the discussions between Her Majesty's Government and that of the United States on the subject of the fisheries and trade in which the British Provinces and the United States are more immediately interested; but for your greater convenience I furnish you, confidentially, with a printed collection of correspondence on this matter which, however, you will eventually return to this Office.

In this collection you will find a despatch which I addressed to Her Majesty's Minister at Washington, on the 2nd of February last, explaining the reasons which

induced Her Majesty's Government to consider it expedient to suspend for a time the negotiation on those matters which he had been authorized to carry on with the Government of the United States; but it is possible that the communications which you may have with the President and Mr. Marcy during your stay at Washington may give you an opportunity of ascertaining whether there is any likelihood at the present time of the negotiation, if resumed, being brought to a successful conclusion. And, in order that you may be able to take advantage of any favourable opening for that purpose, Her Majesty has granted you a full power under the Great Seal, authorizing you to negotiate and conclude on Her Majesty's behalf, any Treaty with the United States.

It is very desirable that before you reach Washington, you should ascertain how far the legislatures of the several British Provinces would be willing, by moderating their extreme demands, to smooth away the difficulties which have hitherto proved a bar to the conclusion of any Treaty. It is clear that if the Provinces, on the one hand, and the United States, on the other, refuse to abate any portion of their pretensions, it is useless for Her Majesty's Government to negotiate any further; but in such an extreme case, and more particularly if it originated in the pertinacious adherence of the Provinces to their demands, Her Majesty's Government might, however reluctantly, be compelled to look rather to Imperial than to Colonial interests alone, and, as in the case of Newfoundland, referred to in the letter to the Colonial Office, of which I inclose a copy, be driven to consider whether it were right to sacrifice the former for the latter.

Your Lordship will find in the correspondence which I have inclosed full particulars as to the extent of compromise to which Great Britain has declared herself prepared to go, and the points which the Government of the United States has hitherto been indisposed to concede. In fact, that Government has, in the course of the negotiations, rather raised than abated its pretensions; and this consideration has not been without its weight in deciding Her Majesty's Government to suspend the formal prosecution of their negotiation, lest by appearing over anxious for a settlement of the points in discussion they should encourage the Government of the United States still more to enhance their demands.

The United States are anxious to participate in the fisheries in the bays and on the shores of the British Provinces; and Great Britain on behalf of the Provinces is not indisposed to concede that privilege. The points on which the two Powers disagree is the sacrifice which the United States shall make to obtain this privilege.

Great Britain, in return for the admission of the United States to participate in the in-shore fisheries of the British Provinces, with the exception of the salmon fisheries, has required:—

1. The remission of the duty levied in the United States on British-caught fish when imported into those States.
2. The abolition of the bounty now payable in the United States on American-caught fish.
3. The admission of the British fishermen from the Provinces to fish within three miles of the Atlantic and Pacific Coasts of the United States.
4. The admission of British-built vessels, including those built in the British Colonies, to register in the United States when manned by citizens of the United States; in the same manner as that privilege has been granted by Great Britain to vessels built in the United States.
5. That certain articles produced in the British Colonies, and specifically coal and iron, shall be admitted duty free into the United States, in conformity with the principle on which the question of duties in general was to be arranged, namely, that such articles as were produced equally in the British provinces and the United States might pass reciprocally without question or interference from one side of the border to the other.

The Government of the United States, on their side, declined to abolish the bounty on American-caught fish; to admit the British fishermen to fish generally on the American coast; to admit British-built vessels to registry; and to allow coal and iron to be retained in the list of articles which shall be admitted duty free into the United States. On four, therefore, out of the five points put forward by the British Government in behalf of its provinces, the United States have hitherto refused to make the required concession; and not only this, but they have put forward a claim to be admitted to participate in the British fisheries on the north-west coast of America, on the plea that the British concession should be applicable to all the shores of the British dominions, inasmuch as access to the United States' fisheries on the Pacific is required

by Great Britain, notwithstanding they themselves refuse to admit the British fishermen to fish on the coast of Florida.

Unless these conflicting pretensions and requirements can be reconciled, the conclusion of any agreement between the two countries is out of the question; and the point to which Her Majesty's Government wish to direct your Lordship's attention is the possibility of reconciling them.

The influence and authority which you so justly possess in the British provinces may afford you means for inducing the Colonial Governments to modify their extreme demands. On the other hand, there are considerations arising out of the existing state of affairs in Europe which may operate with the Government of the United States and induce it to desire to be well with England at the present time, if not from sympathy with the cause for which England and France are now arrayed in arms against Russia, at all events from the great material advantages which a commercial nation like the United States must derive from the unexampled liberality of the principles in regard to neutrals, on which those two Powers have announced their intention of acting during the present war.

It is not, however, desirable that your Lordship should appear at Washington in the character of an Envoy from Her Majesty, specially appointed to settle these troublesome questions. The mere suspicion of such a purpose would, of itself, suffice to render the Government of the United States still more inaccessible than heretofore to reason on the subject, inasmuch as it would conclude, however erroneously, that the British Government was prepared to make sacrifices for the sake of averting a discussion with the United States while engaged in an arduous warfare with an European Power.

Your Lordship, however, will very properly take advantage of any information which you may acquire before you reach Washington of the disposition of the Colonial Legislatures to moderate their demands, to ascertain from the Government of the United States whether it would be prepared to act in this respect in a spirit of reciprocity. If the Colonial Governments should be willing, for the sake of facilitating a settlement of the question respecting the fisheries, which is fraught with so much danger to the maintenance of a good understanding between Great Britain and the United States, to modify their demands on any of the specific points to which I have alluded and in which Colonial interests are mainly involved, Her Majesty's Government would have no objection to give effect to such an important disposition on the part of the local Legislatures; and it would then remain for your Lordship to ascertain how far the Government of the United States would be prepared to act in a corresponding spirit. If it should be so disposed, your Lordship will state to that Government that you are prepared at once to conclude an arrangement on the basis of mutual concession. If, on the other hand, the Government of the United States should be unwilling to accede to terms in themselves fair, and such as it would comport with the honour of the British Crown to admit, your Lordship will hold out no expectation of the British Government acquiescing in any such one-sided settlement.

Your Lordship will be at liberty to adopt any course which you may think expedient or safe, in order to discountenance any unreasonable pretensions on the part of the Colonial Governments, but Her Majesty's Government would, except in a very extreme case, be unwilling that anything like even moral coercion should be resorted to with that view.

Your Lordship will also steadily keep in mind, as a principle never to be lost sight of in negotiating with the United States, that no concession can safely be made to that Government, except in return for corresponding concession on its part; that any concession on which it may insist must be purchased by concession on its side, and that so far from being likely to arrive at a permanent and satisfactory settlement by the adoption of a yielding tone, the result in all probability would be the reverse. I do not mean to say that your Lordship should in all cases require concessions entirely equivalent in value; Her Majesty's Government would, for instance, be content to forego the Fishery on the coast of Florida, which the Americans decline to yield, in return for the withdrawal by the United States of the pretensions which they have advanced to the fisheries on the coasts of the British territories on the north-west side of the continent. But in either case the abandonment must be made on principles of mutual convenience, without any further specification of the grounds which regulate that convenience. Her Majesty's Government could not admit as a valid ground the objection founded on the slave character of the State of Florida, neither might the Government of the United States be disposed to admit the validity of an objection founded on the Charter given by the British Crown to the Hudson's Bay Company.

Her Majesty's Government are certainly desirous of settling the question of

Fisheries and Reciprocity of Trade on a permanent footing, but if that should not be possible, they would not object to a temporary arrangement being effected, based on the principles to which I have adverted, which would obviate the risk of collision on the coasts between the national forces of Great Britain and the United States, or between their respective fishermen. Nevertheless, even with a view to the conclusion of a temporary arrangement, the experience which has been derived from the transactions of the last two years of the advantage of acting with firmness no less than with moderation in the treatment of the question, must not be lost sight of.

Her Majesty's Government place the utmost reliance in your Lordship's judgment and discretion, and they will not fetter you in the exercise of them by laying down any precise instructions to which you must adhere. You may choose your own time for opening the subject with the Government of the United States, and may be guided by the circumstances of the moment as to the degree of urgency which you should employ. It is scarcely, indeed, to be supposed that, under the most favourable circumstances, you could finally conclude an arrangement at Washington within the limited time to which, in the first instance, your stay there must necessarily be restricted; and therefore, if you should consider it advisable to confine yourself on the present occasion to treating the subject with the United States' Government in general terms, and to ascertaining how far, and on what principles, that Government may be disposed at a future period to enter with you more deeply into the question, with the view of then arriving at a definite conclusion, you are at perfect liberty to do so, and to intimate that when the pressing calls on your attention elsewhere shall admit of your returning to Washington you will be ready to resume the question, and to do your best to meet any disposition on the part of the Government of the United States to settle it on fair terms of reciprocity.

Her Majesty's Government are prepared to leave the matter for the present entirely in your Lordship's hands, and they will, therefore, not release Mr. Crampton from the restriction imposed upon him by my despatch No. 19 of the 2nd February. But Her Majesty's Government, entertaining the highest opinion of Mr. Crampton's judgment and ability, cannot too distinctly recommend your Lordship to communicate unreservedly, and with the most entire confidence, with that gentleman; and I can give your Lordship no better proof of the estimation in which Her Majesty's Government hold Mr. Crampton than by stating to you that he will be furnished confidentially with a copy of this instruction, at the same time that he will be directed to afford your Lordship all the assistance in his power for the accomplishment of the object which Her Majesty's Government have in view.

The position which your Lordship occupies in the British Provinces is calculated to give more than ordinary weight to any arguments which you may use for the purpose of influencing either the Colonial Legislature or the Government of the United States. The former will see in your Lordship an advocate whose able and impartial administration of their general affairs entitles him to the utmost unreserved confidence and respect; the latter will conclude that your insistence on any specific points is based on considerations which you are well aware cannot be overlooked; and both may hope to obtain by your intervention not only a fair and honourable settlement of the matters in discussion between them, but an opportunity of developing the vast natural resources which they possess within their respective boundaries, and of laying the foundation of solid and permanent good-will on either side of the border by which their territories are separated from each other.

I am, &c.
(Signed) CLARENDON,

No. 4.

The Earl of Clarendon to Lord Elgin.

(No. 2.)

My Lord,

Foreign Office, May 4, 1854.

MY attention having been called to the construction which the Lieutenant-Governor of Nova Scotia appeared to place upon an opinion given by the Law Officers of the Crown on the 10th of August, 1853, as entitling the Legislature of that Province to expect that its concurrence should be asked previously to the conclusion of any Convention by Her Majesty and the United States for admitting the fishermen of the United States to fish within three miles of the coast of Nova Scotia, I directed a further reference to be made to the Law Officers on the subject; and I have now to

inclose, for your Lordship's information and guidance, a copy of the Report which I have received from them, together with the extract of the Lieutenant-Governor's despatch, and a copy of the previous opinion of the Law Officers to which he referred.

Your Lordship will perceive that the Law Officers consider the Lieutenant-Governor's construction of their Report to be incorrect; but that they call attention to the provisions of the Act of the 59th Geo. III, cap. 38, of which I inclose a copy, and which renders an Act of the Imperial Parliament necessary to give effect to any such stipulations with regard to fisheries as those now in question.

I am, &c.
(Signed) CLARENDON.

No. 5.

The Earl of Clarendon to Lord Elgin.

(No. 3.)

My Lord,

Foreign Office, May 4, 1854.

I TRANSMIT to your Lordship a copy of a report which has been made to me by Dr. Twiss, of the Civil Law Bar, on the provisions of the 1st Article of the Convention between Great Britain and the United States of the 20th October, 1818.

Your Lordship will find in this paper able and conclusive arguments in support of the view taken by the British Government of that Article, and you will make use of those arguments as you may think most expedient in your discussions with the Government of the United States.

I am, &c.
(Signed) CLARENDON.

No. 6.

The Earl of Clarendon to Lord Elgin.

(No. 4.)

My Lord,

Foreign Office, May 4, 1854.

ALTHOUGH your Lordship will not be called upon to discuss the questions to which the inclosed papers relate, I think it desirable that you should have in your possession copies of the Memoranda which have been interchanged between the United States' Minister in this country and myself respecting the territories occupied by Great Britain in the Bay of Honduras, and the Protectorate afforded to the Mosquito nation by the British Crown.

I am, &c.
(Signed) CLARENDON.

No. 7.

The Earl of Clarendon to Lord Elgin.

(No. 5.)

My Lord,

Foreign Office, May 4, 1854.

WITH reference to the wish which would seem to be now entertained in Newfoundland to be included in the stipulations of any Treaty which may be entered into with the United States for the settlement of the Fishery and Trade Questions, I have to state to your Lordship that, considering that certain special privileges of fishing in the neighbourhood of Newfoundland are enjoyed by France, it will be necessary to insert in an Article by which greater rights of fishing on the coast of Newfoundland than they now enjoy should be conceded to the United States, words to this effect,—“saving and excepting the rights of France on the coast of Newfoundland.”

I am, &c.
(Signed) CLARENDON.

No. 8.

The Earl of Clarendon to Mr. Crampton.

(No. 103. Secret.)

Sir,

Foreign Office, May 4, 1854.

THE Earl of Elgin being about to return to Canada, Her Majesty's Government have thought it advisable that his Lordship should take Washington on his way, and avail himself of the opportunity which he will thus have of personally communicating with the President and Secretary of State of the United States, in order to ascertain whether there is any disposition on their part to come to an understanding with Her Majesty's Government, on the question of fisheries and reciprocity of trade between the British provinces in America and the United States.

The unyielding spirit which dictated the last communication made to you on this subject by the United States' Government, decided Her Majesty's Government, as I informed you in my despatch No. 19 of the 2nd of February last, to suspend for a while your discussion with the American Secretary of State on the matter; and Her Majesty's Government would, under ordinary circumstances, have strictly abided by that decision. But it appears to them that, from the position which he holds as Governor-General of the British provinces, Lord Elgin may be enabled to induce the United States' Government on the one hand, and the Colonial Legislature on the other, to abate their extreme pretensions, and may thus have the means of facilitating if not concluding, an arrangement by which their conflicting pretensions may be satisfactorily reconciled. You will therefore clearly understand that it is not from any distrust of your ability to carry on the negotiation, but from the accidental circumstances connected with Lord Elgin's position, and his return to Canada, at the present moment, that Her Majesty's Government have determined to confide to him the task of endeavouring to settle these troublesome questions; and I can give you no better proof of the confidence which Her Majesty's Government repose in you, than by placing in your hands, although for your own personal information alone, a copy of the instructions with which Lord Elgin is furnished.

Knowing the deep interest felt by Her Majesty's Government in the settlement of these matters, you will, I feel convinced, stand in need of no special instructions from me to afford his Lordship the benefit of your advice and assistance, but will zealously aid him to the utmost of your power in his endeavours to give effect to the wishes of Her Majesty's Government.

I am, &c.

(Signed) CLARENDON.

No. 9.

The Earl of Clarendon to Mr. Crampton.

(No. 107.)

Sir,

Foreign Office, May 4, 1854.

MY attention having been called to the construction which the Lieutenant-Governor of Nova Scotia appeared to place upon an opinion given by the Law Officers of the Crown on the 10th of August, 1853, as entitling the Legislature of that Province to expect that its concurrence should be asked previously to the conclusion of any Convention by Her Majesty with the United States for admitting the fishermen of the United States to fish within three miles of the coast of Nova Scotia, I directed a further reference to be made to the Law Officers on the subject; and I now inclose, for your information, a copy of their Report, together with an extract of the Lieutenant-Governor's despatch, and a copy of the previous opinion of the Law Officers to which he referred.

You will perceive that the Law Officers consider the Lieutenant-Governor's construction of their Report to be incorrect, but that they call attention to the provisions of the Act 59 George III, cap. 38, of which I inclose a copy, and which renders an Act of the Imperial Parliament necessary to give effect to any such stipulations with regard to fisheries as those now in question.

I am, &c.

(Signed) CLARENDON.

No. 10.

The Earl of Clarendon to Mr. Crampton.

(No. 108. Secret.)

Sir,

Foreign Office, May 4, 1854.

I HAVE informed the Earl of Elgin, with reference to the wish of Newfoundland to be included in the stipulations of any Treaty for the settlement of the Fisheries and Trade Questions, that, as certain special privileges of fishing in the neighbourhood of that island are enjoyed by France, it will be necessary to insert in an Article by which greater rights should be conceded to the United States than they now enjoy, words to this effect, "saving and excepting the rights of France on the coasts of Newfoundland."

I am, &c.

(Signed) CLARENDON.

No. 11.

Mr. Crampton to the Earl of Clarendon.—(Received May 9.)

(No. 106.)

My Lord,

Washington, April 23, 1854.

REAR-ADMIRAL FANSHAWE, who has lately taken the command of Her Majesty's naval forces on the North American station, has written to me, expressing a hope that I may be enabled to confer with him upon several subjects of interest in regard to the service upon which he is engaged. It appears to me that it would be very desirable that I should be enabled to comply with his Excellency's request to repair to Halifax for that purpose in the course of the present summer; and I would, therefore, should your Lordship concur with me in this opinion, request that I may be authorized to leave Washington for a short period for that purpose.

Should your Lordship concur with my request, I would suggest that it might be well that I should avail myself of the same opportunity to confer with the Governors of Her Majesty's North American Colonies on the commercial questions pending between those Colonies and the United States.

I have, &c.

(Signed) JOHN F. CRAMPTON.

No. 12.

The Earl of Clarendon to Mr. Crampton.

(No. 118.)

Sir,

Foreign Office, May 12, 1854.

I HAVE to state to you, in reply to your despatch No. 106 of the 23rd ultimo, that I approve of your proceeding to Halifax to confer with Rear-Admiral Fanshawe.

The present communication which you will have with the Governor-General of Her Majesty's North-American Provinces, and to which I have alluded in my despatch No. 103 of the 4th instant, will enable you to judge whether any personal communication with the Lieutenant-Governors of the several Provinces is necessary.

I have, &c.

(Signed) CLARENDON.

No. 13.

Mr. Merivale to Mr. Hammond.—(Received May 13.)

(Confidential.)

Sir,

Downing Street, May 12, 1854.

I AM directed by the Duke of Newcastle to transmit to you, for the information of the Earl of Clarendon, two copies of the second series of the papers collected in this Office for the use of the Cabinet relative to the fisheries of British North America.

I am, &c.

(Signed) HERMAN MERIVALE.

Mr. Hammond to Mr. Merivale:

Sir, *Foreign Office, May 13, 1854.*
 I HAVE laid before the Earl of Clarendon your letter of the 12th instant, inclosing two copies of Part 2 of the papers which have been printed confidentially by the Colonial Office relative to the fisheries of British North America; and I am to request that you will express to the Duke of Newcastle Lord Clarendon's thanks for the communication of these papers, but that you will at the same time move his Grace to furnish Lord Clarendon with copies of Part 1, which has not yet been communicated to this office.

I am, &c.
 (Signed) E. HAMMOND.

Mr. Peel to Mr. Hammond.—(Received May 16.)

(Confidential.)

Sir, *Downing Street, May 16, 1854.*
 WITH reference to the instructions to the Earl of Elgin, of which copies were transmitted to this Department in your letter of the 9th instant, on the subject of the projected arrangement with the United States for reciprocal rights of fishery and trade in North America, I am directed by the Duke of Newcastle to state to you, for the information of the Earl of Clarendon, that there are certain points relating to the inclusion of Newfoundland in the arrangement which he thinks, upon consideration, it will be advisable to make the subject of a further communication to Lord Elgin.

2. The duties at present collected in Newfoundland, on the articles proposed for mutual free admission (taking the list in Mr. Marcy's draft Treaty with the additions required by Her Majesty's Government), amount to not much less than 20,000*l.* out of a total revenue of not much more than 60,000*l.* This will be a very heavy amount for the Colonial Legislature to replace. Therefore, in order to reduce the loss of revenue to more manageable proportions, it is desirable, if possible, to stipulate on behalf of Newfoundland for a right to return duties of a certain amount on the several articles, or on a sufficient portion of them; a course which has been suggested by both the Assembly and Executive Government of the Colony.

3. The Duke of Newcastle conceives that there would be no occasion to reserve to the United States, in return, any right to retain duties on the produce of Newfoundland. The exports of its own produce from Newfoundland are, in point of fact, confined (with some insignificant exceptions) to fish and its products, and the free admission of these articles from Newfoundland into the United States, ought in fairness to accompany the admission of United States' citizens to the fisheries of the same Colony on equal terms with British subjects.

4. For the same reason it may be questioned whether there is any occasion for Newfoundland to enter into any stipulation at all with the United States with respect to its duties on imports, fish not being practically amongst these. And if some reduction of the existing duties be proposed, which the Duke of Newcastle thinks will be advisable, his Grace considers that the offer would be altogether liberal on behalf of Newfoundland. His Grace would leave Lord Elgin to consider to what rates of duty and to what articles the offer of reduction should extend.

5. The Duke of Newcastle, however, admits that the right to return duties which he thus suggests, would be, in some degree, a departure from the general principles of the negotiations, and, therefore, if it is impossible to prevail on the United States' Government to accede to this special arrangement as regards Newfoundland, his Grace would give up the point, and consent to a stipulation for the total remission of the duties in Newfoundland as in the other Colonies, rather than prevent the conclusion of the Treaty, or deprive this Colony of an opportunity of joining the rest in a scheme of such great importance.

6. The Treaty, as framed in Mr. Marcy's draft, will remain entirely inoperative, if any one of the several Legislatures concerned, fails to take the requisite steps to give it legal effect. This provision which is no doubt essential as regards the other Colonies, the Duke of Newcastle would not object to, as regards Newfoundland, in the event of easy terms of inclusion being obtained for this Colony. But in the event of a stipulation

being unavoidable for the sweeping change last referred to, or, indeed, one involving any serious relinquishment of revenue, his Grace would be unwilling to risk the success of the entire scheme on the adhesion of Newfoundland, precarious as this would then become in consequence of the difficulties of the financial question. His Grace would, therefore, wish Lord Elgin to consider whether it might not be made a condition of assenting to stipulations, of which the reception in the Colony will be so uncertain, that the operation of the scheme as regards the other Colonies shall not be made dependent on the decision of Newfoundland, but only so as regards its extension to this Colony. If the United States' Government should claim as part of such an arrangement, the insertion of additional stipulations with a view to prevent Newfoundland, if excluded from obtaining indirect admission for its produce into the States, Lord Elgin would be at liberty to consider any such proposition.

7. The last point on which the Duke of Newcastle has to suggest additional directions to Lord Elgin, relates to the fishery rights of France on the coasts of Newfoundland. Lord Elgin has been instructed to introduce words to save and except those rights, in the statement to be made in the proposed Treaty of fishery rights to belong to the United States. But it is a disputed question what the existing rights of France on the Newfoundland coasts are, and it is under consideration at the present time to attempt a settlement of this dispute by offering France, so far as our engagements to the United States permit, exclusive, instead of her present rights of fishery on the upper part of these coasts. It therefore appears to the Duke of Newcastle very desirable, and his Grace would suggest for Lord Clarendon's consideration, whether it might not be practicable, in laying down anew the fishery rights of the United States in regard to Newfoundland, to except not only the present rights of France, but all the coasts on which we are prepared to make the French rights exclusive.

8. Subject to the present observations, the Duke of Newcastle is satisfied of the expediency and importance of including Newfoundland in the projected arrangement, with the view, both of placing the trade and intercourse of the Colony with its neighbours on a better footing, and of giving a more consistent character to the Imperial engagements with respect to its fisheries.

I am, &c.
(Signed) FREDERICK PEEL.

No. 16.

The Earl of Clarendon to Lord Elgin.

(No. 6.)

My Lord,

Foreign Office, May 19, 1854.

I THOUGHT it advisable, on your Lordship's departure for Washington, to give you, in a few words, a general caution against entering into any arrangement with the United States for including Newfoundland in the Fishing and Trade Convention which you are authorized to negotiate which might clash with the special privileges of fishing in the neighbourhood of that island now enjoyed by France. It is desirable, however, that your Lordship should be more fully informed of the complicated position of affairs as regards Newfoundland, and of the various embarrassments which may attend any attempt to include that island in the proposed Treaty with the United States.

The first of those difficulties, unquestionably, is the right which France possesses to fisheries on the coast of that island, which, whatever may be the literal meaning of the terms in which it is conveyed, is practically an exclusive right as against British enterprise. For although the Treaty of 1783 and the Declaration of that year do not convey any exclusive right to France, yet they do secure French fishermen from being interrupted in any manner by English competition, and it appears that the English fishermen cannot carry on the cod fishery within the limits specified in the Treaty without interrupting the French fishermen. Consequently, the French right, though nominally concurrent, is, as far as the cod fishery is concerned, practically exclusive.

But though such may be considered the bearing of the Treaty as regards British fishing, the Treaty has not been considered as precluding the British Government from granting, without limitation, to the United States a right of fishing on certain parts of the coast of Newfoundland, from which, as I have said above, British fishermen are, as far at least as the cod fishery is concerned, virtually excluded; and the Treaty of 1818, by which that right was granted to the United States, conveyed to those States rights of fishing in other quarters, which though much coveted by, have never yet been

formally conceded to, France. I mean the fisheries to and through the Straits of Belle Isle and on the coast of Labrador.

Your Lordship is doubtless aware that, in consequence of the uncertainty of the precise meaning and effect of a portion of the British Treaty with France, and the inconveniences resulting from it, as regards Great Britain, and of the impediments offered to the successful prosecution of the general Newfoundland fishery by the difficulty of procuring bait, as regards France, negotiations have been for a long time in progress between the two countries with a view to the improvement of the existing state of things, and to the removal of causes of difference and dispute between the respective Governments. I need not trouble your Lordship with details upon this point, but it is obvious that much embarrassment might arise, and the conclusion of an amicable arrangement with France be materially impeded, if the result of your negotiation with the United States should involve a still further concession of rights of fishing on the coast of Newfoundland, from which British fishermen are now practically excluded, and thereby give occasion to remonstrances on the part of France against the admission of the United States to share in a fishery which is now enjoyed, without British competition, by France. For this reason, it is thought necessary that the rights of France should in terms, at least, be reserved in any Treaty which your Lordship may conclude with the United States.

But there is an additional difficulty opposed to the unrestricted admission of the United States to the fisheries on the coasts of Newfoundland; for that privilege would give the American fishermen additional facilities for supplying those of France with fish caught in the adjoining waters, and the equivalent which the British Government would have to offer to the French Government for any concessions which a consideration of British interests might prompt it to demand in return for facilities to be afforded to French fishermen in procuring means for the successful prosecution of their occupation, would thereby lose much of its value.

If there were any good grounds for anticipating that the United States might be induced to consent not only to the rights of France under existing Treaties being reserved, but also to the rights which might be conferred upon France by any future Treaty being dealt with in the same manner, Her Majesty's Government would not be disinclined to make a proposal to that effect; but as they cannot suppose that the United States would easily be brought to listen to such a proposal, I am not prepared to instruct your Lordship to bring it forward.

Thus far as regards the difficulties presented by our present and prospective arrangements with France, in the way of any Treaty with the United States, which should apply to the Island of Newfoundland equally as to the rest of the British Colonies.

As regards the position and interests of Newfoundland the question is not less beset with difficulties.

Your Lordship is aware that it is only recently that the Legislation of that island have evinced a disposition to be included in any general arrangement with the United States; but their willingness to be so is clogged with reserves which rest on considerations of vital importance as regards the interests of the island, but which seem to preclude the expectation that Newfoundland can be included in the Convention under consideration.

The object of that Convention is two-fold—to provide for a joint prosecution of fisheries on the coasts of the British Provinces and of the United States respectively, and for the sale of the produce of those fisheries in the respective countries; and also for a free and mutual exchange of certain of the products of the British and American soil: and these two objects are indissoluble. For it is only in consideration of the advantage that would be derived by the British Provinces from the unrestricted interchange of certain articles of produce with the United States, that Her Majesty's Government could consent to the admission of the United States to participate in the British fisheries, for which the United States have no equivalent concession as regards fishery to offer in return.

But it appears that it would be ruinous for Newfoundland to be included in a Convention founded on this basis, which would at once deprive the island of one-third of its limited revenue; and it is therefore suggested that, although as regards the other British Provinces and the United States, absolute freedom of trade might be stipulated in the Convention, an exception should be admitted as regards the trade between Newfoundland and the United States, so that, on certain specified articles, duty to a moderate amount might be levied for the benefit of the Colonial Treasury. But such a departure from the basis of the Convention, if sanctioned, might probably be urged

with equal force by other Colonial Legislatures in regard to certain other articles, whose introduction into any of the British Provinces for competition with the produce of the British soil it might seem desirable to impede; and if such a principle were to be sanctioned in one instance, it would be difficult, if not impossible, to deny its applicability to another; and the result would probably be, that the Convention, if concluded with such exceptions, would only serve to complicate, instead of simplifying, the commercial intercourse between the British Provinces and the United States in the first place, and between the British Provinces themselves in the next.

Moreover, it is scarcely to be expected that the Government of the United States would assent to such a reserve in favour of duties on particular articles as the Legislature of Newfoundland desire to make. The United States would certainly not do so without a corresponding reserve in their favour; and in what could that reserve consist? The products of the soil of Newfoundland which enter into the export trade are few and of no great value, and it is not pretended that the imposition of a duty on the admission of such of them as might be sent to the markets of the United States would tempt those States to concur in the imposition of a duty in Newfoundland on the products of the soil of the United States. The article of fish, while it would form almost the sole object of the export trade of Newfoundland to the United States, would be the only one on which the imposition of a duty would compensate the United States for any duties which the Treaty might allow to be levied in Newfoundland on the produce of those States; and, whatever might be the truth of the case, it cannot be supposed the United States would concur in a proposition that the extended right of fishery to be conceded to the United States on the coasts of Newfoundland ought in fairness to be purchased by the free admission of the produce of the British Colonial fishery to the markets of the United States.

The obstacles to the association of Newfoundland in the proposed Treaty with the United States seem, therefore, to be very great. On the one hand, the embarrassment of the Colony by the diminution of its revenue if it comes into the Treaty on the same terms and principles as the other British possessions; on the other, the certainty that the United States would not agree, as indeed they could not be expected to agree, to admit of exceptions in favour of Newfoundland wholly inconsistent with the principles on which the negotiations are carried on, and for which Newfoundland has not the means of offering or the inclination to offer any corresponding equivalent.

Under these circumstances it is a matter of no small perplexity to determine what course should be pursued. The Legislature of Newfoundland express a desire to be included in the General Convention, and might feel aggrieved if the island were not brought within its provisions; on the other hand, the United States profess to entertain the same desire, and might find in the refusal, on whatever grounds, to admit their fishermen to extended privileges on the coast of Newfoundland, a pretext either for breaking off the negotiation altogether, or for insisting with unflinching pertinacity on concessions in other quarters which might not be acceptable to others of the British Provinces.

Your Lordship will have seen in the several drafts of Treaties which have been under discussion with a view of settling with the United States the various questions arising out of the Colonial Fisheries and trade, that it has been constantly and indeed necessarily provided that the execution of any Treaty must depend on the assent of the Colonial Legislatures and of the Senate of the United States to the stipulations which might be agreed upon by the Plenipotentiaries on either side; but as regards the assent of the British Colonial Legislatures, it has always been assumed that such assent would be concurrently given by all, or if not that the Treaty would altogether fall to the ground. The reason is obvious; the British Crown could only negotiate such a Treaty, or the United States concur in it, by dealing with the British Provinces as constituting for the purposes of the Treaty, a single body. Otherwise, the intercourse between the Provinces and the United States would have to be carried on under different systems, and the United States might require security that a dissenting Province should not, by means of intercolonial communication, be partially admitted to the benefits, though exempted from the burden of the Treaty. If it were not for this obvious principle, your Lordship might without much risk of inconvenience proceed to negotiate with the United States for Newfoundland in common with the other British Provinces, on the understanding that, although by refusing to assent to the terms finally agreed upon, Newfoundland could exclude itself from the benefit of the Treaty, the Treaty would still hold good as regards the other Provinces. But for the reasons which I have stated such an expedient is out of the question; and as the Legislature of Newfoundland might under existing circumstances, withhold its assent from any Treaty

which would place the trade of the island with the United States on the same footing of reciprocity as it is proposed to place the trade between those States and the other British Provinces, it is impossible to make the settlement of the embarrassing questions in regard to Colonial intercourse which the British Government and that of the United States are equally desirous of effecting, dependent on the contingency of the assent of the Island Legislature which there is every reason to suppose would be withheld.

It would seem then that, if the Legislature of Newfoundland and the United States are prepared to make arrangements for the extended permission of American fishermen to the fisheries on the coasts of Newfoundland, the adjustment of the terms on which those arrangements should be effected, can only safely be attempted by a separate Treaty between Great Britain and the United States having reference to Newfoundland alone. Such an arrangement your Lordship may feel yourself at liberty to propose to the Government of the United States, if in your discussion with that Government while at Washington, you should find it disposed to treat on the questions of Fisheries and Trade as already put before it, and decisions of embracing Newfoundland within the provisions of any Treaty by which those questions should be arranged

Under any circumstances it is desirable that your Lordship should, even without waiting to ascertain whether the Government of the United States is prepared to assent to an exceptional arrangement as regards Newfoundland, at once communicate with the Governor of that island, and state the views of Her Majesty's Government as set forth in this despatch; and your Lordship will request the Governor to inform you without loss of time of what sacrifices of revenue the Legislature of the island may be disposed to make for the purpose of facilitating your negotiations on its behalf.

I am, &c.
(Signed) CLARENDON.

No. 17.

The Earl of Clarendon to Lord Elgin.

(No. 7.)

My Lord,

Foreign Office, May 19, 1854.

WITH reference to my despatch No. 6 of this day's date, I have to state to your Lordship that, in the event of its proving to be impossible to include Newfoundland in any General Treaty with the United States, an Article might perhaps be inserted in such General Treaty, providing that the questions respecting Newfoundland were reserved for a separate negotiation.

I am, &c.
(Signed) CLARENDON.

No. 18.

The Earl of Clarendon to Mr. Crampton.

(No. 127. Confidential.)

Sir,

Foreign Office, May 19, 1854.

I INCLOSE herewith, confidentially, for your information, a copy of a despatch which I have addressed to the Earl of Elgin respecting the question of including Newfoundland in the arrangements which his Lordship may have to make with the Government of the United States in regard to fishery and commercial intercourse.

I am, &c.
(Signed) CLARENDON.

No. 19.

Mr. Hammond to Dr. Twiss.

Sir,

Foreign Office, May 20, 1854.

I AM directed by the Earl of Clarendon to acknowledge the receipt of your letter of the 28th ultimo, stating your opinion as to the interpretation to be put upon the expressions respecting fisheries employed in the 1st Article of the Convention of the

20th of October, 1818, between Great Britain and the United States, and I am to convey to you his Lordship's thanks for the clear, able, and convincing report by which you have elucidated that difficult and complicated question.

I am at the same time to inform you that his Lordship has directed the Chief Clerk of this Office to pay to you the sum of 100 guineas as the fee to which you are entitled for the trouble which you have bestowed on this matter.

I am, &c.
(Signed) E. HAMMOND.

No. 20.

Mr. Merivale to Mr. Hammond.—(Received May 26.)

(Confidential.)

Sir,

Downing Street, May 26, 1854.

I AM directed by the Duke of Newcastle to acknowledge your letter of the 13th instant, and in compliance with the request therein made to transmit to you two copies of the first part of the papers relative to the fisheries of British North America.

I am, &c.
(Signed) HERMAN MERIVALE.

No. 21.

Mr. Hammond to Mr. Peel.

(Confidential.)

Sir,

Foreign Office, May 27, 1854.

WITH reference to my letter of the 9th instant, communicating to you copies of instructions given by the Earl of Clarendon to the Earl of Elgin, respecting the settlement of pending questions with the United States in regard to fishery and commercial intercourse, and to your reply of the 16th instant, I am directed by his Lordship to transmit to you, for the information of the Duke of Newcastle, copies of further instructions which Lord Clarendon has given to Lord Elgin in regard to the question of including Newfoundland in the negotiations which Lord Elgin may open with the United States.

I am, &c.
(Signed) E. HAMMOND.

No. 22.

The Earl of Elgin to the Earl of Clarendon.—(Received June 26.)

My Lord,

Government House, Quebec, June 12, 1854.

I SEND herewith, by special messenger to New York, a Treaty executed on Monday the 5th of June by Mr. Secretary Marcy on behalf of the Government of the United States, and myself on behalf of that of Great Britain, on the subject of the fisheries and reciprocity of trade between the United States and the British Provinces in North America.

I adopt this course because I find on my arrival here, that the usual weekly mail for England has already been dispatched, and because I am unwilling that any delay should take place in the transmission of this important document.

2. In coming to an understanding with the Government of the United States on the provisions of this Treaty, the main obstacle which presented itself was the case of Newfoundland. I received your Lordship's final instructions on this points, contained in your despatches Nos. 6 and 7 of May 12, only two days before the period beyond which it was impossible that my visit to Washington should be protracted. Those instructions, as your Lordship is aware, suggested difficulties which stood in the way of the inclusion of Newfoundland in this Treaty, very much more serious than those which were anticipated at the time when your Lordship's despatch No. 5 of 4th May was addressed to me. I proposed to Mr. Marcy in the first instance, as the simplest mode of dealing with the question, that Newfoundland should be altogether omitted from the present Treaty, and a

clause inserted, pledging the British and United States' Governments to make it the subject of a separate arrangement. Mr. Marcy, who, I am bound to say evinced, in all his communications with me, great candour and firmness, expressed much unwillingness to adopt this course, feeling apprehensive, as he alleged, that it might lead to embarrassing discussions in the Senate. The same objection applied with even greater force to the insertion of a clause in the Treaty, reserving (as suggested in your Lordship's despatch, Secret, No. 6 of May 19) not only "the rights of France under existing Treaties," but also "the rights which might be conferred on France by any future Treaty." After much consideration, we agreed on the clause which now stands No. 6 in the Treaty. By the terms of this clause, the provisions of the Treaty are extended to Newfoundland, in "so far as they are applicable to that Colony," and it is further agreed that, if either the Imperial Parliament, the Provincial Parliament, or Congress should fail to include Newfoundland in any legislation which may be necessary for giving effect to this Treaty, such omission shall not prevent the Treaty from taking effect as regards the other Colonies. The terms of the Treaty itself, therefore, distinctly imply that in some respects, it is not applicable to Newfoundland, and they further point out a mode by which that Colony may be excluded from its operation. I have been most desirous, as I trust your Lordship will believe, to avoid doing anything at Washington which could prejudice the endeavours of Her Majesty's Government to effect an amicable arrangement with France, in reference to the rights of that country in the fisheries of Newfoundland. At the same time I felt, and in this opinion Mr. Crampton fully concurred, that so favourable an opportunity for settling important questions, which had been long pending between Great Britain and the United States, might not again present itself, and that I ought not to shrink from assuming any responsibility which the faithful discharge of the duty which your Lordship had imposed upon me might entail.

3. Passing from this special, though embarrassing case, the general scope of the Treaty may be briefly described as providing for the admissions, duty free, into one of the greatest, and certainly the most rapidly rising, market of the world of all the more important staple products of the British North American Colonies, among which are included coal, timber, fish, grain, and flour. In return for this advantage, the people of the United States obtain certain rights of fishing and navigation, which they value highly; but the enjoyment of which by them will, it may be confidently predicted, be attended with benefit rather than loss to the colonists, as leading to the more rapid improvement of resources hitherto but imperfectly developed.

4. In the original drafts of this Treaty the fisheries and estuaries were reserved for the fishermen of either nation respectively, and in subsequent drafts, in order to avoid disputes to which the ambiguity of the word "estuary" might give rise, it was provided that the estuaries and rivers to be excepted from its operation should be enumerated. I found, however, on inquiry, that this enumeration would occasion great delay, and that it was even doubtful whether the Treaty could be submitted to the Senate before it was complete in this particular, I agreed therefore with Mr. Secretary Marcy to substitute the words which your Lordship will find in the second paragraphs of Articles I and II for the terms used in earlier drafts, and to add an Arbitration Clause, which will, I trust, furnish the means of amicably adjusting any differences which may arise with respect to the extent of the reservation in question.

5. In order to rid of all difficulty in regard to interference with the chartered rights of the Hudson's Bay Company, and also with respect to privileges of fishing on the coast of Florida, the fisheries on the Pacific Coast have been altogether omitted from this Treaty, and the liberty of fishing conceded to the subjects of Her Majesty on the eastern coast of the United States has been bounded by a geographical line.

6. I was unable to induce Mr. Marcy to consent to the introduction of a clause conceding to Colonial-built vessels registration in the United States when owned by citizens of that country. It is very obvious, however, that if, in consequence of the refusal of this boon, the cost of carriage in Colonial vessels is rendered permanently lower than in vessels of the United States, the evil must soon correct itself, under a system which admits the bulky staples of the Colonies duty free into the American market. Mr. Marcy, on his side, agreed to withdraw the claims which he had formerly preferred on behalf of the citizens of the United States to the free navigation of the River St. John.

7. Article IV of the Treaty is further modified in the following particulars:— Firstly. That the suspension of the Reciprocity Article III, which is to follow, if the British Government should at any time exercise the reserved right of closing the St. Lawrence against the United States' vessels, shall take effect only in so far as Canada is affected thereby; and, Secondly. That the Navigation of Lake Michigan is secured to

British vessels, and a pledge is given that the Government of the United States will urge the State Governments to grant them similar privileges on the State canals.

8. By the last Article of the Treaty it is provided that the ratifications shall be exchanged at Washington within six months after the date hereof. Your Lordship will, of course, determine the time and mode of carrying this stipulation into effect. I presume that the formal act may be performed by Mr. Crampton; but I need not say that I am at your Lordship's disposal at any moment, if am required for the service.

9. So soon as the Treaty shall have passed the Senate, I shall endeavour to obtain in Canada the legislation necessary for giving effect to it, and I shall put myself at once into communication with the Governors of the other Provinces, with the view of determining what steps it may be expedient to take in order to accomplish the same object there.

10. As no particular time is specified within which Newfoundland must avail itself of the benefits of the Treaty or forfeit them altogether, it is, of course, not necessary that the Imperial legislation requisite for giving effect to it, as respects the other provinces, should be deferred until the settlement of the questions specially affecting that Colony.

11. It will be for your Lordship to consider what directions it may be advisable, under existing circumstances, to give to the Admiral on the North American station, in reference to the protection of the fisheries during the ensuing season. It is most important that occasions of collision should be, if possible, avoided in the present state of affairs; and my exertions to bring this Treaty into shape at the earliest moment have been prompted mainly by a desire to accomplish this end. The fact that an arrangement has been concluded by the negotiators acting on behalf of the respective Governments will probably be held to justify Her Majesty's Government in issuing such instructions as may obviate all risk of collision for the present season.

12. Your Lordship will, I hope, pardon the imperfections of this despatch, which is written in the midst of much business and turmoil, as I arrived here yesterday, and the Provincial Parliament meets to-morrow; but I should be guilty of an unpardonable omission if I were to fail to acknowledge the hearty and valuable assistance which I received from Mr. Crampton in the discharge of the duty assigned to me by your Lordship.

13. I will now close by saying that it is my deliberate opinion, founded on a knowledge of the condition of these Colonies, derived from long residence in this quarter, that the favourable results of this Treaty, should it come into operation, on their prosperity and progress will be found very far to exceed what its most sanguine supporters have ventured to anticipate.

I am, &c.

(Signed) ELGIN AND KINCARDINE.

No. 23.

Memorandum by Mr. Hammond.

I PLACE side by side the stipulations in Lord Elgin's Treaty, and that in the Treaty of 1818, respecting permission given to American fishermen to land and cure fish on the British shores. There does not seem to be any very material difference between the two, at all events in principle.

Lord Elgin's Treaty.

Treaty of 1818.

"Shall have the liberty to take fish of every kind except shell fish on the sea coasts and shores, and in the bays and harbours and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and the adjacent islands, without being restricted to any distance from the shore, with permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the right of private property or with British fishermen in the peaceable use

"Shall have the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, and on the shores of the Magdalen Islands to, &c., &c. And that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and the coast of Labrador; but so soon as the same or any portion thereof shall

*Lord Elgin's Treaty.**Treaty of 1818.*

of any part of the said coast in their occupancy for the same purpose."

be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground."

Lord Elgin's Treaty contains a reciprocal Article in favour of British fishermen on the coasts of the United States, north of 36.

The provision against interference with British fishermen on the coast is in fact a limitation of the privilege as applied to the Colonies included in Lord Elgin's Treaty, granted by the Treaty of 1818, by which no such privilege is secured for British fishermen on the coast of Newfoundland.

Foreign Office, June 27, 1854.

No. 24.

The Earl of Clarendon to the Earl of Elgin.

(No. 8.)

My Lord,

Foreign Office, June 30, 1854.

I RECEIVED on the 26th instant your Lordship's despatch of the 12th, inclosing the Convention respecting fisheries and trade which you had signed at Washington on the 5th instant with the Secretary of State of the United States; and I am commanded by the Queen to signify to your Lordship Her Majesty's entire approval of your proceedings at Washington, and of the ability and judgment which you displayed in overcoming the difficulties with which this complicated subject was beset.

Her Majesty's ratification of the Convention will forthwith be prepared, and, in acquainting Mr. Crampton that such will be the case, I have expressed the hope of Her Majesty's Government that the Senate of the United States will empower the President also to ratify it.

I am, &c.
(Signed) CLARENDON.

No. 25.

The Earl of Clarendon to Mr. Crampton.

(No. 151.)

Sir,

Foreign Office, June 30, 1854.

I TRANSMIT to you, herewith, a copy of a despatch which I have received from the Earl of Elgin, inclosing a copy of the Convention with the United States respecting fisheries and trade signed by his Lordship and the American Secretary of State at Washington on the 5th of this month.

Her Majesty's Government have received this Convention with very great satisfaction, and they are prepared to recommend Her Majesty to ratify it without loss of time; and they trust that the Senate of the United States will empower the President to do the same.

I am, &c.
(Signed) CLARENDON.

No. 26.

Mr. Merivale to Mr. Hammond.—(Received July 26.)

Sir,

Downing Street, July 25, 1854.

WITH reference to my letter of the 29th ultimo, on the subject of the Treaty which the Earl of Elgin has concluded with the United States for settling the Trade and Fisheries Question, I am directed by Secretary Sir George Grey to request that you will inform the Earl of Clarendon that there is one clause of the Treaty with respect to which it is the opinion of Sir George Grey that Lord Elgin should be specially instructed.

2. Article V runs as follows: "The present Treaty shall take effect as soon as the Laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain, and by the Provincial Parliaments of those of the British North American Colonies which are affected by this Treaty on the one hand, and by the Congress of the United States on the other."

3. It may be expedient to caution Lord Elgin, that this Article is not to be understood as if the assent of the Provincial Legislatures or even of the Imperial Legislature were necessary in order to enable the Crown to execute a valid and binding Treaty with a foreign country. This is in all countries a prerogative of the sovereign power, and in England the sovereign power *quoad hoc* is vested in the King. Whatever contracts therefore he engaged in, no other power in the Kingdom can legally delay, resist, or annul.

4. But the concurrence of the Legislature may, nevertheless, be required to abrogate existing laws which may be in any respect inconsistent with the intended Treaty, and it is in this sense that Sir George Grey conceives the provision of Article V is properly to be understood. The Parliament of the United Kingdom must be applied to, for instance, to repeal various provisions of the Statute 59, Geo. III., c. 38, passed in consequence of the Convention of 1818, between Great Britain and the United States, and possibly other existing Acts of Parliament may present impediments which it will require such authority to remove.

5. The Imperial Parliament has, farther, legal power to overrule any provisions of Colonial law which may be in opposition to the Treaty; but it is scarcely necessary to say, that to enforce that power would be contrary to the principles on which the Government and Legislature of this country have long acted towards the inhabitants of Her Majesty's dominions. It will, therefore, be advisable to apply, in addition, to the several Colonial Legislatures, as has been assumed by Lord Elgin in framing the Treaty.

6. The purposes for which such application must be made, and the extent of the repealing or enabling provisions required, must be better known to the Colonial authorities than to Her Majesty's Government. They would appear, however, chiefly to relate to the following subjects. The admission of American fishermen to the Colonial fisheries within Article I, for which purpose certain Acts of the Legislatures of Nova Scotia, New Brunswick, and Prince Edward Island would require repeal; and the admission of American produce duty free under Article III.

7. For these purposes (which Lord Elgin's own better judgment and that of the authorities of the several Colonies will probably add others), it is not proposed that Imperial Legislation should be resorted to, but that they should be provided for by the several provincial Legislatures, as specified in the Treaty.

8. I am to add that, in Sir George Grey's opinion, instructions on this subject should not be sent without the cognizance and sanction of the Law Advisers of the Crown in this country; and that he would propose (if Lord Clarendon concurs), that the present letter should be submitted to the Queen's Advocate, the Attorney-General, and the Solicitor-General, for their joint perusal and advice thereon.

I am, &c.
(Signed) HERMAN MERIVALE.

No. 27.

The Earl of Elgin to the Earl of Clarendon.

(Telegraphic.)

Quebec, August 3, 1854.

RECIPROCITY Treaty confirmed by the Senate.

No. 28.

Mr. Buchanan to the Earl of Clarendon.—(Received August 16.)

*Legation of the United States, London,
August 16, 1854.*

My Lord,

I HAVE the honour to inclose you the copy of a despatch of the 4th instant, which I have just received from Washington, and to express the hope that your Lordship will enable me to communicate to the Secretary of State by Saturday's steamer, that orders have been sent by the British Government to the authorities in the Colonies not to molest

American fishermen in using at once "the privileges secured to them by the Treaty of Reciprocity."

I cordially congratulate you upon the final settlement of the Fishery Question which has, for so many years, threatened to produce serious difficulties between our two countries. May they ever be friends!

I have, &c.
(Signed) JAMES BUCHANAN.

Inclosure in No. 28.

Mr. Marcy to Mr. Buchanan.

Sir, *Department of State, Washington, August 4, 1854.*
I HAVE to inform you that the Senate has approved the Reciprocity Treaty, and that the President's ratification will be ready for exchange whenever that of Her Britannic Majesty shall be presented for the purpose. Congress has also passed a law to give effect to the Treaty. Inasmuch, therefore, as everything has been done on the part of the United States to give complete effect to the Treaty, they do not doubt that American fishermen will not be molested should they at once attempt to use the privileges secured to them by the Treaty, although Great Britain and the provinces may not have passed the laws required on their part to carry it into complete effect. You will make this expectation known in the proper quarter, with an intimation that it would be advisable that the necessary orders should be forthwith dispatched to the authorities in the Colonies.

I am, &c.
(Signed) W. L. MARCY.

No 29.

Mr. Hammond to the Secretary to the Admiralty.

Sir, *Foreign Office, August 16, 1854.*
I AM directed by the Earl of Clarendon to transmit to you herewith, to be laid before the Lords Commissioners of the Admiralty, a copy of a letter from the United States' Minister at this Court, inclosing a copy of a despatch from the Secretary of State of the United States, by which it appears that the President's ratification of the Reciprocity Treaty, lately signed by the Earl of Elgin and Kincardine, will be ready to be exchanged against that of Her Majesty's when the latter arrives at Washington, and that the Congress has already passed a law to give effect to that Treaty.*

With reference to the hope expressed by the American Minister that he may be enabled to announce to his Government by the mail of this week that orders have been sent to the British Colonies not to molest American fishermen in using at once the privileges secured to them by the Treaty of Reciprocity, I am to request that you will state to the Lords of the Admiralty that Lord Clarendon would recommend that the requisite orders to that effect should be sent without delay to the Commander-in-chief of Her Majesty's naval forces on the North American station. I am to add that I have, by Lord Clarendon's directions, addressed a similar letter to the Under-Secretary of State of the Colonial Office as regards the communication to be made to the various British Governors.

I am, &c.
(Signed) E. HAMMOND.

No. 30.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, August 16, 1854.*
I AM directed by the Earl of Clarendon to transmit to you herewith, to be laid before Secretary Sir George Grey, a copy of a letter from the United States' Minister at this Court, inclosing a copy of a despatch from the Secretary of State of the United States, by which it appears that the President's ratification of the Reciprocity Treaty, lately signed by the Earl of Elgin and Kincardine, will be ready to be exchanged against that of

Her Majesty, when the letter arrives at Washington, and that the Congress has already passed a Law to give effect to that Treaty.

With reference to the hope expressed by the American Minister that he may be enabled to announce to his Government by the mail of this week that orders have been sent to the British Colonies not to molest American fishermen in using at once the privileges secured to them by the Treaty of Reciprocity, I am to request that you will state to Sir George Grey that Lord Clarendon would recommend that the requisite orders to that effect should be sent without delay to the various British Governors.

I am to add that I have, by Lord Clarendon's direction, addressed a similar letter to the Secretary of the Admiralty, as regards the communication to be made to the Commander-in-chief of Her Majesty's Naval Forces on the North American Station.

I am, &c.
(Signed) E. HAMMOND.

No. 31.

*Mr. Hammond to the Secretary to the Admiralty.**

(Confidential.)

Sir, *Foreign Office, August 18, 1854.*
WITH reference to my letter of the 16th instant, I am directed by the Earl of Clarendon to transmit to you herewith, to be laid before the Lords Commissioners of the Admiralty, copies of the Treaty signed by the Earl of Elgin with the Secretary of State of the United States, respecting colonial fisheries and trade, the ratification of which by Her Majesty will be sent this evening to Her Majesty's Minister at Washington, to be exchanged against the ratification of the President of the United States.

I am, &c.
(Signed) E. HAMMOND.

No. 32.

Mr. Merivale to Mr. Hammond.—(Received August 18.)

Sir, *Downing Street, August 18, 1854.*
I HAVE laid before Secretary Sir George Grey your letter and its inclosures of the 16th instant, and another of this day's date with its inclosure, and I have to inform you that instructions will be issued by to-day's mail to the Governors of the British North American Provinces, not to molest American fishermen in using at once the privileges secured to them by the Treaty of Reciprocity.

I am, &c.
(Signed) HERMAN MERIVALE.

No. 33.

The Secretary to the Admiralty to Mr. Hammond.—(Received August 18.)

Sir, *Admiralty, August 18, 1854.*
HAVING laid before my Lords Commissioners of the Admiralty your letter of the 16th instant, relative to the Reciprocity Fishery Treaty between this country and the United States, I am commanded by their Lordships to transmit to you, for the information of the Earl of Clarendon, a copy of an instruction, which, in pursuance of his Lordship's recommendation, they have addressed to Rear-Admiral Fanshawe on this subject.

I am, &c.
(Signed) R. OSBORNE.

Inclosure in No. 33.

The Secretary to the Admiralty to Rear-Admiral Fanshawe.

Sir,

Admiralty, August 18, 1854.

I AM commanded by my Lords Commissioners of the Admiralty to transmit to you copies of the Reciprocity Treaty concluded between this country and the United States, defining the rights of fishing to be exercised by the subjects of each country, with copies of a letter and its inclosures from the Earl of Clarendon relating to this subject; and I am to signify their Lordship's direction to you to issue instructions to the officers in command of Her Majesty's cruisers not to molest American fishermen in using at once the privileges secured to them by the said Treaty.

I am, &c.
(Signed) R. OSBORNE.

No. 34.

The Earl of Clarendon to Mr. Crampton.

(No. 186.)

Sir,

Foreign Office, August 18, 1854.

I TRANSMIT to you the Queen's ratification under the Great Seal of the Treaty between Her Majesty and the United States relative to fishery and commerce, which was signed by the Earl of Elgin and Mr. Marcy on the 5th of June last, and I am to desire that you will exchange the same against a similar instrument ratified by the President of the United States.

I also transmit to you a certificate to be signed by you and Mr. Marcy upon the exchange of the ratifications. You will return this certificate to me at the same time that you send home the American ratification.

I am, &c.
(Signed) CLARENDON.

P.S.—I inclose six printed copies of the Treaty.

C.

No. 35.

The Earl of Clarendon to Mr. Crampton.

(No. 188.)

Sir,

Foreign Office, August 18, 1854.

I TRANSMIT to you herewith a copy of a letter from Mr. Buchanan,* inclosing a copy of a despatch from Mr. Marcy, announcing that the President's ratification of the Treaty of June 6, 1854, would be ready to be exchanged against Her Majesty's ratification when the latter arrived at Washington, and stating that the Congress had already passed a law to give effect to that Treaty.

You will see by the inclosed copy of a despatch, which, in the absence from town of Her Majesty's Principal Secretary of State for the Colonial Department, I have addressed to the Governors of Her Majesty's North American Colonies, and by the inclosed copy of a letter from the Admiralty, that orders will be sent by this mail to the British Colonial and naval authorities not to molest American fishermen in using at once the privileges secured to them by this Treaty.

I am, &c.
(Signed) CLARENDON.

P.S.—You will make the contents of this despatch known to Mr. Marcy.

C.

No. 36.

The Law Officers of the Crown to the Earl of Clarendon.—(Received August 21.)

My Lord,

Doctor's Commons, August 19, 1854.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th ultimo, stating that he was directed to transmit to me a letter from the Colonial Office upon the subject of the instructions to be given to Lord Elgin, in the matter of the Treaty between Her Majesty and the United States of America, relative to Fisheries and to Commerce and Navigation, which was signed at Washington on the 5th of June last, and to request that we would take the inclosed letter into our consideration, and report to your Lordship, at our earliest convenience, our opinion upon the points adverted to therein.

In obedience to your Lordship's commands, we have taken the letter into consideration, and have the honour to report—

That we concur in the view taken by Secretary Sir George Grey, and in the propriety of the despatch to Lord Elgin suggested by him.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 37.

Mr. Crampton to the Earl of Clarendon.—(Received August 21.)

(No. 213.)

My Lord,

Washington, August 7, 1854.

I HAVE the honour to inclose the copy of a despatch which I have received from his Excellency the Lieutenant-Governor of New Brunswick, informing me of the seizure of an American fishing vessel, by one of the provincial cruisers, for a violation of the Convention of 1818.

Under present circumstances I have thought that such an occurrence was much to be regretted, and I have accordingly addressed to Admiral Fanshawe a telegraphic message, in cypher, expressing a hope that the vessel may be released.

I have, &c.
(Signed) JOHN F. CRAMPTON.

P.S.—I have this moment received a telegraphic despatch from Admiral Fanshawe, at Halifax, informing me that my suggestion with regard to the American fishing vessel "Ellen," seized for infraction of the Convention of 1818, had been anticipated.

J. F. C.

Inclosure 1 in No. 37.

Sir E. Head to Mr. Crampton.

Sir,

Government House, Fredericton, July 29, 1854.

I INCLOSE, for your information, copies of two documents of some importance.

1. A deposition made by Lieutenant H. H. Knocker, commanding the armed vessel "Alice Rogers," with reference to the seizure of the fishing schooner, "Ellen," of Salisbury, within three miles of the coasts of New Brunswick.

2. Copy of a letter which I have caused the Provincial Secretary to address to the Collector of the Port of Bathurst, in whose custody the seized vessel now is.

I send these papers to Washington without delay, in order that you may be prepared to offer any explanation which may be required, in consequence of complaints on the part of the owner of the "Ellen."

Your Excellency will observe that I do not consider the seizure as made under our Provincial Act, 16 Vict. cap. 69.

I have, &c.
(Signed) EDMUND HEAD.

P.S.—I inclose also a copy of the opinion of the Attorney-General of this Province, which I have received since this despatch was written.

E. H.

Inclosure 2 in No. 37.

Depositions.

IN the matter of the American fishing schooner "Ellen," of Salisbury, being seized by the Provincial armed schooner "Alice Rogers," for breach of the Treaty of 1818.

H. H. Knocker, Lieutenant commanding the armed vessel "Alice Rogers," John Jewans, Pilot, John Smith, John Macguire, William Parr, and David Johnston, seamen of said vessel, severally make oath and say, and first this deponent H. H. Knocker, for himself saith that, this deponent with his said vessel left the port of Port Daniel on the north side of the Bay Chaleur on the morning of Monday, 24th July instant, and stood over towards Miscow Island, and at or about noon of same day deponent saw a schooner hove to on the starboard tack, and on nearing her deponent saw several of the crew at the weather rail apparently heaving something overboard. At 38 minutes after 12 the said schooner filled and bore up for the mouth of the bay, deponent then fired a blank cartridge, and the vessel taking no notice of it, deponent fired a shot ahead of her on which she hove to, and hoisted American colours, with her head off shore. At a quarter after 1 o'clock deponent boarded the said schooner, which he found to be the American fishing-schooner "Ellen" of Salisbury. Deponent asked the master, Ezra Morill, his reasons for being hove to within the limits prescribed by the Treaty for the space of an hour and a half. At first the said Ezra Morill stated that he had sent a boat into Miscow Harbour. Deponent convinced him that he had not done so, his only boat being still at the davits, the said master, Ezra Morill, then stated that he was waiting for another vessel off the Point Miscow, and then he was going into Miscow for water. Deponent then asked said Ezra Morill his reason for having had his lines over the side, he denied that they had been over, deponent then proved to him that the lines had been over the side, and that his lines were still wet. The said master, E. Morill, then offered to give this deponent an amount of money if deponent would leave him and his vessel, and also said that he thought the Americans were allowed to fish anywhere, having seen it so stated in the newspapers. And this deponent further said that he, this deponent, had already boarded this same vessel at anchor in Percé, on the 6th day of July instant, and warned the said master, E. Morill, that the Treaty was to be enforced and carried out the same this year as it had been in previous years; and deponent further saith that, on deponent's boarding the said vessel on the 24th instant, the starboard side of the deck was slightly wet, the mackerel were in pickle, but some of them evidently recently caught, and three fresh codfish were found in a cask, and on lifting up the hatch on deck, deponent found the gills of a mackerel quite fresh and bleeding.

And this deponent further saith that the bearings on board said vessel, the "Ellen," were as follows, viz., centre of the saddle on Miscow Island by compass, east by south, Miscow Harbour steering point, south and by east by compass. Port Daniel N.N.W., by compass; soundings $6\frac{3}{4}$ fathoms, thus giving about five miles S.W. of Miscow Point in the Bay of Chaleur the cross bearings at the time of boarding giving within three miles of the shore of the said vessel had been standing off shore for 12 minutes, and these deponents, John Smith, John Macguire, W. Parr, and David Johnston, for themselves, severally say that they did not hear the offer of money for his release made by the said Ezra Morill as above stated, but that the whole of the other matters and things above stated are correct and true, and the said deponent, John Smith, further saith, that one of the crew of the said vessel, the "Ellen," after the seizure of the said vessel on the 24th instant, on deponent saying to him that it would go hard with them, informed this deponent that the crew of the said vessel, the "Ellen," had only had their lines out a little while; and on the said Lieutenant H. H. Knocker boarding the said vessel, deponent heard the master, E. Morill, say something to the said Lieutenant Knocker, which deponent did not understand, when the said Lieutenant Knocker answered loudly "No, thank God, I am an Englishman and I will not." And this deponent, John Jewans, pilot, for himself saith that, at the time of boarding the said vessel, the "Ellen" of Salisbury, the bearings, distances, and sounding were as above set forth.

And this deponent, H. H. Knocker, further saith that he did, on the 25th day of July instant, deliver up the said vessel, the "Ellen," unto J. Read, Esq., the Collector of Customs at the Port of Bathurst, according to deponent's instructions, to be dealt with

according to law, this deponent having seized said vessel near Point Miscow on the 24th day of July instant, as above stated, for breach of the said Treaty.

(Signed)

H. H. KNOCKER, R.N., *Lieutenant*.
 JOHN JERWANS, his ✕ mark.
 JOHN SMITH.
 JOHN MAGUIRE, his ✕ mark.
 WILLIAM PARR.
 DAVID JOHNSTON.

Sworn by the said deponents severally at Bathurst, in the county of Gloucester, this 25th day of July, 1854.

Before me,

(Signed)

WILLIAM NAPIER.
 S. PEARCE GLOUCESTER.

Inclosure 3 in No. 37.

Mr. Partelow to Mr. Read.

Sir,

Secretary's Office, Fredericton, July 29, 1854.

REFERRING to your letter of the 25th instant, reporting the seizure of the American schooner "Ellen" of Salisbury for an infringement of the fishery laws, I am to acquaint you that, according to the advice of the Attorney-General, his Excellency is informed that such seizure cannot be understood as having taken place under the Provincial Act 16 Vict., cap 69, inasmuch as neither the seizing offices nor the armed vessel which Lieutenant Knocker commanded bore any Commission on authority from the Lieutenant-Governor of New Brunswick.

From instructions which he has received his Excellency is also of opinion that it is advisable all proceedings against the vessel so seized should take place in the Admiralty Court of St. John's, and you will govern yourself accordingly.

I have, &c.

(Signed) J. R. PARTELOW.

Inclosure 4 in No. 37.

Opinion of Attorney-General of New Brunswick on Seizure of "Ellen."

IN the matter of the seizure of the American schooner "Ellen" by Lieutenant Knocker of Her Majesty's navy under instructions from the Admiral of the station for fishing within British waters contrary to Treaty.

1st. I am of opinion, from reading the depositions of the captors that the seizure is legal.

2nd. Under the circumstances of this seizure it is expedient that the proceedings for condemnation should be in the Vice-Admiralty Court of this Province, inasmuch as I do not conceive the seizure to come within the terms of the Provincial Act of 16 Vict. cap. 69.

(Signed)

J. K. STREET, *Attorney-General*.

Fredericton, July 29, 1854.

No. 38.

Mr. Hammond to Mr. Merivale.

Sir,

Foreign Office, August 22, 1854.

I AM directed by the Earl of Clarendon to request that you will inform Secretary Sir George Grey that, in accordance with his suggestion, he has referred to the Law Officers of the Crown your letter of the 25th ultimo, upon the subject of the instructions to be given to Lord Elgin in the matter of the Treaty between Her Majesty and the United States of America relative to fisheries and to commerce and navigation which was signed at Washington on the 5th of June last; and I am to transmit to you, for Sir George Grey's

information, a copy of a Report which has been received from the Law Officers in reply, by which it will be seen that they concur in the proposed instructions to Lord Elgin.*

I am, &c.
(Signed) E. HAMMOND.

No. 39.

The Earl of Clarendon to Mr. Crampton.

(No. 189.)
Sir,

Foreign Office, August 24, 1854.

WITH reference to your despatch No. 213 of the 7th instant, I have to state to you that I approve of your having recommended Admiral Fanshawe to release the American fishing vessel "Ellen," which had been seized by one of the provincial cruizers of New Brunswick for an infraction of the Fisheries Convention of 1818.

I am, &c.
(Signed) CLARENDON.

No. 40.

Mr. Crampton to the Earl of Clarendon.—(Received August 28.)

(No. 219.)
My Lord,

Washington, August 13, 1854.

WITH reference to my despatch No. 208 of the 4th instant, in which I had the honour of informing your Lordship that the Treaty signed on the 5th of June last between Great Britain and the United States in regard to the Fisheries and Reciprocity of Trade had been approved by the Senate, and that the necessary Legislative measures had been adopted by the House of Representatives for giving effect thereto, I have now the honour to inclose a copy of the Act of Congress for that purpose, which was passed and approved by the President on the 5th instant.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 40.

An Act to carry into effect a Treaty between the United States and Great Britain, signed on the 5th day of June, 1854.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whenever the President of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain and the Provincial Parliaments of Canada, New Brunswick, Nova Scotia, and Prince Edward Island, have passed laws on their part to give full effect to the provisions of the Treaty between the United States and Great Britain, signed on the 5th of June last, he is hereby authorized to issue his proclamation, declaring that he has such evidence, and thereupon, from the date of such proclamation, the following articles, being the growth and produce of said provinces of Canada, New Brunswick, Nova Scotia, and Prince Edward Island, to wit:—

Grain, flour, and breadstuffs of all kinds; animals of all kinds; fresh, smoked, and salted meats; cotton-wool; seeds and vegetables; undried fruits; dried fruits; fish of all kinds; products of fish and all other creatures living in the water; poultry; eggs; hides; furs, skins, or tails undressed; stone or marble in its crude or unwrought state; slate; butter, cheese, tallow; lard; horns; manures; ores of metal of all kinds; coal; pitch, tar, turpentine; ashes; timber and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part; firewood, plants, shrubs, and trees; pelts; wool; fish-oil; rice; broom-corn and bark; gypsum, ground or unground; hewn or wrought or unwrought burr or grindstones; dye-stuffs; flax, hemp, and tow, unmanufactured; unmanufactured tobacco; rags:

Shall be introduced into the United States free of duty so long as the said Treaty shall remain in force, subject, however, to be suspended in relation to the trade with Canada on the condition mentioned in the IVth Article of the said Treaty: and all the other provisions of the said Treaty shall go into effect, and be observed on the part of the United States.

Sec. 2. And be it further enacted, that whenever the island of Newfoundland shall give its consent to the application of the stipulations and provisions of the said Treaty to that province, and the Legislature thereof, and the Imperial Parliament shall pass the necessary laws for that purpose, the above enumerated articles shall be admitted free of duty from that province into the United States, from and after the date of a Proclamation by the President of the United States, declaring that he has satisfactory evidence that the said province has consented in a due and proper manner to have the provisions of the Treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained.

Approved August 5, 1854.

No. 41.

The Earl of Elgin to the Earl of Clarendon.—(Received August 28.)

My Lord,

Government House, Quebec, August 12, 1854.

I HAVE the honour to inclose herewith, for your information, the copy of a communication which I have received from the Secretary of State for the United States, with the copy of my reply.

I have, &c.
(Signed) ELGIN AND KINCARDINE.

Inclosure 1 in No. 41.

Mr. Marcy to the Earl of Elgin.

My Lord,

Department of State, Washington, August 5, 1854.

I HAVE the satisfaction to inform you that the Treaty signed here on the 5th June, between the United States and Great Britain, relative to the fisheries and the reciprocity of trade between Her Britannic Majesty's North American Colonies and the United States, has been approved by the Senate, and Congress yesterday passed a law to carry it into effect. I herewith send you a copy of that Act.

It is very much desired on the part of the United States, and I presume it is equally so on the part of Great Britain and the provinces, that the Treaty should go into operation at the earliest practicable period.

Should there be any considerable delay, I apprehend that it will be on account of the time required to consummate the necessary proceedings on the part of the Provincial Legislatures. As I shall probably be often applied to for information as to the time when the instrument will go into operation, I should be pleased to be favoured with your Lordship's opinion on that subject.

There was considerable opposition to the Treaty in the Senate, and in some quarters of the country. The Administration has, however, succeeded beyond its expectation in obtaining, at this early period, the Act of Congress required on the part of the United States to give effect to the instrument.

I am, &c.
(Signed) W. L. MARCY.

Inclosure 2 in No. 41.

An Act to carry into effect a Treaty between the United States and Great Britain.

Signed on the 5th day of June, 1854.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall receive satisfactory evidence that the Imperial Government of Great Britain and the Provincial Parliaments of Canada, New Brunswick, Nova Scotia, and Prince Edward Island have passed Laws on their part to give full effect to the provisions of the Treaty between the United States and Great Britain, signed on the 5th of June last, he is hereby authorized to issue his Proclamation declaring that he has such evidence, and therefore, from the date of such Proclamation, the following articles being the growth and produce

of said Provinces of Canada, New Brunswick, Nova Scotia, and Prince Edward Island, to wit:—

Grain, flour, and breadstuffs of all kinds, animals of all kinds, fresh, smoked, and salted meats, cotton wool, seeds and vegetables, undried fruits, dried fruits, fish of all kinds, products of fish and all other creatures living in the water, poultry, eggs, hides, furs, skins or tails undressed, stone or marble in its crude or unwrought state, slate, butter, cheese, tallow, lard, horns, manures, ores of metals of all kinds, coal, pitch, tar, turpentine, ashes, timber and lumber of all kinds, round, hewed, sawed, unmanufactured in whole or in part, firewood, plants, shrubs, and trees, pelts, wool, fish oil, rice, broomcorn and bark, gypsum, ground or unground, hewn or wrought or unwrought burr or grindstones, dye-stuffs, flax, hemp, and tow, unmanufactured, unmanufactured tobacco, rags, shall be introduced into the United States free of duty so long as the said Treaty shall remain in force, subject, however, to be suspended in relation to the trade with Canada, on the condition mentioned in the IVth Article of the said Treaty; and all the other provisions of the said Treaty shall go into effect, and be observed on the part of the United States.

Sec. 2. And be it further enacted, that whenever the Island of Newfoundland shall give its consent to the application of the stipulations and provisions of the said Treaty to that Province, and the Legislature thereof and the Imperial Parliament shall pass the necessary laws for that purpose, the above-enumerated articles shall be admitted free of duty from that Province into the United States, from and after the date of a Proclamation by the President of the United States declaring that he has satisfactory evidence that the said Province has consented in a due and proper manner to have the provisions of the Treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained.

Approved August 5, 1854.

Inclosure 3 in No. 41.

The Earl of Elgin to Mr. Marcy.

Sir,

Government House, Quebec, August 12, 1854.

I HAVE had the honour to receive your letter of the 5th instant, inclosing the copy of an Act of Congress to carry into effect the Treaty between the United States and Great Britain, signed on the 5th of June last, and I beg to return you my best thanks for the very welcome intelligence which it conveys.

The Canadian Parliament is summoned for the 5th proximo, and I trust that whatever legislation may be necessary for giving effect to this Treaty, in so far as Canada is concerned, will be adopted by that body without delay. Of the other Provinces I cannot yet speak with the same confidence, their legislatures are not in Session, and it was impossible to take any steps towards convening them until it was known whether or not the Treaty would be ratified by the Senate of the United States. I am, however, now in communication with the Governors of these Provinces upon this subject. As soon as I learnt by telegraph that the Treaty had been ratified by the Senate, I also apprised Lord Clarendon of the fact, but it may be doubtful whether this intelligence will have reached him before the prorogation of the Imperial Parliament.

Allow me, Sir, to congratulate you on the success which has attended your endeavours to carry into effect an arrangement which promises to be so highly beneficial to both countries, and to assure you that no exertions shall be wanting on my part to bring the Treaty into operation at the earliest period.

I am, &c.

(Signed) ELGIN AND KINCARDINE.

No. 42.

The Earl of Clarendon to the Earl of Elgin.

(No. 9.)

My Lord,

Foreign Office, September 1, 1854.

I HAVE received your despatch of the 12th instant, inclosing a copy of a letter from the United States' Secretary of State, communicating to your Lordship a copy of the Act which has been passed by the American Senate for carrying into effect the Convention of the 5th of June last, relative to the fisheries and the reciprocity of trade between the British

North American Colonies and the United States, and I have to state to your Lordship that I approve of the answer which you returned to Mr. Marcy's communication.

I am, &c.

(Signed) CLARENDON.

No. 43.

The Secretary to the Admiralty to Mr. Hammond.—(Received September 16.)

Sir,

Admiralty, September 15, 1854.

I AM commanded by my Lords Commissioners of the Admiralty to transmit to you, for the information of the Earl of Clarendon, copies of a letter from Rear-Admiral Fanshawe, and of its inclosed extracts from letters from Lieutenant H. H. Knocker, of Her Majesty's ship "Vestal," with reference to the encroachments of American fishing vessels within the limits prescribed by Treaty, and the seizure of the American vessels "Montezuma" and "Ellen," and the release of the latter.

I am, &c.

(Signed) JOHN JONES DYER, *pro Sec.*

Inclosure 1 in No. 43.

Rear-Admiral Fanshawe to the Secretary to the Admiralty.

Sir,

"Vestal," at Halifax, August 24, 1854.

I HAVE to request you will be pleased to lay before the Lords Commissioners of the Admiralty the inclosed extracts from two letters which I have received from Additional Lieutenant H. H. Knocker, of the "Vestal," in command of the seized provincial schooner "Alice Rogers," stationed in the Gulf of St. Lawrence, for the protection of the fisheries, reporting the frequent encroachment of American fishing vessels within the limits prescribed by Treaty, and that, after his repeated warnings had been neglected, he had deemed it necessary to seize two American fishing vessels, the "Montezuma," of Gloucester, and the "Ellen," of Salisbury, as examples; that he had released the former after a short detention, on the master acknowledging his error and the breach of Treaty; and that he had delivered the latter into the charge of the Customs authorities at Bathurst, New Brunswick.

I beg you will acquaint their Lordships that, on learning (very shortly after receiving Lieutenant Knocker's Reports) from Her Majesty's Minister at Washington, that the Congress of the United States had passed an Act to carry into effect the Reciprocity Treaty, agreed upon between the Representatives of the United States and Great Britain, I considered it would be an act of grace to release the "Ellen" also, on the master acknowledging the legality of the seizure, and communicated my view to his Excellency the Lieutenant-Governor of New Brunswick, requesting that, if his Excellency concurred in my opinion, he would be pleased to give the necessary instructions to the proper officers for her release on that condition; and I am happy to say that I have received a letter from his Excellency, of which I inclose a copy, informing me he has done so.

These acts of seizure made by Lieutenant Knocker were quite in accordance with my instructions to him, and will, I hope, prevent further encroachments; and the release of the "Ellen" will equally show that no other object was desired, and be the means of preventing irritation pending the discussion of such measures as will be requisite to bring the proposed Treaty into operation.

I have, &c.

(Signed) ARTHUR FANSHAWE.

Inclosure 2 in No. 43.

Lieutenant-Governor Sir E. Head to Rear-Admiral Fanshawe.

*Government House, Fredericton, New Brunswick,
August 9, 1854.*

Sir,

I HAVE had the honour of receiving your Excellency's letter of the 5th of August, with its inclosure.

Nothing can be more cautious and considerate than the orders under which Lieutenant Knocker acted, and I have no doubt the seizure was fully justified.

Looking, however, to the present position of matters, I most entirely concur in the view that it is expedient to release the "Ellen," provided the parties interested will acknowledge the justice of the seizure, and exonerate the captors and all parties concerned from all liability whatsoever

I considered that any proposal to take this course ought to originate with your Excellency, and I did not therefore venture to suggest it myself.

I shall cause an official letter to be addressed to the Advocate-General at St. John, and to the Collector at Bathurst, saying that, after communication with your Excellency, I wish this course to be pursued, and direct them to act accordingly.

It will of course be necessary that the expenses incurred by the custody of the vessel and other proceedings, should be defrayed by the master or owner.

I cannot conclude this despatch without expressing my great satisfaction at the result to which our correspondence has in this instance led.

I have, &c.
(Signed) EDMUND HEAD.

Inclosure 3 in No. 43.

Lieutenant Knocker to Rear-Admiral Fanshawe.

(Extract.)

July 22, 1854.

I RETURNED to Chaleur Bay on the 20th, and the following day proceeded up to Caraquitte, where I found twenty-seven vessels fishing.

One vessel I found in the act (the "Montezuma" of Gloucester) the lines being still over when I boarded. Having already been on board and warned the master on the 29th ultimo, and he having nothing to offer in his defence, and owned his vessel to be a lawful prize, I detained her for a short time, but, on consideration of your Excellency's instructions regarding seizures, I released her, but made the master give me a written statement that his vessel was lawfully detained. But I believe that, without an example being soon made, encroachment will take place to a great extent.

Inclosure 4 in No. 43.

Lieutenant Knocker to Rear-Admiral Fanshawe.

(Extract.)

July 25, 1854.

I HAVE the honour to inform you that I left Port Daniel on the morning of the 24th instant, and proceeded towards Miscow Island at 11.40 A.M. I observed a schooner a-head hove to; I stood for her, and on wearing, saw she was evidently fishing, being hove to on starboard tack, crew at the weather rails, and appeared to be throwing something overboard. At 12.38 P.M. she bore up for the mouth of the Bay; I then fired a blank cartridge, and, as she took no notice, about five minutes after a shot wide a head of her, on which she hove to showing American colours. At 12.50, head off shore. At 1.15 P.M. I boarded and found her to be the American schooner "Ellen," of Salisbury, Ezra Morrill, master, and part owner with George Morrill and Francis Kenniston.

The master stated that he was waiting for his boat sent into Miscow; on proving that not to be the case, he stated he was waiting for a vessel off Point Miscow, and then that he had come up for water. (When brought to, she was running out of the Bay, and from Miscow Head.)

I asked his reasons for having had lines over, which he denied. I showed him all the lines were wet, as also the deck. In a tub or cask were three codfish, quiet fresh, as also some mackerel, but the latter were in pickle; also on deck I found the gills of a mackerel quite fresh and bleeding, and one of the crew having told John Smith, one of the "Alice Roger's," they (the crew) had only fished a short time; and lastly, the master, having offered me a sum of money to release him, stating having read on the papers, the Americans were allowed to fish anywhere now, and having already boarded the Ellen at Pine on the 6th instant, and warned her master not to fish within the limits prescribed by the Treaty of 1818, I considered the case perfectly clear against him. I have therefore detained the "Ellen," and brought her to Bathurst, being the nearest port with a Custom-house, according to your instructions. The bearings and soundings when I boarded her

were: centre of the ladder, Miscow Island, E. by S. ; Herring Point, Miscow Harbour, S. by E.; Port Daniel, N.N.W. ; $6\frac{3}{4}$ fathoms.

I beg leave to add that I detained this vessel, as an example is very necessary, as my last communication of the 22nd will prove. Having already released two vessels within a week, the last, the "Montezuma" of Gloucester.

No. 44.

Mr. Hammond to the Secretary to the Admiralty.

Sir,

Foreign Office, September 18, 1854.

I HAVE laid before the Earl of Clarendon your letter of the 15th instant, inclosing a copy of a despatch from Rear-Admiral Fanshawe, respecting the circumstances under which Lieutenant Knocker, of Her Majesty's sloop "Vestal," had detained two American fishing vessels, the "Montezuma" and "Ellen," for infraction of the fishing limits; and I am to request that you will state to the Lords Commissioners of the Admiralty that Lord Clarendon is of opinion that Lieutenant Knocker's conduct on the occasion in question should be approved.

I am, &c.
(Signed) E. HAMMOND.

No. 45.

Mr. Crampton to the Earl of Clarendon.—(Received October 10.)

(No. 234.)

My Lord,

Washington, September 25, 1854.

I HAVE the honour to inclose a copy of a despatch, with its inclosure, which reached me on the 23rd instant, from the Lieutenant-Governor of Nova Scotia, and also a copy of my reply to his Excellency's communication.

The short time which intervenes between the receipt of Sir Gaspard Le Marchant's letter and the departure of the Royal Mail Packet from Boston to Halifax, by which I am anxious to forward my reply, did not allow of my making a written communication on the subject to which it relates to the Government of the United States.

I, however, sought an interview with Mr. Marcy, in which he informed me that, however much he concurred in the desire expressed by Sir Gaspard Le Marchant, that the whole of the prospective advantages to be secured by the Reciprocity Treaty to Her Majesty's subjects in Nova Scotia should at once be made available to them, the Government of the United States was without any Constitutional power by which they could dispense with the conditions by which the provisions, according those advantages, are limited by the Treaty itself.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure 1 in No. 45.

Sir G. le Marchant to Mr. Crampton.

Sir,

Government House, Halifax, September 14, 1854.

THE accompanying copy of a communication which has been this day made to me by my Executive Council, will explain to your Excellency the difficulty which I have experienced in acceding to Lord Clarendon's wish therein referred to, in relation to the claims urged by Mr. Marcy on behalf of American fishermen, and will, at the same time, furnish the grounds of the appeal which I now beg leave earnestly to make to you for your active intervention with the Government of the United States, in order to obtain for Her Majesty's subjects in Nova Scotia the immediate enjoyment, irrespective of future legislation, of the privileges which are eventually to be secured to them by the Reciprocity Treaty. The reasonableness of the claim which I thus venture to urge is so obvious, that it is only necessary, I am persuaded, to bring it to your notice to insure your Excellency's prompt and able advocacy in its support. Permit me to add that, as American fishermen will not henceforth be molested in attempts to participate in our fisheries in the interval

that will clapse before the decision of our Legislature shall be given, it is most desirable that, with the least possible delay, the corresponding advantages of the Treaty should be extended to our own people.

I have, &c.
(Signed) J. GASPARD LE MARCHANT.

Inclosure 2 in No. 45.

The Executive Council of Nova Scotia to the Lieutenant-Governor.

May it please your Excellency,

Halifax, September 14, 1854.

WE beg leave respectfully to submit for your Excellency's consideration, the following observations which are suggested by the despatch addressed to your Excellency, by the Right Honourable the Earl of Clarendon, and which conveys the desire of Her Majesty's Government that a wish communicated to it by the Government of the United States, "that American fishermen should not be molested if they should at once attempt to use the privileges that will be secured to them by the Reciprocity Treaty," should be acceded to by the Provincial Government.

Whilst we entertain, in common with your Excellency, a sincere and earnest desire to promote every object of Her Majesty's Government having relation to the general interests of the Empire; and whilst we are not prepared to advise your Excellency to withhold your assent to the appeal thus earnestly made by the Ministers of our Sovereign, we feel that that assent may be productive of difficulty and embarrassment to your Excellency's Administration.

Uninformed officially of the terms of the Treaty, and gathering a knowledge of its stipulations literally from rumour and public journals, we presume, nevertheless, that the approval of our Legislature is made necessary to give it complete effect. This we cannot doubt, because the opinions of the Imperial Law Officers of the Crown, conveyed by Sir John Pakington's despatch of the 19th October, 1852, recognize the right of our Colonial Legislature to enforce the terms of the Convention of 1818 in our own waters, and because the Royal Assent has been given to a Provincial Statute, based on that right which embodies provisions for carrying it into effect. But though the result of our legislation on this subject is necessarily uncertain, your Excellency is invited, in effect, to assume that it will sanction the Treaty; and, in anticipation of this, in a matter of delicate and invidious legislation, to exercise legislative functions, and admit, by a mere Executive ordinance, Americans to a present participation in our fisheries, without our own people deriving that present advantage which would flow from the immediate free admission of the products of our soil, or our waters, into the ports of the Union.

Your Excellency is asked forthwith to permit American vessels to enter our waters, and carry thence their produce unrestricted by duty, into the United States during the present fishing season, and that the most profitable portion of it; whilst the catch of our fishermen will, during the corresponding period, enter their ports subject to the existing Tariff. At a very large expense to the Colonial Treasury, and by the express authority of the Legislature, provincial armed vessels arrived have been dispatched to the fishing stations to protect our interests; and yet, without any legislative revocation of the authority thus given, the Executive Government is now called upon, at the instance of the Government of the United States, to withdraw these vessels, and relinquish the object of protection hitherto deemed of vast importance by the Legislature, your Excellency thus incurring the hazard of compromising your Government in the possible event of the Treaty being repudiated by our Legislature, as being adverse to the true interests of the Province. Without, however, speculating upon possibilities, your Excellency is not acquainted with the fact that the people of Nova Scotia generally are deeply impressed with a sense of the magnitude and importance of the privileges which they will be called upon to concede, as well as of their constitutional exclusive right to legislate in relation to them, and that a difference of opinion amongst our leading men exists as to the expediency of granting to the citizens of the Union, on the conditions of the Treaty, a community of enjoyment of our fisheries, whilst the corresponding concessions are deemed by many to fall very far short of what, on grounds of fair reciprocity, they ought to be; and yet this knowledge of the conflicting sentiments of Nova Scotians, and the possible influence upon future legislation, that opinions adverse to the Treaty may exercise your Excellency is virtually required to ignore.

In conclusion, we cannot forbear remarking that objections to the Treaty are not likely to be weakened by a sense of the eagerness thus manifested by the Government of

the United States for an immediate enjoyment of the privileges demanded, and that it would have been more reasonable perhaps if that Government had been content to forego the temporary advantages thus asked for the short interval that will elapse previous to the meeting of our Legislature, and more just if the desire for that immediate enjoyment had been accompanied by a tender to Her Majesty's Nova Scotian subjects of a present fruition of corresponding privileges contemplated by the Treaty.

(Signed)

MICHAEL TOBIN.
JAMES McNAB.
SAMUEL CREELMAN.
LEWIS M. WILKINS.
WM. A. HENRY.

Inclosure 3 in No. 45.

Mr. Crampton to Sir G. Le Marchant.

Sir, *Washington, September 25, 1854.*

YOUR Excellency's despatch of the 14th instant reached me yesterday, and I have lost no time in bringing the subject, to which it relates, under the consideration of the Government of the United States.

Having made known to the Secretary of State of the United States the natural desire of Her Majesty's subjects in Nova Scotia to be put at once, and irrespective of future legislation, into possession of the privileges which are eventually to be secured to them by the Treaty signed at Washington on the 5th of June last, Mr. Marcy replied, that the Government of the United States, heartily participating in the desire I had expressed to him on the part of Nova Scotia, that all the provisions of the Treaty should at once be rendered practically available to both parties, would not, if it depended upon the President, delay its accomplishment for a single day. He called my attention, however, to the fact, that neither the President, nor Congress, possessed any constitutional power which would enable them to dispense, even temporarily, with any part of the provisions of a Treaty which, once ratified, formed a part of the law of the land.

I have, &c.

(Signed) J. F. CRAMPTON.

No. 46.

Mr. Crampton to the Earl of Clarendon.—(Received October 10.)

(No. 235.)

My Lord,

Washington, September 25, 1854.

I HAVE the honour to inclose the copy of a letter from the Secretary of the Treasury of the United States to the Collector of the Customs at New York, stating to him the conditions which must necessarily be fulfilled before the provisions of the late Reciprocity Treaty, between Great Britain and the United States, which affect the tariff of duties of the United States can be carried into effect.

This letter has, I understand, been addressed to the Collector in reply to a request on his part for instructions for his guidance in the case of an application which had been made for the free admission of a cargo of Nova Scotian coal under the provisions of the Treaty.

I have, &c.

(Signed) JOHN F. CRAMPTON.

Inclosure in No. 46.

Extract from the "National Intelligencer" of September 21, 1854.

THE DUTY ON COAL.—IT will be seen by the following letter of the Secretary of the Treasury, that the Tariff laws will still be in force in reference to the British North American Colonies until the proper legislation shall have been had by those Colonies on the Reciprocity Treaty :—

on the Reciprocity Treaty recently concluded between the United States and Great Britain.

In reply I have the honour to state that I have laid your Lordship's note before the President, who entertains a high sense of the liberal spirit manifested by your Lordship in the measure adverted to.

I have, &c.
(Signed) W. HUNTER.

No. 48.

Mr. Elliot to Mr. Hammond.—(Received October 11.)

Sir, *Downing Street, October 10, 1854.*
I am directed by Secretary Sir George Grey to transmit to you, for the information of the Earl of Clarendon, the copy of a despatch from the Lieutenant-Governor of Prince Edward Island reporting the steps which he had taken with regard to the immediate admission of American fishermen to the privileges of the Reciprocity Treaty.

I am, &c.
(Signed) T. FREDK. ELLIOT.

Inclosure in No. 48.

Lieutenant-Governor Daly to Sir G. Grey.

Sir, *Government House, Prince Edward Island,
September 11, 1854.*
ON receipt of despatch of 18th August, signed by the Earl of Clarendon, I lost no time in giving effect to the desire of Her Majesty's Government in regard to the immediate admission of American fishermen to the privileges of the Treaty, in so far as lay in my power, by informing American citizens resident here, and largely engaged in the fisheries, that they would not be molested by the local authorities.

2. I presume the Admiral on this station will have received similar instructions, and that the officers who have been engaged in enforcing the Treaty of 1818, and with whom I have no means of immediate communication, will be notified by him accordingly.

3. Having reason to believe that this concession to the United States' Government would be received with considerable dissatisfaction by the people of this island, unless they should at once be admitted to the markets of the United States on the terms secured to them by the new Treaty, I thought it my duty to represent the matter to Her Majesty's Minister at Washington, for such action as he might be able to take regarding it.

4. I have summoned the Legislature of this island to meet on the 26th instant, and the Legislative Assembly, being newly elected, and several members of the Government having to return to their constituents for re-election before they can proceed to business (the present state of the law not enabling them to vacate their seats on the acceptance of office, until the Speaker shall have been chosen), an adjournment for twenty days or more will probably be necessary before the Act, giving effect to the Treaty in this island, can be introduced, but as to its being passed, as speedily as possible, I entertain no doubt whatever.

5. The inhabitants of this island would thus be deprived of their privileges under the Treaty on the sale of the whole or a portion of their produce this year, whilst the American fishermen would have the whole advantage of the best portion of the fishing season.

6. I trust Mr. Crampton's reply may prove satisfactory, and that I may be honoured with your approval in having brought the subject under his notice.

I have, &c.
(Signed) D. DALY.

The Earl of Clarendon to Mr. Crampton.

(No. 223.)

Sir,

Foreign Office, October 13, 1854.

I HAVE received your despatches Nos. 234 and 235 of the 25th of September, reporting your communications with Mr. Marcy, with reference to a representation made to you by the Lieutenant-Governor of Nova Scotia, urging that the Government of the United States ought forthwith to give full effect to the provisions of the Reciprocity Treaty, on the ground that American fishermen had been forthwith admitted to fish on the coast of the British Provinces.

Mr. Marcy, I understand, pleads inability to comply with this request, inasmuch as the action of the Government of the United States is limited by the Act of Congress, by which the Government were allowed to carry the Treaty into effect, and the Vth Article of the Treaty only stipulates that the Treaty is to take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament and by the Provincial Parliaments, on the one hand, and by the Congress of the United States on the other. The Congress of the United States has, indeed, performed its share of legislation, but legislation on the part of Great Britain is still wanting to bring the Treaty into operation; and, consequently, the Government of the United States cannot proceed to give effect to the Treaty as matters now stand.

Her Majesty's Government greatly regret that such an impediment should exist to the immediate enjoyment by the United States, and by the British Provinces, of the advantages which the Treaty of June 5 is calculated to bestow upon them; and Her Majesty's Government would gladly learn that some means had been found for obviating the difficulty stated by Mr. Marcy. The promptitude with which Her Majesty's Government, at the request of the American Minister in this country, gave effect to the stipulations of the Treaty bearing on the fisheries on the coasts of the British Colonies, will, they are satisfied, be acknowledged by the Government of the United States, as entitling them to expect that the Cabinet of Washington will, on its part, endeavour to remove any obstacle to the two countries reaping without delay the benefit of the Treaty, although from the force of circumstances the conditions requisite to give formal effect to the Treaty have not hitherto been fully complied with on the part of Great Britain.

With reference to the subject of this despatch, I inclose, for your information, copies of two letters from the Colonial Office, the one inclosing a copy of a despatch from the Lieutenant-Governor of Nova Scotia, the other the copy of a despatch from the Governor of Prince Edward Island,* urging respectively the claims of those Colonies to be admitted to the full and immediate enjoyment in the United States of the privileges stipulated for in the Treaty of the 5th of June last, on the ground that American fishermen have been admitted without delay to the enjoyment of the Treaty privileges in the waters of those British Colonies.

I am, &c.
(Signed) CLARENDON.

No. 50.

Mr. Hammond to Mr. Elliot.

Sir,

Foreign Office, October 13, 1854.

I HAVE laid before the Earl of Clarendon your three letters of the 10th instant, inclosing copies of despatches from the Lieutenant-Governors of Nova Scotia and Prince Edward Island, urging the claims of those colonies to be admitted to the full and immediate enjoyment in the United States of the privileges stipulated for in the Treaty of the 5th of June last, on the ground that American fishermen have been admitted without delay to the enjoyment of the Treaty privileges in the waters of those colonies.

I am to request that you will acquaint Secretary Sir George Grey that Mr. Crampton has already been in communication with the Government of the United States on the subject of the representation of the Lieutenant-Governor of Nova Scotia, and Sir George Grey will perceive in the despatches from Mr. Crampton, and their inclosures, of which I transmit to you copies, the grounds on which that Government considers itself precluded from complying with the demand of the British colonial authorities.

* See No. 48.

I am at the same time to inclose a copy of a despatch* which Lord Clarendon will address by this day's mail to Mr. Crampton on the subject.

I am, &c.
(Signed) E. HAMMOND.

No. 51.

Mr. Crampton to the Earl of Clarendon.—(Received October 23.)

(No. 237.)

My Lord,

Washington, October 9, 1854.

WITH reference to my despatch No. 234 of the 25th ultimo, inclosing copies of a correspondence between the Lieutenant-Governor of Nova Scotia and myself, on the subject of the Reciprocity Treaty signed on the 5th of June last, I have now the honour to transmit to your Lordship in print the legal opinion of Mr. Cushing, the Attorney-General of the United States, upon the point to which that correspondence related.

Your Lordship will perceive that Mr. Cushing is of opinion that the Executive Branch of the Government of the United States has not the legal or constitutional power, whether by a Proclamation of the President or otherwise, of bringing the provisions of the Treaty into operation before the legislative Acts of the part of the British Parliament and the Colonial Legislature shall have been passed.

This matter has been fully discussed between Mr. Cushing and Mr. Drummond, the Attorney-General of Canada, who came to Washington for the purpose of ascertaining what could be done, and that gentleman has stated to me that he is himself convinced that the constitutional obstacles to the desired measure are insurmountable.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 51.

Opinion of Attorney-General Cushing relative to Reciprocity Treaty.

No. 52.

Mr. Crampton to the Earl of Clarendon —(Received October 23.)

(No. 238.)

My Lord,

Washington, October 9, 1854.

THE decision of the United States' Government, stated in my previous despatch, that there is no possibility of carrying the provisions of the Reciprocity Treaty into practical operation in the United States before the Legislative Acts required by the Vth Article thereof shall have been passed by the British Parliament and the Colonial Legislature, appeared to me calculated to place the fishermen of the British Colonies in so undeservedly disadvantageous a position during the present fishing season, as to make it my duty to endeavour to induce the Government of the United States to take their case into equitable consideration, with a view of devising some measure for their relief.

M. Marcy has fairly admitted that the prompt manner in which Her Majesty's Government has responded to the wishes of the Government of the United States by at once throwing open the British fisheries to American enterprise gave British fishermen a claim, the justice of which it was impossible not to recognize, to a simultaneous abrogation of the discriminating duty now levied in the United States upon British caught fish. For it was evident that American fishermen might now take fish in British waters which would be introduced into the markets of the United States free, while fish taken by British fishermen in the same waters would be subjected to a considerable duty.

He added that he felt convinced that Congress, were it in Session, would unanimously admit the justice of the claim of British fishermen to be exempted from that duty, and I, therefore, pressed upon him to take into consideration whether some plan could not be devised by which the action of Congress in the matter, at its next Session, might be made available, retrospectively, for the remission of the duties in question.

Mr. Marcy said that he would take the matter into consideration, and I have, at his

* See No. 49.

own suggestion, addressed to him a note in regard to it, a copy of which I have the honour to inclose.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 52.

Mr. Crampton to Mr. Marcy.

Sir,

Washington, October 9, 1854.

YOU are aware that instructions have been issued by Her Majesty's Government for the immediate admission of American fishermen to a free participation in the fisheries of the British North American provinces, under the terms of the Treaty signed at Washington on the 5th of June last, while, from the delay which must necessarily occur before the whole of the legislation required by the Treaty on the part of the Imperial Parliament of Great Britain and of some of the Colonial Legislatures, the other provisions of the Treaty, and more especially the provision by which British caught fish are to be admitted free of duty, will probably remain inoperative during the whole of the present fishing season.

You will not fail to perceive the peculiar and serious discouragement to which, under such a state of things, the fishermen of the British Colonies will be subjected, at the very outset of an arrangement which was evidently meant by the High Contracting Parties to be equally beneficial to their respective citizens and subjects.

I entertain no doubt, Sir, that the Government of the United States, in addressing to Her Britannic Majesty's Government the request that the British fisheries should be at once thrown open to American enterprise, were far from desiring that British fishermen should thereby be placed, even temporarily, under any disadvantage in a pursuit which it was the wise and liberal policy of both Governments to throw open to competition on fair and equal terms.

Under these circumstances, although fully aware of the difficulties of a legal and constitutional nature, which would oppose themselves to the adoption, by the Executive of the United States, of a measure exactly corresponding to that by which the British Government has so promptly responded to the wishes of the Government of the United States, I am, nevertheless, induced to bring the subject under your notice, as one which I feel convinced well merits and will receive the equitable consideration of the President, with a view to the adoption of such measures as may be practicable for the immediate relief of a deserving and industrious class of Her Majesty's subjects from the pressure of a heavy discriminating impost, the continued exaction of which results from circumstances over which neither themselves nor their Government have any control, and which must necessarily be of a temporary nature.

I avail, &c.
(Signed) JOHN F. CRAMPTON.

No. 53.

Mr. Crampton to the Earl of Clarendon.—(Received October 31.)

(No. 243.)

My Lord,

Washington, October 16, 1854.

I HAD the honour of forwarding to your Lordship, with my despatch No. 238 of the 9th instant, the copy of a note which I had thought it my duty to address to the Secretary of State of the United States in regard to the disadvantageous position in which the fishermen of the British North American Colonies would be placed during the present fishing season, by the decision of the Government of the United States that there is no possibility of carrying the provisions of the Reciprocity Treaty into practical operation in the United States before the Legislative Acts required by the Vth Article thereof shall have been passed by the Imperial Parliament and by the Colonial Legislatures. Your Lordship will perceive with satisfaction from Mr. Marcy's reply to my communication, a reply of which I have now the honour to inclose, that the United States' Government, fully admitting the equity of the claims of British fishermen in this matter, is disposed to

act upon the suggestion which I made to Mr. Marcy, that the action of Congress should be made available retrospectively for the remission of the duties in question.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 53.

Mr. Marcy to Mr. Crampton.

Sir,

Department of State, Washington, October 10, 1854.

I HAVE received your note of yesterday in relation to the application of the British fishermen to have the fish taken on the coasts of the British North American provinces, introduced into the markets of the United States free of duty. As a compensation for admitting our citizens to the in-shore fisheries, as provided for by the Treaty lately entered into by the United States and Great Britain, the fish taken by British subjects on those coasts are, when the Treaty shall go into full operation, to be admitted into the United States without being charged with any duty. The in-shore fisheries having been thrown open to our citizens this Government, if it had the power to do so, would at once give effect to the stipulation of the Treaty which provides for the introduction into this country of fish of British subjects free of duty. This appears to be equitable and just, but the Executive of the United States has not that power; it is obliged to levy duties on fish brought to its market by British subjects, until the Treaty becomes operative by the required legislation of Great Britain and the British provinces.

Should British fish, caught after the in-shore fisheries were opened, be brought to our markets, and duties paid thereon, it would be reasonable to expect that an application to Congress to refund the duties founded upon such equitable considerations as the case would present, would be successful, or if such fish thus taken should be put in warehouses, and bonds for the duties thereon given, Congress would, I believe, authorize such bonds to be cancelled and given up, without requiring the fish to be exported.

Having regard to the equitable considerations in support of such a proceeding on the part of Congress, I am quite sure the Executive will readily co-operate in such a measure.

I avail, &c.
(Signed) W. L. MARCY.

No. 54.

The Secretary to the Admiralty to Mr. Hammond.—(Received October 26.)

Sir,

Admiralty, October 25, 1854.

I AM commanded by my Lords Commissioners of the Admiralty to transmit to you, for the information of the Earl of Clarendon, a copy of a letter from Rear-Admiral Fanshawe, with its inclosed reports from the officers who have been employed in protecting the fisheries on the coast of North America.

I am, &c.
(Signed) W. A. B. HAMILTON.

Inclosure 1 in No. 54.

Rear-Admiral Fanshawe to the Secretary to the Admiralty.

Sir,

"Boscawen," at Halifax, September 30, 1854.

THE service of protecting the fisheries on the coasts of Her Majesty's North American provinces having been terminated by my withdrawal of the cruisers in consequence of the instructions which I received in your letter No. 137 of the 18th of August, I have the honour to transmit, for the information of the Lords Commissioners of the Admiralty, the reports which I have received from the under-mentioned officers who have been employed on that duty this year, of their proceedings, viz., Commander G. T. Napier, Lieutenant H. H. Knocker, Lieutenant A. Dent, Lieutenant J. Burgess; and I have to request you will be pleased to acquaint their Lordships that I have been perfectly

satisfied with the conduct of these officers in carrying out my instructions, and with their zeal and activity.

I have, &c.
(Signed) ARTHUR FANSHAWE.

Inclosure 2 in No. 54.

Commander Napier to Rear-Admiral Fanshawe.

Sir, "Daring," Halifax, September 15, 1854.

I HAVE the honour to forward a Report of my proceedings during the cruize for the protection of the fisheries in the Gulf of St. Lawrence since the 29th of May last.

I anchored first at Venus Cove, on my way through the Gut of Canso, on the 31st, where I was detained till the 2nd June by strong and contrary winds.

This, as well as Holland and Plaister Coves, is a great resort of the American fishing-vessels, passing through the Gut, where they call to take in wood and water.

There are two stores here, where also may be obtained all the requisites of a fishing outfit. The Custom-house is at Ship Harbour.

There is a Collector of Revenues, whose station is from the northern entrance to Sandy Point (or Eddy Point) but a Custom-house officer with a boat or a revenue tender would be, I should say, a better prevention against illicit traffic.

From thence I went to Charlotte Town, Prince Edward Island, and having communicated with the Lieutenant-Governor, proceeded through the Northumberland Straits to the Bay of Chaleur, arriving at Paspebiac on the 10th June.

At Paspebiac there are two large fishing establishments, the house of Messrs. Robins and Co., and also Messrs. Boutillier, Jersey merchants, who export from here annually about 3,000 tons of codfish.

The fishing is not carried on much from this port, but is brought in from all the different fishing villages between this and the Bay of Gaspé, also from Miscou, Shippagan, and Carquette.

This being a kind of head-quarters, Messrs. Robins build vessels for their own trade. Last year they built a barque of 300 tons, and this season were just launching a schooner of 80 tons, and would then lay down another barque.

They have a complete dockyard establishment, a master shipwright, about thirty shipwrights, five blacksmiths, a leading sailmaker, with the crews of the vessels which are laid up during the summer to assist them.

These establishments let out boats to the fishermen, who bring them the fish, receiving the value of half the catch in cash or barter, but chiefly the latter.

Mackerel seldom strike up the bay so high as this, therefore the American vessels seldom come here, except for wood and water.

Port Daniel, June 12.—No regular fishing establishment here, but the inhabitants catch generally for the houses of Robins and Boutillier. Cod is the principal fishing, but some herring and salmon are also caught in the nets round the bay.

This anchorage was formerly a great resort for the American vessels, but for the last two or three years since the cruizers have visited it, they rarely come here.

Miscou.—Visited the fishing port at the North Point. Formerly, Messrs. Boutillier had an agent stationed here, but for the last few years the cod-fishing having declined, there are only a few fishermen who come in the summer to reside at this port, and fish on their own account. On Miscou Flat, and outside Miscou for some miles, there were a very great number of boats fishing, chiefly belonging to Shippagan. Up to this time, no American had been seen there this year. With the wind from the eastward, and from that round to the northward and north-west, the landing is very bad on this beach.

Percé, June 13.—There is a large fishing establishment here belonging to Messrs. Robins and Boutillier, and another Boutillier on Bonaventure, an island close opposite. About 200 boats are employed from here in the cod fishery. Mackerel and herring are only used for bait, not cured for export; the catch as yet this season has been very bad; and great complaints here, as in the places before mentioned, of the backwardness of the season.

Gaspé, June 14.—This is the port of entry for this part of the coast. The cod fishery is not carried on, but the fish are brought here chiefly in coasters from the different coves and outposts in the Bay of Gaspé, and round to the northward of Cape Gaspé.

There are three or four stores kept by merchants who export fish. A Collector of

Customs is stationed here. There is also a small salmon fishery; the average export is about 200 barrels.

Douglas Town, June 16.—The cod fishery here is almost deserted. Fishermen go for the summer with their boats to the coast of Labrador, between Mingan and Shelldrake River. Lumber to some extent is exported from here. Later in the season, when visiting this place, many of the fishermen told me that they would have done quite as well in the Bay of Gaspé, owing to the detention, &c., in going and returning from the coast of Labrador, and the rough weather they had experienced, though, when able to fish, they caught a plentiful supply. It has been an experiment for the last two or three years.

St. John's River, June 20.—A Hudson's Bay Company's fishing post for salmon fishing.

Mingau.—A Hudson's Bay Company's fishing post, the head-quarters of the agent who superintends the fishing of the different rivers between St. John's River and Natasquahau. From this station there is annually exported about 900 tierces of salmon collected from here and the other posts, and taken to Quebec.

There is a store here also for goods given in exchange for furs and skins brought in by Indians in the spring that they have taken during the winter. Being all Roman Catholics, they come here about a certain time appointed by the missionary priest, who comes here at that time about a fortnight. There are no accounts of Americans encroaching on this part of the coast. Passed through the Esquimaux Islands up to Natasquahau. On the 26th June saw two American vessels codfishing on a bank between the Mingau Islands and Anticosti, which were the only ones I observed on this part of the coast.

Magdalen Islands.—Belonging to these islands there are two schooners and about 90 or 100 boats; the schooners employed early in the spring sealing, and during the summer go to the coast of Labrador codfishing, and during the fall exporting the fish, cured, to different ports, chiefly Halifax.

The first fishing in the season is for herring, as soon as the navigation opens, usually about the 10th of May, to which a great number of vessels resort, this year from 110 to 120—American, 30; Nova Scotian and New Brunswick, 80 or 90. Quantity of herring cleared for exportation, 19,000 barrels. Mackerel fishing commencing early in June, lasting a fortnight, but at this season but few American vessels come for it, as it appears an inferior class of fish.

A second mackerel season from the middle of August through September; and during a second visit early in September found about sixty vessels round the islands. Codfishing very good, may be carried on through the summer till the navigation closes, but did not appear to be energetically pursued, as the inhabitants had also their farms to look after.

A Collector of Customs is here. There were no complaints of either fishing from the shore, or of attempts to cure the fish on the shores. A mail-vessel has been established this summer, intended to be run monthly between Pictou, these islands (Amhurst), Chief Island, and Paspébiac, thereby insuring now a regular communication with the seat of Government (Quebec), of which they have now long been in want. The whole population is about 3,000.

Bay of Seven Islands.—Visited this station in the beginning of August, it having been reported to me at Gaspé that there were a large number of Americans fishing there, but on my arrival I was informed by the Agent of the Hudson's Bay Company, that he had seen but very few there this year, and those not fishing in the bay; four or five English vessels had been there, and remained from a fortnight to three weeks, very successful, and getting nearly their full fare.

Port Hood.—Visited this port the beginning of August, but found no vessels here, but when there the beginning of this month, I found on my arrival eighteen vessels at anchor, chiefly English, and during that day nine Americans arrived, having evidently just come to the fishing-ground.

From the beginning of July, through that month and August, was employed revisiting and cruising off the different parts of the station before mentioned. About the second week of July the American vessels appeared first to assemble for the mackerel fishery, and from that time along the coast from Cape East (Prince Edward's Island) to Cape North, the bays of Chaleur and Gaspé, up to Magdalen River, there were constantly vessels fishing. I never saw any great number together till the middle of August, when off the Bay of Gaspé, I fell in with a fleet of sixty, chiefly American, or quite four to one; a little later in the month, off the Bay of Chaleur, I saw as many as 150.

The number of British vessels employed in this fishing I estimated about sixty or seventy, and is, I fancy, on the increase from former years. The greater portion of them belong to the Province of Nova Scotia, some few to New Brunswick, and five or six to

Prince Edward Island. Very many of them belonging to Halifax and Lunenburg, quite as fine vessels and well found as the Americans.

The majority of foreign vessels boarded during the early part of the season had come to the Gulf with the idea that they would have been permitted this year to the in-shore fishery, and were till the time of my leaving the fishing ground; the question was often asked, fully believing daily that the Reciprocity Treaty might be concluded.

During the presence of a cruizer the American vessels were, I observed, very cautious in keeping the limits and not coming inside to attempt fishing, but otherwise they had no compunction in coming quite into the harbours.

It was reported to me, particularly at Gaspé, that they had come close outside a peninsula, called Landy Reach, that they had been fishing there in my absence, and been very successful.

The mackerel never having struck in in any great quantities, and also from the number of days that the weather has been too rough to permit their fishing, has rendered the catch of fish this year, on the whole, to be considerably under the average, and none of the vessels, even at the end of August, had half a cargo.

Another reason I should attribute it to, is the very large number of vessels that, of late years, have been fishing in these waters, paying no respect to the season, and not allowing the fish time to spawn.

Besides the two provincial tenders fitted out by the Nova Scotian Government for the protection of the fisheries, the Canadian Government had a revenue officer with a boat and six men stationed during the month of July at the Magdalen Islands, and was afterwards moved to the entrance of Gaspé Bay, where he was to remain till the beginning of October.

On my return here, in running through the Gut of Canso on the 10th September, I passed fifty-one fishing schooners, some at anchor, others passing through to the northward.

These were evidently from their clean state coming for their first trip, for the late fishery on the coast of Cape Breton, the class of fish caught at this later part of the season being the best.

I have, &c.
(Signed) GERARD J. NAPIER.

Inclosure 3 in No. 54.

Lieutenant Knocker to Rear-Admiral Fanshawe.

Sir, "Alice Rogers," Halifax, September 18, 1854.

I HAVE the honour to report the arrival of the hired provincial schooner "Alice Rogers," under my command from the Gulf St. Lawrence, where she has been employed in the protection of the fisheries since the 14th of June, and I respectfully submit for your consideration the following remarks, made whilst so employed:—

I cruized in Chaleur Bay and about Gaspé, occasionally visiting North Cape, Prince Edward Island, from 28th of June to 18th of August.

The mackerel struck into Chaleur Bay the last week in June, were more plentiful, and those caught were much finer than those caught last year, but in Gaspé Bay they were three weeks later in striking in, nor were either so abundant or so fine fish as in Chaleur Bay. The mackerel appeared to keep in shore from Cape Gaspé towards Fox River and northward, off which place and Griffin's Cove a large catch was made at the end of July.

At North Cape, Prince Edward's Island, fish abound, but were very small, as also at East Cape and on the shores of Cape Breton, and this appears to have been the case all over the Gulf.

The deep sea fishery on the New Brunswick and Canadian coasts has been successful, and would have been more so had there not been a scarcity of bait.

Finding but few vessels came to the coasts of Chaleur Bay, and requiring medical aid, I left it on the 18th August, and proceeded towards North and East Capes, Prince Edward Island, and arrived at Port Hood, Cape Breton, the latter end of August.

The American fishermen, during the first part of the season, would not take the small mackerel, but they have done so lately, from the great demand for fish in the United States. Many of their vessels (upwards of 100 sail) left the Gulf with half cargoes on that account, but the average catch has not exceeded, even if it equalled, that of last year at this time; and I do not think there are so many vessels employed.

The contrary is the case with English vessels, and to the credit of Nova Scotia a

great many vessels, as fine and as well found as those from the United States, are from Halifax, Lunenburg, Le Hare, &c., far more than any previous year.

They came into the Gulf much later than the foreign vessels, but have been doing well; this they attribute to the protection afforded them,

Encroachments this year by foreign vessels have been frequent, owing, I think, to the less number of cruizers in the Gulf of St. Lawrence, and the American fishermen, knowing no steamer was employed in the protection of the fishermen there, took every advantage of the movement of the cruizers from one part of the coast to another. About Gaspé Bay I did not hear of any cases, but several at and about Fox River, and also received information to that effect from Mr. Belleau, Collector of Customs at Gaspé, copies of whose letter to me, and that of the master of an English schooner to him, I beg to inclose.

In Chaleur Bay several instances of encroachment, after warning off had not been attended to, compelled me to make two seizures, the "Montezuma" and the "Ellen" of Salisbury (American schooners), considering an example absolutely necessary, having detected twenty-seven within a week in the Bay and off North Cape. The "Montezuma" I released, on the master giving me a written statement that he had been legally seized, and the "Ellen" I took to Bathurst, and delivered her to the Collector of the Customs there. I also detained the American schooner "Legislator," of Bremen, off East Cape, but, on the master acknowledging his infraction of the Treaty, and that his vessel was a lawful prize, and giving me a written statement to that effect, I released him.

I was informed by several American captains, that the catch of fish had been very fair on the shores of the Magdalen Islands, chiefly by nets, and from the vessels sprung to their anchors.

The English vessels this year, I am happy to say, have their papers much more correct than last, only five or six out of forty-four I boarded being irregular, and they seem to pay more attention to showing their colours to the cruizers, though in many cases their not doing so caused me considerable trouble and delay.

I feel it right to inform your Excellency that, on the several coasts I have visited, particularly at Point Peter, Gaspé Shores, and most of the fishing stations in Chaleur Bay (I have had but little communication with those of Nova Scotia, except at Port Hood, and in the Gulf of Canso, where the inhabitants are chiefly Americans, and get their living by them, and I fear by smuggling), many of the inhabitants engaged in the fishing have spoken to me, and in several instances have asked me to express their earnest hopes that the fisheries would not be thrown open to the United States' vessels.

The continuance of protection is a question of diplomacy; but I can state that, having been employed two seasons on this service, having associated with the poorer as well as the richer class of people thus engaged, nearly all entertain the same feelings, and seem convinced that such a course will ruin them and their families.

I would wish also to bring under your notice the great increase of vessels that sail this year under English colours and papers, but belonging to American subjects residing in the provinces.

At Cascumpee, Prince Edward Island, an American gentleman, Mr. Ryder, owns about ten vessels; they are American built, the masters are chiefly Americans, as are most of their crews.

Several of these vessels have been run on shore purposely off that harbour, and bought in by Mr. Ryder, but received their papers in the name of his clerk, Mr. Howlan, an Englishman. About the 10th of August, an American schooner, the "Missouri," of Salem, was thus bought in at Cascumpee.

I understand an objectionable practice has existed this year, that of large American boats, with nets, &c., being attached to English (so called) vessels. These boats shoot their nets under the very huts of our fishermen. This took place at Point Peter and Gaspé Bay. Finally, on the subject of coast lights, to which you directed my attention, I would suggest that great benefit would be derived from a lighthouse on East Point, Prince Edward Island, and would be the means of preventing many wrecks which yearly take place on that coast, and even this season would probably have saved several lives. It might be erected with very little cost, and would not require to be higher than 60 feet. A lighthouse also would be very beneficial on Miscou Island, at the entrance of Chaleur Bay, where the navigation is rapidly increasing; it would only require to be lighted about seven months in the year, and as wood is so plentiful, it would cost but little, and would amply repay by the increase of shipping. No less than three fine vessels have been lost from want of such a light this year.

In conclusion, I have to report that the crew of the "Alice Rogers" have conducted themselves to my entire approbation; they have always worked in a diligent and willing

manner, and both the master and pilot have rendered me every assistance I required in conducting this service. Trusting that your Excellency and the Colonial Government will approve of my proceedings, I have, &c.

(Signed) HUGH H. KNOCKER.

Inclosure 4 in No. 54.

Lieutenant Dent to Rear-Admiral Fanshawe.

Sir, "Sarah and Adeline," Halifax, September 16, 1854.

I HAVE the honour to inform you of the arrival of the provincial schooner under my command, and to make the following Report of my proceedings whilst in that vessel.

Leaving Halifax on the 24th of June, I sailed for the eastward, and proceeded along the southern coast of Nova Scotia to Canso Harbour, where I anchored on the 26th, and, on the following morning, proceeded round Chedabucte Bay, calling at Fox Island, Crow Harbour, Guysborough, and the various creeks and harbours.

Finding no fishing going on about the bay, I proceeded on the afternoon of the 28th through the Gut of Canso, calling at all the different coves, &c., and where I found any American vessels, ordering them out as soon as they had remained the term allowed them for procuring wood and water; in which, however, I found no difficulty, as they were only too anxious to proceed on their fishing voyage as soon as wind and weather would permit them.

I anchored at Plaister Cove, where I was detained by contrary winds until the 5th of July, when I weighed, and proceeded through the Strait to Port Hood, with upwards of sixty sail (chiefly Americans) all bound for the North Bay. Before going to Port Hood, I cruized round the Bay of St. George, but finding no fishing or other vessels in the bay, I came to on the morning of the 6th.

On the 7th, weighed and stood to the northward along the Cape Breton shore, seeing only one sail during the day. After cruizing up and down the coast as far as Cape North, I returned to Port Hood on the 10th, and, receiving no orders, proceeded through the Gut to Plaister Cove, where I anchored on the morning of the 11th, and remained until the 13th, watering and refitting, and then proceeded to the southward to Canso Harbour.

Finding no orders, I went back to Port Hood on the 18th of July. There was no appearance of any fishing vessels either in the Bay of St. George or about Port Hood (although the fish was very abundant along the shore and in the Strait). I again sailed for the northward and came to in Chetican Harbour on the 21st. I visited the fishing establishment here carried on by Messrs. Robins and Co., which is conducted on a very large scale. Their boats, &c., are well equipped, and they cure annually from 8,000 to 10,000 quintals of cod fish. Finding no fishery going on about this part of the coast, on the 24th I proceeded to the northward, calling at Limbo Cove, &c., and anchored in the Bay of St. Lawrence. On the 26th weighed, and stood to the southward, calling at Port Hood, and being in want of wood and water, ran down to Holland Cove. I found the street entirely occupied by American fishermen, and indeed during the whole of the fishery season this is the case. On going from the Strait to Port Hood on the 29th July, I observed a dismasted brig and a schooner under the land, about six miles to the southward of Cape Jack Light. On boarding her, she proved to be the British brig "Fortuna," picked up by the American schooner "Mary Gay," on the 27th, off East Point, Prince Edward Island. I anchored alongside the wreck for the night, and on the following morning, not considering her in safety (the wind at the time blowing hard from the south-west, and only one anchor being on board), I desired the American master to take her into Port Hood or some place of safety, and, on his refusing to do so, I took the brig in tow, and, on the following day, anchored her in safety. On Monday, the 1st of August, I gave her in charge of Mr. Blanchard, Collector of Customs, &c., at Port Hood.

I remained at that place until the 4th of August, during which time we were employed refitting, painting, &c., no fishing vessels of any description being on the coast. I was informed by several American fishing masters that the fish were found in great abundance in the bay, but so close inshore that their vessels had done very badly, owing to the vigilance of the cruizers on the station. On the 7th I weighed and ran down along the land to the northward, but finding no fishing vessels on the coast stood across towards Prince Edward Island and continued cruizing until the 10th, when I anchored at Port Hood and received intelligence that Her Majesty's brig "Daring" had sailed on the 9th for Chaleur Bay. There was no fishing either by foreign or British vessels going on. I

remained there until the 12th, on which day I sailed, and being in want of repairs which could not be obtained elsewhere I ran down the Strait of Canso and anchored in Arichat Harbour at 4 P.M. on that day. I remained there until the 16th, when I again sailed for Port Hood. After running through the Strait of Canso, on the 17th, I observed an American vessel fishing within the Bay of St. George, which I boarded, and after examining her papers, ordered and saw her off. She belonged to Truro, and was bound home with 170 barrels of mackerel on board. This was the first American vessel I found fishing within the limits. I arrived at Port Hood on the 24th August, when I was detained by strong north-westerly gales until the 24th, when I sailed and proceeded down the shore to the northward, where I found only five English schooners fishing off Margaree Island. A gale of wind springing up suddenly from the south-west I stood off the land and hove to. On the morning of the 25th the wind shifted round to the north-west, still blowing very hard. I rounded Cape North and ran down the eastern shore of Cape Breton, intending to make Sydney, but failing in that, stood on, and the sails being very much in want of repair, I ran into Louisburgh, where I anchored on the 26th. After refitting and repairing sails I started on the 27th for Port Hood, where I anchored at 8 P.M. on the 28th of August. On the 31st I sailed in company with the provincial schooner "Alice Rogers," standing across towards East Point, and continued cruising from there to Margaree Island until the 3rd of September, when I returned to Port Hood. On the 4th, being in want of wood and water, I ran down to Holland Cove, Strait of Canso. After completing which I returned to Port Hood the following day. On the 7th I weighed and stood down towards Margaree Island, but the wind being fresh from the northward and westward, returned the same night, having seen only three English vessels fishing off the mouth of the river. I remained at Port Hood until the 9th, when Her Majesty's brig "Daring" arrived, and I received orders to repair forthwith to Halifax. I accordingly sailed from Port Hood on the 10th of September, and anchored in the Strait of Canso that night. I was informed that Her Majesty's brig "Daring" had passed through the Gut that forenoon. I remained there until the 12th, being detained by southerly winds and calms, when I sailed.

On leaving the Gut I found the wind blowing hard from the south-west, and, therefore, bore up and anchored in Arichat. On the following morning weighed and stood across towards Canso Harbour, the wind increasing to a strong gale. In the evening I came to inside Island Harbour, where I remained until the following morning, when I sailed for Halifax.

With regard to the services on which I have been employed I beg to state that, up to the time of my being recalled, there was no fishing carried on by any foreign vessels about the shores of Cape Breton Island. About the end of August a few British fishing vessels began to make their appearance at Port Hood, but although the mackerel were found in great abundance they were so small that they were not thought worth taking by the fishermen.

During the whole time I have been off and on the coast of Cape Breton, I have only seen two American vessels within the limits on my station, with the exception of those which, from time to time, put in for shelter, wood, and water. I regret, therefore, that it has almost been out of my power to afford any protection to the fisheries which I was in hopes I should have been enabled to do.

I would respectfully beg to observe, that great inconvenience is occasioned by English vessels not showing their colours when in sight of a man-of-war, and it would greatly forward the service could they be punished for this neglect. Many of the Lunenburg vessels it is almost impossible to distinguish from American, and much time is frequently lost in chasing them, when the cruisers might be better employed.

I would also beg to suggest to your Excellency that, should vessels be again required to be fitted out for the protection of the fisheries, that the owners should not be allowed to go in them as sailing-masters, and that a Government instead of a private pilot should be appointed, who should be responsible for the safe pilotage of the vessel. I transmit, herewith, a copy of my journal, and have returned to your office all the papers and documents with which I was furnished.

I have, &c.
(Signed) ALBERT DENT.

Inclosure 5 in No. 54.

Lieutenant Burgess to Rear-Admiral Fanshawe.

Sir, "Netley," Halifax, September 6, 1854.

IN compliance with my instructions on rejoining your flag, I have the honour of laying before you a general statement of the fisheries, together with the information that I have been able to glean from different sources and personal observation, during my stay in the Bay of Fundy, while in the command of Her Majesty's cutter "Netley," but I am afraid from the former able reports that have been made, there remains but little information for me to impart. I have visited all the different fishing grounds frequently and at irregular periods, and I am happy to say that I have, on no occasion, found any American vessels attempting to trespass or encroach on our waters, neither have I heard of any case of the sort.

This has been on the whole a far better season for the fishermen in general than last year, both as regards the deep-sea and in-shore fishing; herrings have been very abundant on the Nova Scotian shores, more so than they have been for a number of years. At Digby they were so numerous, as many as 500 or 600 barrels having been taken in one weir in a day, in fact, so plentiful were they at times, both there and at Tusket, they were obliged to make manure of them, or give them away, not being able to cure the large quantities taken.

At St. Mary's Bay they were equally fortunate, large numbers of fine mackerel have also been taken there, better and in larger quantities than have been taken for several years. At Yarmouth, or off Yarmouth I should say, the fishing has also been very good, but the fishermen complain there of the difficulty they have in manning their vessels, from the numbers that now go over to the American vessels, they being induced to do so from the much higher wages that are offered by the States' fishermen.

On the New Brunswick grounds as far as regards the herring, with a few exceptions, they have been nearly as numerous as on the Nova Scotian coast, some parts of Grand Manan being those exceptions, in a great many cases those weirs where large quantities of fish were taken last year, had taken very few, while others, again, who took but few last year, had great numbers this, but on the whole they had not been so plentiful up to the time that I left as last year; this was attributed, in a great measure, to the large number of mackerel that were on the coast, these fish nearly always driving the herring away, but when I left, the former were disappearing, and herring coming in very plentifully.

All the in-shore line fishing here has been very good indeed, though at first it was rather poor, yet towards the end of June it was much better than last year, hake being the most prevalent.

Westport is certainly the greatest fishing port in the bay, nearly the whole of the males being fishermen. The vessels owned from this port, which does not exceed 300 inhabitants, are upwards of 35, varying from 60 to 10 tons, 8 of which go to the Magdalen Islands and 2 to Labrador; nearly all of which are owned by the masters, or between the crews. They are more prosperous here than at Grand Manan, which I think is attributable to their being more energetic and all devoting themselves entirely to fishing, while several of the inhabitants of Grand Manan divide their time between farming and fishing, not commencing the latter till nearly the end of May, about six weeks after those of Westport, the best cod fishing being then nearly over. The fishermen of Westport average about 50%, while those of Grand Manan only 30%. The cod abound most from the beginning of April to the end of June, and again in October; these months are not considered the most profitable, except to the regular deep sea fishermen, on account of the stormy weather that prevails during part of that time. About August is considered the best; every sort of fish are then caught, amongst which pollock and hake (which is considered a valuable fish from the quantity of oil that is extracted from it) there abound. The latter fish (which is the most plentiful on the Grand Manan shores) is the best for the West Indian market; it cures better than any other.

From what I have been able to gather, the inhabitants of Grand Manan are fast improving their condition, there being very few now on the island who are not comfortably off; they also certainly look after their own interests as regards the fishing more than they used to. The weir-holders now, instead of taking every fish that gets into their weir, and thereby wasting immense numbers of small herring, which are useless for anything else but manure, now merely take what they can cure, the gates of the weirs are then opened and the remainder driven out. The deep sea and other fishermen also take much more pains in taking and curing their fish. I am, therefore, of opinion that the bounty societies have

done a great deal of good, these latter fishermen being stimulated to more carefulness and greater exertion from the hope of reward. I agree with Captain Kynaston, though, that bounties should be offered a short time to those fishermen who have the largest and best equipped vessels, in order that our fishermen might in time compete with the Americans, whose vessels are more like yachts than fishing vessels, extremely clean and well found, in which they can fish in almost any weather, while the small, dirty, badly-found vessels of this place, which are a disgrace, are obliged to run for shelter.

The Campobello boats are the best I have seen along the coast; they are of a better description and much cleaner. This may in some measure be accounted for by the annual regatta which takes place amongst the fishermen of this port, which was first introduced and much encouraged by Captain Robinson, R.N.

I consider the protection of the spawning ground at the south-west head of Grand Manan (for which I left two men) has proved highly beneficial to the whole of the in-shore fishery. Various sorts of fish which were getting scarce, such as pollock, hake, mackerel, &c., are now gradually increasing again, and I would advise the New Brunswick Government to enlarge the limits of the spawning ground; at the least to include Bradford's Cove, as great destruction is caused to the fish which are taken there while in the very act of spawning.

Regarding the oft disputed question of whether the weirs are detrimental to the in-shore fishing, I should rather imagine not, so long as the owners of the weirs do not take or destroy the small herring, but only those that they want, the decrease of the fish must have been attributable to other reasons, one of the principle, was the destruction of the spawn. I could recommend to the Nova Scotian Government to oblige all their weir holders—as adopted in New Brunswick—to have always at low water a few feet of water in, and gates fitted to the weirs, for large quantities of herring were destroyed at Goat Island, Digby, and at Tasset River this year from that reason, for once in the weir, they could not drive them out again, and they were obliged as I have mentioned before, to make manure, or bury them in the ground, in fact, I believe till the authorities interfered, they were left in some weirs to rot.

I have in accordance to your direction visited the lighthouses in the Bay of Fundy, which I have found in a state which indicates that much attention is paid to them by those in whose charge they are. I may mention the Garnet Light, and Head Harbour Lights, Campobello, in particular, which are both extremely clean.

The fog signals which are in use in the lighthouses are various. At Quoddy Light (American) a large bell is used, which affords an excellent method of ascertaining one's position, and can be heard in light winds, which generally accompanying fogs between 5 and 6 miles. At Quacco and Machias Seal Islands, guns are fired, but neither at the Garnet, which is the most important lighthouse in the Bay, on account of the dangerous ledges and shoals by which it is surrounded, nor Head Harbour, are the arrangements as good as may be; as the former only possesses a horn which might easily be mistaken for a fishing vessel, and the latter has no means to indicate its position beyond answering by a very small gun (which is quite dangerous to fire) any signals a vessel may make.

I think great improvement might be made, if a distinct code of signals, either by guns or bells, were allotted to each lighthouse, which would in most cases afford a tolerably correct idea of the ship's position, and during the greater part of the summer or foggy weather, be equally, if not of more importance than the light itself.

If I may be allowed to make a suggestion on this subject, I would recommend to the authorities that a steam whistle, which can be heard at a great distance—it would not be an expensive mode—might be beneficially fitted to some of the lighthouses.

In conclusion, I have to add that a practice is being extensively adopted by the pilots of New Brunswick, of whitewashing in different ways the various headlands along the shores, first suggested by the marks used by the Surveyors of the Bay of Fundy, which meets with very great success, and if it were adopted along the Nova Scotian coast which it might be with a little expense, I consider a very great benefit would accrue to navigators along this dangerous shore; and if such works as might be determined upon were indicated upon the charts, strangers might often, in making the coast, which they frequently unwittingly do in a fog, be made acquainted with their position, and often perhaps, avoid the fate which so many vessels meet with each summer on these coasts from the danger of navigating in fogs.

I have, &c.

(Signed) J. BURGESS.

Lord Wodehouse to Mr. Merivale.

Sir, *Foreign Office, October 26, 1854.*
 WITH reference to Mr. Hammond's letter of the 13th instant, inclosing copies of despatches from Mr. Crampton, Her Majesty's Minister at Washington, stating the grounds on which the United States' Government considers itself precluded from complying with the request of the Colonial authorities of Nova Scotia and Prince Edward Island for those Colonies to be admitted to the full and immediate enjoyment in the United States of the privileges stipulated for in the Treaty of the 5th of June last, I am directed by the Earl of Clarendon to transmit to you copies of two further despatches from Mr. Crampton,* inclosing a copy of the Report which has been drawn up by the Attorney-General of the United States upon this subject; and also a copy of a note which Mr. Crampton has addressed to the American Secretary of State, pointing out the disadvantageous position in which British fishermen are placed in consequence of the United States declining to reciprocate at once the advantages which have been given to American fishermen. And I am to request that you will lay Mr. Crampton's despatches before Secretary Sir George Grey, and state to him that Lord Clarendon purposes to instruct Mr. Crampton again to bring under the serious consideration of the United States' Government the justice of the claim brought forward on behalf of the British Colonial fishermen.

I am, &c.
 (Signed) WODEHOUSE.

No. 56.

The Earl of Clarendon to Mr. Crampton.

(No. 238.)

Sir, *Foreign Office, November 1, 1854.*
 I HAVE received your despatch No. 238 of the 9th instant inclosing a copy of a note which you had addressed to Mr. Marcy, pointing out the disadvantageous position in which British Colonial fishermen are placed in consequence of the United States declining to reciprocate at once the advantages which have been given to the American fishermen by admitting them to the full and immediate enjoyment of the privileges stipulated for in the Treaty of the 5th of June last; and I have to state to you that I approve of the note which you addressed to Mr. Marcy in regard to this matter.

You will again request the American Government to take into their serious consideration the justice of reciprocating the advantages which have been so unhesitatingly given to American fishermen at the request of the United States.

I am, &c.
 (Signed) CLARENDON.

P.S.—I have spoken on this subject to Mr. Buchanan, who expressed his confident belief that the duties now paid by the British Colonial fishermen will be refunded after the meeting of Congress.

C.

No. 57.

The Earl of Clarendon to Mr. Crampton.

(No. 241.)

Sir, *Foreign Office, November 2, 1854.*
 SINCE my despatch No. 238 of this date was written, I have received your despatch No. 243 of the 16th ultimo, inclosing a copy of a letter from Mr. Marcy, stating that, in consideration of the British Colonial fisheries having been thrown open to American fishermen immediately after the ratification of the Reciprocity Treaty of June 1854, the United States' Government will be ready to support in Congress an arrangement for the remission of the duties which, in consequence of the necessary legal enactments not having yet been passed by Congress for carrying out the Treaty, may have been levied on British Colonial fish in the United States.

It will now, therefore, only be necessary that you should express to Mr. Marcy the

* Nos. 51 and 52.

satisfaction of Her Majesty's Government at the equitable arrangement proposed to be made respecting the above-mentioned duties.

I am, &c.
(Signed) CLARENDON.

No 58.

Mr. Crampton to the Earl of Clarendon.—(Received November 6.)

(No. 251.)

My Lord,

Washington, October 23, 1854.

WITH reference to my despatch of No. 243 of the 16th ultimo, by which I had the honour of informing your Lordship that the United States' Government, in compliance with the suggestion which I had thought it my duty to make to Mr. Marcy, were disposed to take such measures as should be possible for the remission of the duty on British caught fish during the present fishing season, by making the action of Congress at its next session available retrospectively for this purpose, I have now the honour to inclose copies of a circular instruction from the Acting Secretary of the United States Treasury to the Collectors of Customs, for the purpose of facilitating the arrangements and understanding, dependent upon the action of Congress, which had been come to between the United States' Secretary and myself, in regard to this subject.

By the issue of receipts to parties paying duties on British caught fish under the present state of the law, it is intended to enable them without difficulty to obtain, on presentation of such receipts, a repayment of those duties so soon as the contemplated Act of Congress shall have been passed.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 58.

Circular addressed by the United States' Treasury to the Collectors of Customs.

Sir,

Treasury Department, October 16, 1854.

IN consequence of the privilege now enjoyed by citizens of the United States, as well as of the probable exemption from duty, at an early day, of fish of all kinds, the products of fish, and all other creatures living in the water, and in pursuance of the stipulations of the Reciprocity Treaty of the 5th of June last, entered into between the United States and Great Britain, upon due compliance with the requirements of said Treaty respectively, by the Imperial Parliament and the Provincial Colonies affected by the Treaty aforesaid; and in order to facilitate certain arrangements and understandings dependent upon the action of Congress, had between the Secretary of State of the United States and the British Minister, Mr. Crampton, it becomes necessary to issue the following instructions: to wit:—

First—On entry at your port for consumption of the fish of the description mentioned, and due payment of the duties thereon, you will give the owners, importers, or agent a proper receipt therefor, with the Custom-house seal attached, specifying the name and nation of the vessel, the date of her entry, the place from whence arriving, with the quantity and description of the fish.

Second—Should the parties desire to warehouse under bonds you will permit the same to be done in accordance with the existing provisions of the law on this subject, taking care to give such particulars of the law on the transaction in the bond as to show the true object of the obligation.

(Signed) J. G. WASHINGTON,
Acting Secretary to the Treasury.

No. 59.

Lord Wodehouse to Mr. Merivale.

Sir,

Foreign Office, November 13, 1854.

WITH reference to Mr. Hammond's letter of the 13th ultimo and to previous correspondence, I am directed by the Earl of Clarendon to transmit to you, for the

information of Secretary Sir George Grey, a copy of a despatch from Her Majesty's Minister at Washington, reporting the assurances of the United States' Minister that the present exceptional position of British fishermen under the Reciprocity Convention would be duly recommended to the favourable consideration of Congress, and of Lord Clarendon's reply thereto, together with a copy of a further despatch from Mr. Crampton, inclosing a copy of a Circular addressed to the United States' Collectors of Customs with reference to this subject.*

I am, &c.
(Signed) WODEHOUSE.

No. 60.

Mr. Crampton to the Earl of Clarendon.—(Received November 19.)

(No. 261.)

My Lord,

Washington, November 6, 1854.

I HAVE not failed, in conformity with the instructions contained in your Lordship's despatch No. 223 of the 13th ultimo, to take every opportunity of pressing upon the Government of the United States the justice of the claim of the British North American Colonies to participate at once in the benefits secured to both countries by the Reciprocity Treaty, the full effect of which is only delayed for a time by circumstances over which Her Majesty's Government have no control.

Your Lordship will have perceived from my despatches Nos. 237 and 238 of the 9th ultimo, and Nos. 243 and 251 of the 16th and 23rd ultimo respectively, that I had anticipated your Lordship's instructions to a certain extent, and had succeeded in obtaining the desired object in the only form which it appeared to be legally practicable, by an engagement from the Executive of the United States to propose to Congress a law by which any duties which may be collected on British caught fish previous to the formal operation of the Treaty, shall be remitted, in consideration of the prompt manner in which Her Majesty's Government had complied with the wishes of the Government of the United States in throwing open the British fisheries to American citizens.

Since that period the Canadian Legislature has passed an Act by which the duties have been abrogated upon all the articles of American produce enumerated in the Reciprocity Treaty, and it appeared to me to be but fair that the principle which had been admitted by the United States' Government as equitable in regard to British caught fish, should be also applied to those other articles, the produce of Canada, which are now embraced by the Legislative Acts of that Province.

This question having accordingly been submitted by Mr. Marcy to the consideration of the Secretary of the Treasury, has been decided in the affirmative, and your Lordship will perceive from the note which has been addressed to me by Mr. Marcy, a copy of which I have the honour to inclose, that instructions will be addressed to the Collectors of the United States' Customs in regard to the articles enumerated in the Treaty, being the produce of Canada, to the same effect as those which were addressed to them in regard to British caught fish.

I have this day received intelligence of the passage of a Bill by the Legislature of New Brunswick, for giving effect to the Reciprocity Treaty, similar to that passed by the Canadian Parliament, and I shall therefore lose no time in moving the Government of the United States to include New Brunswick also in the above arrangements.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 60.

Mr. Marcy to Mr. Crampton.

Sir,

Department of State, Washington, November 4, 1854.

IN consequence of the proceedings in Canada in allowing bonds to be taken from the citizens of the United States on articles imported into Canada mentioned in the late Treaty between the United States and Great Britain, under favourable conditions to them, the Secretary to the Treasury will immediately issue a Circular applying to articles enumerated in the Treaty imported from Canada into the United States the same regulations which have been adopted in regard to the importation of fish from the British North

* Nos. 53, 57, and 58.

American Provinces by his Circular of the 16th ultimo, a copy of which I herewith inclose.

I avail, &c.
(Signed) W. L. MARCY.

No. 61.

Mr. Crampton to the Earl of Clarendon.—(Received November 19.)

(No. 263.)

My Lord,

Washington, November 6, 1854.

WITH reference to the subject of my despatch No. 261 of this day's date, I have the honour to inclose the copy of a letter which I have addressed to the Lieutenant-Governor of Nova Scotia, requesting his Excellency to give me the earliest information of any action on the part of the Legislature of that province, which may enable me to move the United States to apply to the articles, besides fish, enumerated in the Reciprocity Treaty, being the produce of Nova Scotia, the principle which has been adopted in regard to British-caught fish, and which will now be applied to the other articles, being the produce of Canada, which are enumerated in that Treaty.

I have addressed a similar letter to the Lieutenant-Governor of Prince Edward Island.

I have, &c.
(Signed) JOHN. F. CRAMPTON.

Inclosure in No. 61.

Mr. Crampton to Sir Gaspard Le Marchant.

Sir,

Washington, November 6, 1854.

WITH reference to my letter of the 23rd ultimo, in which I had the honour to inclose to your Excellency the copy of a Circular instruction from the Secretary of the Treasury of the United States to Collectors of Customs, containing instructions for their guidance, with a view to facilitate the arrangements dependent upon the future action of Congress, having reference to a remission of the duty on British-caught fish during the present season, I have now the honour to inform your Excellency that the United States' Government, in consequence of the Act lately passed by the Canadian Legislature for bringing the Reciprocity Treaty into full operation, has engaged to apply the same principle to the other articles enumerated in the Treaty, being the produce of Canada, as has been applied to British-caught fish.

I feel little doubt that the Government of the United States would not hesitate to embrace in the same arrangement similar articles being the produce of Nova Scotia, so soon as I shall be enabled to announce to them, officially, that the Legislature of that province has passed an Act similar to that passed by the Legislature of Canada; and I shall, therefore, feel obliged by the earliest intelligence which your Excellency may be enabled to give me of such an event.

I have, &c.
(Signed) JOHN F. CRAMPTON.

No. 62.

The Earl of Clarendon to Mr. Crampton.

(No. 271.)

Sir,

Foreign Office, November 28, 1854.

I HAVE received your despatch No. 261 of the 6th instant, stating that an Act having been passed by the Canadian Legislature (since the date of your previous despatch No. 231 of the 23rd ultimo) extending to all articles of American produce, enumerated in the Treaty of Reciprocity, the exemption from duty which had been previously granted to American citizens in the case of fish only, you had applied to the United States' Government to extend to the other articles; being Canadian produce enumerated in the Treaty, the principle of future remission of duties which has been admitted in regard to British-caught fish, and inclosing a copy of Mr. Marcy's reply informing you that the United States'

Secretary of the Treasury will immediately issue a Circular applying to Canadian produce the regulations already adopted in regard to fish; and I have to acquaint you that I approve of your proceedings in this matter.

I am, &c.
(Signed) CLARENDON.

No. 63.

The Earl of Clarendon to Mr. Crampton.

(No. 299.)

Sir, *Foreign Office, December 22, 1854.*
I TRANSMIT to you herewith, for your information a copy of a letter from the Colonial Office, inclosing a copy of a letter from Mr. Marcy to the Governor of Canada, stating that the principle adopted with regard to fish on its importation into the United States had been extended to all the articles comprised in the Schedule attached to the Reciprocity Treaty.

I am, &c.
(Signed) CLARENDON.

No. 64.

Mr. Merivale to Mr. Hammond.—(Received February 15.)

My dear Hammond, *Colonial Office, February 15, 1855.*
I INCLOSE, in answer to your note, a letter of Admiral Seymour which I suppose will be Lord Derby's brief against the Treaty. You will observe the minutes of Mr. Peel and Sir G. Grey on the back, which appear to indicate their views.

I am not aware what more can be said, than that Article I of the Treaty only extends to the coasts of Nova Scotia, New Brunswick, and Canada, rights already enjoyed by the French and Americans over a considerable part of the coast of Newfoundland under Convention and Treaty; that permission to land "for the purpose of drying nets and curing fish," certainly does not in terms imply permission to form such permanent stations as Lord Derby and Admiral Seymour seem to apprehend; that, in Newfoundland, though there have been serious international difficulties in the execution of the Treaties, this particular danger, the formation of permanent stations with extensive territorial dependencies by foreigners, has not occurred, so far as I am aware; and that the arguments against the Treaty seems to resolve itself rather into pointing out its possible abuses, than its probable consequences.

I will show your note to Mr. Peel when he arrives, who has paid more attention than I have to this subject.

Yours, &c.
(Signed) HERMAN MERIVALE.

Inclosure 1 in No. 64.

Vice-Admiral Sir G. Seymour to Sir G. Grey.

Sir, *115, Eaton Square, February 3, 1855.*
I TOOK the liberty of calling at the Colonial Office this morning in order to bring under your consideration some points connected with the Treaty of June last with the United States, on which Sir Charles Edward Grey, the late Governor of Jamaica, had expressed his opinions to me in a letter written from that island which I received by the last mail. I venture to extract them for your information, in case it may be possible and advisable to introduce into the Act now under the consideration of Parliament any guard against the extension of the privileges to which the fishermen of the United States will become entitled on the Treaty and Act taking effect, with a power of making Settlements in British North America by foreigners owing no allegiance, and placed, as it appears to me, out of the jurisdiction of the law of the country when they establish stations in the British Colonies for the purpose of taking, curing, and drying fish taken in the sea fishery, or under that supposed intention.

Before the Earl of Elgin proceeded to the United States and Canada, in the month of

May last, the circumstance of my having commanded Her Majesty's naval forces in North America at a period when the enforcement of the Convention of 1818 had (although carried out with success) been attended with difficulties, in which my conduct had the approval of Her Majesty's Government, led the Earl of Clarendon to desire me to see the Earl of Elgin and to state the objections I entertained to extending the right to fish on every part of our coasts, which seemed equivalent to the opposite claims, and which appeared advisable to yield for reciprocal and commercial advantage, so far as to permit the Americans any new privileges on shore in our Colonies for the purpose of drying and curing their fish.

As the considerations I argued did not prevail, or were supposed to be met by the scheme for Arbitration which makes part of the Treaty (Article I), I shall only briefly advert to them.

1. They consisted principally in the belief that it is dangerous to give foreigners, as foreigners, the power to make any establishments or to possess independent rights in your territory.

2. That the privileges proposed by the French, under the Treaty of 1783, on the west coast of Newfoundland, and those claimed by Russia under Treaty with the Ottoman Empire, though for different objects, are existing proofs of the difficulties which may be caused by such concessions.

3. That giving the subjects of the United States privileges or land in our Colonies tended to advance their union with the United States; whereas, when the time shall arrive for the separation of the former from Great Britain, the true policy is to look to their forming an independent Union.

4. I also apprehended that disputes which would arise, on the most trivial causes, on the shores, between the foreign fishermen and our own, would produce international representations, instead of being summarily settled by an appeal to the next Magistrate.

You will observe that Sir Charles E. Grey would meet these difficulties in another way, and it is in order that his view may be seen by you before the Act to give effect to the Treaty (which I have only just obtained) may pass through both Houses that I intrude upon you with the inclosed paper and this hasty sketch of my opinions on a subject which appears to me of much importance to our future relations with British North America and the United States.

I have, &c.
(Signed) G. F. SEYMOUR.

P.S.—I should add that Sir Charles E. Grey had returned to Jamaica to settle some private business.

G. F. S.

Inclosure 2 in No. 64.

Sir C. Grey to Vice-Admiral Sir G. Seymour.

(Extract.)

December 12, 1854.

I WAS glad to see in the Treaty the reciprocal remission of Customs duties, and I am in favour of an admission of both France and the United States to a participation in the fisheries, but I think the best way of doing this would have been that I suggested to you at Jamaica, namely, a waiver of our claim to exclude them from bays and inlets of which the mouths are more than six miles across, so as to put the matter on the ordinary footing of an exclusion of foreign fishermen from the exercise of any right within one league of the British coasts.

But I should not object to the reciprocal waiver even of that exclusion, for I am, in reality, desirous that the British, the American, and the French should, individually, have exactly the same rights as to private property both real and personal, and as to the exercise of trades or callings in the territories of the three nations as the nations themselves, but this would be a very different thing from giving to a foreign people, not the common right of property as individuals, but to the whole of them collectively a national privilege of establishing fishing stations on our coasts.

In the one case their transactions are subject to our laws present and future, in the other an American or French fishing station would probably be inhabited almost exclusively by Americans or French, and it would be very questionable whether British law and jurisdiction would have any influence, especially if the station should be in any mouth or unfrequented situation.

In the one case, no foreign company could hold land except to the extent permitted
[566] P

to British Companies, but, under the Treaty, what is there to prevent a New York Company with a joint stock of, perhaps, 1,000,000*l.* sterling, from taking possession of Anticosti or South Island? or the Magdalen Islands by agreement with the proprietors.

This has been already thought of.

I think that the exclusive command of the Gulf of St. Lawrence and enjoyment of the great coal field in Nova Scotia, New Brunswick, and Newfoundland, may come to be of vital interest to our naval power. I heartily wish that, instead of an extension of the right of forming stations, there had been substituted for the right, in the recent Treaty, an admission of the Americans to a full right of acquiring and holding private property, and if it is now too late to withhold from them the national right of forming stations, I hope that Parliament will qualify the sanction of the Treaty by providing against any of these stations being fortified.

Anticosti, in the hands of an American Company, with the buildings they might erect upon it, would, perhaps, be more difficult to take than Bomersend.

Inclosure 3 in No. 64.

Newspaper Extract.

THE FISHERIES (NORTH AMERICA) BILL.—ON the motion for the second reading of this Bill,

The Earl of Derby did not wish to offer any opposition to the second reading of this Bill, as it was one of pressing importance, and was one to enable the Crown to carry into effect a Treaty which had been already concluded between the United States and this country, and as it had already received the sanction of the various Colonial Legislatures except that of Newfoundland. If, however, they were then discussing the terms of the Treaty, he should find some difficulty in admitting that the principle of reciprocity between the two countries had been fairly carried out by it. He doubted very much whether, for the free navigation of the St. Lawrence obtained by the United States, they had yielded a fair equivalent in the concession to us of the right of navigating Lake Michigan. But the concession on our part, for which he was unable to see that we had obtained any reciprocal advantages, was the right granted to American fishermen of taking fish, not only within certain limits, but within the very bays and shores of our Colonies; for the concession of a similar right to our fishermen to fish on the American coast was in reality worth nothing. The only advantage that we had obtained in return for this concession was, in fact, that fish imported from the coast of Nova Scotia, whether in British or American vessels, should be admitted free of duty into the United States. He thought these terms were undoubtedly favourable to the United States; but still, as the Treaty had received the sanction of the various Colonial Legislatures, he was not disposed to enter further into their discussion. He wished, however, for information on two points on which some apprehensions were entertained. One point was as to whether the jurisdiction of the Mixed Commission to be appointed under the Treaty was to be confined, as he hoped, to the settlement of disputes that might arise as to whether particular parts of the coast of our Colonies were or were not within the limits to be reserved for British fishermen. Another point was this: It appeared by the Treaty that the American fishermen were to be allowed, not only to fish on our coasts, but were to be allowed to land there for the purpose of drying and curing their fish. Now, he thought that the utmost care should be taken that this right should not be extended so as to permit the erection of permanent buildings, or the maintenance of permanent establishments, the property of inhabitants of the United States; for if one thing more than another was likely to give rise to disputes between two countries, it was the granting territorial rights (secured by Treaty) on the one side to the inhabitants of the other. The result necessarily was that, on points guaranteed by the Treaty, questions continually arose between the two Governments, and their interference was invoked in disputes between the inhabitants of the two countries which might have been easily settled by an ordinary magistrate. He trusted that his noble friend, the Chancellor of the Duchy of Lancaster, would be able to give him a satisfactory assurance that his apprehensions on these points were unfounded.

Earl Granville was not able to give the requisite explanations. His noble friend, the Secretary of State for Foreign Affairs, who was now detained at his office by a pressure of public business, would be present on a future occasion, and would be able to give the noble Earl the answers he required. Under these circumstances, he suggested that further discussion should be postponed till the House went into committee on the Bill.

This was agreed to, and the Bill was read a second time.

Mr. Crampton to the Earl of Clarendon.—(Received July 16.)

(No. 129.)

My Lord,

Washington, June 28, 1855.

I HAVE the honour to inclose the copy of a letter which I have received from the Lieutenant-Governor of New Brunswick regarding the laws and local regulations affecting the fisheries of that Province; and I have also the honour to inclose a copy of my reply to his Excellency's communication.

Your Lordship will perceive that, as Mr. Manners Sutton's object is to prevent the occurrence of disputes between provincial and American fishermen, arising out of violations by the latter of those laws and local regulations by which the fishermen of New Brunswick are bound, I have thought this a subject of sufficient importance to bring it under the attention of the Government of the United States, with a view to the adoption of such measures as may, as much as possible, prevent the occurrence of any misunderstanding on the part of American citizens, who, in the exercise of their newly acquired right under the Reciprocity Treaty, may resort to the fisheries of New Brunswick.

I found every disposition on Mr. Marcy's part to concur with the British provincial authorities in the adoption of any measures of precaution by which the chances of collision between the fishermen of the two countries may be diminished; and with this view it is proposed that the masters of American fishing-vessels, clearing for the fisheries of New Brunswick, shall be furnished with printed copies of the laws and regulations in question, it being understood that these shall contain nothing inconsistent with the unrestricted exercise by American citizens of the rights secured to them by the Reciprocity Treaty.

I have thought it right to bring this matter under the immediate attention of the Governor-General of Canada, and the Lieutenant-Governors of Nova Scotia and Prince Edward Island, with a view to the adoption of a similar arrangement in regard to the fisheries of those provinces to that now proposed in regard to the fisheries of New Brunswick; and I have the honour to inclose herewith the copy of a letter which I have addressed to their Excellencies for that purpose.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure 1 in No. 65.

Mr. Manners Sutton to Mr. Crampton.

(Private.)
Sr,

*Government House, Fredericton, New Brunswick,
June 16, 1855.*

I HAVE the honour to inform your Excellency that I have received instructions from Her Majesty's Government, to transmit to your Excellency copies of all the laws and regulations, whether statutory or local, which affect the outside fisheries, and the fisheries in the harbours of this province.

The statutory regulations are contained in one Act, cap. 101, title 22, of the Revised Statutes of New Brunswick.

The local regulations are of two different kinds:—Firstly, those which under the provisions of the 6th section of the Act referred to, have been made by the Governor in Council; and, secondly, those which the Justices in Session of the respective counties are empowered, by the Provincial Act, cap. 64, title 8, of the Revised Statutes, to make for the government of fisheries within the rivers and harbours of the several counties.

The local regulations of the last-mentioned description, although issued in many counties, and having the force of law, were not included in the collection published from Her Majesty's Stationery Office in 1853, because, as appears from a despatch of Sir E. Head to the Duke of Newcastle, which is printed on page 37 of that paper—of which your Excellency, no doubt, has a copy—these regulations were at the time considered to be immaterial, inasmuch as they do not affect the outside fisheries. But your Excellency will observe that they do, in some instances at least, affect the fisheries in the harbours of this province, which are now thrown open to the fishermen of the United States, as well as the river fisheries, which are reserved to Her Majesty's subjects.

Considerable anxiety is felt and expressed here, lest the rules which have been deemed necessary for the preservation of the fisheries of the province, and by which the fishermen

of the province are themselves bound, may be disregarded by those who are now admitted to an equal participation with them in the fisheries; but your Excellency may feel assured that there is no disposition, either on the part of the Provincial Authorities or of the fishermen themselves, to deprive the citizens of the United States of the full benefit of that Article of the Treaty of Reciprocity by which the United States' fishermen enjoy in common with Her Majesty's subjects the right of fishing, both on the outside fishing-grounds and in the harbours of this province.

I have, &c.
(Signed) J. H. T. MANNERS SUTTON.

Inclosure 2 in No. 65.

Mr. Crampton to Mr. Manners Sutton.

Sir,

Washington, June 27, 1855.

I HAVE to acknowledge the receipt of your Excellency's despatch of the 16th instant, respecting the laws and regulations which affect the fisheries of the Province of New Brunswick. I have, to-day, communicated with the Secretary of State of the United States upon this subject, and suggested the expediency of adopting some means of making American citizens, concerned in the prosecution of the fisheries, acquainted with these laws and regulations.

Mr. Marcy entirely concurs with me in the opinion that such a measure would be calculated to prevent the occurrence of any misunderstanding on the part of American fishermen, who may now resort to New Brunswick for the purpose of exercising their newly acquired rights under the Treaty of Reciprocity, and proposes that, after the documents—with which your Excellency is about to furnish me—shall have been examined by him, and shall have been found, as he doubts not will be the case, to contain no provisions inconsistent with the full enjoyment of the American citizens of the rights of fishing secured them by the Treaty, and to direct the "Collectors of the United States' Customs" to furnish copies of the same to the masters of all the vessels clearing from American ports to the British fisheries.

I will observe that I am not in possession of the collection of documents published from Her Majesty's Stationery Office in 1853, to which your Excellency alludes, and that I should consequently feel obliged, should your Excellency be so kind as to furnish me with a copy of the collection.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure 3 in No. 65.

*Mr. Crampton to the Governor-General of Canada.**

Sir,

Washington, June 28, 1855.

WITH a view to preclude the possibility of misunderstanding on the part of citizens of the United States who may in the exercise of the rights secured to them by the Reciprocity Treaty resort to the fisheries on the coasts of Canada, Nova Scotia, Prince Edward Island, I have the honour to suggest to your Excellency that I should be furnished with authentic copies of such laws and local regulations as may have been adopted by the Legislature or other competent authority of the Provinces of Canada, Nova Scotia, Prince Edward Island, for the preservation of the fisheries in harbours for similar purposes, in order that the same may be communicated to the Government of the United States with a view to their being made known by them to American citizens concerned in the fisheries. Copies of the laws and regulations of the Province of New Brunswick relating to the fisheries have already been communicated to me by the Lieutenant-Governor of that province, and I find every disposition on the part of the Government of the United States to co-operate with the British provincial authorities, inasmuch as measures as may diminish the chance of disputes arising between the fisheries of the two countries.

With this view it is proposed by the American Secretary of State to instruct United States' Collectors of Customs to furnish printed copies of the laws and regulations in

* Similar letters were addressed to the Lieutenant-Governor of Nova Scotia and the Lieutenant-Governor of Prince Edward Island.

question to the masters of all vessels claiming from American ports to the British fisheries. It is of course understood that these laws and regulations shall contain no provisions at variance with the stipulations of the Reciprocity Treaty by which the right of participating in the British fisheries is secured to American citizens.

I have, &c.
(Signed) JOHN F. CRAMPTON.

No. 66.

Mr. Crampton to the Earl of Clarendon. -- (Received July 16.)

(No. 130.)

My Lord,

Washington, June 28, 1855.

I HAVE the honour to inclose in copy a letter which has been addressed to me by the Lieutenant-Governor of New Brunswick, containing the copy of a correspondence which has taken place between his Excellency and Rear-Admiral Fanshawe, touching the expediency of the presence in the Bay of Fundy during the approaching fishing season, of a British man-of-war.

I have also the honour to inclose a copy of my reply to Mr. Manners Sutton's communication.

Although the presence of a considerable British force at the fisheries this season would seem to be undesirable, as tending to provoke, or, at least, to furnish a pretext to certain parties in this country for pressing the Government of the United States again to send an American squadron into British waters for the purpose of watching over American Treaty rights, I am nevertheless, of opinion, that the occasional presence of a British man-of-war at different points of the British fisheries could not prudently be dispensed with, while such a measure could give no just grounds for alarm or complaint on the part of the American Government.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure 1 in No. 66.

Mr. Manners Sutton to Mr. Crampton.

(Confidential)

Government House, Fredericton, New Brunswick,

Sir,

June 16, 1855.

I THINK it right to forward to your Excellency, for your Excellency's information, the inclosed copies of a letter which I have received from the Commander-in-chief of Her Majesty's naval forces on this station, and my reply to that letter.

I have received no instructions whatever from Her Majesty's Government on the subject to which the correspondence relates, and I trust that no necessity will arise for any such instructions.

But I have transmitted to the Secretary of State copies of Admiral Fanshawe's letter to me, and my answer to it; and should your Excellency be able to afford me any information which may aid me in taking the necessary precaution to prevent the recurrence of disputes or irritation between the fishermen of this province and those of the United States, I trust your Excellency will favour me with it. I do not myself anticipate any difficulty whatever, if the laws which regulate the fisheries are observed and private rights respected by the United States' citizens.

I have, &c.
(Signed) J. H. T. MANNERS SUTTON.

Inclosure 2 in No. 66.

Mr. Manners Sutton to Rear-Admiral Fanshawe.

Government House, Fredericton, New Brunswick,

Sir,

June 15, 1855.

I HAVE deferred my reply to the letter which your Excellency did me the honour to address to me on the 14th ultimo, because, when that letter reached me I was on the

point of starting for a short tour through the counties of St. John and Charlotte; and I thought it probable that during this tour I should obtain information more accurate than I at the time possessed, of any particular questions or circumstances from which differences or disputes might be expected to arise on the southern shore of this Province between our fishermen and those of the United States. I am happy to be able to assure your Excellency that, as far as I have been able to ascertain the feelings of the fishermen in this province, there is no disposition on their part to obstruct citizens of the United States in the exercise of the rights conferred upon them by the Treaty recently concluded between Great Britain and the United States. But your Excellency will readily believe that any infringement of private rights would cause great irritation, and I entertain no doubt that the fishermen of this province would view with extreme jealousy any violation, even if unintentional, of the statutory and other legal regulations, respecting the fisheries by which they are themselves bound. I should add that such violations, if habitual and continued, might, and in some cases undoubtedly would, be productive of serious injury to the fisheries.

It appears, therefore, to me, that the proximity of a British cruizer to the fishing grounds of this province would, for a time at least, be a very desirable precaution. But it would perhaps be as well, if not more advantageous, that the cruizer should not be ostensibly charged with any special duties connected with the protection of the fisheries, nor am I disposed to suggest that she should be stationed at the fishery grounds. It would, in my opinion, be quite sufficient if your Excellency, approving of my suggestion, should be able to make such arrangements that a cruizer should be near at hand and speedily available, should circumstances arise to render his service desirable. As at present advised, I have no reason to anticipate the occurrence of any such circumstances on the north or north-eastern shores of the province; but the fisheries in the Bay of Fundy, and especially those about Grand Manan, may, I think, require some such precautionary measure, as that to which I have referred, to prevent or to check, at their commencement, any disputes between the fishermen of the two nations.

I do not know whether it is the intention of the Government of the United States to send a naval force to the fishing grounds of this province for the protection of their fishermen. Should they pursue this course, the case would assume a different aspect, and it would be my duty at once to bring the matter before Her Majesty's Government for their consideration.

I have, &c.
(Signed) J. H. T. MANNERS SUTTON.

Inclosure 3 in No. 66.

Rear-Admiral Fanshawe to Mr. Manners Sutton.

Sir, "Boscawen," Bermuda, May 14, 1855.
THE Reciprocity Treaty between Great Britain and the United States having removed the necessity for a vessel of war on the coast of New Brunswick for the protection of the fisheries, I am desirous of hearing from your Excellency if there is any other particular object, beyond the general protection of commerce, you think would make a short visit from a cruizer, during the summer, desirable, either in the Bay of Fundy or the coast of New Brunswick, in the Gulf of St. Lawrence.

The force I have at my disposal is very small compared with the extent of the station, and the many points requiring constant attention on the southern part of it, but I purpose dispatching a cruizer to Halifax, and to proceed thither myself the middle of June, if not prevented, and would be happy to meet any wish you might express on the subject as far as I might be able.

I have, &c.
(Signed) ARTHUR FANSHAWE.

Inclosure 4 in No. 66.

Mr. Crampton to Mr. Manners Sutton.

Sir, Washington, June 27, 1855.
I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 16th, marked Confidential, inclosing, in copy, a correspondence which has taken place

between your Excellency and Rear-Admiral Fanshawe, upon the subject of the measures of precaution which may be necessary for preventing the occurrence of misunderstandings or disputes between Provincial and United States' fishermen, in regard to the newly-acquired rights of the latter under the Reciprocity Treaty.

I shall not fail to immediately apprise your Excellency of any measures which may be adopted by the Government of the United States in regard to this matter. I have every reason to believe that a sincere desire exists on the part of the United States' Government to co-operate with Her Majesty's Provincial Governments in such measures as may tend to guard against the occurrence of disputes or collisions between the fishermen of the two countries.

I have myself received no instructions upon the subject to which Rear-Admiral Fanshawe's letter to your Excellency relates, but I entirely concur with your Excellency that the occasional presence of a British vessel of war at the fisheries would be desirable.

I have, &c.

(Signed) JOHN F. CRAMPTON.

No. 67.

Mr. Crampton to the Earl of Clarendon.—(Received August 20.)

(No. 163.)

My Lord,

Washington, August 7, 1855.

WITH reference to my despatch, No. 129, of the 28th of June last, stating to your Lordship the measures which I had taken for effecting such an arrangement with the Government of the United States as would tend to prevent the occurrence of disputes between American and British fishermen in the waters of the North American Colonies, by securing due respect by American fishermen to such local regulations as had been established by the provincial authorities for the preservation of the fisheries, I have now the honour to inclose the copy of a circular instruction which has been addressed by Mr. Marcy to the Collector of Customs of the United States with a view to the attainment of this object.

Your Lordship will observe that Mr. Marcy, while he strongly recommends to American citizens to respect the local regulations in question, as calculated to preserve the fisheries in which they have a joint interest with British subjects, states nevertheless that "there is nothing in the Reciprocity Treaty between the United States and Great Britain which stipulates for the observance of such regulations by the United States."

I cannot but regret that Mr. Marcy has expressed this view of the matter, which I apprehend may give rise to misunderstanding, for it is evident that, were it admitted that in the exercise of a privilege to which both have a common right, American citizens are to be merely recommended by their Government to conform to certain regulations, which British subjects are compelled by legal penalties to respect, the latter would have just grounds for dissatisfaction. Nor can I concur with Mr. Marcy in the principle upon which his view of the subject is based; for it appears to me that American citizens, while within British jurisdiction, would be subject to the penalties attached to the infringement of all legal regulations, local as well as general, by which British subjects are bound, and not less to those affecting the fisheries, provided always that these latter did not trench upon the rights secured by treaty to citizens of the United States. Did any such law or police regulation exist, or were any such to be enacted, the Government of the United States would no doubt be justified in demanding its abrogation; but the principle now enounced by Mr. Marcy extends much further, for it goes to exonerate American citizens from the penalties attaching to the violation of all British laws and regulations, however unobjectionable, now affecting, or which may hereafter affect, the British fisheries, and leaves their observance to depend solely on the good feeling or good sense of the individuals who may at any time happen to be engaged in those fisheries.

I have, &c.

(Signed) JOHN F. CRAMPTON.

Inclosure in No. 67.

Circular addressed to the Collectors of Customs.

Sir, *Department of State, Washington, July 12, 1855.*

IT is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, Executive Regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the Colonies and injuries to the fishing thereon. There is nothing in the Reciprocity Treaty between the United States and Great Britain which stipulates for the observance of these regulations by our fishermen; yet, as it is presumed, they have been framed with a view to prevent injuries to the fisheries, in which our fishermen now have an equal interest with those of Great Britain, it is deemed reasonable and desirable that both should pay a like respect to those regulations, which were designed to preserve and increase the productiveness and prosperity of the fisheries themselves. It is, consequently, earnestly recommended to our citizens to direct their proceedings accordingly. You will make this recommendation known to the masters of such fishing vessels as belong to your port, in such manner as you may deem most advisable.

I am, &c.
(Signed) W. S. MARCY.

It is believed that the principal regulations referred to above are the following, from the revised Statutes of New Brunswick, vol. i, title 22, chap. 101:—

“ 7. The wardens of any county shall, when necessary, mark out and designate in proper positions ‘gurry grounds,’ putting up notices thereof, describing their limits and position, in the several school houses and other most public places in the parish where the said gurry grounds are marked out, publishing the like notice in the ‘Royal Gazette;’ and no person after such posting and publication shall cast overboard from any boat or vessel the offal of fish into the waters at or near the said parish at any place except the said gurry grounds.

“ 12. Within the parishes of Grand Manor, West Isles, Campo Bello, Pennfield, and St. George, in the County of Charlotte, no seine or net shall be set across the mouth of any haven, river, creek, or harbour, nor in such place extending more than one-third the distance across the same, or be within 40 fathoms of each other, nor shall they be set within 20 fathoms of the shore at low water mark.

“ 15. No herrings shall be taken between the 15th of July and 15th October in any year, on the spawning ground at the southern head Grand of Manan, to commence at the eastern part of Seal Cove, at a place known as Red Point; thence extending westerly along the coast and around the southern head of Bradford’s Cove, about five miles, and extending one mile from the shore: all nets or engines used for catching herring on the said ground within that period shall be seized and forfeited, and every person engaged in using the same shall be guilty of a misdemeanour and punished accordingly.

No. 68.

Mr. Hammond to the Queen’s Advocate.

Sir, *Foreign Office, August 31, 1855.*

I AM directed by the Earl of Clarendon to transmit to you a despatch from Her Majesty’s Minister at Washington,* inclosing a copy of a Circular addressed by the United States’ Secretary of State to the Collector of Customs of the United States with the view of securing due respect by American citizens to such local regulations as have been established by the Colonial authorities for the protection of the fisheries.

I am to request that you will take Mr. Crampton’s despatch and Mr. Marcy’s circular into your consideration, and favour Lord Clarendon with any observations which may occur to you thereupon.

I am, &c.
(Signed) E. HAMMOND.

Mr. Elliot to Mr. Hammond.—(Received September 5.)

Sir,

Downing Street, September 4, 1855.

I AM directed by Secretary Sir William Molesworth to transmit to you for the consideration of the Earl of Clarendon, the copy of a despatch from the Lieutenant-Governor of New Brunswick, containing his observations on a Circular, also annexed, which has been addressed by Mr. Marcy to the Collectors of Customs in the United States, on the subject of the observance by the fishermen of that country of the British North American Colonial laws and regulations relative to the fisheries; and I am to request that you will move Lord Clarendon to inform Sir William Molesworth in what terms he would wish this despatch to be answered.

I am, &c.
(Signed) T. FREDK. ELLIOT.

Inclosure 1 in No. 69.

Lieutenant-Governor Manners-Sutton to Lord J. Russell.

*Government House, Fredericton, New Brunswick,
August 10, 1855.*

My Lord,

IN accordance with the instructions contained in your Lordship's despatch of the 25th May, 1855, I forwarded to Mr. Crampton a complete series of the Laws and Regulations now in force for the preservation and management of the fisheries here.

2. I have now the honour to transmit to your Lordship a copy of the Circular which has been issued by the Government of the United States on this subject for the information of their fishermen. This Circular has been sent to me by Mr. Crampton.

3. I confess, my Lord, that I have read it with deep disappointment. It is true that Mr. Marcy recommends the fishermen of the United States who may resort to the fisheries on the coasts of the British North American Colonies to respect the laws and regulations by which those fisheries are governed. But the United States' fishermen are at the same time informed that there is nothing in the Reciprocity Treaty which stipulates for the observance by them of these laws and regulations; and I fear, therefore, that they will draw the inference that it is optional with them to observe or to violate these fishery laws at their pleasure. If this be so, the Circular will undoubtedly do harm rather than good.

4. Your Lordship is aware that the fishery laws and regulations here consist partly of statutory enactments and partly of regulations, which are in the nature of local bye laws, having been issued for the management of the fisheries in or adjacent to particular counties, by the Lieutenant-Governor in Council, or by the Justices in session of these counties respectively.

5. These two classes of laws, which Mr. Marcy distinguishes as "Acts" and "Executive Regulations," undoubtedly differ from each other in the mode in which they have been enacted. But, although the local regulations above referred to are not, strictly speaking, statutory regulations, they are nevertheless of statutory origin; for they have been enacted and issued by virtue of the powers conferred by statute on the Lieutenant-Governor in Council (*vide* chap. 201, title 22, Revised Statutes, vol i, page 263), and upon the justices in session (*vide* chap. 64, title 8, Revised Statutes, vol. i, page 147).

This class of fishery laws thereof has the force of law here equally with the statutory enactments for the regulation of the fisheries, and both these classes of fishery laws have always been held to be imperatively binding on all Her Majesty's subjects engaged in the fisheries here, from whatever quarter of the world they may have come.

6. It certainly appears to me that even if the Reciprocity Treaty did not contain a stipulation that the inhabitants of the United States who may resort to the fisheries here should be subject to the laws which regulate those fisheries, and which bind all Her Majesty's subjects, still that in the absence of any express stipulation to the contrary the admission of foreigners to participate with Her Majesty's subjects in British fisheries would be held to imply this condition.

7. The question, however, does not in my opinion rest on this footing. For it is expressly provided in the first article of the Treaty that the rights of fishing thereby conceded to the inhabitants of the United States are to be possessed by them in common with the subjects of Her Majesty.

8. But if the fishery laws and regulations here, which are binding on all Her Majesty's

subjects, are not binding on the inhabitants of the United States, then the United States fishermen may legally fish at times, seasons and places as well as in a manner which the laws do not allow to British fishermen. And thus the inhabitants of the United States will possess rights of fishing in British fisheries not common with but superior to those possessed by the subjects of Her Majesty. Such an interpretation of the Treaty is, as it appears to me, not only opposed to its spirit, but directly at variance with its words.

9. I trust that your Lordship will not consider me presumptuous in thus expressing an opinion on a point which I am well aware it is not my province to decide. But it is possible that the question may be raised before me before I can receive any instructions with respect to it from your Lordship. I have therefore thought it right to lay before your Lordship the grounds upon which, in the absence of any directions from your Lordship, I shall, in the enforcement of the fishery laws and regulations here, feel it to be my duty to make no distinction whatever between the subjects of Her Majesty and the inhabitants of the United States.

10. At the same time I beg to assure your Lordship that it will be my anxious endeavour to avoid any step which might lead to remonstrance, or even to observation on the part of the Government of the United States, and I trust that no necessity will arise for my interference.

I have, &c.
(Signed) J. H. T. MANNERS-SUTTON.

Inclosure 2 in No. 69.

Mr. Marcy to Mr. Peaslie, July 12, 1855.

[See Inclosure in No. 67.]

No. 70.

Mr. Hammond to the Queen's Advocate.

Sir, *Foreign Office, September 6, 1855.*
WITH reference to my letter of the 31st ultimo, inclosing a despatch and its inclosure from Her Majesty's Minister at Washington, drawing Lord Clarendon's attention to a circular issued by Mr. Marcy to the Collectors of Customs in the United States, recommending the observance by American citizens of the Colonial Fishery Laws, I am now directed by the Earl of Clarendon to transmit to you a letter from the Colonial Office, inclosing a copy of a despatch from the Governor of New Brunswick on the same subject, which I am also to request that you will take into your consideration.

I am, &c.
(Signed) E. HAMMOND.

No. 71.

The Queen's Advocate to Mr. Hammond.—(Received October 9.)

Doctors' Commons, September 10, 1855.

THE Queen's Advocate presents his compliments to Mr. Hammond, and with reference to his letters of the 31st August and 6th September, upon the Circular issued by Mr. Marcy, the Queen's Advocate wishes, with Lord Clarendon's permission, to have the assistance of the Attorney and Solicitor-General.

No. 72.

The Law Officers of the Crown to the Earl of Clarendon.—(Received October 9.)

My Lord, *Doctors' Commons, October 8, 1855.*
WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st of August last, stating that he was directed to transmit to us a despatch

from Her Majesty's Minister at Washington, inclosing a copy of a Circular addressed by the United States' Secretary of State to the Collectors of Customs of the United States, with the view of securing due respect by American citizens to such local regulations as have been established by the Colonial authorities for the protection of the fisheries.

Mr. Hammond is pleased to request that we would take Mr. Crampton's despatch and Mr. Marcy's Circular into consideration, and report to your Lordship any observations which may occur to us thereupon.

We are also honoured with Mr. Hammond's letter of the 6th instant, stating that, with reference to the above, he was directed to transmit to us a letter from the Colonial Office, inclosing a copy of a despatch from the Governor of New Brunswick on the same subject.

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

That we quite concur in the view taken by Mr. Crampton and Mr. Manners-Sutton.

By the Reciprocity Treaty, American citizens are admitted to the benefit of certain fisheries carried on in British waters in common with Her Majesty's subjects.

It follows, as a necessary consequence, that such American citizens are bound to observe the existing laws and regulations established for the conduct of such fisheries, by which British subjects are bound.

This is necessarily implied in the very words of the Article of the Treaty, but, independently of all agreement, it would follow, on general principles, that American fishermen, pursuing their occupation within British territory, would be bound to observe the local laws and regulations in like manner as all foreigners are bound to observe the municipal laws of the country in which they are resident.

It is indeed literally true, as Mr. Marcy states, that there is no express stipulation in the Reciprocity Treaty which binds American citizens to observe the British regulations, but the obligation to do so did not require a stipulation: it attaches upon American citizens as soon as they claim the benefit of the Treaty.

The expressions adopted by Mr. Marcy are much to be regretted, as they are calculated to mislead, and to be a fruitful source of disputes, and opposition to British authority.

We would, therefore, submit that the British Governor would act wisely in requiring that some explanation should be given by the American Government to prevent the misapprehension which the language of the Circular is undoubtedly likely to give rise to.

Proper steps should be taken by the British local authorities for giving the greatest publicity to the Fishery Regulations.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 73.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, October 11, 1855.*
I AM directed by the Earl of Clarendon to state to you that he referred to the Law Officers of the Crown your letter of the 4th ultimo, inclosing a copy of a despatch from the Governor of New Brunswick, together with a copy of the Circular addressed by the United States' Secretary of State to the Collectors of Customs of the United States, respecting the observance by American fishermen of such local regulations as have been established by the Colonial authorities for the protection of the fisheries; and I am to transmit to you herewith a copy of a Report which has been received from the Law Officers in reply to that reference, together with a copy of a despatch which has been received from Her Majesty's Minister at Washington upon the subject of Mr. Marcy's Circular; and I am to request that you will lay the inclosed papers before Secretary Sir William Molesworth, and state to him that Mr. Crampton has been informed of the view taken by Her Majesty's Government of Mr. Marcy's Circular, and has been instructed to urge upon the United States' Secretary of State the expediency of some explanation being given by the Government of the United States to prevent that misapprehension which the language of the Circular is likely to give rise to.

I am, &c.
(Signed) E. HAMMOND.

No. 74.

The Earl of Clarendon to Mr. Crampton.

(No. 120.)

Sir, *Foreign Office, October 11, 1855.*

HER Majesty's Government have had under their consideration your despatch of the 7th of August last, inclosing a copy of a Circular addressed by the United States' Secretary of State to the Collectors of Customs of the United States, respecting the observance by American fishermen of such local regulations as have been established by the Colonial Authorities for the protection of the fisheries; and I have to state to you that Her Majesty's Government entirely concur in the view which you have taken of Mr. Marcy's Circular.

By the Reciprocity Treaty between this country and the United States, American citizens are admitted to the benefit of certain fisheries carried on in British waters in common with Her Majesty's subjects. It follows as a necessary consequence that such American citizens are bound to observe the existing laws and regulations established for the conduct of such fisheries by which British subjects are bound. This is necessarily implied in the very words of the Article of the Treaty; but independently of all agreement, it would follow, on general principles, that American fishermen pursuing their occupation within British territory would be bound to observe the local laws and regulations in like manner as all foreigners are bound to observe the municipal laws of the country in which they are resident.

It is indeed literally true, as Mr. Marcy states, that there is no express stipulation in the Reciprocity Treaty which bids American citizens to observe the British Colonial Regulations, but the obligation to do so did not require a stipulation; it attaches upon American citizens as soon as they claim the benefit of the Treaty.

Her Majesty's Government are of opinion that the expressions adopted by Mr. Marcy are much to be regretted, as they are calculated to mislead and to be a fruitful source of disputes and opposition to British authority, and you will therefore take an early opportunity of urging upon Mr. Marcy the expediency of some explanation being given by the United States' Government to prevent that misapprehension to which the language of the Circular is undoubtedly likely to give rise.

I am, &c.
(Signed) CLARENDON.

No. 75.

*Mr. Ball to Mr. Hammond.—(Received October 26.)*Sir, *Downing Street, October 25, 1855.*

WITH reference to Mr. Merivale's letter of the 14th August, I am directed by the Secretary of State to transmit to you, for the information of the Earl of Clarendon, the copy of a despatch and of an inclosure from the Governor of Newfoundland, reporting that there are no special enactments of the local Legislature in operation in that island for the regulation of the fisheries.

In laying this despatch before the Earl of Clarendon, I am to request you to move his Lordship to favour this Office with his opinion as to the answer which should be returned to the question raised by the Governor, whether, or not, the Reciprocity Treaty concluded between Great Britain and the United States of America can be construed as extending to Americans the liberty to land for the purpose of drying their nets and curing their fish upon what is usually designated as the French Shore of Newfoundland.

I am, &c.
(Signed) JOHN BALL.

Inclosure 1 in No. 75.

*Governor Darling to Sir W. Molesworth.*Sir, *Government House, St. John's, Newfoundland,*

September 29, 1855.

I HAVE to transmit herewith a copy of the Report from the Law Officers of the Crown, which has been furnished in fulfilment of the instruction conveyed by your

despatch of the 3rd ultimo, and which I shall take care to communicate to the British Minister at Washington, with whom I have already been in correspondence on the subject to which it relates.

You will perceive by this Report which is entirely accordant with that of the late Attorney-General, Mr. Archibald, dated July 5, 1853, copy of which was transmitted with my predecessor's despatch of July 12, 1853, that there are, in fact, no laws or regulations whatever relating to the fisheries practically in force in this Colony.

With respect to the law, which is still in the Statute Book, for imposing a duty upon herrings and capelin exported in such a state as to make them available for bait, I have already had the honour of submitting my views in my despatch of July 8 last.

The only point which occurs to me as one on which misunderstanding may arise, if it be not clearly settled before the people of the United States enter upon the exercise of the rights they have acquired under the Reciprocity Treaty, is, whether or not that Treaty can be construed as extending to them the liberty to land "for the purpose of drying their nets and curing their fish" upon what is usually designated as the French Shore of Newfoundland.

The Convention of October 20, 1818, gave to American citizens the right to take fish upon that part of the French Shore which lies between Cape Ray and the Quirpon Islands, being in fact the whole of our western and northern coasts; but between those islands and Cape John upon the eastern coast, being the remainder of the French Shore, the right even to take fish was not conferred, while the liberty of drying and curing is confined to the unsettled bays, harbours, and creeks of the south coast of Newfoundland and the coast of Labrador.

These rights of the Americans are I believe acquiesced in by the French, and it is no doubt true that the Reciprocity Treaty confers the "liberty to take fish" with permission to land "for the purpose of curing, &c.," only "in common with the subjects of Her Britannic Majesty.

But it seems important to bear in mind that the rights of Her Britannic Majesty's subjects to catch and cure fish upon the whole of the so-called French Shore, in common with the subjects of France, has always been maintained, although from motives of policy, or, as expressed in His Britannic Majesty's Declaration of 1792, "to the end and in order that the fisheries of the two nations may not give cause for daily quarrels," the enforcement of the right has been discouraged by the Government of Great Britain, and is practically exercised by its subjects in Newfoundland to a very limited extent.

It may also be worthy of notice upon the point that the first article of the Reciprocity Treaty provided only against interference by the Americans with the rights of private property, or with British fishermen in the peaceable use of the coast for the purpose referred to.

Intelligence which has reached me from various sources, for the most part however of a purely unofficial character, leads me to believe that, whatever be the existing relations between the Governments of France and the United States, no very friendly feeling prevails at the present moment between large classes of their respective subjects; and that as regards their navies at least, opportunity for collision would be rather sought for than avoided.

I venture to express an opinion that upon every account it seems desirable that it should be determined, with the clear concurrence of the three countries concerned, whether the rights which the Americans are to exercise "in common" with the subjects of Great Britain, are only those which the latter practically and habitually use, or those more extensive rights to which I have referred as being claimed and maintained, although suffered to a great extent to remain in abeyance.

I have, &c.
(Signed) C. H. DARLING.

Inclosure 2 in No. 75.

The Law Officers of the Crown, St. John's, to the Colonial Secretary.

Sir, *St. John's, Newfoundland, September 17, 1855.*

IN reply to your communication transmitting a copy of a despatch from the Right Honourable the Secretary of State for the Colonies to his Excellency the Governor, dated the 23rd August last, requesting him to forward to the British Minister at Washington authentic copies of all the laws and regulations of the Legislature or other competent authority of Newfoundland on the subject of the fisheries of this island, we have the honour to report—

In compliance with the desire of his Excellency that, apart from the common law of England which is in operation here, so far as it is applicable to the circumstances of the Colony and the several Treaties defining the relative rights of England, France, and the United States of America to the fisheries of this Colony, there are no special enactments of the local Legislature in operation here for the regulation of the fisheries.

2. In relation to the export of fish, certain duties are made payable by the Local Act, 8 Vict., c. 5, upon the exportation of fish, salted or pickled herrings, or caplin, if exported in bulk, 3s. per cwt., and upon salted or pickled caplin, if exported in barrels, 2s. 6d. per barrel. This Act, which was passed to check the traffic in bait with the French, was amended as to the exportation of herrings to any part of the British dominions, by permitting the master of every vessel exporting herrings in bulk, to give bond for the amount of the duties, which bond shall be cancelled upon the production within one year of the date of it, of a certificate from a duly qualified person at the port of discharge, that such herrings had been landed within the British dominions. This Act having been found insufficient to prevent the evil which it was passed to arrest has not been enforced for some years past, and is now quite inoperative.

Supposing it to be in any way inconsistent with the Treaty for the establishment of free trade with the United States of America, it must be regarded as suspended so far as general words can do so, with reference to the citizens of that country possessing the fisheries on our coasts under the Treaty. For the Local Act, 18 and 19 Vict., c. 2, being an Act to give effect on the part of this island to the Treaty for the establishment of reciprocal free trade with the United States, suspends all the laws of this island which are contrary to, or inconsistent with, the spirit of the Treaty.

We have, &c.

(Signed)

P. F. LITTLE, *Acting Attorney-General.*
T. HAYWARD, *Acting Solicitor-General.*

No. 76.

Lord Wodehouse to the Law Officers of the Crown.

Gentlemen,

Foreign Office, October 31, 1855.

I AM directed by the Earl of Clarendon to transmit to you the accompanying letter from the Colonial Office and its inclosure, respecting a question raised by the Governor of Newfoundland as to the right of American fishermen, under the Reciprocity Treaty, to land on what is commonly called the French Shore of Newfoundland;* and I am to request that you will take these papers into your consideration, and favour Lord Clarendon with your opinion thereupon.

I am, &c.

(Signed) WODEHOUSE.

No. 77.

Mr. Merivale to Mr. Hammond.—(Received November 24.)

Sir,

Downing Street, November 24, 1855.

I AM directed by the Secretary of State to transmit to you, for the information of the Earl of Clarendon, the accompanying extracts of Reports from Naval Officers on the North American Station, relative to the Fisheries on the coast of Newfoundland, Gulf of St. Lawrence, and the Bay of Fundy.

I am, &c.

(Signed) HERMAN MERIVALE.

Inclosure 1 in No. 77.

Commander Purvis to Rear-Admiral Fanshawe.

(Extract.)

"Argus," Halifax, July 18, 1855.

AT St. George's Bay I was informed that an enormous quantity of herring had been caught, and that a good understanding existed between the English and French fishermen.

I have every reason to believe that no encroachments have been made by the French on the south-west coast this season.

The French bankers have been very unsuccessful, many of the fishing vessels having returned to St. Pierre without fish.

Inclosure 2 in No. 77.

Commander Purvis to Rear-Admiral Fanshawe.

(Extract.)

"Argus," St. John's, Newfoundland, September 16, 1855.

ENCROACHMENTS have been made by the French this season in the Straits of Belle Isle, the crews of two brigs having caught and cured cargoes of fish at Black Bay for their vessels, which left the coast a short-time previous to my arrival.

Inclosure 3 in No. 77.

Commander Lambert to Rear-Admiral Fanshawe.

(Extract.)

"Espiegle," Charlotte Town, Prince Edward Island, September 5, 1855.

I BEG to inform you, that on the receipt of your letter of the 17th ultimo, I left this port in Her Majesty's sloop under my command, on the 24th, and proceeded to execute the orders therein contained: I rounded the north points of the island on the 26th, and passed thirty-eight fishing schooners (apparently American), and on the 28th anchored off Crescumpegue, the principal fishing station on the north side of the island. Communicated with the shore, and found a large store kept by an American of the name of Ryder, where all the requisites of a fishing outfit may be obtained; he is also the American Consul, and keeps a naval yard on a small scale, for the purpose of building and repairing vessels; he informed me that there are about eighty American schooners off this part of the coast, the average tonnage being about 80 tons each; the inhabitants not having above three or four decked fishing vessels, carry on their fishing in open boats. I was also informed that there are about 100 American schooners fishing off the east point of that island.

The cod fishing also this year has been very good, and the cod taken at the Magdalen Islands are much firmer and of more value than those that come from Labrador.

There are this year about 100 American vessels fishing round these islands and the Bird Rock, though the most I saw at one time was twenty-five. Owing to the Reciprocity Treaty there have been a great many trading vessels from the United States which have brought goods and taken fish in exchange.

The Canadian Government brigantine had been here, and had only left a few days for Gaspé, but was shortly expected to return.

Inclosure 4 in No. 77.

Commander Lambert to Rear-Admiral Fanshawe.

(Extract.)

"Espiegle," at Halifax, September 21, 1855.

THE number of American vessels has increased this year, but not so much as might have been expected. The Reciprocity Treaty appears to be working well, and giving satisfaction to all parties. At the different ports they have put in at for provisions, &c., they have conducted themselves very quietly, and the only complaint that I heard against them was their plundering the wreck of the "Lock Maben Castle," which was wrecked on the Bird Rocks about the 2nd of June.

Inclosure 5 in No. 77.

Commander Cochran to Rear-Admiral Fanshawe.

(Extract.)

"Mariner," at Halifax, September 29, 1855.

I HAVE also taken every opportunity of questioning the fishermen as to the present state of the fisheries. From all parties I have obtained but one opinion, as to the perfect

harmony existing between our own and the American fishermen, and the conciliatory spirit in which the fishery is conducted in common between them.

Complaints are made that certain of the existing laws are infringed, particularly that prohibiting any "gurry" or offal being thrown overboard on the fishery grounds, which I am assured both British and American persist in doing. If this practice is continued, it must inevitably do serious mischief to the fishery, as it either destroys or drives away all the good fish, besides attracting those of a bad description, viz., shark, skate, &c.

It is stated upon good authority that the fishery on the American coast down to Cape Cod has been quite destroyed by this practice, which in some measure accounts for the increase in the number of American fishing vessels of late years in British waters. I am also informed that the Herring Spawning Ground, off the south-west head of Grand Mavan, is occasionally poached during the close season between July and October.

A heavy penalty is attached to the infringement of both these laws, but from all I can understand there appears great difficulty in bringing the offenders to justice.

It may seem presumptuous on my part to offer an opinion as to the working of the present system of carrying out the laws relative to the fisheries, but, from the observations I have been able to make, and from the information I have gained from people competent to judge of the matter, there seems to be but little doubt that the present arrangement is far from meeting the wants of the case.

I am of opinion that, if the Provincial Governments employed a small vessel, under a competent officer (similar to the vessel employed by the Scotch Fishery Boards), in continually cruising on the fishing grounds, the irregularities complained of would soon cease to exist, and I conceive that the expense of attending this would not be greater than that now incurred for the protection of laws which appear to be violated with impunity.

The number of British vessels employed this season is much the same as for some years past. With regard to the Americans, I have found great difficulty in arriving at a satisfactory conclusion, opinions differing so much as to their numbers. I believe, however, that there have been some eighty vessels in the bay this year, which appears a small increase compared with last year. Most of these had already left ere I reached the fishing grounds, and those that remained were anchored amongst the islands, where the "Mariner" could not approach with safety, so that I scarcely saw one of them during my cruise.

No. 78.

The Earl of Clarendon to Mr. Crampton.

(No. 282.)

Sir,

Foreign Office, November 28, 1855.

I INCLOSE herewith, for your information, a copy of a letter from the Colonial Office,* inclosing extracts of Reports from naval officers on the North American Station, relative to the fisheries on the coasts of Newfoundland, in the Gulf of St. Lawrence, and the Bay of Fundy.

I am, &c.

(Signed) CLARENDON.

No. 79.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 11.)

My Lord,

Doctors' Commons, January 10, 1856.

WE were favoured with your Lordship's commands contained in Lord Wodehouse's letter of the 31st October last, in which he stated that he was directed to transmit to us the accompanying letter from the Colonial Office, and its inclosures, respecting a question raised by the Governor of Newfoundland, as to the right of American fishermen, under the Reciprocity Treaty, to land on what is commonly called the "French Shore" of Newfoundland, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's request we have considered the several papers transmitted to us, and have the honour to report—

That the effect of the Reciprocity Treaty, which gave to American citizens the liberty to take fish, with permission to land for the purpose of curing, &c., in common with the

subjects of Her Britannic Majesty, is to give to American citizens the right of fishing and landing, for purposes immediately connected with fishing, wheresoever such rights are exercised by British subjects upon the possessions, or by virtue of the territorial rights, of the British Crown.

Where rights of fishing, &c., are exercised by British subjects in the waters or on the coasts of other States, by virtue of Conventions with, or by permission of, such States, it is clear, that the Crown of Great Britain could not extend rights of this nature, thus enjoyed by its own subjects, to the subjects of other countries, without the consent of the State in the waters or coasts of which the rights in question are enjoyed. Any attempt to do so would clearly be invalid as against any such State.

If, then, as we gather from the despatch of the Governor of Newfoundland of the 29th September last, the right of British fishermen to fish and land on that part of the so-called "French Shore," which is now in question, has been maintained, not by virtue of any claim of territorial right, but merely as what in our law would be termed an "easement," (that is a right to be enjoyed *in alieno solo*), it is, in our opinion, clear that the Reciprocity Treaty did not, and could not, confer on American citizens any community in the rights exercised, or claimed to be exercised, on this coast by Her Majesty's subjects.

We would beg to suggest, that should the right be claimed, as is anticipated, by the Americans, there would be no reason for the intervention of the British Government; but the question may well be left to the French and American Governments to settle between themselves.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 80.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, January 14, 1856.*
WITH reference to your letter of the 25th of October last, requesting to be informed what answer should be returned to the question raised by the Governor of Newfoundland as to whether the Reciprocity Treaty between Great Britain and the United States of America, can be construed as extending to United States' citizens the liberty to land for the purpose of drying their nets and curing their fish upon what is usually designated as the French Shore of Newfoundland, I am directed by the Earl of Clarendon to transmit to you, for the information of Mr. Secretary Labouchere, a copy of a Report which his Lordship has received from the Law Officers of the Crown in reply to a reference which his Lordship caused to be made to them upon the above subject.

I am, &c.
(Signed) E. HAMMOND.

No. 81.

Mr. Merivale to Mr. Hammond.—(Received February 14.)

Sir, *Downing Street, February 12, 1856.*
I AM directed by Mr. Secretary Labouchere to acknowledge the receipt of your letter of the 14th ultimo, transmitting a report from the Law Officers of the Crown, in order to assist this Department in answering the question whether the Reciprocity Treaty between Great Britain and the United States can be construed to extend to Americans the liberty to use the French Shore of Newfoundland for certain purposes. The importance of the subject, and the necessity of giving definite instructions to the Governor, induce Mr. Labouchere to trouble Lord Clarendon with a few additional observations.

2. The Law Advisers appear to have answered the reference to them on the assumption that what is termed the French Shore is a coast belonging to a foreign Power, and that any rights enjoyed by British subjects on it are in the nature of an easement *in alieno solo*, and, consequently, not communicated to American citizens by the Treaty. But M. Labouchere supposes that the Law Advisers had before them no materials except the despatch of the Governor, which presumes a prior acquaintance with the circumstances of the case. Those circumstances are quite different. The French Shore is not *alienum solum*. It is British territory, and the French, not the British, enjoy rights over it

in the nature of an "easement," founded on the Treaty of 1783, and subsequent arrangements. The British enjoy, in virtue of territorial dominion, rights to the use of the shore for fishing purposes, it is apprehended, as well as others, except in so far as Conventions with France restrain them; and it is to these rights so enjoyed by the British that the Governor apprehends the Americans may make common claim with the British under the Reciprocity Treaty.

3. In considering this question it is convenient to leave out of view whatever rights the Americans may claim under the Convention of 1818. These form a separate matter, and if necessity should arise, which as yet is not the case, they must be separately discussed. Our present concern is with the Reciprocity Treaty only.

4. That Treaty says that the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell fish, on the sea coast and shores, and in the bays, harbours and creeks of Newfoundland with permission to land upon such sea coasts and shores for fishery purposes, so far as the provisions of the Treaty are applicable to that province.

5. These last words are important, because, if the British are really excluded by Treaty from the specified liberties on the French Shore, of Newfoundland or on any part thereof, then the Americans are clearly excluded also. But the converse appears to Mr. Labouchere equally true, if the British claim any such "liberties" on the French Shore in concurrence with the French, then it would seem that the Americans must be admitted to those liberties also.

6. Now it would be of great importance, and apparently remove all the substantial difficulties of the case, if the Governor could be instructed what the liberties are which British subjects can lawfully enjoy under the existing Treaties and Conventions with France on the French Shore or any part thereof.

7. But assuming that it is impossible to give the Governors such definite instructions, the subject being in fact one involved in actually pending negotiation, Mr. Labouchere would submit to Lord Clarendon the question whether the following more temporary and provisional instructions may be safely given.

8. That for the purpose now in question he must regard the Treaties between France and England as interpreted by the usage which at present prevails with the acquiescence of both Governments.

9. That the rights of the Americans under the British Treaty on the French Shore (as distinct from those rights which they enjoyed under the Convention of 1818) must be considered as governed by such usage; and that this is the fair meaning of the words of the Treaty, that its provisions shall extend to Newfoundland, "so far as they are applicable to that Colony."

10. That, consequently, when Americans apply for or assume the liberty of landing on the French Shore "for the purpose of drying their nets and curing their fish," or apply to use that shore for any other purpose contemplated by the Reciprocity Treaty, the question for his consideration is whether British subjects do, by existing usage, enjoy similar liberty on that shore.

11. That if they do, then the same liberty belongs to the Americans, provided the two nations can exercise it concurrently without interference with French rights.

12. But that in any case where the French by usage founded on the Treaties enjoy exclusive possession, there the Americans as well as the British are excluded.

13. Lastly, it appears to be the Governor's impression that United States' vessels have been in the habit of fishing on the western coast, under the Convention of 1818, without objection on the part of the French. Mr. Labouchere would instruct the Governor to specify, without delay, any instances of such fishing which may have come to his knowledge.

14. In submitting these proposed instructions to Lord Clarendon Mr. Labouchere must add that he is fully aware that they by no means meet all the difficulties of the case; and he cannot but suggest that the complications which must arise from any claim of the Americans to enjoy the benefits of the Reciprocity Treaty in Newfoundland form a strong additional reason for arriving, if possible, at a conclusion with the French Government as to the respective rights of the French and English nations.

15. Should his Lordship think it necessary to consult the Law Advisers further on this subject, Mr. Labouchere would ask that their attention may be drawn to the facts of the case, as stated in the printed confidential Memorandum drawn up in this Department of which copy is annexed.*

I am, &c.
(Signed) HERMAN MERIVALE.

* See separate Colonial Office printed Memorandum.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 18.)

My Lord,

Doctors' Commons, March 17, 1856.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th February ultimo, stating that, with reference to our report of the 10th January last, upon the subject of the question raised by the Governor of Newfoundland as to whether the Reciprocity Treaty between Great Britain and the United States of America can be construed as extending to United States' citizens the liberty to land for the purpose of drying their fish upon what is usually designated as the "French shore of Newfoundland," he was directed to transmit to us a further letter from the Colonial Office, to which Department our Report above-mentioned has been communicated, containing some additional observations upon the point in question, and to request that with reference to the facts of the case, as stated in the printed Memorandum which has been drawn up at the Colonial Office, we would take this question again into consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have again taken this question into consideration, and have the honour to report—

That we concur in the propriety of the instructions proposed by Mr. Secretary Labouchere to be sent to the Governor of Newfoundland.

The question turns entirely on whether by direct concession or by usage the French have acquired the right to fish and dry their nets on the coast in question, to the exclusion of the British. If so, the Americans (who by the Reciprocity Treaty are entitled only to use the fishery in common with British subjects), can have no claim to any right on this coast. If, on the other hand, the right of the French is not exclusive of the use of the coast by British subjects, the Americans would be entitled to claim a joint user under the Treaty.

But in such case it appears to us that, although where the question is as to the respective rights of American and British subjects under the Treaty, we are bound to maintain the rights of American citizens where such rights have accrued, the same obligation does not arise where the question is as to the right of Americans as against the subjects of a third State claiming adversely to ourselves. In such case it appears to us that the British Government may well leave the contending parties to settle the matter between themselves.

We have, &c.

(Signed)

J. D. HARDING.

A. E. COCKBURN.

RICHARD BETHELL.

No. 83.

Mr. Hammond to Mr. Merivale.

Sir,

Foreign Office, May 1, 1856.

WITH reference to my letter of this day's date, inclosing a copy of a despatch from Mr. Perley, the British Commissioner under the 1st Article of the Reciprocity Treaty, requesting to be furnished with copies of correspondence which has passed since 1818 as to the rights of fishery enjoyed by French and American subjects on the coast of Newfoundland, I am directed by the Earl of Clarendon to request that you will move Mr. Secretary Labouchere to furnish Lord Clarendon with his opinion as to the nature and extent of the information with which it might be proper to furnish Mr. Perley upon this subject.

I am, &c.

(Signed)

E. HAMMOND.

No. 84.

Mr. Merivale to Mr. Hammond.—(Received May 17.)

Sir,

Downing Street, May 16, 1856.

I AM directed by Mr. Secretary Labouchere to acquaint you, for the information of the Earl of Clarendon, that he has had under his consideration your letter dated the

1st instant, drawing attention to the application of Mr. Perley, the British Commissioner under the Reciprocity Treaty of 1854, for copies of the correspondence since 1818 upon the subject of the rights of fishery on the coasts of Newfoundland enjoyed by French and American subjects, and asking for Mr. Labouchere's opinion as to the nature and extent of the information with which it may be proper to furnish Mr. Purley.

2. It appears to Mr. Labouchere that the question as to furnishing these papers is one of considerable difficulty. On the one hand, it is obvious that our Commissioner—who, it seems, is not merely to define the mouths of rivers, which is the particular purpose of his appointment provided for by the Reciprocity Treaty, but also to consider, if not to frame, regulations to secure the easy working of the new system of concurrent rights—will be placed at a considerable disadvantage if not fully informed of the past history and present situation of the several fishery questions as between as between the three nations—Great Britain, France, and the United States. But, on the other hand, it must be remembered that Her Majesty's Government is still continuing its endeavours to arrive at a revision of the subsisting engagements upon the subject between this country and France; and Mr. Labouchere presumes that Lord Clarendon would hesitate to send out to a distant officer, employed temporarily only in the Diplomatic Service, any statements or documents containing the entire case and views of the British Government in a matter of pending negotiation.

As a middle course, Mr. Labouchere would be disposed to give Mr. Perley authority to see, confidentially, everything on record with the Newfoundland Government on this subject when he goes to St. John's, as intended; and, further, to take copies of the documents to any extent to which the Governor may not object; and Mr. Labouchere will so instruct the Governor without delay if Lord Clarendon concurs.

I am, &c.

(Signed) HERMAN MERIVALE.

No. 85.

Mr. Crampton to the Earl of Clarendon.—(Received May 19.)

(No. 104.)

My Lord,

Washington, April 25, 1856.

I DID not fail, in obedience to the instructions contained in your Lordship's despatch No. 220 of the 11th of October last, to take an opportunity of calling Mr. Marcy's attention to an objectionable expression contained in the Circular letter which had in July last been issued by the Department of State, by which American fishermen who should repair to the British fisheries in North America were recommended to conform themselves to such laws and regulations as have been adopted by the Provincial authorities for the preservation of the fisheries.

The expression is as follows:—"There is nothing in the Reciprocity Treaty between the United States and Great Britain which stipulates for the observance of these [the above-named] regulations."

I pointed out to Mr. Marcy the ill-effects which might arise from such a declaration by the Government of the United States. I remarked that it would be inferred that the observance by American fishermen of the laws and regulations in question would be discretionary only, while the observance of the same laws and regulations would be enforced on British fishermen by legal penalties; and I added that the Provincial Magistrates would have no choice but to enforce the existing laws, whatever they might be, upon all persons without distinction; and that, consequently, collision or unpleasant discussions would be sure to arise were American fishermen to be left under the impression that they were not, while within British jurisdiction, equally amenable with British subjects to the British laws and regulations affecting the fisheries, as well as in every other respect.

I admitted, I said, that if any of those laws were framed or executed so as to make an unfair discrimination in favour of British fishermen, or directly or indirectly to deprive American fishermen of the privileges secured to them by the Reciprocity Treaty, this would afford just ground for representation to Her Majesty's Government by the Government of the United States. But I called Mr. Marcy's attention to the danger of allowing to each individual the right to judge for himself whether a regulation was in conformity with the provisions of the Treaty or not, and at once object to observe it.

Mr. Marcy appeared entirely to concur in this view of the matter, and said that he would cause such an alteration to be made in the working of the circular instruction to be

issued for the approaching fishing season as would obviate the objection which I had put forward.

Accordingly, a few days after my conversation with Mr. Marcy, I received from him the private note of which I have the honour to inclose a copy, containing an amended draft of the instruction, also inclosed herewith.

Availing myself of the request contained in Mr. Marcy's note, to return it with such remarks as I might think fit, I took the liberty of suggesting the insertion of the passage which I have marked with red ink in the copy,* as being necessary to point out more clearly than Mr. Marcy's amended draft appeared to me to have done, the liability of American fishermen in British waters to British jurisdiction.

Receiving no rejoinder to my note, I lately reminded Mr. Marcy of the matter, when he told me that he had adopted my suggestion, although he had somewhat altered the phraseology of the passage I had proposed to insert, and he added that he would send me copies of the instructions so amended.

These I have received, and have the honour to inclose, with a copy of the note from Mr. Marcy which accompanied them.

I have underlined in red ink* the passage which Mr. Marcy has substituted for that which I suggested.

Although the instruction is now in general more satisfactory, inasmuch as it admits that the laws of each country within its own jurisdiction are as obligatory upon the citizens or subjects of the other as upon its own, your Lordship will remark that Mr. Marcy has taken the opportunity of introducing a phrase by which the extent of the maritime jurisdiction of each country is defined in conformity with the recently adopted American doctrine, that the civil jurisdiction of a country in no case extends further than "a marine league along its coast."

I say the recently adopted doctrine; for although it is certain that the American Executive has asserted this doctrine in the discussion which preceded the Reciprocity Treaty with Great Britain, and that they are now maintaining it in a controversy with the Spanish Government respecting the search of the American steamer "El Dorado" by the Spanish frigate "Ferrolana," it is equally certain that this doctrine is at variance with that laid down by eminent American jurists (see Chancellor Kent's "Commentaries," p. 32, 7th edition, and Wheaton's "Elements of the Law of Nations," chapter IV, section 6); that it has never, directly or indirectly, received the countenance of Congress; that its unqualified admission is firmly resisted by the Government of Spain; and that it has not, unless I am mistaken, been ever acquiesced in by Her Majesty's Government.

I have, &c.

(Signed) JOHN F. CRAMPTON.

Inclosure 1 in No. 85

Mr. Marcy to Mr. Crampton.

(Private.)

Sir,

Washington, March 23, 1856.

I INCLOSE a Circular to be issued to our fishermen, modified, as I think, so as to conform to your suggestions on that subject. I transmit it to you with a request to return it with such remarks thereon as you may see fit to make.

Yours, &c.

(Signed) W. L. MARCY.

Inclosure 2 in No. 85.

Draft of Circular.

Sir,

Department of State, Washington, March 28, 1856.

IT is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, Executive Regulations, intended to prevent the wanton destruction of the fish which frequent the coast of the Colonies, and injuries to the fishing thereon.

It is deemed reasonable and desirable that both United States' and British fishermen should pay a like respect to such laws and regulations which are designed to preserve and increase the productiveness of the fisheries on those coasts.

* Printed in italics.

Such being the object of these laws and regulations, the observance of them is enjoined upon citizens of the United States, in like manner as they are observed by British subjects.

American citizens would, indeed, within British jurisdiction, be liable equally with British subjects to the penalties prescribed by law for a wilful infraction of such regulations, but nevertheless should these be so framed or executed as to make any discrimination in favour of the British fishermen, or to impair the rights secured to American fishermen by the Reciprocity Treaty, those injuriously affected by them will appeal to this Government for redress. In prosecuting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights, or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such a law or regulation, in order that the matter may be arranged by the two Governments.

You will make this direction known to the masters of such fishing vessels as belong to your port, in such manner as you may deem most advisable.

Inclosure 3 in No. 85.

Mr. Marcy to Mr. Peaslee.

(Circular.)
Sir,

Department of State, Washington, March 28, 1856.

It is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, Executive Regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the Colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both United States' and British fishermen should pay a like respect to such laws and regulations, which are designed to preserve and increase the productiveness of the fisheries on those coasts. Such being the object of these laws and regulations, the observance of them is enjoined upon the citizens of the United States in like manner as they are observed by British subjects. *By granting the mutual use of the in-shore fisheries neither party has yielded its right to civil jurisdiction over a marine league along its coast. Its laws are as obligatory upon the citizens or subjects of the other as upon its own. The laws of the British Colonies not in conflict with the provisions of the Reciprocity Treaty would be as binding upon citizens of the United States within that jurisdiction as upon British subjects.* Should they be so framed or executed as to make any discrimination in favour of the British fishermen, or to impair the rights secured to American fishermen by that Treaty, those injuriously affected by them will appeal to this Government for redress. In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two Governments. You will make this direction known to the masters of such fishing vessels as belong to your port, in such manner as you may deem most advisable.

I am, &c.

(Signed) W. L. MARCY.

It is believed that the principal regulations referred to above are the following, from the Revised Statutes of New Brunswick, vol. 1, title 22, chap. 101:—

"7. The wardens of any county shall, when necessary, mark out and designate, in proper positions, 'gurry grounds,' putting up notices thereof, describing their limits and position, in the several school-houses, and other most public places in the parish where the said gurry grounds are marked out, publishing the like notice in the Royal 'Gazette,' and no person, after such posting and publication, shall cast overboard from any boat or vessel the offal of fish into the water at or near the said parish at any place except the said gurry grounds."

"12. Within the parishes of Grand Manan, West Isles, Campo Bello, Pennfield, and Saint George, in the county of Charlotte, no seine or net shall be set across the mouth of any haven, river, creek, or harbour, nor in such place extending more than one-third the distance across the same, or be within forty fathoms of each other, nor shall they be set within twenty fathoms of the shore at low-water mark."

"15. No herrings shall be taken between the 15th day of July and the 15th of

October in any year, on the spawning-ground at the head of Grand Manan, to commence at the eastern part of Seal Cove, at a place known as Red Point, thence extending westerly along the coast and around the southern head of Bradford's Cove, about five miles, and extending one mile from the shore; all nets or engines used for catching herring on the said ground within that period shall be seized and forfeited, and every person engaged in using the same shall be guilty of a misdemeanour, and punished accordingly.

Inclosure 4 in No. 85.

Mr. Marcy to Mr. Crampton.

Sir, *Department of State, Washington, April 24, 1856.*
 I HAVE the honour to communicate printed copies of a letter of the 28th ultimo from this Department to the Collector of the Customs at Boston, relative to the observance by the fishermen of the United States of the laws of the British Provinces, enacted for the preservation of the fish on the coasts thereof. Copies of the letter have been sent to the Collectors of the Customs at other principal ports of this country from which vessels may proceed for the purpose of fishing in that quarter, and the Collectors have all been instructed to furnish the master of every such vessel with a copy of the letter.

I have, &c.
 (Signed) W. L. MARCY.

No. 86.

The Earl of Clarendon to Mr. Crampton.

(No. 122.)

Sir, *Foreign Office, May 21, 1856.*
 I TRANSMIT to you, for your information, a copy of a letter from the Colonial Office upon the subject of the application which has been made to me by Mr. Perley, the British Commissioner,* under the 1st Article of the Reciprocity Treaty between this country and the United States, to be furnished with copies of the correspondence since the year 1818, relative to the rights of fishery on the coasts of Newfoundland enjoyed by French subjects and American citizens.

I also inclose a copy of the answer which I have in consequence returned to Mr. Perley's application.

I am, &c.
 (Signed) CLARENDON.

No. 87.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, May 23, 1856.*
 WITH reference to my letter of the 11th of October last, inclosing a copy of a despatch which had been addressed to Her Majesty's Minister at Washington, directing him to make a representation to Mr. Marcy on the subject of the objectionable expressions adopted in the Circular addressed by him to the Collectors of Customs of the United States, respecting the observance by American fishermen of the local regulations established in regard to the fisheries in British North America, I am directed by the Earl of Clarendon to transmit to you a copy of a despatch from Mr. Crampton,† inclosing copies of his communication with Mr. Marcy upon this subject, together with an amended instruction issued by the United States' Secretary of State; and I am to request that you will lay these papers before Mr. Secretary Labouchere, and move him to favour Lord Clarendon with any observations which he may have to make thereupon.

I am, &c.
 (Signed) E. HAMMOND.

Mr. Hammond to the Secretary to the Treasury.

Sir,

Foreign Office, June 4, 1856.

I AM directed by the Earl of Clarendon to transmit to you an extract of a despatch from Mr. Perley, the Commissioner appointed by Her Majesty's Government, under the 1st Article of the Fisheries Convention between Great Britain and the United States, of June 5, 1854, stating that next season it will be absolutely necessary to employ a vessel for the purpose of carrying out the objects for which the Joint British and American Commission has been appointed, and that the United States' Government, having proposed that a vessel should be built or purchased and maintained for this purpose, at the joint expense of the two Governments, an estimate has been submitted to Congress, of which a copy is inclosed in Mr. Perley's despatch, and a vote taken for the American portion of this estimate, namely, for the sum of 11,625 dollars; and with reference to Mr. Perley's request that an equal sum may be allowed by Her Majesty's Government, I am to request that in laying the inclosed papers before the Lords Commissioners of Her Majesty's Treasury, you will state to their lordships that Lord Clarendon would recommend that the sum of 2,400l. should be granted for this purpose.

I am, &c.
(Signed) E. HAMMOND.

No. 89.

Mr. Merivale to Mr. Hammond.—(Received June 5.)

Sir,

Downing Street, June 4, 1856.

WITH reference to your letter dated the 21st ultimo, by which the course proposed by Mr. Secretary Labouchere, with respect to furnishing information to Mr. Perley, British Commissioner under the Reciprocity Treaty, is concurred in by the Earl of Clarendon, I am directed by Mr. Labouchere to annex for his Lordship's information a copy of a despatch which Mr. Labouchere has accordingly written to the Governor of Newfoundland, and which will be sent out by the mail of the 6th instant.

I am, &c.
(Signed) HERMAN MERIVALE.

No. 90.

Mr. Hammond to the Secretary to the Admiralty.

Sir,

Foreign Office, June 17, 1856.

I AM directed by the Earl of Clarendon to transmit to you an extract of a despatch from Mr. Perley, the Commissioner appointed by Her Majesty's Government, under the 1st Article of the Fisheries Convention between Great Britain and the United States of America, representing the necessity of employing a vessel next season for the purpose of carrying out the objects for which the Joint British and American Commission has been appointed, and that the United States' Government have proposed that a vessel for the above purpose should be built, or purchased, and maintained at the joint expense of the two Governments, a vote having been taken for the American portion of the estimated expense. I am to request that in laying the enclosed extract before the Lords Commissioners of the Admiralty, you will acquaint their Lordships that Lord Clarendon has recommended to the Board of Treasury that the sum of 2,400l., which is equal to that voted by the American Congress, should be granted by their Lordships for the purpose in question.

I am, &c.
(Signed) E. HAMMOND.

No. 91.

The Secretary to the Admiralty to Mr. Hammond.—(Received June 21.)

Sir,

Admiralty, June 19, 1856.

HAVING laid before my Lords Commissioners of the Admiralty your letter of the 17th instant, with its inclosure, respecting the proposal of the United States' Government that a vessel required under the Fishery Convention should be built or purchased, and maintained at the joint expense of the two Governments, I am commanded by their Lordships to request that you will move the Earl of Clarendon, to inform them how this vessel is to be manned and commanded, and how the joint duties are to be carried into effect.

I am, &c.
(Signed) R. OSBORNE.

No. 92.

Mr. Merivale to Mr. Hammond.—(Received June 23.)

Sir,

Downing Street, June 21, 1856.

IN answer to your letter of the 23rd ultimo, inclosing copy of an amended instruction issued by the United States' Secretary of State, respecting the observance by American fishermen of local fishery regulations in British North America, and asking on the part of the Earl of Clarendon for any observations which Mr. Labouchere may have to offer thereon, I am directed by Mr. Labouchere to state that he has nothing to suggest, except to remind Lord Clarendon of the objection raised by Mr. Crampton to certain expressions of the United States' Secretary respecting the limitation of jurisdiction to "a marine league along the coast." Before Mr. Labouchere sends copy of this amended instruction to the North American Governors he would be glad to receive the statement of Lord Clarendon's views concerning that objection.

I am, &c.
(Signed) HERMAN MERIVALE.

No. 93.

Mr. Wilson to Mr. Hammond.—(Received June 26.)

Sir,

Treasury Chambers, June 25, 1856.

I AM commanded to acquaint you, for the information of the Earl of Clarendon, with reference to your letter of the 4th instant, that the Lords Commissioners of Her Majesty's Treasury concur in the proposed contribution of 2,400*l.* towards providing a vessel for the use of the Fishery Commissioners under the Convention between Great Britain and the United States.

It being now too late to propose a vote in the present year, my Lords will be prepared to make the necessary advance from civil contingencies when required.

I have, &c.
(Signed) THOMAS WILSON.

No. 94.

Mr. Crampton to Mr. Hammond.—(Received July 11.)

Sir,

London, July 7, 1856.

IN compliance with the instructions of the Earl of Clarendon conveyed to me in your note of the 24th ultimo, to the effect that I should furnish his Lordship with my opinion as to the instructions which should be sent to the Governors of the British North American Colonies with reference to a Circular instruction to United States' fishermen inclosed in my despatch to Lord Clarendon No. 104 of the 25th of April last, I would beg to submit to his Lordship the expediency of inserting, in the instructions to be addressed to the Governors of British Colonies on this subject, some observations in regard to the extent of the maritime jurisdiction over certain bays and for certain purposes connected with the

Revenue (enumerated in the Act of Parliament having reference to the subject), which would prevent its being supposed that Her Majesty's Government recognizes without qualification the principle which it may be inferred from the American instructions has been adopted as invariable by the Government of the United States, namely, that the right of civil jurisdiction over the waters along the coasts of either country extends in no case further than one marine league from the shore.

A copy of the instructions might be communicated to the Government of the United States, accompanied by such observations as Her Majesty's Government should think it advisable to make upon the subject.

I have, &c.
(Signed) JOHN F. CRAMPTON.

P.S.—I think there is an Act which empowers Revenue cruisers to board vessels at twelve miles from shore in some cases. I know there is an Act of Congress which gives this power to United States' Revenue cruisers. (See Kent's Commentaries on the Jurisdiction over Bays. The principle laid down by him would extend maritime jurisdiction in many cases far beyond the marine league from the coast.)

J. F. C.

No. 95.

Mr. Merivale to Mr. Hammond.—(Received July 10.)

Sir, *Downing Street, July 10, 1856.*

WITH reference to my letter dated the 12th February last, and your reply dated the 26th March, on the subject of instructions to the Governor of Newfoundland with respect to the admission of United States' citizens to rights of fishery on the French Shore, I am directed by Mr. Secretary Labouchere to annex, for the information of the Earl of Clarendon, a copy of the despatch by which Mr. Labouchere conveyed to the Governor the instructions concurred in by Lord Clarendon, and a copy of the reply, dated the 9th June, which has now been received from Governor Darling.

2. Mr. Labouchere is not aware that Governor Darling's present statements make any further issue of instructions necessary.

I am, &c.
(Signed) HERMAN MERIVALE.

Inclosure 1 in No. 95.

Mr. Labouchere to Governor Darling.

Sir, *Downing Street, April 28, 1856.*

IN your despatch dated the 29th September last, you drew the attention of Her Majesty's Government to the question as to how far the fishery rights conferred upon United States' citizens by the Reciprocity Treaty of 1854 are to be considered as extending to what is called the French Shore of Newfoundland, I annex, for your information and guidance, an extract of a letter upon this subject, addressed by my direction to the Department of Foreign Affairs, on the 12th February last, proposing that certain instructions should be given to you, together with a copy of a letter and inclosure (from the Law Officers) received from that Department in reply, concurring in the proposed instructions.

2. I have to instruct you accordingly to be guided by the rules laid down in the 8th and succeeding paragraphs of the letter of February 12, and to request you to furnish the information desired in paragraph 13.

I have, &c.
(Signed) H. LABOUCHERE.

Inclosure 2 in No. 95.

*Governor Darling to Mr. Labouchere.**Government House, St. John's, Newfoundland,
June 9, 1856.*

Sir,

I HAVE had the honour to receive your despatch of the 28th of April last, in which, in your reply to my despatch of the 29th September last, you are pleased to furnish me with certain temporary and provisional instructions for my guidance in the event of questions arising out of the fishery privileges on the coast of Newfoundland, claimed by the French and Americans respectively, which may properly call for the intervention of the Colonial Government, and requiring me to specify any instances which may have come under my knowledge in which the United States' vessels have, under the Convention of 1818, carried on the fishery on the west coast of Newfoundland without objection on the part of the French.

2. I shall endeavour to guide myself by these Instructions in the event of any case occurring to which they can be made applicable; but I am afraid that they will scarcely be found to embrace within their scope the salmon fisheries at the mouths of the rivers, respecting which there is no usage which prevails "with the acquiescence of both Governments," and which the right of landing being now conceded to the Americans are believed likely to prove a greater attraction than formerly, as being readily and profitably combined with the trading voyages which they are in the habit of prosecuting along the western coast.

3. The French have, as you are no doubt aware, practically excluded the English from the salmon fisheries, although their right to pursue those fisheries without "competition," as in the case of the cod fishery, has never been conceded or acknowledged by Great Britain.

4. Disputes between the French and Americans having the exercise of the right of salmon fishery for their foundation would, however, probably fall within the definition laid down in the Crown Law Officers' Report to the Earl of Clarendon, of the 17th March last, as involving a right claimed by the French adversely to ourselves, and should be left, accordingly, to the contending parties to settle, without interference on the part of the Colonial Government.

5. With regard to the direction conveyed by your despatch, that I should report any instances of fishing by Americans upon the west coast, which had been acquiesced in by the French, I have to state that no such instances have come within my knowledge as having occurred since my assumption of the Government.

6. The observation in my despatch of the 29th September last, which seems to have led to your desire to be furnished with information of this nature, was to the effect that I believed the right of the Americans to take fish upon the western coast, but without the liberty of landing to dry and cure, was acquiesced in by the French. I made this statement as the result of my general inquiries into the Fishery Question, which was entirely new to me at the commencement of my administration, about five months' previously; and I grounded it, amongst other authorities, upon the penultimate paragraph of Mr. Hyde Villiers' letter of 20th October, 1830, to Mr. Under-Secretary Hay, page 167 of the printed papers relative to the Fisheries of British North America, extracts of which, from page 133 to page 267, marked Private and Confidential, I found amongst the records in the Governor's Office; and also upon the following passage in a manuscript copy of a paper from the pen of Mr. John Macgregor, intitled "An Inquiry into the Pretensions of France to the Exclusive Right of Fishery on the whole West Coast of Newfoundland, &c.," viz. :—

"When the French, immediately after 1814, assumed the exclusive right of fishing on the west coast of Newfoundland, and the same was forcibly submitted to by Lord Castlereagh, they attempted to keep off the American fishermen also.

"Immediately on this being attempted by the French, an armed force was sent to Newfoundland by the President of the United States to enforce the American right, on the principle of the Treaty of 1783; the French submitted at once, and ever since the French and Americans enjoy concurrently the fisheries of more than 600 miles of coast; the best portion of Newfoundland, of which Great Britain has the undisputed sovereign dominion but from the fisheries of which her subjects and ships are excluded by the assumption of the French Government."

I have, &c.

(Signed)

C. H. DARLING.

No. 96.

Mr. Hammond to the Queen's Advocate.

Sir,

Foreign Office, July 16, 1856.

I AM directed by the Earl of Clarendon to transmit to you a letter from Mr. Crampton,* explaining his views as to the instructions which should be sent to the Governors of the British North American Colonies with reference to a Circular instruction to United States' fishermen, inclosed in the accompanying despatch, addressed by Mr. Crampton to Lord Clarendon; and I am to request that you will take Mr. Crampton's letter into your consideration, and favour Lord Clarendon with your opinion on the points adverted to in it.

I am, &c.
(Signed) E. HAMMOND.

No. 97.

Mr. Hammond to the Law Officers of the Crown.

Gentlemen,

Foreign Office, July 16, 1856.

WITH reference to your report of the 17th of March last upon the subject of the instructions which Mr. Secretary Labouchere proposed to address to the Governor of Newfoundland with respect to the question raised by him as to whether the Reciprocity Treaty between Great Britain and the United States can be construed as extending to United States' citizens the liberty to land for the purpose of drying their fish upon what is usually designated as "the French Shore of Newfoundland," I am directed by the Earl of Clarendon to transmit to you a letter from the Colonial Office,† inclosing a copy of the answer which Governor Darling has returned to Mr. Labouchere with respect to the instructions which have been sent out to him upon the above subject; and I am to request that you will take the same into your consideration, and favour Lord Clarendon with your opinion as to whether it will be necessary to furnish the Governor of Newfoundland with any further instructions.

The former letter from the Colonial Office of February 12th is herewith inclosed.

I am, &c.
(Signed) E. HAMMOND.

No. 98.

The Law Officers of the Crown to the Earl of Clarendon.—(Received July 23.)

My Lord,

Doctors' Commons, July 23, 1856.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th July instant, stating that, with reference to our report of the 17th of March last upon the the subject of the instructions which Mr. Secretary Labouchere proposed to address to the Governor of Newfoundland with respect to the question raised by him as to whether the Reciprocity Treaty between Great Britain and the United States can be construed as extending to United States' citizens the liberty to land for the purpose of drying their fish upon what is usually designated as "the French Shore of Newfoundland," he was to transmit to us a letter from the Colonial Office, inclosing a copy of the answer which Governor Darling has returned to Mr. Labouchere with respect to the instructions which have been sent out to him upon the above subject, and to request that we would take the same into consideration, and report to your Lordship our opinion as to whether it will be necessary to furnish the Governor of Newfoundland with any further instructions.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to Report—

That we are of opinion that it will not be necessary to furnish the Governor of Newfoundland with any further instructions.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

The Queen's Advocate to the Earl of Clarendon.—(Received July 26.)

My Lord,

Doctors' Commons, July 24, 1856.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th July instant, stating that he was directed to transmit to me a letter from Mr. Crampton, explaining his views as to the Instructions which should be sent to the Governor of the British North American Colonies with reference to the Circular Instructions to United States' fishermen, which were inclosed in the accompanying despatch addressed to your Lordship, and to request that I would report to your Lordship my opinion upon the points adverted to in Mr. Crampton's letter.

In obedience to your Lordship's commands I have taken Mr. Crampton's letter into consideration, and have the honour to report—

That as I am not aware of the contents of the document alluded to by Mr. Crampton as the "Instructions to be addressed to the Governors of British Colonies on the subject (that is, I presume, on the subject of Mr. Marcy's Circular Instructions to United States' fishermen), I cannot advise your Lordship upon the expediency of introducing therein any observations to the effect suggested by Mr. Crampton. I do not, I confess (as at present advised), see the necessity of instructing the Governor in the sense suggested.

The question of the exclusive jurisdiction over certain bays, chambers, and waters, lying between headlands, has been often previously discussed, is alluded to in numerous standard works, and must, I presume, be well understood in the North American Colonies. The Reports of Sir J. Dodson and Sir T. Wilde, 30th August, 1841, and of the Law Officers, April 9th, 1844, were, I believe, communicated to the Colonial Authorities, and the first has been printed, and often referred to in reference to this subject.

The provisions in the Revenue Acts, alluded to by Mr. Crampton, have a very doubtful, if any, bearing upon fishery questions.

It does not appear to me that the Colonial Authorities (who are not without legal assistance, and whose close attention is necessarily given to the fisheries) are likely to be misled as to the extent of their jurisdiction, rights, or powers, by any instructions which the United States' Government may issue to United States' fishermen. When any practically important international question is impending, it is to be presumed that the Colonial Authorities will apply for special instructions; and general instructions, issued by anticipation of what may or may not occur, and without local experience, are always liable to misconception.

As regards the United States' Government, I observe that Mr. Marcy modified his original instructions in one important point, in accordance with the desire of Her Majesty's Government, and with the Law Officers' Report, 8th October, 1855, I observe that there are no negative words in Mr. Marcy's Circular. He does not expressly, or even by necessary implication, deny Her Majesty's jurisdiction in bays, or advert to cases of vessels seen fishing, in breach of the regulations, within three miles, and chased and captured beyond that limit.

The two points now suggested (1. Bays; 2. Revenue Laws) do not seem to have been adverted to by Mr. Crampton in his communications with Mr. Marcy; and I fear that any discussion with the United States upon these delicate questions of national dignity and abstract sovereign rights would not, in the present peculiar state of relations existing between the two Governments, be attended with any beneficial result. Such a discussion might be (as it were) provoked, if instructions to the Colonial Governments in special reference thereto were to be communicated to the United States' Government.

Upon the whole matter I would therefore venture to suggest to your Lordship the expediency of sending Mr. Marcy's amended Circular to the North American Colonial Governments for their information only, and unaccompanied by any special instructions in reference thereto.

I have, &c.
(Signed) J. D. HARDING.

No. 100.

Lord Shelburne to Mr. Merivale.

Sir, *Foreign Office, August 13, 1856.*
 I AM directed by the Earl of Clarendon to transmit to you, to be laid before Mr. Secretary Labouchere, a copy of a despatch which has been received from the Commissioner appointed on the part of Her Majesty's Government under the 1st Article of the Reciprocity Treaty between this country and the United States, reporting the proceedings of the Joint British and American Commission during the present season, and requesting permission to return to England, for the purpose of procuring hydrographical charts from the Admiralty, and of acquiring information relative to the Colony of Newfoundland.

Lord Clarendon has acquainted Mr. Perley that he approves of his coming to England for the purposes stated in his despatch.

I am, &c.
 (Signed) SHELburne.

No. 101.

Lord Shelburne to the Secretary to the Admiralty.

Sir, *Foreign Office, August 14, 1856.*
 WITH reference to your letter of the 25th of June last, I am directed by the Earl of Clarendon to transmit to you an extract of a despatch from Mr. Perley, the Commissioner appointed on the part of Her Majesty's Government under the 1st Article of the Reciprocity Treaty between this country and the United States, requesting to be informed on whom and in what form he should draw for the sum of 2,400*l.*, which the Lords Commissioners of Her Majesty's Treasury have concurred in contributing towards providing jointly, with the Government of the United States, a vessel for the use of Commissioners; and I am to request that you will move their Lordships to enable Lord Clarendon to answer Mr. Perley's enquiry.

I am, &c.
 (Signed) SHELburne.

No. 102.

Lord Shelburne to the Secretary to the Admiralty.

Sir, *Admiralty, August 14, 1856.*
 WITH reference to your letter of the 19th of June last, requesting that the Commissioners appointed on the part of Her Majesty's Government, under the 1st Article of the Reciprocity Treaty between this country and the United States, might be desired to report in what manner the vessel which he requested might be built for the use of the Joint British and American Commission was to be manned and commanded, I am directed by the Earl of Clarendon to transmit to you, to be laid before the Lords Commissioners of the Admiralty, a copy of a despatch from Mr. Perley, furnishing the required information, and containing a copy of the official specification for building a Revenue Cutter for the United States' Service.

I am, &c.
 (Signed) SHELburne.

No. 103.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, October 23, 1856.*
 I AM directed by the Earl of Clarendon to transmit to you a copy of a despatch from Mr. Perley, reporting the proceedings of the Commissioners of Great Britain and the United States, relative to the North American Fisheries, and I am to request that you will

move Mr. Secretary Labouchere to cause Lord Clarendon to be informed what instructions he considers should be sent to Mr. Perley on the subject of this despatch.

I am, &c.
(Signed) E. HAMMOND.

No. 104.

Mr. Merivale to Mr. Hammond.—(Received November 14.)

Sir, *Downing Street, November 13, 1856.*
I AM directed by Mr. Secretary Labouchere to acknowledge the receipt of your letters of the 23rd and 29th ultimo, relative to the proceedings of the British and the United States' Commissioners under the Reciprocity Treaty.

I am to request you to state to the Earl of Clarendon that the only means of which Mr. Labouchere is aware of for settling the question in dispute between the Commissioners is by the appointment of an Umpire by the Commissioners, under the provisions made by the Treaty itself for that purpose. On this point it appears from the inclosure in your letter of the 29th October, that some correspondence has taken place which has not been communicated to this Department.

I have, &c.
(Signed) HERMAN MERIVALE.

No. 105.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, November 19, 1856.*
I HAVE laid before the Earl of Clarendon your letter of the 13th instant, and with reference to the observation contained in it, that it appears from Mr. Lumley's despatch, of which a copy was transmitted to you in my letter of the 30th ultimo, that some correspondence has taken place respecting the appointment of an Umpire to the mixed British and American Commission under the 1st Article of the Reciprocity Treaty between this country and the United States, which has not been communicated to the Colonial Office, I am to request that you will state to Mr. Secretary Labouchere, that all the despatches which have been received from Mr. Perley, respecting the business of the Commission have been communicated to the Colonial Department, but that it does not appear from them that any question had arisen respecting the appointment of an Umpire. I am to add that Mr. Perley is expected to arrive shortly in England, and that he will then be consulted on the subject.

I am, &c.
(Signed) E. HAMMOND.

No. 106.

Mr. Merivale to Mr. Hammond.—(Received November 28.)

Sir, *Downing Street, November 27, 1856.*
IN answer to your further letter of the 19th of this month, on the subject of the proceedings of the mixed British and American Commission, under the 1st Article of the Reciprocity Treaty, I am directed by Mr. Secretary Labouchere to call the Earl of Clarendon's attention to a passage in Mr. Savile Lumley's despatch of the 13th ultimo, (transmitted in your former letter of the 29th ultimo) alluding to Mr. Perley's correspondence with the United States' Commissioner respecting the appointment of an Umpire in a manner which led Mr. Labouchere to suppose that this correspondence was in possession of his Lordship's Department.

Since, however, it appears that this is not the case, Mr. Labouchere agrees that it will be necessary to wait for Mr. Perley.

I have, &c.
(Signed) HERMAN MERIVALE.

No. 107.

Mr. Merivale to Mr. Hammond.—(Received January 7.)

Sir, *Downing Street, January 5, 1857.*
 WITH reference to my letter of the 23rd November, 1853, I am directed by Mr. Secretary Labouchere to transmit to you, for the information of the Earl of Clarendon, four copies of a revised collection of the Laws and Regulations now in force in British North America relative to the Fisheries.

I am, &c.
 (Signed) HERMAN MERIVALE.

Inclosure in No. 107.

Laws and Regulations now in Force in the under-mentioned Colonies relative to the Fisheries.

[See paper printed for the Colonial Office. October 1856.]

No. 108.

Mr. Merivale to Mr. Hammond.—(Received March 13.)

Sir, *Downing Street, March 12, 1857.*
 I AM directed by the Secretary of State to transmit to you, for the consideration of the Earl of Clarendon, the copy of a despatch and inclosure from the Governor of Canada relative to the rights of American citizens to fish on the British side of Lakes Huron and Superior.

Mr. Labouchere would be glad to be favoured with an early expression of Lord Clarendon's opinion on this question.

I am, &c.
 (Signed) HERMAN MERIVALE.

Inclosure 1 in No. 108.

Governor Sir E. Head to Mr. Labouchere.

Sir, *Government House, Toronto, February 18, 1857.*
 I HAVE the honour to inclose a copy of a letter received from Mr. Joseph Wilson, who acts as Collector of Customs and a Magistrate at the Sault Sainte Marie, between Lake Huron and Lake Superior.

I conceive that the citizens of the United States have no rights of fishery on the British side. The Reciprocity Treaty extends only to the eastern seaboard; but it is important that Her Majesty's Government should be in possession of the information conveyed by Mr. Wilson's letter.

I have, &c.
 (Signed) EDMUND HEAD.

Inclosure 2 in No. 108.

Mr. Wilson to Mr. Meredith.

Sir, *Sault Ste. Marie, January 24, 1857.*
 I HAVE the honour to request you will have the goodness to inform me if the Americans have the right to fish on the shores and rivers of Lakes Huron and Superior. They have already ruined some of the finest fisheries on Lake Huron; and are now making preparations to establish fisheries on the north shores of Lake Superior. If the Government wish to preserve these fisheries, some measures must be adopted at once; several parties from the United States have been applying to me for permission to fish on the north shores of Lake Superior.

I have, &c.
 (Signed) JOS. WILSON.

No. 109.

Mr. Hammond to the Secretary to the Admiralty.

Sir, *Foreign Office, March 14, 1857.*
 WITH reference to previous correspondence, I am directed by the Earl of Clarendon to transmit to you, to be laid before the Lords Commissioners of the Admiralty, a copy of a letter from Mr. Perley, stating his reasons for considering it advisable that the British and American Fishery Commissioners should each have his own vessel, the expenses to be divided between Her Majesty's Government and that of the United States, rather than that there should be only one vessel at the joint disposal of the two Commissioners, and submitting whether a suitable vessel could not be provided by the Admiralty.

I am, &c.
 (Signed) E. HAMMOND.

No. 110.

The Queen's Advocate to the Earl of Clarendon.—(Received March 25.)

My Lord, *Doctors' Commons, March 23, 1857.*
 I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that he was directed to transmit to me a communication which has been received from the Colonial Department relative to the exercise of fishery by American citizens on the shores and in the rivers of Lake Huron and Lake Superior; and to request that I would take the same into consideration, and report my opinion whether, under the Reciprocity Treaty of 1854, or the Convention of 1818, therein referred to, the citizens of the United States have any right to fish on the British side of those lakes; that the boundary through them is defined by the Treaty of Ghent, of December 24th, 1814.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report,—

That I am of opinion that the citizens of the United States have not, under either of the Treaties alluded to, any right to fish on the British side of the lakes in question.

I observe that the letter of Mr. Wilson, dated "Sault Ste. Marie, 24th of January, 1857," alludes to fisheries on the north shores of Lakes Huron and Superior, and he states that "several parties from the United States have been applying to him for permission to fish on the north shore of Lake Superior." Such applications for permission to a British magistrate and Acting Collector of Customs, would appear to be very clear admissions of the absence of any abstract right under Treaty stipulations.

I have, &c.
 (Signed) J. D. HARDING.

No. 111.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, March 31, 1857.*
 I HAVE laid before the Earl of Clarendon your letter of the 12th instant, inclosing a copy of a despatch from the Governor of Canada, relative to the exercise of fishery rights by American citizens on the shores and in the rivers of Lake Huron and Lake Superior, and I am to request that you will inform Mr. Secretary Labouchere that, having consulted the proper Law Officer of the Crown as to whether, under the Reciprocity Treaty of 1854, or the Convention of 1818, therein referred to, the citizens of the United States have any right to fish on the British side of those lakes, Lord Clarendon is of opinion that the citizens of the United States have not, under either of the Treaties alluded to, any right to fish on the British side of the lakes in question.

Lord Clarendon observes that the letter of Mr. Wilson, Acting Collector of Customs and a magistrate of Sault Ste. Marie, dated 24th of January, 1857, and of which a copy is inclosed in Sir Edmund Head's despatch, alludes to fisheries on the north shores of Lakes Huron and Superior, and that he states that "several parties from the United States have been applying to him for permission to fish on the north shore of Lake Superior."

Such applications for permission to a British magistrate and Acting Collector of Customs appear to be very clear admissions of the absence of any abstract right under Treaty stipulations.

I am, &c.
(Signed) E. HAMMOND.

No. 112.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, April 24, 1857.*
I AM directed by the Earl of Clarendon to transmit to you a copy of a despatch from Mr. Perley, inclosing a chart of the coast of Newfoundland, and stating his views as to the rights claimed by French subjects and American citizens to take fish on certain fishing-grounds in the island; and I am to request that, in laying Mr. Perley's despatch and its inclosure before Mr. Secretary Labouchere, you will move him to be good enough to cause Lord Clarendon to be informed what instructions he considers should be furnished to Mr. Perley upon this subject.

I am, &c.
(Signed) E. HAMMOND.

Inclosure in No. 112.

Despatch from Mr. Perley, dated April 21, 1857.

[See separate print (Perley Commission).]

No. 113.

The Earl of Clarendon to Lord Napier.

(No. 111.)

My Lord,

Foreign Office, May 22, 1857.

I TRANSMIT to your Lordship a note of information respecting the fishery prosecuted by citizens of the United States on the coast of Newfoundland, which it is desirable that Her Majesty's Government should possess, and I have accordingly to instruct your Lordship to forward to me any details on the subject which you may be able to procure.

I am, &c.
(Signed) CLARENDON.

No. 114.

Lord Napier to the Earl of Clarendon.—(Received June 22.)

(No. 89.)

My Lord,

Washington, June 5, 1857.

I HAVE the honour to transmit to your Lordship herewith copy of a note which I have received from the Acting Secretary of State relative to the delay which has occurred in the proceedings of the Commission named under the 1st Article of the Reciprocity Treaty for the regulation of questions connected with the fisheries.

I have transmitted a copy of this paper to Mr. Perley, at St. John's, New Brunswick, and called upon him for an explanation of the delay which is alleged to have occurred in the renewal of the operations suspended in October 1856.

I have, &c.
(Signed) NAPIER.

Inclosure in No. 114.

Mr. Appleton to Lord Napier.

My Lord,

Department of State, Washington, June 2, 1857.

THE Undersigned, Acting Secretary of State of the United States, has the honour to invite the attention of Lord Napier, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States, to the Joint Commission under the 1st Article of the Reciprocity Treaty between the United States and Great Britain.

It appears from the Report of the Commissioner on the part of the United States that the proceedings of the Commission were interrupted in October last by differences of opinion between him and Her Majesty's Commissioner in regard to what should and what should not be considered as rivers on the Island of Prince Edward.

The United States' Commissioner proposed a reference to an umpire of the causes of disagreement. To this Her Majesty's Commissioner answered that he was not in a position to nominate an umpire pursuant to the provisions of the Treaty, but that, as soon as he was, he would communicate to the United States' Commissioner the name of the gentleman whom he would propose for that office.

This Department is informed that the United States' Commissioner has heard nothing further upon the subject from Her Majesty's Commissioner.

Lord Napier is aware that the season during which the business of the Commission can be prosecuted in Her Majesty's Colonies is very brief, consequently that there should be no unnecessary delay in entering upon it. This season is now so far advanced that, under the most favourable circumstances, little progress can be expected before the advent of winter.

The Undersigned is unwilling to impute the neglect of Her Majesty's Commissioner to any acts or omissions of Her Majesty's Government; but if his delay in resuming his official duties arises solely from causes personal to himself, the Undersigned submits that the question may become necessary whether he has not, in the words of the Treaty, "omitted or ceased to act as such Commissioner."

The Undersigned, &c.

(Signed)

JOHN APPLETON, *Acting Secretary.*

No. 115.

Lord Napier to the Earl of Clarendon.—(Received July 18.)

(No. 127.)

My Lord,

Washington, July 3, 1857.

I HAVE the honour to inclose herewith copy of a note which I have addressed to the United States' Government soliciting statistical information in regard to the employment of United States' vessels in the fisheries of Newfoundland and Labrador, a subject to which my attention was directed by your Lordship's instruction No. 111 of the 22nd of May.

The accompanying reply from the State Department does not afford such categorical intelligence on the subject as I hoped to obtain, but it refers your Lordship to a printed "Report on the Principal Fisheries of the American Seas, by Lorenzo Sabine," which I have the honour to transmit under a separate cover.

This document contains an interesting historical view of the origin, expansion, and defence of the United States' fisheries, but it is far from offering those particulars of their present state which would be serviceable to Her Majesty's Government in the pending discussions.

I have, &c.

(Signed)

NAPIER.

Inclosure 1 in No. 115.

Lord Napier to Mr. Appleton.

Sir,

Washington, June 13, 1857.

IN the course of their inquiries in the statistics of the British Colonial Fisheries, Her Majesty's Government has experienced a want of information with respect to the amount of American capital and enterprize which is invested in that branch of industry.

You would confer a great obligation on Her Majesty's Government if, from the sources of intelligence at your command, you could furnish me with returns upon the following points:—

1. The number and tonnage of American vessels which resort to the fisheries of Newfoundland; the number of persons employed, the nature and value of the fish taken and cured, and the localities of the island to which the vessels of the United States principally resort.

2. The same particulars in reference to the fisheries of Labrador.

I have, &c.
(Signed) NAPIER.

Inclosure 2 in No. 115.

Mr. Cass to Lord Napier.

My Lord,

Department of State, Washington, June 30, 1857.

I HAVE the honour to acknowledge the receipt of your Lordship's note of the 13th instant, asking for information with regard to the number and tonnage of American vessels which resort to the fisheries of Newfoundland, the number of persons, the nature and value of the fish taken and cured, and the localities of the island to which the vessels of the United States principally resort, and for the same particulars in reference to the fisheries of Labrador.

Having communicated a copy of your Lordship's note to the Secretary of the Treasury, with a request that he would be so good as to enable him to impart to you the desired information, I now have the honour to transmit to your Lordship a copy of that officer's reply, with a volume containing a Report on the Principal Fisheries of the American Seas. These documents, it is true, do not contain the specific information required by your Lordship, but they embrace the best attainable information on the subject, and may be useful.

I have, &c.
(Signed) LEWIS CASS.

Inclosure 3 in No. 115.

Mr. Cobb to Mr. Appleton.

Sir,

Treasury Department, June 18, 1857.

I HAVE the honour to acknowledge your letter of the 7th instant, inclosing the copy of a note from Lord Napier of the 13th instant, asking for returns showing the number and tonnage of American vessels which resort to the fisheries of Newfoundland, the number of persons employed, and the nature and value of the fish taken and cured, and the localities of the island to which the vessels of the United States principally resort, and the same particulars in reference to the fisheries of Labrador.

On page 621 of the last Annual Report of Commerce and Navigation, may be found the tonnage enrolled and licensed for the cod and mackerel fisheries, respectively, on the 30th of June, 1856, in the several collection districts, as returned by the Collectors of Customs. Neither this Department nor the Collectors are in possession of the data necessary to furnish the specific information asked for by Lord Napier.

When licences have been duly issued to vessels for employment in the fisheries, they may be employed in their pursuit along the coasts of the United States, commonly called the Shore Fishery,—upon St. George's Banks, or the various other banks which are found from one extremity of the Atlantic Coast of the United States to the other, at various distances from the shore,—or on the coast of Labrador, at the option of their managers, without their being at any time required to state the localities of their employment.

Unless the returns made to the Department of State by the Consuls or Consular Agents of the United States in the British Provinces show the fishing vessels of the United States which resort to any particular region in the Provinces, I am not aware of any means of indicating their number and tonnage. If such returns are made, showing the names of the fishing vessels and the collection districts to which they belong, which resort to the Island of Newfoundland or the coast of Labrador, on their being communicated to this Department, I will cheerfully obtain from the Collectors of these districts the tonnage of

each vessel, the number of her crew, and, probably, the quantity of fish taken and cured by each vessel.

I have, &c.
(Signed) HOWELL COBB, *Secretary of the Treasury.*

No. 116.

Lord Napier to the Earl of Clarendon.—(Received August 24.)

(No. 151.)

My Lord,

Washington, August 2, 1859.

I HAVE not thought it necessary to submit to your Lordship several letters which have passed between Mr. Perley and Her Majesty's Legation relative to the resumption of the duties of the Fishery Commission, under the Reciprocity Treaty with the United States.

By the inclosed Report from Her Majesty's Commissioner, your Lordship will learn that he has held a conference with his colleague, that an umpire has been selected, that the rivers of Prince Edward's Islands will in the present season be adjudicated on, and those of New Brunswick examined, and that towards the end of September Mr. Perley and Mr. Cushman will again meet, the former having in the interval, as I understand, duties to perform in Newfoundland, under the orders of the Colonial Office.

I learn from the Department of State that it is not the intention of the American Cabinet to change their Commissioner for the present, but I have reason to believe that an alteration will be effected at a later period. In the mean time Mr. Perley has made no difficulty in co-operating with a person to whose society I believe, and not without reason, he feels some repugnance.

I have, &c.
(Signed) NAPIER.

Inclosure 1 in No. 116.

Mr. Perley to Lord Napier.

My Lord,

St. John's, New Brunswick, July 23, 1859.

I HAVE the honour to inform your Lordship that, agreeably to arrangement with Mr. Cushman, I met him at Eastport on the 19th instant, and proceeded to the appointment of an umpire.

I proposed the Honourable Mr. Gray, and Mr. Cushman proposed Bion Bradbury, Esq., of Eastport. The choice was then decided by lot, and fell upon the Honourable Mr. Gray, whom the United States' Commissioner admitted to be an unexceptionable person.

Mr. Cushman then accompanied me to this city, and yesterday Mr. Gray took and subscribed the solemn Declaration required by the 1st Article of the Treaty in our presence, and before the Mayor of this city and the United States' Consul at this port.

A wish having been expressed by Mr. Cushman and Mr. Cutts, his surveyor, to proceed with the examination of the rivers of New Brunswick during the present season, I furnished them a list of twenty-six rivers in this province which require to be examined and marked, together with copies of the Admiralty charts and provincial maps relating to the same.

Mr. Cushman left here this morning, apparently satisfied in every particular, and proposes, with Mr. Cutts, to commence forthwith the examination of the rivers on the northern side of the Bay of Fundy, commencing at the boundary of the United States, and when those are finished to proceed to Baie Verte, on the Gulf of St. Lawrence, and examine the rivers from thence northwardly to the Canadian boundary, at the River Restigondre.

I shall, of course, give every assistance for the examination of these long lines of coast that may be needed.

Mr. Gray will proceed early next week to Prince Edward's Island, with my surveyor, and enter upon his duties there.

It was agreed between Mr. Cushman and myself that we should meet at Boston the last week in September, to make our awards on the rivers of New Brunswick, and receive the decision of the umpire upon the cases submitted to him, with the understanding that

we shall proceed with the examination of rivers on the American coast, in the States of Connecticut and New York, after the 1st of October.

I have, &c.
(Signed) M. H. PERLEY.

Inclosure 2 in No. 116.

Lord Napier to Mr. Perley.

Sir, *Washington, July 31, 1857.*
I HAVE the honour to acknowledge the receipt of your letter of the 23rd instant, reporting the steps which you have taken in conjunction with your American colleague for the selection of an Arbitrator, and the examination of the river in Prince Edward's Island and New Brunswick.

I do not doubt that the proceedings will meet with the full approval of Her Majesty's Government.

In informing me that you have agreed with Mr. Cushman to meet him at Boston in the last week in September, I presume that you will be engaged in performing the duties in Newfoundland to which you alluded in your letter.

I have, &c.
(Signed) NAPIER.

No. 117.

Mr. Hammond to Mr. Merivale.

Sir, *Foreign Office, August 25, 1857.*
I AM directed by the Earl of Clarendon to transmit to you, to be laid before Mr. Secretary Labouchere, a copy of a despatch from Her Majesty's Minister at Washington, inclosing copies of his correspondence with Mr. Perley respecting the Fishery Commission.*

I am, &c.
(Signed) E. HAMMOND.

No. 118.

Lord Shelburne to Mr. Merivale.

Sir, *Foreign Office, November 7, 1857.*
I AM directed by the Earl of Clarendon to transmit to you, for the information of Mr. Secretary Labouchere, a copy of a despatch from Mr. Perley, reporting his proceedings with reference to the Fishery Commission.

I am, &c.
(Signed) SHELburne.

No. 119.

Lord Shelburne to Mr. Merivale.

Sir, *Foreign Office, November 12, 1857.*
I AM directed by the Earl of Clarendon to inclose a copy of a despatch† from Mr. Perley, forwarding a Memorandum on the subject of the French Fisheries at Newfoundland, and I am to request that you will move Mr. Secretary Labouchere to favour the Earl of Clarendon with any observations he may have to make thereon.

I am to request that the Memorandum in Mr. Perley's despatch forwarded herewith in original may be returned when done with.

I am, &c.
(Signed) SHELburne.

* No. 116.

† See separate print (Perley Commission).

No. 120.

Lord Napier to the Earl of Clarendon.—(Received February 16.)

(No. 20.)

My Lord,

Washington, February 1, 1858.

I HAVE the honour to transmit to your Lordship herewith copy of a Bill which has been brought into the Senate, by Mr. Clay, of Alabama, for the repeal of the laws allowing bounties to vessels employed in the cod fisheries.

In the Senate, where Southern interests, and consequently, Free Trade opinions are predominant, this measure may pass; but there is reason to fear that it will be rejected in the House of Representatives, where the North has a majority.

I have heard no apology for the artificial support granted to the fishing trade, except the argument, exploded in England, that it operates as a nursery for national seamen. The North will, however, regard the present measure as a sectional attack, dictated by the animosities of the Slave States, and will resist rather from party feeling, than from any conviction of the utility of the bounty system.

I have, &c.
(Signed) NAPIER.

No. 121.

Mr. Hammond to Sir J. Emerson Tennent.

Sir,

Foreign Office, February 16, 1858.

I AM directed by the Earl of Clarendon to transmit to you, to be laid before the Lords of Trade a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a Bill which has been introduced into the American Congress, for the repeal of all laws allowing bounties to vessels employed in the cod fisheries.*

I am, &c.
(Signed) E. HAMMOND.

No. 122.

Lord Napier to the Earl of Clarendon.—(Received February 23.)

(No. 33.)

My Lord,

Washington, February 8, 1858.

WITH reference to my despatch No. 20, of the 2nd instant, I have now the honour to inclose copy of a Report of the Committee of Commerce, in which the present system of bounties to the American Cod Fisheries is condemned in brief but conclusive terms.

I have, &c.
(Signed) NAPIER.

No. 123.

Mr. Merivale to Mr. Hammond.—(Received February 26.)

Sir,

Downing Street, February 25, 1858.

WITH reference to Lord Shelburne's letter, dated the 12th November, inclosing copies of a despatch and memoranda from Mr. Perley on the subject of Fisheries in Newfoundland, and requesting to be furnished with any observations which Mr. Secretary Labouchere might have to make on these papers, I am directed to refer you, for the information of the Earl of Clarendon, to the observations in the 3rd paragraph of the confidential despatch, dated the 21st ultimo, from the Governor of Newfoundland (to whom Mr. Labouchere communicated copies of Mr. Perley's despatch and inclosures), of which a copy is transmitted with my other letters of this date.

2. Mr. Perley reported his opinion, in the despatch referred to, that it was unnecessary for the Commissioners under the Reciprocity Treaty to visit the coasts of Newfoundland between Cape St. John and Cape Ray for the purpose of defining mouths of rivers, nature

having itself defined them sufficiently according to the observations or information of Mr. Perley. The Governor having acknowledged the papers without objecting to this opinion, Mr. Labouchere sees no objection to acquiescing in Mr. Perley's proposal to leave this coast unvisited until reason to the contrary may appear.

I am, &c.
(Signed) HERMAN MERIVALE.

No. 124.

Mr. Hammond to Sir J. Emerson Tennent.

Sir, *Foreign Office, February 26, 1858.*
WITH reference to my letter of the 16th instant I am directed by the Earl of Clarendon to transmit to you, to be laid before the Lords of Trade, a copy of a despatch from Her Majesty's Minister at Washington,* inclosing a Report of the Committee of Commerce in the Senate of the United States, recommending the abolition of all bounties to vessels engaged in the cod fisheries.

I am, &c.
(Signed) E. HAMMOND.

No. 125.

Mr. Hammond to Mr. Waddington.

Sir, *Foreign Office, June 4, 1858.*
I AM directed by the Earl of Malmesbury to transmit to you, to be laid before Mr. Secretary Walpole, a copy of a despatch from Mr. Perley, the British Commissioner appointed under the Treaty of June, 5, 1854, between Great Britain and the United States, to define the places intended to be reserved from the common liberty of fishing, requesting that he may be furnished with certain maps which are in the office of the Irish Fisheries Commissioners in Dublin; and I am to request that you will move Mr. Walpole to cause Mr. Perley's application to be complied with.

I am, &c.
(Signed) E. HAMMOND.

No. 126.

Mr. Waddington to Mr. Hammond.—(Received June 26.)

Sir, *Whitehall, June 25, 1858.*
I AM directed by Mr. Secretary Walpole to transmit to you, with reference to your letter of the 4th instant, the inclosed copy of a letter from Colonel Larcom, and copies of maps of certain rivers in Ireland, the mouths of which have been defined by the Fishery Commissioners under the Act 5 and 6 Vict. c. 106; and I am to request that you will submit the same to the Earl of Malmesbury, in order that they may be furnished to Mr. Perley, as requested.

I am, &c.
(Signed) H. WADDINGTON.

Inclosure in No. 126.

Colonel Larcom to Mr. Waddington.

Sir, *Dublin Castle, June 21, 1858.*
REFERRING to your letter of the 7th instant, requesting to be furnished with copies of maps defining the mouths of rivers in Ireland, which are contained in the Report of the Fishery Commissioners for Ireland, 1854, I transmit herewith, by direction of the Lord Lieutenant, copies of maps of certain rivers in Ireland, the mouths of which have been defined by the Commissioners under the provisions of the 5 and 6 Vict. cap. 106,

and I am at the same time desired to acquaint you, for the information of Mr. Secretary Walpole, that the Commissioners of Fisheries, in furnishing these maps, observe that there are many other rivers in Ireland the mouths of which have been similarly defined; but the maps are now out of print. The Commissioners hope, however, that those now sent will be sufficient to show the principle on which the mouths of rivers are defined by them for the government of engines used in the salmon fisheries of Ireland.

I am, &c.
(Signed) THOMAS LARCOM.

No. 127.

Lord Napier to the Earl of Malmesbury.—(Received September 27.)

(No. 216.)

My Lord,

Washington, September 8, 1858.

I HAVE the honour to inclose herewith a copy of a note from the Secretary of State announcing the appointment of Mr. Benjamin Wiggin as Commissioner for the settlement of fishery questions, under the Reciprocity Treaty, in lieu of Mr. Cushman.

It may be hoped that this appointment will be acceptable to Her Majesty's Commissioner, who experienced some difficulties with his former colleague.

I have, &c.
(Signed) NAPIER.

Inclosure in No. 127.

Mr. Cass to Lord Napier.

My Lord,

Department of State, Washington, September 3, 1858.

BY some accident I omitted to notify to you the appointment of Benjamin Wiggin, Esq., as Commissioner on the part of the United States under the Reciprocity Treaty, at the time of his appointment.

I now accordingly have the honour to do so, and to inform you that he has entered upon the discharge of the duties of his office.

I have, &c.
(Signed) LEWIS CASS.

No. 128.

Mr. Fitzgerald to Mr. Merivale.

Sir,

Foreign Office, September 27, 1858.

I AM directed by the Earl of Malmesbury to transmit to you herewith, for the information of Secretary Sir E. B. Lytton, a copy of a despatch from Her Majesty's Minister at Washington,* inclosing a copy of a note addressed to him by the Secretary of State of the United States, announcing the appointment of Mr. B. Wiggin, to succeed Mr. Cushman as Commissioner for the settlement of fishery questions under the Reciprocity Treaty.

I have, &c.
(Signed) W. R. S. V. FITZGERALD.

No. 129.

Mr. Hammond to Mr. Merivale.

Sir,

Foreign Office, December 30, 1858.

I AM directed by the Earl of Malmesbury to transmit to you, for the information of Secretary Sir Edward Bulwer Lytton, a copy of a despatch from Mr. Perley, Her Majesty's Commissioner under the Ist Article of the Reciprocity Treaty between this country and the United States, reporting the progress made in the business of the Commission.

I am, &c.
(Signed) E. HAMMOND.

No. 130.

Mr. Merivale to Mr. Hammond.—(Received January 18.)

Sir, *Downing Street, January 17, 1859.*
 I AM directed by Secretary Sir Edward Bulwer Lytton to acknowledge your letter of the 30th ultimo, inclosing a copy of a despatch from Mr. Perley, reporting the progress made by the Commissioners under the 1st Article of the Reciprocity Treaty with the United States.

I have, &c.
 (Signed) HERMAN MERIVALE.

No. 131.

Sir F. Rogers to Mr. Hammond.—(Received January 26.)

Sir, *Downing Street, January 26, 1861.*
 I AM directed by the Duke of Newcastle to transmit to you, for the consideration of Lord John Russell, the copy of an Act passed by the Legislature of Prince Edward Island, intituled "An Act to enable the Controller of Navigation laws in this Island to grant and issue Fishery Licenses to Citizens of the United States for Vessels built in Prince Edward Island, and owned by them."

I also inclose a copy of the Report made upon that Act by the Attorney-General of the Colony, who states that its provisions conflict with the Imperial Laws relating to British ships and navigation.

With reference to this observation the Act has been referred to the Board of Trade; but the Duke of Newcastle is also desirous to ascertain whether the Act is, in Lord John Russell's opinion, open to any objection in its bearing on the foreign relations of this country.

I am, &c.
 (Signed) FREDERIC ROGERS.

Inclosure in No. 131.

*Extract from Report of the Colonial Attorney-General of Prince Edward Island Acts
 inclosed in Governor's despatch dated November 26, 1860.*

CAP. XX. "An Act to enable the Controller of Navigation Laws in this Island to Grant and Issue Fishing Licenses to Citizens of the United States for Vessels built in Prince Edward Island, and owned by them."

This Act was passed for the purpose of increasing the trade and revenue of the Colony by encouraging the building of vessels, not exceeding 150 tons, by citizens of the United States, to be employed in the fisheries around the coast of the island.

The Act authorizes the Controller of Navigation Laws to grant Fishing Licenses to citizens of the United States for any vessel not exceeding 150 tons burthen built in this island, said vessels only to be employed or engaged in carrying on the fisheries or business connected therewith, but said vessels are not to have and enjoy the privileges of British ships for any other purpose whatsoever.

As the provisions of this Act conflict with the Imperial Laws relating to British ships and navigation, it contains a suspending clause.

No. 132.

Mr. Hammond to Sir F. Rogers.

Sir, *Foreign Office, January 31, 1861.*
 I HAVE laid before Lord J. Russell your letter of the 26th instant, and I am in reply to request that you will inform his Grace the Duke of Newcastle that his Lordship would suggest that the opinion of the Law Officers of the Crown should be taken with regard to the Act recently passed by the Legislature of Prince Edward Island, under

which citizens of the United States can obtain fishing licenses for vessels owned by them and built in that island.

I am, &c.
(Signed) E. HAMMOND.

No. 133.

Lord J. Russell to Lord Lyons.

(No. 197.)

My Lord,

Foreign Office, June 28, 1861.

I TRANSMIT to your Lordship herewith a copy of a letter from the Colonial Office, inclosing a copy of a despatch from the Lieutenant-Governor of Nova Scotia, transmitting a Joint Address to the Queen from both branches of the Legislature of that Colony, praying that the attention of the Governments of France and the United States may be called to the injury inflicted on the fisheries of British North America by the practice of taking fish by means of set lines on the spawning banks off the coasts of Newfoundland, Nova Scotia, Labrador, and other territories; and I have to state to you that Her Majesty's Government are of opinion that it would be advisable that a Joint Commission should be appointed by France, England, and the United States, to inquire into this matter, with a view of framing measures to prevent the practice complained of, if it should be found to be advisable to do so.

I have therefore to instruct your Lordship to propose to the United States' Government the establishment of such a Commission, and making this proposal you will point out that the only object which Her Majesty's Government have in view is the protection of these important fisheries, which it must be equally the desire of France and the United States to preserve from deterioration.

I have, &c.
(Signed) J. RUSSELL.

No. 134.

Lord Lyons to Lord J. Russell.—(Received August 4.)

(No. 356.)

My Lord,

Washington, July 18, 1861.

I HAVE the honour to inclose a copy of a note in which, in obedience to the instruction conveyed to me by your Lordship's despatch No. 197 of the 28th June, I proposed to the United States' Government the appointment of a Joint Commission by Great Britain, the United States, and France, to inquire concerning practices destructive of the fisheries on the coasts of the British North American Provinces.

I have also the honour to inclose a copy of a note which I have received from Mr. Secretary Seward in reply.

I have, &c.
(Signed) LYONS.

Inclosure 1 in No. 134.

Lord Lyons to Mr. Seward.

Sir,

Washington, July 17, 1861.

A JOINT Address has been presented to the Queen from both branches of the Legislature of Nova Scotia, praying that the attention of the Governments of the United States and France may be called to the injuries inflicted on the fisheries of British North America by the practice of taking fish by means of set lines on the spawning banks off the coasts of Newfoundland, Nova Scotia, Labrador, and other territories. And Her Majesty's Government are of opinion that it would be advisable that a Joint Commission should be appointed by Great Britain, the United States, and France, to inquire into this matter, with a view to framing measures to prevent the practice complained of, if it should be found advisable to do so.

I am accordingly instructed to propose to the Government of the United States the establishment of such a Commission, and at the same time to point out that the only object which Her Majesty's Government have in view is the protection of these important

fisheries, which it must be equally the desire of the United States and of France to preserve from deterioration.

I have, &c.
(Signed) LYONS.

Inclosure 2 in No. 134.

Mr. Seward to Lord Lyons.

My Lord, *Department of State, Washington, July 18, 1861.*

YOUR Lordship's note of the 17th instant, suggesting the appointment of a Joint Commission by Great Britain, the United States, and France, to inquire concerning practices destructive of the fisheries of North America off the coasts of Newfoundland, Nova Scotia, Labrador, and other territories, has been received.

The subject is deemed one of sufficient magnitude to deserve early consideration. A law would be necessary to enable the President to act upon the proposition you have submitted. The President will therefore bring the subject to the notice of Congress, whose action upon it will, of course, be conclusive. It will belong to the Legislature also to decide whether the public convenience will allow of its consideration at the present Session of Congress.

I have, &c.
(Signed) WILLIAM H. SEWARD.

No. 135.

Lord Lyons to Lord J. Russell.—(Received August 5.)

(No. 359.)

My Lord, *Washington, July 20, 1861.*

WITH reference to my despatch No. 356 of yesterday's date, I have the honour to inclose the copy of a message from the President to Congress, concerning the proposal of Her Majesty's Government to institute a Joint British, American, and French Commission, to make inquiry with respect to practices injurious to the fisheries on the coasts of the British North American Possessions.

I have, &c.
(Signed) LYONS.

Inclosure in No. 135.

Message.

To the Senate and House of Representatives :

AS the United States have, in common with Great Britain and France, a deep interest in the preservation and development of the fisheries adjacent to the North Eastern coast and islands of this continent, it seems proper that we should concert with the Governments of those countries such measures as may be conducive to those important objects. With this view, I transmit to Congress a copy of a correspondence between the Secretary of State and the British Minister here, in which the latter proposes, on behalf of his Government, the appointment of a Joint Commissioner to inquire into the matter, in order that such ulterior measures may be adopted as may be advisable for the objects proposed. Such legislation is recommended as may be necessary to enable the Executive to provide for a Commissioner on behalf of the United States.

(Signed) ABRAHAM LINCOLN.

Washington, July 19, 1861.

No. 136.

Lord Lyons to Lord J. Russell.—(Received August 8.)

(No. 371.)

My Lord,

Washington, July 25, 1861.

WITH reference to my despatch No. 359 of the 20th ultimo, I have the honour to inform your Lordship that the Senate has postponed until the regular Session in December the consideration of the President's Message concerning the proposal of Her Majesty's Government that a Joint British, United States, and French Commission shall be appointed to make inquiries into certain practices injurious to the fisheries on the coasts of British North America.

Congress determined, at the opening of this special Session, to consider only such measures as were directly connected with the prosecution of the war, and has adhered, except in a very few urgent cases, to this determination.

I have, &c.
(Signed) LYONS.

No. 137.

Earl Russell to Lord Lyons.

(No. 480.)

My Lord,

Foreign Office, December 14, 1861.

WITH reference to my despatch No. 197 of the 28th of June last, I inclose, for your Excellency's information, a copy of a despatch from Her Majesty's Ambassador at Paris, relative to the proposed Joint Commission for inquiring into the measures to be taken for the preservation of the fish on the coasts of Newfoundland, Nova Scotia, Labrador, and other territories.

I am, &c.
(Signed) RUSSELL.

No. 138.

Lord Lyons to Earl Russell.—(Received December 26.)

(No. 760.)

My Lord,

Washington, December 13, 1861.

IN my despatch No. 371 of the 25th July last, I had the honour to inform your Lordship that the Senate had postponed until the regular Session (which has now begun) the consideration of the President's message concerning the proposal of Her Majesty's Government for a joint British, United States, and French Commission for inquiry into certain practices injurious to the fisheries on the coasts of British North America.

The Senate resolved on the 10th instant, on the motion of Mr. Sumner, the Chairman of the Committee on Foreign Relations, that the message in question should be referred at once to that Committee. I have not had any communication on the subject with the United States' Government since the consideration of the message was postponed in July. I presume that Her Majesty's Government still consider the establishment of the Joint Commission to be desirable.

I have, &c.
(Signed) LYONS.

No. 139.

Earl Russell to Lord Lyons.

(No. 498.)

My Lord,

Foreign Office, December 27, 1861.

WITH reference to your Lordship's despatch No. 760 of the 13th instant, relative to the proposed Joint Commission for inquiring into the measures to be taken for the preservation of the fish on the coast of Newfoundland, Nova Scotia, Labrador, and other territories, I have to refer you to Earl Cowley's despatch No. 1,438 of the 13th instant, a copy of which was forwarded to your Lordship in my despatch No. 480 of the 14th of December.

I am, &c.
(Signed) RUSSELL.

No. 140.

Lord Lyons to Earl Russell.—(Received January 27.)

(No. 21.)

My Lord,

Washington, January 14, 1862.

WITH reference to your Lordship's despatches No. 480 of the 14th December last, and No. 498 of the 27th of the same month, I have the honour to inform you that I mentioned to Mr. Seward three days ago that the French Government were not willing to consent to the appointment of a Joint British, American, and French Commission for inquiring into the measures to be taken for the preservation of the fish on the coasts of the British North American Provinces.

Mr. Seward asked me whether I was instructed to make any special communication to him in consequence of the refusal of France to concur in the plan.

I said that I had no special instruction on the subject, but that I concluded that Great Britain and the United States would hardly desire to adhere to the plan, since France objected to it. I had thought it right to speak to him on the matter, because I had observed that it had been recently taken up in the Senate. Mr. Seward said that he would confer about it with Mr. Sumner, the Chairman of the Senate Committee on Foreign Relations.

I have, &c.
(Signed) LYONS.

No. 141.

Lord Lyons to Earl Russell.—(Received April 23.)

(No. 235.)

My Lord,

Washington, April 7, 1862.

I HAVE the honour to inclose copies of an Act of Congress, authorizing the appointment of a Joint Commission for the preservation of the Atlantic fisheries, and also a copy of a note which I have received from Mr. Seward, announcing the appointment of a Commission on the part of the United States.

As I had the honour to report to your Lordship in my despatch No. 31 of the 14th January last, I informed Mr. Seward on the 11th of that month, that the French Government had refused to agree to the proposal made by Great Britain for the appointment of such a Joint Commission, and I said to him that I concluded that Great Britain and the United States would hardly adhere to the plan, since France objected to it.

It would seem, however, that Mr. Seward, having already sent to Congress a request to authorize the President to appoint a Commissioner, thought it better not to recall it. On the Act being passed, I spoke to Mr. Seward again, and suggested to him that the matter should be allowed to stand over for the present. He, however, thought that it would be more regular that he should inform me officially that the Act had passed, and he has accordingly addressed to me the note of which I have inclosed a copy herein. I think it better to defer making any reply to it, until I receive instructions from your Lordships in answer to this despatch.

I have, &c.
(Signed) LYONS.

Inclosure 1 in No. 141.

Laws of the United States passed at the Second Session of the Thirty-seventh Congress.

[PUBLIC.—No. 39.]

An Act for a Joint Commission for the Preservation of the Atlantic Fisheries.

BE IT enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized to appoint a Commissioner, to meet such Commissioner as may be appointed on the part of Great Britain, and also one on the part of France, together to form a Joint Commission to frame measures to protect the fisheries off the coasts of Newfoundland and

North America against deterioration and destruction by means of set lines on the spawn banks, and like destructive practices.

SEC. 2. And be it further enacted, That to enable the President to carry into effect this Act, the sum of three thousand dollars be and the same is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

Approved, March 15, 1862.

Inclosure 2 in No. 141.

Mr. Seward to Lord Lyons.

My Lord,

Washington, April 2, 1862.

I HAVE the honour to inform you that Congress has passed an Act for the establishment of a Joint Commission for the preservation of the Atlantic fisheries, and that Lorenzo Sabine, Esq., has been appointed Commissioner under it on the part of this Government.

I avail, &c.

(Signed) WILLIAM H. SEWARD.

No. 142.

Mr. Hammond to Sir F. Rogers.

Sir,

Foreign Office, April 26, 1862.

WITH reference to my letter of the 19th of December last, I am directed by Earl Russell to transmit to you herewith copies of a despatch and its inclosures from Her Majesty's Minister at Washington,* from which it appears that, although the French Government have declined to take part with Great Britain and the United States in a Joint Commission for the protection of the Atlantic fisheries, the Congress of the United States has passed an Act authorizing the appointment of such a Commission, and the United State's Government has nominated Mr. Lorenzo Sabine to act as their Commissioner under it; and I am to request that, in laying Lord Lyons' despatch before the Duke of Newcastle, you will move his Grace to favour Lord Russell with his opinion as to the course which he would propose to adopt in the matter.

I am, &c

(Signed) E. HAMMOND.

No. 143.

Earl Russell to Lord Lyons.

(No. 235.)

My Lord,

Foreign Office, May 24, 1862.

IT appears from your despatch No. 235 of the 7th of April, that, although the French Government have declined to take part with those of Great Britain and of the United States in nominating a Joint Commission for the protection of the fisheries off the northern coast of America, the Congress of the United States have passed an Act authorizing the appointment of a Commissioner on their behalf, and that Mr. Lorenzo Sabine has been so appointed by the President; and I have to instruct your Lordship to report to me your opinion whether any good would be derived from the appointment of a Commission composed only of a British and American Commissioner, without the co-operation of a Commissioner on the part of France.

I am, &c.

(Signed) RUSSELL.

No. 144.

Lord Lyons to Earl Russell.—(Received June 26.)

(No. 421.)

My Lord,

Washington, June 11, 1862.

I HAVE had the honour to receive your Lordship's despatch No. 235 of the 24th ultimo, respecting the proposal which I was directed by your Lordship to make to the Government of the United States for the appointment of a Joint British, French, and United States' Commission for the protection of the fisheries on the coast of British North America. Your Lordship now desires me to report to you whether, in my opinion, any good would be derived from the appointment of a Commission composed only of a British and American Commissioner, without the co-operation of a Commissioner on the part of France.

The object of the proposed Commission was to inquire into the injuries said to be inflicted on the fisheries by the practice of taking fish by means of set lines on the spawning banks, and to frame measures to prevent that practice, should it be found advisable to do so.

I am not sufficiently acquainted with the habits either of the fishermen or of the fish to be able to say what the effect of regulations binding on Englishmen and Americans, but not binding on Frenchmen, would have with regard to this particular mode of fishing. But in a political point of view I think it would be far from advisable, at this moment, to make, otherwise than in concert with the French Government, any arrangement with the United States in a matter in which France is in any way concerned.

I am, &c.
(Signed) LYONS.

No. 145.

Mr. Layard to Sir F. Rogers.

Sir,

Foreign Office, July 24, 1862.

WITH reference to your letter of the 21st of May, I am directed by Earl Russell to transmit to you, for the information of his Grace, a copy of a despatch from Her Majesty's Minister at Washington,* respecting the proposed appointment of a Commission to inquire into the measures to be adopted for the protection of the fisheries on the coast of British North America.

I am, &c.
(Signed) A. H. LAYARD.

No. 146.

Sir F. Rogers to Mr. Layard.—(Received August 6.)

Sir,

Downing Street, August 5, 1862.

WITH reference to your letter of the 24th ultimo, I am directed by the Duke of Newcastle to acquaint you, for the information of Earl Russell, that his Grace concurs in the opinion expressed by Lord Lyons that it would be inexpedient at the present moment in a political point of view to institute any separate action with the United States in a matter in which France is equally concerned, and he would therefore suggest that the subject of the proposed appointment of a Commission to inquire into the measures to be adopted for the protection of the fisheries on the coasts of British North America should be allowed to drop.

I am, &c.
(Signed) FREDERIC ROGERS.

No. 147.

The Secretary to the Admiralty to Mr. Hammond.—(Received October 18.)

Sir, *Admiralty, October 16, 1862.*
 COMMANDER THRUPP, of Her Majesty's ship "Desperate," having incurred the expense of 20*l.* in providing for the entertainment of Mr. Commissioner Perley, in July last, on the occasion of his visiting the bays and fishing stations in Newfoundland, and the Commissioner having died after having been on board nineteen days, I am commanded by my Lords Commissioners of the Admiralty to acquaint you that they approve of the sum in question being refunded to Commander Thrupp, but will be glad to be informed whether Earl Russell is of opinion that the amount should be charged to the public.

I am, &c.
 (Signed) W. G. ROMAINE.

No. 148.

Sir F. Rogers to Mr. Hammond.—(Received December 4.)

Sir, *Downing Street, December 3, 1862.*
 I AM directed by the Duke of Newcastle to inclose, for Earl Russell's consideration, copies of a letter from the Admiralty with extracts of its inclosures, from which it will be seen that their Lordships are desirous of being informed whether the laws of Newfoundland for the regulation of their fisheries are binding on inhabitants of the United States fishing within Newfoundland waters.

His Grace desires me to inclose the copy of a letter which with Earl Russell's concurrence he would propose to address to the Law Officers of the Crown in order to obtain their opinion on the subject.

I am, &c.
 (Signed) FREDERIC ROGERS.

Inclosure 1 in No. 148.

The Secretary to the Admiralty to Sir F. Rogers.

Sir, *Admiralty, November 12, 1862.*
 I AM commanded by my Lords Commissioners of the Admiralty to send you herewith, for the information of Her Majesty's Secretary of State for the Colonies, a copy of a letter from Vice-Admiral Sir Alexander Milne, dated the 28th October, with copies of its inclosures from Captain Hamilton, of Her Majesty's ship "Vesuvius," relating to the Newfoundland and Labrador fisheries.

My Lords desire to call attention to the question asked by Sir Alexander Milne, whether, under the Reciprocity Treaty, United States' fishermen are bound to obey the laws and regulations which from time to time may be established by the Newfoundland Legislature as to the mode in which fish is to be taken on the coasts of Newfoundland and Labrador.

I am, &c.
 (Signed) W. G. ROMAINE.

Inclosure 2 in No. 148.

Vice-Admiral Sir Alexander Milne to the Secretary to the Admiralty.

Sir, *"Nile," Halifax, October 28, 1862.*
 IN transmitting, for their Lordships' information, the inclosed copy of Captain Hamilton's letter of proceedings of the 15th instant, and of his Fishery Report for the last season, I beg you will acquaint their Lordships that the thanks of the Council of Newfoundland were accorded to that officer for his services during that period.

I should, however, be glad to be informed whether, under the Reciprocity Treaty, United States' fishermen are bound to obey the laws and regulations which from time to

time may be established by the Newfoundland Legislature as to the mode in which fish are to be taken on the coasts of that island and Labrador.

I have, &c.

(Signed) ALEXR. MILNE,
Vice-Admiral and Commander-in-Chief.

Inclosure 3 in No. 148.

Captain Hamilton to Vice-Admiral Sir Alexander Milne.

(Extract.)

"Vesuvius," Halifax, October 15, 1862.

I PROCEEDED from thence to Middle Harbour. On entering, touched on a rock, as reported in my letter of the 16th ultimo. Here I found about fifty Nova Scotian and American schooners, anxiously expecting herring, which had not yet come in (September 14th), the usual commencement of that fishery being a month earlier. I was here informed, the Americans have expressed their conviction they were not bound by Newfoundland laws, and expressed their intention of barring in herring as usual, and defending their seines with fire-arms if attacked; the Newfoundlanders, on the other hand, were determined to prevent the barring of herring.

At Salt's Ponds the same opinions prevailed; and I have no doubt that had herring come in during my absence, there would have been serious disturbances, and to prevent which, I remained principally in the vicinity of the herring stations (Salt's Ponds), Sophia Harbour of Lame's chart, and Middle Harbour.

Inclosure 4 in No. 148.

Captain Hamilton to Governor Sir A. Bannerman.

(Extract.)

"Vesuvius," St. John's, Newfoundland, October 6, 1862.

IT was currently reported, and I believe with truth, that the Americans had expressed their opinion that they were not bound by the laws of Newfoundland; and had also expressed their intention to bar in herring as usual, and defend their seines by force, if necessary; and the Newfoundlanders of Battle Harbour and Salt's Ponds were equally determined to prevent it; and from some of the Nova Scotian masters having asked me if the Reciprocity Treaty did not except Americans, it was evident the subject had been discussed; and I am of opinion, that if herring had come in, there would have been a serious riot, in which fire-arms would probably have been used, had the "Vesuvius" not been present; and to prevent which, I remained a week later on the coast than I otherwise should have done, and till all prospects of herring coming in was over.

Inclosure 5 in No. 148.

Proposed Letter to the Law Officers.

Sir,

Downing Street, December , 1862.

I AM directed by the Duke of Newcastle to request that in conjunction with the Solicitor-General you will favour him with your opinion on the following question.

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

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

His Grace desires to be informed whether inhabitants of the United States fishing in waters within the jurisdiction of the Legislature of Newfoundland or of any other of the above-mentioned Colonies, are bound to obey and legally punishable for disregarding the laws or regulations enacted by or under authority of the respective Provincial Legislatures for the conduct of the fisheries.

His Grace presumes that such laws would only extend to waters situate within a marine league of the coasts of the Colony which (in the case of Newfoundland, to which this question especially relates) are defined by the Governor's Commission, from which I annex an extract.

I also inclose an extract from a Report addressed to Sir A. Bannerman by the officer employed on the coast of Newfoundland, and copies of a letter from Admiral Sir A. Milne transmitting that Report to the Lords Commissioners of the Admiralty, and of a letter addressed to this Department by direction of their Lordships. These papers will explain the object with which the present question is asked.

I am, &c.

Inclosure 6 in No. 148.

Extract from the Commission appointing Governor Sir A. Bannerman to be Governor, &c.

* * * "in and over our Island of Newfoundland, and the islands adjacent, and all the coast of Labrador, from the entrance of Hudson's Straits to a line to be drawn due north and south from Anse Sablon on the said coast to the 52nd degree of north latitude, and all the islands adjacent to that part of the said coast of Labrador."

No. 149.

Mr. Hammond to Sir F. Rogers.

Sir, *Foreign Office, December 12, 1862.*
I HAVE laid before Earl Russell your letter of the 3rd instant, and its inclosures, relative to the question whether the laws of Newfoundland for the regulation of the fisheries are binding upon inhabitants of United States within Newfoundland waters; and I am to state to you in reply, for the information of the Duke of Newcastle, that Lord Russell concurs in the proposed reference of this question for the consideration of the Law Officers of the Crown.

I am, &c.
(Signed) E. HAMMOND.

No. 150.

Mr. Elliot to Mr. Hammond.—(Received January 20.)

Sir, *Downing Street, January 17, 1873.*
WITH reference to my letter of the 3rd of December last, I am directed by the Duke of Newcastle to inclose, for the information of Earl Russell, a Report from the Law Officers of the Crown on the question, Whether American fishermen on the coasts of Newfoundland and Labrador are at liberty, in virtue of the Reciprocity Treaty, to disregard the laws and regulations enacted by the Legislature of Newfoundland for the conduct of the fisheries?

I am also to inclose a copy of a despatch in accordance with that Report, which, with his Lordship's concurrence, his Grace proposes to address (confidentially) to the Governor of Newfoundland, and to communicate (also confidentially) to the Governors of the other North American Provinces and to the Lords Commissioners of the Admiralty.

I am, &c.
(Signed) T. FREDK. ELLIOT.

Inclosure 1 in No. 150.

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

My Lord Duke,

Temple, January 6, 1863.

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

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

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

Sir Frederic Rogers was also pleased to state that your Grace desired to be informed whether inhabitants of the United States, fishing in waters within the jurisdiction of the Legislature of Newfoundland, or of any other of the above-mentioned Colonies, are bound to obey and legally punishable for disregarding the laws or regulations enacted by or under authority of the respective Provincial Legislatures for the conduct of the fisheries; and that your Grace presumed that such laws would only extend to waters situate within a marine league of the coasts of the Colony which (in the case of Newfoundland, to which this question especially relates) are defined by the Governor's Commission, from which an extract was annexed.

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

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

That, in our opinion, inhabitants of the United States fishing in waters within the territorial jurisdiction of the Legislature of Newfoundland, or of any other of the above-mentioned Colonies, are bound to obey and are legally punishable for disregarding the laws and regulations for the conduct of the fisheries enacted by or under authority of the respective provincial Legislatures. The plain object of the Treaties above referred to was to put the inhabitants of the United States, as regards the "liberty to take fish" within the parts (described) of the British dominions, on the same footing as "subjects of Her Britannic Majesty" "in common" with whom, in the terms of the Treaties, such liberty was to be enjoyed. The enactments subsequently passed did but confirm the Treaties and provide for the suspension, during the operation of those Treaties, of such laws, &c., as were, or would be, inconsistent with the "terms and spirit" of the Treaties, which "terms and spirit" are, it appears to us, in no respect violated by regulations *bonâ fide* made for the government of those engaged in the fishing, and applicable to all British subjects so employed. We think, at the same time, that this British authority, as regards the inhabitants of the United States, can be exercised within those limits only within which the Treaty rights were conferred; in other words, within which, but for the Treaties, those inhabitants could not have insisted on their right to fish. These limits may be safely taken, on the main ocean, as extending to three miles (or a marine league) from the beach seawards, but there will remain (possibly) the cases of bays and other inlets lying between headlands and other points of the mainland, the whole of which may be territorial, and subject to the ordinary municipal jurisdiction to which the mainland owes obedience. Beyond this we conceive that the matters to be considered are matters rather of fact than of law.

We have, &c.

(Signed)

W. ATHERTON.

ROUNDELL PALMER.

Inclosure 2 in No. 150.

Proposed Despatch to Governor Sir A. Bannerman.

(Confidential.)

Sir,

Downing Street, January , 1863.

I HAVE to acknowledge the receipt of your despatch No. 62 of the 6th of November, inclosing two Reports from Captain Hamilton of Her Majesty's ship "Hydra," dated respectively 30th June and October last, on the Newfoundland fisheries.

The 6th paragraph of the latter of these Reports, respecting an anticipated resistance by the American fishermen on the Labrador coast to the laws of Newfoundland regulating the fisheries, raises an important question respecting the effect of the Reciprocity Treaty upon laws passed by Colonial Legislatures, on which I wish to place you in possession of the views of Her Majesty's Government.

It appears that, by the Treaty between Great Britain and the United States of America, dated October 20, 1818, it was provided *inter alia* that the inhabitants of the United States should for ever have the liberty to take fish on the coast of Newfoundland in common with the subjects of Her Britannic Majesty. This privilege was extended to the coasts of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and the several islands thereto adjacent, by the Reciprocity Treaty of June 1854, and Acts were passed by the different Colonies (by Newfoundland in July 1855, 18 and 19 Vic., c. 2) to give effect to this Treaty and especially to suspend the local laws which were inconsistent with its terms or spirit.

The question arises, whether inhabitants of the United States, fishing in waters within the jurisdiction of the Legislature of Newfoundland, or of any other of the above-mentioned Colonies, are bound to obey and legally punishable for disregarding the laws or regulations enacted by or under the authority of the Provincial Legislatures for the conduct of the fisheries within their respective waters.

It is the opinion of Her Majesty's Government, that inhabitants of the United States fishing in waters within the territorial jurisdiction of the Legislature of Newfoundland, or of any other of the above-mentioned Colonies, are bound to obey such laws and are legally punishable for disregarding them.

The plain object of the Treaties above referred to was to put the inhabitants of the United States, as regards the "liberty to take fish" within certain parts of the British dominions, on the same footing as "subjects of Her Britannic Majesty," "in common" with whom, in the terms of the Treaties, such liberty was to be enjoyed. The enactments subsequently passed did but confirm the Treaties, and provide for the suspension, during the operation of those Treaties, of such laws as were or would be inconsistent with the "terms and spirit" of the Treaties, which "terms and spirit" are in no respect violated by regulations *bonâ fide* made for the government of those engaged in the fishing, and applicable to all British subjects so employed.

I have to explain, at the same time, that this British authority, as regards the inhabitants of the United States, can be exercised within those limits only within which the Treaty rights were conferred; in other words, within which, but for the Treaties, those inhabitants could not have insisted on their right to fish. These limits may be safely taken, on the main ocean, as extending to three miles (or a marine league) from the beach seawards; but there will remain (possibly) the cases of bays and other inlets lying between headlands and other points of the mainland, the whole of which may be territorial and subject to the ordinary municipal jurisdiction to which the mainland owes obedience. What these may be is a question of fact into which I do not enter.

I have only to add my desire that, while asserting the authority of Colonial law in Colonial waters, within the limits of existing Treaties, you will take care to do so in the manner which is likely to be least offensive to the foreigners who may fall within its scope.

I have, &c.

No. 151.

Mr. Hammond to Mr. Elliot.

Sir,

Foreign Office, January 26, 1863.

I HAVE laid before Earl Russell your letter of the 17th instant, inclosing a copy of a Report from the Attorney- and Solicitor-General, as well as the draft of an instruction which the Duke of Newcastle proposes to address confidentially to the Governor of

Newfoundland, respecting the question whether American fishermen on the coasts of Newfoundland and Labrador are subject to the laws and regulations of that Colony for the conduct of the fisheries.

I am to state to you in reply, for the information of the Duke of Newcastle, that Lord Russell entirely concurs in the proposed instructions to the Governor of Newfoundland on this subject.

I am, &c.
(Signed) E. HAMMOND.

No. 152.

Earl Russell to Lord Lyons.

(No 50. Confidential.)

My Lord,

Foreign Office, January 26, 1863.

I INCLOSE, for your information, a copy of an instruction which has been addressed confidentially by the Duke of Newcastle to the Governor of Newfoundland,* respecting the question whether American fishermen on the coasts of Newfoundland and Labrador were subject to the laws and regulations of that Colony for the conduct of the fisheries.

I am, &c.
(Signed) RUSSELL.

No. 153.

Mr. Elliot to Mr. Hammond.—(Received July 17.)

Sir,

Downing Street, July 17, 1863.

I AM directed by the Duke of Newcastle to transmit to you, for the consideration of Earl Russell, a copy of a despatch from the Lieutenant-Governor of New Brunswick, inclosing an Act for the better management of the local fisheries, to which are appended Regulations made by the Governor and Council for carrying out the provisions of the Act.

With reference to the Report of the Law Officers of the Crown, a copy of which was inclosed in the letter from this Office of the 17th of January last, I am to request that you will move Lord Russell to inform his Grace whether, in his Lordship's opinion, this Act, or the Regulations annexed to it, contain anything at variance with the provisions of the Treaties referred to by the Law Officers.

I am, &c.
(Signed) T. FREDK. ELLIOT.

Inclosure in No. 153.

Mr. Gordon to the Duke of Newcastle.

My Lord Duke,

Fredericton, New Brunswick, June 23, 1863.

IN my despatch of the 30th March last, I had the honour to transmit to your Grace copies of a Report from my private secretary, Mr. Wilson, on the subject of the Fisheries of New Brunswick.

2. This Report was laid before both Houses of the Legislature, and I have now the satisfaction to inclose, for your Grace's information, six copies of an Act which has been passed for the better management of the fisheries, and of the Regulations made by me in Council for carrying out the provisions of the Act itself.

3. A good deal of difficulty may be experienced in giving practical effect to this Act; but I trust that the absolute necessity for some such measure will be sufficiently generally recognized to ensure its eventual success.

4. I may mention, as an illustration of the advantages likely to be derived from the passage of this Act, that the lease for five years of the first fishing-station let under its provisions, was taken at a rent of 770*l.* per annum, by parties who had carried on their fisheries previously at the same place without any payment whatsoever to the Crown.

I have, &c.
(Signed) ARTHUR H. GORDON.

The Law Officers of the Crown to Earl Russell.—(Received August 1.)

My Lord,

Temple, July 31, 1863.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th instant, stating, with reference to the Report of the Attorney- and Solicitor-General of the 6th of January last, addressed to the Secretary of State for the Colonies, he was directed by your Lordship to transmit to us, together with the previous papers, a letter from the Colonial Office, inclosing, with a despatch from the Lieutenant-Governor of New Brunswick, a copy of an Act of the Legislature of that Colony providing for the better management of the local fisheries, to which are appended Regulations made by the Government and Council for carrying out the provisions of the Act. And to request that we would take this Act, and the Regulations annexed to it, into our consideration, and report to your Lordship whether, in our opinion, they contain anything at variance with the Treaties between this country and the United States.

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

That we are of opinion that the Act and Regulations in question do not contain any provisions at variance with the Treaties between Great Britain and the United States.

We have, &c.

(For the Attorney-General and myself)

(Signed)

ROUNDELL PALMER.

ROBERT PHILLIMORE.

No. 155.

Mr. Layard to Sir F. Rogers.

Sir,

Foreign Office, August 4, 1863.

I AM directed by Earl Russell to request that you will state to the Duke of Newcastle that his Lordship thought it right to consult the Law Advisers of the Crown on the question raised in your letter of the 17th ultimo, as to whether the Act passed by the Legislature of New Brunswick for the better management of the local fisheries contained anything at variance with the Treaties between this country and the United States; and I am now to transmit to you, herewith to be laid before his Grace, a copy of a Report from the Law Officers stating that in their opinion, the Act and Regulations appended thereto do not contain any provisions at variance with the Treaties.*

I am, &c

(Signed)

A. H. LAYARD.